BRB No. 02-0233

LEO E. PENO	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SKY HAVEN COAL COMPANY	)	
	)	DATE
Employer-Petitioner	)	ISSUED:_____
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	
		DECISION and ORDER

Appeal of the Decision on Motion for Reconsideration of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

Raymond F. Keisling (Keisling, Schmitt & Coletta), Carnegie, Pennsylvania, for claimant.

Sean B. Epstein (Pietragallo, Bosick & Gordon), Pittsburgh, Pennsylvania, for employer.

Barry H. Joyner (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.

PER CURIAM:

Before: SMITH, McGRANERY and GABAUER, Administrative Appeals Judges.

Employer appeals the administrative law judge's Decision on Motion for Reconsideration (2001-BLA-90) of Administrative Law Judge Daniel L. Leland on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and

Safety Act of 1969, as amended, 30 U.S.C. '901 *et seq.* (the Act).[1] In the initial Decision and Order in this case, the administrative law judge denied benefits based on his finding that the evidence failed to establish the existence of a totally disabling respiratory impairment, and, even if claimant were disabled, the evidence failed to establish that his total disability was due to pneumoconiosis.

The Director, Office of Workers' Compensation Programs (the Director), filed a Motion for Reconsideration of the decision, arguing that because employer conceded that claimant is totally disabled, this issue should not have been adjudicated. The Director also argued that the administrative law judge must reconsider the issue of causation as his prior finding was based upon the premise that total disability had not been established. On reconsideration, the administrative law judge agreed that he erred in considering the issue of total disability. Regarding the issue of causation, the administrative law judge concluded that the evidence established that claimant's total disability is due to pneumoconiosis pursuant to 20 C.F.R. '718.204(c). Accordingly, benefits were awarded. The administrative law judge found that because the record does not indicate the date of onset of claimant's total disability due to pneumoconiosis, claimant is entitled to benefits as of December 1, 1999, the first day of the month in which claimant filed his claim.

On appeal, employer contends that the administrative law judge erred in reversing his previous denial of benefits because it never conceded the issue of total disability during litigation. Employer further contends that the administrative law judge's initial findings regarding the credibility of the medical evidence should not be overturned. Lastly, employer contends that the administrative law judge erred in

[1] 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.

crediting Dr. Illuzi''s unreasoned opinion.[2] Both claimant and the Director respond, urging affirmance.

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 by 30 U.S.C. '932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Initially, we reject employer's contention that the administrative law judge erred in reconsidering his prior decision. Based upon the Director's timely Motion for Reconsideration, submitted on October 24, 2001, within thirty days of the filing of the administrative law judge's Decision and Order B Denying Benefits on September 25, 2001, the administrative law judge properly reconsidered his decision. 20 C.F.R. ''725.478, 725.479. Moreover, the record indicates that employer, in its closing brief dated September 17, 2001, conceded that claimant has established the existence of pneumoconiosis and a totally disabling respiratory impairment and indicated that the only issue for adjudication is whether claimant's respiratory impairment is due to coal workers' pneumoconiosis. Therefore, we reject employer's contention that it did not concede the issue of a totally disabling respiratory impairment and that the administrative law judge erred in reconsidering his initial findings in this case.

On reconsideration, the administrative law judge discussed the two medical opinions in the record, by Drs. Illuzi and Solic. The administrative law judge noted that Dr. Solic's opinions regarding causation were premised on his conclusion that claimant did not suffer from a pulmonary impairment. Decision on Motion for Reconsideration at 2. The administrative law judge further found that since employer conceded the issue that claimant has a totally disabling pulmonary impairment, Dr. Solic's conclusions on causation could not be credited because the physician did not address the cause of impairment, but merely denied that a respiratory impairment existed at all. *Id*. Employer's Exhibits 1, 3. The

[2] Employer does not challenge the administrative law judge's onset date determination and we therefore affirm this finding as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1 B 710 (1983).

administrative law judge then found that ADr. Illuzi's opinion on the cause of claimant's total disability is therefore uncontradicted and must be credited.@ *Id*. The administrative law judge concluded that claimant is totally disabled due to pneumoconiosis.

We reject employer's contention that the administrative law judge erred in changing his initial finding that Dr. Solic's opinion is more credible and persuasive than Dr. Illuzi's opinion on the issue of causation. Because the administrative law judge incorrectly made a contrary finding on the conceded issue that claimant suffered from a totally disabling respiratory impairment, his initial analysis regarding causation was based on a faulty premise. As a result, on reconsideration, the administrative law judge properly revisited his credibility determination regarding the medical opinion evidence.

Nevertheless, we cannot affirm the administrative law judge's finding that claimant established that he is totally disabled due to pneumoconiosis. While the administrative law judge found that Dr. Illuzi's opinion that claimant's pulmonary impairment was caused by coal dust and was totally disabling, was uncontradicted, he failed to articulate his rationale for determining that the opinion is reasoned and therefore sufficient to meet claimant's burden of proof. *See Director, OWCP v. Siwiec*, 894 F.2d 635, 639, 13 BLR 2-259 (3d Cir. 1990); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *see also Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997). A reasoned opinion is one in which the administrative law judge finds the underlying documentation adequate to support the physician's conclusions. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). To make that determination, the administrative law judge must examine the validity of the reasoning of the medical opinion in light of the studies conducted and the objective indications upon which the medical opinion or conclusion is based. *Id; see Fuller v. Gilbraltar Coal Co.*, 6 BLR 1-1291 (1984). Inasmuch as the administrative law judge has not provided the necessary analysis in this case for our review, we must vacate the award of benefits and remand the case to the administrative law judge to provide a thorough analysis on the issue of disability causation.

Accordingly, the administrative law judge's Decision on Motion for Reconsideration is affirmed in part, vacated in part, and the case remanded for further consideration.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge