U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB Nos. 14-0310 BLA
and 14-0310 BLA-A

WILLIE HARMON	)	
	)	
Claimant-Respondent	)	
Cross-Petitioner	)	
	)	
v.	)	
	)	
EASTERN ASSOCIATED COAL CORPORATION	)	DATE ISSUED: 05/27/2015
	)	
	)	
Employer-Petitioner	)	
Cross-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Paul E. Frampton (Bowles Rice LLP), Charleston, West Virginia, for employer.

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

Before: HALL, Chief Administrative Appeals Judge, McGRANERY and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2011-BLA-06015) of Administrative Law Judge Adele Higgins Odegard rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012)(the Act). The administrative law judge credited claimant with thirty-five years of underground coal mine employment, and adjudicated this claim, filed on March 18, 2010, pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that claimant established total respiratory disability at 20 C.F.R. §718.204(b)(2), and was entitled to invocation of the presumption of total disability due to pneumoconiosis at amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[1] The administrative law judge further found that employer failed to establish rebuttal of the presumption. Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in evaluating the x-ray and CT scan evidence of record which, in turn, "tainted" her evaluation of the medical opinion evidence on the issues of clinical and legal pneumoconiosis. Employer further asserts that the administrative law judge's findings do not comport with the requirements of the Administrative Procedure Act (APA).[2] Claimant responds, urging affirmance of the award of benefits, and cross-appeals, arguing that, if the Board remands this case for further findings, the administrative law judge should be directed to address additional x-ray evidence and various deficiencies in Dr. Zaldivar's opinion. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, suggesting that, in the event of remand, the administrative law judge may take official notice of various on-line documents "pertaining to the credibility of the x-ray reading submitted by Dr. Wheeler." Director's Brief at 1 n.1. Employer responds to claimant's cross-appeal, arguing that, as claimant merely seeks advisory opinions regarding what the administrative law judge should do in the event of a remand, claimant lacks standing to pursue his cross-petition.[3]

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[1] Under amended Section 411(c)(4), a miner is presumed to be totally disabled due to pneumoconiosis if he or she establishes at least fifteen years of underground coal mine employment, or surface coal mine employment in conditions substantially similar to those of an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4)(2012). The Department of Labor revised the regulations to implement the amendments to the Act. The revised regulations became effective on October 25, 2013, and are codified at 20 C.F.R. Parts 718, 725 (2014).

[2] The Administrative Procedure Act (APA) provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established total respiratory disability at 20 C.F.R. §718.204(b)(2). As the

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[4] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to rebut the amended Section 411(c)(4) presumption, the implementing regulation provides, in pertinent part, that employer must establish both that claimant does not have legal pneumoconiosis and clinical pneumoconiosis arising out of coal mine employment[5] at 20 C.F.R. §718.305(d)(1)(i), or establish 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" at 20 C.F.R. §718.305(d)(1)(ii). 20 C.F.R. §718.305(d)(1); *see W. Va. CWP Fund v. Bender*, 782 F.3d 129, BLR (4th Cir. 2015).

The administrative law judge found that employer failed to establish rebuttal by either method. Initially, she found that the x-ray and CT scan evidence is insufficient to establish the absence of clinical pneumoconiosis. Decision and Order at 18, 23, 32-33. Turning to the medical opinions, the administrative law judge found that Drs. Zaldivar and Rosenberg "d[id] not take the overall weight of the x-ray/CT scan evidence into consideration," as they relied on findings of solely irregular opacities located in the lower-lung zones to exclude pneumoconiosis, and failed to address the multiple interpretations from dually-qualified physicians identifying rounded opacities in the

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administrative law judge found that the record supports the parties' stipulation regarding the length of claimant's underground coal mine employment, we also affirm her finding that invocation of the presumption of total disability due to pneumoconiosis is established at amended Section 411(c)(4). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[4] The record reflects that claimant's coal mine employment was in West Virginia. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc); Director's Exhibit 3.

[5] "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).

upper and lower lung zones.[6] *Id* at 33. She found that their opinions were based on only a portion of the relevant interpretations and, thus, failed to rule out the presumed fact of pneumoconiosis under 20 C.F.R. §718.305(d)(1)(i). *Id*. at 33-34, 36.

A. Conventional x-rays:

The administrative law judge considered the five readings of the June 28, 2010 x-ray, and determined that all interpreting physicians were dually-qualified Board-certified radiologists and B readers,[7] with the exception of Dr. Rasmussen. Specifically, Drs. Rasmussen, Alexander and Miller interpreted the film as positive for pneumoconiosis, and Drs. Wheeler and Scott found it to be negative for pneumoconiosis. Decision and Order at 14-15; Director's Exhibits 10, 20, 23, 33, 34. The administrative law judge referenced the physicians' relative radiological credentials and explained that "[u]nless there is a reason, as discerned in the record, to give greater or lesser weight to a specific X-ray interpretation," she gave "equal weight to the opinions of all physicians who possess the same level of professional credentials (e.g., B readers; dually-qualified physicians)," because "they have wide professional training in all aspects of X-ray interpretation and have a certified proficiency in interpreting X-rays for indicia of pneumoconiosis." Decision and Order at 17. Having assigned "minimal weight" to readers with lesser radiological credentials, she determined that the June 28, 2010 x-ray is in equipoise. *Id*. As the remaining x-ray of October 6, 2010 was read as positive by dually-qualified Dr. Alexander, Director's Exhibit 30, the administrative law judge found that the overall weight of the conventional x-rays is positive for pneumoconiosis. *Id*.

Employer challenges the administrative law judge's finding that the June 28, 2010 x-ray is in equipoise, asserting that the administrative law judge was obligated to specifically consider that Dr. Wheeler is a radiology professor and author, and to

[6] The record also contains Dr. Rasmussen's medical opinion that claimant has legal as well as clinical pneumoconiosis, and that lower-zone irregular opacities do not rule out pneumoconiosis as a diagnosis. Dr. Rasmussen diagnosed emphysema and interstitial fibrosis related to claimant's coal mine dust exposure and smoking, and attributed his disabling impairment to both smoking and coal mine employment. Decision and Order at 25-28, 35; Claimant's Exhibit 5; Director's Exhibit 10.

[7] 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)(1)(ii)(C). The terms "A reader" and "B-reader" refer 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.

compare all of the qualifications of Drs. Wheeler and Scott[8] against the relative qualifications of Drs. Alexander and Miller.[9] Employer's Brief at 9-10. We disagree. An administrative law judge need not accord greater weight to a physician's x-ray readings based upon academic qualifications. *Harris v. Old Ben Coal Co.*, 23 BLR 1-98 (2006)(en banc)(McGranery & Hall, JJ., concurring and dissenting), *aff'd on recon*., 24 BLR 1-13 (2007)(en banc)(McGranery & Hall, JJ., concurring and dissenting), *citing Old Ben Coal Co. v. Battram*, 7 F.3d 1273, 18 BLR 2-42 (7th Cir. 1993). While the administrative law judge noted the record documentation of the professional credentials of the interpreting physicians, which included academic qualifications, she permissibly resolved the conflict in the readings based on the physicians' radiological credentials. As the remaining October 6, 2010 x-ray was interpreted as positive for pneumoconiosis, we affirm, as supported by substantial evidence, the administrative law judge's determination that the overall weight of the conventional, non-digital x-ray evidence is positive for pneumoconiosis.

Employer next argues that the administrative law judge erred in failing to require Dr. Miller to establish that his readings of digital x-rays and CT scans are medically acceptable and relevant pursuant to 20 C.F.R. §718.107(b). Employer's Brief at 8. According to employer, because "neither Dr. Miller, nor anyone else on behalf of the claimant, provided any such opinion on behalf of Dr. Miller's interpretations," Dr. Miller's digital x-ray and CT scan interpretations were entitled to no probative weight. Employer's Brief at 8-9.

With respect to the digital x-rays of March 20, 2011 and June 13, 2011, which were each interpreted by Drs. Wheeler and Miller, the administrative law judge credited Dr. Wheeler's statement that "digital images are better quality than most analog films for detecting diseases 'including patterns compatible with [coal workers' pneumoconiosis]'," Employer's Exhibits 1, 2, and found that "[t]here is no evidence of record contradicting Dr. Wheeler's statement." Decision and Order at 18. With respect to the CT scans of October 16, 2006 and August 27, 2010, which were each interpreted by Drs. Wheeler and Miller, the administrative law judge accepted Dr. Wheeler's statement that CT scans are "the best radiological modality for detecting interstitial lung disease, including patterns compatible with various [pneumoconiosis]," Employer's Exhibits 4, 5, and found that the record contained "no contravening statement from any other physician on the utility or

[8] Both employer and the administrative law judge mistakenly refer to Dr. Scott as Dr. Wiot. Employer's Brief at 10; Decision and Order at 15, 17; Director's Exhibit 23.

[9] The record reflects that Drs. Scott, Alexander and Miller also include positions as professors of radiology among their credentials. Director's Exhibits 22 at 2-3, 33 at 3-4, 34 at 3-4.

relevance of CT scans for diagnosing pneumoconiosis."[10] Decision and Order at 22. We reject employer's contention that Section 718.107(b) requires *each* party to independently establish the reliability of their interpretations of digital x-ray and CT scan evidence, as the issue of reliability concerns the *type* of evidence, rather than the reliability of a particular reader's interpretation. Thus, we affirm the administrative law judge's admission of the digital and CT scan evidence into the record pursuant to Section 718.107(b).

B. Digital x-rays:

Employer contends that the administrative law judge erred in discounting Dr. Wheeler's attribution of claimant's radiological abnormalities to histoplasmosis on the ground that the record contains no evidence that claimant had histoplasmosis. In support, employer relies on interpretations describing granulomata, and argues that "no doctor has opined that an individual cannot have histoplasmosis without a treatment record being generated." Employer's Brief at 6-7.

The administrative law judge considered the digital x-rays of March 20, 2011 and June 13, 2011, which were read by dually-qualified physicians Drs. Wheeler and Miller as negative and positive for pneumoconiosis, respectively. She contrasted Dr. Wheeler's opinion that the abnormalities were "likely due" to histoplasmosis, with his indication that "any indicia of histoplasmosis were not visible on these digital x-rays," Employer's Exhibits 1, 2, and the fact that he "cited his interpretation of a CT scan reflecting histoplasmosis as the basis for his conclusions."[11] Decision and Order at 18 n.32. Thus, the administrative law judge rationally assigned less weight to Dr. Wheeler's interpretations as "speculative," because "there is no evidence of record that the claimant had histoplasmosis." *Id*. at 18, 22; *see Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 285, 24 BLR 2-269, 2-284 (4th Cir. 2010); *see also Milburn Colliery Co. v. Hicks*, 138

[10] Employer's argument relies on Dr. Miller's statement that "[t]his examination is limited by digital technique (#2)." The exhibits reflect that Dr. Miller indicated film quality "2" and "digital" on the form, and provided an accompanying narrative report. Thus, Dr. Miller's statement appears informational as to the radiological technique, and fails to substantiate employer's assertions that Dr. Miller: "does not believe in the medical acceptance or reliability of his own readings of the digital x-rays, or [] he believes that these digital x-ray readings are less probative than the analog readings in evidence." *See* Claimant's Exhibits 1, 2; Employer's Brief at 8-9.

[11] Additionally, the administrative law judge found that Dr. Wheeler's "conclusions regarding the digital X-rays were influenced by his CT interpretations and, thus, were not fully independent interpretations of the X-rays themselves," which undermined their probative value. Decision and Order at 18.

F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Underwood v. Elkay Mining, Inc*., 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997).

Employer also argues that the administrative law judge erred in finding that Dr. Miller's interpretation of the June 13, 2011 digital x-ray was positive for pneumoconiosis rather than equivocal, because "Dr. Miller noted a 'nonspecific' nodular opacity that he believed 'could represent' pneumoconiosis." Employer's Brief at 5. To the contrary, Dr. Miller read the x-ray as "ILO: 1/2 q/t, 6 lung zones, Category 'A' opacity noted," and identified a "coalescence of small opacities, diffuse small opacities compatible with pneumoconiosis," indicating that the film showed parenchymal abnormalities "consistent with pneumoconiosis" and "small opacities compatible with pneumoconiosis." Decision and Order at 16, 18; Claimant's Exhibit 2. As the administrative law judge rationally concluded that Dr. Miller's digital x-ray readings were positive for pneumoconiosis, and she permissibly assigned less probative weight to Dr. Wheeler's digital x-ray readings, we affirm, as supported by substantial evidence, the administrative law judge's finding that the overall weight of the digital x-ray evidence is positive for pneumoconiosis. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986).

C. CT scan evidence:

In considering the CT scan evidence, the administrative law judge assigned "minimal weight" to the interpretations of the CT scans contained in claimant's treatment records, dated August 2, 2002 and May 3, 2007, because the identified abnormalities were equivocal as to etiology, the reader qualifications were unknown, and the record does not indicate whether the purpose of the scans was to evaluate claimant for pneumoconiosis. Decision and Order at 22. The CT scan of October 16, 2006 was interpreted as positive for simple pneumoconiosis and equivocal for complicated pneumoconiosis by Dr. Miller, and as negative by Dr. Wheeler, who identified calcified granulomata from healed histoplasmosis. *Id*. at 18, 22; Claimant's Exhibit 3; Employer's Exhibit 4. Likewise, the CT scan dated August 27, 2010 was interpreted by Dr. Miller as positive for simple pneumoconiosis, with indicia of complicated pneumoconiosis, and by Dr. Wheeler as negative for pneumoconiosis, with a large abnormality more likely due to histoplasmosis than tuberculosis. Decision and Order at 20-22; Claimant's Exhibit 4; Employer's Exhibit 5. The treatment records also contained a reading of the August 27, 2010 CT scan, noting nodular densities and old granulomatous disease, by Dr. Cargile, whose qualifications are not of record. *See* Decision and Order at 14 n.22, 20; Employer's Exhibits 6, 7.

The administrative law judge found that Dr. Wheeler's reading of the October 16, 2006 CT scan, as showing granulomata from healed histoplasmosis, was speculative because, as she found previously, there is no evidence that claimant ever had

histoplasmosis. Decision and Order at 18, 22; *Cox*, 602 F.3d at 285, 24 BLR at 2-284. Thus, she assigned less weight to Dr. Wheeler's negative reading than to Dr. Miller's positive reading, and determined that the October 16, 2006 CT scan is positive for `pneumoconiosis. The administrative law judge found that the August 27, 2010 CT scan was in equipoise, since she gave equivalent weight to the interpretations of Drs. Wheeler and Miller, and "minimal weight" to Dr. Cargile's interpretation. Decision and Order at 20, 22; Employer's Exhibit 7. Therefore, she concluded that the overall weight of the CT scan evidence is positive for pneumoconiosis.

Employer argues that Dr. Miller's reading of the October 16, 2006 CT scan was not unequivocally positive because it noted findings "compatible with pneumoconiosis," and "calcified lymph nodes commonly associated with pneumoconiosis" which could represent "old granulomatous infection such as [tuberculosis]." Employer's Brief at 6; Decision and Order at 19, 22; Claimant's Exhibit 3. However, as Dr. Miller's narrative report included findings of "diffuse interstitial lung disease with predominantly nodular appearance of mild to moderate severity compatible with simple pneumoconiosis," and concluded: "[I]mpression: Diffuse interstitial lung disease compatible with simple pneumoconiosis,"[12] the administrative law judge rationally concluded that this interpretation was positive for pneumoconiosis. *Id.* As employer makes no additional arguments regarding the administrative law judge's determination that the interpretations of the August 27, 2010 CT scan are in equipoise, we affirm her finding that the weight of the CT scan evidence is positive for pneumoconiosis. Based on the foregoing, we affirm her conclusion that the overall weight of the radiological evidence is positive for pneumoconiosis, as supported by substantial evidence. *See* Decision and Order at 32.

D. Medical opinion evidence:

Next, employer argues that the administrative law judge improperly discredited the medical opinions of Drs. Zaldivar[13] and Rosenberg[14] on the issues of clinical and

[12] Additionally, employer argues that the administrative law judge was precluded from assigning Dr. Miller's radiological interpretations "equal weight on the issue of simple pneumoconiosis [when Dr. Miller] was mistaken regarding his diagnosis of complicated pneumoconiosis." Employer's Brief at 10-11. To the contrary, the administrative law judge permissibly exercised her discretion to credit Dr. Miller's unequivocal radiological interpretations of simple pneumoconiosis, notwithstanding his "equivocal" mention of complicated pneumoconiosis in CT scan readings. *See* Decision and Order at 22, 24.

[13] Dr. Zaldivar, who opined that claimant does not have clinical pneumoconiosis or any occupationally-related condition, diagnosed linear abnormalities and diffusion abnormalities suggestive of pulmonary fibrosis due to smoking and not to

legal pneumoconiosis because the physicians disagreed with her analysis of the x-ray evidence.

Initially, the administrative law judge considered the medical opinions of Drs. Zaldivar and Rosenberg, that claimant does not have clinical pneumoconiosis, and Dr. Rasmussen's[15] opinion that he does. Decision and Order at 25-32. She reviewed Dr. Zaldivar's opinion, that claimant's lower lung zone irregular opacities represented a smoking-related fibrosis rather than pneumoconiosis, based on linear abnormalities and a lack of abnormalities in the upper lung zones. Similarly, she noted that Dr. Rosenberg's opinion of no pneumoconiosis relied, in part, on linear changes and lower lung abnormalities.[16] She determined that Drs. Zaldivar and Rosenberg failed to "address that there are multiple x-ray/CT interpretations from dually-qualified physicians that, contrary to their conclusions, reflect [] rounded (not only irregular) opacities in the lungs and that abnormalities were observed in the upper lungs as well as in the mid and lower lung zones." Decision and Order at 33. Because the opinions of Drs. Zaldivar and Rosenberg were "not based on all of the X-ray/CT scan evidence, but only a portion of the

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pneumoconiosis. Decision and Order at 28-29, 33-34; Director's Exhibit 25; Employer's Exhibit 8.

[14] Dr. Rosenberg, who opined that claimant does not have clinical or legal pneumoconiosis or any occupationally-related lung condition, diagnosed linear interstitial lung disease. He stated that interstitial scarring was a factor in claimant's pulmonary disability, and that coal mine dust exposure can cause linear scarring, that would show micronodular changes on x-ray in pneumoconiosis, while claimant's linear abnormalities are typical of smoking and unrelated to coal mine dust. Decision and Order at 30-34; Employer's Exhibits 3, 9.

[15] Dr. Rasmussen, who diagnosed clinical pneumoconiosis based on his x-ray interpretations and claimant's coal mine history, and gas exchange impairment due to fibrosis and emphysema, stated that coal mine dust causes interstitial fibrosis. He adhered to his diagnosis of pneumoconiosis after reviewing the additional x-ray interpretations, including those of Dr. Wheeler. In particular, he disputed Dr. Wheeler's view, adopted by Drs. Zaldivar and Rosenberg, that the size and location of the identified radiological abnormalities ruled out pneumoconiosis. Decision and Order at 25-28, 32-33 & nn.40 and 42, 34-37; Director's Exhibit 10; Claimant's Exhibit 5.

[16] Additionally, the administrative law judge indicated that Dr. Rosenberg's opinion of no pneumoconiosis was undermined by Dr. Rasmussen's testimony that "pneumoconiosis can manifest with irregular opacities in the lower portions of the lungs." Decision and Order at 33 n.42, *citing* Claimant's Exhibit 5 at 11-12.

evidence," the administrative law judge rationally determined that employer failed to rebut the presumed fact of clinical pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(B). *Id*.

As Drs. Zaldivar and Rosenberg attributed claimant's total respiratory disability to interstitial fibrosis of non-occupational origin, the administrative law judge "presumed" that both doctors opined that claimant has neither clinical nor legal pneumoconiosis at Section 718.305(d)(1)(i), and that no part of claimant's disabling impairment was due to pneumoconiosis at Section 718.305(d)(1)(ii). Decision and Order at 33-34. The administrative law judge discredited their opinions, in part, because the physicians failed to take into consideration the overall weight of the x-ray/CT scan evidence, which she determined was positive for pneumoconiosis.[17] *See Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986); Decision and Order at 33-35. She rejected Dr. Zaldivar's opinion that claimant's diffusion abnormality was due to either fibrosis or a vascular condition, as he cited no vascular condition, and Dr. Rasmussen ruled out any heart-related problem that would cause a reduced diffusion capacity. Decision and Order at 34. Further, while Dr. Zaldivar opined that both smoking and coal dust exposure can cause pulmonary fibrosis, he indicated that he would expect to see positive radiographic evidence in order to attribute pulmonary fibrosis to coal mine dust exposure. As the administrative law judge found that the x-ray evidence established clinical pneumoconiosis, and Dr. Zaldivar stated that claimant's impairment is at least partly due to pulmonary fibrosis, she properly concluded that Dr. Zaldivar could not rule out coal mine dust exposure as a cause of claimant's pulmonary fibrosis. Decision and Order at 34.

Turning to Dr. Rosenberg's opinion, that claimant's oxygenation abnormality may indicate interstitial involvement, the administrative law judge found that his reliance on the lack of an obstructive impairment to exclude legal pneumoconiosis as a diagnosis was contrary to the definition of legal pneumoconiosis, which is not restricted to only obstructive impairments. 20 C.F.R. §718.201(a)(2); Decision and Order at 35. Additionally, she determined that Dr. Rosenberg's discussion regarding the development of interstitial lung disease failed to specifically rule out coal mine dust exposure as a cause of linear scarring; he merely stated that no such link had been established. *Id*.

The administrative law judge need not accept any particular medical theory, but may discount expert opinion that is predicated on inaccurate or incorrect factors. *See generally Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999)

[17] The administrative law judge found that Dr. Rasmussen's references to medical authority linking pulmonary fibrosis to coal dust exposure, and his testimony that pneumoconiosis can manifest with irregular opacities in the lower portion of the lungs, "undermine[s] the hypothesis that the Claimant's lung abnormalities cannot be pneumoconiotic if they present as lower-lung irregular opacities." Decision and Order at 33 n.42.

(assessment of expert witness credibility for the finder-of-fact). As substantial evidence supports her findings, and employer raises no specific additional arguments, we affirm the administrative law judge's determination that the opinions of Drs. Zaldivar and Rosenberg fail to disprove the existence of either clinical or legal pneumoconiosis at Section 718.305(d)(1)(i). Moreover, because Drs. Zaldivar and Rosenberg attributed claimant's pulmonary impairment to his interstitial fibrosis, yet failed to demonstrate that coal dust exposure was unrelated to the linear lung fibrosis seen on claimant's x-ray, or to his diffusion/gas exchange abnormality, the administrative law judge rationally found their opinions were insufficient to affirmatively disprove the presumed fact of disability causation at Section 718.305(d)(1)(ii). As the administrative law judge's findings comport with the requirements of the APA, we affirm her conclusion that employer did not satisfy its burden to establish rebuttal.[18] 20 C.F.R. §718.305(d)(1)(i), (ii); *W. Va. CWP Fund v. Bender*, 782 F.3d 129, BLR (2015).

Accordingly, the Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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RYAN C. GILLIGAN
Administrative Appeals Judge

[18] In light of our disposition of this claim, we need not address claimant's arguments on cross-appeal.