U.S. Department of Labor

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

BRB No. 20-0041 BLA

RAYMOND D. ROSE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
GLAMORGAN COAL CORPORATION	)	DATE ISSUED: 01/29/2021
	)	
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 Monica Markley, Administrative Law Judge, United States Department of Labor.

Kendra R. Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

Jeffrey S. Goldberg (Stanley E. Keen, Deputy Solicitor for National Operations; 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: BOGGS, Chief Administrative Appeals Judge, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge Monica Markley's Decision and Order Awarding Benefits (2017-BLA-05343) 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 December 29, 2011.[1]

The administrative law judge credited Claimant with 17.83 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). 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),[2] and established a change in an applicable condition of entitlement.[3] She further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer contends the administrative law judge erred in finding Claimant established fifteen years of qualifying coal mine employment and therefore erred in finding he invoked the Section 411(c)(4) presumption. Employer further argues the administrative law judge erred in finding it did not rebut the presumption. Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs has

[1] This is Claimant's fourth claim for benefits. Director's Exhibits 1-3, 5. On November 4, 2010, Administrative Law Judge Richard T. Stansell-Gamm denied the most recent prior claim, filed on April 6, 2001, because although Claimant established total disability, he failed to establish the existence of pneumoconiosis. Director's Exhibit 3. Claimant took no further action until filing the current claim. Director's Exhibit 5.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's totally disabling respiratory or pulmonary impairment 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); 20 C.F.R. §718.305.

[3] When a miner files a claim for benefits more than one year after the final denial of a previous claim, the administrative law judge must also deny the subsequent claim unless she finds "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 pneumoconiosis; therefore, to obtain review of the merits of his claim, Claimant had to establish this element of entitlement. *See White*, 23 BLR at 1-3; Director's Exhibit 3.

filed a limited response in support of the finding that Claimant established at least fifteen years of coal mine employment. In its reply brief, Employer reiterates its previous contentions.[4]

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.[5] 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).

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

Length of Qualifying Coal Mine Employment

In order to invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in "underground coal mines, or in coal mines other than underground mines in conditions substantially similar to those in underground mines, or in any combination thereof[.]" 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden of establishing the length of coal mine employment. *See Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold the administrative law judge's determination if it is based on a reasonable method of calculation and is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-26 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

In calculating the length of Claimant's coal mine employment, the administrative law judge considered his application, employment history summaries, Social Security Administration (SSA) earnings record, operator personnel records, hearing testimony, and the district director's findings. Decision and Order at 4-7; Director's Exhibits 1, 5, 6, 8, 9;

[4] We affirm, as unchallenged, the administrative law judge's finding that Claimant established total respiratory disability at 20 C.F.R. §718.204(b)(2). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 18.

[5] 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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 1; Hearing Transcript at 14.

Hearing Transcript at 12-22. She credited Claimant's testimony that all his coal mine work was underground.[6] Decision and Order at 5, 7; Hearing Transcript at 15.

For the years 1969 to 1977, the administrative law judge credited Claimant with thirty-three quarters of coal mine employment as reflected in the SSA records. Decision and Order at 6. Specifically, she found he worked three quarters in 1969 with Norton Coal Corporation; four quarters in 1970 with Honey Camp Coal Company, McClure River Coal Company (McClure River), and The Pittston Company (Pittston); four quarters in 1971 with Pittston and Oakwood Red Ash Coal Corporation; four quarters in 1972 with Pittston and McClure River; two quarters in 1973 with Betty B Coal Company; and four quarters each in 1974, 1975, 1976 and 1977 with Pittston. *Id*.; Director's Exhibit 9. The administrative law judge therefore credited Claimant with 8.25 years of coal mine employment for the years 1969 through 1977. Decision and Order at 6.

In calculating Claimant's pre-1978 employment, Employer argues the administrative law judge "failed to explain what method of calculation she used" or why it is a reasonable method, in violation of the Administrative Procedure Act (APA).[7] Employer's Brief at 9; Employer's Reply Brief at 1-2. Employer's arguments lack merit.

Employer acknowledges the Board previously held it is reasonable to credit a miner for any quarter in which his itemized SSA statement of earnings showed he earned at least $50.00 in coal mine employment. Employer's Brief at 9; Employer's Reply Brief at 3; *see Clark v. Barnwell Coal Co.*, 22 BLR 1-275, 1-280-81 (2003); *Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984). In crediting Claimant with thirty-three quarters of coal mine employment, the administrative law judge specifically outlined the names of the coal companies and the number of quarters she credited in each year, all quarters in which Claimant earned more than $50.00.[8] Director's Exhibit 9. Thus, contrary to Employer's

[6] We affirm, as unchallenged, the administrative law judge's finding that all of Claimant's coal mine employment was underground. *Skrack*, 6 BLR at 1-711; Decision and Order at 5, 7.

[7] 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).

[8] Claimant worked three quarters in 1973 with Betty B Coal Company earning $1,707.75 in the first quarter, $1,659.00 in the second quarter, and $36.00 in the third quarter. Director's Exhibit 9. The administrative law judge credited Claimant with only the first two quarters. Decision and Order at 6.

characterization, the administrative law judge did not "simply state there were [thirty-three] quarters." Employer's Reply Brief at 2. Because the administrative law judge's determination is supported by specific findings, we reject Employer's contention the administrative law judge did not sufficiently explain her method of computation.[9] *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012) (if a reviewing court can discern what the administrative law judge did and why she did it, the duty of explanation under the APA is satisfied); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 n.10 (4th Cir. 1999); Decision and Order at 6.

We also reject Employer's contention the administrative law judge erred in applying "the quarter method" to calculate the length of coal mine employment, as it is "antiquated and rendered unreasonable by the advent of Exhibit 610 and 20 C.F.R. §725.101(a)(32)(iii)." Employer's Brief at 9; Employer's Reply Brief at 3-4. According to Employer, the administrative law judge should have applied the formula at Section 725.101(a)(32)(iii) to calculate Claimant's employment, by comparing his wages to the average earnings of coal miners for those years as set forth in Exhibit 610 of the *Coal Mine* (*Black Lung Benefits Act*) *Procedure Manual*. Contrary to Employer's contention, the administrative law judge is not required to use this specific method; the regulation provides only that an administrative law judge "may" use it. 20 C.F.R. §725.101(a)(32)(iii); *see Muncy*, 25 BLR at 1-27; *Clark*, 22 BLR at 1-280-81; *Vickery v. Director, OWCP*, 8 BLR 1-430, 432 (1986). Moreover, for income earned prior to 1978, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this claim arises, has held that income exceeding fifty dollars is "an appropriate yardstick for determining quarters which will be fully credited to a black lung claimant in determining the duration of his coal mine employment."[10] *Shrader v. Califano*, 608 F.2d 114, 117 n.3 (4th Cir. 1979); *Clark*, 22

[9] The administrative law judge correctly credited Claimant with only one quarter of coal mine employment for those quarters in which he earned more than $50.00 working for more than one coal operator during the same quarter. Decision and Order at 6; Director's Exhibit 9.

[10] Quoting the United States Court of Appeals for the Sixth Circuit in *Shepherd v. Incoal, Inc.*, 915 F.3d 392, 406 (6th Cir. 2019), Employer asserts Claimant should not be credited with a full quarter of employment when "it seems reasonabl[e] to conclude that the miner did not work in the mines most days in the quarter." Employer's Brief at 11; Employer's Reply Brief at 4. Unlike *Shepherd*, which involved specific evidence that the miner did not work all three months during some quarters, Employer's identification of Claimant's income as being lower in some quarters than others does not establish error in the administrative law judge's crediting him with full quarters of coal mine employment. *Shepherd*, 915 F.3d at 406. Nor does Employer allege the Miner's income "approaches that floor of $50.00" to warrant a finding that he "did not work in the mines

BLR at 1-280-81; *Tackett*, 6 BLR at 1-841. As Employer raises no objections to the administrative law judge's factual findings and as they are supported by substantial evidence and comport with the law, we affirm her determination to credit Claimant with thirty-three quarters or 8.25 years of coal mine employment from 1969 to 1977. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208 (4th Cir. 2000); *Shrader*, 608 F.2d at 117 n.3; *Tackett*, 6 BLR at 1-841; Decision and Order at 6.

For the years 1978 through 1991, for which the SSA records do not report quarterly earnings, the administrative law judge applied the formula at Section 725.101(a)(32)(iii). She first divided Claimant's yearly earnings, as reported in his SSA records, by the average yearly earnings for coal miners for each year as reported in Exhibit 610.[11] Decision and Order at 6. For each year in which the calculation yielded at least 125 working days, she credited Claimant with a full year of coal mine employment. *Id*. Using this method, she credited Claimant with a full year of coal mine employment for 1978 and for each year from 1984 through 1991, for a total of 9 years. *Id*. at 6-7. She also credited Claimant with 0.09 of a year each in 1979 and 1982, and 0.90 of a year in 1983, and subtracted 0.5 of a year from 1991 based on a letter from Employer's personnel department indicating Claimant was off work with an injury. *Id*. at 7; Director's Exhibit 8. Thus, the administrative law judge credited Claimant with 9.58 years of coal mine employment between 1978 and 1991. Decision and Order at 6-7.

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most days in the quarter." *Id*. Thus, Employer has not identified any error even if we were to apply *Shepherd*. Moreover, as this case arises within the Fourth Circuit, Sixth Circuit case law is not controlling.

[11] The administrative law judge referenced 20 C.F.R. §725.101(a)(32)(iii), which provides:

> If the evidence is insufficient to establish the beginning and ending dates of the miner's coal mine employment, or the miner's employment lasted less than a calendar year, then the adjudication officer may use the following formula: divide the miner's yearly income from work as a miner by the coal mine industry's daily average earnings for that year, as reported by the Bureau of Labor Statistics (BLS).

Decision and Order at 6. The BLS data is reported in Exhibit 610 of the *Coal Mine* (*Black Lung Benefits Act*) *Procedure Manual*. The "average yearly earnings" figures appear in the center column of Exhibit 610 and reflect multiplication of the "average daily wage" by 125 days.

Employer argues that in crediting Claimant with 9.58 years of coal mine employment, the administrative law judge "skipped a crucial step" of the required analysis by failing to determine whether Claimant had full calendar years of coal mine employment before determining he worked at least 125 days within those years. It asserts "when properly calculated, [Claimant] did not establish more than 7.35 years of coal mine employment."[12] Employer's Brief at 7-8; Employer's Reply Brief at 5-7. We need not address Employer's contention.

Employer concedes Claimant worked for more than 6.75 years after 1977 based on its own calculation. *See* Employer's Brief at 8. Thus, because we affirmed a finding of 8.25 years of coal mine employment from 1969 to 1977 and Employer agrees Claimant was employed for more than 6.75 years from 1978 to 1991, Claimant would still establish the fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption. *Muncy*, 25 BLR at 1-27; Decision and Order at 7. Consequently, error, if any, in the administrative law judge's calculations of Claimant's post-1977 employment is harmless. *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."); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). We therefore also affirm her finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1)(i)-(iii); Decision and Order at 25.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden of proof shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[13] or that

[12] We find no merit to Employer's assertion that the administrative law judge's use of the yearly average wage in Exhibit 610, which is based on 125 working days, was erroneous because "the 125 [day] rule applies exclusively to the identification of the responsible operator." Employer's Brief at 4-5. The regulations specifically provide "if the evidence establishes that the miner worked in or around coal mines at least 125 working days during a calendar year or partial periods totaling one year, then the miner has worked one year in coal mine employment *for all purposes under the Act*." 20 C.F.R. §725.101(a)(32)(i) (emphasis added). Thus, contrary to Employer's argument, the definition of one year of coal mine employment is the same for identification of a responsible operator and application of the presumptions under the Act. *See* 65 Fed. Reg. 79,920, 79,951 (Dec. 20, 2000) (20 C.F.R. §725.101(a)(32) contains a "single definition with general applicability").

[13] "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

"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 rebut the presumption by either method.[14] Decision and Order at 18-26.

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 Co.*, 25 BLR 1-149, 159 (2015) (Boggs, J., concurring and dissenting). The administrative law judge considered the opinions of Drs. Fino and Sargent that Claimant has chronic obstructive pulmonary disease (COPD)/emphysema caused by cigarette smoking and unrelated to coal mine dust exposure. Decision and Order at 21-24; Director's Exhibit 13; Employer's Exhibits 2, 3, 4. She found both opinions not well-reasoned and inconsistent with the preamble to the 2001 regulations, and therefore insufficient to satisfy Employer's burden to disprove legal pneumoconiosis. Decision and Order at 20-23.

Employer argues the administrative law judge applied the "wrong legal standard" when addressing the issue of legal pneumoconiosis by requiring its experts to "rule out" or "exclude" coal mine dust as a cause of Claimant's impairment. Employer's Brief at 14-25. We disagree. The administrative law judge accurately required Employer to affirmatively establish Claimant's pulmonary impairment was not "significantly related to, or substantially aggravated by" coal mine dust exposure.[15] 20 C.F.R. §§718.201(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); Decision and Order at 18, 20. Further, in

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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).

[14] The administrative law judge found Employer rebutted the existence of clinical pneumoconiosis, but not legal pneumoconiosis. Decision and Order at 20, 24.

[15] The administrative law judge specifically found the opinions of Drs. Fino and Sargent insufficient to establish that "Claimant does not suffer from a respiratory or pulmonary impairment significantly related to or significantly aggravated by dust exposure in coal mine employment, i.e., legal pneumoconiosis." Decision and Order at 20; *see* 20 C.F.R. §718.305(d)(1)(i)(A).

discounting the opinions of Drs. Fino and Sargent, the administrative law judge did not require them to rule out any contribution from coal mine dust exposure to Claimant's impairment. Rather, she permissibly found neither physician adequately explained why coal mine dust exposure did not contribute to, or aggravate, Claimant's obstructive impairment. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 20-24.

Employer also asserts the administrative law judge mischaracterized the evidence and failed to provide sufficient reasons for discrediting the opinions of Drs. Fino and Sargent. Employer's Brief at 16-25. We disagree. She noted they eliminated coal dust exposure as a cause of Claimant's obstructive impairment, in part, because his lung function was normal when he stopped working in the mines. Decision and Order at 21, 23; Employer's Exhibits 3 at 16-17, 4 at 21. The administrative law judge permissibly found the doctors' opinions inconsistent with the Department of Labor's (DOL) recognition that pneumoconiosis is "a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see also* 65 Fed. Reg. 79,920, 79,971 (Dec. 20, 2000); ("it is clear that a miner who may be asymptomatic and without significant impairment at retirement can develop a significant pulmonary impairment after a latent period"); *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 737-40 (6th Cir. 2014); Decision and Order at 21, 23.

Further, the administrative law judge accurately noted Dr. Fino opined Claimant's COPD/emphysema is due to smoking because the pulmonary function studies showed a reduced FEV_1/FVC ratio inconsistent with an impairment related to coal mine dust exposure. Decision and Order at 21-22; Director's Exhibit 13 at 13-14; Employer's Exhibit 3. In accordance with Fourth Circuit precedent, the administrative law judge permissibly discounted Dr. Fino's rationale as inconsistent with the DOL's recognition that coal mine dust exposure can cause clinically significant obstructive disease, which can be shown by a reduction in the FEV_1/FVC ratio. *See* 65 Fed. Reg. at 79,943; *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 (4th Cir. 2017); *Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 323 (4th Cir. 2013) (Traxler, C.J., dissenting); Decision and Order at 21-22.

Additionally, she permissibly found Dr. Sargent's conclusion – that emphysematous destruction of lung tissue caused by emphysema other than focal emphysema is an effect solely caused by smoking – at odds with the medical science DOL credited in the preamble.[16] Decision and Order at 23, *citing* 65 Fed. Reg. at 79,941 (citing with approval

[16] Dr. Sargent acknowledged coal mine dust and cigarette smoking can result in obstructive lung disease. Employer's Exhibit 2. He stated that when coal workers'

a study that found centrilobular emphysema, a diffuse form of emphysema, is "significantly more common" among coal workers than non-coal workers); *see A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012).

Because the administrative law judge's discrediting of the opinions of Drs. Fino and Sargent is supported by substantial evidence,[17] we affirm her finding that Employer failed to establish Claimant does not have legal pneumoconiosis, thereby precluding a rebuttal finding that Claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i).

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 [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii). She permissibly discredited the opinions of Drs. Fino and Sargent because they did not diagnose legal pneumoconiosis, contrary to her determination that Employer failed to disprove Claimant has the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015) (physician who fails to diagnose legal pneumoconiosis, contrary to the administrative law judge's finding, cannot be credited on rebuttal of disability causation "absent specific and persuasive reasons"); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013) (rejecting the employer's

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pneumoconiosis causes an obstructive impairment, "it does not result in destruction of lung parenchyma and therefore pulmonary emphysema will not be seen on CT scanning and will be associated with a decreased . . . diffusion capacity. Cigarette smoking, on the other hand, can result in destruction of lung parenchyma with development of centrilobular emphysema. . . [Claimant] has a severe obstructive ventilatory impairment associated with a decreased diffusion capacity and showing definite changes of emphysema on CT scanning. Therefore, his obstructive impairment is much more consistent with cigarette smoking as the cause and is not consistent with obstructive impairment caused by coal dust exposure." *Id*. at 2. He further opined that coal workers' pneumoconiosis causes focal emphysema and "when you smoke you get centrilobular emphysema." Employer's Exhibit 4 at 14. The administrative law judge thus permissibly inferred Dr. Sargent believed emphysema due to coal mine dust must manifest itself as focal emphysema. Decision and Order at 23.

[17] Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Fino and Sargent, any error in discrediting their opinions for other reasons would be 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 their opinions.

argument that the administrative law judge "erred by discrediting an opinion that ruled out legal pneumoconiosis where legal pneumoconiosis is only presumed, rather than factually found"); Decision and Order at 25-26. 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).

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

MELISSA LIN JONES
Administrative Appeals Judge