

BRB No. 07-0625 BLA

W.S.)	
)	
Claimant-Respondent)	
)	
v.)	
)	
PATSY JANE COAL CORPORATION)	
)	
and)	
)	
LIBERTY MUTUAL INSURANCE)	DATE ISSUED: 04/30/2008
COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order – Awarding Benefits of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

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

Francesca L. Maggard (Lewis & Lewis Law Offices), Hazard, Kentucky, 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 - Awarding Benefits (2004-BLA-5180) of Administrative Law Judge Daniel F. Solomon 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 Based on the parties' stipulation, the administrative law judge found that claimant had fifteen years of qualifying coal mine employment, and adjudicated this claim pursuant to the regulatory provisions at 20 C.F.R. Part 718. The administrative law judge determined that the evidence submitted in support of this subsequent claim was sufficient to establish that claimant was totally disabled, thereby demonstrating a change in one of the applicable conditions of entitlement at 20 C.F.R. §725.309(d). Reviewing the claim upon the merits, the administrative law judge found that the evidence was sufficient to establish the existence of clinical and legal pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (4), and 718.203(b), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, he awarded benefits.

On appeal, employer contends that the administrative law judge erred in his application of the evidentiary limitations set forth at 20 C.F.R. §725.414 and challenges the administrative law judge's findings that the evidence was sufficient to establish the existence of pneumoconiosis and disability causation. Claimant responds, urging affirmance of the administrative law judge's evidentiary rulings under Section 725.414 and the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging rejection of employer's arguments regarding the administrative law judge's evidentiary rulings.²

¹ Claimant filed his first claim for benefits on April 5, 1988, which was denied by the claims examiner on September 15, 1988, as claimant did not establish any of the elements of entitlement. Director's Exhibit 1. Claimant took no further action on the claim until filing a second claim on March 6, 2002. Director's Exhibit 3. After the district director issued a proposed Decision and Order awarding benefits, the case was transferred to the Office of Administrative Law Judges for a hearing at employer's request. The hearing was held before Administrative Law Judge Daniel F. Solomon on November 1, 2005. Director's Exhibit 24.

² We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2)-(3), that claimant established that he is totally disabled at 20 C.F.R. §718.204(b)(2), and that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

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, and in accordance with applicable law.³ 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, 363 (1965).

Evidentiary Limitations

Initially we address employer's contention that the administrative law judge erred in rejecting Dr. Wheeler's interpretation of the October 29, 2002 x-ray pursuant to Section 725.414(a)(3)(i). A review of the record reflects that employer designated Dr. Dahhan's interpretation of the October 29, 2002 x-ray and Dr. Broudy's interpretation of the September 10, 2003 x-ray as its two affirmative x-ray readings. See Employer's Evidence Summary Form dated September 7, 2005. At the hearing, employer designated Dr. Wheeler's reading of the October 29, 2002 x-ray as rehabilitative evidence. Hearing Transcript at 24-25. Claimant challenged the admissibility of Dr. Wheeler's reading in his post-hearing brief. In his Decision and Order, the administrative law judge determined that Dr. Wheeler's reading of the October 29, 2002 film was not admissible as rehabilitative evidence, as it was Dr. Dahhan, not Dr. Wheeler, who originally interpreted the film for employer. See 20 C.F.R. §725.414(a)(3)(ii); Decision and Order at 4; Employer's Evidence Summary Form dated September 7, 2005. We affirm the administrative law judge's finding, as it is rational and in accordance with Section 725.414(a)(3)(ii). See *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47 (2004).

Employer also challenges the administrative law judge's determination that Dr. Baker's second supplemental report was admissible under Section 725.414(a)(2)(ii). Dr. Baker examined claimant on April 16, 2002 at the request of the Department of Labor (DOL) and submitted a report of this examination. Director's Exhibit 11. Dr. Baker also submitted a supplemental report, at the request of the district director, in which he provided additional detail regarding the diagnoses expressed in his report. Director's Exhibit 37. Dr. Baker prepared a second supplemental report in response to claimant's request that he review the reports of Drs. Broudy and Dahhan and comment on their opinions that claimant does not have pneumoconiosis and is not totally disabled due to pneumoconiosis. Claimant's Exhibit 6. Claimant designated this report as rehabilitative evidence. Claimant's Evidence Summary Form dated September 28, 2005. Employer challenged the admissibility of this report in its post-hearing brief. In his Decision and

³ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as claimant was employed in the coal mine industry in Kentucky. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibit 4.

Order, the administrative law judge found that claimant “appropriately has submitted a rehabilitative report by Dr. Baker responding to the arguments set forth by Drs. Dahhan and Broudy.” Decision and Order at 5-6 n.6.

Employer now argues that the administrative law judge erred in admitting Dr. Baker’s second supplemental report, contending that claimant sought to admit it in rebuttal to the opinions of Drs. Dahhan and Broudy when he had already submitted Dr. Alam’s report for that purpose. The Director has responded, urging affirmance of the administrative law judge’s admission of Dr. Baker’s second supplemental report. The Director maintains that because Dr. Baker examined claimant pursuant to DOL’s obligation to provide him with a complete pulmonary evaluation, *see* 30 U.S.C. §923(b); 20 C.F.R. §725.406, none of Dr. Baker’s reports should be treated as claimant’s evidence under Section 725.414.⁴ The Director also asserts that pursuant to 20 C.F.R. §725.456(e), it was within the administrative law judge’s discretion to allow the parties to submit evidence to cure any defects in the DOL examination.⁵ Thus, according to the Director, in admitting Dr. Baker’s second supplemental report as claimant’s rehabilitative evidence, the administrative law judge essentially determined that Dr. Baker’s report of his examination of claimant was only reliable in light of the explanation provided in the supplemental report.

We agree with the Director that because the purpose of Dr. Baker’s second supplemental report was to provide additional detail and to clarify the rationale

⁴ The terms of 20 C.F.R. §725.406(b) provide, in relevant part, that “[t]he results of the complete pulmonary evaluation shall not be counted as evidence submitted by the miner under Sec. 725.414.” 20 C.F.R. §725.406(b).

⁵ Under 20 C.F.R. §725.456(e):

If the administrative law judge concludes that the complete pulmonary evaluation provided pursuant to Sec. 725.406, or any part thereof, fails to comply with the applicable quality standards, or fails to address the relevant conditions of entitlement (see Sec. 725.202(d)(2)(i) through (iv)) in a manner which permits resolution of the claim, the administrative law judge shall, in his or her discretion, remand the claim to the district director with instructions to develop only such additional evidence as is required, or allow the parties a reasonable time to obtain and submit such evidence, before the termination of the hearing.

20 C.F.R. §725.456(e).

underlying his diagnoses, this report was part of the complete pulmonary evaluation DOL provided to claimant pursuant to Section 725.406. Accordingly, under the terms of Section 725.406(b), it did not constitute claimant's evidence at Section 725.414(a)(2). In addition, because the purpose of rehabilitative evidence is to cure defects, the administrative law judge's treatment of Dr. Baker's supplemental report as rehabilitative evidence was equivalent to a determination, pursuant to Section 725.456(e), that more evidence was required to make Dr. Baker's pulmonary evaluation of claimant complete. We affirm, therefore, the administrative law judge's admission of Dr. Baker's second supplemental report.

Employer also contends that the administrative law judge erred in considering Dr. Alam's medical report, as Dr. Alam reviewed a pulmonary function study that was not in the record. This argument lacks merit. The administrative law judge found that Dr. Alam discussed a pulmonary function study from 1986 that was not in evidence, and acted within his discretion in excluding that portion of Dr. Alam's discussion from consideration. *See Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-108 (2006); *see also Dempsey*, 23 BLR at 1-55; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (*en banc*); Decision and Order at 17 n.18. In addition, the administrative law judge rationally concluded that he could still credit Dr. Alam's opinion because the physician's premise, that the pulmonary function studies showed declining values, was supported by the properly admitted pulmonary function study values of record. *Id.* We affirm, therefore, the administrative law judge's evidentiary rulings pursuant to Section 725.414.

The Merits of Entitlement

Having found that the newly submitted medical evidence was sufficient to establish total disability and, therefore, a change in an applicable condition of entitlement pursuant to Section 725.309, the administrative law judge considered the claim on the merits. The administrative law judge first addressed the x-ray evidence at Section 718.202(a)(1). The newly submitted x-ray evidence consisted of eight interpretations of three films by Drs. Alexander and Wheeler, who are Board-certified radiologists and B readers, and Drs. Dahhan, Baker and Broudy, who are B readers. Director's Exhibits 11, 13, 15, 16, 17; Claimant's Exhibits 1, 2, 3; Employer's Exhibits 1, 11, 16, 17. Drs. Alexander and Baker interpreted the April 16, 2002 film as positive for pneumoconiosis, while Dr. Wheeler provided a negative reading. Director's Exhibits 11, 16; Claimant's Exhibit 1. Dr. Dahhan interpreted the October 29, 2002 film as negative, while Dr. Alexander interpreted it as positive. Claimant's Exhibit 2; Director's Exhibits 13, 15. Dr. Alexander read the most recent x-ray, dated September 10, 2003, as positive, while Dr. Broudy read it as negative. Claimant's Exhibit 3; Director's Exhibit 17. The x-ray

evidence submitted in support of claimant's initial application for benefits, consists of six negative interpretations of three films dated September 29, 1975, April 29, 1988, and December 1, 1988. Director's Exhibit 1.

The administrative law judge considered the qualifications of the physicians interpreting the newly submitted films and noted that there were five interpretations by dually qualified Board-certified radiologists and B readers in this case. Decision and Order at 14. The administrative law judge concluded that the preponderance of readings by the better-qualified readers was positive for pneumoconiosis. *Id.*

Regarding the x-ray evidence from the prior claim, the administrative law judge observed that all six of the interpretations were negative for pneumoconiosis, but accorded them diminished weight, as they were ten years old and, therefore, less probative of claimant's current medical condition. Decision and Order at 14. The administrative law judge indicated that although the readings of the most recent x-ray, dated September 10, 2003, were in conflict, the more highly qualified of the two readers rendered a positive interpretation of the film. *Id.* Based upon these findings, the administrative law judge concluded that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(1). *Id.*

Employer maintains that the administrative law judge erred in finding the x-ray evidence sufficient to establish the existence of pneumoconiosis under Section 718.202(a)(1). Employer argues that the administrative law judge improperly relied on the numerical superiority of the x-ray evidence without giving an analysis of his findings. We disagree. In considering whether the x-ray evidence was sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), the administrative law judge conducted a proper qualitative and quantitative analysis of the x-ray evidence, and properly accorded greater weight to the preponderance of positive x-ray interpretations by the physicians who possessed superior radiological qualifications. 20 C.F.R. §718.202(a)(1); *see Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 320, 17 BLR 2-77, 2-87 (6th Cir. 1993); Decision and Order at 14.

Similarly, employer's argument that the administrative law judge erred in refusing to accord weight to readings of the x-rays from claimant's prior application for benefits, is without merit. The administrative law judge acted within his discretion in according greater weight to the more recent evidence, submitted in connection with claimant's subsequent claim filed in 2002, since this evidence is more than ten years more recent than the evidence submitted in connection with claimant's prior claim and may therefore be considered more probative of claimant's current condition. *See Woodward*, 991 F.2d at 320, 17 BLR at 2-87; *Clark*, 12 BLR at 1-155; Decision and Order at 14.

We also reject employer's argument that the administrative law judge erred in relying on Dr. Alexander's positive interpretation of the September 10, 2003 film.

Claimant's Exhibit 3. Although Dr. Alexander indicated that this x-ray was overexposed and required using a bright light for interpretation, the regulations require only that an x-ray be of suitable quality for interpretation, not that it be of optimal quality. *See* 20 C.F.R. §410.428(b); *Preston v. Director, OWCP*, 6 BLR 1-1229, 1-1233 (1984). Additionally, because Drs. Alexander and Broudy were both able to interpret the film, the x-ray is assumed to be of acceptable quality. *Auxier v. Director, OWCP*, 8 BLR 1-109, 1-111 (1985); *Lambert v. Itmann Coal Co.*, 6 BLR 1-256, 1-258 (1983); Director's Exhibit 17. The administrative law judge therefore permissibly considered Dr. Alexander's interpretation of the September 10, 2003 film in finding that the evidence was sufficient to establish pneumoconiosis pursuant to Section 718.202(a)(1). Accordingly, we affirm the administrative law judge's finding that the newly submitted x-ray evidence established the existence of pneumoconiosis.

In considering whether the medical opinion evidence was sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4), the administrative law judge reviewed the reports of Drs. Baker, Alam, Batra, Dahhan, and Broudy.⁶ Director's Exhibits 11, 13, 14, 17, 37; Claimant's Exhibits 4-6; Employer's Exhibits 1-3. Dr. Baker conducted the examination on behalf of the DOL on April 16, 2002, recording a twenty-six year history of coal mine employment, with ten years spent underground, and noting a thirty-five to forty pack year history of cigarette smoking. Director's Exhibit 11. Dr. Baker diagnosed coal workers' pneumoconiosis based on a positive chest x-ray and claimant's coal dust exposure, and attributed claimant's totally disabling chronic bronchitis, chronic obstructive pulmonary disease (COPD), and hypoxemia to coal dust and cigarette smoking based on his interpretation of the objective clinical testing values. *Id.*; Director's Exhibit 37; Claimant's Exhibit 6.

Dr. Alam issued a report dated December 16, 2004, based upon his review of claimant's medical records, and the medical reports of Drs. Baker, Broudy, and Dahhan. Claimant's Exhibit 4. Dr. Alam diagnosed clinical pneumoconiosis and legal pneumoconiosis, caused by cigarette smoking and coal dust exposure, and emphysema. *Id.* Dr. Alam agreed that claimant had significant airflow obstruction and did not retain the respiratory capacity to return to coal mine employment. *Id.*

Dr. Batra issued a report on January 30, 2003 in which he opined that claimant had both legal and clinical pneumoconiosis. Claimant's Exhibit 5. Dr. Batra concluded that

⁶ Drs. Anderson, Williams, and Broudy issued medical reports between September 17, 1986 and April 29, 1988 in conjunction with the initial claim for benefits, and concluded that claimant had no evidence of pneumoconiosis. The administrative law judge did not specifically address these opinions when weighing the evidence under Section 718.202(a)(4). Employer has not raised any error with respect to the administrative law judge's treatment of this evidence.

claimant had a moderate impairment due to pneumoconiosis and that he did not have the respiratory capacity to perform the work of a coal miner. *Id.*

Dr. Dahhan examined claimant on October 29, 2002. Director's Exhibit 13. Dr. Dahhan concluded that there were insufficient objective findings to justify the diagnosis of pneumoconiosis based on claimant's normal arterial blood gases, negative chest x-ray, and a significantly reversible obstructive defect on spirometry, but opined that claimant was totally disabled by COPD. *Id.* Dr. Dahhan disagreed with the opinions of Drs. Baker and Batra, and concluded that claimant's COPD was caused by cigarette smoking rather than the inhalation of coal mine dust. *Id.*; Employer's Exhibit 2.

Dr. Broudy examined claimant on September 10, 2003. Director's Exhibit 17. Considering the normal arterial blood gas study, the negative chest x-ray, and the pulmonary function tests showing severe obstructive airways disease, Dr. Broudy diagnosed totally disabling chronic obstructive airways disease due to cigarette smoking, and concluded that there was no evidence claimant had coal workers' pneumoconiosis or any chronic lung disease caused by the inhalation of coal dust. *Id.* Dr. Broudy disagreed with Dr. Baker's conclusion that claimant's impairment was due to a combination of coal dust and smoking, as well as Dr. Alam's conclusion that pneumoconiosis contributed to claimant's impairment in any significant way. Director's Exhibit 17; Employer's Exhibit 3.

The administrative law judge found that Drs. Baker, Alam, Dahhan, and Broudy were highly qualified physicians with excellent credentials, noting that all four are Board-certified in Internal Medicine and Pulmonary Disease.⁷ Decision and Order at 15. The administrative law judge accorded great weight to Dr. Baker's opinion, finding that it was well-reasoned and well-documented and consistent with the x-ray evidence, the pulmonary function study evidence, and claimant's occupational history, smoking history, subjective complaints, and medical history. Decision and Order at 16. In particular, the administrative law judge determined that Dr. Baker's diagnosis of legal pneumoconiosis was persuasive, noting that the physician's explanation of how claimant's chronic bronchitis and COPD were caused by coal dust exposure and cigarette smoking was thorough and well-documented. *Id.* The administrative law judge further

⁷ Despite claimant's assertion that Dr. Batra was his treating physician, the administrative law judge found that Dr. Batra's opinion was not entitled to any special consideration pursuant to the "treating physician" rule, noting that claimant testified at the hearing that he really did not know Dr. Batra. Decision and Order at 16; Hearing Transcript at 21. The administrative law judge determined that Dr. Batra's opinion was not well-reasoned or well-documented, and was entitled to less weight. Decision and Order at 16. We affirm this finding as unchallenged on appeal. *Skrack*, 6 BLR at 1-711.

found that Dr. Alam's opinion supported Dr. Baker's opinion and was entitled to "greater weight." Decision and Order at 16-17.

Conversely, the administrative law judge accorded less weight to the opinions of Drs. Dahhan and Broudy, noting that their determination that claimant does not have clinical pneumoconiosis conflicted with his finding that the more credible x-ray interpretations were positive for pneumoconiosis. Decision and Order at 17. The administrative law judge found that Dr. Dahhan's opinion was not well-reasoned, and was inconsistent with the objective evidence of record, and concluded that the more recent pulmonary function study conducted by Dr. Broudy undermined Dr. Dahhan's opinion with respect to the existence of legal pneumoconiosis. *Id.* The administrative law judge discussed Dr. Dahhan's analysis of claimant's pulmonary function studies and FEV1 loss in attributing claimant's lung condition to cigarette smoking, but noted that Dr. Dahhan's opinion was based on average FEV1 losses. *Id.* The administrative law judge found Dr. Baker's explanation of the loss in claimant's FEV1 based on his heightened sensitivity to irritants like coal dust and cigarette smoking more persuasive. *Id.* The administrative law judge accorded less weight, therefore, to Dr. Dahhan's opinion that claimant's chronic bronchitis and emphysema were due solely to cigarette smoking. *Id.*

The administrative law judge also accorded less weight to Dr. Broudy's opinion, finding that it was not well-reasoned or well-documented. Decision and Order at 17. The administrative law judge discussed Dr. Broudy's statement that he would look to claimant's chest x-rays for evidence of progressive massive fibrosis to determine whether claimant's COPD was due to coal dust, and found Dr. Broudy's opinion contrary to the spirit of the Act, as legal pneumoconiosis may exist even where the x-ray evidence is not dispositive. *Id.* at 18. The administrative law judge again found Dr. Baker's explanation attributing claimant's lung condition to a combination of coal dust and cigarettes more persuasive than the explanation of Dr. Broudy, who attributed the condition solely to cigarette smoking. Thus, the administrative law judge concluded that the medical opinion evidence established the existence of pneumoconiosis at Section 718.202(a)(4). *Id.*

Employer argues that the administrative law judge erred in relying upon Dr. Baker's opinion because the physician diagnosed pneumoconiosis by x-ray, which cannot substantiate a diagnosis of legal pneumoconiosis. Employer also contends that "an opinion based upon a chest x-ray is to be considered under Section 718.202(a)(1) and cannot be reconsidered under Section 718.202(a)(4)." Employer's Brief at 11. Contrary to employer's contention, Section 718.202(a)(4) specifically permits a claimant to establish the existence of pneumoconiosis based on a physician's reasoned opinion that he has either clinical or legal pneumoconiosis as defined at 20 C.F.R. §718.201.⁸ In this

⁸ Pursuant to 20 C.F.R. §718.201(a)(1):

case, the administrative law judge acted rationally in crediting Dr. Baker's diagnoses of both clinical pneumoconiosis based upon an x-ray *and* legal pneumoconiosis under Section 718.202(a)(4).

Employer also argues that the administrative law judge erred in giving more weight to the medical opinions of Drs. Baker and Alam than to the opinions of Drs. Dahhan and Broudy. Employer contends that Dr. Baker's opinion is equivocal and insufficient to support a finding of legal pneumoconiosis defined at Section 718.201(b), arguing that although Dr. Baker diagnosed COPD and chronic bronchitis due to coal dust and cigarette smoking, the physician did not state that the conditions are significantly related to, or substantially aggravated, by coal dust exposure. Employer further contends that Dr. Baker did not provide a reasoned medical judgment because he failed to explain the relationship between, and the relative contribution of, smoking and coal dust on claimant's COPD and chronic bronchitis. These contentions are without merit.

The administrative law judge permissibly accorded great weight to Dr. Baker's diagnosis of COPD due, in part, to coal dust exposure, because it was reasoned and documented, and that Dr. Baker set forth in detail the clinical findings, observations, facts and other data upon which he based his diagnosis. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576-577, 22 BLR 2-107, 2-120 (6th Cir. 2000); *Clark*, 12 BLR at 1-155; Decision and Order at 15. In so doing, the administrative law judge permissibly determined that in stating that coal dust was a "significant" contributing factor to claimant's COPD, Dr. Baker satisfied the requirement, pursuant to Section 718.201(b), that any chronic pulmonary disease or respiratory or pulmonary impairment be significantly related to, or substantially aggravated by, dust exposure in coal mine employment. 20 C.F.R. §718.201(b); Decision and Order at 16; Claimant's Exhibit 6.

Clinical pneumoconiosis consists of those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment.

20 C.F.R. §718.201(a)(1). "Legal pneumoconiosis" is defined under 20 C.F.R. §718.201(a)(2) as "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 pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

Additionally, we reject employer's argument that the administrative law judge erred in crediting Dr. Baker's opinion because it was based on an inaccurate length of coal mine employment. The administrative law judge addressed employer's challenge to Dr. Baker's opinion, and stated:

Dr. Baker did note a history of 26 years of coal mine employment but, of significance, noted that only 10 years were underground. This history, of 10 years of underground coal mine employment, is on point with Claimant's testimony at the hearing. Although Dr. Baker may have had an inflated coal mine history, the most significant exposure to coal dust would have certainly been in the underground coal mine. Because he had an otherwise accurate history of Claimant's underground coal mine dust exposure, I find this error benign.

Decision and Order at 16. The administrative law judge acted within his discretion in determining that Dr. Baker's opinion was based upon an accurate history of claimant's underground coal mine employment and was, therefore, credible as to the extent to which coal dust exposure played a role in claimant's COPD. *See Clark*, 12 BLR at 1-155; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46, 1-47 (1985); *Fitch v. Director*, 9 BLR 1-45, 1-46 (1986); Decision and Order at 16.

Employer further contends that Dr. Alam's report is not well-reasoned because he does not cite literature indicating how claimant's emphysema is due to mining rather than cigarette smoking, and contends that his opinion is entitled to less weight than those of Drs. Broudy and Dahhan based on their superior qualifications. We reject employer's first contention, as the administrative law judge was not required to discredit Dr. Alam's opinion for the reason stated by employer. *See Cornett*, 227 F.3d at 576-577, 22 BLR at 2-120. In addition, the administrative law judge rationally found that the opinion of Dr. Alam was well-reasoned and was supported by the pulmonary function study evidence, which shows a decline in claimant's FEV1 value beginning before he stopped working in the mines. Decision and Order at 16-17. The administrative law judge acted within his discretion, therefore, in according "greater weight" to Dr. Alam's opinion. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 306-307, 23 BLR 2-261, 285-286 (6th Cir. 2005); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 22 BLR 2-320 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003) citing *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); Decision and Order at 15, 16-17. Employer's contention that Dr. Alam's qualifications are not in the record is also without merit as Dr. Alam's qualifications as a Board-certified pulmonologist appear in Claimant's Exhibit 4.

In addition, we affirm the administrative law judge's decision to assign less weight to the opinions of Drs. Dahhan and Broudy, that claimant did not have clinical or legal pneumoconiosis. The administrative law judge rationally determined that these physicians did not persuasively explain, based on the record evidence, why claimant's COPD and emphysema were due entirely to smoking. *Clark*, 12 BLR at 1-155; *Tackett v.*

Cargo Mining Co., 12 BLR 1-11, 1-14 (1988) (*en banc*). The administrative law judge permissibly relied upon his determination that the opinions of Drs. Dahhan and Broudy are based, in part, upon a finding contrary to the administrative law judge's finding that claimant established the existence of clinical pneumoconiosis at Section 718.202(a)(1). *Skukan v. Consolidation Coal Co.*, 993 F.2d 1228, 1233-1234, 17 BLR 2-97, 2-103 (6th Cir. 1993); *Abshire v. D & L Coal Co.*, 22 BLR 1-202, 214 (2002)(*en banc*); Decision and Order at 17-18. The administrative law judge also rationally found that Drs. Dahhan and Broudy, in contrast to Dr. Baker, underestimated the causal effect of claimant's coal dust exposure by utilizing average declines in FEV1. See *King v. Consolidation Coal Co.*, 8 BLR 1-262, 1-265 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-141 (1985); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); Decision and Order at 19. We affirm, therefore, the administrative law judge's determination that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

We also affirm the administrative law judge's finding, pursuant to Section 718.204(c), that claimant met his burden of proving that pneumoconiosis was a substantially contributing cause of his total disability. 20 C.F.R. §718.204(c); see *Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997); *Cross Mountain Coal, Inc. v. Ward*, 93 F.3d 211, 20 BLR 2-360 (6th Cir. 1996); Decision and Order at 19. In setting forth his finding at Section 718.204(c), the administrative law judge relied upon his rational determination, under Section 718.202(a)(4), that the opinions of Drs. Baker and Alam, which identified coal dust exposure as a significant contributing cause of claimant's totally disabling obstructive impairment outweighed the contrary opinions of Drs. Dahhan and Broudy. Decision and Order at 19. We hold, therefore, that the administrative law judge's finding at Section 718.204(c) is also rational and supported by substantial evidence.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge