BRB No. 12-0552 BLA

JOHNNY RAY MCGUIRE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
COLONY BAY COAL COMPANY	)	
	)	
and	)	
	)	
ARCH COAL, INCORPORATED	)	DATE ISSUED: 06/26/2013
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision on Reconsideration-Awarding Benefits of Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

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

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

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

Employer/carrier (employer) appeals the Decision on Reconsideration-Awarding Benefits (06-BLA-5225) of Administrative Law Judge Michael P. Lesniak (the administrative law judge) rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act).

This case, involving a miner's clam filed on December 14, 2004,[1] is before the Board for the second time. Director's Exhibit 2. In the initial decision, the administrative law judge credited claimant with 29.3 years of coal mine employment,[2] and found that the evidence established the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b). The administrative law judge also found that the evidence established total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Alternatively, the administrative law judge found that the evidence established the presence of complicated pneumoconiosis and, thereby, established invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304. Accordingly, the administrative law judge awarded benefits.

Pursuant to employer's appeal, the Board vacated the administrative law judge's award of benefits. *J. M.* [*McGuire*] *v. Colony Bay Coal Co.*, BRB No. 08-0231 BLA (Nov. 26, 2008) (Hall, J. dissenting) (unpub.). Specifically, the Board vacated the administrative law judge's findings that the x-ray and medical opinion evidence established the existence of simple clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4), and that the blood gas study and medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iv).[3] Finally, the Board vacated the administrative law judge's finding that the evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, and remanded the case to the administrative law judge for further consideration.

On remand, in a Decision and Order issued on August 10, 2010, the administrative law judge again found that claimant established the existence of simple clinical pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R.

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[1] Because this claim was filed before January 1, 2005, a recent amendment to the Black Lung Benefits Act does not affect this case. *See* 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556(a), 124 Stat. 119, 260 (2010).

[2] The miner's coal mine employment was in West Virginia. Director's Exhibit 3-6. 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, 1-202 (1989) (en banc).

[3] The Board affirmed, as unchallenged, the administrative law judge's findings that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(2), (3), and did not establish total disability at 20 C.F.R. §718.204(b)(2)(i), (iii). *J. M.* [*McGuire*] *v. Colony Bay Coal Co.*, BRB No. 08-0231 BLA (Nov. 26, 2008) (unpub.), slip op. at 2 n.3.

§§718.202(a)(1), (4), 718.203(b).[4] The administrative law judge also found total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iv), (c), and invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304. Accordingly, the administrative law judge awarded benefits.

Employer appealed the Decision and Order on Remand to the Board, but while the appeal was pending, claimant filed a request for reconsideration with the Office of Administrative Law Judges, asserting that the administrative law judge erred in his analysis of the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1). On September 30, 2010, the Board dismissed employer's appeal as premature, pursuant to 20 C.F.R. §802.206(f).

On reconsideration, following review of the x-ray and computerized tomography evidence, the administrative law judge issued a bifurcated decision. In an Order Granting Claimant's Motion for Reconsideration issued on May 30, 2012, the administrative law judge found that claimant established the existence of simple clinical pneumoconiosis, pursuant to 20 C.F.R. §718.202(a)(1), (4), but not complicated pneumoconiosis, pursuant to 20 C.F.R. §718.304. Following additional briefing, in a Decision on Reconsideration issued on July 12, 2012, the administrative law judge found that claimant's pneumoconiosis arose out of coal mine employment, pursuant to 20 C.F.R. §718.203(b), and that claimant established total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iv), 718.204(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in his analysis of the blood gas study and medical opinion evidence in finding that claimant established that he is totally disabled pursuant to 20 C.F.R. §718.204(b)(ii), (iv). Employer further challenges the administrative law judge's finding that claimant's total disability is due to pneumoconiosis, pursuant to 20 C.F.R. §718.204(c). Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has indicated that he will not file a substantive response in this appeal.[5]

[4] The administrative law judge found that claimant did not establish the existence of legal pneumoconiosis, pursuant to 20 C.F.R. §718.202(a)(4). Decision and Order on Remand at 6.

[5] The administrative law judge's findings that claimant established the existence of simple pneumoconiosis, arising out of coal mine employment, pursuant to 20 C.F.R. §§718.202(a)(1), (4), 718.203(b), but did not establish the existence of complicated

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).

To be entitled to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Employer contends that the administrative law judge erred in his analysis of the blood gas studies of record in determining that total disability was established pursuant to 20 C.F.R.§718.204(b)(2)(ii). The administrative law judge considered the results of six resting and three exercise blood gas studies, performed on July 9, 2003, May 18, 2004, March 9, 2005, March 14, 2005, January 4, 2006, and December 13, 2006. Director's Exhibits 8, 17, 21; Employer's Exhibits 1, 2; Claimant's Exhibit 7. The administrative law judge initially found, correctly, that while the six resting blood gas studies produced non-qualifying values,[6] two of the three exercise blood gas studies, conducted by Drs. Rasmussen and Zaldivar, produced qualifying values.[7] Decision on Reconsideration at 5-6; Decision and Order on Remand at 4; Claimant's Exhibit 1. The administrative law judge found that the exercise values are the more probative indicator of the miner's

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pneumoconiosis, pursuant to 20 C.F.R. §718.304, are affirmed as unchallenged on appeal. *Skrack v. Island Creel Coal Co.*, 6 BLR 1-710 (1983).

[6] A "qualifying" objective study yields values that are equal to or less than those listed in the tables at 20 C.F.R. Part 718, Appendices B, C, for establishing total disability. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[7] The July 9, 2003 and May 18, 2004 studies yielded non-qualifying values at rest. Director's Exhibit 8; Claimant's Exhibit 7. Similarly, the March 9, 2005 study yielded non-qualifying values at rest and during exercise. Director's Exhibit 21. While the March 14, 2005 and January 4, 2006 studies yielded non-qualifying values at rest, the same studies yielded qualifying values during exercise. Director's Exhibit 17; Employer's Exhibit 1. Lastly, the December 13, 2006 study yielded non-qualifying values at rest. Claimant's Exhibit 2.

ability to do his usual coal mine work as a reclamation truck driver, because even though it was predominately sedentary, it required occasional, heavy manual labor. The administrative law judge concluded that as the preponderance of the exercise studies yielded qualifying values, the arterial blood gas study evidence supports a finding of total disability. Decision on Reconsideration at 6.

Employer contends that, in relying on the qualifying exercise blood gas studies, the administrative law judge ignored the opinions of Drs. Tuteur and Zaldivar, that when other factors were considered, the tests do not reflect the presence of a totally disabling respiratory impairment. Employer's Brief at 15-17.

Contrary to employer's argument, the administrative law judge fully considered Dr. Tuteur's opinion, that if the exercise values of the March 14, 2005 study were adjusted for the barometric pressure at which the test was performed, they would not establish total disability under the Department of Labor's (DOL) standards. Employer's Exhibit 10 at 12-15. The administrative law judge permissibly found Dr. Tuteur's opinion to be unpersuasive, because the DOL disability standards are already adjusted for altitude, and, by extension, for barometric pressure.[8] Decision on Reconsideration at 6. The administrative law judge also considered Dr. Zaldivar's opinion, that even though the exercise blood gas studies might meet the DOL disability standards, they do not reflect total disability in light of claimant's oxygen saturation level, and the standards for disability outlined by the American Medical Association.[9] The regulation at 20 C.F.R. §718.204(b)(2) provides that in the absence of contrary probative evidence, evidence which meets the standards of the arterial blood gas test values listed in Appendix C to Part 718 shall establish total disability. As Dr. Zaldivar based his opinion, in part, on criteria not utilized by the Department of Labor in determining disability, the administrative law judge permissibly found that Dr. Zaldivar's opinion was unpersuasive and not dispositive. Decision on Reconsideration at 6 n.7; *see* 20 C.F.R. Part 718, Appendix C.

[8] Dr. Tuteur conceded that the Department of Labor disability standards, in effect, are already adjusted for barometric pressure, because they account for altitude, and as altitude increases, barometric pressure falls. Employer's Exhibit 10 at 14.

[9] Dr. Zaldivar opined that while the Department of Labor criteria indicate that a person who has a PO2 of 70 and a PCO2 of 30 is totally disabled, these values are not disabling under the American Medical Association's Guides to the Evaluation of Permanent Impairment, which provides that an individual must have a PO2 of 55 or less to be declared disabled. Employer's Exhibit 11 at 32.

As the administrative law judge weighed the contrary medical opinions regarding the significance of the qualifying exercise blood gas values, and explained why he found them unpersuasive, we affirm the administrative law judge's finding that the preponderance of the more probative exercise studies supports a finding of total disability at 20 C.F.R. § 718.204(b)(2)(ii). *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 534, 21 BLR 2-323, 2-336 (4th Cir.1998); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997); *Lane v. Union Carbide*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997).

Employer next 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). Initially, employer contends that in evaluating the medical opinions in view of the exertional requirements of claimant's usual coal mine work[10] as a reclamation truck driver, the administrative law judge erred in finding that claimant's work was not just sedentary, but included some heavy manual labor. This contention lacks merit.

The administrative law judge found, consistent with the Board's decision, that claimant's usual coal mine work was that of a reclamation truck driver.[11] Decision on Reconsideration at 4. The administrative law judge further found that while claimant's job was predominantly sedentary, it occasionally required heavy manual labor, including climbing in and out of the cab, helping to load holes with explosives, carrying 50 pound bags of explosives 25-50 feet, and shoveling to fill the holes. Decision on Reconsideration at 4; Decision and Order on Remand at 7; Director's Exhibits 5, 17. Contrary to employer's contention, the administrative law judge permissibly credited claimant's testimony that a truck driver would normally be expected to do other things, and that "you always volunteer," to conclude that these additional duties were generally required of a truck driver and were not voluntary. *See Underwood*, 105 F.3d at 951, 21 BLR at 2-31-32; *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096, 17 BLR 2-123,

[10] "Usual coal mine work" is the most recent job the miner performed regularly and over a substantial period of time. *See Pifer v. Florence Mining Co.*, 8 BLR 1-153, 1-155 (1985); *Shortridge v. Beatrice Pocahontas Coal Co.*, 4 BLR 1-534, 1-539 (1982).

[11] In his initial Decision and Order, the administrative law judge concluded that claimant's last coal mine job as a truck driver was not his usual coal mine work, finding that claimant had changed jobs due to his respiratory inability to work as a driller. The administrative law judge noted correctly that the Board held that this was error because claimant testified that he switched to driving a reclamation truck because the mine was shutting down and there was no more drilling, not because of breathing problems. Decision on Reconsideration at 4, *citing McGuire*, slip op. at 13.

2-127 (4th Cir. 1993); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999); Decision on Reconsideration at 4-5; Employer's Brief at 14. Because it is supported by substantial evidence, we affirm the administrative law judge's discretionary finding that claimant's usual coal mine work included occasional heavy physical labor. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208, 22 BLR 2-162, 2-168 (4th Cir. 2000).

The administrative law judge next considered claimant's testimony that his superintendent and coworkers "insulated" him from performing the full range of his job requirements. Decision on Reconsideration at 5. Specifically, claimant testified that his co-workers did not expect him to drag the fire hose to divert water, or perform other tasks a truck driver would normally be expected to do, and instead "babied [him] around and took care of [him]" by keeping him in the truck. Decision on Reconsideration at 5; Hearing Tr. at 25-26, 38. The administrative law judge concluded that the fact that claimant's co-workers insulated him from performing the more strenuous aspects of his job as a truck driver further supported a finding of disability. Decision on Reconsideration at 5.

It is well established that, in determining the evidentiary effect of a miner's continued employment, the administrative law judge must discern whether the record contains evidence bearing on the quality of the miner's work performance; i.e. the administrative law judge must render a determination as to whether the miner's recent work record reflects "changed circumstances" attributable to his condition. *See Mondragon v. C.F. & I. Steel Corp.*, 1 BLR 1-323 (1977); *see also Kinnick v. National Mines Corp.*, 2 BLR 1-221, 1-229 (1979). Evidence that a miner recently put in for a less strenuous job for health reasons, or frequently receives assistance from coworkers in his duties can support a finding of changed circumstances. *See Kinnick*, 2 BLR at 1-229; *Spencer v. Winston Mining Co., Inc.*, 1 BLR 1-686, 1-689 (1978), *aff'd on recon.*, 1 BLR 996 (1978). Thus, the administrative law judge properly considered "the allowances that [claimant's] superintendent and co-workers made" in determining whether claimant established that he was totally disabled from performing his usual coal mine work. Decision on Reconsideration at 5.

Employer also contends that the administrative law judge erred in according greater weight to the opinion of Dr. Rasmussen, that claimant is totally disabled from performing his usual coal mine work as a truck driver, than to the contrary opinions of Drs. Tuteur and Zaldivar, in determining that total disability was established pursuant to 20 C.F.R. §718.204(b)(2)(iv). This contention lacks merit. Drs. Tuteur and Zaldivar concluded that claimant retains the respiratory capacity to perform his usual coal mine work based, in part, on their belief that the exercise blood gas studies do not reflect a disabling respiratory impairment. However, having permissibly found the opinions of Drs. Tuteur and Zaldivar to be unpersuasive as to the significance of the qualifying blood

gas study results, the administrative law judge acted within his discretion in discounting their opinions as contrary to his own finding that the blood gas study evidence supports a finding of total disability. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *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 (1987); Decision on Reconsideration at 6. In contrast, the administrative law judge permissibly accorded greater weight to the opinion of Dr. Rasmussen, that claimant is totally disabled from a respiratory standpoint, because Dr. Rasmussen had an accurate understanding of claimant's job requirements and his opinion is better supported by the objective evidence of record.[12] *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; Decision on Reconsideration at 6.

Because the administrative law judge's evaluation of the medical opinion evidence pursuant to 20 C.F.R. §718.204(b)(2)(iv) is supported by substantial evidence, it is affirmed. *See Compton*, 211 F.3d at 207-208, 22 BLR at 2-168; *Lane*, 105 F.2d at 174, 21 BLR at 2-48. Further, we affirm the administrative law judge's finding that the evidence, when weighed together, establishes total disability pursuant to 20 C.F.R. §718.204(b)(2). *See Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 198 (1986), *aff'd on recon*. 9 BLR 1-236 (1987) (en banc); Decision on Reconsideration at 6.

Employer asserts in addition that the administrative law judge failed to give valid reasons for according greater weight to the opinion of Dr. Rasmussen than to the opinions of Drs. Tuteur and Zaldivar, in determining that claimant's disabling respiratory impairment is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). This contention lacks merit. Dr. Rasmussen opined that claimant's "coal workers' pneumoconiosis/silicosis . . . is a material contributing cause of his disabling chronic lung disease." Claimant's Exhibits 1, 18. In contrast, Dr. Tuteur opined that to the extent claimant suffers from a pulmonary impairment, it is due to either coal workers' pneumoconiosis or rheumatoid lung disease, or both. Employer's Exhibit 1. Similarly, Dr. Zaldivar opined that any pulmonary impairment claimant has is due to rheumatoid lung disease, which is a consequence of rheumatoid arthritis and the drugs used in its treatment. Employer's Exhibits 1, 11 at 15-19, 35.

[12] Contrary to employer's contention, the administrative law judge properly found that it was irrelevant that Dr. Rasmussen was unaware that claimant had been performing a "tailored" or "makeshift" position, as Dr. Rasmussen's opinion that claimant is totally disabled was based on an accurate understanding of claimant's true job requirements. Decision on Reconsideration at 7; Employer's Brief at 19-20.

Contrary to employer's arguments regarding disability causation, the administrative law judge permissibly discounted Dr. Tuteur's opinion as equivocal, because the physician opined that any pulmonary impairment claimant has could have been caused by coal workers' pneumoconiosis or rheumatoid arthritis, or both. *See U. S. Steel Mining Co. v. Director, OWCP* [*Jarrell*], 187 F.3d 384, 391, 21 BLR 2-639, 2-653 (4th Cir. 1999); *Clark*, 12 BLR at 1-155; *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); Decision on Reconsideration at 7; Employer's Exhibits 2 at 9-10; 10 at 9-11. As this finding is supported by substantial evidence, it is affirmed. *See Compton*, 211 F.3d at 207-208, 22 BLR at 2-168; *Lane*, 105 F.2d at 174, 21 BLR at 2-48.

The administrative law judge next considered Dr. Zaldivar's opinion, that claimant's simple pneumoconiosis did not contribute to his impairment, as reflected by his reduced single breath diffusing capacity, and mild restriction of vital capacity and total lung capacity. Employer's Exhibits 1, 11. The administrative law judge permissibly discounted Dr. Zaldivar's opinion because it was based, in part, on Dr. Zaldivar's belief that pneumoconiosis causes only obstructive impairments, a belief that is inconsistent with the regulations, which provide that coal mine dust can cause an obstructive or restrictive impairment, or both.[13] 20 C.F.R. §718.201(a)(2); *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 25 BLR 2-115 (4th Cir. 2012); Decision on Reconsideration at 8 n.12; Employer's Exhibit 11 at 25-26, 46. Additionally, the administrative law judge found that Dr. Zaldivar's attribution of claimant's impairment to rheumatoid lung disease is based on generalities and is unsupported by the evidence of record, which does not contain evidence that rheumatoid arthritis, or the drugs used to treat it, resulted in rheumatoid lung disease in this case.[14] *See Consolidation Coal Co. v.*

[13] The regulations provide that pneumoconiosis includes, but is not limited to, "any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

[14] The record reflects that Drs. Saikali and Boustani expressed concern about the possibility of rheumatoid lung disease, and indicated it was a differential diagnosis, but did not expressly diagnose the disease. Claimant's Exhibit 7 at 1, 6. Dr. Caldwell also questioned whether claimant's interstitial lung disease could be related to his rheumatoid arthritis. Claimant's Exhibit 13 at 9. Similarly, Dr. St. Clair diagnosed both rheumatoid arthritis and "interstitial lung disease," but did not expressly link the two conditions. Claimant's Exhibit 13 at 11. Further, while claimant's treatment notes reference conditions that are "consistent with" or "may indicate" rheumatoid lung disease, they do not contain a diagnosis of the disease. Employer's Exhibits 1 at 2; 2 at 10; Director's Exhibits 12. In contrast, Dr. Wheeler testified that he saw nothing in his review of the radiographic evidence that suggested the presence of rheumatoid lung disease. Employer's Exhibit 12 at 53. Further, Dr. Ramas explicitly stated that claimant's June 4,

Director, OWCP [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103-04 (7th Cir. 2008); *Knizer v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); Decision on Reconsideration at 8.

In evaluating Dr. Rasmussen's opinion, the administrative law judge correctly noted that while Dr. Rasmussen also considered the possibility that claimant might suffer from rheumatoid lung disease as a result of his rheumatoid arthritis, the doctor ultimately concluded that pneumoconiosis, not rheumatoid lung disease, caused claimant's impairment because there was no evidence that the miner was ever diagnosed with rheumatoid lung disease. Decision on Reconsideration at 7, 8; Director's Exhibit 17; Claimant's Exhibits 1, 18. The administrative law judge permissibly found that Dr. Rasmussen's opinion was better supported by the evidence of record, which does not include a definitive diagnosis of rheumatoid lung disease, but does contain statements from Drs. Wheeler and Ramas that the imaging studies they reviewed contained no evidence of the disease. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274; *Underwood*, 105 F.3d at 951, 21 BLR at 2-31-32; Decision on Reconsideration at 7-8; Employer's Exhibit 12 at 53; Claimant's Exhibit 7 at 7. Thus, the administrative law judge rationally found Dr. Rasmussen's opinion to be well-reasoned and entitled to significant weight. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76. As the administrative law judge correctly analyzed the medical evidence and explained his reasons for discrediting the opinions of Drs. Tuteur and Zaldivar, and crediting the opinion of Dr. Rasmussen, we affirm the administrative law judge's finding that claimant met his burden to establish that his total disability is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c).[15] *See Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 440-41, 21 BLR at 2-274; Decision on Reconsideration at 8-9; Employer's Brief at 22.

2003 computerized tomography scan showed no evidence of the disease. Claimant's Exhibit 7 at 7.

[15] Contrary to employer's contention, having found that there was no evidence that claimant's rheumatoid arthritis ever developed into a lung condition, the administrative law judge properly concluded that claimant's disabling rheumatoid arthritis constituted an independent disability, unrelated to claimant's pulmonary or respiratory disability, which "shall not be considered" in determining whether claimant is totally disabled due to pneumoconiosis. 20 C.F. R. §718.204(a); Decision on Reconsideration at 8-9.

Accordingly, the administrative law judge's Decision on Reconsideration-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