U.S. Department of Labor

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

BRB Nos. 15-0008 BLA
and 15-0009 BLA

DEBORAH HALL (Widow of and o/b/o GERALD HALL)	)	
Claimant-Respondent	)	
v.	)	
CARBON RIVER COAL CORPORATION	)	DATE ISSUED: 10/19/2015
Employer-Petitioner	)	
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 in Miner's and Survivor's Claims of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

W. Gerald Vanover, Jr. (Morgan, Collins & Yeast), London, Kentucky, for claimant.

Paul E. Jones (Jones, Walters, Turner & Shelton PLLC), Pikeville, Kentucky, for employer.

Jonathan Rolfe (M. Patricia Smith, Solicitor of Labor; Rae Ellen Frank 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: HALL, Chief Administrative Appeals Judge, BOGGS and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits in Miner's and Survivor's Claims (2010-BLA-5578 and 2011-BLA-6305) of Administrative Law Judge John P. Sellers, III, rendered on a subsequent miner's claim and a survivor's claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012)(the Act).[1] Initially, addressing the miner's claim, the administrative law judge found that because claimant failed to establish that the miner worked for at least fifteen years in qualifying coal mine employment, she was not entitled to invocation of the rebuttable presumption that the miner was totally disabled due to pneumoconiosis, set forth at amended Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4). Decision and Order at 18-20. Turning to the merits of the miner's claim, the administrative law judge

[1] The miner's first application for benefits, filed on January 24, 2000, was denied on April 26, 2000, as the miner did not establish that he was totally disabled due to pneumoconiosis. The miner took no further action until filing the instant subsequent claim on February 15, 2008. Following the miner's death on April 7, 2011, his widow (claimant) filed a survivor's claim on July 11, 2011. Director's Exhibits 3, 52 at 8-11, 61-63; Decision and Order at 2, 4. Claimant is pursuing benefits on both the miner's claim and her survivor's claim.

[2] In 2010, 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, reinstating Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), which provides, in pertinent part, a rebuttable presumption that the miner was totally disabled due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4)(2012).

Qualifying coal mine employment is work in an underground coal mine or in coal mines in conditions substantially similar to those in underground mines. 20 C.F.R. §718.305(b)(i). 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).

In the instant case, the administrative law judge found, consistent with the parties' stipulation, that the miner worked for twenty-four years in above-ground coal mining. However, "[g]iven the absence of sufficient evidence in the record regarding the [m]iner's dust exposure as a surface miner," the administrative law judge found "that the fifteen-year presumption of total disability due to pneumoconiosis is not invoked in this case." Decision and Order at 20. This finding is affirmed, as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

found that the newly submitted evidence established total respiratory disability pursuant to 20 C.F.R §718.204(b)(2)(iv), and pursuant to 20 C.F.R. §718.204(b) overall, the element of entitlement previously adjudicated against the miner. Consequently, the administrative law judge found that claimant established a change in an applicable condition of entitlement in the miner's subsequent claim pursuant to 20 C.F.R §725.309(c).[3] Decision and Order at 18, 22. Acknowledging employer's concession that the miner suffered from simple pneumoconiosis, the administrative law judge also found that the miner's total respiratory disability was substantially caused by his coal mine employment. 20 C.F.R. §§718.202(a), 718.204(c). *Id*. at 7, 10, 18. Accordingly, the administrative law judge awarded benefits in the miner's claim. Further, based on the award of benefits in the miner's claim, the administrative law judge awarded benefits in the survivor's claim.[4]

On appeal, employer assigns error to the administrative law judge's findings of total respiratory disability and disability causation. 20 C.F.R §§718.204(b), (c). Specifically, employer contends that the administrative law judge improperly found that the miner's usual coal mine employment included the fifteen years he worked for employer and involved heavy manual labor. Employer also contends that the administrative law judge failed to weigh the non-qualifying objective testing against the medical opinion evidence, and selectively considered the evidence, contrary to the requirements of the Administrative Procedure Act (the APA).[5] Claimant responds in

[3] Where a miner files an application for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless "one of the applicable conditions of entitlement … has changed since the date upon which the order denying the prior claim became final." 20 C.F.R §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3); 78 Fed. Reg. 59, 102, 59,118 (Sept. 25, 2013); *see* Decision and Order at 11.

[4] With respect to survivors' claims, the 2010 amendments also revived the "derivative entitlement" provision of Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), for claims filed after January 1, 2005, that are pending on or after March 23, 2010. Under Section 932(*l*), a survivor of a miner who was eligible to receive benefits at the time of his or her death is automatically entitled to survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*); *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193 (2010).

[5] The Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), 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 material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A).

support of the awards of benefits. The Director, Office of Workers' Compensation Programs, filed a limited response,[6] but did not otherwise participate in the appeal.[7]

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.[8] 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).

In order to establish entitlement to benefits in the miner's claim under 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, that the miner was totally disabled, and that the miner's total disability was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(en banc).

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[6] The Director, Office of Workers' Compensation Programs (the Director), contends that the administrative law judge erred in finding that claimant failed to establish invocation of the irrebuttable presumption of totally disabling pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), based on the uncontradicted diagnosis of complicated pneumoconiosis in the autopsy report of Dr. Ferguson. The Director contends, however, that if the Board affirms the administrative law judge's award of benefits in the miner's and the survivor's claims, the administrative law judge's error in failing to find invocation of the irrebuttable presumption at Section 411(c)(3) would be harmless. Director's Response at 1 n.1; *see* Director's Exhibit 52 at 8-10.

[7] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant is not entitled to invocation of the presumption of total disability due to pneumoconiosis pursuant to amended Section 411(c)(4), that the evidence failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii), and that the evidence established the existence of simple pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order at 7-9, 16, 18; Employer's July 28, 2014 Post-Hearing Brief at 11.

[8] The miner's last coal mine employment was in Kentucky. Director's Exhibit 4; Hearing Transcript at 14; Decision and Order at 4, 12. 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, 1-202 (1989)(en banc).

I. Total Disability

Employer first contends that the administrative law judge erred in finding that the miner's usual coal mine employment included all the duties he performed during the fifteen-year period before he switched to only driving a truck and that this work included "at times … hard manual labor." Decision and Order at 17. Instead, employer argues that the administrative law judge should have found that the miner's usual coal mine employment was as a truck driver for Frazier Creek Mining (Frazier) from November 2002 to May 2003, and that this work did not include "hard manual labor." Employer's Brief at 6, 9.

In finding that the miner's usual coal mine employment included the duties performed in the fifteen years prior to being a truck driver, the administrative law judge characterized the miner's six months of work as a truck driver for Frazier as "the relatively short period of time the [m]iner spent solely as a truck driver." Decision and Order at 17. He concluded that the miner's prior fifteen years of work for employer constituted his usual coal mine work and that that employment required various duties, including "at times … hard manual labor." Decision and Order at 17.

It is claimant's burden to establish the exertional requirements of the miner's usual coal mine employment, which then provide a basis of comparison for the administrative law judge to evaluate medical assessments of a miner's capabilities and reach a conclusion regarding total disability. *See McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Cregger v. U. S. Steel Corp.*, 6 BLR 1-1219 (1984). A miner's "usual coal mine employment" is "the most recent job the miner performed regularly and over a substantial period of time." *Shortridge v. Beatrice Pocahontas Coal Co.*, 4 BLR 1-534, 1-539 (1982). "This determination must be made on a case by case basis and will vary depending upon the employment history in the individual case." *Shortridge*, 4 BLR at 1-539.

In this case, the administrative law judge properly found that the miner's fifteen years of employment for employer was his usual coal mine employment, as it was the work the miner performed regularly over a substantial period of time. *Shortridge*, 4 BLR at 1-539. That finding is therefore affirmed.

Additionally, the administrative law judge properly found that this work included hard manual labor, as the miner's duties were "multifold - to sweep coal, operate a drill, perform as a member of the powder crew, and drive a truck and grader." Decision and Order at 17. In particular, the administrative law judge noted that the miner:

> described the drill he operated as a rock drill, and he indicated that as a member of the powder crew he loaded holes and shoveled dirt into holes. He added: 'I set off shot when the regular blaster was absent. I used a

> sweeper to sweep coal, drove a rock truck, drove a powder truck and ran a grader.' Given the relative shortness of the time the [m]iner spent solely as a truck driver, I find that his usual coal mine employment included all the duties he performed during the fifteen-year period before he switched to only driving a truck. I find that considering all of his various job duties, the [m]iner was clearly required at times to perform hard manual labor.

Id.

Employer contends, however, that the administrative law judge erred in finding that the miner's usual coal mine employment involved hard manual labor because he did not "cite to the tasks" the miner regularly performed that required hard manual labor, or "detail any position which required heavy lifting or carrying." Employer's Brief at 8. Moreover, employer asserts that the administrative law judge's finding that the miner's usual coal mine employment required heavy labor "at times" conflicts with the miner's claim form and employer's statement that that the miner's job did not require heavy manual labor. Decision and Order at 17; Director's Exhibit 7 at 3; *see* Employer's Brief at 9. Additionally, employer contends that Dr. Rasmussen's narrative describing the miner's work duties "cannot be accepted over the description provided by the miner on his application which indicates that [he] was sitting for more than eight hours a day."[9] *Id*.

The administrative law judge, as fact-finder, is charged with evaluating the evidence and weighing its credibility. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1071 (6th Cir. 2013); *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983). Our review of the record indicates that the administrative law judge assessed the relevant evidence regarding the miner's usual coal mine work for employer and permissibly credited the miner's depiction of "multifold" work duties. Decision and Order at 17. First, the administrative law judge considered Dr. Rasmussen's report documenting that the last job the miner held for more than one year:

> was that of grader operator. In addition to operating his grader, he did help load holes carrying 50 lb. bags 50-100 feet, several bags per hole and shoveling to fill the holes. Thus, he has done some heavy manual labor.

Director's Exhibit 14 at 41. The administrative law judge reviewed Dr. Dahhan's report indicating that "all" of the miner's work was operating a drill, Director's Exhibit 18 at 3-4, and that Dr. Broudy identified the miner's usual coal mine work as a rock driller. *Id*. Moreover, the administrative law judge considered the miner's claim form, noting that

[9] The miner indicated that his last job was as a "grader operator," involving "8 or more" hours sitting, and "about 2" hours standing. *See* Director's Exhibit 5 at 1-2; Decision and Order at 17.

the miner answered "Various" under the section requesting "Job Title" on his claim form, and described the duties required as including loading holes, shoveling dirt, setting off shot, and sweeping coal. Decision and Order at 17. Based on his consideration of all of this evidence, the administrative law judge properly concluded that the miner performed extra duties in conjunction with his work as a "grader," and properly found that some of these duties required "hard manual labor" at times. Consequently, we affirm his determination.

Next, employer argues that the administrative law judge erred in finding total respiratory disability established based on the opinion of Dr. Rasmussen, which was based on a blood gas study showing "marked impairment in oxygen transfer during exercise." Decision and Order at 17; Employer's Brief at 11-12. Employer contends that the administrative law judge erred in crediting Dr. Rasmussen's opinion without considering the fact that subsequent blood gas studies conducted by Drs. Dahhan and Broudy showed improvement in respiratory function. In particular, employer contends that the administrative law judge erred in crediting the opinion of Dr. Rasmussen, based on the administrative law judge's statement that more recent evidence was more probative than earlier evidence on the issue of total disability. Thus, employer contends that Dr. Rasmussen's opinion, finding total respiratory disability, was undermined by the improvement in respiratory function exhibited on the subsequent blood gas study conducted by Dr. Dahhan.[10]

In considering the medical evidence on the issue of total respiratory disability submitted with the subsequent miner's claim, the administrative law judge found that all of the newly submitted pulmonary function and blood gas studies were non-qualifying.[11] Turning to the medical opinion evidence, the administrative law judge found that Dr. Rasmussen opined that "the [m]iner lacked the pulmonary capacity to perform his usual coal mine employment." Decision and Order at 9. The administrative law judge noted that, in addition to a physical examination, Dr. Rasmussen's opinion was based on the miner's work history, symptoms, x-ray and objective testing, including a pulmonary

[10] Although employer initially argues that the blood gas studies conducted by both Drs. Dahhan and Broudy refute Dr. Rasmussen's finding of total disability, we do not address Dr. Broudy's blood gas study as employer fails to make any specific arguments concerning the administrative law judge's treatment of it. *See Sarf v. Director, OWCP*, 10 BLR 1-119 (1986).

[11] The administrative law judge found that Dr. Rasmussen's pulmonary function study and blood gas study of March 18, 2008 were non-qualifying, that Dr. Dahhan's pulmonary function study and blood gas study of July 16, 2008 were non-qualifying and that Dr. Broudy's pulmonary function study and blood gas study of July 21, 2008 were non-qualifying. Director's Exhibits 14, 18 and 20.

function study and a blood gas study. The administrative law judge noted that Dr. Rasmussen found that the miner's pulmonary function study revealed a moderate, irreversible restrictive ventilatory impairment and that the miner's blood gas study showed a marked impairment in oxygen during exercise. Director's Exhibit 14. Considering Dr. Dahhan's opinion, which was based on a July 16, 2008 examination, as well as the miner's symptoms, work history, an x-ray, a pulmonary function study and a blood gas study, the administrative law judge found that Dr. Dahhan concluded that "the [m]iner had a moderate respiratory impairment." Decision and Order at 17; Director's Exhibit 18. He opined that the miner could not perform hard manual labor because of his moderate respiratory impairment, although he could perform moderate manual labor. Finally, considering Dr. Broudy's opinion, based on his July 21, 2008 examination of the miner, along with the miner's symptoms, work history, an x-ray, a pulmonary function study, and a blood gas study, the administrative law judge found that, although Dr. Broudy opined that the miner's pulmonary function study revealed a moderate restrictive defect and that his blood gas study showed mild arterial hypoxemia, the doctor did not express an opinion as to whether the miner could perform his usual coal mine employment as a "rock driller." Decision and Order at 17; Director's Exhibit 20. Weighing the pulmonary function study, blood gas study, and medical opinion evidence together, the administrative law judge credited Dr. Rasmussen's opinion, which he found supported by Dr. Dahhan's opinion, to find total respiratory disability established pursuant to Section 718.204(b)(2)(iv) and total respiratory disability established pursuant to Section 718.204(b) overall.

Initially, the administrative law judge properly determined that the new evidence submitted with the 2008 subsequent miner's claim was "far more probative" of the miner's respiratory condition prior to his death than "any conclusions based on older examinations and older testing" from his 2000 claim.[12] Decision and Order at 11-12, 18; *Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *Gillespie v. Badger Coal Co.*, 7 BLR 1-839 (1985). However, contrary to employer's contention, it does not follow from the administrative law judge's finding that the 2008 evidence is more probative than the 2000 evidence, that the administrative law judge was required to discount Dr. Rasmussen's March 2008 opinion, finding total disability, in favor of Dr. Dahhan's July 2008 blood gas study showing that the miner's respiratory impairment had improved. In crediting Dr. Rasmussen's opinion of total disability, the administrative law judge properly relied on Dr. Rasmussen's opinion as a whole to find the miner totally disabled. *Cornett v. Benham Coal Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000). Moreover, the administrative law judge noted that Dr. Rasmussen based his finding of total disability

[12] For example, the administrative law judge determined that Dr. Forehand's 2000 report finding no respiratory impairment, was "too old to be probative." Decision and Order at 17-18. That finding is affirmed, as unchallenged on appeal. *Skrack*, 6 BLR at 1-711.

"principally" on the miner's impairment in oxygen transfer and hypoxia during "barely moderate treadmill exercise testing."[13] Decision and Order at 8-10, 20; Director's Exhibit 14.

Additionally, despite employer's assertion that Dr. Dahhan's July 2008 blood gas testing showed improvement and thus undermined Dr. Rasmussen's assessment of total respiratory disability, Dr. Dahhan opined that "the miner has a moderate respiratory impairment *as documented by the pulmonary function studies*." Director's Exhibit 18 at 4 (emphasis added). Thus, the administrative law judge rationally found that Dr. Dahhan "concurred with Dr. Rasmussen that the miner had a moderate respiratory impairment," and that Dr. Rasmussen's opinion "is supported by that of Dr. Dahhan."[14] Decision and Order at 17, 20. Additionally, the administrative law judge considered Dr. Broudy's opinion that the miner had a moderate restrictive defect, restrictive defect on lung volumes, and "at-rest" arterial blood gas studies showing mild arterial hypoxemia. *Id*. at 17; Director's Exhibit 20. Therefore, employer's contention that Dr. Dahhan's July 2008 blood gas testing showed normal "peak exercise values," and an improvement in the miner's respiratory function, fails to demonstrate error in the administrative law judge's conclusion that the miner "had become totally disabled from a respiratory or pulmonary standpoint," by the time he was examined by Dr. Rasmussen in March 2008 and Dr. Dahhan in July 2008. *Id*.

Moreover, contrary to employer's assertion that the administrative law judge failed to weigh the medical opinion evidence of total disability against the contrary objective evidence, the administrative law judge properly considered all of the evidence in determining that the miner was totally disabled. *See* Decision and Order at 16, 22; 20 C.F.R §718.204(b)(iv); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon*. 9 BLR 1-236 (1987)(en banc); Employer's Brief at 14. Consequently, substantial evidence supports the administrative law judge's finding that the miner was totally disabled from a respiratory standpoint, and therefore established a change in an applicable condition of entitlement pursuant to Section 725.309(c), total respiratory disability pursuant to Section

[13] Employer's assertion that the administrative law judge failed to explain why he relied on the results of Dr. Rasmussen's exercise blood gas study when he found the weight of the exercise blood gas study evidence to be non-qualifying for total disability is meritless, as non-qualifying objective test values do not preclude a finding of total disability by a physician. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 57, 22 BLR 2-107, 2-123 (6th Cir. 2000).

[14] Dr. Dahhan also concluded that the miner couldn't perform hard manual labor (which the administrative law judge had determined was required by claimant's usual coal mine employment). *See* Decision and Order at 17.

718.204(b)(2)(iv), and total respiratory disability pursuant to Section 718.204(b) overall. Those findings are therefore affirmed. Decision and Order at 18, 22; *see Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

II. Disability Causation

Employer argues that the administrative law judge erred in evaluating the medical opinions on the issue of disability causation. Reiterating its argument on total disability, employer contends that Dr. Rasmussen's disability causation opinion was flawed, as Dr. Rasmussen attributed the respiratory impairment he saw on the miner's blood gas study to coal dust exposure, rather than the miner's heart condition, without considering Dr. Dahhan's subsequent blood gas study showing an improvement in the miner's respiratory condition. Employer's Brief at 15-16. Employer additionally asserts that the administrative law judge selectively analyzed the conflicting medical opinions, and was "critical of the reasoning offered by Drs. Dahhan and Broudy," without applying the same standard to Dr. Rasmussen. *Id*. at 15. Employer's assertions are without merit.

The administrative law judge examined the relevant opinions of Drs. Broudy, Rasmussen and Dahhan in determining that the miner's "total disability was due to his pneumoconiosis." Decision and Order at 20. The administrative law judge acknowledged that Dr. Broudy "did not directly discuss the origin of the miner's total disability," but found that his description of the miner's deteriorating lung condition, and his diagnoses of clinical and legal pneumoconiosis, "tend[s] to corroborate Dr. Rasmussen's opinion that the source of the miner's totally disabling impairment was his lungs and not his heart." *Id*. at 21; Director's Exhibit 20. Furthermore, the administrative law judge stated that, despite noting the miner's coronary bypass grafting in 2000, Dr. Broudy "only discussed the deterioration of the miner's lung function and gave no indication that he attributed the decrease in the miner's objective testing to his heart rather than his lungs." *Id*.

Next, the administrative law judge found that Dr. Rasmussen identified a normal $PETCO_2$, $PECO_2$, and VD/DT ratio demonstrating that the disability observed was due to the miner's lungs, and not to his heart. Decision and Order at 9-10, 20; Director's Exhibit 14. He examined Dr. Rasmussen's explanation that, "the only known cause of the miner's disabling lung disease 'was his coal mine exposure with his likely significant silicon dioxide exposure,' " and that "the pattern we see in this case is consistent with silicosis." Decision and Order at 20. The administrative law judge further noted Dr. Rasmussen's view that, although the miner had heart disease, there was "nothing to suggest cardiac disease as the cause of his gas exchange impairment since he exceeded his anaerobic threshold in a normal fashion and not prematurely." *Id*.

Conversely, in view of Dr. Dahhan's failure to "offer any specifics," the administrative law judge was unconvinced by Dr. Dahhan's opinion that the pattern of

the miner's pulmonary function and arterial blood gas study values confirmed that his condition was due to congestive heart failure, rather than his lungs. *Id*. at 10-11, 20-21; Director's Exhibit 18. Thus, the administrative law judge found that Dr. Rasmussen provided a "more fully reasoned explanation of his position than Dr. Dahhan," and therefore assigned his opinion probative weight at 20 C.F.R. §718.204(c).[15] Decision and Order at 21.

In support of its argument that the evidence was selectively considered, employer does not identify any explanations by Dr. Dahhan that were not considered by the administrative law judge. Instead, employer relies on the fact that Dr. Dahhan's exercise blood gas study showed an improvement in the miner's respiratory function by showing an increase in the miner's PO_2 level. We have rejected that argument in connection with the administrative law judge's analysis regarding total respiratory disability. It is meritless in this context as well, as the administrative law judge noted that Dr. Rasmussen's causation opinion was based on a number of factors considered by him in reaching his opinion on causation.[16] *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989). Further, employer fails to substantiate its contention that the administrative law judge was improperly critical of Dr. Broudy's disability causation opinion, or identify any inaccuracies in his evaluation of Dr. Broudy's opinion. Therefore, and

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[15] The administrative law judge found that Dr. Dahhan's statement that:

> the [m]iner's respiratory impairment had resulted primarily from his chronic congestive heart failure as confirmed by the pattern of his pulmonary function studies and arterial blood gases does not offer any specifics as to why these studies pointed to the [m]iner's heart, rather than his lungs, as a cause of his impairment. In contrast, Dr. Rasmussen specifically pointed out the basis of his conclusion that the impairment was due to the [m]iner's lungs and not his heart, citing to the normal $PETCO_2$, $PECO_2$, and VD/VT ratio. In this regard, I find that Dr. Rasmussen offered a more fully reasoned explanation of his position than Dr. Dahhan.

Decision and Order at 21.

[16] We note that the $PETCO_2$, $PECO_2$, and VD/DT ratio numbers cited by Dr. Rasmussen as the basis for not attributing the miner's impairment to his heart disease are not PO_2 values, which are the numbers raised by employer. Employer has not explained how the PO_2 numbers reported by Dr. Dahhan would discredit Dr. Rasmussen's statement as to claimant's $PETCO_2$, $PECO_2$, and VD/DT ratio results. *See* Employer's Brief at 16; Decision and Order at 20-21.

because the administrative law judge did not discredit Dr. Broudy's causation opinion, employer's argument is rejected. *See Sarf v. Director, OWCP*, 10 BLR 1-119 (1986).

Based on the foregoing, we reject employer's contentions that the administrative law judge improperly or selectively weighed the relevant evidence, and we conclude that his findings regarding disability causation are rational and comport with the requirements of the APA. The administrative law judge properly credited Dr. Rasmussen's opinion as the most persuasive opinion on the issue of disability causation. *See Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-512 (6th Cir. 2002); *Groves*, 277 F.3d at 836, 22 BLR at 2-330. We therefore affirm his award of benefits in the miner's claim.

Further, based on the administrative law judge's award of benefits in the miner's claim, we affirm the administrative law judge's finding that claimant was derivatively entitled to survivor's benefits. 30 U.S.C. §932(*l*). We, therefore, affirm the administrative law judge's award of benefits in the survivor's claim.

Accordingly, the Decision and Order Awarding Benefits in Miner's and Survivor's Claims is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge

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GREG J. BUZZARD
Administrative Appeals Judge