U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 19-0387 BLA

CARY L. HUFFMAN Claimant-Respondent v. PAMMLIDD COAL COMPANY and WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 08/20/2020 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for Employer/Carrier.

Rita A. Roppolo (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, 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: BUZZARD, GRESH and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge Theresa C. Timlin's Decision and Order Awarding Benefits (2017-BLA-05328) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (Act). This case involves a miner's subsequent claim filed on December 24, 2014,[1]

The administrative law judge credited Claimant with 23.75 years of underground or substantially similar surface employment, and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). She therefore determined Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act. 30 U.S.C. §921(c)(4) (2012).[2] She further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer challenges the administrative law judge's admission of Dr. Forehand's medical report and her findings Claimant established total disability and invoked the Section 411(c)(4) presumption and Employer did not rebut the presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers'

[1] Claimant previously filed claims on April 17, 2009, and January 20, 2011. Director's Exhibits 1, 2. The district director denied the most recent prior claim because Claimant failed to establish total disability. Director's Exhibit 2. When a claimant files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must be denied unless the claimant establishes "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Claimant therefore was required to establish total disability in order to obtain review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3.

[2] Section 411(c)(4) provides a rebuttable presumption Claimant's total disability is due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

Compensation Programs (the Director), has filed a limited response, asserting any error in admitting Dr. Forehand's report is harmless.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order Awarding Benefits if it is rational, supported by substantial evidence, and in accordance with applicable law.[3] 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, 362 (1965).

Admission of Dr. Forehand's Medical Report

An administrative law judge exercises broad discretion in resolving procedural and evidentiary matters. *See Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc). Thus, a party seeking to overturn the disposition of a procedural or evidentiary issue must establish the administrative law judge's action represented an abuse of discretion. *See V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009).

To provide Claimant with the complete pulmonary evaluation he is entitled to under 20 C.F.R. §725.406, the Department of Labor (DOL), at claimant's request, had Dr. Rasmussen examine him and prepare a report. Dr. Rasmussen conducted a physical examination on January 19, 2015, and submitted a report. Director's Exhibit 13. On June 1, 2016, the Director notified the parties that pursuant to a Pilot Program for the submission of a supplemental report by the DOL-examining physician in certain cases,[4] supplementation of Dr. Rasmussen's report was necessary to respond to Dr. Zaldivar's January 9, 2016 medical report. Employer filed objections dated June 21, 2016, contending the Pilot Program is invalid because it violates several statutes and regulations. Director's

[3] 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 3.

[4] The Department of Labor established the Pilot Program in BLBA (Black Lung Benefits Act) Bulletin 14-05 (Feb. 24, 2014) to provide for the supplementation of the miner's complete pulmonary examination in claims where the miner had fifteen or more years of coal mine employment, the DOL-sponsored pulmonary evaluation indicates the miner is entitled to benefits, and employer has submitted evidence contrary to a claims examiner's initial proposed finding of entitlement.

Exhibit 22. Nevertheless, the Director procured a supplemental report dated July 20, 2016, from Dr. Forehand, as Dr. Rasmussen died on July 23, 2015. Director's Exhibit 13.

The district director issued a Proposed Decision and Order awarding benefits on August 11, 2016. At employer's request, the matter was referred to the Office of Administrative Law Judges for a hearing. At the hearing, Employer objected to the admission of Dr. Forehand's report, citing the same reasons it raised before the district director. The administrative law judge overruled the objection but indicated she would revisit the issue in her decision. Hearing Transcript at 5. In her Decision and Order, the administrative law judge stated Employer did not object to the admission of Dr. Forehand's report and further determined it constituted admissible rehabilitative evidence at 20 C.F.R. §725.414(a)(2)(ii).[5] Decision and Order at 5 n.4.

Employer has not renewed its objection to the legality of the Pilot Program or otherwise contested the DOL's authority to supplement the DOL-examining physician's report. Instead, it argues the administrative law judge erred in stating it did not oppose the admission of Dr. Forehand's report and the evidentiary limitations at 20 C.F.R. §725.414(a)(1) permit supplementation of a medical opinion only by the physician who originally prepared the report, in this case Dr. Rasmussen. Because Dr. Forehand did not prepare the original DOL-sponsored medical report, Employer alleges his report cannot be admitted as a supplemental report. *Id*., *citing* 20 C.F.R. §725.414(a)(1). It maintains Dr. Forehand's report therefore constitutes a second affirmative medical report that the Director obtained on Claimant's behalf which is not admissible under the evidentiary limitations. *Id*. at 13-14; *see* 20 C.F.R. §§725.405, 725.414(a)(3)(iii). Employer also alleges that even assuming it did not raise an objection to the admission of Dr. Forehand's report, the administrative law judge was required to reject it, as the evidentiary limitations are mandatory and cannot be waived. *Id*. at 14.

The Director responds, conceding Employer timely objected to the admission of Dr. Forehand's report and the evidentiary limitations are mandatory but can be exceeded by a showing of "good cause." Director's Letter Brief at 2 n.2. She maintains, however, that the Board need not address whether Dr. Forehand's report is admissible because any error in its admission is harmless as the administrative law judge "does not appear to have relied on Dr. Forehand's opinion in any significant way in awarding benefits." *Id*. at 2. The Director further asserts that if the Board does remand the claim based on the admission of

[5] Based on our affirming the administrative law judge's admission of Dr. Forehand's report on other grounds, we need not address whether she erred in finding Dr. Forehand's report admissible as rehabilitative evidence. *See* discussion infra; *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1284 (1983).

Dr. Forehand's report, it should instruct the administrative law judge to consider whether good cause exists for its admission.

As an initial matter, Employer has not identified a basis for excluding Dr. Forehand's supplemental report as part of Claimant's DOL-sponsored pulmonary evaluation. While Section 725.414(a)(1) states a physician's supplemental report "must be considered part of the physician's original medical report," it does not address whether a second physician can supplement the DOL-sponsored pulmonary evaluation due to the first physician's death. Moreover, the prohibition on submitting more than two affirmative medical reports at Section 725.414(a)(2)(i) applies to a *claimant's* submissions. The DOL-sponsored medical report, on the other hand, "must not be counted as evidence submitted by the miner under [Section] 725.414." 20 C.F.R. §725.406(b). Employer essentially asks the Board to treat Dr. Forehand's report as Claimant's submission even though it was prepared as part of the DOL-sponsored pulmonary evaluation at the district director's request. Yet, employer does not challenge Claimant's right under the Pilot Program to have the initial DOL examining physician's report supplemented or offer any argument as to why the district director could not have Dr. Forehand supplement the report in light of Dr. Rasmussen's death. We therefore reject Employer's assertion that Dr. Forehand's opinion constitutes an affirmative submission by Claimant in excess of the evidentiary limitations.

Moreover, we agree with the Director's position that any potential error in admitting the report is harmless. The administrative law judge determined the blood gas study evidence established total disability at 20 C.F.R. §718.204(b)(2)(ii) based on the preponderance and recency of the qualifying tests. Decision and Order at 14-15. She further found the medical opinion evidence established total disability at 20 C.F.R. §718.204(b)(2)(iv), as four physicians, including Dr. Forehand, provided credible diagnoses of total respiratory disability while two physicians, Drs. Castle and Zaldivar, had contrary opinions that she found are not adequately reasoned. *Id*. at 23-25. Employer has not explained how excluding Dr. Forehand's report from the record would alter the administrative law judge's conclusions that the blood gas studies support a finding of total disability or that the other three physicians who diagnosed total disability did so credibly, while the two physicians who offered contrary opinions did not. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference.").

Regarding whether Employer rebutted the presumption, Dr. Forehand's report did not impact the administrative law judge's findings, as she based her determination that Employer did not satisfy its burden on her discrediting the opinions of Drs. Castle and Zaldivar. As we have rejected Employer's argument that Dr. Forehand's report constitutes a submission by Claimant in excess of the evidentiary limitations, and Employer has not

explained how its admission could have tainted her remaining credibility determinations, we decline to remand this case to the administrative law judge for reconsideration of the admissibility of Dr. Forehand's report. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1284 (1983) (when an error is made that does not affect the disposition of an issue, remand is not required).

Invocation of the Section 411(c)(4) Presumption – Total Disability

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of cor pulmonale with right-sided congestive heart failure, or medical opinions.[6] 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must consider all relevant evidence and weigh the evidence supporting total disability against the contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

Blood Gas Studies

As previously indicated, the administrative law judge initially determined the blood gas studies established total disability at 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 14-15. The record contains studies administered at rest and after exercise on January 19, 2015, and studies administered at rest only on January 6, 2016, February 2, 2017, and April 10, 2017. Director's Exhibits 13, 15; Claimant's Exhibits 2, 3. The exercise test performed on January 19, 2015, and the resting tests performed on February 2, 2017, and April 10, 2017, produced values that are qualifying for total disability.[7] The administrative law judge found these studies sufficient to establish total disability based on their preponderance and the recency of the 2017 studies. Decision and Order at 14. In reaching this determination, she discredited the opinions of Drs. Castle and Zaldivar attributing the results to non-pulmonary conditions and questioning the testing procedures. *Id*. at 14-15.

[6] The administrative law judge found Claimant did not establish total disability based on the pulmonary function studies or evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii); Decision and Order at 13, 15.

[7] A "qualifying" blood gas study yields values that are equal to or less than the appropriate values set out in the table at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study yields values that exceed those in the table. 20 C.F.R. §718.204(b)(2)(ii).

Employer alleges the administrative law judge erred in according little weight to the opinions of Drs. Castle and Zaldivar regarding the probative value of the qualifying blood gas studies, asserting they explained why Claimant's abnormal results are not related to a pulmonary condition and are of questionable validity because Claimant's position was not recorded and there was no indication the blood sample was put on ice. Employer's Brief at 15-17, 18-22, 28. These contentions lack merit.

The issues at 20 C.F.R. §718.204(b)(2)(ii) are whether the blood gas studies are in substantial compliance with the quality standards and reflect the qualifying values in Appendix C to Part 718. The cause of Claimant's disabling pulmonary condition is a separate issue addressed at 20 C.F.R. §718.204(c) or at rebuttal of the Section 411(c)(4) presumption. 20 C.F.R. §§718.204(c), 718.305(d)(1)(ii); *W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137 (4th Cir. 2015). Because Drs. Castle and Zaldivar focused on the cause of the abnormal blood gas study results rather than whether they met the criteria for total disability, the administrative law judge permissibly accorded little weight to their opinions. In addition, she rationally dismissed as unsupported their concerns Claimant was reclining when his blood was drawn and the blood sample was not kept on ice, as there is no evidence either of these situations occurred or that the studies were not performed in accordance with the relevant quality standards. 20 C.F.R. §718.105; *see Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); Decision and Order at 14-15. We therefore affirm the administrative law judge's finding the blood gas study evidence established total disability at 20 C.F.R. §718.204(b)(2)(i).

Medical Opinions

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge reviewed the medical opinions of Drs. Rasmussen, Zaldivar, Forehand, Habre, Green and Castle. Dr. Rasmussen examined Claimant on January 19, 2015, and diagnosed total disability based on Claimant's blood gas study results reflecting a moderate impairment in oxygen transfer. Director's Exhibit 13. Dr. Zaldivar examined Claimant on January 6, 2016, and reviewed Dr. Rasmussen's report. Director's Exhibit 15. He stated Claimant does not have a totally disabling respiratory or pulmonary impairment based on the objective testing he administered and Dr. Rasmussen's blood gas study showing only a mild diffusion impairment. *Id*. In a supplemental report dated April 5, 2018, Dr. Zaldivar reiterated his determination that Claimant is not totally disabled and indicated the blood gas studies reflecting hypoxemia that Drs. Green and Habre administered at Norton Community Hospital are of questionable validity. Employer's Exhibit 9. At a subsequent deposition, Dr. Zaldivar opined Claimant's abnormal blood gas study results may have been the result of an acute event or problems with the testing procedures. Employer's Exhibit 11 at 36. Dr. Forehand prepared a report dated July 20, 2016, as a supplement to the DOL-sponsored pulmonary evaluation, based on his review of Dr. Rasmussen's initial DOL report from

January 19, 2015, and Dr. Zaldivar's report from his January 6, 2015 examination of Claimant. Director's Exhibit 13. He diagnosed a totally disabling impairment in gas exchange. *Id*. Dr. Habre examined Claimant on February 2, 2017, and diagnosed a totally disabling pulmonary impairment based on the qualifying results of the blood gas study he administered. Claimant's Exhibit 3. Dr. Green examined Claimant on April 10, 2017, and diagnosed a totally disabling pulmonary impairment, as Claimant's blood gas study reflected significant hypoxemia and significant hypercarbia. Claimant's Exhibit 2. Dr. Castle reviewed the newly submitted medical reports and stated the blood gas studies showed "at least a mild degree of hypoxemia at rest" due to obesity hypoventilation syndrome. Employer's Exhibit 7. In a supplemental report dated May 11, 2018, Dr. Castle reiterated his conclusion. Employer's Exhibit 10.

The administrative law judge credited Drs. Rasmussen's, Forehand's, Habre's and Green's diagnoses of total pulmonary disability, finding them reasoned and documented. Decision and Order at 23-24. In contrast, she determined the contrary opinions of Drs. Zaldivar and Castle were inconsistent with the underlying objective medical evidence and inadequately explained. *Id*. at 24. Employer argues the administrative law judge erred in discrediting the opinions of Drs. Zaldivar and Castle, and did not set forth the rationale underlying her determinations as the Administrative Procedure Act (APA) requires.[8] Employer's Brief at 15-34. We disagree with both assertions.

The administrative law judge permissibly discredited Dr. Zaldivar's opinion because there is no factual basis for his view that the blood gas studies establishing total disability are unreliable. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 24. In addition, she rationally found the opinions of Drs. Zaldivar and Castle do not constitute evidence contrary to the qualifying blood gas studies, as their shared view that the studies' results were attributable to his obesity "goes to the cause of the disability rather than the existence of the disability."[9] Decision and Order at 24; 20 C.F.R.

[8] The Administrative Procedure Act, 5 U.S.C. §§500-591, provides every adjudicatory decision must include "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); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[9] Because the administrative law judge gave valid reasons for discrediting the opinions of Drs. Zaldivar and Castle on total disability, we need not address Employer's remaining arguments regarding why these opinions should have been found credible. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

§§718.201(a)(2); 718.204(b)(2).*see W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 698 (4th Cir. 2018). In rendering both of these findings, the administrative law judge set forth her underlying rationales in accordance with the APA. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); Decision and Order at 24. We further affirm, as unchallenged on appeal, the administrative law judge's finding that the diagnoses of total disability by Drs. Rasmussen, Habre, and Green are entitled to probative weight as they are consistent with the qualifying blood gas studies and her finding Claimant's usual coal mine job required heavy to very heavy manual labor. *See Skrack v. Island Creek. Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 11, 23-24. Because there is no evidence undermining their opinions or the qualifying arterial-blood gas studies, we further affirm the administrative law judge's conclusion that the evidence, when weighed together, establishes total disability, a change in an applicable condition of entitlement, and invocation of the Section 411(c)(4) presumption. 20 C.F.R. §§718.204(b)(2), 718.305(b)(1), 718.309; *see Rafferty*, 9 BLR at 1-232; *White v. New White Coal Co*., 23 BLR 1-1, 1-3 (2004); Decision and Order at 24.

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

Because Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to Employer to establish he does not have legal or clinical pneumoconiosis,[10] or that "no part of [his] 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)(i), (ii). The administrative law judge found Employer failed to establish rebuttal by either method. Decision and Order at 34, 36.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish Claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2),(b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015) (Boggs, J., concurring and dissenting). The administrative law judge considered the opinions of Drs. Zaldivar and Castle that Claimant does not have legal pneumoconiosis.

[10] "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). "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).

Dr. Zaldivar cited Claimant's history of exposure to "biomass smoke" and secondhand tobacco smoke in his youth[11] as risk factors for his mild restrictive impairment and mild reduction in diffusion capacity. Employer's Exhibit 11 at 15-16; Director's Exhibit 15. He also identified Claimant's long history of tobacco use, obesity, and the effects of a thoracotomy as contributing causes of any impairment in gas exchange shown on Claimant's blood gas studies. Employer's Exhibit 11 at 35-36. As reasons to exclude coal dust exposure as a cause of Claimant's impairment, he cited the reversibility of Claimant's mild restrictive impairment on pulmonary function studies and the sudden onset of hypoxemia shown in Claimant's 2017 blood gas studies. *Id*. at 21-22. Dr. Castle indicated Claimant's "blood gas abnormalities" were most likely caused by his "obesity as well as the development of obesity hypoventilation syndrome." Employer's Exhibit 7. He also stated coal dust exposure was not a cause of Claimant's impairment based on his normal pulmonary function study results. *Id*.

The administrative law judge found both opinions insufficiently reasoned to rebut the existence of legal pneumoconiosis. Decision and Order at 31-32. Employer contends the administrative law judge's credibility determinations are erroneous, as Drs. Zaldivar and Castle considered all potential causes of Claimant's impairment and explained why they excluded coal dust exposure when rendering their conclusions. Employer's Brief at 29-32. We disagree.

The determination of whether a medical opinion is documented and reasoned is for the administrative law judge to make, and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305 (4th Cir. 2012); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). Contrary to Employer's allegation, the administrative law judge's determination that Dr. Zaldivar's opinion is unreasoned because it is speculative is rational and supported by substantial evidence. Decision and Order at 35. She permissibly found Dr. Zaldivar relied, in part, "on the speculation that [C]laimant's father smoked in an area of the home that exposed [C]laimant to second hand smoke and that [C]laimant's family did not have the proper means to ventilate any 'biomass smoke,'" noting correctly that

[11] Dr. Zaldivar reported Claimant was exposed to biomass smoke in the form of coal smoke from the stove his family used to heat their home. Employer's Exhibit 11 at 15-17; Director's Exhibit 15. He further stated "biomass smoke is one of the leading causes of [chronic obstructive pulmonary disease] worldwide, second to smoking." Employer's Exhibit 11 at 16. He also indicated Claimant's father exposed him to second hand tobacco smoke and such exposure can cause "asthma, bronchitis, and eventually even emphysema in young children." Employer's Exhibit 11 at 15-16; Director's Exhibit 15.

Claimant stated he did not know the type of coal stove his family used.[12] Decision and Order at 31, *citing* Director's Exhibit 15.

She also permissibly determined Dr. Castle's opinion is not well-reasoned because, although he offered an opinion as to why coal dust exposure did not cause Claimant's impairment, he did not explain why it did not contribute to or aggravate Claimant's impairment. *See Westmoreland Coal Co., Inc. v. Cochran*, 718 F.3d 319, 322-23 (4th Cir. 2013) (coal mine dust exposure need not be the sole cause of a claimant's respiratory impairment); *Hicks*, 138 F.3d at 528; Decision and Order at 32. Because the administrative law judge provided valid reasons for giving little weight to the opinions of Drs. Zaldivar and Castle, we decline to address Employer's additional arguments and affirm her finding Employer did not rebut legal pneumoconiosis.[13] *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-83 n.4 (1983).

Disability Causation

The administrative law judge next considered whether Employer rebutted the Section 411(c)(4) presumption by establishing that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in § 718.201." 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 35-36. We reject Employer's argument the administrative law judge did not provide valid reasons for discrediting the opinions of Drs. Zaldivar and Castle on the issue of disability causation. Employer's Brief at 16-17, 19, 22-25, 30-32. She permissibly discredited their opinions because neither doctor

[12] Employer's allegation that Dr. Zaldivar "eliminated" any reliance on Claimant's alleged exposures to biomass smoke and tobacco is not supported by the record. Employer's Brief at 31-32. In his report regarding his examination of Claimant, Dr. Zaldivar stated "what he has is the pulmonary effect of having smoked so long plus his prior exposure to biomass smoke without any airways damage." Director's Exhibit 15. Dr. Zaldivar explained at his subsequent deposition he took note of Claimant's exposures to biomass smoke and second hand tobacco smoke because each is a cause of the type of lung damage reflected in Claimant's objective testing. Employer's Exhibit 11 at 15, 16-17.

[13] In light of our affirmance of the administrative law judge's finding Employer failed to rebut legal pneumoconiosis, Employer cannot rebut the Section 411(c)(4) presumption by disproving pneumoconiosis. 20 C.F.R. §718.305(d)(1). Thus, we need not address Employer's allegations of error in the administrative law judge's determination it did not rebut clinical pneumoconiosis. Employer's Brief at 34-37; *see Larioni*, 6 BLR at 1-1284.

diagnosed legal pneumoconiosis, contrary to her finding Employer failed to disprove Claimant has the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 35-36. We therefore affirm the administrative law judge's finding Employer did not rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(ii).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge