U.S. Department of Labor

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

BRB No. 19-0436 BLA

RONALD L. JACKSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
BLACK BUTTE COAL COMPANY	)	
	)	DATE ISSUED: 10/30/2020
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of William S. Colwell, Associate Chief Administrative Law Judge, United States Department of Labor.

Jared L. Bramwell (Kelly & Bramwell, P.C.), Draper, Utah, for Claimant.

John S. Lopatto III, Washington, D.C., for Employer.

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

BOGGS, Chief Administrative Appeals Judge:

Claimant appeals Associate Chief Administrative Law Judge William S. Colwell's Decision and Order Denying Benefits (2014-BLA-05919) on a claim filed pursuant to the

Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (Act).[1] This case involves a claim filed on October 25, 2012.

The administrative law judge found that Claimant established fewer than fifteen years of coal mine employment and thus did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] Reviewing Claimant's entitlement under 20 C.F.R. Part 718, the administrative law judge found he did not establish pneumoconiosis and denied benefits. 20 C.F.R. §718.202(a).

On appeal, Claimant contends the administrative law judge erred in finding he does not have legal pneumoconiosis.[3] Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a response brief.

The Benefit 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.[4] 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).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R.

[1] The Board rejects Claimant's motion to strike Employer's brief as untimely and accepts Employer's brief.

[2] Under Section 411(c)(4), Claimant is entitled to a rebuttable presumption that he 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 or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305.

[3] We affirm, as unchallenged, the administrative law judge's finding that Claimant did not establish clinical pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Tenth Circuit because claimant's last coal mine employment was in Nebraska. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 17, 18.

§§718.3, 718.202, 718.203, 718.204. Statutory presumptions may assist claimants to establish these elements when certain conditions are met, but failure to establish any one precludes an award of benefits. *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

Claimant contends that the administrative law judge erred in weighing the medical opinion evidence in finding he does not have legal pneumoconiosis. 20 C.F.R. §718.202(a)(4). Claimant asserts the administrative law judge imposed an impossible burden on him to provide a satisfactory medical opinion to carry his burden of proof. Claimant's Brief at 18. Claimant further argues the administrative law judge did not explain his credibility findings in accordance with the Administrative Procedure Act.[5] *Id*. We reject Claimant's assertions as without merit.

The administrative law judge considered four medical opinions. All of the physicians agree Claimant has chronic obstructive pulmonary disease (COPD). Drs. Gottschall, Sood, and James opined Claimant has legal pneumoconiosis[6] because they attribute his COPD to a combination of smoking, coal mine dust exposure, and his work in a trona mine. Director's Exhibit 10; Claimant's Exhibits 7. 8. Dr. Fino opined Claimant does not have legal pneumoconiosis and attributes Claimant's COPD entirely to his trona dust exposure. Employer's Exhibit 4.

Initially, we reject Claimant's contention the administrative law judge erred in finding Dr. Gottschall's opinion insufficient to satisfy Claimant's burden of proof. Dr. Gottschall conducted the Department of Labor (DOL)-sponsored complete pulmonary evaluation of Claimant on May 1, 2013. Director's Exhibit 10. As the administrative law judge correctly noted, Dr. Gottschall wrote on the DOL Form CM-988 that "COPD is substantially contributed to by both *coal* mine dust exposure and smoking." *Id*. at 19. However, in the "Impression" section of her narrative report prepared on May 1, 2013, Dr. Gottschall states "[i]t is *likely* that his occupational coal mine dust exposure is a

[5] The Administrative Procedure Act, 5 U.S.C. §§500-591, provides that every adjudicatory decision must include "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

[6] 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 that is significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

substantially contributing factor to his COPD." *Id*. at 26 (emphasis added). In the "Discussion" section of her narrative report, she also states "it is *likely* that his previous smoking history in combination with his occupational coal mine dust exposure (legal pneumoconiosis) are both causally important in his obstructive lung disease." *Id*. (emphasis added).

Contrary to Claimant's contention and the views of our dissenting colleague, the administrative law judge permissibly found Dr. Gottschall's use of the word "likely" in her narrative report to be equivocal and that her report therefore was unpersuasive because it had "internal inconsistencies" Decision and Order at 24; *see Northern Coal Co. v. Director, OWCP* [*Pickup*], 100 F.3d 871, 873 (10th Cir. 1996); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16, 1-19 (1987). The United States Court of Appeals for the Tenth Circuit has made clear that "'the task of weighing conflicting medical evidence is within the sole province of the [administrative law judge]' . . . and that 'where medical professionals are in disagreement, the trier of fact is in a unique position to determine credibility and weigh the evidence.'" *Energy West Mining Co. v. Oliver*, 555 F.3d 1211, 1217 (10th Cir. 2009), *quoting Hansen v. Director, OWCP*, 984 F.2d 364, 368 (10th Cir. 1993). The administrative law judge has broad discretion to interpret Dr. Gottschall's various statements on the cause of Claimant's respiratory impairment and determine whether they are persuasive to satisfy Claimant's burden of proof. Id. The Board is not empowered to reweigh the evidence nor to substitute our inferences for those of the administrative law judge. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). We therefore affirm the administrative law judge's finding that Dr. Gottschall's opinion is equivocal and not entitled to weight on the issue of legal pneumoconiosis. *See Pickup*, 100 F.3d at 873; Decision and Order at 24.

The administrative law judge also permissibly found Drs. Sood's and James' opinions unpersuasive to establish legal pneumoconiosis. *See Oliver*, 555 F.3d at 1217; *Kaiser Steel Corp. v. Director, OWCP* [S*ainz*], 748 F.2d 1426 (10th Cir. 1984); Decision and Order at 25, 26. The administrative law judge determined that Claimant worked thirteen years, forty-five weeks and four days in coal mine employment. Decision and Order at 25. He found that three to four of those years were spent in an underground mine and the remainder in surface coal mine employment working as a supervisor. *Id.* He further found Claimant's supervisor work involved spending sixty percent of his time at the mine site and forty percent of his time working in an office. *Id*.

Dr. Sood opined Claimant's coal mine dust exposure and his cigarette smoking history contributed to his COPD, and further stated that Claimant's trona dust exposure was a "likely" contributor. Claimant's Exhibit 3. However, as the administrative law judge accurately noted, Dr. Sood summarized Claimant's employment history working as a section boss in underground mines, a "crew supervisor at a surface coal plant" and foreman,

but he did not mention that Claimant worked in an office for part of his employment. Decision and Order at 25 n.16, *quoting* Claimant's Exhibit 3. The administrative law judge found that Dr. Sood's "understanding of Claimant's out-of-mine employment was significantly less than what is established by the record." Decision and Order at 25. Because Dr. Sood did not display "a clear understanding of Claimant's work locations/sites and dust exposure," the administrative law judge acted within his discretion in giving Dr. Sood's opinion on legal pneumoconiosis little weight. *Id*. at 26; *see Gunderson v. U.S. Dep't of Labor*, 601 F.3d 1013, 1024 (10th Cir. 2010); *Pickup*, 100 F.3d at 873; *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Dr. James reported that Claimant worked in coal mine employment from 1978-1990 in underground and surface mines, and had "some office work" as a supervisor. Claimant's Exhibit 8. He opined that Claimant's thirteen-year coal mine dust exposure, his history of cigarette smoking for eight years, and his twenty-two years of trona mine dust exposure each "to a varying degree has the potential of affecting [Claimant's] lung function." *Id*. He stated that Claimant's exposure to coal mine dust was "a significant contributing factor in the development of his COPD and exercise-induced hypoxemia." *Id*.

Because Dr. James noted only that Claimant had performed "some office work," the administrative law judge indicated he was unable to compare Dr. James' understanding of Claimant's coal mine dust exposure to his own findings. Decision and Order at 25, *quoting* Claimant's Exhibit 8. Like Dr. Sood, the administrative law judge permissibly found Dr. James did not display "a clear understanding of the extent of Claimant's work locations/sites and dust exposure" during his coal mine employment. Decision and Order at 25; *see Gunderson*, 601 F.3d at 1024; *Pickup*, 100 F.3d at 873; *Wojtowicz*, 12 BLR at 1-165. We therefore affirm the administrative law judge's determination to give Dr. James' opinion less weight.[7] Decision and Order at 25.

[7] Our dissenting colleague rejects the administrative law judge's rationale for discrediting Drs. Sood's and James' opinions, suggesting that even if Claimant worked in an office he still had adequate coal mine dust exposure to develop legal pneumoconiosis. However, it is not the Board's role to find facts or reach medical conclusions. *See generally Energy West Mining Co. v. Oliver*, 555 F.3d 1211, 1217 (10th Cir. 2009). *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984). The proper inquiry for the Board, is whether the administrative law judge acted within his discretion in questioning whether Drs. Sood and James would still conclude Claimant has legal pneumoconiosis if they had an accurate understanding of how much time he was exposed to coal mine dust in his job. *See Oliver*, 555 F.3d at 1217. A physician's understanding of a miner's coal mine employment and the extent of coal mine dust exposure are relevant factors for consideration in weighing medical opinions. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR

Claimant has the burden of establishing entitlement and bears the risk of non-persuasion if the evidence is found insufficient to establish a crucial element of entitlement. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994); *Young v. Barnes & Tucker Co.*, 11 BLR 1-147, 1-150 (1988); *Oggero v. Director, OWCP*, 7 BLR 1-860, 1-865 (1985). Because the administrative law judge acted within his discretion in rejecting Drs. Gottschall's, James', and Sood's opinions,[8] we affirm his finding that Claimant did not establish legal pneumoconiosis. *See Oliver*, 555 F.3d at 1217; Decision and Order at 26. Claimant's failure to establish pneumoconiosis, a requisite element of entitlement, precludes an award of benefits. *See* 20 C.F.R. §718.202(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993); *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2: Decision and Order at 27.

1-149, 1-155 (1989) (en banc); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46, 1-47 (1985) (whether a medical report is sufficiently documented and reasoned is for the administrative law judge as the fact-finder to decide).

[8] Because we affirm the administrative law judge's rejection of Drs. Gottschall's, James', and Sood's opinions, we need not address Claimant's arguments regarding Dr. Fino's opinion. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Claimant's Brief at 12, 15-16.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

I concur.

MELISSA LIN JONES
Administrative Appeals Judge

BUZZARD, Administrative Appeals Judge, dissenting:

I respectfully dissent from the majority's decision to affirm the denial of benefits. In finding Claimant does not have legal pneumoconiosis, the administrative law judge committed several errors requiring remand.

The administrative law judge first erred in finding Dr. Gottschall's diagnosis of legal pneumoconiosis "equivocal" and "internally inconsistent." Decision and Order at 24. Dr. Gottschall examined Claimant as part of the Department of Labor (DOL)-sponsored complete pulmonary evaluation. Director's Exhibit 10. The narrative portion of her opinion is set forth on DOL Form CM-988, *Medical History and Examination for Coal Miners' Pneumoconiosis*, to which she attached her notes from her examination of Claimant. *Id*. at 16-27.

In her notes from the May 1, 2013 examination, Dr. Gottschall diagnosed totally disabling chronic obstructive pulmonary disease (COPD), "with symptoms of intermittent cough and exertional dyspnea for several years, mild airflow limitation on spirometry and hypoxemia with a six-minute walk." Director's Exhibit 10 at 26. She stated it is "likely" that Claimant's coal mine dust exposure "is a substantially contributing factor to his

COPD." *Id*. She further stated it is "likely" that Claimant's prior, remote smoking history "in combination with his occupational coal mine dust exposure (legal pneumoconiosis) are both causally important in his obstructive lung disease." *Id*.

On Form CM-988, completed on July 11, 2013, Dr. Gottschall confirmed her earlier statements. She diagnosed Claimant with COPD, which she stated is "supported by the spirometry results, which show mild airflow limitation." Director's Exhibit 10 at 19. She further noted Claimant "becomes hypoxic with a six-minute walk" and identified COPD as "a significant contributing factor in the development of [Claimant's] exercised-induced hypoxemia." *Id*. Finally, she explicitly diagnosed legal pneumoconiosis, opining Claimant's "COPD is substantially contributed to by both coal mine dust exposure and smoking." *Id*.

Contrary to the administrative law judge's finding, Dr. Gottschall's statement in her examination notes that coal dust and smoking "likely" contributed substantially to Claimant's COPD does not render her opinion equivocal. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 763 (4th Cir. 1999) (opinion that pneumoconiosis "could be" a complicating factor in the miner's death was not equivocal); *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366 (4th Cir. 2006) ("refusal to express a diagnosis in categorical terms is candor, not equivocation"). This is particularly so given that her examination notes specifically identify "legal pneumoconiosis" as the disease she is diagnosing, and her conclusions on Form CM-988 definitively attribute Claimant's COPD to coal dust exposure and smoking. *See Piney Mountain Coal Co.*, 176 F.3d at 763 (physician's opinion must be evaluated "in the full context of his report"); *Garcia v. Director, OWCP*, 869 F.2d 1413, 1416–17 (10th Cir. 1989) ("qualified determination" that miner's impairment is "probably" due to nonrespiratory causes "standing alone" is insufficient to rebut disability causation).[9] Nor are her statements internally inconsistent: the examination notes and Form CM-988 both diagnose legal pneumoconiosis in the form of coal dust- and smoke-induced COPD. *See Amax Coal Co. v. Director, OWCP*, 993 F.2d 600, 602 (7th Cir. 1993) (medical opinion not "inconsistent" where there are no discernable "contradictions"). Because the administrative law judge selectively analyzed Dr. Gottschall's opinion and erred in finding it equivocal and inconsistent, I would vacate his determination that her opinion is not adequately reasoned to support a finding of legal

[9] Even assuming Dr. Gottschall's examination notes can be considered to contain a "qualified" diagnosis of legal pneumoconiosis, unlike the medical opinion at issue in *Garcia* her use of the term "likely" does not "stand alone." *See Garcia v. Director, OWCP*, 869 F.2d 1413, 1416–17 (10th Cir. 1989). Rather, it is accompanied by an explicit diagnosis of legal pneumoconiosis on Form CM-988. Director's Exhibit 10 at 19.

pneumoconiosis. *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295 (1984).

Next, the administrative law judge erred in discrediting the diagnoses of legal pneumoconiosis by Drs. Sood and James. The administrative law judge specifically failed to explain how Claimant spending part of his day in an office at the mine site undermines Dr. Sood's and Dr. James' opinions that his daily, severe coal mine dust exposure contributed significantly to his impairment. Decision and Order at 25-26. As found by the administrative law judge, Claimant established 2.7 years of underground coal mine employment with Stansbury Coal. *Id*. at 12-13. He worked at the face which exposed him to "pretty severe" dust conditions. *Id*. at 5. The remainder of his coal mine employment, at least 300 working days per year for 11.15 years, occurred at Employer's "open pit" mine. *Id*. at 8, 13. There, he was a foreman at the coal plant, working "right alongside" the other miners crushing and shoveling coal, loading trains and trucks, and loading overburden and pouring it in the stockpile. *Id*. at 14. He described the dust conditions as "pretty severe" and, in fact, worse than the dust conditions underground. *Id*. "Sometimes the dust would be so thick you couldn't see." Hearing Transcript at 28. After working in the field, he would do paperwork in an office "and pass it on to the oncoming foreman." *Id*. at 29. By the time he began his office work, however, he was "totally covered in coal dust" from his work in the field. *Id*.

Relying on Claimant's statements that he spent anywhere from 50 to 70 percent of his time working for Employer "in the field" or "in the pit," the administrative law judge concluded that Claimant spent 60 percent of each day "in the mine" and 40 percent in an office. Decision and Order at 25. Based on that finding, the administrative law judge discredited the legal pneumoconiosis diagnoses of Dr. Sood and Dr. James because they did not specifically identify the portion of time Claimant spent each day in an office and thus "did not have a clear understanding of the extent of Claimant's work locations/sites and dust exposure." *Id*. Meanwhile, he credited Dr. Fino's opinion because the physician was aware that Claimant spent about half of his time in the field and the other half in an office, and thus had an accurate understanding of Claimant's "coal mine work locations and dust exposure." *Id*. These findings are problematic for two reasons.

First, the administrative law judge's analysis ignores that Drs. Sood and James based their diagnoses of legal pneumoconiosis on an accurate assessment that the miner was exposed to coal mine dust on a daily basis during his thirteen years of coal mine employment, first in an underground mine and then at Employer's open pit mine. 30 U.S.C. §923(b) (fact finder must address all relevant evidence); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand); Claimant's Exhibits 7, 8. That Claimant spent part of his day with Employer working in an office does not undermine the fact that at least 60 percent of

each of his 300 working days per year was spent in "severe" dust conditions that were worse than those in an underground mine, causing him to be "totally covered" in coal dust before ever entering an office. Hearing Transcript at 28-29. The administrative law judge provides no support, legal or medical, for his apparent assessment that a miner's dust exposure must be continuous throughout the day to give rise to a credible diagnosis of legal pneumoconiosis. To the contrary, Dr. Sood's and Dr. James' reliance on Claimant's thirteen years of coal mine dust exposure is wholly consistent with the facts confirming his daily exposure to severe dust conditions for nearly three years underground and 11 years aboveground.

Even if it were advisable to discount Claimant's coal mine employment history based on the time he spent each day in an office, Claimant would still exceed the requisite 125 working days necessary to establish one year of coal mine employment during each calendar year he worked for Employer. Under the regulatory definition of "year," a miner is to be credited with one year of coal mine employment "for all purposes under the Act" if he has "at least 125 working days during a calendar year." 20 C.F.R. §725.101(a)(32)(i). As Claimant actually worked in excess of 300 days per calendar year for Employer,[10] Decision and Order at 12-13, discounting those working days by the 40 percent of his time he spent in an office leaves Claimant with the equivalent of more than 180 days per year of continuous severe dust exposure.[11] Thus, even under this strained (and inadvisable) approach to discounting Claimant's daily coal dust exposure history, Dr. Sood and Dr. James remain accurate in their assessment that Claimant had thirteen years of severe coal mine dust exposure.[12] The administrative law judge erred in substituting his own medical

[10] The only years Claimant worked less than 300 days for Employer were 1980, when he worked 296.3 days, and 1979, when he worked 154 days for Employer and an additional 154.3 days underground for Stansbury Coal. Decision and Order at 12.

[11] For example, the administrative law judge found Claimant worked 306.8 days as a miner in 1981. Decision and Order at 13. Excluding the forty percent of time Claimant worked in an office each day leaves the equivalent of 184.08 days of severe dust exposure (306.8 x .6 = 184.08).

[12] To be clear, Claimant's years of coal mine employment cannot be reduced based on his spending part of the day working in an office, as a "miner" is "any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal" and is entitled to credit for "any day or part of a day for which [he] received pay for work as a miner." 20 C.F.R. §725.101(a)(19), (32). The point of the calculation set forth above is to demonstrate that *even if* one were to exclude Claimant's office work from his years of coal mine employment, the remaining portion of his working

conclusions for those of the qualified physicians. *See generally Marcum v. Director, OWCP*, 11 BLR 1-23 (1987); *Hucker v. Consolidation Coal Co.*, 9 BLR 1-137 (1986).

Second, the administrative law judge failed to explain his finding that Dr. Fino had an "accurate" understanding of Claimant's dust exposure. Decision and Order 25; *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). That finding appears to be based solely on Dr. Fino's awareness that Claimant spent part of his day working in an office. The administrative law judge did not, however, evaluate whether Dr. Fino actually understood the severity of Claimant's daily dust exposure. A review of the physician's opinion reveals little. He simply summarizes that Claimant had thirteen years of underground and aboveground coal mine employment, spent 50 percent of his time in an office and 50 percent in the field, and concludes, without elaboration, "I believe this is not the type of coal dust history that would account for [Claimant's totally disabling impairment in oxygen transfer]." Employer's Exhibit 9. At no point does Dr. Fino indicate any awareness of Claimant's daily, severe coal dust exposure. Thus, the administrative law judge's finding that "Dr. Fino's understanding of Claimant's . . . coal mine dust exposure is better supported by the record" is, itself, unsupported by the record and cannot be affirmed. *See Wojtowicz*, 12 BLR at 1-165.

An administrative law judge must consider all of the relevant evidence and apply the same level of scrutiny in determining the credibility of the medical opinion evidence. 30 U.S.C. §923(b); *see Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-139-40 (1999) (en banc). Because the administrative law judge did not rationally explain, as the Administrative Procedure Act[13] requires, why he discredited Drs. Gottschall's, Sood's, and James' diagnoses of legal pneumoconiosis or why he found Dr. Fino's contrary opinion credible, I would vacate the denial of benefits and remand the claim for further consideration of the medical opinions on the question of whether Claimant has legal

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days during which he was exposed to severe dust conditions is, by itself, sufficient to satisfy the definition of "year" during all of his employment with Employer.

[13] The Administrative Procedure Act provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

pneumoconiosis. *See* 20 C.F.R. §718.202(a)(4); *Wojtowicz*, 12 BLR at 1-165; *McCune* 6 BLR at 1-998.

I, therefore, dissent.

GREG J. BUZZARD
Administrative Appeals Judge