U.S. Department of Labor

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

BRB Nos. 15-0336 BLA
and 15-0336 BLA-A

BEATRICE JAYNE WHITE (on behalf of CARMEL G. WHITE, deceased)	)	
Claimant-Petitioner Cross-Respondent	)	
v.	)	
CAYMEN COAL, INCORPORATED	)	DATE ISSUED: 06/22/2016
Employer-Respondent Cross-Petitioner	)	
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 of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

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

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, and employer/carrier (employer) cross-appeals, the Decision and Order Denying Benefits (2012-BLA-5751) of Administrative Law Judge Richard A. Morgan, rendered on a miner's subsequent claim filed on January 24, 2011, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).[1] The administrative law judge credited the miner with at least twenty years of coal mine employment, but found that, because he had fewer than fifteen years of underground coal mine employment or employment in substantially similar conditions, he was not entitled to the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4), 30 U.S.C. §921(c)(4) (2012).[2] The administrative law judge found that the medical evidence developed since the denial of the miner's prior claim was sufficient to establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4). Thus, the administrative law judge determined that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c). The administrative law judge also determined that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge further found, however, that claimant failed to establish that the miner's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erred in finding fewer than the fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption. Claimant further contends that the administrative law judge did not properly weigh the medical opinions of Drs. Zaldivar and Basheda on the issue of total disability causation at 20 C.F.R. §718.204(c). The Director, Office of Workers' Compensation Programs (the Director), states that he will not file a substantive response to claimant's appeal, but notes his agreement with claimant that the administrative law judge erred in his determination regarding the length of the miner's

[1] The miner's most recent prior claim, filed on January 24, 2008, was denied by Administrative Law Judge Richard A. Morgan on January 5, 2010, because the miner did not establish any of the elements of entitlement. Director's Exhibit 3. On April 1, 2013, while the miner's present subsequent claim was pending, the miner died. Claimant's Exhibit 6. Claimant, Beatrice Jayne White, is the miner's widow and is pursuing this claim on the miner's behalf. *Id*.

[2] Section 411(c)(4) of the Act 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 or pulmonary impairment are established. 30 U.S.C. §921(c)(4)(2012), as implemented by 20 C.F.R. §718.305.

underground coal mine employment. Employer filed a response brief in support of the administrative law judge's length of coal mine employment finding, and the denial of benefits.

Employer also filed a cross-appeal, challenging the administrative law judge's determination that the medical opinion evidence is sufficient to establish the existence of legal pneumoconiosis. Claimant filed a response to employer's cross-appeal, asserting that the administrative law judge's discrediting of the opinions of Drs. Zaldivar and Basheda on this issue is rational and supported by substantial evidence. The Director states that he will not file a substantive response brief to employer's cross-appeal, but expresses his view that employer's arguments regarding the administrative law judge's reference to the preamble, while evaluating the opinions of Drs. Zaldivar and Basheda on the issue of legal pneumoconiosis, are without merit.[3]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[4] 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 establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 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 an award of benefits. *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); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc). Separately, claimant will be entitled to the rebuttable presumption

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that the newly submitted evidence is sufficient to establish total disability at 20 C.F.R. §718.204(b)(2). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 30. Based on this finding, claimant established a change in an applicable condition of entitlement at 20 C.F.R. § 725.309(c), as a matter of law. *See White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004).

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner's coal mine employment was in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 1. 2, 5.

of total disability due to pneumoconiosis if she establishes that the miner had fifteen or more years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4).

I. INVOCATION OF THE SECTION 411(c)(4) PRESUMPTION – COAL MINE EMPLOYMENT

As employer does not contest the administrative law judge's finding that claimant established the existence of a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2), claimant is entitled to the Section 411(c)(4) presumption if she establishes that the miner had at least fifteen years of employment "in one or more underground coal mines, or in coal mines other than underground mines in conditions substantially similar to those in underground mines." 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305(b). The "conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if the claimant demonstrates that the miner was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2). Although claimant bears the burden of establishing comparability between dust conditions in underground and surface mine employment, she is not required to first establish the dust conditions in an underground mine, but "must only establish that [the miner] was exposed to sufficient coal dust in his surface mine employment." *Director, OWCP v. Midland Coal Co.* [*Leachman*], 855 F.2d 509, 512-13 (7th Cir. 1988); *see Blakley v. Amax Coal Co.*, 54 F.3d 1313, 1319, 19 BLR 2-192, 2-202 (7th Cir. 1995). It is then the function of the administrative law judge, based on his expertise and knowledge of the industry, "to compare the surface mining conditions established by the evidence to conditions known to prevail in underground mines." *Leachman*, 855 F.2d at 512-13.

In this case, the administrative law judge initially found that the miner had "at least" twenty years of coal mine employment, based on the miner's "employment history form submitted to the Department of Labor [(DOL)] and social security records." Decision and Order at 3; *see* Director's Exhibits 2, 13. In addressing the more specific issue of whether the miner's coal mine employment qualified to invoke the Section 411(c)(4) presumption, the administrative law judge first examined DOL Form CM-911a, *Listing of Coal Mine Employment*, from the miner's second claim. Decision and Order at 34; Director's Exhibit 2. The administrative law judge noted that the miner identified Belva Coal Company, New River Fuels, John Rodger Mining, Oak Knob Mining, Jasper Mine Company, and Judy Ann Coal as operators of underground mines. Decision and Order at 34. The administrative law judge stated that, because there was "no conflicting evidence about the nature of the work performed at these mines[,] . . . I find the work done at these facilities to be underground coal mine employment." *Id.*

The administrative law judge then observed that, although the miner categorized his work at Westmoreland Coal Company (Westmoreland) and McNamee Resources (McNamee) as underground employment, there was conflicting evidence in the record regarding whether his work for these companies actually took place underground. Decision and Order at 35. With respect to the miner's employment with Westmoreland, the administrative law judge stated:

> At the prior hearing, the [m]iner testified that, while at Westmoreland, he ran the miner at the face for "three or four years" before driving a buggy and running a roof bolting machine. However, he noted on his most recent CM-913 that he was injured on July 31, 1972 while working for Westmoreland as a dozer operator on a "strip job." ([Director's Exhibit] 6). He did not identify when he moved from an underground coal mine to a surface coal mine. As a result, I find that, while employed by Westmoreland Coal Company, the [m]iner worked at an underground facility from the middle of 1966 through the end of 1969. Although the [m]iner continued working for Westmoreland through 1976, the claimant has not demonstrated by a preponderance of the evidence that the remainder of the work for Westmoreland was performed at an underground coal mine.

Id. The administrative law judge next determined that the miner's work at McNamee was not underground coal mine employment, based on the miner's description of his job as hauling coal from strip and underground mines to preparation plants, and his hearing testimony in the 2008 claim, from which the administrative law judge inferred that McNamee ran a strip mine.[5] *Id*. at 35.

[5] The administrative law judge stated:

> [T]he [m]iner identified only three employers by name at the prior hearing; Westmoreland, Belva and McNamee. Then, asked about the hours he worked, the [m]iner stated that he "worked 8 hours a day at Westmoreland, and Belvie [sic]. Then [I] worked 10 hours a day on the strip job." In the absence of another named employer, I infer that the "strip job" refers to his work at McNamee. As a result, I find that the [c]laimant has not demonstrated, by a preponderance of the evidence, that the work for McNamee Resources is "underground" coal mine employment.

Decision and Order at 35, *quoting* Transcript of August 20, 2009 Hearing at 10-11.

The administrative law judge also declined to credit the miner with underground coal mine employment for his work at Little Fork Resources and Skyline Resources, because the miner indicated that these operators ran surface mines. Decision and Order at 35; Director's Exhibit 6. Similarly, the administrative law judge did not credit the miner for his employment with Donna Coal Company because the record did not contain any evidence indicating that the miner's work was at an underground mine. Decision and Order at 35. The administrative law judge then set forth the miner's credited underground coal mine employment in a chart and found that it totaled 12.74 years. *Id* at 35-36. With respect to the miner's work at surface mines, the administrative law judge concluded:

> . . . [T]here is no evidence in the record regarding the dust conditions when working at a surface mine. I note that the [m]iner testified that the conditions were "pretty dusty" when he was working for Westmoreland Coal Company, but that was in reference to his work as a miner operator, buggy driver and roof bolter. There is no testimony regarding the conditions while working on the "strip job." Thus, the claimant has failed to prove that the miner worked at least 15 years in an underground mine, or in conditions substantially similar thereto.

Id. at 36.

Claimant challenges the administrative law judge's finding that she did not establish that the miner's surface coal mine employment was in conditions substantially similar to those in an underground mine. Claimant also argues that the administrative law judge erred by failing to credit the miner with 6.51 years of underground coal mine employment with Westmoreland from 1970 through the middle of 1976, giving the miner a total of 18.25 years of underground coal mine employment. The Director agrees that there is merit in claimant's argument that the administrative law judge erred in crediting the miner with underground coal mine employment at Westmoreland only from 1966 through 1969. Both claimant and the Director further contend that the administrative law judge erred by relying, in part, on the DOL Form CM-913 filed with the current claim because it is unsigned, contains "cryptic information," may not represent "one continuous thought," and is outweighed by more probative documents in the record. Director's Letter Brief at 1 n.1; Claimant's Brief at 11-12; Director's Exhibit 6.

As an initial matter, we reject claimant's assertion that the administrative law judge applied an improper standard in determining that she did not establish that the conditions in which the miner worked during his aboveground coal mine employment were substantially similar to those in an underground mine. The administrative law judge found that "there is no evidence in the record regarding the dust conditions" while the

miner was working at a surface mine. Decision and Order at 36. Although claimant correctly notes that the miner testified that he would cough up black coal dust when he would go home, this statement was in answer to the question "[w]hen you went home after being *in the coal mine* did you cough any dust or did you feel like you had a problem?" Director's Exhibit 2 (emphasis added). The administrative law judge acted within his discretion as fact-finder in determining that this statement referred to the dust conditions the miner experienced when working underground, rather than at a surface mine. *See Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190, 1-192 (1989); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67, 1-68 (1986). We affirm, therefore, the administrative law judge's finding that claimant did not provide evidence establishing that the miner's years of surface coal mine employment were in conditions substantially similar to those in an underground mine. 20 C.F.R. 718.305(b)(1); *Leachman*, 855 F.2d at 512.

However, we agree with claimant and the Director that the administrative law judge did not adequately explain how the DOL Form CM-913, *Description of Coal Mine Work and Other Employment*, submitted with the current claim, supports his finding that the miner did not work underground for Westmoreland after 1969. Consistent with the assertions made by claimant and the Director, the Form CM-913 is undated and unsigned, and includes entries that are not entirely decipherable. Under "Part I – DESCRIPTION OF COAL MINE WORK, 1. Job Title," there are notations indicating that from 1977 to 1981, the miner worked six days per week, ten hours per day, as a "truck-en[d]loader," but his employer is not identified. Director's Exhibit 6. Additional information on the form appears in the following notations, which were written on separate lines after the instruction to "[d]escribe the duties of this job in you[r] own words": "7-31-72"; "Injured at work"; "Westmoreland of 6½ [word cut off]"; "Dozer operator (strip job)"; "Ten hrs 5 days a week"; "Last job at Rita WV 10 hrs at da[end of word cut off]". *Id*. These entries are lacking in detail and cohesion such that we cannot discern the process by which the administrative law judge concluded that the Form CM-913 established that the miner was injured in 1972 while working for Westmoreland as a dozer operator on a strip job.

We also agree with claimant and the Director that the administrative law judge did not adequately address the entirety of the evidence before rendering his finding on the length of the miner's underground coal mine employment. In the miner's 2008 claim, he testified that, while working at Westmoreland from 1966 through 1976, he ran a miner for three or four years, and then drove a buggy and ran a roof bolter. Transcript of August 20, 2009 Hearing at 10-11. On the signed Form CM-913 submitted with the 2008 claim, the miner described his job at Westmoreland from 1966 to 1974 as a "GIL," which claimant asserts is an acronym for general inside laborer, and from 1974 to 1976 as a motor man, which claimant alleges denotes underground coal mine employment. Director's Exhibit 2; Claimant's Brief at 9. In addition, on the Form CM-911(a) filed in the miner's 2008 claim, the miner indicated that his work for Westmoreland from 1966 to

1975 was in an underground coal mine, while on the Form CM-911(a) submitted in the present claim, the miner's work for Westmoreland is described as "general labor[er]" and "motor man." Director's Exhibits 4, 5.

Because the administrative law judge did not explain how the entries on the Form CM-913 filed with the current claim establish that the miner's underground employment for Westmoreland ended in 1969, and did not explicitly weigh the remaining relevant evidence, his finding of four years of underground coal mine employment at Westmoreland does not satisfy the requirements of the Administrative Procedure Act (APA).[6] Accordingly, we vacate the administrative law judge's finding. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). On remand, the administrative law judge must review the evidence relevant to the miner's coal mine employment with Westmoreland, in its entirety, and reconsider whether claimant has established the fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption.

II. LEGAL PNEUMOCONIOSIS AND TOTAL DISABILITY CAUSATION

We next address employer's cross-appeal challenging the administrative law judge's finding that claimant established the existence of legal pneumoconiosis[7] at 20 C.F.R. §718.202(a)(4), and claimant's arguments regarding the administrative law judge's finding that claimant failed to prove that the miner was totally disabled due to pneumoconiosis at 20 C.F.R. §718.204(c). Pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge considered the opinions of Drs. Rasmussen, Zaldivar and Basheda. Decision and Order at 25-27; Director's Exhibit 19; Claimant's Exhibit 2;

[6] The Administrative Procedure Act (APA), 5 U.S.C. §500 *et seq.*, as incorporated into the Act by 30 U.S.C. §932(a), requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

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

Employer's Exhibits 1, 5, 6, 7. The physicians agreed that the miner had bullous emphysema and interstitial fibrosis, but disagreed as to their causes. Dr. Rasmussen indicated that both diseases were caused by smoking and coal dust exposure, and that he could not differentiate between the two etiological factors. Director's Exhibit 19; Claimant's Exhibit 2 at 24-26. Drs. Zaldivar and Basheda opined that the miner's emphysema was caused solely by smoking, and that the miner's fibrosis was not caused by coal dust exposure. Employer's Exhibits 1, 5, 6 at 24-26, 7 at 26-27. The administrative law judge credited Dr. Rasmussen's opinion, stating:

> Dr. Rasmussen diagnosed legal coal workers' pneumoconiosis on the basis of x-ray evidence showing emphysematous changes. He opined that the bullous emphysema shown on the [m]iner's CT scans can be caused by coal dust exposure, cigarette smoke or both and that there is no way to distinguish between the two. He noted that bullous emphysema is not a separate disease, but rather just further destruction of the alveoli that can occur regardless of the underlying cause of the emphysema. I find his opinion regarding legal coal workers' pneumoconiosis to be well-documented and reasoned.

Decision and Order at 26. In contrast, he discredited Dr. Zaldivar's opinion because he "did not state why [the miner's emphysema] was not aggravated by coal dust exposure," when the preamble to the 2001 regulations recognizes that emphysema can meet the definition of legal pneumoconiosis. *Id*., *citing* 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000). The administrative law judge also discredited Dr. Basheda's opinion, stating, "[i]t is proper to discredit the opinion of a physician who did not diagnose legal pneumoconiosis if he did not offer a reason for opining that the [m]iner's bullous emphysema was not substantially aggravated by his coal mine dust exposure beyond the belief that coal mine dust cannot cause the disease." Decision and Order at 26. Based on these credibility determinations, the administrative law judge concluded that Dr. Rasmussen's opinion was sufficient to establish the existence of legal pneumoconiosis under 20 C.F.R. §718.202(a). *Id*.

Employer contends that the administrative law judge erred in finding that Dr. Rasmussen's opinion was sufficient to establish the existence of legal pneumoconiosis. Employer's Brief at 28. Employer alleges that, because Dr. Rasmussen stated that he was unable to distinguish between the effects of coal dust exposure and smoking, and did not fully address the significance of the miner's seventy-four pack years of cigarette smoking, his opinion was not well-documented and well-reasoned. Employer's allegations are without merit. As the administrative law judge noted, Dr. Rasmussen testified at his deposition that, in his report of an earlier examination of the miner, he recorded a smoking history of seventy-four pack years. Decision and Order at 12;

Claimant's Exhibit 2 at 13. The administrative law judge further observed Dr. Rasmussen's testimony that, based on this more extensive smoking history, smoking likely played a greater role in causing the miner's impairment than he expressed in his newly submitted medical report. *Id*. Nevertheless, because Dr. Rasmussen continued to identify coal dust exposure as a significant contributing cause of the miner's emphysema, the fact that he could not distinguish between smoking and coal mine dust exposure as causes of the disease did not render Dr. Rasmussen's opinion unreasoned. *See* 20 C.F.R. §718.201(a)(2); *Consolidation Coal Co. v. Williams*, 453 F.3d 609, 622, 23 BLR 2-345, 2-2-372 (4th Cir. 2006); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-121 (6th Cir. 2000). Consequently, we affirm, the administrative law judge's crediting of Dr. Rasmussen's diagnosis of legal pneumoconiosis.

Regarding the administrative law judge's discrediting of the opinions of Drs. Zaldivar and Basheda, employer contends that the administrative law judge's "citation to the preamble for the proposition that coal mine dust causes bullous emphysema is contrary to law." Employer's Brief at 31. Contrary to employer's allegation, the administrative law judge did not characterize the preamble to the 2001 regulations as establishing that bullous emphysema is caused by coal dust exposure. Rather, the administrative law judge stated that the DOL recognized in the preamble that emphysema, without limitation or qualification as to the particular form, may be legal pneumoconiosis if it arises from coal mine employment. 65 Fed. Reg. 79,920, 79,938-39, 79,941-43 (Dec. 20, 2000). The administrative law judge permissibly gave the opinions of Drs. Zaldivar and Basheda less weight, therefore, because they did not explain why dust exposure in coal mine employment was not a substantially aggravating factor in the miner's bullous emphysema, other than referencing their belief that coal mine dust is not a causative factor in this form of emphysema. 20 C.F.R. §718.202(a)(2), (b); *see Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558, 25 BLR 2-339, 2-353-54 (4th Cir. 2013); *Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 323, 25 BLR 2-255, 2-264-65 (4th Cir. 2013) (Traxler, C.J., dissenting); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 314-15, 25 BLR 2-115, 2-130 (4th Cir. 2012); Decision and Order at 26. Thus, we affirm the administrative law judge's discrediting of the opinions of Drs. Zaldivar and Basheda on the issue of the existence of legal pneumoconiosis.

Pursuant to 20 C.F.R. §718.204(c), the administrative law judge gave Dr. Rasmussen's opinion, that the miner was totally disabled due to legal pneumoconiosis, less weight because, "[b]y stating that the disability has two 'potential' causes and simply that emphysema 'can' lead to a reduced diffusing capacity, I find Dr. Rasmussen's opinion to be somewhat equivocal." Decision and Order at 40, *quoting* Director's Exhibit 19, Claimant's Exhibit 2 at 25. The administrative law judge further observed that both Dr. Zaldivar and Dr. Basheda "opine that the reduced diffusing capacity is not attributable to emphysema but to pulmonary fibrosis, which the claimant failed to

establish was caused or aggravated by coal dust exposure. Thus I find their opinions regarding disability causation to be well[-]documented and well[-]reasoned." Decision and Order at 40. Based on this weighing of the medical opinion evidence, the administrative law judge concluded that claimant did not prove that the miner was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). *Id*.

Claimant contends that, contrary to the administrative law judge's finding, Dr. Rasmussen's opinion on the issue of total disability causation "is well[-]reasoned, being consistent with the objective data and being consistent with the applicable medical literature." Claimant's Brief at 24. Claimant further argues that the administrative law judge erred in determining that the opinions of Drs. Zaldivar and Basheda, that the miner's total disability is entirely due to interstitial fibrosis caused solely by cigarette smoking, are well-documented and well-reasoned. Claimant's allegations of error have merit.

As noted *supra*, Dr. Rasmussen diagnosed both emphysema and interstitial fibrosis, and attributed both diseases to the combined effects of smoking and coal dust exposure. Director's Exhibit 19; Claimant's Exhibit 2 at 51. With respect to the source of the totally disabling reduction in the miner's diffusing capacity, Dr. Rasmussen testified as follows at his deposition:

> Q. [I]s it your opinion that the diseases which are causing the radiographic changes here are what's to blame for his reduced diffusing capacity?
>
> A. I don't think you could tell by the radiographic abnormalities what's going on there. I think that we do have evidence of both interstitial fibrosis and emphysema. I can say that both of those can cause a reduction in diffusing capacity. . . .
>
> Q. But ultimately, though, it's your opinion that the interstitial fibrosis and the emphysema are the cause of the reduced diffusing capacity?
>
> A. Yes, that's what I would believe based on the radiographs and based on the CT scan.
>
> Q. And it's your opinion that those are coal mine dust-induced, but if it's later determined that those are not coal mine dust-induced, then you would diagnose legal pneumoconiosis here. Is that a correct statement?

> A. If it were truly demonstrated, you know, if you had an autopsy, we could talk about it, but you don't have, so there's no way to disprove it.
>
> Q. Because there's [sic] two causative factors here, either the smoking or the coal dust, that could cause that?
>
> A. Yeah, and it's probably - - they're both probably - - in other words, the mechanism of those changes from smoking and coal dust are also the same so - - and you could say that there's no way you could exclude either one of them. I think you must say that they're both contributing factors.
>
> Q. You're basing that conclusion based on the medical literature which discusses the statistics regarding individuals who get those diseases with the various exposures?
>
> A. Well, basically, I'm saying that we know that they both cause, both those exposures. We could say that coal mining is much more likely to cause interstitial fibrosis than is cigarette smoking, but they both do it. They both pretty well cause emphysema. I don't think there's much argument about that. . . .

Claimant's Exhibit 2 at 49-55. Dr. Rasmussen's testimony on the issue of total disability causation indicates that, after initially stating that emphysema and interstitial fibrosis "can cause a reduction in diffusing capacity," he immediately thereafter identified both emphysema and interstitial fibrosis as causes of the miner's totally disabling respiratory impairment, and opined that the medical literature supports the conclusion that smoking and coal dust exposure are indistinguishable causes of both diseases. *Id*. at 49-50. Moreover, as claimant suggests, Dr. Rasmussen's causation opinion is expressed in virtually the same terms as his legal pneumoconiosis opinion, which the administrative law judge credited as documented and well-reasoned, findings that we have affirmed.

Although the administrative law judge may, in the exercise of his discretion as fact-finder, credit a physician's opinion on one element of entitlement but discredit it on another, to accord with the APA there must be a discernible rationale underlying the administrative law judge's findings. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 803, 21 BLR 2-302, 2-311 (4th Cir. 1998). The APA also requires the administrative law judge to resolve any material conflicts among the opinions of the medical experts prior to rendering a finding on a material issue. *See Wojtowicz*, 12 BLR at 1-165. As claimant argues, the administrative law judge did not address the fact that Dr. Rasmussen supported his opinion with citations to medical

literature that purports to conclude that coal dust exposure causes interstitial fibrosis, while Drs. Zaldivar, and Basheda supported their opinions with citations to medical literature that purports to reach the opposite conclusion. Director's Exhibit 19; Claimant's Exhibit 2 at 18, 20-23, 25-27; Employer's Exhibits 1, 6 at 37-41, 7 at 26-28. In addition, the administrative law judge did not resolve the conflict between Dr. Rasmussen's opinion, that bullous emphysema causes reductions in diffusing capacity, and the contrary opinions of Drs. Zaldivar and Basheda. Furthermore, the administrative law judge should have determined whether coal dust exposure was a cause of the miner's interstitial fibrosis, when he considered the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a), rather than when he considered total disability causation at 20 C.F.R. §718.204(c).

Because the administrative law judge did not set forth a rationale that accounts for his differing findings as to the probative value of Dr. Rasmussen's opinion on the issues of legal pneumoconiosis and total disability causation, and did not fully resolve the conflict among Drs. Rasmussen, Zaldivar, and Basheda as to whether there is a causal relationship between coal dust exposure and interstitial fibrosis and whether bullous emphysema causes reductions in diffusing capacity, we vacate his finding that claimant failed to satisfy her burden at 20 C.F.R. §718.204(c). Accordingly, we remand this case to the administrative law judge for reconsideration.

III. REMAND INSTRUCTIONS

A. IF INVOCATION OF THE SECTION 411(c)(4) PRESUMPTION IS NOT ESTABLISHED

If the administrative law judge finds that claimant is not entitled to invocation of the Section 411(c)(4) presumption on remand, he must initially consider, pursuant to 20 C.F.R. §718.202(a), whether claimant has established that the miner's interstitial pulmonary fibrosis was significantly related to, or substantially aggravated by, dust exposure in coal mine employment, such that it constituted legal pneumoconiosis.[8] 20 C.F.R. §718.201(a)(2), (b); *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 2-162, 2-175 (4th Cir. 2000). Relevant to 20 C.F.R. §718.204(c), the administrative law judge must reconsider whether the miner's totally disabling diffusing capacity

[8] Although claimant established that the miner's emphysema constitutes legal pneumoconiosis, the administrative law judge must also determine whether the miner's interstitial fibrosis constitutes legal pneumoconiosis, as that determination is relevant to the issue of whether claimant established that the miner's totally disabling pulmonary impairment is due to legal pneumoconiosis.

impairment was due to legal pneumoconiosis in the form of bullous emphysema, interstitial pulmonary fibrosis, or a combination of these conditions. *See Williams*, 453 F.3d at 622, 23 BLR at 2-2-372; *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 37-38, 14 BLR 2-68, 2-74-76 (4th Cir. 1990).

B. IF INVOCATION OF THE SECTION 411(c)(4) PRESUMPTION IS ESTABLISHED

If the administrative law judge determines that claimant has established that the miner had at least fifteen years of qualifying coal mine employment, she will be entitled to invocation of the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1). The administrative law judge must then reconsider his weighing of the evidence relevant to the existence of pneumoconiosis, and total disability due to pneumoconiosis, in the context of rebuttal of the presumption. On rebuttal, the burden is on employer to establish that the miner has neither legal nor clinical pneumoconiosis,[9] or that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii); *W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137 (4th Cir. 2015); *Minich v. Keystone Coal Mining Corp*., 25 BLR 1-149, 1-154-56 (2015) (Boggs, J., concurring and dissenting).

Based on our affirmance of the administrative law judge's finding that claimant established the existence of legal pneumoconiosis under 20 C.F.R. §718.202(a), by proving that coal dust exposure was a significant cause of the miner's emphysema, employer is precluded from establishing rebuttal under the first method. 20 C.F.R. §718.305(d)(1)(i). Nevertheless, the administrative law judge must determine whether employer has affirmatively established that the miner did not have clinical pneumoconiosis, because that finding is necessary to properly consider whether employer

[9] Clinical pneumoconiosis is defined as:

> [T]hose diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

20 C.F.R. §718.201(a)(1).

has satisfied its burden under the second method of rebuttal to affirmatively establish that no part of the miner's respiratory disability is due to legal or clinical pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(ii). In addition, as indicated *supra*, the administrative law judge omitted from his legal pneumoconiosis analysis a consideration of whether the miner's interstitial pulmonary fibrosis was, in fact, legal pneumoconiosis. Decision and Order at 26, 40. If claimant invokes the Section 411(c)(4) presumption on remand, the administrative law judge must resolve this issue by determining whether employer has established that the miner's interstitial pulmonary fibrosis was not significantly related to, or substantially aggravated by, dust exposure in coal mine employment. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A).

Once the administrative law judge determines on remand whether employer has disproven the presumed existence of clinical pneumoconiosis, and legal pneumoconiosis in the form of interstitial pulmonary fibrosis, the administrative law judge must then consider whether employer has satisfied its burden under 20 C.F.R. §718.305(d)(1)(ii). He must specifically assess whether employer has established that clinical pneumoconiosis, and legal pneumoconiosis in the form of interstitial pulmonary fibrosis and/or bullous emphysema, played "no part" in the miner's respiratory or pulmonary total disability. 20 C.F.R. §718.305(d)(1)(ii).[10]

When weighing the medical opinion evidence on remand, whether the burden of proof is on claimant or employer, the administrative law judge must resolve the conflict among Drs. Rasmussen, Zaldivar and Basheda by addressing "the qualifications of the respective physicians, the explanation of their medical findings, the documentation underlying their medical judgments, and the sophistication and bases of their diagnoses." *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997). The administrative law judge's consideration of "the documentation underlying their medical opinions," should include the physicians' discussion of medical literature regarding the causal connection, if any, between coal dust inhalation and interstitial pulmonary fibrosis. *See Owens*, 724 F.3d at 558, 25 BLR at 2-353-54 (The court affirmed the discrediting of opinions in which the physicians summarily dismissed medical literature that related interstitial fibrosis to coal dust exposure and did not explain why coal dust exposure was not a cause of the miner's impairment). Finally, the administrative law judge must render his findings on remand in

[10] As we have affirmed the administrative law judge's finding that the miner's bullous emphysema is legal pneumoconiosis, the administrative law judge must consider whether employer has established that no part of the miner's respiratory or pulmonary total disability was caused by bullous emphysema, even if he finds that the miner's interstitial pulmonary fibrosis is not legal pneumoconiosis.

detail, including the underlying rationale, as required by the APA. *See Wojtowicz*, 12 BLR at 1-165.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge