BRB No. 13-0141 BLA

JAMES M. LAYTON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
SHREWSBURY COAL COMPANY	)	
	)	
and	)	
	)	
VALLEY CAMP COAL COMPANY	)	DATE ISSUED: 12/23/2013
	)	
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 Denying Benefits of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Sandra M. Fogel (Culley & Wissore), Carbondale, Illinois, for claimant.

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2009-BLA-5817) of Administrative Law Judge Thomas M. Burke rendered on a subsequent claim[1] filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011)(the Act). Upon stipulation of the parties, the administrative law judge credited claimant with 16.27 years of underground coal mine employment, and adjudicated this claim, filed on September 2, 2008, pursuant to 20 C.F.R. Parts 718 and 725.[2] The administrative law judge found that the newly submitted medical evidence failed to establish the irrebuttable presumption of total disability due to complicated pneumoconiosis pursuant to 20 C.F.R. §§718.204(b)(1) (2013) and 718.304 (2013). The administrative law judge found, however, that the evidence was sufficient to support a finding of total respiratory disability, and was, therefore, sufficient to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d) (2013).[3] Applying amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), the administrative law judge found that claimant invoked the presumption of total disability due to pneumoconiosis, but that employer successfully rebutted the presumption by proving that claimant does not have pneumoconiosis. Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's findings on the issues of complicated pneumoconiosis, clinical pneumoconiosis, and legal

[1] Claimant's prior claim, filed on April 24, 1989, was finally denied by Judge Edward J. Murty, Jr. on May 23, 1991, because none of the elements of entitlement had been established. Director's Exhibit 1.

[2] The Department of Labor revised the regulations at 20 C.F.R. Parts 718 and 725 to implement amendments to the Act, eliminate unnecessary or obsolete provisions, and make technical changes to certain regulations. 78 Fed. Reg. 59,102 (Sept. 25, 2013) (to be codified at 20 C.F.R. Parts 718 and 725). The revised regulations became effective on October 25, 2013. *Id*. Unless otherwise identified, a regulatory citation in this decision refers to the regulation as it appears in the September 25, 2013 Federal Register. Citations to the April 1, 2013 version of the Code of Federal Regulations will be followed by "(2013)."

[3] The Department of Labor has revised the regulation at 20 C.F.R. §725.309, effective October 25, 2013. The applicable language formerly set forth in 20 C.F.R. §725.309(d) (2013) is now set forth in 20 C.F.R. §725.309(c). 78 Fed. Reg. 59,102, 59,118 (Sept. 25, 2013).

pneumoconiosis. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a response brief.[4]

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.[5] 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).

Claimant initially contends that the administrative law judge erred in finding that the weight of the evidence was insufficient to establish complicated pneumoconiosis at Section 718.304 (2013). Section 411(c)(3) of the Act, as implemented by 20 C.F.R. §718.304 (2013), provides that there is an irrebuttable presumption of total disability due to pneumoconiosis if the miner suffers from a chronic dust disease of the lung which, (a) when diagnosed by chest x-ray, yields one or more large opacities (greater than one centimeter in diameter) classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, is a condition which would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304 (2013). The introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for the irrebuttable presumption. The administrative law judge must weigh together all of the evidence relevant to the presence or absence of complicated pneumoconiosis and determine whether the claimant has established the presence of complicated pneumoconiosis by a preponderance of the evidence. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 282-83, 24 BLR 2-269, 2-280-81 (4th Cir. 2010); *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (4th Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991)(en banc). The United States Court of Appeals for the Fourth Circuit has held that, "[b]ecause prong (A) sets out an entirely objective scientific

[4] We affirm, as unchallenged on appeal, the administrative law judge's determination that claimant established 16.27 years of underground coal mine employment, and his findings that the evidence was sufficient to establish total respiratory disability at 20 C.F.R. §718.204(b) (2013), a change in an applicable condition of entitlement at 20 C.F.R. §725.309(d) (2013), and invocation of the rebuttable presumption of total disability due to pneumoconiosis pursuant to amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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

standard" for diagnosing complicated pneumoconiosis, that is, an x-ray opacity greater than one centimeter in diameter, the administrative law judge must determine whether a condition which is diagnosed by biopsy or autopsy under prong (B) or by any other means under prong (C) would show as a greater-than-one-centimeter opacity if it were seen on a chest x-ray. *Eastern Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-561-62 (4th Cir. 1999).

Claimant asserts that the administrative law judge erred in failing to credit Dr. Alexander's positive reading of the November 17, 2008 x-ray as a definite diagnosis of complicated pneumoconiosis. With respect to the August 5, 2009 x-ray, claimant argues that the administrative law judge did not provide sufficient reasons for giving less weight to Dr. Ahmed's diagnosis of complicated pneumoconiosis, while crediting the contrary opinions of Drs. Smith and Wiot, as well as the opinion of Dr. Zaldivar, "who has inferior credentials." Claimant further argues that the administrative law judge's consideration of the medical opinion evidence and the CT scan evidence was neither relevant nor necessary. Claimant's Brief at 7-9. Claimant's contentions lack merit.

Pursuant to Section 718.304(a) (2013), the administrative law judge reviewed three interpretations of the November 17, 2008 x-ray and determined that the film was negative for complicated pneumoconiosis, as only Dr. Alexander, who is dually qualified as a B reader and a Board-certified radiologist,[6] found any large opacities, and he stated that further evaluation was needed to determine whether the opacities constituted pneumoconiosis or a different disease process. Dr. Rasmussen, a B reader, and Dr. Meyer, who is dually qualified, read the film as negative for pneumoconiosis. Decision and Order at 17; Director's Exhibit 12; Employer's Exhibit 3; Claimant's Exhibit 1. With regard to the August 5, 2009 x-ray, the administrative law judge credited the interpretations of the film by Drs. Wiot, Smith and Zaldivar, "three well-qualified physicians, two of whom are dually qualified," acknowledging a density on the film but attributing it to cancer or pleural plaques, over the interpretation by Dr. Ahmed, a dually-qualified physician and the only doctor to diagnose a size A large opacity on the film. Thus, the administrative law judge determined that the film was, at most, inconclusive for complicated pneumoconiosis. Finally, the administrative law judge noted that none of the three x-rays found in claimant's treatment records was read as positive for

[6] A Board-certified radiologist is one who is certified as a radiologist or diagnostic roentgenologist by the American Board of Radiology, Inc., or the American Osteopathic Association. 20 C.F.R. §718.202(a)(ii)(C) (2013). The term "B reader" refers to physicians who have demonstrated designated levels of proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute of Safety and Health. *See* 42 C.F.R. §37.51.

complicated pneumoconiosis. Decision and Order at 18; Employer's Exhibits 2, 4; Claimant's Exhibits 2, 3, 4, 5. Pursuant to Section 718.304(c) (2013), the administrative law judge determined that the sole interpretation of a CT scan, performed by Dr. McCain as part of claimant's treatment, did not support a finding of complicated pneumoconiosis. Rather, Dr. McCain diagnosed, in part, calcified pleural plaques consistent with asbestos exposure and an ill-defined 4mm pulmonary nodule, but did not classify the 4mm nodule, nor discuss whether the nodule represented pneumoconiosis or another disease process. Additionally, Dr. McCain did not indicate "whether the nodule would have shown itself as greater than 1 cm in diameter on an x-ray, as would be necessary for a finding of complicated pneumoconiosis." Decision and Order at 18; Claimant's Exhibit 3. The administrative law judge further found that the medical opinion evidence did not support a finding of complicated pneumoconiosis, as "Dr. Rasmussen found no evidence of any clinical pneumoconiosis, let alone complicated;" Drs. Hippensteel and Zaldivar made similar findings; and Dr. Houser agreed, and explained that the abnormality in claimant's left mid-lung zone was pleural thickening resulting from asbestos exposure, rather than complicated pneumoconiosis. Decision and Order at 18; Director's Exhibit 12; Claimant's Exhibits 6, 7, 8; Employer's Exhibits 2, 5, 9, 10, 11, 12, 13, 14.

We find no merit in claimant's contention that the administrative law judge erred in weighing the relevant evidence at Section 718.304 (2013). The administrative law judge permissibly found that Dr. Alexander's interpretation of the November 17, 2008 x-ray was not a definite diagnosis of complicated pneumoconiosis, and that it was outweighed by the negative readings of Drs. Rasmussen and Meyer. *See Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 882, 22 BLR 2-25, 2-42 (6th Cir. 2000); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-37 (1991) (en banc). The administrative law judge also permissibly determined that Dr. Ahmed's finding of large opacities on the August 5, 2009 x-ray was outweighed by the findings of no large opacities of pneumoconiosis by Drs. Zaldivar, Wiot, and Smith, two of whom are dually qualified. The administrative law judge properly considered the number of x-ray interpretations, along with the readers' qualifications, and the actual readings. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59, 19 BLR 2-271, 2-279-80 (6th Cir. 1995). Consequently, weighing all relevant evidence together, we hold that the administrative law judge rationally concluded that claimant failed to establish invocation of the irrebuttable presumption pursuant to Section 718.304(a)-(c) (2013), and we affirm his finding as supported by substantial evidence.

Claimant next challenges the administrative law judge's finding that employer established rebuttal of the amended Section 411(c)(4) presumption with proof that the miner did not have clinical pneumoconiosis. Claimant maintains that the administrative law judge provided an incomplete evaluation of the December 4, 2008 CT scan in finding that it was negative for clinical pneumoconiosis, as he failed to discuss Dr. McCain's

qualifications to interpret the CT scan; treated its findings inconsistently from the x-ray interpretations; and failed to consider the purpose for which the CT scan was ordered. Claimant also argues that the administrative law judge provided no persuasive reason for crediting the medical opinions of Drs. Rasmussen, Hippensteel, Zaldivar and Houser, who did not diagnose clinical pneumoconiosis, over the x-ray evidence that he determined was positive for clinical pneumoconiosis. Claimant's Brief at 4-7. Claimant's arguments lack merit.

The administrative law judge reviewed the x-ray evidence of record from the prior and current claims and, after crediting the more recent evidence, permissibly found that the x-ray evidence "fails to rebut the existence of clinical pneumoconiosis."[7] Decision and Order at 27. The administrative law judge acted within his discretion in finding that the CT scan evidence was negative for pneumoconiosis, since the interpretation of the December 4, 2008 CT scan by Dr. McCain, which noted a history of coal mine employment, did not include a diagnosis of pneumoconiosis. *See Church v. Eastern Associated Coal Corp*., 20 BLR 1-8 (1996), *modified on recon*., 21 BLR 1-52 (1997); *Marra v. Consolidation Coal Co*., 7 BLR 1-216, 1-218-19 (1984); Claimant's Exhibit 3; Decision and Order at 18. We find no merit to claimant's contention that the administrative law judge's evaluation of the CT scan evidence was incomplete. In the absence of controlling statutory language to assess the reliability of a physician's interpretation of a CT scan, we will defer to the administrative law judge's discretion to

[7] The administrative law judge reasonably found that the x-rays from the prior claim, dated 1987, 1989, and 1990, were negative for pneumoconiosis, as no physician found any abnormality consistent with pneumoconiosis. The administrative law judge further determined that the films from claimant's treatment records could not be given full weight, as the September 15, 1993 film, which was read as positive for pneumoconiosis; the October 13, 2008 film, which noted a vague increased opacity, possibly representing calcified pleural plaque; and the August 25, 2009 film, which noted bilateral pleural plaques, were read by physicians whose qualifications were not of record. Of the remaining x-rays, the administrative law judge determined that the November 2008 x-ray was negative for clinical pneumoconiosis, as both Dr. Rasmussen, a B reader, and Dr. Meyer, a dually-qualified physician, found no abnormalities consistent with pneumoconiosis, while Dr. Alexander, also dually qualified, was the sole physician to diagnose pneumoconiosis. The administrative law judge found that the August 5, 2009 x-ray was positive for clinical pneumoconiosis "based solely on the physicians' qualifications," as Dr. Zaldivar, a B reader, and Dr. Wiot, a dually-qualified physician, read the film as negative and Drs. Smith and Ahmed, both dually qualified, read the film as positive for clinical pneumoconiosis. Decision and Order at 26-27.

credit a hospital radiologist.[8] *See Consolidation Coal Co. v. Director, OWCP* [*Stein*], 294 F.3d 885, 22 BLR 2-409 (7th Cir. 2002). Considering the medical opinions of record, the administrative law judge reviewed the four medical reports from the prior claim by Drs. Gaziano, Zaldivar, Fino, and one by Drs. Pfister and Smith,[9] and assigned diminished probative value to Dr. Gaziano's occupational pneumoconiosis diagnosis, on the ground that the doctor based his positive diagnosis on an x-ray that he read as 0/1[10] and which the administrative law judge found to be negative for clinical pneumoconiosis. Furthermore, as Dr. Gaziano did not specify whether he was diagnosing clinical or legal pneumoconiosis, the administrative law judge found the opinion to be vague and not well documented. Decision and Order at 28; Director's Exhibit 1. The administrative law judge also reviewed the medical opinions of Drs. Rasmussen,[11] Zaldivar,[12] Hippensteel,[13]

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[8] The CT scan was performed by Dr. McCain at the Charleston Area Medical Center on December 4, 2008, as part of claimant's treatment. Dr. McCain noted 1) bilateral calcified pleural plaques that correlate with history of asbestos exposure; 2) ill-defined 4mm pulmonary nodule within LU lobe; 3) 1.2 cm left adrenal nodule; 4) abnormal dilation of common bile duct. Dr. McCain also noted emphysematous changes in both upper lung zones. Claimant's Exhibit 3.

[9] Dr. Gaziano diagnosed occupational pneumoconiosis due to smoking and coal dust inhalation. Drs. Zaldivar, Fino, Pfister, and Smith found no evidence of clinical pneumoconiosis. Director's Exhibit 1.

[10] The regulations state that an x-ray classified as Category 0, including sub-category 0/1, under the ILO-U/C 1971 Classification does not constitute evidence of pneumoconiosis. 20 C.F.R. §718.102(b) (2013).

[11] Dr. Rasmussen found no clinical pneumoconiosis, but diagnosed chronic obstructive pulmonary disease (COPD) due to bullous emphysema from smoking and coal mine dust. He noted that claimant's history did not suggest asthma, but stated that it cannot be ruled out. He opined that claimant's coal mine dust represents a significant co-contributor to his disabling lung disease of legal pneumoconiosis. Director's Exhibit 12; Claimant's Exhibit 6; Employer's Exhibit 12 at 27, 45.

[12] Dr. Zaldivar examined claimant on August 8, 2009 and provided supplemental reports on May 3, 2011 and November 20, 2011. Dr. Zaldivar found no evidence of clinical or legal pneumoconiosis. He opined that claimant's pulmonary impairment was due to bullous emphysema due to smoking. He thought claimant exhibited lung cancer radiographically that caused him to lose weight and suggested that claimant see his physician. Employer's Exhibits 2, 9, 11. Dr. Zaldivar provided a deposition on January 11, 2012, in which he reviewed his examination of claimant from 1990, and noted that claimant had been told by Dr. Barry that he had asthma. Based on the CT scan, Dr.

and Houser[14] from the subsequent claim, and noted that "none of the physicians rendering opinions in the subsequent claim found evidence of clinical pneumoconiosis." Decision and Order at 28; Director's Exhibit 12; Claimant's Exhibits 6, 7, 8; Employer's Exhibits 2, 5, 9, 10, 11, 12, 13, 14. Thus, the administrative law judge permissibly discounted Dr. Gaziano's opinion, the only opinion that could possibly have represented a diagnosis of clinical pneumoconiosis, and credited the opinions of Drs. Fino, Pfister, Smith, Rasmussen, Zaldivar, Hippensteel, and Houser, that claimant does not have clinical pneumoconiosis. Decision and Order at 28; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). Recognizing that the CT scan is not a "magic bullet" that automatically rebuts the presumption of clinical pneumoconiosis, but acknowledging Dr. Zaldivar's opinion that a CT scan is a more sensitive test than an x-ray and is an excellent diagnostic tool, the administrative law judge permissibly credited the negative CT scan evidence, as corroborated by the overwhelming consensus of medical experts, that claimant does not have clinical pneumoconiosis. Decision and Order at 18. As substantial evidence supports the administrative law judge's determination that employer has rebutted the presumption of clinical pneumoconiosis, it is affirmed. 20 C.F.R. §718.202(a); *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 2-162, 2-175 (4th Cir. 2000); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997).

Zaldivar stated that what he thought was a bulla was not, and that there was no evidence of emphysema or pneumoconiosis. Employer's Exhibit 14 at 28. He concluded that claimant did not yet have anatomical emphysema, but that his impairment was caused by asthma and emphysema from cigarette smoking, and the asthma was causing remodeling of the lungs because it was never treated. Employer's Exhibit 14 at 86.

[13] Dr. Hippensteel provided consulting opinions on December 9, 2009 and June 13, 2011, and opined that the evidence as a whole shows that claimant's pulmonary impairment is related to his ongoing heavy cigarette smoking, rather than his prior coal mine dust exposure. He stated that claimant's pulmonary condition is caused by asthma and bullous emphysema due to smoking. Employer's Exhibits 5, 10, 13.

[14] Dr. Houser provided a consulting opinion on November 14, 2011 and supplemental opinion on February 21, 2012. He diagnosed a totally disabling respiratory impairment due to emphysema/COPD as a result of coal dust inhalation, with smoking as a contributing factor. He found no evidence to support a diagnosis of bronchial asthma and thought that it was doubtful that claimant had lung cancer. He stated that the likely explanation for the abnormality in the left mid lung zone "is secondary to the pleural thickening, which may be the result of prior asbestos exposure." Claimant's Exhibits 7, 8.

Claimant next challenges the administrative law judge's finding that employer disproved the existence of legal pneumoconiosis, asserting that the administrative law judge failed to adequately address the credibility of the credited opinions of Drs. Zaldivar and Hippensteel. Claimant also contends that the administrative law judge's decision does not comply with the requirements of the Administrative Procedure Act (APA),[15] as he failed to weigh the contrary opinions of Drs. Houser and Rasmussen. Claimant's Brief at 10-14.

The administrative law judge accurately summarized the conflicting opinions of Drs. Houser, Rasmussen, Zaldivar, and Hippensteel, and determined that Dr. Houser diagnosed disabling emphysema/chronic obstructive pulmonary disease (COPD) caused by coal dust inhalation, with smoking as a contributing factor, and no evidence to support a diagnosis of bronchial asthma. Claimant's Exhibits 7, 8. Dr. Rasmussen diagnosed COPD due to bullous emphysema from smoking and coal mine dust. He noted that claimant's history did not suggest asthma, but that it could not be ruled out. Employer's Exhibit 12 at 27, 45. Dr. Zaldivar did not find legal pneumoconiosis, but diagnosed untreated asthma that is triggered continuously by his smoking habit, causing lung damage through remodeling. Dr. Zaldivar noted that there is a known degree of emphysema present that is very mild compared to the degree of damage caused by claimant's bronchospasm. Employer's Exhibit 14 at 29, 38, 87. Dr. Hippensteel diagnosed asthma and bullous emphysema related entirely to smoking, and opined that claimant does not have legal pneumoconiosis. Employer's Exhibit 13 at 8, 48.

The administrative law judge noted that "employer produced a good deal of evidence to rebut the presumption that claimant has legal pneumoconiosis, in the form of medical opinions, especially by Drs. Zaldivar and Hippensteel, and to a lesser extent, Rasmussen." Decision and Order at 29. The administrative law judge credited the opinions of Drs. Zaldivar and Hippensteel, finding that they were "well-reasoned and well-documented opinions arguing strongly that it would be highly unlikely for coal dust inhalation to produce the type of impairment claimant suffers from, and that this impairment is rather the result of longstanding asthma that has been exacerbated, over the years, by his cigarette smoking habit, causing a progressive but variable lung function impairment." Decision and Order at 30. Additionally, the administrative law judge noted that the medical opinions listed emphysema as another cause of claimant's disabling lung

[15] 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).

disease.[16] The administrative law judge noted that "the emphysema question revolved around whether coal dust, smoking, or both could cause the varying types of emphysema" but that Dr. Zaldivar testified that "none of this discussion was applicable to claimant, as the CT scan (which he fervently endorsed as a definitive arbiter of the existence of bullae), and the diagnostic testing from the prior claim records, ruled out bullous emphysema" and "Dr. Hippensteel corroborated this assessment of the CT scan's superiority." Decision and Order at 30. Considering these statements, the administrative law judge credited "Dr. Zaldivar's argument, that claimant does not have emphysema," and found that "the portions of his and other physicians' reports and depositions discussing the etiologies of emphysema are irrelevant." *Id.* Crediting the testimony of employer's experts and "the testimony employer was able to obtain from Dr. Rasmussen,"[17] the administrative law judge found that employer established the absence of legal pneumoconiosis. *Id*.

We agree with claimant's assertion that the administrative law judge failed to explain why the opinions of Drs. Zaldivar and Hippensteel are credible and entitled to greater weight than the contrary opinions of Drs. Rasmussen and Houser, as the APA requires. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). While the administrative law judge stated that the opinions of Drs. Zaldivar and Hippensteel were well-reasoned and well-documented, he failed to assign weight to the contrary opinions of Drs. Rasmussen and Houser and provide a rationale for his findings. Furthermore, as all of the doctors diagnosed some form of emphysema, including Dr. Zaldivar,[18] the

[16] While noting that the medical record also identified asbestos exposure as a potential cause of claimant's lung damage, the administrative law judge concluded that, even if he were to presume that claimant's pleural plaque resulted from asbestos exposure arising out of coal mine employment, the plaque did not necessarily constitute a respiratory impairment and, thus, did not constitute a chronic lung disease or impairment under the regulations. Decision and Order at 31, *citing* 20 C.F.R. §718.201(a)(2) (2013).

[17] The administrative law judge noted that:

> Even Dr. Rasmussen admitted that Claimant's wheezing and cough were "clearly" best explained by his smoking, that his smoking was "by far…the most significant problem [Claimant]'s had," and went so far as to say that he had a "gut feeling" that Claimant would not be disabled if he had never smoked, but had still worked in the coal mines as long as he did.

Decision and Order at 30.

[18] Dr. Zaldivar noted that "there is a known degree of emphysema present, which is not anatomically visible in the CT scan, so the emphysema must be very mild

administrative law judge's conclusion, that the etiology of the emphysema is irrelevant, is not clear. The administrative law judge erred in finding that claimant does not have emphysema, based on Dr. Zaldivar's opinion that the CT scan ruled out bullous emphysema, as a finding of no bullae on the CT scan does not necessarily rule out all forms of emphysema. Additionally, the CT scan reading by Dr. McCain indicated "emphysematous changes within the upper lungs bilaterally" Claimant's Exhibit 3, whereas the record reflects that Dr. Zaldivar did not personally read the CT scan, *see* Employer's Exhibit 14 at 67. Moreover, the administrative law judge acknowledged that "half of the chest x-ray readings in the subsequent claim contained a finding of emphysema, and Claimant's diagnostic testing was consistent with this finding." Decision and Order at 30. In view of the foregoing, we must vacate the administrative law judge's finding that employer established rebuttal of the amended Section 411(c)(4) presumption with proof that claimant does not have legal pneumoconiosis, and remand this case for further findings. On remand, the administrative law judge must clarify his findings regarding the presence of emphysema and, if present, address the issue of whether it constitutes legal pneumoconiosis. When weighing the physicians' medical opinions, the administrative law judge should take into account all of the factors relevant to their probative value, including the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See 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). In so doing, the administrative law judge must set forth his findings on remand in detail, including the underlying rationale, as required by the APA. *See Wojtowicz*, 12 BLR at 1-165. If, on remand, the administrative law judge determines that employer has failed to establish the absence of legal pneumoconiosis, he must determine whether rebuttal of the amended Section 411(c)(4) presumption is established with proof that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii).

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compared to the degree of damage caused by the bronchospasm, which is long-standing and has been subjected to repeated episodes because of remodeling of the lungs." Employer's Exhibit 14 at 29, 38, 87.

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.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge