BRB No. 05-0621 BLA

JIMMY BROWNING	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
INDEPENDENCE COAL COMPANY, LTD.	)	DATE ISSUED: 03/31/2006
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Michelle S. Gerdano (Howard M. Radzely, Solicitor of Labor; 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: McGRANERY, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2004-BLA-5044) of Administrative Law Judge Richard A. Morgan 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). At the hearing in this case, the administrative law judge excluded several exhibits submitted by employer as exceeding the evidentiary

limitations of 20 C.F.R. §725.414, without a showing of good cause by employer for exceeding those limits. Hearing Transcript at 25-34.

In a Decision and Order dated April 7, 2005, the administrative law judge credited claimant with seventeen years of coal mine employment[1] and found that both the x-ray and medical opinion evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (a)(4). In weighing the x-rays, the administrative law judge found the most recent x-ray of record, dated December 5, 2003, was read once as positive by Dr. Miller, a B reader and Board-certified radiologist, and once as negative by Dr. Willis, who is also a dually qualified B reader and Board-certified radiologist. Decision and Order at 17. The administrative law judge concluded, however, that "given my findings that the earlier X-rays are positive, I find Dr. Miller's positive reading more persuasive." Decision and Order at 17. The administrative law judge went on to state that he also found the "consistently positive" readings by Dr. Miller of the remaining x-rays to be most persuasive, noting that two of the physician's readings were corroborated by B readers. Decision and Order at 17. Finding the preponderance of the x-rays of record positive for pneumoconiosis, the administrative law judge turned to the medical opinions. The administrative law judge found that all of the physicians of record rendered well-documented and well-reasoned opinions, but he discounted the opinions of those who concluded that claimant does not have pneumoconiosis because they failed to give "appropriate credit to the majority of positive readings." Decision and Order at 18. The administrative law judge further determined that employer did not rebut the presumption of 20 C.F.R. §718.203(b), that claimant's pneumoconiosis arose out of coal mine employment, and found that claimant is totally disabled by a respiratory or pulmonary impairment and that his total disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b)(2), 718.204(c)(1). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge abused his discretion in his application of 20 C.F.R. §725.414 to exclude evidence submitted by employer. Employer further asserts that the administrative law judge erred in his analysis of the x-ray and medical opinion evidence relevant to the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (4), and further erred in his evaluation of the pulmonary function study and medical opinion evidence relevant to the issues of total disability and disability causation at 20 C.F.R. §718.204(b)(2)(i), (iv), 718.204(c). Claimant responds, urging affirmance of the administrative law judge's evidentiary

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[1] The record indicates that claimant's coal mine employment occurred in West Virginia. Director's Exhibit 5. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

rulings under Section 725.414 and the award of benefits. The Director, Office of Workers' Compensation Programs (the Director) responds, agreeing with employer that the "parties should be permitted to submit one rebuttal reading for each x-ray reading the opposing party submits as part of its affirmative case (even if the two readings are of the same x-ray) . . . ." Director's Brief at 2.[2] Employer has filed a reply brief reiterating its contentions.[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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965). The Board reviews the administrative law judge's procedural rulings for abuse of discretion. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989)(*en banc*).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Employer contends that the administrative law judge erred in excluding several x-ray readings and medical reports submitted by employer,[4] because Section 725.414

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[2] In support of his arguments in this case, the Director refers to the brief he filed with the United States Court of Appeals for the Fourth Circuit in *Elm Grove Coal Co. v. Blake*, No. 05-1108 (4th Cir. 2005).

[3] The administrative law judge's finding of seventeen years of coal mine employment and his findings that claimant did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2) or (3), and further failed to establish the existence of a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2)(ii), (iii), are affirmed as unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[4] At the hearing, employer attempted to submit, in addition to the x-ray readings and medical opinions supporting its affirmative case and others rebutting claimant's affirmative case, more x-ray re-readings by Drs. Wiot, Spitz and Meyer, and more medical opinions by Drs. Repsher and Rosenberg. Hearing Transcript at 25-6. Employer further attempted to submit the findings of the West Virginia Occupational Pneumoconiosis Board (WVOPB) and supporting evidence. Hearing Transcript at 30-33. The administrative law judge admitted into the record the two, specific x-ray readings

violates Section 923(b) of the Act, Section 556(d) of the Administrative Procedure Act, and the decision of the United States Court of Appeals for the Fourth Circuit in *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997). Employer's Brief at 18. The Board has rejected these arguments and held that Section 725.414 is a valid regulation. *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-58-59 (2004)(*en banc*). To these arguments, employer adds the contention that Section 725.414 conflicts with the holding of the Supreme Court in *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). Employer's Brief at 19. Employer's reliance on *Mullins* is misplaced. In *Mullins*, the Court held that in a Part 727 claim, Section 923(b) of the Act is satisfied so long as all relevant evidence is considered at some point, at either the invocation stage or rebuttal stage of the claim. *Mullins*, 484 U.S. at 149-50, 11 BLR at 2-8-9. The Court did not address the Department of Labor's authority to impose limitations on the admission of evidence in black lung claims. We therefore reject employer's argument that the administrative law judge could not apply the evidentiary limits of Section 725.414.

Employer further argues that the administrative law judge abused his discretion in excluding from the record the x-ray, pulmonary function study and physical examination results associated with claimant's state claim for benefits. Employer's Brief at 24. X-rays, pulmonary function studies, and medical reports are specifically limited by Section 725.414. 20 C.F.R. §725.414(a)(2), (a)(3). As none of the evidence associated with the state claim falls within the exception for hospitalization or treatment records, *see* 20 C.F.R. §725.414(a)(4), or the exception for prior federal black lung claim evidence, *see* 20 C.F.R. §725.309(d)(1), the administrative law judge properly held inadmissible under Section 725.414, the x-ray, pulmonary function study and physical examination results associated with claimant's state claim for benefits, as employer had already reached its evidentiary limits in its affirmative case. Hearing Transcript at 30-34.

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and two medical opinions identified by employer as its affirmative case pursuant to Section 725.414(a)(3)(i). 20 C.F.R. §725.414(a)(3)(i). With respect to rebuttal, the administrative law judge excluded a negative reading of a February 5, 2003 x-ray by Dr. Meyer, one of two negative readings of that x-ray which employer submitted to rebut two positive readings of that x-ray submitted by claimant. 20 C.F.R. §725.414(a)(3)(ii). Finally, the administrative law judge admitted the determination of the WVOPB. The administrative law judge excluded from the record, however, the additional x-ray interpretations of Drs. Wiot, Spitz and Meyer, and additional medical opinions by Drs. Repsher and Rosenberg, which exceeded the evidentiary limitations imposed upon the current claim; the x-ray rebuttal interpretation of Dr. Meyer; and the supporting medical evidence associated with the WVOPB determination. Hearing Transcript at 16.

Employer additionally contends that the administrative law judge erred in failing to find that good cause existed for the admission into the record of its excess medical evidence, including the additional x-ray interpretations of Drs. Wiot, Spitz and Meyer, the additional medical opinions by Drs. Repsher and Rosenberg, and the medical evidence associated with the West Virginia Occupational Pneumoconiosis Board (WVOPB) determinations. Employer's Brief at 21. We disagree.

The administrative law judge did not abuse his discretion in determining that employer did not establish good cause under Section 725.456(b)(1) for the submission of the medical evidence proffered by employer in excess of the imitations. *Clark*, 12 BLR at 1-153. Employer argued to the administrative law judge that good cause existed because the excess evidence was "relevant." Employer's Brief at 18-20. The administrative law judge found the assertion that the excess evidence was relevant to be insufficient to establish good cause. Hearing Transcript at 33-34. The administrative law judge's finding was reasonable. *Cf. Conn v. White Deer Coal Co.*, 6 BLR 1-979, 1-981-82 (1984)(holding that a mere assertion that evidence is relevant does not establish good cause for a party's failure to timely submit the evidence under the former Section 725.456(b)(2)(2000)). It was employer's burden to demonstrate good cause. *See* 20 C.F.R. §725.456(b)(1); 65 Fed. Reg. 79920, 80000 (Dec. 20, 2000)(stating that a party must "convince the administrative law judge that the particular facts of a case justify the submission of additional medical evidence"). On the facts and arguments presented, we detect no abuse of discretion in the administrative law judge's determination that employer did not demonstrate good cause for exceeding the limits of Section 725.414. *Clark*, 12 BLR at 1-153.

Employer next contends that the administrative law judge erred in applying Section 725.414(a) to limit employer to only one rebuttal reading of claimant's February 5, 2003 x-ray, rather than permitting employer to rebut both interpretations of that x-ray submitted by claimant. Employer's Brief at 26-29. Revised Section 725.414 provides, in relevant part, that claimant and employer may each submit "no more than two chest X-ray interpretations" in support of their affirmative case. 20 C.F.R. §725.414(a)(2)(i), (a)(3)(i). In turn, the rebuttal provision provides that each party may submit "no more than one physician's interpretation of each chest X-ray . . . submitted" by the opposing party in its affirmative case. 20 C.F.R. §725.414(a)(2)(ii), (3)(ii). Although claimant submitted two interpretations of the February 5, 2003 x-ray as his affirmative case evidence, the administrative law judge apparently concluded that for purposes of Section 725.414(a)(3)(i), claimant had submitted only one *x-ray* and he therefore permitted employer to submit only one interpretation of that x-ray on rebuttal. Hearing Transcript at 26-28. Thus, although employer offered two interpretations of the February 5, 2003 x-ray for its rebuttal evidence, the administrative law judge allowed only one and excluded Dr. Meyer's interpretation contained at Employer's Exhibit 8. As noted, the administrative law judge found the February 5, 2003 x-ray positive, in part because Dr.

Miller's dually qualified positive reading was corroborated by the positive B reading of Dr. Baker. However, Dr. Wiot's dually qualified negative reading was corroborated by the excluded negative reading of Dr. Meyer, who is also a dually qualified B reader and Board-certified radiologist.

The Director agrees with employer that the administrative law judge's approach was inconsistent with the intent of the rebuttal provision:

> Section 725.414(a)(3)(ii) entitles Employer "to submit, in rebuttal of the case presented by the claimant, no more than one physician's interpretation of each chest X-ray . . . submitted by the claimant under paragraph (a)(2)(i) . . . ." (emphasis added) Contrary to the ALJ's understanding, what is submitted under paragraph (a)(2)(i) is not an X-ray but an X-ray interpretation. This is because the X-ray itself has no meaning: it is just a picture. What has meaning, and therefore what is submitted, is the doctor's interpretation. Consequently, taking the whole provision into consideration, it is the X-ray interpretation to which the opposing party may respond. Thus, if a party submits two interpretations--even if it is of the same X-ray--the opposing party may submit two interpretations in response. . . . To hold otherwise would allow the party submitting two interpretations of the same X-ray--all other things being equal--to always have one more X-ray interpretation than its opponent, unless the opponent acts in the same manner when constructing its affirmative case. Such a scenario encourages a strategy focused on numbers.

Director's Brief (Blake) at 23-24.

We agree with the Director's reasonable interpretation of the regulation. *Cadle v. Director, OWCP*, 19 BLR 1-56, 1-62 (1994)(observing that the Director's interpretation of the regulations merits "substantial deference"). Since what is submitted in a party's affirmative case under Section 725.414(a)(2)(i), (a)(3)(i) are "chest X-ray interpretations," that is what each party may rebut under Section 725.414(a)(2)(ii), (a)(3)(ii). Therefore, in the case at bar, since claimant submitted two interpretations of the February 5, 2003 x-ray in support of his affirmative case, employer was entitled to submit two interpretations in rebuttal under Section 725.414(a)(3)(i). The administrative law judge therefore erred in limiting employer to one rebuttal interpretation. We cannot say that the error was harmless, as the administrative law judge's approach led him to conclude that the February 5, 2003 x-ray was positive for pneumoconiosis. Hence, we vacate the administrative law judge's findings at Section 718.202(a)(1) and remand the case for further consideration. On remand, the administrative law judge must admit employer's second rebuttal interpretation of the February 5, 2003 x-ray, contained at Employer's Exhibit 8, reevaluate the x-ray evidence in light of the additional

interpretation, and fully explain the basis for his findings.[5] *Piney Mountain coal Co. v. Mays*, 176 F.3d 753, 762 n. 10, 21 BLR 2-587, 2-603 n. 10 (4th Cir 1999).

Regarding the administrative law judge's consideration of the relative qualifications of the physicians pursuant to Section 718.202(a)(1), we reject employer's argument that the administrative law judge must accord determinative weight to interpretations by the dually qualified x-ray readers of record, and further reject employer's implication that Dr. Scatarige's and Dr. Wiot's additional qualifications as professors of radiology, as well as Dr. Wiot's involvement in the ILO system, mandate that their readings be given the greatest weight. *See Dempsey*, 23 BLR at 1-56; *Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-302 (2003); *Clark*, 12 BLR at 1-149. However, Section 718.202(a)(1) specifically provides that where two or more x-ray readings are in conflict, the administrative law judge shall consider the radiological qualifications of the x-ray readers, as defined therein, in evaluating their x-ray interpretations. 20 C.F.R. §718.202(a)(1)(ii)(C)-(F). While the regulations provide only the criteria for determining whether a reader is Board-certified, Board-eligible, a B reader or a qualified radiologic technologist, and do not explicitly provide for the consideration of additional qualifications, such as professorships, we note that the comments to the revised regulations specifically state that in considering the radiological qualifications of a reader, the adjudicator "should consider any relevant factor in assessing a physician's credibility, and each party may prove or refute the relevance of that factor." 65 Fed. Reg. 79945 (Dec. 20, 2000), *citing Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1983). Therefore, we instruct the administrative law judge to consider these qualifications on remand, as they may bear on the quality of the x-ray evidence.

Pursuant to Section 718.202(a)(4), employer contends that the administrative law judge's analysis of the x-ray evidence affected his weighing of the medical opinion evidence as to the existence of pneumoconiosis. Employer's Brief at 8. We agree. Drs. Baker and Ranavaya diagnosed claimant with pneumoconiosis, while Drs. Crisalli and Zaldivar concluded that he does not have pneumoconiosis. The administrative law judge gave greater weight to the opinions of Drs. Baker and Ranavaya because they "are supported by the positive X-ray readings, unlike the diagnoses of Drs. Crisalli and Zaldivar." Decision and Order at 18. Because we have vacated the administrative law judge's finding that the x-ray evidence establishes the existence of pneumoconiosis, we

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[5] We note that the administrative law judge did not adequately explain his determination to accord greater weight to the x-ray interpretations of Dr. Miller on the ground that his x-ray readings of other x-rays were consistently positive. Decision and Order at 17. While an unexplained inconsistency may be grounds for finding an opinion not credible, it is unclear why the fact that a physician offers relatively the same opinion as to more than one x-ray renders his opinion more credible.

cannot affirm the administrative law judge's basis for according greater weight to the diagnoses of Drs. Baker and Ranavaya.[6] Accordingly, we vacate the administrative law judge's findings at Section 718.202(a)(4). In reconsidering the medical opinion evidence relevant to the existence of clinical and legal pneumoconiosis on remand, the administrative law judge should be mindful that a medical opinion of clinical pneumoconiosis which is merely a restatement of an x-ray opinion may not establish the existence of pneumoconiosis at Section 718.202(a)(4). *See Worhach*, 17 BLR at 1-110.

With respect to the issue of total disability, employer contends that the administrative law judge erred in his evaluation of the pulmonary function studies pursuant to 20 C.F.R. §718.204(b)(2)(i). Employer's Brief at 9-11. We disagree. The administrative law judge considered both the pre-bronchodilator and post-bronchodilator test results and permissibly found that as four of the seven pulmonary function studies produced qualifying values, the preponderance of the pulmonary function study evidence supported a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(i).[7] *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 207, 22 BLR 2-162, 2-174 (4th Cir. 2000); *Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995); *Cohen v. Director, OWCP*, 7 BLR 1-30 (1984); *Strako v. Zeigler Coal Co.*, 3 BLR 1-136 (1981).

Employer next asserts that the administrative law judge erred in his weighing of the medical opinion evidence at Section 718.204(b)(2)(iv). We disagree. In considering the evidence relevant to the issue of total disability at Section 718.204(b)(2)(iv), the administrative law judge summarized the four medical opinions of record, noting that only Dr. Ranavaya concluded that claimant's respiratory impairment would not prevent

[6] In addition, we note that a review of Dr. Crisalli's medical report and deposition testimony does not support the administrative law judge's statement that the physician "relied primarily on the negative X-ray reading by Dr. Willis." Decision and Order at 18; Employer's Exhibit 12 at p. 40.

[7] We note that although in finding Dr. Zaldivar's August 5, 2003 post-bronchodilator values to be qualifying, the administrative law judge did not specify that he reached this conclusion by comparing the FEV_1 test results with those listed in the Table for the closest greater height, as advocated in the Director's OWCP Program Manual, this is the only conclusion possible. *See Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995). The administrative law judge properly determined, consistent with *Toler*, that claimant's "correct" height is 72.5 inches, which falls between two listed heights. Claimant's August 5, 2003 post-bronchodilator test, performed when he was 54 years old, produced an FEV_1 value of 2.36, which is qualifying only at the closest greater height of 72.8 inches.

him from performing his usual coal mine work. The administrative law judge further noted that, by contrast, Dr. Baker opined that claimant's respiratory impairment is totally disabling, and Drs. Zaldivar and Crisalli both opined that in an untreated state, claimant suffers from a totally disabling respiratory impairment. They also opined, however, that claimant was not being treated aggressively for his asthma, and that with proper treatment, claimant could return to his usual coal mine work. As both Dr. Zaldivar and Dr. Crisalli diagnosed the existence of a totally disabling respiratory impairment, and as their opinions regarding the possible effects of treatment are merely speculative, the administrative law judge permissibly concluded that the opinions of Drs. Zaldivar and Crisalli support a finding of total disability pursuant to Section 718.204(b)(2)(iv).[8] *See United States Steel Mining Co., Inc. v. Director, OWCP* [*Jarrell*], 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Snorton v. Zeigler Coal Co.*, 9 BLR 1-106, 108 (1986).

We further reject employer's contention that the administrative law judge erred in finding the opinion of Dr. Baker, that claimant suffers from a totally disabling respiratory impairment, to be a reasoned medical opinion. Employer specifically contends that because Dr. Baker did not perform post-bronchodilator pulmonary function studies, or review post-bronchodilator studies performed by other physicians, he lacked sufficient information to assess claimant's true respiratory capacity. Employer's Brief at 10. We disagree. The regulations pertaining to pulmonary function testing do not require the administration of bronchodilators. 20 C.F.R. §§718.103, 718.204(b)(2)(i), Appendix A to Part 718. Thus, it was reasonable for the administrative law judge to rely on Dr. Baker's assessment of claimant's respiratory capacity, as based on his pre-bronchodilator results.

Finally, we reject employer's argument that the administrative law judge erred in crediting Dr. Baker where the physician failed to explain how his diagnosis of a moderate impairment supported his conclusion that claimant is totally disabled from a respiratory standpoint. It was not unreasonable for the administrative law judge to credit Dr. Baker's determination that the miner's moderate respiratory impairment would prevent him from performing his usual coal mine work, in light of the administrative law judge's finding that the miner's last position was that of a roof bolter and required lifting up to 250 pounds with only the help of one other person. Decision and Order at 4; Hearing Transcript at 12-15. It is the province of the administrative law judge to evaluate the physicians' opinions, to make credibility determinations and resolve inconsistencies in the evidence, *Compton*, 211 F.3d at 211, 22 BLR at 2-175; *Grizzle v. Pickands Mather & Co./Chisolm Mines*, 994 F.2d 1093, 1096 (4th Cir. 1993), and the Board will not

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[8] We note that although his results improved, claimant had qualifying post-bronchodilator results on the August 5, 2003 pulmonary function test administered by Dr. Zaldivar. Employer's Exhibit 1.

substitute its inferences for those of the administrative law judge. *Mays*, 176 F.3d at 753, 21 BLR at 2-587. Consequently, we affirm the administrative law judge's finding that as three of the four physicians of record opined that claimant is totally disabled from a respiratory standpoint, claimant has established the existence of total disability pursuant to Section 718.204(b)(2)(iv) by a preponderance of the evidence. *Compton*, 211 F.3d at 211, 22 BLR at 2-174.

On the issue of total disability due to pneumoconiosis pursuant to Section 718.204(c), the administrative law judge accorded little weight to the opinions by Drs. Crisalli and Zaldivar because they opined that claimant does not have pneumoconiosis, and credited Dr. Baker's and Dr. Ranavaya's opinions that pneumoconiosis substantially contributes to claimant's disability. Decision and Order at 23. Because we have vacated the administrative law judge's finding that the existence of pneumoconiosis was established, we also vacate the administrative law judge's finding pursuant to Section 718.204(c), and instruct him to revisit this issue on remand, if reached. In reconsidering the issue of disability causation, the administrative law judge must consider all of the relevant evidence, including the physicians' qualifications as they may relate to credibility. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533-36, 21 BLR 2-323, 2-336-340 (4th Cir. 1998). In addition, in considering the physicians' opinions, the administrative law judge must consider whether their opinions as to the cause of the miner's respiratory disability are "premise[d] … on an erroneous finding contrary to the ALJ's conclusions." *Compton*, 211 F.3d at 214, 22 BLR at 2-179.

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

SO ORDERED.

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge