U.S. Department of Labor

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

BRB No. 14-0353 BLA

ROOSEVELT R. NEAL Claimant-Respondent v. BAYLOR MINING, INCORPORATED and BRICKSTREET MUTUAL INSURANCE COMPANY Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 07/10/2015 DECISION and ORDER

Appeal of the Decision and Order of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

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

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

Michelle S. Gerdano (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, BOGGS and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order (2012-BLA-05250) of Administrative Law Judge Adele Higgins Odegard awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's claim filed on June 16, 2010.

Applying amended Section 411(c)(4), 30 U.S.C. §921(c)(4),[1] the administrative law judge credited claimant with 27.41 years of underground coal mine employment,[2] and found that the evidence established that claimant has a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge, therefore, found that claimant invoked the rebuttable presumption set forth at Section 411(c)(4). The administrative law judge further found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erred in finding that the evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2) and, therefore, erred in finding that claimant invoked the Section 411(c)(4) presumption. Employer also argues that the administrative law judge erred in finding that employer did not rebut the Section 411(c)(4) presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging the Board to reject employer's arguments regarding

[1] As part of the Patient Protection and Affordable Care Act, Public Law No. 111-148, 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 of total disability due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4). 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] The record reflects that claimant's coal mine employment was in West Virginia. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

rebuttal of the Section 411(c)(4) presumption. Employer filed a reply brief, reiterating its arguments on appeal.[3]

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 Assocs., Inc.*, 380 U.S. 359 (1965).

Invocation of the Section 411(c)(4) Presumption

Employer contends that the administrative law judge erred in finding that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv) and, therefore, erred in finding that claimant invoked the Section 411(c)(4) presumption.

After finding that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii), the administrative law judge considered whether the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge considered the medical opinions of Drs. Rasmussen, Castle, and Zaldivar. Dr. Rasmussen noted that claimant's last coal mine work was as a roof bolter, which required heavy, and very heavy manual labor, including hanging heavy cable, loading bolts on to a machine, and setting timbers. Dr. Rasmussen opined that claimant does not retain the pulmonary capacity to perform his coal mine work, based on a "moderate impairment in oxygen transfer during light exercise" as demonstrated by his blood gas studies.[4] Director's Exhibit 10; Claimant's Exhibits 2 at 1, 5 at 1-2; Decision and Order at 17.

In contrast, Dr. Zaldivar opined that his own objective testing, and that performed by Dr. Rasmussen, indicated that claimant does not have a disabling respiratory impairment but, rather, reflects an impairment due to obesity.[5] Employer's Exhibit 12 at

[3] Because employer does not challenge the administrative law judge's finding that claimant established 27.41 years of underground coal mine employment, that finding is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[4] Dr. Rasmussen explained that claimant's demonstrated oxygen consumption rates of 17.4 ml/kg/min, obtained on December 3, 2010, and 22.6 ml/kg/min, obtained on July 11, 2011, were less than the 25-30 ml/kg/min needed to perform the work of a roof bolter. Decision and Order at 17; *see* Director's Exhibit 10; Claimant's Exhibit 2.

[5] Dr. Zaldivar stated that his own objective testing revealed only a mild restrictive ventilatory impairment, which was attributable to claimant's obesity. Employer's Exhibit

2-3. Thus, Dr. Zaldivar concluded that claimant retained the pulmonary capacity to perform his usual coal mine work. Employer's Exhibit 7 at 28-36. Dr. Castle also opined that claimant's objective studies reflected the pulmonary capacity to perform the duties of his last coal mine job.[6] Employer's Exhibits 3 at 7; 8 at 36.

The administrative law judge found that the opinion of Dr. Rasmussen, that claimant has a totally disabling respiratory impairment, is well-reasoned, well-documented, and supported by the results of the objective studies. Decision and Order at 19. The administrative law judge accorded less weight to the opinions of Drs. Zaldivar and Castle, finding that neither doctor adequately explained how claimant retained the respiratory capacity to return to his previous coal mine employment, given the heavy exertional level of that position. Decision and Order at 18-19. The administrative law judge, therefore, found that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *Id.*

Employer asserts that the administrative law judge erred in discrediting the opinions of Drs. Zaldivar and Castle, that claimant retains the respiratory capacity to perform the work of a roof bolter. Employer's Brief at 8-15. Contrary to employer's contention, the administrative law judge acted within her discretion in according little weight to Dr. Zaldivar's opinion, because Dr. Zaldivar did not adequately explain how his own blood gas study results, which demonstrated a fifteen point drop in PO2 with less

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12 at 2-3. Dr. Zaldivar acknowledged that the blood gas study results obtained by Dr. Rasmussen dropped to an abnormal level, but noted that these results were still slightly above the level considered to be qualifying for disability. Employer's Exhibit 7 at 32-33. Dr. Zaldivar opined that, given claimant's obesity, the oxygen consumption rate of 22.6, obtained by Dr. Rasmussen, indicated that claimant could do very heavy manual labor. Dr. Zaldivar stated that the American Medical Association classifies very heavy labor as requiring an oxygen consumption rate of 25 ml/kg/min, and opined that if claimant were not obese, he could probably have achieved an oxygen consumption rate of up to 26 or 27 ml/kg/min. Thus, Dr. Zaldivar concluded that claimant retained the pulmonary capacity to perform his usual coal mine work. Employer's Exhibit 7 at 28-36.

[6] Dr. Castle stated that, overall, claimant's pulmonary function studies reflected "essentially normal" results, without evidence of obstruction, restriction, or significant diffusion abnormality, and that claimant's blood gas studies did not reveal a disabling abnormality of blood gas transfer mechanisms. Dr. Castle acknowledged that Dr. Rasmussen's blood gas study reflected a fall in PO2 with exercise, but stated that the value was still above disability standards. Employer's Exhibit 3 at 7.

than three minutes of exercise, reflected a "normal cardiopulmonary response."[7] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 532-33, 21 BLR 2-323, 2-334-35 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); Decision and Order at 18, *referencing* 20 C.F.R. §718.105(a). The administrative law judge further permissibly found Dr. Zaldivar's opinion, that Dr. Rasmussen's objective testing, reflecting an oxygen consumption of 22.6 ml/kg/min, also indicated that claimant could perform the work of a roof bolter, to be unpersuasive, in light of Dr. Rasmussen's uncontradicted statements that claimant's work involves heavy and very heavy labor and requires an oxygen consumption of at least 25 ml/kg/min. *See Hicks*, 138 F.3d at 532-33, 21 BLR at 2-334-35; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; Decision and Order at 18 n.27. Finally, the administrative law judge permissibly discounted Dr. Castle's opinion, in part, because Dr. Castle did not adequately reconcile his statement that claimant's exercise PO2 value "did not fall below normal," with his acknowledgment that the PO2 levels indicated an "impairment,"[8] and did not specifically address the exertional requirements of claimant's coal mine work. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 2-162, 2-175 (4th Cir. 2000); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997); *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; Decision and Order at 18-19; Employer's Exhibit 8 at 27, 31-32.

Employer also asserts that the administrative law judge erred in finding the opinion of Dr. Rasmussen to be well-reasoned. Employer's Brief at 7-15. Employer contends that Dr. Rasmussen's opinion is inadequately explained and based on an overestimation of the exertional requirements of claimant's coal mine work. *Id*. at 15. We disagree.

The administrative law judge found that Dr. Rasmussen based his opinion, that claimant is totally disabled, on the results of his physical examination, and on the results of the objective testing he performed, which revealed an oxygen consumption of 17.4

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[7] As noted by the administrative law judge, the regulation at 20 C.F.R. §718.105(a) states that blood gas studies are performed to detect an impairment in the process of alveolar gas exchange, which "will manifest itself primarily as a fall in arterial oxygen tension either at rest or during exercise." 20 C.F.R. §718.105(a); Decision and Order at 18.

[8] Dr. Castle initially testified that while the blood gas testing he reviewed indicated an impairment related to the fall in PO2 value with exercise, the PO2 value did not fall below normal. Employer's Exhibit 8 at 27. Dr. Castle subsequently testified, however, that while claimant's exercise PO2 was "within the lower limit of the normal range," it was "not . . . a normal response to exercise." Employer's Exhibit 8 at 31-32.

ml/kg/min and 22.6 ml/kg/min on successive testing. Contrary to employer's argument, the administrative law judge rationally found that Dr. Rasmussen's description of claimant's specific job duties, as including hanging heavy cable, loading bolts onto a machine, and setting timbers, reflected an accurate understanding of the exertional requirements of claimant's work as a roof bolter.[9] *See Compton*, 211 F.3d at 211, 22 BLR at 2-175; *Underwood*, 105 F.3d at 949, 21 BLR at 2-28; Decision and Order at 17. Further, the administrative law judge permissibly found that, in contrast to Drs. Zaldivar and Castle, Dr. Rasmussen thoroughly explained why, while the objective test results were non-qualifying, the level of impairment revealed by the blood gas studies would nonetheless prevent claimant from performing the duties of his employment, which required very heavy labor, and an oxygen consumption of 25-30 ml/kg/min. *See Compton*, 211 F.3d at 211, 22 BLR at 2-175; *Underwood*, 105 F.3d at 949, 21 BLR at 2-28; *Schetroma v. Director, OWCP*, 18 BLR 1-19, 1-24 (1993).

The determination of whether a physician's opinion is reasoned and documented is within the discretion of the administrative law judge, as trier of fact. *See Hicks*, 138 F.3d at 532-33, 21 BLR at 2-334-35; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76. Because the administrative law judge specifically found that Dr. Rasmussen set forth the rationale for his findings, based on his interpretations of the medical evidence of record, and explained why he concluded that claimant is unable to perform the duties of his usual coal mine work, we affirm the administrative law judge's permissible finding that the opinion of Dr. Rasmussen is well-reasoned and well-documented and entitled to "significant weight." *See Hicks*, 138 F.3d at 532-33, 21 BLR at 2-334-35; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; Decision and Order at 17, 19.

Additionally, because substantial evidence supports the administrative law judge's determination to accord greater weight to the opinion of Dr. Rasmussen, than to the opinions of Drs. Zaldivar and Castle, we affirm the administrative law judge's finding that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). In asserting that the opinions of Drs. Zaldivar and Castle should have been accorded greater weight than the opinion of Dr. Rasmussen, employer is asking for a reweighing of the evidence, which the Board is not empowered to do. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

[9] Contrary to employer's contention, the administrative law judge permissibly credited Dr. Rasmussen's conclusion that claimant's work included heavy and very heavy labor, in light of "Dr. Rasmussen's long years of experience working with coal miners." *See Budash v. Bethlehem Mines Corp.*, 16 BLR 1-27, 1-29 (1991); Decision and Order at 18 n.27.

Moreover, as the administrative law judge properly considered the medical opinion evidence, in light of the pulmonary function and arterial blood gas study evidence, we affirm the administrative law judge's finding that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc); Decision and Order at 19.

In light of our affirmance of the administrative law judge's findings that claimant established at least fifteen years of qualifying coal mine employment, and the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2), we affirm the administrative law judge's finding that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4). 30 U.S.C. §921(c)(4).

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

Because claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to employer to rebut the presumption by establishing that claimant does not have pneumoconiosis, or by establishing that claimant's pulmonary or respiratory impairment "did not arise out of, or in connection with," his coal mine employment. 30 U.S.C. §921(c)(4). Under the implementing regulation, employer may rebut the presumption by establishing that claimant does not have either legal or clinical pneumoconiosis,[10] 20 C.F.R. §718.305(d)(1)(i), or by establishing that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in §718.201." 20 C.F.R. §718.305(d)(1)(ii). The administrative law judge found that employer failed to establish rebuttal by either method.

Initially, employer argues that the administrative law judge erred by improperly restricting its methods of rebuttal to those provided to the Secretary of Labor at 30 U.S.C. §921(c)(4). Employer's contention is identical to the one that the Fourth Circuit rejected

[10] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). "Clinical pneumoconiosis" consists of "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).

in *W. Va. CWP Fund v. Bender*, 782 F.3d 129, 138-43, BLR (4th Cir. 2015), and we reject it here for the reasons set forth in that decision.

Employer next contends that the administrative law judge erred in finding that employer failed to disprove the existence of clinical pneumoconiosis. Relevant to the existence of clinical pneumoconiosis, the administrative law judge initially considered seven readings of two x-rays. Dr. Rasmussen, a B reader, and Dr. Alexander, a B reader and Board-certified radiologist, interpreted an x-ray taken on December 3, 2010, as positive for clinical pneumoconiosis. Director's Exhibit 10; Claimant's Exhibit 1. Dr. Meyer, who is also a B reader and Board-certified radiologist, interpreted the December 3, 2010 x-ray as negative for clinical pneumoconiosis.[11] Director's Exhibit 11. According the greatest weight to the readings by dually-qualified readers, the administrative law judge found the readings of the December 3, 2010 x-ray to be in equipoise as to the existence of pneumoconiosis. Decision and Order at 25.

Turning to the May 11, 2011 x-ray, the administrative law judge correctly noted that Drs. Groten and Ahmed, both of whom are B readers and Board-certified radiologists, interpreted the May 11, 2011 x-ray as positive for pneumoconiosis, while Dr. Wolfe, a B reader and Board-certified radiologist, and Dr. Scott, a Board-certified radiologist whose B reader status was unclear at the time of his reading,[12] interpreted this x-ray as negative for clinical pneumoconiosis. Claimant's Exhibits 3, 4; Employer's Exhibits 1, 5. According the most weight to the readings by Drs. Groten, Ahmed, and Wolfe, based on their dual qualifications, and "somewhat less" weight to Dr. Scott's opinion, based on the uncertainty regarding his B reader status,[13] the administrative law judge determined that the May 11, 2011 x-ray is positive for pneumoconiosis, based on the preponderance of the readings by the most highly qualified readers. Decision and

[11] Dr. Barrett, a B reader and Board-certified radiologist, provided a quality-only reading of the December 3, 2010 x-ray. Director's Exhibit 10.

[12] Dr. Scott read the May 11, 2011 x-ray on October 5, 2012. Employer's Exhibit 5. The administrative law judge accurately noted that the evidence in the record, specifically Dr. Scott's curriculum vita, as well as Dr. Scott's B reader certificate, indicates that his last B reader certification took place in 2008 and expired on July 31, 2012. Decision and Order at 23; Employer's Exhibit 6 at 14, 19.

[13] Notwithstanding the expiration of Dr. Scott's B reader certification, the administrative law judge "presume[d] that . . . [Dr. Scott] has significant experience as a B reader." Decision and Order at 23 n.40. Nonetheless, the administrative law judge gave "somewhat less weight to Dr. Scott's opinion because his B reader qualification is uncertain." *Id.* at 25.

Order at 25. Weighing the December 3, 2010 and May 11, 2011 x-rays together, the administrative law judge determined that the "overall weight" of the x-ray evidence is positive for clinical pneumoconiosis. Decision and Order at 25.

Employer argues that in finding the May 11, 2011 x-ray to be positive for clinical pneumoconiosis, the administrative law judge improperly discounted Dr. Scott's negative reading based on the uncertainty of his B reader status. Employer's Brief at 20. Employer asserts that because "[t]he NIOSH B-reader website demonstrates that Dr. Scott's B-reader certification has been current through this time period without interruption," Dr. Scott's x-ray reading should have been accorded full weight. *Id*. Employer's argument is without merit. While the administrative law judge has the option to take official notice of information outside the evidentiary record, she is not required to do so. *See Maddaleni v. Pittsburg & Midway Coal Mining Co*., 14 BLR 1-135, 1-138-40 (1990). Because the record contains no evidence that establishes that Dr. Scott's B reader certification was in effect on October 5, 2012, when he read the May 11, 2011 x-ray, the administrative law judge permissibly granted his opinion less weight than those of the readers whose dual qualifications were in the record. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 557-58, 25 BLR 2-339, 2-351-52 (4th Cir. 2013); *Adkins v. Director, OWCP*, 958 F.2d 49, 52, 16 BLR 2-61, 2-65-66 (4th Cir. 1992); *Maddaleni*, 14 BLR at 1-140. Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the "overall weight" of the x-ray evidence is positive and, therefore, does not assist employer in disproving the existence of clinical pneumoconiosis.[14] *See Compton*, 211 F.3d at 207-208, 22 BLR at 2-168; Decision and Order at 25.

Employer further contends that the administrative law judge erred in her evaluation of the medical opinion evidence relevant to the existence of clinical pneumoconiosis. The administrative law judge considered opinions of Drs. Rasmussen, Zaldivar, and Castle. Dr. Rasmussen opined that claimant has clinical pneumoconiosis, while Drs. Zaldivar and Castle opined that claimant does not suffer from the disease. Director's Exhibits 10, 12, 26; Claimant's Exhibits 2, 9; Employer's Exhibits 3, 7, 8.

The administrative law judge accorded greater weight to the opinion of Dr. Rasmussen, that claimant has pneumoconiosis, than to the contrary opinions of Drs. Zaldivar and Castle, because she found his opinion to be better reasoned and better

[14] We note that, even if the administrative law judge accorded Dr. Scott's negative interpretation of the May 11, 2011 x-ray equal weight to the interpretations of Drs. Groten, Ahmed and Wolfe, the readings of the x-ray would be in equipoise (two positive and two negative) as to the existence of pneumoconiosis, and therefore insufficient to assist employer in disproving the existence of clinical pneumoconiosis.

supported by the weight of the x-ray evidence of record. Decision and Order at 29-31. Thus, the administrative law judge found that the probative medical opinion evidence does not disprove the existence of clinical pneumoconiosis. *Id.* at 31.

Employer contends that the administrative law judge erred in discounting the opinions of Drs. Zaldivar and Castle, and in crediting the opinion of Dr. Rasmussen. Employer's Brief at 16-20. Employer's contentions lack merit.

The administrative law judge accurately noted that, despite his review of both the positive and negative x-ray readings of record, Dr. Zaldivar concluded that there is "no radiographic evidence of pneumoconiosis," and relied on this conclusion to support his opinion that claimant does not suffer from the disease. Decision and Order at 29-30; Director's Exhibit 12; Employer's Exhibit 7 at 17-19. The administrative law judge further accurately noted that Dr. Castle also relied on his conclusion that the "majority" of the x-rays are negative for pneumoconiosis to support his opinion that claimant does not have clinical pneumoconiosis. Decision and Order at 31; Employer's Exhibits 3 at 7; 8 at 18, 22.

Contrary to employer's argument, as we have affirmed the administrative law judge's finding that the overall weight of the x-ray evidence is positive for pneumoconiosis, we further affirm the administrative law judge's permissible finding that conclusions of Drs. Zaldivar and Castle's that the x-ray evidence of record is largely negative, called into question the reliability of their opinions that claimant does not have clinical pneumoconiosis. *See Owens*, 724 F.3d at 554-56, 25 BLR at 2-350-54; *Compton*, 211 F.3d at 211, 22 BLR at 2-174; *Arnoni v. Director, OWCP*, 6 BLR 1-423, 1-426 (1983). In contrast, the administrative law judge rationally credited the opinion of Dr. Rasmussen, that claimant has clinical pneumoconiosis, as more consistent with the x-ray evidence of record. *See Minnich v. Pagnotti Enters. Inc.*, 9 BLR 1-89, 1-90 n.1 (1986); *King v. Consolidation Coal Co.*, 8 BLR 1-262, 1-265 (1985); *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-141 (1985); Decision and Order at 31. Thus, we affirm the administrative law judge's credibility determinations regarding the opinions of Drs. Zaldivar, Castle, and Rasmussen, as rational and supported by substantial evidence.

Based on her consideration of the x-ray interpretations and medical opinion evidence, the administrative law judge found that employer failed to disprove the existence of clinical pneumoconiosis. Decision and Order at 31. As this determination is supported by substantial evidence, it is affirmed.

Employer next argues that the administrative law judge erred in finding that employer failed to disprove the existence of legal pneumoconiosis. The administrative law judge considered the medical opinions of Drs. Rasmussen, Zaldivar, and Castle. Dr. Rasmussen diagnosed legal pneumoconiosis in the form of a gas exchange impairment

during exercise, reflected by hypoxia, due to coal mine dust exposure. Claimant's Exhibits 5, 9. Dr. Rasmussen stated that claimant's test results did not reflect any contribution to his impairment by cardiac disease or obesity. *Id.* Dr. Zaldivar opined that claimant does not suffer from legal pneumoconiosis, or any pulmonary disease or impairment, but suffers from shortness of breath due to deconditioning and possibly cardiac disease, and a mild diffusion abnormality due to obesity. Director's Exhibit 12; Employer's Exhibit 7 at 21-24, 35-40. Dr. Castle similarly opined that claimant does not suffer from legal pneumoconiosis, and that the impairment reflected by claimant's blood gas studies is due to cardiac disease and obesity. Employer's Exhibits 3; 8 at 34-37.

The administrative law judge permissibly credited the opinion of Dr. Rasmussen, as well-reasoned and well-documented, and supported by citation to medical authority and the medical evidence of record. *See Owens*, 724 F.3d at 556-59, 25 BLR at 2-350-54; Decision and Order at 31. The administrative law judge permissibly discounted the opinions of Drs. Zaldivar and Castle, that claimant does not suffer from legal pneumoconiosis, in part, because she found their opinions to be speculative as to the causal connection between claimant's obesity and heart condition and his impairment. *See Owens*, 724 F.3d at 556-59, 25 BLR at 2-350-54; Decision and Order at 30-31. The administrative law judge further discounted the doctors' opinions, in part, because they failed to adequately explain how they eliminated claimant's twenty-seven years of coal mine dust exposure as a contributory factor to claimant's diffusion and gas exchange abnormalities.[15] *See Owens*, 724 F.3d at 558, 25 BLR at 2-353; Decision and Order at 30-31. Therefore, the administrative law judge stated that she gave "little weight" to the opinions of Drs. Zaldivar and Castle, and she concluded that their opinions do not rebut the presumption of total disability due to pneumoconiosis because they do not establish that "no part of the Claimant's impairment was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." Decision and Order at 30-31. The administrative law judge, therefore, found that employer failed to disprove the existence of legal pneumoconiosis.

Employer contends that a remand is required because the administrative law judge applied an improper standard by requiring employer to establish that "no part" of claimant's impairment is due to pneumoconiosis. Employer's Brief at 21-23. Employer asserts that it is not required to rule out the existence of legal pneumoconiosis, which is a higher burden. *Id.* at 23 n.5. While employer's argument has some merit, a review of the administrative law judge's Decision and Order as a whole reflects that, before beginning her analysis of the medical evidence, the administrative law judge correctly stated that employer could rebut the presumption by "establishing that the Claimant does not have

[15] The administrative law judge also noted that neither Dr. Zaldivar nor Dr. Castle believed claimant to have a disabling pulmonary impairment, making it difficult to assess their opinions as to the cause of that impairment. Decision and Order at 30.

pneumoconiosis" or "by establishing that no part of Claimant's disabling impairment was caused by pneumoconiosis, as defined in § 718.201." Decision and Order at 20; *see* 20 C.F.R. §718.305(d)(1)(i), (ii). Further, as the Director asserts, the administrative law judge did not reject the opinions of Drs. Zaldivar and Castle as to the existence of legal pneumoconiosis because their opinions failed to meet any particular rebuttal standard. Director's Brief at 2, n.2. Rather, she found that their opinions on the existence of legal pneumoconiosis were not credible, for the reasons she gave after considering the physicians' explanations. Decision and Order at 30-31; Director's Brief at 2, n.2. Moreover, employer has not challenged the administrative law judge's specific credibility findings with regard to the opinions of Drs. Zaldivar, Castle, or Rasmussen. Consequently, those findings are affirmed, *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983), and the administrative law judge's error in stating that employer's experts' opinions failed to establish that "no part of Claimant's impairment was caused by pneumoconiosis as defined in § 718.201," was harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1985); *see also Owens*, 724 F.3d at 554-56, 25 BLR at 2-350-54 (holding that it was unnecessary to address employer's argument that the administrative law judge improperly raised its burden on rebuttal, where the outcome of the case was not affected). Accordingly, we affirm the administrative law judge's determination that employer did not rebut the Section 411(c)(4) presumption by disproving the existence of pneumoconiosis.

Employer next contends that the administrative law judge did not adequately address whether employer was able to rebut the presumed fact of total disability causation, by establishing that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis, as defined in §718.201. 20 C.F.R. §718.305(d)(1)(ii); Employer's Brief at 23. We disagree.

After finding that employer was unable to disprove the existence of pneumoconiosis, the administrative law judge addressed whether employer rebutted the presumed fact of disability causation. Decision and Order at 32. Contrary to employer's contention, the administrative law judge rationally discounted the opinions of Drs. Zaldivar and Castle, that pneumoconiosis did not cause claimant's total respiratory disability, because Drs. Zaldivar and Castle opined that claimant is not totally disabled by a respiratory impairment, contrary to the administrative law judge's finding.[16] *See Hobet*

[16] As previously discussed, the administrative law judge permissibly discredited the opinions of Drs. Zaldivar and Castle, that claimant does not have legal pneumoconiosis and is not totally disabled, because neither doctor adequately explained why coal mine dust did not also contribute to claimant's impairment, or how claimant retained the respiratory capacity to return to his previous coal mine employment, given the heavy exertional level of that position. Moreover, there is no merit to employer's

Mining, LLC v. Epling, 783 F.3d 498, 505 (4th Cir. 2015), *citing Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995)(holding that once the existence of pneumoconiosis and a totally disabling respiratory impairment have been established, an administrative law judge making a finding on disability causation may not credit a medical opinion as to the cause of claimant's total disability where the physician did not diagnose claimant with pneumoconiosis or total disability unless the judge offers "specific and persuasive reasons" for relying on that opinion); *see also Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062, 25 BLR 2-453, 2-474 (6th Cir. 2013); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-452 (6th Cir. 2013); Decision and Order at 32. Moreover, as the administrative law judge rationally relied on the well-reasoned and well-documented opinion of Dr. Rasmussen relevant to the issues of total disability and the existence of pneumoconiosis, she permissibly found that Dr. Rasmussen's opinion supported a finding that claimant is totally disabled due to pneumoconiosis. *See Bender*, 782 F.3d at 144-45; *Compton*, 211 F.3d at 212, 22 BLR at 2-176. Therefore, we affirm the administrative law judge's determination that employer did not rebut the Section 411(c)(4) presumption by proving that no part of claimant's totally disabling impairment was caused by pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(ii); *Bender*, 782 F.3d at 135.

Because claimant established invocation of the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis, and employer did not rebut the presumption, the administrative law judge's award of benefits is affirmed.

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additional argument, raised in its reply brief, that the administrative law judge could not rely on the "presumed" finding of legal pneumoconiosis to discredit the disability causation opinions of Drs. Zaldivar and Castle. Employer's Reply Brief at 5-9. Contrary to employer's contention, an administrative law judge may discredit a physician's opinion that a miner's disabling pulmonary impairment was not caused by legal pneumoconiosis, because the physician did not diagnose legal pneumoconiosis, contrary to the administrative law judge's finding that employer failed to disprove the existence of the disease. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-452 (6th Cir. 2013).

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

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge

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RYAN GILLIGAN
Administrative Appeals Judge