

BRB Nos. 10-0585 BLA  
and 10-0585 BLA-A

WENDELL E. ROLLINS	)	
	)	
Claimant-Respondent	)	
Cross-Petitioner	)	
	)	
v.	)	
	)	
MYSTIC, LLC	)	DATE ISSUED: 05/29/2012
	)	
and	)	
	)	
BRICKSTREET MUTUAL INSURANCE	)	
COMPANY, INCORPORATED	)	
	)	
Employer/Carrier-Petitioner	)	
Cross-Respondent	)	
	)	
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 Ralph A. Romano,  
Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Paul E. Frampton (Bowles, Rice, McDavid, Graff & Love), Charleston,  
West Virginia, for employer/carrier.

Jonathan Rolfe (M. Patricia Smith, Solicitor of Labor; Rae Ellen James,  
Associate Solicitor; Michael J. Rutledge, Counsel for Administrative  
Litigation and Legal Advice), Washington, D.C., for the Director, Office of  
Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer/carrier (employer) appeals, and claimant cross-appeals, the Decision and Order Awarding Benefits (2008-BLA-06021) of Administrative Law Judge Ralph A. Romano, with respect to a claim filed on November 13, 2007, pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(l)) (the Act). After crediting claimant with 29.68 years of underground coal mine employment, the administrative law judge adjudicated the claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge initially determined that claimant established that he has clinical and legal pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a)(2), (4), 718.203(b) and that he suffers from a totally disabling respiratory impairment due to coal workers' pneumoconiosis at 20 C.F.R. §718.204(b)(2), (c).<sup>1</sup> The administrative law judge then found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis set forth in amended Section 411(c)(4), 30 U.S.C. §921(c)(4), and employer did not rebut it.<sup>2</sup> Accordingly, the administrative law judge awarded benefits.

Employer argues on appeal that the administrative law judge erred in finding that the preponderance of the evidence supported a finding of total disability and total disability due to pneumoconiosis. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has responded and maintains that employer has not adequately challenged the administrative

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<sup>1</sup> Clinical pneumoconiosis is defined as "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). 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).

<sup>2</sup> Relevant to this case, Section 1556 of Public Law Number 111-148, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4)), reinstated the "15-year presumption" of Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), for claims filed after January 1, 2005, that were pending on or after March 23, 2010. Under Section 411(c)(4), if a miner establishes at least fifteen years of qualifying coal mine employment, and that he or she has a totally disabling respiratory impairment, there is a rebuttable presumption that he or she is totally disabled due to pneumoconiosis.

law judge's finding that employer failed to prove that claimant's totally disabling impairment did not arise out of, or in connection with, his coal mine employment.<sup>3</sup>

In claimant's cross-appeal, he contends that the administrative law judge erred in finding that claimant did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and in crediting Dr. Oesterling's pathology report at 20 C.F.R. §718.202(a)(2). Claimant also asserts that the administrative law judge erred in failing to address a pathology report and a pulmonary function study (PFS) that are included in claimant's treatment records. Employer responds and urges the Board to reject claimant's allegations of error. The Director did not file a response brief in claimant's cross-appeal.

The Board's scope of review is defined by statute. The administrative law judge's findings must be affirmed if they are rational, supported by substantial evidence, and in accordance with applicable law.<sup>4</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

#### **I. Invocation of the Amended Section 411(c)(4) Presumption**

Employer argues that the administrative law judge erred in determining that Dr. Ranavaya's opinion was sufficient to establish total disability at 20 C.F.R. §718.204(b)(2).<sup>5</sup> Employer also alleges that the administrative law judge erred in

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<sup>3</sup> We affirm, as unchallenged on appeal, the administrative law judge's length of coal mine employment determination, his finding that claimant established the existence of clinical pneumoconiosis arising out of coal mine employment at 20 C.F.R. §§718.202(a), 718.203(b), and his finding that employer cannot rebut the amended Section 411(c)(4) presumption by proving that claimant does not have pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

<sup>4</sup> The record reflects that claimant's coal mine employment was in West Virginia. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

<sup>5</sup> Dr. Ranavaya examined claimant on January 15, 2008, at the request of the Department of Labor. Director's Exhibit 10. Dr. Ranavaya noted that claimant last worked as a continuous miner operator and that his duties required medium to heavy manual labor. *Id.*; Claimant's Exhibit 11 at 33-34. Dr. Ranavaya diagnosed pneumoconiosis and chronic bronchitis, both related to coal dust exposure, and a moderately severe pulmonary impairment that is totally disabling. Director's Exhibit 10. Regarding the extent to which the diagnosed conditions contributed to claimant's

discrediting the contrary opinions of Drs. Repsher and Oesterling.<sup>6</sup> Employer further maintains, therefore, that the administrative law judge erred in finding that claimant established invocation of the rebuttable presumption of total disability due to pneumoconiosis set forth in amended Section 411(c)(4).

Employer's contentions are without merit. The administrative law judge acted within his discretion as fact-finder in determining that Dr. Ranavaya's diagnosis of a totally disabling respiratory impairment is well-documented and well-reasoned, as it is based on objective studies and an accurate understanding of the exertional requirements of claimant's job duties. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); Decision and Order at 18. Regarding the PFS upon which Dr. Ranavaya relied, the administrative law judge rationally accorded greater weight to Dr. Ranavaya's opinion, that the study was valid, than to the contrary opinion of Dr. Repsher, based upon Dr. Ranavaya's status as the administering physician and Dr. Gaziano's report validating the study. *See Siegel v. Director, OWCP*, 8 BLR 1-156 (1985); Decision and Order at 15; Director's Exhibit 10; Claimant's Exhibit 11 at 53. Moreover, contrary to employer's argument, the administrative law judge was not required to discredit Dr. Ranavaya's opinion on the ground that the PFS was nonqualifying.<sup>7</sup> *See Smith v. Director, OWCP*, 8

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impairment, Dr. Ranavaya stated, "coal workers' pneumoconiosis is the substantial contributing factor and the material cause of this man's moderately severe respiratory impairment[.]" *Id.*

<sup>6</sup> Dr. Repsher examined claimant on April 23, 2008, and reviewed the results of a lung biopsy obtained in October 2007. Employer's Exhibits 3, 7, 9. Dr. Repsher opined that claimant "is not suffering from coal workers' pneumoconiosis, indeed he is not suffering from any clinically significant respiratory or pulmonary disease or condition. He does have a benign simple pneumoconiosis, which is of no clinical significance." Employer's Exhibit 9. Dr. Oesterling reviewed medical records and tissue slides from claimant's lung biopsy. Employer's Exhibit 8. Dr. Oesterling diagnosed mild coal workers' pneumoconiosis and middle lobe syndrome. *Id.* Dr. Oesterling concluded that claimant's weight and the inflammation and bronchiectasis attributable to middle lung syndrome "would have hampered his breathing capacity," but were unrelated to coal dust exposure. *Id.*

<sup>7</sup> A "qualifying" pulmonary function study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendix B, for establishing total disability. *See* 20 C.F.R. §718.204(b)(2)(i). A "nonqualifying" study exceeds those values.

BLR 1-258 (1985); *Marsiglio v. Director, OWCP*, 8 BLR 1-190 (1985). The administrative law judge also reasonably credited Dr. Ranavaya's statement that the results of claimant's PFS revealed a moderately severe pulmonary impairment, caused by a mixed obstructive and restrictive defect. See *Hicks*, 138 F.3d at 532, 21 BLR at 2-334; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76.

In addition, the administrative law judge acted within his discretion in determining that Dr. Ranavaya had a better understanding of the exertional requirements of claimant's last coal mine job, as a continuous miner operator, than did Drs. Repsher and Oesterling. See *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997); Decision and Order at 17-18. As noted by the administrative law judge, Dr. Ranavaya testified at his deposition that he was familiar with the nature of claimant's duties and that they required "somewhere between a medium to heavy physical demand level," according to the *Dictionary of Occupational Titles*. Claimant's Exhibit 11 at 34-35; Decision and Order at 17. The administrative law judge accurately found that, although Dr. Repsher was aware of the title of claimant's last job, "he [did] not discuss the physical requirements of his job[] in any reports or at deposition." Decision and Order at 17; Employer's Exhibits 3, 7 (at 6), 9. Similarly, the administrative law judge indicated correctly that Dr. Oesterling "did not discuss [c]laimant's coal mining duties[,] despite having reviewed [c]laimant's coal mine employment history form." Decision and Order at 17; Employer's Exhibit 8. The administrative law judge reasonably concluded, therefore, that Dr. Ranavaya's opinion diagnosing a totally disabling respiratory impairment was entitled to greater weight than the opinions of Drs. Repsher and Oesterling. See *Underwood*, 105 F.3d at 949, 21 BLR at 2-28.

Finally, we reject employer's arguments that the administrative law judge erred in failing to accord greater weight to Dr. Repsher's opinion, based upon his status as a Board-certified pulmonologist, and in failing to weigh Dr. Ranavaya's opinion against the contrary probative evidence of record. A physician's qualifications do not render irrelevant the requirement that his or her opinion be reasoned and documented. *Consolidation Coal Co. v. Held*, 314 F.3d 184, 22 BLR 2-564 (4th Cir. 2002). The administrative law judge noted the physicians' respective qualifications but, as indicated *supra*, rationally determined that Dr. Repsher's opinion was entitled to diminished weight.<sup>8</sup> Employer is also incorrect in alleging that the administrative law judge did not address the contrary probative evidence. The administrative law judge stated:

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<sup>8</sup> The administrative law judge noted correctly that Dr. Ranavaya is Board-certified in Occupational Medicine, Dr. Repsher is Board-certified in Internal Medicine and Pulmonary Medicine, and Dr. Oesterling is Board-certified in Anatomic and Clinical Pathology and Nuclear Medicine. Decision and Order at 10-12; Director's Exhibit 10; Employer's Exhibits 3, 8.

Weighing all of the evidence on total disability together, I find that Claimant has established total disability due to a respiratory or pulmonary impairment by a preponderance of the evidence. I find that the medical opinion evidence outweighs the pulmonary function tests and blood gas studies. Dr. Ranavaya physically examined the Claimant, noting his work history, and opined that Claimant's pulmonary condition would prevent him from returning to work in the coal mines. In other words, the physicians, of whom Dr. Ranavaya's opinion is given the most weight, were in the best position to physically examine the Claimant and weigh his present pulmonary condition against his job duties. Therefore, I accord the physicians' opinions the most weight and find that Claimant has established total disability under § 718.204(b)(2).

Decision and Order at 18.

Accordingly, we affirm the administrative law judge's determination that claimant established total disability at 20 C.F.R. §718.204(b)(2) and invoked the rebuttable presumption set forth in amended Section 411(c)(4).

## **II. Rebuttal of the Amended Section 411(c)(4) Presumption**

The administrative law judge found that the opinions in which Drs. Repsher and Oesterling stated that claimant does not have a respiratory impairment related to coal dust exposure were entitled to little weight, as they did not diagnose a disabling respiratory impairment. Decision and Order at 19-20, *citing Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995). In contrast, the administrative law judge determined:

Dr. Ranavaya's opinion is entitled to weight because it is well-reasoned. Dr. Ranavaya adequately took into account Claimant's coal dust exposure, type of impairment, and lack of smoking history to opine that Claimant's pneumoconiosis is a substantial cause of his impairment. I recognize that there is some discrepancy in the biopsy evidence over whether the pneumoconiosis present was slight or prevalent. That issue is not dispositive here because Dr. Ranavaya found the presence of both clinical and legal pneumoconiosis; Claimant's clinical and legal pneumoconiosis (chronic bronchitis) were both contributing to his disability. Accordingly, I grant Dr. Ranavaya's opinion on disability causation weight.

*Id.* at 19. The administrative law judge concluded that Dr. Ranavaya's opinion outweighed the opinions of Drs. Repsher and Oesterling and, therefore, was sufficient to establish that claimant is totally disabled due to pneumoconiosis. *Id.* at 20. Thus, the

administrative law judge further found that employer did not rebut the presumption that claimant's total disability arose out of, or in connection with, his coal mine employment. *Id.*

Employer contends that the administrative law judge erred in relying upon the decision of the United States Court of Appeals for the Fourth Circuit in *Toler* to accord less weight to the opinions of Drs. Repsher and Oesterling. Employer's allegation of error is without merit. Under the Fourth Circuit's holding in *Toler*, an administrative law judge who finds that the miner suffers from pneumoconiosis and is totally disabled, "may not credit a medical opinion that the former did not cause the latter, unless the [administrative law judge] can and does identify specific and persuasive reasons for concluding that the doctor's judgment on the question of disability causation does not rest upon [his] disagreement with the [administrative law judge's] finding as to either or both of the predicates in the causal chain." *Toler*, 43 F.3d at 116, 19 BLR at 2-83.

In this case, Drs. Repsher and Oesterling opined, contrary to the administrative law judge's finding, that claimant does not have legal pneumoconiosis, while Dr. Repsher opined that claimant is not totally disabled.<sup>9</sup> Employer's Exhibits 3, 8, 9. The administrative law judge, therefore, properly found that their opinions on the issue of disability causation were entitled to less weight than Dr. Ranavaya's opinion and, therefore, insufficient to establish that claimant's totally disabling impairment is unrelated to his coal mine employment. *Toler*, 43 F.3d at 16, 19 BLR at 2-83.

Thus, we affirm the administrative law judge's determination that employer did not rebut the amended Section 411(c)(4) presumption, that claimant is totally disabled due to pneumoconiosis, and the award of benefits. Because we have affirmed the award of benefits, we need not address claimant's cross-appeal. *See Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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<sup>9</sup> The administrative law judge's determination, that the preponderance of the evidence established that claimant has legal pneumoconiosis under 20 C.F.R. §718.202(a)(4), is rational and supported by substantial evidence. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); Decision and Order at 13. The administrative law judge acted within his discretion in finding that Dr. Ranavaya's opinion, that claimant's mixed obstructive and restrictive impairment was caused by coal dust exposure, outweighed the contrary opinions of Drs. Repsher and Oesterling, as Dr. Ranavaya provided a more thorough explanation of his conclusion. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); Decision and Order at 13.

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