

BRB No. 07-0929 BLA

D.K.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BUCAR COAL COMPANY	)	DATE ISSUED: 09/22/2008
	)	
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 on Remand Awarding Benefits of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

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

Ronald E. Gilbertson (Bell, Boyd & Lloyd LLP), Washington, D.C., for employer.

Rita Roppolo (Gregory F. Jacob, Solicitor of Labor; Rae Ellen Frank James, Acting 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:

Employer appeals the Decision and Order on Remand Awarding Benefits (04-BLA-5856) of Administrative Law Judge Thomas M. Burke (the administrative law

judge), 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). This case is before the Board for a second time.<sup>1</sup> When this case was previously before the Board, the Board affirmed the administrative law judge's finding that this subsequent claim was timely filed, that the administrative law judge properly found that evidence submitted in connection with a prior withdrawn claim was not admissible, that the administrative law judge was not required to conduct a qualitative comparison between old and new evidence in order to determine whether a change in an applicable condition of entitlement was established at 20 C.F.R. §725.309, that the administrative law judge properly admitted Dr. Rasmussen's opinion pursuant to 20 C.F.R. §725.414, that the administrative law judge properly accorded greater weight to the evidence submitted in conjunction with the most recent claim as it was more reflective of claimant's current condition, and that the administrative law judge properly found that the new x-ray and medical opinion evidence established clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1) and (4).

The Board, however, vacated the administrative law judge's finding of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4) and remanded the case for reconsideration thereunder because the administrative law judge did not properly evaluate the medical opinion evidence on the issue. When reconsidering the issue of legal pneumoconiosis the Board instructed the administrative law judge to address the comparative credentials of the physicians, the explanations for their conclusions, the underlying documentation supporting their medical judgments, and the sophistication of, and bases for, their diagnoses. Further, because the administrative law judge is required to weigh together all of the evidence in determining whether pneumoconiosis is established at Section 718.202(a) pursuant to *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000), the Board vacated the administrative law judge's finding of pneumoconiosis at Section 718.202(a) overall, and remanded the case for the administrative law judge to consider together the new x-ray and the new medical opinion evidence on the issue of pneumoconiosis. In addition, because the administrative law judge's finding that a change in an applicable condition of entitlement was established at 20 C.F.R. §725.309 was affected by his finding that pneumoconiosis was established, the Board vacated the administrative law judge's finding at Section 725.309, as well. Likewise, because the administrative law judge's analysis of the evidence on the issue of pneumoconiosis could affect his weighing of the evidence on the issue of disability causation, the Board vacated the administrative law judge's findings at 20 C.F.R. §718.204(c) and remanded the case for reconsideration thereunder. Further, the Board directed the administrative law judge to reconsider the medical opinion evidence relevant

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<sup>1</sup> The history of this case is set out by the Board in [*D.K.*] *v. Bucar Coal Co.*, BRB No. 05-0672 BLA, *slip op.* at 2 n.2 (May 26, 2006) (unpub.).

to Section 718.204(c) in light of the holdings in *Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002); *Dehue Coal Co. v. Ballard*, 65 F.3d 1189, 19 BLR 2-304 (4th Cir. 1995); *Hobbs v. Clinchfield Coal Co.*, 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995); and *Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 19 BLR 2-709 (4th Cir. 1995). [D.K.], BRB No. 05-0672 BLA, *slip op.* at 19-20. Accordingly, the Board vacated the administrative law judge's award of benefits and remanded the case for the administrative law judge to reconsider the issues of pneumoconiosis at Section 718.202(a), change in an applicable condition of entitlement at Section 725.309, and disability causation at Section 718.204(c). [D.K.] v. *Bucar Coal Co.*, BRB No. 05-0672 BLA (May 26, 2006) (unpub.).

On remand the administrative law judge found that the new medical opinion evidence established legal pneumoconiosis at Section 718.202(a)(4), and that the new x-ray and medical opinion evidence, considered together, established pneumoconiosis at Section 718.202(a). Therefore, because pneumoconiosis was established, an element previously adjudicated against claimant, the administrative law judge found that a change in an applicable condition of entitlement was established pursuant to Section 725.309. The administrative law judge further found, after reviewing all of the evidence of record, that clinical and legal pneumoconiosis, total disability, and disability causation were established at 20 C.F.R. §§718.202(a), 718.204(b) and (c). Benefits were, accordingly, awarded.

On appeal, employer contends, *inter alia*, that the administrative law judge erred in finding that the new medical opinion evidence established legal pneumoconiosis at Section 718.202(a)(4) and erred, therefore, in finding that pneumoconiosis was established overall, based on a weighing of the new x-ray and medical opinion evidence at Section 718.202(a).<sup>2</sup> Employer also contends that the administrative law judge erred in

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<sup>2</sup> Employer also raises many of the same assertions it made in its previous appeal, *i.e.*, whether claimant's subsequent claim was timely filed, whether evidence from previously withdrawn claims should have been considered, whether the administrative law judge was required to provide a qualitative comparison of the old and new evidence in order to establish if a change in an applicable condition was established at 20 C.F.R. §725.309, whether the administrative law judge erred in considering Dr. Rasmussen's report because it relied on an inadmissible x-ray under 20 C.F.R. §725.414, whether the x-ray evidence established clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1), whether the administrative law judge properly relied on the more recent evidence than the evidence submitted with claimant's prior claims, and whether the medical opinion established clinical pneumoconiosis at 20 C.F.R. §718.202(a)(4). These arguments were, however, addressed and rejected by the Board in its previous decision in [D.K.], BRB No. 05-0672 BLA, *slip op.*, at 4-13. Accordingly, as the Board's previous disposition of these arguments constitutes the law of the case, we decline to revisit them since employer

finding disability causation established on the merits at Section 718.204(c).<sup>3</sup> In response, claimant urges affirmance of the administrative law judge's decision awarding benefits. The Director, Office of Workers' Compensation Programs (the Director), in a limited response brief, argues that the administrative law judge properly credited the opinion of Dr. Rasmussen on the issue of disability causation pursuant to Section 718.204(c).<sup>4</sup>

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed.<sup>5</sup> 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).

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.*, 23 BLR 1-1, 1-3 (2004). The applicable conditions of entitlement "shall be limited to those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2).

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has presented no persuasive evidence that the law of the case doctrine is inapplicable or that an exception to the doctrine has been demonstrated. *Dankle v. Duquesne Light Co.*, 20 BLR 1-1 (1995); *Gillen v. Peabody Coal Co.*, 16 BLR 1-22, 1-25 (1991); *Bridges v. Director, OWCP*, 6 BLR 1-988, 1-989 (1984); *see also Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-150-151 (1990), *rev'd on other grounds, Peabody Coal Co. v. Brinkley*, 972 F.2d 880, 16 BLR 2-129 (7th Cir. 1992).

<sup>3</sup> The administrative law judge's finding that total disability on the merits was established at 20 C.F.R. §718.204(b) is affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>4</sup> In reply to claimant's response brief and in response to the brief of the Director, Office of Workers' Compensation Programs, employer reiterates the assertions it raises on appeal.

<sup>5</sup> The law of the United States Court of Appeals for the Fourth Circuit applies because the miner was employed in coal mining in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish that he has pneumoconiosis, that pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

**20 C.F.R. §§718.202(a), 718.202(a)(4); 725.309**

On appeal, employer contends that the administrative law judge erred in crediting the newly submitted opinion of Dr. Rasmussen, to find legal pneumoconiosis established over the newly submitted opinions of Drs. Fino and Hippensteel.<sup>6</sup> Employer contends that the administrative law judge made several errors in his analysis of these medical opinions.

In finding that the newly submitted medical opinion evidence established legal pneumoconiosis, the administrative law judge credited the opinion of Dr. Rasmussen, that claimant's chronic obstructive pulmonary disease/emphysema (COPD) was due to the combined effects of coal dust exposure and cigarette smoking, Director's Exhibit 17; Claimant's Exhibit 1. The administrative law judge found that Dr. Rasmussen's opinion was well-documented and well-reasoned as it was based on the results of a physical examination, x-ray, pulmonary function studies, and blood gas studies, as well as claimant's smoking and coal mine employment histories and his symptoms. The administrative law judge rejected the opinions of Drs. Fino and Hippensteel that claimant's COPD was due solely to smoking, not coal mine employment, because he found that the reasons the doctors gave for their conclusions were not supported in the record. The administrative law judge also accorded greater weight to the new opinion of Dr. Rasmussen because he found Dr. Rasmussen's credentials were superior to those of Drs. Fino and Hippensteel. Specifically, that the administrative law judge noted that, while Drs. Rasmussen, Fino and Hippensteel were all Board-certified in internal medicine and Drs. Fino and Hippensteel were additionally Board-certified in pulmonary medicine and had published articles on pulmonary medicine, Dr. Rasmussen was a recognized expert in the field of coal dust diseases of the lung, who had testified before Congress and the West Virginia legislature and had published many articles on coal dust exposure as the cause of lung disease. Decision and Order on Remand at 7-8. The administrative law judge, therefore, found that the new medical opinion evidence

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

established legal pneumoconiosis at Section 718.202(a)(4). Additionally, the administrative law judge found, on considering the new x-ray and medical opinion evidence together, that pneumoconiosis was established overall at Section 718.202(a) and that claimant had therefore established a change in an applicable condition of entitlement at Section 725.309.

Employer contends, however, that the administrative law judge erred in crediting the opinion of Dr. Rasmussen over the opinions of Drs. Fino and Hippensteel based on the superiority of Dr. Rasmussen's qualifications. Employer contends that, unlike Dr. Rasmussen, both Drs. Fino and Hippensteel were not only Board-certified in internal medicine but were also Board-certified in pulmonary medicine. Further, employer contends that while the administrative law judge cited Dr. Rasmussen's years of treating black lung patients, his testimony before Congress and the West Virginia legislature on pneumoconiosis, and his numerous publications regarding the effect of coal dust exposure on lung disease, Decision and Order on Remand at 7-8, he failed to consider that Dr. Fino had had a fellowship in pulmonary diseases and had held numerous hospital appointments in the area of pulmonary disease, including an assistant professorship in pulmonary diseases. In addition, employer noted that the administrative law judge failed to consider that Dr. Fino had also testified before Congress that he had extensive experience in doing examinations for black lung. *See Fino Dep.* at 5-6. Regarding the new opinion of Dr. Hippensteel, employer contends that the administrative law judge failed to adequately consider Dr. Hippensteel's testimony that he was familiar with the diagnosis and treatment of pneumoconiosis as a result of his training and practice as a pulmonologist. *See Hippensteel Dep.* at 7-8. Further, employer contends that the administrative law judge failed to consider that Dr. Hippensteel had been the assistant head of a hospital pulmonary division.

Contrary to employer's argument, the administrative law judge is not required to accord greater weight to the opinions of physicians who are professors or have held hospital appointments. *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991); *see also Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Rather, the administrative law judge, while noting that Drs. Fino and Hippensteel were Board-certified in both internal medicine and pulmonary disease, permissibly found that Dr. Rasmussen's qualifications were superior: based on his greater experience in the treatment and diagnosis of pneumoconiosis in miners; because Dr. Rasmussen had authored numerous articles on the effect of coal dust exposure on lung disease; and because Dr. Rasmussen had testified before Congress and the West Virginia legislature on pneumoconiosis.<sup>7</sup> Consequently, the administrative law

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<sup>7</sup> The administrative law judge noted that Dr. Fino's positions on the causative effects of coal mine dust exposure have been rejected by the Department of Labor. 65 Fed. Reg. 79938-44, 79969-71 (Dec. 20, 2000). The administrative law judge also noted

judge permissibly found that Dr. Rasmussen's qualifications were greater than those of Drs. Fino and Hippensteel and permissibly accorded greater weight to his opinion on legal pneumoconiosis for that reason. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996) (credibility of medical opinion is for administrative law judge to determine); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997).

Employer also contends that the administrative law judge erred in finding that Dr. Rasmussen's opinion was well-documented and well-reasoned because Dr. Rasmussen did not explain how the results of claimant's examination and objective testing supported his finding that claimant's chronic obstructive pulmonary disease was due to both smoking and coal dust exposure. Employer further contends that Dr. Rasmussen's opinion as to the causes of claimant's chronic obstructive pulmonary disease was speculative, because the doctor did not explain his reasons for finding that claimant's respiratory impairment was caused by both smoking and coal dust exposure or provide any "scientific" basis for that conclusion.

Contrary to employer's argument, however, the administrative law judge permissibly found that Dr. Rasmussen's new opinion was well-documented and well-reasoned because it was based on the results of objective testing, a positive x-ray, a physical examination, a smoking history of approximately thirty years, and a coal mine employment history of twenty years. *Stiltner*, 86 F.3d at 340, 20 BLR at 2-252; *Clark*, 12 BLR at 1-152. Moreover, contrary to employer's assertion, the administrative law judge could properly credit Dr. Rasmussen's new opinion because it was based on a review of the more recent evidence that was more reflective of claimant's current respiratory condition. *Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 11 BLR 2-147 (6th Cir. 1988); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986).

Further, contrary to employer's contention, an administrative law judge is not required to determine the relative contributions of smoking and coal mine employment to claimant's respiratory impairment in order to credit a physician's opinion that claimant's chronic obstructive pulmonary disease was due to both smoking and coal mine employment. *See Gross v. Dominion Coal Corp.*, 23 BLR 1-8 (2003); *see also Consolidation Coal Co. v. Williams*, 453 F.3d 609, 23 BLR 2-345 (4th Cir. 2006); *see generally Stalcup v. Peabody Coal Co.*, 477 F.3d 482, 24 BLR 2-38 (7th Cir. 2007).

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that Dr. Hippensteel testified on cross-examination that coal miners constitute about 1% of his practice. Decision and Order on Remand at 8.

The administrative law judge's finding that Dr. Rasmussen's opinion was well-documented and well-reasoned is, therefore, affirmed.

Employer also contends that the administrative law judge erred in not crediting the opinions of Drs. Fino and Hippensteel, that smoking, not coal mine employment, was the sole cause of claimant's respiratory impairment. The administrative law judge, however, properly found that the explanations that Drs. Fino and Hippensteel gave for ruling out coal dust exposure as a source of claimant's respiratory impairment were not persuasive. Contrary to employer's assertion, the administrative law judge could properly find that Dr. Fino's failure to find pneumoconiosis based, in part, on a negative x-ray, was error, as Dr. Fino's finding was contradicted by the weighing of the positive x-ray evidence. *See Akers*, 131 F.3d at 441, 21 BLR at 2-274. Further, the administrative law judge permissibly found Dr. Fino's opinion less persuasive as Dr. Fino found that because claimant's respiratory impairment was obstructive rather than restrictive, it ruled out coal dust exposure as a source of claimant's impairment. Dr. Fino opined that coal dust exposure only produces a restrictive impairment. Director's Exhibit 21; Employer's Exhibit 6; *see* 20 C.F.R. §718.201(a)(2); *Stiltner*, 86 F.3d at 341, 20 BLR a 2-253; *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 19 BLR 2-265 (4th Cir. 1995). Based on this reasoning, the administrative law judge permissibly concluded that Dr. Fino's opinion was inconsistent with Department of Labor's implementing regulations that coal dust exposure can produce both obstructive and restrictive impairments. Additionally, the administrative law judge permissibly rejected Dr. Fino's opinion that the relative loss of FEV<sub>1</sub> due to coal dust exposure seen on claimant's pulmonary function study could not account for all of claimant's respiratory impairment. The administrative law judge found that Dr. Fino relied on statistical data, rather than an understanding of claimant's specific case in making this finding. *See generally Underwood*, 105 F.3d at 946, 21 BLR at 2-23; *K.J.M. v. Clinchfield Coal Co.*, BLR , BRB No. 07-0655 BLA (June 30, 2008); 65 Fed. Reg. 79941 (Dec. 20, 2000). The administrative law judge also permissibly found that Dr. Fino's explanation that claimant's respiratory impairment was not due to coal mine employment because it was reversible after the administration of bronchodilator therapy, was unconvincing. The administrative law judge noted that while claimant's test results showed a 13% improvement in FEV<sub>1</sub> level after the administration of bronchodilator therapy, the results remained 59% of normal, and Dr. Fino failed to explain how this precluded coal mine employment from being a cause of claimant's respiratory impairment. *See Marcum v. Director, OWCP*, 11 BLR 1-23 (1987). Finally, contrary to employer's argument, the administrative law judge permissibly found that Dr. Fino's attribution of claimant's reduction in diffusing capacity as a symptom of emphysema did not rule out coal dust exposure as a cause of claimant's respiratory impairment, as a diagnosis of emphysema does not rule out the presence of legal pneumoconiosis. *See generally Underwood*, 105 F.3d at 946, 21 BLR at 2-23. Consequently, the administrative law judge permissibly found Dr. Fino's opinion on the issue of legal pneumoconiosis to be less persuasive than that of Dr. Rasmussen.



Regarding the new opinion of Dr. Hippensteel, employer contends that the administrative law judge failed to adequately analyze it on the issue of legal pneumoconiosis at Section 718.202(a)(4). In considering Dr. Hippensteel's new opinion, the administrative law judge found that the underlying bases for his conclusion, that claimant's impairment was not due to coal mine employment, was that claimant's x-rays were mostly negative for pneumoconiosis, claimant's lung disease was obstructive rather than restrictive, and the results of claimant's pulmonary function and blood gas studies showed some reversibility. The administrative law judge concluded, therefore, that Dr. Hippensteel's reasons for rejecting coal mine employment as a cause of claimant's respiratory impairment were "generally the same as those of Dr. Fino." Decision and Order on Remand at 7. Thus, contrary to employer's assertion, the administrative law judge rationally rejected Dr. Hippensteel's new opinion for the same reasons he fully explained in rejecting Dr. Fino's new opinion. See *Hicks*, 138 F.3d at 536; 21 BLR at 2-341; *Akers*, 131 F.3d at 441, 21 BLR at 2-224; *Underwood*, 105 F.3d at 946, 21 BLR at 2-23.

We hold, therefore, that the administrative law judge has complied with the Board's remand instructions and has provided legally affirmable bases for his determination that the new medical opinion evidence established the existence of legal pneumoconiosis at Section 718.202(a)(4). Further, as the administrative law judge found that both clinical and legal pneumoconiosis were established at Section 718.202(a), after weighing the x-ray and medical opinion evidence together, we affirm the administrative law judge's finding that claimant has established a change in an applicable condition of entitlement at Section 725.309. *Compton*, 211 F.3d at 211, 22 BLR at 2-174; see *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 1364, 20 BLR 2-227, 2-234 (4th Cir. 1996), *rev'g en banc*, 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995), *cert. denied*, 510 U.S. 1090 (1997). We also affirm the administrative law judge's finding that pneumoconiosis was established on the merits at Section 718.202(a) based on his consideration of all of the evidence of record and his finding that the most recent evidence of record is the most credible as to the presence of the disease. See *Cooley*, 845 F.2d at 624, 11 BLR at 2-148.

#### **20 C.F.R. §718.204(c)**

Employer next argues that the administrative law judge erred in finding that the medical opinion evidence established disability causation on the merits pursuant to Section 718.204(c). Specifically, employer contends that the administrative law judge assumed that disability causation was established merely because the medical opinion evidence established that claimant was totally disabled from a respiratory impairment and that he had legal pneumoconiosis, without sufficiently analyzing the opinions on the issue of disability causation.

The regulation at Section 718.204(a) states that a miner shall be considered totally disabled due to pneumoconiosis if pneumoconiosis, as defined by the Act, is a substantially contributing cause of the miner's totally disabling respiratory or pulmonary impairment. Pneumoconiosis is a substantially contributing cause if it has a material adverse effect on the miner's respiratory or pulmonary condition or it materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment. 20 C.F.R. §718.204(c)(1)(i), (ii); *see Hobbs v. Clinchfield Coal Co.*, 917 F.2d 790, 15 BLR 2-225 (4th Cir. 1990); *Robinson v. Pickands Mather and Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990). Claimant must demonstrate that pneumoconiosis is a necessary condition of disability; it must play more than a *de minimis* role in claimant's disabling respiratory impairment. *See Gross*, 23 BLR at 1-18.

In finding that claimant established disability causation pursuant to Section 718.204(c), the administrative law judge noted that Dr. Rasmussen persuasively opined that claimant's respiratory disability was due to both smoking and coal mine employment. The administrative law judge noted that the contrary opinions of Drs. Fino and Hippensteel were not as convincing on disability causation, as their opinions were not as persuasive on the effect of coal dust on claimant's respiratory impairment. Thus, relying on his previous assessment of the physicians' credibility at Section 718.202(a)(4), the administrative law judge permissibly found that the medical opinion evidence established that coal dust exposure was a substantial contributing cause of claimant's respiratory disability. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 n.10, 21 BLR 2-587, 2-606 (4th Cir. 1999); *Lane Hollow Coal Co. v. Director, OWCP*, 137 F.3d 799, 802-03, 21 BLR 2-302 (4th Cir. 1998). Because we have concluded that the administrative law judge's analysis of the medical opinion evidence was reasonable, *see* discussion, *supra*, we hold that administrative law judge has provided sufficient explanation for his disability causation findings by referring to that analysis. In so doing, we reject employer's assertion that the administrative law judge's analysis of the medical opinion evidence on the issue of disability causation is conclusory.

Further, contrary to employer's contention that the administrative law judge failed to acknowledge claimant's significant smoking history, the administrative law judge specifically addressed the claimant's smoking history in his discussion of the issue of legal pneumoconiosis and explained that the relevant issue in this case was whether claimant's coal dust exposure was also a significant contributing factor. *See Williams*, 453 F.3d at 622, 23 BLR at 2-372. We thus reject employer's assertion that the administrative law judge failed to fully account for claimant's smoking history.

Moreover, we reject employer's contention that Dr. Rasmussen's opinion is not well-reasoned, as the administrative law judge, in his discussion of the opinion at Section

718.202(a)(4), provided an affirmable basis for his conclusion that Dr. Rasmussen's opinion was well-reasoned, *i.e.*, that it was based on a physical examination, a chest x-ray, pulmonary function and blood gas studies, symptoms, and smoking and coal mine employment histories. Decision and Order on Remand at 3. *See Hicks*, 138 F.3d at 536; 21 BLR at 2-341; *Akers*, 131 F.3d at 441, 21 BLR at 2-224; *Underwood*, 105 F.3d at 946, 21 BLR at 2-23.

Lastly, we reject employer's contention that the administrative law judge failed to consider the opinions of Drs. Fino and Hippensteel pursuant to the holdings of *Scott*, *Ballard*, *Hobbs*, and *Toler*. Although the administrative law judge did not specifically refer to those cases in his decision on remand, the administrative law judge nonetheless provided valid reasons for why he did not find the opinions of Drs. Fino and Hippensteel to be persuasive on the effect coal dust exposure had on claimant's respiratory disability. Moreover, the holdings in *Scott* and *Toler*, support of the administrative law judge's rejection of the opinions of Drs. Fino and Hippensteel on disability causation because neither physician found, contrary to the administrative law judge's findings, either clinical or legal pneumoconiosis. *See Scott*, 289 F.3d at 269-70, 22 BLR at 2-382-84; *Toler*, 43 F.3d at 115, 19 BLR at 2-83. Accordingly, we affirm the administrative law judge's finding that disability causation was established at Section 718.204(c).<sup>8</sup> *See Robinson*, 914 F.2d at 38, 14 BLR at 2-77.

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<sup>8</sup> Because we affirm the award of benefits, we need not address employer's request that the case be reassigned to a different administrative law judge on remand.

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

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