BRB No. 13-0512 BLA

CARL E. KANIPE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
PEABODY COAL COMPANY c/o OLD REPUBLIC INSURANCE COMPANY	)	
	)	
and	)	
	)	
PEABODY INVESTMENTS, INCORPORATED	)	DATE ISSUED: 06/11/2014
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits on Remand of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

Brent Yonts, Greenville, Kentucky, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits on Remand (2009-BLA-05182) of Administrative Law Judge John P. Sellers, III, rendered 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 January 22, 2008, Director's Exhibit 2, and is before the Board for the second time.

In the initial decision, applying amended Section 411(c)(4),[1] 30 U.S.C. §921(c)(4), the administrative law judge credited claimant with thirty-four years of qualifying coal mine employment,[2] and determined that claimant established a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Thus, the administrative law judge found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis, pursuant to amended Section 411(c)(4). However, relying on the opinions of Drs. Repsher and Fino, the administrative law judge further found that employer/carrier (employer) rebutted the presumption by proving that claimant's disability did not arise out of his coal mine employment.[3] Accordingly, the administrative law judge denied benefits. 2011 Decision and Order.

Pursuant to claimant's appeal, the Board affirmed the administrative law judge's finding that claimant invoked the presumption of total disability due to pneumoconiosis. *Kanipe v. Peabody Coal Co.*, BRB No. 11-0712 BLA (July 13, 2012)(unpub.). The Board vacated, however, the administrative law judge's finding that employer rebutted this presumption. *Kanipe*, slip op. at 7. Specifically, the Board held that the

[1] 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 that a miner is totally disabled 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)(2012). The Department of Labor revised the regulations at 20 C.F.R. Parts 718 and 725 to implement the amendments to the Act, eliminate unnecessary or obsolete provisions, and make technical changes to certain regulations. 78 Fed. Reg. 59,102 (Sept. 25, 2013) (to be codified at 20 C.F.R. Parts 718 and 725). The revised regulations became effective on October 25, 2013. *Id.* We will indicate when a regulatory citation in this decision refers to a regulation as it appears in the September 25, 2013 Federal Register. Otherwise, all regulations cited in this Decision and Order may be found in 20 C.F.R. Parts 718, 725 (2013).

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because claimant's coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

[3] The administrative law judge did not determine whether employer could establish rebuttal by disproving the existence of pneumoconiosis.

administrative law judge did not properly address whether the opinions of Drs. Repsher and Fino constitute "affirmative" evidence that claimant does not have pneumoconiosis or a respiratory disability due to his coal mine dust exposure. *Kanipe*, slip op. at 7-8. The Board instructed the administrative law judge, on remand, to reassess all of the evidence of record relevant to rebuttal, and to fully explain the basis for his findings of fact and conclusions of law, as required by the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). *Kanipe*, slip op. at 7-8.

On remand, the administrative law judge found that employer affirmatively disproved the existence of both clinical and legal pneumoconiosis.[4] Therefore, the administrative law judge found that employer rebutted the presumption of total disability due to pneumoconiosis, and denied benefits.

On appeal, claimant asserts that the administrative law judge erred in his analysis of the x-ray, computerized tomography (CT) scan, and medical opinion evidence in finding that employer rebutted the Section 411(c)(4) presumption. Employer responds, urging affirmance of the administrative law judge's denial of benefits. Claimant has filed a reply brief, restating his position. The Director, Office of Workers' Compensation Programs, has not filed a brief.

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).

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

On remand, the administrative law judge reassessed the evidence relevant to rebuttal, as instructed, and properly noted that because claimant invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis, the burden of proof shifted to employer to establish rebuttal. 2013 Decision and Order at 11. The administrative law judge noted that employer could rebut the Section 411(c)(4)

[4] "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 to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). "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).

presumption by disproving the existence of pneumoconiosis,[5] or by proving that claimant's pulmonary or respiratory impairment "did not arise out of, or in connection with," coal mine employment. 30 U.S.C. §921(c)(4); 78 Fed. Reg. 59,102, 59,114 (Sept. 25, 2013) (to be codified at 20 C.F.R. §718.305(d)(1)). The administrative law judge found that employer disproved the existence of clinical pneumoconiosis, based on the x-ray, CT scan, and medical opinion evidence. The administrative law judge further found that employer disproved the existence of legal pneumoconiosis, relying on the opinions of Drs. Fino and Repsher.

Clinical Pneumoconiosis

Claimant argues that the administrative law judge erred in his evaluation of the x-ray evidence. The administrative law judge considered twelve interpretations of four chest x-rays dated February 19, 2008, August 13, 2008, February 20, 2009, and February 22, 2010, and considered the readers' radiological qualifications. Contrary to claimant's argument, the administrative law judge correctly noted that greater weight could be accorded to the x-ray interpretations rendered by physicians with the dual qualifications of B reader and Board-certified radiologist. *See Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); 2013 Decision and Order at 12; Claimant's Brief at 13. The February 19, 2008 x-ray was read as negative by Dr. Westerfield, a B reader, and as positive by Dr. Alexander, who is dually qualified as a B reader and a Board-certified radiologist. Director's Exhibit 11; Claimant's Exhibit 1. The administrative law judge permissibly found this x-ray to be positive, based on Dr. Alexander's superior qualifications. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279-80 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993); *White v. New White Coal Co.*, 23 BLR 1-1, 1-4-5 (2004); 2013 Decision and Order at 12-13. The August 13, 2008 x-ray was read as negative by Dr. Repsher, a B reader, and by Dr. Wiot, a B reader and Board-certified radiologist, and was read as positive by Dr. Alexander. Employer's Exhibits 1, 3; Claimant's Exhibit 5. The administrative law judge permissibly found this x-ray to be negative, based on the preponderance of the negative readings by highly qualified readers. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 272-76, 18 BLR 2A-1, 2A-6-9 (1994); *Staton*, 65 F.3d at 59, 19 BLR at 2-279-80; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87;

[5] Contrary to claimant's contention, the administrative law judge was not required to find that employer ruled out the existence of clinical or legal pneumoconiosis. Claimant's Brief at 19. The implementing regulation that was promulgated after the administrative law judge issued his decision, provides that in order to rebut the presumption of total disability due to pneumoconiosis, employer must prove that a miner does not have clinical pneumoconiosis, as defined in § 718.201(a)(1), or legal pneumoconiosis as defined in [20 C.F.R.] §718.201(a)(2). 78 Fed. Reg. at 59,115 (to be codified at 20 C.F.R. §718.305(d)(1)(i).

White, 23 BLR at 1-4-5; 2013 Decision and Order at 13. The February 20, 2009 x-ray was read as negative by Dr. Shipley, a B reader and Board-certified radiologist, and as positive by Dr. Baker, a B reader. Employer's Exhibit 7; Claimant's Exhibits 2, 10. The administrative law judge permissibly found this x-ray to be negative based on Dr. Shipley's superior credentials.[6] *See Staton*, 65 F.3d at 59, 19 BLR at 2-279-80; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87; *White*, 23 BLR at 1-4-5; 2013 Decision and Order at 13. The February 22, 2010 x-ray was read as positive by Dr. Alexander, and as negative by Dr. Myer, a B reader and Board-certified radiologist, and by Dr. Shipley. Claimant's Exhibits 3, 4; Employer's Exhibits 6, 8. The administrative law judge permissibly found this x-ray to be negative, based on the preponderance of the interpretations by the most highly qualified readers. *See Ondecko*, 512 U.S. at 272-76, 18 BLR at 2A-6-9; *Staton*, 65 F.3d at 59, 19 BLR at 2-279-80; *Woodward*, 991 F.2d at 321, 17 BLR at 2-87; *White*, 23 BLR at 1-4-5; 2013 Decision and Order at 13.

Based on his permissible resolution of the conflicting x-ray readings, the administrative law judge concluded that "[t]he weight [of the x-ray evidence], both in terms of quantity and quality, is negative." 2013 Decision and Order at 13; *see Staton*, 65 F.3d at 55, 59, 19 BLR at 2-271, 2-279-80; *Woodward*, 991 F.2d at 314, 321, 17 BLR at 2-77, 2-87. As substantial evidence supports this finding, it is affirmed. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005).

Claimant next contends that the administrative law judge erred in crediting Dr. Wiot's negative CT scan reading, relevant to the existence of clinical pneumoconiosis. Claimant argues that because the regulations contain no technical quality standards for the administration of CT scans, the administrative law judge erred in according probative weight to the CT scan results. Claimant's Brief at 15. Claimant's contention lacks merit. The regulation at 20 C.F.R. §718.107 provides, in pertinent part, that "the results of any medically acceptable test or procedure reported by a physician and not addressed in this subpart, which tends to demonstrate the presence or absence of pneumoconiosis . . . may be submitted in connection with a claim and shall be given appropriate consideration." 20 C.F.R. §718.107(a). The Board has consistently held that, pursuant to Section 718.107(b), the administrative law judge must determine, on a case-by-case basis, whether the proponent of the "other medical evidence" has established that the test or procedure is "medically acceptable and relevant to entitlement." *Webber v. Peabody Coal Co.*, 23 BLR 1-123 (2006) (en banc) (Boggs, J., concurring), *aff'd on recon.*, 24

[6] There is no merit to claimant's assertion that the administrative law judge discredited Dr. Baker's x-ray interpretation as undated. Claimant's Brief at 18. The administrative law judge reasonably determined, based on Dr. Baker's comments, that Dr. Baker had interpreted the February 20, 2009 x-ray. 2013 Decision and Order at 3, n.2, 13.

BLR 1-1 (2007) (en banc). In this case, the administrative law judge correctly found that Dr. Wiot interpreted a CT scan taken on August 13, 2008, as showing no evidence of coal workers' pneumoconiosis, and stated that CT scan evidence is medically acceptable and relevant to a determination of whether a miner suffers from pneumoconiosis, as required by 20 C.F.R. §718.107(b). 2013 Decision and Order at 13; Employer's Exhibit 4. Thus, contrary to claimant's contention, the administrative law judge permissibly found, based on Dr. Wiot's uncontradicted opinion and supporting statement, that Dr. Wiot's negative CT scan reading weighs against a finding of clinical pneumoconiosis. 2013 Decision and Order at 13. As this finding is supported by substantial evidence, it is affirmed.

Claimant further contends that the administrative law judge erred in his evaluation of the medical opinion evidence in finding that employer disproved the existence of clinical pneumoconiosis. On remand, the administrative law judge reconsidered the medical opinions of Drs. Repsher, Fino, Simpao, Baker, and Chavda as instructed by the Board. Drs. Repsher and Fino opined that claimant does not suffer from clinical pneumoconiosis, while Drs. Baker and Simpao diagnosed clinical pneumoconiosis, and Dr. Chavda stated that an x-ray showed "no pneumoconiosis changes," but did not otherwise comment on the existence of clinical pneumoconiosis. Employer's Exhibits 1, 2, 5, 9; Claimant's Exhibits 7, 10.

The administrative law judge found that the opinions of Drs. Repsher and Fino are reasoned and documented, and constitute affirmative evidence that claimant does not have pneumoconiosis. 2013 Decision and Order at 14-15, 21-22. Conversely, the administrative law judge accorded less weight to the opinions of Drs. Simpao, Baker, and Chavda, because he found their opinions to be inadequately reasoned and less persuasive than those of Drs. Repsher and Fino. The administrative law judge, therefore, found that the more probative opinion of Dr. Repsher, as supported by the opinion of Dr. Fino, outweighed the opinions of Drs. Simpao, Baker, and Chavda, and established that claimant does not have clinical pneumoconiosis.

Claimant contends that the administrative law judge failed to provide valid reasons for finding that the opinions of Drs. Repsher and Fino disproved the existence of clinical pneumoconiosis. Claimant's Brief at 3-16. Moreover, claimant argues that the administrative law judge erred in discounting the opinions of Drs. Simpao and Baker. Claimant's Brief at 17. Claimant's contentions lack merit.

Turning first to Dr. Repsher's opinion, the administrative law judge correctly found that Dr. Repsher, who is Board-certified in Internal Medicine and Pulmonary Medicine, examined claimant on August 13, 2008. In his opinion dated August 26, 2008, Dr. Repsher recorded a history of thirty-six years of coal mine employment and thirteen pack-years of cigarette smoking. Employer's Exhibit 1. Dr. Repsher interpreted claimant's x-ray as negative for pneumoconiosis, and also obtained a CT scan, pulmonary

function study, arterial blood gas study, and an EKG. Dr. Repsher explained that claimant's normal diffusing capacity results, which reflected normally functioning alveoli, effectively precluded the presence of "any clinically significant interstitial lung disease, such as medical coal workers' pneumoconiosis." Employer's Exhibits 1 at 3; 9 at 8. Thus, Dr. Repsher concluded that claimant does "not now [suffer] and never has suffered" from clinical pneumoconiosis. Employer's Exhibits 1 at 3; 9 at 8. Rather, Dr. Repsher opined that claimant's objective test results were characteristic of hypoxemia with hypercarbia due to obesity and a paralyzed hemidiaphragm. Employer's Exhibits 1 at 3-4; 9 at 6-8. The administrative law judge rationally found that Dr. Repsher's opinion constitutes affirmative evidence disproving the existence of clinical pneumoconiosis. *See Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011); 2013 Decision and Order at 14, 16. Moreover, the administrative law judge found that Dr. Repsher explained how the objective test results supported his opinion. Thus, contrary to claimant's argument, the administrative law judge permissibly accorded "substantial weight" to the opinion of Dr. Repsher, as reasoned, documented, and "entirely consistent" with his own finding that the "overall negative weight of both the x-ray and CT scan evidence" is negative for the existence of clinical pneumoconiosis. *See Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-512 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); 2013 Decision and Order at 14, 16; Claimant's Brief at 15.

The administrative law judge next considered the opinion of Dr. Fino, who is Board-certified in Internal Medicine and Pulmonary Medicine. The administrative law judge correctly found that, while Dr. Fino's written report simply stated that there was insufficient evidence to diagnose clinical pneumoconiosis, in his deposition, Dr. Fino affirmatively stated that it was his opinion that claimant does not have clinical pneumoconiosis. Contrary to claimant's argument, the administrative law judge properly considered that Dr. Fino did not personally read any x-rays or CT scans, but relied on the readings of other physicians. 2013 Decision and Order at 17; Claimant's Brief at 16. The administrative law judge also considered Dr. Fino's concession that the majority of the x-ray readings he reviewed were positive for the existence of pneumoconiosis. 2013 Decision and Order at 17; Claimant's Brief at 16. However, noting that Dr. Fino supported his opinion with reference to the negative CT scan evidence he reviewed, which he opined is superior to x-ray evidence for the detection of pneumoconiosis, the administrative law judge permissibly found Dr. Fino's opinion to be sufficiently explained. *See Stephens*, 298 F.3d at 522, 22 BLR at 2-512; *Groves*, 277 F.3d at 836, 22 BLR at 2-330; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103. The administrative law judge accorded less weight to Dr. Fino's opinion because he did not examine claimant, and reviewed a more limited selection of the radiographic evidence, but rationally concluded that Dr. Fino's opinion nonetheless constituted affirmative evidence that claimant does

not have pneumoconiosis, and corroborated the opinion of Dr. Repsher. *See Morrison*, 644 F.3d at 480, 25 BLR at 2-9; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; 2013 Decision and Order at 17. Thus, we affirm the administrative law judge's credibility determinations regarding the opinions of Drs. Repsher and Fino, as rational and supported by substantial evidence.

Further, we reject claimant's argument that the administrative law judge erred in discounting the opinions of Drs. Simpao and Baker, that claimant suffers from clinical pneumoconiosis. The administrative law judge permissibly found that, in contrast to Dr. Repsher, Dr. Simpao did not adequately explain his conclusion that the existence of clinical pneumoconiosis "is evidenced" by claimant's blood gas study and pulmonary function study results. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; 2013 Decision and Order at 18; Director's Exhibit 11. The administrative law judge also permissibly accorded less weight to the opinion of Dr. Simpao, because Dr. Simpao is not Board-certified in either Internal Medicine or Pulmonary Medicine. *See Scott v. Mason Coal Co.*, 14 BLR 1-37, 1-41 (1990) (en banc recon.), *rev'd on other grds*, 60 F.3d 1138, 19 BLR 2-257 (4th Cir. 1995); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); 2013 Decision and Order at 18. Therefore, we affirm, as supported by substantial evidence, the administrative law judge's finding that Dr. Simpao's opinion diagnosing clinical pneumoconiosis is not persuasive. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; 2013 Decision and Order at 18.

In addition, the administrative law judge permissibly accorded little weight to Dr. Baker's diagnosis of clinical pneumoconiosis, as not well-reasoned or well-documented, because Dr. Baker cited no supporting evidence, other than his own positive x-ray reading, which the administrative law judge found was re-read as negative by a more highly qualified reader, and was contrary to the weight of the x-ray evidence overall. *See Cornett v. Benham Coal*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); 2013 Decision and Order at 19; Claimant's Exhibit 10. Therefore, we affirm the administrative law judge's finding that the medical opinion evidence establishes that claimant does not have clinical pneumoconiosis.

Based on his consideration of "all the x-ray evidence, CT scan evidence, and medical opinion evidence" the administrative law judge found that employer disproved the existence of clinical pneumoconiosis by a preponderance of the evidence. 2013 Decision and Order at 19. As this determination is supported by substantial evidence, it is affirmed.

Legal Pneumoconiosis

In addressing, on remand, whether employer also disproved the existence of legal pneumoconiosis, the administrative law judge considered the opinions of Drs. Repsher,

Fino, and Simpao.[7] The administrative law judge noted that Drs. Repsher and Fino both opined that claimant does not have legal pneumoconiosis, but suffers from a disabling gas exchange impairment, as reflected by hypoxemia with hypercarbia, due to a combination of claimant's obesity, his heart failure and his paralyzed right hemidiaphragm. In contrast, Dr. Simpao diagnosed legal pneumoconiosis, in the form of chronic obstructive pulmonary disease (COPD) due, in significant part, to claimant's thirty-six years of coal mine employment. The administrative law judge found the opinions of Drs. Repsher and Fino, to be "stronger and more persuasive" than the opinion of Dr. Simpao, and sufficient to affirmatively established that claimant does not have legal pneumoconiosis. 2013 Decision and Order at 29.

Claimant contends that the administrative law judge erred in finding that the opinions of Drs. Repsher and Fino affirmatively establish that claimant does not have legal pneumoconiosis. Claimant further contends that the administrative law judge erred in crediting the opinions of Drs. Repsher and Fino over that of Dr. Simpao. Claimant's contentions lack merit.

In finding that Drs. Repsher and Fino provided reasoned, affirmative opinions that claimant does not suffer from legal pneumoconiosis, the administrative law judge correctly noted that Dr. Repsher expressly stated that there was no evidence of "legal coal workers' pneumoconiosis" and no evidence of "any other pulmonary or respiratory disease or condition, either caused by or aggravated by [claimant's] employment as a coal miner with exposure to coal mine dust." 2013 Decision and Order at 22; Employer's Exhibit 1. Contrary to claimant's contention, in formulating his opinion, Dr. Repsher did not rely solely on "probabilities, statistics and imagination." Claimant's Brief at 18.

[7] The administrative law judge also considered the opinions of Drs. Baker, Chavda and White. Dr. Baker diagnosed moderate decreased O2 saturation with exertion, chronic bronchitis, and a mild restrictive ventilatory defect. Claimant's Exhibit 10. Contrary to claimant's assertion, the administrative law judge properly found that because Dr. Baker did not attribute these diagnoses to coal mine dust exposure, Dr. Baker did not diagnose legal pneumoconiosis. 20 C.F.R. §718.201(a)(2); 2013 Decision and Order at 26-27; Claimant's Brief at 20; Claimant's Exhibit 10. The administrative law judge found that Dr. Chavda's opinion, that claimant's significant exertional hypoxia "could qualify him for legal pneumoconiosis" was not a reasoned, unequivocal diagnosis of legal pneumoconiosis, and thus was entitled to little weight. 2013 Decision and Order at 29; Claimant's Exhibit 7. The administrative law judge also found that Dr. White's opinion, that claimant's low oxygen levels are due to "black lung," was unexplained and not well documented. 2013 Decision and Order at 27; Claimant's Exhibit 10. As claimant does not specifically challenge the administrative law judge's credibility determinations, they are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Rather, as noted by the administrative law judge, Dr. Repsher explained that while claimant has chronic respiratory failure, the pattern of the pulmonary function study and blood gas study results, including the FEV1/FVC ratio, the lung volumes, and the normal diffusion capacity results, are not indicative of any pulmonary or respiratory condition, but are characteristic of claimant's other serious diseases, including his obesity and paralyzed hemidiaphragm;[8] conditions which could not be fairly attributed to coal mine dust exposure. 2013 Decision and Order at 22; Employer's Exhibits 1; 9 at 6-9. Thus the administrative law judge rationally concluded that Dr. Repsher's opinion is sufficient to disprove the existence of pneumoconiosis. *See Morrison*, 644 F.3d at 480, 25 BLR at 2-9; *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; 2013 Decision and Order at 29.

Turning to Dr. Fino's opinion, the administrative law judge correctly found that, during his deposition, Dr. Fino also affirmed that claimant does not have legal pneumoconiosis, and added that claimant's objective test results, including his variable hypoxemia and his normal diffusion capacity results, are not consistent with either cigarette smoking or coal mine dust exposure, or any condition intrinsic to the lungs. 2013 Decision and Order at 23; Employer's Exhibit 5 at 18-20. The administrative law judge noted that Dr. Fino explained that the blood gas study results, while abnormal, could not be attributed to COPD, because claimant's pulmonary function studies do not reflect an obstructive impairment. Employer's Exhibit 2. Rather, Dr. Fino explained that claimant's disabling gas exchange impairment is the result of claimant's obesity and hemidiaphragm paralysis, conditions which restrict the proper expansion of the lungs. Employer's Exhibits 2; 5 at 10. Thus, the administrative law judge rationally concluded that, like that of Dr. Repsher, Dr. Fino's opinion is sufficient to establish that claimant does not have legal pneumoconiosis. *See Morrison*, 644 F.3d at 480, 25 BLR at 2-9; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; 2013 Decision and Order at 29.

Finding that Drs. Repsher and Fino provided reasoned and documented opinions, and explained their conclusions in light of the evidence they reviewed, the administrative law judge permissibly concluded that the opinions of Drs. Repsher and Fino are entitled to substantial weight, and are sufficient to disprove the existence of legal pneumoconiosis. *See Morrison*, 644 F.3d at 480, 25 BLR at 2-9; *Crisp*, 866 F.2d at 185,

[8] There is no merit in claimant's assertion that Dr. Repsher did not definitively diagnose the presence of a paralyzed hemidiaphragm. Claimant's Brief at 18. Dr. Repsher testified that claimant "clearly . . . has a paralyzed diaphragm," and further explained that claimant's obesity and paralyzed hemidiaphragm worked together to prevent claimant from breathing as deeply and as rapidly as he needed to keep his blood gases in a normal range. Employer's Exhibit 9 at 6-7.

12 BLR at 2-129; *Rowe,* 710 F.2d at 255, 5 BLR at 2-103; 2013 Decision and Order at 23, 29.

Further, we reject claimant's argument that the administrative law judge erred in discounting the opinion of Dr. Simpao, that claimant suffers from legal pneumoconiosis. The administrative law judge permissibly found that, in contrast to Drs. Repsher and Fino, Dr. Simpao did not adequately explain how he was able to determine that claimant's coal mine dust exposure was a significant contributing factor to his pulmonary impairment. *See Rowe,* 710 F.2d at 255, 5 BLR at 2-103; 2013 Decision and Order at 18; Director's Exhibit 11. The administrative law judge also permissibly accorded less weight to the opinion of Dr. Simpao, finding that, although Dr. Simpao has considerable experience treating coal miners, he does not have the same level of credentials as Drs. Repsher and Fino. *See Scott*, 14 BLR at 1-41; 2013 Decision and Order at 18.

Because it is supported by substantial evidence, we affirm the administrative law judge's determination that the weight of the medical opinion evidence establishes that claimant does not suffer from legal pneumoconiosis. *See Morrison*, 644 F.3d at 480, 25 BLR at 2-9.

Because we have affirmed the administrative law judge's findings that employer disproved the existence of both clinical and legal pneumoconiosis, we also affirm the administrative law judge's determination that employer rebutted the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); *see Morrison*, 644 F.3d at 480, 25 BLR at 2-9.

Accordingly, the administrative law judge's Decision and Order Denying Benefits on Remand is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge