BRB No. 12-0544 BLA

PAUL E. GIVEN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SEWELL COAL COMPANY	)	DATE ISSUED: 07/15/2013
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Joseph Wolfe (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

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: SMITH, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2011-BLA-5540) of Administrative Law Judge Richard A. Morgan on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act). This case

involves a subsequent claim filed on February 22, 2010.[1] The administrative law judge credited claimant with at least thirty-seven years of coal mine employment, fifteen of which were in underground coal mine employment,[2] and found that the evidence established the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b). The administrative law judge found, therefore, that claimant was entitled to invocation of the amended Section 411(c)(4) presumption of total disability due to pneumoconiosis.[3] 30 U.S.C. §921(c)(4). In addition, the administrative law judge found that employer did not rebut the presumption by "disproving" the existence of legal pneumoconiosis[4] or that claimant's disabling respiratory impairment arose out of, or in connection with, coal mine employment. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the constitutionality of the 2010 amendments and the administrative law judge's application of the amended Section 411(c)(4) presumption

[1] Claimant's previous claim, filed on June 11, 1986, was denied by an administrative law judge on March 22, 1989 because, although claimant established the existence of pneumoconiosis, he failed to establish total respiratory disability or disability causation. Claimant's subsequent notice of appeal to the Board was dismissed as untimely and claimant took no further action on the claim. Decision and Order at 2, 17; Director's Exhibit 1 at 3-4, 12-13.

[2] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as claimant's last coal mine employment was in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc).

[3] Congress enacted amendments to the Act, which became effective on March 23, 2010, affecting claims filed after January 1, 2005. Relevant to this living miner'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 Section 411(c)(4), if a miner 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 that he or she has a totally disabling respiratory impairment, there will be a rebuttable presumption that he or she is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(4), amended by Pub. L. No. 111-148, §1556(a), 124 Stat. 119 (2010)(codified at 30 U.S.C. §921(c)(4)). If the presumption is invoked, the burden of proof shifts to employer to disprove the existence of pneumoconiosis, or to establish that the miner's pulmonary or respiratory impairment "did not arise out of, or in connection with," employment in a coal mine. 30 U.S.C. §921(c)(4).

[4] The administrative law judge found that claimant did not have clinical pneumoconiosis. *See* Decision and Order at 22-24.

to this case. Additionally, employer challenges the administrative law judge's findings on total respiratory disability at Section 718.204(b), change in an applicable condition of entitlement at 20 C.F.R. §725.309(d), and invocation and rebuttal of the amended Section 411(c)(4) presumption.[5] Claimant responds, arguing that the administrative law judge's Decision and Order awarding benefits should be affirmed. 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 2010 amendments, and to affirm the applicability of the amended Section 411(c)(4) presumption to this case. The Director does not challenge the administrative law judge's weighing of the evidence.

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).

Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2). Claimant's prior claim was denied because he failed to establish the presence of a total respiratory disability. Director's Exhibit 2. Consequently, to obtain review of the merits of his claim, claimant had to submit new evidence establishing a total respiratory disability. 20 C.F.R. §725.309(d).

Application of the Amended Section 411(c)(4) Presumption

Employer asserts that the retroactive application of the amended Section 411(c)(4) presumption is unconstitutional as a violation of employer's due process rights and is an unlawful taking of employer's property in violation of the Fifth Amendment to the United States Constitution. Employer's Brief at 25-31. Further, employer contends that the rebuttal provisions of the amended Section 411(c)(4) presumption apply only to claims against the "Secretary," and do not apply to claims brought against a responsible operator. *Id*. at 21-22.

[5] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established at least thirty-seven years of coal mine employment, of which fifteen or more years were in underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Employer's contentions are substantially similar to the ones that the Board rejected in *Owens v. Mingo Logan Coal Co.*, 25 BLR 1-1, 1-4-5 (2011), *appeal docketed*, No. 11-2418 (4th Cir. Dec. 29, 2011), and we reject them here for the reasons set forth in that decision. In addition, employer argues that the application of amended Section 411(c)(4) is premature, because the Department of Labor has not yet promulgated regulations implementing the amendments to the Act. Employer's Brief at 22-24. We reject this argument. The mandatory language of the amended portions of the Act supports the conclusion that the provisions are self-executing. *See Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-201 (2010). Accordingly, we affirm the administrative law judge's consideration of this claim under amended Section 411(c)(4).

Invocation of the Amended Section 411(c)(4) Presumption
Total Respiratory Disability – 20 C.F.R. §718.204(b)

Employer challenges the administrative law judge's finding that claimant established a total respiratory disability pursuant to 20 C.F.R. §718.204(b). Specifically, employer contends that the administrative law judge "failed to provide *any* discussion" of his credibility determinations in reconciling the conflicting evidence. Employer's Brief at 19. Employer further argues that the administrative law judge failed to comply with the requirements of the Administrative Procedure Act (the APA), which requires that the administrative law judge state the basis for his findings and the rationale underlying his conclusions. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2). *Id.*

The administrative law judge first found that the evidence failed to establish total respiratory disability pursuant to Section 718.204(b)(2)(i)-(iii), because all of the new pulmonary function studies of record,[6] with the exception of the two most recent pre-bronchodilator pulmonary function studies, were non-qualifying; because all of the new blood gas studies of record were non-qualifying;[7] and because there was no evidence of

[6] The administrative law judge found that Dr. Rasmussen's May 25, 2010 pulmonary function study resulted in both pre-bronchodilator and post-brochodilator non-qualifying values. Director's Exhibit 13. However, the administrative law judge found that Dr. Zaldivar's December 29, 2010 pulmonary function study resulted in qualifying pre-bronchodilator values and non-qualifying post-bronchodilator values. Likewise, the administrative law judge found that Dr. Klayton's November 16, 2011 pulmonary function study resulted in a qualifying pre-bronchodilator value and a non-qualifying post-bronchodilator value. Employer's Exhibit 1; Claimant's Exhibit 1.

[7] The administrative law judge noted that the blood gas studies were performed by Dr. Rasmussen on May 25, 2010; Dr. Zaldivar on December 29, 2010; and Dr. Klayton on November 16, 2011.

cor pulmonale with right-sided congestive heart failure.[8] Decision and Order at 25-26. Considering the new medical opinion evidence, however, the administrative law judge found that it established a total respiratory disability pursuant to Section 718.204(b)(2)(iv). Specifically, the administrative law judge noted that claimant's "last coal mining positions required heavy manual labor," and that *all* of the physicians' opinions submitted in support of the subsequent claim found that claimant's respiratory impairment rendered him totally disabled from performing his usual coal mine employment. Decision and Order at 27-28.[9] The administrative law judge further found that the new evidence, when weighed together, established a total respiratory disability pursuant to Section 718.204(b), and a change in an applicable condition of entitlement pursuant to Section 725.309(d). The administrative law judge then found that, considering all of the evidence of record, both old[10] and new, a total respiratory disability was established pursuant to Section 718.204(b).

[8] This finding is affirmed, as unchallenged on appeal. *Skrack*, 6 BLR at 1-711.

[9] Dr. Rasmussen conducted a physical examination on May 25, 2010, took work and medical histories, and conducted a pulmonary function study, a blood gas study and an x-ray. Dr. Rasmussen opined that claimant did not retain the respiratory capacity to perform heavy manual labor. Director's Exhibit 13.

Dr. Klayton evaluated claimant on November 16, 2011, took work and medical histories, and conducted an x-ray, a pulmonary function study, and a blood gas study. Dr. Klayton found that claimant's respiratory impairment is severe and "he would not be able to work at his most recent coal mine employment given his dyspnea with mild exertion and inability to lift two hundred pounds." Claimant's Exhibit 1.

Dr. Zaldivar evaluated claimant on December 29, 2010 and based on his examination, review of medical records, and claimant's pulmonary function study, x-ray, and blood gas study found that claimant, from a pulmonary standpoint, is incapable of performing his usual coal mine employment. Employer's Exhibit 1. Dr. Zaldivar was deposed on January 3, 2012, and stated that claimant's "respiratory impairment is sufficient to preclude him from performing the last coal mining work he described." Employer's Exhibit 5.

Dr. Castle prepared a report dated April 27, 2011, based on his review of claimant's medical records. Dr. Castle opined that claimant has a totally disabling respiratory impairment. Employer's Exhibit 3. Pursuant to a deposition taken on January 5, 2012, Dr. Castle stated that claimant lacks the pulmonary capacity to return to his regular coal mine employment. Employer's Exhibit 6.

[10] The administrative law judge found that the evidence submitted with the prior claim, which was filed in 1986, failed to establish total respiratory disability.

Contrary to employer's argument, the administrative law judge explained his reason for finding that the medical evidence established a total respiratory disability. The administrative law judge stated that, because all of the doctors who most recently evaluated claimant were in agreement that claimant is totally disabled from his usual coal mine employment, and the two most recent pulmonary function studies resulted in qualifying pre-bronchodilator values, the evidence was sufficient to establish a totally disabling respiratory impairment pursuant to Section 718.204(b). *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon*. en banc, 9 BLR 1-236 (1987); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986)(en banc), *aff'd on recon*. en banc, 9 BLR 1-104 (1986); *see generally Marsiglio v. Director, OWCP*, 8 BLR 1-190 (1985)(it is not appropriate to discredit a medical report solely because the conclusions reached do not coincide with objective standards regarding disability based on the pulmonary function studies and blood gas studies). Accordingly, we reject employer's argument that the administrative law judge has not sufficiently explained the basis for his finding of total respiratory disability. We affirm, therefore, the administrative law judge's finding that the new evidence established total respiratory disability and a change in an applicable condition of entitlement pursuant to Section 725.309(d). *White*, 23 BLR at 1-3. We also affirm the administrative law judge's finding that all of the relevant evidence, both old and new, when considered together, established total respiratory disability pursuant to Section 718.204(b). *See Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 624, 11 BLR 2-147, 2-149 (6th Cir. 1988); *Parsons v. Wolf Creek Collieries*, 23 BLR 1-29 (2004)(en banc).

In light of our affirmance of the administrative law judge's findings that claimant established over fifteen years of underground coal mine employment, and the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b), we affirm the administrative law judge's finding that the amended Section 411(c)(4) presumption of total disability due to pneumoconiosis was invoked. 30 U.S.C. §921(c)(4); Decision and Order at 17-18, 28-30.

Rebuttal of the Amended Section 411(c)(4) Presumption

Considering the medical opinion evidence relevant to rebuttal of the amended Section 411(c)(4) presumption, the administrative law judge found that "Drs. Rasmussen and Klayton diagnosed [claimant] with legal pneumoconiosis,[11] while Drs. Zaldivar and

[11] The regulation at 20 C.F.R. §718.201(a) and (b) provides, in pertinent part:

> 'Legal pneumoconiosis' includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition

Castle did not." Decision and Order at 24. In addition, the administrative law judge noted that Drs. Rasmussen and Klayton opined that claimant's disabling respiratory impairment was due to both coal mine employment and smoking, while Drs. Zaldivar and Castle opined that it was due to asthma and not related to coal mine employment. The administrative law judge determined, however, that the opinions of Drs. Zaldivar and Castle failed to rebut the amended Section 411(c)(4) presumption by "disproving" either the existence of legal pneumoconiosis or that claimant's disabling respiratory impairment arose out of, or in connection with, coal mine employment because they were not well-reasoned and in keeping with the regulations.[12] 30 U.S.C. §921(c)(4).

Initially, we reject employer's contention that the administrative law judge afforded claimant "the benefit of a non-existent presumption under Section 718.202(a)(4)," and "improperly shifted the burden of proof to the employer." Employer's Brief at 10-11. Contrary to employer's contention, claimant does not bear the burden of establishing the existence of legal pneumoconiosis or disability causation;

> includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment.
>
> For purposes of this section, a disease "arising out of coal mine employment" includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment.

[12] Dr. Rasmussen examined claimant and diagnosed chronic obstructive pulmonary disease due to smoking and coal dust exposure. He opined that coal dust exposure was a major contributing factor in claimant's disabling respiratory impairment. Decision and Order at 11-12, 24; Director's Exhibit 13 at 7-8.

Dr. Klayton examined claimant and concluded that coal dust exposure played a major role in claimant's disabling respiratory impairment. Decision and Order at 12, 24; Claimant's Exhibits 1 at 3-4, 2.

Dr. Zaldivar examined claimant and diagnosed asthma, but found that claimant does not have "clinical or legal" pneumoconiosis. He attributed claimant's disabling respiratory impairment to asthma. Decision and Order at 12-14; Employer's Exhibits 1 at 3-4, 5 at 19, 24-31.

Dr. Castle, who reviewed claimant's medical records, diagnosed disabling bronchial asthma unrelated to coal mine employment, and opined that claimant does not have "medical or legal" pneumoconiosis. Decision and Order at 14-16; Employer's Exhibits 3 at 9-10, 6 at 21-24.

rather, these elements of entitlement are established by invocation of the amended Section 411(c)(4) presumption and it is employer's burden to affirmatively establish rebuttal of the presumption. 30 U.S.C. §921(c)(4); *Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 939, 2 BLR 2-38, 2-43-44 (4th Cir. 1980); *see Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 478, 25 BLR 2-1 (6th Cir. 2011). Accordingly, the administrative law judge acted properly in finding that claimant was entitled to a presumption of pneumoconiosis and disability causation and in considering whether employer met its burden of "disproving" the existence of pneumoconiosis or that claimant's disabling respiratory impairment arose out of, or in connection with, coal mine employment.

Next, we reject employer's assertion that the administrative law judge "inaccurately" characterized the findings of Drs. Zaldivar and Castle regarding the existence of legal pneumoconiosis and disability causation. Employer asserts that Dr. Zaldivar's opinion that claimant does not have legal pneumoconiosis, together with his testimony that asthma is a disease of the general population, "unequivocally demonstrates that Dr. Zaldivar averred that the claimant's disabling asthma is unrelated to his coal mine employment."[13] Decision and Order at 12. Likewise, employer asserts that Dr. Castle's opinion attributing claimant's disabling respiratory impairment to asthma, a disease of the general population that is unrelated to coal dust exposure,[14] demonstrates

[13] Dr. Zaldivar stated that the main problem with claimant's breathing is his asthma, and indicated that emphysema and asthma are the diseases most commonly associated with smoking. Dr. Zaldivar opined that claimant's reduced diffusion capacity is not necessarily the result of emphysema, but is due to untreated asthma. Decision and Order at 12-14; Employer's Exhibits 1 at 4, 5 at 9-11, 12-15, 21-22, 24. Dr. Zaldivar wrote: "[t]here is no evidence in this case to justify a diagnosis of legal coal worker's pneumoconiosis. [The miner's] pulmonary condition is best explained by long standing submaximally treated asthma with resultant lung remodeling and loss of lung units." Employer's Exhibit 1 at 4; Decision and Order at 12-15, 24-25.

Dr. Zaldivar disagreed that coal dust exposure was a causative or contributory factor in claimant's impairment, stating:

> Now, he did work in the coal mines, but he had to work at something. He could have been a banker. He could have been anybody. But the disease he has is a disease of the general population.

Employer's Exhibit 5 at 30-31.

[14] Dr. Castle opined that he does not believe coal mine dust contributed to [claimant's] disability because he has bronchial asthma. Employer's Exhibit 6 at 24-25; Decision and Order at 15, 24. Dr. Castle testified: "[A]s I stated in my report…his physiologic impairments…are not seen with coal workers' pneumoconiosis. That finding

that claimant's disabling respiratory impairment is unrelated to coal mine employment. Employer contends, therefore, that the opinions of Drs. Zaldivar and Castle rebut the amended Section 411(c)(4) presumption by establishing that claimant does not have legal pneumoconiosis and that his disabling respiratory impairment did not arise out of, or in connection with, coal mine employment.

Contrary to employer's assertion, however, the administrative law judge accurately evaluated the reports and deposition testimony of Drs. Zaldivar and Castle and found that they failed to rebut the amended Section 411(c)(4) presumption. Specifically, the administrative law judge properly considered the opinions of Drs. Zaldivar and Castle in light of the definition of chronic obstructive pulmonary disease, which includes the disease of chronic bronchitis, emphysema, and asthma.[15] Decision and Order at 24-25; *see* 65 Fed. Reg. 79,920, 79,939, 79,944 (Dec. 20, 2000). The administrative law judge determined that "although [Drs. Zaldivar and Castle] don't directly state [that the disease of] asthma is unrelated to coal mine dust exposure, both make statements implying such," since both doctors rely on their findings that asthma is a disease of the general population. Decision and Order at 25. The administrative law judge concluded,

---

is unequivocally due to bronchial asthma." Employer's Exhibits 1 at 4-5, 6 at 25; Decision and Order at 12-15, 24-25.

Dr. Castle disagreed that coal mine dust contributed to claimant's impairment, stating:

> I think that the problem here is that of bronchial asthma. I can't say that he didn't have some of the obstruction related to smoking, but I think that it's more likely that it's all due to bronchial asthma.

Employer's Exhibit 6 at 25.

[15] The comments to the regulations state:

> The term '*chronic obstructive pulmonary disease*' (*COPD*) *includes* three disease processes characterized by airways dysfunction: *chronic bronchitis*, *emphysema*, and *asthma*. Airflow limitation and shortness of breath are features of COPD, and lung function testing is used to establish its presence. Clinical studies, pathological findings, and scientific evidence regarding the cellular mechanisms of lung injury *link*, *in a substantial way*, coal mine dust exposure to pulmonary impairment and chronic obstructive lung disease.

65 Fed. Reg. 79,939 (Dec. 20, 2000)(emphasis added).

therefore, that "[t]hey both failed to address whether [claimant's] asthma itself arose from coal dust exposure." *Id*. at 24-25. Thus, because he found that Drs. Zaldivar and Castle both viewed asthma as a disease of the general population unrelated to coal mine dust exposure, the administrative law judge rationally found their opinions at variance with the views of the Department of Labor (DOL) as expressed in the comments in the preamble to the revised regulations linking asthma to coal dust exposure. *Id*. Consequently, the administrative law judge rationally discounted the opinions of Drs. Zaldivar and Castle because they implied that the disease of asthma is always unrelated to coal dust exposure and, thus, foreclosed any causal or contributory relationship between claimant's asthma and his coal mine dust exposure. As such, the administrative law judge properly found that the opinions of Drs. Zaldivar and Castle were contrary to the medical principles accepted by the DOL. *See* Decision and Order at 25; 65 Fed. Reg. 79,939 (Dec. 20, 2000); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 25 BLR 2-115 (4th Cir. 2012); *A & E Coal Co. v. Adams*, 694 F.3d 798, 25 BLR 2-203 (6th Cir. 2012); *Lewis Coal Co. v. Director, OWCP* [*McCoy*], 373 F.3d 570, 578, 23 BLR 2-184, 2-190 (4th Cir. 2004); *J.O* [*Obush*] *v. Helen Mining Co*., 24 BLR 1-117, 1-125-26 (2009), *aff'd*, *Helen Mining Co. v. Director, OWCP*, 650 F.3d 248, 24 BLR 2-369 (3d Cir. 2011). Because the opinions of Drs. Zaldivar and Castle, the only opinions supportive of a finding that claimant does not have legal pneumoconiosis and that his disabling respiratory impairment did not arise out of, or in connection with, his coal mine employment, were properly discounted, we affirm the administrative law judge's finding that employer failed to meet its rebuttal burden under amended Section 411(c)(4).[16] *See Rose*, 614 F.2d at 939, 2 BLR at 2-43; *see also Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999); *Hicks*, 138 F.3d at 533, 21 BLR at 2-335.

In light of the foregoing, the administrative law judge's findings that claimant established invocation of the amended Section 411(c)(4) presumption, and that employer

[16] Employer has the burden of rebutting the amended Section 411(c)(4) presumption by affirmatively disproving the existence of pneumoconiosis or "disproving" that claimant's disabling respiratory impairment arose out of, or in connection with, coal mine employment. Thus, error, if any, in the administrative law judge's weighing of the opinions of the physicians who found legal pneumoconiosis and a disabling respiratory impairment arising out of coal mine employment is harmless. *See Johnson v. Jeddo-Highland Coal Co*., 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). We decline, therefore, to address employer's assertions that Drs. Rasmussen and Klayton were insufficiently reasoned and probative, and relied on an inaccurate smoking history. Because employer bears the burden of proof on rebuttal, the sufficiency of claimant's evidence is not at issue. *See 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); *see also Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 479-80, 25 BLR 2-1, 2-9 (6th Cir. 2011).

has not rebutted the presumption are rational, supported by substantial evidence, and in compliance with the requirements of the APA. We, therefore, affirm the award of benefits. 30 U.S.C. §921(c)(4).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

_____
ROY P. SMITH
Administrative Appeals Judge

_____
REGINA C. McGRANERY
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge