U.S. Department of Labor

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

BRB No. 14-0235 BLA

ELBERT O'DELL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
KITCHEKAN FUEL CORPORATION	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	DATE ISSUED: 03/30/2015
	)	
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 Christine L. Kirby, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe Williams & Reynolds), Norton, Virginia, for claimant.

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for employer/carrier.

Before: HALL, Acting Chief Administrative Appeals Judge, McGRANERY and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2012-BLA-5412) of Administrative Law Judge Christine L. Kirby rendered on a claim filed on October 13, 2010, pursuant to the provisions of the Black Lung Benefits Act, as

amended, 30 U.S.C. §§901-944 (2012)(the Act).[1] The administrative law judge credited claimant with 13.25 years of coal mine employment,[2] and accepted employer's stipulation to the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b). The administrative law judge found that the evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a),[3] and that claimant is totally disabled due to legal pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding that the existence of legal pneumoconiosis and disability causation were established pursuant to 20 C.F.R. §§718.202(a) and 718.204(c). Specifically, employer argues that, in crediting the medical opinions of Drs. Ammisetty, Klayton and Gallai, over those of Drs. Zaldivar and Castle, the administrative law judge misapplied the burden of proof and the preamble to the 2001 amended regulations, selectively and improperly analyzed the medical opinion evidence, substituted her own opinion for those of the medical experts, and failed to comply with the requirements of the Administrative Procedure Act (APA).[4] Claimant responds to employer's appeal, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in response to employer's appeal.

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[1] As part of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 (2010), Congress enacted amendments to the Black Lung Benefits Act, which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. The 2010 amendments do not apply to this case, however, because the administrative law judge found that claimant did not establish at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine. *See* 30 U.S.C. §921(c)(4)(2012), as implemented by 20 C.F.R. §718.305 (2014); Decision and Order at 4.

[2] Claimant's coal mine employment was in West Virginia. Director's Exhibit 3; Decision and Order at 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc).

[3] The administrative law judge found that the existence of clinical pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a). Decision and Order at 15.

[4] The Administrative Procedure Act provides that every adjudicatory decision must include a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record...." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

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).

To establish entitlement to benefits under 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that the pneumoconiosis arose out of his coal mine employment, and that he is totally disabled due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204.[5] Failure to establish any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(en banc).

Legal Pneumoconiosis

The evidence relevant to the existence of legal pneumoconiosis consists of the opinions of Drs. Ammisetty, Klayton and Gallai, who diagnosed claimant with legal pneumoconiosis in the form of severe obstructive lung disease due to coal mine dust exposure and smoking,[6] Director's Exhibit 11; Claimant's Exhibits 3, 9, and the contrary

[5] The Board has held that a finding that pneumoconiosis arises out of coal mine employment is necessarily subsumed in a finding of legal pneumoconiosis. *Kiser v. L & J Equipment Co*., 23 BLR 1-246, 1-259 n.18 (2006).

[6] The administrative law judge recognized the smoking histories recorded by all of the physicians. Dr. Ammisetty noted that claimant smoked cigarettes and a pipe from 1965 to 1999 and smoked 15 cigarettes daily during the period he smoked cigarettes, but "did not specify the period that [c]laimant smoked cigarettes as opposed to a pipe." Decision and Order at 7; Director's Exhibit 11.

Dr. Klayton recorded that claimant smoked half a pack of cigarettes per day for 17 years, followed by pipe-smoking for 20 years. Claimant's Exhibit 3.

Dr. Gallai noted that claimant smoked cigarettes from age 16 to 35 and smoked a pipe after age 35 until the age of 55, but did not inhale. He observed, therefore, that claimant had less than a 10 year history of cigarette smoking, noting that he smoked a pack a week from age 16 to 25, and half a pack a day from age 25 to 35, concluding that this was about a 5 pack-year history of cigarette smoking and a 20 year history of pipe smoking without inhaling. Claimant's Exhibit 9.

Dr. Zaldivar recorded that claimant smoked half a pack of cigarettes a day from age 16 to age 27 or 28, and then smoked a pipe until 2000. Employer's Exhibits 3, 6.

opinions of Drs. Zaldivar and Castle, Employer's Exhibits 3, 5 and 7. Dr. Zaldivar did not diagnose legal pneumoconiosis because he attributed claimant's severe pulmonary impairment entirely to asthma and emphysema related to smoking, and discounted any impact whatsoever from coal mine dust. Employer's Exhibit 3 at 5, 6 at 29-30. Dr. Castle also concluded that claimant does not have legal pneumoconiosis, but has tobacco-induced moderately severe to severe airway obstruction and bronchial asthma unrelated to coal mine dust exposure. Employer's Exhibit 5 at 8, 7 at 19-20, 31. In addition, the record includes claimant's treatment records.[7]

In finding the existence of legal pneumoconiosis established, the administrative law judge credited the opinions of Drs. Ammisetty, Klayton and Gallai over the opinions of Drs. Zaldivar and Castle, because she found them better reasoned. The administrative law judge also found that claimant's treatment records supported a finding of legal pneumoconiosis.

Whether the conclusions set forth in a medical opinion are reasoned is a determination committed to the administrative law judge's discretion. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997). It is the role of the finder-of-fact to evaluate the medical evidence, draw inferences, assess the probative value of the evidence, and ascertain compliance with the premises underlying the Act and relied on by the Department of Labor (DOL) in promulgating the implementing regulations. *See J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-125-26 (2009), *aff'd Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 24 BLR 2-369 (3d Cir. 2011).

Employer argues that the administrative law judge erred in crediting the opinions of Drs. Ammisetty, Klayton, and Gallai over the opinions of Drs. Zaldivar and Castle. Specifically, regarding the opinion of Dr. Ammisetty, employer contends that the administrative law judge erred in crediting it because Dr. Ammisetty provided no

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Dr. Castle noted that claimant "smoked tobacco products for at least 37 years," beginning at age 16 to age 27 or so, and thereafter smoked a pipe. Decision and Order at 7, 8, 10-12; Employer's Exhibits 5 at 6-7, 6 at 17-18. Employer's Exhibits 5, 7.

[7] These treatment records consist of: Dr. Faulkner's treatment of claimant for chronic obstructive pulmonary disease (COPD) from March 2009 to October 2010, and prescription of breathing medication, inhalers, and oxygen; Dr. Bird's December 2011 through March 2012 treatment records for COPD and continuous shortness of breath, and an albuterol prescription; and Dr. Figueroa's follow-up care provided from April through June 2010, for COPD and sleep apnea, and an inhaler prescription. *See* Claimant's Exhibits 5-7; Decision and Order at 14-15.

reasoning for his opinion. Contrary to employer's contention, however, the administrative law judge properly found that Dr. Ammisetty's opinion was well-reasoned as it was supported by the results of claimant's diagnostic evidence, namely, his examination, symptoms, history, x-ray, pulmonary function test, blood gas tests and electrocardiogram.[8] As this is a credibility determination within the administrative law judge's discretion, we reject employer's assertion that the administrative law judge erred in crediting Dr. Ammisetty's opinion as reasoned. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(en banc); Decision and Order at 7-8, 15.

Similarly, the administrative law judge properly credited Dr. Klayton's opinion that claimant has had a respiratory impairment due to a combination of coal dust exposure and smoking as it was supported by claimant's history of coal mine employment and symptoms, namely, dyspnea on mild exertion and chronic productive cough of fifteen years' duration, and the results of his pulmonary function studies, showing very severe obstructive lung disease with air trapping, reduced diffusing capacity, very severely reduced MVV, and his resting [arterial blood gas studies] showing severe hypoxemia. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76.

Likewise, the administrative law judge properly credited Dr. Gallai's opinion as "well-reasoned" because the doctor found that claimant's coal dust exposure was "sufficient to produce severe obstructive lung disease and chronic bronchitis" and

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[8] Employer also asserts that the administrative law judge erred in crediting Dr. Ammisetty's diagnosis of legal pneumoconiosis as reasoned, when she discredited his diagnosis of cor pulmonale as unreasoned. Contrary to employer's assertion, however, the administrative law judge rationally found that Dr. Ammisetty's diagnosis of legal pneumoconiosis was well-reasoned, while his diagnosis of cor pulmonale was not. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); Decision and Order at 7-8.

Moreover, to the extent that employer's argument equates Dr. Ammisetty's diagnosis of cor pulmonale with his diagnosis of legal pneumoconiosis, it is inapposite. While cor pulmonale with right-sided congestive heart failure may be caused by pneumoconiosis and may establish total respiratory disability pursuant to Section 718.204(b)(2)(iii), *see Newell v. Freeman United Coal Mining Co.*, 13 BLR 1-37 (1989), a diagnosis of cor pulmonale is not a diagnosis of pneumoconiosis, and cannot, therefore, establish the existence of legal pneumoconiosis at Section 718.202(a)(4). *See* 20 C.F.R. §718.201. Employer has not identified any error in the administrative law judge's analysis of Dr. Ammisetty's diagnosis of legal pneumoconiosis. *See* Employer's Brief at 6, 8-9.

because the opinion was supported by "several documented factors including diagnostic [pulmonary function testing] and [arterial blood gas testing], physical examination, and analysis of symptoms consistent with chronic bronchitis."[9] Decision and Order at 9, 16; *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Clark*, 12 BLR at 1-155. Accordingly, we conclude that the administrative law judge permissibly credited the opinions of Drs. Ammisetty, Klayton and Gallai on the issue of legal pneumoconiosis as she properly found them to be reasoned. *See Hicks*, 138 F.3d at 533, 21 BLR 2-335; *Clark*, 12 BLR at 1-155.

Regarding the opinions of Drs. Zaldivar and Castle, we reject employer's argument that the administrative law judge erred in not crediting them. The administrative law judge properly determined that the opinions of Drs. Zaldivar and Castle were "problematic," and merited "diminished weight." Decision and Order at 14-16. Specifically, employer argues that the administrative law judge should have credited the opinions of Drs. Zaldivar and Castle who opined that, in addition to his cigarette smoking history, claimant had an additional twenty or more years of tobacco exposure as the result of tobacco inhalation from pipe smoking and exposure to secondhand smoke from his mother during her pregnancy and while he was a child. Employer's Brief at 12, 16-17. The administrative law judge, however, rejected the opinions of Drs. Zaldivar and Castle that pipe smokers inhale tobacco smoke and are subject to the same type of lung disease risk as cigarette smokers, as she credited claimant's testimony that while he held the pipe in his mouth, he did not inhale.[10] *See* Decision and Order at 9; Hearing

[9] We reject employer's assertion that the administrative law judge erred in crediting Dr. Gallai's opinion because Dr. Gallai's diagnosis of legal pneumoconiosis is based on his diagnosis of clinical pneumoconiosis. Contrary to employer's assertion, the administrative law judge noted that Dr. Gallai's diagnosis of clinical pneumoconiosis was based on a positive x-ray reading, while his diagnosis of legal pneumoconiosis was based on examination, pulmonary function study, blood gas study, history and symptoms. Decision and Order at 9.

Further, contrary to employer's assertion, the fact that Dr. Gallai relied on a lesser cigarette smoking history than any other physician of record, and characterized claimant's cigarette smoking history as "insignificant," does not render his opinion unreasoned when, as here, the administrative law judge considered Dr. Gallai's opinion in its totality, including his discussion of claimant's smoking history, and credited it as reasoned because it was supported by other documentation, namely, pulmonary function testing, blood gas testing, physical examination, and symptoms. *See Hicks*, 138 F.3d at 533; 21 BLR at 2-335; Decision and Order at 9.

[10] Employer asserts that: "Dr. Zaldivar explained that cigarette smokers who later become pipe-smokers *generally* continue to inhale as they change their habit to pipe-smoking." *See* Employer's Brief at 14 (emphasis added). Employer does not, however,

Transcript at 16; Employer's Exhibits 3 at 3, 7 at 19. Similarly, the administrative law judge rejected the views of Drs. Zaldivar and Castle that claimant's mother exposed him to secondhand smoke as a child or that smoking prior to age 23 increased claimant's chance of developing COPD, as they did not provide any evidence that such exposures resulted in increased tobacco-induced lung damage. *See* Decision and Order at 4, 9-10, 12-13; Employer's Exhibits 3 at 3, 6 at 17-18, 7 at 10. Further, the administrative law judge observed that, while Dr. Zaldivar referred to medical literature supportive of his opinion, because such literature was not in the record she was unable to determine the basis of his opinion. The administrative law judge, therefore, permissibly found that Dr. Zaldivar's opinion was speculative. *See Dempsey v. Sewell Coal Co.*, 23 BLR 1-47 (2004)(en banc); *Knizer v. Bethlehem Mines Corp.*, 8 BLR 1-5 (1985); Decision and Order at 10.

Additionally, the administrative law judge permissibly gave Dr. Zaldivar's opinion that claimant did not have legal pneumoconiosis diminished weight because it was based, in part, on Dr. Zaldivar's finding that claimant did not have clinical pneumoconiosis. 65 Fed. Reg. 79,939-43 (Dec. 20, 2000); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 311-12, 25 BLR 2-115, 2-125 (4th Cir. 2012); *see Obush*, 24 BLR at 1-125-26; *see also A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02, 25 BLR 2-203, 2-210-11 (6th Cir. 2012). The administrative law judge also reasonably accorded less weight to Dr. Zaldivar's opinion attributing claimant's respiratory impairment to asthma, because it was "based on speculation" instead of specific objective evidence showing that claimant has asthma.[11] Decision and Order at 12; *see Knizer*, 8 BLR at 1-7.

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contest the administrative law judge's decision to credit claimant's testimony that he did *not* inhale as a pipe-smoker. Decision and Order at 9.

[11] The administrative law judge noted that Dr. Zaldivar's diagnosis of asthma was based on his belief "that even though [c]laimant has no personal or family history of asthma, that simply means that his doctors did not give him the diagnosis or he may not have wanted to hear the diagnosis," and that "[c]laimant's doctors misdiagnosed his condition and did not properly treat him with medications." Decision and Order at 12; Employer's Exhibits 3 at 4, 6 at 21-22, 31-32.

The administrative law judge determined that Dr. Zaldivar's view, that "an individual who is asthmatic and continues to smoke will develop frequent exacerbations of bronchospasm, leading to airway remodeling," fails to account for how, even if asthma contributed to claimant's pulmonary condition, the doctor is able to totally exclude coal mine dust as contributing in any way to claimant's condition. *See Crockett Collieries Inc. v. Barrett*, 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007); Decision and Order at 10-11; Employer's Exhibits 3 at 3-5, 6 at 29-30.

Finally, the administrative law judge permissibly rejected Dr. Zaldivar's opinion, that claimant's presentation is no different from that of anyone else in his condition who never worked in coal mines, as it was insufficient to demonstrate that coal mine dust was not a factor in claimant's specific case. Decision and Order at 12; Employer's Exhibit 6 at 29-31, 36-37; *see Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 438, 21 BLR at 2-275-76; *Clark*, 12 BLR at 1-155; *see also Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989).

Turning to Dr. Castle's opinion, the administrative law judge properly accorded it diminished weight as she found the opinion concerning claimant's smoking history to be problematic.[12] *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Clark*, 12 BLR at 1-155. She also properly accorded it less weight because Dr. Castle's opinion, that claimant's moderately severe to severe airway obstruction was not legal pneumoconiosis, was based "at least in part [on a] lack of restrictive defect," contrary to the position of the DOL, that legal pneumoconiosis may be a restrictive, obstructive, or mixed defect. *See* 20 C.F.R. §718.201(a)(2). Further, the administrative law judge properly accorded Dr. Castle's opinion less weight because he failed to explain why, even if smoking and bronchial asthma were factors in claimant's condition, coal mine dust exposure could not have also been a factor in his impairment.[13] *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-325 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003). Finally, to the extent that Dr. Castle relied on claimant's bronchodilation results to rule out legal pneumoconiosis, the administrative law judge rationally found that the doctor failed to

[12] The administrative law judge found that Dr. Castle's opinion, that individuals who were previously cigarette smokers necessarily inhale tobacco smoke as pipe smokers, is speculative as Dr. Castle did not "explain why [c]laimant could not be one of the pipe smokers who does *not*, in fact, inhale." Decision and Order at 12-13; Employer's Exhibits 5 at 6-7, 7 at 10. The administrative law judge gave both Dr. Zaldivar's and Dr. Castle's conclusions on this issue little weight because they are "unsupported by specific evidence of record." Decision and Order at 10, 12.

[13] Dr. Castle stated that: "[c]oal mine dust exposure doesn't contribute to asthma," and "any dust or fumes" could "precipitate bronchospasm, but that doesn't result in permanent changes or persistent aggravation." Employer's Exhibit 7. He further opined that coal mine employment and smoking could contribute to bronchitis simultaneously, "during ongoing coal dust exposure," but that "[o]nce the coal dust exposure ceases, the bronchitis related to that industrial bronchitis goes away within about six months." Employer's Exhibit 7. He also explained that claimant's asthma was not due to coal mine dust exposure, because: "coal mine dust doesn't cause bronchial asthma. This man has allergies. He has - is allergic to mold and I believe oak." Employer's Exhibit 7.

"adequately address" the cause of the residual component of claimant's respiratory impairment.[14] *See Barrett*, 478 F.3d at 356, 23 BLR at 2-483.

Based on the foregoing, we reject employer's assertion that the administrative law judge substituted her own opinion for that of the medical experts, or imposed an improper burden of proof. *Id*.; Employer's Brief at 17. Rather, the administrative law judge reasonably found the opinions of Drs. Zaldivar and Castle "problematic," based on their divergence from the preamble to the 2001 regulations respecting the diagnosis of legal pneumoconiosis. *See Looney*, 678 F.3d at 311-12, 25 BLR at 2-125; *see also Adams*, 694 F.3d at 801-02, 25 BLR at 2-210-11. Likewise the administrative law judge permissibly assigned their opinions "diminished weight" at 20 C.F.R. §718.202(a)(4), based on the deficiencies in their rationales. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Clark*, 12 BLR at 1-155. Hence, we conclude that the administrative law judge properly found the existence of legal pneumoconiosis established based on the better reasoned opinions of Drs. Ammisetty, Klayton and Gallai.[15] *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); Decision and Order at 10-15. As substantial evidence supports the administrative law judge's credibility determinations, *see Lane v. Union Carbide Corp.*, 105 F.2d 166, 174, 21 BLR 2-34, 2-48 (4th Cir 1997); *Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08, 22 BLR 2-162, 2-168 (4th Cir. 2000), we affirm her findings. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Clark*, 12 BLR at 1-155.

Disability Causation

The following evidence is relevant to employer's assertion that the administrative law judge provided an insufficient discussion on the issue of disability causation at 20

[14] Dr. Castle stated that claimant "had the reversibility and variability, … that's not typically related to a coal mine dust induced problem." Employer's Exhibit 7 at 18-19.

[15] We need not consider employer's argument that the administrative law judge erred in finding that claimant's treatment records are supportive of a finding of legal [pneumoconiosis], Decision and Order at 15, because they did not attribute claimant's COPD to coal mine employment. In this case, the administrative law judge found that the better-reasoned medical opinions attributed claimant's COPD to coal mine employment, thereby establishing the existence of legal pneumoconiosis. Thus, even if the treatment records were not supportive of the medical opinions, the administrative law judge's finding that the medical opinions established legal pneumoconiosis is sufficient to establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *See* 20 C.F.R. §§718.201(a)(2); 718.202(a)(4); *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Clark*, 12 BLR at 1-155; *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

C.F.R. §718.204(c).[16] Dr. Ammisetty found that claimant's coal dust exposure played a significant role in his totally disabling pulmonary impairment. Director's Exhibit 11. Dr. Klayton opined that claimant's disabling pulmonary impairment was due to a combination of smoking and coal dust exposure. Claimant's Exhibit 3. Dr. Gallai opined that claimant did not have the pulmonary capacity to return to coal mine employment due to his legal pneumoconiosis. Claimant's Exhibit 9. Opposing these opinions, Drs. Zaldivar and Castle found that claimant's total respiratory disability was not due to his legal pneumoconiosis/coal mine employment. Employer's Exhibits 3, 5, 7.

In finding disability causation established, the administrative law judge credited the opinions of Drs. Ammisetty, Klayton and Gallai because they found that the existence of legal pneumoconiosis was established and their opinions were well-reasoned. The administrative law judge accorded less weight to the opinions of Drs. Zaldivar and Castle because they did not find the existence of legal pneumoconiosis established. Employer contends, however, that the administrative law judge improperly credited the opinions of Drs. Ammisetty, Klayton, and Gallai, and "rotely dismiss[ed]" those of Drs. Zaldivar and Castle. Decision and Order at 23; Employer's Brief at 19-21.

A medical opinion in which a physician finds, contrary to an administrative law judge's determination, that the miner has neither legal nor clinical pneumoconiosis, cannot be credited unless the administrative law judge identifies "specific and persuasive reasons for concluding that the doctor's judgment" on causation "does not rest upon her disagreement with the [administrative law judge's] finding . . . ." *See Scott v. Mason Coal Co.*, 289 F.3d 263, 269, 22 BLR 2-372, 2-384 (4th Cir. 2002); *Toler v. Eastern Assoc. Coal Co.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995). Thus, the

[16] 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 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)(i), (ii).

administrative law judge rationally found that the same reasons for which she discredited the opinions of Drs. Zaldivar and Castle as to the existence of legal pneumoconiosis also undercut their opinions that claimant's impairment is unrelated to his coal mine employment. Decision and Order at 15-16; *see Scott*, 289 F.3d at 269, 22 BLR at 2-384; *Toler*, 43 F.3d at 116, 19 BLR at 2-83; *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986). Further, the administrative law judge properly discounted the causation opinions of Drs. Zaldivar and Castle because they failed to account for the effects of coal dust exposure. Decision and Order at 16; *see Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-19-20 (2004).

Instead, the administrative law judge properly credited the opinions of Drs. Ammisetty, Klayton and Gallai because the doctors found the existence of legal pneumoconiosis and because their opinions regarding disability causation were supported by their underlying documentation. *See Scott*, 289 F.3d at 269, 22 BLR at 2-384; *Toler*, 43 F.3d at 116, 19 BLR at 2-83; *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Clark*, 12 BLR at 1-155. She, therefore, properly found that their opinions established that claimant is totally disabled due to legal pneumoconiosis pursuant to 20 C.F.R. §718.204(c).

As the decision before us comports with the requirements of the APA, we affirm the administrative law judge's finding that the evidence established the existence of legal pneumoconiosis and disability causation pursuant to Sections 718.202(a)(4) and 718.204 (c).

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

SO ORDERED.

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BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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GREG J. BUZZARD
Administrative Appeals Judge