BRB No. 07-0927 BLA

B.S.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
GOLDEN OAK MINING COMPANY	)	
	)	DATE ISSUED: 09/30/2008
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order - Award of Benefits of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

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

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

PER CURIAM:

Employer appeals the Decision and Order - Award of Benefits (2005-BLA-05890) of Administrative Law Judge Thomas F. Phalen, Jr., rendered on a subsequent 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 a Decision and Order issued on

[1] Claimant filed prior claims for benefits on October 22, 1993 and October 13, 2000, which were denied by the district director for failure to establish any of the requisite elements of entitlement. Director's Exhibit 1. Claimant also filed a claim in February 2002, which he subsequently withdrew. Claimant took no further action with

July 25, 2007, the administrative law judge credited claimant with thirty-two years of coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. Initially, the administrative law judge found that employer failed to rebut the presumption that claimant's current claim is timely filed pursuant to 20 C.F.R. §725.308. The administrative law judge then determined that the new evidence, developed since the denial of claimant's prior claim, was sufficient to establish that he was totally disabled due to a respiratory or pulmonary impairment and, therefore, that claimant had demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). Based on his review of all the record evidence, the administrative law judge found that claimant established the existence of legal pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4) and 718.203(b). Further, the administrative law judge found the evidence was sufficient to establish that claimant was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that the claim was timely filed. Employer also challenges the administrative law judge's decision to strike evidence, *sua sponte*, based on the evidentiary limitations set forth in 20 C.F.R. §725.414. Further, employer contends that the administrative law judge erred in relying on the September 9, 2004, pulmonary function study in finding total disability established pursuant to 20 C.F.R. §718.204(b)(2)(i) and, thus, incorrectly determined that a change in an applicable condition of entitlement was demonstrated under 20 C.F.R. §725.309. Employer also challenges the administrative law judge's findings that the evidence was sufficient to establish the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), and that claimant's total disability was due to pneumoconiosis at 20 C.F.R. §718.204(c). Lastly, employer asserts that the administrative law judge erred in failing to render a finding with respect to the date from which benefits commence. Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has not participated in this appeal. Employer has filed a reply, reiterating its contentions.[2]

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,

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respect to the denial of his 2000 claim until he filed the current subsequent claim on April 22, 2004. Director's Exhibit 3.

[2] Because the administrative law judge's finding that claimant established thirty-two years of coal mine employment is not challenged on appeal, it is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

and in accordance with applicable law.[3] 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).

Initially, we address employer's contention that the administrative law judge erred in finding that claimant timely filed his subsequent claim. Section 422(f) of the Act, 30 U.S.C. §932(f), and its implementing regulation at 20 C.F.R. §725.308(a), provide that a claim for benefits must be filed within three years of a medical determination of total disability due to pneumoconiosis, which has been communicated to the miner. The regulation at 20 C.F.R. §725.308(c), however, provides a rebuttable presumption that every claim for benefits filed under the Act is timely filed. 20 C.F.R. §725.308(c). In *Tennessee Consolidated Coal Co. v. Kirk*, 264 F.3d 602, 22 BLR 2-288 (6th Cir. 2001), the United States Court of Appeals for the Sixth Circuit stated that it is "employer's burden to rebut the presumption of timeliness by showing that a medical determination satisfying the statutory definition was communicated to [claimant]" more than three years prior to the filing of his/her claim. *Kirk*, 264 F.3d at 607, 22 BLR at 2-296. In addition, in defining what constitutes a medical determination that is sufficient to start the running of the three year limitations period, the Sixth Circuit court, in *Kirk*, stated that the statute relies on the "trigger of the reasoned opinion of a medical professional." *Id*.

To rebut the presumption of timeliness in this case, employer relies solely on claimant's hearing testimony. At the September 20, 2005 hearing, claimant was asked by employer's counsel, "Was it about February 2001 that Dr. Alam told you that you had black lung disease and that as a result of it, you're totally disabled?" Hearing Transcript at 33. Claimant responded, "Yes, I'm not sure of the date because I can't remember." *Id.* Employer's counsel asked, "Is that in the ballpark though as far as timewise?" *Id.* Claimant answered, "Somewhere there. I really can't remember how many years it's been." *Id.* Employer's counsel continued, "The winter of 2001?" *Id.* Claimant replied, "It could have been." *Id*.

The administrative law judge, who sought to clarify claimant's testimony, also asked, "Well, your best testimony, [claimant], is that you think it was around [what date] that you were told you had black lung and were totally disabled? This is very important for you to get it accurate." Hearing Transcript at 34-35. Claimant replied, "Well, I had every doctor I went to, every doctor just about I ever went to has told me I had black lung. Dr. Alam probably was the first doctor who told me I was totally disabled." *Id*. at

[3] The record indicates that claimant's coal mine employment was in Kentucky. Director's Exhibit 1. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

35. The administrative law judge then asked, "And can you remember specifically when that was maybe by a visit in terms of month and year?" *Id*. Claimant responded, "No, I can't. My memory is not real good and I'd have to go and get it from them, Dr. Alam, to know exactly when it was." *Id.*

In his Decision and Order, the administrative law judge found that claimant did not receive a reasoned medical determination of total disability from Dr. Alam in 2001, sufficient to rebut the presumption of timeliness. Decision and Order at 7. Employer asserts that the administrative law judge erred in failing to find claimant's testimony, standing alone, to be sufficient to rebut the timeliness presumption. Citing *Island Creek Coal Co. v. Henline*, 456 F.3d 421, 425-26, 23 BLR 2-321, 2-330 (4th Cir. 2006), employer argues that the administrative law judge erred in his analysis at 20 C.F.R. §725.308 because he required Dr. Alam's communication to be in writing in order to trigger the statute of limitations. Employer's Brief at 14. Employer also argues that it is not necessary for the administrative law judge to inquire as to whether Dr. Alam provided a reasoned diagnosis of total disability in 2001, as claimant's testimony is uncontradicated as to what he was told by Dr. Alam. We disagree.

Contrary to employer's contention, the administrative law judge specifically acknowledged that Dr. Alam's communication did not have to be in writing in order to trigger the statute of limitations. Decision and Order at 7. He then properly considered whether Dr. Alam's oral communication constituted a "reasoned" medical determination of total disability as required by *Kirk*. *See Kirk*, 264 F.3d at 607, 22 BLR at 2-296. As noted by the administrative law judge, the only treatment records from Dr. Alam contained in the record are located at Director's Exhibit 25, and they are dated 2004, subsequent to the alleged time that claimant was told by Dr. Alam that he was totally disabled due to pneumoconiosis. *Id*. The administrative law judge also specifically found that the 2004 treatment records were "unreasoned for the purposes of diagnosing pneumoconiosis." Decision and Order at 7 n.13; *see* Director's Exhibit 25 at 3, 5, 7-10, 12-16. Thus, because the administrative law judge found that there was "no record upon which [he could] evaluate Dr. Alam's reasoning in giving a diagnosis of total disability due to pneumoconiosis [in 2001]," the administrative law judge found that employer had not rebutted the 20 C.F.R. §725.308 presumption of timeliness by showing that a reasoned medical determination of total disability had been communicated to claimant more than three years prior to April 22, 2004, the filing date of the subsequent claim. *Id*.

Insofar as the administrative law judge, as the trier-of-fact, was unable to discern from either the objective evidence or Dr. Alam's treatment notes contained in the record, whether Dr. Alam's 2001 diagnosis of total disability due to pneumoconiosis was a reasoned medical determination sufficient to trigger the statute of limitations, we affirm his finding that employer failed to rebut the presumption pursuant to 20 C.F.R. §725.308(c). *See Kirk*, 264 F.3d at 607, 22 BLR at 2-296; *Brigance v. Peabody Coal*

Co., 23 BLR 1-170, 1-175 (2006)(*en banc*), *recon. denied en banc*, BRB No. 05-0722 BLA (Oct. 26, 2006)(Order)(unpub.); Hearing Transcript at 29-37. Thus, we affirm the administrative law judge's finding that the present claim was timely filed.

Employer's next argument is that the administrative law judge erred in finding that claimant satisfied the requirements of 20 C.F.R. §725.309. Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d); *White v. New White Coal Co., Inc.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2).

In this case, claimant's prior claim was denied because he failed to establish any of the requisite elements of entitlement. Because the administrative law judge determined that the newly submitted evidence was sufficient to establish that claimant has a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2), the administrative law judge also found that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Decision and Order at 15-19. Employer's challenges the administrative law judge's finding that claimant established total disability, asserting that the administrative law judge misstated the quality of the evidence that he found to be supportive of claimant's case. We agree.

Under 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered five newly submitted pulmonary function studies and found that the first four studies, dated May 24, 2004, May 25, 2004, May 26, 2004 and July 29, 2004, were invalid. Decision and Order at 17; Director's Exhibits 11, 25. In contrast, the administrative law judge found that Dr. Fino's September 9, 2004 pulmonary function study was not only valid but qualifying for total disability,[4] both before and after bronchodilators were administered. Decision and Order at 17; Director's Exhibit 27. Thus, because the administrative law judge found that there was only one valid pulmonary function study of record, which produced qualifying results, the administrative law judge found that claimant established total disability pursuant to subsection (b)(2)(i). *Id*.

In assessing the September 9, 2004 pulmonary function study, the administrative law judge noted that claimant's cooperation was "poor" and that there were tracings

[4] A "qualifying" objective study yields values that are equal to or less than those listed in the tables at 20 C.F.R. Part 718, Appendices B, C. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

included with the study. Decision and Order at 9-10; *see* Director's Exhibit 27 at 10, 11. However, a review of the record indicates that, contrary to the administrative law judge's statement, the technician administering the September 9, 2004 study wrote that claimant expended "[p]oor effort on DLCO" with respect to the diffusion portion of the pulmonary function study and "questionable effort" on the spirometry portion of the study. *See* Decision and Order at 9-10; Director's Exhibit 27 at 10. Furthermore, we note that there is only one tracing that accompanied the September 9, 2004 study, as opposed to three tracings as suggested by the administrative law judge. Director's Exhibit 27 at 10-11. Thus, in light of the administrative law judge's failure to adequately address the validity of the September 9, 2004 study, and since he specifically rejected other pulmonary function studies in the record as being invalid because they did not have three tracings,[5] we must vacate the administrative law judge's finding at 20 C.F.R. §718.204(b)(2)(i) and remand the case for further consideration. On remand, the administrative law judge must determine whether the September 9, 2004 pulmonary function study is a valid and qualifying test for total disability, sufficient to satisfy claimant's burden of proof at 20 C.F.R. §718.204(b)(2)(i). *See* 20 C.F.R. §718.103.

In light of the administrative law judge's failure to properly consider whether the September 9, 2004 pulmonary function study is valid, we must also vacate the administrative law judge's findings at 20 C.F.R. §718.204(b)(2)(iv). In finding that the medical opinion evidence was sufficient to establish that claimant is totally disabled, the administrative law judge specifically relied upon the opinion of Dr. Baker, who opined that clamant was totally disabled based, in part, on his review of the September 9, 2004 study. Dr. Dahhan, whose opinion was also credited by the administrative law judge, similarly opined that claimant was totally disabled in light of the September 9, 2004 pulmonary function results. Because the validity of the September 9, 2004 study has yet to be properly resolved under 20 C.F.R. §718.204(b)(2)(i), we vacate the administrative law judge's finding that the opinions of Drs. Baker and Dahhan are sufficient to establish that claimant is totally disabled under 20 C.F.R. §718.204(b)(2)(iv), and his finding that claimant established a change in an applicable conditions of entitlement pursuant to 20 C.F.R. §725.309.

In the interest of judicial economy, we also address employer's argument that the administrative law judge erred in his analysis of the medical opinion evidence as to whether claimant established the existence of legal pneumoconiosis at 20 C.F.R.

[5] The administrative law judge found the pulmonary function study dated May 26, 2004 to be "invalid because it is not accompanied by three tracings." Decision and Order at 17; Director's Exhibit 25.

§718.202(a)(4)[6] and disability causation pursuant to 20 C.F.R. §718.204(c).[7] Employer argues that the administrative law judge erred in crediting the opinions of Drs. Baker and Fino, that claimant has a respiratory condition due, in part, to coal dust exposure, over the contrary opinions of Drs. Broudy and Dahhan, that claimant's respiratory condition is due entirely to smoking. Employer maintains that in rendering his credibility determinations, the administrative law judge erred by failing to properly resolve the conflicts in the record regarding the length of claimant's smoking history.

Claimant testified at the hearing that he smoked for about eight or ten years, quitting in 1993. Hearing Transcript at 21. The administrative law judge found that because claimant's testimony was "consistent with the history he provided to all the physicians who provided examinations in conjunction with his claim for black lung, who all listed [c]laimant as having smoked for ten half-pack years. . . . [t]his would equate to five pack years." Decision and Order at 14. The administrative law judge further stated:

> There are treatment records indicating that as of September 12, 1995, [c]laimant may have been smoking a half pack a day, and as of February 5, 2004, he may have been smoking three quarter packs a day. This information was provided to his doctors in association with his blood pressure problems. However, I find that these treatment records are not admissible under [20 C.F.R. §]725.414(a)(4). Furthermore, neither party addressed or briefed this issue. Therefore, I credit neither the implication that [c]laimant was continuing to smoke up to 3/4 [a] pack a day, nor any argument that he had a ten pack year history of smoking.

Decision and Order at 14-15 n. 23.

In weighing the medical opinion evidence at 20 C.F.R. §718.202(a)(4), the administrative law judge noted that while Dr. Broudy opined that claimant had chronic obstructive pulmonary disease (COPD) due to smoking, his opinion was less credible

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[6] Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment. *Id.*

[7] We affirm, as unchallenged by the parties on appeal, the administrative law judge's finding that claimant was unable to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(3), and his finding that the evidence was insufficient to establish the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *See Skrack*, 6 BLR at 1-711.

because Dr. Broudy "did not explain *how* a five pack year smoking history, and the fact [c]laimant had not smoked for over ten years, could be the sole etiology for Claimant's pulmonary condition." Decision and Order at 23 (emphasis in the original). The administrative law judge specifically assigned controlling weight to the opinions of Drs. Baker and Fino, because he found that they "clearly articulated their opinion[s] that a lack of a lengthy smoking history could not be responsible for [c]laimant's current pulmonary condition." Decision and Order at 24.

Employer argues that the administrative law judge improperly found that claimant had a five pack year smoking history by "unilaterally and impermissibly excluding" relevant treatment notes, pertaining to the length of claimant's smoking history, from the record. Employer's Brief in Support of Petition for Review at 20. Employer's argument has merit, in part.

The regulation at 20 C.F.R. §725.414(a)(4), states that "any record of a miner's hospitalization for a respiratory or pulmonary or related disease, or medical treatment for a respiratory or pulmonary or related disease" may be admitted into the record. 20 C.F.R. §725.414(a)(4); Decision and Order at 13. Although the administrative law judge excluded a February 5, 2004 treatment note on the ground that it did not pertain to claimant's treatment for a respiratory condition, the administrative law judge failed to properly consider that claimant complained of shortness of breath and productive cough during that office visit. Director's Exhibit 25-22. Similarly, with respect to the September 12, 1995 treatment note, although claimant was seen for complaints of ulcers, the doctor noted that claimant had a history of COPD, and recommended a complete physical examination. Director's Exhibit 25-46. Since the administrative law judge has not specifically addressed whether the notation of claimant's respiratory complaints in the February 5, 2004 treatment note is sufficient to satisfy the requirements of 20 C.F.R. §725.414(a)(4), we vacate his evidentiary ruling and remand this case for further consideration. If the February 5, 2004 treatment note is found to be admissible, the administrative law judge should consider the note with regard to claimant's smoking habit, and then render, if necessary, a new finding as to the length of claimant's smoking history.[8]

Furthermore, because the administrative law judge relied on his findings as to the length of claimant's smoking history in assessing the relative credibility of the medical

[8] Employer also argues that "the smoking habit reported in those [excluded] treatment notes certainly is relevant to [claimant's] respiratory or pulmonary status even if the purpose of the visit was not directly related to a respiratory condition." Employer's Brief in Support of Petition for Review at 20. On remand, the administrative law judge should address this particular argument in his consideration of whether the treatment notes are admissible pursuant to 20 C.F.R. §725.414(a)(4).

experts, as to the presence or absence of legal pneumoconiosis, we vacate his finding at 20 C.F.R. §718.202(a)(4). On remand, the administrative law judge must consider each medical opinion to determine whether the physician had an accurate understanding of claimant's smoking history.

Employer further argues that the administrative law judge failed to consider that Drs. Fino and Baker relied on invalid pulmonary function studies in rendering their diagnoses that claimant's respiratory condition was due, in part, to coal dust exposure. We agree. Because we are remanding this case for further consideration of the pulmonary function study evidence at 20 C.F.R. §718.204(b)(2)(i), if the administrative law judge determines that all of the pulmonary function studies are invalid, he must determine what weight to accord the physicians' opinions as to the existence of legal pneumoconiosis based on their reliance on those studies.

Employer also contends that the administrative law judge erred in failing to explain why he rejected Dr. Dahhan's diagnosis of asthma, and why he chose to credit Dr. Baker's opinion over Dr. Dahhan's opinion on the issue of whether claimant suffered from legal pneumoconiosis.[9] We agree. The administrative law judge rejected Dr. Dahhan's opinion, that claimant's respiratory condition was due to asthma and was unrelated to coal dust exposure, on the ground that "Dr. Baker specifically articulated why he disagreed with a diagnosis of asthma, [and explained that] there was nothing in the record to support such a diagnosis." Decision and Order at 24. However, the administrative law judge has not explained with any specificity how the record supports Dr. Baker's opinion[10] or why he considered Dr. Baker's opinion to be more credible than

[9] Contrary to employer's contention, the administrative law judge had discretion to consider, as one of the factors influencing the weight he accorded the conflicting medical opinions, whether a particular physician had examined claimant. *See Tackett v. Cargo Mining* Co., 12 BLR 1-11 (1988) (*en banc*); *Worthington v. United States Steel Corp.*, 7 BLR 1-522 (1984

[10] We note that, in weighing the evidence relevant to the existence of clinical pneumoconiosis, the administrative law judge indicated that he found Dr. Dahhan's opinion, that claimant did not have clinical pneumoconiosis, to be reasoned and the most convincing, since Dr. Dahhan explained to the satisfaction of the administrative law judge how "the reversibility in the [pulmonary function tests] suggested bronchial asthma, which was consistent with [c]laimant's history of wheezing." Decision and Order at 24. This finding appears to be inconsistent with the administrative law judge's later decision to credit Dr. Baker's opinion on the ground that "there is nothing in the record to support a diagnosis of asthma." *Id.* On remand, the administrative law judge should resolve any inconsistencies in his analysis of these conflicting opinions.

Dr. Dahhan's opinion on the issue of whether claimant has asthma. Thus, because the administrative law judge has failed to adequately explain the basis for his credibility determinations, we vacate the administrative law judge's finding that claimant established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4) and remand this case for further consideration. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). Furthermore, to the extent that the administrative law judge's finding at 20 C.F.R. §718.202(a)(4) influenced his consideration of the evidence on disability causation, we also vacate his finding that claimant established total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c).[11]

To summarize, the administrative law judge must reconsider the admissibility of the treatment records relevant to claimant's smoking history. The administrative law judge must also render a specific finding as to the length of claimant's smoking history, based on his evidentiary ruling. The administrative law judge must consider whether claimant has established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. If the administrative law judge finds that the newly submitted pulmonary function studies or medical opinions are sufficient to establish total disability under 20 C.F.R. §718.204(b)(2)(i), (iv), he must weigh this evidence against the newly submitted contrary probative evidence of record to determine whether claimant has established total disability pursuant to 20 C.F.R. §718.204(b)(2).[12] *See Fields v. Island Creek Coal Co*., 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(*en banc*). If the administrative law judge finds that claimant has established a change in applicable condition of entitlement under 20 C.F.R. §725.309(d), he must then determine whether claimant has established entitlement on the merits, based upon a weighing of all of the evidence of record. 20 C.F.R. §725.309(d); *White*, 23 BLR at 1-3.

On remand, in considering whether claimant satisfied his burden to establish the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), the administrative law judge must determine the respective weight to which each physicians' opinion is entitled.

[11] Employer's final contention is that the administrative law judge erred in failing to determine the date from which benefits are payable. Employer's Brief in Support of Petition for Review at 24. However, on August 14, 2007, the administrative law judge issued an Errata Order, which amended his original Decision and Order to reflect that benefits were to commence April 2004, the month and year claimant filed the present claim. In light of that Order, employer's contention is moot.

[12] We note that claimant may also establish a change in an applicable condition of entitlement under 20 C.F.R. §725.309 if the newly submitted evidence is found to be sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a).

The administrative law judge should consider the validity of the reasoning of a medical opinion in light of the studies conducted and the objective indications upon which the medical conclusion is based. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 398-90, 21 BLR 2-615, 2-629 (6th Cir. 1999); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 834, 22 BLR 2-320, 2-326 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003)*; Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). The administrative law judge must resolve the conflict in the medical opinion evidence regarding the extent to which smoking contributed to the miner's respiratory condition. In this regard, the administrative law judge should consider whether each physician had an accurate understanding of the miner's smoking and work histories. *See Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). If the administrative law judge finds that claimant established the existence of legal pneumoconiosis, he must further consider whether claimant has established that he is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). *Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997); *Abshire v. D & L Coal Co.*, 22 BLR 1-202, 214 (2002)(*en banc*); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-17 (2003).

Finally, in rendering all of his credibility determinations, the administrative law judge is required by the Administrative Procedure Act, 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); *Caudill v. Arch of Kentucky, Inc.*, 22 BLR 1-97, 1-101 (2000)(*en banc*), to set forth the rationale underlying his findings of fact and conclusions of law.

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge