BRB Nos. 10-0654 BLA
and 10-0654 BLA-A

HOMER L. MAYHEW	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ADKINS & WEBB COAL COMPANY, INCORPORATED	)	
	)	
and	)	
	)	DATE ISSUED: 08/25/2011
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Richard A. Morgan, Administrative Law Judge, United Stated Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

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

Emily Goldberg-Kraft (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals, and claimant cross-appeals, the Decision and Order Awarding Benefits (2008-BLA-5685) of Administrative Law Judge Richard A. Morgan rendered on a subsequent claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*)) (the Act). The administrative law judge credited claimant with fourteen years of qualifying coal mine employment; determined that employer is the properly designated responsible operator herein;[1] and adjudicated this subsequent claim,[2] filed on April 9, 2007, pursuant to the regulatory provisions at 20 C.F.R. Parts 718 and 725. The administrative law judge found that the newly-submitted evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), thereby establishing a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). Considering the entire record, the administrative law judge found the evidence sufficient to establish the existence of clinical and legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a), 718.107, and total respiratory disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, benefits were awarded.

On appeal, employer challenges its designation as responsible operator, as well as the administrative law judge's findings that claimant established the existence of clinical and legal pneumoconiosis pursuant to Section 718.202(a), and disability causation pursuant to Section 718.204(c). Claimant responds, urging dismissal of employer as the responsible operator and affirmance of the award of benefits, and cross-appeals, arguing that the medical opinions of Drs. Broudy and Crisalli should be accorded diminished

[1] By Ruling and Order dated March 22, 2010, the administrative law judge declined to admit claimant's second deposition, regarding the issue of operator liability, into the record, Employer's Exhibit 11, and denied employer's motion to dismiss employer as the named responsible operator.

[2] Claimant's initial claim was filed on January 20, 1989, and was denied because the evidence failed to establish any element of entitlement. Director's Exhibit 1. The administrative law judge determined that the recent amendments to the Black Lung Benefits Act, which became effective on March 23, 2010, do not apply to the instant case, as claimant has less than fifteen years of coal mine employment. Decision and Order at 26-28.

weight on additional grounds.[3] The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging affirmance of the administrative law judge's finding that employer was properly designated as the responsible operator herein. Employer has filed a reply brief in support of its position.[4]

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.[5] 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).

Employer first challenges the administrative law judge's finding that employer was properly designated the responsible operator herein. Employer asserts that the record does not establish the beginning and ending dates of claimant's employment, and that the Director failed to meet his burden of developing reliable proof of employment with employer for at least one calendar year. Employer's Brief at 10-12. Upon review of the administrative law judge's Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the administrative law judge's finding on the responsible operator issue cannot be affirmed.

The applicable regulations provide that the Director bears the burden of proving that the designated responsible operator initially found liable for the payment of benefits pursuant to 20 C.F.R. §725.410 is a potentially liable operator that, *inter alia*, employed the miner for a cumulative period of not less than one year. 20 C.F.R. §§725.101(a)(32); 725.494(c); 725.495(b). A "year" is defined as:

> one calendar year (365 days, or 366 days if one of the days is February 29), or partial periods totaling one year, during which the miner worked in or

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[3] Claimant acknowledges that its arguments on cross-appeal need only be addressed if the Board does not affirm the administrative law judge's award of benefits. Claimant's Brief at 13, 19.

[4] We affirm, as unchallenged on appeal, the administrative law judge's findings that the evidence was sufficient to establish total respiratory disability at 20 C.F.R. §718.204(b), and a change in an applicable condition of entitlement at 20 C.F.R. §725.309(d). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[5] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as claimant was last employed in the coal mining industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibit 4.

> around a coal mine or mines for at least 125 working days. The dates and length of coal mine employment may be established by any credible evidence including, but not limited to, company records, pension records, earnings statement, coworkers' affidavits and sworn testimony.

20 C.F.R. §725.101(a)(32).[6]

The record reflects that claimant worked for employer in 1978, earning $2,885.11, and in 1979, earning $16,533.62, as indicated by claimant's Social Security Administration (SSA) records.[7] Claimant testified that he worked for employer for a full year, "from '78 and '79, last part of '78 and then part of '79." Director's Exhibit 22 at 10-11. Based on claimant's testimony and the SSA records, the administrative law judge concluded that employer's designation as the responsible operator was proper. Decision and Order at 4; Director's Exhibits 26, 28. As the record contains no evidence of the beginning and ending dates of claimant's employment, however, and the SSA records are not broken down by quarter, claimant's general testimony, that he worked for employer for one year, is insufficient to meet the Director's burden of proving that claimant worked for employer for one calendar year, or for partial periods totaling 365 days. *See* 20 C.F.R. §§725.101(a)(32), 725.492, 725.495(b); *Boyd v. Island Creek Coal Co.*, 8 BLR 1-458 (1986); *Gration v. Westmoreland Coal Co*., 7 BLR 1-90 (1984). While the Director correctly maintains that claimant's earnings with employer equate to .28 year in 1978 and at least one year in 1979 under the Bureau of Labor Statistics average coal mine earnings table,[8] the "yearly" figures set forth therein are not based on a one-year employment period, but represent only 125 days of earnings, and thus, are insufficient to prove a calendar year of employment. *See Clark v. Barnwell Coal Co*., 22 BLR 1-277, 1-281

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[6] The district director initially named Energy Development Corporation as the potentially liable responsible operator. Director's Exhibit 17. Energy Development contested liability, submitted interrogatories, and took claimant's deposition. Director's Exhibits 18, 22, 23. Energy Development moved to be dismissed on the basis that it had not employed claimant for a cumulative period of 365 days. 20 C.F.R. §725.101(a)(32); Director's Exhibit 24.

[7] Claimant also earned $1,319.76 from Energy Development Corporation in 1978, and earned $1,996.14 from Wolford-Enterprise Coal Corporation in 1979. Claimant had non-coal industry earnings in 1979 of $59.88. Director's Exhibit 7.

[8] The Bureau of Labor Statistics average coal mine earnings table is located at Exhibit 610 of the Office of Workers' Compensation Programs Coal Mine (BLBA) Procedure Manual. *See* http://www.dol.gov/owcp/dcmwc/exh610.htm.

(2002). Because the Director failed to carry his initial burden of proof, we reverse the administrative law judge's finding that employer was properly designated the responsible operator herein pursuant to 20 C.F.R. §§725.494, 725.495. Consequently, the Black Lung Disability Trust Fund is liable for any payment of benefits.

Turning to the merits of the case, employer challenges the administrative law judge's finding that the x-ray and CT scan evidence of record is sufficient to establish the existence of pneumoconiosis pursuant to Sections 718.202(a)(1) and 718.107. Specifically, employer contends that x-ray or CT scan findings that are "consistent with pneumoconiosis" are insufficient to satisfy claimant's burden of proof. Employer also suggests that the findings on claimant's x-rays and CT scans can be consistent with a host of non-occupational disorders, arguing that Dr. Alexander reported other conditions on the ILO form that are not coal dust-related, and that Drs. Wolfe and Miller acknowledged non-specific findings.[9] Employer further asserts that CT scans are better indicators than x-rays of what claimant's interstitial abnormalities represent, and contends that the administrative law judge failed to provide an adequate explanation for not crediting Dr. Crisalli's opinion, that his findings on claimant's CT scans and the abnormalities described by Dr. Willis on x-ray do not represent coal workers' pneumoconiosis. Employer's Brief at 12-14. Employer's arguments lack merit.

In finding that claimant established the existence of pneumoconiosis at Section 718.202(a)(1), the administrative law judge accurately summarized the newly-submitted x-ray evidence of record, consisting of seven interpretations of three x-rays dated May 17, 2007; February 12, 2008; and August 4, 2008. Decision and Order at 6. The administrative law judge determined that the x-rays were uniformly classified as positive for pneumoconiosis. Specifically, the film dated May 17, 2007 was read as Category 2/1 by Dr. Ranavaya, a B reader, Director's Exhibit 13;[10] as Category 2/2 by Dr. Alexander, a dually qualified Board-certified radiologist and B reader, Claimant's Exhibit 2; and as

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[9] Dr. Alexander stated that the "round opacities are present bilaterally, consistent with pneumoconiosis." He also noted abnormality of cardiac size; pleural thickening; coalescence of small pneumoconiotic opacities; honeycomb lung; ill-defined heart outline; and ill-defined diaphragm. Claimant's Exhibits 2, 3, 4.

[10] A "B reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute for Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Co. Inc. of Va. v. Director, OWCP*, 484 U.S. 135, 145 n.16, 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). A "Board-certified radiologist" is a physician who has been certified by the American Board of Radiology as having particular expertise in the field of radiology.

Category 1/1 by Dr. Wolfe, a dually qualified physician, Employer's Exhibit 13.[11] The film dated February 12, 2008 was interpreted as Category 1/0 by Dr. Broudy, a B reader, Director's Exhibit 14, and as Category 2/2 by Dr. Alexander, Claimant's Exhibit 3; and the film dated August 4, 2008 was read as Category 3/2 by Dr. Alexander, Claimant's Exhibit 4, and as Category 1/2 by Dr. Willis, another dually qualified physician, Employer's Exhibit 6.[12] Decision and Order at 6. Because the regulations provide that an x-ray conducted and classified as 1/0 or greater in accordance with 20 C.F.R. §718.102 may form the basis for a finding of the existence of pneumoconiosis, and as all of the readers classified the x-rays as 1/0 or greater on an ILO form specifying pleural or parenchymal abnormalities "consistent with pneumoconiosis," the administrative law judge permissibly found that the newly-submitted x-ray evidence was positive for pneumoconiosis, based on the seven positive interpretations by highly qualified readers under the ILO classification system. *See* 20 C.F.R. §§718.102(b), 718.202(a)(1). We reject employer's contention that Dr. Alexander's additional notation of other reported conditions on the ILO form creates an ambiguity regarding his diagnosis of pneumoconiosis. *See Wolf Creek Collieries v. Robinson*, 872 F.2d 1264, 12 BLR 2-259 (6th Cir. 1989); *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-5 (1999). Finding that the prior x-ray interpretations from 1989 were too old to be of value, the administrative law judge permissibly credited the more recent x-ray evidence of record to find it sufficient to establish clinical pneumoconiosis. *See Crace v. Kentland-Elkhorn Coal Corp.*, 109 F.3d 1163, 1167, 21 BLR 2-73, 2-82 (6th Cir. 1997); *Workman v. Eastern Associated Coal Corp.*, 23 BLR 1-22, 1-27 (2004)(*en banc*); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). While Dr. Crisalli, who possesses no radiological qualifications, interpreted three CT scans as negative for pneumoconiosis,[13] and opined that the abnormalities described by Dr. Willis on x-ray did not represent pneumoconiosis, the administrative law judge properly found that Dr. Crisalli's opinion was outweighed by the positive x-ray interpretations of Drs. Alexander, Wolfe and Willis, who possess superior radiological qualifications. *See Melnick v. Consolidation Coal Co.*, 16 BLR 1-

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[11] Dr. Wolfe commented that "the appearances are nonspecific and could result from cause other than pneumoconiosis." Employer's Exhibit 13.

[12] Dr. Willis diagnosed an "interstitial disease consistent with occupational pneumoconiosis," and noted a "pleural based mass on lateral view." Employer's Exhibit 6.

[13] Dr. Crisalli, a physician who is Board-certified in internal and pulmonary medicine, reviewed CT scans dated April 12, 2006, June 5, 2006, and June 15, 2007, noting "evidence of emphysema throughout the entire lung with prominence of the interstitial markings throughout," but "no nodular changes to suggest coal workers' pneumoconiosis." Employer's Exhibit 8.

31 (1991)(*en banc*); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). Further, the administrative law judge acted within his discretion in discounting "non-radiologist" Dr. Crisalli's negative CT scan interpretations, and crediting the contrary opinion of Dr. Miller, a dually-qualified B reader and Board-certified radiologist, who interpreted the three CT scans as showing "moderately severe diffuse interstitial lung disease compatible with simple pneumoconiosis." *Id.*; Claimant's Exhibits 7, 8, 9; Decision and Order at 19. As substantial evidence supports the administrative law judge's credibility determinations, we affirm his finding of clinical pneumoconiosis at Section 718.202(a)(1).

At Section 718.202(a)(4), employer contends that the administrative law judge provided an invalid reason for discounting the opinion of Dr. Crisalli, and erred in finding legal pneumoconiosis established, based on the opinions of Drs. Baker, Ranavaya and Broudy. Employer asserts that the administrative law judge failed to resolve the conflict regarding claimant's smoking habit, and incorrectly found that Dr. Crisalli's opinion is antithetical to the notion that pneumoconiosis is latent and progressive. Further, employer maintains that the administrative law judge mischaracterized Dr. Broudy's opinion, and failed to determine whether the opinions of Drs. Baker and Ranavaya were sufficiently reasoned and documented, arguing that Dr. Baker relied on no evidence specific to claimant, and that Dr. Ranavaya's opinion is insufficient to support a finding of legal pneumoconiosis as a matter of law. Employer's Brief at 14-19. Claimant counters on cross-appeal that the opinions of Drs. Broudy and Crisalli are entitled to less weight because they are based on less extensive documentation than the opinions of Drs. Baker and Ranavaya, and because Drs. Broudy and Crisalli expressed multiple views that are contrary to the medical science set forth in the preamble to the amended regulations.[14] Claimant's Brief at 15-19. As discussed *infra*, some of the arguments raised on appeal have merit.

In evaluating the conflicting medical opinions at Section 718.202(a)(4), the administrative law judge summarized the physicians' findings and generally stated that

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[14] Claimant additionally asserts that the opinions of Drs. Broudy and Crisalli should be given less weight because the physicians reviewed inadmissible evidence in formulating their opinions, *i.e.*, Dr. Broudy discussed his 1992 examination of claimant, and Dr. Crisalli reviewed Dr. Ranavaya's examination report of February 3, 1989, and the interpretations of a February 10, 1989 x-ray by Drs. Gaziano and Zaldivar. Claimant's Brief at 15. As this case involves a subsequent claim, however, we note that the applicable regulation provides that "[a]ny evidence submitted in connection with any prior claim shall be made a part of the record in the subsequent claim, provided that it was not excluded in the adjudication of the prior claim." 20 C.F.R. §725.309(d)(1).

he found each medical opinion to be documented and reasoned, unless otherwise noted.[15] Decision and Order at 23. The administrative law judge initially determined that Drs. Ranavaya, Baker and Broudy all diagnosed clinical and legal pneumoconiosis, but that Dr. Crisalli did not diagnose either clinical or legal pneumoconiosis. Decision and Order at 22. After discounting Dr. Crisalli's opinion on the issue of clinical pneumoconiosis, Decision and Order at 19, 23, the administrative law judge found that Dr. Crisalli's opinion,[16] that claimant's emphysema was due to smoking, but not coal dust exposure, was entitled to less weight than the opinions of Drs. Ranavaya,[17] Baker[18] and Broudy,[19]

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[15] The administrative law judge stated that "[t]his is the case, because except as otherwise noted, they are documented (medical), *i.e.*, the reports set forth the clinical findings, observations, facts, etc., on which the doctor has based his diagnosis and reasoned since the documentation supports the doctor's assessment of the miner's health." *Citing Collins v. J & L Steel*, 21 BLR 1-182 (1999); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). Decision and Order at 18 n.29.

[16] Dr. Crisalli examined claimant, and opined that he has a severe obstruction with a moderate degree of air trapping and a severe diffusion impairment, all consistent with emphysema secondary to smoking. He stated that emphysema of this type is not seen as a result of coal dust exposure, as coal dust causes a focal type of emphysema, which is seen under the microscope and which does not manifest itself through pulmonary function study results or radiographically. Dr. Crisalli further stated that:

> Given the fact that cigarette smoke is far more potent than coal dust in terms of causing lung disease and given the fact that claimant's only continuing exposure stopped around 1989, and considering that claimant's only continuing inhalation exposure has been his heavy cigarette smoke exposure, it is clear that claimant's pulmonary disease is secondary to cigarette smoke.

Employer's Exhibit 6.

[17] Dr. Ranavaya performed the Department of Labor examination and diagnosed clinical pneumoconiosis due to coal dust exposure and chronic bronchitis-COPD most probably due to claimant's thirty pack-years of cigarette smoking, but that his twenty-one year history of exposure to coal dust was also a major contributing factor in his pulmonary impairment. He further opined that his findings would remain the same if claimant had only ten years of coal dust exposure rather than twenty-one, and if claimant had a greater smoking history. Dr. Ranavaya testified that "once you have 20, 25 years of history of cigarette smoking, the effect remains pretty much the same." Claimant's Exhibit 11 at 10; Director's Exhibits 1, 13, 42.

who diagnosed chronic obstructive pulmonary disease (COPD) attributable to a combination of smoking and coal dust exposure. Decision and Order at 22-23. The administrative law judge determined that "[claimant's] COPD was undoubtedly caused, in large measure or primarily, by his heavy smoking history," but that coal mine dust exposure was a contributing factor, as established through the opinions of Drs. Ranavaya, Baker and Broudy. Decision and Order at 23. Employer correctly notes, however, that the administrative law judge failed to consider that Dr. Broudy diagnosed x-ray evidence of simple pneumoconiosis and disabling COPD due to smoking, and testified that, while he would not exclude "some" contribution from the inhalation of coal dust, he did not believe that pneumoconiosis was a significant contributing factor in claimant's respiratory impairment. Director's Exhibit 14; Employer's Exhibit 7 at 32. Because legal pneumoconiosis is defined as "a chronic pulmonary disease or respiratory or pulmonary impairment *significantly related to, or substantially aggravated by*, dust exposure in coal mine employment," 20 C.F.R. §718.201(b)(emphasis added), the administrative law judge incorrectly found Dr. Broudy's opinion sufficient to establish legal pneumoconiosis at Section 718.202(a)(4), as well as disability causation at Section 718.204(c).[20] We also agree with employer's argument that the administrative law judge

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[18] Dr. Baker diagnosed clinical pneumoconiosis based on x-ray evidence, ten years of coal dust exposure, and CT scan findings of interstitial changes. He diagnosed legal pneumoconiosis due to claimant's at least ten years of coal dust exposure and his approximately thirty pack-year history of smoking. He acknowledged that there has been a significant contribution and perhaps an even greater contribution from claimant's smoking history, but that claimant's coal dust exposure has been responsible for a significant portion of his respiratory impairment. Claimant's Exhibit 1.

[19] Dr. Broudy performed an examination and diagnosed COPD largely due to cigarette smoking, but stated that he would not exclude some contribution from the inhalation of coal dust. Dr. Broudy disagreed with Dr. Ranavaya's opinion, that coal dust exposure is a major contributor to claimant's pulmonary impairment. He attributed claimant's impairment to cigarette smoking, and stated that in individuals with impairment due to coal dust, one generally sees a restrictive defect with small lungs and rarely evidence of obstruction, although there can be some obstruction especially if there is complicated pneumoconiosis or pulmonary massive fibrosis. He opined that he did not believe that pneumoconiosis was a significant contributing factor in claimant's respiratory impairment. Employer's Exhibit 7; Director's Exhibit 14.

[20] Section 718.204(c)(1) provides that:

> A miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined in §718.201, is a substantially contributing

failed to subject all of the medical opinions to the same scrutiny, and failed to explain why he credited the opinions of Drs. Broudy, Baker and Ranavaya as sufficient to establish entitlement and as more reliable than the opinion of Dr. Crisalli.[21] *See Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-139 (1999)(*en banc*). Consequently, we vacate the administrative law judge's finding of legal pneumoconiosis at Section 718.202(a)(4), and remand this case for further consideration of the conflicting medical opinions of record. We find no merit, however, to employer's contention that the administrative law

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> cause of the miner's totally disabling respiratory or pulmonary impairment. 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); *see Gross v. Dominion Coal Corp.*, 23 BLR 1-8 (2003). The comments to the regulations clarify 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).

[21] The administrative law judge discounted Dr. Crisalli's opinion, *inter alia*, as "antithetical to the acknowledged latent and progressive nature of pneumoconiosis," because the doctor "rel[ied] on the fact the miner's coal mine employment had ended in 1989 yet he continued smoking." Decision and Order at 23. While the administrative law judge is correct that Dr. Crisalli took into consideration that claimant's employment ended in 1989, Employer's Exhibit 6, Dr. Crisalli did not rely solely on that fact in making his diagnosis. Further, although pneumoconiosis *may* be a latent and progressive disease, it is not *always* latent and progressive, and employer notes that Dr. Crisalli did not opine that pneumoconiosis is *never* latent and progressive. *See Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 23 BLR 2-124 (D.C. Cir. 2002), *aff'g in part and rev'g in part Nat'l Mining Ass'n v. Chao*, 160 F. Supp.2d 47 (D.D.C. 2001); 68 Fed. Reg. 69931 (Dec. 15, 2003). As we cannot discern whether the administrative law judge improperly discredited Dr. Crisalli's opinion as hostile to the Act, the administrative law judge is instructed to clarify his findings with regard to Dr. Crisalli's opinion on remand.

judge neglected to resolve the disputed testimony concerning claimant's smoking habit.[22] The administrative law judge accurately summarized claimant's reported smoking histories, noting that they were "conflicting" and "heavy," and found a smoking history of "well over fifty pack years." Decision and Order at 5, 23. Furthermore, Drs. Ranavaya and Baker, who diagnosed legal pneumoconiosis, both acknowledged that claimant's smoking history was significant and that it was most likely the major contributor to claimant's impairment. Director's Exhibits 13, 42; Claimant's Exhibits 1, 11. We also reject employer's argument that the opinions of Drs. Ranavaya and Baker are not sufficiently specific to claimant, as Dr. Ranavaya examined claimant and performed objective testing on two separate occasions, and Dr. Baker reviewed and discussed the medical evidence of record dating from 2005. Director's Exhibits 13, 42; Claimant's Exhibits 1, 11.

On remand, the administrative law judge must reassess and weigh the medical opinions of record in light of their reasoning and documentation, and provide a thorough analysis and explanation of his credibility determinations at Section 718.202(a)(4). *See Director, OWCP v. Rowe*, 710 F.2d 241, 5 BLR 2-99 (6th Cir. 1983); *Collins v. J & L Steel*, 21 BLR 1-181 (1999). The administrative law judge may permissibly evaluate expert opinions in conjunction with the Department of Labor's discussion of prevailing medical science in the preamble to the revised regulations. *J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-125 (2009).

Because the administrative law judge relied upon his findings on the issue of legal pneumoconiosis in assessing the weight to be accorded to the conflicting medical opinions on the issue of disability causation, we also vacate his findings at Section 718.204(c) for a reevaluation and weighing of the evidence thereunder on remand, if reached.

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[22] The record contains the following smoking histories: in 1987, Dr. Tablante recorded 1-2 packs per day (ppd), Employer's Exhibit 9; in 1995, Dr. Vyes noted 1 ppd, Employer's Exhibit 10; in 1998, Dr. Lupashunski noted 0.5-3 ppd for 44 years, Employer's Exhibit 2; in 2006, Dr. Munn noted 1.5 ppd for 59 years, then 0.5 ppd for one year, Employer's Exhibit 1; in 2007, Dr. Ranavaya recorded 1 ppd from age 30 and considered all of claimant's reported histories, Director's Exhibit 13, Claimant's Exhibit 11; in 2008, Dr. Broudy noted 1 ppd since age 20, Director's Exhibit 14; in 2008, Dr. Crisalli noted at least 30 pack-years, currently 0.5 ppd, Employer's Exhibit 6; in 2009, Dr. Baker noted 30 pack-years, Claimant's Exhibit 1; and in 2010, claimant testified that he started smoking 0.5 ppd at age 18, and then soon went to 1 ppd, where he is now, Hearing Transcript at 49-50.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is reversed in part, 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.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge