U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0683 BLA

DEBORAH CARLISLE (o/b/o and Widow of GROVER CARLISLE, SR.)	)	
Claimant-Respondent	)	
v.	)	
HARLAN FUEL COMPANY, INCORPORATED, c/o NEW HORIZON HOLDING, INCORPORATED	)	DATE ISSUED: 09/18/2017
and	)	
THE HARTFORD	)	
Employer/Carrier-Petitioners	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decisions and Orders of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe, Brad A. Austin and M. Rachel Wolfe (Wolfe, Williams & Reynolds), Norton, Virginia, for claimant.

David L. Murphy (Murphy Law Offices, PLLC), Louisville, Kentucky, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BOGGS and ROLFE, Administrative Appeals Judges.

HALL, Chief Administrative Appeals Judge:

Employer/carrier (employer) appeals the Decisions and Orders (2013-BLA-05395, 2014-BLA-05222) of Administrative Law Judge Joseph E. Kane, awarding benefits on claims filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's claim filed on August 18, 2011, and a survivor's claim filed on August 13, 2013.[1]

In the miner's claim, the administrative law judge credited the miner with fourteen years of coal mine employment.[2] The administrative law judge found that, although the record contained x-ray readings supportive of a finding of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a), the miner's CT scan readings and treatment records established that "the [m]iner suffered from lung cancer that was interpreted as complicated pneumoconiosis on the chest x-rays." Decision and Order at 21. Because the preponderance of the evidence did not establish the existence of complicated pneumoconiosis under 20 C.F.R. §718.304, the administrative law judge found that claimant did not invoke the irrebuttable presumption that the miner was totally disabled due to pneumoconiosis under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3).

The administrative law judge further found that, because the miner had less than fifteen years of coal mine employment, claimant could not invoke the rebuttable presumption that the miner was totally disabled due to pneumoconiosis under Section 411(c)(4) of the Act, 30 U.S.C §921(c)(4) (2012).[3] The administrative law judge

[1] The miner died on July 17, 2013, while his claim was pending before the Office of Administrative Law Judges. Miner's Claim (MC) Decision and Order at 2. Claimant, the widow of the miner, is pursuing the miner's claim. *Id*. at 3-4.

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

[3] Under Section 411(c)(4), there is a rebuttable presumption that the miner was totally disabled due to pneumoconiosis if claimant establishes at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory

therefore considered whether claimant could establish entitlement pursuant to 20 C.F.R. Part 718 without the benefit of the Section 411(c)(4) presumption.

The administrative law judge found that the x-ray, CT scan, and medical opinion evidence established the existence of clinical pneumoconiosis[4] under 20 C.F.R. §718.202(a)(1), (4), and found that the clinical pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). The administrative law judge further found that the medical opinion evidence established that the miner also had legal pneumoconiosis,[5] in the form of emphysema due to both cigarette smoking and coal mine dust exposure under 20 C.F.R. §718.202(a)(4). In addition, the administrative law judge found that the miner was totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2), and that the total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge awarded benefits in the miner's claim. In a separate decision, the administrative law judge found that claimant was automatically entitled to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2012).[6]

On appeal, employer argues that the administrative law judge erred in his analysis of the medical opinion evidence when he found that the miner had both clinical and legal pneumoconiosis. Employer argues further that the administrative law judge erred in finding that the miner was totally disabled, and that his total disability was due to pneumoconiosis. Claimant responds, urging affirmance of the award of benefits. The

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or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305.

[4] "Clinical pneumoconiosis" consists of "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).

[5] "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).

[6] Under Section 422(*l*), the survivor of a miner who was determined to be eligible to receive benefits at the time of his or her death is automatically entitled to survivor's benefits, without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2012).

Director, Office of Workers' Compensation Programs, has declined to file a response brief unless specifically requested to do so by the Board.[7]

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).

The Miner's Claim

To be entitled to benefits under the Act, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *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); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

I. Existence of Pneumoconiosis

A. Clinical Pneumoconiosis

Employer contends that the administrative law judge erred in finding that the medical opinion evidence established that the miner had clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge considered the medical opinions of Drs. Alam and Jarboe.[8] Dr. Alam examined the miner on behalf of

[7] We affirm, as unchallenged on appeal, the administrative law judge's findings of fourteen years of coal mine employment, that the x-ray and CT scan evidence established the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4), and that the clinical pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[8] The administrative law judge also considered the deposition testimony of Dr. Broudy, who testified regarding his treatment of the miner in 2008, and again in January 2012, just before the miner was diagnosed with lung cancer. Employer's Exhibit 6. The administrative law judge noted that Dr. Broudy testified that the miner did not have complicated pneumoconiosis and that his symptoms were due to lung cancer, but did not address whether the miner had simple clinical pneumoconiosis, or legal pneumoconiosis.

the Department of Labor on November 14, 2011, and diagnosed him with clinical pneumoconiosis based on a chest x-ray read as "2/1," and a history of fifteen years of underground coal mine employment. Miner's Claim (MC) Director's Exhibit 11 at 30.[9] Dr. Jarboe examined the miner on behalf of employer on August 9, 2012, and opined that there was no evidence of clinical pneumoconiosis. Employer's Exhibits 5 at 31-32; 8 at 9. Dr. Jarboe diagnosed the miner with non-small cell carcinoma stage IV, possible asbestosis, and hypertension. *Id*.

The administrative law judge found Dr. Alam's diagnosis of clinical pneumoconiosis to be supported by the x-ray and CT scan evidence.[10] MC Decision and Order at 18. In contrast, the administrative law judge found that Dr. Jarboe's opinion merited less weight because, contrary to Dr. Jarboe's conclusion, the x-ray and CT scan evidence "support[ed] a finding of at least simple clinical pneumoconiosis."[11] *Id*. at 19-20.

MC Decision and Order at 21. Employer does not contest this aspect of the administrative law judge's characterization of Dr. Broudy's testimony.

[9] The record contains two sets of Director's Exhibits, one in the miner's claim and one in the survivor's claim. We have therefore indicated Miner's Claim (MC) above. The record contains only one set of Claimant's and Employer's Exhibits, and they are in the miner's claim.

[10] The administrative law judge also found that Dr. Alam diagnosed the miner with complicated pneumoconiosis, based on the miner's x-ray, and discredited the diagnosis. MC Decision and Order at 18. The basis for this finding is unclear, as a review of Dr. Alam's November 14, 2011 medical report does not reveal a diagnosis of complicated pneumoconiosis by Dr. Alam. MC Director's Exhibit 11 at 27-30. The record reflects that Dr. Alexander read the miner's November 14, 2011 x-ray as positive for both simple pneumoconiosis "2/1," and a Category A large opacity. *Id*. at 7. Dr. Alam diagnosed the miner with clinical pneumoconiosis "2/1," and emphysema, citing a November 14, 2011 x-ray. *Id*. at 29-30.

[11] The administrative law judge also found Dr. Jarboe's opinion unpersuasive because Dr. Jarboe did not adequately explain why the miner could not have suffered from both clinical pneumoconiosis and lung cancer. MC Decision and Order at 20. Additionally, the administrative law judge discounted Dr. Jarboe's opinion that pleural thickening seen on the miner's x-rays was likely related to asbestos exposure because there was no evidence that the miner was exposed to asbestos. *Id*.

Employer argues that the administrative law judge should have discounted Dr. Alam's opinion because, employer contends, the administrative law judge rejected Dr. Alam's x-ray interpretation. Employer's Brief at 9. Contrary to employer's argument, Dr. Alam relied on the November 14, 2011 x-ray to diagnose clinical pneumoconiosis. MC Director's Exhibit 11 at 29. The administrative law judge found that x-ray to be positive for clinical pneumoconiosis because more highly-qualified radiologists read it as positive for the disease.[12] MC Decision and Order at 8-10. In addition, the administrative law judge found that the x-rays and CT scans support Dr. Alam's finding of simple clinical pneumoconiosis. MC Decision and Order at 18; *see Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149, 1-155 (1989) (en banc).

Moreover, because the administrative law judge found that the preponderance of the x-ray and CT scan evidence was positive for clinical pneumoconiosis, he rationally discounted Dr. Jarboe's opinion that the miner did not have clinical pneumoconiosis. *See Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 700 F.3d 878, 881, 25 BLR 2-213, 218 (6th Cir. 2012). As employer does not offer any other challenge, we therefore affirm, as supported by substantial evidence, the administrative law judge's finding that the medical opinion evidence supports the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(4). We also affirm the administrative law judge's finding that all of the relevant evidence weighed together established the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *See Hensley*, 700 F.3d at 881, 25 BLR at 2-218.

[12] Drs. Alexander and Crum, both of whom are dually-qualified B readers and Board-certified radiologists, read this x-ray as positive for clinical pneumoconiosis, 2/1, and complicated pneumoconiosis, while Dr. Jarboe, a B reader, read it as negative for pneumoconiosis. MC Director's Exhibit 11; Claimant's Exhibit 1; Employer's Exhibit 8. The administrative law judge found that the x-ray evidence overall supported findings of both simple and complicated pneumoconiosis; however, after considering the evidence in total, he determined that the CT scans "illustrate that the [m]iner suffered from lung cancer that was interpreted as complicated pneumoconiosis on the chest x-rays." Decision and Order at 21. The administrative law judge dismissed what he understood to be Dr. Alam's diagnosis of complicated pneumoconiosis on the basis that "this opinion [of complicated pneumoconiosis] rested simply on the chest x-ray reading," while the CT scans showed the contrary. As noted *supra*, Dr. Alam's report does not appear to include a diagnosis of complicated pneumoconiosis.

B. Legal Pneumoconiosis

Employer argues that the administrative law judge erred in finding that the medical opinion evidence established legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). The administrative law judge again weighed the medical opinions of Drs. Alam and Jarboe. Dr. Alam diagnosed the miner with emphysema, citing the miner's shortness of breath, his x-ray, his pulmonary function study results, and his blood gas study results. MC Director's Exhibit 11 at 30. Dr. Alam attributed the emphysema to both tobacco abuse and coal mine dust exposure.[13] *Id*.

In contrast, Dr. Jarboe opined that the miner did not suffer from legal pneumoconiosis. Dr. Jarboe attributed a restrictive defect on the miner's pulmonary function studies to lung cancer unrelated to coal mine employment, and to "basilar fibrosis and bilateral pleural thickening" likely caused by asbestos exposure. Employer's Exhibits 5 at 32-33; 8 at 13. He attributed the hypoxemia identified by Dr. Alam on the November 14, 2011 blood gas study to untreated lung cancer. Employer's Exhibit 5 at 30-31. Additionally, Dr. Jarboe opined that the miner's "normal diffusion capacity" indicated that the miner did not suffer from emphysema. *Id*. at 27.

The administrative law judge found that Dr. Alam's opinion diagnosing the miner with legal pneumoconiosis was well-reasoned and documented. MC Decision and Order at 18. The administrative law judge found that Dr. Jarboe's contrary opinion was not persuasive because there was no evidence in the record indicating that the miner was exposed to asbestos and because, contrary to Dr. Jarboe's conclusion, the miner's CT scans verified the presence of emphysema. *Id*. at 20.

Employer argues that the administrative law judge did not adequately address Dr. Alam's reliance on a cigarette smoking history that was approximately half of the miner's actual smoking history when he credited Dr. Alam's opinion that the miner's emphysema

[13] Dr. Alam assumed that the miner smoked one-half pack of cigarettes per day for twenty-seven years and worked in coal mine employment for fifteen years in rendering his diagnosis of legal pneumoconiosis. MC Director's Exhibit 11 at 30. Dr. Alam noted that the miner was still smoking and that he "quit working in the mines [a] long time ago." *Id*. In discussing the etiology of the emphysema, Dr. Alam stated that "more weight is given to t[obacco] abuse[-] related hypoxia [and] emphysema than coal [mine] dust-related," but added that fifteen "years of [coal] mining cannot be totally ignored." *Id*.

constituted legal pneumoconiosis.[14] Employer's Brief at 8-9, 13. We agree. The effect of an inaccurate smoking history on the credibility of a medical opinion is a determination is to be made by the administrative law judge. *See Sellards v. Director, OWCP*, 17 BLR 1-77, 1-80-81 (1993); *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988). The administrative law judge did not address this credibility issue in the section of his decision regarding the existence of legal pneumoconiosis. Later, when addressing disability causation under 20 C.F.R. §718.204(c), the administrative law judge recognized that "Dr. Alam based his opinion only on a smoking history of one-half-a-pack of cigarettes per day, and the evidence establishes [that] the [m]iner smoked at least a pack of cigarettes per day . . . ." MC Decision and Order at 26. Notwithstanding the discrepancy, the administrative law judge stated that "I still give his opinion weight on the issue." *Id*.

The administrative law judge's finding, however, is unexplained. A review of the administrative law judge's Decision and Order reflects that the administrative law judge found Dr. Alam's opinion on the existence of emphysema to be documented because it was supported by the x-ray and CT scan evidence that detected emphysema. MC Decision and Order at 18. The Board, however, is unable to discern the administrative law judge's rationale for finding Dr. Alam's opinion on the etiology of the emphysema to be reasoned, despite the physician's reliance on an inaccurate smoking history. Therefore, the administrative law judge's decision does not comply with the Administrative Procedure Act (APA), which requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented. . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). We must therefore vacate the administrative law judge's finding of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and remand this case for further consideration.[15]

On remand, the administrative law judge must reconsider Dr. Alam's medical opinion on the issue of legal pneumoconiosis and explain how he determines the weight to accord the opinion in light of Dr. Alam's reliance on an inaccurate smoking history.

[14] Employer does not challenge the administrative law judge's decision to discount Dr. Jarboe's opinion on the issue of legal pneumoconiosis. Therefore, this finding is affirmed. *See Skrack*, 6 BLR at 1-711.

[15] As we will discuss, *infra*, the Board is unable to affirm the administrative law judge's finding that the miner was totally disabled due to both clinical pneumoconiosis and legal pneumoconiosis at 20 C.F.R. §718.204(c).

See Sellards, 17 BLR at 1-80-81; *Bobick*, 13 BLR at 1-54. In weighing Dr. Alam's medical opinion, the administrative law judge should address Dr. Alam's credentials, the explanations for his conclusions, the documentation underlying his medical judgment, and the sophistication of, and bases for, his opinion. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

II. Total Disability

Employer argues that the administrative law judge erred in finding that the miner had a totally disabling respiratory or pulmonary impairment. A miner is totally disabled if the miner has a respiratory or pulmonary impairment which, standing alone, prevents the miner from performing his usual coal mine work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability using any of four types of evidence: pulmonary function study evidence, arterial blood gas study evidence, evidence of cor pulmonale with right-sided congestive heart failure, and medical opinion evidence. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must consider all of the relevant evidence and weigh the evidence supporting a finding of total disability against the contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). In this case, employer contends that the administrative law judge erred in weighing the arterial blood gas study and medical opinion evidence under 20 C.F.R. §718.204(b)(2)(ii), (iv).[16]

Pursuant to 20 C.F.R. §718.204(b)(2)(ii), the administrative law judge considered two arterial blood gas studies conducted on November 14, 2011, and August 9, 2012. MC Decision and Order at 24; MC Director's Exhibit 11; Employer's Exhibit 8. The November 14, 2011 study was qualifying[17] for total disability, and the August 9, 2012 study was non-qualifying. The administrative law judge noted that no blood gas study was performed near the time of the miner's death in 2013. MC Decision and Order at 24. Because one study was qualifying and the other was non-qualifying, the administrative law judge found that the blood gas study evidence was inconclusive. *Id*.

[16] The administrative law judge found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i),(iii).

[17] A "qualifying" blood-gas study yields values that are equal to or less than the appropriate values set out in the table at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study yields values that exceed those in the table. 20 C.F.R. §718.204(b)(2)(ii).

Employer argues that the administrative law judge should have credited the non-qualifying, August 9, 2012 study over the qualifying, November 14, 2011 study because the August 9, 2012 study was "substantially" more recent. Employer's Brief at 7-8. Additionally, employer notes that Dr. Jarboe explained that the values obtained by Dr. Alam on the November 14, 2011 blood gas study were due to the miner's lung cancer, which Dr. Alam was unaware of at the time of his evaluation. *Id*. We disagree. An administrative law judge may accord greater weight to more recent medical evidence, but need not mechanically credit more recent, non-qualifying test results over earlier qualifying results merely because they are more recent. *See Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 739, 25 BLR 2-675, 2-685-86 (6th Cir. 2014); *Woodward v. Director, OWCP*, 991 F.2d 314, 319-20, 17 BLR 2-77, 2-84-85 (6th Cir. 1993).

Moreover, although Dr. Jarboe opined that the blood gas study results he obtained when he examined the miner in August of 2012 were higher than those obtained by Dr. Alam before the miner had begun treatment for his lung cancer, the administrative law judge noted accurately that Dr. Jarboe also opined that the miner was totally disabled by his lung cancer, a pulmonary condition. MC Decision and Order at 25. The studies were conducted within less than a year of each other and neither was found to be invalid. Consequently, substantial evidence supports the administrative law judge's finding that the blood gas studies were inconclusive for total disability at 20 C.F.R. §718.204(b)(2)(ii). Therefore, this finding is affirmed.

Employer next argues that the administrative law judge erred in his consideration of the medical opinion evidence pursuant to 20 C.F.R. §718.204(b)(2)(iv). Dr. Alam opined that the miner was totally disabled based on his blood gas study values and his "severe" emphysema. MC Decision and Order at 25; MC Director's Exhibit 11 at 30. The administrative law judge found that Dr. Alam's opinion was well-reasoned and documented. The administrative law judge noted that Dr. Jarboe initially stated that the miner was not totally disabled by a respiratory or pulmonary impairment, but later stated that the miner was totally disabled by his lung cancer, a pulmonary condition. MC Decision and Order at 25; Employer's Exhibit 8 at 12-13. Finding Dr. Jarboe's opinion to be contradictory, the administrative law judge assigned it "little weight" on the issue of total disability. MC Decision and Order at 25.

Employer argues that the administrative law judge erred in discounting Dr. Jarboe's opinion because, employer contends, the administrative law judge selectively discredited Dr. Jarboe because of his x-ray interpretation, without doing the same with respect to Dr. Alam. Employer's Brief at 10. Contrary to employer's contention, the administrative law judge did not discount Dr. Jarboe's opinion on total disability because he failed to diagnose clinical pneumoconiosis. MC Decision and Order at 25. Rather, the administrative law judge permissibly found Dr. Jarboe's opinion on the subject of total

disability contradictory for the reasons set forth *supra*. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

Moreover, employer contends that Dr. Jarboe explained that the qualifying blood gas study conducted by Dr. Alam in November of 2011 could be attributed to the miner's lung cancer, which was diagnosed soon thereafter in January of 2012. Employer's Brief at 10. Employer asserts that Dr. Alam failed to consider Dr. Jarboe's explanation for the source of the impairment when concluding that the miner was totally disabled. *Id*. Employer's argument lacks merit. The regulation at 20 C.F.R. §718.204 treats the issue of total disability and the issue of disability causation as distinct issues, with the inquiry into the presence of a totally disabling respiratory or pulmonary impairment governed by 20 C.F.R. §718.204(b), and the cause of the impairment governed by 20 C.F.R. §718.204(c). The regulation at 20 C.F.R. §718.204(b) sets forth the medical criteria relevant to the existence of a totally disabling impairment, and total disability is established if, in the absence of contrary probative evidence, the medical criteria in any one of the subsections at 20 C.F.R. §718.204(b)(2) is satisfied. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock*, 9 BLR at 1-198. The regulatory definition of "total disability due to pneumoconiosis," and the types of proof that are required to satisfy its terms, appear separately at 20 C.F.R. §718.204(c). Moreover, to the extent that Dr. Jarboe opined that the miner was totally disabled by lung cancer, a pulmonary condition, his opinion does not constitute contrary probative evidence at 20 C.F.R. §718.204(b)(2)(iv).

Employer argues that the administrative law judge erred in crediting Dr. Alam's opinion because Dr. Alam did not address the non-qualifying blood gas study that was obtained after he examined the miner. Employer's Brief at 12. We disagree. In opining that the miner was totally disabled, Dr. Alam stated that the miner's P02 on the November 14, 2011 blood gas study was "significantly low . . . ." MC Director's Exhibit 11 at 30. The administrative law judge recognized that Dr. Alam "based his opinion on the [m]iner's . . . qualifying [blood gas study], and the severity of the [m]iner's emphysema . . . ." MC Decision and Order at 25. Acknowledging that the blood gas study evidence was "inconclusive," the administrative law judge permissibly found that Dr. Alam's opinion was reasoned and documented because "the [blood gas study] relied on by Dr. Alam did produce qualifying results," and the evidence supported a finding of emphysema. *Id*.; *see Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-155.

Employer also contends that the administrative law judge's conclusion regarding total disability was flawed because Dr. Alam's opinion did not "indicate an awareness of the miner's last coal mine work . . . ." Employer's Brief at 12. Contrary to employer's argument, the record reflects that Dr. Alam was aware that the miner worked as an

equipment operator. MC Director's Exhibit 11 at 27. The administrative law judge could rationally conclude that Dr. Alam adequately understood the demands of working as an equipment operator. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714, 22 BLR 2-537, 2-552-53 (6th Cir. 2002) (holding that the administrative law judge could rationally conclude that physicians understood the demands of working as a repairman because the position has a precise meaning in the context of coal mining); MC Decision and Order at 25.

Therefore, we affirm the administrative law judge's finding that the medical opinion evidence established total disability at 20 C.F.R. §718.204(b)(2)(iv). Further, as the administrative law judge addressed all of the contrary probative evidence, we affirm his finding that the evidence established total disability under 20 C.F.R. §718.204(b)(2). *See Shedlock*, 9 BLR at 1-198; MC Decision and Order at 25.

III. Total Disability Due to Pneumoconiosis

Employer argues that the administrative law judge erred in finding that the miner was totally disabled due to pneumoconiosis. To establish that the miner was totally disabled due to pneumoconiosis, claimant must establish that pneumoconiosis was a "substantially contributing cause" of the miner's totally disabling respiratory or pulmonary impairment.[18] 20 C.F.R. §718.204(c)(1); *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 599, 25 BLR 2-615, 2-624 (6th Cir. 2014). The "cause or causes of a miner's total disability shall be established by means of a physician's documented and reasoned medical report." 20 C.F.R. §718.204(c)(2).

The administrative law judge weighed the medical opinions of Drs. Alam and Jarboe, and Dr. Broudy's deposition testimony regarding his treatment of the miner. MC Decision and Order at 25-26. Dr. Alam opined that "70% of [the miner's] disability is

[18] Pneumoconiosis is a "substantially contributing cause" of the miner's disability if it:

> (i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or
>
> (ii) Materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.

20 C.F.R. §718.204(c)(1); *Tenn. Consol. Coal Co. v. Kirk*, 264 F.3d 602, 611, 22 BLR 2-228, 2-303 (6th Cir. 2001).

related to t[obacco] abuse," with "20% [due] to coal dust related to clinical [coal workers' pneumoconiosis] [and] 10% legal" pneumoconiosis. MC Director's Exhibit 11 at 30. Dr. Jarboe opined that the miner was "disabled as a whole man because of his stage IV adenocarcinoma of the lung." Employer's Exhibit 8 at 13. Dr. Jarboe further opined that the blood gas impairment evidenced by the November 14, 2011 blood gas study relied upon by Dr. Alam could be explained by the miner's untreated lung cancer. *Id*. at 12; Employer's Exhibit 5 at 30-31, 35. Dr. Broudy testified that, based on his records of treating the miner, lung cancer due to smoking was the cause of the miner's symptoms and physical findings. Employer's Exhibit 6 at 16-17.

The administrative law judge credited Dr. Alam's opinion that both clinical pneumoconiosis and legal pneumoconiosis contributed to the miner's total disability, finding that it merited weight despite Dr. Alam's reliance on an inaccurate smoking history. MC Decision and Order at 26. The administrative law judge discounted the opinions of Drs. Jarboe and Broudy because neither physician diagnosed the miner with simple clinical pneumoconiosis or legal pneumoconiosis. *Id*. Finding "no credible evidence in the record to dispute [Dr. Alam's] findings," the administrative law judge concluded that the miner's total disability was due to pneumoconiosis. *Id*.

Employer argues that the administrative law judge erred in crediting Dr. Alam's opinion on the cause of the miner's disability. Employer's Brief at 10, 13. Employer asserts that the administrative law judge did not address all the relevant evidence or adequately explain his basis for finding that Dr. Alam's opinion was reasoned. *Id*. Employer's argument has merit.

As was discussed, *supra*, the administrative law judge did not explain his reasons for finding Dr. Alam's opinion to be credible despite Dr. Alam's reliance on an inaccurate smoking history. Further, the administrative law judge did not adequately address whether Dr. Alam's disability causation opinion was otherwise sufficiently documented and reasoned. Specifically, although the administrative law judge found that the evidence established that the miner had clinical and legal pneumoconiosis, he also found that the miner had lung cancer:

> The CT scans illustrate that the [m]iner suffered from lung cancer that was interpreted as complicated pneumoconiosis on the chest x-rays. The [m]iner's treatment records support this finding. The progression of CT scans and treatment records illustrate that the mass in the [m]iner's lung, originally interpreted on the chest x-rays as complicated pneumoconiosis, changed in size after the [m]iner received chemotherapy for the condition.

MC Decision and Order at 21. The record reflects that the miner's lung cancer was diagnosed in January of 2012 as stage IV with metastasis.[19] Director's Exhibit 9. Review of the record does not reveal whether Dr. Alam was aware of possible lung cancer when he addressed the causes of the miner's total disability in his November 14, 2011 report. MC Director's Exhibit 11.

In assessing the credibility of Dr. Alam's disability causation opinion, the administrative law judge did not address the fact that the miner suffered from lung cancer, or that Dr. Jarboe attributed the impairment detected on Dr. Alam's November 14, 2011 blood gas study to the untreated lung cancer. Therefore, the administrative law judge's Decision and Order fails to satisfy the requirements of the APA. 5 U.S.C. §557(c)(3)(A); *see Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Wojtowicz*, 12 BLR at 1-165. Accordingly, we must vacate the administrative law judge's finding that claimant established total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c), and remand this case for further consideration.

On remand, the administrative law judge must reconsider Dr. Alam's medical opinion on the issue of disability causation, along with all of the relevant evidence of record, and address employer's argument that Dr. Alam was unaware that the miner had lung cancer. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; Employer's Brief at 8, 12-13. The administrative law judge should also specifically explain his credibility determination regarding Dr. Alam's opinion in light of Dr. Alam's reliance on an inaccurate smoking history. *See Sellards*, 17 BLR at 1-80-81; *Bobick*, 13 BLR at 1-54; *Wojtowicz*, 12 BLR at 1-165.

Because we have vacated the administrative law judge's finding of total disability due to pneumoconiosis at 20 C.F.R. §718.204(c), we also vacate the award of benefits in the miner's claim. If, on remand, the administrative law judge finds that clinical pneumoconiosis, or legal pneumoconiosis if it is again established, was a substantially contributing cause of the miner's total disability at 20 C.F.R. §718.204(c), he may reinstate the award of benefits in the miner's claim. If the administrative law judge finds that disability causation is not established, he must deny benefits, as claimant will have failed to establish an essential element of entitlement. *See Anderson*, 12 BLR at 1-112.

[19] As was summarized by the administrative law judge, the miner's death certificate indicated that he died on July 17, 2013, of metastatic lung cancer. MC Decision and Order at 17; Employer's Exhibit 1.

The Survivor's Claim

In light of our decision to vacate the administrative law judge's award of benefits in the miner's claim, we must also vacate the administrative law judge's determination that claimant is derivatively entitled to survivor's benefits pursuant to Section 932(*l*).[20] 30 U.S.C. §932)(*l*). If, on remand, the administrative law judge again awards benefits in the miner's claim, claimant will be automatically entitled to benefits. If the administrative law judge denies benefits in the miner's claim, he must consider whether claimant can establish entitlement to survivor's benefits by establishing that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b). *See* 20 C.F.R. §§718.1, 718.205; *Neeley v. Director, OWCP*, 11 BLR 1-85, 1-86 (1988).

[20] We affirm, as unchallenged, the administrative law judge's finding that claimant is an eligible survivor of the miner. *See Skrack*, 6 BLR at 1-711.

Accordingly, the administrative law judge's Decisions and Orders are 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.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

I concur:

JONATHAN ROLFE
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring and dissenting:

I respectfully dissent from the majority's decisions to affirm the administrative law judge's determination that the medical opinion evidence, in the form of Dr. Alam's opinion, supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv), and further to affirm the administrative law judge's determination that the evidence as a whole establishes total disability at 20 C.F.R. §718.204(b)(2). I do so because, as employer argues, the administrative law judge failed to consider all the relevant evidence in making these determinations. 30 U.S.C. §923(b); *see Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011); *Gray v. SLC Coal Co.*, 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999); *Peabody Coal Co. v. Hill*, 123 F.3d 412, 416, 21 BLR 2-192, 2-198 (6th Cir. 1997); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983).

Dr. Alam's opinion, diagnosing a totally disabling respiratory or pulmonary impairment, rests, in part, on the results of the November 14, 2011 arterial blood gas study, and in particular, on the low pO2 values it produced. Director's Exhibit 11 at 11-30. In addition, the administrative law judge credited Dr. Alam's opinion, based partly

on the fact that the November 14, 2011 arterial blood gas study was qualifying for total disability. Decision and Order at 25. However, as employer contends, the administrative law judge failed to consider that the non-qualifying August 9, 2012 arterial blood gas test results contradict both the November 14, 2011 test and Dr. Alam's total disability opinion. Moreover, Dr. Jarboe offered an explanation for why the November 14, 2011 study produced low pO2 results, which undermines Dr. Alam's total disability opinion.

Specifically, Dr. Jarboe explained that the miner's lung cancer caused an "obstructed right upper lung bronchus" which prevented "air or oxygen" from getting into the miner's "right upper lung." Employer's Exhibit 5 at 30-31. Dr. Jarboe further explained that the miner subsequently underwent chemotherapy, which removed this obstruction and resulted in an improvement to normal pO2 results on the August 9, 2012 non-qualifying arterial blood gas study.[21] *Id*. In other words, Dr. Jarboe's explanation for the disparity between the results of the November 14, 2011 test on which Dr. Alam relied, and the results of the August 9, 2012 test, is that, as a result of treatment, there was marked actual improvement in the miner's pulmonary condition, including improvement in the miner's oxygenation.[22] Contrary to the majority's contention that Dr. Jarboe's explanation is relevant only to the issue of the etiology of the miner's total disability, it has direct bearing on the issue of the existence of total disability.

Dr. Jarboe's explanation of the reason for the discrepancy in the arterial blood gas test results, if credited, eliminates a portion of the rationale Dr. Alam provided for finding disability (i.e., that the miner was totally disabled because of his low pO2), and potentially renders Dr. Alam's opinion not credible. Thus, the administrative law judge's failure to consider all of the relevant evidence is not harmless.[23] Consequently, I would

[21] Dr. Jarboe also opined that the miner's essentially normal diffusion capacity, after correction for lung volume, meant he did not have significant emphysema. This also has bearing on the acceptance of Dr. Alam's total disability opinion. Employer's Exhibit 5 at 26-27.

[22] It was Dr. Jarboe's opinion, based on the 2012 functional testing, that the miner had the functional pulmonary capacity to perform his last coal mining job. Employer's Exhibit 8 at 13.

[23] Dr. Jarboe's explanation raises the question of whether the miner's condition had changed to the point that both the November 14, 2011 test and Dr. Alam's opinion could not be accepted as accurate assessments of whether the miner was totally disabled. Further, its acceptance could resolve the conflict in result between the two arterial blood gas studies and make the later study more probative. Additionally, the administrative law

vacate the administrative law judge's findings and determinations with respect to total disability at 20 C.F.R. §718.204(b)(2)(iv) and 20 C.F.R. §718.204(b)(2), and remand for him to consider all of the relevant evidence, resolve the conflicts in the evidence, and properly explain his findings and determinations on the issue of total disability. *See* 30 U.S.C. §923(b); *Morrison*, 644 F.3d at 480, 25 BLR at 2-9; *Gray*, 176 F.3d at 388, 21 BLR at 2-626; *Hill*, 123 F.3d at 416, 21 BLR at 2-198; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *see also* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

In all other respects, I agree with the majority's ultimate conclusions.

JUDITH S. BOGGS
Administrative Appeals Judge

judge's failure to consider the August 9, 2012 arterial blood gas study caused him to give undue weight to the earlier study.