

BRB No. 07-0790 BLA

J.P.)
)
 Claimant-Respondent)
)
 v.)
)
 STERLING GARRETT COAL OF)
 KENTUCKY)
) DATE ISSUED: 06/30/2008
 and)
)
 KENTUCKY COAL PRODUCERS SELF-)
 INSURANCE FUND)
)
 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 of Larry S. Merck,
Administrative Law Judge, United States Department of Labor.

Mark L. Ford (Ford Law Offices), Harlan, Kentucky for claimant.

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

Jeffrey S. Goldberg (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
BOGGS, Administrative Appeals Judges.

PER CURIAM:

Sterling Garrett Coal of Kentucky (employer) appeals the Decision and Order – Award of Benefits (2005-BLA-05603) of Larry S. Merck on a subsequent claim¹ 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). The administrative law judge accepted the parties’ stipulation that claimant worked nineteen years in coal mine employment, and he further determined that the claim was timely filed pursuant to 20 C.F.R. §725.308 and that employer was properly designated as the responsible operator. Because the administrative law judge determined that the newly submitted evidence was sufficient to establish the existence of legal pneumoconiosis, he found that claimant established an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. The administrative law judge also found that claimant is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(4), 718.204(b), (c). Accordingly, the administrative law judge awarded benefits.

Employer appeals, asserting that the administrative law judge erred in finding that employer was the responsible operator, and in finding that the claim was timely filed. Employer also challenges the administrative law judge’s findings pursuant to 20 C.F.R. §§718.202(a)(4), 718.204(c), and 725.309. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers’ Compensation Programs (the Director), has filed a brief, urging the Board to reject employer’s argument that claimant’s subsequent claim was untimely filed. The Director, however, concedes that the case should be remanded to the administrative law judge for further consideration of the responsible operator issue. The Director takes no position on the merit of claimant’s

¹ Claimant filed an initial claim for benefits on April 21, 1988, which was denied by Administrative Law Judge E. Earl Thomas on August 27, 1992. Director’s Exhibit 1. Judge Thomas determined that claimant had eighteen years of coal mine employment and that he was last employed by Cox Coal Company. *Id.* He denied benefits, however, because the evidence was insufficient to establish any of the requisite elements of entitlement. *Id.* Claimant filed a duplicate claim on August 5, 1994, which was denied by the district director on September 12, 1995 because claimant did not establish any of the requisite elements of entitlement. Director’s Exhibit 2. On September 10, 1999, claimant filed his third claim for benefits. Director’s Exhibit 3. In a Decision and Order issued on May 30, 2002, Administrative Law Judge Joseph Kane determined that Sterling Garrett Coal of Kentucky (employer) was the responsible operator but denied benefits because he found the evidence insufficient to establish the existence of pneumoconiosis. Judge Kane did not make any finding as to whether claimant was totally disabled. *Id.* Claimant took no action on the denial until he filed his subsequent claim on January 30, 2004. Director’s Exhibits 5, 20.

entitlement to benefits. Employer has also filed a reply brief, responding to the Director's arguments on the issue of timeliness.

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.² 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).

Responsible Operator

Employer challenges the administrative law judge's determination that it is the responsible operator liable for payment of benefits. In order to meet the regulatory definition of "a potentially liable operator," an operator must have employed the miner for a cumulative period of not less than one year and must also have the financial ability to assume liability for the payment of benefits. 20 C.F.R. §725.494(c), (e). If a miner worked for more than one operator who meets all the requirements of a potentially liable operator, then the operator for whom the miner worked most recently will be named the responsible operator. 20 C.F.R. §725.495(a)(2)(i). If the most recent operator demonstrates an inability to pay benefits, and there is no successor operator, then liability is assessed against the potentially liable operator that next most recently employed the miner. 20 C.F.R. § 725.495(a)(2)(ii) and (iii). A "successor operator" is defined as "[a]ny person who, on or after January 1, 1970, acquired a mine or mines, or substantially all of the assets thereof, from a prior operator, or acquired the coal mining business of such operator, or substantially all of the assets thereof[.]" 20 C.F.R. §725.492. Additionally, the regulation at Section 725.492(b) states that a successor operator is created when an operator ceases to exist by reorganization, liquidation, sale of assets, merger, consolidation, or division. 20 C.F.R. §725.492(b)(1)-(3).

Section 725.495(b) addresses the burden of proof of the parties with regard to the criteria for determining the responsible operator. The pertinent regulation specifically states that:

Except as provided in this section and §725.408(a)(3), with respect to the adjudication of the identity of a responsible operator, the Director shall bear the burden of proving that the responsible operator initially found liable for the payment of benefits pursuant to §725.410 (the "designated responsible operator") is a potentially liable operator.

² This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as the miner's coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*).

20 C.F.R. §725.495(b). Section 725.408 provides a deadline for coal mine operators to submit evidence if they disagree with their designation as potentially liable responsible operators. 20 C.F.R. §725.408. Further, Section 725.495(c) provides that once an operator has been proved responsible for a claim, that operator may be relieved of liability only if it proves either that it is financially incapable of assuming liability or that another operator that more recently employed the miner is financially capable of doing so. 20 C.F.R. §725.495(c). The United States Court of Appeals for the District of Columbia Circuit has upheld 20 C.F.R. §§725.408 and 725.495(c) as valid regulations. *Nat'l Mining Ass'n v. Dep. of Labor*, 292 F.3d 849, 23 BLR 2-124 (D.C. Cir. 2002).

In this case, the district director recognized that claimant had been employed by other coal companies after working for employer, but found that claimant worked for less than one year for Chamber Coal Company, Wash Ridge Coal Company, Andy Frost Coal Company and Mountainside Coal Company. Director's Exhibit 20. The administrative law judge determined that employer was properly designated as the responsible operator because the Social Security earnings record and the payroll records established that employer was the last coal mine operator to employ claimant for a cumulative period of not less than one year.³ Decision and Order at 4-5. Employer does not dispute that it employed claimant as a coal miner for more than one year or that claimant was regularly exposed to coal dust. Rather, employer asserts that it is not the responsible operator because claimant's most recent year of combined coal mine employment was with Mountainside Coal Company (Mountainside) and its successor operator, Wash Ridge Coal Company (Wash Ridge). Employer's Brief in Support of Petition for Review at 13-14. Employer asserts that Wash Ridge is the successor operator of Mountainside because both companies are owned by the same individual, and they share the same office space and employees. *Id.* at 15, citing Director's Exhibit 1. Employer contends that because the district director failed to identify Wash Ridge/Mountainside as a potentially liable operator, liability for benefits should transfer to the Black Lung Disability Trust Fund. *Id.* at 15.

The Director asserts that employer has not produced sufficient evidence to prove that Wash Ridge is the successor operator of Mountainside, or that they are a single legal entity. Director's Brief at 17-19. However, the Director concedes that "[b]ecause the [administrative law judge] as fact-finder, has not made the necessary findings on this evidence," the case must be remanded for "appropriate disposition of the liability issue." *Id.* at 19. We agree. Because the administrative law judge's Decision and Order does not

³ The administrative law judge noted that claimant worked for Wash Ridge Coal Company from October 1987 to August 1988, less than one year, and that his cumulative employment with Mountainside Coal Company in 1982, 1983, 1984 and 1985 was also less than one year. Decision and Order at 4-5.

reflect his consideration of employer's argument that Wash Ridge is the successor operator of Mountainside, and that claimant had combined coal mine employment with these companies of at least one year, we are compelled to vacate the award of benefits and remand this case for further consideration. On remand, the administrative law judge must address the nature of the relationship between Wash Ridge and Mountainside. If these companies operated as one entity or if Wash Ridge is determined to be the successor operator of Mountainside, the administrative law judge must further determine whether claimant worked as a coal miner for these companies for a cumulative period of not less than one year, so as to relieve employer from liability for this claim.

Timeliness of the Subsequent Claim

Section 422(f) of the Act, 30 U.S.C. §932(f), and its implementing regulation at Section 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. 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 “[t]he 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” *Kirk*, 244 F.3d at 608, 22 BLR at 2-298 (emphasis in original).

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). The Sixth Circuit stated in *Kirk* 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 miner]” more than three years prior to the filing of his/her claim. *Kirk*, 264 F.3d at 607, 22 BLR at 2-296. Furthermore, in defining what constitutes a medical determination that is sufficient to start the running of the statute of limitations, the Sixth Circuit stated that the statute relies on the “trigger of the reasoned opinion of a medical professional.” *Kirk*, 264 F.3d at 607, 22 BLR at 2-298. Applying this standard, the Board has held that, under the language set forth in *Kirk*, a miner’s mere statement that he was told by a physician that he was totally disabled by black lung is insufficient to trigger the running of the statute of limitations. See *Brigance v. Peabody Coal Co.*, 23 BLR 1-170 (2006) (*en banc*); *Furgerson v. Jericol Mining Co.*, 22 BLR 1-216 (2002) (*en banc*).

In this case, the administrative law judge summarily stated, that “the record contains no supporting evidence that establishes a diagnosis of total disability was ever directly communicated to claimant.” Decision and Order at 5. Therefore, he concluded that employer did not rebut the presumption that claimant timely filed his claim. *Id.* Employer asserts that the administrative law judge’s finding is in error, as the record establishes that claimant received a diagnosis of total disability due to pneumoconiosis

from Dr. Baker on September 30, 1999, more than three years prior to the filing date of his subsequent claim. Although the Director concedes that the administrative law judge did not specifically mention Dr. Baker's opinion pursuant to Section 725.308, the Director maintains that "the administrative law judge rationally concluded that no qualifying medical opinion had been communicated directly to [claimant]." Director's Brief at 11. In this regard, the Director notes that claimant's "2004 hearing testimony negates any suggestion that he had any direct knowledge of Dr. Baker's diagnosis or its import." *Id.* at 12. The Director also contends that Dr. Baker's 1999 diagnosis of total disability due pneumoconiosis does not constitute a reasoned medical determination sufficient to trigger the statute of limitations.

We are unable to discern from the administrative law judge's Decision and Order whether he specifically considered Dr. Baker's opinion; therefore, the prudent course is to remand this case for further consideration on this issue. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). The question of whether the opinion of Dr. Baker constitutes a reasoned diagnosis of total disability due to pneumoconiosis under *Kirk*, and whether Dr. Baker's opinion was communicated to claimant, involve factual determinations to be made by the trier-of-fact. We, therefore, vacate the administrative law judge's finding pursuant to Section 725.308 and remand this case to the administrative law judge for further consideration as to whether employer has rebutted the presumption that claimant's subsequent claim was timely filed.⁴ *Kirk*, 264 F.3d at 607, 22 BLR at 2-298; *Sturgill v. Bell County Coal Corp.*, 23 BLR 1-159, 1-166 (2006) (*en banc*).

Entitlement to Benefits

In the interest of judicial economy, we will additionally address employer's arguments on the merits. In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718, claimant must prove the existence of pneumoconiosis, arising out of coal mine employment, and total disability due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. If a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The

⁴ The Director, Office of Workers' Compensation Programs, takes the position that the language in *Tennessee Consol. Coal Co. v. Kirk*, 264 F.3d 602, 22 BLR 2-288 (6th Cir. 2001), indicating that the denial of a prior claim does not reset the limitations period for subsequent claims, is dicta. Director's Brief at 3. The Board, however, has rejected the Director's position, and applies *Kirk* in all cases arising within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *Furgerson v. Jericol Mining*, 22 BLR 1-216, 1-222 (2002) (*en banc*).

“applicable conditions of entitlement” are “those conditions upon which the prior denial was based.” 20 C.F.R. §725.309(d)(2).

In this case, the miner’s prior claim was denied for failure to establish the existence of pneumoconiosis. Director’s Exhibit 3. Consequently, the newly submitted medical evidence had to show that claimant has pneumoconiosis, in order for the administrative law judge to proceed to consider the merits of claimant’s subsequent claim. 20 C.F.R. §725.309(d)(2), (3). Because the administrative law judge determined that the newly submitted evidence was sufficient to establish the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4), he found a change in an applicable condition of entitlement under Section 725.309. Based on his review of all of the record evidence, the administrative law judge also found that the miner established each of the requisite elements of entitlement.

Employer contends that the administrative law judge erred in relying on the newly submitted medical opinion of Dr. Baker to find that claimant established the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4) and a change in condition under Section 725.309. Employer’s Brief in Support of Petition for Review at 21-22. As an initial matter, employer states that “the administrative law judge did not take into account the fact that Dr. Baker made a prior finding of pneumoconiosis and did not explain how his previously ‘unreasoned’ opinion became ‘well-reasoned’” before concluding that claimant had established a change in condition under Section 725.309. Employer’s Brief in Support of Petition for Review at 21. Employer maintains that because Dr. Baker’s opinion diagnosing pneumoconiosis has not changed, his opinion is insufficient, as a matter of law, to carry claimant’s burden of proof pursuant to Section 725.309. *Id.* Contrary to employer’s argument, however, the regulation at Section 725.309 provides only that claimant is required to show that one of the applicable conditions of entitlement has changed since the prior denial of his claim. He may accomplish this by submitting new evidence developed in connection with the current claim that establishes an element of entitlement upon which the prior denial was based, *i.e.*, the existence of pneumoconiosis. *See* 20 C.F.R. §725.309(d)(2), (3); *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47 (2004) (*en banc*). Therefore, the administrative law judge was not required to analyze Dr. Baker’s medical opinions in the manner suggested by employer.

Employer also asserts that the administrative law judge’s finding that claimant established the existence of legal pneumoconiosis at Section 718.202(a)(4) fails to comport with 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), because the administrative law judge did not adequately explain the basis for his credibility determinations. We disagree.

As noted by the administrative law judge, the record developed in conjunction with claimant's subsequent claim consists of three newly submitted medical opinions by Drs. Baker, Dahhan and Broudy. Dr. Baker opined that claimant suffers from chronic obstructive pulmonary disease (COPD) due to coal dust exposure, while Drs. Dahhan and Broudy attributed claimant's COPD to smoking. Decision and Order at 10; Director's Exhibits 13, 33, 25, 35, Claimant's Exhibit 1; Employer's Exhibits 2, 3. In weighing these three conflicting medical opinions at Section 718.202(a)(4), the administrative law judge correctly found that "Dr. Dahhan relies on the improvement in [c]laimant's pulmonary function results after the administration of a bronchodilator in determining that [c]laimant's [respiratory condition] is not related to coal dust exposure." Decision and Order at 14. Similarly, the administrative law judge noted that Dr. Broudy stressed the importance of the reversibility of claimant's post-bronchodilator results, testifying that "certainly – the impairment associated with coal workers' pneumoconiosis is not at all reversible, but the fact that this is partially reversible suggests that [claimant] has some asthmatic or bronchoplastic component to his impairment." Decision and Order at 16-17, quoting Employer's Exhibit 3.

We conclude that the administrative law judge reasonably found that the presence of a fixed and "qualifying" respiratory impairment, remaining after the administration of a bronchodilator, served to undermine the conclusions of Drs. Dahhan and Broudy that there was no contribution from coal dust exposure to claimant's respiratory condition. *See Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007); *Consolidation Coal Co. v. Swiger*, 98 Fed. Appx. 227, 237 (4th Cir. May 11, 2004) (unpub.); Decision and Order at 13-15. Thus, we affirm the administrative law judge's decision to assign the opinions of Drs. Dahhan and Broudy less weight as to whether claimant has legal pneumoconiosis. *See Wolf Creek Collieries v. Director, OWCP [Stephens]*, 298 F.3d 511, 522, 22 BLR 2-494, 512 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003).

In contrast to the opinions of Drs. Dahhan and Broudy, the administrative law credited Dr. Baker's opinion,⁵ that claimant's COPD was due to coal dust exposure, as

⁵ Dr. Baker examined claimant on March 2, 2004 and opined that claimant had x-ray evidence for clinical pneumoconiosis. Director's Exhibit 13. Dr. Baker also diagnosed chronic obstructive pulmonary disease (COPD) due to smoking and coal dust exposure. He opined that claimant had a moderate respiratory impairment due to COPD. *Id.* In a supplemental report dated October 11, 2004, Dr. Baker stated that claimant would be unable to perform his usual coal mine work based on the results of his pulmonary function test. Director's Exhibit 33. In a supplemental report dated October 30, 2004, Dr. Baker indicated that his opinion, that claimant has a respiratory condition due to coal dust exposure, would not change even if claimant had only nineteen years of

being sufficient to establish that claimant has legal pneumoconiosis as defined at 20 C.F.R. §718.201.⁶ We agree with employer, however, that the administrative law judge has failed to adequately explain the basis for his finding that Dr. Baker’s opinion is reasoned and documented, as required by the APA. 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), requires that an administrative law judge independently evaluate the evidence and provide an explanation for his findings of fact and conclusions of law. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). We therefore vacate the administrative law judge’s finding that claimant established the existence of legal pneumoconiosis based on the newly submitted medical opinion of Dr. Baker at Section 718.202(a)(4) and the administrative law judge’s finding of a change in an applicable condition of entitlement pursuant to Section 725.309.

Employer further asserts that the administrative law judge failed to adequately review the evidence of record in its entirety, particularly the medical evidence from the earlier claims, prior to finding that claimant is entitled to benefits.⁷ We agree, in part. The administrative law judge specifically noted that claimant filed three prior claims in 1988, 1994 and 1999. Decision and Order at 18. The administrative law judge reasonably determined that “since the evidence developed in the 1988 and 1994 claims dates prior to 1999 it is proper to afford the results of recent medical testing more weight over earlier testing.” *Id.* The administrative law judge then focused on the medical evidence from the 1999 claim, along with the medical evidence from the subsequent claim, to determine whether claimant established all of the requisite elements

coal mine employment and not forty-four years of coal mine employment as stated in his March 2, 2004 report. Dr. Baker specifically opined that nineteen years constituted exposure significant enough to cause claimant’s clinical pneumoconiosis and COPD. Director’s Exhibit 15. Dr. Baker also provided deposition testimony. Claimant’s Exhibit 1.

⁶ Legal pneumoconiosis is defined as “any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment.” 20 C.F.R. §718.201(a)(2). The term “arising out of coal mine employment” denotes “any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment.” 20 C.F.R. §718.201(b).

⁷ We affirm, as unchallenged on appeal, the administrative law judge’s finding that claimant established a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 24. .

of entitlement. As to the issue of legal pneumoconiosis, the administrative law judge noted that the 1999 claim contained a medical report by Dr. Baker, in which he diagnosed legal pneumoconiosis, and three contrary reports by Drs. Westerfield, Fino, Paranthaman, in which they did not diagnose any respiratory condition due to coal dust exposure.⁸ *Id.*

In weighing the medical opinions from 1999 claim against Dr. Baker's newly submitted 2004 opinion, the administrative law judge stated that he assigned little weight to the opinions of Drs. Westerfield and Fino, that claimant's COPD is attributable to a combination of smoking and asthma. The administrative law judge, however, did not specifically explain the basis for his finding that the opinions of these doctors were not reasoned and documented as to the presence or absence of legal pneumoconiosis.⁹ *See Stephens*, 298 F.3d at 522, 22 BLR at 512; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (*en banc*); Decision and Order at 19.

With respect to Dr. Paranthaman, the administrative law judge noted that, while Dr. Paranthaman opined that claimant's respiratory condition was consistent with asthmatic bronchitis and not coal dust exposure, the doctor also stated that additional coal dust exposure would worsen that condition. *Id.* The administrative law judge determined that Dr. Paranthaman's opinion was inconsistent and not well reasoned as Dr. Paranthaman did not adequately explain "how additional coal dust exposure would worsen claimant's respiratory condition but did not contribute in any way to his current pulmonary/respiratory diagnoses." Decision and Order at 20; *see Clark*, 12 BLR at 1-153. However, without a more complete discussion of the issue by the administrative law judge, it is not clear that Dr. Paranthaman's recommendation against further dust exposure is necessarily inconsistent with his opinion as to the etiology of claimant's respiratory disease. As noted by employer, "[w]hile an individual with asthmatic bronchitis could have his or her condition aggravated by a return to dust exposure, this does not convert asthmatic bronchitis into a compensable condition [such as legal pneumoconiosis]." Employer's Brief in Support of Petition for Review at 34.

The administrative law judge also summarily stated that Dr. Baker's opinion, consisting of his "March 2, 2004 report, two clarification reports, and deposition

⁸ The administrative law judge noted that Dr. Baker's September 30, 1999 opinion, diagnosing pneumoconiosis, was rejected by Judge Kane because it was unreasoned, and therefore, Judge Kane had not evaluated the remaining opinions by Drs. Westerfield, Fino, and Paranthaman. Decision and Order at 19.

⁹ Thus, we conclude that the administrative law judge has not provided a sufficient rationale for rejecting Dr. Paranthaman's opinion.

testimony, constitutes the only well-reasoned and well-documented opinion of record regarding the existence of legal pneumoconiosis.” Decision and Order at 24; *Clark*, 12 BLR at 1-153. Because the administrative law judge did not specifically explain why he found Dr. Baker’s newly submitted opinion to be reasoned and documented, and did not explain his decision to credit this opinion over the previously submitted opinions of Drs. Westerfield, Fino, and Paranthaman on the merits, we vacate his finding that claimant established the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4), and remand this case for further credibility findings in accordance with the APA. *See* 5 U.S.C. §557(c)(3)(A); *Collins v. J & L Steel*, 21 BLR 1-181 (1999); *Muscar v. Director, OWCP*, 18 BLR 1-7 (1993).

Lastly, employer argues that the administrative law judge did not properly weigh the medical opinions at Section 718.204(c). To the extent that the administrative law judge’s findings at Section 718.202(a)(4) influenced his finding as to the cause of claimant’s disability, we vacate the administrative law judge’s finding that claimant established total disability due to pneumoconiosis pursuant to Section 718.204(c) and remand the case for further consideration of that issue.¹⁰ *See Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997).

In summary, we vacate the administrative law judge’s finding that employer is the responsible operator and his determination that claimant’s subsequent claim was timely filed. We also vacate the administrative law judge’s findings pursuant to Sections 725.309, 718.202(a)(4) and 718.204(c). On remand, the administrative law judge must consider employer’s argument that it is not the responsible operator who last employed claimant for a cumulative period of not less than one year, addressing employer’s assertion that Wash Ridge is a successor operator of Mountainside. If the administrative law judge finds that Wash Ridge is a successor operator, he must determine whether claimant worked for Wash Ridge/Mountainside for at least one year. If so, the administrative law judge must determine whether liability for benefits should transfer to the Trust Fund, as neither Wash Ridge nor Mountainside was identified as a potentially liable operator by the district director in this subsequent claim. The administrative law

¹⁰ Contrary to employer’s contention, on remand, the administrative law judge may assign less weight to a doctor’s opinion at 20 C.F.R. §718.204(c) on the issue of whether claimant’s respiratory disability is due to legal pneumoconiosis if that doctor opines that claimant does not have legal pneumoconiosis. *See Skukan v. Consolidation Coal Co.*, 993 F.2d 1228, 17 BLR 2-97 (6th Cir. 1993), *vac’d sub nom.*, *Consolidation Coal Co. v. Skukan*, 114 S. Ct. 2732 (1994), *rev’d on other grounds*, *Skukan v. Consolidation Coal Co.*, 46 F.3d 15, 19 BLR 2-44 (6th Cir. 1995); *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993); *Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989).

judge must also address employer's contention that it has rebutted the presumption that claimant's subsequent claim was timely filed based on the 1999 report of Dr. Baker. If the administrative law judge determines that the subsequent claim was timely filed, he must reconsider whether claimant has established, by the newly submitted evidence, a change in an applicable condition of entitlement at Section 725.309. If so, the administrative law judge must consider whether claimant has established, based on a *de novo* review of the entire record, the existence of legal pneumoconiosis at Section 718.202(a)(4) and total disability due to legal pneumoconiosis pursuant to 718.204(c). On remand, when considering the medical opinion evidence, the administrative law judge should address the comparative credentials of the respective physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their opinions. The administrative law judge also must provide an adequate rationale for his credibility findings in accordance with the APA. *Wojtowicz*, 12 BLR 1-165.

Accordingly, the Decision and Order – Award of Benefits of the administrative law judge is affirmed in part, and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge