BRB No. 03-0720 BLA

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| GEORGE F. BOWMAN | ) | |
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| Claimant-Petitioner | ) | |
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| v. | ) | |
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| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | DATE ISSUED: 09/10/2004 |
| | ) | |
| Respondent | ) | DECISION and ORDER |

Appeal of the Decision and Order - Denial of Benefits of Ralph A. Romano, Administrative Law Judge, United States Department of Labor.

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

Jeffrey S. Goldberg (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order - Denial of Benefits (02-BLA-0397) of Administrative Law Judge Ralph A. Romano rendered on claimant's request for modification of a duplicate 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] Claimant's first application for benefits, filed on September 12, 1980, was

[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.

finally denied by the district director on July 31, 1981, based on a finding that claimant did not establish any element of entitlement. Director's Exhibit 1. Claimant filed a second application for benefits on October 11, 1996, which was denied as abandoned on February 21, 1997. Director's Exhibit 2. On June 25, 1998, claimant filed his third and current application for benefits, which is a duplicate claim because it was filed more than one year after the previous denial. 20 C.F.R. §725.309(d) (2000); Director's Exhibit 3.

By Decision and Order dated September 17, 1999, Administrative Law Judge Paul H. Teitler credited claimant with twelve and one-half years of coal mine employment and found that claimant established the existence of pneumoconiosis and that he was totally disabled, but did not establish that his total disability was due to pneumoconiosis. Director's Exhibit 24. Accordingly, Judge Teitler denied benefits.

Upon review of claimant's appeal, the Board affirmed Judge Teitler's determinations with respect to length of coal mine employment and pursuant to 20 C.F.R. §§718.202, 718.203, 718.204(c)(2), and (c)(3) (2000) as unchallenged on appeal. The Board also affirmed Judge Teitler's finding pursuant to 20 C.F.R. §718.204(c)(1) (2000), as it was supported by substantial evidence. The Board vacated, however, Judge Teitler's findings under 20 C.F.R. §718.204(b) and (c)(4) (2000), because he relied on the opinion of Dr. Green without first determining whether the Director, Office of Workers' Compensation Programs (the Director), established good cause for submitting Dr. Green's report less than twenty days before the hearing. *See* 20 C.F.R. §725.456(b)(2) (2000); *Bowman v. Director, OWCP*, BRB No. 00-0103 BLA (Oct. 31, 2000) (unpub.); Director's Exhibit 27.

On remand, Judge Teitler found that the Director established good cause for the untimely submission of Dr. Green's report. Judge Teitler additionally found that Dr. Green's opinion attributing claimant's total disability to heart disease outweighed those of Drs. Raymond Kraynak and Matthew Kraynak stating that claimant is totally disabled due to pneumoconiosis. Consequently, Judge Teitler found that claimant failed to establish that he is totally disabled due to pneumoconiosis under 20 C.F.R. §718.204(c). Director's Exhibit 28. Accordingly, Judge Teitler denied benefits.

On May 14, 2002, claimant filed a timely petition for modification with supporting evidence. See 20 C.F.R. §725.310 (2000); Director's Exhibit 30. After holding a hearing, Administrative Law Judge Ralph A. Romano (the administrative law judge), credited claimant with twelve and one-half years of coal mine employment, and noted that claimant's prior claim was denied because he failed to establish that he was totally disabled due to pneumoconiosis. Considering the evidence of record, the administrative law judge found that claimant failed to establish either a mistake in a determination of fact or a change in conditions, because the evidence of record failed to establish either total disability or disability causation, which were elements previously adjudicated

against claimant. Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge failed to consider whether Judge Teitler made a mistake of fact when he found that good cause justified the Director's untimely submission of Drs. Green's medical report under 20 C.F.R. §725.456(b)(2). Claimant further asserts that the administrative law judge did not consider fully the entire record when he found that claimant did not establish a mistake in a determination of fact, because the administrative law judge did not address claimant's specific allegations of prior mistaken factual findings. Claimant also argues that the administrative law judge erred in his analysis of the pulmonary function study and medical opinion evidence when he found that claimant did not establish that he is totally disabled by a respiratory impairment or that his total disability is due to pneumoconiosis. The Director responds, arguing that the administrative law judge erred in failing to consider fully previously submitted evidence from claimant's first two claims when he found that no mistake of fact was established. Further, the Director argues that the administrative law judge's weighing of the newly submitted pulmonary function and blood gas study evidence was proper, but that the administrative law judge erred in his weighing of the medical opinion evidence on the issue of total disability. Accordingly, the Director urges the Board to vacate the decision denying benefits and to remand the case for further consideration of the medical opinion evidence.[2]

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 the 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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

The Director argues that the administrative law judge erred in finding that claimant failed to prove a material change in conditions since the denial of the prior claim. We agree. The administrative law judge noted that this case involves claimant's petition for modification of his 1998 duplicate claim, and stated, "If the evidence provides one of the elements of entitlement that formed the basis of the last denial of benefits by Judge Teitler, thereby establishing a change in condition or that a mistake in a determination of fact was made, the Claimant will have demonstrated a material change in conditions as a matter of law." Decision and Order at 6. Because he found that claimant established neither a mistake in a determination of fact nor a change in conditions, the administrative law judge found that claimant did not establish a material

[2] The administrative law judge's determination regarding the length of coal mine employment is affirmed as it was unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 4.

change in conditions under Section 725.309(d) (2000). Decision and Order at 14. As the Director notes, however, claimant previously failed to establish any element of entitlement, Director's Exhibits 1, 2, but, in his third claim, established the existence of pneumoconiosis, as found by Judge Teitler. Director's Exhibits 24, 28. Because claimant established an element of entitlement previously decided against him, he established a material change in conditions as required by Section 725.309(d) (2000). *Labelle Processing Co. v. Swarrow*, 72 F.3d 308, 20 BLR 2-76 (3d Cir. 1995). Consequently, the material change in conditions issue was not before the administrative law judge on modification. Nevertheless, the administrative law judge's error was harmless, as it is not dispositive of the outcome of this case. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Claimant argues that the administrative law judge erred in not considering whether Judge Teitler made a mistake in a determination of fact in the prior decision when he admitted Dr. Green's medical report into evidence based on a finding that the Director established good cause for his untimely submission of Dr. Green's report in violation of the twenty-day rule. Accordingly, claimant argues that the administrative law judge erred in relying on Dr. Green's report to find that claimant was not totally disabled. Although Judge Teitler permitted claimant to submit rebuttal evidence responding to Dr. Green's report and objective tests, claimant contends that Judge Teitler erred in excluding his additional evidence that rebutted the Director's reports concerning the validity of claimant's February 8, 1999 and April 7, 1999 pulmonary function studies.

The Director responds, and citing *Donadi v. Director, OWCP*, 13 BLR 1-24, 1-28 (1989), argues that Judge Teitler's prior finding of good cause for the untimely submission of the Director's evidence cannot serve as a basis for a finding of a mistake in a determination of fact on modification because this evidentiary ruling is a "collateral issue… which [did] not determine the ultimate issue in [this] case." Director's Response Brief at 17-18 n.5. Moreover, the Director asserts that claimant's argument is moot because Judge Teitler admitted claimant's rebuttal evidence to Dr. Green's report. Although Judge Teitler refused to admit all of claimant's rebuttal evidence, the Director asserts that any error by Judge Teitler has been remedied because the previously excluded evidence is now contained in the record at Director's Exhibit 23. *See* [2003] Hearing Transcript at 5-6.

The formal hearing before Judge Teitler was held on May 18, 1999. On May 12, 1999, the Director submitted and exchanged the report of Dr. Green, less than the requisite twenty days prior to the formal hearing. Judge Teitler admitted Dr. Green's 1999 report into the record and relied on it to find that claimant was totally disabled due to heart disease and not pneumoconiosis, and therefore, that claimant failed to establish total disability causation. Director's Exhibit 24 at 15. As Dr. Green's report was not submitted twenty days prior to the hearing and the parties did not waive the twenty-day

requirement set forth in Section 725.456(b), the Board vacated Judge Teitler's determinations at Section 718.204(b) and (c)(4) (2000) because he failed to determine whether the Director established good cause for untimely submitting the report. *Bowman*, slip op. at 3; Director's Exhibit 27 at 3. On remand, Judge Teitler found that the Director demonstrated good cause for the untimely filing of Dr. Green's report based on the facts of the case and the parties' arguments. Director's Exhibit 28 at 2-3. Additionally, Judge Teitler permitted claimant to submit post-hearing evidence responding to Dr. Green's 1999 report and pulmonary function study, but excluded claimant's evidence responding to Dr. Ranavaya's invalidation of the February 8, 1999 pulmonary function study and to Dr. Michos's invalidation of the April 7, 1999 pulmonary function study. Director's Exhibit 28 at 4.

We agree with the Director that, based on the particular facts of this case, Judge Teitler's discretionary determination that the Director established good cause for the untimely submission of Dr. Green's report is not subject to modification because Judge Teitler was resolving a procedural matter that is not within the scope of issues that are subject to modification, i.e., issues of entitlement. *See* 20 C.F.R. §725.310. The proper recourse for correction of error, if any, would have been a timely appeal or motion for reconsideration, neither of which were pursued. *See* 20 C.F.R. §§725.480, 725.481, 802.205; *Donadi*, 13 BLR at 1-28. Furthermore, a review of the record reveals that, consistent with the Director's assertion, claimant's rebuttal evidence addressing the validity of the February 8, 1999 and April 7, 1999 pulmonary function studies is contained in the record at Director's Exhibit 23. Hence, because claimant was afforded the opportunity to respond to Dr. Green's report submitted by the Director, and all of claimant's evidence which responds to the Director's late evidence is contained in the record, claimant has not been deprived of due process or the opportunity for a full presentation of his case. *See* 20 C.F.R. §725.456(b)(2), (3); *North American Coal Co. v. Miller*, 870 F.2d 948, 951, 12 BLR 2-222, 2-227-228 (3d Cir. 1989); *see also Bethlehem Mines Corp. v. Henderson*, 939 F.2d 143, 148, 16 BLR 2-1, 2-5 (4th Cir. 1991); *Stephensen v. Director, OWCP*, 7 BLR 1-212, 1-215 (1984); *Baggett v. Island Creek Coal Co.*, 6 BLR 1-1311, 1-1314 (1984); Director's Exhibit 23. Accordingly, we reject claimant's argument that the administrative law judge erred in not finding that Judge Teitler made a mistake in a determination of fact in admitting late evidence.

Both claimant and the Director contend that the administrative law judge did not address claimant's specific allegations that mistakes in determinations of fact occurred in the prior decision denying benefits, and thus did not make specific findings or provide a rationale for his conclusion that no mistake in a determination of fact was demonstrated, as required by the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2).

On the specific facts of this case, we hold that the administrative law judge's analysis cannot be affirmed. In finding that a mistake in a determination of fact was not established, the administrative law judge concluded, "[b]ased upon a review of the evidence previously submitted, I find that no mistake in a determination of fact has been made." Decision and Order at 6. Absent from this discussion, however, is any analysis of the allegations of mistaken factual findings in Judge Teitler's prior decision that were raised by claimant before Judge Romano. *See* Claimant's Brief in Support of Claim Petition at 9-21; *see also* Claimant's Brief in Support of Petition for Review at 5-17. Because the administrative law judge did not address claimant's specific assertions that a mistake in a determination of fact was demonstrated when the administrative law judge reviewed the prior evidence, we vacate his finding that no mistake in a determination of fact was made, and we remand the case for further consideration. *See Branham v. BethEnergy Mines, Inc.*, 20 BLR 1-27, 1-34 (1996)(instructing administrative law judge to address specific allegations of mistake); *Keating v. Director, OWCP*, 71 F.3d 1118, 1123, 20 BLR 2-53, 2-62-63 (3d Cir. 1995). On remand, the administrative law judge must consider the entirety of the evidentiary record and discuss claimant's allegations of mistakes in determinations of fact, and clearly state why he credits or discredits specific evidence in reaching his findings and conclusions, in compliance with the APA. *See Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 356, 21 BLR 2-83, 2-90-91 (3d Cir. 1997); *Marx v. Director, OWCP*, 870 F.2d 114, 119, 12 BLR 2-199, 2-207 (3d Cir. 1989); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *Vickery v. Director, OWCP*, 8 BLR 1-430 (1986).

Claimant next contends that the administrative law judge erred in his evaluation of the two newly submitted pulmonary function studies dated December 4, 2002 and January 30, 2003.[3] Concerning the qualifying pulmonary function study dated December 4, 2002, which was administered by Dr. Raymond Kraynak, claimant argues that the

[3] Claimant argues that the administrative law judge erred in addressing the issue of total disability because Judge Teitler and the Board previously determined that total disability was established. Claimant filed a Motion to Strike the disability issue, which was denied by Administrative Law Judge Robert D. Kaplan. Claimant moved for reconsideration of Judge Kaplan's ruling. Claimant asserts that although he and the Director addressed this issue in post-hearing briefs filed before the administrative law judge, "the record is unclear as to whether there was ever a ruling on that Motion." Claimant's Brief in Support of Petition for Review at 3-4. Contrary to claimant's argument, however, the administrative law judge addressed this issue in his Decision and Order and denied claimant's motion to strike the issue of total disability based upon a review of the record, the parties' post-hearing arguments, and the reasons set forth by Judge Kaplan. Decision and Order at 2 n.1. Substantial evidence supports the administrative law judge's determination that total disability was, and continues to be, a contested issue throughout these proceedings.

administrative law judge erred in crediting the invalidation of the study by Dr. Michos, without considering Dr. Simelaro's report that the study was valid. Claimant further asserts that, contrary to the administrative law judge's inference, the record contains no medical evidence that claimant's Alzheimer's disease affected his performance on the December 4, 2002 test. Additionally, claimant contends that the administrative law judge erred in accepting the January 30, 2003, non-qualifying, pulmonary function study as evidence that claimant is not totally disabled, without considering that Dr. Raymond Kraynak invalidated the study because claimant was unable to cooperate during the test due to his Alzheimer's disease, resulting in technical problems that caused the study to record higher values than would have been recorded had claimant been able to perform the test properly. Claimant's Exhibit 14.

In response, the Director asserts that the administrative law judge acted within his discretion in crediting Dr. Michos's opinion that the December 2002 study, which was performed less than two months prior to the January 2003 test, was invalid because it was performed at a time when claimant suffered from Alzheimer's disease, a condition which rendered the January 2003 study invalid. Thus, the Director contends that the Board should affirm the administrative law judge's finding pursuant to Section 718.204(b)(2)(i) as it is supported by substantial evidence in the record.

In concluding that the new pulmonary function study evidence did not establish total disability, the administrative law judge credited Dr. Raymond Kraynak's opinion that the January 2003 study was invalid because claimant's Alzheimer's disease adversely affected his ability to comprehend and cooperate in the administration of the study. Claimant's Exhibit 14. The administrative law judge found that Dr. Raymond Kraynak's opinion, that claimant was unable to comprehend or cooperate on the January 2003 study due to Alzheimer's disease, would "invalidate the study he administered as well" in December 2002 because claimant also suffered from Alzheimer's disease at that time. Decision and Order at 10. The administrative law judge noted that such an inference was supported by the fact that Dr. Michos invalidated the December 2002 study because of suboptimal effort, cooperation and comprehension.

A review of the record reveals that when Dr. Kraynak examined claimant on December 4, 2002, he observed claimant to be "[w]ell-oriented to person, place[,] and time." Claimant's Exhibit 4 at 3. When Dr. Kraynak administered the December 4, 2002 pulmonary function study, he recorded that claimant's effort, cooperation, and comprehension were "good." Claimant's Exhibit 12. Upon review of the test tracings, Dr. Simelaro opined that the December 4, 2002 pulmonary function test was valid. Claimant's Exhibit 12. Consequently, claimant is correct that the record lacks any statement by a physician that Alzheimer's disease affected claimant's ability to cooperate

while performing the December 2002 pulmonary function study.[4] Additionally, as claimant correctly argues, the administrative law judge did not consider Dr. Simelaro's opinion that the December 2002 pulmonary function study was valid. Because the administrative law judge must consider all relevant evidence, 30 U.S.C. §923(b), and is not permitted to substitute his opinion for that of a physician, *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 9 BLR 2-1 (3d Cir. 1986), we vacate the administrative law judge's findings regarding the December 4, 2002 pulmonary function study pursuant to Section 718.204(b)(2)(i).

Likewise, substantial evidence does not support the administrative law judge's finding that, because pulmonary function studies are effort-dependent, the January 2003 non-qualifying study established that claimant is not totally disabled. Dr. Green, who administered the pulmonary function study, noted that claimant was unable to cooperate but concluded that the study understated claimant's respiratory ability. Director's Exhibit 41. However, Dr. Kraynak concluded that claimant was unable to cooperate and the resulting study overstated his respiratory ability. Claimant's Exhibit 14. The administrative law judge did not resolve the conflict between these two medical opinions before he found that the January 2003 non-qualifying pulmonary function test was "more probative" because pulmonary function studies "are effort dependent." Decision and Order at 10. Consequently, we must vacate the administrative law judge's assessment of this pulmonary function study and instruct him to consider all of the relevant evidence concerning the study's validity. *See Director, OWCP v. Siwiec*, 894 F.2d 635, 13 BLR 2-259 (3d Cir. 1990); *Director, OWCP v. Mangifest*, 826 F.2d 1318, 10 BLR 2-220 (3d Cir. 1987).

Claimant argues further that the administrative law judge erred in finding that the newly submitted medical opinion evidence failed to establish total disability. Specifically, claimant argues that the administrative law judge erred in discounting the opinions of Drs. Khanna, Raymond Kraynak, and Matthew Kraynak, claimant's treating physicians, and the opinion of Dr. Prince, a Board-certified pulmonologist, all of whom diagnosed a totally disabling respiratory impairment. The Director agrees with claimant, asserting that the administrative law judge erred in finding that Dr. Prince's opinion was based solely on previously submitted evidence and that his diagnosis was unexplained. The Director asserts further that, in weighing the opinions of Dr. Matthew Kraynak and Dr. Raymond Kraynak, the administrative law judge erred in finding that the only medical evidence they relied on was the December 2002 pulmonary function study. The Director also contends that the administrative law judge erred by finding that Dr. Green's conclusion was supported by the most recent blood gas study and pulmonary function study, when the administrative law judge found that the most recent pulmonary function

[4] Dr. Michos noted suboptimal effort but did not attribute it to any specific medical condition. Director's Exhibit 42.

study was invalid.

We agree with the argument of claimant and the Director that substantial evidence does not support the administrative law judge's analysis of some of the medical opinion evidence. The administrative law judge rejected Dr. Prince's opinion because he found that Dr. Prince neither explained how he reached his conclusion nor reviewed the newly submitted medical evidence. However, the record reflects that Dr. Prince relied on multiple, qualifying pulmonary function studies, claimant's medical and employment histories, physical examinations, x-ray interpretations, arterial blood gas studies, claimant's physical limitations, as well as the post-modification reports of Dr. Raymond Kraynak and Dr. Khanna, dated May 14, 2002 and September 20, 2002 respectively, to reach his determination that claimant was totally disabled. *See Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); Claimant's Exhibits 9, 10. Similarly, the administrative law judge's statement that the opinions of Drs. Matthew and Raymond Kraynak "were unsupported by the reliable medical evidence of record," Decision and Order at 12, was not rational because the administrative law judge did not specifically discuss the record in its entirety and thus, he did not render any determinations as to the reliability or probative value of the conflicting evidence. Accordingly, we vacate the administrative law judge's determination that the newly submitted medical opinion evidence is insufficient to demonstrate total respiratory or pulmonary disability at Section 718.204(b)(2)(iv). On remand, the administrative law judge should consider that claimant has been treated by Dr. Matthew Kraynak since 1996 and by Dr. Raymond Kraynak since 1999 and that both physicians' diagnoses of a totally disabling respiratory impairment were based on physical examinations, diagnostic tests, claimant's symptomatology, and medical and employment histories. 20 C.F.R. §718.104(d); *see Soubik v. Director, OWCP*, 366 F.3d 226, 235, BLR (3d Cir. 2004); *Balsavage v. Director, OWCP*, 295 F.3d 390, 22 BLR 2-386 (3d Cir. 2002); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *Mancia v. Director, OWCP*, 130 F.3d 579, 21 BLR 2-215 (3d Cir. 1997); Claimant's Exhibits 4, 6, 8, 14; Director's Exhibits 2, 10, 21, 23, 30.

Contrary to claimant's argument, however, the administrative law judge properly found that Dr. Khanna's opinion was insufficient to demonstrate total respiratory disability because Dr. Khanna failed to term claimant totally disabled or to address the severity of a pulmonary or respiratory impairment. *See Gee v. W.G. Moore & Sons*, 9 BLR 1-4, 1-6 (1986); Claimant's Exhibit 1. Similarly, contrary to the Director's assertion, Dr. Green's reliance on an invalid pulmonary function study does not necessarily undermine the probative value of his opinion, because he also relied on claimant's medical and employment histories, physical examination, x-rays interpretation, and a non-qualifying arterial blood gas study. *Cf. Siwiec*, 894 F.2d at 639,

13 BLR at 2-267 (holding medical opinion that was based entirely on non-conforming pulmonary function evidence was unreasoned).

Claimant finally asserts that the administrative law judge erred in relying on the opinions of Drs. Singzon, Michos, and Green, to find that claimant failed to establish that he is totally disabled due to pneumoconiosis, because, contrary to the administrative law judge's acceptance of the fact that pneumoconiosis was established, these physicians did not diagnose the existence of pneumoconiosis. Subsequent to the issuance of the administrative law judge's decision, the United States Court of Appeals for the Third Circuit, within whose jurisdiction this case arises, held that "an [administrative law judge] may not credit a medical opinion stating that a claimant did not suffer from pneumoconiosis causing respiratory disability after the [administrative law judge] ha[s] already accepted the presence of pneumoconiosis unless the [administrative law judge] state[s] 'specific and persuasive reasons' why he or she relied upon such an opinion." *Soubik v. Director, OWCP*, 366 F.3d 226, 234, BLR (3d Cir. 2004), *citing Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002). Since we herein vacate the administrative law judge's findings at Section 718.204(b)(2)(i) and (iv), we also vacate his finding that claimant failed to establish disability causation pursuant to Section 718.204(c). Because the administrative law judge accepted the presence of pneumoconiosis in this case, he must examine the relevant medical opinions of record to determine whether claimant established causation in accordance with *Soubik* if he finds total respiratory disability established on remand.

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed in part, 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

BETTY JEAN HALL
Administrative Appeals Judge