BRB No. 99-0274 BLA

BILLY J. PARSONS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WESTMORELAND COAL COMPANY	)	DATE ISSUED:
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Caleb Echterling (United Mine Workers of America, District 28 Legal Department), Castlewood, Virginia, for claimant.

Natalie D. Brown (Jackson & Kelly), Lexington, Kentucky, for employer.

Edward Waldman (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: SMITH, BROWN and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (97-BLA-1786) of Administrative Law Judge Richard T. Stansell-Gamm awarding benefits on a claim filed pursuant to

the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq*. (the Act).[1] The administrative law judge initially

[1]Claimant originally filed a Part B claim with the Social Security Administration on October 28, 1971, Director's Exhibit 47. On December 7, 1982, the Department of Labor awarded benefits on review, contingent upon claimant retiring from coal mine employment within one year of its decision becoming final, *i.e.*, January 7, 1984. In addition, liability for benefits was held to have transferred from employer to the Black Lung Disability Trust Fund pursuant to the 1981 Amendments to the Act. However, claimant did not retire from coal mine employment until May, 1985, *see* Director's Exhibits 1, 47, and subsequently filed a duplicate claim on February 20, 1986, Director's Exhibit 47.

In a Decision and Order issued on December 13, 1990, Administrative Law Judge Charles W. Campbell initially found that employer conceded that it was the correctly named responsible operator, in light of claimant's testimony that he had not worked in coal mine employment since May, 1985, *see* Director's Exhibit 47 (May 22, 1990, Hearing Transcript at 6-7). In addition, Judge Campbell found that employer conceded that a material change in conditions was established pursuant to 20 C.F.R. §725.309(d) in light of claimant's retirement from coal mine employment. Judge Campbell found twenty-seven years and four months of coal mine employment established and adjudicated the claim pursuant to 20 C.F.R. Part 718. Judge Campbell found the existence of pneumoconiosis established pursuant to 20 C.F.R. §718.202(a)(1) and pneumoconiosis arising out of coal mine employment established pursuant to 20 C.F.R. §718.203(b). However, Judge Campbell further found that total disability was not established pursuant to 20 C.F.R. §718.204(c)(1)-(4) and, therefore, denied benefits.

Claimant appealed, but because claimant subsequently filed a motion for modification, the Board remanded the case to the district director, *see* Director's Exhibit 47. *Parsons v. Westmoreland Coal Co.*, BRB No. 91-0664 BLA (July 29, 1992)(unpub. order). In a Decision and Order issued on September 30, 1994, Administrative Law Judge Reno E. Bonfanti found no mistake of fact established pursuant to 20 C.F.R. §725.310 and no basis for modifying Judge Campbell's findings that the existence of pneumoconiosis was established pursuant to Section 718.202(a)(1), that pneumoconiosis arising out of coal mine employment was established pursuant to Section 718.203(b), and that total disability was not established pursuant to Section 718.204(c)(1)-(4) in light of the newly submitted evidence. Thus, Judge Bonfanti found that a change in conditions also was not

found employer to be the responsible operator in the instant case. The administrative law judge further found total disability established by the newly submitted medical opinion evidence pursuant to 20 C.F.R. §718.204(c) and, therefore, a material change in conditions established pursuant to 20 C.F.R. §725.309(d) pursuant to the standard enunciated by the United States Court of Appeals, within whose jurisdiction this case arises, in *Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996)(*en banc*), *rev'g,* 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995). Next, in regard to the merits of entitlement, the administrative law judge initially found that in light of the principles of *res judicata* and collateral estoppel, the findings in claimant's prior claim that pneumoconiosis arising out of coal mine employment was established pursuant to 20 C.F.R. §§718.202(a)(1) and 718.203(b) could not be reopened. Finally, the administrative law judge found total disability established pursuant to Section 718.204(c) and total disability due to pneumoconiosis established pursuant to 20 C.F.R. §718.204(b). Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in several respects: in finding employer to be the responsible operator, in finding total disability and, therefore, a material change in conditions established by the newly submitted medical opinion evidence pursuant to Sections 718.204(c) and 725.309(d), and in considering only whether total disability due to pneumoconiosis was established pursuant to Section 718.204(b), (c) on the merits. Claimant responds, urging that the administrative law judge's Decision and Order awarding benefits be affirmed. The Director, Office of Workers' Compensation Programs (the Director), as a party-in-interest, responds, urging the Board to reject employer's contention that the administrative law judge erred in finding employer to be the responsible operator, but agreeing with employer's contention that the

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established pursuant to Section 725.310. Accordingly, benefits were denied.

Claimant appealed and employer cross-appealed, but the Board dismissed claimant's appeal as abandoned, *see* Director's Exhibit 47. *Parsons v. Westmoreland Coal Co.*, BRB No. 95-0422 BLA/A (Apr. 24, 1995)(unpub. order). In addition, the Board also dismissed employer's cross-appeal, as employer was no longer potentially aggrieved by Judge Bonfanti's Decision and Order denying benefits in light of the dismissal of claimant's appeal. Subsequently, claimant filed the instant, duplicate claim on July 24, 1996, Director's Exhibit 1.

administrative law judge erred in considering only whether total disability due to pneumoconiosis was established pursuant to Section 718.204(b), (c) on the merits.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The Fourth Circuit Court has held that in order to establish a material change in conditions in a duplicate claim pursuant to Section 725.309(d), a claimant must prove "under all of the probative medical evidence of his condition after the prior denial, at least one of the elements previously adjudicated against him," *see Rutter, supra*. In order to establish entitlement to benefits under Part 718 in this living miner's claim, it must be established that claimant suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3; 718.202; 718.203; 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986). Failure to prove any one of these elements precludes entitlement, *id*. Pursuant to Section 718.204(c), the administrative law judge must weigh all relevant evidence, like and unlike, with the burden on claimant to establish total respiratory disability by a preponderance of the evidence, *see Budash v. Bethlehem Mines Corp.*, 16 BLR 1-27 (1991)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986). Moreover, pursuant to Section 718.204(b), claimant must prove by a preponderance of the evidence that his pneumoconiosis was at least a contributing cause of his totally disabling respiratory impairment, *see Hobbs v. Clinchfield Coal Co.*, 917 F.2d 790, 15 BLR 2-225 (4th Cir. 1990); *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990).

The administrative law judge initially found employer to be the responsible operator, rejecting employer's contention that in light of the Department of Labor's December, 1982, order transferring liability for benefits from employer to the Trust Fund pursuant to the 1981 Amendments to the Act in claimant's original claim, employer was precluded from being designated as the responsible operator in claimant's subsequent claims. The administrative law judge determined that the transfer provisions of the 1981 Amendments to the Act were not applicable to the

instant claim because it did not merge with claimant's original claim, which had been denied and was no longer pending. Decision and Order at 4-6, n. 9. Employer again contends that in light of the Department of Labor's December, 1982, order which became final, transferring liability for benefits in claimant's original claim from employer to the Trust Fund, pursuant to the 1981 Amendments to the Act, employer is precluded from being designated as the responsible operator in the instant claim in accordance with the principle of *res judicata*.

We reject employer's contention, as claimant's original Part B claim cannot support transfer of liability because it had been finally denied and administratively closed after one year when claimant did not retire from coal mine employment, *see* Director's Exhibit 47. Thus, that claim was no longer pending. The only claim still "alive" and pending adjudication before the administrative law judge is the instant, duplicate Part C claim filed by claimant on July 24, 1996, which will not support transfer of liability, as it was not denied prior to March 1, 1978, the effective date of the Black Lung Benefits Reform Act of 1977, and it is not subject to the provisions of Section 435 of the Act, 30 U.S.C. §932(j)(3); 26 U.S.C. §9501(d)(1)(B). *See Hagerman v. Island Creek Coal Co.*, 11 BLR 1-116 (1988); *see also Lovilia Coal Co. v. Harvey*, 109 F.3d 445, 21 BLR 2-50 (8th Cir. 1997), *cert denied*, 118 S.Ct. 1385 (1998) (unless a claim is subject to merger pursuant to 20 C.F.R. §725.309, each claim must be considered separately to determine whether the claim is subject to the transfer of liability provisions in accordance with 20 C.F.R. §725.496(c)).[2]

Next, the administrative law judge considered the newly submitted evidence to determine whether it established total disability pursuant to Section 718.204(c), the basis of the denial of claimant's prior claim, and, therefore, whether it established a material change in conditions pursuant to Section 725.309(d) in accordance with the standard enunciated by the Fourth Circuit in *Rutter*. The administrative law judge initially found that total disability was not demonstrated by the relevant, newly submitted evidence pursuant to 20 C.F.R. §718.204(c)(1)-(3) and that the existence

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[2]Moreover, employer conceded before Judge Campbell that it was correctly named the responsible operator, in light of claimant's testimony that he had not worked in coal mine employment since May, 1985, *see* Director's Exhibit 47 (May 22, 1990, Hearing Transcript at 6-7, 20; December 13, 1990, Decision and Order at 2, n. 3). *See generally Cornett v. Director, OWCP*, 9 BLR 1-179 (1986)(*recon. en banc*); *McCuller v. Director, OWCP*, 8 BLR 1-467 (1986); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

of complicated pneumoconiosis was not established in order to invoke the irrebuttable presumption at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304, *see* 20 C.F.R. §§718.204(b), 718.304. Decision and Order at 6-13.[3] The administrative law judge then considered the eight physicians who provided newly submitted medical opinions under 20 C.F.R. §718.204(c)(4). Decision and Order at 13-20.

While the administrative law judge found that all the opinions were documented and reasoned, the administrative law judge correctly found that Drs. Zayed, Claimant's Exhibit 4, and Smiddy, Director's Exhibit 34; Claimant's Exhibit 1, did not address disability, and that Dr. Michos, Director's Exhibit 29, only addressed whether claimant was disabled due to pneumoconiosis, but not whether any respiratory disability exists. As to the remaining five physicians, Dr. Taylor, claimant's treating physician, Director's Exhibits 13, 15, Dr. Dahhan, who examined claimant, Director's Exhibit 26; Employer's Exhibit 4, and Dr. Castle, who reviewed the evidence, Employer's Exhibits 2, 5, found that claimant was totally disabled from a respiratory standpoint, while Drs. Fino, Employer's Exhibit 1, and Morgan, Employer's Exhibit 3, who both reviewed the evidence, found that claimant was not totally disabled from a respiratory standpoint. The administrative law judge found that Dr. Taylor's opinion, that claimant was totally disabled due to a pulmonary impairment, was more probative than the other medical opinions in evidence from better qualified physicians because Dr. Taylor was claimant's treating physician for several years in the most advantageous position to provide an informed opinion as to claimant's respiratory capacity and as he had examined claimant on numerous occasions. While the administrative law judge found the remaining physicians had similar qualifications, the administrative law judge also attributed greater probative value to Dr. Dahhan's opinion that claimant was totally disabled as he had examined claimant and as the administrative law judge found his opinion to be reasoned and documented. Ultimately, the administrative law judge found the opinions of Drs. Taylor, Dahhan and Castle, that claimant was totally

[3]Inasmuch as the administrative law judge's findings regarding the newly submitted evidence under Sections 718.204(c)(1)-(3) and 718.304 have not been challenged by any party on appeal, they are affirmed, *see Skrack, supra*.

disabled, outweighed the contrary opinions of Drs. Fino and Morgan. Thus, the administrative law judge found that the preponderance of the newly submitted medical opinion evidence demonstrated total disability pursuant to Section 718.204(c)(4) and outweighed the other contrary evidence under Section 718.204(c), *see Budash, supra*; *Fields, supra*; *Rafferty, supra*; *Shedlock, supra*.

Employer contends that the administrative law judge erred in giving greater weight to Dr. Taylor's opinion as claimant's treating physician, noting that it is only one factor to be considered by the administrative law judge, and that Dr. Taylor's opinion is poorly documented and reasoned and failed to account for the duration of claimant's smoking history. Employer further contends that the administrative law judge erred in giving less weight to the contrary opinions of Drs. Fino and Morgan, who employer contends are better qualified and whose opinions employer argues are documented and reasoned.

Contrary to employer's contention that there is no record of the frequency of Dr. Taylor's examinations or treatment findings, the record contains Dr. Taylor's monthly treatment records dating from December, 1987, through 1991, and up to 1997, *see* Director's Exhibits 13, 15, 47. In addition, contrary to employer's argument that Dr. Taylor's opinion was equivocal as to the cause of claimant's disability, while Dr. Taylor stated that claimant's primary disability was due to his heart disease and diabetes, he also stated that claimant would be disabled due to his pulmonary disease, *see* Director's Exhibit 15. Moreover, the administrative law judge properly noted that Dr. Taylor recorded a one pack per day smoking habit, *see* Decision and Order at 14-15. While there is no rule that absolute deference be given to the opinions of treating or examining physicians, their opinions nevertheless deserve special consideration, *see Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993). In any event, the administrative law judge, within his discretion, also accorded less weight to the opinions of Drs. Fino and Morgan because they were outweighed by the newly submitted medical opinion evidence, *see Snorton v. Zeigler Coal Co.,* 9 BLR 1-106 (1986); *Sheckler v. Director, OWCP*, 7 BLR 1-128 (1984); *see also Director, OWCP v. Greenwich Collieries [Ondecko]*, 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

It is within the administrative law judge's discretion, as the trier-of-fact, to determine the weight and credibility to be accorded the medical experts, *see Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986); *Sisak v. Helen Mining Co.*, 7 BLR 1-178, 1-181 (1984), and to determine whether an opinion is documented and reasoned, *see*

Clark v. Karst-Robbins Coal Co., 12 BLR 1-149 (1989)(*en banc*); *Fields supra; Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Thus, as the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge, *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988), and as the administrative law judge, within his discretion, provided valid, alternative reasons for giving more weight to the opinions of Drs. Taylor, Dahhan and Castle, *see Searls v. Southern Ohio Coal Co*., 11 BLR 1-161 (1988); *Kozele v. Rochester & Pittsburg Coal Co*., 6 BLR 1-378 (1983); *see also Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), we affirm the administrative law judge's finding that total disability was established by the newly submitted evidence pursuant to Section 718.204(c) as supported by substantial evidence, *see Snorton, supra; Sheckler, supra; see also Ondecko, supra; see also Budash, supra*; *Fields, supra*; *Rafferty, supra*; *Shedlock, supra*. Consequently, we affirm the administrative law judge's finding that a material change in conditions was established pursuant to Section 725.309(d), *see Rutter, supra*.

In regard to the merits of entitlement, the administrative law judge initially found that in light of the principles of *res judicata* and collateral estoppel, the findings in claimant's prior claim that the existence of pneumoconiosis and pneumoconiosis arising out of coal mine employment were established pursuant to Sections 718.202(a)(1) and 718.203(b) could not be reopened. The administrative law judge found that in light of the fact that pneumoconiosis is a progressive disease, a claimant may file a duplicate claim and establish a material change in conditions pursuant to Section 725.309(d), but determined that an employer may not relitigate the findings in claimant's prior claim that the existence of pneumoconiosis and pneumoconiosis arising out of coal mine employment were established pursuant to Sections 718.202(a)(1) and 718.203(b) to show a mistake in fact because pneumoconiosis cannot be cured. In addition, the administrative law judge found that because claimant had appealed the denial of his prior claim, employer had an opportunity, but failed, to file a cross-appeal to challenge the findings in claimant's prior claim that the existence of pneumoconiosis and pneumoconiosis arising out of coal mine employment were established pursuant to Sections 718.202(a)(1) and 718.203(b).

Employer contends that the administrative law judge erred in failing to consider all four elements of entitlement, including the existence of pneumoconiosis and pneumoconiosis arising out of coal mine employment, on the merits. We agree and, therefore, reverse the administrative law judge's determination that the findings in claimant's prior claim that the existence of pneumoconiosis and pneumoconiosis

arising out of coal mine employment were established pursuant to Sections 718.202(a)(1) and 718.203(b) could not be reopened in light of the principles of *res judicata* and collateral estoppel, and remand the case for consideration of all the evidence of record on the merits of entitlement pursuant to Section 718.202(a) and, if reached, Section 718.203(b). Collateral estoppel forecloses "the relitigation of issues of fact or law that are identical to issues which have been actually determined and necessarily decided in prior litigation in which the party against whom [issue preclusion] is asserted had a full and fair opportunity to litigate." *Ramsay v. INS*, 14 F.3d 206 (4th Cir. 1994); *see Virginia Hosp. Ass'n v. Baliles*, 830 F.2d 1308 (4th Cir. 1987)*; Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134 (1999)(*en banc*). For collateral estoppel to apply in the present case, which arises within the jurisdiction of the Fourth Circuit Court, claimant must establish that:

(1) the issue sought to be precluded is identical to one previously litigated;
(2) the issue was actually determined in the prior proceeding;
(3) the issue was a critical and necessary part of the judgment in the prior proceeding;
(4) the prior judgment is final and valid; and
(5) the party against whom estoppel is asserted had a full and fair opportunity to litigate the issue in the previous forum.

See Sedlack v. Braswell Services Group, Inc., 134 F.3d 219 (4th Cir. 1998); *Sandberg v. Virginia Bankshares, Inc.*, 979 F.2d 332 (4th Cir. 1992); *Ramsey, supra; Hughes, supra*. Inasmuch as benefits were ultimately denied in claimant's prior claim because total disability was not established pursuant to Section 718.204(c) and claimant did not pursue an appeal of the denial, the third and fifth element have not been satisfied.

While the existence of pneumoconiosis and pneumoconiosis arising out of coal mine employment are essential elements of entitlement, the establishment of those elements does not support, and thus are not "essential" to, a judgment denying benefits. *See Hughes, supra*. Moreover, contrary to the administrative law judge's finding, a party who is satisfied with a judgement below need not appeal or cross-appeal from it, *see generally Malcomb v. Island Creek Coal Co.*, 15 F.3d 364, 18 BLR 2-113 (4th Cir. 1994); *Dalle Tezze v. Director, OWCP*, 814 F.2d 129, 10 BLR 2-62 (3d Cir. 1987); *see also Hansen v. Director, OWCP*, 984 F.2d 364, 17 BLR 2-48 (10th Cir. 1993). In any event, while claimant had appealed the denial of his prior claim, employer did in fact file a cross-appeal, *see* Director's Exhibit 47; *Parsons,* BRB No. 95-0422 BLA/A (Apr. 24, 1995)(unpub. order). However, as the Board dismissed claimant's prior appeal as abandoned, the Board also dismissed employer's cross-appeal, inasmuch as employer was no longer potentially aggrieved by the denial of claimant's prior claim

in light of the dismissal of claimant's appeal. Thus, employer did not have a full and fair opportunity to litigate the issues of the existence of pneumoconiosis and pneumoconiosis arising out of coal mine employment in claimant's original claim. Consequently, under the facts of this case, we reverse the administrative law judge's finding that employer is collaterally estopped from relitigating the issues of the existence of pneumoconiosis and pneumoconiosis arising out of coal mine employment.

Finally, after considering all the evidence of record, the administrative law judge found that total disability was established on the merits of entitlement pursuant to Section 718.204(c), giving more weight to the more recent evidence of record, Decision and Order at 23-32,[4] and found that total disability due to pneumoconiosis was established pursuant to Section 718.204(b), Decision and Order at 32-34. The administrative law judge gave no weight to the opinions of those physicians who did not diagnose pneumoconiosis under Section 718.204(b) in light of the administrative law judge's determination that the finding in claimant's prior claim that the existence of pneumoconiosis was established pursuant to Sections 718.202(a)(1) could not be reopened. Consequently, inasmuch as this case must be remanded for consideration of whether the existence of pneumoconiosis was established on the merits pursuant to Section 718.202(a), we vacate the administrative law judge's finding that the opinions of those physicians failing to diagnose pneumoconiosis should be discredited under Section 718.204(b) and, therefore, vacate the administrative law judge's finding that total disability due to pneumoconiosis was established pursuant to Section 718.204(b) and remand the case for reconsideration, if reached.[5]

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[4]Inasmuch as the administrative law judge's finding pursuant to Section 718.204(c) on the merits is not challenged by any party on appeal, it is affirmed, *see Skrack, supra*.

[5]Moreover, the Fourth Circuit Court held in *Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 19 BLR 2-304 (4th Cir. 1995), that where, as in this case pursuant to Section 718.204(b) , a claimant bears the burden of establishing that pneumoconiosis caused his total disability, as opposed to enjoying a presumption of total disability due to pneumoconiosis, once the administrative law judge has found that the claimant suffers from some form of pneumoconiosis, a physician's opinion premised on an understanding that the miner does not suffer from coal workers' pneumoconiosis may hold probative value, *see also Hobbs v. Clinchfield Coal* Co., 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995); *cf. Grigg v. Director, OWCP*, 28 F.3d 416, 18 BLR 2-299 (4th Cir. 1994). The Fourth Circuit Court held in *Ballard, supra*, that such an opinion is not necessarily inconsistent with the administrative law judge's decision that the miner suffers from pneumoconiosis as defined in 20 C.F.R. §718.201, inasmuch as the legal definition of pneumoconiosis is broader than the

Accordingly, the Decision and Order of the administrative law judge's awarding benefits is affirmed in part, vacated in part, and this case is remanded for further consideration consistent with this opinion.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

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medical definition of coal workers' pneumoconiosis. In addition, the Fourth Circuit Court held that a medical opinion that acknowledges the miner's respiratory or pulmonary impairment, but nevertheless concludes that an ailment other than pneumoconiosis caused the miner's total disability, is relevant because it directly rebuts the miner's evidence that pneumoconiosis contributed to his disability, *id*.