BRB No. 01-0728 BLA

BILLY RALPH FURGERSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
JERICOL MINING INCORPORATED	)	
	)	DATE ISSUED:
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER *EN BANC*

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

Billy Ralph Furgerson, Evarts, Kentucky, *pro se*.[1]

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

Timothy S. Williams (Eugene Scalia, 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.

Stephen A. Sanders, Prestonsburg, Kentucky, for Appalachian Citizens Law Center, Inc., as *amicus curiae*, in support of claimant.

William H. Howe and Mary Lou Smith (Howe, Anderson & Steyer, P.C.), Washington, D.C., for Association of Bituminous Contractors, Inc., as *amicus curiae*, in support of employer.

[1]Ron Carson, a lay representative employed by Stone Mountain Health Services, appeared on claimant's behalf before the administrative law judge, but is not representing claimant before the Board.

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

PER CURIAM:

Employer appeals the Decision and Order (2001-BLA-128) of Administrative Law Judge Thomas F. Phalen, Jr., awarding benefits on 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).[2] This claim has an extensive procedural history. Claimant filed his initial claim for benefits on August 30, 1994, which was denied by the Department of Labor on January 31, 1995 as claimant failed to establish any of the elements of entitlement. Director's Exhibit 24. Claimant took no further action on the initial claim and thus it was administratively closed. Claimant filed a second application for benefits on February 26, 1996, which was denied by the district director on July 15, 1996 for failure to establish any of the elements of entitlement. Director's Exhibit 25. Claimant filed another claim on November 28, 1997, which was subsequently denied by the district director on March 12, 1998 as the evidence submitted failed to establish any of the elements of entitlement. Director's Exhibit 25.

[2]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.

Claimant filed his most recent application for benefits, the subject of the instant appeal, on June 18, 1999. It was denied by the district director on July 6, 2000. The district director found that although the new evidence established the existence of pneumoconiosis arising out of coal mine employment, and thus, a material change in conditions, claimant failed to establish that he was totally disabled due to pneumoconiosis. Director's Exhibits 1, 23. Claimant requested a formal hearing and the case was referred to the Office of Administrative Law Judges on October 20, 2000 and assigned to Administrative Law Judge Thomas F. Phalen, Jr. (the administrative law judge). Director's Exhibit 26. After determining that the instant claim was a duplicate claim, the administrative law judge found that the newly submitted medical opinion evidence was sufficient to establish the existence of pneumoconiosis and thus concluded that claimant established a material change in conditions pursuant to 20 C.F.R. §725.309 (2000).[3] Decision and Order at 2-3, 10-14. The administrative law judge found, and the parties stipulated to, at least seventeen years of qualifying coal mine employment and, based on the date of filing, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718. Decision and Order at 4, 10; Director's Exhibits 1, 6, 26. The administrative law judge determined that employer was the responsible operator and, based upon a *de novo* review of the evidence of record, concluded that the evidence was sufficient to establish the existence of totally disabling pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a)(4), 718.203(b), 718.204(b), (c) (2000). Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in failing to perform the proper material change in conditions analysis, in failing to dismiss the claim as untimely and in failing to properly explain his basis for finding the existence of pneumoconiosis and disability causation established pursuant to 20 C.F.R. §§718.202(a)(4) and 718.204(b) (2000). Claimant has not filed a response brief in the instant appeal. The Director, Office of Workers' Compensation Programs (the Director), has responded, asserting that employer has waived any argument with respect to the timeliness of the claim and that the administrative law judge properly found a material change in conditions established. The Director declines to take a position with respect to the administrative law judge's weighing of the medical opinion evidence.[4] The Board, by Order dated May 16, 2002, scheduled oral argument in this case with respect to the timeliness issue. *Furgerson v. Jericol Mining Inc.*,

[3]The amendments to the regulation at 20 C.F.R. §725.309 (2000) do not apply to claims, such as the instant claim, which were pending on January 19, 2001. *See* 20 C.F.R. §725.2.

[4]We affirm the findings of the administrative law judge with respect to the length of coal mine employment, the designation of employer as the responsible operator, and pursuant to 20 C.F.R. §§718.202(a)(1)-(3), 718.203(b) and 718.204(c) (2000), as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

BRB No. 01-0728 BLA (May 16, 2002)(unpub. Order). Oral argument was held in Cincinnati, Ohio on June 27, 2002.[5]

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. 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).

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 the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Gee v. W.G. Moore and Sons*, 9 BLR 1-4 (1986)(*en banc*). Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

[5]Administrative Appeals Judge Roy P. Smith was not present at the oral argument, but has reviewed the transcript and will participate in this decision.

Initially, we address employer's contention that, based on the recent decision by the United States Court of Appeals for the Sixth Circuit in *Tennessee Consolidated Coal Co. v. Kirk*, 264 F.3d 602, BLR 2- (6th Cir. 2001), this claim was untimely filed.[6] Employer contends that the instant claim is barred by 20 C.F.R. §725.308 since it was not filed within three years after the medical determination of total disability due to pneumoconiosis by Dr. Kabani had been communicated to the miner.[7] Employer's Brief at 11; Employer's Reply Brief at 3-7; Employer's Further Reply Brief at 1-5. The Director responds to this contention, asserting that employer has waived any argument with respect to the timeliness of the claim, as employer did not controvert this issue at the earliest possible time as an affirmative defense. Director's Response Brief at 2; Director's Second Response Brief at 3.

[6]This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, inasmuch as claimant's coal mine employment occurred in the Commonwealth of Kentucky. *See Shupe v. Director, OWCP,* 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 2.

[7]The amended regulations did not alter 20 C.F.R. §725.308.

We reject the Director's contentions that employer has waived its right to raise the issue of timeliness in this instance. The Director specifically contends that the issue of timeliness was not raised by employer as an affirmative defense, either in its initial controversion of the claim, before the district director, or before the administrative law judge, and as a result employer has waived reliance on this issue under Section 725.308.[8] *See* Director's Exhibits 16, 17, 23, 26; *Cabral v. Eastern Associated Coal Corp.*, 18 BLR 1-25 (1993). While an appellate court generally will not address an issue which was not presented below, an exception is made when raising the issue would have been futile. *See Youakim v. Miller*, 425 U.S. 231 (1976); *Peabody Coal Co. v. Greer*, 62 F.3d 801, 19 BLR 2-235 (6th Cir. 1995); *The Youghiogheny and Ohio Coal Co. v. Warren*, 841 F.2d 134, 11 BLR 2-73 (6th Cir. 1987); *Kyle v. Director, OWCP*, 819 F.2d 139, 10 BLR 2-112 (6th Cir. 1987), *cert. denied*, 488 U.S. 997 (1988). This holding governs the instant case.

The Board has held that the time limitation set forth in Section 422(f) of the Act, 30 U.S.C. §932(f), as implemented by 20 C.F.R. §725.308, does not bar the filing of a duplicate claim. *See Faulk v. Peabody Coal Co.*, 14 BLR 1-18 (1990); *Andryka v. Rochester & Pittsburgh Coal Co.*, 14 BLR 1-34 (1990). The Board consequently has held that the statute of limitations contained in Section 725.308, applies only to the filing of a claimant's initial Part C claim and that the filing of any subsequent claims need not comply with the statute of limitations. *Faulk, supra*; *Andryka, supra*. At the time that the instant case was filed, the Board adhered to this position and thus it would have been futile for employer to raise this issue before the district director or the administrative law judge. *See Youakim, supra*; *Greer, supra*; *Warren, supra*; *Kyle, supra*. Consequently, we hold that the issue of timeliness was not waived by employer and we will now consider employer's arguments thereunder.

Employer asserts that because claimant received his first diagnosis of total disability due to pneumoconiosis in 1994, the present claim, which was filed more than three years after that date, is untimely filed in accordance with the recent decision by the Sixth Circuit in *Kirk*. Employer therefore alleges that claimant's June 1999 claim is barred by the terms of Section 725.308. Employer's Brief at 11; Employer's Reply Brief at 3-7; Employer's Further Reply Brief at 1-5. Section 422(f) of the Act, 30 U.S.C. §932(f), provides:

[8]The record specifically indicates that employer stipulated before the district director that the instant claim was timely filed and further did not indicate that this was a contested issue before the administrative law judge, either on the Employment Standards Administration, U.S. Department of Labor Form CM-1025, or at the hearing. 20 C.F.R. §725.462; Director's Exhibits 23, 26; Hearing Transcript at 9-10.

> Any claim for benefits by a miner under this section shall be filed within three years after whichever of the following occurs later -
>
> (1) a medical determination of total disability due to pneumoconiosis; or
>
> (2) March 1, 1978.

Section 422(f) of the Act, 30 U.S.C. §932(f). The implementing regulation provides in pertinent part:

> (a) A claim for benefits. . .shall be filed within three years after a medical determination of total disability due to pneumoconiosis which has been communicated to the miner or a person responsible for the care of the miner. . .
>
> (c) There shall be a rebuttable presumption that every claim for benefits is timely filed. However, . . .the time limits in this section are mandatory and may not be waived or tolled except upon a showing of extraordinary circumstances.

20 C.F.R. §725.308. Subsequent to the administrative law judge's Decision and Order in the instant case, the Sixth Circuit issued *Kirk*, and with respect to the time limitation of Section 725.308 held:

> The three-year limitations clock begins to tick *the first time* that a miner is told by a physician that he is totally disabled by pneumoconiosis. This clock is not stopped by the resolution of the miner's claim or claims, and, pursuant to *Sharondale*, the clock may only be turned back if the miner returns to the mines after a denial of benefits. There is thus a distinction between premature claims that are unsupported by a medical determination....and those claims that come with or acquire such support. Medically supported claims, even if ultimately deemed "premature" because the weight of the evidence does not support the elements of the miner's claim, are effective to begin the statutory period. Three years after such a determination, a miner who has not subsequently worked in the mines will be

> unable to file any further claims against his employer, although, of course he may continue to pursue pending claims.

Kirk, 264 F.3d at 608.

The Director asserts that this discussion by the Sixth Circuit is *dicta* and thus suggests that employer's argument must fail. We reject this suggestion. In *Kirk*, the Sixth Circuit found that the employer had failed to rebut the presumption of timeliness, and thus affirmed the finding that the claim was timely. The court then addressed the employer's complaint that accepting the claim in *Kirk* as timely implied that an employer would never know when its liability for a particular miner would cease. In over one full page of text, the court explained why the employer was incorrect when it asserted that a miner would be able to "infinitely file 'claim after claim until they find a pliant ALJ' and a 'compliant physician.'" *Id*., quoting *Lisa Lee Mines v. Director, OWCP*, 86 F.3d 1358, 1366, 20 BLR 2-227, 2-242 (4th Cir. 1996)(*en banc*)(Luttig, J., dissenting). It was while addressing this complaint that the court provided the language that the Director now contends is non-binding *dicta*.

In the process of finding that the claim in *Kirk* was timely, the court carefully analyzed its holding and provided specific guidance on the application of this holding. Moreover, in support of its holding, the Sixth Circuit reconciled its reasoning with its prior decision in *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994). We therefore reject the Director's suggestion that this language is merely *dicta*. Rather, the court has provided a detailed interpretation of Section 725.308 and has provided guidance on this provision's applicability to duplicate claims.

Based upon our holdings that the interpretation of Section 725.308 set forth in *Kirk* is not *dicta* and that employer did not waive its right to assert that claimant's 1999 claim was untimely filed, the timeliness issue is only now squarely presented for decision in this case. Although every claim for benefits is presumed to be filed within the prescribed time limits pursuant to Section 725.308(c), the party opposing entitlement is given an opportunity to rebut this presumption. 20 C.F.R. §725.308(c). Whether the evidence in a particular case is sufficient to establish rebuttal involves substantial *factual* findings which must be rendered by the administrative law judge. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). The Sixth Circuit has held that "[w]hen the ALJ fails to make important and necessary factual findings, the proper course for the Board is to remand the case[.]" *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *see Greer*, *supra*; *Harlan Bell Coal Co. v. Lemar*, 904 F.2d 1042, 14 BLR 2-1 (6th Cir. 1990). Thus, the Board cannot resolve the conflict regarding the application of Section 725.308 to the facts of the present case. Accordingly, we must vacate the administrative law judge's award of benefits and remand this case to the administrative law judge to permit him to address the timeliness

issue.[9] *See Kirk, supra*; *Adkins v. Donaldson Coal Co.*, 19 BLR 1-34 (1993); *Daugherty v. Johns Creek Elkhorn Coal Corp.*, 18 BLR 1-95 (1994); *Clark, supra*. On remand, the administrative law judge must determine whether, as employer asserts, Dr. Kabani's 1994 report constitutes "a medical determination of total disability due to pneumoconiosis that has been communicated to the miner" in accordance with Section 725.308 and the court's holding in *Kirk*. 20 C.F.R. §725.308(a).[10] The administrative law judge should also address the Director's argument, to the contrary, that a duplicate claim is not time-barred by a medical opinion which meets the requirements of Section 725.308 but, like Dr. Kabani's, is rejected as unpersuasive in a prior claim proceeding.[11] Finally, if the administrative law judge finds that the evidence of record is sufficient to establish rebuttal of the presumption that this claim was timely filed, then he must give claimant the opportunity to prove that extraordinary circumstances exist that may preclude the dismissal of the claim. 20 C.F.R. §725.308(c).

We are mindful, however, that employer has also raised specific allegations of error regarding the administrative law judge's analysis of the evidence with respect to the material change in conditions determination and pursuant to 20 C.F.R. Part 718. Accordingly, in the interest of judicial economy, we now address those allegations.

Employer asserts that the administrative law judge failed to make the proper inquiry in determining if a material change in conditions was established, as the administrative law

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[9]The administrative law judge may exercise his discretionary authority to reopen the record on remand to allow the parties to submit additional evidence. *Cochran v. Consolidation Coal Co.*,16 BLR 1-101 (1992); *Lynn v. Island Creek Coal Co.*, 12 BLR 1-147 (1989); *Toler v. Eastern Associated Coal Corp.*, 12 BLR 1-49 (1988).

[10]Dr. Kabani diagnosed chronic obstructive pulmonary disease (COPD) and occupational pneumoconiosis due to smoking heavily as well as exposure to coal while working in the coal mines. The physician opined that the miner had a moderate impairment and could do only work requiring mild to moderate exertion and would not be able to perform heavy physical activity as may be required in coal mining due to the COPD and pneumoconiosis. The physician also noted that claimant had a back injury that prevented him from bending over or walking rapidly. Director's Exhibit 24.

[11]The Director relies upon the decision in *Wyoming Fuel Co. v. Director, OWCP [Brandolino]*, 90 F.3d 1502, 20 BLR 2-302 (10th Cir. 1996), in which the United States Court of Appeals for the Tenth Circuit held that a final finding by an adjudicator that the miner is not totally disabled due to pneumoconiosis repudiates any earlier medical determination to the contrary and renders prior medical opinions to the contrary ineffective to trigger the running of the statute of limitations.

judge failed to compare the newly submitted evidence with the prior evidence. Employer also contends that the administrative law judge's analysis was flawed as a mistake in a prior denial cannot form the basis for an award. Rather, the evidence must show that the miner's condition has worsened, which is the proper inquiry pursuant to 20 C.F.R. §725.309 (2000). Employer's Brief at 8-14. We agree.

The administrative law judge, in this case, found that the instant claim was subject to the provisions of Section 725.309 (2000) as claimant filed his claim more than one year after the final denial of the prior claim. Decision and Order at 2-3, 10-11. He noted that the previous claim was denied as claimant did not establish the existence of pneumoconiosis or any other element necessary for establishing entitlement. Decision and Order at 2-3, 11; Director's Exhibit 25. Further, the administrative law judge correctly found that when assessing whether the evidence is sufficient to establish a material change in conditions pursuant to Section 725.309 (2000), he must consider all of the new evidence, favorable and unfavorable to claimant, and determine whether claimant has proven at least one of the elements of entitlement previously adjudicated against him. *See Ross*, *supra*; Decision and Order at 10-11. Ultimately, the administrative law judge concluded that all of the evidence entitled to any weight established that claimant suffers from pneumoconiosis. Decision and Order at 14.

On appeal, employer further contends that the administrative law judge failed to make a specific finding that claimant's condition has worsened. This contention has merit. Specifically, employer asserts that the new evidence reflects only an ongoing debate as to whether the medical opinion evidence establishes the existence of pneumoconiosis and thus, does not indicate any actual change in the miner's condition pursuant to the standard set forth in *Ross*. In determining whether a material change in conditions is established pursuant to the appropriate standard, the administrative law judge must analyze whether the new evidence submitted with the duplicate claim differs qualitatively from the evidence submitted with the previously denied claim. *See Kirk*, *supra*; *Stewart v. Wampler Brothers Coal Co*, 22 BLR 1-80 (2000)(*en banc*); *Flynn v. Grundy Mining Co.*, 21 BLR 1-40 (1997). In the instant case, the administrative law judge has not addressed whether the new evidence differs qualitatively from the evidence submitted with the prior claim. Accordingly, we vacate the administrative law judge's determination that the evidence submitted since the prior denial supports a finding of a material change in conditions pursuant to Section 725.309 (2000). On remand, if the administrative law judge finds that claimant's duplicate claim was timely filed and remains viable, the administrative law judge must then reconsider the credibility of the medical opinion evidence as discussed *infra* and specifically determine whether the newly submitted evidence is sufficient to establish a material change in conditions in a manner consistent with the holdings in *Kirk, Ross*, *Stewart* and *Flynn*.

Employer further argues that the administrative law judge violated 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).[12] Employer specifically contends that, in finding the medical opinion evidence of record sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4) (2000), the administrative law judge failed to specifically discuss the bases for the physicians' conclusions and failed to fully consider the credibility of the medical opinion evidence in light of the x-ray evidence contained in the record. Employer's Brief at 14-18.

[12]The Administrative Procedure Act requires that each adjudicatory decision include a statement of "findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law or discretion presented on the record...." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2).

In addressing the relevant medical opinion evidence of record, the administrative law judge concluded that the opinion of Dr. Baker, that the miner suffers from pneumoconiosis, was entitled to great weight as his opinion was well reasoned and documented and as he is a highly qualified physician.[13] Decision and Order at 13, 16; Director's Exhibit 8. The administrative law judge, however, did not reconcile the physician's diagnosis of pneumoconiosis, based upon the positive chest x-ray and the miner's significant duration of coal dust exposure, with the fact that Dr. Baker's positive interpretation was reread as negative by a physician with superior qualifications. Director's Exhibit 8; Decision and Order at 12-13. Consequently, the credibility of the physician's opinion and his diagnosis of pneumoconiosis has been called into question. Dr. Baker also diagnosed chronic obstructive pulmonary disease, chronic bronchitis and hypoxemia, which he opined were caused by both coal dust exposure and cigarette smoking. Director's Exhibit 8. This finding regarding the source of claimant's conditions, if credited, could establish the presence of pneumoconiosis as defined in the regulations. *See* 20 C.F.R. §§725.102(a)(25), 718.201(a)(2); *Campbell v. Consolidation Coal Co.*, 811 F.2d 302, 9 BLR 2-221 (6th Cir. 1987); *Taylor v. Director, OWCP*, 9 BLR 1-22 (1986). Nevertheless, we cannot affirm the administrative law judge's

[13]The administrative law judge properly accorded the letter of Dr. Ahmad no weight as he found it was vague, was undocumented and did not address the existence of pneumoconiosis. Decision and Order at 13; Claimant's Exhibit 1; *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985). He permissibly accorded less weight to the opinions of Drs. Smiddy and Younes as he found that Dr. Smiddy relied on an inaccurate length of coal mine employment and failed to consider claimant's smoking history in his diagnosis, and he found Dr. Younes did not indicate what evidence he relied upon in making his diagnosis. Decision and Order at 13-14, 16; Director's Exhibits 19, 22; *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Stark v. Director, OWCP*, 9 BLR 1-136 (1986); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985). The administrative law judge also acted within his discretion in according Dr. Wright's opinion little weight as he found it was vague, equivocal and not probative of claimant's current condition. Decision and Order at 15; Director's Exhibit 25; *Fife v. Director, OWCP*, 888 F.2d 365, 13 BLR 2-209 (6th Cir. 1989); *Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 11 BLR 2-147 (6th Cir. 1988); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). He further rationally determined that the opinion of Dr. Dahhan was not well reasoned since the physician did not explain how the underlying documentation supported his diagnosis. Decision and Order at 16; Director's Exhibits 24, 25; *Collins v. J & L Steel*, 21 BLR 1-181 (1999); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Martinez v. Clayton Coal Co.*, 10 BLR 1-24 (1987); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987).

findings regarding Dr. Baker's opinion as supported by substantial evidence since the administrative law judge has not provided an adequate rationale for his determination. *Clark, supra*; *Hutchens v. Director, OWCP*, 8 BLR 1-16 (1985); *Arnoni v. Director, OWCP*, 6 BLR 1-427 (1983). On remand, therefore, the administrative law judge must specifically set forth the basis for finding the opinion of Dr. Baker reasoned and documented and specifically discuss the credibility of this, as well as the other relevant medical opinion evidence of record, pursuant to Section 718.202(a)(4). *See Jericol Mining, Inc. v. Napier*, F.3d , 2002 WL 1988221 (6th Cir., Aug. 30, 2002); *Greer*, *supra*.

We reject, however, employer's assertion that the administrative law judge is required to determine if the presence of pneumoconiosis is established pursuant to Section 718.202(a)(4) (2000), by weighing the medical opinion evidence against the x-ray evidence in light of the holding in *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-164 (4th Cir. 2000). Employer's Brief at 15. In *Compton*, the United States Court of Appeals for the Fourth Circuit held that despite the fact that Section 718.202(a) enumerates four distinct methods of establishing pneumoconiosis, all types of relevant evidence must be weighed together to determine whether a claimant suffers from the disease. *Compton*, *supra*. Although decisions rendered by a circuit court can provide guidance in cases that do not arise within its geographical jurisdiction, we have declined to apply *Compton* beyond the boundaries of the Fourth Circuit, as it is not apparent that the court's holding is mandated by the Act and the implementing regulations. Thus, inasmuch as the instant case arises within the jurisdiction of the Sixth Circuit, *see* n. 5 *supra*, and the Sixth Circuit has not adopted the reasoning of the Fourth Circuit, we decline to apply the holding of *Compton* in this case. *See Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *contra Compton*, *supra*; *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 21 BLR 2-104 (3d Cir. 1997).

Employer finally asserts that the administrative law judge erred in finding that the medical opinions of Drs. Baker, Younes, and Kabani established that pneumoconiosis was more than a *de minimis* cause of claimant's totally disabling respiratory impairment.[14] Employer's Brief at 16-24; Decision and Order at 19. In light of the fact that the administrative law judge's determination regarding the issue of total disability causation was based, in part, upon his incomplete weighing of Dr. Baker's opinion under Section 718.202(a)(4), we also vacate his finding that claimant proved that he is totally disabled due to pneumoconiosis. If the administrative law judge reaches this issue on remand, he must reconsider all relevant medical evidence to determine whether it satisfies the requirements of Section 718.204(c) and the applicable case law. 20 C.F.R. §718.204(c); *see Peabody Coal Co. v. Smith*, 127 F.3d 818, 21 BLR 2-181 (6th Cir. 1998); *Adams v. Director, OWCP*, 886

[14]After revision of the regulations, the disability causation regulation, previously set forth at 20 C.F.R. §718.204(b), is now set forth at 20 C.F.R. §718.204(c).

F.2d 818, 13 BLR 2-52 (6th Cir. 1989). In weighing the medical opinion evidence, the administrative law judge must determine whether each opinion is adequately reasoned and documented with regard to the issue of total disability causation and must set forth the rationale underlying his findings. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge