BRB No. 10-0533 BLA

ROMAINE SHORT (Widow of CLAUDE SHORT)	)	
Claimant-Petitioner	)	
v.	)	
SAHARA COAL TRUST	)	
	)	DATE ISSUED: 07/27/2011
Employer-Respondent	)	
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 Jeffrey Tureck, Administrative Law Judge, United States Department of Labor.

Sandra M. Fogel (Culley & Wissore), Carbondale, Illinois, for claimant.

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

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (07-BLA-5162) of Administrative Law Judge Jeffrey Tureck, rendered on a survivor's claim filed 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).[1] The administrative law judge credited the miner with

[1] Claimant is the widow of the miner, who died on February 4, 2005. Director's Exhibits 8, 10. The miner's lifetime claim for benefits, which he filed on December 17, 1996, was finally denied by the district director on May 20, 1997. Director's Exhibit 1.

sixteen years of coal mine employment[2] based on the parties' stipulation, and noted that employer conceded that the miner had clinical pneumoconiosis.[3] The administrative law judge then considered whether claimant could establish her entitlement to survivor's benefits with the aid of a rebuttable presumption of death due to pneumoconiosis that was reinstated by a recent amendment to the Act.[4] *See* 30 U.S.C. §921(c)(4). The administrative law judge found that claimant established invocation of the rebuttable presumption of death due to pneumoconiosis under 30 U.S.C. §921(c)(4), by establishing that the miner worked for at least fifteen years in underground coal mine employment, and that he was totally disabled by a respiratory or pulmonary impairment. However, the administrative law judge further found that employer rebutted the presumption, by establishing that the miner's clinical pneumoconiosis did not contribute to his death, and that the miner did not have legal pneumoconiosis.[5] Accordingly, the administrative law judge denied benefits.

---

[2] The record reflects that the miner's coal mine employment was in Illinois. Director's Exhibits 3-5. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

[3] Clinical pneumoconiosis is defined as "those 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." 20 C.F.R. §718.201(a)(1).

[4] Congress recently enacted amendments to the Act, which became effective on March 23, 2010, affecting claims filed after January 1, 2005. Relevant to this survivor's claim, Section 1556 of Public Law No. 111-148 reinstated the presumption of Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). Under amended Section 411(c)(4), if a claimant establishes that the miner had at least fifteen years of qualifying coal mine employment, and that the miner had a totally disabling respiratory impairment, there is a rebuttable presumption that the miner's death was due to pneumoconiosis. 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §921(c)(4)); *see Keene v. Consolidation Coal Co.*, F.3d , 2011 WL 1886106 at *2 (7th Cir. 2011). If the presumption is invoked, the burden of proof shifts to employer to rebut the presumption. 30 U.S.C. §921(c)(4). Another amendment, which reinstated the derivative entitlement provision of 30 U.S.C. 932(*l*) for eligible survivors, does not affect this case, because the miner's claim for benefits was denied.

[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

On appeal, claimant argues that the administrative law judge erred in admitting and excluding certain exhibits. Claimant further asserts that the administrative law judge erred in refusing to allow her to submit a supplemental brief regarding the Section 411(c)(4) presumption. Further, claimant asserts that the administrative law judge erred in his evaluation of the medical evidence. Employer responds, urging affirmance of the administrative law judge's denial of benefits.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Procedural Matters

Claimant challenges the administrative law judge's decision to admit four graphs that employer submitted as exhibits accompanying Employer's Exhibit 4, the transcript of Dr. Tuteur's deposition. The administrative law judge declined to consider claimant's objection to this evidence, finding the objection untimely because claimant first raised it with the administrative law judge in her brief filed seven months after the hearing.[6] Decision and Order at 2. Because the administrative law judge has broad discretion in ruling on the admission of evidence, *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989)(*en banc*); *Itell v. Ritchey Trucking Co.*, 8 BLR 1-356, 1-359 (1985), and we detect no abuse of discretion by the administrative law judge, we reject claimant's assertion that he erred in admitting the exhibits into evidence.

Claimant also challenges the administrative law judge's decision to exclude Dr. Sood's February 9, 2006 letter, which claimant submitted as an exhibit to accompany the transcript of Dr. Cohen's deposition. Claimant's Exhibit 4. Employer moved the administrative law judge to exclude the letter as a medical report in excess of the evidentiary limitations. The administrative law judge found that Dr. Sood's letter, dated one year after the miner's death, was not written for medical treatment purposes and thus, was not admissible under 20 C.F.R. §725.414(a)(4) as a medical treatment record. Finding that Dr. Sood's letter was a medical report in excess of claimant's two-report

---

limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

[6] As the administrative law judge noted, although claimant's counsel objected to the documents during Dr. Tuteur's deposition, claimant's counsel did not inform the administrative law judge of the objection until seven months after the hearing. Decision and Order at 2.

limit under 20 C.F.R. §725.414(a)(2)(i), and that claimant did not establish good cause for the letter's admission, the administrative law judge excluded Dr. Sood's letter from the record. Order Closing Record, Jan. 28, 2009. We reject claimant's assertion that the administrative law judge erred in declining to admit Dr. Sood's letter as a treatment record. Based on the language in Dr. Sood's letter, and the letter's date, substantial evidence supports the administrative law judge's determination that the letter was not a treatment record. The administrative law judge properly excluded Dr. Sood's letter as a medical report exceeding the evidentiary limitations applicable to claimant under 20 C.F.R. §725.414. *See Smith v. Martin County Coal Corp.*, 23 BLR 1-69, 1-74 (2004).

Claimant also challenges the administrative law judge's denial of her request to submit a reply to employer's June 17, 2009 letter, in which employer responded to issues claimant raised in her post-hearing brief. After consideration of the specific circumstances involved, we reject claimant's allegation of error. The administrative law judge found that no reply was warranted, because the parties had already had an adequate opportunity to brief the relevant issues. We detect no abuse of discretion by the administrative law judge in this ruling. *see Clark*, 12 BLR at 1-153.

Finally, we consider claimant's assertion that the administrative law judge erred in denying her request to submit a supplemental brief arguing her position regarding the Section 411(c)(4) presumption. On April 7, 2010, the administrative law judge ordered the parties to file position statements addressing whether the Section 411(c)(4) presumption applied to this claim. He further instructed the parties to file, at the same time, any "[m]otions to reopen the record and/or file supplemental briefs due to the effects of" the amendment to the Act. Order, Apr. 7, 2010 at 1. Claimant responded that the Section 411(c)(4) presumption applied, but argued that there was no need to reopen the record because the parties' existing evidence "fully addresses invocation and rebuttal of the presumption." Claimant's Position Statement at 2. Claimant requested, however, that the parties be given "the opportunity to argue invocation and rebuttal" in supplemental briefs. *Id*. The administrative law judge denied claimant's request, stating that he found the parties' post-hearing briefs adequate for him to address the issues he had to decide under Section 411(c)(4).[7] Decision and Order at 3. An administrative law judge has discretion to accept briefs or other written statements from the parties. 20 C.F.R. §725.455(d); *Freeman United Coal Mining Co. v. Cooper*, 965 F.2d 443, 446-47,

[7] The administrative law judge also denied employer's request to remand the case to the district director for employer to submit new evidence. He found that the parties' existing evidence adequately addressed the issues under Section 411(c)(4) and that, in any event, it was unnecessary to remand the case to the district director, since the administrative law judge had the authority to reopen the record for any necessary evidence. Decision and Order at 2-3 and n.3.

16 BLR 2-74, 2-76-77 (7th Cir. 1992). Our review of the record does not reveal any abuse of discretion by the administrative law judge in denying the request for supplemental briefing. *See Clark*, 12 BLR at 1-153; *Itell*, 8 BLR at 1-359. Further, claimant does not indicate what arguments she would have made, or how she was prejudiced by the administrative law judge's denial of her request. Therefore, we reject claimant's allegation of error.

Merits of Entitlement

To establish entitlement to survivor's benefits, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.205; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). Death is considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Peabody Coal Co. v. Director, OWCP* [*Railey*], 972 F.2d 178, 16 BLR 2-121 (7th Cir. 1992).

As noted above, the March 23, 2010 amendments to the Act reinstated Section 411(c)(4), which provides a rebuttable presumption that the miner died due to pneumoconiosis, if claimant establishes that the miner had fifteen or more years of qualifying coal mine employment, and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4). In order to rebut this presumption, the party opposing entitlement must establish that the miner did not have pneumoconiosis, or that the miner's death was unrelated to dust exposure in coal mine employment. *See* 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(d).[8]

After finding that claimant established invocation of the presumption, the administrative law judge found that employer rebutted the presumption by establishing that the miner's death was unrelated to his clinical pneumoconiosis or to dust exposure in

[8] Section 718.305 implemented 30 U.S.C. §921(c)(4) for claims that were filed before January 1, 1982. Although 20 C.F.R. §718.305(e) states that the regulation does not apply to claims filed on or after January 1, 1982, the administrative law judge consulted the regulation for guidance in determining the rebuttal standard in a survivor's claim under the reinstated 30 U.S.C. §921(c)(4). Decision and Order at 4. On appeal, no party challenges this aspect of the administrative law judge's decision.

his coal mine employment. Specifically, the administrative law judge accorded "great weight" to Dr. Oesterling's opinion that the miner's clinical pneumoconiosis was too mild to have contributed to his death from respiratory failure due to smoking-related emphysema, finding the opinion well-explained and supported by Dr. Oesterling's qualifications in Pathology and by his extensive experience in performing autopsies of coal miners. Decision and Order at 7. The administrative law judge noted that Dr. Tuteur, a Board-certified pulmonologist, reviewed the medical evidence of record and also concluded that the miner's clinical pneumoconiosis was too mild to produce any impairment or contribute to his death. The administrative law judge further credited, as well-reasoned, the opinions of Drs. Oesterling and Tuteur that the miner's severe emphysema was unrelated to his coal mine dust exposure, finding their opinions to be well-reasoned and supported by their discussion of medical literature. The administrative law judge discounted Dr. Perper's contrary opinion, that the miner died due to both clinical and legal pneumoconiosis, because he found that the doctor's opinion contained multiple errors that undermined its credibility. Further, the administrative law judge found that Dr. Cohen did not address whether the miner's clinical pneumoconiosis caused a respiratory or pulmonary impairment that played a role in his death. Claimant's Exhibit 3, 4. Finally, the administrative law judge discredited Dr. Cohen's opinion that the miner's fatal emphysema was legal pneumoconiosis, because he found that Dr. Cohen did not submit a reasoned medical opinion, "despite his great expertise in regard to pneumoconiosis." Decision and Order at 8-9.

Claimant asserts that the administrative law judge failed to consider the claim pursuant to Section 411(c), erred in weighing the x-ray evidence, and improperly weighed the medical opinion evidence.

We reject claimant's assertion that the administrative law judge failed to consider the claim pursuant to Section 411(c). The administrative law judge specifically found that claimant established invocation of the Section 411(c)(4) presumption, and then addressed whether employer rebutted the presumption.[9] Decision and Order at 4, 5-9. Thus, we turn to whether substantial evidence supports the administrative law judge's finding that employer carried its burden to rebut the presumption. *See Blakley v. Amax Coal Co.*, 54 F.3d 1313, 1320, 19 BLR 2-192, 2-203 (7th Cir. 1995).

[9] We affirm the administrative law judge's finding that the Section 411(c)(4) presumption was invoked, as this finding is not challenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). Further, we need not address claimant's arguments regarding the administrative law judge's discussion and weighing of the x-ray evidence, since employer conceded the existence of clinical pneumoconiosis, based on autopsy evidence. 20 C.F.R. §718.202(a); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985).

Claimant challenges the administrative law judge's evaluation of the evidence in finding that employer proved that the miner's clinical pneumoconiosis did not contribute to his death. Specifically, claimant asserts that the administrative law judge erred in discrediting Dr. Perper's opinion. Further, claimant asserts that the administrative law judge did not properly analyze the opinions of Drs. Oesterling and Tuteur, and misinterpreted Dr. Cohen's opinion regarding whether clinical pneumoconiosis contributed to the miner's death.

We reject claimant's contention that the administrative law judge erred in discounting Dr. Perper's opinion. The administrative law judge found that Dr. Perper's combined autopsy review and medical report diagnosing severe clinical pneumoconiosis, and legal pneumoconiosis, both of which contributed to the miner's death, was "shoddy and error-prone" and therefore not entitled to any weight. Decision and Order at 6. In so finding, the administrative law judge detailed specific instances in which Dr. Perper's report was inaccurate and contained irrelevant discussion and information.[10] We conclude that substantial evidence supports the administrative law judge's permissible credibility determination. *See Knizer v. Bethlehem Mines Corp.*, 8 BLR 1-5 (1985). Therefore, contrary to claimant's contention, the administrative law judge did not err in discrediting Dr. Perper's opinion.

Claimant argues that the administrative law judge erred in crediting Dr. Oesterling's opinion that the miner's clinical pneumoconiosis did not contribute to his death, because the administrative law judge did not consider that Dr. Perper disagreed with Dr. Oesterling. We disagree. As just discussed, the administrative law judge permissibly discounted Dr. Perper's opinion. Further, contrary to claimant's contention, the administrative law judge acted within his discretion when he found Dr. Oesterling's opinion on the minimal extent of the miner's clinical pneumoconiosis to be well-explained, and bolstered by Dr. Oesterling's credentials and experience in Pathology. *See Livermore v. Amax Coal Co.*, 297 F.3d 668, 672, 22 BLR 2-399, 2-407 (7th Cir. 2002); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985).

Additionally, claimant argues that the administrative law judge summarized Dr. Tuteur's opinion that the miner's clinical pneumoconiosis was too mild to cause any impairment, but "did not address Dr. Tuteur's [opinion on] cause of death at all," or

[10] Guided by Dr. Oesterling's testimony, the administrative law judge noted, *inter alia*, that Dr. Perper (1) failed to distinguish between lung and lymph node tissue when he diagnosed severe pneumoconiosis based on one lung tissue slide, (2) ignored other lung tissue slides, (3) referred to two other miners in his report, and (4) discussed cancer and idiopathic pulmonary fibrosis, conditions that the physicians agree the miner did not have. Decision and Order at 6.

explain the relevancy of Dr. Tuteur's opinion. Claimant's Brief at 20. Dr. Tuteur's opinion was that, because the miner's clinical pneumoconiosis was too mild to cause any impairment, it played no role in his death. Director's Exhibit 17; Employer's Exhibit 4. Given the administrative law judge's analysis of Dr. Oesterling's similar opinion, we detect no error by the administrative law judge in his discussion of Dr. Tuteur's opinion.

Claimant argues further that the administrative law judge erred in finding that Dr. Cohen's opinion, that the miner's clinical pneumoconiosis combined with his emphysema and chronic obstructive pulmonary disease (COPD) "to cause his very severe impairment which ultimately [led] to his death," Claimant's Exhibit 3, did not specifically address the causative role of the miner's clinical pneumoconiosis alone. We disagree. Since the administrative law judge had before him opinions from Drs. Oesterling and Tuteur that the miner's clinical pneumoconiosis was too mild to have played any role in his death, he reasonably looked to Dr. Cohen's opinion for specific, contrary evidence focusing on the causative role of the clinical pneumoconiosis. *See Clark*, 12 BLR at 1-155. The administrative law judge accurately stated that Dr. Cohen did not address the causative role of the miner's clinical pneumoconiosis alone. Claimant's Exhibits 3-5. Although claimant points to Dr. Cohen's statement that the miner's clinical pneumoconiosis contributed to a diffusion impairment, Dr. Cohen further stated that the miner's severe emphysema also caused that impairment. Claimant's Exhibit 5 at 82-83. In sum, substantial evidence supports the administrative law judge's determination that Dr. Cohen did not specifically contradict the opinions of Drs. Oesterling and Tuteur, that the miner's clinical pneumoconiosis was too mild to play any role in his death. In view of the foregoing, we affirm the administrative law judge's finding that employer established that the miner's mild clinical pneumoconiosis did not contribute to his death.

We next consider claimant's assertion that the administrative law judge erred in evaluating the evidence to find that employer established that the miner did not have legal pneumoconiosis. Claimant asserts that the administrative law judge failed to thoroughly evaluate the credibility of Dr. Tuteur's opinion, that the miner's emphysema was unrelated to coal mine employment, before he credited the opinion. Claimant's assertion has merit.

Dr. Tuteur opined that there was a 1% chance that coal mine dust exposure would cause the emphysema that the miner had, but a 20% chance that smoking could cause it. Dr. Tuteur therefore concluded that the miner's chronic obstructive pulmonary disease was due solely to his inhalation of tobacco smoke. Director's Exhibit 12; Employer's Exhibit 4. The administrative law judge found that Dr. Tuteur's opinion was entitled to great weight because it was "based on numerous studies in the medical literature," and because Dr. Tuteur carefully considered the medical literature and demonstrated "incredible knowledge" of it in reaching his conclusion. Decision and Order at 8.

The determination of whether a medical opinion is reasoned and documented is for the administrative law judge as the factfinder to decide. *See Consolidation Coal Co. v. Director, OWCP* [*Stein*], 294 F.3d 885, 895, 22 BLR 2-409, 2-426 (7th Cir. 2002); *Clark*, 12 BLR at 1-155. That determination requires the administrative law judge to examine the validity of the reasoning of a medical opinion and to explain his credibility determinations. *See Stalcup v. Peabody Coal Co.*, 477 F.3d 482, 484, 22 BLR 2-35, 2-37 (7th Cir. 2007); *Peabody Coal Co. v. McCandless*, 255 F.3d 465, 468-69, 22 BLR 2-311, 2-318 (7th Cir. 2001). In this case, as claimant asserts, when the administrative law judge found that Dr. Tuteur's opinion was well-reasoned because it was based on medical literature, he did not address Dr. Cohen's criticism of Dr. Tuteur's analysis and use of the medical literature regarding coal mine dust and obstructive lung disease.[11] Claimant's Exhibit 5. Further, claimant notes that the administrative law judge did not consider Dr. Tuteur's opinion in light of *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 24 BLR 2-97 (7th Cir. 2008), which addressed reasoning by Dr. Tuteur that was similar to his reasoning in this case. As a result, we are unable to determine whether substantial evidence supports the administrative law judge's credibility determination. Therefore, we must vacate the administrative law judge's finding regarding Dr. Tuteur's opinion, and remand this case for him to reconsider whether it supports employer's burden to establish rebuttal of the Section 411(c)(4) presumption. *See Blakley*, 54 F.3d at 1320, 19 BLR at 2-203. On remand, the administrative law judge must address all relevant evidence and resolve the physicians' conflicting opinions on the medical science, to the extent it forms the basis for their opinions. *See Stalcup*, 477 F.3d at 484, 22 BLR at 2-37; *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 22 BLR 2-265 (7th Cir. 2001); *McCandless*, 255 F.3d at 468-69, 22 BLR at 2-318.

In addition, we agree with claimant that the administrative law judge did not thoroughly evaluate Dr. Oesterling's opinion, that the miner did not have legal pneumoconiosis, before crediting it. The administrative law judge credited Dr. Oesterling's opinion that a medical textbook establishes that the only type of emphysema caused by exposure to coal mine dust is centrilobular emphysema, whereas the miner suffered from panlobular and bullous emphysema, which Dr. Oesterling opined are forms of emphysema caused by smoking. Employer's Exhibit 5 at 24. The administrative law judge accorded greatest weight to Dr. Oesterling's opinion, finding it carefully explained and well-reasoned, and "consistent with the conclusions reached in 'the classical

[11] The record includes Dr. Cohen's contrary analysis of the medical literature regarding the role of coal mine dust in causing obstructive lung disease and emphysema, Claimant's Exhibits 3-5, along with Dr. Cohen's opinion that the particular article upon which Dr. Tuteur relied to derive his etiology analysis "has little, if any, scientific value and is not recognized as scholarly research in the medical community." Claimant's Exhibit 5 at 4.

pulmonary textbook.'" Decision and Order at 8. As claimant argues, however, the administrative law judge did not take into account the contrary opinions of Drs. Cohen and Tuteur, that the description of emphysema as centrilobular, bullous, or panlobular, has nothing to do with its etiology, but describes only the location and extent of the lung damaged by emphysema.[12] Claimant's Exhibit 4 at 72-74; Employer's Exhibit 4 at 175-76. Because the administrative law judge did not address and resolve this issue before he credited Dr. Oesterling's opinion, we must vacate the administrative law judge's finding regarding Dr. Oesterling's opinion, and instruct him to reconsider whether it supports employer's burden to establish rebuttal of the Section 411(c)(4) presumption. *See Stalcup*, 477 F.3d at 484, 22 BLR at 2-37; *McCandless*, 255 F.3d at 468-69, 22 BLR at 2-318; *Blakley*, 54 F.3d at 1320, 19 BLR at 2-203.

In view of our holdings, we vacate the administrative law judge's finding that employer established rebuttal of the Section 411(c)(4) presumption by establishing that the miner did not have legal pneumoconiosis. On remand, the administrative law judge should reconsider that issue in light of the physicians' respective analyses and the quality of their comparative reasoning, in addition to their qualifications. *See Stalcup*, 477 F.3d at 484, 22 BLR at 2-37; *McCandless*, 255 F.3d at 468-69, 22 BLR at 2-318. Further, based on our foregoing discussion, we instruct the administrative law judge to take into account Dr. Cohen's opinion, in its entirety, in determining whether the opinions of Drs. Oesterling and Tuteur establish rebuttal of the Section 411(c)(4) presumption. Upon review of Dr. Cohen's opinion as a whole, we conclude that substantial evidence does not support the administrative law judge's findings that Dr. Cohen was unfamiliar with the relevant medical literature or the medical evidence in this case, and that therefore, Dr. Cohen did not submit a reasoned medical opinion. Claimant's Exhibits 3-5.

Finally, we reject claimant's argument that the administrative law judge erred in finding that the miner had a smoking history of more than forty years, during part of which time he smoked at least two packs of cigarettes per day. Decision and Order at 4. The administrative law judge identified the specific evidence in the miner's treatment records that led him to that conclusion, and reasonably explained why he credited it. *See Clark*, 12 BLR at 1-155; Decision and Order at 3-4. Moreover, the administrative law judge's finding coincides with the physicians' own assessments of the miner's smoking history, and the administrative law judge did not credit or discredit the various medical opinions based on any discrepancies in smoking histories.

[12] Dr. Cohen testified that a different Pulmonary Pathology textbook than the one cited by Dr. Oesterling establishes that panlobular and bullous emphysema are progressively more severe forms of emphysema, not distinct diseases with specific etiologies. Claimant's Exhibit 4 at 73-74.

Accordingly, the administrative law judge's Decision and Order Denying 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.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge