BRB No. 08-0761 BLA

E.A.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ARCH ON THE NORTH FORK, INCORPORATED, C/O UNDERWRITERS SAFETY & CLAIMS, INCORPORATED	)	DATE ISSUED: 09/23/2009
	)	
Employer/Carrier-Petitioners	)	
	)	
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 Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

Ronald E. Gilbertson (Bell, Boyd & Lloyd LLP), Washington, D.C., for employer.

Rita Roppolo (Carol A. DeDeo, Deputy Solicitor; Rae Ellen Frank 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 HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (07-BLA-5954) of Administrative Law Judge Janice K. Bullard, rendered on a miner's 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). Upon stipulation of the parties, the administrative law judge credited claimant with twenty-six years of qualifying coal mine employment, and adjudicated this subsequent claim, filed on September 14, 2006, pursuant to the regulatory provisions at 20 C.F.R. §725.309(d).[1] The administrative law judge determined that claimant's prior claim was denied for failure to establish total respiratory disability or disability causation at 20 C.F.R. §718.204(b), (c), and found that the newly submitted evidence was sufficient to establish these elements of entitlement, thus claimant had established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d).[2] Reviewing the entire record, the administrative law judge found that the weight of the evidence was sufficient to establish the existence of legal pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4), 718.203(b), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge's decision fails to comply with the Administrative Procedure Act (APA), 5 U.S.C. §551, *et seq.*, as incorporated into the Act by 30 U.S.C. §932(a) and 33 U.S.C. §919(d). Employer challenges the administrative law judge's evaluation of the CT scan, x-ray, and medical opinion evidence, and contends that she erred in finding that claimant established the existence of legal pneumoconiosis at Section 718.202(a) and disability causation at Section 718.204(c). Employer also challenges the administrative law judge's determination of the date from which payment of benefits should commence. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a brief limited to addressing employer's assertions regarding the administrative law judge's evaluation of the CT scan and x-ray evidence, and the date for commencement of benefits. Employer replied to both response briefs.

---

[1] The miner's first claim for benefits, filed on July 13, 1972, was denied on June 12, 1973; following reconsideration, the claim was again denied on February 29, 1980. Decision and Order at 2; Director's Exhibit 1. The miner's second claim for benefits was filed on June 13, 1988, and denied on November 25, 1988. Decision and Order at 3; Director's Exhibit 2. Claimant took no further action until the filing of his current claim on September 14, 2006. Decision and Order at 3; Director's Exhibit 4.

[2] The administrative law judge's finding of total respiratory disability at 20 C.F.R. §718.204(b)(2), and her finding that claimant established a change in an applicable condition of entitlement at 20 C.F.R. §725.309(d), are affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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).[3]

Existence of Pneumoconiosis

Initially, although the administrative law judge found that the weight of the x-ray and CT scan evidence was insufficient to establish the existence of clinical pneumoconiosis at Sections 718.202(a)(1), 718.107, employer assigns various errors to her evaluation of this evidence. Employer asserts that the administrative law judge should have affirmatively found that this evidence was negative for pneumoconiosis, rather than inconclusive, and given correspondingly less weight to the diagnoses of pneumoconiosis at Section 718.202(a)(4) by Drs. Alam and Baker, who relied, in part, on positive x-rays and/or CT scans. Employer's Brief at 14-17. Contrary to employer's arguments, however, the administrative law judge properly discredited the diagnoses of clinical pneumoconiosis by Drs. Alam and Baker. *See* Decision and Order at 15. Because clinical and legal pneumoconiosis represent separate disease processes, the administrative law judge was not obligated to assign diminished weight to diagnoses of legal pneumoconiosis under Section 718.202(a)(4).[4] Rather, the administrative law judge permissibly evaluated the reasoning and documentation underlying the physicians' diagnoses of legal pneumoconiosis separately. Consequently, we reject employer's arguments, as error, if any, in the administrative law judge's evaluation of the x-ray and CT scan evidence would be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Employer next challenges the administrative law judge's determination to credit the medical opinions of Drs. Alam and Baker over the contrary opinion of Dr. Jarboe, in finding the existence of legal pneumoconiosis established under Section 718.202(a)(4). Employer maintains that the opinions of Drs. Alam and Baker lack adequate

---

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, because the miner's coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibits 1 at 45, 2.

[4] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). "Arising out of coal mine employment" refers to "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

documentation and reasoning, as the physicians based their diagnoses of pneumoconiosis on discredited x-ray and/or CT scan evidence, the presence of lung disease, and coal dust exposure. In particular, employer argues that Dr. Alam's "checkmark" responses on a pre-printed form are unreasoned, and that the record does not support Dr. Alam's finding of "progressive fibrosis." Employer's Brief at 18-19. Employer maintains that Dr. Baker relied on incorrect smoking and coal mine employment histories, and failed to explain how the miner's pulmonary condition is significantly related to his coal mine employment. Employer also asserts that the administrative law judge "did not bother to address the fact that claimant was exposed to coal dust in non-coal mine employment for many years after he quit work as a 'miner,'" Employer's Brief at 3, and that Dr. Baker failed to separate the effects of coal dust exposure in the miner's qualifying employment from the effects of coal dust exposure in his non-qualifying night watchman job. Employer's Brief at 20-21. Employer contends that the administrative law judge provided no valid basis for according less weight to the opinion of Dr. Jarboe, that claimant does not have clinical or legal pneumoconiosis, arguing that this opinion is well-reasoned, documented and better explained. Employer's Brief at 23-26.

We find no merit to employer's assertion that the administrative law judge failed to provide valid reasons for crediting the opinions of Drs. Baker and Alam over the contrary opinion of Dr. Jarboe. The administrative law judge accorded less weight to Dr. Jarboe's opinion, that the miner has interlobular fibrosis, emphysema and chronic bronchitis attributable solely to smoking, because she found that it was not well-reasoned.[5] Decision and Order at 15-16. Specifically, she determined that his reasoning

---

[5] In his medical report of March 25, 2007, Dr. Jarboe stated:

> [The miner] also has extensive interlobular fibrosis in his lower lung zones. The exact cause of this is not clear, but this is a very nonspecific finding. It could have resulted from his long history of smoking or perhaps even the mild bronchiectasis which is present in his CT scan. In the absence of any evidence of dust deposition, I do not feel the interlobular fibrosis is the result of coal dust inhalation.
>
> [The miner] has a severe respiratory impairment. This is in the form of chronic bronchitis and pulmonary emphysema with marked impairment of gas exchange. I feel the cause of this impairment is severe pulmonary emphysema which has been caused by a long history of cigarette smoking. The pattern of abnormality noted and the absence of dust deposition in the presence of severe emphysema argues for causation by smoking and not by the inhalation of coal mine dust.

Claimant's Exhibit 2 at 5.

was "flawed" in attributing claimant's reduction in diffusion capacity on pulmonary function studies to cigarette smoking alone, based on his explanation that "most of the studies of diffusing capacity in miners are normal or show only mild reduction," while claimant's residual volumes were "higher than those typically caused by the ill effects of coal mining alone." *Id*. at 16; Employer's Exhibit 5 at 21. As Dr. Jarboe did not explain why some portion of the severe abnormalities could not be due to coal dust exposure, the administrative law judge's determination that his opinion was speculative, and based on generalities in the medical literature rather than consideration of the effects of claimant's actual exposure to coal mine dust, constitutes a permissible exercise of her discretion to assess the probative value of medical evidence. *See* Decision and Order at 16; *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984); *see also Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). Further, the administrative law judge found that Dr. Jarboe failed to "fully address whether claimant's coal dust exposure when combined with smoking could have adversely affected his pulmonary condition." Decision and Order at 16. A medical opinion may be discredited for failure to satisfactorily address whether a miner's coal dust exposure was an aggravating or contributing cause of his pulmonary impairment, or for failure to sufficiently explain a conclusion that cigarette smoking was the sole and exclusive cause of impairment. Decision and Order at 12; *see Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-19-20 (2004). Finally, a review of Dr. Jarboe's deposition testimony supports the administrative law judge's determination that Dr. Jarboe focused on the absence of clinical pneumoconiosis but failed to adequately consider whether claimant's pulmonary condition satisfied the regulatory definition of legal pneumoconiosis.[6] *See* Decision and Order at 9-10, 16; Employer's Exhibit 5 at 15,

---

[6] For example, at his deposition, Dr. Jarboe was asked: "[h]ow are you able to rule out [the miner's] exposure of 26 years as a cause or contributing factor to his respiratory impairment?" Dr. Jarboe replied, in pertinent part: "I think that the finding in this case would indicate that the primary cause of [the miner's] problem is his cigarette smoking which has caused emphysema." Employer's Exhibit 5 at 20. Dr. Jarboe continued:

> [T]he residual volume is 160 percent normal finding not seen generally in the inhalation of coal mine dust. Also, this man has extensive bullous emphysema in his upper and mid zones and no coal dust that you can see on his high resolution CT scan. When a coal miner gets emphysema it is in proportion to the dust deposition. We have no evidence that he has dust deposition, therefore, I'm left to conclude that the findings are the result of smoking and not the inhalation of coal dust.

Id. at 21.

13-14, 17-18, 21-22, 24- 25, 33-34; *see Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 624, 11 BLR 2-147, 2-149 (6th Cir. 1988); *see also Workman v. Eastern Associated Coal Corp.*, 23 BLR 1-22, 1-27 (2004); *Justice*, 11 BLR at 1-91; *Hopton v. U.S. Steel Corp.*, 7 BLR 1-12 (1984). The administrative law judge's observations on the probative value of the physician's testimony and the studies cited as support for his medical opinion are permissible credibility determinations, and we find no merit in employer's assertion that she substituted her opinion for that of a medical expert. Having identified deficiencies in Dr. Jarboe's medical opinion, the administrative law judge permissibly accorded little weight to his conclusion that claimant did not have legal pneumoconiosis. Decision and Order at 15-16; *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *see also Crockett Collieries, Inc. v. Director, OWCP* [*Barrett*], 487 F.3d 350, 23 BLR 2-472 (6th Cir. 2007); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).

Next, we address, *seriatim*, employer's challenges to the administrative law judge's determination to assign greater weight to the opinions of Drs. Alam[7] and Baker.[8]

Subsequently, when asked if he agreed or disagreed with Dr. Alam's findings of legal and clinical pneumoconiosis and total disability, Dr. Jarboe replied:

> Well, I agree with total disability but I don't think it's due to pneumoconiosis. I think he's got total disability from smoking for 40 years or so, 45 years one or two packs a day, and he also has this basilar interlobular fibrosis and generalized fibrosis. I don't agree that he has clinical pneumoconiosis because I don't think what we're seeing on the x-ray represents pneumoconiosis, I think it represents a nonspecific fibrotic reaction in the lower lung zones, so I disagree with Dr. Alam's conclusions.

Id. at 25; *see also* Claimant's Exhibit 2 at 4-5.

[7] Dr. Alam, who reviewed claimant's medical records and was a consulting physician during one of claimant's hospitalizations, relied on a coal mine employment history of twenty-six years, and a smoking history of approximately one-half to two packs per day for sixty years, and diagnosed both clinical and legal pneumoconiosis. Decision and Order at 9, 12-13; Claimant's Exhibit 2 at 2. Dr. Alam noted a history of bronchitis aggravated by coal dust exposure, and diagnosed COPD significantly contributed to or substantially aggravated by dust exposure in coal mine employment. Dr. Alam attributed claimant's disabling pulmonary impairment to smoking and exposure to coal mine dust. Claimant's Exhibit 2 at 3-4, 6.

[8] Relying on his Department of Labor evaluation of the miner on October 12, 2006, and a supplemental letter of January 12, 2007, Decision and Order at 8-9;

See Decision and Order at 15-16. In evaluating these medical opinions, the administrative law judge found that Dr. Alam relied on his course of treatment of the miner, and that both physicians considered the miner's actual coal mine employment history, social and medical histories, including smoking history, and observed symptoms, performed physical examinations, recorded claimant's subjective complaints, and conducted objective studies. Decision and Order at 15. The administrative law judge determined that Drs. Alam and Baker each diagnosed a "coal mine dust-induced lung disease," namely, COPD and bronchitis arising from coal dust exposure. Decision and Order at 15.[9] The administrative law judge found that their opinions were supported, documented and reasoned, whereas Dr. Jarboe's contrary diagnosis of a chronic lung condition attributable solely to cigarette smoking, was based on flawed reasoning, and merited less weight than the opinions of Drs. Baker and Alam. *Id.*

The determination of whether a medical opinion is documented and reasoned rests within the discretion of the administrative law judge, *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987), as does the assessment of the weight and credibility to be accorded to the conflicting medical evidence. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 23 BLR 2-261 (6th Cir. 2005); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 22 BLR 2-320 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003). Here, the administrative law judge reviewed the conflicting medical opinion evidence of record at Section 718.202(a)(4), in light of its supporting bases, and corresponding relevant testimony, *see Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983), and adequately summarized the physicians' respective medical rationales. Employer asserts that Dr. Alam's medical opinion should have been discredited because it was prepared on a pre-printed form, and contained several "checkmark" responses. However, use of a standardized format does not necessarily render a physician's opinion unreliable. *See*

Director's Exhibits 16, 19, Dr. Baker diagnosed coal workers' pneumoconiosis, chronic bronchitis, COPD and hypoxemia, and attributed all of the conditions to coal mine dust exposure. Decision and Order at 8; Director's Exhibits 12, 16. Assessing a "severe impairment," Dr. Baker specified that all of the diagnosed conditions contributed fully to the impairment. *Id.* In his supplemental letter of January, 2007, Dr. Baker corrected the miner's smoking history to "[greater than] 50 pack years," and identified smoking as the primary cause of the severe obstructive defect and hypoxemia. Decision and Order at 8; Director's Exhibit 19. Dr. Baker noted that medical literature suggests a "synergistic effect" with the smoking and coal dust exposure, in causing obstructive airway disease. *Id.*

[9] The administrative law judge discredited the remaining medical opinion of Dr. Gilbert, that claimant suffered a coal mine dust-induced lung condition, because she determined that the physician relied on an incorrect length of coal mine employment. Decision and Order at 15.

Hall v. Director, OWCP, 12 BLR 1-133 (1989); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986); *Gambino v. Director, OWCP*, 6 BLR 1-134 (1983). Moreover, in addition to the pulmonary questionnaire challenged by employer contained at Claimant's Exhibit 2, the administrative law judge reviewed Dr. Alam's treatment records of the miner at Employer's Exhibit 1 and Claimant's Exhibit 3, dating from February and March, 2006. Employer also argues that Dr. Alam's opinion was deficient for failure to quantify the effects of the miner's smoking from his coal mine employment. However, contrary to employer's assertion, physicians need not quantify with specificity the relative contributions of smoking and coal dust exposure to a miner's respiratory condition. 20 C.F.R. §718.201(a)(2); Claimant's Exhibit 2 at 6-7; *see generally Barrett*, 478 F.3d 350, 23 BLR 2-472; *Gross*, 23 BLR 1-8. The administrative law judge therefore permissibly accepted Dr. Alam's judgment that the effects of the miner's smoking versus his coal dust exposure cannot necessarily be medically differentiated. Accordingly, we reject employer's arguments, and affirm the administrative law judge's assessment of Dr. Alam's medical opinion as supported, documented, and reasoned. Decision and Order at 9, 12-13, 15.

Employer's challenges to the administrative law judge's weighing of Dr. Baker's opinion also lack merit. Employer's assertion that Dr. Baker's diagnosis of legal pneumoconiosis was based solely on coal dust exposure and a positive x-ray is incorrect, as the physician's initial and supplemental reports reflect reliance on physical examination, with findings of severe obstructive ventilatory defect on pulmonary function studies, and hypoxemia on blood gas studies, to support his diagnoses of chronic bronchitis and COPD due to coal dust exposure. *See* Director's Exhibits 16 at 12, 19 at 2. With respect to the smoking history relied upon by Dr. Baker, employer concedes that Dr. Baker, in a supplemental report, corrected his earlier inaccurate recorded smoking history of one cigarette per day for over sixty years, Director's Exhibit 12, to "50 pack years or more." Director's Exhibit 19 at 2; *see also* Decision and Order at 8, 15. Employer nonetheless argues that Dr. Baker's estimated smoking history is significantly different from that of Dr. Jarboe's consideration of sixty pack-years, and that, due to the discrepancy, the administrative law judge should have discredited Dr. Baker's opinion. We disagree. In his Decision and Order, the administrative law judge specifically addressed employer's challenge to the smoking history considered by Dr. Alam, and accepted Dr. Alam's estimation of "anywhere from 1/2 pack to 2 packs a day for 60 years," stating "[t]his is as accurate an accounting as any given Claimant's inconsistent testimony in this regard." Decision and Order at 3, 9, 15 n.7. Accordingly, we conclude that Dr. Baker's consideration of a smoking history of fifty or more pack-years is consistent with the administrative law judge's factual findings on this issue. Moreover, while employer argues that Dr. Jarboe's estimation of a "sixty-plus year history of

smoking" is correct, Dr. Jarboe's testimony on this point is not definitive.[10] Employer's Brief at 13, 23. Based on the foregoing, we reject employer's assertion that Dr. Baker relied on an incorrect smoking history.

We also find no merit in employer's arguments that Dr. Baker relied on an inaccurate length of coal mine employment, and that he was required to "separate out the effects of claimant's qualifying coal mine employment from the effects of any exposure as a night watchman" in order to provide a reasoned medical opinion diagnosing legal pneumoconiosis. Employer's Brief at 7, 21, 23. The administrative law judge acknowledged Dr. Baker's consideration of forty-five years of coal mine employment in his initial report. This included ten to fifteen years of work as a night watchman in a coal mine, Decision and Order at 15, n.6; Director's Exhibits 16, 19, the customary duties of which have been held not to constitute qualifying coal mine employment. *See Falcon Coal Co., Inc. v. Clemons*, 873 F.2d 916, 12 BLR 2-271 (6th Cir. 1989); *Slone v. Director, OWCP*, 12 BLR 1-92 (1988); *accord B.D.G. v. Valley Camp of Utah, Inc.*, BRB No. 04-0522 (Mar. 16, 2005)(unpub). However, the administrative law judge rationally accepted Dr. Baker's explanation, provided in his supplemental report, that, in making the relevant medical determinations, he separated out the period of the miner's night watchman employment from claimant's qualifying coal mine employment of at least twenty-six years, and concluded that, while the non-qualifying coal dust exposure was a contributory factor to the diagnosed condition, the condition was related to his total coal dust exposure, with each period of time constituting a contributing factor to his disease. Director's Exhibit 19. Employer's arguments are therefore without merit.

In all, the administrative law judge found that the opinions of Drs. Alam and Baker were better supported and entitled to greater weight than the contrary opinion of Dr. Jarboe. Decision and Order at 16; *see Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89, 1-90 n.1 (1986). Because the credited medical opinions are consistent with the definition of legal pneumoconiosis adopted by the Department of Labor (DOL), and applicable caselaw, employer's assertion that they fail to meet the statutory standard is without merit. 20 C.F.R. §§718.201(a)(2), 718.202(a)(4); 65 Fed. Reg. 79936-45 (Dec. 20, 2000); *Barrett*, 478 F.3d 350, 23 BLR 2-472; *Cornett*, 227 F.3d 569, 22 BLR 2-107;

---

[10] Dr. Jarboe testified that the miner indicated that he started smoking "in his late teens…first smoked roll your own cigarettes, estimated that he consumed a half pack of cigarettes a day" until November 2006. Employer's Exhibit 5 at 9. Dr. Jarboe noted that this smoking history "differed significantly from the history recorded elsewhere in the records." Id. Dr. Jarboe also testified that the miner's objective test results from the March 2007 pulmonary evaluation indicated that he might still be smoking or exposed to cigarette smoke, and later described the miner's smoking history as "40 years or so, 45 years one or two packs a day." Id. at 9, 16, 25.

Rowe, 710 F.2d at 255, 5 BLR at 2-103. Substantial evidence supports the administrative law judge's finding that the weight of the medical opinions under Section 718.202(a)(4) established the existence of pneumoconiosis, and it is affirmed.

Disability Causation

Turning to the issue of disability causation, employer contends that the administrative law judge erred in relying on the opinions of Drs. Alam and Baker over that of Dr. Jarboe at Section 718.204(c). Employer argues that the opinions of Drs. Alam and Baker fail to affirmatively prove that legal pneumoconiosis is a substantially contributing cause of disability, or that pneumoconiosis is more than a *de minimus* or infinitesimal factor in claimant's total disability, and are therefore insufficient to establish disability causation at Section 718.204(c).[11] Employer's arguments lack merit. The record reflects that both Drs. Alam and Baker attributed claimant's pulmonary disability to a combination of smoking and coal dust exposure. Dr. Alam indicated that he could not partition the deleterious effects of these exposures, while Dr. Baker opined that, although smoking might be the primary cause of the miner's disabling severe obstructive defect and resting arterial hypoxemia, his condition was significantly related to and substantially aggravated by dust exposure from his coal mine employment. Decision and Order at 7-8, 19; Director's Exhibit 19; Claimant's Exhibit 2 at 4. The administrative law judge credited the opinions of Drs. Alam and Dr. Baker as well-reasoned and supported, and found that the contrary opinion of Dr. Jarboe, that claimant's disability was due entirely to smoking, was entitled to no weight because the physician did not diagnose legal pneumoconiosis, in direct contradiction to the administrative law judge's finding. Decision and Order at 19; *see Skukan v. Consolidation Coal Co.*, 993 F.2d 1228, 17 BLR 2-97 (6th Cir. 1993); *Abshire v. D & L Coal Co.*, 22 BLR 1-202, 1-214 (2002)(*en banc*). Thus, the administrative law judge acted within her discretion in finding that the opinions of Drs. Baker and Alam were entitled to greater weight than the contrary view of Dr. Jarboe, and established disability causation at Section 718.204(c). Decision and Order at 16-17; *see Tennessee Consolidated Coal Co. v. Kirk*, 264 F.3d 602, 610-611, 22 BLR 2-288, 2-303 (6th Cir. 2001); *see also Dempsey v. Sewell Coal Co.*, 23 BLR 1-47 (2004)(*en banc*).

Based on the foregoing evaluation of the factual findings and analysis set forth by the administrative law judge, we conclude that her decision adequately comports with the requirements of the APA, and that employer's assignments of error essentially request a

---

[11] Pursuant to 20 C.F.R. §718.204(c), "[a] miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined in Sec. 718.201, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment." 20 C.F.R. §718.204(c)(1).

reweighing of the evidence, an exercise beyond our scope of review. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). As substantial evidence supports the administrative law judge's credibility determinations at Section 718.204(c), we affirm her findings thereunder, and affirm the award of benefits. *See Cornett*, 227 F.3d at 576, 22 BLR at 2-121; *Peabody Coal Co. v. Hill*, 123 F.2d 412, 21 BLR 2-192 (6th Cir. 1997); *Cross Mountain Coal Inc. v. Ward*, 83 F.3d 211, 20 BLR 2-360 (6th Cir. 1996).

Date for Commencement of Benefits

Lastly, employer challenges the administrative law judge's determination that, because the evidence does not establish the month of onset of total disability due to pneumoconiosis, "benefits are payable beginning with August 2006, the month during which the claim was filed." Decision and Order at 20-21; *see* 20 C.F.R. §725.503(b). Employer maintains, and claimant and the Director agree, that the instant claim was filed on September 14, 2006, as reflected by the record. *See* Director's Exhibit 2. Moreover, the administrative law judge initially determined that this claim was filed on September 14, 2006. Decision and Order at 3. As it appears that the administrative law judge's error was inadvertent, we modify her Decision and Order to reflect benefits payable commencing as of September 2006, the month during which the claim was filed, in accordance with Section 725.503(b) and the agreement of the parties.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed, as modified to reflect benefits payable from September 2006.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge