

BRB No. 12-0331 BLA

JAMES A. ADAMS)	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 03/15/2013
)	
MILLER BROTHERS COAL COMPANY)	
)	
and)	
)	
AMERICAN INTERNATIONAL SOUTH)	
INSURANCE COMPANY)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order on Remand Denying Benefits of Pamela J. Lakes, Administrative Law Judge, United States Department of Labor.

John C. Collins (Collins & Allen), Salyersville, Kentucky, for claimant.

H. Brett Stonecipher and Patrick O'Conner (Ferreri & Fogle, PLLC), Lexington, Kentucky, for employer.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order on Remand Denying Benefits (07-BLA-5998) of Administrative Law Judge Pamela J. Lakes rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp.

2011)(the Act). This case involves a miner's claim filed on October 26, 2006, and is before the Board for the second time.

In her initial decision, the administrative law judge credited claimant with thirty-seven years of coal mine employment,¹ and found that claimant did not affirmatively establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and, thus, did not establish entitlement to benefits under 20 C.F.R. Part 718. The administrative law judge further found that claimant established invocation of the rebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), but also determined that employer rebutted the presumption by establishing that claimant does not have pneumoconiosis. Accordingly, the administrative law judge denied benefits.

Pursuant to claimant's appeal, the Board vacated the administrative law judge's finding that employer rebutted the Section 411(c)(4) presumption.² *Adams v. Miller Bros. Coal Co.*, BRB No. 10-0605 BLA (July 20, 2011)(unpub.). In finding rebuttal established, the administrative law judge had credited, as well-reasoned, Dr. Westerfield's medical opinion that claimant does not have legal pneumoconiosis,³ but suffers from asthma and chronic obstructive pulmonary disease (COPD) that are unrelated to his coal mine employment. Because the administrative law judge, however, did not set forth the basis for her determination that Dr. Westerfield's opinion was well-reasoned, the Board was unable to determine whether substantial evidence supported her

¹ The record reflects that claimant's last coal mine employment was in Kentucky. Director's Exhibit 6. Accordingly, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc).

² The Board affirmed the administrative law judge's findings that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), that he invoked the rebuttable presumption of total disability due to pneumoconiosis at 30 U.S.C. §921(c)(4), and that employer established that claimant does not have clinical pneumoconiosis. *Adams v. Miller Bros. Coal Co.*, BRB No. 10-0605 BLA, slip op. at 3 n.4, 4-5 and n.7 (July 20, 2011)(unpub.). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

³ 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).

credibility determination. *Adams*, slip op. at 5-6. Therefore, the Board remanded the case for the administrative law judge to reconsider whether Dr. Westerfield's opinion supported employer's burden to establish rebuttal of the Section 411(c)(4) presumption. The Board specifically instructed the administrative law judge, on remand, to indicate how she assessed the quality of Dr. Westerfield's reasoning in concluding that claimant does not have legal pneumoconiosis. *Adams*, slip op. at 6-7.

On remand, the administrative law judge reconsidered Dr. Westerfield's opinion, and found it to be a well-reasoned opinion that claimant does not have legal pneumoconiosis. Thus, the administrative law judge found that employer rebutted the Section 411(c)(4) presumption by disproving the existence of pneumoconiosis. Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's reliance on Dr. Westerfield's opinion to find that employer disproved the existence of legal pneumoconiosis. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, declined to file a substantive response brief.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Because claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden of proof shifted to employer to establish rebuttal. To establish rebuttal, employer must disprove the existence of pneumoconiosis, or establish that claimant's pulmonary or respiratory impairment "did not arise out of, or in connection with," coal mine employment. 30 U.S.C. §921(c)(4); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 479, 25 BLR 2-1, 2-8 (6th Cir. 2011).

In considering whether employer established rebuttal of the presumption, the administrative law judge reconsidered Dr. Westerfield's opinion, focusing on the physician's reasoning for concluding that claimant does not have legal pneumoconiosis. The administrative law judge found that, contrary to claimant's contention, Dr. Westerfield's opinion was not based upon a generalized statistical rationale, but rather, was based on the doctor's application of his medical knowledge to the facts of this case. Decision and Order at 5. In so finding, the administrative law judge determined that Dr. Westerfield explained that he diagnosed claimant with asthma not merely because claimant's pulmonary function study reflects reversibility of 17%, but also because

claimant is being treated for asthma.⁴ Decision and Order at 4 n.6, 6. The administrative law judge further found that Dr. Westerfield explained that claimant's asthma was not caused or aggravated by either smoking or coal mine dust, but was allergy-related. *Id.*

Additionally, the administrative law judge found that Dr. Westerfield explained that claimant has COPD unrelated to coal mine dust exposure, but due to a long history of cigarette smoking, because claimant has a specific pattern of airway obstruction coupled with a reduced diffusion capacity, in the presence of a normal O₂ value. Decision and Order at 5-6. The administrative law judge further found that since Dr. Westerfield acknowledged that claimant had sufficient exposure to coal mine dust, even as a surface miner, to contract pneumoconiosis, the doctor did not rely on claimant's status as a surface miner as a significant basis for his opinion that claimant's COPD is unrelated to coal mine employment.⁵ Decision and Order at 6. Finding Dr. Westerfield's opinion to be well-reasoned and documented, the administrative law judge determined that "the preponderance of the evidence weighs in favor of a finding that the [c]laimant does not suffer from legal pneumoconiosis and the [e]mployer has established rebuttal under the first method." Decision and Order at 6.

Claimant contends that Dr. Westerfield's opinion is equivocal, contradictory, and lacks a reasoned explanation for why claimant's coal mine dust exposure did not contribute to, or aggravate, claimant's obstructive impairment. Claimant's Brief at 10-12, 14. Claimant therefore argues that the record "does not contain an affirmative showing that [claimant] does not suffer from pneumoconiosis" Claimant's Brief at 15. Claimant's contention lacks merit.

The determination of whether a medical opinion is adequately reasoned is committed to the discretion of the administrative law judge. *See Director, OWCP v. Rowe*, 710 F. 2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). Contrary to claimant's contention, substantial evidence supports the administrative law judge's permissible

⁴ In making this finding, the administrative law judge was addressing the Board's instruction to consider whether Dr. Westerfield adequately explained how the reversibility of claimant's impairment supported a determination that claimant does not have legal pneumoconiosis. *Adams*, slip op. at 6-7.

⁵ In making this finding, the administrative law judge was addressing the Board's instruction to consider Dr. Westerfield's statement that "[m]ost coal miners do not develop COPD" from coal mine dust exposure, "[a]nd that's particularly true with surface miners," in light of her finding that claimant worked in dusty conditions that were substantially similar to those underground. *Adams*, slip op. at 6 n.8, *quoting* Employer's Exhibit 3 (Dr. Westerfield's deposition at 19).

determination that Dr. Westerfield adequately explained his opinion, with reference to the objective evidence in this case, that claimant's impairment is not related to coal mine dust exposure, but is due to asthma and smoking. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989). Claimant's assertions that Dr. Westerfield's opinion is equivocal and contradictory amount to a request to reweigh the evidence, which the Board is not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because the administrative law judge permissibly exercised her discretion in reaching her credibility determinations, we affirm her finding, based on Dr. Westerfield's opinion, that employer disproved the existence of legal pneumoconiosis by a preponderance of the evidence. *See Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103. We, therefore, affirm, as supported by substantial evidence, the administrative law judge's determination that employer rebutted the Section 411(c)(4) presumption by proving that claimant does not have pneumoconiosis, and we affirm the denial of benefits. 30 U.S.C. §921(c)(4); *see Morrison*, 644 F.3d at 479, 25 BLR at 2-8.

Accordingly, the administrative law judge's Decision and Order on Remand Denying Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge