BRB No. 13-0336 BLA

ERNIE L. REYNOLDS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
JUDITH TRUCKING COMPANY, INCORPORATED	)	
	)	
and	)	
	)	
KENTUCKY EMPLOYERS MUTUAL INSURANCE	)	DATE ISSUED: 03/07/2014
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

James W. Herald, III (Jones, Walters, Turner & Shelton PLLC), Pikeville, Kentucky, for employer/carrier.

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

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order (11-BLA-05055) of Administrative Law Judge Larry S. Merck awarding benefits on a claim filed pursuant to

the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a claim filed on September 9, 2009. Director's Exhibit 2.

Applying amended Section 411(c)(4),[1] 30 U.S.C. §921(c)(4), the administrative law judge found that claimant established at least twenty-one years of coal mine employment, as stipulated by the parties, including twelve years of underground coal mining and nine years of surface coal mine employment as a coal truck driver.[2] The administrative law judge further found that all of claimant's surface coal mine employment took place in conditions substantially similar to those in an underground mine. The administrative law judge, therefore, found that claimant established at least the fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption. The administrative law judge further found that the medical evidence established that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge, therefore, determined that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis set forth at Section 411(c)(4) of the Act. 30 U.S.C. §921(c)(4). The administrative law judge also found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erred in finding that claimant has at least fifteen years of qualifying coal mine employment and that he is totally disabled, and therefore erred in finding that claimant invoked the Section

[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 of total disability due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4) (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] The record reflects that claimant's last coal mine employment was in Kentucky. Director's Exhibits 3, 7. Accordingly, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

411(c)(4) presumption. Employer also contends that the administrative law judge erred in finding that employer failed to rebut the Section 411(c)(4) presumption. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response 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).

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

Qualifying Coal Mine Employment

Employer initially argues that the administrative law judge erred in finding that claimant established at least fifteen years of qualifying coal mine employment for the purpose of invoking the Section 411(c)(4) presumption. Employer does not dispute that claimant was employed as a coal miner for at least twenty-one years, or that twelve of those years were spent underground. Hearing Tr. at 8; Employer's Brief at 8-9. Rather, employer asserts that claimant failed to prove that, during his employment as a coal truck driver, he was exposed to dust conditions substantially similar to those existing underground. Employer's Brief at 9. Employer's contention lacks merit.

Subsequent to the issuance of the administrative law judge's Decision and Order, the Department of Labor (DOL) promulgated regulations implementing amended Section 411(c)(4). 78 Fed. Reg. 59,102 (Sept 25, 2013). Those regulations provide that "[t]he 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."[3] 78 Fed. Reg. at 59,114 (to be

[3] The comments accompanying the Department of Labor's regulations further clarify claimant's burden in establishing substantial similarity:

> [T]he claimant need only focus on developing evidence addressing the dust conditions prevailing at the non-underground mine or mines at which the miner worked. The objective of this evidence is to show that the miner's duties regularly exposed him to coal mine dust, and thus that the miner's work conditions approximated those at an underground mine. The term "regularly" has been added to clarify that a demonstration of sporadic or incidental exposure is not sufficient to meet the claimant's burden. The fact-finder simply evaluates the evidence presented, and determines

codified at 20 C.F.R. §718.305(b)(2)); *see also Director, OWCP v. Midland Coal Co.* [*Leachman*], 855 F.2d 509, 512-13 (7th Cir. 1988). As noted by the administrative law judge, claimant stated that, as a truck driver, he spent twelve to sixteen hours a day, five to six days per week, hauling raw coal from the mines to the tipple. Decision and Order at 7; Director's Exhibit 4. Claimant testified that his dust exposure while driving a coal truck was "not much differen[t]" from that working underground, because when coal was loaded into his truck the "dust would boil over the top" and "poof right out of the truck" and "pop up down in [his] face." Decision and Order at 5-7; Hearing Tr. at 20-21. He also stated that when he was at the tipple, under the silos where the coal was falling, he was "in constant coal dust." Decision and Order at 5; Director's Exhibit 20 at 7-9. Further, according to claimant, dust would come into the cab of the truck, and at the end of his shift his clothes would be black with coal dust. Decision and Order at 7; Hearing Tr. at 29, 31. Based on claimant's uncontradicted description of his working conditions, the administrative law judge permissibly found that claimant "established at least fifteen years of coal mine employment either in underground coal mine employment or in conditions substantially similar to those known to prevail in underground mines." 20 C.F.R. §718.305(b)(2); *see also Leachman*, 855 F.2d at 512-13; Decision and Order at 8. We, therefore, affirm the administrative law judge's finding that claimant established more than fifteen years of qualifying coal mine employment, and satisfied the requirement of Section 411(c)(4).

Total Disability

Employer next argues that the administrative law judge erred in finding that the evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2). Employer specifically challenges the administrative law judge's findings that the arterial blood gas study and medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iv).[4]

> whether it credibly establishes that the miner's non-underground mine working conditions regularly exposed him to coal mine dust. If that fact is established to the fact-finder's satisfaction, the claimant has met his burden of showing substantial similarity.

78 Fed. Reg. at 59,105.

[4] The administrative law judge found that the pulmonary function study evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 8-9. Further, as there is no evidence of record that claimant suffers from cor pulmonale with right-sided congestive heart failure, the administrative law judge properly

The administrative law judge considered three arterial blood gas studies conducted on January 18, 2010, November 16, 2010, and July 20, 2011.[5] While all three tests produced non-qualifying values at rest, the two studies that contained an exercise portion produced conflicting values. The January 18, 2010 study, performed by Dr. Rasmussen, produced qualifying values with exercise.[6] Director's Exhibit 1. By contrast, the November 16, 2010 study, performed by Dr. Broudy, produced non-qualifying values with exercise. Employer's Exhibit 1.

In evaluating the conflicting blood gas study results, the administrative law judge noted that Dr. Rasmussen's January 18, 2010 arterial blood gas study results, which were validated by Dr. Gaziano, were questioned by Drs. Vuskovich, Broudy, and Zaldivar in light of the normal pulmonary function study results obtained on the same day, and other factors. Director's Exhibit 11; Employer's Exhibits 14; 9; 29 at 37. Specifically, Dr. Vuskovich opined that claimant's obesity had influenced the results of the exercise portion of the study;[7] Dr. Broudy stated that the reduced PO2 values from the January 18, 2010 exercise study could be explained by a venous, as opposed to an arterial, blood sample;[8] and Dr. Zaldivar stated that either there was something wrong with Dr.

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found that claimant is unable to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 11.

[5] The January 18, 2010 and November 16, 2010 arterial blood gas studies contain both resting and exercise values. The July 20, 2011 study does not contain an exercise portion. Director's Exhibit 11; Employer's Exhibits 1, 4.

[6] A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values, *i.e.* Appendices B and C of Part 718. A "non-qualifying" study yields values that exceed the requisite table values.

[7] Dr. Vuskovich stated that claimant's exercised-induced hypoxemia was the result of the increased oxygen demand required to move his body during exercise. Director's Exhibit 13 at 6.

[8] Dr. Broudy stated that he "suspect[ed] that perhaps the sample obtained at the time of the exercise study [performed by Dr. Rasmussen] was . . . a venous blood gas." Employer's Exhibit 2 at 1. Dr. Broudy added, however, that while this would explain the drop in PO2 values with exercise, if the sample was a venous one, he would have expected the PCO2 value to be higher. *Id.* at 1-2. Thus, Dr. Broudy concluded that he could not definitely state that Dr. Rasmussen's sample was a venous blood gas sample. Employer's Exhibit 2 at 2. During his deposition, Dr. Broudy testified that he thought

Rasmussen's handling of the blood gas study, or claimant was suffering from an occult disease at the time of the test.[9]

The administrative law judge permissibly discounted Dr. Vuskovich's opinion, that the qualifying results could be explained by claimant's obesity, because Dr. Vuskovich failed to explain how he eliminated claimant's significant history of coal mine dust exposure as a possible contributing cause of his qualifying blood gas study. *See Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 9-10. Evaluating Dr. Broudy's opinion, the administrative law judge accurately noted that while Dr. Broudy initially attributed claimant's January 18, 2010 exercise PO2 results to a possible venous sample, Dr. Broudy acknowledged that claimant's other test values did not reflect a venous sample, Employer's Exhibit 1 at 1-2, and later testified that he thought the sample from the January 18, 2010 study was a valid, arterial sample. Employer's Exhibit 5 at 17. The administrative law judge acted within his discretion in finding Dr. Broudy's opinion to be internally inconsistent, and entitled to little weight. *See 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; *Clark*, 12 BLR at 1-155; Decision and Order at 10. Finally, the administrative law judge rationally concluded that Dr. Zaldivar's opinion, that Dr. Rasmussen's January 18, 2010 exercise blood gas study results were either mishandled, or caused by an undetected illness, was speculative and entitled to little probative weight. *See Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 882, 22 BLR 2-25, 2-42 (6th Cir. 2000); *Griffith v. Director, OWCP*, 49 F.3d 184, 186-87, 19 BLR 2-111, 2-117 (6th Cir. 1995); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); Decision and Order at 10. Thus, the administrative law judge determined that the January 18, 2010 exercise blood gas study yielded valid, qualifying results.

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that the January 18, 2010 blood sample was an arterial sample, and that "as far as he could tell" the sample was valid. Employer's Exhibit 5 at 17.

[9] Dr. Zaldivar opined that "there was something wrong" with Dr. Rasmussen's January 19, 2010 blood gases "because they don't conform to the rest of the examination." Employer's Exhibit 7 at 16. Dr. Zaldivar stated that while "[t]here [was] not anything that could be explained in any scientific terms" he "believe[ed] there was either a problem with Doctor Rasmussen's blood gas[] handling or something happened, unless there [was] some kind of occult disease that [claimant] was suffering from at the time he saw Doctor Rasmussen." *Id.* at 16-17.

The administrative law judge then weighed the January 18, 2010 qualifying exercise blood gas study results against the non-qualifying results of the November 16, 2010 exercise blood gas study. Decision and Order at 11. Finding that claimant's last coal mine employment required him to crank a tarp across the top of his truck to cover the coal, to occasionally load his own coal, and to change his own tires, which required him to lift between 150 to 200 pounds, the administrative law judge permissibly concluded that the January 18, 2010 blood gas study is "more probative" on the issue of claimant's ability to perform his last coal mine employment because claimant completed more rigorous exercise for a longer period of time.[10] *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578, 22 BLR 2-107, 2-124 (6th Cir. 2000); Decision and Order at 11. Thus, the administrative law judge found that the weight of the arterial blood gas study evidence supported a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 11.

Employer contends that the administrative law judge erred in relying on Dr. Rasmussen's January 18, 2010 qualifying exercise arterial blood gas study to find that the blood gas study evidence supported a finding of total disability, in light of the fact that the remainder of the blood gas studies of record produced non-qualifying values, and Drs. Vuskovich, Broudy, and Zaldivar "all had serious concerns regarding the validity" of Dr. Rasmussen's results. Employer's Brief at 8-9.

Contrary to employer's assertion, as set forth above, the administrative law judge gave valid reasons for discrediting the opinions of Drs. Vuskovich, Broudy, and Zaldivar, questioning the validity of the January 18, 2010 exercise blood gas study results. Moreover, employer has failed to challenge the administrative law judge's credibility determinations. We, therefore, affirm the administrative law judge's finding that the January 18, 2010 arterial blood gas study results are valid. *See 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; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). Finally, in resolving the conflict in the blood gas study evidence, the administrative law judge permissibly found that the

[10] The administrative law judge noted that, relevant to the January 18, 2010 blood gas study, Dr. Rasmussen recorded that claimant underwent an incremental treadmill exercise study beginning at "1.6 miles per hour at a 0% grade . . . for 3 minutes. Thereafter, the grade of the treadmill increased 2% per minute. [Claimant] exercised for 7 minutes and reached a maximum of 1.6 mph at an 8% grade." Decision and Order at 9; Director's Exhibit 11 at 43. The administrative law judge noted that, relevant to the November 16, 2010 blood gas study, Dr. Broudy recorded that claimant "exercised for 3 minutes at 0% grade at 1.7 miles per hour and then exercised another minute at 5% grade [at] 1.7 miles per hour before becoming very short of breath." Decision and Order at 10; Employer's Exhibit 1 at 1.

January 18, 2010 exercise blood gas study results, which reflected more rigorous exercise, were the most probative of claimant's ability to perform the heavy manual labor required by claimant's last coal mine work. *See Cornett*, 227 F.3d at 578, 22 BLR at 2-124; Decision and Order at 8. We therefore affirm, as supported by substantial evidence, the administrative law judge's finding that the arterial blood gas study evidence supports a finding of total disability, pursuant to 20 C.F.R. §718.204(b)(2)(ii). *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005).

Employer also argues 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). The administrative law judge considered the medical opinions of Drs. Rasmussen, Broudy, and Zaldivar. Dr. Rasmussen noted that claimant's exercise blood gas study indicated a "marked loss of lung function as reflected by his impairment in oxygen transfer and hypoxia," and concluded that claimant does not retain the pulmonary capacity to perform his usual coal mine work, which included "some heavy manual labor." Director's Exhibit 11 at 38, 43. In contrast, Drs. Broudy and Zaldivar opined that claimant does not suffer from a totally disabling respiratory impairment. Employer's Exhibits 4, 5.

In weighing the conflicting medical opinion evidence, the administrative law judge found Dr. Rasmussen's opinion, that claimant is totally disabled, to be well-reasoned and well-documented, as the doctor based his assessment on his physical examination, the results of objective testing, including the non-qualifying pulmonary function study and the qualifying exercise arterial blood gas study, and an accurate description of claimant's job duties. Decision and Order at 13. In contrast, the administrative law judge found that the opinions of Drs. Broudy and Zaldivar are "not well-reasoned," as these physicians discounted the qualifying January 18, 2010 exercise blood gas study as invalid, while the administrative law judge found this test to be valid. Decision and Order at 14, 16. Giving the most weight to the well-reasoned and well-documented opinion of Dr. Rasmussen, the administrative law judge found that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 16.

Employer argues that the administrative law judge erred in crediting the opinion of Dr. Rasmussen. We disagree. The administrative law judge properly considered Dr. Rasmussen's assessment of claimant's loss of lung function during light and moderate exercise, in conjunction with the exertional requirements of claimant's usual coal mine employment, which "required him to crank a tarp across the top of his truck to cover the coal, to occasionally load his own coal, and to change his own tires which required him to lift between 150 to 200 pounds," and found the physician's opinion sufficient to support a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Cornett*, 227

F.3d at 578, 22 BLR at 2-124; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; Decision and Order at 11, 16.

We also reject employer's contention that the administrative law judge erred in his consideration of the opinions of Drs. Broudy and Zaldivar. The administrative law judge permissibly found the opinions of Drs. Broudy and Zaldivar to be not well-reasoned, because they are based, in part, on their mistaken belief that the qualifying exercise arterial blood gas study, obtained on January 18, 2010, is invalid. *See Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-155; Decision and Order at 14, 16. Because it is based upon substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Martin*, 400 F.3d at 305, 23 BLR at 2-283. 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, 1-198 (1986), *aff'd on recon.* 9 BLR 1-236 (1987) (en banc); Decision and Order at 16.

In light of our affirmance of the administrative law judge's findings that claimant established at least fifteen years of qualifying coal mine employment, and the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2), we affirm the administrative law judge's finding that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4). 30 U.S.C. §921(c)(4). Decision and Order at 16.

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

Because the administrative law judge found that claimant invoked the presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(4), he properly noted that the burden of proof shifted to employer to establish rebuttal by disproving the existence of both clinical and legal pneumoconiosis, 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); *see Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1069-70 (6th Cir. 2013); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 25 BLR 2-1 (6th Cir. 2011). The administrative law judge found that employer failed to establish rebuttal by either method. Decision and Order at 24, 26.

In determining whether employer disproved the existence of legal pneumoconiosis,[11] the administrative law judge considered the medical opinions of Drs.

[11] "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).

Broudy and Zaldivar, that claimant does not suffer from legal pneumoconiosis, or any pulmonary or respiratory impairment.[12] Decision and Order at 13-16; Director's Exhibit 14; Employer's Exhibits 1, 2, 4, 5, 7. Contrary to employer's assertion, the administrative law judge rationally found that, because both Dr. Broudy and Dr. Zaldivar based their opinions, that that claimant does not suffer from legal pneumoconiosis, in part, on their belief that claimant does not have any pulmonary or respiratory impairment, contrary to the administrative law judge's finding, they offered no explanation as to the cause of claimant's disabling respiratory impairment. Decision and Order at 22, 23; Employer's Exhibits 5 at 12-13; 7 at 11-12.

Employer was required to rule out a connection between claimant's disabling respiratory impairment and his coal mine employment. *See Ogle*, 737 F.3d at 1071. In light of that standard, the administrative law judge permissibly found that the opinions of Drs. Broudy and Zaldivar are not sufficient to rule out claimant's twenty-one years of coal mine dust exposure as a contributing cause of claimant's disabling respiratory impairment. *See Ogle*, 737 F.3d at 1071; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; Decision and Order at 22, 23.

In sum, substantial evidence supports the administrative law judge's finding that the opinions of Drs. Broudy and Zaldivar do not meet employer's burden to disprove the existence of legal pneumoconiosis.[13] *See Martin*, 400 F.3d at 305, 23 BLR at 2-283; Decision and Order at 15. Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Broudy and Zaldivar, the only opinions supportive of a finding that the miner did not suffer from legal pneumoconiosis, we affirm the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption by disproving the existence of pneumoconiosis.[14]

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[12] The administrative law judge also considered the opinion of Dr. Rasmussen, that claimant has legal pneumoconiosis, in the form of interstitial lung disease with an impairment in oxygen transfer and hypoxia, and that claimant's resulting disabling respiratory impairment is due to both coal mine dust exposure and smoking. Decision and Order at 12; Director's Exhibit 11.

[13] Employer's failure to disprove the existence of legal pneumoconiosis precludes a rebuttal finding that claimant did not have pneumoconiosis. *See Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011). Therefore, we need not address employer's contention that the administrative law judge erred in his analysis of the x-ray and medical opinion evidence when he found that employer did not disprove the existence of clinical pneumoconiosis.

[14] Thus, we need not address employer's arguments regarding the weight the administrative law judge accorded to Dr. Rasmussen's opinion. *See Kozele v. Rochester*

With regard to the second rebuttal method, the administrative law judge permissibly found that the same reasons for which he discredited the opinions of Drs. Broudy and Zaldivar, that claimant does not suffer from legal pneumoconiosis, also undercut their opinions that claimant's impairment is unrelated to his coal mine employment. *See Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); *Ogle*, 737 F.3d at 1074; Decision and Order at 26. Therefore, we affirm the administrative law judge's finding that employer did not rebut the Section 411(c)(4) presumption of total disability due to pneumoconiosis, and we affirm the award of benefits. 30 U.S.C. §921(c)(4).

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

SO ORDERED.

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge

& Pittsburgh Coal Co., 6 BLR 1-378, 1-382 n.4 (1983); *see also Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1072-73 (6th Cir. 2013); Employer's Brief at 20-27.