U.S. Department of Labor

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

BRB No. 19-0415 BLA

DAVID BANKS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
LONE MOUNTAIN PROCESSING, INCORPORATED	)	DATE ISSUED: 08/27/2020
	)	
Employer-Petitioner	)	
	)	
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 Jason A. Golden, Administrative Law Judge, United States Department of Labor.

Wes Addington (Appalachian Citizens' Law Center, Inc.), Whitesburg, Kentucky, for Claimant.

Ronald E. Gilbertson (Gilbertson Law, LLC), Columbia, Maryland, for Employer.

Rita Ann 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: ROLFE, GRESH and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge Jason A. Golden's Decision and Order Awarding Benefits (2018-BLA-05746) rendered on a subsequent claim[1] filed on April 6, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The administrative law judge credited Claimant with at least twenty-nine years of underground coal mine employment based on the parties' stipulation and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant established a change in an applicable condition of entitlement and invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §725.309(c). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues that the administrative law judge lacked the authority to preside over the case because he was not appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2,[3] and that it did not forfeit this argument.[4] In addition, it challenges the constitutionality of the Section 411(c)(4)

[1] Claimant filed an initial claim on May 4, 2010. Director's Exhibit 4. The district director denied that claim because Claimant failed to establish any element of entitlement. *Id*.

[2] Section 411(c)(4) provides a rebuttable presumption that a miner'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 or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[3] Article II, Section 2, Clause 2, sets forth the appointing powers:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

[4] "[F]orfeiture is the failure to make the timely assertion of a right[;] waiver is the 'intentional relinquishment or abandonment of a known right.'" *Hamer v. Neighborhood*

presumption, but nevertheless contends the administrative law judge improperly invoked the presumption based on erroneously finding Claimant is totally disabled. Employer further argues he erred in finding it did not rebut the presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response brief, contending the administrative law judge had authority to decide the case and that the Section 411(c)(4) presumption is constitutional. Employer filed reply briefs, reiterating its arguments.[5]

The Benefits Review Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[6] 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).

Appointments Clause

Employer urges the Board to vacate the award and remand the case to be heard by a different, constitutionally appointed administrative law judge pursuant to *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044 (2018).[7] Employer's Brief at 25-27. It acknowledges the Secretary of Labor (the Secretary) ratified the prior appointments of all sitting Department of Labor (DOL) administrative law judges on December 21, 2017, but maintains the ratification was insufficient to cure the constitutional defect in the administrative law

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Housing Services of Chicago, 138 S.Ct. 13, 17 n.1 (2017), *citing United States v. Olano*, 507 U. S. 725, 733 (1993) (quoting *Johnson v. Zerbst*, 304 U. S. 458, 464 (1938)).

[5] We affirm, as unchallenged on appeal, the administrative law judge's finding Claimant has at least twenty-nine years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

[6] Because Claimant's last coal mine employment occurred in Kentucky, Hearing Transcript at 14-15, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[7] *Lucia* involved a challenge to the appointment of an administrative law judge at the Securities and Exchange Commission (SEC). The United States Supreme Court held that, similar to Special Trial Judges at the United States Tax Court, SEC administrative law judges are "inferior officers" subject to the Appointments Clause. *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044, 2055 (2018) (citing *Freytag v. Commissioner*, 501 U.S. 868 (1991)).

judge's prior appointment.[8] *Id*. The Director contends the Secretary's ratification was proper under the Appointments Clause.

Employer forfeited its Appointments Clause argument by failing to raise it when the case was before the administrative law judge. *See Lucia*, 138 S.Ct. at 2055 (requiring "a timely challenge to the constitutional validity of the appointment of an officer who adjudicates [a party's] case"); *Island Creek Coal Co. v. Wilkerson*, 910 F.3d 254, 256 (6th Cir. 2018) ("Appointments Clause challenges are not jurisdictional and thus are subject to ordinary principles of waiver and forfeiture.") (citation omitted). *Lucia* was decided over six months before the hearing in this case and over eleven months before the administrative law judge issued his Decision and Order, but Employer failed to raise its arguments while the claim was before the administrative law judge. At that time, the administrative law judge could have addressed Employer's arguments and, if appropriate, taken steps to have the case assigned for a new hearing before a different administrative law judge. *See Kiyuna v. Matson Terminals, Inc.*, 53 BRBS 9, 10 (2019). Instead, Employer waited to raise the issue until after the administrative law judge issued an adverse decision. Because Employer has not raised any basis for excusing its forfeiture of the issue, we reject its argument that this case should be remanded to the Office of Administrative Law Judges for a new hearing before a different administrative law judge.[9] *See Glidden Co. v. Zdanok*,

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[8] The Secretary of Labor issued a letter to the administrative law judge on December 21, 2017, stating:

> In my capacity as head of the Department of Labor, and after due consideration, I hereby ratify the Department's prior appointment of you as an Administrative Law Judge. This letter is intended to address any claim that administrative proceedings pending before, or presided over by, administrative law judges of the U.S. Department of Labor violate the Appointments Clause of the U.S. Constitution. This action is effective immediately.

Secretary's December 21, 2017 Letter to Administrative Law Judge Golden.

[9] In its Reply Brief, Employer asserts the "removal protections for judges contained in the Administrative Procedure Act [(APA)]" are invalid. Employer's Reply Brief at 6. To the extent Employer challenges the provisions in the APA for removing administrative law judges, 5 U.S.C. §7521, we decline to address this issue as it is inadequately briefed. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); 20 C.F.R. §802.211(b). Further, Employer forfeited this argument by failing to raise it in its opening brief. *See Island Creek Coal Co. v. Young*, 947 F.3d 399, 402-03 (6th Cir. 2020); *Island*

370 U.S. 530, 535 (1962) (cautioning against excusing forfeited arguments because of the risk of sandbagging); *Powell v. Serv. Emps. Int'l, Inc.*, 53 BRBS 13, 15 (2019).

Constitutionality of the Affordable Care Act and the Section 411(c)(4) Presumption

Citing *Texas v. United States*, 340 F. Supp. 3d 579, *decision stayed pending appeal*, 352 F. Supp. 3d 665, 690 (N.D. Tex. 2018), Employer contends the Affordable Care Act (ACA), which reinstated the Section 411(c)(4) presumption, Pub. L. No. 111-148, §1556 (2010), is unconstitutional. Employer's Brief at 7-8. Employer cites the district court's rationale in *Texas* that the ACA requirement for individuals to maintain health insurance is unconstitutional and the remainder of the law is not severable. *Id*. Employer alternatively urges the Board to hold this appeal in abeyance pending resolution of the legal arguments in *Texas*.

After the parties submitted their briefs, the United States Court of Appeals for the Fifth Circuit held the health insurance requirement in the ACA unconstitutional, but vacated and remanded the district court's determination that the remainder of the ACA must also be struck down. *Texas v. United States*, 945 F.3d 355, 393, 400-03 (5th Cir. 2019) (King, J., dissenting), *cert. granted*, U.S. , No. 19-1019, 2020 WL 981805 (Mar. 2, 2020). Moreover, the United States Court of Appeals for the Fourth Circuit held the ACA amendments to the Black Lung Benefits Act are severable because they have "a stand-alone quality" and are fully operative. *W. Va. CWP Fund v. Stacy*, 671 F.3d 378, 383 n.2 (4th Cir. 2011), *cert. denied*, 568 U.S. 816 (2012). Further, the United States Supreme Court upheld the constitutionality of the ACA in *Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012), and the Board has declined to hold cases in abeyance pending resolution of legal challenges to the ACA. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-26 (2011); *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-201 (2010). We also reject Employer's argument that the Director and the Board are bound by the Department of Justice's briefing in *Texas v. United States*, as it points to no authority for such a proposition. Employer's Brief at 7-8. We therefore reject Employer's argument that the Section 411(c)(4) presumption is unconstitutional and inapplicable to this case, and deny its request to hold this case in abeyance.

Section 411(c)(4) Presumption - Total Disability

A miner is totally disabled if he has a pulmonary or respiratory impairment which, standing alone, prevents him from performing his usual coal mine work and comparable gainful 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

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Creek Coal Co. v. Bryan, 937 F.3d 738, 754 (6th Cir. 2019); *Williams v. Humphreys Enters., Inc.*, 19 BLR 1-111, 1-114 (1995).

pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must weigh all relevant supporting evidence against all relevant 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).

The administrative law judge found Claimant's usual coal mine employment was working as a repairmen and electrician, and this work required heavy manual labor. Decision and Order at 5. He found Claimant did not establish total disability based on the new pulmonary function studies or arterial blood gas studies. 20 C.F.R. §718.204(b)(2)(i), (ii); Decision and Order at 6-8. He also found the record contains no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 5-6. He found, however, Claimant established total disability based on the medical opinion evidence. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 8-11.

Usual Coal Mine Employment

Because Employer does not challenge the administrative law judge's finding Claimant's usual coal mine work was as a repairman and electrician, it is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5.

We reject Employer's argument the administrative law judge erred in evaluating the exertional requirements of this work. Employer's Brief at 9-11. The administrative law judge summarized Claimant's testimony that he "mostly performed repairs and changed parts," including servicing, greasing, and cleaning the continuous miner machine (CMM). Decision and Order at 5, *citing* Hearing Transcript at 16-17; *see also* Director's Exhibit 4. Claimant was required to carry a tool bag weighing fifty to seventy pounds or more. Decision and Order at 5, *citing* Hearing Transcript at 16-19. He also had to "move jacks that weighed [seventy to one-hundred] pounds and drill heads that weighed [seventy-five to one-hundred] pounds." *Id*. He assisted with moving belt lines, changing pump heads, and shoveling coal. *Id*. If Claimant completed his repair work early, he operated the CMM to produce coal. *Id*.

Contrary to Employer's argument, the administrative law judge permissibly found this work required heavy manual labor. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005) (administrative law judge's findings are conclusive if they are supported by substantial evidence and are in accordance with the applicable law); *Cross Mountain Coal, Inc. v. Ward*, 93 F.3d. 211, 218-19 (6th Cir. 1996) (administrative law judge's finding miner's usual coal mine work was as a miner's helper and that such job involved heavy or strenuous manual labor are supported by substantial evidence when

based on miner's testimony and documentary evidence describing relevant job duties); Decision and Order at 5; Employer's Brief at 9-11.

Arterial Blood Gas Studies

Employer does not dispute the administrative law judge's finding the new arterial blood gas studies do not establish total disability. But it nonetheless asserts he erroneously characterized an October 9, 2017 blood gas study as qualifying when it produced non-qualifying results.[10] Employer's Brief at 13-14. Contrary to Employer's argument, while the administrative law judge incorrectly stated the study "yielded a qualifying PCO2," he accurately considered and weighed it as a non-qualifying study because it did not produce a corresponding qualifying PO2 value. Decision and Order at 7-8.

Employer generally asserts the administrative law judge's error in characterizing the PCO2 value as qualifying affected his weighing of the medical opinions. Employer's Brief at 13-14. But there is no indication the administrative law judge credited or discredited any medical opinion based on a "qualifying" PCO2. Decision and Order at 7-11. Thus Employer has not explained how the "error to which [it] points could have made any difference." *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009).

Medical Opinions

There is no merit to Employer's arguments the administrative law judge erred in weighing the medical opinions. Employer's Brief at 9-20.

The administrative law judge first considered Dr. Dahhan's opinion, that Claimant's arterial blood gas testing evidenced moderate resting hypoxemia. Director's Exhibit 25. Dr. Dahhan found "no evidence of functional pulmonary impairment and/or disability caused by, related to, contributed to, or aggravated by inhalation of coal dust, hence, no evidence of legal pneumoconiosis." *Id*.

Insofar as Dr. Dahhan focused on the cause of any impairment, the administrative law judge permissibly found his opinion not well-reasoned and documented because the doctor did not "specifically opine whether he found Claimant to be totally disabled or whether he thought Claimant capable of performing his previous coal mine work." Decision and Order at 9; *see Napier*, 301 F.3d at 713-714; *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Employer's Brief at 18-19. The administrative law judge also permissibly found

[10] A "qualifying" arterial blood gas study yields values that are equal to or less than the applicable table values contained in Appendix C of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(ii).

Dr. Dahhan did not demonstrate an adequate understanding of the exertional requirements of Claimant's usual coal mine employment. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 587 (6th Cir. 2000); Decision and Order at 8-9.

The administrative law judge next weighed Dr. Nader's opinion that Claimant is totally disabled by a respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 8-11. Dr. Nader diagnosed Claimant with significant resting hypoxemia based on the July 1, 2017 blood gas study and mild restrictive airway disease based on the July 1, 2017 pulmonary function study. Director's Exhibit 15 at 4. He recognized Claimant had to lift fifty to one-hundred pounds as part of his usual coal mine employment as an equipment repairman. *Id*. at 2. He also reported Claimant could walk up to sixty feet uphill or hundred feet on level ground before having to stop and catch his breath. *Id*. at 3. Further, he noted Claimant "has a history of chronic cough, wheezing, shortness of breath and mucus expectoration." *Id*. at 4. Based on this information, he concluded Claimant is "totally disabled from a [pulmonary standpoint]" because he cannot do the "exercise requirement" of his equipment repairman job. *Id*. In a supplemental report, he indicated he reviewed the October 9, 2017 blood gas study and opined it "correlate[ed]" with the July 1, 2017 blood gas study as it also "reflects significant underlying hypoxemia" at rest. Director's Exhibit 24. He reiterated his finding Claimant is totally disabled.[11]

The administrative law judge permissibly credited Dr. Nader's opinion because the doctor's "description of the exertional requirements of Claimant's last coal mine job is consistent with [his] finding that Claimant's last job required heavy manual labor." Decision and Order at 10; *see Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714 (6th Cir. 2002); *Cornett*, 227 F.3d at 578; *Ward*, 93 F.3d at 218-19. He also permissibly found well-reasoned and documented Dr. Nader's opinion "that the level of hypoxemia seen on [blood gas testing] prevents Claimant from being able to perform the exertional requirements of his last coal mine job."[12] *See Napier*, 301 F.3d at 713-714; *Cornett*, 227

[11] There is no merit to Employer's assertion Dr. Nader diagnosed total disability based solely on the principle that Claimant should avoid further coal mine dust exposure. Employer's Brief at 16. Rather, he opined additional coal mine dust exposure would worsen Claimant's already disabling hypoxemia. Director's Exhibits 15, 24.

[12] We reject Employer's argument the administrative law judge erred in crediting Dr. Nader's opinion because the doctor based his opinion on non-qualifying testing. Employer's Brief at 14. Total disability can be established with reasoned medical opinions even "where total disability cannot be shown [by the objective studies identified] under paragraphs (b)(2)(i), (ii), or (iii), of this section . . . ." 20 C.F.R. §718.204(b)(2)(iv); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000) ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties");

F.3d at 577 ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"); *Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005) (claimant can establish total disability despite non-qualifying objective tests); Decision and Order at 10. Thus we affirm the administrative law judge's finding the medical opinions establish total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 8-11.

We further affirm the administrative law judge's conclusion that the evidence, when weighed together, establishes total disability. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; Decision and Order at 10-11. We also affirm his determinations that Claimant established a change in an applicable condition of entitlement and invoked the Section 411(c)(4) presumption.[13] 20 C.F.R. §§718.305(b)(1), 725.309.

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 Claimant has neither legal nor clinical pneumoconiosis,[14] 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.

Killman v. Director, OWCP, 415 F.3d 716, 721-22 (7th Cir. 2005) (claimant can establish total disability despite non-qualifying objective tests).

[13] Contrary to Employer's argument, the administrative law judge adequately acknowledged the evidence from Claimant's previous claim on the issue of total disability, including a March 11, 2011 non-qualifying blood gas study and the 2011 medical opinions of Drs. Dahhan and Jarboe that Claimant is not totally disabled. Decision and Order at 10-11; Employer's Brief at 11-13, 19-20. He permissibly found the "medical evidence designated in the current claim is entitled to greater weight" because it is more recent and "provides a more accurate evaluation [of Claimant's] current condition." *Id.*; *see Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993); *Parsons v. Wolf Creek Collieries*, 23 BLR 1-29, 1-35 (2004) (en banc).

[14] "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). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). "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).

§718.305(d)(1)(i), (ii). The administrative law judge found Employer failed to establish rebuttal by either method.

Clinical Pneumoconiosis

Employer does not challenge the administrative law judge's finding the evidence is insufficient to rebut the presumed existence of clinical pneumoconiosis. Decision and Order at 11-13. This finding is therefore affirmed. 20 C.F.R. §718.305(d)(1)(i)(B); *See Skrack*, 6 BLR at 1-711; Decision and Order at 13. Although Employer's failure to disprove clinical pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis, we will address the issue of legal pneumoconiosis because it is relevant to the second method of rebuttal. 20 C.F.R. §718.305(d)(1)(i).

Legal Pneumoconiosis

We reject Employer's argument the administrative law judge applied an incorrect legal standard when weighing Dr. Dahhan's opinion on legal pneumoconiosis. Employer's Brief at 21-24. 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 Co*., 25 BLR 1-149, 159 (2015) (Boggs, J., concurring and dissenting). The Sixth Circuit holds this standard requires Employer to "disprove the existence of legal pneumoconiosis by showing that [the miner's] coal mine employment did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). "An employer may prevail under the not 'in part' standard by showing that coal dust exposure had no more than a de minimis impact on the miner's lung impairment." *Id*. at 407 (citing *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014)).

As the administrative law judge noted, "Dr. Dahhan diagnosed moderate hypoxemia which he opined 'resulted from [Claimant's] lengthy smoking habit that he continues to indulge in.'" Decision and Order at 14, *quoting* Director's Exhibit 25 at 4. The administrative law judge permissibly found this reasoning "fails to adequately explain why Claimant's past occupational exposures to coal mine dust did not contribute, even in part, to the moderate hypoxemia he diagnosed." *Id*.; *see* 20 C.F.R. §718.201(a)(2), (b); *Young*, 947 F.3d at 403-07; *Collieries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007). Thus we affirm the administrative law judge's determination that Employer did not disprove the existence of legal pneumoconiosis.[15] 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 14.

[15] Employer asserts the administrative law judge did not weigh the opinions of Drs. Dahhan and Jarboe that Employer submitted in Claimant's initial claim relevant to rebuttal

Disability Causation

The administrative law judge next considered whether Employer established "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). He permissibly discredited Dr. Dahhan's opinion because the doctor did not diagnose pneumoconiosis, contrary to his finding Employer failed to disprove Claimant has the disease. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 14-15. 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) and the award of benefits.

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of the Section 411(c)(4) presumption. Employer's Brief at 24. We disagree. The administrative law judge reiterated his permissible finding, as discussed above, that "the medical evidence designated in the current claim is entitled to greater weight" than the prior claim evidence insofar "as it provides a more accurate evaluation of Claimant's current condition." Decision and Order at 15; *see Woodward*, 991 F.2d at 319-20; *Parsons*, 23 BLR at 1-35.

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge