U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 14-0404 BLA

WILBURN M. NEWBILL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
EASTERN ASSOCIATED COAL CORPORATION/PEABODY ENERGY CORPORATION	)	DATE ISSUED: 08/31/2015
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Pamela J. Lakes, Administrative Law Judge, United States Department of Labor.

Katherine L. Dooley (The Dooley Law Firm, PLLC), Charleston, West Virginia, for claimant.

Paul E. Frampton and Thomas M. Hancock (Bowles Rice, LLP), Charleston, West Virginia, for employer/carrier.

Jeffrey S. Goldberg (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: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

Claimant appeals the Decision and Order Denying Benefits (2011-BLA-05184) of Administrative Law Judge Pamela J. Lakes, rendered on a subsequent claim filed on

September 18, 2009,[1] pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). Based on the filing date of the subsequent claim, and her determinations that claimant established at least fifteen years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment, the administrative law judge found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis under amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[2] The administrative law judge also determined that claimant demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. However, the administrative law judge ultimately found that employer rebutted the amended Section 411(c)(4) presumption by establishing that claimant does not have pneumoconiosis and she denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that employer rebutted the amended Section 411(c)(4) presumption by disproving the existence of legal pneumoconiosis. Claimant also asserts that the administrative law judge failed to consider a supplemental report from Dr. Rasmussen. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, asserting that the administrative law judge did not properly weigh the medical opinions relevant to the existence of legal pneumoconiosis. Claimant has filed a reply brief, reiterating the Director's arguments and also asserting that employer's response brief was untimely filed with the Board.[3]

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[1] Claimant filed an initial claim for benefits on December 29, 1981, which was denied by the district director for failure to establish total disability. Director's Exhibit 1. A second claim was filed on May 26, 1999 and was denied by reason of abandonment. Director's Exhibit 2. Claimant filed a third claim on November 21, 2002, which was denied by Administrative Law Judge Jeffrey Tureck, on August 6, 2007, based on his finding that claimant failed to establish the existence of pneumoconiosis. Director's Exhibit 3. Claimant took no further action until filing the current subsequent claim on September 18, 2009. Director's Exhibit 5.

[2] Under amended Section 411(c)(4), claimant is entitled to a rebuttable presumption of total disability due to pneumoconiosis, if he establishes at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and also suffers from a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305.

[3] On December 19, 2014, employer filed a Motion for Enlargement of Time to file its response brief in this case. In a December 23, 2014 letter, claimant opposed the

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law.[4] 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).

Because claimant invoked the amended Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to employer to affirmatively establish that claimant does not suffer from either legal pneumoconiosis[5] or clinical pneumoconiosis,[6] or establish that "no part of claimant's disabling respiratory or pulmonary impairment was caused by pneumoconiosis, as defined in § 718.201." 20 C.F.R. §718.305(d)(1); *see West Virginia CWP Fund v. Bender*, 782 F.3d 129, 137 (4th

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motion. Employer filed its Response Brief on January 14, 2015. On January 23, 2015, claimant filed a second letter asserting employer's brief was untimely and requesting that it be disregarded and stricken from the record. On February 2, 2015, the Board issued an Order accepting employer's brief. Although, claimant renews his request that the Board reject employer's response brief as untimely, we decline to alter our February 2, 2015 Order accepting employer's brief before the Board. 20 C.F.R. §§802.212, 802.217.

[4] The record indicates that claimant's coal mine employment was in West Virginia. Director's Exhibit 6. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director*, 12 BLR 1-200, 1-202 (1989) (en banc).

[5] Legal pneumoconiosis is defined as "any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

[6] Clinical pneumoconiosis is defined as:

> [T]hose diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by 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. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

20 C.F.R. §718.201(a)(1).

Cir. 2015); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011); *Minich v. Keystone Coal Mining Corp.*, BLR , BRB No. 13-0544 BLA, slip op. at 10-11 (April 21, 2015) (Boggs, J., concurring and dissenting). Based on her review of the relevant x-ray[7] and medical opinion[8] evidence, the administrative law judge determined that employer rebutted the presumed fact that claimant has clinical pneumoconiosis. Decision and Order at 14. As claimant does not challenge the administrative law judge's finding that employer disproved the existence of clinical pneumoconiosis, it is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 14.

In evaluating whether employer disproved the existence of legal pneumoconiosis, the administrative law judge considered the medical opinions of Drs. Forehand, Rasmussen, Zaldivar, and Rosenberg, which are summarized as follows. Dr. Forehand examined claimant for the Department of Labor on September 30, 2009, and diagnosed "legal coal workers' pneumoconiosis" based on claimant's "30+ years in coal mining, shortness of breath, abnormal breath sounds," and the results of the pulmonary function study, which demonstrated an obstructive impairment. Director's Exhibit 13. Dr. Forehand identified claimant's "30+ years at [the] face" as the principal cause of his "significant respiratory impairment," noting that claimant is a non-smoker and that "no other major contributing factors exist." *Id.*

Dr. Rasmussen examined claimant on May 16, 2012, and prepared a report dated May 29, 2012. Claimant's Exhibit 4. He had also examined claimant previously, on March 11, 2004, in conjunction with the prior claim. Director's Exhibit 3. In his May 29, 2012 report, Dr. Rasmussen diagnosed clinical pneumoconiosis by x-ray. Claimant's Exhibit 4. He noted that the pulmonary function study showed moderate, irreversible obstructive and restrictive ventilatory impairment, minimal reductions in claimant's total lung capacity and residual volume, but a marked reduction of the single breath carbon monoxide diffusing capacity. *Id.* A resting blood gas study showed hypoxia. *Id.* Although an exercise blood gas study could not be obtained, Dr. Rasmussen noted during

[7] The administrative law judge found that a preponderance of the readings of the analog and digital x-ray evidence was negative for pneumoconiosis. Decision and Order at 12-13.

[8] Drs. Forehand, Zaldivar, and Rosenberg each opined that claimant does not have clinical pneumoconiosis. Director's Exhibits 13, 31; Employer's Exhibits 2, 7. Dr. Rasmussen diagnosed clinical pneumoconiosis based on his interpretation of the May 16, 2012 digital x-ray. Claimant's Exhibit 4. The administrative law judge gave Dr. Rasmussen's opinion diminished weight because she determined that the May 16, 2012 x-ray was negative for pneumoconiosis. Decision and Order at 14.

his 2004 examination of claimant, that the exercise study showed marked impairment in oxygen transfer during light exercise. *Id.* Dr. Rasmussen identified coal dust exposure as the only known cause for claimant's restrictive and obstructive impairment. *Id.*

Dr. Rasmussen was deposed on December 19, 2012, at which time he was informed that claimant had been diagnosed with rheumatoid arthritis. He explained that this diagnosis did not change his opinion that claimant has legal pneumoconiosis:

> I was not aware of the diagnosis [of rheumatoid arthritis] when I saw him in March. Rheumatoid arthritis can definitely cause the abnormalities that we see in this gentleman. In other words, rheumatoid arthritis can cause much of the same physiologic abnormalities as coal mine dust does. It doesn't as often cause obstruction, but it does cause restriction and it causes reduction in single breath diffusing capacity and so I certainly cannot exclude rheumatoid arthritis as a causative factor or contributing factor in this. The only problem is you don't have any way of distinguishing the effects of rheumatoid arthritis from the effects of coal mine dust exposure and I'm not sure how the diagnosis of rheumatoid arthritis was made. Presumably, he was seen by a rheumatologist who would diagnose him according to the American College of Radiology standards. If it had been only on the basis, say, of a serum test for rheumatoid factor, then it would be a questionable diagnosis because coal miners have increased levels of rheumatoid factor and ANA antibodies that are typical with rheumatoid arthritis. But even if this is a firmly diagnosed condition, not all people with rheumatoid arthritis have significant impairment.

Claimant's Exhibit 5 at 13-14. Dr. Rasmussen later stated:

> [H]e may very well have rheumatoid arthritis which can cause the exact findings which we have here, but you can't – you cannot distinguish it from coal mine-induced lung disease. So there's that certainty and then even if – even if he has rheumatoid arthritis, he could have had that influenced by his coal mine dust exposure as well.

Id. at 19. Dr. Rasmussen indicated that claimant suffers from emphysema and interstitial fibrosis, consistent with coal workers' pneumoconiosis and rheumatoid arthritis, "although, typically rheumatoid lung disease doesn't result in obstruction." *Id*. at 26.

Dr. Zaldivar examined claimant on May 14, 2010 and July 14, 2010, in conjunction with the current claim. Director's Exhibit 32. In the report prepared for the July 14, 2010 examination, he noted that claimant was under treatment for rheumatoid arthritis and that a CT scan showed small bullae and pulmonary fibrosis. *Id*. Dr.

Zaldivar described the pulmonary function study as showing mild restriction of vital capacity, mild obstruction pre-bronchodilator, but no obstruction after it was administered, normal lung volumes, and a moderate diffusion impairment. *Id*. Dr. Zaldivar concluded that claimant does not have clinical or legal pneumoconiosis and attributed claimant's respiratory impairment to a combination of pulmonary fibrosis and the multiple small bullae observed on claimant's CT scans. *Id*. Dr. Zaldivar opined that claimant's "pulmonary fibrosis is the result of long standing rheumatoid arthritis," referencing a medical article that showed "20 [percent]" of patients with rheumatoid arthritis develop interstitial lung disease. *Id*. Dr. Zaldivar stated that the cause of claimant's bullous emphysema was "unknown" as claimant is a non-smoker and "[b]ullae are not a manifestation of coal workers' pneumoconiosis." *Id*.

During a deposition conducted on March 27, 2012, Dr. Zaldivar discussed a CT scan and opined that claimant's emphysema was consistent with Alpha 1 antitrypsin deficiency due to its location in the lower portion of the lungs, which he said was inconsistent with coal workers' pneumoconiosis. Employer's Exhibit 6A at 17-22. In a November 11, 2013 deposition, Dr. Zaldivar stated that "[b]oth the emphysema changes seen morphologically and the physiological changes of pulmonary fibrosis fit very well the description of rheumatoid lungs. And so one can make an assertion that this is exactly what happened to [claimant]." Employer's Exhibit 6B at 22.

Dr. Rosenberg prepared a report on March 12, 2012, in conjunction with his review of claimant's medical records. Employer's Exhibit 2. Dr. Rosenberg noted that claimant's pulmonary function tests revealed a mild, symmetrical reduction of the FEV1 and FVC, normal to minimally reduced total lung capacity, and mild reduction of the diffusing capacity. *Id*. Dr. Rosenberg attributed the diffusion capacity impairment to bullous and centrilobular emphysema, as identified by claimant's CT scans. *Id*. He observed that claimant's "emphysematous pattern" was inconsistent with coal dust-related lung disease, and explained:

> [Claimant] has bullous emphysema, without any associated interstitial fibrosis. With respect to this, it is the inflammatory response caused by coal dust which leads to a disruption of the normal alveolar structures and the development of emphysema. As such, pathologically, coal mine dust deposition would be found in close proximity to emphysema developing in relationship to past coal mine dust exposure. Similarly, in association with emphysema observed on CT scans related to past coal mine dust exposure, one would expect evidence of an associated inflammatory reaction caused by coal dust exposure.

Id. Dr. Rosenberg concluded that "[o]ne would have to suspect that [claimant's] bullous emphysema with centrilobular manifestations relates to his underlying autoimmune

disorder, namely rheumatoid arthritis." *Id.* He also added that, in medical literature, "an emphysematous syndrome has been described in patients with connective tissue disorders, including rheumatoid arthritis." *Id.* During his deposition on January 22, 2014, Dr. Rosenberg concluded:

> [W]hile clearly bullae formation is evidence of advanced emphysema, this would not be present in a coal mine dust-related type of disorder unless one had advanced changes causing scarring and distortion of the lungs resulting in bullae formation. So I really think that the total picture of findings here are not that of legal [coal workers' pneumoconiosis].

Employer's Exhibit 7 at 9-10.

In considering the weight to accord the conflicting medical opinions, the administrative law judge rejected Dr. Forehand's opinion because he "made the diagnosis of legal pneumoconiosis without the benefit of significant data relating to [claimant's] other etiological agent (rheumatoid arthritis)." Decision and Order at 17. The administrative law judge also rejected Dr. Rasmussen's diagnosis of legal pneumoconiosis, noting that Dr. Rasmussen:

> did not mention the [c]laimant's rheumatoid arthritis in his report, and he did not appear to be aware of it when he initially formulated his opinion. When questioned about it at his deposition, he conceded that rheumatoid arthritis could explain the [cl]laimant's symptomatology but that it was impossible to separate out the factors . . .

Id. at 15. The administrative law judge concluded that Dr. Rasmussen's opinion was "ultimately speculative in view of the recognized diagnosis of rheumatoid arthritis that would explain [c]laimant's current symptoms, which are atypical for pneumoconiosis." *Id*. at 17. In contrast, the administrative law judge credited the opinions of Drs. Zaldivar and Rosenberg, stating that although the opinions "suffer[ed] from some deficiencies, they have convincingly explained how all of the findings can be explained by rheumatoid arthritis, and that conclusion has not been undermined by Drs. Forehand and Rasmussen." *Id.* The administrative law judge concluded that the preponderance of the medical opinion evidence established that claimant does not have legal pneumoconiosis, as "the diagnosis of legal pneumoconiosis is speculative based upon the record before me and the exclusion of the diagnosis by Drs. Rosenberg and Zaldivar is ultimately more persuasive." *Id*.

Claimant argues in this appeal that the administrative law judge erred in rejecting Dr. Rasmussen's opinion as speculative as "Dr. Rasmussen discussed the subject in depth and explains why [claimant's] diagnosis of rheumatoid arthritis did not negate his

diagnosis of [coal workers' pneumoconiosis]."[9] Claimant's Brief at 7. Claimant and the Director further contend that the administrative law judge did not adequately examine the reasoning underlying the opinions of Drs. Zaldivar and Rosenberg. These arguments have merit.

In giving less weight to Dr. Rasmussen's opinion that claimant has legal pneumoconiosis, the administrative law judge stated:

> Dr. Rasmussen's diagnosis of legal pneumoconiosis is ultimately speculative in view of the recognized diagnosis of rheumatoid arthritis that would explain [c]laimant's current symptoms, which are atypical for pneumoconiosis. Although the opinions of Drs. Zaldivar and Rosenberg suffer from some deficiencies, they have convincingly explained how all of the findings can be explained by rheumatoid arthritis, and that conclusion has not been undermined by Drs. Forehand and Rasmussen.

Decision and Order at 17. Contrary to the administrative law judge's description, Dr. Rasmussen made clear in his deposition that claimant's diagnosis of rheumatoid arthritis does not change his opinion that claimant has legal pneumoconiosis. *See* Claimant's Exhibit 5 at 13-14, 19. Although Dr. Rasmussen questioned, with some skepticism, how claimant was diagnosed with rheumatoid arthritis, he is unequivocal in his opinion that there is no "way of distinguishing the effects of rheumatoid arthritis from the effects of

[9] In his brief, claimant inserted text from a July 16, 2012 supplemental report prepared by Dr. Rasmussen and asserts that while it was submitted into the record as part of Claimant's Exhibit 4, it was "either ignored or overlooked by the [administrative law judge]." Claimant's Brief at 5-7. Based on our review of the record before us, Claimant's Exhibit 4 consists only of the May 29, 2012 report by Dr. Rasmussen and does not include a July 16, 2012 supplemental report by him. The August 6, 2013 Evidence Summary Form prepared by claimant identified Dr. Rasmussen's May 2012 report as the only medical report being submitted by claimant. There is no mention of the July 16, 2012 supplemental report in that document, and the hearing transcript does not identify a supplemental report. At the November 20, 2013 hearing, in the course of identifying claimant's exhibits for admission, claimant's counsel stated only that "Dr. Rasmussen's report is Exhibit Number 4." Hearing Transcript at 25. Claimant did not specify the dates of the report or reports he submitted. Thus, because the July 16, 2012 supplemental report from Dr. Rasmussen does not appear to have been admitted into the record by the administrative law judge, we reject claimant's assertion of error. Furthermore, because it was not submitted before the administrative law judge, the Board is precluded from considering any portion of it in this appeal. *See* 20 C.F.R. §802.301(b); *Berka v. North American Coal Corp.*, 8 BLR 1-183, 1-184 (1985).

coal mine dust exposure" because "rheumatoid arthritis can cause much of the same physiologic abnormalities as coal mine dust does." Claimant's Exhibit 5 at 13. Thus, the administrative law judge's characterization of Dr. Rasmussen's opinion as "speculative" is not supported by the evidence of record.

The Director states that Dr. Zaldivar's reliance on a medical article showing twenty percent of individuals with rheumatoid arthritis develop interstitial lung disease[10] "certainly does not justify the conclusion that rheumatoid arthritis would be the only cause of [claimant's] obstructive [or restrictive] lung disease."[11] Director's Exhibit 32; Director's Letter Brief (unpaginated) at [2]. Furthermore, the Director identifies contradictions in Dr. Rosenberg's opinion that are relevant, but were not addressed by the administrative law judge. In support of his opinion that claimant's emphysema is due to his rheumatoid arthritis, Dr. Rosenberg cites a medical study indicating that emphysema and "scarring of the lungs" occur in relationship to connective tissue disorders, such as rheumatoid arthritis.[12] Employer's Exhibit 7 at 13. However, Dr. Rosenberg denied that claimant has scarring of the lungs.[13] Employer's Exhibit 2. In addition, Dr. Rosenberg eliminated coal dust as cause of claimant's emphysema on the ground that coal dust-induced emphysema causes an inflammatory response, and Dr. Rosenberg did not observe inflammation on claimant's CT scans.[14] Employer's Exhibit 7 at 9. Dr.

[10] Dr. Zaldivar stated in his July 30, 2010 report "[a]ccording to the article which I just mentioned in UpToDate some series of patient's [sic] with rheumatoid arthritis have uncovered that 20% suffer from interstitial lung disease." Director's Exhibit 32.

[11] The Director notes that the cited article states "the prevalence of small airway obstruction and bronchial hyperresponsiveness in patients with [rheumatoid arthritis] remains controversial" and that "it is likely that a variety of types of pathology contribute to airway obstruction." Director's Letter Brief (unpaginated) at [2], *citing* Employer's Exhibit 6B, Deposition Exhibit 1 at 6.

[12] Dr. Rosenberg testified at his January 22, 2014 deposition that the medical literature "outlined in one of the references I included [in my March 12, 2012 medical report] by Koch . . . . outlines a combination of emphysema and scarring of the lungs occurring in relationship to connective tissue disorders, which includes rheumatoid arthritis." Employer's Exhibit 7 at 13.

[13] In his March 12, 2012 report, Dr. Rosenberg states claimant has "emphysema with bullae formation, without associated interstitial fibrosis." Employer's Exhibit 2.

[14] Dr. Rosenberg testified that:

Rosenberg, however, later identified rheumatoid arthritis as the cause of claimant's fibrosis and emphysema precisely because of its inflammatory nature.[15] Employer's Exhibit 7 at 13.

The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, requires that an administrative law judge examine the underlying rationale and explanations given by a physician for his opinion, including the documentation underlying his or her medical judgments, and the sophistication of, and bases for, the diagnoses provided. *See 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). Because the administrative law judge did not properly consider whether Drs. Zaldivar and Rosenberg have credibly explained why rheumatoid arthritis was the sole cause of claimant's lung condition, and why claimant's years of coal mine employment did not significantly contribute to, or substantially aggravate, his pulmonary fibrosis and emphysema, we must vacate the administrative law judge's finding that employer disproved the existence of legal pneumoconiosis. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR at 2-23, 2-31 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc).

Furthermore, although the administrative law judge specifically acknowledged that Dr. Rosenberg expressed views that are contrary to the regulations, insofar as he required that there be radiographic evidence of clinical pneumoconiosis before he would

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> When coal dust causes emphysema and [coal workers' pneumoconiosis], you would expect interstitial changes, fibrotic changes in relationship to the emphysema present. That makes sense because the *emphysema that occurs in relationship to coal dust, when it does occur you would expect an inflammatory response, and this inflammatory response would cause inflammatory changes even within the interstitium of the lung in relationship to the emphysema. This was not apparent on the CT scans that have been obtained on* [*claimant*]. For this reason, I think that that is strong evidence that the emphysema observed is not related to coal exposure.

Employer's Exhibit 7 at 9 (emphasis added).

[15] Dr. Rosenberg testified that "[r]heumatoid arthritis is an inflammatory condition" and that "there's a clear-cut relationship between emphysema and the inflammatory reaction from collagen vascular disorders which are these arthritic disorders." Employer's Exhibit 7 at 12-13.

attribute claimant's centrilobular or bullous emphysema to coal dust exposure, she summarily concluded, without any explanation, that "his reasoning is otherwise sound." Decision and Order at 16, *citing* Employer's Exhibit 7 at 14-15. Because the administrative law judge did not adequately explain the basis for her crediting of Dr. Rosenberg's opinion, her Decision and Order does not satisfy the Administrative Procedure Act (APA).[16]

For all of the above-stated reasons, we vacate the administrative law judge's finding that employer established rebuttal of the amended Section 411(c)(4) presumption. On remand, the administrative law judge must reconsider the credibility of the medical opinion evidence and determine whether employer has satisfied its burden to affirmatively disprove the existence of legal pneumoconiosis, or establish that no part of claimant's respiratory disability is due to pneumoconiosis as defined at 20 C.F.R. §718.201.[17] In reaching her credibility determinations on remand, the administrative law judge is instructed to set forth her rationale, findings of fact and conclusions of law, in accordance with the APA. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[16] The Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Black Lung Benefits Act by 30 U.S.C. §932(a), requires that an administrative law judge set forth the rationale underlying his or her findings of fact and conclusions of law. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[17] On remand, the administrative law judge may consider whether Dr. Zaldivar's elimination of coal dust exposure as a cause of claimant's pulmonary fibrosis, based on the absence of radiographic findings for simple pneumoconiosis, is consistent with the regulatory definition of legal pneumoconiosis, set forth in 20 C.F.R. §718.201, and the preamble to the revised regulations. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 314-16, 25 BLR 2-115, 2-129-32 (4th Cir. 2012); *Lewis Coal Co. v. Director, OWCP* [*McCoy*], 373 F.3d 570, 578, 23 BLR 2-184, 2-190 (4th Cir. 2004); Employer's Exhibit 6B at 26. In addition, the administrative law judge should reconsider whether Dr. Rosenberg has credibly explained why coal dust exposure and rheumatoid arthritis did not contribute in combination to claimant's respiratory impairment if, as he describes, both are inflammatory processes that may cause emphysema and fibrosis. *See* Employer's Exhibit 7 at 9, 13.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed in part and 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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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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RYAN C. GILLIGAN
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge