



BRB No. 14-0261 BLA

PATRICIA F. FITZWATER	)	
(Widow of JACKIE L. FITZWATER)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WESTMORELAND COAL COMPANY	)	
	)	
Employer-Petitioner	)	DATE ISSUED: 04/29/2015
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Lystra A. Harris, Administrative Law Judge, United States Department of Labor.

Timothy C. MacDonnell (Black Lung Legal Clinic, Washington & Lee University School of Law), Lexington, Virginia, for claimant.

Paul E. Frampton (Bowles Rice LLP), Charleston, West Virginia, for employer.

Jeffrey S. Goldberg (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: HALL, Chief Administrative Appeals Judge, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2010-BLA-5364) of Administrative

Law Judge Lystra A. Harris 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 survivor's claim filed on January 18, 2009.

After crediting the miner with at least twenty-nine years of qualifying coal mine employment,<sup>1</sup> the administrative law judge found that the miner had a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge, therefore, determined that claimant<sup>2</sup> invoked the rebuttable presumption that the miner's death was due to pneumoconiosis set forth at amended Section 411(c)(4) of the Act.<sup>3</sup> 30 U.S.C. §921(c)(4).<sup>4</sup> The administrative law judge further found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

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<sup>1</sup> The miner's coal mine employment was in West Virginia. Director's Exhibit 6. 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, 1-202 (1989) (en banc).

<sup>2</sup> Claimant is the surviving spouse of the miner, who died on September 24, 2008. Director's Exhibit 13.

<sup>3</sup> 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 that a miner's death was 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). The Department of Labor revised the regulations to implement the amendments to the Act. The revised regulations became effective on October 25, 2013, and are codified at 20 C.F.R. Parts 718, 725 (2014).

<sup>4</sup> The amendments also revived Section 422(l) of the Act, 30 U.S.C. §932(l), which provides that a survivor of a miner who was determined to be eligible to receive benefits at the time of his or her death is automatically entitled to receive survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l). The miner filed a claim in 1978. On December 10, 1982, the district director informed the miner that he would be entitled to benefits if he terminated his coal mine employment within one year. The miner's employment records, however, indicate that the miner did not terminate his coal mine employment within the one year time period. Director's Exhibit 6. Thus, claimant cannot benefit from this provision, as the miner was not eligible to receive benefits at the time of his death.

On appeal, employer argues that the administrative law judge erred in identifying it as the responsible operator. Employer also 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) and, therefore, erred in finding that claimant invoked the Section 411(c)(4) presumption. Employer further contends that the administrative law judge erred in finding that employer did not rebut the Section 411(c)(4) presumption. Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds in support of the administrative law judge's identification of employer as the responsible operator.<sup>5</sup>

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).

Benefits are payable on survivors' claims when the miner's death is due to pneumoconiosis. See 20 C.F.R. §§718.1, 718.205; *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, the presumption relating to complicated pneumoconiosis set forth at 20 C.F.R. §718.304 is applicable, or the Section 411(c)(4) presumption is invoked and not rebutted. 20 C.F.R. §718.205(b)(1)-(4). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(b)(6).

### **Responsible Operator**

Employer, Westmoreland Coal Company, challenges its designation as the responsible operator. Section 725.495 addresses the burden of proof of the parties with regard to the criteria for determining the responsible operator, and specifically provides that the Director bears the burden of proving that the responsible operator initially found liable for the payment of benefits is the potentially liable operator that most recently employed the miner. 20 C.F.R. §725.495(a), (b). The regulation also provides that in any case in which the designated responsible operator is not the operator that most recently employed the miner, the district director is required to explain the reasons for

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<sup>5</sup> Employer does not challenge the administrative law judge's finding that claimant established that the miner had at least twenty-nine years of qualifying coal mine employment. This finding is, therefore, affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

such designation. To set forth a prima facie case that the most recent operators are incapable of paying benefits, the district director need only include within the record a statement that the Office of Workers' Compensation Programs has searched its files and found no record of insurance coverage or authorization to self-insure for those operators. 20 C.F.R. §725.495(d).

The district director designated employer, Westmoreland Coal Company, as the responsible operator because the miner's more recent employer, Lady H Coal Company, was uninsured at the time of the miner's last employment with them. 20 C.F.R. §725.495(a)(3); Director's Exhibit 30. As the administrative law judge accurately noted, the record contains the required statement from the Office of Workers' Compensation Programs that Lady H Coal Company was uninsured and lacked authorization to self-insure at the time of the miner's last employment. Decision and Order at 35; Director's Exhibit 19. Moreover, the district director in this claim reiterated in the Proposed Decision and Order that Lady H Coal Company was uninsured at the time of the miner's last employment with the company.<sup>6</sup> Director's Exhibit 30. Employer does not offer any evidence to meet its burden as the designated responsible operator, under 20 C.F.R. §725.495(c), of proving that Lady H Coal Company is a potentially liable operator, pursuant to 20 C.F.R. §725.494. We, therefore, affirm the administrative law judge's designation of employer as the responsible operator in this claim.

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<sup>6</sup> In declining to identify Lady H Coal Company as the responsible operator, the district director explained that:

Lady H Coal Company was insured by [the West Virginia Coal Workers' Pneumoconiosis] Fund, but the policy was cancelled on March 16, 1994 and there is no evidence that Lady H Coal Company obtained insurance after the policy was cancelled. This means that on the date of the last exposure Lady H Coal Company was uninsured. Lady H Coal Company declared bankruptcy and its assets were acquired in 1996 by Green Valley Coal Company, a subsidiary of A.T. Massey. The assets of Lady H Coal Company were purchased free and clear of any liability per the U.S. Bankruptcy Court [for the] Southern District [of] West Virginia. Based on this information, Lady H Coal Company cannot be named [the] responsible operator.

Director's Exhibit 30.

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

Employer contends that the administrative law judge erred in finding that the evidence established total disability pursuant to 20 C.F.R. §718.204(b)(iii), (iv) and, therefore, erred in finding that claimant invoked the Section 411(c)(4) presumption.<sup>7</sup>

Pursuant to 20 C.F.R. §718.204(b)(2)(iii), a claimant may establish that a miner was totally disabled by offering medical evidence establishing that the miner suffered from cor pulmonale with right-sided congestive heart failure. Dr. Smith, the miner's treating physician, opined that the miner suffered from cor pulmonale with right-sided congestive heart failure due to coal workers' pneumoconiosis and emphysema. Claimant's Exhibits 2, 3. Based upon an extensive review of the medical evidence, Dr. Houser similarly opined that the miner suffered from cor pulmonale with right-sided congestive heart failure due to coal workers' pneumoconiosis and emphysema. Claimant's Exhibits 4, 5. Although Dr. Rosenberg diagnosed cor pulmonale with right-sided congestive heart failure, he opined that it was "multifactorial in etiology, but unrelated to past coal dust exposure." Employer's Exhibit 3. Dr. Hippensteel opined that the miner did not suffer from cor pulmonale. Employer's Exhibit 6 at 35.

In weighing the conflicting evidence, the administrative law judge found that Dr. Smith's opinion, that the miner suffered from cor pulmonale with right-sided congestive heart failure, was well reasoned, and supported by hospital records from the University of Virginia. Decision and Order at 7. The administrative law judge also accorded greater weight to Dr. Smith's opinion based upon his status as the miner's treating physician. *Id.* The administrative law judge further credited the opinions of Drs. Smith and Houser over the opinions of Drs. Rosenberg and Hippensteel because he found that their opinions were based upon more extensive documentation. *Id.* at 7-8. The administrative law judge, therefore, found that the evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii).

Employer argues that the administrative law judge erred in failing to explain her basis for finding that the evidence established that the miner's right-sided congestive heart failure was due to lung disease.<sup>8</sup> We disagree. The administrative law judge noted that, although Dr. Smith initially attributed the miner's right-sided congestive heart failure to restrictive pericarditis, Claimant's Exhibit 1 at 37, 43, the doctor subsequently

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<sup>7</sup> The administrative law judge found that the pulmonary function study and arterial blood gas study evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i),(ii). Decision and Order at 5-6.

<sup>8</sup> Claimant agrees with employer that cor pulmonale encompasses only right-sided congestive heart failure that is caused by lung disease. Claimant's Brief at 8.

opined that the condition was attributable to the miner's lung disease. The administrative law judge noted that Dr. Smith explained that, after the miner's pericardial disease had been treated,<sup>9</sup> his congestive heart disease continued to progress, thereby leading him to attribute the miner's right-sided congestive heart failure, in part, to his lung disease. Decision and Order at 7; Claimant's Exhibit 3 at 45. The administrative law judge also accurately noted that Dr. Smith's diagnosis was supported by hospital records from the University of Virginia, which include a 2003 diagnosis of right-sided congestive heart failure due to multiple etiologies, including "sleep apnea, COPD [and] interstitial lung disease." Decision and Order at 7; Director's Exhibit 16. Because it is based on substantial evidence, we affirm the administrative law judge's finding that Dr. Smith's diagnosis of cor pulmonale with right-sided congestive heart failure is sufficiently reasoned. See *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 7. Having found that Dr. Smith's opinion was well-reasoned, the administrative law judge permissibly accorded greater weight to it based upon his status as the miner's treating physician.<sup>10</sup> 20 C.F.R. §718.104(d); Decision and Order at 7, 15-17.

The administrative law judge also credited the opinions of Drs. Smith and Houser over the opinions of Drs. Rosenberg and Hippensteel because she found that they were based upon more extensive documentation, namely Dr. Smith's extensive treatment records.<sup>11</sup> Decision and Order at 7-8. In weighing medical reports, an administrative law

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<sup>9</sup> Dr. Smith explained that the miner's right-sided congestive heart failure continued to worsen after the miner underwent pericardial stripping to treat his pericarditis. Claimant's Exhibit 3 at 20-21. Dr. Houser similarly opined that the miner's treatment for pericarditis "would eliminate the complications associated with the pericarditis as masking other diseases." Claimant's Exhibit 5 at 44.

<sup>10</sup> The administrative law judge noted that Dr. Smith was the miner's primary care physician from 1983 to 2008, during which he treated the miner for pulmonary problems, including chronic obstructive pulmonary disease, cor pulmonale, and chronic hypoxemia. Decision and Order at 8-9, 16. The administrative law judge noted that the doctor "ordered and reviewed many objective tests in the course of his treatment . . . and . . . saw the [m]iner two to four times per year in the beginning and as frequently as once or twice a month toward the end." *Id.* at 16-17.

<sup>11</sup> Dr. Smith's treatment records encompass over 1,000 pages, and include office notes, discharge summaries, x-ray interpretations, laboratory results, and objective tests from the 1980s to 2008. Claimant's Exhibit 1. As the administrative law judge notes, the "records diagnose and discuss multiple medical conditions such as gastrointestinal bleeding, atrial fibrillation, valve replacement, toxic shock syndrome, restrictive

judge may properly find that a doctor's opinion based on limited clinical data is entitled to less weight than conflicting reports based upon more comprehensive documentation. *See Sabett v. Director, OWCP*, 7 BLR 1-299 (1984); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the evidence established that the miner suffered from cor pulmonale with right-sided congestive heart failure pursuant to 20 C.F.R. §718.204(b)(2)(iii).

Employer next contends 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 again considered the medical opinions of Drs. Smith, Houser, Rosenberg and Hippensteel. Drs. Smith and Houser opined that the miner was totally disabled from a pulmonary standpoint. Claimant's Exhibits 3 at 16, 5 at 53. Dr. Rosenberg, however, opined that the miner had no disability "from a pulmonary perspective." Employer's Exhibit 3. Dr. Hippensteel opined that, after a long history of working in the mines, the miner "had evidence of normal pulmonary function." Employer's Exhibit 6 at 26.

In weighing the conflicting medical opinion evidence, the administrative law judge found that Dr. Smith's opinion, that the miner was totally disabled from a pulmonary standpoint, was well reasoned. Decision and Order at 17. The administrative law judge also accorded greater weight to Dr. Smith's opinion based upon his status as the miner's treating physician. *Id.* The administrative law judge further credited the opinions of Drs. Smith and Houser, that the miner was totally disabled from a pulmonary standpoint, over the contrary opinions of Drs. Rosenberg and Hippensteel, because she found that their opinions were based upon more extensive documentation. *Id.* The administrative law judge, therefore, found that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

Employer argues that the administrative law judge erred in relying upon the opinions of Drs. Smith and Houser to support a finding of total disability because the doctors relied upon "treatment blood gas tests which were affected by other health

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pericarditis, pneumoconiosis, hypertension, acute renal failure, congestive heart failure, chronic obstructive pulmonary disease, diabetes, obstructive sleep apnea, and pulmonary hypertension." *Id.* While Dr. Houser reviewed Dr. Smith's treatment records, Claimant's Exhibit 4, Drs. Rosenberg and Hippensteel did not review Dr. Smith's treatment records, and instead limited their review to Dr. Smith's December 31, 2008 medical report and February 29, 2012 deposition testimony. Employer's Exhibits 6 at 8, 7 at 39.

conditions, such as recent heart surgery, and toxic shock syndrome.”<sup>12</sup> Employer’s Brief at 15, citing *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131 (1986). Employer, however, did not dispute the relevance of this blood gas study evidence for purposes of determining total disability when this claim was pending before the administrative law judge. Employer’s objection will not be considered for the first time on appeal to the Board. See *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47, 1-49 (1990); *Oreck v. Director, OWCP*, 10 BLR 1-51, 1-54 (1987) (Levin, J., concurring). Furthermore, we note that unlike the physician’s opinion in *Casella*, 9 BLR at 1-134, Dr. Rosenberg’s opinion does not provide the requisite foundation for employer’s argument: a statement that the miner’s heart surgery and toxic shock syndrome fully account for the decline measured in the miner’s blood gas studies.<sup>13</sup>

The administrative law judge also noted that Drs. Smith and Houser did not rely exclusively on the blood gas study results to support their assessments of the miner’s pulmonary impairment. The administrative law judge noted that Drs. Smith and Houser also based their opinions, that the miner was totally disabled from a pulmonary standpoint, on the fact that the miner was on continuous supplemental oxygen for two or more years before his death. Decision and Order at 17. Because it is based on 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).

Moreover, the administrative law judge properly weighed the evidence of cor pulmonale with right-sided congestive heart failure and the medical opinion evidence with the pulmonary function and blood gas study evidence, and found that, when weighed together, the evidence established total disability pursuant to 20 C.F.R.

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<sup>12</sup> Dr. Smith interpreted a 1999 arterial blood gas study as revealing minimal hypercapnia; a 2001 arterial blood gas study as revealing increased hypercapnia and significant hypoxia even with oxygen supplementation; a 2002 arterial blood gas study as demonstrating evidence of respiratory failure requiring oxygen supplementation; and a 2004 arterial blood gas study as revealing hypercapnia and hypoxia requiring oxygen supplementation. Decision and Order at 9; Claimant’s Exhibit 1.

<sup>13</sup> The administrative law judge noted that Dr. Smith opined that the miner’s heart surgery around the time of the 2001 arterial blood gas study should not have affected the results. Decision and Order at 9; Claimant’s Exhibit 3 at 33-34. While the administrative law judge observed that Dr. Smith acknowledged that the miner’s toxic shock syndrome affected the 2002 arterial blood gas study results, Decision and Order at 9 n.7; Claimant’s Exhibit 3 at 32, there is no evidence that the miner’s more recent 2004 arterial blood gas study results (interpreted as showing hypercapnia and hypoxia) were unreliable.

§718.204(b)(2).<sup>14</sup> See *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); Decision and Order at 40. This finding is, therefore, affirmed.

In light of our affirmance of the administrative law judge's findings that claimant established over 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 death due to pneumoconiosis at Section 411(c)(4). 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305.

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

Because claimant invoked the presumption of death due to pneumoconiosis at Section 411(c)(4), the burden of proof shifted to employer to establish rebuttal by disproving the existence of clinical and legal pneumoconiosis,<sup>15</sup> or by proving that the miner's death did not arise out of, or in connection with, his coal mine employment. 30 U.S.C. §921(c)(4); *Copley v. Buffalo Mining Co.*, 25 BLR 1-81, 1-89 (2012). To prove that the miner's death did not arise from his coal mine employment, employer had to establish "that no part of the miner's death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(2)(ii); 78 Fed. Reg. at 59,115. The administrative law judge found that employer did not establish rebuttal by either method. Decision and Order at 33.

The administrative law judge found that employer failed to disprove the existence of clinical pneumoconiosis or legal pneumoconiosis. Decision and Order at 33. Employer's arguments on appeal focus on the extent and severity of the miner's clinical

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<sup>14</sup> The administrative law judge permissibly found that the "outdated" non-qualifying pulmonary function studies and arterial blood gas studies from 1979 and 1981 were "outweighed by the more recent and comprehensive evidence of record demonstrating that the [m]iner was totally disabled." Decision and Order at 18; see *Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 624, 11 BLR 2-147, 2-149 (6th Cir. 1988); *Parsons v. Wolf Creel Collieries*, 23 BLR 1-29, 1-35 (2004).

<sup>15</sup> "Clinical pneumoconiosis" consists of "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 to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). "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).

pneumoconiosis and legal pneumoconiosis, rather than on the existence of the diseases. Notably, employer contends that “the weight of the pathology evidence is that the *coal mine dust induced lung disease, both pneumoconiosis and related emphysema*, was too minimal to cause or contribute to any health problem or impairment.” Employer’s Brief at 23 (emphasis added). Although employer characterizes the miner’s pneumoconiosis and coal mine dust-induced emphysema as too mild to have contributed to any pulmonary impairment, employer essentially concedes the existence of both clinical pneumoconiosis and legal pneumoconiosis (emphysema due in part to coal mine dust exposure). We, therefore, affirm the administrative law judge’s findings that employer failed to disprove clinical pneumoconiosis or legal pneumoconiosis.

Employer contends that the administrative law judge erred in finding that employer failed to establish “that no part of the miner’s death was caused by pneumoconiosis.” In addressing the cause of the miner’s death, the administrative law judge accorded the greatest weight to the opinion of the miner’s treating physician, Dr. Smith, stating:

I find that Dr. Smith’s conclusion that the [m]iner’s coal mine dust induced lung disease contributed to his death is reasonable because it takes into account the [m]iner’s multiple medical problems and reasonably explains how lung disease contributed to the [m]iner’s death by increasing venous pressure and worsening the bleeding from the arteriovenous malformations. Thus, I afford controlling weight to Dr. Smith’s opinion that the [m]iner suffered from clinical and legal pneumoconiosis which contributed to his death.

Decision and Order at 32.

The administrative law judge further noted that, “[l]ike Dr. Smith, Dr. Houser opined that the miner suffered from clinical and legal pneumoconiosis and cor pulmonale and that his lung disease contributed to his death.” *Id.* The administrative law judge accorded “full weight” to Dr. Houser’s opinion, finding that the doctor’s “explanation of how the [m]iner’s limited respiratory reserve and increased venous pressure from cor pulmonale contributed to [his] death is well-reasoned and takes into account the [m]iner’s complex medical condition.” *Id.*

The administrative law judge afforded little weight to the opinions of Drs. Rosenberg and Hippensteel because their opinions were based upon “less extensive documentation.” *Id.* The administrative law judge found that, “[w]ithout the opportunity to consider the hypoxia, oxygen dependency, and evidence of resolution of the restrictive pericarditis, Dr. Rosenberg and Dr. Hippensteel are not able to persuasively rule out

pneumoconiosis and emphysema, or coal mine employment generally, as factors which contributed to the [m]iner's death."<sup>16</sup> *Id.*

The administrative law judge also considered the autopsy reports of Dr. Lopes, the autopsy prosector, and Drs. Bush and Oesterling, reviewing pathologists. The administrative law judge found that the autopsy evidence does not assist employer in ruling out coal dust exposure as a cause of the miner's death:

Specifically, I find that [the autopsy opinions] confirm the presence of simple coal workers' pneumoconiosis, emphysema, and complex cardiac problems, as well as pulmonary hypertension[,] and do not adequately rule out the coal dust as a factor in the complex presentation on autopsy. I find that the pathologists did not have the benefit of considering a complete picture of the [m]iner's hospital course and, therefore, I give little weight to the opinions of Drs. Bush and Oesterling that coal mine dust exposure did not contribute to the [m]iner's death.

Decision and Order at 24. The administrative law judge, therefore, found that employer failed to rule out coal mine dust exposure as a cause of the miner's death. *Id.* at 33.

Employer generally asserts that the medical evidence is sufficient to rule out clinical and legal pneumoconiosis as a cause of the miner's death. Employer, however, alleges no specific error in regard to the administrative law judge's consideration of the evidence. *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). Because the Board is not empowered to engage in a *de novo* proceeding or unrestricted review of a case brought before it, the Board must limit its review to contentions of error that are specifically raised by the parties. *See* 20 C.F.R. §§802.211, 802.301. The Board is not empowered to reweigh the evidence. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Consequently, we affirm the administrative law judge's finding that employer failed to establish that "no part of the miner's death was caused by pneumoconiosis as defined in §718.201." 20 C.F.R. §718.305(d)(2)(ii).

Because claimant invoked the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis, and employer did not rebut the presumption, the administrative law judge's award of benefits is affirmed.

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<sup>16</sup> The miner's death certificate lists the cause of death as renal failure due to congestive heart failure and infective endocarditis. Director's Exhibit 13. Although the administrative law judge noted that the miner's death certificate does not mention pneumoconiosis, emphysema or COPD, she found that it was outweighed by the more thorough medical opinions of Drs. Smith and Houser. Decision and Order at 32.

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

SO ORDERED.

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BETTY JEAN HALL, Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge