U.S. Department of Labor

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

BRB No. 19-0465 BLA

MARC E. GIBSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
AEP KENTUCKY COAL	)	
	)	DATE ISSUED: 11/18/2020
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

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

Sarah M. Hurley (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, GRESH and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge John P. Sellers, III's Decision and Order Awarding Benefits (2018-BLA-05324) rendered on a claim filed on December 22, 2014, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The administrative law judge credited Claimant with at least twenty years of surface coal mine employment in conditions substantially similar to those in an underground mine and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He thus found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2012). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer challenges the administrative law judge's findings that Claimant established total disability based on the pulmonary function studies and medical opinions. Therefore it asserts he erred in finding Claimant invoked the Section 411(c)(4) presumption.[2] It also argues he erred in finding the presumption unrebutted. Claimant has not filed a response. The Director, Office of Workers' Compensation Programs (the Director), has filed a response asserting there is no merit to Employer's arguments regarding the pulmonary function studies.

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.[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).

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 gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical

[1] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the administrative law judge's finding Claimant established at least twenty years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 18-20.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant's coal mine employment occurred in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Transcript at 15.

opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence."[4] 20 C.F.R. §718.204(b)(2).

Pulmonary Function Studies

The administrative law judge first considered five pulmonary function studies dated December 4, 2014, March 18, 2015, August 5, 2016, November 17, 2016, and August 30, 2018. Decision and Order at 5-13; Director's Exhibits 14, 18, 23; Claimant's Exhibits 3, 4. He found they all produced values qualifying[5] for total disability. *Id*. Although he concluded the August 5, 2016 study was invalid, Decision and Order at 10-11, he found the December 4, 2014, March 18, 2015, November 17, 2016, and August 30, 2018 studies are all valid. Decision and Order at 5-13. As the record does not contain any non-qualifying studies, he found Claimant established total disability based on this evidence. 20 C.F.R. §718.204(b)(2)(i).

We reject Employer's argument that the administrative law judge erred in finding the March 18, 2015 and November 17, 2016 studies valid. Employer's Brief at 4-10. When considering pulmonary function studies, an administrative law judge must determine whether they are in substantial compliance with the quality standards. 20 C.F.R. §§718.101(b), 718.103(c); *Director, OWCP v. Siwiec*, 894 F.2d 635, 638 (3d Cir. 1990); *Director, OWCP v. Mangifest*, 826 F.2d 1318, 1326 (3d Cir. 1987). Compliance with the quality standards at 20 C.F.R. Part 718, Appendix B "shall be presumed" unless there is "evidence to the contrary." 20 C.F.R. §718.103(c). A physician's opinion regarding the reliability of a pulmonary function study may constitute substantial evidence for an administrative law judge's decision to credit or reject the results of the study. *Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985).

[4] The administrative law judge found Claimant did not establish total disability based on the arterial blood gas studies or evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 4, 13-14.

[5] A "qualifying" pulmonary function study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendix B, for establishing total disability. 20 C.F.R. §718.204(b)(2)(i). A "non-qualifying" study exceeds those values.

March 18, 2015 Study

Claimant performed the March 18, 2015 study as part of his Department of Labor (DOL)-sponsored pulmonary evaluation. Director's Exhibit 14. In her initial report, Dr. Ajjarapu stated the study's results were "suboptimal due to lack of plateau and good initial push." Director's Exhibit 14 at 10. She subsequently testified, however, that the study was not "totally invalid" and supported a finding of disability. Employer's Exhibit 4 at 24-35. Dr. Gaziano reviewed the study for the DOL and opined it produced valid results. Director's Exhibit 16. The technician who administered the study indicated Claimant was cooperative, and able to understand and follow instructions. Director's Exhibit 14 at 15.

In contrast Dr. Vuskovich opined the study was invalid because Claimant did not "put forth the effort required to generate valid FVC and FEV1 results." Director's Exhibit 21 at 4. He also stated Claimant's "respiratory rate and tidal volume were not sufficient" to generate valid MVV results. *Id*. Dr. Dahhan opined the study was invalid based on Dr. Ajjarapu's comment in her initial report indicating the study was suboptimal. Employer's Exhibit 2 at 16.

The administrative law judge found Dr. Ajjarapu's testimony well-reasoned and sufficient to establish the study is valid. Decision and Order at 10. He credited Dr. Gaziano's opinion because the DOL retained him for purposes of evaluating the study's validity. *Id*. at 8. He found Dr. Vuskovich's opinion entitled to "little probative weight" because the doctor "expressed his conclusions summarily, and did not explain what data or calculus" allowed him to invalidate the study. *Id*. Finally the administrative law judge found Dr. Dahhan's opinion entitled to little weight because the doctor mischaracterized Dr. Ajjarapu's position on whether the study produced valid results.[6] *Id*.

Employer first argues the administrative law judge mischaracterized Dr. Ajjarapu's opinion. Employer's Brief at 6-8. We disagree. Dr. Ajjarapu testified a pulmonary function study is valid if its results are reproducible. Employer's Exhibit 4 at 22-23. She indicated a study is reproducible if there are "three maneuvers" within 0.15 to 0.20 milliliters of one another. *Id*. Although she initially indicated in her written report that the study produced sub-optimal results "[b]ased on the graphs that [she] looked at," upon further review she clarified in her testimony that the study's "numerical value[s]" fell within the accepted range for reproducibility. *Id*. at 28-29. Upon further questioning, she reiterated the study's "numerical values" fell "within the parameters of validity." *Id*. at 32.

[6] The administrative law judge also assigned probative weight to the administering technician's observations that Claimant was cooperative and able to understand and follow instructions. Decision and Order at 9-10. As this finding is not challenged, we affirm it. *See Skrack*, 6 BLR at 1-711.

She also reviewed pulmonary function studies Drs. Dahhan and Jarboe performed. *Id*. She explained these results substantiated the validity of the March 18, 2015 study because Claimant was "giving his best effort and produced very similar or close results" on all three tests. *Id*. at 35. She explained that if the March 18, 2015 study was totally invalid, she would have characterized it as "indeterminate" and the DOL would have ordered a new study. *Id*. at 32-33.

Thus contrary to Employer's argument, the administrative law judge accurately characterized Dr. Ajjarapu's opinion that the March 18, 2015 study produced valid results supporting a finding of total disability.[7] Decision and Order at 8-10. Employer identifies no specific error in the administrative law judge finding Dr. Ajjarapu's opinion well-reasoned. We therefore affirm his credibility finding. 20 C.F.R. §802.211(b); *Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Consol. Coal Co. v. Worrell*, 27 F.3d 227, 231 (6th Cir. 1994); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); Decision and Order at 10.

Employer also generally argues the opinions of Drs. Vuskovich and Dahhan are sufficient to invalidate the March 28, 2015 study. Employer's Brief at 6-8. As Employer raises no specific argument challenging the administrative law judge's credibility findings with respect to Drs. Vuskovich and Dahhan, we affirm them.[8] 20 C.F.R. §802.211(b); *Cox*, 791 F.2d at 446-47; *Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; *Sarf*, 10 BLR at 1-120-

[7] Contrary to Employer's argument, the administrative law judge did not mischaracterize Dr. Ajjarapu's testimony about the relevance of a computer printout that accompanied the March 18, 2015 study. Employer's Brief at 5-6. Dr. Ajjarapu was asked about the significance of the pulmonary function study computer printout indicating "[u]nconfirmed interpretation. MD should review." Employer's Exhibit 4 at 30. The administrative law judge correctly found "Dr. Ajjarapu explained that the machine generated [an alert], but it could not read the results for the physician. Therefore, she testified that a physician had 'to make sense of the data' that the test generated." Decision and Order at 9, *quoting* Employer's Exhibit 4 at 30.

[8] As we affirm the administrative law judge's discrediting the invalidation opinions of Drs. Vuskovich and Dahhan and crediting Dr. Ajjarapu's validation opinion, we need not address Employer's arguments with respect to Dr. Gaziano's opinions. Employer's Brief at 6-8. Any error by the administrative law judge in crediting his opinion is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

21; *Fish*, 6 BLR at 1-109; Decision and Order at 8-10. Thus we affirm the administrative law judge's finding the March 18, 2015 study valid.

November 17, 2016 Study

Claimant performed the November 17, 2016 study as part of his evaluation by Dr. Jarboe.[9] Employer's Exhibit 1. In his initial report, Dr. Jarboe stated Claimant gave "somewhat inconsistent effort" on the test, but nonetheless noted Claimant's "two highest FVCs and FEV1s were matching." *Id*. at 2. He thus opined the study demonstrated mild obstructive and severe restrictive lung defects. *Id*. at 2-3. In his subsequent deposition, however, Dr. Jarboe stated he reviewed the study's flow-volume curves again and opined the study is invalid because it did not reflect "three acceptable curves." *Id*. Contrary to Employer's argument, the administrative law judge permissibly found Dr. Jarboe's opinion unpersuasive because he did not explain "why he reversed his opinion from the time of his earlier report, when he clearly considered the curves" and stated they "demonstrate not only the validity of the study, but its reliability for assessing the Claimant's disability." Decision and Order at 11; *see Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255. Thus we affirm the administrative law judge's finding the November 17, 2016 study valid.

We further affirm as unchallenged the administrative law judge's finding the March 18, 2015 and November 17, 2016 studies are qualifying. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5-13. Employer has failed to demonstrate these studies are invalid, and the record does not contain any non-qualifying studies. We therefore affirm his finding that the pulmonary function studies establish total disability.[10] 20 C.F.R. §718.204(b)(2)(i).

[9] The technician who administered this study stated Claimant demonstrated good effort and understanding. Employer's Exhibit 1 at 12. She indicated Claimant "understood how to perform the plethysmography test; panting was gentle and uniform, breath holds and maximal effort were performed during the slow vital capacity." *Id*. She also indicated he "understood what was required during the maximum voluntary ventilation test and generated a good effort in terms of depth and rate of breathing." *Id*.

[10] As Claimant established total disability based on the March 18, 2015 and November 17, 2016 studies, we need not address Employer's arguments with respect to the qualifying December 4, 2014 and August 30, 2018 studies. Employer's Brief at 4-10. Any error by the administrative law judge in evaluating these studies is harmless. *See Larioni*, 6 BLR at 1-1278.

Medical Opinions

We also reject Employer's argument that the administrative law judge erred in finding Claimant established total disability based on the medical opinions. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 14-18; Employer's Brief at 10-11.

Dr. Dahhan opined Claimant's "ventilatory capacity cannot be assessed due to poor performance" on pulmonary function testing. Director's Exhibit 23 at 4. Moreover, he stated Claimant has no lung impairment based on arterial blood gas, diffusion capacity, and lung volume testing. *Id*. Thus he concluded there is no evidence Claimant is totally disabled from a respiratory or pulmonary impairment. *Id*. at 4-5. Dr. Jarboe initially opined Claimant is totally disabled from a pulmonary standpoint because his November 17, 2016 pulmonary function study reflects qualifying FEV1 and FVC values. Employer's Exhibit 1 at 6. During his deposition, however, he opined this study is invalid. Employer's Exhibit 3 at 16-17. Thus he opined there is no evidence of a ventilatory impairment. *Id*. at 16-18. Because the arterial blood gas testing is not qualifying, he opined Claimant is not totally disabled. *Id*. at 16-18. Insofar as the opinions of Drs. Dahhan and Jarboe were based on an incorrect assessment of the March 18, 2015 and November 17, 2016 pulmonary function studies as invalid, the administrative law judge permissibly found their opinions not well-reasoned or documented. *See Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; Decision and Order at 15-17.

Dr. Ajjarapu opined the FEV1 results on Claimant's pulmonary function testing had been "consistently low from year to year measurements." Director's Exhibit 27. Thus she concluded Claimant is "totally and completely disabled due to his work in the mines." *Id*. Thereafter she reviewed additional pulmonary function testing and reiterated her opinion that Claimant is totally disabled. Employer's Exhibit 4 at 47. The administrative law judge found Dr. Ajjarapu "clearly and thoroughly explained why she thought Claimant gave his best effort on the pulmonary function tests" and her "conclusions are consistent with the valid pulmonary function tests" in the record. Decision and Order at 14-15. Contrary to Employer's arguments, the administrative law judge permissibly found Dr. Ajjarapu's opinion well-reasoned and documented.[11] *See Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; Decision and Order at 14-15.

[11] Employer argues Claimant was precluded from selecting Dr. Ajjarapu as his Department of Labor (DOL)-sponsored examining physician. Employer's Brief at 4-5. It notes the administrative law judge found Claimant treated once per year with Stone Mountain Health Services, which employs Dr. Ajjarapu. *Id*.; *see* Decision and Order at 5 n.4. Employer has forfeited this argument because it failed to make it before the administrative law judge. *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).

Because it is supported by substantial evidence, we affirm the administrative law judge's finding the medical opinions establish total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 17-18. We further affirm the administrative law judge's conclusion that the evidence, when weighed together, establishes total disability and Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §§718.204(b)(2), 718.305(b)(1); *Rafferty*, 9 BLR at 1-232; Decision and Order at 18.

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

Because Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,[12] 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.[13]

Nonetheless, insofar as the regulation at 20 C.F.R. §725.406(b) states Claimant may not select as his examiner for the DOL examination "[a] physician who has examined or provided medical treatment to [claimant] within the twelve months preceding the date of [claimant's] application," Employer argues the administrative law judge should have excluded Dr. Ajjarapu's opinion. Employer's Brief at 4-5. As the Director asserts, Employer does not identify any evidence that Dr. Ajjarapu specifically treated Claimant in the year preceding the date he filed this claim. Director's Brief at 4. She also points to Dr. Ajjarapu's testimony that while employed by Stone Mountain, she rotates between only three of its ten clinics. Director's Brief at n.1, *citing* Employer's Exhibit 4 at 6.

[12] "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).

[13] The administrative law judge found Employer disproved clinical pneumoconiosis. Decision and Order at 23.

To disprove legal pneumoconiosis, Employer must establish Claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Co*., 25 BLR 1-149, 159 (2015) (Boggs, J., concurring and dissenting). The Sixth Circuit holds this standard requires Employer to "disprove the existence of legal pneumoconiosis by showing that [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).

Dr. Dahhan opined Claimant does not have legal pneumoconiosis because there is no valid pulmonary function testing demonstrating an obstructive impairment. Director's Exhibit 23; Employer's Exhibit 2. Thus he opined there is no evidence Claimant has a pulmonary impairment significantly related to, or substantially aggravated by, coal mine dust exposure. *Id*. The administrative law judge permissibly discredited Dr. Dahhan's opinion as being inconsistent with his finding the March 18, 2015 and November 17, 2016 studies valid, qualifying, and demonstrating a disabling lung impairment. *See Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; Decision and Order at 24.

Dr. Jarboe initially diagnosed a severe restrictive and a mild obstructive impairment on pulmonary function testing. Employer's Exhibit 1. He explained the restrictive impairment was not related to coal mine dust exposure because Claimant has no evidence of clinical pneumoconiosis. *Id*. He stated the restrictive impairment could be due to obesity, but clarified the degree of impairment was "far out of proportion" to the degree of Claimant's obesity. *Id*. He also opined asthma could be a cause of the obstructive impairment. *Id*. The administrative law judge permissibly found these explanations inadequately reasoned and speculative. *See Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; Decision and Order at 25. Moreover, Dr. Jarboe subsequently testified Claimant does not have any obstructive or restrictive pulmonary impairment because all the pulmonary function testing of record was invalid. Employer's Exhibit 3. The administrative law judge permissibly rejected Dr. Jarboe's opinion because it is inconsistent with his finding "the valid pulmonary function tests" evidence a disabling lung impairment. *See Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; Decision and Order at 25.

In challenging the administrative law judge's findings on the issue of legal pneumoconiosis, Employer summarizes the opinions of Drs. Dahhan and Jarboe and argues they provided "articulate explanations" for how they "arrived at their conclusion." Employer's Brief at 12-13. We consider Employer's arguments to be a request that the Board reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because the administrative law judge acted

within his discretion in rejecting the opinions of Drs. Dahhan and Jarboe, we affirm his finding Employer did not disprove the existence of legal pneumoconiosis and his determination that it did not rebut the Section 411(c)(4) presumption by establishing the absence of pneumoconiosis.[14] *See* 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

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. Dahhan and Jarboe 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 26-27. We therefore affirm the administrative law judge's finding 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.

[14] Dr. Ajjarapu diagnosed clinical and legal pneumoconiosis. Director's Exhibits 14, 27. The administrative law judge correctly found her opinion does not aid Employer on rebuttal. Decision and Order at 26.

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge