BRB No. 06-0454 BLA

EDGAR MARTIN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
LIGON PREPARATION COMPANY	)	DATE ISSUED: 12/29/2006
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Stephen A. Sanders (Appalachian Citizens Law Center, Inc.), Prestonsburg, Kentucky, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (98-BLA-1166) of Administrative Law Judge Daniel J. Roketenetz (the administrative law judge) denying

benefits on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq*. (the Act).[1] This case is before the Board on modification for the third time. In a January 24, 2000 Decision and Order, the administrative law judge found the newly submitted evidence sufficient to establish total disability pursuant to 20 C.F.R. §718.204(c) (2000).[2] Consequently, the administrative law judge found the newly submitted evidence sufficient to establish a change in conditions pursuant to 20 C.F.R. §725.310 (2000).[3] However, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (a)(4) and 718.203(b) (2000). The administrative law judge further found the evidence insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) (2000). The administrative law judge therefore stated that "the decisions of [Administrative Law Judge Mollie W. Neal] are modified only to the extent that the evidence now establishes a totally disabling respiratory impairment within the meaning of the Act and regulations."[4] 2000

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[1]The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[2]The provision pertaining to total disability, previously set out at 20 C.F.R. §718.204(c), is now found at 20 C.F.R. §718.204(b), while the provision pertaining to disability causation, previously set out at 20 C.F.R. §718.204(b), is now found at 20 C.F.R. §718.204(c).

[3]The revisions to the regulations at 20 C.F.R. §725.310 apply only to claims filed after January 19, 2001.

[4]Claimant filed a claim on June 22, 1987. Director's Exhibit 1. In an April 26, 1994 Decision and Order, Administrative Law Judge Mollie W. Neal credited claimant with sixteen years of coal mine employment and found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) (2000). Accordingly, Judge Neal denied benefits. In its March 10, 1995 Decision and Order, the Board affirmed Judge Neal's unchallenged length of coal mine employment finding. The Board also affirmed Judge Neal's findings at 20 C.F.R. §718.202(a)(1)-(3) (2000). However, the Board vacated Judge Neal's finding at 20 C.F.R. §718.202(a)(4) (2000), and remanded the case for further consideration of the evidence thereunder. The Board instructed Judge Neal to determine whether claimant's pneumoconiosis arose out of coal mine employment and whether claimant is totally disabled due to pneumoconiosis, if the existence of pneumoconiosis was established on remand. The Board therefore affirmed in part and vacated in part Judge Neal's 1994 Decision and Order, and remanded the case for further

Decision and Order at 12. However, the administrative law judge stated that "there is no evidence of [a] mistake of fact, and the evidence is otherwise insufficient to establish entitlement to benefits." *Id*. Accordingly, the administrative law judge denied benefits. In a subsequent Decision and Order dated June 7, 2000, the administrative law judge denied claimant's request for reconsideration.

In disposing of claimant's first appeal on modification, the Board, in an August 30, 2001 Decision and Order, affirmed the administrative law judge's finding of total disability at 20 C.F.R. §718.204(c) (2000). The Board also affirmed the administrative law judge's findings of no pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(3) (2000). However, the Board vacated the administrative law judge's findings at 20 C.F.R. §§718.202(a)(4), 718.203(b) and 718.204(b) (2000),[5] and remanded the case for further consideration of the evidence.[6] *Martin*

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proceedings consistent with its opinion. *Martin v. Ligon Preparation Co.*, BRB No. 94-2594 BLA (Mar. 10, 1995)(unpub.). In a March 7, 1996 Decision and Order on Remand, Judge Neal found the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4) (2000). Accordingly, Judge Neal again denied benefits. In its February 25, 1997 Decision and Order, the Board affirmed Judge Neal's finding at 20 C.F.R. §718.202(a)(4) (2000). The Board therefore affirmed Judge Neal's denial of benefits. *Martin v. Ligon Preparation Co.*, BRB No. 96-0853 BLA (Feb. 25, 1997)(unpub.). Claimant, in a Motion to Modify dated February 23, 1998, filed a request for modification. Director's Exhibit 141.

[5]The Board stated that "[t]he results of the arterial blood gas study and diffusing capacity test are probative of the issue of whether claimant has a respiratory or pulmonary impairment that meets the legal definition of pneumoconiosis." *Martin v. Ligon Preparation Co.*, BRB No. 00-0959 BLA, Slip op. at 5 (Aug. 30, 2001)(unpub.). The Board also stated that "[Administrative Law Judge Daniel J. Roketenetz (the administrative law judge)] left unresolved the ambiguity created by Dr. Fino's and Dr. Broudy's reference to the fact that a drop in post exercise test results could support a diagnosis of pneumoconiosis arising out of coal mine employment pursuant to Sections 718.201, 718.202(a)(4), and 718.203(b) (2000) and neither the doctors nor the administrative law judge discussed the doctors' opinions in light of Dr. Rasmussen's test results." *Id*. at 5-6. The Board therefore held that claimant's assertion, that the administrative law judge erred in giving greater weight to the opinions of Drs. Broudy and Fino under 20 C.F.R. §§718.202(a)(4), 718.203(b), and 718.204(b), without addressing their comments regarding the significance of the exercise blood gas study and the diffusing capacity test in light of the test results obtained by Dr. Rasmussen, has merit. *Id*. at 5.

[6]The Board instructed the administrative law judge to specifically address the comments made by Drs. Fino and Broudy concerning the significance of exercise blood gas

v. Ligon Preparation Co., BRB No. 00-0959 BLA (Aug. 30, 2001)(unpub.).

In a September 27, 2002 Decision and Order on Remand, the administrative law judge found the medical opinion evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).[7] Accordingly, the administrative law judge again denied benefits.[8] In response to claimant's second appeal on modification, the Board, in an October 28, 2003 Decision and Order, affirmed the administrative law judge's finding that the evidence was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). The Board therefore affirmed the administrative law judge's denial of benefits. *Martin v. Ligon Preparation Co.*, BRB No. 03-0147 BLA (Oct. 28, 2003)(unpub.).

In response to claimant's appeal of the Board's October 28, 2003 Decision and Order, the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, vacated the Board's decision, and remanded the case for further consideration by the administrative law judge. *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 23 BLR 2-261 (6th Cir. 2005), *rehearing en banc denied* (6th Cir. 2005). In an August 23, 2005 Order, the Board remanded the case to the Office of Administrative Law Judges for further proceedings consistent with the Sixth Circuit court's opinion. *Martin v. Ligon Preparation Co.*, BRB No. 03-0147 BLA (Aug. 23, 2005)(unpub.).

In a February 16, 2006 Decision and Order on Remand, the administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Accordingly, the administrative law judge again denied benefits.[9]

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study results and lung diffusing capacity tests. *Martin*, BRB No. 00-0959 BLA, slip op. at 6.

[7]The administrative law judge stated that Dr. Rasmussen used his findings about the pulmonary function and arterial blood gas studies to reach his opinion that claimant was suffering from a pulmonary impairment, but he did not use them to find the existence of pneumoconiosis. 2002 Decision and Order on Remand at 5. The administrative law judge also stated that "Dr. Fino reviewed the testing conducted by Dr. Rasmussen, and found it insufficient to establish coal mine dust related disease." *Id*.

[8]The administrative law judge stated, "[w]hile, as noted in my Decision and Order of January 24, 2000, the [c]laimant has established a change in condition, inasmuch as there is a respiratory impairment which was not previously found, none of the other elements of entitlement have [sic] been established." 2002 Decision and Order on Remand at 7.

[9]The administrative law judge also found the evidence insufficient to establish a change in conditions and a mistake in a determination of fact at 20 C.F.R. §725.310 (2000).

On appeal, claimant challenges the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Employer responds, urging affirmance of the administrative law judge's refusal to modify his prior denial of benefits.[10] The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

At the outset, we will consider the administrative law judge's finding that the newly submitted evidence is insufficient to establish a change in conditions at 20 C.F.R. §725.310 (2000). The administrative law judge specifically stated, "[a]s the [c]laimant has failed to establish the existence of pneumoconiosis, total disability, or total disability arising from pneumoconiosis, I find that [claimant] has not established a material change in condition since his prior denial."[11] 2006 Decision and Order on Remand at 8.

As discussed, *supra*, at 2 n.4, Claimant filed a claim on June 22, 1987. Director's Exhibit 1. On April 26, 1994, Judge Neal issued a Decision and Order denying benefits, on the ground that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(4) (2000). The Board affirmed Judge Neal's findings of no pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(3) (2000). However, the Board vacated Judge Neal's finding of no pneumoconiosis at 20 C.F.R. §718.202(a)(4) (2000), and remanded the case for further consideration of the evidence thereunder. *Martin v. Ligon Preparation Co.*, BRB No. 94-2594 BLA (Mar. 10, 1995)(unpub.). On March 7, 1996, Judge Neal issued a Decision and Order on Remand denying benefits, on the ground that claimant failed to establish the existence of pneumoconiosis. The Board affirmed Judge Neal's denial of benefits. *Martin v. Ligon Preparation Co.*, BRB No. 96-0853 BLA (Feb. 25, 1997)(unpub.).

Claimant filed a request for modification on February 23, 1998. Director's Exhibit 141. In his January 24, 2000 Decision and Order, the administrative law judge found the

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[10]Claimant filed a brief in reply to employer's response brief, reiterating his prior contentions.

[11]This case involves a request for modification, and not a duplicate claim. Consequently, the administrative law judge should have referred to a change in conditions rather than a *material* change in conditions. *Compare* 20 C.F.R. §725.309 (2000) *with* 20 C.F.R. §725.310 (2000).

newly submitted evidence sufficient to establish a change in conditions at 20 C.F.R. §725.310 (2000), on the ground that claimant established total disability at 20 C.F.R. §718.204(c) (2000). The Board affirmed the administrative law judge's finding at Section 718.204(c) (2000). *Martin v. Ligon Preparation Co.*, BRB No. 00-0959 BLA (Aug. 30, 2001)(unpub.). In his September 27, 2002 Decision and Order on Remand, the administrative law judge noted that claimant had previously established a change in conditions. On appeal, that determination was not at issue. *Martin v. Ligon Preparation Co.*, BRB No. 03-0147 BLA (Oct. 28, 2003)(unpub.).

In its March 4, 2005 Decision and Order, the Sixth Circuit court in *Martin* did not address the Board's affirmance of the administrative law judge's prior finding that the newly submitted evidence established total disability at 718.204(c) (2000); the court limited its review to the administrative law judge's finding of no pneumoconiosis at 718.202(a)(4) on the merits. Accordingly, when the court vacated that finding it did not also vacate the finding that total disability had been established.

In his February 16, 2006 Decision and Order on Remand, the administrative law judge stated that "[t]he Findings of Fact and Conclusions of Law contained in my previous two Decisions and Orders are hereby adopted in the Decision and Order on Remand except to the extent that any findings made in the previous Decisions are inconsistent with the findings and conclusions expressed in this Decision and Order on Remand." 2006 Decision and Order on Remand at 3. The administrative law judge acknowledged that the Sixth Circuit court's decision in this case was limited to the issue of pneumoconiosis. The administrative law judge specifically stated:

> The Sixth Circuit's opinion in *Martin* only addressed the existence of pneumoconiosis under §718.202(a)(4). Specifically, the Sixth Circuit disagreed with how the opinions of Drs. Rasmussen, Broudy, and Fino were weighed. As the remainder of my Decision and Order was not analyzed by the court, *I will assume my findings were affirmed*.

Id. (emphasis added). However, the administrative law judge later stated that claimant failed to establish a change in conditions at 20 C.F.R. §725.310 (2000). Since the administrative law judge did not indicate that his current finding regarding the issue of a change in conditions was inconsistent with his past finding, we conclude that he must have mistakenly remembered his finding at Section 725.310 (2000) when he summarized his past findings. 2006 Decision and Order on Remand at 8. Further, since the administrative law judge's consideration of the evidence at 20 C.F.R. §725.310 (2000) was outside the scope of the Sixth Circuit court's remand order, we hold that the administrative law judge erred in his most recent statement that the evidence was insufficient to establish a change in conditions at Section 725.310 (2000). In fact, as the administrative law judge earlier found, the evidence is sufficient to establish a change in conditions at Section 725.310(2000) by means of Section

718.204(b).

Turning to the merits of the case, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis at 718.202(a)(4). The administrative law judge considered the reports of Drs. Broudy, Fino and Rasmussen. Dr. Broudy opined that claimant does not have coal workers' pneumoconiosis, or a significant disease or respiratory impairment arising out of his occupation as a coal worker. Employer's Exhibits 1, 10. Similarly, Dr. Fino opined that claimant does not have an occupationally acquired pulmonary condition. Employer's Exhibits 9, 14. In contrast, Dr. Rasmussen diagnosed coal workers' pneumoconiosis arising out of coal mine employment. Claimant's Exhibit 1. Dr. Rasmussen also opined that coal dust exposure must be considered a major contributing factor to claimant's disabling respiratory insufficiency. *Id*. The administrative law judge accorded greater weight to Dr. Fino's opinion that claimant does not have legal pneumoconiosis than to the opinions of Drs. Broudy and Rasmussen, on the grounds that Dr. Fino's opinion is better supported by the objective testing of record and he has superior qualifications. Further, the administrative law judge discredited Dr. Rasmussen's diagnoses of both clinical pneumoconiosis and legal pneumoconiosis, on the ground that his opinion is not reasoned. Citing *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000), the administrative law judge found that Dr. Rasmussen's diagnoses of clinical pneumoconiosis and legal pneumoconiosis are not reasoned, because Dr. Rasmussen did not list any reasons for his opinion outside of the x-ray interpretation and the coal dust exposure history. 2006 Decision and Order on Remand at 5-6. The administrative law judge stated, "[a]cknowledging that Dr. Rasmussen conducted and reviewed other objective medical testing, he fails to expressly state any reason for his diagnosis of pneumoconiosis beyond the x-ray and exposure history." *Id*. The administrative law judge also discredited Dr. Broudy's opinion that claimant does not have clinical pneumoconiosis or legal pneumoconiosis, on the ground that it is not reasoned.[12]

Claimant argues that Dr. Rasmussen's diagnosis of coal workers' pneumoconiosis was based on more than a mere x-ray reading and history of exposure to coal dust. Specifically, claimant argues that Dr. Rasmussen's opinion was also based on medical and smoking histories, and several sophisticated medical tests, including a pulmonary function test, resting and exercise blood gas studies, and a single breath diffusing capacity test. Claimant therefore asserts that the reason stated by the administrative law judge for finding Dr. Rasmussen's

[12]The administrative law judge stated, "[a]s I originally found Dr. Broudy's opinion to be unreasoned, it was error to grant his report more weight than Dr. Rasmussen's report." 2006 Decision and Order on Remand at 6. The administrative law judge therefore stated that "[b]ecause both opinions [Dr. Broudy's and Dr. Rasmussen's] are unreasoned, neither will receive any probative weight." *Id*.

report inadequate to establish the existence of pneumoconiosis is the same reason rejected by the Sixth Circuit court in *Cornett*. Claimant further argues that the administrative law judge's failure to follow the Sixth Circuit court's holding in this case when considering this case on remand is arbitrary and capricious.

In response to claimant's assertions, employer argues that while Dr. Rasmussen reviewed other medical evidence, the only explanation he provided for his diagnoses of clinical pneumoconiosis and legal pneumoconiosis was x-ray evidence and an occupational history. Employer further argues that Dr. Rasmussen never stated that the arterial blood gas and pulmonary function studies were proof of pneumoconiosis. Employer therefore argues that the Sixth Circuit court's determination in its decision in *Martin*, that Dr. Rasmussen diagnosed legal pneumoconiosis, does not compel the administrative law judge to conclude that Dr. Rasmussen's opinion is well-reasoned.

In its March 4, 2005 Decision and Order, the Sixth Circuit court vacated the administrative law judge's prior finding that the evidence was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4), and remanded the case for further consideration of the opinions of Drs. Broudy, Fino and Rasmussen. The court stated:

> In our opinion, the ALJ erred in analyzing the relative import of the three physicians' opinions. We emphasize at the outset, however, that we are not independently deciding whether Dr. Rasmussen's opinion is entitled to more weight than Dr. Broudy's or Dr. Fino's. Rather, we simply believe that the ALJ's explanation for crediting the opinions of Drs. Broudy and Fino over Dr. Rasmussen's is not supported by substantial evidence.

Martin, 400 F.3d at 306, 23 BLR at 2-284.

The court further stated that "the ALJ failed to adequately explain why Dr. Rasmussen's report did not support a finding of pneumoconiosis, and the [Board's] explanation that Dr. Rasmussen diagnosed clinical but not legal pneumoconiosis is inaccurate as a matter of law." *Id*.

In his February 16, 2006 Decision and Order on Remand, the administrative law judge stated, "[a]s Dr. Rasmussen's diagnosis of coal workers' pneumoconiosis technically qualifies as a determination of legal pneumoconiosis under the Sixth Circuit's interpretation, I continue to find it unreasoned and undocumented for the same reasons stated above pursuant to *Cornett*." 2006 Decision and Order on Remand at 6. The administrative law judge additionally stated, "I decline, as the Sixth Circuit seems to suggest in *Martin*, to perform Dr. Rasmussen's job and link 'a physical examination of [claimant], a diffusing capacity test, arterial blood-gas studies, and [claimant's] personal and occupational history' to his determination of coal workers' pneumoconiosis." *Id*.

In *Cornett*, the Sixth Circuit court stated that "the ALJ's opinion [in that case] erroneously states that Drs. Vaezy and Baker 'based their diagnoses of coal workers' pneumoconiosis on their interpretations of an x-ray and a history of coal dust exposure.'" *Cornett*, 227 F.3d at 576, 23 BLR at 2-120. The court determined that the administrative law judge's factual description of the opinions of Drs. Vaezy and Baker was clearly inaccurate. *Id*. The court stated that in addition to x-rays, Drs. Vaezy and Baker each considered their examinations of the miner, his smoking and coal mine employment histories, and pulmonary function studies. *Id*. The court additionally stated that "Dr. Baker went so far as to explain that 'there is sufficient objective and clinical evidence to justify a diagnosis of coal workers' pneumoconiosis notwithstanding a negative x-ray.'" *Id*.

The facts in the instant case are similar to the facts in *Cornett*. In its March 4, 2005 decision in this case, the Sixth Circuit court specifically stated that "Dr. Rasmussen's report establishes that Dr. Rasmussen in fact diagnosed [claimant] with legal pneumoconiosis." *Martin*, 400 F.3d at 306, 23 BLR at 2-284. The court stated that "an individual who has clinical pneumoconiosis necessarily has legal pneumoconiosis as well." *Martin*, 400 F.3d at 306, 23 BLR at 2-285. Further, the court explained that Dr. Rasmussen's consideration of other evidence aside from the positive x-ray reading, such as a physical examination, a diffusing capacity test, arterial blood gas studies, and the miner's personal and occupational histories, would alone have been sufficient to support a finding of legal pneumoconiosis. *Id*. Although Dr. Rasmussen did not explicitly state that he relied on other objective evidence to diagnose pneumoconiosis, the court stated that Dr. Rasmussen relied upon claimant's individual test results to conclude that claimant suffers from pneumoconiosis. *Martin*, 400 F.3d at 307, 23 BLR at 2-285. Thus, in light of the Sixth Circuit court's statements about Dr. Rasmussen's opinion in this case, we hold that the administrative law judge erred in finding that Dr. Rasmussen's diagnoses of clinical and legal pneumoconiosis are based solely on an x-ray and coal dust exposure history.

Claimant also argues that the administrative law judge erred in finding that Dr. Fino's opinion outweighed Dr. Rasmussen's opinion. Specifically, claimant argues that the administrative law judge erred in refusing to follow the Sixth Circuit court's ruling when he stated that Dr. Rasmussen's exercise blood gas study results do not, as stated by the court, undermine Dr. Fino's opinion regarding pneumoconiosis. Employer, however, argues that the administrative law judge's decision to accord greater weight to Dr. Fino's opinion than to Dr. Rasmussen's contrary opinion is permissible. Employer argues that even if Dr. Fino did not review all of Dr. Rasmussen's tests, the record is clear that Dr. Rasmussen ignored, without explanation, an extensive history of medical tests that was contrary to his diagnosis.

The administrative law judge stated that "[Dr. Rasmussen] did not expressly state that he relied on [exercise arterial blood gas analysis results] in opining [that] the [c]laimant had legal or clinical pneumoconiosis." 2006 Decision and Order on Remand at 7. The

administrative law judge also stated that "Dr. Rasmussen's exercise arterial blood gas results do not, as stated by [the] court, undermine Dr. Fino's opinion regarding pneumoconiosis." *Id*. The administrative law judge stated that "it is clear that Dr. Fino's discussion and analysis of Dr. Rasmussen's exercise arterial blood gas study was related solely to the issue of total disability rather than to the issue of whether the [c]laimant had pneumoconiosis." *Id*. Further, the administrative law judge stated that although Dr. Fino did not review Dr. Rasmussen's exercise arterial blood gas results, as correctly noted by the Sixth Circuit court, he did examine the remainder of Dr. Rasmussen's report. *Id*. Consequently, the administrative law judge found that Dr. Fino's opinion outweighed Dr. Rasmussen's contrary opinion, on the basis that Dr. Fino's opinion is better supported by the objective evidence of record.

We are persuaded by claimant's argument that the administrative law judge's finding that Dr. Fino's opinion outweighed Dr. Rasmussen's contrary opinion may not be affirmed, based on the administrative law judge's disregard for the Sixth Circuit court's opinion in *Martin*. The Sixth Circuit court specifically stated, "Dr. Rasmussen's exercise blood-gas results therefore appear to undermine Dr. Fino's opinion, yet Dr. Fino offered no evidence to refute those results." *Martin*, 400 F.3d at 307, 23 BLR at 2-287. Hence, the court implied that it is irrational to find that a doctor who performs a specific test did not rely upon that test when diagnosing the disease. Likewise, the court implied that it is irrational for an administrative law judge to credit a doctor's diagnosis of no pneumoconiosis when that doctor is unaware of those test results and has nothing comparable to rely upon. Thus, since the administrative law judge's weighing of the opinions of Drs. Fino and Rasmussen on remand does not comply with the Sixth Circuit court's opinion in *Martin*, we hold that the administrative law judge failed to provide an adequate explanation for finding that Dr. Fino's opinion outweighed Dr. Rasmussen's opinion.[13] *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

In view of the foregoing, we vacate the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4), and remand the case to the Office of Administrative Law Judges for further

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[13]The administrative law judge also accorded greater weight to Dr. Fino's opinion than to Dr. Rasmussen's contrary opinion, because of Dr. Fino's superior qualifications. However, the Sixth Circuit court explained that Dr. Fino's credentials are not necessarily superior to Dr. Rasmussen's credentials. *Martin*, 400 F.3d at 307, 23 BLR at 2-286. Furthermore, the Board has held that where a physician's opinion is undermined by defective reasoning, the "probative enhancement" that the opinion would otherwise receive from his qualifications as a pulmonary expert is diminished. *Gross v. Dominion Coal Corp.*, 23 BLR 1-8 (2003).

consideration of the evidence in accordance with the Sixth Circuit court's opinion in *Martin*.[14]

If, on remand, the administrative law judge finds the evidence sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a) on the merits, the administrative law judge must also consider whether the evidence is sufficient to establish that the pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203 on the merits. Further, if reached, the administrative law judge must consider whether the evidence is sufficient to establish total disability at 20 C.F.R. §718.204(b) on the merits. Finally, the administrative law judge must consider whether the evidence is sufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c) on the merits, if reached.

[14]We note that the administrative law judge is no longer with the Office of Administrative Law Judges.

Accordingly, the administrative law judge's Decision and Order on Remand denying benefits is vacated, and the case is remanded for further proceedings consistent with this opinion.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge