BRB No. 07-0686 BLA

N. S.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MULLINS AND STANLEY TRUCKING	)	
	)	DATE ISSUED: 05/29/2008
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 on Remand - Award of Benefits of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe Williams & Rutherford), Norton, Virginia, for claimant.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand – Award of Benefits (04-BLA-5124) of Administrative Law Judge Thomas M. Burke 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). This case is before the Board for the second time with respect to this subsequent claim.[1] In the original Decision and Order,

[1] Claimant filed his first application for benefits on April 25, 1989. In a Decision and Order dated October 11, 1991, Administrative Law Judge John C. Holmes found that

Administrative Law Judge Mollie W. Neal adjudicated this claim pursuant to 20 C.F.R. Part 718, credited claimant with thirty years of qualifying coal mine employment and found that because claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), claimant established that one of the applicable conditions of entitlement had changed since the denial of his prior claim pursuant to 20 C.F.R. §725.309. Addressing the merits of entitlement, Judge Neal found that claimant established total respiratory disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b) and (c).[2] Accordingly, benefits were awarded as of June 2001, the month in which the claim was filed.

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while claimant established total respiratory disability at 20 C.F.R. §718.204(c) (2000), he failed to establish either the existence of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1) or disability causation at 20 C.F.R. §718.204(b) (2000). Director's Exhibit 1. Claimant appealed the denial to the Board, but had also filed a petition for modification accompanied by supportive evidence with the district director. Consequently, the Board remanded the case to the district director. *[N. S.] v. Mullins and Stanley Trucking*, BRB No. 92-0332 BLA (May 20, 1992) (unpub. Order); Director's Exhibit 1. The district director denied modification and the case was forwarded to the Office of Administrative Law Judges. On July 26, 1994, Judge Holmes found that the newly submitted evidence was sufficient to establish modification under 20 C.F.R. §725.310 (2000), but that claimant's entitlement to benefits was precluded based on claimant's failure to establish the existence of pneumoconiosis pursuant to Section 718.202(a) or disability causation pursuant to Section 718.204(b) (2000). Claimant appealed and employer filed a cross-appeal. The Board vacated the Decision and Order and remanded the case for the administrative law judge to render determinations under Sections 718.202(a)(4), 718.204(b) (2000), and 718.204(c)(1)-(4) (2000). *[N. S.] v. Mullins and Stanley Trucking*, BRB No. 94-3776 BLA (May 26, 1995) (unpub.); Director's Exhibit 1. On remand, Judge Holmes found that claimant failed to establish the existence of either clinical or legal pneumoconiosis and, on reexamination of the blood gas studies and medical opinions, the evidence was insufficient to establish total respiratory disability at Section 718.204(c)(1)-(4) (2000). Accordingly, benefits were denied. Although claimant filed an appeal, the Board dismissed it as the appeal was untimely filed. *[N. S.] v. Mullins and Stanley Trucking*, BRB No. 96-0399 BLA (Jan. 30, 1996) (unpub. Order); Director's Exhibit 1. Claimant did not further pursue this claim. Instead, claimant filed a second application for benefits on June 14, 2001, which is pending on appeal. Director's Exhibit 2.

[2] When the regulations set forth at 20 C.F.R. Part 718 were amended, the regulations set forth at Section 718.204(b) and (c) were switched such that the provisions set forth in Section 718.204(b) (2000) are presently found at Section 718.204(c) and the

Employer appealed and the Board affirmed, as unchallenged, Judge Neal's determinations that claimant established total respiratory disability and that the date for the commencement of benefits was June 2001. With respect to the issue of the existence of pneumoconiosis, the Board vacated Judge Neal's determinations that Dr. Rosenberg's opinion was equivocal as to the cause of claimant's respiratory impairment; that Dr. Castle's opinion of no legal pneumoconiosis was conclusory; and that the reliance of Drs. Rasmussen and Robinette on claimant's diminished breath sounds and qualifying blood gas studies rendered their diagnosis of legal pneumoconiosis more credible because the aforementioned determinations were either inadequately explained or unclear. Consequently, the Board vacated Judge Neal's finding pursuant to Section 718.202(a)(4) and instructed her to reconsider the opinions of Drs. Rosenberg, Castle, Rasmussen and Robinette in their entirety. Further, while the Board disagreed with employer's argument that Judge Neal erred in not addressing Dr. Prince's opinion since Dr. Prince had not addressed the presence of pneumoconiosis, the Board instructed Judge Neal to consider Dr. Renfro's opinion along with claimant's hospital records on remand because these records were relevant to whether claimant established the existence of pneumoconiosis. Hence, the Board instructed Judge Neal to review all of the relevant medical evidence to determine whether claimant established the existence of pneumoconiosis under Section 718.202(a) and, if reached, disability causation under Section 718.204(c). *[N. S.] v. Mullins and Stanley Trucking Co.*, BRB No. 05-0378 BLA (Jan. 23, 2006) (unpub.).[3]

Due to the retirement of Judge Neal, the case was assigned to Administrative Law Judge Thomas M. Burke (the administrative law judge) on remand. With respect to 20 C.F.R. §725.414(a)(3)(i) and (ii), the administrative law judge identified the affirmative case and rebuttal x-ray evidence proffered by employer and found that Judge Neal permitted employer to submit evidence in excess of the evidentiary limitations, *i.e.*, three x-ray readings in support of its affirmative case and one extra rebuttal rereading of the January 15, 2003 x-ray film. After excluding the excess x-ray interpretations, the

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provisions set forth in Section 718.204(c) (2000) are presently found in Section 718.204(b). *Compare* 20 C.F.R. §718.204(b), (c) (2000), and 20 C.F.R. §718.204(b), (c).

[3] Associated with the first appeal, the Director, Office of Workers' Compensation Programs (the Director), filed a letter of non-participation. However, the Director noted that Judge Neal failed to enforce the evidentiary limitations set forth at 20 C.F.R. §725.414 when she permitted employer to submit evidence in excess of the evidentiary limitations, *i.e.*, three x-ray readings in support of its affirmative case and one extra rebuttal rereading of the January 15, 2003 x-ray film. The Director asserted that, if the Board remanded the case, it should instruct the administrative law judge to enforce the evidentiary limitations at Section 725.414(a)(3)(i) and (ii). *See [N. S.] v. Mullins and Stanley Trucking Co.*, BRB No. 05-0378 BLA, *slip op.* at 2 (Jan. 23, 2006) (unpub.).

administrative law judge found that the preponderance of the x-ray evidence failed to establish the existence of pneumoconiosis under Section 718.202(a)(1). Next, the administrative law judge accorded greater weight to the medical opinions of Drs. Rasmussen and Robinette, that claimant's pulmonary condition was caused or contributed to by his coal dust exposure, than to the contrary opinions of Drs. Rosenberg and Castle, and therefore, found that claimant established the existence of pneumoconiosis under Section 718.202(a)(4). The administrative law judge then reviewed all the evidence relevant to the existence of pneumoconiosis in accordance with *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000),[4] and found that the preponderance of the evidence affirmatively established the existence of pneumoconiosis pursuant to Section 718.202(a). Next, the administrative law judge found that claimant established total disability due to pneumoconiosis under Section 718.204(c) and, accordingly, awarded benefits.[5]

On appeal, employer argues that the administrative law judge erred in his weighing of the medical opinion evidence and in finding it sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a). In addition, employer argues that the administrative law judge erred in awarding benefits to claimant. Claimant has filed a response brief, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating his intention not to participate in this appeal.[6]

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

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because claimant's coal mine employment occurred in Virginia. *See Shupe v. Director*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 1.

[5] The administrative law judge noted that the Board previously affirmed, as unchallenged, Judge Neal's determinations that claimant established total respiratory disability and that June 2001 would be the correct date for the commencement of benefits. Decision and Order on Remand at 7; *see [N. S.] v. Mullins and Stanley Trucking Co.*, BRB No. 05-0378 BLA, *slip op*. at 2 n.1 (Jan. 23, 2006) (unpub.).

[6] We affirm the administrative law judge's determinations that claimant failed to establish the existence of pneumoconiosis at Section 718.202(a)(1) and that claimant did establish total disability due to pneumoconiosis at Section 718.204(c) as 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 on Remand at 2, 7.

U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & 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. *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*).

Challenging the administrative law judge's weighing of the conflicting medical opinions of record at Section 718.202(a)(4), employer argues that the administrative law judge erred in according the opinions of Drs. Rasmussen and Robinette greatest weight over the contrary opinions of Drs. Castle and Rosenberg. Initially, employer contends that Dr. Rasmussen's opinion was not reasoned because Dr. Rasmussen relied on an erroneous conclusion that claimant was employed as a coal miner for forty years, contrary to claimant's account that he worked in coal mine employment for thirty years. In addition, employer asserts that the administrative law judge erred in failing to discount Dr. Rasmussen's opinion as he only considered the positive interpretation by Dr. Patel of a chest x-ray dated December 12, 2003,[7] and did not consider the negative interpretation rendered by Dr. Scott of this same x-ray. Employer also avers that the probative value of Dr. Rasmussen's opinion is undermined based on his failure to explain why the respiratory impairment he diagnosed was caused by coal dust exposure rather than claimant's non-work related conditions, such as cigarette smoking, obesity, emphysema, sleep apnea, or coronary artery disease.

Although it has consistently been held that an administrative law judge must note a discrepancy between his finding regarding a claimant's history of coal mine employment and that relied upon by a physician and explain how the discrepancy affects the credibility of that physician's opinion, the discrepancy must be "significant" to find a physician's opinion undermined on this basis. *See Sellards v. Director, OWCP*, 17 BLR 1-77 (1993); *Fitch v. Director, OWCP*, 9 BLR 1-45, 1-46 (1986); *Hall v. Director, OWCP*, 8 BLR 1-193, 1-195 (1985); *Long v. Director, OWCP*, 7 BLR 1-254 (1984); *Gouge v. Director, OWCP*, 8 BLR 1-307 (1985). While the discrepancy between Dr. Rasmussen's understanding that claimant worked in coal mine employment for forty

[7] Employer incorrectly cited the date on the x-ray associated with Dr. Rasmussen's pulmonary evaluation as December 12, 2003. The x-ray was dated December 12, 2001. Employer's Brief in Support of Its Petition for Review at 4; Director's Exhibit 8.

years compared to the prior administrative law judge's finding of thirty years[8] is a difference of ten years, employer has not explained how this difference would affect the credibility of the physicians' opinions[9] since the duration of claimant's coal mine employment, either thirty or forty years, was lengthy. Likewise, the probative value of Dr. Rasmussen's opinion[10] was not diminished because Dr. Rasmussen did not review Dr. Scott's rereading of the December 12, 2001 chest x-ray since the regulations do not require physicians to review multiple chest x-ray interpretations in order to affirmatively diagnose the existence of pneumoconiosis. *See* 20 C.F.R. §§718.104, 718.202(a)(4), 718.202(b). Nevertheless, the administrative law judge discounted that portion of Dr. Rasmussen's opinion diagnosing clinical pneumoconiosis because it was "based on a positive chest x-ray [that] is contrary to the evidence of record." *See Furgerson v. Jericol Mining Inc.*, 22 BLR 1-216, 1-226 (2002) (*en banc*); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984); Decision and Order on Remand at 3. Likewise, we reject employer's assertion that the probative value of Dr. Rasmussen's opinion was undermined because Dr. Rasmussen did not attribute the claimant's disease to non-work related conditions, including cigarette smoking, obesity, emphysema, sleep apnea, or coronary artery disease. Dr. Rasmussen's pulmonary evaluation of claimant reveals that he was aware of other potential causes that could contribute to claimant's respiratory impairment such as claimant's weight, difficulty sleeping, and cigarette smoking history but, in conclusion, he attributed claimant's disabling lung disease to only two risk factors:

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[8] In the prior Decision and Order, Judge Neal credited the parties' stipulation that claimant worked in qualifying coal mine employment for thirty years. Decision and Order at 2.

[9] A review of the medical opinions reveals that all four physicians administered physical examinations and, during the course of their pulmonary evaluations, obtained claimant's employment history. Dr. Rasmussen and Dr. Castle each reported that claimant believed he was employed in the coal mining industry for approximately fifty years, but that the dates claimant reported working, namely from 1948 to 1988, suggested a forty-year coal mine employment history. Director's Exhibits 8, 31. Dr. Robinette recorded a thirty-year coal mine employment history. Director's Exhibit 32. While Dr. Rosenberg indicated that it was difficult to determine the exact years claimant worked due to claimant's uncertainty, he concluded that claimant "probably worked in the mines approximately 35 years… ." Director's Exhibit 31.

[10] In a report dated December 12, 2001, Dr. Rasmussen diagnosed coal workers' pneumoconiosis arising out of coal mine employment and a disabling lung disease due to coal dust exposure and cigarette smoking history. Director's Exhibit 8. After examining claimant on January 12, 2004, Dr. Rasmussen again arrived at the same conclusions [no exhibit number].

dust exposure arising out of his coal mine employment and cigarette smoking. Contrary to employer's argument, therefore, the reliability of Dr. Rasmussen's opinion was not diminished. *See Nance v. Benefits Review Board*, 861 F.2d 68, 71, 12 BLR 2-31, 2-36 (4th Cir. 1988); *Gozalka v. Big Horn Coal Co.*, 16 BLR 1-48, 1-52 (1990) ("all claimant has to demonstrate is that coal dust exposure was a significant causative factor" in his lung disease). Further, the administrative law judge properly found Dr. Rasmussen's opinion entitled to determinative weight as his diagnosis of legal pneumoconiosis was based on claimant's significant duration of coal mine dust exposure, marked resting hypoxia, pulmonary function studies indicative of no obstructive lung disease, and a reduced diffusing capacity. *See Trumbo v. Reading Anthracite Co*., 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*). The administrative law judge was persuaded by Dr. Rasmussen's reasoning that claimant, who is symptomatic, exhibited an impairment in oxygen transfer, absent significant airway obstruction impairment, which, Dr. Rasmussen opined, is a pattern consistent with coal mine dust induced disease. *See Lane v. Union Carbide Corp*., 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997); *King v. Consolidation Coal Co.*, 8 BLR 1-262, 1-265 (1985); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-296 (1984). Employer's contention that the administrative law judge erred in according determinative weight to the opinion of Dr. Rasmussen must fail.

Employer argues that the administrative law judge erred in crediting the opinion of Dr. Robinette because Dr. Robinette, who is not a Board-certified radiologist, based his diagnosis of pneumoconiosis primarily on his own reading of the January 15, 2003 chest x-ray without also reviewing the negative rereadings of the same x-ray by Drs. Scott and Wheeler, physicians who are Board-certified radiologists. Similarly, employer contends that while Dr. Robinette relied on studies completed in the 1970's that delineated the relationship between normal spirometry and reduced diffusing capacity, his opinion is worthy of little weight because he failed to explain why claimant's condition was not due to cigarette smoking, obesity, sleep apnea, emphysema, or coronary artery disease.

Employer's contentions lack merit. Dr. Robinette, like Dr. Rasmussen, attributed claimant's pulmonary disease, in part, to cigarette smoking and acknowledged that it was difficult to assess its specific contribution. *See* 20 C.F.R. §718.201; Director's Exhibit 32. Initially, the administrative law judge observed that Dr. Robinette based his opinion on claimant's severe reduction in diffusion capacity, impaired gas exchange, and severe hypoxemia notwithstanding normal spirometry, which were conditions indicative of a lung disease caused by coal dust exposure. Next, the administrative law judge found that Dr. Robinette's opinion was further bolstered by the physician's assessment that if claimant's lung damage was the sole result of cigarette smoking, "he would have had a decreased FEV1 and FVC3, which is clearly not the case." Decision and Order on Remand at 4, *citing* Director's Exhibit 32. The administrative law judge determined further that Dr. Robinette's reliance on literature documenting the relationship between

miners with micronodular dust reticulation and the decrease in their diffusion capacity and impaired gas exchange levels enhanced the reliability of his opinion. Decision and Order on Remand at 4. Therefore, because the administrative law judge found Dr. Robinette's conclusions, as supported by those of Dr. Rasmussen, more persuasive than those of Drs. Rosenberg and Castle, he rationally accorded dispositive weight to Dr. Robinette's opinion. *See 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); *see Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Calfee v. Director, OWCP*, 8 BLR 1-7, 1-10 (1985).

Employer argues that the administrative law judge erred in discrediting the opinion of Dr. Rosenberg, that claimant's interstitial lung disease was not coal workers' pneumoconiosis, since claimant's lung disease, combined with the presence of clubbing in claimant's fingers, continued to progress after he ceased coal mine employment in 1988. Employer avers that the administrative law judge failed to discuss the impact of Dr. Rosenberg's belief in the non-progressivity of pneumoconiosis in association with the presence of clubbing, a condition that neither Dr. Rasmussen nor Dr. Robinette mentioned in his report.[11] Employer's Brief in Support of Its Petition for Review at 7.

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[11] Dr. Rosenberg opined:

> Based on a review of the above information, it can be appreciated that Mr. [S]'s chest X-ray has variably been reported as either being negative, to demonstrate micronodular changes, or to reveal linear changes. Also, his lung volumes were normal, indicating that he does not have restriction. On auscultation of his chest, chronic end-respiratory rales were not noted, but he definitely had a decreased diffusing capacity associated with gas exchange abnormality… . Finally, clubbing of the fingers was observed. These findings taken in total indicate Mr. [S] probably does have some form of interstitial lung disease (ILD). However, its progressive nature after stopping his coal mine employment in 1988, associated with the presence of clubbing, indicates his ILD is not coal workers' pneumoconiosis (CWP).

Director's Exhibit 31.

The administrative law judge did not err in not discussing this condition[12] as it relates to claimant's lung disease. In analyzing the probative value of Dr. Rosenberg's opinion, the administrative law judge found that while Dr. Rosenberg unequivocally diagnosed a disabling pulmonary disease, he was uncertain as to its etiology and also indicated that further evaluation was necessary in order to definitively characterize claimant's lung condition. Decision and Order on Remand at 4. The administrative law judge, however, did not discount Dr. Rosenberg's opinion based on his uncertainty concerning the cause of claimant's lung disease or his equivocal statement that claimant "probably" had interstitial lung disease. Rather, the administrative law judge found Dr. Rosenberg's opinion entitled to diminished weight based on his conclusion "that the probable interstitial lung disease could not be caused by coal dust exposure since the disease continued to progress after claimant ceased coal mine employment," a belief that is inconsistent with the regulatory provisions that pneumoconiosis is a progressive disease. Decision and Order on Remand at 4; Director's Exhibit 31. Because it is well established that the regulations dictate that pneumoconiosis may be a latent and progressive lung disease, the administrative law judge reasonably found Dr. Rosenberg's opinion less persuasive on this basis. *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, 491, 22 BLR 2-612, 2-621 (6th Cir. 2003); *Stiltner v. Island Creek Coal Co.*, 86 F.3d 337, 20 BLR 2-246 (4th Cir. 1996); Decision and Order on Remand at 4-5. Hence, we affirm the administrative law judge's finding that Dr. Rosenberg's opinion was insufficient to outweigh the opinions of Drs. Rasmussen and Robinette concerning the cause of claimant's lung disease.

Lastly, employer avers that the administrative law judge erred in discounting the opinion of Dr. Castle. Reiterating the contents of Drs. Castle's report in its brief, employer asserts that Dr. Castle and Dr. Rosenberg are the only physicians who reviewed the entirety of claimant's medical records and discussed the impact of each of claimant's diagnosed conditions. Employer's Brief in Support of Its Petition for Review at 7-9. As employer fails to challenge the administrative law judge's discounting of the medical opinion of Dr. Castle, and fails to set forth any allegations of error with respect to the administrative law judge's weighing of Dr. Castle's opinion or his determination that Dr. Castle's opinion was entitled to diminished weight, *see Cox v. Benefits Review Board*, 791 F.2d 445, 446, 9 BLR 2-46, 2-49 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983), we affirm the administrative law judge's determination that claimant affirmatively satisfied his burden of establishing the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4). *See* 20 C.F.R. §§718.201, 718.202(a)(4); *Clark*, 12 BLR at 1-149; *King*, 8 BLR at 1-262;

[12] While employer is correct that Dr. Robinette did not address the presence of clubbing, Dr. Rasmussen did, in fact, address the condition and found no evidence of it. Director's Exhibits 8, 32.

Lucostic v. U.S. Steel Corp., 8 BLR 1-46 (1985); Decision and Order on Remand at 5-6.[13] We, therefore, affirm the administrative law judge's determination that claimant established the existence of pneumoconiosis under Section 718.202(a)(4).

Based on the foregoing, we affirm the administrative law judge's determinations that the medical evidence of record was sufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a) by a preponderance of the evidence, *see Compton*, 211 F.3d at 211, 22 BLR at 2-174, and that claimant is entitled to benefits. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-1.

Accordingly, the Decision and Order on Remand – 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

[13] Employer also asserts that it submitted the report of Dr. Prince. The Board held that Judge Neal had not erred in not addressing Dr. Prince's opinion under Section 718.202(a)(4) because Dr. Prince did not address the presence of legal pneumoconiosis. *[N. S.]*, BRB No. 05-0378 BLA, *slip op.* at 5.