U.S. Department of Labor

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

BRB No. 19-0127 BLA

WAYMON VANCE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
LEE SARTIN TRUCKING COMPANY	)	
	)	
Employer-Petitioner	)	DATE ISSUED: 03/10/2020
	)	
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 Steven D. Bell, Administrative Law Judge, United States Department of Labor.

Thomas E. Johnson (Johnson, Jones, Snelling, Gilbert & Davis), Chicago, Illinois, for claimant.

Paul E. Frampton and Fazal A. Shere (Bowles Rice LLP), Charleston, West Virginia, for employer.

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: BUZZARD, ROLFE, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2015-BLA-05363) of Administrative Law Judge Steven D. Bell on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a claim filed on December 2, 2013.

The administrative law judge found claimant did not invoke the Section 411(c)(4)[1] presumption of total disability due to pneumoconiosis because he proved did not prove at least fifteen years of coal mine employment.[2] 30 U.S.C. §921(c)(4) (2012). Turning to whether claimant established entitlement under 20 C.F.R. Part 718, the administrative law judge found claimant is totally disabled due to legal pneumoconiosis and awarded benefits.[3] 20 C.F.R. §§ 718.202(a)(4), 718.204(b), (c).

On appeal, employer contends the administrative law judge erred in designating it the responsible operator. It also argues the administrative law judge erred in finding claimant established legal pneumoconiosis, total disability, and total disability due to legal pneumoconiosis. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging affirmance of the finding employer is the responsible operator.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order Awarding Benefits if it is rational, supported by substantial evidence, and in accordance with applicable law.[4] 33 U.S.C.

[1] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is due to pneumoconiosis if he had 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) (2012); *see* 20 C.F.R. §718.305.

[2] The administrative law judge credited claimant with "almost" fourteen years of coal mine employment. Decision and Order at 10-13.

[3] The administrative law judge found claimant does not have clinical pneumoconiosis. 20 C.F.R. §718.202(a).

[4] Claimant's coal mine employment occurred in West Virginia. Director's Exhibit 3; Claimant's Exhibit 19. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

§921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359, 362 (1965).

Responsible Operator

Employer contends the administrative law judge erred in not considering evidence that purportedly establishes it is not liable for benefits. Employer's Brief at 8-11. The Director argues the administrative law judge properly excluded employer's liability evidence because employer did not timely submit it to the district director and failed to establish extraordinary circumstances to excuse its failure to do so. Director's Brief at 1-3. We agree with the Director's position.

Procedural History

The district director issued a Notice of Claim on December 19, 2013, informing employer it was identified as a "potentially liable operator." Director's Exhibit 14. By letter dated December 14, 2015, employer denied its liability, asserting that claimant was not exposed to coal mine dust while working for it. Director's Exhibit 15. Employer, however, submitted no documentary evidence, or list of witnesses, to support its contention.[5]

On December 10, 2014, the district director issued a Proposed Decision and Order, finding employer the responsible operator liable for benefits. Director's Exhibit 20. In making her finding, the district director noted that employer failed to rebut the presumption that claimant was regularly and continuously exposed to coal mine dust during all periods of his employment with employer. *Id.*; 20 C.F.R. §725.491(d). Employer requested a formal hearing. Director's Exhibit 21.

After the case was forwarded to the Office of Administrative Law Judges (OALJ), claimant submitted a sworn affidavit dated March 8, 2017, which included a description of his coal dust exposure during all of his coal mine employment. Claimant's Exhibit 19. In response, employer sought to submit affidavits not submitted to the district director from former employees and company officials alleging claimant was not exposed to coal mine dust while in its employ. Employer's Exhibits 14-19.

The administrative law judge noted that because the district director must identify a single responsible operator before referring a case to OALJ, the regulations require that absent extraordinary circumstances, all liability evidence must be submitted to the district

[5] Employer stated only that claimant "drove a truck that was manufactured to meet all EPA specifications for dust and noise control." Director's Exhibit 15.

director.[6] Decision and Order at 14; *see* 20 C.F.R. §§725.407(d), 725.414(d), 725.418(d), 725.456(b)(1); 65 Fed. Reg. 79,920, 79,989 (Dec. 20, 2000). The administrative law judge admitted the affidavits, but did not consider them as liability evidence because employer failed to timely submit them to the district director and failed to establish extraordinary circumstances warranting their late admission. *Id.* at 14-15.

Discussion

Employer contends the administrative law judge erred in finding it failed to establish extraordinary circumstances to justify consideration of its untimely liability evidence. An administrative law judge exercises broad discretion in resolving 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, 1-152 (1989) (en banc). A party seeking to overturn the disposition of an evidentiary issue must establish that 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). Employer has not satisfied its burden.

Employer raised the issue of claimant's dust exposure before the district director but did not offer its supporting affidavits at that time. Director's Exhibit 15. Instead, it argued its untimely submission should be excused because claimant's statements regarding his dust exposure "were not made in the record until [claimant] filed his affidavit in 2017." Decision and Order at 14; Employer's Closing Brief at 7-10. Only thereafter did employer have its "personnel . . . review these statements and respond[]." Employer's Closing Brief at 7. The administrative law judge found this explanation did not establish "extraordinary circumstances," because employer "was clearly aware of the [c]laimant's job duties in his work as a truck driver for the [e]mployer" and "offered [no] argument as to why it could

[6] In addition, while the claim is before the district director, "all parties must notify the district director of the name and current address of any potential witness whose testimony pertains to the liability of a potentially liable operator or the designated responsible operator." 20 C.F.R. §725.414(c). Absent such notice, "the testimony of a witness relevant to the liability of a potentially liable operator or the designated responsible operator will not be admitted in any hearing conducted with respect to the claim unless the administrative law judge finds that the lack of notice should be excused due to extraordinary circumstances." 20 C.F.R. §725.414(c). The administrative law judge is obligated to enforce these limitations even if no party objects to the evidence or testimony. *See Smith v. Martin Cnty. Coal Corp.*, 23 BLR 1-69, 1-74 (2004) (holding that the evidentiary limitations set forth in the regulations are mandatory and, as such, are not subject to waiver).

not have obtained these affidavits from its former employees when this claim was pending before the [district director]."[7] *Id.* at 14-15.

Because employer did not offer any explanation for why the affidavits could not have been submitted to the district director,[8] the administrative law judge did not abuse his discretion in finding that it failed to establish extraordinary circumstances to justify its failure to submit its liability evidence when this matter was before the district director. *Dempsey*, 23 BLR at 1-55; *Clark*, 12 BLR at 1-153. We therefore affirm the administrative law judge's decision not to consider employer's affidavits as they pertain to its liability for benefits. Because employer raises no other error in regard to the administrative law judge's finding that it is the responsible operator, this finding is affirmed.

Legal Pneumoconiosis

Employer next contends the administrative law judge erred in finding the medical opinions established legal pneumoconiosis.[9] Employer's Brief at 7-10. To establish legal pneumoconiosis, claimant must demonstrate he has a chronic lung disease or impairment

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[7] The administrative law judge noted that:

> The Employer was clearly aware of the Claimant's job duties in his work as a truck driver for the Employer. The Employer did not attempt to take the Claimant's deposition, or obtain any other information about the extent of his coal mine dust exposure while this claim was before the [district director]. Nor did the Employer attempt to obtain or submit any testimony or information from its own employees, current and former, regarding the nature of the Claimant's duties.

Decision and Order at 15.

[8] As the Director correctly notes, employer "had more than sufficient notice while the case was before the district director that the extent of [claimant's] coal mine dust exposure was at issue and it needed to take affirmative steps if it wished to prove he was not exposed to coal mine dust while in its employ." Director's Brief at 2.

[9] 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). A disease arising out of coal mine employment 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).

"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 medical opinions of Drs. Conibear, Sood, Tuteur, and Zaldivar.[10]

Drs. Conibear and Sood diagnosed legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) due to coal mine dust exposure and cigarette smoking. Claimant's Exhibits 8, 16, 18. Drs. Tuteur and Zaldivar concluded that claimant does not have legal pneumoconiosis. Dr. Tuteur opined that claimant's COPD is due to cigarette smoking, not coal mine dust exposure. Employer's Exhibit 3. Dr. Zaldivar opined that claimant's "breathing problem" is due to obesity, asthma, and cigarette smoking. Employer's Exhibit 11.

The administrative law judge found the opinions of Drs. Conibear and Sood well-reasoned and entitled to significant weight. Decision and Order at 38-40. Conversely, he found the opinions of Drs. Tuteur and Zaldivar not well-reasoned because they did not credibly explain how they determined that claimant's years of coal mine dust exposure did not contribute to, or aggravate, his pulmonary disease. *Id.* at 40-42. The administrative law judge therefore credited the opinions of Drs. Conibear and Sood over those of Drs. Tuteur and Zaldivar. *Id.* at 42.

Employer contends the administrative law judge erred in crediting the opinions of Drs. Conibear and Sood. Employer's Brief at 17-18. Employer concedes that Drs. Conibear and Sood diagnosed legal pneumoconiosis, but alleges that it is unknown "to what extent" their mistaken diagnoses of clinical pneumoconiosis impacted their opinions regarding legal pneumoconiosis. *Id.* at 18. But it has not provided any support for its contention that their diagnoses of legal pneumoconiosis were adversely influenced by their diagnoses of clinical pneumoconiosis. We therefore reject employer's argument. *See* 20 C.F.R. §§802.211(b), 802.301(a).

Employer also contends the administrative law judge erred in not addressing affidavits purporting to demonstrate that claimant was not exposed to significant levels of

[10] The record also contains Dr. Grodner's medical opinion. Dr. Grodner diagnosed "obstructive [illegible] disease" due to coal dust, cigarette smoking, with "occupational dust exposure" making a "minor contribution." Director's Exhibit 11. Although the administrative law judge summarized Dr. Grodner's opinion, he did not address whether it supports a finding of legal pneumoconiosis. Decision and Order at 21, 37-42. Employer does not allege any error by the administrative law judge or assert Dr. Grodner's opinion supports a finding of no legal pneumoconiosis.

coal mine dust exposure during the two and one-half years he worked for employer.[11] Employer's Brief at 8. Employer asserts that this evidence is "very relevant to the issue of causation" and supports the conclusions of the physicians who opined coal mine dust exposure did not contribute to claimant's impairment. *Id.* Employer, however, has not explained how the affidavits regarding claimant's dust exposure during part of his fourteen year career, even if credited, undermine the opinions of Drs. Conibear and Sood or support those of Drs. Tuteur and Zaldivar. Moreover, in its closing argument to the administrative law judge, employer argued only that the affidavits called into question its designation as the responsible operator, not that they affected the credibility of the medical opinion evidence on legal pneumoconiosis. We therefore decline to address employer's contention. *See* 20 C.F.R. §§802.211(b), 802.301(a). Because employer does not allege any other error in regard to the administrative law judge's consideration of the opinions of Drs. Conibear and Sood, we affirm his findings that their diagnoses of legal pneumoconiosis are well-reasoned, and entitled to significant weight.

We also reject employer's contention the administrative law judge erred in finding the opinions of Drs. Tuteur and Zaldivar not well-reasoned. Employer's Brief at 16-19. He accurately noted that Dr. Tuteur excluded a diagnosis of legal pneumoconiosis based on a relative "risk assessment" of claimant's cigarette smoke and coal mine dust exposures. Decision and Order at 40. Citing medical literature, Dr. Tuteur explained that "smokers who never mine" have a twenty percent risk of developing COPD compared to a one to two percent risk "of non-smoking miners" developing the disease. Employer's Exhibit at 3. Dr. Tuteur therefore opined that claimant's COPD was "uniquely due to the chronic inhalation of tobacco smoke, not coal mine dust."[12] *Id*.

[11] Although the administrative law judge ruled he would not consider the affidavits "as they may pertain to the issue of whether the [e]mployer was properly designated as the responsible operator," he found they were responsive to claimant's March 8, 2017 affidavit regarding his coal mine dust exposure, and admitted them into the record. Decision and Order at 10, 15. He stated that while employer "intended to rely on these affidavits to argue that the [c]laimant's surface coal mine employment did not constitute qualifying coal mine employment for the purposes" of invoking the Section 411(c)(4) presumption, that issue was moot because claimant did not establish at least 15 years of coal mine employment. *Id*. at 14 n.5.

[12] The administrative law judge noted that Dr. Tuteur acknowledged it was possible, although highly unlikely, that coal mine dust exposure influenced claimant's chronic obstructive pulmonary disease. Decision and Order at 40; Employer's Exhibit 3 at 5.

The administrative law judge permissibly found Dr. Tuteur "did not explain why . . . [c]laimant could not be one of the supposedly statistically rare individuals who develop obstruction as a result of coal mine dust exposure." Decision and Order at 40; *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *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). Moreover, he permissibly rejected Dr. Tuteur's opinion because the doctor failed to adequately explain why coal mine dust exposure was not an "additive" factor, along with smoking, in causing or aggravating claimant's COPD. *See* 20 C.F.R. §718.201(b); 65 Fed. Reg. at 79,940; *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 (4th Cir. 2017); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); Decision and Order at 40.

We also affirm the administrative law judge's finding that Dr. Zaldivar's opinion is not well-reasoned. He permissibly found Dr. Zaldivar failed to adequately explain why coal mine dust exposure was not a factor, along with obesity, asthma, and cigarette smoking, in causing or aggravating claimant's obstructive pulmonary impairment.[13] *See* 20 C.F.R. §718.201(b); 65 Fed. Reg. at 79,940; *Stallard*, 876 F.3d at 671-72; *Owens*, 724 F.3d at 558; Decision and Order at 41-42.

We therefore affirm the administrative law judge's finding that claimant established legal pneumoconiosis based on the opinions of Drs. Conibear and Sood, 20 C.F.R. §718.202(a)(4), and on consideration of the evidence as a whole. 20 C.F.R. §718.202(a); *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000).

Total Disability

A miner is totally disabled if his 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). In the absence of contrary probative evidence, a miner's total disability is established by qualifying pulmonary function studies, qualifying arterial blood gas studies,[14] evidence of pneumoconiosis and cor pulmonale with right-

[13] The administrative law judge noted that while Dr. Zaldivar found obesity, asthma, and cigarette smoking were "sufficient" to explain claimant's pulmonary impairment, they did "not explain why [claimant's] exposure to coal mine dust could not also have been a factor, if not the only or even predominant factor, in his pulmonary condition." Decision and Order at 41.

[14] A "qualifying" pulmonary function study or blood gas study yields results that are equal to or less than the applicable table values contained in Appendices B and C of 20

sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must weigh the relevant evidence supporting a finding of 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 that a majority of the most recent pulmonary function studies are qualifying and support a finding of total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 43; Director's Exhibit 11; Claimant's Exhibits 1, 2, 15; Employer's Exhibit 13. Because the only two arterial blood gas studies, conducted on February 19, 2014 and November 6, 2015, both produced qualifying values,[15] he further found that the blood gas studies support a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 43; Director's Exhibit 11; Claimant's Exhibit 3.

The administrative law judge next considered the medical opinions of Drs. Conibear, Sood, Tuteur, and Zaldivar. He credited the opinions of Drs. Conibear and Sood that claimant is totally disabled, noting they explained why the objective medical evidence supported their conclusions. Decision and Order at 45; Claimant's Exhibits 8, 16, 18. He discredited the contrary opinions of Drs. Tuteur and Zaldivar, finding they offered "conflicting and speculative" opinions about the nature of claimant's impairment. Decision and Order at 45; Employer's Exhibits 3, 4, 11. He therefore found the medical opinions established total disability. 20 C.F.R. §718.204(b)(2)(iv). Weighing the evidence together, he found that claimant has a totally disabling respiratory or pulmonary impairment. Decision and Order at 45.

Employer argues the administrative law judge erred in relying on the pulmonary function studies to find claimant totally disabled because the January 28, 2016 study produced non-qualifying values. Employer's Brief at 11-13. We disagree. Observing that a majority (four out of five) of the most recent pulmonary function studies are qualifying,[16]

C.F.R. Part 718, respectively. A "non-qualifying" study yields results that exceed those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

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

[16] Although the January 28, 2016 pulmonary function study produced non-qualifying values before the administration of a bronchodilator, a subsequent pulmonary function study conducted on November 3, 2016 produced qualifying values both before and after the administration of a bronchodilator. Claimant's Exhibit 15; Employer's

the administrative law judge permissibly found that the preponderance of the studies support total disability.[17] *See* 20 C.F.R. §718.204(b)(2)(i); *Adkins v. Director, OWCP*, 958 F.2d 49, 51-52; *Woodward v. Director, OWCP*, 991 F.2d 314, 319 (6th Cir. 1993); Decision and Order at 43.

Employer also contends that the administrative law judge erred by relying on the qualifying blood gas study results to find that claimant is totally disabled even though Drs. Tuteur and Zaldivar attributed the results to obesity hypoventilation, or "Pickwickian syndrome."[18] Employer's Brief at 11-14; Employer's Exhibits 3 at 2; 11 at 26. We disagree. The blood gas studies are qualifying and therefore are evidence of total disability. 20 C.F.R. §718.204(b)(2)(ii). The explanations for the qualifying results address the *cause* of claimant's disabling respiratory or pulmonary impairment, which is not relevant at 20 C.F.R. §718.204(b)(2), but is properly addressed at 20 C.F.R. §718.204(c). *See* 20 C.F.R. §718.204(a) ("If . . . a nonpulmonary or nonrespiratory condition or disease causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered in determining whether the miner is or was totally disabled due to pneumoconiosis."). We therefore affirm the administrative law judge's finding that the blood gas studies support a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii).

We also reject employer's argument that the administrative law judge erred in discrediting the total disability opinions of Drs. Tuteur and Zaldivar. Employer's Brief at 14. The administrative law judge found Dr. Tuteur did not offer an assessment of claimant's respiratory capacity or address whether he could perform his previous coal mine employment in light of his respiratory impairment. Decision and Order at 43; 20 C.F.R. §718.204(b)(2). Although Dr. Tuteur diagnosed a mild restrictive abnormality and mild resting hypoxemia, the administrative law judge accurately noted he also characterized

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Exhibit 13. Three additional pulmonary function studies conducted on February 19, 2014, March 18, 2014, and May 5, 2015 also produced qualifying values. Director's Exhibit 11; Claimant's Exhibits 1, 2.

[17] Employer provides no proof for its assertion that claimant "may have had" a bronchospasm or an acute problem that reduced his pulmonary function study results. Employer's Brief at 12.

[18] Obesity hypoventilation syndrome, sometimes referred to as Pickwickian syndrome, is a breathing disorder that affects some obese people by preventing proper gas exchange, which raises the level of carbon dioxide in the blood and decreases the oxygen level. *What Is Obesity Hypoventilation Syndrome?*, NATIONAL HEART, LUNG, AND BLOOD INSTITUTE, https://www.nhlbi.nih.gov/health/health-topics/topics/ohs (last updated Jan. 27, 2012).

claimant's COPD as "impairing and disabling." *Id.*; Employer's Exhibit 3 at 5. The administrative law judge therefore permissibly found Dr. Tuteur did not offer a reasoned opinion as to whether claimant retains the respiratory capacity to perform his former coal mine employment. *See Hicks*, 138 at 533 (4th Cir. 1998); *Akers*, 131 F.3d at 441.

Dr. Zaldivar singled out the non-qualifying values from the January 28, 2016 pulmonary function study to argue that if claimant were treated intensively with bronchodilators and for his sleep apnea, he would not have any impairment. Decision and Order at 44; Employer's Exhibit 11 at 104-05. The administrative law judge recognized, however, that Dr. Zaldivar also conceded the qualifying pulmonary function studies conducted in 2014, 2015, and 2016 show that claimant could do no more than light work. Decision and Order at 44; Employer's Exhibit 11 at 102-03. The administrative law judge therefore found Dr. Zaldivar's opinion speculative, and not entitled to any weight. Decision and Order at 44. We affirm the administrative law judge's discrediting of Dr. Zaldivar's opinion as unchallenged. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-170, 1-711 (1983).

As employer raises no other contention of error regarding the administrative law judge's consideration of the medical opinions, we further affirm his finding that the medical opinions, and the evidence as a whole, establishes total disability. 20 C.F.R. §718.204(b).

Total Disability Due to Pneumoconiosis

Employer next argues the administrative law judge erred in finding claimant's total disability is due to legal pneumoconiosis. Employer's Brief at 14-17. To establish disability causation, claimant must prove that pneumoconiosis is a "substantially contributing cause" of his respiratory impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause if it has "a material adverse effect on the miner's respiratory or pulmonary condition," or if it "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii).

As we held above, the administrative law judge permissibly relied on the opinions of Drs. Conibear and Sood to find legal pneumoconiosis, in the form of disabling COPD due in part to coal mine dust exposure. Thus, he rationally found their opinions also support a finding that legal pneumoconiosis is a substantially contributing cause of claimant's total disability. *See Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-18-19 (2003); Decision and Order at 46. Moreover, the administrative law judge permissibly discounted the opinions of Drs. Tuteur and Zaldivar because they did not diagnose legal

pneumoconiosis. *See Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986); Decision and Order at 46. Therefore, we affirm the administrative law judge's finding that claimant's total disability is due to legal pneumoconiosis.[19] 20 C.F.R. §718.204(c).

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[19] In light of our affirmance of the award of benefits, we need not address claimant's contention that the administrative law judge erred in crediting him with less than fifteen years of coal mine employment and therefore erred in finding he did not invoke the Section 411(c)(4) presumption.