BRB Nos. 11-0592 BLA,
11-0592 BLA-A and 11-0593 BLA

EDITH J. SISK O/B/O ESTATE OF HANSLEY SISK AND EDITH J. SISK, SURVIVING SPOUSE OF HANSLEY SISK[1]	)	
Claimant-Petitioner Claimant-Respondent	)	
v.	)	
GREEN RIVER COAL COMPANY	)	DATE ISSUED: 06/12/2012
and	)	
LIBERTY MUTUAL MIDDLE MARKET FORMERLY EMPLOYER'S INSURANCE OF WAUSAU	)	
Employer/Carrier-Petitioners Employer/Carrier-Cross-Petitioners	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Brent Yonts (Brent Yonts, PSC), Greenville, Kentucky, for claimant.

[1] The administrative law judge's Decision and Order refers to the first name of the miner as "Hensley." However, as claimant notes, and the record shows, the correct first name of the miner is "Hansley." *See* Claimant's Brief at 1.

William A. Lyons (Lewis and Lewis Law Office), Hazard, Kentucky, for employer/carrier.

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

PER CURIAM:

Before us is the Decision and Order (08-BLA-5856 and 08-5857) of Administrative Law Judge Joseph E. Kane denying benefits on a miner's claim and awarding benefits on a survivor's claim, filed pursuant to 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).[2] Claimant appeals the denial of benefits in the miner's claim.[3] Employer cross-appeals, challenging the administrative law judge's finding of clinical pneumoconiosis in the miner's claim. *See* Employer's Brief at 22. Employer also appeals the award of benefits in the survivor's claim. The Director, Office of Workers' Compensation Programs, is not participating in these appeals.

The miner's first claim for benefits, filed in 1992, was denied because the miner failed to establish any of the elements of entitlement. Decision and Order at 15. On May 9, 2002, the miner filed this subsequent claim. Following the initial proposed award of benefits, and prior to the holding of an administrative hearing, the miner died on June 28, 2007. The miner's lifetime claim was then remanded for consolidation with the survivor's claim, filed on July 18, 2007.

In considering the subsequent miner's claim, the administrative law judge credited the miner with thirty-one years of coal mine employment pursuant to the parties'

[2] Section 1556 of Public Law No. 111-148 amended the Act with respect to the entitlement criteria for certain claims that were filed after January 1, 2005 and remained pending as of March 23, 2010, the effective date of the amendments. In particular, Section 1556 reinstated the "15-year presumption" of Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). Section 411(c)(4) provides that if a miner had at least fifteen years of qualifying coal mine employment, and a totally disabling respiratory impairment, there is a rebuttable presumption that the miner is totally disabled due to pneumoconiosis, that the miner's death was due to pneumoconiosis, or that at the time of the miner's death he or she was totally disabled by pneumoconiosis. 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010)(to be codified at 30 U.S.C. §921(c)(4)).

[3] The 2010 amendments do not apply to the miner's claim, as it was filed before January 1, 2005.

stipulation, and found that the new biopsy evidence, submitted after the denial of the first claim, established the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), and therefore established a change in applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). Decision and Order at 15, 19. Reviewing the miner's claim on the merits, the administrative law judge found the existence of clinical pneumoconiosis established pursuant to Section 718.202(a)(2) based on biopsy evidence,[4] that the clinical pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b), and that total respiratory disability was established pursuant to 20 C.F.R. §718.204(b)(2)(i), (ii) and (iv). *Id*. at 19, 22, 23-24. However, the administrative law judge found that the evidence failed to establish that pneumoconiosis was a substantially contributing cause of the miner's total disability pursuant to 20 C.F.R. §718.204(c), and, accordingly, denied benefits on the miner's claim.

Turning to the survivor's claim, the administrative law judge found that the miner was employed for over fifteen years in underground coal mining employment, and was totally disabled by a pulmonary or respiratory impairment pursuant to Section 718.204(b). Decision and Order at 3, 24-26. Consequently, the administrative law judge found that claimant was entitled to invocation of the Section 411(c)(4) presumption of the Act, 30 U.S.C. §921(c)(4), in the survivor's claim.[5] Because the administrative law judge found that employer failed to rebut the presumption, he awarded benefits on the survivor's claim.

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.[6] 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).

[4] The administrative law judge found that the existence of legal pneumoconiosis was not established. Decision and Order at 19; *see* 20 C.F.R. §§718.201, 718.202.

[5] We affirm, as unchallenged on appeal, the administrative law judge's findings that the 2010 amendments apply to this survivor's claim and that claimant is entitled to invocation of the Section 411(c)(4) presumption of the Act. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, because claimant's coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc); Director's Exhibit 1 at 113; Decision and Order at 12-13.

The Miner's Claim: Claimant's Appeal

In order to establish entitlement to benefits in a miner's claim filed pursuant to 20 C.F.R Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

A finding of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) would ordinarily preclude review of claimant's challenge to the administrative law judge's finding that the evidence did not establish pneumoconiosis[7] pursuant to Section 718.202(a)(4), as this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, and Section 718.202(a)(1)-(4) provides alternative methods for establishing the existence of pneumoconiosis. *See Cornett v. Benham Coal Co., Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985). However, because the administrative law judge found that legal pneumoconiosis was not established and the diagnoses of the physicians, as to the existence of legal pneumoconiosis, are relevant to the credibility of their opinions on the issue of disability causation pursuant to 20 C.F.R. §718.204(c), we will address the administrative law judge's consideration of their opinions on the issue of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *See* 20 C.F.R. §§718.201; 718.202.

Claimant challenges the administrative law judge's finding that the medical opinion evidence failed to establish the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4) and that the administrative law judge thereby erred in finding that the medical opinion evidence established total respiratory disability due to pneumoconiosis pursuant to Section 718.204(c). Specifically, claimant argues that the administrative law judge should have found "both legal black lung as well as clinical black lung," and was obligated to assign determinative weight to the medical opinion of the miner's treating physician, Dr. Hack.[8] Claimant's Brief at 5, 8. Moreover, claimant

[7] "Legal" pneumoconiosis includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). "Arising out of coal mine employment" refers to "any chronic pulmonary disease or respiratory of pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[8] Dr. Hack diagnosed pneumoconiosis and chronic obstructive pulmonary disease (COPD), and opined that coal dust aggravated the COPD. He testified that either

asserts that the administrative law judge improperly evaluated the medical opinion evidence in concluding that the miner did not suffer from legal pneumoconiosis. Claimant also contends that the administrative law judge's finding that the miner was totally disabled, but not due to his pneumoconiosis, is "logically inconsistent" with his finding that total disability was established in the survivor's claim, as "the same evidence" should "establish the same result." *Id*. at 7, 8. Thus, claimant argues that, since the administrative law judge awarded benefits in the survivor's claim, he should have also awarded benefits in the miner's lifetime claim.

At the outset, we conclude that claimant's argument, that the denial of benefits in the miner's claim is inconsistent, per se, with the finding of entitlement in the survivor's claim, is without merit. To the contrary, the administrative law judge's finding, that claimant failed to establish that the miner was totally disabled due to pneumoconiosis in the miner's claim, is not inconsistent with his evaluation of the evidence in the survivor's claim because total disability due to pneumoconiosis is established by invocation of the Section 411(c)(4) presumption in the survivor's claim. *See* 30 U.S.C. §921(c)(4). By contrast, in the miner's claim, claimant bears the burden of proving each element of entitlement. *See Anderson*, 12 BLR at 1-112. Claimant's argument is therefore rejected.

Next, we consider claimant's contention that the administrative law judge erred in finding that the medical opinion evidence failed to establish the existence of legal pneumoconiosis. In particular, claimant contends that the administrative law judge erred in failing to accord determinative weight to the opinion of Dr. Hack, because Dr. Hack was the miner's treating physician. The medical opinion evidence relevant to the issue of legal pneumoconiosis consists of the opinions of Drs. Hack, Simpao and Rasmussen, who attributed the miner's chronic obstructive pulmonary disease (COPD) to coal mine employment, and the opinions of Drs. Powell and Jarboe, who attributed it to smoking alone.

Evaluating the reasoning underlying conflicting medical opinion evidence is "essentially a credibility matter" reserved to the discretion of the fact-finder, as is the determination of the extent and superiority of a physician's medical credentials. *See Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-512 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). For example, a medical opinion that is found inconsistent may be discounted. *Fagg v. Amax Coal Co*., 12 BLR 1-77 (1988). Moreover, in the exercise of the administrative law judge's discretion, a medical opinion may be found credible on one issue, but not on another. *See Drummond Coal Co. v Freeman*, 17 F.3d 361 (11th Cir. 1994).

---

smoking or coal dust could have caused the COPD. Dr. Hack later reported that the miner's COPD was from smoking.

The administrative law judge, as the finder-of-fact, is required to evaluate the opinion of a treating physician in light of the nature and extent of the treating relationship pursuant to 20 C.F.R. §718.104(d), as well as the opinion's reasoning and documentation, in order to determine whether the treating physician has a superior understanding of the miner's condition, so as to warrant giving his opinion additional probative weight. 20 C.F.R. §718.104(d)(1)-(5). "[T]he opinions of treating physicians get the deference they deserve based on their power to persuade." *Eastover Mining Co. v. Williams*, 338 F.3d 501, 513, 22 BLR 2-625, 647 (6th Cir. 2003).

In this case, the administrative law judge determined that Dr. Hack's treating relationship with the miner was of "limited duration," and the administrative law judge recognized that Dr. Hack's professional qualifications are in "family medicine, not pulmonary medicine." Decision and Order at 7-8, 17; Claimant's Exhibit 3 at 3-4. Therefore, the administrative law judge rationally concluded that Dr. Hack's opinion was not entitled to controlling weight merely based on his status as claimant's treating physician. *Id.* at 17, 30; 20 C.F.R. §718.104(d)(1)-(5); *Williams*, 338 F.3d at 513, 22 BLR at 2-647; *Stephens*, 298 F.3d at 522, 22 BLR at 2-512.

Additionally, the administrative law judge found that Dr. Hack's opinion, that coal dust aggravated the miner's chronic lung disease, was inconsistent with his prior report, attributing the miner's COPD to "years of tobacco abuse."[9] Decision and Order at 17; Director's Exhibits 51 at 79, 72 at 1, 75 at 2; Claimant's Exhibit 3 at 11 and Deposition dated April 28, 2006. The administrative law judge therefore reasonably assigned "little weight" to Dr. Hack's opinion that coal dust aggravated the miner's COPD. Decision and Order at 17; *Fagg*, 12 BLR at 1-79. Because the administrative law judge's findings regarding Dr. Hack's opinion are rational and supported by substantial evidence, we reject employer's argument, that Dr. Hack's medical opinion was improperly weighed, as meritless. *See* 20 C.F.R. §718.104(d)(1)-(5); *Williams*, 338 F.3d at 513, 22 BLR at 2-647; *Stephens*, 298 F.3d at 522, 22 BLR at 2-512.

Next, we address claimant's argument that the administrative law judge failed to properly evaluate the other medical opinion evidence on the issue of legal pneumoconiosis.[10] Decision and Order at 17-18; Director's Exhibit 76 at 10, 16-17, 18,

[9] The administrative law judge found that the miner smoked from 1946, until his death in 2007, at a rate of one to two packs per day, or 61-122 pack-years. Decision and Order at 3.

[10] Dr. Simpao diagnosed legal pneumoconiosis, based on severe restrictive and obstructive airway disease caused, or aggravated, by coal dust exposure. Decision and Order at 16-17; Director's Exhibit 76 at 16, 19, 37.

36-37; Claimant's Exhibit 4 at 5. The administrative law judge correctly found that the opinion of Dr. Simpao, attributing the miner's respiratory impairment to both coal dust and smoking, and the opinion of Dr. Powell, attributing the miner's respiratory impairment to smoking alone, were in equipoise, because neither doctor adequately addressed the cause of the respiratory impairment.[11] *See Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

Turning to the opinion of Dr. Jarboe, who found that the miner's COPD was due to smoking, and the opinion of Dr. Rasmussen, who attributed the miner's COPD to both coal mine employment and smoking, the administrative law judge found that both opinions were persuasive as they were reasoned and both doctors possessed superior qualifications.[12] The administrative law judge noted therefore that both Drs. Jarboe and Rasmussen provided detailed opinions "in support of their respective, albeit opposing opinions." Decision and Order at 19. However, the administrative law judge properly found "no reason" to credit one opinion over the other, based on their respective qualifications. *Id.*, *see Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(en banc).

In conclusion, therefore, the administrative law judge properly found that the medical opinion evidence on the issue of legal pneumoconiosis was, "at best, in

---

Dr. Rasmussen opined that coal dust was "clearly a significant contributing cause" in the miner's disabling chronic lung disease. *See* Decision and Order at 8-9; Claimant's Exhibit 4 at 5.

Dr. Powell opined that the miner's chronic lung disease was caused by smoking and the loss of his right upper lobe. Employer's Exhibits 1, 6.

Dr. Jarboe opined that smoking was the sole cause of the miner's chronic lung disease. Employer's Exhibits 7, 11.

[11] Specifically, the administrative law judge correctly noted that Dr. Simpao "gave no specific reasons for attributing the etiology of the obstruction to both coal dust and cigarette smoke," while Dr. Powell also "gave no specific reasons for his opinion that coal dust was not a causal factor." Decision and Order at 17-19; Director's Exhibit 76; Employer's Exhibit 6.

[12] The administrative law judge noted that Dr. Jarboe is a Board-certified pulmonologist, and that, while Dr. Rasmussen is not a Board-certified pulmonologist, he is an acknowledged expert in the field of pulmonary impairments of coal miners, who has "described in detail how coal dust causes obstructive lung disease." Decision and Order at 19; Claimant's Exhibit 4 at 5.

equipoise," and rationally found that the medical opinion evidence did not establish the existence of legal pneumoconiosis. Decision and Order at 18-19; *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

It is claimant's burden to establish the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4). In this case, the administrative law judge has made rational and permissible credibility determinations in concluding that the medical opinion evidence was insufficient to establish the existence of legal pneumoconiosis at Section 718.202(a)(4). Decision and Order at 16-19; *see Ondecko*, 512 U.S. at 281, 18 BLR at 2A-24. Claimant's arguments regarding the administrative law judge's findings pursuant to Section 718.202(a)(4) are tantamount to a request that the Board reweigh the evidence. The administrative law judge is charged with evaluating the evidence and determining whether the parties have met their burdens, *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984), and the Board cannot reweigh the evidence. *Anderson*, 12 BLR 1-113; *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Consequently, we will not overturn the administrative law judge's credibility determination that claimant has failed to carry her burden to establish the existence of legal pneumoconiosis, based on his assessment of the conflicting medical opinions. Accordingly, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of legal pneumoconiosis pursuant to Section 718.202(a)(4), as this finding is supported by substantial evidence. Decision and Order at 19.

Because the administrative law judge rationally concluded that the medical opinion evidence does not establish the existence of legal pneumoconiosis, and that the record does not contain a reasoned and documented opinion that the miner's clinical pneumoconiosis caused his total respiratory disability, we also reject claimant's assertion that disability causation is established pursuant to Section 718.204(c). *Id*. at 22-24. Therefore, the administrative law judge's finding, that claimant has failed to carry her burden of proof to establish that pneumoconiosis was a substantially contributing cause of the miner's disability pursuant to Section 718.204(c), is affirmed. Accordingly, the administrative law judge's denial of benefits on the miner's claim is affirmed.[13]

[13] We need not address employer's argument, on cross-appeal, that the miner's biopsy evidence does not establish the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). Because the administrative law judge properly found that claimant failed to establish that the miner's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c), an essential element of entitlement, benefits are precluded as a matter of law. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

Further, because the administrative law judge properly found that employer failed to disprove the existence of legal pneumoconiosis in the survivor's claim, *see infra*,

The Survivor's Claim: Employer's Appeal

Employer argues that the administrative law judge erred in finding that the presumption at Section 411(c)(4) was not rebutted in the survivor's claim. Specifically, employer argues that the administrative law judge erred in discrediting Dr. Jarboe's opinion because he did not diagnose clinical pneumoconiosis. Employer's Brief at 25-6. Employer also contends that the administrative law judge erred in finding that the Section 411(c)(4) presumption was not rebutted since Dr. Jarboe opined that "the presence of coal worker's pneumoconiosis did not cause, hasten or contribute to the [miner's death]" and "[the miner] would have died at the same time and of the same causes as he did whether he had ever worked as a miner." *Id*.; *see* Decision and Order at 10; Employer's Exhibit 11.

In order to meet its burden on rebuttal under Section 411(c)(4), employer must affirmatively prove, by a preponderance of all relevant evidence: (1) that the miner had neither clinical nor legal pneumoconiosis; or (2) that the miner's death was unrelated to coal dust exposure in his coal mine employment. *See* 30 U.S.C. §921(c)(4); *Morrison v. Tennessee Consol. Coal Co.*, 644F.3d 473, 479-80, BLR (6th Cir. 2011).

First, contrary to employer's argument, the administrative law judge properly rejected Dr. Jarboe's negative opinion on the issue of clinical pneumoconiosis, because it was inconsistent with his own finding that the biopsy evidence established the existence of clinical pneumoconiosis by demonstrating the presence of anthracosis. *See Skukan v. Consolidation Coal Co.*, 993 F.2d 1228, 17 BLR 2-97 (6th Cir. 1993); *Toler v. Eastern Assoc. Coal Co.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995); Decision and Order at 28-29. Second, the administrative law judge permissibly determined that Dr. Jarboe's opinion, that the miner did not have legal pneumoconiosis, was entitled to little weight. The administrative law judge found that Dr. Jarboe relied on a faulty premise, that was inconsistent with the position of the Department of Labor, to find that the miner did not have legal pneumoconiosis, namely that the miner showed a disproportionate reduction in his FEV_1 ratio.[14] Decision and Order at 9, 18-19, 31; Employer's Exhibit 11; s*ee*

---

employer's argument that the miner did not have clinical pneumoconiosis is insufficient alone to rebut the presumption. *See* 30 U.S.C. §921(c)(4); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[14] Specifically, the administrative law judge properly found that Dr. Jarboe's opinion, that the miner's chronic lung disease was caused by smoking, and not coal dust exposure, relied on a reduced FEV_1/FVC ratio, contrary to the views accepted by the Department of Labor. Decision and Order at 18; Employer's Exhibit 11 at 2, 4; *see* 65 Fed. Reg. at 79,940 (Dec. 20, 2000) and 65 Fed. Reg. 79,943 (Dec. 20, 2000); *see also*

Freeman United Coal Mining Co. v. Summers, 272 F.3d 473, 483 n.7, 22 BLR 2-265, 2-292 n.7 (7th Cir. 2001); *J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 117, 125-26 (2009), *aff'd sub nom. Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 24 BLR 2-369 (3d Cir. 2011). As substantial evidence supports the administrative law judge's determinations, we affirm the administrative law judge's finding that Dr. Jarboe's opinion was insufficient to rebut the Section 411(c)(4) presumption by showing that the miner had neither clinical nor legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a).

Turning to the alternate means of establishing rebuttal of the Section 411(c)(4) presumption, the administrative law judge stated: "I cannot rely on Dr. Jarboe's opinion to find that pneumoconiosis played no part in causing the miner's death since I cannot determine whether Dr. Jarboe's opinion would remain the same if he assumed that the miner suffered from clinical pneumoconiosis."[15] Decision and Order at 32; Employer's Exhibits 2, 7. Additionally, because Dr. Jarboe did not diagnose pneumoconiosis, the administrative law judge acted within his discretion in according little weight to his opinion that pneumoconiosis played no role in the miner's death, which was due to other health problems. Decision and Order at 9, 30-31; s*ee Skukan*, 993 F.2d at 1233, 17 BLR at 2-104; *Toler*, 43 F.3d at 115, 19 BLR at 2-83.

Employer's assertions of error with regard to the weight accorded the medical opinion of Dr. Jarboe amount to a request that the Board reweigh the evidence, which we are not empowered to do. *See Clark*, 12 BLR at 1-55; *Anderson*, 12 BLR at 1-113; *Worley*, 12 BLR at 1-23. Further, the administrative law judge properly found that the other medical evidence could not rebut the presumption because the death certificate was "silent" regarding the etiology of the miner's death from congestive heart failure,[16] and that the other medical opinions that addressed the cause of death were "silent" as to the

---

Freeman United Coal Mining Co. v. Summers, 272 F.3d 473, 483 n.7, 22 BLR 2-265, 2-292 n.7 (7th Cir. 2001).

[15] Dr. Jarboe "did not believe that the miner had clinical or legal pneumoconiosis on the date of his death," and "attributed the etiology of his death to 'progressive respiratory failure' cause [sic] by 'profound weakness and debility [sic] resulting from the motor vehicle accident in 1996, pneumonia, and smoking.'" Decision and Order at 10; Employer's Exhibit 7.

[16] The miner's death certificate, completed by Dr. Hack, listed congestive heart failure as the primary cause of death, and listed other significant conditions of COPD (chronic obstructive pulmonary disease), HTN (hypertension), and CVA (stroke). No autopsy was performed. Decision and Order at 8, 12; Director's Exhibits 51 at 11, 65 at 1.

effect of the miner's anthracosis on his death.[17] *See* 30 U.S.C. §921(c)(4); Decision and Order at 32. Therefore, the administrative law judge rationally found that the evidence was insufficient to establish Section 411(c)(4) rebuttal by showing that the miner's death was not due to his coal mine employment.

Because the administrative law judge permissibly exercised his discretion in weighing the evidence, we affirm his findings that employer did not disprove the existence of pneumoconiosis or show that the miner's death did not arise out of coal mine employment. Therefore, we affirm the administrative law judge's finding that employer failed to rebut the presumption of death due to pneumoconiosis pursuant to Section 411(c)(4), 30 U.S.C. §921(c)(4).

Accordingly, the administrative law judge's Decision and Order denying benefits in the miner's claim and awarding benefits in the survivor's claim is affirmed.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge

[17] The administrative law judge noted that Dr. Rasmussen opined that the miner's death was "primarily a consequence of his [COPD]," while Dr. Hack opined that the death was due to "bad lungs" and COPD. Decision and Order at 32.