U.S. Department of Labor

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

BRB No. 20-0053 BLA

CHRISTOPHER POLLY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BATES CONTRACTING & CONSTRUCTION	)	
	)	
	)	
and	)	DATE ISSUED: 01/12/2021
	)	
BRICKSTREET MUTUAL INSURANCE	)	
	)	
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 Jason A. Golden, Administrative Law Judge, United States Department of Labor.

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

Jeffrey R. Soukup (Jackson Kelly PLLC), Lexington, Kentucky, for Employer and its Carrier.

Rita A. Roppolo (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative

Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge Jason A. Golden's Decision and Order Awarding Benefits (2016-BLA-05795) rendered on a claim filed on November 25, 2013 pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The administrative law judge credited Claimant with 13.23 years of coal mine employment and thus found he could not invoke the rebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018). When considering whether Claimant established entitlement to benefits without the presumption, he found the evidence established the existence of clinical and legal pneumoconiosis,[2] a totally disabling respiratory impairment, and total disability due to pneumoconiosis.[3] 20 C.F.R. §§718.202(a)(1), (4), 718.203, 718.204(b)(2), (c).

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

[2] "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). "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).

[3] The administrative law judge found Claimant did not establish complicated pneumoconiosis and therefore could not invoke the irrebuttable presumption of total

On appeal, Employer contends the administrative law judge erred in finding Claimant has more than ten years of coal mine employment. It further challenges his findings that the evidence establishes legal pneumoconiosis, total disability, and total disability due to pneumoconiosis.[4] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, asserting the administrative law judge did not err in discrediting Dr. Tuteur's opinion that Claimant is not totally disabled.

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).

Length of Coal Mine Employment

Claimant bears the burden to establish the number of years he worked in coal mine employment. *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 an administrative law judge's determination if it is based on a reasonable method of calculation that is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

The regulations define a "year" of coal mine employment as "a period of one calendar year (365 days, 366 days if one of the days is February 29), or partial periods totaling one year, during which the miner worked in or around a coal mine or mines for at least 125 'working days.'" 20 C.F.R. §725.101(a)(32); *see Daniels Co. v. Mitchell*, 479 F.3d 321, 334-36 (4th Cir. 2007); *Clark v. Barnwell Coal Co.*, 22 BLR 1-277, 1-280 (2003). The regulations permit an adjudicator to rely on a comparison of the miner's wages to the average daily earnings in the coal mining industry "[i]f the evidence is insufficient

---

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] We affirm, as unchallenged on appeal, the administrative law judge's determination that Claimant established the existence of clinical pneumoconiosis arising out of his coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 16, 23.

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

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 . . . ." 20 C.F.R. §725.101(a)(32)(iii).

Because the evidence did not establish the exact months of employment for all of Claimant's coal mine employers, the administrative law judge relied on his Social Security Administration (SSA) earnings records in conjunction with the formula at 20 C.F.R. §725.101(a)(32)(iii)[6] and a divisor of 125 days to calculate the length of his coal mine employment. Decision and Order at 4, 10-12. Thus, by dividing Claimant's annual SSA-reported earnings by the average daily wage in Exhibit 610 of the *Coal Mine (Black Lung Benefits Act) Procedure Manual* to determine the number of days he worked per year and further dividing that number of days worked by 125 to determine the portion of the year he worked, the administrative law judge determined Claimant had a total of 13.23 years of coal mine employment with various employers from 1994 to 2012. Decision and Order at 10-12.

Employer contends the administrative law judge relied upon an impermissible formula that overestimated Claimant's coal mine employment. Employer's Brief at 5-9. In response, the Director asserts Employer waived its challenge to the length of employment. Director's Response Brief at 1 n.1. We agree with the Director's position.

At the January 9, 2019 hearing, Employer stated it would only stipulate to one year of coal mine employment, the length of time it employed Claimant, but admitted the record would establish additional coal mine employment. Hearing Transcript at 6. Noting the Director and Claimant agreed the record established more than ten years of coal mine employment but fewer than fifteen years, the administrative law judge instructed Employer to provide its own calculations as to the length of Claimant's coal mine employment in its closing arguments or he would deem the issue waived. *Id*. at 8. Employer agreed it would do so. *Id*. at 9. Employer's untimely brief, which was not admitted into the record, stated

---

[6] The regulation at 20 C.F.R. §725.101(a)(32)(iii) provides, in pertinent part:

> 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 average daily earnings for that year, as reported by the Bureau of Labor Statistics (BLS).

20 C.F.R. §725.101(a)(32)(iii).

only that Claimant had less than fifteen years of coal mine employment and included no calculations. Employer's Post-Hearing Brief at 12 (unpaginated). Although the administrative law judge calculated Claimant's coal mine employment, he also found that "Employer waived its controversion to the number of years Claimant worked as a miner by not providing the tribunal with a calculation of the amount of time Claimant worked in the mines." Decision and Order at 3 n.6.

Had Employer responded to the order to provide its own calculations, the administrative law judge could have addressed its contentions and, if appropriate, determined a different length of coal mine employment. Based on its inaction, Employer waived its challenge to Claimant's length of coal mine employment. *Dankle v. Duquesne Light Co.*, 20 BLR 1-1, 1-4-7 (1995); *Prater v. Director, OWCP*, 8 BLR 1-461, 1-462 (1986). Consequently, we reject Employer's argument and affirm the administrative law judge's determination that Claimant has 13.23 years of coal mine employment.

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).

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(b).

The administrative law judge considered the opinions of Drs. Ajjarapu, Go, Tuteur, and Fino. Drs. Ajjarapu and Go diagnosed legal pneumoconiosis in the form of chronic bronchitis due to coal mine dust exposure. Director's Exhibit 11 at 37; Claimant's Exhibit 2 at 6-7. Dr. Tuteur opined Claimant does not have legal pneumoconiosis, but has a mild restrictive and mild to moderate obstructive impairment due to nephrotic syndrome.[7]

[7] Claimant was first diagnosed with nephrotic syndrome, a chronic kidney condition, in 1989. Dr. Tuteur asserted it could cause edema in the peribronchiolar and interstitial

Employer's Exhibits 1 at 4-5; 6 at 7; 9 at 11-13. Dr. Fino opined Claimant has asthma unrelated to coal mine dust exposure. Employer's Exhibit 10 at 14-16.

The administrative law judge found the opinions of Drs. Ajjarapu and Go well-reasoned and documented, consistent with the regulations, and supported by the underlying evidence. Decision and Order at 18-20. He declined to credit Dr. Tuteur's opinion that Claimant does not have legal pneumoconiosis because it was not supported by the objective testing of record, and the doctor offered no credible explanation for how he excluded coal dust as a contributing factor. *Id*. at 20. The administrative law judge accorded little weight to Dr. Fino's opinion that Claimant's asthma does not constitute legal pneumoconiosis because he did not explain the cause of Claimant's asthma and his opinion is based upon premises contrary to the preamble. *Id*. at 17, 22, *citing* 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000). Consequently, the administrative law judge found the weight of the medical opinion evidence establishes legal pneumoconiosis. *Id*. at 23.

Employer contends the administrative law judge erred in his evaluation of the medical opinions. Employer's Brief at 16-27. Specifically, Employer contends he erred in crediting Dr. Ajjarapu's conclusory opinion because her diagnosis is based on subjective symptoms unsupported by the record and she relied upon generalities and not specifics of Claimant's condition. *Id*. at 16-20. Contrary to Employer's arguments, as noted by the administrative law judge, Dr. Ajjarapu stated Claimant had never been a smoker and diagnosed legal pneumoconiosis in the form of chronic bronchitis based on Claimant's symptoms as well as the severe obstructive ventilatory defect seen on his pulmonary function studies and the duration of his exposure to coal dust. Decision and Order at 18; Director's Exhibit 11 at 37; Employer's Exhibit 5 at 19. Thus, the administrative law judge permissibly found Dr. Ajjarapu's opinion well-documented and well-reasoned. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 19.

Employer argues the administrative law judge erred in crediting Dr. Go's opinion because he relied upon Claimant's subjective reports of symptoms and invalid pulmonary function studies. Employer's Brief at 20. However, the administrative law judge did not find the pulmonary function studies of record invalid, and Employer has not specifically challenged the validity of any of the individual tests. Decision and Order at 26-27. Moreover, the administrative law judge found Dr. Go's opinion was based upon Claimant's symptoms, pulmonary function studies, history of coal mine employment, and lack of a smoking history, and permissibly found the opinion well-documented and well-reasoned.

---

space in the lungs, thereby causing a mild restrictive and mild to moderate obstructive impairment unrelated to coal mine dust exposure. Employer's Exhibit 9 at 12-13.

Further, Dr. Go opined there was no evidence Claimant's nephrotic syndrome was so severe that it would account for his symptoms and he had no other known basis for his condition. Employer's Exhibit 8 at 33-35; *see Compton v. Island Creek Coal Co.*, 211 F.3d 203, 211 (4th Cir. 2011); *Hicks*, 139 F.3d at 528; *Akers* 131 F.3d at 441; Decision and Order at 19. Substantial evidence thus supports his determination to credit Dr. Go's opinion. *See Compton*, 211 F.3d at 207-08. As the trier-of-fact, the administrative law judge has the discretion to assess the credibility of the medical opinions and assign those opinions appropriate weight, and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997). Employer's arguments that the opinions of Drs. Ajjarapu and Go are not well-reasoned and well-documented amount to a request to reweigh the evidence, which the Board cannot do. *Anderson*, 12 BLR at 1-113.

Finally, Employer contends the administrative law judge erred in discrediting the opinions of Drs. Tuteur and Fino. Employer's Brief at 22-27. We disagree. Dr. Tuteur opined Claimant's pulmonary function tests were invalid as a measure of maximum pulmonary function and attributed his impairment solely to nephrotic syndrome. Employer's Exhibit 9 at 10-11. The administrative law judge permissibly discredited this opinion as it is inconsistent with his own finding that the 2018 pulmonary function test is valid and because Dr. Tuteur did not adequately explain why Claimant's history of coal mine dust exposure could not be an additional factor contributing to his obstructive impairment.[8] *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *Hicks*, 139 F.3d at 528; *Akers* 131 F.3d at 441; Decision and Order at 21.

Dr. Fino opined that Claimant's obstructive impairment is due to asthma, which he indicated is not caused by coal mine dust exposure. Employer's Exhibit 10 at 14, 16. The administrative law judge found Dr. Fino did not adequately explain why Claimant's coal mine dust exposure could not contribute to or aggravate his impairment. *See* 20 C.F.R. §718.201(b); Decision and Order at 22. Thus, he permissibly discredited Dr. Fino's opinion. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 22.

[8] As the administrative law judge noted, Dr. Tuteur conceded Claimant has a sufficient history of coal mine dust exposure to cause a disabling pulmonary impairment in a susceptible miner. Decision and Order at 21; Employer's Exhibit 9 at 21.

Because it is supported by substantial evidence, we affirm the administrative law judge's determination that the medical opinion evidence establishes the existence of legal pneumoconiosis. 20 C.F.R. §718.202(a); Decision and Order at 23.

Total Disability

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work. See 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of 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 consider all relevant evidence and weigh the evidence supporting total disability against the contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.,* 9 BLR 1-236 (1987) (en banc). The administrative law judge found the pulmonary function study and medical opinion evidence established total disability while the arterial blood gas testing did not. Decision and Order at 31. Weighing the evidence together, he found Claimant established total disability. *Id.*

Employer contends the administrative law judge erred in finding that the medical opinions and evidence as a whole establishes total disability. Employer's Brief at 10-16. We disagree.

As an initial matter, we affirm, as unchallenged on appeal, the administrative law judge's determinations that the pulmonary function study evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(i)[9] and that Claimant's usual coal mine employment required heavy manual labor. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3, 27.

The administrative law judge considered the medical opinions of Drs. Ajjarapu, Go, Fino, and Tuteur. 20 C.F.R. §718.204(b)(2)(iv). Drs. Ajjarapu and Go opined Claimant

[9] The administrative law judge gave greatest weight to the January 31, 2018 pulmonary function study as "the most up to date representation of Claimant's pulmonary condition" and found the "preponderant weight of the [pulmonary function study] evidence supports a finding of total disability." Decision and Order at 27.

has a totally disabling impairment based upon his qualifying pulmonary function studies.[10] Director's Exhibits 11 at 37; 62 at 1; Claimant's Exhibit 2 at 7. Dr. Fino opined that Claimant could perform light, moderate, and occasionally heavy labor. Employer's Exhibit 10 at 17. Dr. Tuteur opined that, while Claimant is disabled from a "whole man standpoint" due to his nephrotic syndrome, he has only a mild or moderate pulmonary impairment which is not totally disabling. Employer's Exhibit 9 at 15-16, 22.

The administrative law judge credited the opinions of Drs. Ajjarapu and Go as well-reasoned, well-documented, and supported by the objective studies of record. Decision and Order at 28-29. He further credited Dr. Fino's opinion as well-reasoned and well-documented; therefore, he found it supported a finding of total disability. *Id*. at 29-30. Conversely, he discredited Dr. Tuteur's opinion because it failed to adequately consider the qualifying pulmonary function testing. *Id*. at 29. Consequently, he found that the medical opinion evidence supports a finding of total disability. *Id*. at 30.

We reject Employer's contention the administrative law judge erred in crediting the opinions of Drs. Ajjarapu and Go because they are not well-reasoned. *See* Employer's Brief at 10-13. Dr. Ajjarapu examined Claimant, considered his employment and exposure histories, and reviewed objective testing including pulmonary function and arterial blood gas studies. Decision and Order at 28; Director's Exhibits 11, 62. As the administrative law judge observed, in her March 2, 2018 supplemental report Dr. Ajjarapu opined the January 31, 2018 pulmonary function study demonstrated Claimant does not have the pulmonary capacity to perform his previous coal mine employment and he is thus totally disabled. Decision and Order at 28; Director's Exhibit 62. Likewise, the administrative law judge noted Dr. Go opined the pulmonary function studies demonstrate a pattern of significant impairment such that, independent of whether individual studies are qualifying, Claimant would be considered totally disabled to return to his last coal mine employment.[11] Decision and Order at 28; Employer's Exhibit 8 at 28, 36. As the trier-of-fact, the administrative law judge has the discretion to assess the credibility of the medical opinions and give them appropriate weight. *See Stallard*, 876 F.3d at 670; *Underwood,* 105 F.3d at 949. Employer's arguments that the opinions of Drs. Ajjarapu and Go are not well-

[10] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i).

[11] Employer further argues Dr. Go's opinion is not well-reasoned because he considered only "invalid pulmonary function studies." Employer's Brief at 12-13. As we note above, however, Employer does not contest the validity of any individual pulmonary function study.

reasoned amount to a request to reweigh the evidence, which the Board is not empowered to do. *Anderson*, 12 BLR at 1-113.

Additionally, the administrative law judge permissibly discredited Dr. Tuteur's opinion because the physician did not adequately explain his opinion that Claimant is not disabled in light of the qualifying pulmonary function study evidence.[12] *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 29; Director's Response Brief at 1. We further affirm, as unchallenged on appeal, the administrative law judge's finding that Dr. Fino's opinion on disability is well-reasoned, well-documented, and consistent with a finding of total disability. *Skrack*, 6 BLR 1-711; Decision and Order at 30. Therefore, because it is supported by substantial evidence, we affirm the determination that the medical opinion evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(iv).

Finally, contrary to Employer's contentions, the administrative law judge properly weighed the blood gas studies and found they did not impact his crediting of the qualifying pulmonary function study evidence because they measure different types of impairment. *See Tussey v. Island Creek Coal Co*., 982 F.2d 1036, 1040-41 (6th Cir. 1993); *Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797 (1984). Decision and Order at 31.[13] We therefore affirm the administrative law judge's determination that the evidence as a whole establishes a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b); *see Rafferty*, 9 BLR at 1-232; Decision and Order at 34.

Disability Causation

To establish his total disability is due to pneumoconiosis, Claimant must prove pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1); *see Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 37-38 (4th Cir. 1990).

Drs. Tuteur and Fino opined legal pneumoconiosis played no role in Claimant's disability. Decision and Order at 33-34; Employer's Exhibits 1, 6, 9, 10. In contrast, Drs.

[12] Because the administrative law judge provided a valid reason for discrediting Dr. Tuteur's opinion, we need not address Employer's arguments regarding the additional reasons the administrative law judge gave for rejecting his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1993); Decision and Order at 29.

[13] We note that there is no evidence in the record suggesting that the non-qualifying arterial blood gas studies indicate that the 2018 pulmonary function test the administrative law judge found reliable and qualifying should be discounted or discredited.

Ajjarapu and Go opined Claimant's legal pneumoconiosis contributed significantly to his total disability. Decision and Order at 34; Director's Exhibits 11, 62; Claimant's Exhibit 2; Employer's Exhibits 5, 8. The administrative law judge discredited the opinions of Drs. Tuteur and Fino, credited the opinions of Drs. Ajjarapu and Go, and found Claimant established disability causation. Decision and Order at 34.

Contrary to Employer's argument, the administrative law judge permissibly discredited the opinions of Drs. Tuteur and Fino because they did not diagnose legal pneumoconiosis, contrary to his finding Claimant has the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015); *Toler v. E. Associated Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995) (where physician failed to properly diagnose pneumoconiosis, an administrative law judge "may not credit" that physician's opinion on causation absent "specific and persuasive reasons," in which case the opinion is entitled to at most "little weight"); Decision and Order at 34; Employer's Brief at 27.

Conversely, the administrative law judge permissibly credited the opinions of Drs. Ajjarapu and Go that Claimant is totally disabled due to legal pneumoconiosis, for the same reasons he credited their opinions that Claimant has a totally disabling obstructive lung disease and that this obstructive lung disease is legal pneumoconiosis. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 34. We therefore affirm his determination that Claimant established that he is totally disabled due to pneumoconiosis at 20 C.F.R. §718.204(c).

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