

BRB No. 09-0722 BLA

RONALD DUNCAN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	DATE ISSUED: 09/21/2010
	)	
TENNESSEE COAL COMPANY	)	
	)	
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 Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Lois A. Kitts and James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

Michelle S. Gerdano (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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 HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits (2005-BLA-05516) of Administrative Law Judge Donald W. Mosser rendered on a subsequent claim filed on October 2, 2001, pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010)

(to be codified at 30 U.S.C. §§921(c)(4) and 932(l)) (the Act).<sup>1</sup> Adjudicating the claim under 20 C.F.R. Part 718, the administrative law judge found that the record supports the parties' stipulation to at least thirteen years of coal mine employment. The administrative law judge found that the newly submitted evidence was sufficient to establish total disability and, therefore, that claimant's condition has changed since the prior denial of benefits, pursuant to 20 C.F.R. §725.309(d). Based upon a consideration of the newly submitted evidence, the administrative law judge also found that claimant established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(1), (4), 718.203, and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b)(2)(iv), (c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erred in finding that claimant established the existence of clinical pneumoconiosis pursuant to Section 718.202(a)(1), legal pneumoconiosis pursuant to Section 718.202(a)(4) and total disability due to pneumoconiosis pursuant to Section 718.204(b), (c). Claimant did not file a response brief. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not participate in this appeal.<sup>2</sup>

By Order dated May 12, 2010, the Board provided the parties with the opportunity to address the impact on this case, if any, of Section 1556 of Public Law No. 111-148, which amended the Act with respect to the entitlement criteria for certain claims.<sup>3</sup> *Duncan v. Tennessee Coal Co.*, BRB No. 09-0722 BLA (May 12, 2010)(unpub. Order). Employer and the Director have responded. Both employer and the Director assert that Section 1556 does not apply in this case because all of the claims of record were filed

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<sup>1</sup> Claimant's first claim, filed on November 18, 1987, was denied by the district director on May 10, 1988, because he did not establish any element of entitlement. Director's Exhibit 1. Claimant filed a second claim on April 24, 1997. Director's Exhibit 2. On August 20, 1997, the district director denied benefits, because claimant failed to prove that he was totally disabled. *Id.* Claimant took no action until he filed this subsequent claim. Director's Exhibit 4.

<sup>2</sup> We affirm, as unchallenged by the parties on appeal, the administrative law judge's determination that claimant worked thirteen years as a coal miner. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>3</sup> Relevant to a living miner's claim, Section 1556 of Pub. L. No. 111-148, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4)), reinstated the "15-year presumption" of total disability due to pneumoconiosis set forth in Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), for claims filed after January 1, 2005, that were pending on or after March 23, 2010.

before January 1, 2005. We agree. The recent amendments to the Act, which became effective on March 23, 2010, are not applicable in this case, as claimant's initial and subsequent claims were filed before January 1, 2005. Director's Exhibits 1, 2, 4.

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.<sup>4</sup> 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 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 miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, that he is totally disabled and that his total disability is due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes a finding of entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

### **I. Subsequent Claim**

When a miner files an application 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 "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2). Claimant's prior claim was denied because he failed to establish that he was totally disabled by a respiratory or pulmonary impairment. Director's Exhibit 2. Consequently, claimant had to submit new evidence establishing this condition of entitlement to proceed with his claim. 20 C.F.R. §725.309(d)(2), (3).

The administrative law judge weighed the newly submitted medical opinions pursuant to Section 718.204(b)(2)(iv) and found:

Dr. Baker, who is a highly qualified pulmonary specialist, initially found the claimant had a mild respiratory impairment but that he was unable to perform his previous jobs in the coal mines. I find that even this opinion is sufficient to support a finding of total disability in this case considering the arduous nature of the claimant's last job in the mines and the fact that he

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<sup>4</sup> The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as claimant's last year of coal mine employment was in Kentucky. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibits 1, 2, 4.

now is oxygen dependent. I reiterate that Dr. Patton treated the claimant for a number of years and he believes the miner's impairment to be significant. Moreover, I again note that I find that Dr. Patton's opinion should be given deference as he has frequently treated the claimant for his respiratory problems for . . . several years and has conducted the tests necessary to appropriately evaluate and treat his patient.

Decision and Order at 17. The administrative law judge further stated that the "reduced results of the pulmonary function studies support the opinions of Drs. Baker and Patton although the results are not sufficient by themselves to establish total respiratory disability." *Id.* The administrative law judge discredited the opinions in which Drs. Repsher and Fino indicated that claimant is not totally disabled, as, *inter alia*, they did not have an accurate understanding of the exertional requirements of claimant's usual coal mine employment. *Id.* at 17-18. The administrative law judge further stated that the credibility of Dr. Repsher's opinion was diminished because he adopted the role of "trier-of-fact." *Id.* at 17.

Employer contends that the administrative law judge did not provide a valid rationale for his decision to credit the opinions of Drs. Baker and Patton and his decision to reject the opinions of Drs. Repsher and Fino. Employer also argues that the administrative law judge erred in neglecting to address all of the medical opinions of record and in failing to weigh the non-qualifying blood gas studies against the evidence supportive of a finding of total disability.

Employer is correct in maintaining that the administrative law judge did not set forth the bases for his determinations that the diagnoses of total disability rendered by Drs. Patton and Baker were reasoned and documented. Decision and Order at 18; *see Wojtowicz*, 12 BLR at 1-165. Regarding the administrative law judge's conclusion that the "reduced results" of the pulmonary function studies supported the opinions of Drs. Patton and Baker, the pre-bronchodilator tests dated November 19, 2002 and September 9, 2004, produced qualifying results, while the four remaining studies, including the most recent study obtained on July 18, 2006, were non-qualifying. Director's Exhibit 36; Claimant's Exhibit 3. In determining the significance of the test results that were non-qualifying, but below the predicted normal values, the administrative law judge improperly substituted his opinion for that of a medical expert. *See Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-139 (1999)(*en banc*); *Wright v. Director, OWCP*, 7 BLR 1-475, 1-477 (1984).

In addition, as employer indicates, the administrative law judge did not resolve the conflict between Dr. Patton's statement, that claimant did not respond to bronchodilator treatment, and the results of the post-bronchodilator studies obtained on November 19, 2002, April 16, 2003 and September 9, 2004, which appear to conflict with Dr. Patton's view. Director's Exhibit 36; Claimant's Exhibits 4, 5; Employer's Exhibits 1, 5.

Similarly, employer argues correctly that the administrative law judge did not consider that, in a letter dated October 25, 2004, Dr. Baker indicated that claimant's total disability is a "possibility" and that the absence of valid pulmonary function studies makes it difficult to conclusively determine the degree of claimant's impairment. Director's Exhibit 36.

Concerning the administrative law judge's discrediting of the opinions of Drs. Repsher and Fino, employer's contention that the administrative law judge did not identify a rational basis for his decision has merit. Because Drs. Repsher and Fino concluded that claimant does not have a clinically significant impairment, the extent of their knowledge of claimant's usual coal mine work is irrelevant. See *Cornett v. Benham Coal*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Beatty v. Danri Corp. and Triangle Enterprises*, 16 BLR 1-11 (1991). Moreover, as employer notes, it is not clear from the record that Drs. Patton and Baker had any greater knowledge of the exertional requirements of claimant's job as a bolt machine operator.<sup>5</sup> Director's Exhibit 16; Claimant's Exhibit 4. In addition, although the administrative law judge acted within his discretion in declining to credit Dr. Repsher's statements, that a particular B reader is unreliable and that Dr. Patton's diagnoses are of little value because he did not consult with a pulmonologist, the administrative law judge did not explain why this also provided the basis for his discrediting of Dr. Patton's analysis of the objective evidence relevant to total disability. See *Mazgaj v. Valley Camp Coal Corp.*, 9 BLR 1-201 (1986).

Finally, employer is correct in asserting that the administrative law judge's statement, that Dr. Fino "based his opinion on the results of a pulmonary function study conducted in 2006 that were not offered in evidence," is not accurate. Decision and Order at 18. Our review of the record indicates that Dr. Fino opined that claimant's variable impairment, caused by asthma, was no longer disabling, based on the non-qualifying pulmonary function study administered by Dr. Patton on July 18, 2006, which was admitted as Claimant's Exhibit 3. Claimant's Exhibits 2, 3.

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<sup>5</sup> Dr. Repsher reported that claimant worked thirteen and one-half years as an underground "pinner and continuous miner operator in 36 inch seams." Employer's Exhibits 1-3, 5. Drs. Baker and Fino noted that claimant worked as a roof bolting machine operator. Director's Exhibits 16, 36-132, 156; Employer's Exhibit 7. Dr. Patton stated that claimant worked thirteen and one-half years "as an underground coal miner." Claimant's Exhibit 2. Claimant testified that he was a bolt machine operator and ran a continuous miner. Hearing Transcript at 12. As a bolt machine operator, claimant stated that he was required to bend, stop, crawl, lift, and set over one hundred bolts per shift, each weighing five-six pounds. *Id* at 13-14. Claimant described his work as a continuous miner operator as involving cutting and loading coal. *Id*.

Because the administrative law judge's weighing of the newly submitted opinions of Drs. Patton, Baker, Repsher and Fino was incomplete and based upon a mischaracterization of the evidence, we must vacate the administrative law judge's determination that these opinions were sufficient to establish total disability pursuant to Section 718.204(b)(2)(iv) and a change in an applicable condition of entitlement pursuant to Section 725.309(d). *See Peabody Coal Co. v. Groves*, 277 F.3d 829, 834, 22 BLR 2-320, 2-326 (6th Cir. 2002); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). On remand, the administrative law judge must reconsider the newly submitted medical opinion evidence of record and determine whether claimant has established total disability at Section 718.204(b)(2)(iv), by a preponderance of this evidence. The administrative law judge must assess the weight to which each opinion is entitled, based on the credentials of the physicians, the explanations for their conclusions, the documentation underlying their diagnoses, and the complexity of, and bases for, their conclusions. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 513, 22 BLR 2-625, 2-647 (6th Cir.2003); *Groves*, 277 F.3d at 834, 22 BLR at 2-326; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103. The administrative law judge cannot accord determinative weight to Dr. Patton's opinion, based on his status as claimant's treating physician, unless he determines, pursuant to 20 C.F.R. §728.104(d)(5), that it is credible "in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. §718.104(d)(5); *see also Williams*, 338 F.3d at 513, 22 BLR at 2-647. Furthermore, the administrative law judge must comply with the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a), and set forth his findings in detail, including the underlying rationale. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989);

If the administrative law judge finds that the newly submitted medical opinion evidence is sufficient to establish total disability under Section 718.204(b)(2)(iv) and, therefore, a change in an applicable condition of entitlement under Section 725.309(d), he must treat claimant's October 2, 2001 claim as a new claim and consider whether claimant has established entitlement to benefits on the merits, based upon a weighing of all of the evidence of record. 20 C.F.R. §725.309(d); *White*, 23 BLR at 1-3. When addressing total disability at Section 718.204(b)(2) on the merits, the administrative law judge is required to weigh the evidence supportive of a finding of total disability against the contrary probative evidence of record to determine whether the evidence of record, as a whole, is sufficient to establish total disability. 20 C.F.R. §718.204(b); *see Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(*en banc*).

We will now address employer's allegations of error regarding the administrative law judge's consideration of the newly submitted evidence relevant to Sections 718.202(a)(1), (4) and 718.204(c).

## II. The Existence of Pneumoconiosis

### A. Section 718.202(a)(1)

When weighing the newly submitted x-ray evidence under Section 718.202(a)(1), the administrative law judge found that the films dated December 15, 2001, March 6, 2002, December 2, 2003 and September 4, 2004, were insufficient to meet claimant's burden, as the readings of each film by dually qualified radiologists were equally divided between positive and negative.<sup>6</sup> Decision and Order at 13. The administrative law judge, found that the film dated April 16, 2003, was positive for pneumoconiosis, because the positive interpretation rendered by a dually qualified radiologist outweighed the negative reading performed by a B reader. Based on this x-ray, the administrative law judge determined that claimant established the existence of clinical pneumoconiosis at Section 718.202(a)(1). *Id.*

Employer contends that the administrative law judge should have given greatest weight to Dr. Wiot's negative interpretations of the films dated March 6, 2002, December 2, 2003 and September 4, 2004, because in addition to his dual qualifications as a Board-certified radiologist and B reader, he "has been a national leader in developing the ILO classifications and standards" and "holds prestigious academic appointments in the field of radiology." Employer's Brief at 19-20. Employer contends that the administrative law judge "reverted to a simple head count that is not a scientific basis for weighing the chest x-ray evidence" at Section 718.202(a)(1). We disagree.

Although the administrative law judge could have given greater weight to Dr. Wiot's readings, based upon his academic qualifications and his involvement in the B Reader Program, the administrative law judge was not required to do so. *See Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-114 (2006)(*en banc*) (McGranery and Hall, JJ., concurring and dissenting). Contrary to employer's argument, that the administrative law judge relied on a head count, the administrative law judge properly considered both the quantity and the quality of the x-ray readings. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994); Decision and Order at 13.

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<sup>6</sup> In his summary of the x-ray evidence, the administrative law judge listed readings by Dr. Ahmed of x-rays dated September 4, 2004 and September 9, 2004, and a reading by Dr. Wiot of an x-ray dated September 9, 2004. Decision and Order at 6. A review of the record indicates that the only September 2004 film interpreted by Drs. Ahmed and Wiot was the x-ray obtained at the request of Dr. Patton, claimant's treating physician, on September 4, 2004. Director's Exhibit 36; Claimant's Exhibit 5. Upon weighing the x-ray evidence, the administrative law judge did not refer to readings of a film dated September 9, 2004. Decision and Order at 12-13.

Because employer raises no other challenge to the administrative law judge's determination, that the newly submitted x-ray evidence is sufficient to establish the existence of clinical pneumoconiosis at Section 718.202(a)(1), we affirm the administrative law judge's finding.

Nevertheless, we instruct the administrative law judge that if he determines, on remand, that claimant has established a change in condition by establishing that he is totally disabled, he must consider whether claimant has met his burden of proof under Section 718.202(a)(1), based upon a weighing of all of the x-ray evidence of record. 20 C.F.R. §725.309(d); *White*, 23 BLR at 1-3.

#### **B. Section 718.202(a)(4)**

Because Section 718.202(a) provides alternative methods by which a claimant may establish the existence of pneumoconiosis, *see Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007), a finding that claimant established the existence of clinical pneumoconiosis, based on the x-ray evidence under Section 718.202(a)(1), would be sufficient to support claimant's burden to establish pneumoconiosis.<sup>7</sup> *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 306, 23 BLR 2-261, 2-285 (6th Cir. 2005). However, because the administrative law judge based his finding that claimant established total disability due to pneumoconiosis at Section 718.204(c) on his determination that claimant demonstrated the existence of legal pneumoconiosis at Section 718.202(a)(4), we will address employer's contention that the administrative law judge erred in crediting the diagnoses of legal pneumoconiosis contained in the newly submitted medical opinions of Drs. Patton and Baker.<sup>8</sup>

Under Section 718.202(a)(4), the administrative law judge found that the medical reports by Drs. Baker, Patton, Repsher and Fino "are conflicting as to the cause of claimant's pulmonary problems." Decision and Order at 15. The administrative law judge noted that Drs. Baker and Patton concluded that claimant's respiratory impairment is due, in part, to coal mine exposure, while Drs. Repsher and Fino determined that

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<sup>7</sup> Pursuant to 20 C.F.R. §718.201(a)(1), clinical pneumoconiosis is a disease "characterized by [the] permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

<sup>8</sup> Under 20 C.F.R. §718.201(a)(2), legal pneumoconiosis "includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

claimant's obstructive impairment was due to cigarette smoking or asthma. The administrative law judge assigned greater weight to Dr. Patton's opinion, based on his status as claimant's treating physician, pursuant to Section 718.104(d), and determined that "the acceptable medical report evidence" established the existence of legal pneumoconiosis.<sup>9</sup> Decision and Order at 15. The administrative law judge stated:

For reasons provided later in this decision, I do not find the opinions of Drs. Repsher and Fino persuasive. Instead, I accept the opinions of Drs. Baker and Patton. Both opinions are based on documented reports and in Dr. Patton's case, on his report and notes from his treatment of the claimant over several years. Their reasoned reports clearly established the claimant has legal pneumoconiosis within the meaning of Sections 718.201 and 718.202(a)(4).

*Id.*

Employer argues that the administrative law judge erred in mechanically giving controlling weight to Dr. Patton's opinion because he is claimant's treating physician. In addition, employer maintains that the administrative law judge did not adequately explain his finding that the opinions of Drs. Patton and Baker were documented and reasoned. Employer also alleges that, in discrediting the opinions in which Drs. Repsher and Fino attributed claimant's respiratory impairment to causes other than coal dust exposure, the administrative law judge impermissibly shifted the burden of proof to employer. Employer further contends that the administrative law judge did not provide a valid rationale for determining that these opinions were not persuasive.

Employer's allegation, that the administrative law judge did not provide an adequate explanation for his decision to credit the opinions of Drs. Patton and Baker and discredit the opinions of Drs. Repsher and Fino, has merit. The APA requires that every adjudicatory decision must be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165. In this case, the administrative law judge set forth his findings regarding the credibility of the newly

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<sup>9</sup> Pursuant to 20 C.F.R. §718.104(d)(1)-(4), the administrative law judge must consider the nature and duration of the treating physician relationship, as well as the frequency and extent of treatment. 20 C.F.R. §718.104(d)(1)-(4). Under Section 718.104(d)(5), the relationship between a miner and his treating physician may constitute substantial evidence in support of giving that physician's opinion controlling weight, provided that the weight given to this opinion "shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. §718.104(d)(5).

submitted medical opinions, but did not explain his determination that the diagnoses of legal pneumoconiosis rendered by Drs. Patton and Baker were documented and reasoned, nor did he explain why he found the contrary opinions of Drs. Repsher and Fino “unpersuasive” at Section 718.202(a)(4). Decision and Order at 15. Although the administrative law judge properly determined that Dr. Patton met the criteria set forth in Section 718.104(d)(1)-(4), he did not assess the credibility of Dr. Patton’s opinion, “in light of its reasoning and documentation, other relevant evidence and the record as a whole,” as required by Section 718.104(d)(5). 20 C.F.R. §718.104(d)(5); *see also Williams*, 338 F.3d at 513, 22 BLR at 2-647.

Accordingly, we vacate the administrative law judge’s finding that the newly submitted medical opinions were sufficient to establish the existence of legal pneumoconiosis at Section 718.202(a)(4). If the administrative law judge determines that claimant has established a change in an applicable condition of entitlement on remand, he is required to address all of the medical opinions of record relevant to the issue of legal pneumoconiosis. 20 C.F.R. §725.309(d); *see White*, 23 BLR at 1-3.

If the administrative law judge reaches the issue of the existence of pneumoconiosis on the merits, he must assess the weight to which each medical opinion is entitled, based on the credentials of the physicians, the explanations for their conclusions, the documentation underlying their diagnoses, and the complexity of, and bases for, their conclusions.<sup>10</sup> *See Williams*, 338 F.3d at 513, 22 BLR at 2-647; *Groves*, 277 F.3d at 834, 22 BLR at 2-326; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103. In weighing the medical opinion evidence, the administrative law judge must apply the same level of scrutiny to each opinion. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295 (1984). The administrative law judge must also place the burden on claimant to establish, by a preponderance of the credible evidence, the existence of legal pneumoconiosis at Section 718.202(a)(4). *See Ondecko*, 512 U.S. at 280-81, 18 BLR at 2A-12; *Cornett*, 227 F.3d at 576, 22 BLR at 2-121. Furthermore, the administrative law judge must comply with the APA and set forth his findings in detail, including the underlying rationale. *See Wojtowicz*, 12 BLR at 1-165.

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<sup>10</sup> Dr. Baker is a B reader and is Board-certified in internal medicine and pulmonary disease. Director’s Exhibit 36. Dr. Patton is Board-certified in family practice. Claimant’s Exhibit 4. Drs. Repsher and Fino are B readers and are Board-certified in internal medicine and pulmonary disease. Employer’s Exhibits 5, 9. Dr. Repsher is also Board-certified in critical care. Employer’s Exhibit 5.

### **III. Total Disability Due to Pneumoconiosis**

Employer contends that the administrative law judge erred in finding that the medical opinions of Drs. Patton and Baker were sufficient to establish that claimant is totally disabled due to pneumoconiosis. Because we have vacated the administrative law judge's findings under Sections 718.202(a)(4) and 718.204(b)(2), which provided the basis for his determination on the issue of total disability causation, we vacate his finding under Section 718.204(c). On remand, if the issue is reached, the administrative law judge must consider whether claimant has established, by a preponderance of all of the relevant evidence of record, that pneumoconiosis is a substantially contributing cause of claimant's total disability. 20 C.F.R. §718.204(c)(1).

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge