U.S. Department of Labor

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

BRB No. 15-0205 BLA

OMA MULLINS (o/b/o DENVER A. MULLINS) Claimant-Respondent v. MACK COAL COMPANY, INCORPORATED Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 04/19/2016 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Linda S. Chapman, Administrative Law Judge, United States Department of Labor.

Jeremy B. O'Quinn (The O'Quinn Law Office, PLLC), Wise, Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

Maia S. Fisher (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, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2012-BLA-5266) of Administrative Law Judge Linda S. Chapman (the administrative law judge) rendered on a subsequent claim[1] filed 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 determined that employer was the properly designated responsible operator,[2] and credited the miner with 32.68 years of coal mine employment, of which all but eight months were performed underground. The administrative law judge adjudicated this claim, filed on July 29, 2010, pursuant to the regulatory provisions at 20 C.F.R. Parts 718 and 725, and accepted the stipulation of the parties that the miner had a totally disabling respiratory impairment. Applying Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012),[3] the administrative law judge found that the miner was entitled to invocation of the rebuttable

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[1] The miner's initial claim for benefits, filed on August 25, 1970, was denied by the Social Security Administration on April 26, 1971 and by the Department of Labor on January 16, 1981 for failure to establish any element of entitlement.

The miner's second claim, filed on April 13, 1993, was denied by Administrative Law Judge Richard Morgan on December 14, 1998, who found that while the miner established a "material change in conditions" at 20 C.F.R. §725.309 (2000) because he had proven he was totally disabled, he failed to establish pneumoconiosis or that his disability was due to pneumoconiosis. Upon the miner's request for modification, Administrative Law Judge Pamela Lakes Wood denied modification, as the evidence did not establish the existence of pneumoconiosis. On April 24, 2003, the Board affirmed the denial of benefits. *Mullins v. Mack Coal Co*., BRB No. 02-0632 BLA (Apr. 24, 2003)(unpub.).

The miner's third claim, filed on May 7, 2004, was finally denied by Administrative Law Judge William S. Colwell on December 19, 2006 because the miner did not establish the existence of pneumoconiosis or a "change in an applicable condition of entitlement" at 20 C.F.R. §725.309 (2015) since the denial of his last claim.

[2] By Order dated October 23, 2014, the administrative law judge denied employer's motion to be dismissed as the responsible operator.

[3] Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012), provides, in pertinent part, that if a miner worked fifteen or more years in underground coal mine employment or comparable surface coal mine employment, and if the evidence establishes a totally disabling respiratory impairment, there is a rebuttable presumption that the miner is totally disabled due to pneumoconiosis.

presumption of total disability due to pneumoconiosis, thereby establishing a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309.[4] Considering the entire record, the administrative law judge determined that employer failed to rebut the Section 411(c)(4) presumption, and awarded benefits.

On appeal, employer challenges its designation as the responsible operator, asserting that liability should transfer to the Black Lung Disability Trust Fund (Trust Fund). Employer contends that the administrative law judge erred in finding a change in an applicable condition of entitlement established at 20 C.F.R. §725.309, based on a change in law, rather than a change in the miner's physical condition. Employer further maintains that the administrative law judge did not apply the appropriate legal standard on rebuttal, and that she erred in weighing the evidence relevant to the issues of pneumoconiosis and disability causation. Claimant[5] responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to reject employer's arguments and affirm the award of benefits. Employer has filed a reply brief in support of its position.[6]

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.[7] 33 U.S.C. §921(b)(3), as incorporated by 30

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[4] Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3).

[5] Claimant is the widow of the miner, who died on October 27, 2013, and is pursuing the miner's claim on his behalf. Hearing Transcript at 4, 18, 22.

[6] We affirm, as unchallenged on appeal, the administrative law judge's findings that the miner established more than fifteen years of qualifying coal mine employment and total respiratory disability pursuant to 20 C.F.R. §718.204(b). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner's coal mine employment was in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc); Director's Exhibit 5.

U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Initially, employer contends that the administrative law judge erred in finding it to be the properly designated responsible operator. Employer argues that it must be released from liability because the miner's first claim for benefits is still pending. Alternatively, employer maintains that it is not liable because Old Ralph Coal Company (Old Ralph) and its bankrupt insurer, Rockwood Insurance Company (Rockwood), through its reinsurer, the Virginia Property and Casualty Insurance Company (VPCIGA),[8] accepted liability as the responsible operator in the miner's third claim for benefits. Employer asserts that VPCIGA cannot rely on state law to limit its liability under federal law and, thus, liability must transfer to the Trust Fund. Employer's Brief 14-22; Reply Brief at 2-4.

The record reveals that, in the miner's 1993 claim, the district director identified Old Ralph, Mack Coal Company (Mack Coal or employer), and Betty B Coal Company (Betty B) as potentially liable operators. Director's Exhibit 2-89-92. In his Decision and Order issued on December 14, 1998, Administrative Law Judge Richard A. Morgan noted that Old Ralph and its insurance carrier, Rockwood, were insolvent, and that this claim against Rockwood's reinsurer, VPCIGA, was time barred, as it was filed after August 27, 1992.[9] Director's Exhibit 2-119. Finding that the miner worked for Mack Coal for a period of at least one year prior to his work at Old Ralph, Judge Morgan found that Mack Coal was the responsible operator, and dismissed Betty B. Director's Exhibits 2-115 at 13, 2-119.

In the miner's 2004 claim, the district director identified Old Ralph and Mack Coal as potentially liable operators. Director's Exhibit 3-15-16. Upon review of the evidence in the file, the district director dismissed Mack Coal and named Old Ralph as the designated responsible operator in his Proposed Decision and Order. Director's Exhibits 3-20, 3-28. Old Ralph and VPCIGA withdrew controversion to the responsible

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[8] Employer does not challenge the administrative law judge's determination that Old Ralph is no longer in business and that Rockwood is insolvent.

[9] Under Virginia law, claims against Rockwood Insurance Company were to be paid by a reinsurer, Virginia Property and Casualty Insurance Company (VPCIGA), but only those claims that were filed prior to August 27, 1992 could be covered by VPCIGA. Because the miner's claim for benefits was filed after August 27, 1992, VPCIGA notified the district director that it could not cover the claim. Director's Exhibit 2-27.

operator issue at the hearing and successfully defended the claim. 2005 Hearing Transcript at 6.

In the miner's current claim, filed in 2010, the district director identified Mack Coal and Betty B as potentially liable operators. While noting that the miner's employment with Old Ralph exceeded one year and occurred after employment with Mack Coal and Betty B, the district director determined that Old Ralph could not be a potentially liable operator, as Old Ralph and its insurer, Rockwood, were in liquidation and the date for filing a claim against them through VPCIGA had "expired" in 1992. Director's Exhibits 21, 22, 26. Thereafter, in the Proposed Decision and Order awarding benefits, the district director dismissed Betty B and formally designated employer as the proper responsible operator. Director's Exhibit 31.

In her October 23, 2014 Order Denying Employer's Motion for Dismissal as the responsible operator, the administrative law judge noted that the miner's most recent employment for over one year was with Old Ralph, but found that "Old Ralph is no longer in business, that its insurer, Rockwood, is insolvent, and that the VPCIGA can only pay claims filed before August 27, 1992." Order at 4. The administrative law judge stated:

> It is entirely unclear why the Director, in the face of clear evidence that Old Ralph did not meet the requirements for designation as a responsible operator, named Old Ralph in the 2004 claim, or why counsel for Old Ralph and Rockwood/VPCIGA not only defended the claim, but conceded the responsible operator issue. Nevertheless, the evidence in the file clearly establishes that Old Ralph is not properly designated as the responsible operator.

Order at 4. The administrative law judge concluded that Old Ralph did not meet the requirements to be designated as a responsible operator, and that Mack Coal presented no evidence to show that Old Ralph or its carrier, Rockwood, through its reinsurer, VPCIGA, is capable of assuming liability for benefits. Accordingly, the administrative law judge found that Mack Coal is the properly designated responsible operator, and denied its motion to dismiss.

Employer asserts that the miner's initial claim is still pending because the miner filed a request for modification with the Department of Labor (DOL) within thirty days after the district director's denial of his initial claim, informing DOL that he wished to

pursue his claim.[10] Citing *Consolidation Coal Co. v. Borda*, 171 F.3d 175, 21 BLR 2-545 (4th Cir. 1999), employer argues that DOL's failure to consider the miner's request in a timely manner requires that liability be transferred to the Trust Fund, as employer was deprived of a meaningful opportunity to defend itself. We disagree.

In his 1998 Decision and Order, Judge Morgan credited the miner's testimony[11] that "he did not wish to go on with his claim because he was not ready to quit work," and found that this statement, coupled with the fact that the miner continued to work until 1992, proved that the miner had no intention of going forward with his first claim. 1998 Decision and Order at 2. Unlike the claimant in *Borda*, who regularly inquired into the status of his claim, the miner in the present case never submitted additional evidence, never inquired about his 1970 claim, and continued to work as a coal miner until 1992.[12]

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[10] After the miner's first claim was denied by the district director on January 16, 1981, the miner filed a "statement of claimant," dated February 9, 1981, with the Department of Labor (DOL) on February 12, 1981, stating: "I wish to pursue my claim. Please grant me an extension so I can get my work record from social security. If there is any other evidence you need, please advise. Please schedule me for any tests I should take for my claim." Director's Exhibit 29.

[11] The miner testified in 1998 that it was not his handwriting on the statement, but that it was his signature. He stated that he did not wish to go on with his claim because he was not ready to quit work. 1998 Hearing Transcript at 33-34; Director's Exhibit 2-115.

[12] In *Consolidation Coal Co. v. Borda*, 171 F.3d 175, 21 BLR 2-545 (4th Cir. 1999), the United States Court of Appeals for the Fourth Circuit held that the employer's due process rights had been violated, due to DOL's failure to act on Borda's request for modification and its failure to notify the employer for sixteen years of the continued viability of the claim. The court concluded that the employer had been stripped of a full and fair opportunity to defend itself in the manner that the statutory scheme at that time contemplated. In finding that Borda's letter to DOL was a request for modification, the court noted that the request was timely submitted, it unambiguously expressed dissatisfaction with the claim examiner's prior findings, and it attached evidence, albeit evidence that had been sent on prior occasions, which contradicted the district director's factual findings. The court reasoned that Borda's questions regarding how a workers' compensation claim would affect black lung relief provided further evidence of Borda's "intent to persist in pursuing" his black lung claim, as only someone interested in pursuing a black lung claim would care about how a workers' compensation claim could

Furthermore, as the Director correctly notes, employer was notified of the miner's second claim, was identified as the responsible operator, had a meaningful opportunity to defend against the claim, and successfully defeated the 1993 claim. We, therefore, reject employer's arguments that the miner's initial claim is still pending, and that a transfer of liability is appropriate.

Employer next argues that Old Ralph's concession in the miner's third claim, that it was the properly designated responsible operator, should have been recognized as binding by DOL in the instant claim. Employer's Brief at 16. We disagree. The denial of benefits in the miner's 2004 claim does not result in a binding determination that Old Ralph would be held liable as the responsible operator in any subsequent claim. As the Director correctly notes, the doctrine of collateral estoppel[13] is not applicable because the determination of the responsible operator issue was not necessary to support the denial of benefits in the miner's 2004 claim. *See Arkansas Coals, Inc. v. Lawson*, 739 F.3d 309, 320-22, 25 BLR 2-521, 2-543-45 (6th Cir. 2014); *Nat'l Satellite Sports, Inc. v. Eliadis, Inc.*, 253 F.3d 900, 908 (6th Cir. 2001); *Sedlack v. Braswell Services Group, Inc.*, 134 F.3d 219, 224 (4th Cir. 1998); *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-137 (1999)(en banc). Furthermore, even if Old Ralph's concession at the 2004 hearing, that it was no longer contesting the issue of responsible operator, could be construed as a stipulation pursuant to 20 C.F.R. §725.309(c)(5),[14] the Director was not a party to the stipulation and would not be bound by it. As Old Ralph and Rockwood were not capable of assuming liability for the payment of benefits in the current claim, the district director

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affect black lung relief. *Consolidation Coal Co. v. Borda*, 171 F.3d 175, 181, 21 BLR 2-545, 2-556-57 (4th Cir. 1999).

[13] A party seeking to rely on the doctrine of collateral estoppel is obliged to establish five elements: (1) that the issue sought to be precluded is identical to one previously litigated; (2) that the issue was actually determined in the prior proceeding; (3) that the issue's determination was a critical and necessary part of the decision in the prior proceeding; (4) that the prior judgment is final and valid; and (5) that the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the previous forum. *Collins v. Pond Creek Mining Co.*, 468 F.3d 213, 217, 23 BLR 2-393, 2-401 (4th Cir. 2006), *citing Sedlack v. Braswell Servs. Group, Inc.*, 134 F.3d 219, 224 (4th Cir. 1998).

[14] Section 725.309(c)(5) provides, in pertinent part, that any stipulation made by a party in connection with a prior claim will be binding on that party in the adjudication of a subsequent claim. 20 C.F.R. §725.309(c)(5).

properly named employer as a potentially liable operator. *See* 20 C.F.R. §§725.490, 725.494, 725.495(a), (b).

Lastly, employer maintains that VPCIGA may not rely on state law to limit its liability under the Act, which requires insurers to assume full liability for black lung benefits. Employer's argument is without merit. As the Director points out, the Virginia courts have recognized that VPCIGA, a reinsurer, is not liable for benefits where a claimant files a claim after the final date set by a court for the filing of claims against an insolvent insurer. *See Uninsured Employer's Fund v. Mounts*, 484 S.E.2d 140 (Va. Ct. App. 1997), *aff'd*, 497 S.E.2d 464 (Va. 1998)(VPCIGA not liable for benefits because the claim was filed after VPCIGA's statutory deadline). We affirm, therefore, the administrative law judge's determination that employer is the properly designated responsible operator in the current claim.

We next address employer's contention that the administrative law judge erred in finding an applicable condition of entitlement established pursuant to 20 C.F.R. §725.309, based on a change in law, *i.e.*, upon invocation of the Section 411(c)(4) presumption, thus relieving claimant of the burden to affirmatively establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Employer's Brief at 22-23; Reply Brief at 6-7. Contrary to employer's contention, the miner's presumed total disability due to pneumoconiosis under Section 411(c)(4), based on invocation of the presumption, satisfies his initial burden to demonstrate a change in an applicable condition of entitlement at 20 C.F.R. §725.309. *See E. Associated Coal Corp. v. Director, OWCP* [*Toler*], 805 F.3d 502, 511-14, BLR (4th Cir. 2015) (holding that utilizing the Section 411(c)(4) presumption to show a change in an applicable condition of entitlement under 20 C.F.R. §725.309(c) does not contravene the Act or the implementing regulations); *see also Consolidation Coal Co. v. Director, OWCP* [*Bailey*], 721 F.3d 789, 794, 795, 25 BLR 2-285, 2-292 (7th Cir. 2013). Accordingly, as the administrative law judge found that the miner established more than fifteen years of qualifying coal mine employment, and there is no dispute that the miner had a totally disabling respiratory impairment, we affirm the administrative law judge's finding that the miner invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement at Section 725.309.

Turning to rebuttal of the Section 411(c)(4) presumption of total disability due to pneumoconiosis, employer must affirmatively establish that the miner does not have legal[15] and clinical[16] pneumoconiosis, or that "no part of [the miner's] respiratory or

[15] Legal pneumoconiosis refers to "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The

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); *see W. Va. CWP Fund v. Bender*, 782 F.3d 129, BLR (4th Cir. 2015); *Minich v. Keystone Coal Mining Corp*., 25 BLR 1-149 (2015)(Boggs, J., concurring and dissenting).

Employer argues that the implementing regulation at 20 C.F.R. §718.305 is invalid because it conflicts with the statute at 30 U.S.C. §921(c)(4). Employer asserts that the imposition of the "rule out" standard, coupled with reliance on the preamble to the revised regulations, precludes the possibility of rebuttal and violates 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 23-31. We disagree. The Board has held that the amended regulation at Section 718.305 is a rational means of assigning rebuttal burdens and that it is not inconsistent with the statutory language. *Minich*, 25 BLR at 1-155; *see also Bender*, 782 F.3d at 137. Furthermore, the administrative law judge permissibly consulted the preamble as a statement of medical science studies found credible by DOL when it revised the definition of pneumoconiosis to include obstructive impairments arising out of coal mine employment. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 25 BLR 2-255 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 25 BLR 2-115 (4th Cir. 2012); *J.O.* [*Obush*] *v. Helen Mining Co*., 24 BLR 1-117, 125-26 (2009), *aff'd sub nom. Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 24 BLR 2-369 (3d Cir. 2011). We, therefore, reject employer's arguments.

Employer next maintains that the administrative law judge failed to provide valid reasons for discounting the medical opinions of Drs. Rosenberg and Fino under the appropriate legal standard on rebuttal. Employer's Brief at 28-31. While the administrative law judge conflated her discussion of the issues of legal pneumoconiosis

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regulation also provides that "a disease 'arising out of coal mine employment' 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) (emphasis added).

[16] Clinical pneumoconiosis is defined as "those 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." 20 C.F.R. §718.201(a)(1).

and disability causation on rebuttal,[17] it is not necessary to remand this case for further consideration of the opinions of Drs. Rosenberg and Fino, as the administrative law judge's credibility determinations were not based on the application of an erroneous legal standard. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1985).

After finding that employer failed to disprove the existence of clinical pneumoconiosis,[18] Decision and Order at 23-24, the administrative law judge considered the medical opinion evidence relevant to rebuttal of the presumed fact of disability due to pneumoconiosis. The administrative law judge summarized the documentation and explanations for the opinions of Drs. Rosenberg and Fino, that the miner did not have pneumoconiosis and that his disabling chronic obstructive pulmonary disease (COPD) was caused by emphysema due to cigarette smoking. Decision and Order at 9-17; Director's Exhibit 18; Employer's Exhibits 1, 2. The administrative law judge found that Drs. Rosenberg and Fino failed to provide creditable bases for concluding that coal dust exposure did not contribute to, or aggravate, the miner's disabling obstructive impairment. Decision and Order at 28-29.

The administrative law judge determined that Dr. Rosenberg's opinion, that the miner's markedly reduced FEV_1/FVC ratio was not characteristic of coal dust-related obstruction, but was classic for smoking-related COPD, was inconsistent with the science credited by DOL in the preamble that coal mine dust exposure may cause disabling COPD with associated decrements in the FEV_1/FVC ratio.[19] Decision and Order at 25;

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[17] The administrative law judge should have first addressed whether employer disproved the existence of legal pneumoconiosis by establishing that the miner's chronic obstructive pulmonary disease (COPD) was not significantly related to, or substantially aggravated by, coal dust exposure. The administrative law judge should then have separately considered whether employer established that "no part of [the miner's] respiratory or pulmonary disability was caused by pneumoconiosis as defined at 20 C.F.R. §718.201." 20 C.F.R. §718.305; *see Minich v. Keystone Coal Mining Corp*., 25 BLR 1-149 (2015)(Boggs, J., concurring and dissenting).

[18] We affirm, as unchallenged on appeal, the administrative law judge's finding that employer failed to rebut the presumed fact of clinical pneumoconiosis at Section 411(c)(4). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[19] The DOL stated the following:

> In addition to the risk of simple [coal workers' pneumoconiosis] and [progressive massive fibrosis], epidemiological studies have shown that

Employer's Exhibit 2; *see* 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000); *Cochran*, 718 F.3d at 324, 25 BLR at 2-265. Additionally, while Dr. Rosenberg opined that the miner's significantly reduced diffusing capacity was indicative of a diffuse form of emphysema associated with smoking and not coal dust exposure, the administrative law judge found that the physician failed to adequately explain why the miner's emphysema was not aggravated by his 33-year history of coal dust exposure. Lastly, the administrative law judge determined that Dr. Rosenberg relied on the reversibility of the miner's pulmonary function studies after bronchodilation to rule out coal dust exposure as a cause of disability, but failed to explain why the fixed, disabling portion of the tests were unrelated to the miner's lengthy coal mine employment. For the foregoing reasons, the administrative law judge acted within her discretion in finding that Dr. Rosenberg's opinion was entitled to diminished weight. Decision and Order at 25-26, 28; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(en banc); *see also Looney*, 678 F.3d at 316, 25 BLR at 2-132.

In evaluating Dr. Fino's opinion, the administrative law judge determined that the physician considered the reduction in the miner's FEV_1/FVC ratio to be an important factor in attributing the miner's disabling impairment to smoking, along with the fact that the miner developed his obstruction after leaving the mines. The administrative law judge noted, however, that pneumoconiosis is recognized as a latent and progressive disease which may first become detectable after coal mine employment ceases. Decision and Order at 27; *see* 20 C.F.R. §718.201(c). Further, Dr. Fino speculated that the reversibility in the miner's obstructive impairment "went away after 1994 because all of the reversible lung disease due to smoking turned into permanent fixed obstruction and emphysema." Decision and Order at 27; Employer's Exhibit 1. The administrative law judge properly found that Dr. Fino offered no support for this claim and failed to explain why the fixed, disabling portion of the miner's pulmonary function could not be related to the miner's coal dust exposure. *Id.* As the variability of the miner's respiratory impairment does not preclude the existence of a coal mine dust-related impairment, the

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> *coal miners have an increased risk of developing [Chronic Obstructive Pulmonary Disease (COPD)]. COPD may be detected from decrements in certain measures of lung function, especially FEV_1 and the ratio of FEV_1/FVC.* Decrements in lung function *associated with exposure to coal mine dust are severe enough to be disabling in some miners,* whether or not pneumoconiosis is also present.

65 Fed. Reg. 79,930, 79,943 (Dec. 20 , 2000) (emphasis added).

administrative law judge permissibly accorded little weight to Dr. Fino's opinion on this basis. Decision and Order at 27; *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); *Consolidation Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004).

As the administrative law judge provided multiple valid reasons for discounting the medical opinions of Drs. Rosenberg and Fino, and substantial evidence supports her credibility determinations, we affirm the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption of total disability due to pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i)(A), (B), (ii). We, therefore, affirm the administrative law judge's award of benefits.

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

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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RYAN GILLIGAN
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge