BRB No. 14-0207 BLA

CARL P. EDWARDS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
EMPIRE MINING, INCORPORATED	)	DATE ISSUED: 12/31/2014
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
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 – Awarding Benefits on Subsequent Living Miner's Claim and Decision and Order on Reconsideration Awarding Benefits of Stephen R. Henley, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Ryan C. Gilligan (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer/carrier.

Before: HALL, Acting Chief Administrative Appeals Judge, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order - Awarding Benefits on Subsequent Living Miner's Claim and Decision and Order on Reconsideration

Awarding Benefits (2012-BLA-05313) of Administrative Law Judge Stephen R. Henley (the administrative law judge) rendered on a claim filed on April 21, 2006, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012)(the Act). The administrative law judge found that claimant established twenty-four years of qualifying coal mine employment, and total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge found, therefore, that claimant was entitled to invocation of the rebuttable presumption of total disability due to pneumoconiosis at amended Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2012). The administrative law judge further found that employer failed to rebut the presumption.[2] Moreover, the administrative law judge found that a change in an applicable condition of entitlement was established pursuant to 20 C.F.R. §725.309.[3] Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that the claim was timely filed and that the presumption at amended Section 411(c)(4) was not rebutted. Employer also contends that the administrative law judge imposed an improper standard of proof, "ignored" relevant medical evidence, mischaracterized the opinions of Drs. Fino and Castle, inadequately considered claimant's treatment notes, and failed to

[1] Congress enacted amendments to the Black Lung Benefits Act, which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, Congress reinstated Section 411(c)(4) of the Act, which provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4) (2012). The Department of Labor revised the regulations to implement the amendments to the Act. The revised regulations became effective on October 25, 2013, and are codified at 20 C.F.R. Parts 718, 725 (2014).

[2] Once the presumption of total disability due to pneumoconiosis at amended Section 411(c)(4) is invoked, the burden shifts to employer to rebut the presumption by disproving that claimant has clinical and legal pneumoconiosis, or by establishing that claimant's disability did not arise out of, or in connection with, coal mine employment. 30 U.S.C. §921(c) (2012), implemented by 20 C.F.R. §718.305 (2014); *Barber v. Director, OWCP*, 43 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, 2-43-44 (4th Cir. 1980).

[3] Claimant filed claims in 1984, 1995, 1998, 2000, and 2002, which were denied. Claimant's most recent claim prior to the instant claim was filed on March 22, 2004 and denied on February 16, 2005, for failure to establish pneumoconiosis or total respiratory disability. *See* Director's Exhibits 1-6, 8, 35, 90, 91; Decision and Order at 2.

comply with the requirements of the Administrative Procedure Act (APA).[4] In response, claimant urges that the administrative law judge's decision awarding benefits be affirmed. In a reply brief, employer reiterates its arguments. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response brief in this appeal.[5]

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.[6] 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).

Employer's Procedural Argument
Timeliness of Claim

Employer argues that the instant claim was untimely filed. In support of its argument, employer submits that, in light of claimant's "confess[ion] that Dr. Baxter had told him he was totally disabled due to pneumoconiosis many years earlier,"[7] *i.e.*, as part of his original 1984 claim, the instant 2006 claim was not timely filed and the

[4] The Administrative Procedure Act requires an administrative law judge to independently evaluate the evidence and provide an explanation for his findings of fact and conclusions of law. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

[5] Employer does not challenge the administrative law judge's length of coal mine employment finding, or his findings that claimant established invocation of the presumption of total disability due to pneumoconiosis at amended Section 411(c)(4), and that a change in an applicable condition of entitlement was established pursuant to 20 C.F.R. §725.309. These findings are, therefore, affirmed, as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as claimant was employed in the coal mining industry in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(en banc); Director's Exhibits 2; Decision and Order at 3-5.

[7] Employer appears to reference the pulmonary evaluation performed by Dr. Baxter for the Department of Labor (DOL) in November, 1984, in which he diagnosed claimant with chronic obstructive pulmonary disease, coal workers' pneumoconiosis, and chronic respiratory insufficiency. *See* Employer's Pre-Hearing Brief dated April 1, 2013, pp. 15-17; Director's Exhibit 15; Hearing Transcript of Dec. 6, 2012 at 20-21.

administrative law judge "failed to assess the timeliness of the claim under *Peabody Coal Co. v. Director, OWCP* [*Brigance*], 718 F.3d 590, 25 BLR 2-273 (6th Cir. 2013)." Employer's Reply Brief at 1-2. In particular, employer contends that "the Department's (DOL's) loss of the earlier claim files precluded anyone from determining whether Dr. Baxter's opinion was submitted and rejected in the prior claims such that it was converted into a misdiagnosis." Employer's Reply Brief at 2. Moreover, employer asserts that, "if the claim is not dismissed as untimely, [employer] should be dismissed as the responsible operator due to [DOL's] inability to recreate the entire file." *Id*.

Section 422(f) of the Act provides that "[a]ny claim for benefits by a miner . . . shall be filed within three years of "a medical determination of total disability due to pneumoconiosis . . . ." 30 U.S.C. §932(f). To rebut the presumption that the claim is timely filed, employer must show that the claim was filed more than three years after a "medical determination of total disability due to pneumoconiosis" was communicated to the miner. 30 U.S.C. §932(f); 20 C.F.R. §725.308(a), (c). A medical determination of total disability due to pneumoconiosis predating a prior denial of benefits is legally insufficient to trigger the running of the three-year time limit for filing a subsequent claim, because the medical determination must be deemed a misdiagnosis in view of the superseding denial of benefits. *Consolidation Coal Co. v. Williams*, 453 F.3d 609, 618, 23 BLR 2-345, 2-365 (4th Cir. 2006); *see Arch of Ky., Inc. v. Director, OWCP* [*Hatfield*], 556 F.3d 472, 483, 24 BLR 2-135, 2-154 (6th Cir. 2009).[8]

The administrative law judge observed that claimant's first claim for benefits, filed on September 5, 1984, was denied on February 24, 1988, for failure to establish "either disease or disability." Decision and Order at 2; *see also* Employer's Pre-Hearing Brief dated April 1, 2013, at 1-2. Claimant's next five claims, namely claims two through six, were denied for failure to establish pneumoconiosis or total disability, and were not further pursued. *Id*. Claimant's sixth claim was denied on February 16, 2005, less than fifteen months before the instant, seventh, claim was filed on April 21, 2006. Thus, as all of claimant's previous claims were denied for failure to establish pneumoconiosis, the administrative law judge properly found that employer was unable to rebut the timeliness presumption in this case by showing that "a medical determination of total disability due

[8] In *Peabody Coal Co. v. Director, OWCP* [*Brigance*], 718 F.3d 590, 25 BLR 2-273 (6th Cir. 2013), cited by employer, the United States Court of Appeals for the Sixth Circuit stated that a medical diagnosis of disease *predating* a denial of benefits does not trigger the three year statute of limitations as the diagnosis must be deemed a misdiagnosis. The Court held, however, that based on the facts in *Brigance*, a medical diagnosis of total disability due to pneumoconiosis communicated to a miner more than three years prior to his filing of a claim under the federal Black Lung Benefits Act triggered the statute of limitations, even though it preceded a limited award of benefits in the state claim and that award had expired before the miner filed a federal claim.

to pneumoconiosis" was communicated to claimant more than three years before the filing of the instant claim. 30 U.S.C. §932(f); 20 C.F.R. §725.308(a); *see Hatfield*, 556 F.3d at 483, 24 BLR at 2-154.

Moreover, the administrative law judge noted that the missing files were reconstructed, and the entire file record from the seven claims was "returned to [the Office of Administrative Law Judges] on December 5, 2011." Decision and Order at 2. Thus, the current record is comprised of the first six "closed" claims, including the first three "reconstructed" claims, together with the fourth, fifth and sixth claim records, and the current, seventh, claim record.[9] Decision and Order at 2; *see* Hearing Transcript at 7 (Dec. 6, 2012); Employer's Reply Brief at 2; Director's Exhibit 90. Consequently, we reject employer's argument that "the file is incomplete, and that it was "precluded" by DOL's temporary loss of the files from the first three closed claims, from pursuing the issue of whether Dr. Baxter's opinion "was converted into a misdiagnosis," so as to re-set the running of the statute of limitations.[10] Employer's Reply Brief at 2. Therefore, we also reject employer's assertion that it should be dismissed as responsible operator.

Amended Section 411(c)(4) Rebuttal
Pneumoconiosis

Treatment Records

Employer contends that it rebutted the presumption by showing that claimant did not have pneumoconiosis. Specifically, employer contends that the administrative law judge failed "to provide an APA-compliant explanation" for his finding that claimant's treatment records[11] "do not assist [employer] in rebutting the presumption" by disproving

[9] Employer does not contest the accuracy of the foregoing summary.

[10] Employer's suggestion that the DOL's partial reconstruction of the case file records hindered litigation of these claims is belied by Dr. Fino's medical review of November 21, 2002, which included the DOL pulmonary evaluation performed by Dr. Baxter on November 6, 1984. *See also* Employer's Answers to Interrogatories filed on December 28, 2000. Moreover, employer does not identify any specific medical diagnosis or date, which triggers the running of the statute of limitations for *this* claim. Dr. Baxter's 1984 pneumoconiosis diagnosis was rendered before claimant's initial claim for benefits was finally denied in 1988, and cannot trigger the statute of limitations for this subsequent claim. *See* Employer's Brief at 5-6 n.2.

[11] Claimant's treatment records reflect that he was treated for unstable angina, congestive heart failure, osteoarthritis, urinary tract infection, renal insufficiency, acid peptic disease, Alzheimer's dementia, diabetes mellitus, transient ischemic attacks, gastroesophageal reflux disease and diverticulosis of the colon by history. Claimant's

the existence of pneumoconiosis. Employer's Brief at 14-15; Employer's Reply Brief at 2; *see* Decision and Order at 15. Moreover, employer contends that the treatment records do not "actually document[] a basis for a diagnosis of coal workers' pneumoconiosis, either clinical or legal, let alone consistently diagnose[] the disease[,]" and that "[p]neumoconiosis as well as chronic obstructive pulmonary disease was mentioned intermittently, and only by history." Employer's Brief at 14-15; Employer's Reply Brief at 2. Employer, however, fails to identify any portion of the treatment records that affirmatively rule out the existence of pneumoconiosis. Because claimant has successfully invoked the presumption at amended Section 411(c)(4), it is employer's burden to affirmatively establish that claimant does not have pneumoconiosis in order to rebut the presumption. *Barber v. Director, OWCP*, 43 F.3d 899, 900-01, 19 BLR 2-61, 2-65-66 (4th Cir. 1995); Decision and Order at 11-12. Thus, we reject employer's argument and hold that the administrative law judge properly found that the treatment records failed to assist employer in rebutting the presumption.

Medical Opinions

Employer also contends that the administrative law judge erred in finding that the opinions of Drs. Fino and Castle[12] did not rebut the presumption by showing that claimant does not have legal pneumoconiosis.[13] Specifically, employer contends that the

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Exhibit 1 at 5-7, 16, 27, 31. Also included among the diagnoses were acute bronchitis or chronic obstructive pulmonary disease and coal workers' pneumoconiosis. Claimant's Exhibit 1 at 4, 11, 12, 14, 17, 19, 22, 23, 26, 30, 33, 34.

[12] Dr. Fino examined claimant on October 26, 2006. Based on his examination findings, claimant's symptoms, history, x-ray and a review of several medical studies, he opined that claimant does not have pneumoconiosis, and that his pulmonary disability is neither caused, nor contributed to, by the inhalation of coal mine dust. Decision and Order at 19.

Based on a June 6, 2007 examination, which included a review of claimant's symptoms, history, x-ray physiologic testing, arterial blood gas studies, and scientific literature, Dr. Castle opined that claimant does not have clinical or legal pneumoconiosis, and diagnosed "usual interstitial pneumonitis." Decision and Order at 19-20.

[13] Rebuttal of the presumption at amended Section 411(c)(4)(A) requires employer to disprove the existence of both clinical and legal pneumoconiosis. If the administrative law judge's finding that employer failed to disprove the existence of legal pneumoconiosis can be affirmed, we will not address employer's challenge to the administrative law judge's finding that employer failed to disprove the existence of clinical pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984);

administrative law judge erred in rejecting Dr. Fino's opinion because he relied on "the pattern and location of abnormality on [claimant's] x-ray, and the onset and progression of the disease," as a basis for diagnosing "idiopathic pulmonary fibrosis or nonspecific interstitial pneumonitis, a scarring of the lungs unrelated to coal mine dust exposure," as opposed to pneumoconiosis.[14] Employer's Brief at 13.

Contrary to employer's contention, however, the administrative law judge properly discounted Dr. Fino's rationale that the type and location of claimant's lung scarring indicated that he was not suffering from coal workers' pneumoconiosis, since the regulations do not require nodules of rounded scarring. *See* 20 C.F.R. §718.102(b). Further, because legal pneumoconiosis encompasses a broader set of conditions than clinical pneumoconiosis, a diagnosis of legal pneumoconiosis is not dependent upon x-ray readings, *see Cornett v. Benham Coal Inc*., 227 F.3d 569, 576-77, 22 BLR 2-107, 2-121-22 (6th Cir. 2000). Rather, a diagnosis of legal pneumoconiosis involves a determination of whether coal dust exposure was a causal factor in claimant's respiratory impairment. 20 C.F.R. §718.202(a)(2). An opinion purporting to rule out coal dust exposure as a causative factor of a respiratory impairment, based on the location of the opacities and the absence of rounded opacities in the upper and middle lung zones, is not determinative of whether claimant's respiratory impairment arose out of coal mine employment. *See* 20 C.F.R. §718.102(b). Hence, Dr. Fino's reliance on the existence of irregular opacities on x-ray to diagnose claimant's idiopathic interstitial pulmonary fibrosis fails to preclude coal dust exposure as an etiology of the respiratory impairment, and does not aid employer in ruling out the presumed existence of legal pneumoconiosis, i.e., "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2); *see* Decision and Order at 18-19; Decision and Order on Recon. at 4. The administrative law judge, therefore, rationally rejected Dr. Fino's opinion on the existence of pneumoconiosis as not well-reasoned. *See Id.* at 4-5; Employer's Exhibit 10 at 25, 27, 29, 35-36; *see also Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997).

Decision and Order at 14-15; Decision and Order on Recon. at 2, 4-6; Employer's Brief at 22-23, 32-36.

[14] Dr. Fino stated that coal workers' pneumoconiosis causes a nodular type of fibrosis. He also states that whether pulmonary fibrosis is caused by coal mine dust exposure as opposed to other causes can be determined by how it looks on x-ray. Specifically, Dr. Fino states that claimant has an irregular type of fibrosis that's primarily in the lower lung fields, which is atypical for coal mine dust that is a rounded type of fibrosis seen in the upper lung fields. Employer's Exhibit 10 at 25; *see also* Director's Exhibit 33 at 5, 14.

Similarly, the regulations do not require the imposition of a time period in determining whether claimant's pneumoconiosis is progressive. *See* 20 C.F.R. §718.201. Consequently, the administrative law judge permissibly discounted Dr. Fino's opinion for failing to explain why the progression of claimant's respiratory impairment in this case was "too rapid" to be pneumoconiosis and how it differs from the progression of pneumoconiosis.[15] Decision and Order on Recon. at 5.

Lastly, contrary to employer's argument, the administrative law judge properly questioned Dr. Fino's diagnosis of idiopathic interstitial pulmonary fibrosis unrelated to coal mine dust.[16] Decision and Order at 18-19, 20; *see* Employer's Brief at 10-11;

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[15] Employer asserts that Dr. Fino did not state that pneumoconiosis is *never* progressive, and that his "reliance on the rapid progression of [claimant's] disease decades after [claimant's] exposure ended," was a proper basis for rejecting the opinion. Rather, employer asserts that Dr. Fino opined that the progression of claimant's disease was "far too rapid" to be pneumoconiosis. Employer's Brief at 18.

On reconsideration, the administrative law judge addressed employer's argument:

> Neither the Department nor these courts have cautioned that 'too rapid' progression negates CWP. On the contrary, when a claimant proves that his disease is now disabling when it previously was not, he 'has demonstrated that the disease from which he suffers is of a progressive nature,' which **is** evidence of CWP. *Workman v. Eastern Associated Coal Corp.*, BRB No. 02-0727 BLA, 23 BLR 1-22 (2004) (emphasis added). Additionally, Dr. Fino does not explain why he believes this progression is too rapid, and how this may be different from progression of CWP. A medical report may be discredited where the physician does not explain how underlying documentation supports the physician's diagnosis. *See Phillips v. Director, OWCP*, 768 F.2d 982 (8th Cir. 1985); *Smith v. Eastern Coal Co.*, 6 BLR 1-1130 (1984); *Duke v. Director, OWCP*, 6 BLR 1-673 (1983).

Decision and Order on Recon. at 5.

[16] Dr. Fino opined that "there is no cause and effect relationship between coal mine dust and diffuse interstitial pulmonary fibrosis." Decision and Order at 18; Director's Exhibit 33 at 14. Dr. Fino referenced views that the pigmented forms of interstitial fibrosis are "more likely" to be associated with severe pneumoconiosis, and caused by exposure to coal dust. He opined that an "excellent approach" holds:

Director's Exhibit 33 at 14-17. The administrative law judge observed that Dr. Fino "appears not to recognize that legal pneumoconiosis includes all pulmonary or respiratory diseases 'arising out of coal mine employment.'" Decision and Order at 20. Further, the administrative law judge concluded that Dr. Fino's opinion was not well-reasoned because he did not explain what he meant when he said claimant's "coal dust exposure may have 'modified' but not 'caused' claimant's condition."[17] *Id*. Based on the foregoing factors, the administrative law judge's conclusion that Dr. Fino's opinion was "not well-explained" and was "not helpful" in rebutting the presumption of pneumoconiosis was a rational exercise of his discretion to determine the credibility of an expert opinion, and is affirmed. Decision and Order at 20; *see Hicks*, 138 F.3d at 532 n.9, 21 BLR at 2-335 n.9.

The administrative law judge next turned to the opinion of Dr. Castle that claimant has idiopathic interstitial pneumonitis unrelated to coal dust exposure, because claimant has restrictive impairment without obstruction and when coal workers' pneumoconiosis causes an impairment, "it generally does so because of a mixed obstructive and restrictive ventilatory defect." Decision and Order at 20. The administrative law judge rejected Dr.

> If there is clear-cut evidence of classical pneumoconiosis, either radiographically or pathologically associated with the diffuse interstitial pulmonary fibrosis, then it is reasonable to conclude that the two are connected…[however] non-pigmented fibrosis has an unclear pathogenesis in etiology. They do not state that there is a cause and effect relationship, however the authors comment that 'it is possible that exposure to coal mine dust modifies immune and fibrogenic responses in a susceptible population, similar to the mechanisms proposed for the development of rheumatoid pneumoconiosis. In other words, coal mine dust inhalation is not causing the pulmonary fibrosis, but is modifying it. This is well documented by the observations that the course of pulmonary fibrosis in coal miners is much less severe than it is in non-coal miners.'

Director's Exhibit 33 at 16-17.

[17] Employer avers that, "[if Dr. Fino's] opinion was not clear to the [administrative law judge,] the solution was not to discredit the opinion, it was to ask the doctor to clarify what he meant." Employer's Reply Brief at 3. To the contrary, it is employer's obligation to provide a sufficiently clear and reliable expert opinion to affirmatively rebut the presumption. *See* 20 C.F.R. §725.414.

Castle's opinion because it was based on "generalities" of typical impairment patterns. Decision and Order at 20-21; Decision and Order on Recon. at 3, 5-6. Employer avers that the administrative law judge substituted his own opinion for that of a medical expert in rejecting the opinion of Dr. Castle.

Contrary to employer's contention, the administrative law judge permissibly rejected Dr. Castle's opinion because the doctor did not acknowledge the fact that legal pneumoconiosis, which includes "any chronic restrictive or obstructive pulmonary disease," may be manifested by restrictive impairments that are "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(2); 65 Fed. Reg. 79,920, 79,937-39 (Dec. 20, 2000). Further, the administrative law judge permissibly discounted the opinion of Dr. Castle as unexplained and based on generalities, because he believed that irregular, linear opacities are not "the hallmark or the typical finding" of pneumoconiosis, which manifests as "small, round, regular opacities" and because coal workers' pneumoconiosis generally manifests as a mixed, restrictive and obstructive defect. *See* 20 C.F.R. §718.102(b); Decision and Order on Recon. at 5-6; Employer's Exhibit 11 at 27-28; Director's Exhibit 46 at 18-19; *see Morrison v. Tenn. Consol. Coal Co*., 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011); *Stiltner v. Island Creek Coal Co*., 86 F.3d 337, 20 BLR 2-246 (4th Cir 1996); *Warth v. Southern Ohio Coal Co*., 60 F.3d 174, 19 BLR 2-268 (4th Cir. 1995). Accordingly, the administrative law judge's rejection of Dr. Castle's opinion as unreasoned was a rational exercise of his discretion to determine the credibility of an expert, and it is affirmed.

As the administrative law judge rationally discredited the opinions of Drs. Fino and Castle, the only opinions supportive of a finding that claimant does not suffer from legal pneumoconiosis, we affirm his finding that employer failed to disprove the existence of legal pneumoconiosis. *See* 65 Fed. Reg. 79939 (Dec. 20, 2000); *Barber*, 43 F.3d at 901, 19 BLR at 2-67; *Rose*, 614 F.2d at 939, 2 BLR at 2-43-44. We, therefore, affirm the administrative law judge's finding that employer failed to rebut the presumption at amended Section 411(c)(4) under the first means of rebuttal by establishing that claimant does not have pneumoconiosis.

Amended Section 411(c)(4) Rebuttal
Disability Causation

Medical Opinions

The administrative law judge rationally determined that the conclusion of Drs. Fino and Castle's that claimant does not suffer from clinical or legal pneumoconiosis is "contrary" to his own findings, and "significantly compromised" the probative value of their disability causation opinions. Decision and Order at 21; Decision and Order on Recon. at 6; *see Scott v. Mason Coal Co.*, 60 F.3d 1138, 19 BLR 2-257 (4th Cir. 1995); *Toler v. Eastern Associated Coal Co.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995); *see also*

Big Branch Res., Inc. v. Ogle, 737 F.3d 1063 (6th Cir. 2013). Therefore, we affirm the administrative law judge's finding that the disability causation opinions of Drs. Fino and Castle are insufficient to rebut the presumption at amended Section 411(c)(4). Contrary to employer's assertions on appeal, the administrative law judge provided valid reasoning, consistent with the requirements of the APA, for concluding that employer failed to rebut the presumption.

Rebuttal Standard

Employer also contends that the administrative law judge erred in finding that it failed to rebut the presumption by showing that claimant's totally disabling respiratory impairment did not arise out of, or in connection with, coal mine employment. Employer contends that, in requiring employer to "rule out" coal mine dust exposure as a cause of claimant's totally disabling respiratory impairment to rebut the presumption at amended Section 411(c)(4), the administrative law judge impermissibly turned the rebuttable presumption at amended Section 411(c)(4) into an "irrebuttable" presumption.

Because the administrative law judge permissibly discounted the opinions of Drs. Fino and Castle as unreasoned, we need not consider employer's argument as to whether the administrative law judge applied the correct rebuttal standard. *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 25 BLR 2-339 (4th Cir. 2013).

In light of the foregoing, we affirm the administrative law judge's award of benefits. 30 U.S.C. §921(c)(4) (2012).

Accordingly, the administrative law judge's Decision and Order - Awarding Benefits on Subsequent Living Miner's Claim and Decision and Order on Reconsideration Awarding Benefits are affirmed.

SO ORDERED.

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BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge