BRB No. 11-0154 BLA

DALLAS R. OWENS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MINGO LOGAN COAL COMPANY	)	
	)	
and	)	
	)	
WELLS FARGO DISABILITY MANAGEMENT	)	DATE ISSUED: 10/28/2011
	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

John Cline, Piney View, West Virginia, for claimant.

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

Sarah M. Hurley (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 (2009-BLA-5328) of Administrative Law Judge Janice K. Bullard awarding benefits with respect to a claim filed on April 29, 2008, 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). The administrative law judge accepted the parties' stipulation to 29.89 years of coal mine employment, and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. Based on her finding that the evidence established a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2)(ii) and (iv), and her determination that claimant had more than fifteen years of qualifying coal mine employment, the administrative law judge found that claimant established invocation of the rebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as amended by Section 1556 of the Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148, §1556(a) (2010). The administrative law judge also found that employer failed to establish that claimant does not have clinical or legal pneumoconiosis, or that claimant's total disability was not due to pneumoconiosis. Consequently, the administrative law judge found that employer failed to rebut the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the presumption of total disability due to pneumoconiosis at Section 411(c)(4) is not applicable to this case because the rebuttal provisions apply to the Secretary of Labor, and not to responsible operators. Employer also contends that Section 1556 of the PPACA is unconstitutional because its retroactive application denies employer the right to due process and constitutes a taking of private property. Employer further contends that the administrative law judge erred in finding that the evidence failed to rebut the presumption of total disability due to pneumoconiosis at Section 411(c)(4). 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, urging the Board to reject employer's constitutional challenges to the administrative law judge's application of Section 1556 of the PPACA.

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.[1] 33 U.S.C. §921(b)(3), as incorporated by 30

[1] The record reflects that claimant's coal mine employment was in West Virginia. Director's Exhibit 3. 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 (1989)(*en banc*).

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 filed pursuant to 20 C.F.R. Part 718, claimant must establish 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 (1989).

On March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010, were enacted. In pertinent part, the amendments reinstated Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), which provides a rebuttable presumption that the miner is totally disabled due to pneumoconiosis, if fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment, *see* 20 C.F.R. §718.204(b), are established. *See* 30 U.S.C. §921(c)(4), as amended by Section 1556 of the PPACA, Pub. L. No. 111-148, §1556(a) (2010). In order to rebut the Section 411(c)(4) presumption, it must be shown that the miner did not have pneumoconiosis or that the miner's respiratory or pulmonary impairment did not arise out of, or in connection with, coal mine employment. 30 U.S.C. §921(c)(4).

Employer initially contends that, because amended Section 411(c)(4) of the Act provides that "the Secretary" can rebut the presumption by making certain showings, but does not include a reference to coal mine operators, the rebuttable provisions of Section 411(c)(4) do not apply to responsible operators. Employer maintains, therefore, that applying this section to responsible operators violates principles of statutory construction. Employer's Brief at 6-7, *citing Usery v. Turner Elkhorn Mining Co*., 428 U.S. 1, 3 BLR 2-36 (1976).

Claimant responds and asserts that his claim is a Part C claim, which does not limit rebuttal to the Secretary, and that controlling case law does not support employer's interpretation of amended Section 411(c)(4). The Director also argues that the Board should reject employer's argument. The Director indicates that employer did not cite case law supporting its contention and that in *Usery*, the one decision employer referenced, the United States Supreme Court held that "the Section 411(c)(4) presumption applies to operator cases under Part C of the [Act] notwithstanding the statutory reference to the Secretary."[2] Director's Brief at 2, *citing Usery*, 428 U.S. at 37-

[2] The United States Supreme Court held in *Usery v. Turner Elkhorn Mining Co*., 428 U.S. 1, 3 BLR 2-36 (1976), that the 15-year presumption applies to responsible operators and that, "the Act does not itself limit the evidence with which an operator may rebut the [Section] 411(c)(4) presumption." *Usery*, 428 U.S. at 35-38, 3 BLR at 2-57-59.

38, 3 BLR at 2-58-59. The Director also cites a case in which the United States Court of Appeals for the Fifth Circuit applied the Section 411(c)(4) rebuttal provision to an operator. *See U.S. Steel Corp. v. Gray*, 588 F.2d 1022, 1 BLR 2-168 (5th Cir. 1979).

We reject employer's allegation that the rebuttal provisions of amended Section 411(c)(4) do not apply to a claim brought against a responsible operator. As claimant and the Director have indicated, the courts have consistently ruled that Section 411(c)(4), including the language pertaining to rebuttal, applies to operators, despite the reference to "the Secretary." *Usery*, 428 U.S. at 37-38, 3 BLR at 2-58-59; *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, BLR (6th Cir. 2011); *Keene v. Consolidation Coal Co.*, 645 F.3d 844, 24 BLR 2-385 (7th Cir. 2011); *Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 2 BLR 2-38 (4th Cir. 1980); *Gray*, 588 F.2d at 1025-26, 1 BLR at 2-170-71. Therefore, we reject employer's assertion that Section 411(c)(4) does not apply to a responsible operator.

Employer also argues that Section 1556 of the PPACA is unconstitutional because its retroactive application denies employer the right to due process and constitutes a taking of private property. Employer's assertions are substantially similar to the ones that the Board rejected in *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-198-200 (2010), *recon. denied*, BRB No. 09-0666 BLA (Apr. 14, 2011)(Order) (unpub.), *appeal docketed*, No. 11-1620 (4th Cir. June 13, 2011). We, therefore, reject them here for the reasons set forth in *Mathews*, 24 BLR at 1-198-200; *see also Stacy v. Olga Coal Co.*, 24 BLR 1-207, 1-214 (2010), *appeal docketed*, No. 11-1020 (4th Cir. Jan. 6, 2011); *Keene*, 645 F.3d at 849-51, 24 BLR at 2-397-400.

Turning to the merits of entitlement, employer contends that the administrative law judge erred in finding that the evidence failed to rebut the presumption of total disability due to pneumoconiosis at Section 411(c)(4). Employer asserts that the administrative law judge erred in finding that the x-ray evidence supported the presence of pneumoconiosis. Specifically, employer argues that the administrative law judge's consideration of the physicians' qualifications was inconsistent. Employer maintains that "[the administrative law judge] should be required to look more closely at the chest x-ray interpretations themselves, rather than crediting or discrediting the physicians based on qualifications alone." Employer's Brief at 17. We disagree.

The administrative law judge considered x-rays dated May 15, 2008 and October 15, 2008. Dr. Alexander, a dually-qualified B reader and Board-certified radiologist, and Dr. Rasmussen, a B reader, read the May 15, 2008 x-ray as positive for pneumoconiosis,

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We note that employer has not alleged that there are appropriate methods, other than those identified in Section 411(c)(4), for establishing rebuttal.

Director's Exhibit 11; Claimant's Exhibit 4, while Dr. Spitz, a dually-qualified radiologist, read this x-ray as negative, Employer's Exhibit 2. Drs. Alexander and Smith, dually-qualified radiologists, read the October 15, 2008 x-ray as positive for pneumoconiosis, Claimant's Exhibits 3, 8, while Dr. Scatarige, a dually-qualified radiologist, and Dr. Zaldivar, a B reader, read this x-ray as negative, Employer's Exhibits 1, 2. In considering the May 15, 2008 x-ray, the administrative law judge stated, "I accord more weight to the corroborating readings by the qualified physicians and find that this film supports finding the presence of pneumoconiosis."[3] Decision and Order at 18. Further, after noting that the October 15, 2008 x-ray was read as positive for pneumoconiosis by two dually-qualified radiologists and as negative by one dually-qualified radiologist, the administrative law judge stated, "Dr. Zaldivar also read the film as negative, and I acknowledge that at the time of the reading he may have been a certified B-reader, although the record definitively reflects that sometime thereafter he lost his certification."[4] *Id*. The administrative law judge then gave greater weight to the positive readings of the two dually-qualified radiologists. Hence, the administrative law judge found that the x-ray evidence supported a finding of pneumoconiosis.

As the trier-of-fact, the administrative law judge has broad discretion to assess the evidence of record and determine whether a party has met its burden of proof. *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984). In this case, the administrative law judge properly explained why the positive readings of the May 15, 2008 x-ray by Drs. Alexander and Rasmussen outweighed the negative reading of this x-ray by Dr. Spitz. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *see also Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Chaffin v. Peter Cave Coal Co*., 22 BLR 1-294, 1-302 (2003); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). In addition, the administrative law judge properly explained why she found that Dr. Zaldivar's negative reading of the October 18, 2008 x-ray lost some of its probative value, and why she found that the positive readings of the October 15, 2008 x-ray by Drs. Alexander and Smith outweighed

[3] The party who attempts to rely upon an x-ray interpretation has the burden of establishing for the record the qualifications of the x-ray reader in question. *Rankin v. Keystone Coal Mining Corp.*, 8 BLR 1-54 (1985). Further, comments to the amended regulations provide that, in considering radiological qualifications, 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).

[4] Dr. Zaldivar stated that, although he was a B reader until November 31, 2009, he had since failed the B reader recertification test twice. Employer's Exhibit 8 (Dr. Zaldivar's Depo. at 47).

the negative readings of this x-ray by Drs. Scatarige and Zaldivar. *Id*. Thus, we reject employer's assertion that the administrative law judge's consideration of the physicians' qualifications was inconsistent. The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988).

Employer next asserts that the administrative law judge erred in finding that the medical opinion evidence supported the presence of clinical and legal pneumoconiosis. The administrative law judge considered the opinions of Drs. Rasmussen, Zaldivar, and Hippensteel, as well as the treatment notes of Drs. Boustani and Figueroa, claimant's treating physicians.[5] Dr. Rasmussen opined that claimant has clinical and legal pneumoconiosis.[6] By contrast, Dr. Zaldivar opined that claimant does not have clinical or legal pneumoconiosis.[7] Employer's Exhibits 1, 9. Similarly, Dr. Hippensteel opined

[5] In a treatment note dated August 27, 2008, Dr. Boustani opined that claimant "probably has significant pulmonary fibrosis." Claimant's Exhibit 1. Further, in a treatment note dated September 15, 2008, Dr. Boustani opined that claimant has chronic obstructive pulmonary disease and pneumoconiosis. *Id*. In a subsequent treatment note dated November 6, 2008, Dr. Boustani noted that there was a "[p]ositive PET scan in a patient suspected of having pneumoconiosis which could be consistent with that history." *Id*. In treatment notes dated June 25, 2009 and August 7, 2009, Dr. Figueroa diagnosed coal workers' pneumoconiosis. *Id*.

[6] In a report dated June 4, 2008, Dr. Rasmussen diagnosed coal workers' pneumoconiosis and interstitial fibrosis related to coal dust exposure. Director's Exhibit 11. Further, in a supplemental report dated June 4, 2008, Dr. Rasmussen opined that claimant has clinical pneumoconiosis. *Id*. In a report dated November 12, 2009, Dr. Rasmussen opined that claimant's chronic lung disease was related to coal dust exposure. Claimant's Exhibit 5.

[7] In reports dated November 24, 2008 and May 19, 2010, Dr. Zaldivar opined that claimant does not have coal workers' pneumoconiosis "from the medical or the legal standpoint." Employer's Exhibit 1. Dr. Zaldivar also opined that claimant has interstitial pulmonary fibrosis from an undetermined cause. *Id*. During a deposition dated January 12, 2010, Dr. Zaldivar opined that claimant does not have coal workers' pneumoconiosis or a chronic lung disease related to coal dust exposure. Employer's Exhibit 8 (Dr. Zaldivar's Depo. at 27, 28). Dr. Zaldivar also opined that claimant has pulmonary fibrosis that is not related to coal dust exposure. Employer's Exhibit 8 (Dr. Zaldivar's Depo. at 28).

that claimant does not have medical or legal pneumoconiosis.[8] Employer's Exhibits 5, 10. The administrative law judge gave substantial weight to Dr. Rasmussen's opinion because she found that it was supported by the objective medical evidence of record. In addition, the administrative law judge gave substantial weight to Dr. Rasmussen's opinion because she found that it was supported by the opinions of Drs. Boustani and Figueroa.[9] Conversely, the administrative law judge gave less weight to the opinions of Drs. Zaldivar and Hippensteel because she found that "neither doctor gave an adequate explanation for why coal dust inhalation could not have caused at least some of [c]laimant's impairment." Decision and Order at 21. The administrative law judge also gave less weight to the opinions of Drs. Zaldivar and Hippensteel because she found that "[they] are further compromised by not being fully documented." *Id*. Hence, the administrative law judge found that the best documented and reasoned medical opinion evidence established the existence of clinical and legal pneumoconiosis. The administrative law judge therefore found that employer failed to establish rebuttal of the presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), by showing that claimant does not have pneumoconiosis.

[8] In a report dated January 11, 2009, Dr. Hippensteel opined that claimant has an interstitial lung disease that is a disease of the general public, and not related to coal workers' pneumoconiosis. Employer's Exhibit 5. In a subsequent report dated July 6, 2010, Dr. Hippensteel opined that claimant's interstitial lung disease is a disease of the general public that is unrelated to coal mine dust exposure. Employer's Exhibit 10. Dr. Hippensteel also opined that claimant does not have "medical or legal coal workers' pneumoconiosis." *Id*. During a deposition dated December 1, 2009, Dr. Hippensteel opined that claimant does not have coal workers' pneumoconiosis or a chronic lung disease related to coal dust exposure. Employer's Exhibit 7 (Dr. Hippensteel's Depo. at 17-18, 27). Dr. Hippensteel also opined that claimant has interstitial pulmonary fibrosis that is not related to coal dust exposure. Employer's Exhibit 7 (Dr. Hippensteel's Depo. at 22).

[9] In finding that Dr. Rasmussen's opinion was supported by the opinions of Drs. Boustani and Figueroa, the administrative law judge stated that "[b]oth Dr. Boustani and Dr. Figueroa noted pulmonary fibrosis and concluded that the interstitial changes were related to CWP." Decision and Order at 20. The administrative law judge then stated that, "[a]lthough the record reflects that [c]laimant saw both Drs. Boustani and Figueroa on more than one occasion, the record is not developed sufficiently to accord their opinions controlling weight." *Id*. Nonetheless, the administrative law judge gave significant weight to the opinions of Drs. Boustani and Figueroa, based on her finding that their status as treating physicians merited according additional value to their opinions.

Employer asserts that Dr. Rasmussen's opinion was insufficient to establish the existence of pneumoconiosis because, employer alleges, it is equivocal.[10] Contrary to employer's assertion, Dr. Rasmussen unequivocally opined that claimant has clinical and legal pneumoconiosis. *U.S. Steel Mining Co. 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); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). In a June 4, 2008 report, Dr. Rasmussen opined that claimant has coal workers' pneumoconiosis and interstitial fibrosis related to coal mine dust exposure. Director's Exhibit 11. Dr. Rasmussen further opined that coal mine dust exposure is a significant contributing cause to claimant's disabling lung disease. *Id.* In a subsequent report dated November 12, 2009, Dr. Rasmussen noted, "I believe that in the initial evaluation that [claimant] had coalworkers' [sic] pneumoconiosis, and felt that he could also have interstitial fibrosis." Claimant's Exhibit 5. Dr. Rasmussen further stated:

> The radiographic pattern in [claimant], however, is more suggestive of coal pneumoconiosis than idiopathic interstitial fibrosis. Both conditions could co-exist, but the findings could all be due to coalworkers' [sic] pneumoconiosis. There would be no way in which a separation could be made between the physiologic effects of coalworkers' [sic] pneumoconiosis and interstitial pulmonary fibrosis since many of the features are indistinguishable. There is, in fact, no basis for separating those effects in this case. Their effects could be additive, but indistinguishable.

Id. Dr. Rasmussen also opined that claimant has a coal mine dust induced totally disabling chronic lung disease. In considering Dr. Rasmussen's November 12, 2009 report, the administrative law judge stated that "Dr. Rasmussen maintained that the radiographic pattern suggests CWP, even if that condition co-existed with idiopathic interstitial fibrosis." Decision and Order at 6. Thus, because Dr. Rasmussen

[10] Employer further asserts that "[s]uch a statement [by Dr. Rasmussen] does not satisfy the burden to demonstrate the existence of pneumoconiosis by a preponderance of the evidence." Employer's Brief at 27. Contrary to employer's assertion, claimant does not have the burden to establish the existence of pneumoconiosis in this case, as he established invocation of the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). Rather, employer has the burden to rebut the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), in this case. *See generally Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, BLR (6th Cir. 2011)(holding that rebuttal requires an affirmative showing that the miner does *not* suffer from pneumoconiosis, or that the disease is not related to coal mine work). Thus, we reject employer's assertion that claimant has the burden to establish the existence of pneumoconiosis in this case.

unequivocally opined that claimant has clinical and legal pneumoconiosis, *Jarrell*, 187 F.3d at 391, 21 BLR at 2-652-53; *Justice*, 11 BLR at 1-94; *Campbell*, 11 BLR at 1-19, we reject employer's assertion that Dr. Rasmussen's opinion does not establish the existence of pneumoconiosis because it is equivocal.

Employer also asserts that the administrative law judge erred in finding that Dr. Rasmussen's opinion outweighed the contrary opinions of Drs. Zaldivar and Hippensteel. Specifically, employer argues that the administrative law judge failed to analyze the opinions of Drs. Zaldivar and Hippensteel in their entirety, and disregarded their explanations of why they eliminated coal dust exposure as a contributing factor to claimant's interstitial fibrosis and pulmonary impairment. Employer also argues that the administrative law judge failed to consider that Drs. Zaldivar and Hippensteel gave detailed responses to the concerns raised with regard to the medical literature. Further, employer argues that "Dr. Rasmussen's 'differential diagnosis' of causes of [claimant's] pulmonary fibrosis does not render his opinion more reliable." Employer's Brief at 28.

Contrary to employer's assertion, the administrative law judge properly found that Dr. Rasmussen's opinion was better documented and reasoned than the opinions of Drs. Zaldivar and Hippensteel. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*). As discussed *supra*, the administrative law judge has broad discretion to assess the evidence of record and determine whether a party has met its burden of proof. *Kuchwara*, 7 BLR at 1-170. The administrative law judge properly accorded substantial weight to Dr. Rasmussen's opinion because it is supported by the objective medical evidence of record.[11] *Clark*, 12 BLR at 1-155; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46, 1-47 (1985). In addition, the administrative law judge properly found that Dr. Rasmussen's opinion is supported by the treatment notes of Drs. Boustani and Figueroa. *Walker v. Director, OWCP*, 927 F.2d 181, 15 BLR 2-16 (4th Cir. 1991); *Bethlehem Mines Corp. v. Massey*, 736 F.2d 120, 7 BLR 2-72 (4th Cir. 1984); *Newland v. Consolidation Coal Co.*, 6 BLR 1-1286 (1984). Further, the administrative law judge properly discounted the opinions of Drs. Zaldivar and Hippensteel because they did not adequately explain why coal dust exposure did not contribute to claimant's interstitial fibrosis.[12] *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441,

[11] In considering Dr. Rasmussen's opinion, the administrative law judge noted that Dr. Rasmussen relied on positive x-ray readings, arterial blood gas studies, and CT scans as support for a finding of pneumoconiosis. Decision and Order at 20.

[12] In considering the opinions of Drs. Zaldivar and Hippensteel, the administrative law judge stated:

21 BLR at 2-275-76; *Clark*, 12 BLR at 1-155. Additionally, the administrative law judge properly discounted the opinions of Drs. Zaldivar and Hippensteel because they are not "fully" documented.[13] *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984).

As discussed *supra*, the Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson*, 12 BLR at 1-113; *Fagg*, 12 BLR at 1-79; *Worley*, 12 BLR at 1-23. Because the administrative law judge properly found that Dr. Rasmussen's opinion was better documented and reasoned than the contrary opinions of Drs. Zaldivar and Hippensteel, *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Clark*, 12 BLR at 1-155, we reject employer's assertion that the administrative law judge erred in according greater weight to Dr. Rasmussen's opinion than to the contrary opinions of Drs. Zaldivar and Hippensteel.

Because it is supported by substantial evidence, we affirm the administrative law judge's finding that employer failed to establish that claimant did not have clinical or legal pneumoconiosis and, thus, that it failed to establish rebuttal of the presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). *Barber v. U.S. Steel Mining Co.*, 43

> Both Drs. Zaldivar and Hippensteel dismissed in a cursory factor [sic] the medical literature that associated coal dust exposure with interstitial fibrosis. Both acknowledged that the diagnosis of idiopathic interstitial fibrosis depended on ruling out all suspected factor [sic], but neither doctor gave an adequate explanation for why coal dust inhalation could not have caused at least some of [c]laimant's impairment. Both doctors maintained that idiopathic interstitial fibrosis exists in the general population, but neither adequately addressed the fact that [c]laimant is not a member of the general population, as he was exposed to coal and other dust while working in coal mine employment for 29 years.

Decision and Order at 21.

[13] After finding that the opinions of Drs. Zaldivar and Hippensteel were compromised because they were not "fully" documented, the administrative law judge stated that "[n]either doctor fully addressed the fact that two treating pulmonary specialist [sic] found sufficient evidence to diagnose CWP rather than idiopathic interstitial fibrosis." Decision and Order at 21. The administrative law judge also stated that "[b]oth doctors relied upon negative readings of X-rays and CT scans, regardless of contrary treatment." *Id*. Further, the administrative law judge stated that "[t]reatment related X-ray and CT scans supported the diagnosis of CWP." *Id*.

F.3d 899, 901, 19 BLR 2-61, 2-67 (4th Cir. 1995); *Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 939, 2 BLR 2-38, 2-43 (4th Cir. 1980).

Finally, employer contends that the administrative law judge erred in finding that employer failed to establish rebuttal of the presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), by showing that claimant's respiratory or pulmonary impairment did not arise out of coal mine employment. The administrative law judge considered the opinions of Drs. Rasmussen, Zaldivar, and Hippensteel. The administrative law judge stated, "[a]lthough Drs. Zaldivar and Dr. [sic] Hippensteel diagnosed idiopathic interstitial fibrosis, I find that this diagnosis is not sufficient to establish a cause of [c]laimant's disability other than CWP." Decision and Order at 21. Hence, the administrative law judge found that employer failed to rebut the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), by showing that claimant's respiratory impairment did not arise out of, or in connection with, coal mine employment.

Employer asserts that the administrative law judge erred in finding that the opinions of Drs. Zaldivar and Hippensteel were outweighed by Dr. Rasmussen's contrary opinion. Specifically, employer asserts that the administrative law judge relied on the same erroneous reasons to discount the opinions of Drs. Zaldivar and Hippensteel, that claimant's disabling respiratory impairment did not arise out of coal mine employment, that she relied on to discount their opinions that claimant does not have pneumoconiosis. Contrary to employer's assertion, as discussed *supra*, the administrative law judge provided a valid basis for finding that the opinions of Drs. Zaldivar and Hippensteel, that claimant does not have clinical or legal pneumoconiosis, were outweighed by Dr. Rasmussen's contrary opinion, namely, that she properly found that Dr. Rasmussen's opinion was better documented and reasoned. *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Clark*, 12 BLR at 1-155. Employer raises no additional challenge to the administrative law judge's weighing of the evidence. We, therefore, affirm the administrative law judge's finding that employer failed to establish rebuttal of the presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), by showing that claimant's respiratory impairment did not arise out of, or in connection with, coal mine employment. *Barber*, 43 F.3d at 901, 19 BLR at 2-67; *Rose*, 614 F.2d at 939, 2 BLR at 2-43.

In sum, because the administrative law judge properly found that employer failed to establish rebuttal of the presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), by establishing either that claimant does not have clinical or legal pneumoconiosis, or that claimant's respiratory impairment did not arise out of, or in connection with, coal mine employment, we affirm the administrative law judge's award of benefits.

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

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