BRB No. 10-0107 BLA

DANA T. NAPIER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HMN & S COAL COMPANY	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	DATE ISSUED: 02/24/2011
	)	
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 and the Order on Employer's Motion for Reconsideration of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

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

Wendy G. Adkins, Kathy L. Snyder (Jackson Kelly PLLC), Morgantown, West Virginia, for employer/carrier.

Sarah M. Hurley (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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer and its carrier, the West Virginia Coal Workers' Pneumoconiosis Fund (WVCWP Fund), appeal the Decision and Order Awarding Benefits and the Order on Employer's Motion for Reconsideration (2008-BLA-5586) of Administrative Law Judge Richard A. Morgan rendered on a subsequent claim filed 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).[1] The administrative law judge credited claimant with at least twenty-six years of coal mine employment, and adjudicated this claim, filed on March 8, 2007, pursuant to 20 C.F.R. Parts 718 and 725.[2] The administrative law judge determined that the claim was timely filed; that employer was the properly designated responsible operator herein; and that employer had waived the right to contest its designation by failing to respond to the Schedule for the Submission of Additional Evidence (SSAE). The administrative law

[1] The recent amendments to the Act, which became effective on March 23, 2010, apply to the instant case, as the claim was filed after January 1, 2005. In response to the Board's Order of June 18, 2010 allowing supplemental briefing, employer submits that if its designation as responsible operator is affirmed, then the case must be remanded to allow development of additional evidence. Employer's additional argument, *i.e.*, that retroactive application of the revisions to the Act denies employer its right to due process and constitutes an unconstitutional taking of private property, has been rejected by the Board. *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193 (2010)(recon. pending).

The Director, Office of Workers' Compensation Programs (the Director), submits that if the Decision and Order is affirmed without reliance on the recently amended Section 411(c)(4), 30 U.S.C. §921(c)(4), then remand for further consideration in light of the amendments is not necessary. The Director further submits that, if the Board does not affirm the award of benefits, the case must be remanded for the administrative law judge to consider whether total disability due to pneumoconiosis is established under the Section 411(c)(4) presumption, and to allow the parties to submit additional evidence, consistent with the evidentiary limitations or upon a showing of good cause. Claimant did not respond.

[2] Claimant's first claim for benefits was filed on January 19, 1989, and was denied on June 9, 1989 for failure to establish any of the elements of entitlement. Claimant's second claim for benefits, filed on April 23, 1999, was finally denied on October 3, 2000, because, while the evidence established total disability, it did not establish the remaining elements of entitlement. Decision and Order at 2.

judge found that the newly submitted evidence was sufficient to establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a), thereby establishing a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). Considering the entire record, the administrative law judge found that the weight of the evidence was sufficient to establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, benefits were awarded. Upon review of employer's motion for reconsideration, the administrative law judge rejected employer's arguments challenging its designation as the responsible operator herein and the findings of legal pneumoconiosis and disability causation at Sections 718.202(a), 718.204(c), and denied the relief requested.

On appeal, employer challenges its designation as the responsible operator, as well as the administrative law judge's findings that the evidence was sufficient to establish the existence of legal pneumoconiosis at Section 718.202(a)(4), and disability causation at Section 718.204(c). Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging affirmance of the administrative law judge's finding that employer was properly designated the responsible operator herein. Employer has filed a consolidated reply in support of its position.[3]

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.[4] 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).

Employer initially contends that because Wolf Creek Collieries (Wolf Creek) was found to be the responsible operator in claimant's previous claims, the administrative law judge erred in finding that the doctrine of collateral estoppel was not applicable to bar

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding with regard to the length of claimant's coal mine employment, as well as his findings that the claim was timely filed, and that claimant established total respiratory disability pursuant to 20 C.F.R. §718.204(b). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4, 26-27.

[4] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as claimant was last employed in the coal mining industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202-03 (1989)(*en banc*); Director's Exhibit 3.

relitigation of the responsible operator issue in this case. We disagree. Under the doctrine of collateral estoppel, "once a court has decided an issue of fact or law necessary to its judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Tyrus v. Schomehl*, 93 F.3d 449, 453 (8th Cir. 1996). However, employer was not a party to claimant's earlier claims. Further, as the earlier claims were denied for failure to establish every element of entitlement, the responsible operator determination in those claims was not necessary to the judgment. *See Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134 (1999)(*en banc*). Consequently, we affirm the administrative law judge's finding that the doctrine of collateral estoppel has no applicability in this subsequent claim.

Employer next contends that the administrative law judge erred in finding that employer waived its right to contest its designation as the responsible operator herein by failing to respond to the SSAE. Employer notes that it is undisputed that the SSAE was not served on counsel for employer and the WVCWP Fund (counsel), despite the filing of counsel's Notice of Appearance requesting that all future correspondence be forwarded to counsel. Based on the district director's failure to serve the document on counsel, employer asserts that it was deprived of the opportunity to timely respond to the SSAE. Employer's arguments lack merit.

When the Department of Labor amended the regulations pertaining to the identification of the responsible operator, it created a requirement that the responsible operator be identified *before* the case was transferred to the Office of Administrative Law Judges (OALJ) for a hearing. 20 C.F.R. §725.407(d). The regulations appearing at 20 C.F.R. §§725.407-412 set forth the means by which this requirement is to be met, and provide that the district director shall issue the SSAE after completing the development of medical evidence, notifying one or more operators of the potential liability for the payment of benefits, and receiving the responses and evidence submitted pursuant to 20 C.F.R. §725.407 by all identified potentially liable operators. *See* 20 C.F.R. §§725.407, 725.408, 725.410. After the issuance of the SSAE, the pertinent regulation provides that:

> If the responsible operator designated by the district director does not file a timely response, it shall be deemed to have accepted the district director's designation with respect to its liability and to have waived its right to contest its liability in any further proceeding conducted with respect to the claim.

20 C.F.R. §725.412(a)(2).

In this case, the record reflects that on August 1, 2007, the district director served a notice of claim on the third party administrator for employer and the WVCWP Fund at Charleston, West Virginia, notifying employer of its potential liability in this claim.

Director's Exhibit 17. On August 24, 2007, counsel for employer and the WVCWP Fund entered an appearance, controverting the claim and requesting that all correspondence relating thereto be forwarded to counsel at his Charleston, West Virginia office. Director's Exhibit 18. On November 5, 2007, the district director issued the SSAE, preliminarily finding that claimant was entitled to benefits, and assigning liability to employer and carrier. Director's Exhibit 21. The district director advised employer that if it did not respond to the schedule by December 5, 2007, either accepting or rejecting claimant's entitlement to benefits, "it will be considered to have contested the claimant's entitlement." *Id.* However, the district director also advised employer that its failure to respond to the SSAE by December 5, 2007 would be deemed acceptance of the responsible operator designation, and a waiver of any right to subsequently contest liability as responsible operator. *Id.*; *see* 20 C.F.R. §725.412(a)(2). Despite counsel's notice of appearance, the SSAE was served on the third party administrator, and not on counsel. *Id.* On February 11, 2008, the district director issued a proposed Decision and Order awarding benefits, noting that because employer did not file a timely response to the SSAE "it shall be deemed to have accepted the district director's designation with respect to its liability and to have waived its right to contest its liability in any further proceedings conducted with respect to the claim." Director's Exhibit 22. The proposed Decision and Order was served on the third party administrator and not on counsel. *Id.* On February 21, 2008, counsel acknowledged receipt of the proposed Decision and Order and requested that the case be forwarded to the Office of Administrative Law Judges (OALJ) for a hearing. Director's Exhibit 23. At the hearing, with regard to the responsible operator issue, counsel stated only that "we would like to continue to contest the responsible operator issue just to preserve the issue." Hearing Transcript at 8. In its post-hearing brief, counsel argued that the evidence contained within the Director's exhibits showed that employer was improperly designated the responsible operator herein because Wolf Creek, as insured by Zeigler Coal, was designated the responsible operator in claimant's prior claims, and the doctrine of collateral estoppel barred relitigation of the issue in the present claim. Counsel noted that the SSAE listed Wolf Creek as the last coal mine employer for claimant and indicated, without explanation, that Wolf Creek was uninsured for the period of claimant's employment. Counsel also stated that no additional evidence relevant to the responsible operator issue was submitted by counsel in response to the SSAE because the information relevant to Wolf Creek had already been submitted to the district director in claimant's prior and current claims. On August 13, 2009, the administrative law judge awarded benefits and found that employer had waived its right to contest its designation as the responsible operator by failing to respond to the SSAE, as admitted in counsel's closing brief. Decision and Order at 4, n.8. Employer filed a motion for reconsideration and argued, for the first time, that the district director's failure to serve counsel with the SSAE had deprived employer of its opportunity to object to the responsible operator designation. Employer further argued that collateral estoppel and due process considerations barred its designation as responsible operator. The administrative law judge rejected employer's arguments, stating that:

> [the WVCWP] Fund waived its right to contest the designation of [employer] as the proper responsible operator pursuant to 20 C.F.R. §725.412. A Notice of Claim, dated August 1, 2007, was sent to [employer] as a potentially liable operator. The Notice was mailed to the prior third party administrator. On August 24, 2007, Employer's counsel submitted a Notice of Representation and Operator Controversion. On November 5, 2007, the Schedule for the Submission of Additional Evidence was issued by the District Director. [Employer] did not respond to the Schedule. I do not find that the failure of the director to serve the Schedule directly on employer's counsel to have deprived the Fund of its ability to timely respond to the Schedule. The Schedule was served on a previous administrator and the Schedule provided a month for the designated responsible operator to reject its designation.

Order on Recon. at 2.

Based on the facts of this case, we hold that the administrative law judge did not abuse his discretion in finding that the district director's failure to serve the SSAE on counsel did not deprive employer of its ability to timely respond to the SSAE. While the regulations provide that, if an attorney has been appointed by a party to represent the party's interests pursuant to 20 C.F.R. §725.362, then "[n]otice given to any party of any administrative action, determination, or decision, or request to any party for the production of evidence shall be sent to the representative of such party," 20 C.F.R. §725.364, case law supports the Director's position that if the document is actually received, the document is deemed to have been sent in compliance with the regulatory service requirements. *See Pothering v. Parkson Coal Co.*, 861 F.2d 1321, 12 BLR 2-60 (3d Cir. 1988)(failure to mail district director's notice of initial determination of survivor's eligibility to employer's counsel did not deprive employer of due process where record indicated that counsel knew that a claim for survivor's benefits had been lodged and would be adjudicated by an administrative law judge); *Wellman v. Director, OWCP*, 706 F.2d 191, 5 BLR 2-81 (6th Cir. 1983)(failure to serve claimant's attorney with administrative law judge's adverse decision did not toll 30-day period for filing an appeal when attorney had actual notice of the decision); *see also* 20 C.F.R. §725.311. In the present case, the administrative law judge determined that the SSAE was served on employer and carrier, *see* 20 C.F.R. §725.410(c), and he reasonably inferred that counsel received the SSAE, based on the concession in employer's post-hearing brief that counsel intentionally failed to respond to the SSAE. Decision and Order at 4; Order on Recon. at 2. As substantial evidence supports the administrative law judge's findings, we affirm his conclusion that employer waived its right to contest its designation as the responsible operator in this case. *See* 20 C.F.R. §725.412(a)(2). Consequently, we need not reach employer's additional argument, that the evidence of record shows that Wolf Creek is the proper responsible operator herein.

Turning to the merits of entitlement, employer challenges the administrative law judge's assignment of determinative weight to the opinion of Dr. Rasmussen, arguing that this medical opinion is insufficient to establish the existence of legal pneumoconiosis under Section 718.202(a)(4) and disability causation under Section 718.204(c). Employer disputes the administrative law judge's determination that Dr. Rasmussen's opinion is more consistent with the premises underlying the amended regulations than are the contrary medical opinions of Drs. Fino and Zaldivar. Employer additionally argues that the administrative law judge shifted the burden of proof, selectively evaluated the medical evidence, and failed to consider the relative professional qualifications of the physicians, in violation of the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2) (APA). Employer's arguments lack merit.

At Section 718.202(a)(4), the administrative law judge reviewed the medical opinions of Drs. Rasmussen,[5] Fino[6] and Zaldivar,[7] noting that all of the physicians found

[5] Dr. Rasmussen performed a physical examination of claimant and obtained an x-ray, and pulmonary function and arterial blood gas testing. Based on the foregoing, and citing to medical literature and findings of airflow obstruction and reduced SBDLCO on lung function studies, Dr. Rasmussen opined that claimant did not have clinical pneumoconiosis, but suffered from legal pneumoconiosis in the form of COPD/emphysema. Dr. Rasmussen concluded that claimant's twenty-three years of coal mine employment, plus ten years as a federal coal mine inspector and a thirty pack-year smoking history, were contributing causes of his COPD/emphysema, and that coal dust exposure was a material contributing factor to claimant's disabling lung disease. Decision and Order at 9; Order on Motion for Reconsideration at 2-3; Director's Exhibit 14; Claimant's Exhibit 4.

[6] Dr. Fino issued a report on July 30, 2008, based on his testing and examination of claimant in December 1999, and his review of claimant's hospital records and the medical reports of Drs. Rasmussen and Zaldivar. Decision and Order at 12; Employer's Exhibits 4, 12. Dr. Fino diagnosed emphysema, and opined that claimant does not have legal pneumoconiosis. He attributed claimant's disabling respiratory impairment to smoking, and stated that coal mine dust was not a clinically significant contributing or aggravating factor in claimant's impairment. Employer's Exhibit 4 at 1-2, 10, 15-16.

[7] Dr. Zaldivar noted an extensive smoking history, and diagnosed a totally disabling lung impairment from congestive heart failure, asthma and, primarily, emphysema, based on his examination of claimant, answers to interrogatories, social and work histories, treatment records, and medical literature. Decision and Order at 10-12; Employer's Exhibits 1, 11 at 22, 24-28, 32-33. He opined that claimant's severe pulmonary impairment is entirely due to a combination of smoking plus asthma, and that

no x-ray evidence of clinical pneumoconiosis, but agreed that claimant had emphysema. Decision and Order at 22. While Drs. Fino and Zaldivar attributed claimant's emphysema solely to smoking, with no contribution from coal dust exposure, Dr. Rasmussen attributed the emphysema to both coal dust exposure and smoking. *Id.* at 22-23, 26. The administrative law judge determined that Dr. Rasmussen objectively supported his finding of emphysema caused in part by coal dust exposure with the pulmonary function study results, referencing medical literature and expressing views that were consistent with the Department of Labor's findings in promulgating the revised regulations with regard to legal pneumoconiosis. *Id.* at 25-26. In particular, he found that Dr. Rasmussen discussed and took into account the latent and progressive nature of pneumoconiosis, as well as the possible effects of claimant's smoking and coal dust exposure, and acknowledged that coal dust exposure can cause impairment in the absence of clinical pneumoconiosis. Moreover, he found that Dr. Rasmussen adequately documented his conclusion that coal dust exposure contributed to claimant's emphysema, and "tied the literature to specific evidence of record." *Id.* at 25. Finally, the administrative law judge noted Dr. Rasmussen's acknowledgment that coal dust and smoking can cause obstructive lung disease through similar mechanisms and that the effects of each are additive. Decision and Order at 9; Director's Exhibit 14. The administrative law judge found that Dr. Rasmussen's statement, that it was possible that all of claimant's impairment was due to smoking, or that all was due to coal mine dust exposure, did not render his medical opinion equivocal. *Id*. at 10, 26. Rather, the administrative law judge concluded that Dr. Rasmussen's view, that to attribute claimant's impairment exclusively to smoking or to coal mine dust was not "medically defensible," accorded with the acknowledgment in the preamble to the amended regulations that "the effects of coal mine dust and smoking are additive, and that coal mine dust-induced emphysema and smoke-induced emphysema occur through similar mechanisms." *Id*. at 26.

By comparison, the administrative law judge determined that the opinions of Drs. Fino and Zaldivar were not well-reasoned, and failed to accord with the premises underlying the amended regulations. He found that Dr. Fino's opinion was inconsistent with the regulatory definition of legal pneumoconiosis and accepted scientific evidence, as determined by the Department of Labor and set forth in the preamble to the revised regulations. Decision and Order at 23-24; Order on Recon. at 4. The administrative law judge determined that Dr. Fino relied heavily on studies, including one by Dr. Leigh, to support his conclusion that the amount of clinical pneumoconiosis in the lungs

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neither coal workers' pneumoconiosis nor coal dust exposure played any role in causing the pulmonary impairment. Decision and Order at 12; Employer's Exhibits 1 at 3-4, 11 at 42-43.

determines the amount of clinical emphysema; that "it is very helpful to estimate the amount of clinical pneumoconiosis present in order to assess the contribution to the clinical emphysema from the coal dust inhalation;" and that there will only be a clinically significant reduction in FEV_1 if moderate or profuse pneumoconiosis is present "because the amount of pneumoconiosis correlates quite well with the amount of emphysema present." Decision and Order at 23; Employer's Exhibit 4 at 11, 13. The administrative law judge noted Dr. Fino's testimony, [8] that claimant's impairment is more consistent with a smoking-induced impairment because he did not have any demonstrable impairment when he left the coal mines, Decision and Order at 24, and found that Dr. Fino's opinion was inconsistent with the premises underlying the regulations "to the extent that he opines: that emphysema caused by coal mine dust does not exist in the absence of chest x-ray evidence of coal workers' pneumoconiosis; that loss of lung function, FEV_1, will not be clinically significant in the absence of moderate or profuse coal workers' pneumoconiosis; and, that pneumoconiosis is not a progressive and latent disease." Decision and Order at 23. Additionally, he determined that Dr. Fino's testimony regarding the disabling, latent and progressive nature of pneumoconiosis was inconsistent with the conclusions contained in his medical report and supporting literature. Order on Recon. at 4, n.3.

Similarly, the administrative law judge assigned less weight to the medical opinion of Dr. Zaldivar because his views failed to accord with the premises of the regulations and the views accepted by the Department of Labor. He found that Dr. Zaldivar "links the presence of legal pneumoconiosis to the radiographic presence of coal workers' pneumoconiosis," since the physician relied on the absence of dust retention on x-ray for

[8] Dr. Fino stated: "the literature that the DOL relied on for progression, they were talking about radiographic progression, they didn't talk about any other kind of progressions," and indicated that, although COPD can progress after a coal miner leaves the mines, the miner must already have "a demonstrable reduction in the FEV_1 consistent with a clinically significant obstruction" at the time he leaves the mines. Dr. Fino further stated that: "if you quit smoking and your lung function is normal and you do not have another condition that can be worsening or adding on to the smoking, then you're not going to progress any more than what an average person would lose per year. Now, the same thing is true of coal mining…" Employer's Exhibit 12 at 17, 23; *see also* Decision and Order at 24 nn.36, 37.

Dr. Fino also stated: "the fact that [claimant's] x-rays are negative for pneumoconiosis doesn't mean he doesn't have some emphysema due to coal mine dust. But it means that the emphysema contributes no more than 7-10 percent of his total reduction in FEV_1, which would be clinically insignificant." Employer's Exhibit 12 at 31-32.

his conclusion that coal mine dust did not cause claimant's obstructive lung disease. Decision and Order at 24.[9] Therefore, he concluded, Dr. Zaldivar relied on the negative x-ray reading as "the key to determining that the claimant has no impairment due to coal mine dust."[10] *Id*. Additionally, the administrative law judge found that Dr. Zaldivar failed to identify any objective evidence to support his opinion that claimant's emphysema was caused exclusively by smoking, and relied instead on claimant's smoking history and medical literature establishing a causal link between smoking and COPD. The administrative law judge characterized Dr. Zaldivar's reasoning as "particularly problematic" and "not firmly rooted" in the record evidence, since both Dr. Fino and Dr. Rasmussen acknowledged that "both substances cause emphysema through similar mechanisms." Decision and Order at 25. Therefore, the administrative law judge concluded that Dr. Zaldivar failed to adequately support his conclusion that cigarette smoking was the sole and exclusive cause of claimant's disability. Decision and Order at 25.

Based on the foregoing discussion, we affirm the administrative law judge's credibility determinations, as supported by substantial evidence and within his discretion. The Department of Labor has recognized that coal dust exposure can cause obstructive lung disease, separate and distinct from clinical pneumoconiosis. *See* 65 Fed. Reg. 79938-45 (Dec. 20, 2000). The regulation at 20 C.F.R. §718.202(a)(4) provides that "[a] determination of the existence of pneumoconiosis may … be made if a physician, exercising sound medical judgment, *notwithstanding a negative x-ray*, finds that the miner suffers or suffered from pneumoconiosis as defined in Sec. 718.201." 20 C.F.R. §718.202(a)(4) (emphasis added). In addition, 20 C.F.R. §718.201(a)(2) defines legal

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[9] Dr. Zaldivar explained at his deposition why he concluded that neither coal workers' pneumoconiosis nor coal mine dust exposure played any role in claimant's impairment, stating that claimant:

> [h]as the same type of disease that any non-miners would develop under the circumstances. He doesn't have any evidence of dust retention in the lungs. And here is where the chest x-ray comes in handy as well, not as a definite diagnosis of coal workers' pneumoconiosis, but as an indication of how much dust was retained within the lungs. And he doesn't have any.

Employer's Exhibit 11 at 43.

[10] Dr. Zaldivar stated that the importance of claimant's negative chest x-ray is that "the x-ray reflects the amount of dust retained within the lungs," and he relied on literature indicating that the degree of morphological airway destruction in miners is "related to the amount of dust retained within the lungs." Employer's Exhibit 1 at 3.

pneumoconiosis as "any chronic lung disease or impairment and its sequelae arising out of coal mine employment," which "includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." *See* Order on Recon at 3-4; 20 C.F.R. §718.201(a)(2). Since physicians need not quantify with specificity the relative contributions of smoking and coal dust exposure to a claimant's respiratory condition, the administrative law judge rationally determined that Dr. Rasmussen's opinion was not equivocal, but accorded with the premises of the regulations. *See Crockett Collieries, Inc. v. Director, OWCP* [*Barrett*], 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007); *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8 (2004). While employer correctly maintains that Dr. Rasmussen is only Board-certified in internal medicine, whereas Drs. Fino and Zaldivar are Board-certified in internal medicine and pulmonary diseases, the administrative law judge was not required to accord greater weight to the opinions of the physicians with superior qualifications. *See Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Rather, the administrative law judge properly assigned weight to the opinions on the basis of their documentation and reasoning, and permissibly credited Dr. Rasmussen's opinion on the issue of legal pneumoconiosis because he found that it was most consistent with the objective evidence and the underlying premises of the regulations. 20 C.F.R. §718.202(a)(4); 65 Fed. Reg. at 79938; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*). We reject employer's argument that the administrative law judge imposed a presumption of legal pneumoconiosis and shifted the burden of proof in his evaluation of the conflicting medical evidence. Our review indicates that the administrative law judge accurately summarized the medical opinions of Drs. Fino and Zaldivar, and identified shortcomings and discrepancies in their underlying premises and documentation. Decision and Order at 23-24, 29; *see* 65 Fed. Reg. at 79938-42; *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14, 22 BLR 2-537, 2-551 (6th Cir. 2002); *Gray v. SLC Coal Co.*, 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *see also J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-125-26 (2009); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993). We also find no merit in employer's assertion that the administrative law judge's analysis was improperly selective. To the contrary, he rationally determined that the opinions of Drs. Fino and Zaldivar were not well-reasoned, as they failed to satisfactorily explain why claimant's emphysema was not due, in part, to coal dust exposure. The administrative law judge's assignment of little weight to their opinions is within his discretion as fact-finder, supported by substantial evidence, and accords with law. Decision and Order at 11-12, 25 n.41; Order on Recon. at 3-4; *see Martin v. Ligon Preparation Co.*, 400 F.3d 302, 23 BLR 2-261 (6th Cir. 2005); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 22 BLR 2-320 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000). We therefore affirm the administrative law judge's finding that claimant established legal pneumoconiosis at Section 718.202(a)(4), as supported by substantial evidence.

Lastly, employer contends that the administrative law judge mechanically discounted the opinions of Drs. Fino and Zaldivar, and erred in crediting Dr. Rasmussen's opinion to support his finding that claimant established disability causation at Section 718.204(c). We disagree. Contrary to employer's arguments, the administrative law judge acted within his discretion in finding that Dr. Rasmussen's opinion, that coal dust exposure was a material contributing factor in claimant's disabling respiratory impairment, was well-reasoned and sufficient to establish disability causation. Decision and Order at 29-30; *see Tennessee Consolidated Coal Co. v. Kirk*, 264 F.3d 602, 610-611, 22 BLR 2-288, 2-303 (6th Cir. 2001); *Peabody Coal Co. v. Smith*, 127 F.3d 504, 21 BLR 2-180 (6th Cir. 1997); *see also Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-513 (6th Cir. 2002). The administrative law judge permissibly accorded little weight to the contrary opinions of Drs. Fino and Zaldivar because these physicians failed to diagnose pneumoconiosis, contrary to the administrative law judge's finding that claimant had legal pneumoconiosis. *See Skukan v. Consolidation Coal Co.*, 993 F.2d 1228, 1233, 17 BLR 2-97, 2-104 (6th Cir. 1993), *vac'd sub nom*., *Consolidation Coal Co. v. Skukan*, 512 U.S. 1231 (1994) *rev'd on other grounds*, *Skukan v. Consolidation Coal Co.*, 46 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Abshire v. D & L Coal Co*., 22 BLR 1-202, 1-214 (2002)(*en banc*); *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1042, 17 BLR 2-16, 2-24 (6th Cir. 1993); *Adams v. Director, OWCP*, 886 F.2d 818, 820, 13 BLR 2-52, 2-63 (6th Cir. 1989). As substantial evidence supports the administrative law judge's finding of disability causation at Section 718.204(c), it is affirmed. Consequently, we affirm his award of benefits.[11]

[11] As we have affirmed the administrative law judge's award of benefits, we need not remand the case for consideration under Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits and his Order on Employer's Motion for Reconsideration are affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge