U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 14-0234 BLA

WILLIAM H. MAYNARD Claimant-Petitioner v. ARGUS ENERGY LLC and NEW HAMPSHIRE INSURANCE/CHARTIS Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 04/30/2015 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Leonard J. Stayton, Inez, Kentucky, for claimant.

Sarah Y. M. Himmel (Two Rivers Law Group PC), Christiansburg, Virginia, for employer/carrier.

Richard A. Seid (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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: HALL, Chief Administrative Appeals Judge, McGRANERY and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2013-BLA-5082) of Administrative Law Judge Drew A. Swank, rendered on a claim filed on February 1, 2012, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge found that claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv), and observed that the parties stipulated to twenty-six years of aboveground coal mine employment. The administrative law judge determined that claimant's twenty-six years of aboveground work was equivalent to at least fifteen years of underground coal mine employment. Based on these findings, the administrative law judge concluded that claimant invoked the presumption of total disability due to pneumoconiosis set forth in amended Section 411(c)(4) of the Act. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305. The administrative law judge further determined, however, that employer successfully rebutted the presumption. Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erred in finding that employer rebutted the amended Section 411(c)(4) presumption by establishing that he is not totally disabled due to pneumoconiosis. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not file a substantive response, unless specifically requested to do so by the Board. The Director, however, notes his agreement with claimant's contention that the administrative law judge did not properly weigh the medical opinions relevant to total disability causation.[1]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence and in accordance with applicable law.[2] 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).

[1] We affirm the administrative law judge's finding that claimant did not establish total disability under 20 C.F.R. §718.204(b)(2)(i)-(iii), as it is unchallenged by claimant on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[2] The record indicates that claimant's last coal mine employment was in West Virginia. Decision and Order at 5; Hearing Transcript at 28; Director's Exhibit 3. Accordingly, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

Under amended Section 411(c)(4), a miner is presumed to be totally disabled due to pneumoconiosis if he or she establishes at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305(b). Upon invocation of the presumption, the burden shifts to employer to rebut the presumption with affirmative proof that claimant does not have legal[3] and clinical[4] pneumoconiosis, or that no part of his disabling respiratory or pulmonary impairment was caused by pneumoconiosis. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §725.305(d)(1); *see West Virginia CWP Fund v. Bender*, ---F.3d---, 2015 WL 1475069, slip op. at 13-14 (4th Cir. 2015); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011); *Minich v. Keystone Coal Mining Corp.*, BLR , BRB No. 13-0544 BLA, slip op. at 10-11 (April 21, 2015) (Boggs, J., concurring and dissenting).

Rather than initially determining whether claimant invoked the rebuttable presumption at amended Section 411(c)(4), the administrative law judge considered whether claimant satisfied his burden to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a). The administrative law judge found that claimant did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1), (2), as the sole x-ray interpretation of record was negative for pneumoconiosis[5] and the record is devoid of

[3] Under 20 C.F.R. §718.201(a)(2), legal pneumoconiosis is defined as including "any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

[4] Pursuant to 20 C.F.R. §718.201(a)(1), clinical pneumoconiosis is defined as:

> [T]hose diseases recognized by the medical community as pneumoconiosis, *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. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

20 C.F.R. §718.201(a)(1).

[5] Dr. Gaziano, a B reader, read the x-ray, dated February 16, 2012, as negative for pneumoconiosis. Director's Exhibit 11.

biopsy evidence. Decision and Order at 7-8; Director's Exhibit 11. The administrative law judge then considered whether claimant could establish the existence of pneumoconiosis "by operation of a legal presumption" at 20 C.F.R. §718.202(a)(3). Decision and Order at 9-14. The administrative law judge found that claimant met the prerequisites for invocation of the rebuttable presumption as set forth in 20 C.F.R. §718.305(b)(1)(i), (iii). *Id*. at 13-14. He concluded, therefore, that claimant "met his burden of establishing the presence of pneumoconiosis as required by 20 C.F.R. §718.202(a)." *Id*. at 14. The administrative law judge further determined that claimant was entitled to the presumption, set forth in 20 C.F.R. §718.203(b), that his clinical pneumoconiosis arose out of coal mine employment, and that employer did not rebut this presumption. *Id*. at 14-15. The administrative law judge then considered whether employer rebutted the amended Section 411(c)(4) presumption, without rendering any other findings as to the existence of pneumoconiosis. *Id*. at 15-18.

The administrative law judge initially set forth the text of the prior version of 20 C.F.R. §718.305 (2001) and observed that "the party opposing entitlement [must] demonstrate by a preponderance of the evidence either: (1) the miner's disability does not, or did not, arise out of coal mine employment; or (2) the miner does not, or did not, suffer from pneumoconiosis." Decision and Order at 16. The administrative law judge stated that he was not required to address the latter method of rebuttal, because the issue of the existence of pneumoconiosis was settled by his finding that claimant invoked the amended Section 411(c)(4) presumption. *Id*. The administrative law judge then weighed the conflicting opinions of Drs. Gaziano and Rosenberg to determine "whether the miner's total disability arises from his coal workers' pneumoconiosis due to his past coal mine employment." *Id*. at 17.

Dr. Gaziano examined claimant on behalf of the Department of Labor (DOL) on February 16, 2012. Director's Exhibit 10. He diagnosed chronic obstructive pulmonary disease (COPD), and a totally disabling pulmonary impairment, and identified coal dust exposure and cigarette smoking as the causes of claimant's COPD. *Id*. Dr. Rosenberg submitted a report, dated October 14, 2013, based on a review of Dr. Gaziano's report and the results of the objective testing that Dr. Gaziano performed. Employer's Exhibit 1. Dr. Rosenberg stated that claimant does not have clinical pneumoconiosis and that his obstructive disease is attributable to smoking, rather than coal dust exposure. *Id*. In support of his opinion, Dr. Rosenberg cited medical studies demonstrating that a reduced FEV_1/FVC ratio, such as that exhibited by claimant, is consistent with an obstructive impairment caused solely by smoking, stating:

> As outlined by the data summarized by NIOSH [(National Institute for Occupational Safety and Health)], as well as the data of Attfield and Hodous and Dimich-Ward and Bates, all cited by DOL, when coal mine dust exposure causes obstruction, the general pattern is that of a reduced

> FEV_1 with a symmetrical reduction of the FVC, such that the FEV_1/FVC ratio is preserved. That did not happen here. The exact opposite did, and the extreme decline in [claimant's] ratio down to 48% (preserved ratio 70% or higher) indicates that the obstruction is entirely related to cigarette smoking.

Id. at 4 (citations omitted). Dr. Rosenberg also took issue with the Attfield and Hodous study, asserting that the 2009 Kohansal study is superior in data collection and analysis, and establishes that smoking "causes much more significant decrements than coal dust over time." *Id*. at 4-6. Dr. Rosenberg further indicated that claimant's 13% bronchodilator response supported ruling out coal dust exposure as a cause of claimant's obstructive impairment. *Id*.

The administrative law judge discredited Dr. Gaziano's opinion because he "gave only his conclusions that both smoking and coal dust exposure caused [c]laimant's pulmonary/respiratory impairments." Decision and Order at 17. In contrast, the administrative law judge found that Dr. Rosenberg's opinion was "persuasive," as he "explained the basis for each of his conclusions, supporting his conclusions with references to medical studies." *Id*. The administrative law judge further determined:

> Based upon the thoroughness of Dr. Rosenberg's report, with his explanations and citation to medical studies in support of his conclusions, the undersigned finds that the presumption established by 20 C.F.R. §718.305 is rebutted, and [c]laimant has not proven that . . . clinical coal workers' pneumoconiosis was a "substantially contributing cause" of the miner's total disability. Without this element[,] the claim for benefits must be denied.

Id. (citations omitted).

Claimant alleges that Dr. Rosenberg's statement, that clinical pneumoconiosis is absent, was insufficient to establish that both clinical and legal pneumoconiosis played no part in causing claimant's total disability. Claimant also contends that the administrative law judge erred in crediting Dr. Rosenberg's opinion, without addressing significant flaws in his reasoning. Claimant further argues that Dr. Rosenberg's reliance on claimant's reduced FEV_1/FVC ratio conflicts with the DOL's discussion of sound medical science in the preamble to the 2001 regulations. In addition, claimant alleges that the 2009 Kohansal study cited by Dr. Rosenberg does not support his interpretation of claimant's FEV_1/FVC ratio, nor does it establish that the studies that the DOL cited in the preamble are incorrect. Finally, claimant contends that, in addressing the reversibility of his impairment, Dr. Rosenberg failed to discuss the significance of the residual impairment.

Claimant's contentions have merit. Pursuant to 20 C.F.R. §718.305(d)(1)(ii) (2014),[6] the amended Section 411(c)(4) presumption can be rebutted by "[e]stablishing that 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). As indicated *supra*, 20 C.F.R. §718.201 contains definitions of clinical, and legal, pneumoconiosis. Thus, to establish rebuttal at 20 C.F.R. §718.305(d)(1)(ii), employer was required to prove that no part of claimant's pulmonary total disability was caused by *either clinical, or legal,* pneumoconiosis. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324, 25 BLR 2-255, 2-258 (4th Cir. 2013) (Traxler, C.J., dissenting) ("[The] regulations make clear that the absence of clinical pneumoconiosis cannot be used to rule out legal pneumoconiosis."); *Minich*, slip op. at 10-11. In the administrative law judge's Decision and Order, however, he framed the issue before him as "whether the miner's total disability arises from . . . *coal workers' pneumoconiosis*" and concluded that "[c]laimant has not proven that . . . *clinical coal workers' pneumoconiosis* was a 'substantially contributing cause' of the miner's total disability." Decision and Order at 16, 17 (emphasis added). Accordingly, we hold that the administrative law judge did not properly consider whether employer rebutted the amended Section 411(c)(4) presumption by establishing that no part of claimant's pulmonary impairment was caused by legal pneumoconiosis. We must vacate, therefore, the administrative law judge's finding that employer established rebuttal under 20 C.F.R. §718.305(d)(1)(ii).

We further hold that there is merit in claimant's allegation that the administrative law judge erred in crediting the opinion of Dr. Rosenberg, without considering whether he provided valid rationales for his conclusion that claimant's obstructive impairment was unrelated to dust exposure in coal mine employment. Dr. Rosenberg's view, that claimant's reduced FEV_1/FVC ratio is inconsistent with the pattern of impairment caused by coal dust exposure, may conflict with the conclusions set forth in the scientific studies that the DOL cited in the preamble. The DOL relied, in particular, on the summary of the medical literature developed by NIOSH in conjunction with its determination of a permissible dust exposure limit. The DOL stated:

> [I]n developing its recommended dust exposure standard, NIOSH carefully reviewed the available evidence on lung disease in coal miners. NIOSH also considered the strength of the evidence, including the sampling and statistical analysis techniques used, and concluded that the science provided a substantial basis for adopting a permissible dust exposure limit. NIOSH summarized its findings . . . as follows: "In addition to the risk of simple

[6] The Department of Labor (DOL) revised the regulation at 20 C.F.R. §718.305, effective October 25, 2013. The revised regulation is applicable to all claims filed after January 1, 2005 and pending on, or after, March 23, 2010.

> CWP [coal workers' pneumoconiosis] and PMF [progressive massive fibrosis], epidemiological studies have shown that coal miners have an increased risk of developing COPD. COPD may be detected from decrements in certain measures of lung function, especially FEV_1 *and the ratio of* FEV_1/FVC."

65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000), *quoting* NIOSH *Criteria Document* 4.2.3.2 (citations omitted) (emphasis added).

Whether a physician bases his or her opinion on a premise that conflicts with the research findings accepted by the DOL is an issue that the administrative law judge must address when determining the probative value of that medical opinion. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 314-16, 25 BLR 2-115, 2-129-32 (4th Cir. 2012); *Lewis Coal Co. v. Director, OWCP* [*McCoy*], 373 F.3d 570, 578, 23 BLR 2-184, 2-190 (4th Cir. 2004). In this regard, although employer is correct in suggesting that it can use an expert opinion to challenge the scientific view accepted by the DOL in the preamble, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has indicated that the expert must testify "as to scientific innovations that archaized or invalidated the science underlying the [p]reamble." *Cochran*, 718 F.3d at 324, 25 BLR at 2-265. Whether Dr. Rosenberg's opinion satisfies this requirement is an issue for the administrative law judge to decide on remand.[7] *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31-32 (4th Cir. 1997); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Claimant's allegation that the administrative law judge did not fully consider Dr. Rosenberg's reliance on the reversibility of claimant's obstructive impairment after bronchodilator administration also has merit. The administrative law judge acknowledged that the pulmonary function study, and blood gas study of record, did not

[7] Employer contends that Dr. Rosenberg did not rely on a premise in conflict with the preamble, as he admitted the "legislative fact" that coal dust exposure can cause a totally disabling obstructive impairment, and merely "explained why it did not apply in [claimant's] particular case" by referencing more recent, and more accurate, studies than those cited by the DOL in the preamble. Defendant's Response to Claimant's Brief at 11. Whether Dr. Rosenberg's interpretation of the significance of claimant's reduced FEV_1/FVC ratio conflicts with the view set forth in the preamble, and whether employer, through Dr. Rosenberg's opinion, has laid the proper foundation for disputing the studies that the DOL discussed, are questions for the administrative law judge to resolve on remand. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 314-16, 25 BLR 2-115, 2-129-32 (4th Cir. 2012); *Lewis Coal Co. v. Director, OWCP* [*McCoy*], 373 F.3d 570, 578, 23 BLR 2-184, 2-190 (4th Cir. 2004).

produce qualifying values at 20 C.F.R. §718.204(b)(2)(i), (ii), but determined that the opinions of Drs. Rosenberg and Gaziano were sufficient to establish that claimant has a totally disabling obstructive impairment.[8] Decision and Order at 14. Both physicians cited the severe obstructive impairment revealed on claimant's pulmonary function study in support of their opinions, while noting that claimant's blood gas study showed a mildly reduced PO_2. Director's Exhibit 11; Employer's Exhibit 1 at 3. In finding that employer rebutted the presumption that pneumoconiosis caused claimant's total disability, however, the administrative law judge did not consider whether Dr. Rosenberg explained why the irreversible portion of claimant's impairment was not related to coal dust exposure, or why his partial response to bronchodilators eliminated such exposure as a cause of his disabling residual impairment.[9] *See Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007); *Consolidation Coal Co. v. Swiger*, 98 Fed. Appx. 227, 237 (4th Cir. May 11, 2004) (unpub.). Because the administrative law judge did not determine whether the probative value of Dr. Rosenberg's opinion is diminished by his statements regarding claimant's FEV_1/FVC ratio and partially reversible obstructive impairment, we must vacate the administrative law judge's finding that Dr. Rosenberg's opinion was sufficient to rebut the presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.305(d)(1)(ii). *See Looney*, 678 F.3d at 314-16, 25 BLR at 2-129-32; *McCoy*, 373 F.3d at 578, 23 BLR at 2-190.

On remand, the administrative law judge must reconsider his finding that employer rebutted the amended Section 411(c)(4) presumption. In contrast to the rebuttal analysis used by the administrative law judge in his prior Decision and Order, he should initially determine whether employer has established rebuttal at 20 C.F.R. §718.305(d)(1)(i) by disproving the presumed existence of legal *and* clinical pneumoconiosis.[10] 20 C.F.R. §718.305(d)(1)(i)(A), (B); *see Minich*, slip op. at 10-11.

[8] 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. A non-qualifying study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i).

[9] We reject employer's contention that a physician's explanation is relevant only when the miner's pulmonary function study produces qualifying values both before, and after, the administration of bronchodilators. As the administrative law judge found in this case, a reasoned diagnosis of a totally disabling pulmonary impairment can be based on a non-qualifying objective study that, nevertheless, reveals the presence of an impairment. *See Marsiglio v. Director, OWCP*, 8 BLR 1-190, 1-192 (1985); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-298 (1984); Decision and Order at 14.

[10] Contrary to the administrative law judge's finding, invocation of the amended Section 411(c)(4) presumption does not render moot a consideration of rebuttal at 20 C.F.R. §718.305(d)(1)(i). *See* Decision and Order at 16. Rather, in pertinent part,

The administrative law judge should first consider whether employer has affirmatively established the absence of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A). Performing the rebuttal analysis in the order set forth in the regulation satisfies the statutory mandate to consider all relevant evidence, and provides a framework for the analysis of the credibility of the medical opinions at Section 718.305(d)(1)(ii), the second rebuttal prong. *See Minich*, slip op. at 10-11. Because the definition of legal pneumoconiosis encompasses only those diseases or impairments that are "significantly related to, or substantially aggravated by, dust exposure in coal mine employment," employer must prove that these prerequisites are absent to establish that claimant's obstructive impairment is not legal pneumoconiosis. 20 C.F.R. §718.201(a)(2), (b); *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 2-162, 2-175 (4th Cir. 2000).

If the administrative law judge finds that employer has failed to establish the absence of legal pneumoconiosis, he should next determine whether employer has disproved the presence of clinical pneumoconiosis arising out of coal mine employment at Section 718.305(d)(1)(i)(B). Because the administrative law judge previously weighed only the x-ray evidence, and put the burden on claimant to prove that he has clinical pneumoconiosis, the administrative law judge must address and weigh all relevant evidence on remand, including the medical opinions of record, while placing the burden on employer to disprove the existence of clinical pneumoconiosis.

If the administrative law judge finds that employer has failed to establish that claimant does not have legal and clinical pneumoconiosis, he must consider whether employer has rebutted the presumed fact of total disability causation at 20 C.F.R. §718.305(d)(1)(ii). Employer can accomplish this by proving that "no part of the miner's respiratory or pulmonary disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii). In a recent decision, the United States Court of Appeals for the Fourth Circuit held that the "no part" standard is valid, and that it requires the party opposing entitlement to "rule out" any connection between pneumoconiosis and the miner's total disability. *Bender*, slip op. at 28-29; *see also Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); *Minich*, slip op. at 11 (To rebut the presumed causal relationship between pneumoconiosis and total disability, employer must establish that "no part, not even an insignificant part, of claimant's respiratory or pulmonary disability was caused by pneumoconiosis.").

---

invocation gives rise to a *rebuttable* presumption that claimant has both legal and clinical pneumoconiosis. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305(c), (d)(1).

If employer proves that claimant does not have legal and clinical pneumoconiosis, or that claimant's disabling obstructive impairment was not caused by legal and clinical pneumoconiosis, employer has rebutted the amended Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305(d)(1); *see Morrison*, 644 F.3d at 480, 25 BLR at 2-9; *Rose*, 614 F.2d at 939, 2 BLR at 2-43-44.

Finally, when weighing Dr. Rosenberg's opinion on remand, the administrative law judge must address whether the probative value of his opinion is diminished by his statements regarding claimant's FEV_1/FVC ratio and partially reversible obstructive impairment.[11] The administrative law judge must also render a finding on the other factors relevant to the opinion's probative value, including Dr. Rosenberg's explanations for his conclusions, the documentation underlying his medical judgment, and the sophistication of, and bases for, his diagnoses.[12] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997). In so doing, the administrative law judge must set forth his findings in detail, including the underlying rationale, as required by the Administrative Procedure Act, 30 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 1-161, 1-165 (1989).

[11] The administrative law judge should also address the argument by the Director, Office of Workers' Compensation Programs (the Director), that the administrative law judge failed to address "a logical flaw" in Dr. Rosenberg's determination that the reduction in claimant's FEV_1/FVC ratio supported ruling out coal dust exposure as a cause of his obstructive impairment. Director's Letter Brief at 1 n.1 (unpaginated). The Director maintains, "[e]ven assuming Dr. Rosenberg's premise regarding the FEV_1/FVC ratio is true (which we do not accept), the doctor has failed to explain why coal mine dust and smoking could not have combined to reduce [claimant's] test scores." *Id*.

[12] Because employer bears the burden of proof, the administrative law judge must determine whether the opinion of Dr. Rosenberg, employer's expert, is reasoned and credible, irrespective of the weight accorded to the opinion of Dr. Gaziano, claimant's expert. *See Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 80, 25 BLR 2-1, 2-9 (6th Cir. 2011); *Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 939, 2 BLR 2-38, 2-43-44 (4th Cir. 1980).

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

SO ORDERED.

_____
BETTY JEAN HALL, Chief
Administrative Appeals Judge

_____
REGINA C. McGRANERY
Administrative Appeals Judge

_____
GREG J. BUZZARD
Administrative Appeals Judge