BRB No. 13-0391 BLA

DAVID A. DORSEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MIDWEST COAL COMPANY (formerly known as AMAX COAL COMPANY)	)	DATE ISSUED: 03/26/2014
	)	
and	)	
	)	
AMERICAN ZURICH	)	
	)	
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 Awarding Benefits of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

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

Cheryl L. Intravaia (Feirich/Mager/Green/Ryan), Carbondale, Illinois, for employer/carrier.

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

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (09-BLA-5587) of Administrative Law Judge Alice M. Craft rendered on a claim filed on July 25, 2008, pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2012)(the Act). The administrative law judge credited claimant with at least

twenty-nine years of surface coal mine employment based on the parties' stipulation. She found that claimant was entitled to the presumption of total disability due to coal mine employment at amended Section 411(c)(4),[1] 30 U.S.C. §921(c)(4), because he established that he had at least fifteen years of coal mine employment in conditions substantially similar to those in an underground mine and that he had a total respiratory disability, pursuant to 20 C.F.R. §718.204(b). The administrative law judge further found that employer failed to rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding the presumption at amended Section 411(c)(4) invoked and not rebutted. In particular, employer argues that the administrative law judge selectively analyzed the evidence, mischaracterized the medical opinion of Dr. Repsher, imposed an improper standard of proof, and failed to comply with the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). In response to employer's appeal, claimant asserts that the administrative law judge's decision awarding benefits should be affirmed. In reply, employer reiterates its contentions. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[2] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

[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. In pertinent part, amended Section 411(c)(4) provides a rebuttable presumption of total disability due to pneumoconiosis if claimant establishes at least fifteen years of underground, or substantially similar, coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012). If the presumption is invoked, the burden of proof shifts to employer to disprove the existence of pneumoconiosis, or to establish that claimant's disabling pulmonary or respiratory impairment "did not arise out of, or in connection with," coal mine employment. 30 U.S.C. §921(c)(4) (2012).

[2] The record reflects that claimant's coal mine employment was in Indiana. Director's Exhibits 2-3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc); Decision and Order at 3.

Invocation of the Section 411(c)(4) presumption:

1. Qualifying Coal Mine Employment.

Employer asserts that the administrative law judge applied an improper standard in determining that claimant established that the conditions in which he worked were substantially similar to those in an underground mine. We disagree.

To establish that he worked in substantially similar conditions to those in an underground coal mine pursuant to Section 411(c)(4), a surface miner need establish only that he was exposed to sufficient coal dust. *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 480, 22 BLR 2-265, 2-275 (7th Cir. 2001); *Blakley v. Amax Coal Co.*, 54 F.3d 1313, 1319, 19 BLR 2-192, 2-202 (7th Cir. 1995); *Director, OWCP v. Midland Coal Co.* [*Leachman*], 855 F.2d 509, 512 (7th Cir. 1988). The administrative law judge must then "compare the surface mining conditions established by the evidence, to conditions known to prevail in underground mines." *Leachman*, 855 F.2d at 512.

At the hearing, claimant described the work conditions of his twenty-nine years of coal mine employment, mostly as a welder, at a preparation plant at surface mines. He testified that coal was brought to the preparation plant from other mines, where it was dumped from railroad cars, put through breakers, and loaded onto river barges. Decision and Order at 2; Hearing Transcript at 11-12. He explained that the coal entered the rotary dump on a conveyor belt that crushed the coal before it was loaded onto barges through a hopper. Claimant stated that he worked around the coal which he described as "mainly dust." Decision and Order at 4. Claimant further testified that he repaired equipment in the preparation plant, the rotary dump, the belt line and the conveyor belt, and that he hauled equipment. He testified that he repaired holes in the hoppers and railroad cars by beating coal dust out of the way and replacing the metal, and side panels. He also stated that he replaced rollers and other parts on the conveyor, where there was coal dust "all under the belt."[3] *Id.*; Hearing Transcript at 12-13. Additionally, claimant testified that he substituted for absent employees by running a coal chute and operating the rotary dump. Hearing Transcript at 14-16, 25. Claimant stated that the machinery was usually full of coal when he was welding, that there was coal dust around everything he repaired, and that he was exposed to coal and rock dust when running the rotary dump and loading coal. Decision and Order at 4; Hearing Transcript at 16, 23.

Based on claimant's testimony, the administrative law judge found that claimant worked in "dusty conditions at a preparation plant." Decision and Order at 4, 22. Hence,

[3] Employer concedes that "coal dust was on the property and equipment." Employer's Brief at 7.

the administrative law judge concluded that claimant's working conditions were substantially similar to those in an underground mine. *Id*.

First, contrary to employer's contention,[4] the administrative law judge was aware that claimant's coal mine employment consisted of work at a coal preparation plant. Employer's Brief at 6; Decision and Order at 3-4; Hearing Transcript at 1-12, 23. We discern no evidentiary inconsistencies between claimant's testimony and the administrative law judge's finding that all of claimant's coal mine employment occurred at a preparation plant for surface mines.[5] Employer incorrectly contends that work at a preparation plant is not coal mine employment. Work at a preparation plant is, however, coal mine employment. *See* 20 C.F.R. §725.101(a)(12), (19). Consequently, we reject employer's argument that the administrative law judge did not clearly distinguish work in a coal mine from that in a preparation plant. 20 C.F.R. §725.101(a)(12), (19); *see*

[4] Employer contends that, despite claimant's testimony that "no mining was performed at the [preparation plant]," the administrative law judge's finding that claimant "worked in dusty conditions at a preparation plant for above ground mines," Decision and Order at 22, "creates the perception that mining was occurring at the facility." Employer's Brief at 6.

[5] The following exchanges occurred at the hearing:

Q. What type of facility is it?

A. It was a prep plant where (sic) brought coal in from other mines.…

****

Q. You said that the coal was brought in from the various coal mines?

A. Yes, Ma'am.

****

Q. Just to clarify, there was no mining that was done where you worked at any time, is that correct?

A. No mining, no, ma'am.

Q. All of the coal brought in via the rail cars?

A. Yes, ma'am.

See Hearing Transcript at 11-12, 23.

Summers, 272 F.3d at 480, 22 BLR at 2-275; *Blakely*, 54 F.3d at 1319, 19 BLR at 2-202; *Leachman*, 855 F.2d at 512.

Also, contrary to employer's contention,[6] claimant is not required to compare his work as a welder with that of an underground miner, because claimant's testimony that he was exposed to coal mine dust on a daily basis is, if credited, sufficient to satisfy the "substantially similar" requirement of the presumption at amended Section 411(c)(4). *See Summers*, 272 F.3d at 480, 22 BLR at 2-276; *Leachman*, 855 F.2d at 512. We, therefore, affirm the administrative law judge's finding that claimant established that at least fifteen years of his surface coal mine employment were in conditions substantially similar to those in an underground mine.

2. Total Disability.

Employer contends that the administrative law judge erred in finding total respiratory disability established pursuant to Section 718.204(b) based on the pulmonary function study and medical opinion evidence.[7] Decision and Order at 9-10, 22-23; Employer's Brief at 8. Employer first contends that, even though all six of the pulmonary function studies were qualifying,[8] the administrative law judge failed to consider the fact that four of the studies did not comply with the quality standards and that the other two studies were invalidated.[9]

---

[6] Specifically employer contends that the administrative law judge "provides no rationale as to how [claimant's] employment could even remotely be 'substantially similar'" to that of an underground miner since "[c]laimant was a welder who repaired equipment all around the facility, and was only occasionally employed to move the coal around the facility." Employer's Brief at 7.

[7] The parties do not challenge the administrative law judge's finding that total respiratory disability was not established pursuant to 20 C.F.R. §718.204(b)(2)(ii)-(iii). This finding is, therefore, affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 22-23.

[8] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the applicable table values set forth in Appendices B and C to 20 C.F.R. Part 718. A "non-qualifying" study yields values that exceed those values.

[9] The pulmonary function study evidence consists of qualifying studies conducted on June 23, 2003, February 16, 2007, May 19, 2008, September 25, 2008, February 17, 2009 and October 2, 2009. The administrative law judge noted that the June 23, 2003 and Feb. 16, 2007 studies, conducted for Dr. Grow, and the February 17, 2009 and October 2, 2009 pulmonary function studies, conducted for Dr. Rieti, were contained in

In reviewing the pulmonary function studies, the administrative law judge noted that the four pulmonary function studies contained in claimant's treatment records were not subject to the quality standards[10] at 20 C.F.R §718.103. With respect to the remaining two studies, the administrative law judge acknowledged that one of the studies had been invalidated and that the other study had been both invalidated and validated.[11] Specifically, the administrative law judge acknowledged that Dr. Repsher invalidated his own May 19, 2008 study and noted that that invalidation was not contradicted. The administrative law judge found, however, that Dr. Murthy's September 25, 2008 study, in addition to being invalidated by Dr. Repsher, was validated by Dr. Gerblich. Decision and Order at 10, 23; Director's Exhibit 9 at 16-19. The administrative law judge rejected Dr. Repsher's invalidation of Dr. Murthy's study because Dr. Repsher "did not explain whether or how it violated the regulatory standards." Decision and Order at 23. Consequently, based on her consideration of all the pulmonary function study evidence which was qualifying, and, in particular, the September 25, 2008 qualifying pulmonary function study conducted by Dr. Murthy, the administrative law judge found that the pulmonary function study evidence established total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i).

The function of the administrative law judge, as fact-finder, is to identify and resolve inconsistencies in conflicting medical evidence, and to assign probative weight. *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 13 BLR 2-348 (7th Cir. 1990); *see also Peabody Coal Co. v. Lowis*, 708 F.2d 266, 5 BLR 2-84 (7th Cir. 1983). In this case, in addition to properly finding that the qualifying pulmonary function studies contained in the treatment records need not comply with quality standards, the administrative law judge properly determined that Dr. Repsher's invalidation of Dr.

---

claimant's treatment records. Decision and Order at 9-10; 11-12; 14-15; Claimant's Exhibit 5; Employer's Exhibits 11, 13. The September 25, 2008 pulmonary function study was conducted by Dr. Murthy and the May 19, 2008 pulmonary function study was conducted by Dr. Repsher.

[10] The quality standards set forth in 20 C.F.R. §718.103 are not applicable to the pulmonary function studies of June 24, 2003, Feb. 16, 2007, Feb. 17, 2009 and Oct. 2, 2009, as those standards apply only to evidence developed in connection with a claim for benefits. *See* 20 C.F.R. §718.101(b); *accord J.V.S.* [*Stowers*] *v. Arch of W. Va.*, 24 BLR 1-78, 1-89, 1-92 (2008).

[11] The administrative law judge noted that the four pulmonary function studies contained in claimant's treatment records were neither validated nor invalidated. Decision and Order at 23.

Murthy's September 25, 2008 study was not, in fact, an invalidation of that study, but was an invalidation of his own study.[12] Therefore, contrary to employer's contention, the administrative law judge reasonably relied on Dr. Murthy's September 25, 2008 qualifying pulmonary function study, which was validated by Dr. Gerblich. Employer's Brief at 11; Decision and Order at 23. Thus, we conclude that the administrative law judge properly found that the pulmonary function study evidence, as a whole, established total respiratory disability pursuant to Section 718.204(b)(2)(i). Decision and Order at 23.

Next, employer argues that the administrative law judge erred in finding that the medical opinion evidence established total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Employer contends that the administrative law judge erred in failing to consider the physicians' credentials in weighing their opinions. Employer also contends that the administrative law judge erred in evaluating the medical opinion evidence.

The administrative law judge considered the medical opinions of Drs. Rieti,[13] Houser,[14] Murthy[15] and Repsher.[16] The administrative law judge found that the opinions

[12] The administrative law judge observed: "[Dr. Repsher] said both his and Dr. Murthy's pulmonary function testing was invalid, but in explaining his reasoning, he focused on additional testing he performed during his own testing to measure muscular force that was not available in Dr. Murthy's testing. He also said the results were so low that if true, [claimant] would have been ventilator dependent, but it appears that he was again referring to his own testing, and not Dr. Murthy's, which resulted in higher values." Decision and Order at 19, 23; Employer's Exhibits 4, 7 at 14-15; *see* Employer's Brief at 9-10.

[13] Dr. Rieti, claimant's treating pulmonologist since 2008, diagnosed chronic obstructive pulmonary disease (COPD) due to both smoking and coal dust exposure, opined that "both contributed" to claimant's COPD, and that claimant is unable to do any physical activity and is disabled based on the severity of his COPD. Decision and Order at 19-21, 23; Claimant's Exhibit 5 at 1; Employer's Exhibits 11 at 10, 35-36, 15 at 32-33, 35-36, 46, 49-51.

[14] Dr. Houser performed a medical records review and opined that claimant has clinical pneumoconiosis due to the inhalation of coal and rock dust, and COPD due to smoking and the inhalation of coal and rock dust. He further opined that claimant's respiratory impairment would preclude him from performing his former coal mine employment. Decision and Order at 21, 23; Claimant's Exhibit 6.

of Drs. Rieti and Houser, who both stated that claimant is totally disabled due to the severity of his chronic obstructive pulmonary disease (COPD), established total respiratory disability. She also found that the opinions of Drs. Murthy and Repsher supported the opinions of Drs. Rieti and Houser, as Dr. Murthy found claimant disabled by his "cardiopulmonary condition," but "did not diagnose any cardiac condition other than hypertension," and Dr. Repsher "did not give an opinion [as to] whether or not claimant is disabled, but said there was a good possibility that he is." Decision and Order at 23. The administrative law judge also observed that "no doctor said that [claimant] is not disabled by the condition of his lungs." *Id*. The administrative law judge concluded, therefore, that claimant established total respiratory disability "based on the opinions of Drs. Rieti and Houser, [as] supported by Drs. Murthy and Repsher." *Id*.

First, contrary to employer's assertion that the administrative law judge failed to consider the qualifications of the doctors in this case, Employer's Brief at 12-13, we note the administrative law judge reviewed the professional qualifications of Drs. Rieti, Houser, Murthy, and Repsher. The administrative law judge acknowledged that all of the doctors are Board-certified in internal medicine and pulmonary disease. Decision and Order at 11-12, 17, 18, 21, 27. As employer identifies no inaccuracies regarding the administrative law judge's identification of the doctors' qualifications, and as the record discloses none, employer's assertion is rejected. *See Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983).

---

[15] Dr. Murthy performed the Department of Labor examination, diagnosed COPD due to exposure to coal dust with minimal contribution from smoking, and opined that claimant is "totally disabled for his last coal mine employment due to his cardio pulmonary condition." Decision and Order at 17-18, 23; Director's Exhibit 9.

[16] Dr. Repsher examined claimant and reported that claimant had "probably severe" COPD, "overwhelmingly most likely due to" a heavy smoking history. He opined that "any contribution from the inhalation of coal mine dust would be de minimus and clinically insignificant." He opined that claimant does not have either clinical or legal pneumoconiosis, or any other pulmonary or respiratory disease caused, contributed to, or aggravated by, his coal mine employment. His other diagnoses included "hypertension, unknown cause, controlled with therapy," peripheral vascular disease, and "symptoms of left ventricular congestive heart failure." Employer's Exhibit 7, Report of June 29, 2009, pp. 3-8. On October 22, 2009, Dr. Repsher was deposed, testifying that he thought there was "a good possibility that [claimant] is disabled from further work, but [he] can't say that to a certainty…." Employer's Exhibit 7 at 25, 28; Decision and Order at 19.

Next, contrary to employer's assertion, the administrative law judge did not err in evaluating the medical opinion evidence. Specifically, the administrative law judge permissibly found that Dr. Repsher's opinion, that "there was a good possibility" that claimant is totally disabled,[17] was supportive of the opinions of Drs. Reiti and Houser, that claimant is totally disabled. *See Brown v. Director, OWCP*, 7 BLR 1-730, 1-733 (1985); Decision and Order at 23. Similarly, contrary to employer's contention, the administrative law judge permissibly found that Dr. Rieti's opinion, that claimant is "disabled for physical activity work" was sufficient to establish total disability pursuant to Section 718.204(b)(2)(iv).[18] *See Hvizdzak v. North American Coal Co.*, 7 BLR 1-469 (1984). Further, contrary to employer's contention, the administrative law judge did not err in crediting the opinions of Drs. Murthy and Houser even though they relied, in part, on pulmonary function studies that were either invalidated or failed to comply with the quality standards. As we held previously, the pulmonary function studies contained in claimant's treatment records, which Dr. Houser reviewed, are not required to comply with the quality standards. Moreover, the administrative law judge properly rejected Dr. Repsher's invalidation of Dr. Murthy's pulmonary function study. Consequently, the administrative law judge did not err in crediting the opinions of Drs. Murthy and Houser. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(en banc).

Lastly, contrary to employer's argument, the administrative law judge did not find that the non-qualifying blood gas study evidence was "subordinate" to the qualifying pulmonary function study evidence, when she found that the pulmonary function study

---

[17] On deposition, Dr. Repsher stated that while "it's not as clear-cut as we would like it to be because of his lack of cooperation with the testing, but the pulmonary function tests do suggest that he has significant COPD." Further, Dr. Repsher was asked:

> Q…[do] you believe [claimant] has the current capacity to work as a coal miner, from a pulmonary point of view?
>
> A. I really don't know, because he didn't cooperate with the pulmonary function testing, and that's critical in trying to determine whether or not somebody is disabled for further work as a coal miner. I would say that there's certainly a good possibility that he is disabled from further work, but I can't say that to a certainty because of the lack of credible pulmonary function testing.

Employer's Exhibit 7 at 25, 28; *see* Decision and Order at 19, 23; Employer's Brief at 13-14.

[18] The administrative law judge discussed the requirements of claimant's usual coal mine employment. Decision and Order at 3-4.

evidence established total disability. Rather, the administrative law judge properly observed that the non-qualifying blood gas study evidence did not contradict the qualifying pulmonary function study evidence, as the blood gas studies "measure a different aspect of lung function." Decision and Order at 23; Employer's Brief at 16. The administrative law judge was not required to find that the non-qualifying blood gas studies rebutted the qualifying pulmonary function studies of record or the medical opinions that were, in part, based upon them. *See Sweet v. Jeddo-Highland Coal Co.*, 7 BLR 1-659 (1985); *Whitaker v. Director, OWCP*, 6 BLR 1-983 (1984). Thus, we conclude that the administrative law judge properly found, after considering all the relevant evidence, that claimant established total respiratory disability pursuant to Section 718.204(b) based on the pulmonary function study and medical opinion evidence of record. *See Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.* 9 BLR 1-236 (1987)(en banc). Consequently, we affirm her finding that claimant established invocation of the presumption of total disability due to pneumoconiosis at amended Section 411(c)(4), because claimant had at least fifteen years of qualifying coal mine employment and a total respiratory disability. 30 U.S.C. §921(c)(4).

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

1. Absence of Pneumoconiosis.

In order to rebut the presumption of total disability due to pneumoconiosis at amended Section 411(c)(4), the burden shifts to employer to rebut the presumption to disprove the existence of both clinical and legal pneumoconiosis or, to establish that claimant's disabling pulmonary or respiratory impairment did not arise out of, or in connection with, coal mine employment. 30 U.S.C. §921(c)(4); *see Keene v. Consolidation Coal Co.*, 645 F.3d 844, 847, 24 BLR 2-385, 2-395 (7th Cir. 2011); *Blakley*, 54 F.3d at 1320, 19 BLR at 2-203; *see also Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011).

In finding that employer failed to rebut the presumption by disproving the existence of legal pneumoconiosis,[19] the administrative law judge found that the opinions of Drs. Rieti, Murthy and Houser failed to disprove the existence of legal pneumoconiosis because "[a]ll three agreed that claimant had pneumoconiosis as defined in the regulations."[20] Decision and Order at 28. The administrative law judge found that

[19] Contrary to employer's assertion, rebuttal of the presumption under the first means of rebuttal requires disproving the existence of both clinical and legal pneumoconiosis. *See* 30 U.S.C. §921(c)(4); Employer's Brief at 15-16, 24.

[20] Legal pneumoconiosis includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. *See* 20 C.F.R. §718.201(a)(2).

Dr. Repsher's contrary opinion was "not sufficient to overcome the [Section 411(c)(4)] presumption[,]" because it was "not well-reasoned." Decision and Order at 28.

Considering Dr. Repsher's opinion, that claimant's COPD "is entirely due to smoking, and coal dust would have made a de minimus contribution," Decision and Order at 18-19, 27, 29; Employer's Exhibits 4, 7 at 22, the administrative law judge noted that Dr. Repsher examined claimant, took relevant histories, performed objective tests, and reviewed Dr. Murthy's report. The administrative law judge also noted that he was well-qualified. Nonetheless, the administrative law judge found that Dr. Repsher's "skepticism whether coal mine dust causes clinically significant COPD even in the absence of smoking, is inconsistent with the premise underlying the regulations that coal dust causes clinically significant COPD even in the absence of smoking." Decision and Order at 27. Further, she deemed that his view, that cigarette smoking causes centrilobular emphysema, but that coal dust does not, is contrary to the premise underlying the regulations that coal dust and smoking cause damage to the lungs by similar mechanisms. Decision and Order at 27; *see* Employer's Exhibit 7 at 22, 27-28, and Report of June 29, 2009 pp. 3-8. She also found that Dr. Repsher's belief that, unlike smoking, coal dust does not cause a reduction in the FEV_1/FVC ratio, on pulmonary function studies, is inconsistent with the DOL findings demonstrating that chronic coal dust causes obstructive pulmonary disease with associated decrements in the FEV_1/FVC ratio. Decision and Order at 27; Employer's Exhibit 7, and Report of June 29, 2009 pp. 3-8. Finally, the administrative law judge found that Dr. Repsher failed to explain his reason for excluding coal dust as a contributing factor to claimant's obstructive disease. Decision and Order at 27.

Contrary to employer's challenge to the administrative law judge's evaluation of Dr. Repsher's opinion, we conclude that the administrative law judge rationally evaluated the opinion of Dr. Repsher. In promulgating the 2001 revised regulations defining pneumoconiosis, the DOL reviewed the scientific literature on the issue and found that there was a consensus among medical experts that coal dust-induced COPD is clinically significant and that the causal relationship between coal dust and COPD is not merely rare. 65 Fed. Reg. 79,938 (Dec. 20, 2000). Moreover, the scientific views accepted by the DOL indicate that coal mine dust exposure is clearly associated with clinically significant airways obstruction and chronic bronchitis, that the risk is additive with cigarette smoking, and that dust-induced emphysema and smoking-induced emphysema occur through similar mechanisms. *See* 65 Fed. Reg. 79,940-43 (Dec. 20, 2000). The DOL also accepts the scientific view that COPD may be detected from decrements in certain measures of lung function, especially FEV_1 and the ratio of FEV_1/FVC. 65 Fed. Reg. at 79,943 (Dec. 20, 2000). Thus, contrary to employer's arguments, the administrative law judge properly found that Dr. Repsher's opinion was in conflict with the scientific views accepted by the DOL, and she discounted it accordingly. *See Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 24 BLR 2-97 (7th

Cir. 2008); *Midland Coal Co. v. Director, OWCP* [*Shores*], 358 F.3d 486, 23 BLR 2-18 (7th Cir. 2004); *Summers*, 272 F.3d at 480, 22 BLR at 2-275. Further, contrary to employer's assertion, substantial evidence supports the administrative law judge's determination that Dr. Repsher's opinion is inconsistent with claimant's treatment records, which "show no evidence of significant cardiac or peripheral vascular disease, and no objective evidence of genetic predisposition to develop COPD." Decision and Order at 28. Finally, contrary to employer's assertion, the administrative law judge properly found that Dr. Repsher's opinion regarding the existence of legal pneumoconiosis was insufficiently reasoned because the doctor failed to offer any credible explanation for excluding coal dust exposure as a contributing factor in claimant's obstructive disease. Decision and Order at 27; *Poole*, 897 F.2d at 895, 13 BLR at 2-355; *Amax Coal Co. v. Burns*, 855 F.2d 499 (7th Cir. 1988); *Clark*, 12 BLR at 1-155.

Because Dr. Repsher's opinion is the only medical opinion supportive of employer's affirmative burden on rebuttal, employer's assertions that the administrative law judge erred in failing to fully evaluate the other medical opinions, or that the administrative law judge's findings fail to accord with the requirements of the APA, are meritless. *See* Employer's Brief at 19, 21, 24-28; 30 U.S.C. §921(c)(4). Employer's failure to rule out the existence of legal pneumoconiosis, therefore, precludes a finding that claimant did not have pneumoconiosis. *See Beeler*, 521 F.3d at 726, 24 BLR at 2-103; *Stalcup v. Peabody Coal Co.*, 477 F.3d 482, 484, 22 BLR 2-35, 2-37 (7th Cir. 2007); *Peabody Coal Co. v. McCandless*, 255 F.3d 465, 468-69, 22 BLR 2-311, 2-318 (7th Cir. 2001). We, therefore, affirm the administrative law judge's finding that employer failed to rebut the presumption at amended Section 411(c)(4) by disproving the existence of pneumoconiosis.[21]

2. Absence of Disability Causation.

Next, in finding that employer failed to rebut the presumption by establishing that claimant's disabling respiratory impairment did not arise out of, or in connection with, coal mine employment, the administrative law judge found that the opinions of Drs. Rieti, Houser and Murthy could not rebut the presumption because they found that claimant's disability was caused by his legal pneumoconiosis. Considering Dr. Repsher's opinion, the administrative law judge found "no specific and persuasive reasons for concluding that Dr. Repsher's judgment that exposure to coal dust did not cause or contribute to the

[21] Because employer has failed to disprove the existence of legal pneumoconiosis, we need not address its argument that the administrative law judge erred in finding that it failed to disprove the existence of clinical pneumoconiosis. 30 U.S.C. §921(c)(4); *see Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[c]laimant's [disabling] impairment did not rest upon his disagreement with my finding that the [e]mployer failed to rebut the presumption that the [c]laimant has pneumoconiosis." Decision and Order at 29. She, therefore, rationally concluded that the same reasons that undercut Dr. Repsher's finding that claimant does not have legal pneumoconiosis also undercut his opinion that coal mine employment did not contribute to claimant's disability. *See Stalcup*, 477 F.3d at 484, 24 BLR at 2-37; *McCandless*, 255 F.3d at 468-69, 22 BLR at 2-318; *see also Poole*, 897 F.2d at 895, 13 BLR at 2-355. Consequently, the administrative law judge properly found "that Dr. Repsher's opinion that coal dust did not contribute to the [c]laimant's obstructive disease cannot rebut the presumption as to the cause of his disability, either." Decision and Order at 29; *see Scott v. Mason Coal Co.*, 60 F.3d 1138, 19 BLR 2-257 (4th Cir. 1995); *Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995). She, therefore, properly found that employer failed to meet its burden to establish rebuttal of the presumption at amended Section 411(c)(4) by establishing that claimant's disability was not due to coal mine employment. *See Blakley*, 54 F.3d at 1320, 19 BLR at 2-203.

Because claimant established invocation of the presumption that he was totally disabled due to pneumoconiosis at amended Section 411(c)(4), and employer has not rebutted the presumption, we affirm the administrative law judge's award of benefits.

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

SO ORDERED.

_____

ROY P. SMITH
Administrative Appeals Judge

_____

REGINA C. McGRANERY
Administrative Appeals Judge

_____

BETTY JEAN HALL
Administrative Appeals Judge