BRB No. 01-0954 BLA

HARVEY N. OHLER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	DATE ISSUED:
	)	
Employer-Petitioner	)	
	)	
and	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
	)	
Party-in-Interest	)	DECISION AND ORDER

Appeal of the Decision and Order Awarding Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Blair V. Pawlowski (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

William S. Mattingly (Jackson & Kelly PLLC), Morgantown, West Virginia, for employer.

Rita Roppolo (Eugene Scalia, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy 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: SMITH, HALL, and GABAUER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (00-BLA-564) of

Administrative Law Judge Richard A. Morgan with respect to 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). Claimant Harvey N. Ohler worked as a coal miner for at least 21 years. According to various reports and claimant's testimony, he smoked very little (perhaps one pack year) in the 1950s. His first claim for benefits was denied in 1984 because, although the Office of Workers' Compensation Programs determined that claimant suffered from pneumoconiosis, it found that he had failed to establish that his pneumoconiosis arose out of coal mine employment or that he was totally disabled due to pneumoconiosis. Director's Exhibit 38-14. Claimant took no further action on that claim, and it became final. Claimant retired in 1990 and submitted a second claim for benefits in 1991. That claim was denied because claimant failed to establish the existence of pneumoconiosis arising out of coal mine employment or total disability due to pneumoconiosis and, therefore, a material change in conditions under Section 725.309(d). That claim too became final.

In 1999, claimant filed this duplicate black lung benefits claim. Director's Exhibit 1. The Office of Workers' Compensation Programs found pneumoconiosis arising out of coal mine employment and total disability due to pneumoconiosis, and therefore determined that claimant was entitled to benefits. Director's Exhibit 36. Employer then sought a hearing.

Following a hearing and the submission of additional medical evidence the administrative law judge found that claimant had established a right to benefits under the Act. The administrative law judge found claimant's prior claim was denied because he failed to establish the existence of pneumoconiosis or total disability, and the evidence established that claimant now suffers from a totally disabling pulmonary impairment. Decision and Order at 23. Therefore, the administrative law judge concluded that claimant had established a material change in conditions pursuant to 20 C.F.R. §725.309(d) (1999).[1] He then addressed the question whether, based upon all of the evidence, claimant had established entitlement to benefits.

[1] As this claim was pending on January 19, 2001, the revised Section 725.309 regulation does not apply. *See* 20 C.F.R. §725.2 (2001).

The administrative law judge found that the x-ray evidence – consisting of 14 positive and 16 negative readings of five x-rays – was in equipoise regarding the existence of coal workers' pneumoconiosis.[2] Decision and Order at 25. However, he also found that the x-rays established the existence of "pulmonary fibrosis of one type or another, *i.e.*, diffuse interstitial pulmonary fibrosis, fibrosing alveolitis, idiopathic pulmonary fibrosis, or usual interstitial fibrosis." *Id*. He then evaluated the medical reports Drs. Bloom, Parcinski, Malhotra, Schaaf, Fino, Morgan, and Spagnolo; and the depositions of Drs. Malhotra, Schaaf, Fino, and Morgan;[3] and found that claimant had established the existence of pneumoconiosis. *Id*. at 21-31.

[2] All but six readings were by dually qualified readers. Decision and Order at 7-10.

[3] The record largely consists of reports from Drs. Bloom (1984: no pneumoconiosis); Parcinski (1991: idiopathic pulmonary fibrosis (IPF), resulting in mild impairment, no pneumoconiosis); Malhotra (1999: pneumoconiosis due to coal mine employment causing total disability); Schaaf (1999: pneumoconiosis due to coal mine employment causing total disability); Fino (1999: no pneumoconiosis, IPF causing total disability); Morgan (2000: no pneumoconiosis, IPF causing total disability); and Spagnolo (2000: no chronic restrictive or obstructive disease arising out of coal mine employment, not totally disabled); and depositions of Drs. Malhotra, Schaaf, Fino, and Morgan. The administrative law judge gave little or no weight to Dr. Spagnolo's opinion finding no chronic obstructive or restrictive lung disease and no disability because it was "so radically different" from the other four physicians' opinions. Decision and Order at 29. Employer does not challenge this finding, and we do not address it further.

The administrative law judge concluded:

> Basically, we have the opposing physicians seeing the same opacities on X-ray, but reaching differing conclusions. The employer's physicians say the opacities represent IPF [idiopathic pulmonary fibrosis][4] of unknown etiology, but unrelated to occupational exposure and found in the general population. The claimant's physicians say the opacities represent CWP and even if it was pulmonary fibrosis the only possible etiology for it is Mr. Ohler's coal dust exposure. Dr. Malhotra found it could be silicosis or anthracosis, but said that could only be verified . . . by autopsy. He essentially ruled out asbestosis. Cigarette smoking was not determined to be an etiology for the pulmonary fibrosis. The employer's physicians did not discuss anthracosis or silicosis. Particularly given Dr. Malhotra's explanations, Dr. Fino's apparent non-adherence to the ILO classification scheme, the various physician credentials, and objective results, I find the claimant's physicians' rationales more convincing and more consistent with the evidence. While the 14 positive X-ray readings alone were insufficient to establish CWP, when combined with the medical opinions, I find the evidence establishes the existence of the disease in this light smoker, claimant with decades of coal dust exposure.
>
> There is no legitimate issue of "latency" as Dr. Morgan suggests. . . .There was evidence of CWP as early as 1984, when the claimant was still mining and in February 1991, just a year after Mr. Ohler left the mines. The development of Mr. Ohler's symptoms and the deterioration in his AGS results, starting in 1991, are consistent with the progressive nature of CWP.

Id. at 29-30 (footnote omitted). The administrative law judge concluded, "claimant has not [sic] met his burden of proof in establishing the existence of pneumoconiosis." *Id*. at 30.

[4] All four physicians testified that IPF is a fatal disease of the lungs whose cause is unknown.

Finally the administrative law judge found that employer had failed to rebut the presumption that claimant's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b), and caused claimant's total pulmonary disability pursuant to 20 C.F.R. §718.204(c). Decision and Order at 33-35. Accordingly he awarded benefits.

Employer makes numerous arguments on appeal, with particular focus on the administrative law judge's finding of the existence of pneumoconiosis.[5] Claimant filed a responsive brief urging that the administrative law judge's findings of fact are supported by substantial evidence and should be affirmed. The Director, Office of Workers' Compensation Programs, as a party-in-interest, has not responded to this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law. 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).

In order to establish entitlement to benefits under the duplicate claim provision of the Black Lung regulations, claimant must establish that "there has been a material change in conditions or the later claim is a request for modification and the requirements of 725.310 are met." 20 C.F.R. §725.309(d). As claimant's duplicate claim was filed more than one year after his previous claim, it may not be treated as a request for modification. 20 C.F.R. §725.310. Therefore, in order to prevail, claimant must establish a material change in conditions regarding at least one of the elements of entitlement that formed the basis of the prior denial. *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 20 BLR 2- 227 (4th Cir.1996) (*en banc*), *cert. denied*, 519 U.S. 1090 (1997). If claimant establishes a material change in conditions regarding one of these elements, he is entitled to review of all of the evidence in the record to determine whether he qualifies for benefits. *Cline v.*

[5] Employer does not contest that claimant now suffers from a totally disabling respiratory impairment; therefore that finding is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Westmoreland Coal Co., 21 BLR 1-69 (1997).

Several of employer's arguments on appeal are without merit. First, employer objects to the administrative law judge's failure to give weight to the opinions of Drs. Bloom (1984) and Parcinski (1991). Dr. Bloom evaluated claimant for the Office of Workers' Compensation Programs in connection with his first claim for benefits, and reported a normal cardiopulmonary examination with no conditions caused by coal dust exposure. Director's Exhibit 38-6. Dr. Parcinski evaluated claimant for the Office of Workers' Compensation Programs in connection with claimant's 1991 claim for benefits. Director's Exhibit 39-13. Dr. Parcinski found no pneumoconiosis, diagnosed IPF, and found mild impairment due to IPF. Citing *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992), the administrative law judge found both reports to be too old to be of much value. Decision and Order at 28. Additionally, the administrative law judge gave "lesser credence" to the opinions of Drs. Bloom and Parcinski because their qualifications were unknown. *Id*. at 26. Given the age of the opinions of Drs. Bloom and Parcinski finding no pneumoconiosis, and the lack of any information regarding these doctors' qualifications, we find no reversible error in the administrative law judge's determination to give those opinions little weight. *Kendrick v. Kentland-Elkhorn Coal Corp.*, 5 BLR 1-730, 1-733 (1983)(administrative law judge may give less weight to medical report of physician whose qualifications are unknown).

Second, employer challenges the administrative law judge's treatment of the x-ray evidence, which the administrative law judge found was in equipoise. Employer asserts that only seven x-ray readings were positive, while 19 were negative, rather than the nearly equal

positive and negative readings found by the administrative law judge.[6] Part of this disparity is accounted for by the fact that without explanation employer failed to include two positive x-ray readings by Dr. Brandon in its count of positive and negative x-rays. *Compare* Decision and Order at 9 with Employer's Brief at 5.

However, the primary cause of this disparity relates to the administrative law judge's treatment of Dr. Morgan's four x-ray readings. Relying on *Cranor v. Peabody Coal Co.*, 21 BLR 1-201 (1999), *on recon.*, 22 BLR 1-1 (1999)(*en banc*), the administrative law judge ruled that because Dr. Morgan categorized the x-rays as 1/1 or 1/2 they were appropriately characterized as positive for pneumoconiosis in spite of Dr. Morgan's notations of "[n]o evidence of coal workers' pneumoconiosis"

[6] Employer did not include the two earliest readings from 1984 – one positive and one negative – in its count.

and "consistent with other disease (not dust)." Decision and Order at 6 n.14, 25 n.32. On appeal, employer argues that:

> 20 C.F.R. §718.102(b) provides that a chest x-ray can establish the existence of pneumoconiosis when classified according to the ILO system. This regulation fails to state what qualifies as a "positive" interpretation noting that a chest x-ray classified as category 0, or 0/1 does not constitute evidence of pneumoconiosis. One must look to the Act for further guidance. 30 U.S.C. §923(b) requires all relevant evidence be considered together rather than merely within the discreet subsections of a regulation. *See also Island Creek Coal Co. v. Compton*, 211 F. 2d 203 (4th Cir. 2000).
>
> When all of the relevant evidence concerning the x-rays is analyzed, it cannot be said that the chest x-ray evidence is at equipoise or suggests the presence of CWP.

Employer's Brief at 6.

Contrary to employer's first assertion, Section 718.102(b) provides: "A chest X-ray to establish the existence of pneumoconiosis shall be classified as Category 1, 2, 3, A, B, or C, according to [the ILO system]. . . . A chest X-ray classified . . . as Category 0, including sub-categories 0–, 0/0, or 0/1 . . . does not constitute evidence of pneumoconiosis." The clear import of this provision is that readings of 1, 2, 3, A, B, or C are positive for pneumoconiosis, while readings of 0 are not.

We also reject employer's second assertion. In *Island Creek Coal Co. v. Compton*, 211 F.2d 203, 22 BLR 2-162 (4th Cir. 2000), the Fourth Circuit Court of Appeals held that in evaluating the evidence regarding the existence of pneumoconiosis pursuant to Section 718.202(a), the administrative law judge is required to weigh all of the evidence – *i.e.*, the x-ray, autopsy/biopsy, and the medical opinion evidence – together, rather than evaluating the evidence under each subsection separately. *Compton*, *supra*, 211 F. 3d at 208-211. The court did not purport to address the issue presented in *Cranor*: how the fact finder is to characterize a particular x-ray reading in light of the regulatory mandate that a classification of 1, 2, 3, A, B, or C, constitutes a finding of pneumoconiosis.

Cranor, on the other hand, involved an x-ray which the reader classified as 1/1

while at the same time commenting "not coal workers' pneumoconiosis etiology unknown. Compare to old films. Need oblique views." *Cranor*, *supra*, 22 BLR at 1-4. The administrative law judge did not consider the reader's comments under Section 718.202(a)(1) and found that the reader had classified the x-ray as positive for pneumoconiosis. The Board endorsed this treatment of the evidence, noting that the reader's comments appropriately should be considered under Section 718.203. We conclude that the administrative law judge's treatment of Dr. Morgan's x-ray readings is consistent with *Cranor* and does not run afoul of *Compton*.

With the Morgan and Brandon x-rays properly accounted for, the number of negative and positive readings is almost equal. Employer presents no other argument for rejecting the administrative law judge's finding that the x-ray readings are in equipoise, and we find none.

Third, employer argues that the administrative law judge invaded the province of expert physicians by resorting to Dorland's Illustrated Medical Dictionary for definitions of such terms as "pulmonary fibrosis," "diffuse pulmonary fibrosis," "idiopathic pulmonary fibrosis," and "fibrosing alveolitis" instead of relying on the testimony of the medical experts for those definitions. *See* Decision and Order at 25-26. However, employer has not shown how or where the administrative law judge used the dictionary definitions to override an opinion of one of the physicians. Nor has it shown an instance in which a doctor's definition of one of the conditions was at odds with the dictionary definition. Even if we were to conclude that the administrative law judge erred in resorting to those extra record sources, that error is harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); *see generally Morely Construction v. Maryland Casualty Co.*, 300 U.S.185 (1936).

Fourth, we find no merit in employer's argument that the Decision and Order is inconsistent and irrational because the administrative law judge found, "claimant **has not** met his burden of proof in establishing the existence of pneumoconiosis. . ." but awarded benefits. Decision and Order at 30 (emphasis added). The administrative law judge's use of the word "not" in the quoted sentence is inconsistent with the entirety of the Decision and Order and clearly is nothing more than a typographical error.

We now turn to several issues that we conclude warrant a remand to the administrative law judge, all of which relate to the administrative law judge's treatment of the opinions of Drs. Malhotra, Schaaf, Fino and Morgan. Employer challenges the administrative law judge's determination that Drs. Malhotra was as qualified as Drs. Fino, Schaaf, and Spagnolo, and more qualified than Dr. Morgan. Employer also argues that the administrative law judge credited the findings of Drs.

Malhotra and Schaaf in spite of the fact that they are based almost exclusively upon claimant's long exposure to coal mine dust. Moreover, employer argues that the administrative law judge discounted the opinions of Drs. Fino and Morgan for erroneous reasons and failed to resolve several critical conflicts among the physicians. All of these issues relate to the relative weight the administrative law judge assigned to the physicians' opinions.

We begin the discussion of these issues of evidentiary weight by acknowledging that 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 assess the evidence of record and draw his own conclusions and inferences from it, *see Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). In engaging in that process an administrative law judge may give more weight to physicians' opinions that he finds are based on a more thorough review of the evidence of record and better reasoned. *See Hall v. Director, OWCP*, 8 BLR 1-193 (1985). With these standards clearly in mind, however, we conclude that the administrative law judge erred in certain respects in weighing the physicians' opinions.

The first aspect of the Decision and Order that warrants further consideration involves the administrative law judge's evaluation of the physicians' respective credentials. The administrative law judge found Drs. Malhotra, Schaaf, Fino, and Spagnolo "more or less equally qualified." Decision and Order at 26. Although he acknowledged that Dr. Malhotra was not board certified in the sub-specialty of pulmonary diseases and was not a B-reader, as were Drs. Fino, Spagnolo, and Morgan, he found Dr. Malhotra "ma[d]e up for that in experience" treating coal miners. *Id*. However, although Dr. Morgan had extensive experience treating patients with occupational lung diseases, including coal miners (Director's Exhibit 32, Decision and Order at 16), the administrative law judge found, "[g]iven Dr. Morgan's credentials, I give him slightly less credit than [Drs. Malhotra, Schaaf, Fino, and Spagnolo]." *Id*. Employer challenges both the administrative law judge's finding that Dr. Malhotra was as qualified as Drs. Schaaf, Fino, and Spagnolo, and his finding that Dr. Morgan was not as qualified as those four doctors.

In weighing physicians' opinions, it is the administrative law judge's responsibility to carefully consider the experts' qualifications because they are important indicators of the reliability of their opinions. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 536, 21 BLR 2-323 (4th Cir. 1998). *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23 (4th Cir. 1997); *Adkins v. Director, OWCP*, 958

F.2d at 52; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 440, 441, nn.1-2 21, BLR 2-269 (4th Cir. 1997)(*Akers*). We cannot determine the basis upon which the administrative law judge distinguished between the qualifications of Dr. Malhotra on the one hand and Dr. Morgan on the other. Both doctors apparently had experience treating miners, and neither doctor was board certified in the U.S. in the subspecialty of pulmonary diseases.[7] In light of the respective qualifications of these two doctors, it is incumbent upon the administrative law judge to explain why Dr. Morgan's credentials render him less qualified than Dr. Malhotra.

Further attention must also be given to the weighing of the physicians' opinions in light of their reasoning and documentation. The administrative law judge gave the greatest weight to the opinion of Dr. Malhotra:

> In the best reasoned and documented evaluation in the record, Dr. Malhotra . . . explained the miner lacked the symptoms of IPF and his 39 years of coal mine dust exposure essentially ruled out other causes. He opined, in essence, that the lung disease was not "idiopathic" as there was no other reasonable cause than coal dust exposure. He found Mr. Ohler's restrictive and obstructive lung disease consistent with CWP as well as X-rays which showed involvement of additional lung zones, i.e., the upper zones normally associated with CWP. Although concerned with the shape and size of the opacities, he explained, as did Dr. Schaaf, that one with CWP may have irregular-shaped opacities and Mr. Ohler's inhalation of sand, anthracite and silica on the job might account for the more linear than rounded opacities. . . . Further, noting Mr. Ohler's hypoxemia, he explained that CWP "affects blood gas transfer because the scarred lung tissue impairs the transfer of O2 from the alveoli to the blood vessels."

Decision and Order at 27-28. The administrative law judge also credited Dr. Schaaf's opinion:

[7] Dr. Morgan testified that he held equivalent credentials in Great Britain and Canada. Decision and Order at 16.

> Dr. Schaaf found no other alternative explanation for the miner's breathlessness save his CWP . . . . He was unaware of any other etiology for the interstitial fibrosis, which he ruled out here, other than coal mine dust exposure. Had Mr. Ohler suffered from IPF in 1984, he would not likely be living now.

Id. at 28. On the other hand, because the he concluded that Dr. Fino had not rated claimant's x-rays in accord with ILO standard, the administrative law judge appears to have given little weight to Dr. Fino's opinion that claimant did not have pneumoconiosis but did have IPF:

> It appears Dr. Fino, a B-reader, took too myopic a view of the X-rays. Although confirming the 1991-1999 X-rays were very abnormal with diffuse irregular fibrosis representing IPF, he essentially admitted he did not classify the X-ray he read in accordance with the ILO system because he did not feel it was consistent with CWP. This calls into question his reading of all four X-rays as well as his conclusions.

Id. at 29. The administrative law judge emphasized the importance of this finding when he explicitly relied on "Dr. Fino's apparent non-adherence to the ILO classification scheme," in finding the evidence established the existence of pneumoconiosis. *Id*. at 30.

Employer argues that there is no basis for the administrative law judge's finding that Dr. Fino did not comply with the ILO guidelines. We agree. Dr. Fino testified at some length on deposition regarding his strict adherence to the ILO standards. Most significantly, in response to questions by claimant's counsel, Dr. Fino testified that because it was his medical opinion that the x-ray was not consistent with pneumoconiosis, it did not warrant a classification as to type, zone, size, and profusion. Employer's Exhibit 10 at 45. Therefore, on remand the administrative law judge must more fully explain why Dr. Fino's x-ray readings are called into question because of his failure to classify the x-rays in accordance with the ILO system.

Employer also asserts that the administrative law judge did not comply with the requirements of the APA because he failed to resolve the conflict among the physician witnesses over whether irregular opacities can be associated with coal

workers' pneumoconiosis. Drs. Malhotra,[8] Fino, and Morgan all found the opacities on claimant's x-rays to be irregular in shape. Thus, Dr. Fino testified, "there was diffuse irregular fibrosis, spare in the upper lung zones, but present in the middle and lower lung zones " on all films. Employer's Exhibit 10 at 6. Dr. Malhotra testified that the opacities were "slightly irregular, linear" in the four lower lung zones, sparing the upper zones. Director's Exhibit 27 at 25-26. Dr. Morgan found irregular opacities in the lower and mid zones on the 1991 x-ray, and irregular opacities in all lung zones on the 1999 x-rays. Employer's Exhibit 9 at 64-65; Decision and Order at 6-9. On the other hand, Dr. Schaaf categorized the opacities he found on the July 1, 1999 x-ray as 1/2, p/s, in all zones.[9] On deposition he testified that there were both rounded and irregular opacities present on the x-ray. Claimant's Exhibit 12 at 80.

Drs. Fino and Morgan testified that coal workers' pneumoconiosis is normally associated with rounded opacities, and that irregular opacities are characteristic of IPF.[10] Dr. Malhotra testified that coal workers' pneumoconiosis typically causes rounded opacities, and when asked if the pattern of opacities found on claimant's x-ray would be consistent with pneumoconiosis he conceded that "ideally you would like to see rounded opacities." Director's Exhibit 27 at 26.

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[8] Dr. Malhotra, who is neither a B-reader nor a board certified radiologist, agreed with the x-ray reading of Dr. Mital (B-reader, board certified radiologist), which characterized the opacities as 2/1, t/t, in the four lower zones. Director's Exhibit 12, 16, 27 at 25.

[9] Dr. Schaaf is neither a B-reader nor a board certified radiologist and his x-ray reading is not in the record. Decision and Order at 8. Dr. Schaaf testified as to his characterization of the x-ray's opacities on deposition. Claimant's Exhibit 12 at 23, 75.

[10] In response to the question whether the x-ray abnormality had an appearance which could be easily confused with the abnormalities caused by coal dust exposure, Dr. Fino testified, "No, no. The sparing of the upper lung zones and the dense irregular fibrosis in the lower lung zones is not what one would expect to see in coal workers' pneumoconiosis." Employer's Exhibit 10 at 7. When asked whether he had stated that coal workers' pneumoconiosis is usually characterized by rounded opacities, Dr. Fino responded "I don't recall if I said 'usually.' It is characterized by rounded opacities." *Id*. at 55. Dr. Morgan testified that he determined that claimant did not have coal workers' pneumoconiosis because "he had irregular opacities in the lower zones. To my knowledge there is not history of exposure to asbestosis. And no exposure to other causes of irregular opacities such as hard metal disease. Therefore, he had interstitial fibrosis or some disease which was not related to his occupation." Employer's Exhibit 9 at 64.

Dr. Schaaf was the only physician to testify that claimant's x-ray was characterized primarily by rounded opacities.[11] He testified that a film that shows both rounded and irregular opacities is consistent with coal workers' pneumoconiosis. Claimant's Exhibit 12 at 25. Citing a medical text (Green, Claimant's Exhibit 12, Exhibit 2) and a journal article (Cockcroft, Claimant's Exhibit 12, Exhibit 4) Dr. Schaaf also testified that x-rays that reflect solely irregular opacities can be consistent with coal workers' pneumoconiosis. Claimant's Exhibit 12 at 26-28, 76-79.

[11] Two x-ray readers found only rounded opacities (Greene: 1984 x-ray), (Mather: 1991 x-ray, and three 1999 x-rays); two readers, including Dr. Schaaf (7/1/99 x-ray), found predominantly rounded opacities with significant numbers of irregular opacities (Onderka: 1984 x-ray); and one reader found predominantly irregular opacities with significant numbers of rounded opacities (Brandon: 7/1/99 and 11/4/99 x-rays); the overwhelming majority of readers either did not classify the opacities or found solely irregular opacities (King: 1991 x-ray, no classification; Wiot: 1991, and three 1999 x-rays, irregular opacities; Fino: 1991 and three 1999 x-rays, irregular opacities; Morgan: 1991 and three 1999 x-rays, irregular opacities; Mital: 5/26/99 x-ray, irregular opacities; Barrett: 5/26/99 x-ray, irregular opacities; Spitz three 1999 x-rays, irregular opacities, Meyer three 1999 x-rays, irregular opacities).

Dr. Fino disagreed with Dr. Schaaf's assertion that coal mine dust exposure can cause principally irregular opacities and gave a detailed critique of Dr. Schaaf's reading of the medical literature.[12] Employer's Exhibit 10 at 19-23, 25-26, 47-55, 58-66, 88-91. Although Dr. Fino testified that the questions on whether irregular opacities and/or IPF can be associated with coal mine dust exposure are important ones, he concluded that there were no studies that demonstrated those associations. *Id*. at 21-23.

The administrative law judge referred to the disagreement between Drs. Malhotra, Fino, and Morgan on the one hand and Dr. Schaaf on the other regarding the characterization of the opacities on claimant's x-rays. However, he did not attempt to resolve this conflict. Thus, although a number of readers found principally or exclusively irregular opacities, the administrative law judge made no reference to that fact, and instead found Dr. Fino's opinion lacked "substantial credibility" because "Mr. Ohler's X-rays depicted both irregular shaped and rounded opacities." Decision and Order at 29. This determination needs to be more fully explained, especially since the administrative law judge found the x-ray evidence in equipoise. Thus, on remand the administrative law judge should further consider his weighing of Dr. Fino's opinion.

Similarly, although the administrative law judge notes the difference of opinion between Drs. Schaaf and Fino with regard to the medical literature in his summary of the evidence, he does not resolve this difference. Dr. Fino asserts that the studies relied upon by Dr. Schaaf were either flawed or did not stand for the principles for which Dr. Schaaf had cited them. The administrative law judge should address this conflict in his weighing of the evidence.

[12] Dr. Fino stated "[t]he typical abnormality that one sees as a result of coal workers' pneumoconiosis is rounded opacities, although I firmly believe that one can see as secondary opacities, irregular opacities. The question is whether or not one can see irregular opacities in coal miners alone, and that is true, you can, but that does not mean that they're due to coal mine dust inhalation." Claimant's Exhibit 10 at 18.

Proper resolution of the issues discussed above may alter the weight the administrative law judge accords to the opinions of Drs. Malhotra, Schaaf, Fino, and Morgan with regard to the existence of pneumoconiosis, and therefore the ultimate finding the administrative law judge reaches. Therefore we vacate the administrative law judge's findings pursuant to Section 718.202(a) and remand this case to the administrative law judge with instructions to reevaluate the evidence consistent with the Fourth Circuit's decisions in *Milburn*, *supra*; *Akers*, *supra*; and *Underwood*, *supra*.[13]

[13] We note that employer also argues that the administrative law judge failed to weigh the evidence relevant to the question whether employer rebutted the Section 718.203(b) presumption that claimant's pneumoconiosis arose out of coal mine employment. The administrative law judge's discussion of this issue is cursory. *See* Decision and Order at 31. If on remand the administrative law judge again finds the existence of pneumoconiosis, he must fully address and weigh the evidence relevant to rebuttal of that presumption.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge