U.S. Department of Labor

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

BRB No. 20-0007 BLA

JOEL EDWIN MILES	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
17 WEST MINING, INCORPORATED	)	DATE ISSUED: 01/12/2021
	)	
and	)	
	)	
17 WEST MINING/MAPCO, INCORPORATED	)	
	)	
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 on Remand of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Paul Jones and Denise Hall Scarberry (Jones & Walters, PLLC), Pikeville, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge Larry W. Price's Decision and Order on Remand (2016-BLA-05319) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's subsequent claim filed on March 18, 2015,[1] and is before the Benefits Review Board for the second time.

In his initial Decision and Order Denying Benefits, the administrative law judge credited Claimant with nine years of coal mine employment based on the parties' stipulation and therefore found Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018). Considering whether Claimant established entitlement to benefits without the aid of any presumption,[3] the administrative law judge found he failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2) and denied benefits.[4]

Pursuant to Claimant's pro se appeal, the Board affirmed the administrative law judge's findings that Claimant could not invoke the Section 411(c)(3) or (c)(4)

[1] On April 19, 2001, the district director denied Claimant's prior claim, filed on November 27, 2000, because he failed to establish any element of entitlement. Director's Exhibit 1. Claimant took no further action until filing the current claim. Director's Exhibit 3.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis when he establishes at least fifteen years of underground coal mine employment or substantially similar surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[3] The administrative law judge also found no evidence of complicated pneumoconiosis and therefore Claimant could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

[4] The administrative law judge considered the old and new evidence together and permissibly relied upon the evidence submitted with the current claim, which he found more accurately reflects Claimant's current condition. *See Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 624 (6th Cir. 1988); *Parsons v. Wolf Creek Collieries*, 23 BLR 1-29, 1-34-35 (2004) (en banc); *Workman v. Eastern Associated Coal Corp.*, 23 BLR 1-22, 1-27 (2004) (en banc); 2017 Decision and Order at 9.

presumptions. 30 U.S.C. §§921(c)(3), (c)(4). It vacated, however, the administrative law judge's findings that Claimant did not establish total disability and a change in an applicable condition of entitlement.[5] The Board instructed the administrative law judge on remand to weigh the pulmonary function studies and medical opinions and fully explain his findings. Thus, the Board vacated the denial of benefits and remanded the case for reconsideration of total disability and entitlement under 20 C.F.R. Part 718. *Miles v. 17 West Mining, Inc*., BRB No. 18-0026 BLA (March 11, 2019) (unpub.).

On remand, the administrative law judge determined the newly submitted pulmonary function studies establish total disability and a change in an applicable condition of entitlement. He also found Claimant is totally disabled due to legal pneumoconiosis[6] and awarded benefits.

In the present appeal, Employer argues the administrative law judge erred in not allowing it to brief the issues on remand. Employer also argues he erred in finding Claimant established total disability and legal pneumoconiosis. Neither Claimant nor the Director, Office of Workers' Compensation Programs, filed a response brief.

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.[7] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359

[5] When a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "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's prior claim was denied because he failed to establish any of the elements of entitlement. Director's Exhibit 1. Consequently, Claimant had to submit new evidence establishing at least one element of entitlement to proceed with a review of the merits of his claim. *See* 20 C.F.R. §725.309(d)(2), (3); *White*, 23 BLR at 1-3.

[6] "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).

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as Claimant's coal mine employment occurred in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 1, 4; Hearing Transcript at 11.

(1965). The Board reviews the administrative law judge's procedural rulings for an abuse of discretion. *McClanahan v. Brem Coal Co.*, 25 BLR 1-171, 1-175 (2016); *Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-236 (2007) (en banc).

Procedural Matter

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).

On March 11, 2019, the Board issued its Decision and Order remanding the case to the administrative law judge. By letter dated June 21, 2019, Employer notified the administrative law judge that it wished to file a brief on remand. Employer's Brief at 4. By Order dated July 3, 2019, the administrative law judge declined to allow briefing "[b]ecause Claimant is proceeding without benefit of counsel."[8] July 3, 2019 Order at 1. The administrative law judge subsequently issued his Decision and Order on Remand on September 16, 2019.

Employer argues the administrative law judge violated its due process rights by not allowing it to submit a brief on remand because its right to an adequate defense must not be "reduced, removed, diminished, or deprived" due to Claimant's lack of legal representation. Employer's Brief at 4-5. Employer's argument lacks merit.

Briefs contain argument, not evidence, and the regulations provide an administrative law judge with discretion to accept briefs or other written statements from the parties. *See* 20 C.F.R. §725.455(d); *Freeman United Coal Mining Co. v. Cooper*, 965 F.2d 443, 446-47 (7th Cir. 1992). Section 725.455(d) provides, in pertinent part, "[b]riefs or other written statements or allegations as to facts or law may be filed by any party *with the permission of the administrative law judge*." 20 C.F.R. §725.455(d) (emphasis added). While Employer has the right to defend the claim irrespective of Claimant's legal representation, the regulations demonstrate there is no absolute right to file a brief on remand, and the decision as to whether the parties are permitted briefs lies within the sound discretion of the administrative law judge. *See* 20 C.F.R. §725.455(d). Moreover, Employer was afforded the opportunity to file a post-hearing brief when the matter was first before the

[8] The administrative law judge noted that in preparing his Decision and Order on Remand he may take notice of any briefs the parties submitted to the Benefits Review Board on appeal. July 3, 2019 Order at 1.

administrative law judge. *See* July 3, 2017 Brief of Employer. On appeal, it does not indicate what arguments it would have made or how it was prejudiced by the administrative law judge's denial of its request to submit additional briefing on remand. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009). Further, Employer does not argue the regulations themselves violate its due process rights. Thus, the record does not reveal any due process violation or abuse of discretion by the administrative law judge in denying the request for briefing. *See Blake*, 24 BLR at 1-113; *Clark*, 12 BLR at 1-153.

Entitlement under 20 C.F.R. Part 718

Without the benefit of the Section 411(c)(3) and (c)(4) presumptions, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Total Disability

A miner is totally disabled if a pulmonary or respiratory impairment, 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 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 established total disability based on the newly submitted pulmonary function studies and his weighing of the evidence as a whole.[9] 20 C.F.R. §718.204(b)(2); Decision and Order on Remand at 3-8.

[9] The Board affirmed the administrative law judge's findings that total disability was not established under 20 C.F.R. §718.204(b)(2)(ii), (iii). *Miles v. 17 West Mining, Inc.*, BRB No. 18-0026 BLA, slip op. at 6 (March 11, 2019) (unpub.); 2017 Decision and Order at 10-11; Decision and Order on Remand at 5. On remand, the administrative law judge found the medical opinions do not establish total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order on Remand at 6-7.

In his prior decision, the administrative law judge considered the newly submitted April 1, 2015, October 1, 2015, November 17, 2015, February 11, 2016, and January 31, 2017 pulmonary function studies. He determined Claimant established total disability at 20 C.F.R. §718.204(b)(2)(i) because the most recent February 11, 2016 and January 31, 2017 studies produced qualifying values and provided a better representation of Claimant's current medical condition. On appeal, the Board held the administrative law judge did not explain his determination that the February 11, 2016 pulmonary function study is qualifying. The Board instructed him to consider the MVV value of the 2016 pulmonary function study, determine whether the study is qualifying, and render a determination regarding the pulmonary function study evidence as a whole. *Miles*, BRB No. 18-0026 BLA slip op. at 4-6.

On remand, the administrative law judge again considered the five newly submitted pulmonary function studies and found the pre-bronchodilator results for all but the October 1, 2015 study are qualifying based on FEV_1 and FVC and/or MVV values.[10] Decision and Order on Remand at 4-5; Director's Exhibit 11; Claimant's Exhibits 3, 4; Employer's Exhibits 1, 2. He also considered Dr. Vuskovich's opinion Claimant "did not put forth the effort required to generate valid spirometry results" on the April 1, 2015 study.[11] Decision

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[10] For a pulmonary function study to constitute evidence of total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), it must produce *both* a qualifying FEV_1 value *and* either an FVC or MVV value equal to or less than the values appearing in the tables set forth in Appendix B, or an FEV_1 to FVC ratio equal to or less than 55%. *See* 20 C.F.R. §718.204(b)(2)(i)(A)-(C). The administrative law judge found the April 1, 2015, November 17, 2015, and January 31, 2017 pre-bronchodilator studies had qualifying FVC and MVV values, and the February 11, 2016 pre-bronchodilator study had qualifying MVV values. Decision and Order on Remand at 5. None of the post-bronchodilator studies performed on April 1, 2015, October 1, 2015, or November 17, 2015 produced qualifying values. Director's Exhibit 11, Employer's Exhibits 1, 2.

[11] Dr. Vuskovich opined:

> [Claimant's] respiratory rate and tidal volume were not sufficient to generate valid MVV results. [Claimant] did not put forth the effort required to generate valid FVC and FEV_1 results. His initial efforts were not maximum efforts which artificially lowered his FEV_1 results. His deep breath efforts and expiratory efforts were unacceptably variable which artificially lowered his FEV_1 and FVC results.

Director's Exhibit 13 at 2.

and Order on Remand at 5, *referencing* Director's Exhibit 13 at 4. Weighing Dr. Vuskovich's opinion against the contrary opinions of Dr. Gaziano, who reviewed the study and opined it was valid; the administering technician, who noted "good effort;" and Dr. Ajjarapu's testimony that Claimant gave sufficient effort to produce acceptable results,[12] the administrative law judge found the April 1, 2015 study valid.[13] Decision and Order on Remand at 5; Director's Exhibits 11, 13; Employer's Exhibit 6 at 25. Thus, determining that all but one of Claimant's pre-bronchodilator pulmonary function study results are qualifying, the administrative law judge found the pulmonary function studies support a finding of total disability.[14] 20 C.F.R. §718.204(b)(2)(i); Decision and Order on Remand at 4-5.

Employer argues the administrative law judge erred in failing to consider the validity of "each and every pulmonary function study" prior to finding disability established by the pulmonary function study evidence, and therefore failed to comply with the requirements of the Administrative Procedure Act (APA).[15] Employer's Brief at 5-7.

Contrary to Employer's argument, in the absence of evidence to the contrary, compliance with the quality standards set forth in the regulations is presumed. 20 C.F.R. §718.103(c); *see* Appendix B to 20 C.F.R. Part 718; *Vivian v. Director, OWCP*, 7 BLR 1-360 (1984) (the party challenging the validity of a study has the burden to establish the results are suspect or unreliable). While Employer asserts Dr. Vuskovich additionally questioned the validity of the 2016 and 2017 pulmonary function studies, the record reflects he only questioned the April 1, 2015 study, which the administrative law judge found to be valid. Decision and Order on Remand at 5; Employer's Brief at 6, *citing* Employer's

[12] Dr. Ajjarapu provided a deposition on March 1, 2017. She disagreed with Dr. Vuskovich, testifying Claimant gave good effort on the April 1, 2015 pulmonary function study which showed a "severe pulmonary impairment." Employer's Exhibit 6 at 11, 25.

[13] Neither Dr. Rosenberg nor Dr. Jarboe provided an opinion regarding the validity of the April 1, 2015 pulmonary function study. Employer's Exhibits 1, 2, 4, 5.

[14] We affirm, as unchallenged, the administrative law judge's crediting of the pre-bronchodilator values. *See* 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[15] The Administrative Procedure Act provides that 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).

Exhibits 7, 8;[16] Director's Exhibit 13. Nor is there merit to Employer's assertion that Dr. Jarboe "opined that these subsequent studies were invalid." Employer's Brief at 7. Dr. Jarboe invalidated the pre-bronchodilator study he administered on October 1, 2015,[17] but did not question the validity of the April 1, 2015, November 17, 2015, February 11, 2016, or January 31, 2017 pulmonary function studies, which were all qualifying.[18] *See* Employer's Exhibits 2, 4. Because it is supported by substantial evidence, we affirm the administrative law judge's determination that the pulmonary function studies establish total

[16] At the April 4, 2017 hearing, Employer submitted Employer's Exhibits 1 through 6. Hearing Transcript at 7; Administrative Law Judge Exhibit 2. Employer's Evidence Summary form referenced two reports from Dr. Vuskovich, purportedly reviewing the February 11, 2016 and January 31, 2017 pulmonary function studies, which were labeled "TBA" [to be admitted]. At the hearing, after admitting Employer's Exhibits 1 through 6, the administrative law judge referenced "the other two [exhibits Employer] intends to submit" and stated "I will mark those and admit them when received." Hearing Transcript at 7. In his 2017 Decision and Order, the administrative law judge noted he left the record open for sixty days after the hearing for the development of additional evidence, but "neither party submitted exhibits during this time." 2017 Decision and Order at 2; Hearing Transcript at 26.

[17] In his report, Dr. Jarboe described the data from his October 1, 2015 testing. He opined:

> Claimant gave variable effort on spirometric testing. He appeared to hyperventilate after each test and complained of pain due to gout. The pre-dilator study is not valid as the two highest FVC's and FEV1's are not matching.

Employer's Exhibit 2 at 3. He reiterated this opinion during his deposition. Employer's Exhibit 4 at 16.

[18] We reject Employer's assertion that the administrative law judge erred in "assum[ing]" the April 1, 2015 pulmonary function study was valid "based on the mere fact . . . the subsequent studies rendered similar results." Employer's Brief at 7. As discussed, *supra*, the administrative law judge weighed Dr. Vuskovich's opinion against those of the administering technician and Drs. Gaziano and Ajjarapu, and permissibly found the April 1, 2015 study valid and supported by the subsequent qualifying studies. *See* Decision and Order on Remand at 5.

disability. 20 C.F.R. §718.204(b)(2)(i); *see Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005).

The administrative law judge next considered the newly submitted medical opinions of Drs. Ajjarapu, Jarboe, and Rosenberg, together with the treatment records.[19] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order on Remand at 6-7. Dr. Ajjarapu[20] opined Claimant is totally disabled and does not have the respiratory or pulmonary capacity to perform his previous coal mine employment, while Drs. Jarboe[21] and Rosenberg[22] opined Claimant could return to his last coal mine employment from a respiratory standpoint. Decision and Order on Remand at 6-7; Director's Exhibit 11; Employer's Exhibits 1, 2, 4, 5, 6. The administrative law judge found none of the doctors' opinions persuasive because they were not well-reasoned. Decision and Order on Remand at 7. He found Dr. Ajjarapu did not relate Claimant's pulmonary condition to his exertional requirements and Drs. Jarboe and Rosenberg did not address Claimant's subsequent qualifying pulmonary function studies. *Id*. Thus, he concluded the medical opinion evidence was insufficient to support a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order on Remand at 7. Finally, weighing all of the relevant evidence together and giving greatest weight to the pulmonary function studies, the administrative law judge found Claimant established total

[19] The administrative law judge found that none of the treating physicians offered an opinion as to whether Claimant is totally disabled from a respiratory or pulmonary standpoint. Decision and Order on Remand at 8.

[20] After she performed a complete pulmonary evaluation of Claimant on April 1, 2015, Dr. Ajjarapu opined he is "totally and completely disabled" from a respiratory standpoint. Director's Exhibit 11. Dr. Ajjarapu administered Claimant's February 11, 2016 and January 31, 2017 qualifying pulmonary function studies and provided testimony during her March 1, 2017 deposition in which she reiterated her initial opinion that Claimant is totally disabled based on the objective tests, and does not have the pulmonary capacity to perform his usual coal mine work. Claimant's Exhibits 3, 4; Employer's Exhibit 6 at 17.

[21] Dr. Jarboe opined, based on an October 1, 2015 examination, that Claimant does not have a significant ventilatory impairment and is not totally disabled from a pulmonary standpoint. Employer's Exhibits 2, 4.

[22] Dr. Rosenberg opined, based on a November 17, 2015 examination, that Claimant has a mild to moderate degree of restriction but is not disabled, from a pulmonary perspective, from performing his previous coal mine job or a similarly arduous type of labor. Employer's Exhibits 1, 5.

disability by a preponderance of the evidence pursuant to 20 C.F.R. §718.204(b)(2). Decision and Order on Remand at 8.

We reject Employer's argument that the administrative law judge "mischaracterized" the opinions of Drs. Jarboe and Rosenberg "in order to discredit" them.[23] Employer's Brief at 9. The administrative law judge accurately noted Dr. Jarboe and Dr. Rosenberg each based their conclusions on the non-qualifying pulmonary function study results from their respective studies. Decision and Order on Remand at 7; Employer's Exhibits 1, 2, 4, 5. He found their conclusions to be inconsistent with Claimant's 2015 qualifying studies and his subsequent 2016 and 2017 qualifying studies, which Drs. Jarboe and Rosenberg neither addressed nor had the benefit of reviewing. *Id*. Thus, the administrative law judge found their opinions that Claimant is not totally disabled to be inconsistent with the pulmonary function study results of record. *Id*. He therefore permissibly found their opinions not well-reasoned to the extent they concluded the non-qualifying pulmonary function studies demonstrate Claimant is not totally disabled, contrary to his finding the pulmonary function study evidence as a whole supports a finding of total disability. *See 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). Moreover, the administrative law judge permissibly determined Dr. Rosenberg's reliance on post-bronchodilator values detracted from his opinion. Decision and Order on Remand at 7; *see* 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980) (use of bronchodilators "does not provide an adequate assessment of [a] miner's disability"). We therefore affirm the administrative law judge's determination that the medical opinions do not establish total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order on Remand at 7.

In addition, we reject Employer's assertion that in reviewing the evidence as a whole, the administrative law judge "seemed to rely" on Dr. Ajjarapu's discredited opinion. Employer's Brief at 7, *referencing* the Decision and Order on Remand at 8. Having found the pulmonary function studies support a finding of total disability, the administrative law judge considered whether they were outweighed by any contrary probative evidence. Decision and Order on Remand at 8. He permissibly found the medical opinion

[23] Employer argues the administrative law judge erred in weighing Dr. Ajjarapu's opinion diagnosing total disability. Employer's Brief at 7-8. We need not address Employer's argument as the administrative law judge found her opinion, while not contrary to the pulmonary function study evidence, was nonetheless unreasoned and thus did not accord it any weight. *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"); Decision and Order on Remand at 6-7; Employer's Brief at 7-8; Director's Exhibit 11. We also need not address Employer's arguments regarding Drs. Dahhan, Everhart, Green, and Nader as these physicians did not provide opinions in this case. Employer's Brief at 8.

evidence does not constitute contrary probative evidence that would undermine the qualifying pulmonary function studies. *See* 20 C.F.R. §718.204(b)(2)(i) (a qualifying pulmonary function study is sufficient to establish total disability "[i]n the absence of contrary probative evidence"). He also considered the non-qualifying blood gas studies but permissibly found they do not undermine the qualifying pulmonary function studies. *See Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984) (blood gas studies and pulmonary function studies measure different types of impairment). We therefore affirm his determinations that Claimant established total disability under 20 C.F.R. §718.204(b)(2) by a preponderance of the evidence considered as a whole, and established a change in an applicable condition of entitlement under 20 C.F.R. §725.309(c). Decision and Order on Remand at 8, 14.

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must demonstrate he has 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). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this claim arises, holds a miner can establish a lung disease or impairment is significantly related to coal mine dust exposure "by showing that his disease was caused 'in part' by coal mine employment." *Arch on the Green v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014); *see also Island Creek Coal Co. v. Young*, 947 F.3d 399, 407 (6th Cir. 2020) ("[I]n [*Groves*] we defined 'in part' to mean 'more than a *de minimis* contribution' and instead 'a contributing cause of some discernible consequence.'").

On this issue, the administrative law judge considered the opinions of Drs. Ajjarapu, Jarboe, and Rosenberg. Decision and Order on Remand at 10-12. Dr. Ajjarapu opined Claimant has legal pneumoconiosis in the form of chronic bronchitis due to his smoking and coal mine dust exposure. Director's Exhibit 11; Employer's Exhibit 6 at 13-14. Drs. Jarboe and Rosenberg both opined Claimant does not have legal pneumoconiosis.[24] Employer's Exhibits 1, 2, 4, 5. The administrative law judge found Dr. Ajjarapu's opinion well-reasoned and entitled to probative weight because she considered Claimant's specific diagnoses and exposures. Decision and Order on Remand at 11-12. Conversely, he found the opinions of Drs. Jarboe and Rosenberg not well-reasoned because they did not credibly

[24] Dr. Jarboe diagnosed chronic bronchitis and observed that any variability in the pulmonary function study values is due to restrictive airways disease and/or lack of effort. Employer's Exhibits 2, 4 at 18-19. Dr. Rosenberg diagnosed Claimant with a mild to moderate restrictive impairment but found it was due to his obesity and asthma. Employer's Exhibits 1; 5 at 12-13, 14-15.

explain how they determined Claimant's years of coal mine dust exposure did not contribute to, or aggravate, his pulmonary disease. *Id*. at 10-12. According greater weight to Dr. Ajjarapu's opinion, the administrative law judge found Claimant established legal pneumoconiosis. *Id*. at 12.

Employer argues Dr. Ajjarapu's opinion is not well-reasoned because her diagnosis of legal pneumoconiosis was based "solely" on Claimant's symptoms, she considered an inaccurate employment history, and the administrative law judge "assumed" coal mine dust was a factor in Claimant's impairment. Employer's Brief at 10-12. Employer's contentions lack merit.

Employer is incorrect that Dr. Ajjarapu relied solely on symptoms to diagnose legal pneumoconiosis and did not explain how coal dust exposure contributed to Claimant's lung disease. Dr. Ajjarapu, like Dr. Jarboe, diagnosed chronic bronchitis on the basis of Claimant's "symptoms of daily cough and sputum production" and shortness of breath. Director's Exhibit 11 at 30; Employer's Exhibit 2. She identified the "underlying etiologies" of Claimant's disease as "his work in the mines and tobacco abuse" and explained that the "basis for [her diagnoses of] legal coal worker pneumoconiosis/chronic bronchitis" is that both etiologies "cause airway inflammation leading to bronchospasm and cause excessive airway secretions and bronchitic symptoms." *Id*. She also identified a "severe pulmonary impairment" on Claimant's pulmonary function study and concluded he is "completely disabled due to his work in the mines." *Id*. at 31. She reiterated these diagnoses at her deposition and further explained that miners at the surface, like Claimant, are "exposed to a lot more rock mixture in the coal," which "could be even more devastating than even the [underground] coal face work itself." Employer's Exhibit 6 at 11-14, 17. We therefore reject Employer's argument that Dr. Ajjarapu did not explain her diagnosis of legal pneumoconiosis beyond identifying symptoms of chronic bronchitis.

With respect to years of coal mine employment, the administrative law judge acknowledged Dr. Ajjarapu initially relied on "nine years of surface coal mine employment with three additional years in coal mining."[25] Decision and Order on Remand at 10; Director's Exhibit 11. He further recognized, however, that Dr. Ajjarapu was subsequently informed at her deposition that Claimant was credited with only nine years of coal mine employment but did not change her opinion Claimant has legal pneumoconiosis and, as noted above, explained why the composition of dust from surface mining can be "more devastating" than underground mining. Decision and Order on Remand at 10, *citing* Employer's Exhibit 6 at 16. As the administrative law judge noted, Claimant also

[25] Claimant alleged twelve years of coal mine employment, and Drs. Ajjarapu, Jarboe, and Rosenberg each based their respective reports on twelve years of coal mine employment. Director's Exhibits 3, 11; Employer's Exhibits 1, 2.

described his working conditions driving trucks with an open cab as exposing him to "a lot of dust." Decision and Order at 12, *quoting* Employer's Exhibit 1. Further, when asked if she typically sees coal miners who have less than ten years of coal mine dust exposure and also have pneumoconiosis, Dr. Ajjarapu responded in the affirmative and reiterated that Claimant's low spirometry readings were due to multifactorial reasons. Employer's Exhibit 6 at 16, 34. Thus, Employer also has not established error in the administrative law judge's crediting of Dr. Ajjarapu's opinion despite her initial assessment that the miner had twelve years of coal mine employment.

Finally, the administrative law judge did not, as Employer contends, "assume" Claimant's respiratory condition is due to coal dust exposure. Employer's Brief at 11-12. He based his finding on Dr. Ajjarapu's written report and deposition testimony which he permissibly determined is adequately reasoned and documented, as she diagnosed legal pneumoconiosis based on Claimant's years of coal mine employment with coal and rock dust exposure; his smoking history; his symptoms of chronic coughing with sputum production and dyspnea; and his abnormal pulmonary function studies that showed a severe pulmonary impairment. *See Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255 (determinations of whether a physician's report is sufficiently documented and reasoned is a credibility matter); Decision and Order on Remand at 10-12; Director's Exhibit 11; Claimant's Exhibits 3, 4; Employer's Exhibit 6. The administrative law judge further permissibly determined Dr. Ajjarapu's opinion that coal mine dust was a contributing factor in Claimant's respiratory impairment is sufficient to meet the requirement that Claimant's impairment was caused "in part" by his coal mine dust exposure. Decision and Order on Remand at 11-12; *see Groves*, 761 at 598-99. Thus, we affirm the administrative law judge's finding that Dr. Ajjarapu's opinion is well-reasoned and entitled to probative weight on the issue of whether Claimant has legal pneumoconiosis. *See Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; Decision and Order on Remand at 12; Director's Exhibit 11; Employer's Exhibit 6.

Employer next contends the administrative law judge violated the APA by failing to explain why he discredited the opinions of Drs. Jarboe and Rosenberg. Employer's Brief at 12. We disagree. Contrary to Employer's contention, the administrative law judge permissibly discredited their opinions because he found they failed to adequately explain why Claimant's years of coal mine dust exposure did not significantly contribute, along with the other factors they identified, to his restrictive impairment.[26] *See Crockett*

[26] Dr. Jarboe acknowledged Claimant's chronic bronchitis could meet the definition of legal pneumoconiosis but determined it was "nonoccupational in origin" because "any cough and mucus production he may have had due to coal mine dust inhalation would have cleared long ago." Employer's Exhibit 2. Dr. Jarboe attributed any restrictive impairment to Claimant "being significantly overweight and having reactive airways disease." *Id.* At

Colleries, Inc. v. Barrett, 478 F.3d 350, 356 (6th Cir. 2007); *Rowe*, 710 F.2d at 255; Decision and Order on Remand at 11. Other than a general assertion that Drs. Rosenberg and Jarboe "explained how they arrived at their conclusion," Employer does not address the administrative law judge's finding or explain how he erred. Employer's Brief at 12. Thus, we affirm his finding that the opinions of Drs. Jarboe and Rosenberg are not adequately explained and are entitled to diminished weight. *Kozele v. Rochester & Pittsburgh Coal Co*., 6 BLR 1-378, 1-382 n.4 (1983); Decision and Order on Remand at 11-12. We therefore further affirm the administrative law judge's finding that Claimant established legal pneumoconiosis based on the medical opinion evidence. 20 C.F.R. §718.202(a)(4); Decision and Order on Remand at 12.

Total Disability Causation

A miner is totally disabled due to pneumoconiosis if it substantially contributes to a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1); *see Groves*, 761 F.3d at 599-601. Because Claimant established legal pneumoconiosis but not clinical pneumoconiosis,[27] the relevant inquiry before the administrative law judge was whether his legal pneumoconiosis is a substantially contributing cause of his total disability.

The administrative law judge found Claimant established his total respiratory or pulmonary disability is due to legal pneumoconiosis. 20 C.F.R. §718.204(c); Decision and Order on Remand at 13. Employer raises no specific arguments on disability causation, other than to assert Claimant is not totally disabled and does not have legal pneumoconiosis. Because we have affirmed the administrative law judge's findings of total respiratory or pulmonary disability and legal pneumoconiosis, we further affirm his determination that Claimant established his totally disabling respiratory or pulmonary

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his deposition, Dr. Jarboe stated Claimant does not have legal pneumoconiosis because he does not have airflow obstruction and, concerning the restrictive impairment he observed, he clarified "when you look at [Claimant's] measurements of lung volumes, he doesn't have restriction." Employer's Exhibit 4 at 20-21. In his report, Dr. Rosenberg generally concluded Claimant does not have legal pneumoconiosis. Employer's Exhibit 1. Dr. Rosenberg subsequently testified there is no evidence of legal pneumoconiosis because any restriction he observed is due to Claimant's obesity and "a condition of asthma or hyperreactive airways, which does not relate to coal dust exposure." Employer's Exhibit 5 at 12-13.

[27] The administrative law judge found the evidence did not establish clinical pneumoconiosis. Decision and Order on Remand at 9-12.

impairment is due to legal pneumoconiosis. 20 C.F.R. §718.204(c); Decision and Order on Remand at 13.

Accordingly, the administrative law judge's Decision and Order on Remand is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge