BRB No. 09-0781 BLA

LEO A. CHEMELLI	)	
	)	
Claimant- Respondent	)	
	)	
v.	)	DATE ISSUED: 09/30/2010
	)	
CANTERBURY COAL COMPANY	)	
	)	
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 on Remand - Awarding Benefits of Administrative Law Judge Daniel L. Leland, United States Department of Labor.

Lynda D. Glagola (Lungs at Work), McMurray, Pennsylvania, for claimant.

Mark E. Solomons (Greenberg Traurig LLP), Washington, D.C., for employer.

Emily Goldberg-Kraft (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: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand – Awarding Benefits (2006-BLA-6163) of Administrative Law Judge Daniel L. Leland 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] This case has been before the Board previously. In his original Decision and Order, dated October 22, 2007, the administrative law judge determined that the newly submitted evidence was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a) and, thus, found that claimant failed to demonstrate a change in the applicable condition of entitlement since the denial of his prior claim pursuant to 20 C.F.R. §725.309. Accordingly, the administrative law judge denied benefits.

Pursuant to claimant's appeal, without the assistance of counsel, the Board rejected employer's contention that the doctrine of collateral estoppel applied to preclude claimant from re-litigating the cause of his disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c). *L.C.* [*Chemelli*] *v. Canterbury Coal Co.*, BRB No. 08-0171 BLA (Oct. 30, 2008)(unpub.) The Board vacated the administrative law judge's findings that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4) and remanded the case for the administrative law judge to reconsider the newly submitted x-ray and medical opinion evidence. *Id*.

On remand, the administrative law judge found that the x-ray and medical opinion evidence was insufficient to establish the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4). The administrative law judge further found, however, that the medical opinion evidence was sufficient to establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) and, thus, a change in the applicable condition of entitlement under 20 C.F.R. §725.309. The administrative law judge also found that the evidence was sufficient to establish 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, commencing on April 1, 2002.

On appeal, employer contends that an award of benefits is precluded, as a matter of law, because claimant is collaterally estopped from relitigating the cause of his respiratory disability, which was established in his prior claims. Alternatively, employer asserts that the administrative law judge erred in weighing the newly submitted medical opinion evidence relevant to the issues of the existence of legal pneumoconiosis and disability causation pursuant to 20 C.F.R. §§718.202(a)(4) and 718.204(c), and a change

[1] Claimant filed prior claims for benefits on August 2, 1988, August 8, 1990, July 9, 1997, and April 5, 2002, which were denied. Director's Exhibits 1-3. The April 5, 2002, claim was denied by Administrative Law Judge Richard A. Morgan on May 28, 2004, on the ground that claimant failed to establish the existence of pneumoconiosis. Director's Exhibit 3. Claimant took no further action until he filed this subsequent claim on August 29, 2005. Director's Exhibit 5.

in the applicable condition of entitlement under 20 C.F.R. §725.309. Employer also contends that the administrative law judge erred in awarding benefits effective April 1, 2002, "based on the mistaken impression that [that] was the date [claimant] filed his most recent claim." Employer's Brief in Support of Petition for Review at 27. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter stating that he will not file a substantive brief unless requested to do so by the Board. Employer has filed a reply to claimant's response brief, reiterating its arguments.[2]

By Order dated May 21, 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.[3] *Chemelli v. Canterbury Coal Co.*, BRB No. 09-0781 BLA (May. 21, 2010) (unpub. Order). The Director, claimant and employer have responded. The Director states that Section 1556 will not affect this case if the Board affirms the administrative law judge's award of benefits. However, the Director maintains that, if the Board does not affirm the award of benefits, remand for consideration under Section 411(c)(4), 30 U.S.C. §921(c)(4), and for the possible submission of additional evidence, would be required, as the present claim was filed after January 1, 2005, and the administrative law judge credited claimant with more than fifteen years of coal mine employment. Claimant agrees with the Director that if the Board affirms the administrative law judge's award of benefits, the reinstated presumption need not be considered. Claimant further agrees with the Director that if the award of benefits cannot be affirmed, the case must be remanded for the administrative law judge to address the applicability of Section 411(c)(4) and for the submission of additional evidence by employer and from claimant in response to employer's new evidence. Employer asserts that the administrative law judge's findings, that claimant has pneumoconiosis and that he is totally disabled due to pneumoconiosis, should be vacated and the case remanded for consideration under the amended

[2] We affirm the administrative law judge's finding that claimant established that he is totally disabled pursuant 20 C.F.R. 718.204(b)(2), as it is not challenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[3] Section 1556 of Pub. L. No. 111-148, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §921(c)(4)), reinstated the "15-year presumption" of Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), for claims filed after January 1, 2005, that were pending on or after March 23, 2010. 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 is a rebuttable presumption that he or she is totally disabled due to pneumoconiosis. In this case, claimant filed his claim after January 1, 2005, and he was credited with thirty-nine years of coal mine employment.

provisions. Employer maintains that, if the case is remanded, due process requires that employer be allowed to develop and submit additional evidence addressing the new standards created by the legislation.

Based upon the parties' responses, and our review, we hold that the disposition of this case is not affected by Section 1556. As will be discussed below, we affirm the administrative law judge's award of benefits. Because claimant carried his burden to establish each element of entitlement by a preponderance of the evidence, we agree with claimant and the Director, that there is no need to consider whether claimant can establish entitlement with the aid of the rebuttable presumption at Section 411(c)(4), 30 U.S.C. §921(c)(4), reinstated by Section 1556.

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.[4] 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).

If 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). Because claimant's prior claim was denied on the ground that he failed to establish the existence of pneumoconiosis, he was required to establish, based on the newly submitted evidence, that he has pneumoconiosis in order to satisfy the requirements of 20 C.F.R. §725.309. If he satisfied his burden of proof under 20 C.F.R. §725.309, then claimant was entitled to have all of the evidence of record considered as to his entitlement to benefits. *White*, 23 BLR at 1-3.

As a preliminary matter, we address employer's assertion that benefits are precluded as a matter of law. Employer's Brief at 13. Employer asserts that Administrative Law Judge Richard A. Morgan determined in the prior claim that claimant was totally disabled due to asthma and not coal workers' pneumoconiosis. *Id*. at 14. Employer thus maintains that claimant is collaterally estopped from relitigating the

[4] The record indicates that claimant's coal mine employment was in Pennsylvania. Director's Exhibit 6. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*).

cause of his disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c). *Chemelli*, slip op. at 7 n.9. Employer raised this argument in the prior appeal and the Board held that if claimant could prove, based on the newly submitted evidence, that pneumoconiosis had a "material adverse effect on [his] respiratory or pulmonary condition" or that it "materially worsen[ed] a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment," he could establish disability causation at 20 C.F.R. §718.204(c) and a change in one of the elements of entitlement since the denial of his prior claim. *Id*.; *see Labelle Processing Co. v. Swarrow*, 72 F.3d 308, 20 BLR 2-76 (3d Cir. 1995); *Sellards v. Director, OWCP*, 17 BLR 1-77 (1993) (the doctrine of res judicata generally has no application in the context of a duplicate claim).

In this appeal, however, employer asserts that the Board mischaracterized its argument and failed to recognize that the issue in this case is not whether claimant's pneumoconiosis progressed to the point of disability, but whether he has pneumoconiosis. Employer maintains that, because it was previously determined in the prior claim that claimant's disabling respiratory condition was not work-related, that determination is not subject to change. We reject employer's argument as it is without merit, but we will more fully explain our prior holding.

Contrary to employer's contention, it was not resolved in the prior claim that claimant is totally disabled due to asthma, as the prior claim was denied because the evidence was insufficient to establish the existence of pneumoconiosis. Claimant's inability to establish a disabling respiratory impairment due to coal dust exposure in the prior claim is not the same as an affirmative finding that he is totally disabled due to asthma. Judge Morgan did not definitively determine the etiology of claimant's respiratory impairment, nor was he required to do so. Thus, pursuant to 20 C.F.R. §725.309, claimant may now submit new evidence, developed in connection with the current claim, to establish that he has pneumoconiosis, either clinical or legal.[5] *See White*, 23 BLR at 1-3; s*ee also* 65 Fed. Reg. 79968 (Dec. 20, 2000). In referring to the

[5] Pursuant to 20 C.F.R. §718.201(a)(1), clinical pneumoconiosis is defined as "those diseases recognized by the medical community as pneumoconioses, i.e., the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). Legal pneumoconiosis is defined as "any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The term "arising out of coal mine employment" denotes "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).

causal connection between coal dust exposure and claimant's disabling impairment in our prior Decision and Order, *Chemelli*, slip op. at 7 n.9, we intended to indicate that claimant could establish the existence of legal pneumoconiosis, as defined in 20 C.F.R. §718.201(a)(2), by submitting new evidence demonstrating that his impairment is related to coal dust exposure.

In determining whether a claimant has satisfied his burden of proof under 20 C.F.R. §725.309, the adjudicator is bound by the final denial of the prior claim, but compares the new medical evidence with the legal conclusions reached in the prior claim, to determine whether claimant has established a change in one of the applicable conditions of entitlement. By requiring a miner to prove a change in an applicable condition of entitlement with new evidence, the regulation ensures that the miner is not simply seeking reconsideration of his prior, finally denied, claim. *Swarrow*, 72 F.3d at 314, 20 BLR at 2-87; *Consolidation Coal Co. v. Williams*, 453 F.3d 609, 23 BLR 2-345 (4th Cir. 2006). Thus, we reject employer's assertion that the subsequent claim is barred as a matter of law.

Employer also challenges the administrative law judge's weighing of the evidence pursuant to 20 C.F.R. §718.202(a)(4). Employer initially asserts that the administrative law judge failed to discuss relevant evidence, namely claimant's treatment records from 1995 to 2007.

Employer contends that the administrative law judge erred in failing to discuss claimant's treatment records from 1995 to 2007 and asserts that the records include treatment for claimant's respiratory condition, but that no doctor attributed claimant's respiratory disease to coal mine employment. Employer's Brief at 17. Employer suggests that since the doctors considered claimant's condition, but failed to attribute these conditions to dust exposure, the records support an inference of the absence of pneumoconiosis. *Id*. at 18. A review of the treatment records discloses that, while the doctors acknowledged the presence of pulmonary conditions, including chronic obstructive pulmonary disease (COPD) and emphysema, they rendered no conclusions as to the etiology of these conditions. Claimant's Exhibit 6. Accordingly, employer did not identify specific, relevant evidence that the administrative law judge overlooked or explain how the consideration of this evidence would alter the administrative law judge's credibility findings. Moreover, the administrative law judge specifically noted that he reviewed all of the evidence from claimant's prior claims and stated that he found that the more recent evidence was the most probative, and thus accorded it greater weight. Decision and Order on Remand at 7. Accordingly, the administrative law judge's omission of claimant's treatment records from consideration does not constitute error requiring remand. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Employer also argues that the administrative law judge erred in giving determinative weight to Dr. Cohen's opinion and in according little weight to the contrary opinions of Drs. Fino and Pickerill on the issues of the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) and disability causation pursuant to 20 C.F.R. §718.204(c). On remand, the administrative law judge reconsidered the newly submitted medical opinions of Drs. Celko, Pickerill, Fino, Cohen and Rasmussen. Decision and Order on Remand at 2-4. Dr. Celko examined claimant on behalf of the Department of Labor on October 10, 2005, and diagnosed COPD due to cigarette smoke and "legal pneumoconiosis," and opined that claimant's impairment is predominately due to coal dust exposure. Director's Exhibit 11. Dr. Pickerill examined claimant on April 4, 2006, and opined that claimant suffers from asthma, unrelated to coal dust exposure, based on claimant's negative chest x-ray, cessation of coal mine employment in 1985, and a fifteen percent improvement in pulmonary function study results after the administration of a bronchodilator. Employer's Exhibit 16. Dr. Fino examined claimant on April 11, 2006, and opined that claimant's pulmonary function studies showed "classic reversibility," which is consistent with asthma, and that claimant has emphysema, caused by coal dust exposure, but that his emphysema does not cause any respiratory impairment. Director's Exhibit 16. Dr. Cohen examined claimant on October 16, 2006, and diagnosed clinical pneumoconiosis and COPD due to thirty-nine years of coal dust exposure. Claimant's Exhibit 1. In a consultative opinion dated May 11, 2007, Dr. Rasmussen diagnosed COPD due to coal dust exposure, based on his review of the medical evidence. Claimant's Exhibit 5.

In weighing the conflicting newly submitted medical opinions at 20 C.F.R. §718.202(a)(4), the administrative law judge initially found that, because none of the physicians proffered persuasive opinions on the issue of clinical pneumoconiosis, claimant failed to establish the existence of clinical pneumoconiosis. Decision and Order on Remand at 4. The administrative law judge then reconsidered, as instructed by the Board, whether the newly submitted medical opinion evidence is sufficient to establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

The administrative law judge gave little weight to Dr. Celko's diagnosis of COPD predominately caused by coal dust exposure, upon finding that Dr. Celko "failed to provide a rationale or explanation for his opinion." Decision and Order on Remand at 4-5. The administrative law judge gave little weight to Dr. Pickerill's opinion, that claimant's respiratory condition is not caused or aggravated by coal dust exposure, because Dr. Pickerill did not recognize the latent and progressive nature of pneumoconiosis and opined that claimant's respiratory condition would not deteriorate in the absence of clinical pneumoconiosis. *Id*. at 5. The administrative law judge gave little weight to Dr. Rasmussen's opinion because the doctor failed to explain, other than by general assertions, how he concluded that coal mine dust contributed to claimant's disabling chronic lung disease. *Id*. The administrative law judge gave little weight to Dr.

Fino's opinion, that claimant has asthma, because he found that Dr. Fino's diagnosis was based primarily on the reversibility seen on the pulmonary function studies, contrary to Dr. Cohen's explanation, which he supported with references to medical literature, that reversibility can appear with numerous forms of COPD and that the reversibility seen on claimant's pulmonary function studies could not be used to render a diagnosis of asthma to the exclusion of a respiratory condition caused by coal dust exposure. *Id*. at 5-6. The administrative law judge also rejected Dr. Fino's rationale for his opinion, that he would not expect an obstructive abnormality due to the inhalation of coal mine dust to progressively worsen, in the absence of further coal dust exposure, as being inconsistent with the position of the Department of Labor that pneumoconiosis is a latent and progressive disease that may become manifest after exposure to coal dust ceases. *Id*. at 6.

In contrast, the administrative law judge gave determinative weight to Dr. Cohen's opinion, upon finding that it was well-reasoned and well-documented and supported by the objective medical evidence of record. Decision and Order on Remand at 6. The administrative law judge explained that:

> Dr. Cohen stated that the pulmonary function and arterial blood gas tests demonstrate an early obstructive pattern with moderate severely depressed diffusion capacity and gas exchange abnormalities. He opined that these conditions were caused by [c]laimant's thirty-nine years of coal dust exposure. Dr. Cohen stated that [c]laimant's diffusion impairment is not a feature of asthma, but of COPD and/or interstitial lung disease. Dr. Cohen opined that wheezing is not sufficient to diagnose asthma as it may be present in individuals with emphysema, chronic bronchitis, and interstitial lung disease. He further stated that responsiveness to bronchodilators can be seen in patients with COPD and that 59 percent of men with moderate disease have hyper-responsiveness. . . . Dr. Cohen based his opinion on [c]laimant's history of coal dust exposure, his symptoms consistent with chronic lung disease, and the results of the objective testing, including the pulmonary function and arterial blood gas tests. Dr. Cohen explained how the pattern of [c]laimant's symptoms demonstrates the presence of a coal dust-induced respiratory impairment. Dr. Cohen has also presented a persuasive explanation as to why [c]laimant does not have asthma, and has cited to medical literature in support of his position.

Decision and Order on Remand at 6.

Although employer asserts that Dr. Cohen's reliance on certain medical articles is not sufficiently explained, and that he did not address fluctuations in the objective test results, we consider employer's remaining arguments with regard to Dr. Cohen to be a request that the Board reweigh the evidence, which we are not empowered to do.

Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986). The administrative law judge permissibly found that Dr. Cohen's opinion, that claimant has COPD due, in part, to his coal dust exposure, is credible. Decision and Order Remand at 6; *see Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 211, 22 BLR 2-467, 2-481 (3d Cir. 2002); *Kertesz v. Director, OWCP*, 788 F.2d 158, 163, 9 BLR 2-1, 2-8 (3d Cir. 1986). The administrative law judge noted that Dr. Cohen considered claimant's symptoms, coal mine employment history, clinical findings and objective testing. Decision and Order on Remand at 6. The administrative law judge also acknowledged that Dr. Cohen's opinion was supported by medical literature and the prevailing medical view that coal dust can cause obstructive disease and clinically significant impairment, and that he considered all of claimant's known risk factors for lung disease, including asthma and coal dust exposure. *Id*. Thus, we find no merit in employer's contention that Dr. Cohen's opinion is legally insufficient to satisfy claimant's burden of proof, as Dr. Cohen specifically diagnosed two respiratory conditions, asthma and COPD, the latter of which he attributed to coal dust exposure. 20 C.F.R. §718.201(a)(2); Claimant's Exhibit 1. We affirm, therefore, the administrative law judge's finding that Dr. Cohen's opinion is entitled to great weight pursuant to 20 C.F.R. §718.202(a)(4).

We further hold that the administrative law judge acted within his discretion as fact-finder in discrediting the opinions of Drs. Fino and Pickerill, that claimant's COPD was unrelated to coal dust exposure. As explained by the courts and the Department of Labor: "Pneumoconiosis is recognized as the latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151, 11 BLR 2-1, 2-9 (1987); *see* 20 C.F.R. §718.201(c). The administrative law judge rationally determined, therefore, that the opinions of Drs. Fino and Pickerill were entitled to little weight, as they failed "to recognize that pneumoconiosis is a latent and progressive disease that may become manifest after exposure to coal dust ceases," contrary to the view adopted by the Department of Labor. Decision and Order on Remand at 6; *see Roberts & Schaefer Co. v. Director, OWCP* [*Williams*], 400 F.3d 992, 999, 23 BLR 2-301, 2-318 (7th Cir. 2005) (appropriate to discount a medical opinion which conflicts with the regulation at 20 C.F.R. §718.201(c) recognizing that pneumoconiosis can be latent and progressive). We affirm, therefore, the administrative law judge's credibility findings regarding the opinions of Drs. Fino and Pickerill.

In addition, in light of the administrative law judge's permissible credibility determinations with respect to the opinions of Drs. Cohen, Fino and Pickerill, the administrative law judge acted within his discretion in according greater weight to the opinion of Dr. Cohen, as he found that it was better reasoned and more persuasive than the opinions of Drs. Fino and Pickerill. Decision and Order on Remand at 5-6; *see Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Clark v. Karst-Robbins*

Coal Co., 12 BLR 1-149, 1-155 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987). We affirm, therefore, his determination that the newly submitted evidence is sufficient to establish the existence of legal pneumoconiosis under 20 C.F.R. §718.202(a)(4) and a change in the applicable condition of entitlement under 20 C.F.R. §725.309(d). Decision and Order on Remand at 6-7; *see Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 25, 21 BLR 2-104, 2-108 (3d Cir. 1997); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Thus, because claimant met his burden at 20 C.F.R. §725.309(d), the administrative law judge properly considered the merits of claimant's subsequent claim. *See* 20 C.F.R. §725.309; *White*, 23 BLR at 1-3; Decision and Order on Remand at 6-7.

With respect to the administrative law judge's findings on the merits, 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 Balsavage v. Director, OWCP*, 295 F.3d 390, 396, 22 BLR 2-386, 2-394-395 (3d Cir. 2002); *Mabe*, 9 BLR at 1-68; *Sisak v. Helen Mining Co.*, 7 BLR 1-178, 1-181 (1984). It is also within the administrative law judge's discretion to determine whether an opinion is documented and reasoned. *See Clark*, 12 BLR at 1-155; *Fields*, 10 BLR at 1-22; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46, 1-47 (1985). Because the administrative law judge addressed all relevant evidence, assigned the evidence appropriate weight, and provided valid reasons for crediting the opinions of Dr. Cohen over the contrary opinions of Drs. Fino and Pickerill, his Decision and Order on Remand comports with the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2). *Wojtowicz*, 12 BLR at 1-165. Consequently, we affirm the administrative law judge's finding that the weight of the evidence of record was sufficient to establish the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a) and disability causation at 20 C.F.R. §718.204(c), as supported by substantial evidence.[6]

Finally, employer asserts that the administrative law judge erred in finding that the miner was totally disabled due to pneumoconiosis as of April 1, 2002. Employer's Brief at 27. We agree. When benefits are awarded on a subsequent claim, "no benefits may be paid for any period prior to the date upon which the order denying the prior claim became

[6] Pursuant to 20 C.F.R. §718.204(c), the administrative law judge permissibly accorded little weight to the opinions of Drs. Fino and Pickerill, that claimant's impairment was due to asthma, unrelated to coal dust exposure, as the administrative law judge found their opinions to be unpersuasive and outweighed by the opinion of Dr. Cohen, that pneumoconiosis was a substantial contributing cause of claimant's disability. Decision and Order on Remand at 8; *see Bonessa v. United States Steel Corp.*, 884 F.2d 726, 13 BLR 2-23 (3d Cir. 1989).

final." 20 C.F.R. §725.309(d)(5). Because the denial of the prior claim became final on May 28, 2004, the administrative law judge erred in awarding benefits as of April 2002. Decision and Order on Remand at 8.

When a claimant is awarded benefits in a subsequent claim, the date for the commencement of benefits is determined in the manner provided under 20 C.F.R. §725.503, which precludes payment of benefits for any period prior to the date upon which the denial of the previous claim became final. 20 C.F.R. §725.503(d)(2). Once entitlement to benefits is demonstrated, the date for the commencement of those benefits is determined by the month in which the miner became totally disabled due to pneumoconiosis. 20 C.F.R. §725.503; *see Rochester & Pittsburgh Coal Co. v. Krecota*, 868 F.2d 600, 12 BLR 2-178 (3d Cir. 1989); *Lykins v. Director, OWCP*, 12 BLR 1-181 (1989). If the date of onset of total disability due to pneumoconiosis is not ascertainable from all the relevant evidence of record, benefits will commence with the month during which the claim was filed, unless evidence credited by the administrative law judge establishes that the miner was not totally disabled due to pneumoconiosis at any subsequent time. 20 C.F.R. §725.503(b); *Green v. Director, OWCP*, 790 F.2d 1118, 9 BLR 2-32 (4th Cir. 1986); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47 (1990).

The medical evidence credited by the administrative law judge in the subsequent claim establishes only that claimant became totally disabled due to pneumoconiosis at some time prior to the date of that evidence. *See Merashoff v. Consolidation Coal Co*, 8 BLR 1-105, 1-109 (1985). Further, the administrative law judge did not credit any evidence that claimant was not totally disabled due to pneumoconiosis at any time subsequent to the filing date of his subsequent claim. Since the medical evidence does not reflect the date upon which claimant became totally disabled due to pneumoconiosis, benefits are payable from the month in which he filed his subsequent claim. 20 C.F.R. §725.503(b). Consequently, we modify the administrative law judge's determination and hold that benefits shall commence as of August 2005, the month and year in which claimant filed the current claim. 20 C.F.R. §§725.309(d)(5), 725.503(b); *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-65 (2004) (*en banc*); *Owens*, 14 BLR at 1-49; *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990).

Accordingly, the administrative law judge's Decision and Order on Remand - Awarding Benefits is affirmed, but modified as to the date from which benefits commence from April 2002 to August 2005.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge