U.S. Department of Labor

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

BRB No. 20-0184 BLA

KADOUS EDWARD HALL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DNC, INCORPORATED	)	
	)	
and	)	
	)	
CENTURY WORKERS COMPENSATION	)	DATE ISSUED: 05/27/2021
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Larry A. Temin, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

Kyle L. Johnson and John W. Beauchamp (Fogle Keller Walker, PLLC), Lexington, Kentucky, for Employer and its Carrier.

Jeffrey S. Goldberg (Elena Goldstein, Deputy Solicitor, 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 GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge Larry A. Temin's Decision and Order Awarding Benefits (2016-BLA-05695) rendered on a subsequent claim[1] filed on June 18, 2015, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The administrative law judge credited Claimant with 16.14 years of qualifying coal mine employment in conditions substantially similar to those in an underground mine and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[2] 30 U.S.C. §921(c)(4) (2018), and thereby established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer contends the administrative law judge improperly invoked the Section 411(c)(4) presumption based on erroneous findings that Claimant has at least

[1] When a miner files a claim for benefits more than one year after the final denial of a previous claim, he must establish "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 filed two prior claims. Director's Exhibits 1, 2. The district director denied his most recent prior claim, filed on October 29, 2012, for failure to establish any element of entitlement. Director's Exhibit 2. Consequently, Claimant had to establish at least one element of entitlement in order to obtain review of the merits of his claim. 20 C.F.R. §725.309(c)(3), (4).

[2] 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.

fifteen years of qualifying coal mine employment and is totally disabled. It also alleges the black lung regulations for establishing total disability violate its right to due process because the tables at 20 C.F.R. Part 718, Appendix B, do not identify qualifying pulmonary function study values for miners over the age of seventy-one and thus do not "account for the unique physiological concerns" of older miners. It further argues the administrative law judge erred in finding it did not rebut the Section 411(c)(4) presumption. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response urging the Benefits Review Board to reject Employer's allegation that it was denied due process.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[3] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Invocation of the Section 411(c)(4) Presumption: Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mines or in "substantially similar" surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). The "conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if the Claimant demonstrates [he] was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2); *see Zurich v. Am. Ins. Grp. v. Duncan*, 889 F.3d 293, 304 (6th Cir. 2018); *Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 663 (6th Cir. 2015); *Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 489-90 (6th Cir. 2014). 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 length of coal mine employment determination if it is based on a reasonable method of computation and supported by substantial evidence. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

The administrative law judge considered Claimant's Social Security Administration (SSA) earnings record, pay stubs, and testimony. Decision and Order at 4-7; Director's

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 35-37.

Exhibits 1, 5, 17; Hearing Transcript at 18-44. He relied on Claimant's pay stubs, as corroborated by his SSA earnings, to determine the beginning and ending dates of Claimant's employment with DNC, Incorporated (DNC), and credited Claimant with 1.13 years of coal mine employment from 1998 to 1999. 20 C.F.R. § 725.101(a)(32)(ii); Decision and Order at 6; Director's Exhibit 1. Although he could not determine the exact beginning and ending dates for Claimant's employment with Cornett Trucking (Cornett), he found Claimant worked solely for Cornett from 1989 to 1993[4] and therefore inferred Cornett employed Claimant for a full calendar year for each of these years. He also found Claimant's "substantial earnings exceeded the average earnings for 125 days of coal mine employment" as published in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (BLBA) Procedure Manual*, entitled "Average Wage Base," and there is "no evidence" to rebut the presumption that he worked for 125 working days each year, for a total of five years of coal mine employment. 20 C.F.R. § 725.101(a)(32)(ii), (iii); *see Shepherd v. Incoal, Inc*., 915 F.3d 392, 401-02 (6th Cir. 2019); Decision and Order at 6.

The administrative law judge further determined Claimant was self-employed, employed for part of a calendar year, or worked for multiple employers within a calendar year during the years 1970 to 1977, 1984 to 1988, 1994, 1995, and 1999. Decision and Order at 6. Because he could not determine the beginning and ending dates of Claimant's employment, the administrative law judge applied the formula at 20 C.F.R. §725.101(a)(32)(iii)[5] and credited Claimant with an additional 10.01 years of coal mine employment.[6] *See Shepherd*, 915 F.3d at 401-02; Decision and Order at 7. Thus, the

[4] Claimant worked for Cornett continuously from 1988 to 1995. Director's Exhibit 7. However, he earned additional income from other employers in 1988, 1994, and 1995, and the administrative law judge therefore considered those years of employment separately. Decision and Order at 6-7; Director's Exhibit 7.

[5] The regulation provides that if the beginning and ending dates of the miner's employment cannot be ascertained, or the miner's employment lasted less than a calendar year, the administrative law judge may determine the length of the miner's work history by dividing his yearly income by the average daily earnings of employees in the coal mining industry, as reported by the Bureau of Labor Statistics (BLS). 20 C.F.R. §725.101(a)(32)(iii). The BLS wage information is published in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (BLBA) Procedure Manual*.

[6] The administrative law judge divided Claimant's earnings for each year by the average daily earnings reported in Exhibit 610 of the *BLBA Procedure Manual*. Decision and Order at 6. Where Claimant's wages exceeded the 125-day average, the administrative law judge credited him with a full year of coal mine employment; where Claimant's wages

administrative law judge found Claimant established a total of 16.14 years of coal mine employment. Decision and Order at 7.

Employer initially contends the administrative law judge erred in crediting Claimant with the full amount of time he worked for Cornett and DNC. Employer's Brief at 12-14. Because Claimant estimated he typically hauled raw coal from the mine site ten months of the year, but processed coal from the tipple two months of the year, Employer argues for the first time on appeal that he was not employed as a "miner" under the Act during those two months. Employer's Brief at 12-14; *see* Employer's Exhibit 13 at 12-17. But Employer forfeited this argument.

In its post-hearing brief filed with the administrative law judge, Employer provided its own calculations of Claimant's coal mine employment, arguing he established .93 of a year with McCoy Coal and Cornett in 1988, 6.69 years with Cornett from 1989 to 1995, and 1.24 years with DNC from 1998 to 1999, which is 0.05 of a year greater than the administrative law judge's finding of 8.81 years with these employers during these years.[7] Employer's Closing Arguments at 20. At no point in the proceedings before the administrative law judge did it argue any portion of this work did not constitute coal mine employment. Employer thus forfeited its argument by failing to raise it before the administrative law judge. 20 C.F.R. §802.301(a) (Board's review authority limited to "findings of fact and conclusions of law on which the decision or order appealed from was based"); *see Joseph Forrester Trucking v. Director, OWCP* [*Mabe*], 987 F.3d 581, 588 (6th Cir. 2021) (black lung regulations require that an issue be "raised before the ALJ to preserve the issue for the Board's review"); *Arch of Ky., Inc. v. Director, OWCP* [*Hatfield*], 556 F.3d 472, 479 (6th Cir. 2009); *Dankle v. Duquesne Light Co.*, 20 BLR 1-1, 1-4-7 (1995); *Prater v. Director, OWCP*, 8 BLR 1-461, 1-462 (1986). Because the administrative law judge's method of calculating Claimant's length of coal mine employment was reasonable and his finding of 16.14 years is supported by substantial

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were less, the administrative law judge credited him with a fraction of the year based on the ratio of days worked up to 125. *Id.*; *see* 20 C.F.R. §725.101(a)(32)(i).

[7] Employer based its calculations on Claimant's SSA earnings record and the formula at 20 C.F.R. §725.101(a)(32)(iii). Employer's Closing Arguments at 20. Its calculations of .93 of a year in 1988 is identical to the administrative law judge's calculation; its calculation of 6.69 years for 1989 through 1995 is 0.06 of a year less than the administrative law judge's calculation of 6.75 years; and, finally, its calculation of 1.24 years of employment with DNC in 1998 and 1999 is 0.11 of a year greater than the 1.13 years found by the administrative law judge. *Id.*; Decision and Order at 6-7.

evidence and in accordance with the law, we affirm it. *See Shepherd*, 915 F.3d at 401-02; *Muncy*, 25 BLR at 1-27; Decision and Order at 7.

Employer further contends the administrative law judge erred in finding Claimant's testimony was sufficient to establish he performed his work as a coal truck driver in conditions substantially similar to those in an underground mine.[8] Employer's Brief at 15-18. Claimant is not required to prove the dust conditions aboveground were identical to those underground, *see* 78 Fed. Reg. 59,102, 59,105 (Sept. 25, 2013), nor does he need to prove he "was around surface coal dust for a full eight hours on any given day for that day to count." *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 481 (7th Cir. 2001). Rather, Claimant need only establish he was "regularly exposed to coal-mine dust" while working at surface mines. 20 C.F.R. §718.305(b)(2).

The administrative law judge credited Claimant's testimony that he usually had the windows of his truck open and was exposed to coal mine dust as he picked up coal at the surface mines, waited for it to be loaded and receive his ticket, and there was always a layer of fine dust covering the interior of his truck.[9] Decision and Order at 18; Director's Exhibit 17 at 13-14, 18-19; Hearing Tr. at 41-42, 49-50. The administrative law judge accorded his testimony great weight, finding Claimant was a credible witness whose testimony was consistent with the dust conditions of his work identified in the medical reports of record.[10] Decision and Order at 18-19.

[8] The administrative law judge also found Claimant established qualifying coal mine employment working as an underground miner for White Deer Coal Company from 1970 to 1971 and as a surface miner for McCoy Coal Company from 1987 to 1988. *See* Decision and Order at 7; Hearing Transcript at 25-37; Director's Exhibits 7, 17. Because these findings are not challenged on appeal, they are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[9] Claimant further testified he did not have air conditioning until he worked for Cornett, but that even in an air conditioned cab, coal dust would get into the cab and "completely cover everything," stating a driver would be "pretty well continually covered in dust" when hauling coal. Hearing Tr. at 41-42, 49-50, 52. He indicated he stood outside at the surface mines waiting for his truck to be loaded for approximately four hours per day and on a typical day his clothes were covered in dust. Director's Exhibit 17 at 14, 19.

[10] Contrary to Employer's contention, the physicians did not opine as to the extent of Claimant's dust exposure, but instead reported his description of "heavy" or "a lot" of exposure to coal and rock dust. Director's Exhibit 11; Claimant's Exhibits 1, 2; Employer's Exhibit 1; Employer's Brief 15-16. We see no error in the administrative law

The administrative law judge permissibly relied on Claimant's credible, uncontested testimony detailing his work conditions to find he was "regularly exposed" to coal mine dust while working as a truck driver hauling coal.[11] *See Kennard*, 790 F.3d at 663; *Sterling*, 762 F.3d at 490; *Summers*, 272 F.3d at 479; Decision and Order at 19. It is the administrative law judge's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Tennessee 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). The Board cannot substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because it is based on substantial evidence, we affirm the administrative law judge's finding that Claimant established 16.14 years of qualifying coal mine employment,[12] sufficient to invoke the Section 411(c)(4) presumption.

Invocation of the Section 411(c)(4) Presumption: Total Disability

A miner is totally disabled if he has a pulmonary or respiratory impairment which, standing alone, prevents him from performing his usual coal mine work and comparable and 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 cor pulmonale

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judge's decision to find Claimant's statements to the physicians consistent with his subsequent testimony. *See Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc); Decision and Order at 19; Employer's Brief at 15-16.

[11] Employer contends the United States Court of Appeals for the Seventh Circuit established the standard for demonstrating "substantially similar" conditions for coal truck drivers in *Consolidation Coal Co. v. Director, OWCP* [*Bailey*], 721 F.3d 789 (7th Cir. 2013). Employer's Brief at 18. However, Employer fails to articulate what that standard is. Moreover, the court in *Bailey* concluded only that the administrative law judge's determination, that the miner's testimony established that his job loading coal trucks occurred in conditions substantially similar to an underground mine, is "in line with case law concerning outdoor but excessively dusty coal environments." *Bailey*, 721 F.3d at 795. Thus, we reject Employer's argument.

[12] Employer also argues the administrative law judge erred in not considering Claimant's "admission" to Dr. Dahhan that he worked "for about 14-and-a-half years." Employer's Brief at 14. Contrary to Employer's arguments, the administrative law judge permissibly found Claimant's SSA earnings records most probative for the purposes of determining the length of his coal mine employment. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); Decision and Order at 6.

with right-sided congestive heart failure, or medical opinion evidence. 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 Claimant established total disability based on the pulmonary function studies and medical opinions.[13] 20 C.F.R. §718.204(b)(2)(i), (iv).

Pulmonary Function Studies

The administrative law judge considered the results of eight pulmonary function studies.[14] Decision and Order at 10, 20-23. He found the September 10, 2012, September 28, 2012, and October 19, 2016 studies invalid because they lacked the requisite number of trials and tracings and were thus not in substantial compliance with the quality standards at 20 C.F.R. §718.103(b).[15] Decision and Order at 20-21. He further concluded none of the pulmonary function studies in the record contained MVV tracings meeting the quality standards, and thus concluded he would not consider any of the reported MVV values. *Id.* at 22.

[13] The administrative law judge found the blood gas studies do not establish total disability and there is no evidence that Claimant has cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 19.

[14] The administrative law judge noted the individual pulmonary function studies reported differing heights ranging from 71 to 73 inches. Decision and Order at 10. As no evidence in the record resolved the discrepancy, he permissibly averaged the recorded heights, finding Claimant is 71.25 inches tall, which he rounded up to 71.3 inches because the table at 20 C.F.R. Part 718, Appendix B, does not contain a specific measurement for 71.25 inches. *See Protopappas v. Director, OWCP*, 6 BLR 1-221 (1983); Decision and Order at 10 n.31.

[15] The regulations specify that pulmonary function test results submitted in connection with a claim for benefits shall be accompanied by three tracings of the flow versus volume and the electronically derived volume versus time tracings. If the MVV is reported, two tracings of the MVV whose values are within 10% of each other will be sufficient. 20 C.F.R. §718.103(b).

The administrative law judge found the July 17, 2015 and December 26, 2016 studies yielded non-qualifying[16] values before and after administration of bronchodilators.[17] Decision and Order at 22-23; Director's Exhibits 11. The January 4, 2017 study yielded non-qualifying values pre-bronchodilator and qualifying values post-bronchodilator. Employer's Exhibit 3. The February 4, 2017 study yielded qualifying pre-bronchodilator values and non-qualifying post-bronchodilator values. Claimant's Exhibit 2. The March 6, 2017 study yielded qualifying values before and after bronchodilators. Employer's Exhibit 1.

The administrative law judge credited the most recent study of record, which was qualifying before and after bronchodilators, as the most probative of record, and found the prior tests that consistently reflected reduced if not qualifying values further supported its results. Decision and Order at 23. Consequently, he found the pulmonary function study evidence established total disability at 20 C.F.R. §718.204(b)(2)(i). *Id.*

Employer contends the upper age limit of seventy-one contained in the tables for qualifying pulmonary function study values at Appendix B of 20 C.F.R. Part 718 is arbitrary, and therefore the administrative law judge's application of those values deprived it of due process.[18] Employer's Brief at 19-20. The Director responds Employer forfeited this argument by failing to raise it before the administrative law judge and fails to show

[16] 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).

[17] The July 17, 2015 and December 26, 2016 pulmonary function studies yielded qualifying values pre-bronchodilator based upon qualifying FEV1 and MVV values. Decision and Order at 22-23; Director's Exhibit 11; Claimant's Exhibit 1. However, the administrative law judge found the MVV portion of the studies invalid. Decision and Order at 20; *see* 20 C.F.R. §718.103(b). Therefore, based solely upon the valid portions of the tests, the administrative law judge found these studies yielded non-qualifying values. Decision and Order at 22-23.

[18] The qualifying values used for pulmonary function studies are set forth by gender, height, and age, and are sixty-percent of normal predicted values. *See* 43 Fed. Reg. 17,722, 1729-31 (Apr. 25, 1978), *citing* R.J. Knudson, et al., The Maximal Expiratory Flow-volume Curve: Normal Standards, Variability, and Effects of Age, 113 Am. Rev. Respir. Dis. 587-660 (May 1976); 45 Fed. Reg. 13,711 (Feb. 29, 1980). The maximum age for which values are reported is 71 years. 20 C.F.R. Part 718, Appendix B.

how the age cut-off is arbitrary. Director's Response Brief at 2. We agree with the Director.

At no point did Employer argue before the administrative law judge that its due process rights were violated by the age cut-off contained in the tables at Appendix B of 20 C.F.R. Part 718. Consequently, Employer forfeited this argument by failing to raise it before the administrative law judge. *Mabe*, 987 F.3d at 588; *Hatfield*, 556 F.3d at 479; *Dankle*, 20 BLR at 1-6. Moreover, Employer was not denied due process because, as the law requires, it was permitted to submit contrary evidence, in the form of Dr. Dahhan's medical opinion, to establish that the qualifying values for a seventy-one year old are not indicative of Claimant's disability. Employer's Closing Arguments at 12-13; *see K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-47 (2008) (absent contrary probative evidence, the values for a seventy-one year old miner listed in Appendix B of the regulations should be used to determine if miners over the age of seventy-one qualify as totally disabled). But, as discussed below, the administrative law judge permissibly rejected Dr. Dahhan's opinion.

Alternatively, Employer argues the administrative law judge erred in finding the pulmonary function study evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(i). Employer's Brief at 20-22. We disagree. He accurately found the two most recent studies demonstrated qualifying values prior to the administration of bronchodilators. Decision and Order at 23; Claimant's Exhibit 2; Employer's Exhibit 1. He further accurately noted the two prior tests, while non-qualifying, revealed reduced pre-bronchodilator values "close to the disability values in the regulations."[19] Decision and Order at 23. Consequently, contrary to Employer's argument, the administrative law judge did not "exclusively" base his opinion on a single test nor were four of the tests non-qualifying. Decision and Order at 23; Employer's Brief at 22. Rather, having considered all of the relevant evidence, the administrative law judge permissibly found the pulmonary function study evidence established total disability at 20 C.F.R. §718.204(b)(2)(i). *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59-60 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993); Decision and Order at 23.

[19] The January 4, 2017 study was non-qualifying pre-bronchodilator, because the FEV1 was 0.04 liters above the disability standards, and was qualifying post-bronchodilator. Decision and Order at 23 n.57; Employer's Exhibit 3. The December 26, 2016 study yielded non-qualifying pre-bronchodilator values, because the FVC was 0.01 liters above disability. Decision and Order at 23 n.57; Claimant's Exhibit 1.

We further reject Employer's argument that Dr. Dahhan's use of the Knudson formula for extrapolating qualifying values for a miner over the age of seventy-one renders his January 4, 2017 pulmonary function study the only "viable" study and his opinion the "most credible." Employer's Brief at 19-24; Employer's Exhibits 3, 4. The administrative law judge found Dr. Dahhan's opinion not persuasive because he did not provide the equation he used or the reference values he relied on in determining the extrapolated values, a finding Employer has not challenged. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 24. It is the administrative law judge's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255. Employer's argument amounts to request to reweigh the evidence, which the Board cannot do. *Anderson*, 12 BLR at 1-113; Employer's Brief at 20, 22. Consequently, we affirm the administrative law judge's determination that the pulmonary function study evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(i).

Medical Opinion Evidence

In finding the medical opinion evidence establishes total disability, 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the opinions of Drs. Werchowski, Green, and Rosenberg that Claimant is totally disabled, and the contrary opinion of Dr. Dahhan. Decision and Order at 23-24; Director's Exhibit 11; Claimant's Exhibits 1-2; Employer's Exhibits 1, 3, 4. He found the opinions of Drs. Werchowski, Green, and Rosenberg reasoned, documented, and consistent with the pulmonary function studies. Decision and Order at 24. He further gave Dr. Rosenberg's opinion the greatest weight because, having conducted the most recent examination and reviewed a substantial amount of additional evidence, he had a "more complete picture of Claimant's health." *Id*. Conversely, he found Dr. Dahhan's opinion entitled to less weight as he did not adequately explain his opinion that the pulmonary function study evidence is not disabling based upon extrapolated values, and he did not have an opportunity to consider the most recent tests. *Id*. Consequently, he found the medical opinion evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.*

Employer argues the administrative law judge erred in crediting the opinions of Drs. Werchowski, Green, and Rosenberg because they did not reconcile the qualifying pulmonary function studies with the non-qualifying arterial blood gas studies. *Id*. It reiterates that Dr. Dahhan's opinion is the "most credible" and entitled to the greatest weight. Employer's Brief at 24. We disagree.

Because blood gas and pulmonary function studies measure different types of impairment, non-qualifying blood gas studies do not call into question valid and qualifying pulmonary function studies. *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, 1-798 (1984). Here, Drs. Werchowski, Green, and Rosenberg each acknowledged the non-qualifying arterial blood gas studies, but still found Claimant disabled based upon the pulmonary function studies. Director's Exhibit 11; Claimant's Exhibits 1-2; Employer's Exhibit 1. The administrative law judge permissibly found their opinions well-reasoned and well-documented, and permissibly discredited Dr. Dahhan for failing to adequately explain his opinion that Claimant is not disabled in light of the qualifying pulmonary function studies. *See Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; Decision and Order at 24.

Because it is supported by substantial evidence, we affirm the administrative law judge's determination that the medical opinion evidence establishes total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 24. We further affirm his finding that the evidence as a whole establishes total disability. 20 C.F.R. §718.204(b)(2); Decision and Order at 24. Consequently, we affirm his determinations that Claimant invoked the Section 411(c)(4) presumption, 30 U.S.C. §921(c)(4), and thereby established a change in an applicable condition of entitlement. *Rafferty*, 9 BLR at 1-232; 20 C.F.R. §§718.204(b)(2), 718.305(b)(1), 725.309(c); Decision and Order at 25.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[20] or that "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 establish rebuttal by either method.

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),

[20] "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). "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).

718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp*., 25 BLR 1-149, 1-155 n.8 (2015). The United States Court of Appeals for the Sixth Circuit holds this standard requires Employer to show the miner's "coal mine employment did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). "An employer may prevail under the not 'in part' standard by showing that coal dust exposure had no more than a de minimis impact on the miner's lung impairment." *Id*. at 407, *citing Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014).

Employer relies on the opinions of Drs. Rosenberg and Dahhan.[21] Decision and Order at 28-29; Employer's Exhibits 1, 3-5. Dr. Rosenberg opined Claimant does not have legal pneumoconiosis but instead has a mild to moderate restrictive impairment due to rib deformities and a reduction in his PO2 on a blood gas study with exercise due to smoking-related emphysema. Employer's Exhibit 1, 5. Dr. Dahhan opined that Claimant does not have legal pneumoconiosis, but has a moderate obstructive pulmonary disease due to cigarette smoking. Employer's Exhibit 3, 4. The administrative law judge found their opinions not well-reasoned because they did not credibly explain how they determined Claimant's sixteen years of coal mine dust exposure did not contribute, along with his smoking, to his obstructive impairment. Decision and Order at 31.

Employer argues the administrative law judge applied an incorrect legal standard because he required Drs. Rosenberg and Dahhan to completely "rule out" coal mine dust exposure as a cause of Claimant's respiratory impairment. Employer's Brief at 38-39. Employer further argues the administrative law judge erred in discrediting their opinions. *Id.* at 37-39. We disagree.

The administrative law judge correctly observed legal pneumoconiosis includes any chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 26, 30; 20 C.F.R. §718.201(a)(2), (b). In discrediting the opinions of Drs. Rosenberg and Dahhan, he did not require them to rule out any contribution from coal mine dust exposure to Claimant's impairment. Rather, he permissibly found they relied on general statistics concerning the average loss in FEV1 on pulmonary function testing due to coal mine dust as opposed to smoking, but did not cite to specific evidence when they excluded coal mine dust as a significant contributing cause of Claimant's impairment. *See Rowe*, 710 F.2d at 255;

[21] The administrative law judge also considered the medical opinions of Drs. Werchowski and Green, but accurately found they do not assist Employer in rebutting the existence of legal pneumoconiosis. Decision and Order at 29; Director's Exhibit 11; Claimant's Exhibits 1-2.

Knizner v. Bethlehem Mines Corp., 8 BLR 1-5, 1-7 (1985); Decision and Order 30-31. He also permissibly discredited their opinions because neither physician provided objective evidence to support their opinion that coal mine dust exposure played no role in Claimant's impairment and consequently permissibly found they failed to persuasively explain their view that Claimant was not "among the minority of miners who have significant decrements in pulmonary function due to coal dust."[22] *Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; Decision and Order at 31.

Because we affirm the administrative law judge's discrediting of the opinions of Drs. Dahhan and Rosenberg, the only opinions supportive of a finding that Claimant does not have legal pneumoconiosis, we affirm his finding that Employer failed to establish Claimant does not have legal pneumoconiosis. Thus, we affirm his finding that Employer failed to rebut the Section 411(c)(4) presumption by proving Claimant does not have pneumoconiosis.[23] 20 C.F.R. §718.305(d)(1)(i); *see Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480 (6th Cir. 2011); Decision and Order at 31.

The administrative law judge next considered whether Employer established "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(ii). He permissibly discredited the disability causation opinions of Drs. Rosenberg and Dahhan because neither diagnosed legal pneumoconiosis, contrary to his finding Employer failed to disprove Claimant has the disease. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 32. We therefore affirm the administrative law judge's finding that Employer did not rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(ii) and the award of benefits.

[22] Because the administrative law judge gave valid reasons for discrediting the opinions of Drs. Dahhan and Rosenberg, we need not address Employer's arguments regarding the additional reasons the administrative law judge gave for rejecting their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1993); Decision and Order at 31. Similarly, as the remaining medical opinions do not aid Employer on rebuttal, we need not address Employer's argument that the administrative law judge erred in crediting their opinions. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 31-37.

[23] The administrative law judge also found Employer did not disprove clinical pneumoconiosis. Decision and Order at 29. Because we have affirmed the administrative law judge's findings on legal pneumoconiosis, we need not address Employer's arguments on clinical pneumoconiosis. *See Larioni*, 6 BLR at 1-1278.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge