BRB No. 13-0361 BLA

MARGARET PHIPPS (o/b/o JOHN PHIPPS)	)	
Claimant-Respondent	)	
v.	)	
BUD DAVIS TRUCKING	)	
and	)	DATE ISSUED: 05/21/2014
AMERICAN MINING INSURANCE COMPANY	)	
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 Granting Benefits of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Lynda D. Glagola, (Lungs at Work), McMurray, Pennsylvania, lay representative, for claimant.[1]

Christopher L. Wildfire, (Pietragallo Gordon Alfano Bosick & Raspanti, LLP), Pittsburgh, Pennsylvania, for employer/carrier.

Rebecca J. Fiebig (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative

[1] On June 17, 2010, following the miner's death on May 30, 2010, claimant, the miner's widow, designated Ms. Glagola as her representative in pursuing the miner's claim. Director's Exhibits 1, 3; Decision and Order at 2, 16.

Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Acting Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Granting Benefits (2011-BLA-5716) of Administrative Law Judge Thomas M. Burke rendered on a miner's subsequent claim[2] filed on May 1, 2009, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012)(the Act). The administrative law judge accepted the parties' stipulation that the miner had thirty-six years of above-ground coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Parts 718 and 725. The administrative law judge found that claimant established that the miner had a total respiratory disability pursuant to 20 C.F.R. §718.204(b) and, therefore, demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c). Additionally, the administrative law judge determined that the miner's above-ground coal mine employment was comparable to underground coal mine employment. The administrative law judge found, therefore, that claimant was entitled to invocation of the presumption of total disability due to pneumoconiosis at amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). The administrative law judge further found that employer failed to establish rebuttal of the presumption.[3] Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding that the new evidence established total respiratory disability and erred, therefore, in

[2] The miner's first claim, filed on August 28, 1995, was denied on January 19, 1996, for failure to establish total respiratory disability. Director's Exhibit 1.

[3] Amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), provides, in pertinent part, a rebuttable presumption that the miner is totally disabled due to pneumoconiosis, if fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment, *see* 20 C.F.R. §718.204(b), are established. Qualifying coal mine employment consists of either employment in an underground coal mine or employment in an above-ground coal mine in conditions that are substantially similar to those in an underground mine. If the presumption is invoked, the burden of proof shifts to employer to rebut the presumption by disproving the existence of pneumoconiosis, or by proving that the miner's pulmonary or respiratory impairment "did not arise out of, or in connection with," coal mine employment. 30 U.S.C. §921(c)(4) (2012).

finding a change in an applicable condition of entitlement established. Employer also contends that the administrative law judge erred in finding total respiratory disability established pursuant to Section 718.204(b), based on the entire record. Further, employer contends that the administrative law judge erred in finding that the conditions in the miner's above-ground coal mine employment were comparable to those in underground coal mining for purposes of invoking the presumption at amended Section 411(c)(4). Finally, employer contends that the administrative law judge erred in finding that it failed to rebut the presumption at amended Section 411(c)(4). The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response to employer's appeal, urging the Board to affirm the administrative law judge's finding regarding the comparability of the conditions in the miner's above-ground coal mine employment to those in an underground mine, for purposes of invoking the presumption of total disability due to pneumoconiosis at amended Section 411(c)(4). Claimant also responds to employer's appeal, urging affirmance of the award of benefits.

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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Invocation of the Presumption at Amended Section 411(c)(4)
A. Qualifying Coal Mine Employment

In order to invoke the presumption at amended Section 411(c)(4), claimant must establish that the miner had at least fifteen years of "employment in one or more underground coal mines," or "employment in a coal mine other than an underground mine," in conditions that were "substantially similar to conditions in an underground mine." 30 U.S.C. §921(c)(4); *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-29 (2011). Claimant bears the burden of establishing the comparability between dust conditions in underground and surface mine employment. In order to establish such comparability, claimant need only "establish that [the miner] was exposed to sufficient coal dust in his surface mine employment." *Director, OWCP v. Midland Coal Co.* [*Leachman*], 855 F.2d 509, 512-13 (7th Cir. 1988); *see Blakley v. Amax Coal Co.*, 54 F.3d 1313, 19 BLR 2-192 (7th Cir. 1995); *Williamson Shaft Contracting Co. v. Phillips*, 794 F.2d 865, 9 BLR 2-79 (3d Cir. 1986); *Garrett v. Cowin & Co.*, 16 BLR 1-77 (1990). It is then the function of the administrative law judge, based on his expertise and knowledge of the industry, "to compare the surface mining [dust] conditions established by the evidence to [the dust]

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, as the miner's coal mine employment was in Pennsylvania. Director's Exhibits 1, 18, 19; *see Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc).

conditions known to prevail in underground mines." *Leachman*, 855 F.2d at 512. Unrefuted testimony is sufficient to support a finding of substantial similarity. *See Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 22 BLR 2-265 (7th Cir. 2001).

In this case, the administrative law judge credited the miner with thirty-six years of qualifying coal mine employment at an above-ground strip mine, hauling coal as a truck driver, as he found that the dust conditions in that mine were substantially similar to those in an underground mine. Specifically, the administrative law judge stated, "based on the effectively uncontradicted testimony of the miner and [the claimant], I find that the miner was exposed to enough coal dust during his [thirty-six] years of [surface] coal mine employment for that work to be considered comparable to underground coal mining within the meaning of [amended Section 411(c)(4)]." Decision and Order at 17.

Employer contends, however, that the administrative law judge improperly considered the miner's testimony because, by the time the amendments to the Act became effective on March 23, 2010, the miner was "very ill" and "was never able to be cross-examined on this issue."[5] Employer's Brief at 21, 23. Employer further contends that claimant's testimony was improperly credited because she did not testify that she ever witnessed the miner working at his coal mine job, or saw his worksite. *Id*. at 20. Lastly, employer contends that, absent implementing regulations, the comparability of surface and underground coal mine employment cannot be established, thus precluding invocation of the presumption at amended Section 411(c)(4). In response, however, the Director contends that, because the Act is predicated on the fact that dusty conditions exist in underground mines, "work in sufficiently dusty surface mines is deemed 'substantially similar' to work in underground mines." Director's Response at 2. The Director submits that the administrative law judge properly credited the uncontradicted

[5] To the extent that employer argues that its due process rights were violated because it was not able to cross-examine the miner regarding the dust conditions in his surface coal mine employment, that argument is rejected. Employer does not contend that it attempted to obtain deposition testimony from the miner. Moreover, the due process rights of confrontation and cross-examination, as they are incorporated into 20 C.F.R. §725.455(c), require only that the parties be allowed a reasonable opportunity to know the arguments of the opposing party and to address them. *See No. Am. Coal Co. v. Miller*, 870 F.2d 948, 12 BLR 2-222 (3d Cir. 1989). Employer was aware of the miner's statements, which the administrative law judge credited, because they were contained in an exhibit in the prior claim, Director's Exhibit 1, and in an exhibit in the current claim, Director's Exhibit 6. To rebut these statements, employer offered the testimony of Drs. Goodman and Fino, Employer's Exhibit 16 and 20, however the administrative law judge was not persuaded. Decision and Order at 17.

evidence that the miner was generally exposed to sufficient coal mine dust during his entire coal mining career. *Id*. at 3.

The administrative law judge reviewed the miner's responses to a questionnaire, which indicated that his job driving trucks in the pit at the strip mine required "breath[ing] a lot of dust, picking rock off [a] raw coal screen… [and] cleaning up spills of coal [and] dust." Decision and Order at 17. The administrative law judge also considered the miner's statement that "he loaded coal from a bin, and had to open the truck door to watch the process, at which point "dust would come down into the truck cab." *Id*.; Hearing Transcript at 15-16. Further, the administrative law judge noted the miner's description of daily exposure to coal in the "prep plant and in the strip job, as well as while loading and unloading coal into the truck," and the miner's testimony that the interior of his nose and his phlegm were black "every day." *Id*.; Director's Exhibits 1, 6. Additionally, the administrative law judge considered claimant's testimony that, on returning from work, the miner's clothes contained "lots of dust." *Id*.; Director's Exhibit 6. The administrative law judge found "no reason not to credit" the statements of the miner and claimant concerning how much dust the miner was exposed to occupationally. *Id*. Specifically, the administrative law judge noted that Dr. Goodman's "statement that any truck driver's coal dust exposure would have occurred in open air, was not actually inconsistent with the other accounts in the record of how much dust the miner was exposed to, or how much was retained in his clothing and on his person after the end of his shift." *Id*. The administrative law judge also noted that "Dr. Fino's argument, that truck drivers at strip mines are less likely to develop emphysema from coal dust exposure is based on a generality, and says nothing concrete at all about the situation of the miner in this case." *Id*.

Based on the foregoing, the administrative law judge properly concluded that the testimony of the miner and claimant was "largely uncontradicted," and established that the dusty work environment that the miner experienced for thirty-six years in above-ground mining was substantially similar to the dusty conditions in an underground coal mine. Decision and Order at 17. We, therefore, reject employer's contentions that the administrative law judge was precluded from considering the miner's responses to a questionnaire, or from considering claimant's testimony, in determining the extent of the miner's coal dust exposure and the degree of dust dispersion in his work environment. Further, as employer does not challenge the administrative law judge's identification of shortcomings in the views of Drs. Goodman and Fino, those findings are affirmed. *See* Employer's Brief at 21-23; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). Thus, as employer does not identify inaccuracies in the credited testimony or any inconsistencies of record concerning the miner's truck driver job duties, we conclude that substantial evidence, in the form of the miner's and claimant's testimony, supports the administrative law judge's findings. We, therefore, affirm the administrative law judge's determination that claimant established that the miner had the at least fifteen years of qualifying coal mine employment necessary to invoke the presumption of total disability

due to pneumoconiosis at amended Section 411(c)(4). *See Summers*, 272 F.3d at 480, 22 BLR at 2-275-76; *Blakley*, 54 F.3d at 1319, 19 BLR at 2-202; Decision and Order at 17.

B. Total Disability and a Change in an Applicable Condition of Entitlement

Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "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(d); *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(d)(2). The miner's prior claim was denied because he failed to establish total respiratory disability. Decision and Order at 14. Consequently, to obtain review on the merits of the miner's subsequent claim, claimant had to submit new evidence establishing total respiratory disability. 20 C.F.R. §725.309(d)(2), (3).

In finding that the new evidence established total respiratory disability pursuant to Section 718.204(b), the administrative law judge found that the only new pulmonary function study of record, conducted in May 2009 by Dr. Olalere, produced qualifying results[6] and, therefore, "tends to support a finding of total [respiratory] disability" at Section 718.204(b)(2)(i). Decision and Order at 14; *see* Director's Exhibit 14. Turning to the new blood gas study evidence, the administrative law judge found that, while the resting blood gas studies "uniformly" showed no disability, "the only exercise study," conducted in May 2009 by Dr. Bajwa, "showed hypoxemia with exercise." Decision and Order at 14. The administrative law judge concluded that, because the miner's coal mine employment "entail[ed] physical labor above the sedentary level, meaning that he would have to exercise and therefore, apparently, suffer hypoxemia[,] the [new] blood gas study evidence … tends to support a finding of total disability as well."[7] Decision and Order at 15. Considering the new medical opinion evidence, the administrative law judge found that it supported a finding of total respiratory disability pursuant to Section 718.204(b)(2)(iv), as all of the doctors agreed that the miner had a totally disabling

[6] A "qualifying" pulmonary function or blood gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B and C, for establishing total disability. *See* 20 C.F.R. §718.204(b)(2)(i), (ii). A "non-qualifying" study exceeds those values.

[7] The administrative law judge found that total respiratory disability was not established at 20 C.F.R. §718.204(b)(2)(iii), because there was no credible evidence indicating that the miner had cor pulmonale with right-sided congestive heart failure. Decision and Order at 15.

respiratory impairment, and was unable to return to his usual coal mine employment.[8] Decision and Order at 10-13; 15. In addition, the administrative law judge found that claimant's testimony supported a finding of total respiratory disability, as claimant testified that the miner "could no longer garden, mow grass, or do anything other than walk 25 feet at a time." Decision and Order at 15. Further, the administrative law judge noted that "claimant also testified that [the miner] was on 'oxygen all the time' towards the end of his life." *Id*. The administrative law judge concluded that claimant's "testimony depicts a man whose respiratory condition has deteriorated so much that he could no longer perform activities of daily living, let alone a full-time job driving - and climbing up and down the backs of - trucks in the pit at a strip mine." *Id*. at 15-16. The administrative law judge found, therefore, that the lay testimony also supported a finding of total respiratory disability. *Id*.

[8] Dr. Bajwa examined the miner and prepared a report on June 22, 2009. He reviewed, in addition to the findings on examination, the miner's symptoms, work and family histories, and the results of a pulmonary function study and a blood gas study. He opined that the miner's "dyspnea entirely prevent[ed] him from working." Director's Exhibit 14.

Dr. Rasmussen prepared a report on April 4, 2002, based on his review of the miner's medical records. He opined that the miner's coal dust exposure and smoking caused chronic obstructive pulmonary disease and emphysema, which caused progressive deterioration in "function." He opined that the miner had disabling, and ultimately fatal, lung disease. Claimant's Exhibit 2.

Dr. Fino prepared a report dated May 23, 2012, based on his review of the miner's medical records. He opined that the miner suffered from a respiratory impairment sufficient to disable him from performing his last coal mining job or similar work. Employer's Exhibit 20.

The record also contains the February 16, 2010, May 10, 2010 and March 26, 2012 reports of Dr. Klain, who had treated the miner during the last fifteen years of his life. He opined that the miner's severe chronic obstructive pulmonary disease and emphysema required the administration of "oxygen around the clock" and rendered him "unable to perform any activities other than bathing, dressing, and feeding himself." Claimant's Exhibit 1.

Additionally, the record contains the October 28, 2011 report of Dr. Goodman based on his review of the miner's records. He opined that "[i]t seems more likely than not that [the miner] suffered a work limiting respiratory impairment." Employer's Exhibit 16.

Considering the above evidence, the administrative law judge concluded that it established that the miner had a total respiratory disability pursuant to Section 718.204(b), and that a change in an applicable condition of entitlement was established pursuant to Section 725.309(c). Reviewing the entire record, the administrative law judge, noting that "pneumoconiosis is a progressive and irreversible disease process," found that the more recent evidence developed in the miner's current claim was entitled to greater weight than the evidence from the miner's first claim, which was filed fourteen years earlier. Thus, the administrative law judge found that the evidence of record established total respiratory disability pursuant to Section 718.204(b) overall. Additionally, the administrative law judge concluded, in light of the miner's thirty-six years of qualifying coal mine employment and his total respiratory disability, that claimant was entitled to invocation of the presumption that the miner was totally disabled due to pneumoconiosis at amended Section 411(c)(4).

Employer contends, however, that the administrative law judge erred in finding that the pulmonary function study evidence, blood gas study evidence, medical opinion evidence, and the lay testimony, together established total respiratory disability. Specifically, employer contends that the administrative law judge did not consider evidence that challenged the reliability of the qualifying pulmonary function study. Contrary, to employer's contention, however, the administrative law judge considered Dr. Michos's evaluation of the May 2009 qualifying pulmonary function study, noting that Dr. Michos opined that "the vents were acceptable, but there was suboptimal MVV performance." Decision and Order at 5; Director's Exhibit 14. The administrative law judge also considered Dr. Long's evaluation of the May 2009 qualifying pulmonary function study, noting that Dr. Long "said that 'this pulmonary function study would not be useful in the evaluation of a respiratory impairment.'"[9] Decision and Order at 5. The administrative law judge concluded that Dr. Michos found the May 2009 qualifying pulmonary function study "to be technically acceptable." *Id*. at 6. The administrative law judge declined to "evaluate [Dr. Long's] credibility on this issue," however, reasoning that even if her validity assessment were correct, "that would merely render the [pulmonary function study] inconclusive, and the remaining, valid evidence would still be unanimously supportive of a finding of total disability." *Id*. at 6 n. 5. The administrative law judge concluded, therefore, that, at worst, the pulmonary function study evidence was inconclusive, in contrast to the remaining evidence of disability. Thus, contrary to employer's contention, the administrative law judge did consider and

[9] Dr. Long found "that there were only two flow volume loops, without any indication as to whether they were recorded before or after bronchodilator, and three superimposed spirometric tracings with the same flaw. She also noted that the tracings were recorded at 11 mm/sec, which was too rapid to evaluate them for effort and cooperation. She said, however, that the MVV study was valid." Decision and Order at 5; Director's Exhibit 16.

address the evidence that challenged the reliability of the May 2009 pulmonary function study, and properly found that such evidence would not affect his finding that the new evidence, as a whole, established total respiratory disability. *See White*, 23 BLR at 1-3.

Employer also contends that the administrative law judge's analysis of the new blood gas study evidence is defective because he failed to consider the non-qualifying at rest results of an April 26, 2010 blood gas study performed under the direction of Dr. Spar. Employer further contends that the administrative law judge should have given as much weight to the non-qualifying exercise results of a September 25, 1995 blood gas study as he did to the qualifying exercise results of the May 2009 blood gas study, since he found that exercise test results better reflected the miner's ability to work.

We reject employer's argument that the administrative law judge erred in failing to consider Dr. Spar's non-qualifying April 26, 2010 blood gas study in his assessment of the blood gas study evidence. Although Dr. Spar refers to that study in his consultation notes, as part of a series of tests performed during the miner's April 26-April 30, 2010 hospitalization, *see* Decision and Order at 9, the study does not include the data required of a "report of a blood-gas study submitted in connection with a claim." 20 C.F.R. §718.105; Employer's Exhibit 4. The administrative law judge did not err, therefore, in failing to consider and address it in determining that the new blood gas study evidence supported a finding of total respiratory disability. 20 C.F.R. §718.105.

We also reject employer's argument that the administrative law judge should have considered the non-qualifying exercise results from a September 25, 1995 blood gas study, since he credited the qualifying results of the May 2009 exercise blood gas study as more reflective of the miner's ability to work. Contrary to employer's argument, the 1995 study is not relevant in determining whether the new evidence has established total respiratory disability. *See White*, 23 BLR at 1-3.

Moreover, contrary to employer's contention, as the administrative law judge's evaluation of the pulmonary function study and blood gas study evidence was proper, the administrative law judge properly credited the medical opinion evidence, which was based, in part, on that evidence. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(en banc). Further, contrary to employer's assertion, the administrative law judge permissibly considered claimant's testimony, in conjunction with the medical evidence of record, in finding that the evidence established total respiratory disability. 20 C.F.R. §718.204(d)(5); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987); Decision and Order at 2-3, 15-17; *see* Employer's Brief at 19-20. We affirm, therefore, as rational and supported by substantial evidence, the administrative law judge's findings that claimant established total respiratory disability based on the new evidence pursuant to Section 718.204(b) and a change in an applicable condition of entitlement pursuant to Section 725.309(c). We also affirm the administrative law judge's finding that the record as a whole established total respiratory disability. Consequently, we also affirm the

administrative law judge's finding that claimant was entitled to invocation of the presumption of total disability due to pneumoconiosis at amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).

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

In finding that the presumption was not rebutted, the administrative law judge found that the analog x-ray evidence, the digital x-ray evidence, the CT scan evidence and the medical opinion evidence failed to carry employer's burden of disproving the existence of clinical pneumoconiosis. Specifically, the administrative law judge accorded greater weight to the positive analog x-ray readings of Dr. Smith than to the negative analog x-ray readings of record,[10] as Dr. Smith was better qualified than the other x-ray readers.[11] Further, the administrative law judge found that the two digital x-rays dated April 4, 2009 and May 22, 2010, which were read only by Dr. Smith, were positive for the existence of pneumoconiosis. Regarding the two CT scans in the record, the administrative law judge gave greater weight to the positive reading of the April 4, 2004 CT scan by Dr. Smith, based on his credentials, than to the negative reading of the April 9, 2004 CT scan by Dr. Mohan, whose credentials were not in the record. Finally, regarding the opinions of the doctors, all of whom found that the miner did not have clinical pneumoconiosis, the administrative law judge rejected the opinions because they were either equivocal or contrary to his finding that the x-ray and CT scan evidence established the existence of clinical pneumoconiosis.[12]

[10] The administrative law judge noted that the analog x-rays submitted with the miner's previous 1995 claim consisted of four readings of the miner's September 25, 1995 x-ray. The administrative law judge credited the negative readings of that x-ray based on the readers' qualifications. The administrative law judge found that there were thirteen new analog x-rays of record, taken between April 2004 and May 2010. They consisted of both positive and negative readings by readers whose qualifications are not in the record, by readers who are neither B readers nor Board-certified radiologists, by readers who are both B readers and Board-certified radiologists, and by a reader who, in addition to being a B reader and a Board-certified radiologist, has additional radiological qualifications. *See* Decision and Order at 18-20.

[11] Although the administrative law judge also noted that Drs. Simone and Wolfe, like Dr. Smith, are both B readers and Board-certified radiologists, he nonetheless found that Dr. Smith's qualifications were superior because, in addition to being a dually-qualified reader, Dr. Smith's "professional experience as a radiologist is markedly more varied, and he has held more clinical leadership positions[,] including leadership of his own private radiology practice." Decision and Order at 19.

[12] This finding is affirmed, as it is unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Employer contends, however, that the administrative law judge erred in failing to consider a negative reading of an April 23, 2004 CT scan, and negative readings by Dr. Goodman, a B reader, of analog x-rays dated June 12, 2006 and April 13, 2009. Employer also contends that the administrative law judge erred in failing to consider that Dr. Fino, a B reader, read the May 22, 2010 digital x-ray as negative. Employer's Brief at 23-24.

Employer does not, however, challenge the administrative law judge's determination that Dr. Smith is the most highly-qualified reader of record. Nor does employer challenge the administrative law judge's right, as fact-finder, to accord greater weight to Dr. Smith's positive readings of the x-ray and CT scan evidence, based on his superior radiological qualifications. Hence, because employer does not contend that Drs. Goodman and Fino are better-qualified readers than Dr. Smith, and the record fails to support employer's argument that the administrative law judge's failure to consider the negative readings of Drs. Goodman and Fino would have altered the administrative law judge's finding on the issue of clinical pneumoconiosis, we reject employer's argument.[13] *See Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Larioni*, 6 BLR at 1-1278; *Skrack*, 6 BLR at 1-711. Accordingly, we affirm the administrative law judge's finding that employer failed to rebut the presumption at amended Section 411(c)(4) by disproving the existence of clinical pneumoconiosis.[14] 30 U.S.C. §921(c)(4) (2012).

Next, the administrative law judge found that employer failed to rebut the presumption at amended Section 411(c)(4) by establishing that the miner's totally disabling respiratory impairment did not arise out of, or in connection with, coal mine employment. Specifically, the administrative law judge rejected the opinions of Drs. Goodman and Fino, attributing the miner's disability to sources other than coal mine employment, because they believed, contrary to the administrative law judge's own finding, that the miner did not have clinical pneumoconiosis.[15] Contrary to employer's

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[13] Moreover, the record shows that the administrative law judge stated that he found that Dr. Goodman's negative April 23, 2004 CT scan was outweighed by the positive April 9, 2004 CT scan of Dr. Smith, who was better-qualified. Decision and Order at 3, 21.

[14] Because employer failed to disprove the existence of clinical pneumoconiosis, employer cannot rebut the presumption by simply disproving the existence of legal pneumoconiosis. 30 U.S.C. §921(c)(4) (2012).

[15] We need not address employer's argument that the administrative law judge erred in crediting the opinions of Drs. Klain, Bajwa and Rasmussen, attributing

contention, this reasoning was rational. *See Soubik v. Director, OWCP*, 366 F.3d 226, 23 BLR 2-82 (3d Cir. 2004); *V.M.* [*Matney*] *v. Clinchfield Coal Co.*, 24 BLR 1-65 (2008); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472, 1-473 (1986); Decision and Order at 22. Therefore, we affirm the administrative law judge's finding that employer failed to rebut the presumption at amended Section 411(c)(4) by showing that the miner's disabling pulmonary or respiratory impairment "did not arise out of, or in connection with," coal mine employment. 30 U.S.C. §921(c)(4) (2012).

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

SO ORDERED.

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BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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claimant's disability to coal mine employment, as it does not affect employer's burden to rebut the presumption at amended Section 411(c)(4) by showing that the miner's disability was not due to coal mine employment. *See* 30 U.S.C. §921(c)(4) (2012).