BRB No. 06-0814 BLA

ROY R. JENT	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CUMBERLAND RIVER COAL COMPANY	)	
	)	
and	)	DATE ISSUED: 07/31/2007
	)	
ARCH COAL, INCORPORATED, UNDERWRITERS SAFETY & CLAIMS	)	
	)	
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 – Award of Benefits and the Decision and Order Granting Claimant's Motion for Reconsideration and Amending the Prior Decision and Order of Thomas F. Phalen, Jr., Administrative Law Judge, United States Department of Labor.

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

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

Sarah M. Hurley (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals the Decision and Order – Award of Benefits and the Decision and Order Granting Claimant's Motion for Reconsideration and Amending the Prior Decision and Order (04-BLA-6200) of Administrative Law Judge Thomas F. Phalen, Jr. (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). In the Decision and Order – Award of Benefits, the administrative law judge credited claimant with at least twenty years of coal mine employment and adjudicated this subsequent claim pursuant to the regulations contained in 20 C.F.R. Part 718.[1] The administrative law judge found that the newly submitted evidence established total disability pursuant to 20 C.F.R. §718.204(b). Consequently, the administrative law judge found that the newly submitted evidence established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309.[2] On the merits, the administrative law judge found that the evidence established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b). The administrative law judge also found that the evidence established total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge awarded benefits to commence as of October 2003. Subsequently, in the Decision and Order Granting Claimant's Motion for Reconsideration and Amending the Prior Decision and Order, the administrative law judge found that the correct date for the commencement of benefits was the beginning of October 2002 because claimant's subsequent claim was filed on October 3, 2002, and not on October 3, 2003.

[1] Claimant filed his first claim on March 31, 1993. Director's Exhibit 1. It was finally denied on October 7, 1996, because claimant did not establish total disability. *Id*. Claimant filed his second claim on February 16, 2001, but on November 26, 2001, he requested withdrawal of his claim. Director's Exhibit 2. On November 29, 2001, the district director granted withdrawal. *Id*. Claimant filed this claim on October 3, 2002. Director's Exhibit 4.

[2] The administrative law judge correctly referred to claimant's October 3, 2002 claim as a subsequent claim, as opposed to a duplicate claim. Decision and Order at 19. However, the administrative law judge incorrectly stated that his finding that the newly submitted evidence established total disability at 20 C.F.R. §718.204(b) "constitute[d] a *material* change in conditions as required under §725.309(d)." Decision and Order at 19 (emphasis added). Employer does not challenge this aspect of the administrative law judge's finding at 20 C.F.R. §725.309.

Employer contends that claimant's October 3, 2002 subsequent claim was untimely filed under 20 C.F.R. §725.308. Next, employer challenges the administrative law judge's application of the evidentiary limitations set forth at 20 C.F.R. §725.414. Employer also challenges the administrative law judge's finding that the newly submitted evidence established a change in an applicable condition of entitlement at 20 C.F.R. §725.309. Employer further challenges the administrative law judge's finding that the evidence established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Employer additionally challenges the administrative law judge's finding that the evidence established total disability at 20 C.F.R. §718.204(b)(2)(i) and (iv). Lastly, employer challenges the administrative law judge's finding that the evidence established total disability due to pneumoconiosis at 20 C.F.R. §718.204(c). Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response by letter, urging the Board to remand the case to the administrative law judge to address the timeliness issue.[3]

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. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Initially, we will address employer's contention that claimant's October 3, 2002 subsequent claim was untimely filed. Section 422(f) of the Act, 30 U.S.C. §932(f), and its implementing regulation at 20 C.F.R. §725.308(a), provide that a claim for benefits must be filed within three years of a medical determination of total disability due to pneumoconiosis which has been communicated to the miner. The regulation at Section 725.308(c) provides a rebuttable presumption that every claim for benefits filed under the Act is timely filed. 20 C.F.R. §725.308(c). In *Tennessee Consol. Coal Co. v. Kirk*, 264 F.3d 602, 22 BLR 2-288 (6th Cir. 2001), the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, stated that it is "employer's burden to rebut the presumption of timeliness by showing that a medical determination satisfying the statutory definition was communicated to [the claimant]" more than three years prior to the filing of his/her claim. *Kirk*, 264 F.3d at 607, 22 BLR at 2-296. Further, the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), requires that an administrative law judge independently evaluate the evidence and provide an explanation

[3] Employer filed briefs in reply to the response briefs of claimant and the Director, Office of Workers' Compensation Programs, reiterating its prior contentions.

for his findings of fact and conclusions of law. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *see also Hall v. Director, OWCP*, 12 BLR 1-80 (1988); *Shaneyfelt v. Jones & Laughlin Steel Corp.*, 4 BLR 1-144 (1981).

Employer and the Director argue that the administrative law judge erred in failing to address the issue of timeliness. We agree. Because the timeliness issue was raised,[4] and the administrative law judge did not consider medical evidence that may have satisfied employer's burden of establishing rebuttal of the presumption of timeliness, we vacate the administrative law judge's award of benefits, and remand the case for further consideration of the relevant evidence in accordance with *Kirk*. *See* APA, 5 U.S.C. §557(c)(3)(A); *Wojtowicz*, 12 BLR at 1-165.

We now turn our attention to employer's contentions of error regarding the administrative law judge's consideration of claimant's 2002 claim on the merits. With regard to Section 725.414, employer contends that the administrative law judge did not properly apply the evidentiary limitations. Specifically, employer asserts that the administrative law judge erred in excluding evidence from the record that was submitted in connection with claimant's withdrawn 2001 claim. We disagree. Since a withdrawn claim is considered never to have been filed, the evidence associated with it is not a part of the record in subsequent claims. *See* 20 C.F.R. §725.306(b). In this claim, employer did not designate any of the evidence from the withdrawn claim as its evidence pursuant to 20 C.F.R. §725.414. The administrative law judge properly determined that admitting evidence from the withdrawn claim would permit employer to exceed its Section 725.414 evidentiary limits. Thus, the administrative law judge properly refused to admit this evidence.

We also reject employer's assertion that 30 U.S.C. §923(b) of the Act requires the administrative law judge to consider all relevant evidence. 30 U.S.C. §923(b). The Board has rejected the argument that Section 725.414 is an invalid regulation because it conflicts with Section 923(b) of the Act. *See Dempsey v. Sewell Coal Co*., 23 BLR 1-47 (2004)(*en banc*).

[4] In Item 1 of Form CM-1025, employer did not indicate that it contested the timeliness of claimant's October 3, 2002 subsequent claim. Director's Exhibit 33. In Item 18, however, employer stated that "[t]he designated Responsible operator contests additional issues as listed in letters dated 11/26/02, 12/19/03 & 3/03/04." *Id*. In Operator's Response and Controversion, which was stamped received on November 26, 2002, employer asserted that claimant's October 3, 2002 subsequent claim was untimely because it was not filed within three years of a medical determination of total disability due to pneumoconiosis. *Id*.

We further reject employer's assertion that the administrative law judge erred in failing to admit Dr. Jarboe's May 25, 2001 report into the record as a treatment record at 20 C.F.R. §725.414(a)(4). Contrary to employer's assertion, Dr. Jarboe's May 25, 2001 report was developed in defense of claimant's 2001 claim, not as a part of claimant's medical treatment. *See* Director's Exhibit 2.

The administrative law judge found that if Dr. Jarboe's May 25, 2001 report had been included as part of the admissible record, the report would have exceeded the evidentiary limitations at 20 C.F.R. §725.414. Decision and Order at 5 n.6. Employer disagrees, maintaining that Dr. Jarboe's May 25, 2001 report was admissible because employer obtained only one report for submission in this claim. Employer's assertion is based on the premise that Dr. Jarboe's August 28, 2003 deposition and November 8, 2005 report did not have to be designated as one of employer's affirmative reports because they were based on the doctor's prior May 25, 2001 and July 14, 2003 reports.

Employer may submit no more than two medical reports in support of its affirmative case. 20 C.F.R. §725.414(a)(3)(i). In this claim, employer did not designate Dr. Jarboe's May 25, 2001 report as one of its affirmative medical reports. Rather, employer expressly designated Dr. Jarboe's July 14, 2003 and November 8, 2005 reports as its evidence in support of its affirmative case. Consequently, the administrative law judge acted within his discretion in following employer's evidence designation, and in excluding Dr. Jarboe's May 25, 2001 report as exceeding the evidentiary limitations set forth at Section 725.414.

In addition, employer argues that the administrative law judge erred in completely excluding Dr. Jarboe's November 8, 2005 report and August 28, 2003 deposition from the record. Contrary to employer's assertion, the administrative law judge did not completely exclude Dr. Jarboe's November 8, 2005 report from the record. Rather, the administrative law judge merely stated that "a majority of Dr. Jarboe's ultimate conclusion in the 2005 report will not be considered in the instant adjudication." Decision and Order at 13 n.20. In considering Dr. Jarboe's November 8, 2005 report, the administrative law judge determined that Dr. Jarboe did not separate conclusions that were based solely on his 2003 report from those that were based on his inadmissible 2001 report. Because the administrative law judge acted within his discretion in finding that it was impossible for him to redact the objectionable content from the inadmissible 2001 report, we hold that the administrative law judge reasonably found that "Dr. Jarboe's admissible conclusions were, for the most part, a reiteration of his 2003 medical report." Decision and Order at 13 (footnote omitted); *Harris v. Old Ben Coal Co*., 23 BLR 1-98, 1-108 (2006). Furthermore, we reject employer's assertion that the administrative law judge erred in excluding Dr. Jarboe's August 28, 2003 deposition, because the administrative law judge acted within his discretion in finding that "Dr. Jarboe's deposition conclusions were inexorably entwined with the two reports [dated May 25,

2001 and July 14, 2003]" and he was "not able to determine which of his conclusions [were] based solely on the 2003 report." Decision and Order at 5 n.6; *Harris*, 23 BLR at 1-108.

Employer next argues that the administrative law judge erred in finding that the newly submitted evidence established a change in an applicable condition of entitlement at 20 C.F.R. §725.309. Citing *Sharondale Corp. v. Ross*, 42 F.3d 993, 19 BLR 2-10 (6th Cir. 1994), employer argues that the administrative law judge erred in failing to compare the prior evidence with the newly submitted evidence in determining whether claimant's condition has worsened. We disagree. Under Section 725.309(d)(3), a claimant establishes a change in an applicable condition of entitlement "only if new evidence submitted in connection with the subsequent claim establishes at least one applicable condition of entitlement." 20 C.F.R. §725.309(d)(3). The pertinent regulation does not mention a qualitative comparison of the old and new evidence.[5] Thus, we reject employer's contention that the administrative law judge was required to conduct a qualitative comparison.

Employer next contends that the administrative law judge erred in finding that the medical opinion evidence established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). The administrative law judge considered the reports of Drs. Alam, Baker, and Jarboe.[6]

After giving little weight to Dr. Alam's diagnosis of "legal" pneumoconiosis,[7] the

[5] The Department of Labor, in amending 20 C.F.R. §725.309, adopted the standard set forth in *Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996)(*en banc*), *rev'g* 57 F.3d 402, 19 BLR 2-223 (4th Cir. 1995), which does not require a qualitative analysis of the old and new evidence.

[6] The administrative law judge gave less weight to the previously submitted medical opinion evidence at Section 718.202(a)(4), based on "its remoteness and the progressive nature of pneumoconiosis." Decision and Order at 22. The administrative law judge noted that "these reports are all more than six years older than the most remote of the newly submitted reports." *Id*.

[7] Section 718.201 provides that a diagnosis of "legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201.

Dr. Alam diagnosed an occupational lung disease caused by coal mine employment. Claimant's Exhibit 3. The administrative law judge found that Dr. Alam's diagnosis of "legal" pneumoconiosis was entitled to little weight for several reasons: (1) the doctor did not specifically document a length of cigarette smoking history; (2) the doctor's notation on an August 5, 2002 treatment record of "minimal tobacco abuse" was

administrative law judge found that Dr. Baker's diagnosis of "clinical" pneumoconiosis was not reasoned because it was based on only a chest x-ray and a coal dust exposure history. Director's Exhibit 15; *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000). The administrative law judge also found that Dr. Baker's diagnosis of chronic bronchitis related to coal dust exposure did not establish the existence of "legal" pneumoconiosis since claimant's subjectively reported symptomatology did not constitute objective medical evidence. Decision and Order at 23. The administrative law judge additionally found that Dr. Baker's diagnosis of hypoxemia related to coal dust exposure was not sufficiently reasoned and documented because Dr. Baker failed to explain how a finding of hypoxemia by non-qualifying arterial blood gas study values supported a diagnosis of "legal" pneumoconiosis. *Id*.

The administrative law judge noted, however, that Dr. Baker also diagnosed a moderate restrictive ventilatory defect attributable to coal dust exposure and cigarette smoking. Director's Exhibit 15. In contrast, Dr. Jarboe opined that claimant's mild restrictive lung disease was caused by obesity and congestive heart failure, and not by coal dust inhalation. Director's Exhibit 16. In weighing this conflicting evidence, the administrative law judge found that the opinions of both Drs. Baker and Jarboe were well-reasoned and well-documented. The administrative law judge also found that both of their opinions were bolstered by their credentials as internists and pulmonologists. Decision and Order at 23-24. Further, the administrative law judge found that both opinions were adequately supported by the objective evidence. *Id*. at 24. Nonetheless, the administrative law judge accorded greater weight to Dr. Baker's opinion than to Dr. Jarboe's contrary opinion, on the ground that Dr. Baker's opinion was better supported by the underlying objective evidence. The administrative law judge specifically stated:

> I find that both of these opinions are adequately supported by the objective evidence, but I find Dr. Baker's opinions to be better supported, and thus, the most persuasive. Specifically, while Dr. Jarboe provided a number of reasons in each of his reports why he believed the PFT evidence proved that [c]laimant's restriction was caused by smoking and other conditions, I did not find his opinion sufficient enough to overcome Dr. Baker's conclusion that coal dust exposure played a significant role. Stated another way, Dr. Jarboe has clearly and logically explained why he believes [c]laimant's restriction was caused, in part, by obesity and his heart condition, but Dr. Baker also clearly and logically explained why he believes that [c]laimant's chronic condition was caused, in part, by coal dust exposure.

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inconsistent with the administrative law judge's finding of a thirty-five pack-year smoking history; (3) the doctor did not state which objective test results he relied upon to reach his conclusions; and (4) the doctor found the pulmonary function study evidence unreliable at Section 718.202(a)(4). Decision and Order at 22.

Decision and Order at 24. We agree with employer that the administrative law judge failed to explain his basis for finding that Dr. Baker's opinion is better supported by the objective evidence. 5 U.S.C. §557(c)(3)(A); *Wojtowicz*, 12 BLR at 1-165.

Employer also argues that the administrative law judge selectively analyzed the conflicting opinions of Drs. Baker and Jarboe. The administrative law judge noted that Dr. Jarboe emphasized that claimant's 2003 pulmonary function study showed reversibility in support of his opinion that claimant did not have "legal" pneumoconiosis. Decision and Order at 24. The administrative law judge, however, found that Dr. Jarboe erroneously concluded that the post-bronchodilator values of the 2003 test were non-qualifying, as a result of Dr. Jarboe's inaccurate recordation of claimant's height. *Id*. The administrative law judge therefore concluded, "[a]s a result, I find that this failure to explain why [c]laimant's post-bronchodilator values remain qualifying under the regulations diminishes the weight of [Dr. Jarboe's] ultimate conclusion because, despite the reversibility, [c]laimant continues to have a non-reversible defect that meets the federal guidelines for total disability in coal miners." *Id*.

In his report, Dr. Jarboe considered the pre- and post-bronchodilator values of claimant's June 30, 2003 pulmonary function study. Because Dr. Jarboe found that "[t]here is some improvement after dilators," he opined that "the pulmonary function studies do not support a diagnosis of a dust induced lung disease." Director's Exhibit 16. Dr. Jarboe explained that the element of reversibility was inconsistent with a coal dust-related lung disease, which causes "a fixed, not a reversible impairment." *Id*.

Although Dr. Jarboe focused on the improvement shown by the post-bronchodilator values in finding that claimant's June 30, 2003 pulmonary function study showed reversibility and thus reflected a non-coal mine employment impairment, the administrative law judge focused on the fact that this study yielded qualifying post-bronchodilator values for total disability in discrediting Dr. Jarboe's finding that the study showed reversibility on bronchodilation. The administrative law judge therefore concluded that claimant has a "non-reversible defect" that is totally disabling. Decision and Order at 24. Notwithstanding Dr. Jarboe's incorrect finding that claimant's June 30, 2003 pulmonary function study yielded non-qualifying pre- and post-bronchodilator values, Dr. Jarboe, in addressing the issue of pneumoconiosis, interpreted the improvement in the post-bronchodilator values of this study to "show[] some element of reversibility." Director's Exhibit 16. The interpretation of medical data is for the medical experts. *Marcum v. Director,* OWCP, 11 BLR 1-23 (1987). Thus, in finding that claimant has a non-reversible defect, based on his finding that claimant's 2003 pulmonary function study yielded qualifying post-bronchodilator values, the administrative law judge erroneously substituted his opinion for that of the physician. *Marcum*, 11 BLR at 1-24. Furthermore, the administrative law judge did not explain why

a qualifying pulmonary function study supports a finding of "legal" pneumoconiosis at 20 C.F.R. §718.202(a)(4). *Wojtowicz*, 12 BLR at 1-165. In light of the foregoing, we vacate the administrative law judge's finding that the medical opinion evidence established the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Employer also contends that the administrative law judge erred in finding that the pulmonary function study evidence established total disability at 20 C.F.R. §718.204(b)(2)(i). The administrative law judge considered the six newly submitted pulmonary function studies dated January 9, 2002, January 31, 2002, August 16, 2002, November 16, 2002, June 30, 2003, and October 5, 2005. The administrative law judge gave little weight to the January 9, 2002, January 31, 2002, August 16, 2002, and October 5, 2005 studies because they were based on only one set of tracings. Decision and Order at 17. The administrative law judge also gave little weight to the October 5, 2005 study because it revealed a substantial jump in FEV1 and FVC values from the previous studies. *Id*. The administrative law judge found that the November 16, 2002 and June 30, 2003 studies were the most probative pulmonary function studies of record. *Id*. Because the November 16, 2002 and June 30, 2003 studies yielded qualifying values, the administrative law judge found that the pulmonary function study evidence established total disability at 20 C.F.R. §718.204(b)(2)(i).

Employer argues that the administrative law judge did not explain how he resolved the conflicts in the record regarding claimant's height. Contrary to employer's assertion, the administrative law judge reasonably found that claimant's actual height was seventy-one inches, based on claimant's hearing testimony and four of the six pulmonary function studies of record that support it.[8] *See Protopappas v. Director, OWCP*, 6 BLR 1-221 (1983); Decision and Order at 6 n.10.

We also reject employer's assertion that the administrative law judge did not provide a basis for questioning the reliability of claimant's October 5, 2005 pulmonary function study. As noted above, the administrative law judge properly questioned the

[8] Although the administrative law judge found that claimant's height was 71 inches in considering the conflicting pulmonary function study evidence, Dr. Jarboe indicated that claimant's height was 68.9 inches on the June 20, 2003 pulmonary function study. Thus, Dr. Jarboe did not rely upon a height of 71 inches. However, as employer accurately notes, Dr. Baker also did not rely upon a height of 71 inches in his consideration of claimant's November 16, 2002 pulmonary function study. Rather, Dr. Baker relied upon a height of 69 inches. Nonetheless, because Dr. Baker's 2002 study yielded qualifying values based on this height, we hold that the administrative law judge's failure to note that Dr. Baker's 2002 pulmonary function study was also based on an inaccurate height was harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

reliability of this study because it was based on only one set of tracings. *See Estes v. Director, OWCP*, 7 BLR 1-414 (1984); Decision and Order at 17. Consequently, we affirm the administrative law judge's finding that the pulmonary function study evidence established total disability at 20 C.F.R. §718.204(b)(2)(i).

Employer also contends that the administrative law judge erred in finding that the evidence established total disability at 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge considered the opinions of Drs. Alam, Baker, and Jarboe. Although Drs. Alam and Baker opined that claimant was totally disabled from a pulmonary or respiratory impairment, Dr. Jarboe opined that claimant was not totally disabled from a respiratory impairment. The administrative law judge gave little weight to Dr. Alam's disability opinion because he found that it was not reasoned or documented. Decision and Order at 18. The administrative law judge similarly accorded little weight to Dr. Jarboe's opinion because he found that it was not reasoned. *Id*. By contrast, the administrative law judge accorded greater weight to Dr. Baker's opinion, that claimant was totally disabled, because he found that it was well-reasoned and well-documented. *Id*.

Employer argues that the administrative law judge erred in discounting Dr. Jarboe's disability opinion. Contrary to employer's assertion, the administrative law judge permissibly discounted Dr. Jarboe's disability opinion because it was not reasoned. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). The administrative law judge stated that "Dr. Jarboe's opinion is unreasoned in light of his failure to explain how the qualifying post-bronchodilator values support his opinion that [c]laimant is not totally disabled." Decision and Order at 19. Thus, we reject employer's argument that the administrative law judge erred in discounting Dr. Jarboe's disability opinion.

Employer also argues that the administrative law judge did not provide a valid reason for crediting Dr. Baker's disability opinion over that of Dr. Jarboe. We agree. The administrative law judge merely stated, "[because] I find that [Dr. Baker's] opinion is well-reasoned and well-documented, and therefore, bolstered by his advanced credentials as an internist and pulmonologist, I accord his opinion significant probative weight." Decision and Order at 18. However, the administrative law judge did not explain why he found that Dr. Baker's opinion was well-reasoned and well-documented. *Wojtowicz*, 12 BLR at 1-165. Thus, we hold that the administrative law judge erred in finding that Dr. Baker's disability opinion outweighed Dr. Jarboe's contrary disability opinion.

In light of the foregoing, we vacate the administrative law judge's finding that the medical opinion evidence established total disability at 20 C.F.R. §718.204(b)(2)(iv).

Finally, in light of our decision to vacate the administrative law judge's finding that the medical opinion evidence established the existence of "legal" pneumoconiosis at Section 718.202(a)(4), we find it necessary to also vacate the administrative law judge's finding that the evidence established total disability due to pneumoconiosis at 20 C.F.R. §718.204(c).

Accordingly, the administrative law judge's Decision and Order – Award of Benefits and Decision and Order Granting Claimant's Motion for Reconsideration and Amending the Prior Decision and Order are vacated, and the case is remanded to the administrative law judge for further proceedings consistent with this opinion.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge