BRB No. 10-0634 BLA

WESLEY MILLER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	DATE ISSUED: 08/05/2011
	)	
WHITAKER COAL CORPORATION	)	
	)	
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 Second Remand of Daniel A. Sarno, Jr., District Chief Administrative Law Judge, United States Department of Labor.

Ronald E. Gilbertson (Husch Blackwell LLP), Washington, D.C., for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Second Remand (04-BLA-6327) of District Chief Administrative Law Judge Daniel A. Sarno, Jr., awarding benefits on a subsequent claim[1] filed pursuant to the provisions of the Black Lung Benefits Act, 30

[1] Claimant filed a previous claim on March 22, 1996, which was denied by an administrative law judge on May 2, 2001, because claimant did not establish pneumoconiosis or total disability. Director's Exhibit 1 at 283, 708. Claimant filed this claim on April 17, 2003. Director's Exhibit 3. Section 1556 of Public Law No. 111-148 amended the Act with respect to the entitlement criteria for certain claims. The recent amendments to the Black Lung Benefits Act, which became effective on March 23, 2010, and which apply to claims filed after January 1, 2005, do not apply to this claim,

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 is before the Board for the third time.[2]

In its last decision, the Board vacated the administrative law judge's finding that a change in an applicable condition of entitlement was established pursuant to 20 C.F.R. §725.309(d), as the administrative law judge committed errors in weighing the x-ray and medical opinion evidence to find that claimant established the existence of clinical and legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4). *W.M.* [*Miller*] *v. Whitaker Coal Corp.*, BRB No. 08-0586 BLA (June 25, 2009) (unpub.). Thus, the Board remanded the case to the administrative law judge for reconsideration of whether claimant established a change in an applicable condition of entitlement. With regard to the merits of entitlement, the Board vacated the administrative law judge's finding of total disability pursuant to 20 C.F.R. §718.204(b)(2), and remanded the case to the administrative law judge for further consideration of this issue. Based on its decision to vacate the administrative law judge's findings of pneumoconiosis and total disability pursuant to Sections 718.202(a)(1), (4), 718.204(b)(2), the Board also vacated the administrative law judge's finding of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c), and remanded the case to the administrative law judge for reconsideration of that issue, if reached.

On remand, the administrative law judge found that a change in an applicable condition of entitlement was established pursuant to Section 725.309(d), because the new evidence establishes that claimant has pneumoconiosis. Considering the merits of entitlement, the administrative law judge also found that clinical and legal pneumoconiosis,[3] arising out of coal mine employment, were established pursuant to 20

---

because it was filed before January 1, 2005.

[2] The procedural history of this case is set out in the Board's previous decisions. *W.M.* [*Miller*] *v. Whitaker Coal Corp.*, BRB No. 08-0586 BLA (June 25, 2009) (unpub.); *W.M.* [*Miller*] *v. Whitaker Coal Corp.*, BRB Nos. 07-0300 BLA and 07-0300 BLA-A, slip op. at 1-4 (Dec. 31, 2007) (unpub.).

[3] 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 lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive

C.F.R. §§718.202(a)(1), (4), 718.203(b), and that claimant is totally disabled due to legal pneumoconiosis pursuant to Section 718.204(b)(2), (c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding that the x-ray and medical opinion evidence established the existence of clinical and legal pneumoconiosis pursuant to Section 718.202(a)(1), (4). Employer also argues that the administrative law judge erred in finding that the evidence established that clamant is totally disabled due to pneumoconiosis, pursuant to Section 718.204(b)(2), (c). Employer requests that the Board either reverse the administrative law judge's award of benefits, or vacate the administrative law judge's findings, and remand for further consideration of these issues. The Director, Office of Workers' Compensation Programs, declined to file a substantive response brief. Claimant did not file a response brief.

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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Where 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). Claimant's prior claim was denied because he failed to establish pneumoconiosis or total disability. Director's Exhibit 1 at 287, 708. Consequently, to obtain review of the merits

---

pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

[4] The record indicates that claimant's coal mine employment was in Kentucky. Director's Exhibit 4. 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*).

of his claim, claimant had to submit new evidence establishing pneumoconiosis or total disability. 20 C.F.R. §725.309(d)(2), (3).

Legal Pneumoconiosis

In its prior decision, the Board vacated the administrative law judge's finding of legal pneumoconiosis, because the administrative law judge had erroneously combined the issue of the existence of pneumoconiosis with the issue of whether claimant has a totally disabling respiratory impairment when he weighed the medical opinions under Section 718.202(a)(4). The Board instructed the administrative law judge that it was appropriate for him to assess the credibility of a medical opinion regarding the presence of an impairment and its source, but not the degree of impairment. *Miller*, BRB No. 08-0856 BLA, slip op. at 10, *citing* 20 C.F.R. §718.201.

On remand, the administrative law judge first considered whether the medical opinion evidence established the presence of a chronic lung disease or pulmonary impairment. The administrative law judge noted that Drs. Rasmussen, Simpao, and Broudy examined and tested claimant, and diagnosed a chronic lung disease or pulmonary impairment, based on the pulmonary function studies that they performed. Director's Exhibits 8 at 4, 7; 9a at 4-5; 13 at 2-3. In contrast, Dr. Dahhan reported no pulmonary impairment. Director's Exhibit 10 at 3. Dr. Dahhan stated that although the pulmonary function study he administered on March 27, 2003 indicated a mild obstructive defect, he noted that claimant made only a fair effort on the study. Dr. Dahhan therefore reviewed his 1999 medical opinion and testing from claimant's prior claim, along with Dr. Simpao's report, to conclude that claimant has no impairment when he provides good effort on a pulmonary function study.

The administrative law judge found that claimant established that he has a chronic pulmonary impairment, based on the well-reasoned opinions of Drs. Rasmussen, Simpao, and Broudy. The administrative law judge discounted Dr. Dahhan's opinion of no pulmonary impairment, because the administrative law judge was not persuaded by Dr. Dahhan's reliance on the 1999 medical data, when the new medical evidence developed in this claim showed a decline in claimant's pulmonary function. Further, the administrative law judge found that Dr. Dahhan's opinion was contradicted by the results of pulmonary function testing performed by Drs. Broudy and Simpao. Decision and Order on Second Remand at 16-17.

Employer first argues that the administrative law judge erred in discounting Dr. Dahhan's. Employer contends that the administrative law judge erred in substituting his opinion for that of a medical expert in attempting to analyze the results of the pulmonary function testing, and asserts that the administrative law judge selectively analyzed the evidence to reach a desired outcome. Employer's Brief at 36-37. We disagree.

In his April 3, 2003 report, Dr. Dahhan reported that his more recent pulmonary function study indicated an obstructive ventilatory defect with less than optimum effort, but opined that there were insufficient findings to justify the diagnosis of coal workers' pneumoconiosis, based on "normal respiratory mechanics when [claimant] produced valid studies and had good effort." Director's Exhibit 10 at 3. In reaching this conclusion, Dr. Dahhan reviewed his older 1999 pulmonary function study, performed with good effort, which resulted in normal respiratory function, as well as Dr. Simpao's pulmonary function study, which Dr. Dahhan opined was also performed with good effort and resulted in normal respiratory function. Director's Exhibit 10 at 2. The administrative law judge reasonably concluded that Dr. Dahhan's reliance on his older 1999 pulmonary function study rendered his opinion unpersuasive, as this study was five years older than the current studies.[5] *See Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 624, 11 BLR 2-147, 2-149 (6th Cir. 1988); *Sexton v. Southern Ohio Coal Co.*, 7 BLR 1-411, 1-412 (1984); *Coffey v. Director, OWCP*, 5 BLR 1-404, 1-407 (1982). Moreover, the administrative law judge reasonably questioned Dr. Dahhan's reliance on Dr. Simpao's pulmonary function study, since Dr. Simpao diagnosed a moderate obstructive impairment based on his study, and Dr. Dahhan did not explain why he did not diagnose an impairment based on the same study. *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*). Lastly, the administrative law judge reasonably questioned Dr. Dahhan's opinion of no impairment because it was contrary to Dr. Broudy's opinion of mild obstruction on a more recent pulmonary function study. *See Snorton v. Zeigler Coal Co.*, 9 BLR 1-106, 1-107 (1986). We, therefore, affirm the administrative law judge's discounting of Dr. Dahhan's.

The administrative law judge next considered whether claimant established that his chronic impairment arose out of his coal mine employment.[6] Initially, the administrative law judge gave less weight to Dr. Dahhan's opinion, that there was "no

[5] Moreover, the earlier testing Dr. Dahhan relied on to support his opinion is irrelevant, because it pre-dates the current claim and, thus, cannot be considered in determining whether a change in an applicable condition of entitlement is established. *See* 20 C.F.R. §725.309(d)(3); *Arch of Kentucky, Inc. v. Director, OWCP* [*Hatfield*], 556 F.3d 472, 24 BLR 2-135 (6th Cir. 2009).

[6] Dr. Dahhan opined that claimant has no pulmonary impairment, Director's Exhibit 10. Dr. Broudy diagnosed a pulmonary impairment due to smoking. Director's Exhibit 13. Dr. Rasmussen opined that claimant's pulmonary impairment is due, in part, to coal mine dust exposure, Director's Exhibit 8, and Dr. Simpao opined that claimant's coal mine dust exposure was significant in causing his pulmonary impairment. Director's Exhibit 9a.

evidence of pulmonary impairment and/or disability caused by . . . the inhalation of coal dust," Director's Exhibit 10, because the doctor did not find a pulmonary impairment to exist, contrary to the administrative law judge's finding that claimant has a chronic pulmonary impairment. Decision and Order on Second Remand at 17. Contrary to employer's contention, this was a valid basis for the administrative law judge to give less weight to Dr. Dahhan's opinion. *See, e.g., Toler v. Eastern Associated Coal Co.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995).

The administrative law judge also gave less weight to Dr. Broudy's opinion because Dr. Broudy did not adequately explain why coal mine dust exposure was not a contributing factor to claimant's pulmonary impairment due to smoking. Decision and Order on Second Remand at 18. Employer argues that the administrative law judge erred in discrediting Dr. Broudy's opinion, asserting that Dr. Broudy better explained his opinion than Dr. Simpao. Employer's Brief at 37. We reject employer's contention. The administrative law judge permissibly discounted Dr. Broudy's opinion, identifying only smoking as the cause of claimant's obstructive airways disease, because the doctor did not adequately explain why coal mine dust exposure did not also contribute to claimant's respiratory impairment. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-155; Director's Exhibit 13 at 3.

The administrative law judge found Dr. Rasmussen's opinion, that both coal mine dust exposure and smoking contributed to claimant's pulmonary impairment, to be persuasive because Dr. Rasmussen addressed both smoking and coal mine dust exposure as contributing factors. The administrative law judge found that Dr. Rasmussen's opinion was consistent with, and supported by, the Department of Labor's finding underlying the regulations that smokers who mine have an additive risk for developing significant obstruction. Decision and Order on Second Remand at 18-19, *citing* 65 Fed. Reg. 79,939-79,940 (Dec. 20, 2000). Because the administrative law judge gave Dr. Rasmussen's opinion "greater weight" than those of Drs. Broudy and Dahhan, he found that claimant's coal mine dust exposure was a significant contributing factor to claimant's pulmonary impairment. Contrary to employer's argument, the administrative law judge rationally credited Dr. Rasmussen's opinion because he found that it adequately addressed whether coal mine dust exposure contributed to claimant's impairment, and was consistent with DOL's findings as to the medical science regarding coal mine dust exposure and obstructive lung disease. *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008); *Mountain Clay, Inc. v. Collins*, 256 F. App'x 757 (6th Cir. Nov. 29, 2007)(unpub.); *J.O.* [*Obush*] *v. Helen Mining Co*., 24 BLR 1-117, 1-125-26 (2009), *aff'd*, *Helen Mining Co. v. Director, OWCP* [*Obush*], F.3d , 2011 WL 1366355 (3d Cir. 2011); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; Employer's Brief at 36; Director's Exhibit 8 at 4, 7.

The administrative law judge found that Dr. Simpao's opinion, that claimant's coal mine dust exposure caused his pulmonary impairment, merited less weight because Dr. Simpao's qualifications were not of record. The administrative law judge noted, however, that Dr. Simpao's opinion was supported by the doctor's testing, and by the well-documented and well-reasoned opinion of Dr. Rasmussen. Decision and Order on Second Remand at 19. Employer argues that the administrative law judge erred in finding that Dr. Simpao's opinion carried claimant's burden of proof to establish legal pneumoconiosis. Employer's Brief at 35-36. We reject employer's argument, as the administrative law judge, in fact, relied on Dr. Rasmussen's opinion to find legal pneumoconiosis established.

As the administrative law judge rationally weighed the new medical opinion evidence to find that claimant established the presence of a chronic impairment that arose out of coal mine employment, we affirm the administrative law judge's finding that claimant established legal pneumoconiosis pursuant to Section 718.202(a)(4).[7] In light of our affirmance of the administrative law judge's finding that the new evidence established the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4), we affirm, as supported by substantial evidence, the administrative law judge's finding that one of the applicable conditions of entitlement has changed since the date upon which the denial of claimant's prior claim became final.[8] 20 C.F.R. §725.309(d).

The Merits of Entitlement

[7] We further note that, contrary to employer's assertion, the administrative law judge did not rely on the later evidence rule to discount the previously submitted prior claim medical opinion evidence. Employer's Brief at 35. Rather, the administrative law judge properly did not consider the prior claim evidence in making his threshold determination that claimant established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(d)(3).

[8] The regulation at 20 C.F.R. §718.202(a) provides alternative methods by which a claimant may establish the existence of pneumoconiosis. *See Dixon v. North Camp Coal Co.*, 8 BLR 1-344, 1-345 (1985). Consequently, the administrative law judge's finding that the new medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) established that one of the applicable conditions of entitlement has changed since the date upon which the denial of claimant's prior claim became final. 20 C.F.R. §725.309(d). Thus, we need not address employer's challenge to the administrative law judge's finding that the new x-ray evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and, thus, a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). *See* Employer's Brief at 32-35.

Total Disability

In its prior decision, the Board affirmed the administrative law judge's finding that Dr. Simpao's opinion was documented and reasoned. *Miller*, BRB No. 08-0586 BLA, slip op. at 13-14. However, the Board vacated the administrative law judge's crediting of Dr. Rasmussen's opinion, and his discrediting of the opinions of Drs. Dahhan and Broudy, and remanded the case to the administrative law judge for a reconsideration of these medical opinions. *Id*. at 14-16.

On remand, the administrative law judge accorded very little weight to Dr. Dahhan's opinion that claimant has no pulmonary impairment whatsoever. Contrary to employer's argument, the administrative permissibly discounted Dr. Dahhan's opinion, as contrary to his own finding that the weight of the medical opinion evidence establishes that claimant has at least some degree of respiratory impairment. Decision and Order on Second Remand at 23. *See Toler,* 43 F.3d at 116, 19 BLR at 2-83; Director's Exhibit 10 at 3-4. Consequently, we affirm the administrative law judge's determination to accord very little weight to Dr. Dahhan's opinion.

Next, the administrative law judge considered Dr. Broudy's opinion, and gave it less weight because Dr. Broudy did not clearly understand the duties of claimant's usual coal mine employment, and because Dr. Broudy did not perform an exercise blood gas study. Employer argues that the administrative law judge erred by giving less weight to Dr. Broudy's opinion on these bases. We disagree.

The administrative law judge rationally gave less weight to Dr. Broudy's opinion, that claimant's mild obstructive airways disease is not totally disabling, because it was based on Dr. Broudy's misidentification of claimant as a repairman, and not a continuous miner operator, and because Dr. Broudy acknowledged only that claimant "sometimes" had to perform heavy lifting, when the administrative law judge found that claimant had to perform heavy lifting several times per day. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578, 22 BLR 2-107, 2-124 (6th Cir. 2000); Director's Exhibit 13 at 1; Decision and Order on Second Remand at 22-23. We, therefore, affirm the administrative law judge's credibility determination with respect to Dr. Broudy's opinion.

The administrative law judge also reconsidered Dr. Rasmussen's opinion. In its last decision, the Board instructed the administrative law judge to "address the ambiguity present in Dr. Rasmussen's opinion" wherein the doctor stated, "the cause of [claimant's] early anaerobic threshold is not clearly established." *Miller*, BRB No. 08-0586 BLA, slip op. at 14. On remand, the administrative law judge found that Dr. Rasmussen's above-quoted statement was not a diagnosis of a disabling, non-respiratory impairment. Decision and Order on Second Remand at 25.

The administrative law judge reasoned that a respiratory impairment was established based on Dr. Rasmussen's opinion, since Dr. Rasmussen reported that the blood gas study he administered resulted in a minimal impairment in oxygen transfer during exercise, and he identified claimant's early anaeroblic threshold when asked to provide his assessment of claimant's chronic respiratory or pulmonary disease. Moreover, the administrative law judge found that the fact that Dr. Rasmussen left blank, on his form report, the question asking him to identify claimant's disabling non-respiratory conditions, supported the conclusion that Dr. Rasmussen diagnosed claimant with a totally disabling respiratory impairment. The administrative law judge also found that Dr. Rasmussen's opinion was documented and reasoned, as it was based on extensive testing, including an exercise blood gas study, and because the doctor had an accurate understanding of claimant's usual coal mine employment. Thus, the administrative law judge credited Dr. Rasmussen's opinion on the issue of total disability. Decision and Order on Second Remand at 25-26.

Employer argues that the administrative law judge erred in relying on Dr. Rasmussen's opinion to find total disability established, because Dr. Rasmussen obtained normal pulmonary function and blood gas studies, diagnosed only a "minimal" respiratory impairment, and indicated that he was uncertain as to the cause of claimant's early anaerobic threshold. Employer's Brief at 23-24. Employer also argues that the administrative law judge erred in relying on Dr. Rasmussen's opinion because Drs. Dahhan and Wicker previously performed exercise blood gas studies, in 1998 and 1999, which were non-qualifying.

Employer's arguments lack merit. The administrative law judge rationally found that Dr. Rasmussen's opinion was documented and reasoned, after determining that the cause of claimant's early anaerobic threshold, which the doctor opined rendered claimant unable to perform continued manual labor beyond very light exercise, was respiratory in nature. *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; Director's Exhibit 8 at 4, 7. In addition, contrary to employer's assertion, the administrative law judge was not required to discount Dr. Rasmussen's opinion of total disability because it was based on non-qualifying objective studies, or because the doctor refers to claimant as having a "minimal" impairment. As Dr. Rasmussen opined that claimant's minimal loss of lung function precludes claimant from performing very heavy manual labor, and identified claimant's usual coal mine employment as involving very heavy manual labor, the administrative law judge acted within his discretion in relying on Dr. Rasmussen's opinion. *See Cornett*, 227 F.3d at 577-78, 22 BLR at 2-123-24; Director's Exhibit 8 at 4, 7. Further, although employer points out that Drs. Dahhan and Wicker previously performed exercise blood gas studies, these studies pre-date Dr. Rasmussen's 2003 studies by four and five years, respectively, and thus are not relevant to claimant's current condition. *See Cooley*, 845 F.2d at 624, 11 BLR at 2-149; *Coffey*, 5 BLR at 1-407; Director's Exhibit 1 at 407, 479; Decision and Order on Second Remand at 17. Thus, the

administrative law judge did not err in according greater weight to Dr. Rasmussen's opinion.

In its prior decision, the Board upheld the administrative law judge's crediting of Dr. Simpao's opinion on the issue of total disability because it was documented and reasoned. *W.M.* [*Miller*], BRB No. 08-0586 BLA, slip op. at 13-14. On remand, the administrative law judge again credited Dr. Simpao's opinion. Decision and Order on Second Remand at 26. Employer argues that the administrative law judge erred in relying upon Dr. Simpao's opinion as it is poorly reasoned, and conclusory. Employer's Brief at 26-27. Based on the law of the case doctrine, to which no exception applies, we decline to review employer's argument. *Troup v. Reading Anthracite Coal Co.*, 22 BLR 1-11, 1-22 (1999)(*en banc*); Director's Exhibit 9a. As we have affirmed the administrative law judge's credibility determinations, we affirm the administrative law judge's finding of total disability pursuant to Section 718.204(b)(2), based on the opinions of Drs. Rasmussen and Simpao.[9]

Total Disability Due to Legal Pneumoconiosis

The administrative law judge found that claimant's total disability is due to legal pneumoconiosis pursuant to Section 718.204(c), based on the opinions of Drs. Rasmussen and Simpao, and he found that the opinions of Drs. Dahhan and Broudy had little or no probative value on this issue. Decision and Order on Second Remand at 27-28.

Employer argues that the administrative law judge erred in relying on Dr. Rasmussen's opinion to find disability causation established, as Dr. Rasmussen did not explain his opinion that both coal mine dust exposure and smoking caused claimant's pulmonary impairment. Employer's Brief at 29. Employer asserts that the basis of Dr. Rasmussen's opinion of total disability was claimant's early anaerobic threshold and Dr. Rasmussen admitted that its cause could not "clearly [be] established." *See* Director's Exhibit 4 at 7.

Contrary to employer's argument, the administrative law judge rationally concluded that Dr. Rasmussen's opinion, that claimant's minimal loss in lung function was due to both smoking and coal mine dust exposure, and precluded very heavy labor, supported a finding that claimant is totally disabled due to legal pneumoconiosis. *See*

[9] Employer asserts that the administrative law judge erred in failing to weigh the old evidence of total disability. We disagree, given the administrative law judge's finding "that a medical exam[ination] from five years ago does not overcome the new medical evidence that shows a decline in the Claimant's pulmonary functions." Decision and Order on Second Remand at 17.

Peabody Coal Co. v. Smith, 127 F.3d 504, 507, 21 BLR 2-180, 2-185-86 (6th Cir. 1997); Director's Exhibit 8 at 4, 7.

Employer also argues that the administrative law judge erred in crediting Dr. Simpao's opinion, asserting that it is not documented or reasoned. Employer's Brief at 31-32. We reject employer's contention. The determination of whether a medical opinion is documented and reasoned is for the administrative law judge, and the administrative law judge permissibly determined that Dr. Simpao's opinion, that claimant's legal pneumoconiosis is totally disabling, is based upon objective test results and physical findings and symptomatology. *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; Decision and Order on Second Remand at 28; Director's Exhibit 9a at 5.

On remand, the administrative law judge rationally discounted Dr. Dahhan's opinion, because Dr. Dahhan did not diagnose legal pneumoconiosis. Decision and Order on Second Remand at 27. *See Skukan v. Consolidation Coal Co.*, 993 F.2d 1228, 1233, 17 BLR 2-97, 2-104 (6th Cir. 1993), *vac'd sub nom., Consolidation Coal Co. v. Skukan*, 512 U.S. 1231 (1994), *rev'd on other grounds, Skukan v. Consolidated Coal Co.*, 46 F.3d 15, 19 BLR 2-44 (6th Cir. 1995); *Adams v. Director, OWCP*, 886 F.2d 818, 825-26, 13 BLR 2-52, 2-63-64 (6th Cir. 1989); *V.M.* [*Matney*] *v. Clinchfield Coal Co.*, 24 BLR 1-65, 1-76 (2008); Director's Exhibit 10 at 3-4. The administrative law judge also found, accurately, that Dr. Broudy's opinion was silent as to the etiology of claimant's disability, because Dr. Broudy opined that claimant is not totally disabled. Decision and Order on Second Remand at 27; Director's Exhibit 13 at 3. Consequently, we reject employer's contentions regarding disability causation, and affirm the administrative law judge's finding that claimant established that his legal pneumoconiosis is totally disabling pursuant to Section 718.204(c).

As we have affirmed the administrative law judge's findings that claimant established legal pneumoconiosis, total disability, and total disability due to legal pneumoconiosis pursuant to Sections 718.202(a)(4), 718.204(b)(2), (c), we affirm the administrative law judge's award of benefits. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005).

Accordingly, the administrative law judge's Decision and Order on Second Remand Awarding Benefits is affirmed.

SO ORDERED.

_____

NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____

ROY P. SMITH
Administrative Appeals Judge

_____

BETTY JEAN HALL
Administrative Appeals Judge