BRB No. 11-0862 BLA

WILMA M. CHUMLEY	)	
Claimant-Petitioner	)	
v.	)	DATE ISSUED: 09/20/2012
PEABODY COAL COMPANY	)	
Employer-Respondent	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

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

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

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (07-BLA-5753) of Administrative Law Judge Alice M. Craft rendered on a 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). This case involves a claim filed on July 17, 2006. Director's Exhibit 2.

The administrative law judge credited claimant with fourteen and two-thirds years of coal mine employment,[1] based on claimant's employment records, and found that claimant established the existence of legal pneumoconiosis,[2] in the form of chronic obstructive and restrictive airways disease due, in part, to coal mine dust exposure, pursuant to 20 C.F.R. §§718.202(a)(4), 718.203(b). The administrative law judge further found that claimant established the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2)(iv), but failed to establish that pneumoconiosis is a substantially contributing cause of her totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge failed to provide valid reasons for discrediting Dr. Simpao's opinion that claimant's respiratory impairment is due to coal mine dust exposure pursuant to 20 C.F.R. §718.204(c). Employer responds, urging the Board to affirm the denial of benefits. In the alternative, employer contends that the administrative law judge erred in her analysis of the medical opinion evidence relevant to the existence of legal pneumoconiosis, at 20 C.F.R. §718.202(a)(4), and total disability, at 20 C.F.R. §718.204(b)(2)(iv). Claimant filed a reply brief, reiterating her contentions on appeal.[3] The Director, Office of Workers' Compensation Programs, declined to file a substantive response brief.[4]

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[1] The record indicates that claimant's coal mine employment was in Kentucky. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[2] 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). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[3] Claimant further asserts that the administrative law judge erred by failing to apply the recent amendment to the Act, enacted by Section 1556 of Public Law. No. 111-148, which provides a rebuttable presumption of total disability due to pneumoconiosis in certain claims where claimant has established fifteen years of qualifying coal mine employment, and the existence of a totally disabling respiratory impairment. *See* Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4); Claimant's Reply Brief at 5, 7. Specifically, claimant contends that because she is "only shy [four] months" of the fifteen year coal mine employment requirement, she should have the benefit of the rebuttable presumption. Claimant's Reply Brief at 5, 7. Contrary to claimant's assertion, as claimant concedes that she did not establish the requisite fifteen years of qualifying coal

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

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that she suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes a finding of entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

We first address employer's contention that the administrative law judge erred in finding that the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[5] Employer's Brief at 29. The administrative law judge considered the medical opinions of Drs. Simpao, Repsher, and Fino. Dr. Simpao opined that claimant suffers from obstructive and restrictive airways

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mine employment, the administrative law judge properly found that claimant is not entitled to the rebuttable presumption at Section 411(c)(4). Decision and Order at 3; Claimant's Reply Brief at 1, 4, 5, 7, 8.

[4] The administrative law judge's finding of fourteen and two-thirds years of coal mine employment, and her findings that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3) or total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii), are unchallenged on appeal. Therefore, they are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[5] Employer's arguments in its response brief are in support of another method by which the administrative law judge may reach the same result and deny benefits. Employer's Response Brief at 11-19. Therefore, those arguments are properly before the Board, and no cross-appeal is required of employer. *See Malcomb v. Island Creek Coal Co.*, 15 F.3d 364, 370, 18 BLR 2-113, 2-121 (4th Cir. 1994); *Dalle Tezze v. Director, OWCP*, 814 F.2d 129, 133, 10 BLR 2-62, 2-67 (3d Cir. 1987); *Whiteman v. Boyle Land & Fuel Co.*, 15 BLR 1-11, 1-18 (1991)(en banc); *King v. Tenn. Consolidated Coal Co.*, 6 BLR 1-87, 1-92 (1983).

disease due, at least in part, to coal mine dust exposure.[6] 20 C.F.R. §718.201(a)(2); Director's Exhibit 13. Drs. Repsher and Fino opined that claimant does not suffer from any coal mine dust-related disease of the lung.[7] Employer's Exhibits 1, 2, 7.

The administrative law judge accorded less weight to the opinions of Drs. Repsher and Fino because she found them to be inadequately explained and based on premises contrary to the findings of the Department of Labor (DOL), as set forth in the preamble to the revised regulations, regarding obstructive lung disease and coal mine dust exposure. Decision and Order at 23-24. Conversely, the administrative law judge found that Dr. Simpao's diagnosis of legal pneumoconiosis was reasoned and documented and consistent with the findings of DOL. Decision and Order at 23-24. The administrative law judge, therefore, found that the credible medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Initially, we reject employer's assertion that the administrative law judge erred in referring to the preamble to the amended regulations, when weighing the medical opinions relevant to 20 C.F.R. §718.202(a)(4). Employer's Brief at 12-17. The preamble to the amended regulations sets forth how DOL has chosen to resolve questions of scientific fact. *See Midland Coal Co. v. Director, OWCP* [*Shores*], 358 F.3d 486, 490, 23 BLR 2-18, 2-26 (7th Cir. 2004). An administrative law judge may evaluate expert opinions, therefore, in conjunction with DOL's discussion of sound medical science in the preamble to the amended regulations. *A & E Coal Co. v. Adams*, F.3d , No. 11-3926, 2012 WL 3932113 at *3-4 (6th Cir. Sept. 11, 2012); *Cumberland River Coal Co. v. Banks*, F.3d , 2012 WL 3194224 at *7-8 (6th Cir. 2012). In addition, contrary to employer's suggestion, the preamble does not constitute evidence outside the record with respect to which the administrative law judge must give notice and an opportunity to respond. *See Adams*, 2012 WL 3932113 at *3-4. Thus, in evaluating the expert opinions of record in conjunction with DOL's discussion of the medical science cited in the preamble to the amended regulations, the administrative law judge did not improperly treat the preamble as evidence, or as a presumption that all obstructive lung disease is pneumoconiosis. Employer's Brief at 12-17. Rather, the administrative law judge acted within her discretion in consulting the preamble as an authoritative statement of medical

[6] Dr. Simpao opined that claimant's moderate degree of restrictive and obstructive airways disease is due to coal mine dust exposure, smoking, and claimant's employment at a sewing factory. Director's Exhibit 12.

[7] Dr. Repsher diagnosed mild chronic obstructive pulmonary disease (COPD) and emphysema due to heredity and lifestyle factors, with no contribution from coal mine dust exposure. Employer's Exhibit 1. Dr. Fino diagnosed a mild to moderate obstructive impairment, due solely to cigarette smoking. Employer's Exhibit 7.

principles accepted by DOL, and in considering the preamble to the revised regulations in assessing the credibility of the medical experts' opinions in this case. *See Adams*, 2012 WL 3932113 at *3-4; *Banks*, 2012 WL 3194224 at *7-8; *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012); *J.O.* [*Obush*] *v. Helen Mining Co*., 24 BLR 1-117, 1-125-26 (2009), *aff'd*, *Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 24 BLR 2-369 (3d Cir. 2011); *see also Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008).

We also reject employer's contention that the administrative law judge erred in determining that Dr. Simpao's opinion was sufficient to establish the existence of legal pneumoconiosis, under 20 C.F.R. §718.202(a)(4). Dr. Simpao considered claimant's symptoms, her medical, smoking and employment histories, her x-rays and objective studies, and performed a physical examination. Director's Exhibit 13. The administrative law judge found that Dr. Simpao opined that claimant's more than thirteen years of coal mine dust exposure was a significant contributing factor to her impairment, and that smoking and working in a sewing factory had also contributed, and explained that there is no proven procedure to determine the degree of influence of each of the contributing factors. Decision and Order at 23; Director's Exhibit 13. Contrary to employer's arguments, having specifically considered these aspects of Dr. Simpao's opinion, the administrative law judge permissibly credited Dr. Simpao's opinion as documented and reasoned, and consistent with the scientific premises underlying the regulations that obstructive lung disease can be caused by a combination of factors. 20 C.F.R. §718.201(a)(2); *see* 65 Fed. Reg. 79,940 (Dec. 20, 2000); *Adams*, 2012 WL 3932113 at *3-4; *Banks*, 2012 WL 3194224 at *7-8; *Looney*, 678 F.3d at 313*; Obush*, 24 BLR at 1-125-26; *Beeler*, 521 F.3d at 726, 24 BLR at 2-103; *Martin v. Ligon Preparation Co*., 400 F.3d 302, 306, 23 BLR 2-261, 2-285 (6th Cir. 2005); *Tenn. 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, 1-18-19 (2003); Decision and Order at 23-24; Director's Exhibit 13. Consequently, we affirm the administrative law judge's determination to credit Dr. Simpao's diagnosis of legal pneumoconiosis, as adequately explained, consistent with the views accepted by DOL when it revised the definition of legal pneumoconiosis, and sufficient to satisfy claimant's burden of proof. *See Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); *Cornett v. Benham Coal, Inc*., 227 F.3d 569, 576, 22 BLR 2-107, 2-121 (6th Cir. 2000).

We reject employer's contention that the administrative law judge erred in her consideration of the opinions of Drs. Repsher and Fino. Dr. Repsher opined that claimant's chronic obstructive pulmonary disease (COPD) is due to heredity and lifestyle factors, with no contribution from coal mine dust exposure. Employer's Exhibit 1 at 3-4. The administrative law judge permissibly assigned less weight to the opinion of Dr. Repsher, in part, because he did not adequately explain why claimant's more than thirteen years of coal mine dust exposure did not contribute, along with claimant's

smoking history and other factors, to her COPD. *See Barrett*, 478 F.3d at 356, 23 BLR at 2-483; *Cornett*, 227 F.3d at 576, 22 BLR at 2-121; Decision and Order at 24.

Dr. Fino opined that "although [thirteen] years in the mines could cause a coal mine dust related condition, it would be unusual to cause an obstructive type of abnormality." Employer's Exhibit 2 at 3. The administrative law judge assigned less weight to the opinion of Dr. Fino, in part, because it was contrary to DOL's recognition that coal mine dust can cause clinically significant obstructive lung disease, even in the absence of clinical pneumoconiosis. *See* 20 C.F.R. §718.201(a)(2)*; Adams*, 2012 WL 3932113 at *3-4; *Banks*, 2012 WL 3194224 at *7-8; Decision and Order at 23. An administrative law judge may discredit a medical opinion she finds to be divergent from the prevailing view of the medical community and scientific literature relied upon by DOL in promulgating the revised regulations. *See Adams*, 2012 WL 3932113 at *3-4; *Banks*, 2012 WL 3194224 at *7-8; Decision and Order at 24. The administrative law judge further found that Dr. Fino did not adequately explain how he eliminated claimant's years of coal mine dust exposure as a contributing or aggravating factor in claimant's COPD. *See Barrett*, 478 F.3d at 356, 23 BLR at 2-483; Decision and Order at 24. Thus, the administrative law judge acted within her discretion in discounting Dr. Fino's opinion, as contrary to the views accepted by DOL, and inadequately explained. Decision and Order at 17; 65 Fed. Reg. at 79,940; *see Beeler*, 521 F.3d at 726, 24 BLR at 2-103; *Barrett*, 478 F.3d at 356, 23 BLR at 2-483; *Obush*, 24 BLR at 1-125-26.

We, therefore, affirm the administrative law judge's determination to accord less weight to the opinions of Drs. Repsher and Fino. Because the administrative law judge provided valid reasons for discounting the opinions of Drs. Repsher and Fino, we need not address employer's other arguments challenging the administrative law judge's weighing of these opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-83 n.4 (1983). We, therefore, affirm the administrative law judge's finding that the medical opinion evidence established the existence of legal pneumoconiosis.[8]

We next address the parties' challenges to the administrative law judge's analysis of the opinions regarding the existence of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the opinions of Drs. Simpao, Repsher, and Dr. Fino. In a report dated August 2006, Dr. Simpao opined that claimant has a moderate pulmonary impairment

[8] The administrative law judge further properly found that as the medical opinion evidence established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), claimant also established that her pneumoconiosis is due to coal mine dust exposure, 20 C.F.R. §718.203(b). *Henley v. Cowan & Co.*, 21 BLR 1-147, 1-151 (1999); Decision and Order at 24-25.

that is totally disabling. Director's Exhibit 13 at 44. In a report dated January 2007, Dr. Repsher stated that claimant is not totally disabled. Employer's Exhibit 1 at 4. In a report dated July 2008, Dr. Fino initially stated that claimant is not totally disabled. Employer's Exhibit 2 at 10. However, in a supplemental report dated October 2010, Dr. Fino revised his opinion to conclude that claimant is probably disabled, as he was not sure she could return to her usual coal mine employment involving heavy manual labor. Employer's Exhibit 7 at 5. While the administrative law judge discredited the opinion of Dr. Simpao, she credited the opinion of Dr. Fino, concluding that total disability was established. Decision and Order at 25-26.

Contrary to claimant's arguments, the administrative law judge permissibly discounted Dr. Simpao's opinion, that claimant suffers from a totally disabling respiratory impairment, because it was based, in part, on invalid objective studies. *See Siegel v. Director, OWCP*, 8 BLR 1-156 (1985); *Street v. Consolidation Coal Co.*, 7 BLR 1-65 (1984); Decision and Order at 25. While, as claimant's contends, Dr. Simpao later repeated his objective testing, the administrative law judge properly found that Dr. Simpao did not have the benefit of the valid, September 2006, studies at the time he rendered his August 2006 report, and he was not asked to revise his opinion in light of the later testing. Decision and Order at 15; Claimant's Brief at 3; Director's Exhibit 13 at 7, 8, 21, 43.

We also reject employer's contention that the administrative law judge erred in relying on Dr. Fino's opinion to find total disability established.[9] Employer's Brief at 18. The administrative law judge accurately noted that, in his 2010 supplemental report, Dr. Fino reviewed the results of objective testing from 2007, 2008, and 2010, and opined:

> [Claimant's] last job was laying timbers, which involved heavy manual labor. I am not sure that she would be able to do that job with her present pulmonary function.

Decision and Order at 17; Employer's Exhibit 7 at 5. Thus, Dr. Fino concluded that, from a respiratory standpoint, claimant is "probably disabled from returning to her last mining job or a job requiring similar effort." Decision and Order at 17; Employer's Exhibit 7 at 5. Contrary to employer's argument, the administrative law judge accurately characterized Dr. Fino's opinion, and permissibly concluded that because it was based on the decline in claimant's pulmonary function between 2007 and 2010, in conjunction with the exertional requirements of claimant's usual coal mine work, Dr. Fino's opinion

[9] Employer does not challenge the administrative law judge's determination not to rely on the 2007 opinion of Dr. Repsher. Therefore, it is affirmed. *See Skrack*, 6 BLR at 1-711.

is well-documented and reasoned and sufficient to establish that claimant was totally disabled by the time of his evaluation in 2010. *See Martin*, 400 F.3d at 306, 23 BLR at 2-285; *Cornett*, 227 F.3d at 576, 22 BLR at 2-121; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; Decision and Order at 26; Employer's Brief at 18.

Because the administrative law judge provided valid reasons for discrediting Dr. Simpao's opinion and for relying on the opinion of Dr. Fino, we affirm the administrative law judge's finding that claimant established total respiratory disability, pursuant to 20 C.F.R. §718.204(b)(2)(iv).[10]

We next address claimant's contention that the administrative law judge erred in her evaluation of Dr. Simpao's opinion in finding that claimant failed to establish that pneumoconiosis was a substantially contributing cause of her total disability at 20 C.F.R. §718.204(c). As the administrative law judge correctly summarized, a miner is totally disabled due to pneumoconiosis if pneumoconiosis is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c); *see Tennessee Consol. Coal Co. v. Kirk*, 264 F.3d 602, 611, 22 BLR 2-288 (6th Cir. 2001); Decision and Order at 26. Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it has a "material adverse effect" on the miner's respiratory or pulmonary condition or "[m]aterially worsens" a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.[11] 20 C.F.R. §718.204(c)(1); *Gross*, 23 BLR at 1-17; Decision and Order at 26.

[10] Claimant also asserts that, because Dr. Simpao was the Department of Labor examining physician, "[t]he Department of Labor should have asked for an updated opinion from Dr. Simpao," after Dr. Simpao performed subsequent, valid objective testing. Claimant's Reply Brief at 4. To the extent claimant is asserting that the Department of Labor failed to provide her with a complete pulmonary evaluation, sufficient to constitute an opportunity to substantiate her claim, as required by the Act, 30 U.S.C. §923(b), as implemented by 20 C.F.R. §§718.101(a), 725.406; *Greene v. King James Coal Mining, Inc.*, 575 F.3d 628, BLR (6th Cir. 2009); *Hodges v. BethEnergy Mines*, 18 BLR 1-84, 1-93 (1994), we need not address this contention in light of our determination to affirm the administrative law judge's finding that claimant established total disability. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[11] The comments to the regulations make clear that the inclusion of the words "material" or "materially" reflects the view that "evidence that pneumoconiosis makes only a negligible, inconsequential, or insignificant contribution to the miner's total disability is insufficient to establish that pneumoconiosis is a substantially contributing cause of that disability." 65 Fed. Reg. 79946 (Dec. 20, 2000).

In evaluating the medical opinions relevant to the cause of claimant's disabling respiratory impairment at 20 C.F.R. §718.204(c), the administrative law judge discredited Dr. Simpao's opinion, that coal mine dust exposure is a "significant contributing factor" to claimant's disabling respiratory impairment.[12] Decision and Order at 26; Director's Exhibit 13. The administrative law judge explained that because she had found, pursuant to 20 C.F.R. §718.204(b)(2)(iv), that Dr. Simpao's diagnosis of a disabling respiratory impairment was based on invalid objective testing, and thus was not credible, she also could not rely on Dr. Simpao's opinion regarding the cause of the impairment. Decision and Order at 26.

We agree with claimant that the administrative law judge erred in discrediting Dr. Simpao's opinion. As the administrative law judge found that claimant established the existence of a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2)(iv), the issue is no longer the extent of the disability but, rather, the cause of claimant's total disability. *See Smith v. Martin County Coal Corp.*, 23 BLR 1-69, 1-75 (2004). Thus, the administrative law judge did not adequately explain why her determination not to rely on Dr. Simpao's opinion as to the *extent* of claimant's impairment, at 20 C.F.R. §718.204(b)(2)(iv), undermined the physician's separate conclusion that coal mine dust exposure is a "significant contributing factor" to claimant's disabling respiratory impairment.[13] *See Smith*, 23 BLR at 1-75. We must therefore vacate the administrative law judge's finding that claimant failed to meet her burden to establish that she is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c).

However, we disagree with claimant's assertion that, because the administrative law judge credited, pursuant to 20 C.F.R. §718.202(a)(4), Dr. Simpao's opinion that

[12] The record also contains the opinions of Drs. Repsher and Fino. Dr. Repsher opined that claimant does not have legal pneumoconiosis, or any condition attributable to coal mine dust exposure, and has no clinically significant respiratory impairment. Employer's Exhibit 1. Dr. Fino opined that claimant does not have legal pneumoconiosis, and that her respiratory impairment is unrelated to coal mine dust exposure. Employer's Exhibit 7. The administrative law judge did not specify what weight she accorded these opinions. Decision and Order at 26.

[13] Dr. Simpao opined that claimant's history of cigarette smoking and her five-year employment in a sewing factory were additional aggravating factors in claimant's disabling respiratory impairment. Director's Exhibit 13. The Sixth Circuit has held that a medical opinion attributing claimant's disabling respiratory impairment to a combination of smoking and coal dust exposure may be sufficient to establish that claimant was totally disabled due to pneumoconiosis. *See Cross Mountain Coal, Inc. v. Ward*, 93 F.3d. 211, 218, 20 BLR 2-360, 2-373 (6th Cir. 1996).

claimant's chronic obstructive and restrictive impairments are due to coal mine dust exposure, claimant has established, as a matter of law, that pneumoconiosis is a substantially contributing cause of her disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c). Claimant's Brief at 3. Because the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) and the cause of claimant's disabling respiratory impairment pursuant to 20 C.F.R. §718.204(c) are separate elements of entitlement, and since the administrative law judge has the discretion to credit and discredit medical opinions based on the quality of their reasoning and documentation, *Gray v. SLC Coal Co.*, 176 F.3d 382, 398-90, 21 BLR 2-615, 2-629 (6th Cir. 1999); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983), we conclude that this case must be remanded to the administrative law judge for further consideration of the medical opinion evidence pursuant to 20 C.F.R. §718.204(c).

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge