U.S. Department of Labor

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

BRB No. 19-0445 BLA

RANDY L. BROWN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CUMBERLAND COAL RESOURCES, LP	)	
	)	
and	)	
	)	
ANR, INCORPORATED	)	DATE ISSUED: 09/18/2020
	)	
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 Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawloski, Bilonick, & Long), Ebensburg, Pennsylvania, for Claimant.

Kathy L. Snyder and Andrea Berg (Jackson Kelly PLLC), Morgantown, West Virginia, for Employer/Carrier.

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

BOGGS, Chief Administrative Appeals Judge:

Employer and its Carrier (Employer) appeal Administrative Law Judge Drew A. Swank's Decision and Order Awarding Benefits (2018-BLA-05890) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on October 13, 2016.

The administrative law judge found Claimant has thirty-eight years of surface coal mine employment, including at least fifteen years in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. He therefore found Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[1] The administrative law judge further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the administrative law judge erred in finding Claimant established at least fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption. Employer also argues the administrative law judge erred in finding it failed to rebut the presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, did not file a response brief.[2]

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).

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

[2] We affirm, as unchallenged on appeal, the administrative law judge's finding Claimant established a totally disabling respiratory impairment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 16-23.

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

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

Length of Qualifying Coal Mine Employment

Employer challenges the administrative law judge's finding that Claimant worked for at least fifteen years in qualifying coal mine employment. Employer argues the administrative law judge failed to consider the evidence and make specific findings regarding the length of Claimant's coal mine employment, in violation of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). Employer's Brief at 4-7. We agree.

A claimant bears the burden of proof to establish the number of years he actually worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-711 (1985). The Board will uphold the administrative law judge's determination if it is based on a reasonable method of computation and is supported by substantial evidence in the record. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

The administrative law judge initially noted, correctly, "it is proper to consider evidence from a variety of sources, including affidavits of co-workers, Social Security records, sworn testimony, written statements of the miner (including the Form CM-911a), records of the employer, and pension records." Decision and Order at 3. He further noted the regulations provide "[i]n determining whether a miner worked for one year, any day for which the miner received pay while on an approved absence, such as vacation or sick leave, may be counted as part of the calendar year and as partial periods totaling one year." *Id.* at 4, *quoting* 20 C.F.R. § 725.101(a)(32). The administrative law judge observed that on his application for benefits Claimant alleged forty years of coal mine employment, on his CM-911a employment history form he alleged thirty nine years of coal mine employment, and the district director found thirty-eight years of coal mine employment. Decision and Order at 4. Without further analysis, however, he concluded: "Based upon a totality of the evidence, the undersigned finds that Claimant was employed in coal mining for 38 years, an amount greater than 15 years." *Id.*

The APA requires the administrative law judge to consider all relevant evidence in the record, and to set forth his "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); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Because we cannot discern the basis for the administrative

law judge's finding Claimant established thirty-eight years of coal mine employment[4] we must vacate that determination and remand the case for reconsideration of this issue.[5]

Employer next asserts the administrative law judge erred in finding Claimant established at least fifteen years of his coal mine employment occurred in conditions substantially similar to those in an underground mine. Employer's Brief at 6-7.

The administrative law judge correctly noted: "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 that [he] was regularly exposed to coal-mine dust while working there." Decision and Order at 6, *quoting* 20 C.F.R. §718.305(b)(2). He then concluded, "[b]ased upon the description of Claimant's work conditions, the undersigned finds that Claimant's 38 years of aboveground coal mining work is equivalent to at least fifteen years of underground coal mine employment." Decision and Order at 6, *citing* Hearing Transcript at 11-16. As we have vacated the administrative law judge's finding Claimant established thirty-eight years of coal mine employment, we must also vacate this related finding.

Moreover, while an administrative law judge is granted broad discretion in evaluating the credibility of the evidence of record, including witness testimony, *see Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67, 1-68 (1986), we agree with Employer's argument that the administrative law judge's bare conclusion does not adequately explain his determination Claimant's exposure equated to at least fifteen years of regular dust exposure and, therefore, does not comport with the APA. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz*, 12 BLR at 1-165. The administrative law judge must explain how the

[4] To the extent the administrative law judge intended to adopt the district director's finding of thirty-eight years, this was improper. With only one exception not applicable here, "any findings or determinations made with respect to a claim by a district director shall not be considered by the administrative law judge." 20 C.F.R. §725.455(a). When a party requests a formal hearing after a district director's proposed decision, an administrative law judge must proceed *de novo* and independently weigh the evidence to reach his or her own findings on each issue of fact and law. *See Dingess v. Director, OWCP*, 12 BLR 1-141, 1-143 (1989); *Oggero v. Director, OWCP*, 7 BLR 1-860, 1-863 (1985).

[5] Employer argues that the work Claimant performed at the harbor does not qualify as coal mine employment. The administrative law judge made no findings in this regard. On remand, the administrative law judge must address Employer's contention.

evidence establishes Claimant was regularly exposed to coal dust. He also must determine the years in which Claimant engaged in qualifying employment, and the total number of such years. [6]

In summary, because we have vacated the administrative law judge's findings Claimant has at least fifteen years of qualifying coal mine employment we must further vacate his finding Claimant invoked the Section 411(c)(4) presumption.[7] Decision and Order at 7, 23. On remand, the administrative law judge must consider all relevant evidence *de novo* and render findings as to the length and nature of claimant's coal mine employment in accordance with our instructions above. *See Wojtowicz*, 12 BLR at 1-165; *see also* 5 U.S.C. §557(c)(3). He may rely on any credible evidence and any reasonable method of computation will be upheld if it is supported by substantial evidence in the record considered as a whole. 20 C.F.R. §725.101(a)(32)(ii); *see Muncy*, 25 BLR at 1-27; *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986). If, on remand, claimant establishes at least fifteen years of qualifying employment he invokes the Section 411(c)(4) presumption. The administrative law judge must then determine whether Employer has rebutted the presumption. *See* 20 C.F.R. §718.305(d)(1)(i), (ii). If Claimant is unable to invoke the presumption, the administrative law judge must address whether Claimant established all the elements of entitlement under 20 C.F.R. Part 718, by a preponderance of the evidence. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *see Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987). The administrative law judge must explain the bases for his findings on remand in accordance with the APA. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz*, 12 BLR at 1-165.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed in part and vacated in part, and the case is remanded for further proceedings consistent with this opinion.

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[6] Our dissenting colleague helpfully supplies findings and explanations missing from the administrative law judge's opinion. The Board cannot take on the role and responsibilities of the administrative law judge. *Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986).

[7] Because we have vacated the administrative law judge's finding that claimant invoked the Section 411(c)(4) presumption, we decline to address, as premature, Employer's arguments pertaining to the administrative law judge's rebuttal findings.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

I concur:

MELISSA LIN JONES
Administrative Appeals Judge

BUZZARD, Administrative Appeals Judge, dissenting:

I respectfully disagree with the majority's decision to vacate the award of benefits. The administrative law judge's finding that claimant established well over fifteen years of qualifying coal mine employment, and thus invoked the Section 411(c)(4) presumption that his totally disabling respiratory impairment is due to pneumoconiosis, must be affirmed as it is rational, supported by substantial evidence, and consistent with law. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011) (an administrative law judge's determination based on a reasonable method of computation and supported by substantial evidence will be upheld). Because employer did not rebut the presumption, Claimant is entitled to benefits.

Length of Coal Mine Employment

Employer's very general argument that the administrative law judge violated the Administrative Procedure Act (APA) by failing to explain his finding that Claimant worked thirty-eight years as a coal miner must be rejected on its merits. While the APA requires an administrative law judge to set forth his "findings and conclusions and the reasons or basis therefor," 5 U.S.C. §557(c)(3)(A), it does not "impose a duty of long-windedness." *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012) (citations omitted). Rather, "if a reviewing court can discern what the [administrative law judge] did and why [he] did it, the duty of explanation under the APA is satisfied." *Id*. Here, the administrative law judge specifically stated he based his finding on the "totality of the evidence," including Claimant's application for benefits and his employment history

form listing thirty-nine years of continuous employment *with Employer* from May 1977 through August 2016. Decision and Order at 4, *discussing* Director's Exhibits 2, 3.

Employer does not allege the administrative law judge erred in relying on Claimant's recitation of his employment history, nor did it raise any such argument below. Employer's Brief at 4-7; Employer's Reply Brief at 1-2; Employer's Closing Argument at 2-3**.** In fact, it completely ignores this evidence, perhaps because Claimant's statements are consistent with *its own* contemporaneous records documenting his continuous employment from May 9, 1977 through at least July 26, 2016.[8] Director's Exhibits 5, 6.

The *only* issue Employer identifies with any specificity – both before the Board and the administrative law judge – is that Claimant's work at its harbor location from August 22, 1977 to June 25, 1985, a period of seven years and ten months, does not constitute coal mine employment. Director's Exhibit 5. The Board need not address this argument, however. Even accepting it as true, Claimant would still have more than thirty uncontested years of coal mine employment, well over the fifteen years necessary to invoke the Section 411(c)(4) presumption. Employer does not attempt to explain how a finding of thirty years and two months of coal mine employment, rather than thirty-eight years, could have made any difference in the administrative law judge's finding that Claimant successfully invoked the presumption. Nor does it allege that this finding impacted his weighing of the medical opinions on rebuttal of the presumption. Thus, any error is harmless. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Because the Board is not empowered to engage in de novo proceedings or unrestricted review of a case, it must limit its review to contentions of error that are specifically raised by the parties. *See* 20 C.F.R. §§802.211(b), 802.301(a); *Cox v. Benefits Review Board*, 791 F.2d 445, 446, 9 BLR 2-46, 2-47-48 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987). To the extent Employer specifically challenges

[8] The only aspect of the administrative law judge's decision that lacks an explanation is why he credited Claimant with only thirty-eight years of employment with Employer when Claimant specifically alleged, and Employer's records confirm, greater than thirty-nine years. The difference, however, is insignificant and harmless, as he otherwise credited Claimant with well over the fifteen years necessary to invoke the Section 411(c)(4) presumption. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). Nevertheless, to the extent the majority remands for additional explanation, the administrative law judge should consider that May 1977 through August 2016 is thirty-nine years and four months.

only Claimant's harbor work, an issue with no bearing on the administrative law judge's finding that he invoked the Section 411(c)(4) presumption, the Board should not remand this claim based on Employer's vague, unsubstantiated allegation of an APA violation. This is especially true given that the evidence discussed by the administrative law judge – and Employer's own records – document more than thirty additional, uncontested years of coal mine employment *after* Claimant worked at the harbor.

Whether Claimant's Coal Mine Employment is Qualifying

Employer's final argument with respect to invocation of the Section 411(c)(4) presumption is that Claimant's testimony does not establish that his coal mine work occurred in conditions substantially similar to those in an underground mine.[9] Employer's Brief at 6-7. Notably, when the matter was before the administrative law judge, Employer raised no challenge to Claimant's description of his working conditions, or to Claimant's counsel's assertion that "all of Claimant's work was performed at an underground site and/or in very dusty conditions." Claimant's Closing Argument at 1. Despite not being contested below, the Board can easily reject this argument on its merits.

"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 that [he] was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2). A claimant's testimony is sufficient to establish substantial similarity, i.e., that he was regularly exposed to coal mine dust. *See Zurich American Insurance Group v. Duncan*, 889 F.3d 293, 304 (6th Cir. 2018) (rejecting argument that claimant must provide evidence of "the actual dust conditions" and citing with approval the Department of Labor's position that "dust exposure evidence will be inherently anecdotal" (*quoting* 78 Fed. Reg. at 59,105 (Sept. 25, 2013)); *Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 664 (6th Cir. 2015) (claimant's "uncontested lay testimony" regarding his dust conditions "easily supports a finding" of regular dust exposure); *Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 490 (6th Cir. 2014) (claimant's testimony that the conditions of his employment were "very dusty" sufficient to establish regular exposure); *Antelope Coal Co./Rio Tinto Energy Am. v. Goodin*, 743 F.3d 1331, 1343-44 & n.17 (10th Cir. 2014) (claimant's testimony that it was impossible to keep the

[9] The administrative law judge did not make a finding as to whether claimant's aboveground work at the preparation plant occurred at the site of an underground mine, as Claimant asserts. Claimant's Brief at 2. If so, Claimant need not establish substantial similarity of dust conditions. *See Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1058-59 (6th Cir. 2013); *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-29 (2011).

dust out of the cabs of the vehicles he drove, and that he was exposed to "pretty dusty" conditions "provided substantial evidence of regular exposure to coal mine dust").

The administrative law judge relied on Claimant's hearing testimony about his working conditions to find that he credibly established regular dust exposure. *See Looney*, 678 F.3d at 316; Decision and Order at 7, *citing* Hearing Transcript at 11-16. Specifically, as referenced by the administrative law judge, Claimant testified he was first exposed to coal mine dust in 1977 when he started working for Employer as an electrician at the harbor.[10] *Id*. at 11. He stated it was "a dusty job" as dust came off the coal that was being unloaded. *Id.* at 12. In 1985, he left the harbor location and began work as an electrician at the preparation plant where he stayed until he quit work in 2016. *Id*. at 13. This job required him to "maintain all electrical components, switch gear[s], motors, [and] lighting receptacles . . . throughout the plant and plant area." *Id*. When asked if it was a dusty job, Claimant replied, "Yes, it could be. . . . You could see it in the air, in the light. You got it in your eyes, your nose, your clothes. At the end of the day, you'd blow your nose, it was pure black." *Id*. Further, when asked whether he could return to his job as an electrician, he stated that in addition to being unable to perform the exertional requirements of the job, he could not "[b]e in that dust." *Id*. at 16.

Claimant's unrefuted testimony constitutes substantial evidence in support of the finding that he was regularly exposed to coal mine dust during all of his coal mine work with Employer. It therefore must be affirmed. *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); *Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67, 1-68 (1986); Decision and Order at 7. While the majority may prefer additional explanation, the administrative law judge's finding, supported by his citation to relevant portions of the record in which Claimant provided unrefuted testimony about his dust exposure, satisfies the APA. *See Looney*, 678 F.3d at 316-17. As Claimant established well over fifteen years of qualifying coal mine employment and a totally disabling respiratory impairment, I would affirm the

[10] Claimant similarly indicated on his CM-911a employment history form that he was exposed to "dust, gases, or fumes" from 1977-2016 while employed by Cumberland Mine. Director's Exhibit 2.

administrative law judge's finding that Claimant invoked the Section 411(c)(4) presumption. Decision and Order at 7, 23.

Rebuttal of Legal Pneumoconiosis

Finally, I would affirm the administrative law judge's finding Employer did not rebut the Section 411(c)(4) presumption.[11] To do so, Employer must establish Claimant has neither legal nor clinical pneumoconiosis, or "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).

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 Corp.*, 25 BLR 1-149, 1-155 n.8 (2015) (Boggs, J., concurring and dissenting).

The administrative law judge considered the opinions of Drs. Basheda and Spagnolo.[12] Dr. Basheda opined Claimant does not have legal pneumoconiosis, but has significant spirometry abnormalities and a diffusion impairment due to obesity, cigarette smoking, uncontrolled asthma and a lung mass that is "worrisome for lung cancer."[13] Director's Exhibit 22; Employer's Exhibit 7 at 23-24, 33. Dr. Spagnolo opined Claimant does not have legal pneumoconiosis, but has reduced spirometry and variable blood gas results consistent with an asthmatic condition "very likely" due to morbid obesity. Employer's Exhibits 3, 6. Finding their opinions not well-reasoned and unpersuasive, the

[11] The administrative law judge found Employer disproved clinical pneumoconiosis. Decision and Order at 15.

[12] The administrative law judge also considered the opinions of Drs. Holt and Saludes that Claimant has legal pneumoconiosis in the form of chronic obstructive pulmonary disease due to coal mine dust exposure and smoking. Decision and Order at 15, 26; Director's Exhibits 12, 24; Claimant's Exhibits 1, 5.

[13] Dr. Unger interpreted the August 8, 2018 x-ray as negative for pneumoconiosis, but showing a large opacity in the right lower hemithorax "measuring at least 6 cm" and "highly suspicious for primary lung neoplasm." Claimant's Exhibit 3. He suggested a follow up computed tomography scan. *Id*.

administrative law judge determined Employer failed to disprove legal pneumoconiosis. Decision and Order at 26.

Employer argues the administrative law judge applied an incorrect legal standard by requiring it to establish Claimant's respiratory impairment is "entirely unrelated" to coal mine dust exposure or "no part" of his coal mine dust exposure caused his respiratory impairment. Employer's Brief at 21-22, *quoting* Decision and Order at 16. Contrary to Employer's assertion, the administrative law judge properly acknowledged that "an employer can rebut presumed legal pneumoconiosis by proving that a miner does not have a lung disease 'significantly related to, or substantially aggravated by, dust exposure in coal mine employment' by a preponderance of the evidence." Decision and Order at 8. Further, he did not reject the opinions of Drs. Basheda and Spagnolo for failing to satisfy a heightened rebuttal standard. Decision and Order at 26. Rather, he found their opinions not credible based on the rationale each physician provided for why Claimant does not have legal pneumoconiosis. *Id*. The context in which he used the phrases "entirely unrelated" and "no part" reflects that he was explaining why Dr. Basheda's and Dr. Spagnolo's complete exclusion of coal mine dust exposure as a causative factor was not credible, not that he was imposing a more difficult burden of proof. *Id*. at 16, 26.

I would also reject Employer's assertion the administrative law judge erred in discrediting their opinions. Employer's Brief at 9-10, 17-19. Dr. Basheda excluded coal mine dust as a factor in Claimant's impairment because there is no radiographic evidence of pneumoconiosis, his symptoms of wheezing are consistent with asthma, and the pulmonary function testing did not indicate either an obstructive or restrictive impairment. Decision and Order at 25; Employer's Exhibit 7 at 26-27. He further stated that while Claimant's final lung volume measurements from Dr. Saludes' examination revealed a diffusion impairment, there were other reasons to explain it rather than coal mine dust exposure.[14] Decision and Order at 25; Employer's Exhibit 7 at 24. Meanwhile, Dr. Spagnolo opined the variable values of the pulmonary function studies he reviewed are not consistent with a pulmonary impairment related to coal mine dust exposure and attributed

[14] When asked why Claimant's blood gas abnormalities could not be due to coal mine dust, Dr. Basheda stated: "Again, you have to have objective evidence that there is coal mine dust involvement. We don't have any evidence of that. The chest x-ray is normal. There is [sic] no pulmonary function abnormalities consistent with coal dust. So you have to look at other explanations why there may be blood gas abnormalities. I touched on those. He is obese. He has at times uncontrolled asthma, continues to smoke, and now appears to have a lung cancer." Employer's Exhibit 7 at 27.

his reduced pulmonary function to obesity.[15] Decision and Order at 25; Employer's Exhibit 6 at 23-24.

The administrative law judge permissibly found that although Drs. Basheda and Spagnolo provided a variety of explanations for Claimant's impairments, they did not adequately explain why his years of coal mine dust exposure did not significantly contribute, along with those other conditions, to his impairment. *See Balsavage v. Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *see also Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007) (administrative law judge rejected physician's opinion where physician failed to adequately explain why coal dust exposure did not exacerbate claimant's impairments); Decision and Order at 26.

The administrative law judge observed that both Dr. Basheda and Dr. Spagnolo "minimize[d] the results of Claimant's pulmonary function testing" to determine he has no obstructive or restrictive impairment. Decision and Order at 18-23, 26; Director's Exhibit 22; Employer's Exhibits 3, 6, 7. Dr. Basheda opined Claimant does not have an obstructive impairment because the FEV_1/FVC ratio of the August 8, 2018 pulmonary function study[16] was normal at 0.73%, and there was no restrictive impairment because the total lung capacity was 98%. Employer's Exhibit 7 at 14-15. Dr. Spagnolo opined Claimant does not have an obstructive or restrictive impairment because even though his FEV_1 and FVC values are below 60%, his FEV_1/FVC ratio is above normal limits and his total lung capacity is normal. Employer's Exhibit 6 at 24, 26, 31. The administrative law judge rejected these opinions as contrary to his finding that Claimant has a disabling obstructive impairment based on the pulmonary function study evidence and the opinions of Drs. Holt and Saludes.[17] *See Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 211 (3d Cir. 2002);

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[15] Dr. Spagnolo reviewed pulmonary function studies dated December 15, 2016, September 20, 2017, and August 8, 2018 and noted a reduction in spirometry values from 2017 to 2018. Employer's Exhibit 6 at 24-26. He opined the variable values of the studies are due to either smoking or the lung mass. *Id*. at 32-33. He concluded coal mine dust does not cause "that kind of dramatic drop" in spirometry over the course of eleven months from 2017 to 2018. *Id*. at 38. He stated "these numbers are reduced because of his obesity, which is classic for obesity." *Id*. at 32-33.

[16] Dr. Saludes conducted a qualifying pre-bronchodilator pulmonary function study on August 8, 2018, which produced an FEV_1 value of 1.75 L, 56% of predicted; an FVC value of 2.39 L, 56% of predicted; and an FEV_1/FVC ratio of 73%. Claimant's Exhibit 1.

[17] While Employer devotes a significant portion of its brief asking for a reweighing of the evidence on whether Drs. Holt and Saludes credibly diagnosed chronic obstructive pulmonary disease (COPD) due to coal mine dust exposure, it does so only in the context

Kertesz v. Crescent Hills Coal Co., 788 F.2d 158, 163 (3d Cir. 1986); Decision and Order at 25-26; Director's Exhibit 12; Claimant's Exhibits 1, 5.

As the trier-of-fact, the administrative law judge has the discretion to assess the credibility of the medical opinions and to assign them weight; the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Balsavage*, 295 F.3d at 396; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988). Because the administrative law judge permissibly discredited the only medical opinions supportive of a finding that Claimant does not have legal pneumoconiosis,[18] I would affirm his finding Employer failed to disprove the disease. Employer's failure to disprove legal pneumoconiosis precludes a finding it rebutted the Section 411(c)(4) presumption by establishing the absence of pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

Rebuttal of Disability Causation

The administrative law judge next considered whether Employer established that "no part of [Claimant'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 found the same reasons for which he discredited Dr. Basheda's and Dr. Spagnolo's opinions that Claimant does not have legal pneumoconiosis also undercut their opinions that his disabling respiratory impairment is unrelated to pneumoconiosis.[19] *See*

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of rebuttal of legal pneumoconiosis. Employer's Brief at 9-21. Employer does not actually raise any challenge to the administrative law judge's finding at 20 C.F.R. §718.204(b)(2) that Claimant has a totally disabling obstructive impairment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). The difference is important as the former inquiry involves consideration of the etiology of the COPD, while the latter concerns its existence.

[18] Employer asserts the administrative law judge erred in finding the opinions of Drs. Holt and Saludes better reasoned on the issue of legal pneumoconiosis than the opinions of Drs. Basheda and Spagnolo. Employer's Brief at 10-17. The Board need not address this argument, however, as the administrative law judge accurately stated "these opinions do nothing to rebut the presumption." *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). Moreover, regardless of his consideration of their opinions, the administrative law judge permissibly discredited Dr. Basheda's and Dr. Spagnolo's opinions. *Id.*; Decision and Order at 26.

[19] Because the administrative law judge provided a valid reason for discrediting the opinions of Drs. Basheda and Spagnolo on the issues of legal pneumoconiosis disability

Soubik, 366 F.3d at 234; *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015), *quoting Toler v. E. Associated Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995); Decision and Order at 26. I would therefore affirm his finding that Employer failed to disprove disability causation. 20 C.F.R. §718.305(d)(1)(ii).

Because Claimant invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis, and Employer did not rebut the presumption, I would affirm the award of benefits.

I, therefore, dissent.

GREG J. BUZZARD
Administrative Appeals Judge

causation, the Board need not address Employer's remaining arguments regarding his weighing of their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).