BRB No. 13-0592 BLA

ROGER D. KENNEDY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
McELROY COAL COMPANY, Self-Insured through CONSOLIDATED ENERGY, INCORPOARTED	)	DATE ISSUED: 07/29/2014
	)	
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 - Award of Benefits in a Subsequent Claim of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

Anne Megan Davis (Johnson, Jones, Snelling, Gilbert & David, P.C.), Chicago, Illinois, for claimant.

William S. Mattingly (Jackson Kelly PLLC), Morgantown, West Virginia, for employer/carrier.

Emily Goldberg-Kraft (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, Acting Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order - Award of Benefits in a Subsequent Claim[1] (2010-BLA-05559) of Administrative Law Judge Larry S. Merck rendered on a claim filed pursuant to the provisions of Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012)(the Act). Considering the entire record, the administrative law judge found that the evidence established that claimant is entitled to invocation of the rebuttable presumption of total disability due to pneumoconiosis under amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4)(2012).[2] The administrative law judge further found that employer did not rebut the presumption. 30 U.S.C. §921(c)(4)(2012). Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erred in applying the rebuttal provisions of amended Section 411(c)(4) to this case and erred in failing to apply the proper rebuttal standard in evaluating the evidence. Employer also contends that the administrative law judge erred in his evaluation of the rebuttal evidence and in his consideration of the case pursuant to the Administrative Procedure Act (APA), 5 U.S.C.

[1] Claimant's original claim, filed on October 31, 2003, was deemed abandoned because of his failure to comply with the district director's Order of January 29, 2004, to provide evidence required for processing his claim. Claimant filed his current claim on June 1, 2009. Director's Exhibits A-1 at 1-4, 2; *see* Decision and Order at 2, 40. Because claimant's original claim was deemed abandoned, the administrative law judge erred in treating claimant's second claim as a subsequent claim. *Crowe v. Director, OWCP*, 226 F.3d 609, 22 BLR 2-80 (7th Cir. 2011). However, the administrative law judge considered all of the relevant evidence in making his determination in this case. Hence, we conclude that the administrative law judge's mischaracterization of claimant's second claim is harmless error. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[2] 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, amended Section 411(c)(4) provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if the miner establishes a totally disabling respiratory or pulmonary impairment and at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine. 30 U.S.C. §921(c)(4) (2012). If the presumption is invoked, the burden of proof shifts to employer to rebut the presumption, with affirmative proof that claimant does not have pneumoconiosis, or that his disabling respiratory or pulmonary impairment did not arise out of, or in connection with, coal mine employment. *See Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 2 BLR 2-38 (4th Cir. 1980); *accord Morrison v. Tenn. Consol. Coal Co.*, 644 F.2d 478, 25 BLR 2-1 (6th Cir. 2011).

§557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).[3] In response, claimant argues that the administrative law judge's award of benefits should be affirmed. The Director, Office of Workers' Compensation Programs (the Director), in a limited response brief, states that the administrative law judge properly applied the amended Section 411(c)(4) presumption in this case, and properly applied the correct rebuttal standard. The Director also contends that the administrative law judge permissibly discredited the disability causation opinions of physicians who did not diagnose the existence of legal pneumoconiosis.

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).

Applicability of Amended Section 411(c)(4)

Employer asserts that the rebuttal provisions under amended Section 411(c)(4) apply only to claims against the "Secretary," and not to claims brought against a responsible operator. Employer contends, therefore, that "no limits of any kind" apply to employer's ability to rebut the presumption. This argument has been previously addressed and rejected. *See Owens v. Mingo Logan Coal Co.*, 25 BLR 1-1, 1-5 (2011), *aff'd sub nom. Mingo Logan Coal Co. v. Owens*, 724 F.3d 550 (4th Cir. 2013)(Niemeyer, J., concurring); *W. Va. CWP Fund v. Stacy*, 671 F.3d 378, 25 BLR 2-65 (4th Cir. 2011), *cert. denied*, 133 S.Ct. 127 (2012); *Fairman v. Helen Mining Co.*, 24 BLR 1-227, 1-229 (2011). Employer also asserts that the absence of implementing regulations at the time of this claim's adjudication prevent application of the presumption. This argument has likewise been addressed and rejected. *See Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 939, 2 BLR 2-38, 2-43 (4th Cir. 1980); *DeFore v. Alabama By-Products*, 12 BLR 1-27 (1988); *Alexander v. Island Creek Coal Co.*, 12 BLR 1-44, 1-47 (1988), *aff'd sub nom. Island Creek Coal Co. v. Alexander*, No. 88-3863 (6th Cir. Aug. 29, 1989); *Tanner v.*

[3] The Administrative Procedure Act, 5 U.S.C. §500 *et seq.*, provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented...." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as claimant's coal mine employment was in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc); Director's Exhibit 14; Decision and Order at 11.

Freeman United Coal Co., 10 BLR 1-85 (1987); *see* 20 C.F.R. §718.305(d). Accordingly, we affirm the administrative law judge's application of the amended Section 411(c)(4) presumption to this case, including the rebuttal provisions contained therein.[5]

Amended Section 411(c)(4) Rebuttal
Pneumoconiosis

To rebut the presumption at amended Section 411(c)(4), employer must affirmatively prove that the miner does not suffer from either clinical or legal pneumoconiosis or that his total disability is not due to coal mine employment. 30 U.S.C. §921(c)(4)(2012); *see Barber v. Director, OWCP*, 43 F.3d 899, 901, 19 BLR 2-61, 2-67 (4th Cir. 1995); *Rose*, 614 F.2d at 939, 2 BLR at 2-43; *accord Morrison v. Tenn. Consol. Coal Co*., 644 F.3d 473, 479-480, 25 BLR 2-1, 2-8-9 (6th Cir. 2011). We affirm, as unchallenged on appeal, the administrative law judge's finding that employer failed to disprove the existence of clinical pneumoconiosis. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 38.

In finding that employer failed to disprove the existence of legal pneumoconiosis, the administrative law judge accorded little weight to the opinion of Dr. Crisalli,[6] because it was premised on scientific evidence concerning the causes of respiratory impairment, which conflicted with the scientific evidence credited by the Department of Labor (DOL) in the preamble to the 2001 revised black lung regulations.[7] The administrative law judge also accorded little weight to Dr. Crisalli's opinion, that claimant's obstructive impairment is not due to coal dust exposure, because the doctor found that claimant's respiratory condition improved with the use of bronchodilator treatment. The

[5] The administrative law judge found that claimant was entitled to invocation of the rebuttable presumption that his total disability is due to pneumoconiosis at amended Section 411(c)(4), as he established at least twenty-six years of underground coal mine employment and a total respiratory disability. These findings are affirmed, as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7-11, 13, 31.

[6] Dr. Crisalli opined that claimant's respiratory impairment was due solely to tobacco-induced emphysema, secondary to a component of asthma. Employer's Exhibit 4.

[7] In the preamble to the 2001 revised black lung regulations, the Department of Labor (DOL) adopted the views of scientific evidence finding that both coal dust exposure and cigarette smoking caused emphysema through similar mechanisms. *See* 65 Fed. Reg. 79,940-43 (Dec. 20, 2000).

administrative law judge found Dr. Crisalli's opinion to be inconsistent with the view of the scientific literature, adopted by the DOL, that holds that coal dust exposure causes permanent fixed effects on a miner's respiratory system. Regarding Dr. Zaldivar's opinion,[8] the administrative law judge accorded it little weight because Dr. Zaldivar believed, contrary to the position adopted by the DOL, that emphysema caused by coal dust exposure manifests itself differently from emphysema caused by smoking.

Initially, we reject employer's assertion that the administrative law judge erred in relying on the preamble to the 2001 revised regulations in evaluating the credibility of the medical opinion evidence pursuant to Section 718.202(a)(4). Contrary to employer's assertion, the administrative law judge did not utilize the preamble to the 2001 revised regulations as a legislative rule or misapply the burden of proof by creating an erroneous "irrebuttable" presumption of legal pneumoconiosis.[9] *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 25 BLR 2-115 (4th Cir. 2012). Rather, the administrative law judge properly consulted the preamble as an authoritative statement of the medical principles accepted by the DOL in promulgating the 2001 revised regulations, and permissibly evaluated the medical opinions of record for consistency therewith. *See Looney*, 678 F.3d at 311, 25 BLR at 2-125. The administrative law judge, therefore, properly accorded little weight to Dr. Crisalli's opinion, attributing claimant's pulmonary impairment "solely" to tobacco-induced emphysema, secondary to a component of asthma. The administrative law judge found that it "conflict[ed]" with the scientific literature adopted by the DOL, which acknowledges: that coal mine dust exposure is clearly associated with clinically significant airways obstruction; that the risk is additive with cigarette smoking; and that coal dust-induced emphysema and smoking-induced emphysema occur through similar mechanisms. *See* 65 Fed. Reg. 79,940-43 (Dec. 20, 2000); *Looney*, 678 F.3d at 311, 25 BLR at 2-125; *see also Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 257, 24 BLR 2-369, 2-382-83 (3d Cir. 2011), *aff'g J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-125-26 (2009); *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008); *Peabody Coal Co. v. McCandless*, 255 F.3d 465, 468-69, 22 BLR 2-311, 2-318 (7th Cir. 2001).

---

[8] Dr. Zaldivar opined that there was no evidence to justify a diagnosis of legal pneumoconiosis and that claimant's smoking habit, as well as his family history of asthma and personal history of some bronchospasm, were the causes of his chronic obstructive pulmonary disease. Employer's Exhibit 13.

[9] Specifically, employer contends that the administrative law judge "misinterpreted" the preamble to the 2001 revised regulations by "discredit[ing] the physicians differentiating between the effects of cigarette smoking and coal dust exposure. Employer's Brief at 6-7. Thus, employer contends that the administrative law judge "converts the rebuttable presumption into an irrebuttable one." *Id.*

Further, the administrative law judge properly accorded little weight to Dr. Crisalli's opinion, that claimant's obstructive impairment is not due to coal dust exposure, because it was based on claimant's improved respiratory response after treatment with bronchodilators.[10] *See Beeler*, 521 F.3d at 726, 24 BLR at 2-103. Specifically, the administrative law judge stated that Dr. Crisalli's opinion was unreasoned, because "the fact that claimant may experience some relief from bronchodilators does not address the cause of the fixed portion of claimant's impairment that does not benefit from bronchodilator treatment."[11] Decision and Order at 38-39. As neither a miner's improved response to bronchodilator treatment, nor the variability of his respiratory impairment, preclude the existence of a coal mine dust-related impairment, the administrative law judge permissibly accorded little weight to Dr. Crisalli's opinion on this basis. *See* 20 C.F.R. §718.201(a)(2); *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); *Consolidation Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004); Decision and Order at 38-39. The administrative law judge has given valid reasons for according less weight to the opinion of Dr. Crisalli. *See Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-83 n.4 (1983). As substantial evidence supports the administrative law judge's credibility determinations regarding Dr. Crisalli's opinion, the administrative law judge's assignment of "little weight" to Dr. Crisalli's opinion is affirmed.

Regarding Dr. Zaldivar's opinion, the administrative law judge properly accorded it little weight because it, like the opinion of Dr. Crisalli, conflicted with the position

---

[10] Employer identifies no specific findings in support of its assertion that the administrative law judge found "that Dr. Crisalli's opinion focused *solely* on a response to bronchodilators," and "mischaracterized [Dr. Crisalli's] assessment as relying *solely* on reversibility due to bronchodilators." *See* Employer's Brief at 8 (italics added). Rather, the administrative law judge conducted a detailed review of Dr. Crisalli's evidence, and permissibly identified deficiencies in his opinion attributing claimant's emphysema and asthma exclusively to smoking. Decision and Order at 18-20, 35-36, 38-39.

[11] Dr. Crisalli explained:

> The pulmonary function studies are compatible with emphysema based on the obstruction to air flow and the pattern of the diffusion impairment as noted at the time of my examination. There is improvement after bronchodilators consistent with reversible airway obstruction. Coal workers' pneumoconiosis does not result in air way obstruction.

Employer's Exhibit 4 at 5; *see* Decision and Order at 19; Employer's Brief at 8.

adopted by the DOL, that emphysema caused by coal dust exposure and emphysema caused by smoking occur through similar mechanisms.[12] A physician's opinion that there is a pattern of impairment characteristic of smoking, as opposed to coal mine dust exposure, is contrary to the view of the scientific literature adopted by the DOL in the preamble and the regulations. *See* 65 Fed. Reg. 79,940-43 (Dec. 20, 2000); *Looney*, 678 F.3d at 316, 25 BLR at 2-125. The administrative law judge's accordance of little weight to the opinion of Dr. Zaldivar was, therefore, rational.[13] Decision and Order at 39; *Sewell Coal Co. v. Triplett*, 253 F. App'x 274, 277 (4th Cir. 2007).

Further, as the definition of legal pneumoconiosis does not solely encompass respiratory impairment *directly caused* by coal mine dust exposure, but also encompasses respiratory impairments *significantly related to* or *substantially aggravated by* coal dust exposure, the administrative law judge rationally accorded little weight to Dr. Zaldivar's opinion that claimant does not have legal pneumoconiosis. The administrative law judge found that the doctor's opinion as to the existence or absence of legal pneumoconiosis was not credible, because the doctor did not consider whether claimant's respiratory impairment was *significantly related to* or *substantially aggravated by* coal mine dust

[12] Dr. Zaldivar opined that "emphysema caused by coal dust exposure will manifest itself differently than emphysema caused by smoking." Employer's Exhibit 13 at 40.

[13] Dr. Zaldivar stated that claimant's "presentation is typical of that of an individual who was a lifelong smoker who began smoking early on in the teenage years." He concluded "in this specific case, there is such a strong history of smoking which fully explains his disease that the diagnosis is best explained by smoking." He observed that "claimant suffers from centrilobular emphysema" and explained "that is the typical finding of smokers' emphysema," and "we do know with certainty that smokers' emphysema is centrilobular…. So really the centrilobular emphysema is not what one expects to find without a focal fibrosis area in a coal miner, but you do find it invariably in a smoker." Decision and Order at 22-25; *see* Employer's Exhibit 13 at 39-43, 78.

Additionally, Dr. Zaldivar stated that claimant had "typical findings" of smoker's emphysema, and that "[a]ny patient that presents with this kind of history, whether they are bankers or lawyers or anything else, will have smokers' COPD. There is some element of an asthmatic problem as well. He is being treated for that. The two go together. I mentioned that in my report. It's called the Dutch hypothesis. So he fully has [sic] an explainable diagnosis from smoking -- emphysema." Finally, he opined that "centrilobular emphysema, unless it is very very extensive, will not result in any abnormalities in the breathing test," unless the emphysema was "very severe [and] widespread." Employer's Exhibit 13 at 40, 80.

exposure.[14] 20 C.F.R. §718.201. Contrary to employer's contention, Dr. Zaldivar's testimony does not substantiate its contention that the administrative law judge "failed to consider" Dr. Zaldivar's "reasons for not identifying coal dust exposure as a causative factor" in claimant's respiratory impairment. The administrative law judge's decision includes a lengthy review of Dr. Zaldivar's report and testimony. *See* Decision and Order at 20-25. Employer merely reiterates Dr. Zaldivar's views that: claimant's lung disease "fits the criteria" of a smoker; claimant shows "typical findings in smoker's emphysema[;]" claimant's asthmatic problem and his smoking "go together[;]" claimant's bronchospasm is due to smoking, and his asthma is due to smoking or a familial predisposition; and coal dust exposure did not cause claimant's respiratory disease because "his presentation" is "typical" for a smoker. *See* Employer's Exhibit 13 at 39-44. Employer fails to demonstrate that Dr. Zaldivar provided any opinion concerning whether claimant's emphysema and asthma were *significantly related to* or *substantially aggravated by* his coal mine dust exposure. Hence, the administrative law judge rationally found that Dr. Zaldivar's opinion was not well-reasoned and accorded it "little weight."

As substantial evidence supports the administrative law judge's credibility determinations regarding the opinions of Drs. Crisalli and Zaldivar, we affirm his finding that employer has failed to establish rebuttal of the amended Section 411(c)(4) presumption with affirmative proof that claimant does not have pneumoconiosis. *See Rose*, 614 F.2d at 939, 2 BLR at 2-43-44; *see also Morrison*, 644 F.3d at 479-80, 25 BLR at 2-8-9.

---

[14] Dr. Zaldivar's deposition includes the following exchange:

> Q. Now, as I understand your report and your direct testimony, you are attributing one hundred percent of [claimant's] pulmonary impairment to his cigarette smoking. Is that fair?
>
> A. It is fair because this is the typical presentation of a lifelong smoker who has no other physical manifestations of any previous -- any damage produced by any previous work. The physical manifestations in a dust-induced disease is to find dust. And even by the more sensitive techniques in this case, which was the CT scan, we can't find any dust.

Id. at 70, 75.

Amended Section 411(c)(4) Rebuttal
Disability Causation

The second method of rebuttal pursuant to amended Section 411(c)(4) provides that claimant's disabling pulmonary or respiratory impairment did not arise out of, or in connection with, employment in a coal mine, pursuant to 30 U.S.C. §921(c)(4)(2012). Employer contends that the administrative law judge erred in assuming "that a finding of legal pneumoconiosis necessarily precludes rebuttal under the second prong by disproving disability causation." Employer's Brief at 27-28. Employer also contends that the administrative law judge failed to apply the correct burden of proof on rebuttal, when he required employer to "rule out" any contribution of coal mine employment to claimant's disabling respiratory impairment.

In finding that employer failed to rebut the presumption under the second method of rebuttal, the administrative law judge determined that employer failed to show that claimant's twenty-six years of underground coal mine dust exposure "did not significantly cause, contribute [to] or aggravate his pulmonary impairment." Decision and Order at 41. Thus, the administrative law judge found that employer "failed to establish that [c]laimant's total disability did not arise in whole or [in] part out of his coal mine employment." *Id*.

Initially, we reject employer's contention that the administrative law judge failed to apply the correct rebuttal standard in requiring employer to "rule out" any contribution of coal mine employment to claimant's disabling respiratory impairment. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, requires that in order to satisfy the latter method of rebuttal, an employer must "effectively . . . rule out" any contribution to a miner's pulmonary impairment by coal mine dust exposure. *Rose*, 614 F.2d at 939, 2 BLR at 2-43-44; *see also Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 25 BLR 2-255 (4th Cir. 2013)(Traxler, C.J., dissenting).

We also reject employer's contention that the administrative law judge improperly used his finding of legal pneumoconiosis to preclude employer from rebutting the presumption by showing that claimant's disabling respiratory impairment did not arise out of, or in connection with, coal mine employment. Contrary to employer's contention, the administrative law judge may consider a doctor's finding regarding the presence or absence of legal pneumoconiosis in determining the credibility of his finding on disability causation. *See Toler v. Eastern Associated Coal Co.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986); *see also Grigg v. Director, OWCP*, 28 F.3d 416, 419, 18 BLR 2-299, 2-306 (4th Cir. 1994). Additionally, contrary to employer's contention, the administrative law judge rationally found that the same reasons that undercut the credibility of the opinions of Drs. Crisalli and Zaldivar on the

issue of legal pneumoconiosis, also undercut their opinions as to whether claimant's disabling respiratory impairment was related to his coal mine employment. *See Toler*, 43 F.3d at 116, 19 BLR at 2-83; *Trujillo*, 8 BLR at 1-473; *see also Grigg*, 28 F.3d at 419, 18 BLR at 2-306. Consequently, the administrative law judge properly found, in light of employer's experts' failure to show that claimant's "at least" twenty-six years of underground coal dust exposure did not significantly cause, contribute to, or aggravate his pulmonary impairment, that employer failed to satisfy its burden of establishing that claimant's disabling respiratory impairment did not arise out of, or in connection with, coal mine employment. *See* Decision and Order at 40-41. Accordingly, we reject employer's contention that the administrative law judge erred in failing to sufficiently address whether claimant's disabling respiratory impairment arose out of, or in connection with, coal mine employment.

Because the opinions of Drs. Crisalli and Zaldivar are the only opinions supportive of a finding that claimant's disabling respiratory impairment did not arise out of his coal mine employment, we affirm the administrative law judge's finding that employer failed to establish rebuttal pursuant to the second method of rebuttal provided at amended Section 411(c)(4). *See* 30 U.S.C. §921(c)(4)(2012); *see Barber*, 43 F.3d at 901, 19 BLR at 2-67; *Rose*, 614 F.2d at 939, 2 BLR at 2-43; *Morrison*, 644 F.3d at 479-480, 25 BLR at 2-8-9; *see also Collins v. Pond Creek Mining Co.*, F.3d , 2013 WL 1711718 (4th Cir. May 1, 2014).

The administrative law judge's determination, that employer failed to rebut the amended Section 411(c)(4) presumption by disproving the existence of pneumoconiosis, or by establishing that claimant's disabling respiratory impairment did not arise out of, or in connection with, coal mine employment, is supported by substantial evidence, and comports with the requirements of the APA. It is, therefore, affirmed. 30 U.S.C. §921(c)(4)(2012).

Accordingly, the administrative law judge's Decision and Order - Award of Benefits is affirmed.

SO ORDERED.

_____
BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
REGINA C. McGRANERY
Administrative Appeals Judge