BRB No. 02-0408 BLA

WILLIAM SOHOSKY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
READING ANTHRACITE COMPANY	)	DATE ISSUED:
	)	
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 of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order (99-BLA-0597) of Administrative Law Judge Paul H. Teitler 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] In the initial Decision and Order, Administrative Law Judge Robert D. Kaplan, after crediting claimant with forty-five years of coal mine employment, found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) (2000). Accordingly, Judge Kaplan denied benefits. By Decision and Order dated December 22, 1997, the Board affirmed Judge Kaplan's findings that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) (2000). *Sohosky v. Reading Anthracite Co.*, BRB No. 97-0607 BLA (Dec. 22, 1997) (unpublished). The Board, therefore, affirmed Judge Kaplan's denial of benefits. *Id.*

Claimant subsequently filed a timely request for modification of his denied claim. Although claimant and employer each indicated that they wanted a hearing to be conducted, Administrative Law Judge Ralph A. Romano, by Order dated April 16, 1999, indicated that a hearing would not be held. Judge Romano subsequently issued a Decision and Order on September 24, 1999. Finding that claimant failed to demonstrate a change in conditions or a mistake in a determination of fact pursuant to 20 C.F.R. §725.310 (2000), Judge Romano denied claimant's request for modification. By Decision and Order dated October 5, 2000, the Board, citing *Pukas v. Schuylkill Contracting Co.*, 22 BLR 1-69 (2000), noted that a party is entitled to a hearing with respect to a petition for modification if one is requested. *Sohosky v. Reading Anthracite Co.*, BRB No. 00-0123 BLA (Oct. 5, 2000) (unpublished). The Board, therefore, vacated Judge Romano's Decision and Order and remanded the case for a hearing regarding claimant's request for modification. *Id*.

[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.

Due to Judge Romano's unavailability, Administrative Law Paul H. Teitler (the administrative law judge) considered the claim on remand. After holding a hearing on October 18, 2001, the administrative law judge issued his Decision and Order on January 28, 2002. After crediting claimant with forty-five years of coal mine employment, the administrative law judge found that there was not a mistake in a determination of fact pursuant to 20 C.F.R. §725.310 (2000). The administrative law judge also found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3) (2000). The administrative law judge further found that the evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1)-(4) (2000)[2] and that the evidence was insufficient to establish that claimant's total disability was due to pneumoconiosis. Finally, the administrative law judge found that the evidence was insufficient to establish a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in failing to provide any explanation for finding that there was not a mistake in a determination of fact pursuant to 20 C.F.R. §725.310 (2000). Claimant also contends that the administrative law judge erred in finding the x-ray evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Claimant further argues that the administrative law judge erred in failing to address whether the medical opinion evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Claimant also contends that the administrative law judge erred in finding the evidence insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1) and (c)(4) (2000). Claimant finally argues that the administrative law judge erred in finding that the evidence was insufficient to establish that his total disability was due to pneumoconiosis. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a response brief.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

We initially note that the administrative law judge erred in addressing whether the evidence was sufficient to establish a material change in condition pursuant to 20 C.F.R. §725.309 (2000). *See* Decision and Order at 16. Because the instant case does not involve a

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

duplicate claim, Section 725.309 is inapplicable. The instant case involves claimant's request for modification of his denied 1995 claim.

The Board has held that in considering whether a claimant has established a change in conditions pursuant to 20 C.F.R. §725.310 (2000),[3] an administrative law judge is obligated to perform an independent assessment of the newly submitted evidence, considered in conjunction with the previously submitted evidence, to determine if the weight of the new evidence is sufficient to establish at least one element of entitlement which defeated entitlement in the prior decision. *See Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993); *Kovac v. BCNR Mining Corp.*, 14 BLR 1-156 (1990), *modified on recon.*, 16 BLR 1-71 (1992). In the prior decision, Judge Kaplan found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4) (2000), a finding ultimately affirmed by the Board.[4] Consequently, the issue properly before the administrative law judge was whether the newly submitted evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). *See Nataloni, supra*.

Claimant contends that the administrative law judge erred in finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). In challenging the administrative law judge's finding, claimant initially contends that Administrative Law Judge Ainsworth H. Brown, the administrative law judge who was initially assigned the case on remand from the Board, improperly limited the parties to submitting two interpretations of claimant's December 21, 2000 x-ray.[5]

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[3]Although Section 725.310 has been revised, these revisions apply only to claims filed after January 19, 2001.

[4]The administrative law judge found that claimant's "prior claim" had been denied because claimant "failed to demonstrate that he was disabled due to pneumoconiosis or any respiratory disease." Decision and Order at 4. The administrative law judge, therefore, found that in order to show a change in conditions, the newly submitted evidence must establish that claimant is "totally disabled due to pneumoconiosis." *Id.* Contrary to the administrative law judge's finding, Administrative Law Judge Robert D. Kaplan, in his initial denial of claimant's claim, did not find that the evidence was insufficient to establish total disability. Judge Kaplan denied benefits because he found that the evidence was insufficient to establish the existence of pneumoconiosis. *See* Director's Exhibit 104. Judge Kaplan did not address whether the evidence was sufficient to establish total disability. *Id.*

[5]The only new x-ray is a December 21, 2000 film. Drs. Cappiello and Ahmed, both dually qualified as B readers and Board-certified radiologists, interpreted this x-ray as positive for pneumoconiosis. Claimant's Exhibits 11, 17. However, two equally qualified

After the Board vacated Judge Romano's Decision and Order, the case was remanded to the Office of Administrative Law Judges. The case was initially assigned to Judge Brown.

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physicians, Drs. Laucks and Sobel, interpreted the x-ray as negative for pneumoconiosis. Employer's Exhibits 11, 13.

Although claimant and employer submitted new interpretations of claimant's April 19, 1995 x-ray, Judge Kaplan previously considered interpretations of this x-ray. Consequently, new interpretations of claimant's April 19, 1995 x-ray are insufficient to establish a change in conditions pursuant to 20 C.F.R. §725.310 (2000).

In his Notice of Hearing, Judge Brown informed the parties that:

> A maximum of two (2) interpretations of each x-ray will be received in the record from each party, except if fairness requires additional readings.

Judge Brown's Notice of Hearing dated January 26, 2001.

In a letter dated February 14, 2001, employer objected to Judge Brown's order limiting the number of x-ray interpretations that could be submitted by each party. In a letter dated March 7, 2001, Judge Brown informed employer that he found authority for limiting the number of x-ray interpretations, not in the revised regulations, but in 5 U.S.C. §556(d). Judge Brown explained that, as administrative law judge, he had broad discretion to determine what evidence was required for "a full and true disclosure of the facts" pursuant to 5 U.S.C. §556(d). Judge Brown further explained that he was free to exclude "irrelevant, immaterial or unduly repetitious evidence."

The case was scheduled for hearing on May 22, 2001 before Judge Brown. However, on May 21, 2001, claimant's counsel requested a continuance of that hearing due to illness. By Order dated June 1, 2001, Judge Teitler (the administrative law judge) noted that the case had been continued by Judge Brown and reassigned to him. The administrative law judge informed the parties that the hearing had been rescheduled for October 18, 2001.

At the October 18, 2001 hearing, claimant did not object to Judge Brown's earlier order limiting the number of x-ray interpretations that could be submitted into the record.[6] In fact, claimant was successful in having employer withdraw one of its three interpretations of claimant's December 21, 2000 x-ray.[7] Under such circumstances, we reject claimant's

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[6]The revised regulations do not provide for the limiting of evidence in the instant case. The revised regulations specifically provide that the evidentiary limitations are not applicable to cases that were pending on January 19, 2001. *See* 20 C.F.R. §725.2.

[7]At the hearing employer agreed to withdraw Employer's Exhibit 13. Transcript at 19. Employer's Exhibit 13 is identified in the record as Dr. Soble's negative interpretation of claimant's December 21, 2000 x-ray. Despite employer's indication that it wished to withdraw this evidence, the administrative law judge considered Dr. Soble's x-ray interpretation in his Decision and Order. *See* Decision and Order at 7. The administrative law judge, however, excluded Employer's Exhibit 12, Dr. Duncan's negative interpretation of claimant's December 21, 2000 x-ray, in rendering his decision. *Id.* Because Drs. Soble and Duncan possess equivalent radiological qualifications and each rendered a negative interpretation of claimant's December 21, 2000 x-ray, the administrative law judge's exclusion of Dr. Duncan's x-ray interpretation rather than Dr. Soble's x-ray interpretation

assertion that he was prejudiced by a limitation in the number of x-ray interpretations that could be submitted.

In his consideration of the x-ray evidence, the administrative law judge noted that an x-ray interpretation rendered by a physician dually qualified as a B reader and Board-certified radiologist could be accorded greater weight than a physician qualified as only a B reader. *See Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 7. Since the x-rays of record were read as both positive and negative by dually qualified physicians, the administrative law judge found that the x-ray interpretations were "in equipoise" and, therefore, insufficient to establish the existence of pneumoconiosis. Decision and Order at 8-9. Although the administrative law judge did not separately consider the newly submitted x-ray evidence, the record contains both positive and negative interpretations of claimant's December 21, 2000 x-ray by the best qualified physicians of record. *See* n.5, *supra*. Consequently, the administrative law judge implicitly found that the interpretations of claimant's December 21, 2000 x-ray evidence were in equipoise and, therefore, insufficient to establish the existence of pneumoconiosis. Inasmuch as it is based upon substantial evidence, we affirm the administrative law judge's finding that the newly submitted x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

Since the record does not contain any biopsy or autopsy evidence, the administrative law judge properly found that claimant was precluded from establishing the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). Decision and Order at 8. Furthermore, the administrative law judge properly found that claimant is not entitled to any of the statutory presumptions arising under 20 C.F.R. §718.202(a)(3).[8]

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constitutes harmless error. *See Larioni v. Director, OWCP*, 6 BLR 1-1284 (1986).

[8]Because there is no evidence of complicated pneumoconiosis in the record, the Section 718.304 presumption is inapplicable. *See* 20 C.F.R. §718.304. The Section 718.305 presumption is inapplicable because claimant filed the instant claim after January 1, 1982. *See* 20 C.F.R. §718.305(e). Finally, inasmuch as the instant

Claimant argues that the administrative law judge erred in failing to address whether the medical opinion evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). We agree. After finding the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (a)(2) and (a)(3), the administrative law judge noted that the existence of pneumoconiosis could also be established by medical opinion evidence pursuant to 20 C.F.R. §718.202(a)(4). Decision and Order at 8. However, because "the x-ray evidence [was] in equipoise," the administrative law judge stated that he would "defer discussion of the medical opinion evidence to the question of whether the claimant is totally disabled due to pneumoconiosis." *Id*. at 9. The administrative law judge failed to subsequently address whether the newly submitted medical opinion evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Consequently, we remand the case to the administrative law judge with instructions to address whether the newly submitted medical opinion evidence is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Should the administrative law judge, on remand, find the newly submitted medical opinion evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), he must weigh all of the relevant newly submitted evidence together to determine whether it is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), s*ee Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997) and, therefore, sufficient to establish a change in conditions pursuant to 20 C.F.R. §725.310 (2000). *Nataloni*, *supra*.

Claimant argues that the administrative law judge failed to explain the basis for his finding that there was not a mistake in a determination of fact pursuant to 20 C.F.R. §725.310 (2000). In reviewing the record as a whole on modification, an administrative law judge is authorized "to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971). In light of the fact that the administrative law judge failed to consider whether the newly submitted medical evidence is sufficient to establish the existence of pneumoconiosis, we vacate the administrative law judge's determination that there was not a mistake in a determination of fact pursuant to 20 C.F.R. §718.310 (2000) and remand the case for further consideration.

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claim is not a survivor's claim, the Section 718.306 presumption is also inapplicable. *See* 20 C.F.R. §718.306.

Should the administrative law judge, on remand, find the evidence sufficient to establish a change in conditions or a mistake in a determination of fact pursuant to 20 C.F.R. §725.310 (2000), he must consider claimant's 1995 claim on the merits, based on a weighing of all the evidence of record. *See Shupink v. LTV Steel Corp.*, 17 BLR 1-24 (1992).

We now turn our attention to the administrative law judge's finding that the evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c) (2000). Claimant contends that the administrative law judge erred in finding that the pulmonary function study evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(c)(1) (2000). Claimant argues that the administrative law judge erred in failing to make a determination regarding claimant's height. Where there are substantial differences in the recorded heights among the pulmonary function studies of record, the administrative law judge must make a factual finding to determine claimant's actual height. *See Protopappas v. Director, OWCP*, 6 BLR 1-221 (1983). In the instant case, the administrative law judge noted that claimant's recorded heights ranged from 64 inches to 68 inches. Decision and Order at 10. Citing *Protopappas*, the administrative law judge conceded that "[a]ctual height is very important for the purpose of evaluating the values of the pulmonary function studies." Decision and Order at 10. The administrative law judge, however, indicated that he could not "reasonably find a height for [c]laimant." *Id.* After further noting that the variations in recorded heights were "troubling," the administrative law judge observed that Dr. Levinson was the only doctor who recorded a "consistent height," listing claimant's height each time as 64 inches. *Id*. at 12.

The administrative law judge erred in not making a determination regarding claimant's height. Moreover, to the extent that the administrative law judge determined that claimant's height was 64 inches because Dr. Levinson consistently provided this measurement, his finding is not rational. On remand, the administrative law judge is instructed to render a finding regarding claimant's height based upon a review of all the evidence of record and to utilize that finding in determining whether each of claimant's pulmonary function studies is qualifying.[9] *Protopappas, supra*.

[9]A "qualifying" pulmonary function study yields values which are equal to or less than the applicable table values, *i.e.* Appendix B of Part 718. A "non-qualifying" study yields values which exceed the requisite table values.

Claimant also argues that administrative law judge erred in crediting Dr. Levinson's invalidations of the pulmonary function studies of record. When determining the validity of a pulmonary function study, an administrative law judge must provide a rationale for crediting the opinion of a consulting physician over that of an administering physician. *See Siegel v. Director, OWCP*, 8 BLR 1-156 (1985). In the instant case, the administrative law judge noted that Dr. Levinson had invalidated pulmonary function studies administered by Drs. Raymond J. Kraynak (R. Kraynak) and Matthew J. Kraynak (M. Kraynak). Decision and Order at 12. The administrative law judge noted that Dr. Levinson had "written creditable invalidations" and possessed "substantial qualifications in pulmonary medicine." *Id.* An administrative law judge may properly credit the invalidations of a physician based upon his superior qualifications. *See Siegel, supra* ; *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988). In the instant case, we find no error in the administrative law judge's implicit finding that Dr. Levinson possessed superior qualifications to those of Drs. R. Kraynak and M. Kraynak.[10] However, we agree with claimant that the administrative law judge erred in not addressing the significance of medical statements provided by Drs. R. Kraynak and M. Kraynak in response to Dr. Levinson's invalidations. Moreover, the administrative law judge, while noting that Dr. Levinson invalidated Dr. Kruk's June 26, 1996 pulmonary function study, failed to provide a rationale for crediting Dr. Levinson's opinion over that of Dr. Kruk.[11] *See* Director's Exhibit 87.

The administrative law judge also misidentified and mischaracterized the pulmonary function study evidence. The administrative law judge inaccurately stated that claimant's January 5, 1995 pulmonary function study was invalidated by Drs. Ahluwalia and Levinson. Decision and Order at 12. This study was invalidated by Drs. Sahillioglu and Levinson, not Dr. Ahluwalia. *See* Director's Exhibit 9. Inasmuch as the administrative law judge mischaracterized the pulmonary function study evidence, he committed error. *See generally Tackett v. Director, OWCP*, 7 BLR 1-703 (1985).

Additionally, the administrative law judge failed to consider a qualifying pulmonary

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[10]Dr. R. Kraynak is Board-eligible in Family Medicine. Director's Exhibit 94. Dr. M. Kraynak is Board-certified in Family Medicine. Claimant's Exhibit 5. Dr. Levinson is Board-certified in Internal Medicine and Pulmonary Disease. Employer's Exhibit 14.

[11]The administrative law judge properly found that Dr. Levinson possessed superior qualifications to those of Drs. R. Kraynak and M. Kraynak. However, it is not clear whether the administrative law judge would find Dr. Levinson's qualifications significantly superior to those of Dr. Kruk. Dr. Kruk, unlike Drs. R. Kraynak and M. Kraynak, is Board-certified in Internal Medicine. *See* Director's Exhibit 95.

function study administered by Dr. R. Kraynak on June 19, 1996.[12] *See* Director's Exhibit 86. Furthermore, the administrative law judge misidentified a pulmonary function study administered by Dr. M. Kraynak on April 15, 1999 as a study administered on March 17, 1998. *See* Decision and Order at 11; Claimant's Exhibit 3.

Moreover, the administrative law judge cited the results of post-bronchodilator pulmonary function studies conducted on March 17, 1998 (actually April 15, 1999), December 21, 2000 and September 20, 2001. *See* Decision and Order at 11. Not only did the administrative law judge provide the incorrect exhibit numbers for these studies,[13] there is no evidence in the record of any post-bronchodilator studies having been administered on these dates.[14]

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[12]The administrative law judge actually listed the results of claimant's June 19, 1996 pulmonary function study, albeit under a pulmonary function study identified as having been administered on March 6, 1996. *See* Director's Exhibits 85, 86.

[13]The administrative law judge indicated that these studies were found at Director's Exhibit 133. In fact, claimant's April 15, 1999, December 21, 2000 and September 20, 2001 pulmonary function studies were admitted as Claimant's Exhibit 3, Claimant's Exhibit 13 and Claimant's Exhibit 22 respectively.

[14]In his consideration of whether the pulmonary function study evidence was sufficient to establish total disability, the administrative law judge recognized that the United States Court of Appeals for the Third Circuit, within whose jurisdiction the

instant case arises, has held that pulmonary function studies which return disparately higher values tend to be more reliable indicators of an individual's capacity than those with lower values. Decision and Order at 12 (citing *Andruscavage v. Director, OWCP*, No. 93-3291 (3d Cir. Feb. 22, 1994) (unpublished)). The administrative law judge, however, did not explain the significance of this holding in relation to the facts of the instant case.

In light of the above-referenced errors, we vacate the administrative law judge's finding that the pulmonary function study evidence is insufficient to establish total disability and remand the case for further consideration. 20 C.F.R. §718.204(b)(2)(i).

Claimant also argues that the administrative law judge's finding that the medical opinion evidence is insufficient to establish total disability is "convoluted, confusing, and inconsistent." Claimant's Brief at 15. In finding that the medical opinion evidence was insufficient to establish total disability, the administrative law judge credited Dr. Levinson's opinion. In his October 19, 2001 report, Dr. Levinson stated that:

> On the basis of the present examination and my review of the studies performed it is my professional opinion that [claimant] is not suffering from any form of industrial pulmonary disease and find that his current examination is negative for findings of coal workers' pneumoconiosis. He does have evidence of advanced arteriosclerotic cardiovascular disease and he has had known cerebral arteriosclerosis and has had carotid endarterectomy [sic] more recently he has undergone open heart surgery with four coronary bypasses in November of 1998. He has evidence of prior myocardial infarction with evidence of pleural effusion suggesting cardiac decompensation. I feel that his current symptomatology as well as his hypoxemia post exercise is a result of advanced cardiac disease with evidence of pleural effusion and developing congestive heart failure. I do not feel that his present complaints are in any way developed or aggravated as a result of his previous coal mine work.

Employer's Exhibit 14.

Dr. Levinson's assessment regarding the contribution of claimant's cardiac disease is contradicted by Dr. Longarini's opinion. Dr. Longarini, claimant's treating cardiologist, opined that claimant's symptomatology was not attributable to his cardiac condition. In a report dated January 2, 2001, Dr. Longarini noted that he had taken care of claimant "over the past several years." Claimant's Exhibit 14. Dr. Longarini further stated that:

> I have been asked to address [claimant's] cardiac condition related to a possible Black Lung Claim, and pursuant to his cardiac condition, specifically prior to and post operatively from his CABG surgery that was done in 1998, this patient has done quite well. I have noted stable control of his blood pressure, as well as his ability to be able to perform ADLs without obvious cardiac involvement such as chest pain or marked degrees of shortness of breath that would be attributed to coronary insufficiency. Now, in the absence of any signs of any coronary insufficiency and with normal LV EF also noted, via nuclear medicine imaging via stress evaluation. This particular exam was

> done on 6/22/2000 and in his subsequent visits since that time, he had a stable cardiac course and it should also be noted that the patient is on a treadmill exercise program at home and he is doing well on this, without signs of cardiac compromise.
>
> I believe that if the patient is in fact complaining of shortness of breath, it is certainly, in my estimation, *not* related to any cardiac compromise, as pursuant to recent evaluation done by myself, as well as his recent stress evaluation.

Claimant's Exhibit 14.

The administrative law judge credited Dr. Levinson's assessment regarding the contribution of claimant's cardiac disease over Dr. Longarini's contrary assessment based upon Dr. Levinson's Board-certification in Internal Medicine and Pulmonary Disease. Decision and Order at 15. The administrative law judge, however, erred in not addressing whether Dr. Levinson's opinion was sufficiently reasoned. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Moreover, the etiology of a claimant's totally disabling respiratory impairment is not relevant at 20 C.F.R. §718.204(b)(2)(iv). Consequently, the administrative law judge erred in not addressing whether Dr. Levinson's opinion supported a finding that claimant did not suffer from a totally disabling respiratory impairment, regardless of cause.

The administrative law judge also erred in discrediting the opinions of Drs. R. Kraynak, M. Kraynak and Kruk that claimant was totally disabled due to pneumoconiosis because they were inconsistent with the results of Dr. Longarini's stress test. Decision and Order at 15. The administrative law judge noted that Dr. Longarini's stress test indicated that claimant "was capable of performing 7 mets, without shortness of breath or chest pain." *Id.* The administrative law judge found that this level of activity was inconsistent with the opinions of Drs. R. Kraynak, M. Kraynak and Kruk. *Id.* The administrative law judge made an improper medical determination. The determination of the significance of claimant's cardiac stress test is a medical assessment for the doctor, rather than the administrative law judge. *See Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984).

In light of the above referenced errors, we vacate the administrative law judge's finding that the medical opinion evidence is insufficient to establish total disability. 20 C.F.R. §718.204(b)(2)(iv). Inasmuch as the administrative law judge did not address whether the medical opinion evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and in light of our decision to vacate the administrative law judge's findings that the pulmonary function and medical opinion evidence is insufficient to establish total disability, *see* 20 C.F.R. §718.204(b)(2)(i), (b)(2) (iv), we also vacate the administrative law judge's finding that the evidence is insufficient to establish that claimant's

total disability is due to pneumoconiosis. 20 C.F.R. §718.204(c); *see* *Bonessa v. United States Steel Corp.*, 884 F.2d 726, 13 BLR 2-23 (3d Cir. 1989).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge