BRB No. 10-0106 BLA

LAWRENCE L. GROVES	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ARCH ON THE GREEN, INCORPORATED	)	
	)	DATE ISSUED: 10/28/2010
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-Award of Benefits of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Brent Yonts (Brent Yonts, PSC), Greenville, Kentucky, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Ann Marie Scarpino (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order-Award of Benefits (07-BLA-5375) of Administrative Law Judge Daniel F. Solomon rendered on a subsequent claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30

U.S.C. §§921(c)(4) and 932(*l*)) (the Act).[1] The administrative law judge credited claimant with at least twenty years of coal mine employment, as stipulated.[2] The administrative law judge found that the medical opinion evidence developed since the denial of claimant's prior claim established that claimant has legal pneumoconiosis, in the form of chronic obstructive pulmonary disease (COPD) due, in part, to coal mine dust exposure pursuant to 20 C.F.R. §718.202(a)(4).[3] The administrative law judge, therefore, determined that claimant established a change in the applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). Considering the claim on its merits, the administrative law judge found that claimant is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b)(2), (c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that claimant established the existence of legal pneumoconiosis and a change in the applicable condition of entitlement, pursuant to Sections 718.202(a)(4), 725.309(d). Moreover, employer challenges the administrative law judge's finding that claimant established that his total disability is due to pneumoconiosis pursuant to Section 718.204(c).[4] Claimant responds, urging affirmance. The Director, Office of Workers' Compensation Programs (the Director), declined to file a substantive response brief. Employer filed a reply brief, reiterating its contentions.

By Order dated June 18, 2010, the Board provided the parties with the opportunity to address the impact on this case, if any, of Section 1556 of Public Law No. 111-148, which amended the Act with respect to the entitlement criteria for certain claims. The

[1] Claimant's previous claim, filed on September 14, 1998, was finally denied on January 25, 2000, because claimant did not establish the existence of pneumoconiosis. Director's Exhibit 1 at 2, 257. Claimant filed his current claim on May 1, 2006. Director's Exhibit 3.

[2] The record indicates that claimant's coal mine employment was in Kentucky. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*).

[3] The administrative law judge found that the new x-ray and biopsy evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1),(2). Decision and Order at 17-20.

[4] The administrative law judge's finding that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2) is unchallenged. Thus, this finding is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Director responds that, if the Board cannot affirm the administrative law judge's award of benefits, Section 1556 affects this case. Specifically, the Director states that the case would have to be remanded to the administrative law judge for consideration of whether claimant is entitled to the rebuttable presumption of total disability due to pneumoconiosis that was reinstated by Section 1556.[5] Claimant responds, asserting that he is entitled to an award of benefits, whichever law is applied. Employer responds that Section 1556 may affect this claim, and states that, if the Board vacates the award of benefits, the case should be remanded to the district director so that the parties can respond to the change in law.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a miner's claim, a claimant must establish the existence of 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. Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2). Claimant's prior claim was denied because he failed to establish the existence of pneumoconiosis. Director's Exhibit 1 at 2. Consequently, to obtain review of the merits of his claim, claimant had to submit new evidence establishing that he has pneumoconiosis. 20 C.F.R. §725.309(d)(2), (3).

20 C.F.R. §725.309-Legal Pneumoconiosis

[5] Relevant to this living miner's claim, Section 1556 of Public Law No. 111-148 reinstated the presumption of Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), for claims filed after January 1, 2005, that are pending on or after March 23, 2010. Director's Brief at 1. Under Section 411(c)(4), if a miner establishes at least fifteen years of qualifying coal mine employment, and that he or she has a totally disabling respiratory impairment, there will be a rebuttable presumption that he or she is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §921(c)(4)).

Pursuant to Section 718.202(a)(4), the administrative law judge considered the new medical opinions of Drs. Rasmussen, Simpao, Broudy, and Dahhan.[6] Dr. Rasmussen, who is Board-certified in Internal Medicine, stated initially that claimant's COPD "was the consequence of both smoking and mine dust exposure," but later seemed to qualify his opinion regarding the extent to which coal mine dust exposure contributed to the impairment.[7] Claimant's Exhibit 8 at 3. Dr. Simpao reported that claimant's x-ray showed emphysema and COPD, and he attributed claimant's pulmonary impairment to both smoking and coal mine dust exposure. Director's Exhibit 11 at 4, 5. Drs. Broudy and Dahhan, both of whom are Board-certified in Internal Medicine and Pulmonary Disease, opined that claimant does not have legal pneumoconiosis, but has a chronic lung impairment that is due solely to smoking. Employer's Exhibits 1 at 3-4; 14 at 2.

The administrative law judge found that Dr. Rasmussen's report was the most well-documented and well-reasoned, and relied on it to find legal pneumoconiosis established. Decision and Order at 25. The administrative law judge also found that Dr. Simpao's opinion was well-documented, and supportive of Dr. Rasmussen's opinion. *Id*. The administrative law judge accorded less weight to the opinions of Drs. Broudy and Dahhan, finding that they did not adequately address whether claimant's twenty years of coal mine dust exposure aggravated his COPD. Decision and Order at 23-25.

Employer first argues that the administrative law judge did not address the specific language of Dr. Rasmussen's opinion and explain how it established that claimant suffers from legal pneumoconiosis. Employer's contention has merit.

To establish the existence of legal pneumoconiosis, claimant must establish that his COPD is "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-121 (6th Cir. 2000). As noted, Dr. Rasmussen stated initially that claimant's disabling COPD "was the consequence of both smoking

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[6] The administrative law judge also considered the opinion of Dr. Schell, who performed claimant's lung biopsy, but discounted his opinion for various reasons. Decision and Order at 23. On appeal, no party challenges this aspect of the administrative law judge's decision. *See Skrack*, 6 BLR at 1-711.

[7] In view of claimant's history of "50 or more pack[-] years of smoking" and sixteen years of coal mine employment, Dr. Rasmussen later stated that "it seems quite intuitive that most of [claimant's] impairment is secondary to cigarette smoking and that coal mine dust contributes to a minor degree." Claimant's Exhibit 8 at 4. At the end of his report, Dr. Rasmussen concluded that "coal mine dust contributes minimally to [claimant's] disabling chronic lung disease." *Id*.

and mine dust exposure," but he then indicated that the COPD was "secondary to smoking," and that coal mine dust exposure contributed either "to a minor degree," or contributed "minimally" to the COPD. Claimant's Exhibit 8 at 3-4. Finding Dr. Rasmussen's opinion to be "the most well[-]reasoned and well[-]documented opinion of record," the administrative law judge "accept[ed] [Dr. Rasmussen's] opinion that [c]laimant's COPD is mostly due to cigarette smoking and secondarily contributed to by coal dust inhalation." Decision and Order at 25. The administrative law judge, however, did not explain how Dr. Rasmussen's opinion met the legal standard set forth above, with reference to the specific language used by the physician. Therefore, we vacate the administrative law judge's finding pursuant to Section 718.202(a)(4), and remand this case to him for further consideration of Dr. Rasmussen's opinion. On remand, the administrative law judge must take into account the specific language used by Dr. Rasmussen, and explain whether it establishes the existence of legal pneumoconiosis. *See* 20 C.F.R. §718.201(b). Additionally, we agree with employer that, on remand, the administrative law judge should more fully explain the basis for his finding that Dr. Rasmussen's opinion was the most well-reasoned and documented because Dr. Rasmussen considered accurate smoking and coal dust exposure histories, as the record reflects that the other physicians of record considered the same or similar histories.[8] *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-139-40 (1999)(*en banc*); Exhibit 1 at 2; Employer's Exhibit 12 at 3.

Employer next argues that the administrative law judge erred in relying on Dr. Simpao's opinion as "well[-]documented and supportive of Dr. Rasmussen's opinion," Decision and Order at 25, without specifically considering whether the opinion was reasoned. Employer's Brief at 14. We agree. The administrative law judge noted that Dr. Simpao considered a coal mine employment history of twenty years, a fifty-nine pack-year smoking history, and physical findings. Decision and Order at 25. On remand, the administrative law judge must also consider "the validity of the reasoning" of Dr. Simpao's opinion before relying on it to support a finding of legal pneumoconiosis.[9]

[8] Dr. Broudy, in his report dated July 20, 2007, specifically observed that claimant worked "18 years on surface coal mining operations largely running heavy equipment," and smoked "for 49 years stopping in 1997. [Claimant] consumed cigarettes anywhere from 1 half pack per day up to 2 packs per day." Employer's Exhibit 1 at 2. Dr. Dahhan reviewed Dr. Broudy's September 4, 2007 deposition, and attached to this deposition is Dr. Broudy's July 20, 2007 report, noting claimant's coal dust exposure and smoking histories. Employer's Exhibit 12 at 3.

[9] Dr. Simpao stated: "I feel that [claimant's] 18 years of coal dust exposure is the significant contributing factor in his pulmonary impairment. However, he does have a history of smoking which is an aggravating factor. . . . [T]here is no proven procedure to

Rowe, 710 F.2d at 255, 5 BLR at 2-103; *see Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46, 1-47 (1985); Director's Exhibit 11.

Employer also argues that the administrative law judge erred in discounting the opinions of Drs. Broudy and Dahhan. With respect to Dr. Broudy's opinion, employer argues that the administrative law judge erred by requiring the doctor to rule out coal dust exposure as a cause of claimant's pulmonary impairment, and thus improperly shifted the burden of proof to employer to establish that claimant does not have legal pneumoconiosis. This argument lacks merit, as the administrative law judge placed the burden of proof on claimant to establish that he has legal pneumoconiosis,[10] and did not require employer to "rule out" coal dust exposure as a cause of claimant's pulmonary impairment. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 280-81, 18 BLR 2A-1, 2A-6-9 (1994); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 515-16, 22 BLR 2-625, 2-651 (6th Cir. 2003).

Employer further argues that the administrative law judge mischaracterized Dr. Broudy's opinion as a statement that claimant's pulmonary disease is caused by smoking, and not coal dust exposure, because claimant has only an obstructive, but not a restrictive, impairment. We disagree. Dr. Broudy reviewed the pulmonary function studies performed in 2006, and observed that they showed both moderately severe obstruction and mild restriction. Employer's Exhibits 1 at 2, 3; 3 at 9; 11 at 3. In response to the question concerning the etiology of claimant's impairment, Dr. Broudy stated:

> The type of impairment that he [has is] obstructive impairment which is typical of cigarette smoking. And furthermore, the lung volumes showed enlarged lungs or emphysematous lungs, again typical of cigarette smoking and not typical of the type of impairment one would expect to see if coal dust had caused this degree of disability.
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> With coal dust, one would expect to see a restricted lung, with largely restriction on the spirometric study and small lungs. In this case, the lungs

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determine the degree these factors have influenced his pulmonary impairment." Director's Exhibit 11 at 5.

[10] Before weighing the medical opinion evidence at 20 C.F.R. §718.202(a)(4), the administrative law judge stated that, "[t]he burden is on the [c]laimant to prove that his coal-mine employment caused his lung disease." Decision and Order at 20. After weighing the medical opinions at legal pneumoconiosis, the administrative law judge found that "[c]laimant has satisfied his burden of proving legal pneumoconiosis." *Id.* at 25.

> are large and have obstruction, making it far more likely that this is due to cigarette smoking and extremely unlikely that this would be due to coal-dust exposure.

Employer's Exhibit 3 at 12. The administrative law judge reasonably interpreted Dr. Broudy's testimony as "exclud[ing] coal dust as a factor in [c]laimant's impairment on the notion that obstructive diseases, unlike restrictive diseases, are mostly associated with tobacco abuse." Decision and Order at 24. Contrary to employer's contention, the administrative law judge permissibly found that this portion of Dr. Broudy's reasoning was not well explained in light of "the facts of [c]laimant's case," specifically, that claimant's pulmonary function studies reviewed by Dr. Broudy "indicated both a restrictive and obstructive impairment." *Id*.; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

Employer further argues that the administrative law judge erred in discounting Dr. Broudy's opinion because it was based on generalities, when the administrative law judge did not consider that Dr. Rasmussen's opinion was based on generalities. Employer's argument has merit. The administrative law judge gave less weight to Dr. Broudy's opinion because it was based on generalities, rather than the specifics of claimant's case, in that Dr. Broudy relied on a 1994 medical study by Drs. Lapp, Morgan, and Zaldivar to conclude that it would be "very unusual" for claimant's impairment to be due to coal mine dust exposure. Decision and Order at 24. An administrative law judge may permissibly discount a medical opinion if he finds that it was based on generalities. *See Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985). We agree with employer, however, that the administrative law judge did not apply the same standard to Dr. Rasmussen's opinion, which was based, in part, on general statistics regarding the causes of COPD.[11] Claimant's Exhibit 8 at 3. Thus, the administrative law judge did not subject Dr. Rasmussen's opinion to the same scrutiny as he applied to Dr. Broudy's opinion. *Hughes*, 21 BLR at 1-139-40.

[11] Specifically, Dr. Rasmussen stated, in his July 31, 2008 report, that eighty percent of COPD cases are caused by cigarette smoking, with fifteen percent of COPD cases caused by occupational exposures, including coal dust exposure. Claimant's Exhibit 8 at 3. Dr. Rasmussen also reported that smoking and coal mine dust cause independent impairments in underground coal miners, "with smoking miners having perhaps twice the impairment as non-smokers, but those exposed to higher dust levels also [having] greater impairment in both smokers and non-smokers." *Id*. Dr. Rasmussen then opined that, based on the above general statistics, the bulk of claimant's pulmonary impairment is due to smoking, with a minor or minimal contribution from coal mine dust exposure. *Id.* at 4.

With respect to Dr. Dahhan's opinion, employer argues that the administrative law judge erred in discounting it because it did not address sufficiently the issue of legal pneumoconiosis, and because Dr. Dahhan did not diagnose claimant with COPD and emphysema. Initially, employer improperly relies on Dr. Dahhan's March 3, 2008 report to support its argument, because employer did not designate this report in its evidence summary form.[12] *See* Employer's Evidence Summary Form Dated February 2, 2009 at 5. However, Dr. Dahhan's other reports, which were designated by employer, sufficiently address the issue of legal pneumoconiosis, and recognize that the other doctors diagnosed claimant with COPD and emphysema.[13] *See* Employer's Exhibit 12 at 3. Thus, we vacate the administrative law judge's findings regarding Dr. Dahhan's opinion, and remand this case to the administrative law judge for reconsideration of Dr. Dahhan's opinion.[14]

[12] Dr. Dahhan rendered four reports dated March 3, 2008; June 13, 2008; August 4, 2008; and September 23, 2008. Employer's Exhibits 6, 9, 12, 14. Employer designated for submission into evidence only two of his reports – the two most recent ones, found at Employer's Exhibits 12, 14. *See* Employer's Evidence Summary Form Dated February 2, 2009 at 5. The administrative law judge properly considered only the two designated reports, found at Employer's Exhibits 12, 14.

[13] In his report dated August 4, 2008, Dr. Dahhan referred to his conclusion in his June 13, 2008 report, that claimant has no evidence of legal pneumoconiosis. Employer's Exhibit 12 at 2. In the same report, Dr. Dahhan addressed Dr. Broudy's September 4, 2007 deposition, wherein Dr. Broudy ultimately concludes that claimant has no evidence of a pulmonary impairment due to coal dust exposure. *Id.* at 3. Lastly, in the August 4, 2008 report, Dr. Dahhan referred to Dr. Schell's June 13, 2008, deposition, wherein Dr. Schell testified that he diagnosed claimant with COPD and emphysema. *Id*. In his report dated September 23, 2008, Dr. Dahhan specifically diagnosed "no evidence of legal pneumoconiosis," attributing claimant's disabling pulmonary impairment to "surgical resection of carcinogenic lung contributed to [by] his 59 pack years of smoking." Employer's Exhibit 14 at 2.

[14] We reject employer's remaining contention that the administrative law judge erred by finding that the opinions of Drs. Broudy and Dahhan were inconsistent with the findings made by the Department of Labor when it revised the regulatory definition of pneumoconiosis. The administrative law judge did not discount the opinions of Drs. Broudy and Dahhan on this basis. Decision and Order at 23-24. Moreover, contrary to employer's broader contention, that any such inquiry by the administrative law judge is prohibited, an administrative law judge may consider whether a medical opinion's reasoning is consistent with the regulations, and with the Department's findings as to the prevailing medical science. *See Consolidation Coal Co. v. Director, OWCP* [*Beeler*],

Therefore, on remand, the administrative law judge must reconsider the opinions of Drs. Rasmussen, Simpao, Broudy, and Dahhan, taking into account the respective analyses and the quality of the physicians' comparative reasoning, along with the physicians' qualifications,[15] and explain the weight he accords their conclusions in determining whether they establish legal pneumoconiosis pursuant to Section 718.202(a)(4). *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*).

Total Disability Due to Pneumoconiosis

Pursuant to Section 718.204(c), the administrative law judge found that claimant's total disability is due to legal pneumoconiosis based on Dr. Rasmussen's opinion, that coal mine dust exposure contributes minimally to claimant's totally disabling pulmonary impairment. Decision and Order at 29; Claimant's Exhibit 8 at 4. Employer argues that the administrative law judge erred in relying on Dr. Rasmussen's opinion because it is legally insufficient to establish total disability due to pneumoconiosis, and erred in according less weight to the opinions of Drs. Broudy and Dahhan for failing to adequately address whether claimant's coal mine dust exposure was a causal factor in his disabling impairment. Because we vacate the administrative law judge's finding of legal pneumoconiosis, and remand this case to him for reconsideration of that issue, we also vacate the administrative law judge's finding that claimant's total disability is due to pneumoconiosis. If, on remand, the administrative law judge finds the existence of legal pneumoconiosis established, he must reconsider whether the medical opinion evidence establishes that claimant is totally disabled due to pneumoconiosis. On remand, the administrative law judge must specifically address whether Dr. Rasmussen's opinion, viewed in its entirety, establishes that pneumoconiosis is a substantially contributing cause of claimant's total disability, and must explain that finding, pursuant to 20 C.F.R.

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521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008); *Midland Coal Co. v. Director, OWCP* [*Shores*], 358 F.3d 486, 490-91, 23 BLR 2-18, 2-26-27 (7th Cir. 2004); *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 483 n.7, 22 BLR 2-265, 2-281 n.7 (7th Cir. 2001); *J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-125-26 (2009).

[15] Contrary to employer's contention, the administrative law judge is not required to consider Dr. Rasmussen to be less qualified than are Drs. Broudy and Dahhan because Dr. Rasmussen lacks Board-certification in Pulmonary Disease. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 307, 23 BLR 2-261, 2-286 (6th Cir. 2005); Claimant's Exhibit 8.

§718.204(c).[16] *See Peabody Coal Co. v. Smith*, 127 F.3d 504, 507, 21 BLR 2-180, 2-185-86 (6th Cir. 1997).

Section 411(c)(4)

This claim was filed after January 1, 2005, claimant was credited with at least twenty years of coal mine employment, and he established total disability pursuant to Section 718.204(b)(2). Therefore, the administrative law judge, on remand, must consider whether claimant is entitled to the presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[17] If the administrative law judge, on remand, finds that claimant is entitled to the presumption that he is totally disabled due to pneumoconiosis at Section 411(c)(4), the administrative law judge must then determine whether the medical evidence rebuts the presumption by showing that claimant does not have pneumoconiosis or that his total disability "did not arise out of, or in connection with," coal mine employment. 30 U.S.C. §921(c)(4). The administrative law judge, on remand, should allow for the submission of additional evidence by the parties to address the change in law. *See Harlan Bell Coal Co. v. Lemar*, 904 F. 2d 1042, 1047-50, 14 BLR 2-1, 2-7-11 (6th Cir. 1990); *Tackett v. Benefits Review Board*, 806 F.2d 640, 642, 10 BLR 2-93, 2-95 (6th Cir. 1986). Thus, although employer requests a remand to the district director for the parties to develop additional evidence, we agree with the Director that a remand to the administrative law judge is appropriate. Further, as the Director states, any additional evidence submitted must be consistent with the evidentiary limitations. 20 C.F.R. §725.414. If evidence exceeding those limitations is offered, it must be justified by a showing of good cause. 20 C.F.R. §725.456(b)(1).

[16] The administrative law judge found that Dr. Rasmussen's statement, that coal mine dust contributes "minimally" to claimant's impairment, established that pneumoconiosis is more than a *de minimis* factor in claimant's total disability. Decision and Order at 29. The administrative law judge, however, did not set forth the basis for that conclusion.

[17] Employer has not challenged the administrative law judge's finding of total respiratory disability, or his finding that claimant has at least twenty years of coal mine employment. Employer states, however, that the administrative law judge "made no findings regarding the nature of [claimant's coal mine] employment," and that "[s]uch findings are necessary in order to determine whether the presumption at 30 U.S.C. §921(c)(4) applies in this case." Employer's Supplemental Brief at 1.

Accordingly, the administrative law judge's Decision and Order-Award of Benefits is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge