BRB Nos. 07-0858 BLA
and 07-0858 BLA-A

H.F. Claimant-Respondent Cross-Petitioner v. ACE CONTRACTING and KENTUCKY EMPLOYERS' MUTUAL INSURANCE Employer/Carrier-Petitioners Cross-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 08/22/2008 DECISION and ORDER

Appeal of the Decision and Order – Award of Benefits of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Paul E. Jones (Jones, Walters, Turner & Shelton, PLLC), Pikeville, Kentucky, for employer/carrier.

Emily Goldberg-Kraft (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: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals and claimant cross-appeals the Decision and Order – Award of Benefits (04-BLA-6229) of Administrative Law Judge Larry S. Merck on a claim[1] 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). Adjudicating this claim pursuant to 20 C.F.R. Part 718, the administrative law judge credited claimant with at least fourteen years of qualifying coal mine employment. The administrative law judge found that claimant established the existence of both clinical and legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and that claimant's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). The administrative law judge also found that claimant established total respiratory disability pursuant to 20 C.F.R. §718.204(b) and that pneumoconiosis was a substantially contributing cause of claimant's total disability pursuant to 20 C.F.R. §718.204(c). Accordingly, benefits were awarded.

On appeal, employer argues that the administrative law judge erred in designating it as the responsible operator in this case. With respect to the merits of entitlement, employer contends that the administrative law judge erred in his weighing of the x-ray evidence and in finding it sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Likewise, employer argues that the administrative law judge erred in his evaluation of the medical opinions of Drs. Ammisetty, Baker, and Belhasen, and, therefore, erred in finding that claimant established the existence of pneumoconiosis pursuant to Section 718.202(a)(4) and total disability due to pneumoconiosis pursuant to Section 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), has filed a limited response letter in this appeal. The Director disagrees with employer on the responsible operator issue, asserting that the administrative law judge reasonably found that employer was the properly named responsible operator and that this determination is supported by substantial evidence. The Director takes no position on the merits of employer's challenge to the administrative law judge's determination that claimant is entitled to benefits.

On cross-appeal, claimant argues that, while the ultimate decision awarding benefits in this case is rational and supported by substantial evidence, certain portions of the administrative law judge's analysis of the x-ray and medical opinion evidence should be reevaluated in the event that the case is remanded, namely the administrative law

[1] Claimant filed an application for benefits on July 3, 2002. Director's Exhibit 2.

judge's weighing of the Dr. Alexander's interpretation of the September 10, 2002 chest x-ray and Dr. Baker's diagnosis of hypoxemia. Neither employer nor the Director has filed a response to claimant's cross-appeal.[2]

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with the applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling.[3] *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Failure to establish any one of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

Employer argues that, in finding that it was the responsible operator, the administrative law judge failed to provide sufficient analysis of the issue pursuant to 20 C.F.R. §725.493(a) and (b). Employer also contends that the administrative law judge erred in failing to consider the fact that claimant's Social Security Administration records, demonstrating an income earned in excess of $25,000.00 while claimant was employed with T & R Trucking, suggest employment of over one year with T & R Trucking. Employer contends, therefore, that the case should be remanded for a more complete analysis of the responsible operator issue. The Director responds, contending that the brevity of the administrative law judge's responsible operator determination does not require that the finding be vacated. Instead, the Director asserts that the evidence of record is insufficient to establish that any other operator, namely T & R Trucking, employed claimant for at least one year. The Director avers that employer's suggestion,

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[2] We affirm the administrative law judge's findings with respect to length of coal mine employment, that claimant established invocation of the presumption that his pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b), and that claimant established total respiratory disability pursuant to 20 C.F.R. §718.204(b), because these findings are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 4-5, 20-22.

[3] We will apply the law of the United States Court of Appeals for the Fourth Circuit because claimant's most recent coal mine employment took place in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (*en banc*); Director's Exhibit 3.

that claimant's income of $25,000.00 in 1998-1999 while employed with T & R Trucking indicates more than one year of employment with T & R Trucking, is flawed since claimant consistently testified that he worked for T & R Trucking for less than one year. Hence, the Director asserts that because employer has proffered no evidence to support its contention that liability should be transferred to T & R Trucking, employer has failed to satisfy its burden of proof under Section 725.495(c)(2).

In order to be designated as a responsible operator, otherwise known as a "potentially liable operator," an employer must have been the last employer in the coal mining industry for which the miner had his most recent coal mine employment. 20 C.F.R. §§725.493(a), (b), 725.495(a)(1). If more than one potentially liable operator may be deemed to have employed the miner most recently, then the liability for any benefits payable as a result of such employment shall be assigned as follows: (1) to the potentially liable operator that directed, controlled or supervised the miner; (2) to a successor operator; and (3) to any other potentially liable operator deemed to have been the miner's most recent employer pursuant to Section 725.493. 20 C.F.R. §725.495(a)(2)(i)-(iii). If the operator that most recently employed the miner is not considered the potentially liable operator in accordance with Section 725.494, the responsible operator shall be the potentially liable operator that next most recently employed the miner. 20 C.F.R. §725.495(a)(3). Further, the responsible operator must have employed the miner for a cumulative period of not less than one year, which is defined as "one calendar year … or, partial periods totaling one year, during which the miner worked in or around a coal mine or mines for at least 125 'working days'." 20 C.F.R. §§725.101(a)(32); 725.494(c). The dates and length of coal mine employment may be established by any credible evidence including, but not limited to, company records, earnings statements, co-worker affidavits, and sworn testimony. 20 C.F.R. §725.101(a)(32)(ii); *see Daniels Co. v. Mitchell*, 479 F.3d 321, 24 BLR 2-1 (4th Cir. 2007).

Contrary to employer's argument, the administrative law judge's reasoning for his determination that employer was the responsible operator in this case is adequate and his determination is sufficiently explained. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 n.10, 21 BLR 2-587, 2-603 n.10 (4th Cir. 1999). After reviewing the relevant evidence of record, namely claimant's testimony from the formal hearing on October 12, 2006 and his deposition taken on January 31, 2003, as well as claimant's Social Security earnings record, the administrative law judge permissibly credited claimant's uncontradicted testimony that, while his most recent coal mine employment was with T & R Trucking, this employment lasted less than the requisite one year. Decision and Order at 4; Hearing Transcript at 17-19, 32-33, 41; Director's Exhibit 21 at 8-11. The administrative law judge was persuaded by claimant's testimony that prior to his employment with T & R Trucking, he was employed by employer from the middle of 1995 through most of 1997. Decision and Order at 4; Hearing Transcript at 30-31; Director's Exhibit 21 at 9. Next, the administrative law judge found that the probative

value of claimant's deposition and formal hearing testimony was further bolstered by claimant's Social Security earnings record, which corroborated claimant's testimony that he was continuously employed by employer from 1995 to 1997. Director's Exhibit 7. Therefore, because the administrative law judge found that claimant's testimony, as supported by the Social Security Administration earnings record, affirmatively demonstrated that claimant was employed by employer for at least one year, he rationally concluded that employer was the properly designated responsible operator in this case. *See Mitchell*, 479 F.3d at 330, 24 BLR at 2-17.

Further, we note that it is employer's burden to establish that it is not the potentially liable operator that most recently employed the miner. 20 C.F.R. §725.492(c)(2). However, in this case, employer has proffered no support in the record demonstrating that claimant's earnings in excess of $25,000 while employed with T & R Trucking establish that he worked a minimum of one year with T & R Trucking. In addition, employer does not dispute claimant's testimony regarding his employment with employer. Therefore, we reject employer's argument and affirm the administrative law judge's designation of employer as the responsible operator.

In challenging the administrative law judge's finding that claimant established the existence of pneumoconiosis at Section 718.202(a)(1), employer argues that the administrative law judge failed to credit the overwhelming weight of the negative x-ray evidence. Specifically, employer asserts that the administrative law judge erred in according less weight to the negative interpretations of Drs. Wheeler, Poulos, Broudy, Dahhan, and Baker, all of whom possess radiological expertise in interpreting x-rays for the presence of pneumoconiosis, and in according greater weight to two positive x-ray interpretations rendered by Dr. Alexander.

In considering the x-ray evidence of record, the administrative law judge found that because the September 10, 2002 x-ray film was interpreted as positive for pneumoconiosis by Dr. Alexander, a Board-certified radiologist and B reader, and negative for pneumoconiosis by Dr. Wheeler, a Board-certified radiologist and B reader, it was inconclusive as to the existence of pneumoconiosis because the readings were in equipoise. Turning to the December 17, 2002 x-ray, the administrative law judge found that Dr. Broudy, a B reader, read the x-ray as negative, while Dr. Alexander, a Board-certified radiologist and B reader, read the x-ray as positive. Because of Dr. Alexander's superior qualifications, the administrative law judge determined that this chest x-ray was positive. Regarding the July 28, 2003 x-ray, the administrative law judge found that it was negative for pneumoconiosis because Dr. Dahhan, a B reader, who provided the only reading of the x-ray, read it as negative.

In light of the foregoing, the administrative law judge concluded that the December 17, 2002 x-ray film, read as positive by Dr. Alexander, was entitled to greater

weight than the July 28, 2003 x-ray film, read as negative by Dr. Dahhan, because Dr. Alexander possessed greater radiological expertise than Dr. Dahhan. Because the administrative law judge conducted both a qualitative and quantitative assessment of the x-ray evidence, we affirm his finding at Section 718.202(a)(1), and reject employer's arguments. 20 C.F.R. §718.202(a)(1);[4] *see Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-280 (6th Cir. 1995) ("administrative factfinders must not rely solely on the quantity of readings on one side or the other, 'without reference to a difference in the qualifications of the readers'…."); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1994); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985); Decision and Order at 6-7; Director's Exhibits 12-14; Claimant's Exhibits 2, 3; Employer's Exhibits 1, 17.

Challenging the administrative law judge's weighing of the conflicting medical opinions of record on the issue of legal pneumoconiosis under Section 718.202(a)(4),[5] employer argues that the administrative law judge erred in according the opinions of Drs. Ammisetty, Baker, and Belhasen more weight than the contrary opinions of Drs. Broudy and Dahhan. Specifically, employer avers that the probative value of Dr. Ammisetty's opinion was undermined because he first diagnosed chronic obstructive pulmonary disease and chronic bronchitis due to both coal mine employment and cigarette smoking,

[4] Section 718.202(a)(1) provides, in pertinent part, "where two or more X-ray reports are in conflict, in evaluating such X-ray reports consideration *shall* be given to the radiological qualifications of the physicians interpreting such X-rays." 20 C.F.R. §718.202(a)(1) [emphasis added].

[5] Relevant to 20 C.F.R. §718.202(a)(4), the record contains the following medical opinions. Dr. Ammisetty diagnosed chronic obstructive pulmonary disease and chronic bronchitis caused by coal dust exposure and cigarette smoking in a report dated September 10, 2002. Director's Exhibit 12. On August 14, 2003, Dr. Belhasen opined that claimant's coal mine employment history of twenty years contributed to his respiratory impairment. Director's Exhibit 20. In a report dated January 19, 2006, Dr. Baker diagnosed chronic obstructive pulmonary disease, chronic bronchitis, and hypoxemia attributable to coal dust exposure and cigarette smoking. Claimant's Exhibit 1. In reports dated December 17, 2002 and May 3, 2006, Dr. Broudy found no evidence of coal workers' pneumoconiosis or any chronic lung disease caused by the inhalation of coal mine dust. Director's Exhibit 14; Employer's Exhibit 3. Dr. Dahhan opined that claimant's pulmonary impairment was caused by obstructive airway disease attributable to his lengthy cigarette smoking habit, chronic bronchitis, and emphysema. Employer's Exhibit 1.

but later stated that claimant's pulmonary impairment was not attributable to pneumoconiosis.

In a report dated September 10, 2002, under the cardiopulmonary diagnoses and etiology sections of the form, Dr. Ammisetty diagnosed chronic obstructive pulmonary disease and chronic bronchitis caused by coal dust exposure and cigarette smoking. When completing a questionnaire that accompanied the report, Dr. Ammisetty answered "Yes" when asked whether claimant has occupational lung disease caused by coal mine employment. Director's Exhibit 12. On the same form, however, Dr. Ammisetty answered "No" to the question "If the Miner has an impairment, is the impairment related to pneumoconiosis *or* does it have another etiology?" Director's Exhibit 12 [emphasis added].

While Dr. Ammisetty's response could be construed, as employer suggests, as concluding that claimant's pulmonary impairment was not related to pneumoconiosis, his contrary statements, on two separate occasions belie such a conclusion. Dr. Ammisetty not only diagnosed claimant with chronic obstructive pulmonary disease and chronic bronchitis due to coal dust exposure, in his September 10, 2002 report, he also opined, in the same report, that claimant has an "occupational lung disease caused by coal mine employment." Director's Exhibit 12. Thus, contrary to employer's suggestion, a reasonable interpretation, on reading the entire report, is that Dr. Ammisetty's answer of "No" to the question "If the Miner has an impairment, is the impairment related to pneumoconiosis *or* does it have another etiology" was responsive to the latter, not the former, portion of the question, namely, "does it have another etiology...." Director's Exhibit 12. Consequently, we hold that the administrative law judge properly found that Dr. Ammisetty's opinion established the existence of legal pneumoconiosis at Section 718.202(a)(4). Further, the administrative law judge properly credited Dr. Ammisetty's opinion as well-reasoned and well-documented because it was based on a complete pulmonary evaluation of claimant, consisting of claimant's symptomotology, medical, smoking, and coal mine employment histories, physical examination, chest x-ray, and qualifying pulmonary function studies. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275 (4th Cir. 1997); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 9-10.

Employer also avers that the administrative law judge erred in relying on Dr. Baker's opinion to find that claimant established the existence of legal pneumoconiosis. Employer asserts that Dr. Baker attributed claimant's chronic bronchitis primarily to his many years of cigarette smoking, even though he also found that claimant's coal dust exposure was a contributory factor. Employer contends, however, that the reliability of

Dr. Baker's opinion, that claimant's pulmonary impairment was due to coal dust exposure, is diminished because claimant had not worked in coal mine employment for six to seven years before seeing Dr. Baker and claimant had continued to smoke.

In finding that Dr. Baker's opinion diagnosing chronic bronchitis due, in part, to claimant's coal dust exposure was sufficient to establish legal pneumoconiosis, the administrative law judge properly credited the opinion as well-reasoned and well-documented because Dr. Baker relied on objective medical data, including claimant's work and smoking histories, symptomotology, and a qualifying pulmonary function study. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997); *Zbosnik v. Badger Coal Co.*, 759 F.2d 1187, 7 BLR 2-202 (4th Cir. 1985); *Trumbo*, 17 BLR at 1-88-89; *King*, 8 BLR at 1-265; *Lucostic*, 8 BLR at 1-47; Decision and Order at 10-13, Claimant's Exhibit 1. Contrary to employer's argument, the fact that claimant had ceased coal mine employment six to seven years prior to visiting Dr. Baker does not demonstrate that the opinion is unreasoned, as legal pneumoconiosis is a latent and progressive disease which may not manifest itself until after claimant ceases coal mine employment. *See Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Peabody Coal Co. v. Odom*, 342 F.3d 486, 22 BLR 2-612 (6th Cir. 2003); *Labelle Processing Co. v. Swarrow*, 72 F.3d 308, 20 BLR 2-76 (3d Cir. 1995).

Employer also argues that the administrative law judge improperly relied on Dr. Belhasen's opinion, contained in a hand-written note, to find legal pneumoconiosis because Dr. Belhasen relied on an erroneous work history of twenty years of coal mine employment when the record established only fourteen and one-half years. Further, employer contends that Dr. Belhasen was not aware of claimant's lengthy cigarette smoking history and failed to provide any objective evidence. Employer contends that Dr. Belhasen's opinion is not reasoned in light of these factors.

In finding that Dr. Belhasen's opinion established the existence of legal pneumoconiosis, the administrative law judge noted that Dr. Belhasen relied on a coal mine employment history of at least twenty years and a qualifying pulmonary function study to opine that coal dust exposure contributed to claimant's pulmonary impairment. Decision and Order at 18. Further, the administrative law judge noted that Dr. Belhasen was claimant's treating physician. Employer is correct that Dr. Belhasen relied on an erroneous work history of twenty years of coal mine employment to find legal pneumoconiosis. Further, as employer contends, it does not appear that Dr. Belhasen was aware of claimant's lengthy smoking history. *See Maypray v. Island Creek Coal Co.*, 7 BLR 1-683, 1-686 (1985). Nonetheless, we deem the administrative law judge's error in finding the opinion reasoned and sufficient to establish legal pneumoconiosis to be harmless in light of the administrative law judge's permissible crediting of the opinions of Drs. Ammisetty and Baker, who each relied on accurate smoking and coal mine

employment histories when they diagnosed legal pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); Decision and Order at 9-13; Director's Exhibit 12; Claimant's Exhibit 1. Therefore, because the administrative law judge found Dr. Ammisetty's conclusions, as supported by those of Dr. Baker, more persuasive than those of Drs. Broudy and Dahhan, he rationally found the credible medical opinion evidence sufficient to establish the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4). *See Clinchfield Coal Co. v. Fuller*, 180 F.3d 622, 21 BLR 2-654 (4th Cir. 1999); *Warth v. Southern Ohio Coal Co.*, 60 F.3d 173, 19 BLR 2-265 (4th Cir. 1995); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000). Because the administrative law judge's crediting of the opinions of Drs. Ammisetty and Baker is rational and supported by substantial evidence and, employer has not otherwise challenged the administrative law judge's weighing of the opinions of Drs. Broudy and Dahhan, we affirm the administrative law judge's finding that claimant established the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4). In conclusion, we affirm the administrative law judge's determination that claimant established the existence of both clinical and legal pneumoconiosis under Section 718.202(a). *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 2-162, 2-174 (4th Cir. 2000).

Employer also argues that the administrative law judge erred in finding that claimant established total disability due to pneumoconiosis under Section 718.204(c). Employer contends that, once the administrative law judge found the existence of pneumoconiosis established, he found that claimant's disability was due to pneumoconiosis without sufficiently analyzing the medical opinion evidence on disability causation. Specifically, employer contends that, for the same reasons it challenged the administrative law judge's crediting of the opinions of Drs. Ammisetty and Belhasen on the issue of legal pneumoconiosis, the opinions are insufficient to establish disability causation. Instead, employer contends that the administrative law judge should have credited the contrary opinions of Drs. Broudy and Dahhan.[6] We disagree.

[6] Relevant to Section 718.204(c), the record contains the following medical opinion evidence. Dr. Ammisetty opined that claimant's totally disabling respiratory impairment was attributable to pneumoconiosis. Director's Exhibit 12. Dr. Baker concluded that claimant's severe ventilatory defect was the result of chronic obstructive pulmonary disease and chronic bronchitis due to coal dust exposure and cigarette smoking. Claimant's Exhibit 1. Dr. Belhasen opined that claimant's coal dust exposure in coal mine employment contributed to his total disability. Director's Exhibit 20. Dr. Broudy concluded that claimant's total disability is due to chronic obstructive airways disease caused by cigarette smoking. Director's Exhibit 14; Employer's Exhibit 3. Dr. Dahhan opined that claimant's pulmonary disability resulted from his lengthy smoking habit that caused obstructive airways disease with chronic bronchitis and emphysema. Employer's Exhibit 1.

Within a rational exercise of his discretion, the administrative law judge assigned dispositive weight to the opinions of Drs. Ammisetty and Baker, that claimant's disabling respiratory impairment was due to pneumoconiosis, because these physicians rendered well-reasoned and well-documented opinions. This determination is rational and supported by substantial evidence. *See Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002); *see also Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-513 (6th Cir. 2002) (employer is asking the Board to overturn the administrative law judge's credibility determinations which exceeds the Board's limited scope of review); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Calfee v. Director, OWCP*, 8 BLR 1-7, 1-10 (1985). The administrative law judge reasonably accorded little weight to the opinions of Drs. Broudy and Dahhan since neither physician diagnosed the existence of either clinical or legal pneumoconiosis. *See Scott*, 289 F.3d at 268-269, 22 BLR at 2-382; *Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995). Consequently, we affirm the administrative law judge's finding that disability causation was established at Section 718.204(c).[7]

Based on the foregoing, we affirm the administrative law judge's determinations that employer was the properly designated responsible operator, that the medical evidence established the existence of pneumoconiosis pursuant to Section 718.202(a), and that the medical evidence established disability causation pursuant to Section 718.204(c). The administrative law judge, therefore, properly found that claimant was entitled to benefits. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-1.[8]

[7] Any error in the administrative law judge's crediting of Dr. Belhasen's opinion under Section 718.204(c) is harmless as the administrative law judge properly credited the opinions of Drs. Ammisetty and Baker on the issue of disability causation. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); Decision and Order at 25-26.

[8] Our affirmance of the administrative law judge's award of benefits in this case obviates the necessity to address the merits of claimant's cross-appeal.

Accordingly, the Decision and Order – Award of Benefits of the administrative law judge is affirmed.

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge