



BRB No. 20-0388 BLA

EDDIE R. BARNHART)	
)	
Claimant-Respondent)	
)	
v.)	
)	
NEW WARWICK MINING COMPANY)	
)	
and)	
)	
ARROWOOD INDEMNITY)	DATE ISSUED: 08/27/2021
)	
Employer/Carrier-)	
Petitioners)	
)	
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 Larry W. Price, Administrative Law Judge, United States Department of Labor.

J. Thomas Walker (Maples Tucker & Jacobs, LLC), Birmingham, Alabama, for Claimant.

James M. Poerio (Poerio & Walter, Inc.), Pittsburgh, Pennsylvania, for Employer and its Carrier.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge Larry W. Price's Decision and Order Awarding Benefits (2018-BLA-06285) rendered on a claim filed on August 15, 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 nineteen years of underground coal mine employment and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore determined Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.¹ 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer asserts the administrative law judge erred in finding it did not rebut the Section 411(c)(4) presumption.² Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief unless specifically requested to do so.

The Benefit 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.³ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,⁴ or that "no part

¹ 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) (2018); *see* 20 C.F.R. §718.305.

² We affirm, as unchallenged on appeal, the administrative law judge's finding that Claimant invoked the Section 411(c)(4) presumption. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 15.

³ This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because Claimant performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3, 13, 14.

⁴ 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). This definition encompasses any chronic pulmonary disease or respiratory or pulmonary impairment

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 did not establish rebuttal by either method.⁵

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).

The administrative law judge considered Dr. Rosenberg’s opinion on rebuttal.⁶ He diagnosed Claimant with chronic obstructive pulmonary disease (COPD) and emphysema. Employer’s Exhibit 7. He opined both diseases are due to Claimant’s cigarette smoking history and unrelated to coal mine dust exposure. *Id.* The administrative law judge discredited Dr. Rosenberg’s opinion because he found it inadequately reasoned and inconsistent with the scientific evidence cited in the preamble to the 2001 revised regulations. Decision and Order at 19-20.

We reject Employer’s argument that the administrative law judge erred in discrediting Dr. Rosenberg’s opinion. Employer’s Brief at 11-14. He correctly found Dr. Rosenberg opined Claimant’s COPD is unrelated to coal mine dust exposure because Claimant’s pulmonary function testing revealed a reduced FEV₁/FVC ratio, which is not a pattern of impairment consistent with legal pneumoconiosis. Decision and Order at 19-20;

“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 pneumoconiosis, 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).

⁵ The administrative law judge found Employer disproved clinical pneumoconiosis. Decision and Order at 18.

⁶ Contrary to Employer’s argument, the administrative law judge did not credit the opinions of Drs. Barney and Banick diagnosing legal pneumoconiosis when finding it did not rebut the presumption of pneumoconiosis. Employer’s Brief at 11, 14. Because neither doctor excluded legal pneumoconiosis, the administrative law judge correctly found their opinions do not support Employer’s burden to establish rebuttal. *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149 (2015); Decision and Order at 20.

see Employer's Exhibit 7 at 5-6. The administrative law judge permissibly found this rationale conflicts with the medical science set forth in the preamble that "coal miners have an increased risk of developing COPD," and that COPD "may be detected from decrements in certain measures of lung function, especially FEV₁ and the ratio of FEV₁/FVC." 65 Fed. Reg. 79,920, 79,943 (Dec 20, 2000); see *Helen Mining Co. v. Director, OWCP [Obush]*, 650 F.3d 248, 257 (3d Cir. 2011); see also *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 (4th Cir. 2017); *Cent. Ohio Coal Co. v. Director, OWCP [Sterling]*, 762 F.3d 483, 491 (6th Cir. 2014); Decision and Order at 19.

The administrative law judge also correctly found Dr. Rosenberg relied on various studies that indicate cigarette smoking is more detrimental to lung function than coal mine dust exposure in order to exclude coal mine dust exposure as a cause of Claimant's COPD and emphysema. Decision and Order 19-20, citing Employer's Exhibit 7 at 6-8. Specifically, Dr. Rosenberg opined "the effects of cigarette smoking are far greater than the effects of coal dust on the loss" of lung function. Employer's Exhibit 7 at 6-8. The administrative law judge permissibly discredited Dr. Rosenberg's opinion because the doctor did not adequately "address the additive effect of smoking and coal mine dust exposure on the Claimant's pulmonary condition."⁷ Decision and Order at 19-20; see *Balsavage v. Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *Stallard*, 876 F.3d at 673 n.4 (administrative law judge permissibly discredited medical opinions that "solely focused on smoking" as a cause of obstruction and "nowhere addressed why coal dust could not have been an additional cause"); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013).

Thus we affirm the administrative law judge's finding that Employer failed to disprove Claimant has legal pneumoconiosis.⁸ 20 C.F.R. §§718.201(a)(2),(b), 718.305(d)(1)(i)(A); Decision and Order at 19-23. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

⁷ Because the administrative law judge provided valid reasons for discrediting Dr. Rosenberg's opinion, any error in discrediting it for other reasons is harmless. See *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983). Therefore, we need not address Employer's remaining arguments regarding the weight accorded to his opinion. Employer's Brief at 10-14.

⁸ As it is unchallenged, we affirm the administrative law judge's finding the treatment record evidence does not rebut the presumption of legal pneumoconiosis. *Skrack*, 6 BLR at 1-711; Decision and Order at 22.

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); Decision and Order at 23-25. He rationally discounted Dr. Rosenberg’s opinion because the doctor did not diagnose legal pneumoconiosis, contrary to his finding that Employer failed to disprove the existence of the disease.⁹ See *Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order at 23-25. We therefore affirm the administrative law judge’s finding that 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.

⁹ Dr. Rosenberg did not offer an opinion on disability causation independent of his reasoning relating to the existence of pneumoconiosis. Employer’s Exhibit 7.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge