BRB No. 11-0711 BLA

THOMAS L. HYNEMAN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WABASH MINE HOLDING COMPANY	)	
	)	DATE ISSUED: 06/27/2012
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 Alice M. Craft, Administrative Law Judge, United States Department of Labor.

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

Richard H. Risse (White & Risse. L.L.P.), Arnold, Missouri, for employer.

Barry H. Joyner (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 (2008-BLA-5342) of Administrative Law Judge Alice M. Craft rendered on a claim filed on February 1, 2007, 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).

In her Decision and Order, dated June 17, 2011, the administrative law judge credited claimant with thirty one-years of coal mine employment, as stipulated by the parties, and found that, based on its date of filing, this claim is governed by the recently enacted amendments to the Act, affecting claims that are filed after January 1, 2005, that are pending on or after March 23, 2010. 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 amended 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) (to be codified at 30 U.SC. §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 claimant's pulmonary or respiratory impairment "did not arise out of, or in connection with," coal mine employment.[1] 30 U.S.C. §921(c)(4).

Applying amended Section 411(c)(4), the administrative law judge found that claimant worked more than fifteen years at the aboveground facilities of an underground mine, where he was exposed to coal dust in conditions substantially similar to those of an underground coal mine. The administrative law judge also found that the evidence established that claimant has a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge, therefore, found invocation of the rebuttable presumption established. The administrative law judge further found that employer failed to establish either that claimant does not have pneumoconiosis, or that his pulmonary or respiratory impairment "did not arise out of, or in connection with," coal mine employment, and, therefore, she found that employer failed to rebut this presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erred in excluding Dr. Spitz's rebuttal reading of a March 29, 2007 x-ray. Employer further contends that the administrative law judge erred in finding that claimant established invocation of the Section 411(c)(4) presumption, challenging both the administrative law judge's finding of fifteen years of qualifying coal mine employment, and her finding of a totally

[1] On April 12, 2010, the administrative law judge provided the parties with notice of amended Section 411(c)(4), 30 U.SC. §921(c)(4), and of its potential applicability to this case. The administrative law judge set a schedule for the parties to submit position statements and additional evidence. Claimant, Employer, and the Director, Office of Workers' Compensation Programs, submitted position statements, but did not submit additional evidence.

disabling respiratory impairment. Employer also contends that the administrative law judge erred in weighing the x-ray and medical opinion evidence in finding that employer failed to rebut the Section 411(c)(4) presumption. Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has filed a limited response, requesting that the Board reject employer's contentions that the administrative law judge erred in excluding Dr. Spitz's x-ray reading, and in finding fifteen years of qualifying coal mine employment established, to support invocation of the Section 411(c)(4) presumption. In a reply brief, employer reiterates its previous contentions.

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.[2] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Evidentiary Limitations

X-ray Rebuttal Evidence

Employer contends that the administrative law judge erred in excluding from evidence Dr. Spitz's negative reading of the x-ray dated March 29, 2007. Employer's contention lacks merit.

The March 29, 2007 x-ray was procured as part of the examination of claimant performed at the request of the Department of Labor (DOL). Dr. Malnar, a B reader and Board-certified radiologist, interpreted the x-ray on behalf of DOL as positive for pneumoconiosis. Director's Exhibit 14. Claimant designated a positive reading of this x-ray by Dr. Ahmed, a B reader and Board-certified radiologist, as rebuttal evidence. Director's Exhibit 3. Employer designated two negative readings by Drs. Wiot and Spitz, both B readers and Board-certified radiologists, in rebuttal of the positive readings by Drs. Malnar and Ahmed. Director's Exhibit 16; Hearing Tr. at 7. At the hearing, the administrative law judge required employer to choose only one of the readings. Employer chose to submit Dr. Wiot's reading, and the administrative law judge excluded Dr. Spitz's reading from the record. Hearing Tr. at 8-9.

[2] The record indicates that claimant's last coal mine employment was in Illinois. Hearing Tr. at 5; Director's Exhibit 4. Accordingly, the Board will apply the law of the United States Court of Appeals for the Seventh Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

Pursuant to 20 C.F.R. §725.414(a)(2)(ii), claimant was entitled to submit in rebuttal of employer's case one physician's interpretation of the x-ray submitted by the Director pursuant to 20 C.F.R. §725.406. 20 C.F.R. §725.414(a)(2)(ii). Claimant permissibly submitted the positive interpretation by Dr. Ahmed as rebuttal evidence in response to the interpretation submitted by the Director. *See J.V.S.* [*Stowers*] *v. Arch of W. Va./Apogee Coal Co.*, 24 BLR 1-78, 1-83 (2008). Similarly, under 20 C.F.R. §725.414(a)(3)(ii), employer was entitled to submit in rebuttal of claimant's case one physician's interpretation of the x-ray submitted by the Director under 20 C.F.R. §725.406. 20 C.F.R. §725.414(a)(3)(ii). Employer permissibly submitted the negative interpretation by Dr. Wiot as rebuttal to the interpretation submitted by the Director. Contrary to employer's argument, however, the regulation does not entitle employer to submit a second reading to rebut claimant's rebuttal reading. The regulations permit each party to submit one physician's interpretation of each x-ray that the opposing party submits in its affirmative case. 20 C.F.R. §725.414(a)(2)(ii), (a)(3)(ii). Dr. Ahmed's x-ray reading, submitted by claimant, was not an affirmative-case x-ray reading; it was a reading in rebuttal to the x-ray reading submitted by the Director. Thus, the administrative law judge properly found that Dr. Spitz's negative x-ray reading was not admissible as rebuttal evidence to claimant's x-ray reading.

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

Coal Mine Employment

Employer next contends that the administrative law judge erred in finding that the miner's aboveground work was substantially similar to underground coal mine employment, and therefore erred in finding that claimant established the requisite fifteen years of qualifying coal mine employment to invoke the Section 411(c)(4) presumption. In order to establish invocation, a claimant must establish 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 suffers from a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4). Employer specifically asserts that the administrative law judge failed to determine whether the dust conditions in claimant's aboveground employment were substantially similar to those found in underground mines. Employer's Brief at 12-14. We disagree.

The United States Court of Appeals for the Seventh Circuit has held that, while a claimant bears the burden of establishing comparability, he is required only to produce "sufficient evidence of the surface mining conditions under which he worked." *See Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 479, 22 BLR 2-265, 2-275 (7th Cir. 2001); *Director, OWCP v. Midland Coal Co.* [*Leachman*], 855 F.2d 509, 512-13 (7th Cir. 1988). In this case, the administrative law judge found that claimant proved that, during his thirty-one years as an aboveground worker, he was exposed to coal and

rock dust in all parts of his job as a hoist man, lamp man, and washhouse attendant:

> [Claimant] worked in the washhouse. That required sweeping the floors of coal dust, rock dust and trash up to an inch thick…. He [testified] the dust where he worked was worse than underground because a haul road that ran by the building had dust two feet deep which would be kicked up by the trucks and blew through the washhouses. He usually worked seven days a week for eight and a half hours. He was exposed to coal and rock dust doing all three of the jobs.

Decision and Order at 5 (citations omitted).[3] Based on claimant's testimony, the administrative law judge concluded that claimant was exposed to sufficient coal dust in his surface employment to satisfy the standard set forth by the Seventh Circuit, and that the "conditions of his employment were substantially similar to those in an underground mine." Decision and Order at 6, 20. Because it is based upon substantial evidence, the administrative law judge's finding, that claimant established more than fifteen years of employment as an aboveground worker at an underground mine, with dust conditions substantially similar to those found in underground mines, is affirmed. *See Summers*, 272 F.3d at 479, 22 BLR at 2-275; *Blakley v. Amax Coal Co.*, 54 F.3d 1313, 19 BLR 2-192 (7th Cir. 1995); *see also Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-29 (2011); *Alexander v. Freeman United Coal Mining Co.*, 2 BLR 1-497, 1-504 (1979) (Smith, Chairman, dissenting).

Total Disability

Employer also challenges the administrative law judge's evaluation of the medical opinion evidence in finding total disability and, thus, invocation of the rebuttable presumption.

In considering whether the evidence establishes that claimant sufferers from a totally disabling respiratory impairment, the administrative law judge found that none of the pulmonary function or blood gas studies resulted in qualifying values.[4] Decision and Order at 9-11, 21; Director's Exhibits 14, 17; Claimant's Exhibit 2. The administrative law judge, therefore, found that the pulmonary function and blood gas study evidence did

[3] Claimant's characterization of the conditions of his aboveground coal mine employment is uncontradicted.

[4] A "qualifying" pulmonary function or blood gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendix B. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii). Decision and Order at 21.

not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (ii).[5] The administrative law judge further found, however, that while the results of all the blood gas studies were normal, the pulmonary function studies consistently indicated the presence of obstructive lung disease. Decision and Order at 21.

Turning to the medical opinion evidence, pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the opinions of Drs. Cohen, Murthy, Repsher, and Renn.[6] Drs. Cohen and Murthy opined that claimant is totally disabled from a respiratory standpoint, while Drs. Repsher and Renn opined that claimant retains the respiratory capacity to perform his usual coal mine work. The administrative law judge accorded the greatest weight to the opinion of Dr. Cohen, as supported by that of Dr. Murthy, and discredited the opinions of Drs. Repsher and Renn, to find that claimant is totally disabled.

Employer contends that the administrative law judge erred in discrediting the opinions of Drs. Repsher and Renn. We disagree. The administrative law judge properly noted that Dr. Repsher's conclusion, that claimant is not disabled from performing his usual coal mine work, was based, in part, on his opinion that the record contains no valid evidence that claimant has a clinically significant pulmonary impairment.[7] Decision and Order at 22; Director's Exhibit 17; Employer's Exhibit 6. The administrative law judge further correctly found, however, that Dr. Repsher was the only physician to invalidate all of the pulmonary function studies, including his own August 14, 2007 study. In contrast, Drs. Cohen and Renn both opined that Dr. Repsher's pulmonary function study is valid. Decision and Order at 9, 22; Claimant's Exhibit 3; Employer's Exhibit 7 at 36. Moreover, Dr. Repsher conceded that the "shape of the [August 14, 2007] expiratory flow line loop would suggest some degree of chronic airways obstruction," and further conceded that Dr. Renn was correct in concluding that the [August 14, 2007] study is

[5] The administrative law judge also found that the record contains no evidence of complicated pneumoconiosis, pursuant to 20 C.F.R. §718.204(b)(1), or cor pulmonale with right-sided congestive heart failure, pursuant to 20 C.F.R. §718.204(b)(2)(iii).

[6] The administrative law judge noted that the record also contains medical records from claimant's treating physicians, and a medical report from Dr. Houser. However, neither the treating physicians, nor Dr. Houser, expressed an opinion as to whether claimant is totally disabled. Decision and Order at 22.

[7] Contrary to employer's contention, the administrative law judge did not infer from Dr. Repsher's opinion that he found claimant totally disabled. Employer's Brief at 18. The administrative law judge accurately summarized the physician's opinion as not supportive of disability. Decision and Order at 22.

valid under the normal criteria.[8] Decision and Order at 22; Directors Exhibit 17; Employer's Exhibit 6 at 11. Thus, contrary to employer's assertion, having resolved the conflict as to the validity of Dr. Repsher's pulmonary function study, the administrative law judge permissibly concluded that Dr. Repsher's opinion, that there is no valid evidence of a pulmonary impairment in the record, is not consistent with the objective evidence, and is entitled to little weight. *See Stalcup v. Peabody Coal Co.*, 477 F.3d 482, 484, 24 BLR 2-33, 2-37 (7th Cir. 2007); *Consolidation Coal Co. v. Director, OWCP* [*Stein*], 294 F.3d 885, 895, 22 BLR 2-409, 2-426 (7th Cir. 2002); *Peabody Coal Co. v. McCandless*, 255 F.3d 465, 468-69, 22 BLR 2-311, 2-318 (7th Cir. 2001); Decision and Order at 22; Employer's Brief at 18; Director's Exhibit 17; Employer's Exhibit 6.

The administrative law judge also discredited the opinion of Dr. Renn, that claimant has a moderate to moderately severe obstructive defect, but is not disabled, because Dr. Renn based his opinion, in part, on the premise that a person with an FEV1 of 55% or greater should be able to perform heavy manual labor. Decision and Order at 23; Employer's Exhibit 7 at 27. Contrary to employer's assertion, as the regulations provide that an FEV1 of 60% or less of predicted meets the standard for establishing disability, the administrative law judge permissibly concluded that Dr. Renn's opinion was based, in part, on a premise contrary to the regulations and, therefore, was entitled to less weight. *See* 20 C.F.R. §718.204(b)(2)(i) and Appendix B; *see Stein*, 294 F.3d at 895, 22 BLR at 2-426; *Blakley*, 54 F.3d at 1320, 19 BLR at 2-203; Decision and Order at 23; Employer's Brief at 21-24.

Employer also contends that the administrative law judge erred in finding that Dr. Cohen's opinion was sufficient to establish that claimant is totally disabled. Decision and Order at 22-23; Employer's Brief at 19-21. Employer argues that Dr. Cohen relied on an inaccurate description of the exertional requirements of claimant's job, of lifting up to 300 pounds and walking up and down 200 steps a day. Employer's Brief at 19; Employer's Reply Brief at 14. Employer also asserts that, while Dr. Cohen opined that claimant could not perform "continuous" labor, the administrative law judge never made a specific finding that claimant's labor was continuous. Employer's Brief at 20. Further, employer contends that the administrative law judge improperly engaged in a medical determination when she concluded that Dr. Cohen's test results supported his conclusion

[8] Dr. Repsher explained that pulmonary function studies are usually validated by examining the shape and repeatability of the tracings, and the repeatability of the numbers obtained, *see* 20 C.F.R. §718.103 and Appendix B, and agreed with Dr. Renn that the August 14, 2007 study would be valid under these criteria. Employer's Exhibit 6 at 11. Dr. Repsher further explained, however, that he considered the test to be invalid based on additional measurements used by his own laboratory. Employer's Exhibit 6 at 10-11.

that claimant is totally disabled. Employer's Brief at 20. Employer's arguments with respect to Dr. Cohen are without merit.

Dr. Cohen opined that, based on claimant's job duties and the results of his pulmonary function studies, claimant's moderately severe obstructive lung disease with moderate diffusion impairment would preclude him from engaging in the heavy labor required in his usual coal mine employment. Claimant's Exhibits 3, 5. The administrative law judge permissibly found Dr. Cohen's opinion to be "well documented and well reasoned" because Dr. Cohen reviewed all of the pulmonary function testing, as well as the treatment records and the opinions of the other physicians, and better explained how the evidence he reviewed supported his conclusions. *See Stein*, 294 F.3d at 893, 22 BLR at 2-423; *Summers*, 272 F.3d at 483, 22 BLR at 2-280; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987); Decision and Order at 22-23.

Contrary to employer's contention, the administrative law judge acknowledged that Dr. Cohen had originally based his opinion on an inaccurate description of claimant's job duties, which included lifting up to 300 pounds. Decision and Order at 20; Claimant's Exhibit 3. However, the administrative law judge further correctly found that Dr. Cohen later clarified that his opinion would be unchanged if claimant's job required that he walk only half the distance or lift half the maximum weight described, or 150 pounds, in accordance with the administrative law judge's own findings. Decision and Order at 20; Claimant's Exhibit 5. Moreover, while Dr. Cohen stated, at one point, that claimant's FEV1 results were not adequate to perform "continuous moderate to heavy labor," Dr. Cohen also stated that, from a respiratory standpoint, claimant could not perform the physical labor required of a lamp man and hoisting engineer. Claimant's Exhibits 3 at 9, 5 at 1-2. Further, contrary to employer's contention, the administrative law judge reasonably found that Dr. Cohen's opinion, that claimant's most recent pulmonary function testing, which resulted in a post-bronchodilator FEV1 of only 62% of predicted, indicated a significant degree of impairment, was consistent with the Department of Labor's regulations regarding disability. *See Summers*, 272 F.3d at 483 n.7; 22 BLR at 2-281 n.7; Decision and Order at 22, 23; Employer's Brief at 19-20; Claimant's Exhibit 5 at 2. Because Dr. Cohen relied on the true exertional requirements of claimant's job, and as his opinion that claimant's job required heavy manual labor is consistent with the administrative law judge's finding, the administrative law judge permissibly credited the doctor's disability opinion, based upon the non-qualifying pulmonary function test interpreted as showing a moderately severe obstructive impairment. *See Killman v. Director, OWCP*, 415 F.3d 716, 721, 23 BLR 2-250, 2-259 (7th Cir. 2005); *Summers*, 272 F.3d at 483, 22 BLR at 2-280. We, therefore, affirm the administrative law judge conclusion that Dr. Cohen's opinion is sufficient to satisfy claimant's burden to establish the existence of a totally disabling respiratory impairment, pursuant to 20 C.F.R. §718.204(b)(2)(iv).

Finally, there is no merit to employer's contention that the administrative law judge erred in finding the opinion of Dr. Murthy, that claimant suffers from a moderately severe obstructive impairment that is totally disabling, to be supportive of Dr. Cohen's opinion. Employer's Brief at 17, 25-26. The administrative law judge specifically found that, because Dr. Murthy did not sufficiently explain his opinion that claimant is totally disabled, in light of the non-qualifying results of the objective testing, his opinion was entitled to "less weight." Decision and Order at 22. The administrative law judge further found, however, that Dr. Murthy's opinion on the severity of claimant's impairment was nonetheless consistent with the results of the pulmonary function study he performed. Decision and Order at 22.

Specifically, the administrative law judge acknowledged that Dr. Murthy's pulmonary function study was invalidated by Drs. Repsher and Renn, but correctly found that it had also been validated by Drs. Cohen and Gerblich. Decision and Order at 23. Moreover, contrary to employer's contention, the administrative law judge reasonably concluded that Dr. Murthy's March 29, 2007 pulmonary function study, yielding pre-bronchodilator and post-bronchodilator FEV1 values of 2.12 and 2.28, and FVC values of 3.78 and 3.75, respectively, was consistent, on its face, with Dr. Repsher's admittedly valid pre-bronchodilator and post-bronchodilator FEV1 results of 2.14 and 2.26, and FVC results of 3.59 and 3.74, respectively, performed only five months later on August 14, 2007. *See Livermore v. Amax Coal Co*., 297 F.3d 668, 672, 22 BLR 2-399, 2-408 (7th Cir. 2002); *Amax Coal Co. v. Beasley*, 957 F.2d 324, 327, 16 BLR 2-45, 2-48 (7th Cir. 1992); Decision and Order at 10, 22; Employer's Brief at 18-19; Director's Exhibits 14, 17. In addition, the administrative law judge acknowledged that Dr. Murthy relied on an inflated exertional requirement that claimant lift 300 pounds, in opining that claimant is totally disabled. However, the administrative law judge permissibly found that this did not undermine Dr. Murthy's disability opinion, as the record established that even the lesser, accurate lifting requirement of 150 pounds constituted heavy physical exertion. Decision and Order at 6, 22; Employer's Exhibit 6 at 7; Employer's Exhibit 7 at 69. In addition, Dr. Cohen, whose opinion the administrative law judge permissibly credited, similarly opined that claimant's moderately severe obstructive impairment would prevent him from lifting 150 pounds. Therefore, the administrative law judge permissibly concluded that Dr. Murthy's opinion was more consistent with the evidence underlying his opinion, and with the overall weight of the medical evidence of record, than the opinions of Drs. Repsher and Renn, and thus was sufficiently credible to support Dr. Cohen's opinion. *See Summers*, 272 F.3d at 483, 22 BLR at 2-280; *Stein*, 294 F.3d at 893, 22 BLR at 2-423; Decision and Order at 22.

We, therefore, affirm the administrative law judge's findings that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), and further affirm her finding that all of the medical evidence, when weighed together, established total disability pursuant to 20 C.F.R. §718.204(b)(2). *See Shedlock v.*

Bethlehem Mines Corp., 9 BLR 1-195, 1-198 (1986), *aff'd on recon*. 9 BLR 1-236 (1987)(en banc); Decision and Order at 23.

In light of our affirmance of the administrative law judge's findings that claimant had more than fifteen years of qualifying coal mine employment, and was totally disabled by a respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2), we also 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); Decision and Order at 23.

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

Because claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4), the administrative law judge properly noted that the burden of proof shifted to employer to establish rebuttal. 30 U.S.C. §921(c)(4); Decision and Order at 23-24. The administrative law judge found that employer failed to disprove the existence of legal pneumoconiosis.[9] Decision and Order at 26, 28. The administrative law judge, therefore, found that employer failed to rebut the Section 411(c)(4) presumption. Decision and Order at 28.

Employer contends that the administrative law judge erred in finding that it failed to disprove the existence of legal pneumoconiosis. Employer specifically asserts that the administrative law judge erred in discrediting the opinions of Drs. Repsher and Renn.

Dr. Repsher opined that there was no valid evidence of clinically significant impairment but that, even if claimant had mild chronic obstructive pulmonary disease (COPD) due to coal dust exposure, it would be "very mild and clinically insignificant." Director's Exhibit 17; Employer's Exhibit 6 at 16. In explaining why he believed claimant does not have any clinically significant impairment due to coal dust exposure, Dr. Repsher stated that "the effect of coal mine dust in most coal miners is generally quite mild" and while "one can certainly develop significant COPD from the inhalation of coal mine dust . . . it's very uncommon." Employer's Exhibit 6 at 16. The administrative law judge discounted the opinion of Dr. Repsher, in part, because while Dr. Repsher acknowledged that coal mine dust can cause COPD, he relied on statistical averaging to diagnose claimant's individual case. *See* 65 Fed. Reg. at 79,939*; Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008); *Summers*, 272 F.3d at 483 n.7; 22 BLR at 2-281 n.7; Decision and Order at 27; Employer's Brief at 27.

[9] "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).

We initially reject employer's assertion that the administrative law judge erred in relying on the preamble to the revised regulations in evaluating the credibility of the medical opinion evidence at 20 C.F.R. §718.202(a)(4).[10] Employer's Brief at 26-29. Contrary to employer's assertions, the administrative law judge did not utilize the preamble as a legal rule, or to create an erroneous presumption of legal pneumoconiosis; she consulted the preamble as an authoritative statement of medical principles accepted by DOL when it revised the definition of pneumoconiosis to include obstructive impairments arising out of coal mine employment. *See Beeler*, 521 F.3d at 726, 24 BLR at 2-103; *McCandless*, 255 F.3d at 468-69, 22 BLR at 2-318; *see also Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012); *Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 257, 24 BLR 2-369, 2-382-83 (3d Cir. 2011), *aff'g J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-125-26 (2009). Thus, the administrative law judge permissibly discredited Dr. Repsher's opinion as divergent from the prevailing view of the medical community and scientific literature relied upon by DOL in promulgating the revised regulations. *See Summers*, 272 F.3d at 483 n.7; 22 BLR at 2-281 n.7; *McCandless*, 255 F.3d at 468-69, 22 BLR at 2-318.

The administrative law judge further discredited Dr. Repsher's opinion, in part, because the doctor, in excluding coal mine dust exposure as a cause of claimant's obstructive lung disease, improperly focused on generalities and statistics, rather than on claimant's specific condition.[11] *See Beeler*, 521 F.3d at 726, 24 BLR at 2-103; *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); Decision and Order at 27. Thus, the administrative law judge permissibly concluded that Dr. Repsher's opinion is not well reasoned and is not sufficient to rebut the presumption. *See Stein*, 294 F.3d at 895, 22 BLR at 2-426; Decision and Order 27.

Turning to the opinion of Dr. Renn, the administrative law judge correctly noted that Dr. Renn diagnosed chronic bronchitis due to smoking, with an asthmatic component. Employer's Exhibits 1, 7. Dr. Renn opined that claimant does not have legal pneumoconiosis because "he has a disease process that coal mine dust exposure does not

[10] In her Decision and Order, the administrative law judge noted that the preamble to the revised regulations acknowledges the prevailing views of the medical community that a miner has an additive risk of developing lung disease if he or she also smokes, that coal dust exposure is linked to decrements in lung function measurements, and that dust-induced emphysema and cigarette smoke-induced emphysema occur through similar mechanisms. Decision and Order at 26-27, *citing* 65 Fed. Reg. 79938-43 (Dec. 20, 2000).

[11] Dr. Repsher cited studies demonstrating that the average reduction in FEV1 caused by coal mine dust exposure is "negligible." Employer's Exhibit 6 at 17-18.

aggravate." Employer's Exhibit 7 at 19. Dr. Renn added that he disagreed with the position of DOL that coal mine dust can result in chronic bronchitis, i.e., bronchitis that persists more than six months after exposure ceases. Employer's Exhibit 7 at 46-47. As DOL has recognized that coal dust exposure is associated with clinically significant chronic bronchitis, the administrative law judge permissibly discredited Dr. Renn's opinion as not consistent with the scientific literature relied upon by DOL in promulgating the revised definition of legal pneumoconiosis. *See* 20 C.F.R. §718.201(a)(2); *Summers*, 272 F.3d at 483 n.7, 22 BLR at 2-281 n.7; Decision and Order at 28.

The determination of whether a medical opinion is sufficiently documented and reasoned is a credibility matter within the purview of the administrative law judge. *See Stein*, 294 F.3d at 893, 22 BLR at 2-423; *Summers*, 272 F.3d at 483, 22 BLR at 2-280; *Clark*, 12 BLR at 1-155; *Fields*, 10 BLR at 1-22. Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Repsher and Renn, the only opinions supportive of a finding that claimant does not suffer from legal pneumoconiosis, we affirm the administrative law judge's finding that employer failed to disprove the existence of legal pneumoconiosis.

Employer's failure to disprove the existence of legal pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis. *See Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, BLR (6th Cir. 2011); *see also 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). Therefore, we need not address employer's additional contention that the administrative law judge erred in weighing the x-ray evidence as to the existence of clinical pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1278 (1984); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

Employer next argues that the administrative law judge erred in finding that employer did not rebut the Section 411(c)(4) presumption by establishing that claimant'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); Employer's Brief at 29-30. Employer's argument lacks merit. Contrary to employer's contention, the administrative law judge permissibly found that the same reasons for which she discredited the opinions of Drs. Repsher and Renn, that claimant does not suffer from legal pneumoconiosis, also undercut their opinions that claimant's impairment is unrelated to his coal mine employment. *See Stalcup*, 477 F.3d at 484, 24 BLR at 2-37; *McCandless*, 255 F.3d at 468-69, 22 BLR at 2-318; *see also Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 895, 13 BLR 2-348, 2-355, (7th Cir. 1990); Decision and Order at 28; Employer's Brief at 29-30. Because the opinions of Drs. Repsher and Renn are the only opinions supportive of a finding that claimant's pulmonary impairment did not arise out of his coal

mine employment, we affirm the administrative law judge's finding that employer failed to meet its burden to establish rebuttal. 30 U.S.C. §921(c)(4). Because we affirm the administrative law judge's findings that employer did not rebut the Section 411(c)(4) presumption, we affirm the award of benefits.

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge