BRB Nos. 11-0205 BLA
and 11-0205 BLA-A

HERBERT JAMES KEATHLEY	)	
	)	
Claimant-Petitioner	)	
Cross-Respondent	)	
	)	
v.	)	
	)	
SUNNY RIDGE MINING COMPANY	)	DATE ISSUED: 11/16/2011
	)	
and	)	
	)	
AMERICAN INTERNATIONAL SOUTH INSURANCE	)	
	)	
Employer/Carrier-Respondents	)	
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 Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky.

H. Brett Stonecipher (Ferreri & Fogle, PLLC), Lexington, Kentucky, for employer/carrier.

Ann Marie Scarpino (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals and employer/carrier (employer) cross-appeals the Decision and Order (09-BLA-5081) of Administrative Law Judge Richard T. Stansell-Gamm denying benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*)) (the Act). This case involves a claim filed on July 20, 2007.

In considering the claim, the administrative law judge properly noted that Congress recently enacted amendments to the Act, which became effective on March 23, 2010, affecting claims filed after January 1, 2005. Relevant to this living miner's claim, Section 1556 of Public Law No. 111-148 reinstated the presumption of Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). Under amended Section 411(c)(4), if a miner establishes at least fifteen years of qualifying coal mine employment, and that he or she has a totally disabling respiratory impairment, there will be a rebuttable presumption that he or she is totally disabled due to 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)). If the presumption is invoked, the burden of proof shifts to employer to disprove the existence of pneumoconiosis, or to establish that claimant's pulmonary or respiratory impairment "did not arise out of, or in connection with," coal mine employment.[1] 30 U.S.C. §921(c)(4).

Applying amended Section 411(c)(4), the administrative law judge found that claimant worked for more than fifteen years in surface mining employment, where he was exposed to coal dust in conditions substantially similar to those of an underground

[1] In an April 2, 2010 Order, the administrative law judge provided the parties with notice of amended Section 411(c)(4), and of its potential applicability to this case. The administrative law judge set a schedule for the parties to submit position statements, and he reopened the record to allow the parties to submit additional evidence to respond to the change in law. Employer and the Director, Office of Workers' Compensation Programs (the Director), submitted position statements. Employer did not submit any additional evidence. Claimant, however, submitted a handwritten employment history, which the administrative law judge admitted into evidence. Decision and Order at 3; Claimant's Exhibit 7.

coal mine.[2] The administrative law judge also found that the evidence established that claimant has a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge, therefore, found invocation of the rebuttable presumption established. However, the administrative law judge found that employer rebutted the presumption, by establishing that claimant does not have pneumoconiosis. Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that employer established rebuttal of the Section 411(c)(4) presumption. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, requesting that the Board vacate the administrative law judge's finding that employer established rebuttal of the Section 411(c)(4) presumption. In a reply brief, employer reiterates its previous contentions. Employer has also filed a cross-appeal, arguing that the administrative law judge erred in finding that claimant established invocation of the Section 411(c)(4) presumption. Neither claimant nor the Director has responded to employer's contentions on cross-appeal.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 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).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a living miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

Invocation of the Section 411(c)(4) Presumption

Employer contends that the administrative law judge erred in finding that claimant established invocation of the Section 411(c)(4) presumption. In order to establish invocation, a claimant must establish at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an

[2] The record reflects that claimant's last coal mine employment was in Kentucky. Claimant's Exhibit 7. 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 (1989) (*en banc*).

underground mine, and that he suffers from a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4). Employer initially challenges the administrative law judge's finding that claimant established that he worked for sixteen and one-half years in a surface mine, in dust conditions substantially similar to those found in an underground mine.

In order to establish that his surface mine conditions are comparable to underground conditions, a claimant need only establish that the conditions existing at the surface coal mine work site are substantially similar to the conditions found in an underground mine. *McGinnis v. Freeman United Coal Mining Co.*, 10 BLR 1-4 (1987); *Wagahoff v. Freeman United Coal Mining Co.*, 10 BLR 1-100 (1987). A claimant is not required to demonstrate that the environmental conditions at the surface mine are similar to the "most dusty area of an underground coal mine." *McGinnis*, 10 BLR at 1-7.

In this case, the administrative law judge found that claimant proved that, during his sixteen and one-half years as a surface miner, he was exposed to dust conditions substantially similar to those existing underground:

> Based on [claimant's] undisputed testimony that, as a backhoe operator, he worked at times 10 to 500 feet from active strip coal mines on roads that were being used to haul raw coal from the strip mines to the tipples; and that as a bulldozer operator he removed slate at the strip coal mines, I find that [claimant] was exposed to coal mine dust during his 16 and ½ years as a coal miner. Regarding the intensity of the exposure, [claimant] testified that he worked in dusty conditions and the dust levels were ". . . black . . . you couldn't see." According to [claimant], the dust entered his eyes, nose, and throat and his clothes would appear black at the end of the day. In light of the uncontroverted and credible testimony, I find [claimant] has proved he was employed for 16 and ½ years in conditions substantially similar to underground coal mine employment.

Decision and Order at 13 (citation omitted).[3]

[3] Review of the record reflects that claimant's characterization of the conditions of his surface coal mine employment is uncontradicted. Although employer notes that Drs. Westerfield and Broudy testified that surface coal miners tend to have less significant coal dust exposure than do underground coal miners, *see* Employer's Brief at 24, employer presented no evidence contradicting claimant's testimony regarding the dust conditions that he experienced while engaged in surface mining.

Employer contends that the administrative law judge erred in finding that claimant's self-employment as a backhoe operator from 1972 to 1984 was substantially similar to conditions in an underground mine.[4] Employer's Brief at 23. Employer argues that it "appears" that claimant's hearing testimony, regarding the intensity of his coal dust exposure, was in reference to his coal mine employment that occurred after he began working for coal mine operators in 1984. *Id.* In support of its argument, employer notes that claimant's description of the coal dust, as being so black that he "couldn't see," occurred during a discussion of claimant's work for "other people." *Id.* at 23-24; Hearing Transcript at 27-28. While employer provides its interpretation of this portion of claimant's testimony, employer ignores claimant's earlier testimony that, while he was working as a backhoe operator at the strip mines, dust entered his eyes, nose, and throat, and his clothes would appear black at the end of the day. Hearing Transcript at 21. The administrative law judge permissibly relied upon this testimony in finding that claimant's self-employment as a backhoe operator at strip mines from 1972 to 1984 occurred in conditions substantially similar to those found in underground mines. *See McGinnis*, 10 BLR at 1-7; Decision and Order at 13. Because it is based upon substantial evidence, we affirm the administrative law judge's finding that claimant established more than fifteen years of employment in a surface mine with dust conditions substantially similar to those found in underground mines. *McGinnis*, 10 BLR at 1-7; *Wagahoff*, 10 BLR at 1-101.

Employer also contends that the administrative law judge erred in finding that the evidence established total disability. Specifically, employer argues that the administrative law judge erred in finding that the pulmonary function study evidence established the existence of a totally disabling pulmonary impairment. Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered four pulmonary function studies conducted on March 11, 2008, May 23, 2008, October 7, 2008, and October 10, 2008. Director's Exhibit 17; Claimant's Exhibit 1; Employer's Exhibits 3, 4. The first two pulmonary function studies, conducted on March 11, 2008 and May 23, 2008, produced qualifying values both before and after the administration of a bronchodilator.[5] Director's Exhibit 17; Employer's Exhibit 4. However, the October 7, 2008 pulmonary function study produced non-qualifying values both before and after the administration of a bronchodilator. Employer's Exhibit 3. The final pulmonary function

[4] Employer notes that, if claimant's twelve-year period of self-employment is not credited as being substantially similar to underground coal mine employment, claimant would fall short of establishing the requisite fifteen years of coal mine employment necessary to invoke the Section 411(c)(4) presumption. Employer's Brief at 23.

[5] A "qualifying" pulmonary function study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendix B. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i).

study, conducted on October 10, 2008, produced qualifying pre-bronchodilator results, and included no post-bronchodilator results. Claimant's Exhibit 1.

The administrative law judge found that all of the studies were valid, and that "five of the seven pulmonary function tests met the regulatory threshold to establish total disability. In turn, the preponderance of the conforming and valid pulmonary function tests demonstrate total disability under 20 C.F.R. §718.204(b)(2)(i)." Decision and Order at 15.

Employer contends that the administrative law judge erred in failing to provide a valid reason for according less weight to the non-qualifying October 7, 2008 pulmonary function study. We agree. In this case, the administrative law judge's evaluation of the conflicting pulmonary function study was improperly based solely upon a count of the qualifying versus the non-qualifying studies. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 503 n.1, 22 BLR 2-625, 2-629 n.1 (6th Cir. 2003); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993). Consequently, the administrative law judge failed to provide a valid basis for according less weight to the non-qualifying results obtained during claimant's October 7, 2008 pulmonary function study. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-154 (1989) (*en banc*). Consequently, we must vacate the administrative law judge's finding pursuant to 20 C.F.R. §718.204(b)(2)(i), and remand the case for further consideration. *See Director, OWCP v. Rowe*, 710 F. 2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983).

On remand, after resolving the conflicting pulmonary function study evidence pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge must weigh all of the relevant evidence together, both like and unlike, to determine whether claimant has established total disability pursuant to 20 C.F.R. §718.204(b)(2).[6] *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.* 9 BLR 1-236 (1987) (*en banc*). On remand, if claimant establishes total disability pursuant to 20 C.F.R. §718.204(b)(2), he is entitled to invocation of the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4). 30 U.S.C. §921(c)(4). If claimant fails to establish total disability

[6] The administrative law judge found that the arterial blood gas study evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 15. Because there is no evidence of cor pulmonale with right-sided congestive heart failure, the administrative law judge also found that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). *Id.* at 15. The administrative law judge, however, found that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *Id.* at 15-16. Because these findings are unchallenged on appeal, they are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

pursuant to 20 C.F.R. §718.204(b)(2), an essential element of entitlement, he is not entitled to benefits. *Trent*, 11 BLR at 1-27.

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

In the interest of judicial economy, should the administrative law judge, on remand, again find the presumption invoked, we next consider claimant's contention that the administrative law judge erred in finding that employer established rebuttal of the Section 411(c)(4) presumption. If claimant invokes the presumption of total disability due to pneumoconiosis at Section 411(c)(4), the burden of proof shifts to employer to establish rebuttal by disproving the existence of pneumoconiosis, or by proving 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, 479-80, BLR (6th Cir. 2011). The administrative law judge found that employer established the first method of rebuttal by disproving the existence of clinical and legal pneumoconiosis.[7]

Claimant initially argues that the administrative law judge erred in finding that employer disproved the existence of clinical pneumoconiosis. Specifically, claimant contends that the administrative law judge erred in his consideration of the x-ray evidence. After initially finding that numerous interpretations of x-rays taken from June 5, 2006 through July 27, 2007 were either inconclusive or negative for pneumoconiosis, the administrative law judge focused upon the remaining seven interpretations of four x-rays taken on September 17, 2007, May 23, 2008, October 7, 2008, and October 10, 2008. Decision and Order at 16-18. Although the administrative law judge found that the May 23, 2008 and October 7, 2008 x-rays were "inconclusive for the existence of pneumoconiosis,"[8] he found that the September 17, 2007 and October 10, 2008 x-rays

[7] "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 tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). "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).

[8] Dr. Baker, a B reader, interpreted the May 23, 2008 and October 7, 2008 x-rays as positive for pneumoconiosis. Claimant's Exhibits 3, 6. However, each of these x-rays was also interpreted as negative for pneumoconiosis by an equally qualified physician. Dr. Broudy, a B reader, rendered a negative interpretation of the May 23, 2008 x-ray, and Dr. Westerfield, a B reader, rendered a negative interpretation of the October 7, 2008 x-ray. Employer's Exhibits 2, 3.

were negative for the disease.[9] Decision and Order at 18. The administrative law judge, therefore, found that employer proved, through the x-ray evidence, that claimant does not suffer from clinical pneumoconiosis. *Id.*

Claimant argues that the administrative law judge erred in considering the interpretations of the x-rays taken from June 5, 2006 through July 27, 2007, because this evidence exceeds the evidentiary limitations set forth at 20 C.F.R. §725.414. We disagree. The x-ray interpretations in question are contained in claimant's hospitalization and treatment records, and are, therefore, admissible. *See* 20 C.F.R. §725.414(a)(4); Employer's Exhibit 8. Moreover, even if this evidence were excluded, the administrative law judge's finding, that the x-ray evidence established that claimant does not suffer from clinical pneumoconiosis, would still be supported by substantial evidence. Consequently, the administrative law judge's error, if any, in considering the disputed x-ray evidence, is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). We, therefore, affirm the administrative law judge's finding that the x-ray evidence established that claimant does not suffer from clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).[10] Because it is based on substantial evidence, we affirm the administrative law judge's finding that employer disproved the existence of clinical pneumoconiosis.

Claimant next contends that the administrative law judge erred in finding that employer disproved the existence of legal pneumoconiosis. The administrative law judge considered the medical opinions of Drs. Martin, Ammisetty, Baker, Westerfield, and Broudy. Drs. Martin, Ammisetty, and Baker diagnosed legal pneumoconiosis, in the form of chronic obstructive pulmonary disease (COPD) due to both cigarette smoking and coal mine dust exposure. Director's Exhibit 17; Claimant's Exhibits 1-2, 4. Although Dr. Westerfield also diagnosed COPD, he opined that it was due to cigarette smoking alone. Employer's Exhibit 3. Dr. Broudy diagnosed COPD, but opined that it was "due to a combination of chronic obstructive asthma and pulmonary emphysema and chronic bronchitis from cigarette smoking." Employer's Exhibit 4. Dr. Broudy opined

[9] Dr. Narra, a physician with no special radiological qualifications, interpreted the September 17, 2007 x-ray as negative for pneumoconiosis. Director's Exhibit 17. There are no other interpretations of the September 17, 2007 x-ray in the record. Although Dr. Baker, a B reader, interpreted the October 10, 2008 x-ray as positive for pneumoconiosis, Claimant's Exhibit 6, Dr. Wiot, a B reader and Board-certified radiologist, rendered a negative interpretation of that x-ray. Employer's Exhibit 11.

[10] The administrative law judge also found that the medical opinion evidence established that claimant does not suffer from clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Decision and Order at 38. Because claimant does not challenge this finding, it is affirmed. *Skrack*, 6 BLR at 1-711.

that claimant's impairment was not associated with coal mine dust exposure, "because of the reversibility and obstructive nature of the respiratory impairment." Employer's Exhibit 4.

In evaluating whether the evidence disproved the existence of legal pneumoconiosis, the administrative law judge found that the diagnoses of legal pneumoconiosis rendered by Drs. Martin and Ammisetty were not sufficiently reasoned, because neither doctor adequately explained his basis for attributing claimant's COPD to his coal mine dust exposure. Decision and Order at 36. The administrative law judge accorded less weight to Dr. Baker's diagnosis of legal pneumoconiosis because the doctor relied upon an inaccurate smoking history. *Id.* at 37. Turning to the opinions of employer's physicians, the administrative law judge accorded diminished weight to Dr. Westerfield's opinion, as to the etiology of claimant's COPD, because he found that the doctor's opinion failed to recognize that pneumoconiosis is a latent and progressive disease. *Id.* at 36-37. The administrative law judge, however, found that Dr. Broudy's opinion, that claimant's COPD was not due to his coal mine dust exposure, was a "documented and reasoned assessment." *Id.* at 38. Based upon his crediting of Dr. Broudy's opinion, the administrative law judge found that employer disproved the existence of legal pneumoconiosis.

Claimant argues that the administrative law judge should have accorded greater weight to the opinions of Drs. Ammisetty and Martin, based upon their status as claimant's treating physicians.[11] An administrative law judge is not required to accord greater weight to the opinion of a treating physician based on that status alone. *See* 20 C.F.R. §718.104(d)(5). Rather, "the opinions of treating physicians get the deference they deserve based on their power to persuade." *Peabody Coal Co. v. Odom*, 342 F.3d 486, 492, 22 BLR 2-612, 2-622 (6th Cir. 2003); *Williams*, 338 F.3d at 513, 22 BLR at 2-647. Because Drs. Martin and Ammisetty did not provide an explanation for attributing claimant's COPD to his coal dust exposure, the administrative law judge permissibly found that their diagnoses were not sufficiently reasoned. *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-155; Decision and Order at 26. Consequently, we reject claimant's contention that the administrative law judge was required to accord their opinions greater weight based upon their status as claimant's treating physicians.

Claimant and the Director contend that the administrative law judge erred in relying on Dr. Broudy's opinion to find that employer rebutted the Section 411(c)(4)

[11] Because no party challenges the administrative law judge's bases for according less weight to the opinions of Drs. Baker and Westerfield, these findings are affirmed. *Skrack*, 6 BLR at 1-711.

presumption. Specifically, claimant and the Director argue that the administrative law judge did not adequately examine the reasoning underlying Dr. Broudy's opinion. The determination of whether a medical opinion is reasoned and documented is for the administrative law judge as factfinder to decide. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103. That determination "requires the factfinder to examine the validity of the reasoning of a medical opinion," and to explain his credibility determinations. *Id.*

After summarizing Dr. Broudy's opinion, the administrative law judge found that:

> Dr. Broudy . . . reasonably concluded that [claimant's] pulmonary obstruction and breathing problems were not due in part to his coal mine dust exposure. First, the notable, partial reversibility in [claimant's] pulmonary obstruction in response to the administration of bronchodilator medication in the May 23, 2008 pulmonary function test is inconsistent with the fixed, irreversible pulmonary condition associated with pneumoconiosis. Next, the notable improvement in [claimant's] pulmonary capacity during the October 7, 2008 pulmonary function test demonstrates a variability in his pulmonary obstruction that is likewise inconsistent with pneumoconiosis, which is incurable. Finally, Dr. Broudy noted that[,] as a complication of his heart surgery, [claimant] lost his sternum and that chest wall injury adversely affects the function of his lungs.

Decision and Order at 37.

The Director contends that the administrative law judge erred in not addressing whether Dr. Broudy's reasoning for excluding coal mine dust exposure as a cause of claimant's obstructive impairment was consistent with the regulations. The record reflects that Dr. Broudy excluded coal mine dust exposure as a cause of claimant's chronic bronchitis because "bronchitis associated with coal dust exposure usually ceases with cessation of exposure." Employer's Exhibit 6 at 16. As the Director notes, the administrative law judge did not address this aspect of Dr. Broudy's opinion in light of the regulations, which recognize that pneumoconiosis may be latent and progressive, and "may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), *reh'g denied* 484 U.S. 1047 (1988); *Odom*, 342 F.3d at 491, 22 BLR at 2-621.

The Director argues further that, in finding Dr. Broudy's opinion to be well-reasoned, the administrative law judge did not address the significance of Dr. Broudy's reliance upon the obstructive nature of claimant's pulmonary impairment to exclude coal mine dust exposure as a cause of his COPD. Director's Brief at 3. As the Director argues, the administrative law judge did not reconcile this aspect of Dr. Broudy's opinion

with 20 C.F.R. §718.201(a)(2), which defines legal pneumoconiosis as "any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment."[12]

The Director also contends that the administrative law judge erred in accepting, without analysis, Dr. Broudy's opinion that claimant's COPD is unrelated to his coal mine employment, because his pulmonary function study demonstrates reversibility. The Director argues that the administrative law judge did not address whether Dr. Broudy adequately explained why impairment reversibility eliminates a condition caused or aggravated by coal mine dust exposure. Director's Brief at 4-5. Employer responds that Dr. Broudy adequately explained his opinion in this respect. Employer's Reply Brief at 3.

While the administrative law judge summarized Dr. Broudy's report, and his deposition testimony regarding the significance of reversibility in claimant's pulmonary function study, he did not set forth his basis for finding this aspect of Dr. Broudy's opinion to be well-reasoned and persuasive. Decision and Order at 25-26, 37. Therefore, and because the administrative law judge did not address the other aspects of Dr. Broudy's opinion discussed above, the Board is unable to determine whether substantial evidence supports the administrative law judge's finding that employer rebutted the presumption, by establishing that claimant does not have legal pneumoconiosis. We must therefore vacate the administrative law judge's finding that employer established rebuttal of the Section 411(c)(4) presumption, and remand this case to the administrative law judge for further consideration of Dr. Broudy's opinion. *See Rowe*, 710 F. 2d at 255, 5 BLR at 2-103. On remand, the administrative law judge should consider the issues raised by the Director, and employer's response, in assessing the validity of the reasoning of Dr. Broudy's opinion. *See Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

On remand, if the administrative law judge finds that claimant has invoked the Section 411(c)(4) presumption, he must consider whether Dr. Broudy's opinion establishes that claimant does not have legal pneumoconiosis, or that claimant's respiratory or pulmonary impairment did not arise out of, of in connection with, coal mine employment. 30 U.S.C. §921(c)(4); *see Morrison*, 644 F.3d at 479-80.

[12] The Director also notes an "apparent inconsistency" in Dr. Broudy's opinion. Director's Brief at 4. The Director notes that, although Dr. Broudy acknowledged, at one point, that coal mine dust exposure can cause an obstructive impairment, Employer's Exhibit 6 at 19-20, the doctor nevertheless ruled out coal mine dust exposure as a cause of claimant's COPD based, in part, on the obstructive nature of claimant's pulmonary impairment. Employer's Exhibit 4.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge