U.S. Department of Labor

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

BRB No. 16-0335 BLA

RAY SHELL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SCOTT'S BRANCH COAL COMPANY	)	DATE ISSUED: 04/24/2017
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe Williams & Reynolds), Norton, Virginia, for claimant.

Paul E. Jones (Jones, Walters, Turner & Shelton PLLC), Pikeville, Kentucky, for employer.

Rita Roppolo (Nicholas C. Geale, Acting Solicitor of Labor; Maia Fisher, 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, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2012-BLA-05448) of Administrative Law Judge Larry W. Price, rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent miner's claim filed on August 22, 2010.[1]

Applying Section 411(c)(4), 30 U.S.C. §921(c)(4),[2] the administrative law judge credited claimant with twenty-eight years of underground coal mine employment, as stipulated by the parties, and found that the evidence established that claimant has a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Therefore, the administrative law judge found that claimant demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309, and invoked the rebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(4). The administrative law judge further determined that employer failed to rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding that the claim was timely filed. Employer also argues that the administrative law judge erred in identifying it as the responsible operator. Further, employer asserts that the administrative law judge erred in finding that the evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2), and therefore erred in finding that claimant invoked the Section 411(c)(4) presumption. Employer also asserts that the administrative law judge erred in finding that it did not rebut the presumption. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds in support of the administrative law judge's identification of employer as the responsible operator.

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,

[1] This is claimant's fourth claim. His most recent prior claim, filed on June 6, 2003, was finally denied on April 7, 2004 because the evidence did not establish any element of entitlement. Director's Exhibit 3.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where the miner worked at least fifteen years in underground coal mine employment, or in surface mine employment in conditions substantially similar to those in an underground mine, and where a totally disabling respiratory impairment is established. 30 U.S.C. §921(c)(4).

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).

I. TIMELINESS

Section 422(f) of the Act, 30 U.S.C. §932(f), and its implementing regulation at 20 C.F.R. §725.308(a), provide that a claim for benefits must be filed within three years of a medical determination of total disability due to pneumoconiosis that has been communicated to the miner. The regulation at 20 C.F.R. §725.308(c) provides a rebuttable presumption that every claim for benefits filed under the Act is timely filed. 20 C.F.R. §725.308(c). The "burden falls on the employer to prove that the claim was filed outside the limitations period." *Peabody Coal Co. v. Director, OWCP* [*Brigance*], 718 F.3d 590, 595-96, 25 BLR 2-273, 2-283 (6th Cir. 2013). The question of whether the evidence is sufficient to establish rebuttal of the presumption of timeliness involves factual findings that are appropriately made by the administrative law judge. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-152 (1989) (en banc).

Employer asserts that because claimant testified at the September 9, 2015 hearing that he had been informed of the existence of a totally disabling respiratory impairment due to pneumoconiosis "seven or eight years ago," his claim, filed on August 22, 2010, is untimely. Employer's Brief at 12, *quoting* Hearing Tr. at 17. We disagree. The administrative law judge specifically considered claimant's testimony and correctly found that because the hearing was held on September 9, 2015, the seven or eight years before the hearing to which claimant referred would be September 9, 2007, or September 9, 2008. *See Clark*, 12 BLR at 1-152; Decision and Order at 10. Because the administrative law judge properly found that either of those dates would be within three years of the August 22, 2010 filing date of the instant claim, the administrative law judge's finding that the instant claim was timely filed is affirmed. *See* 20 C.F.R. §725.308.

II. RESPONSIBLE OPERATOR

We next address employer's challenge to the administrative law judge's responsible operator determination. The responsible operator is the "potentially liable operator, as determined in accordance with [20 C.F.R.] §725.494, that most recently

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

employed the miner."[4] 20 C.F.R. §725.495(a)(1). Once a potentially liable operator has been properly identified by the Director, that operator may be relieved of liability only if it proves either that it is financially incapable of assuming liability for benefits, or that it is not the potentially liable operator that most recently employed the miner. *See* 20 C.F.R. §725.495(c)(1), (2). Such proof must include evidence that the miner was employed as a miner after he stopped working for the designated responsible operator. 20 C.F.R. §725.495(c)(2).

The administrative law judge reviewed the evidence, claimant's testimony, and the arguments of the parties and determined that employer is the properly designated responsible operator. Decision and Order at 10-12. The administrative law judge found that claimant was more recently employed as a security guard at mining properties by two companies: Bull Creek Coal Corporation (Bull Creek) and Pinkerton, Incorporated (Pinkerton). Decision and Order at 11; Hearing Tr. at 22-23, 25. The administrative law judge further found that claimant's work as a security guard for Bull Creek and Pinkerton did not constitute the work of a miner.[5] Decision and Order at 12. Thus, the administrative law judge found that employer failed to meet its burden to prove that it is not the potentially liable operator that most recently employed claimant as a miner. *Id*.

Employer contends that claimant's work as a security guard and night watchman with Bull Creek and Pinkerton was the work of a miner because, by preventing theft and damage to the coal mining properties, claimant's work was integral to the extraction and preparation of coal. Employer's Brief at 10-11. Employer also asserts that the administrative law judge's acceptance of the parties' stipulation to the twenty-eight years of coal mine employment found by the district director, which included 1.04 years with Bull Creek, supports the conclusion that claimant's employment with Bull Creek was

[4] In order for a coal mine operator to meet the regulatory definition of a "potentially liable operator," the miner's disability or death must have arisen out of employment with the operator, the operator must have been in business after June 30, 1973, the operator must have employed the miner for a cumulative period of not less than one year, the employment must have included at least one working day after December 31, 1969, and the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

[5] Throughout the record, the terms "security guard" and "night watchman" are used interchangeably to describe claimant's employment with Bull Creek Coal Corporation and Pinkerton, Incorporated. Director's Exhibits 3, 33 at 6, 8, 10; Hearing Tr. at 22-23, 25.

covered coal mine employment. *Id*. at 10. Employer asserts that it therefore should be dismissed as the responsible operator and liability should be transferred to the Black Lung Disability Trust Fund. *Id.* at 11. We disagree.

Under the Act, 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." 30 U.S.C. §902(d); *see* 20 C.F.R. §§725.101(a)(19), 725.202(a). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has adopted a situs-function test in determining whether an individual is a "miner" under the Act. *Director, OWCP v. Consolidation Coal Co.*, [*Petracca*], 884 F.2d 926, 931, 13 BLR 2-38, 2-41-42 (6th Cir. 1989). The situs portion of the test requires that a person's work occur in or around a coal mine or coal preparation facility. *Id*. An individual meets the function requirement if his or her work was necessary and integral to the extraction or preparation of coal. *Id*. The Sixth Circuit has also held that "[t]hose whose tasks are merely convenient but not vital or essential to production and/or extraction are generally not classified as 'miners.'"[6] *Falcon Coal Co. v. Clemons*, 873 F.2d 916, 922, 12 BLR 2-271, 2-278 (6th Cir. 1989). There is no dispute that claimant's work as a security guard and night watchman occurred in and around coal mine facilities, and thus satisfies the situs requirement. The issue in this case is whether that work also satisfies the function requirement.

The administrative law judge rationally concluded that claimant's work as a security guard and night watchman did not satisfy the function requirement and thus did not meet the regulatory definition of a miner. The administrative law judge noted that claimant described his duties as a security guard and night watchman for Bull Creek as patrolling the property to prevent theft or vandalism. Decision and Order at 11; Hearing Tr. at 25-26; Director's Exhibit 3. Claimant indicated that he did not perform other job duties, the mine was not in operation when he was on duty, and he did not enter the mine or the preparation plant. Decision and Order at 11; Director's Exhibit 3. Further, the

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[6] Specifically, the court noted that:

> In general, those individuals who handle raw coal or who perform tasks necessary to keep the mine operational and in repair are generally classified as "miners." Those whose tasks are merely convenient but not vital or essential to production and/or extraction are generally not classified as "miners."

Falcon Coal Co. v. Clemons, 873 F.2d 916, 922-23, 12 BLR 2-271, 2-279 (6th Cir. 1989).

administrative law judge noted that claimant described performing similar duties as a security guard and night watchman for Pinkerton, such as making sure no unauthorized persons entered the various coal mine properties he was assigned to patrol. Decision and Order at 11; Hearing Tr. at 22-23. Claimant also testified that the mines he patrolled for Pinkerton were closed down, except for one that was engaged in "buying coal." Hearing Tr. at 23.

The administrative law judge considered these duties in light of the Sixth Circuit's holding in *Clemons* that the duties of a night watchman did not constitute coal mine work because the work was not sufficiently integral to the extraction or preparation of coal.[7] Decision and Order at 12. The administrative law judge acknowledged that, in contrast, in an unpublished decision, *Sammons v. EAS Coal Co.*, 980 F.2d 731 (Table), 1992 WL 348976 (6th Cir. Nov. 24, 1992), the Sixth Circuit held that a security guard could be considered a miner where his work also involved operational, safety, and repair duties.[8] Contrary to employer's arguments, the administrative law judge permissibly found that claimant's testimony and employment history indicate that his duties for Bull Creek and Pinkerton constituted more traditional security work, similar to that of the night watchman in *Clemons*, without any additional duties integral to the extraction or preparation of coal. *See Price v. Peabody Coal Co.*, 7 BLR 1-671 (1985) (the issue of whether a worker is a miner is a factual finding to be made by the administrative law judge); Decision and Order at 12. We affirm, as supported by substantial evidence, the administrative law judge's finding that claimant's work for Bull Creek and Pinkerton did

[7] In *Clemons*, the court held that while the claimant's duties as a security guard and night watchman may have been convenient or helpful to Falcon Coal Company's (Falcon) operation, they were not necessary to procure coal. *Clemons*, 873 F.2d at 923, 12 BLR at 2-281. The court explained that Falcon could have installed alarms or other security devices instead of hiring a security guard, because the type of security system used does not affect the extraction methods at the mine. *Id.*

[8] In *Sammons*, the claimant's job title was "night watchman," but the Sixth Circuit concluded that his actual job duties included work as a miner, stating:

> [The] undisputed evidence also shows that [Sammons] worked part of each shift as a fire boss, checking the mine for safety and repairing and replacing pipes and pumps. Such work is vital and essential to the production and extraction of coal, as it keeps the mine operational, safe, and in repair.

Sammons v. EAS Coal Co., 980 F.2d 731 (Table), 1992 WL 348976 at *2 (6th Cir. Nov. 24, 1992).

not satisfy the function requirement to establish that he was a "miner" for either company. *See* 20 C.F.R. §725.202(a); *Petracca*, 884 F.2d at 931, 13 BLR at 2-41-42; Decision and Order at 12.

We also reject employer's alternative argument that because the district director's calculation of twenty-eight years of coal mine employment included 1.04 years with Bull Creek, the administrative law judge and the parties tacitly accepted that claimant's work for Bull Creek was covered coal mine employment by accepting the district director's calculation of twenty-eight years. Employer's Brief at 10. As the Director correctly asserts, the fact that the district director mistakenly included claimant's work at Bull Creek in his total calculations is of no consequence, as the initial findings of the district director are not binding on the Director. *See Pavesi v. Director, Office of Workers' Compensation Programs*, 758 F.2d 956, 960-61, 7 BLR 2-184, 2-190 (3d Cir. 1985); Director's Brief at 3. Further, neither the Director nor the administrative law judge agreed that claimant was more recently employed as a miner for Bull Creek. Director's Brief at 3. Rather, at the hearing, the administrative law judge specifically acknowledged that whether employer was properly identified as the responsible operator was still at issue. Hearing Tr. at 5. Thus, while the administrative law judge may have erred in finding that claimant established twenty-eight years of coal mine employment, including 1.04 years with Bull Creek, he did not err in adjudicating the responsible operator issue.[9] Consequently, we affirm the administrative law judge's finding that employer is the properly designated responsible operator.

III. INVOCATION OF THE SECTION 411(c)(4) PRESUMPTION

Employer argues that the administrative law judge erred in finding that the pulmonary function studies and medical opinions establish the existence of a totally disabling respiratory impairment, and therefore erred in finding that claimant invoked the Section 411(c)(4) presumption. We disagree.

The administrative law judge initially considered the results of four new pulmonary function studies conducted on April 12, 2011, July 22, 2011, June 12, 2015,

[9] We note that, to the extent the administrative law judge erred in accepting the parties' stipulation to twenty-eight years of coal mine employment because this number includes 1.04 years when claimant was not employed as a miner, this error is harmless, as claimant nonetheless has sufficient qualifying coal mine employment to invoke the Section 411(c)(4) presumption. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1278 (1984).

and October 29, 2015.[10] Director's Exhibits 14, 15; Claimant's Exhibit 1; Employer's Exhibit 3. Contrary to employer's argument that "the pulmonary function studies with the exception of the FEV1 value, are above the Federal Criteria for Disability," the administrative law judge properly found that all four pulmonary function studies produced qualifying results.[11] Employer's Brief at 12; *see* 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 15. The administrative law judge also considered Dr. Vuskovich's opinion that the April 12, 2011 study demonstrated asthma but no clinically significant emphysema, and that the June 12, 2015 study is invalid. Decision and Order at 15. The administrative law judge permissibly found that, even if he discounted these two studies entirely, the pulmonary function study evidence still supports a finding of total disability, as the remaining studies are qualifying. *See* 20 C.F.R. §718.204(b)(2)(i); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); Decision and Order at 15. We affirm that finding, as supported by substantial evidence. *See Martin v. Ligon Preparation Co*., 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005).

Additionally, the administrative law judge determined that claimant met his burden to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), as all of the physicians agree that claimant is totally disabled from a pulmonary standpoint. Decision and Order at 16. Employer asserts that the administrative law judge erred, stating only that "the medical opinion evidence clearly does not establish a totally disabling pulmonary or respiratory impairment." Employer's Brief at 13.

Employer alleges no specific error in regard to the administrative law judge's determination that the medical opinion evidence establishes that claimant has a totally disabling respiratory or pulmonary impairment. *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). The Board is not empowered to engage in a *de novo* proceeding or unrestricted review of

[10] The administrative law judge properly resolved the height discrepancy recorded on the pulmonary function studies, finding that claimant's height, for the purpose of the studies, was seventy-two inches. *See Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 15.

[11] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i). All of the pulmonary function studies produced qualifying FEV1 values and a FEV1/FVC ratio of less than fifty-five percent. *See* 20 C.F.R. §718.204(b)(2)(i); Director's Exhibits 14, 15; Claimant's Exhibit 1; Employer's Exhibit 3.

a case brought before it, and must limit its review to contentions of error that are specifically raised by the parties. *See* 20 C.F.R. §§802.211, 802.301. Consequently, we affirm the administrative law judge's finding that the medical opinion evidence establishes a totally disabling respiratory impairment.[12]

We further affirm the administrative law judge's permissible finding that, notwithstanding the negative blood gas study evidence,[13] the weight of the pulmonary function study and medical opinion evidence establishes total disability and, therefore, claimant established a change in an applicable condition of entitlement. 20 C.F.R. §§718.204(b)(2)(i)-(iv), 725.309(c); *see Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41, 17 BLR 2-16, 2-22 (6th Cir. 1993); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 198 (1986), *aff'd on recon*. 9 BLR 1-236 (1987) (en banc); Decision and Order at 15-16; Employer's Brief at 12.

In light of our affirmance of the administrative law judge's findings that claimant established at least fifteen years of qualifying coal mine employment, and the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2), we affirm the administrative law judge's finding that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4). 30 U.S.C. §921(c)(4).

IV. REBUTTAL OF THE SECTION 411(c)(4) PRESUMPTION

Because claimant invoked the Section 411(c)(4) presumption, the burden shifted to employer to rebut the presumption by establishing that claimant has neither legal nor clinical pneumoconiosis,[14] 20 C.F.R. §718.305(d)(1)(i), or by establishing that "no part of

[12] Further, substantial evidence supports the administrative law judge's finding that all of the new medical opinions diagnosed total disability. Director's Exhibits 14, 15; Claimant's Exhibit 1; Employer's Exhibits 1, 3.

[13] The administrative law judge properly found that, because all of the new blood gas studies of record produced non-qualifying results, claimant could not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 15-16.

[14] "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). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the

the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in §718.201." 20 C.F.R. §718.305(d)(1)(ii). The administrative law judge found that employer failed to establish rebuttal by either method.

Employer contends that the administrative law judge erred in finding that employer failed to disprove the existence of legal pneumoconiosis. We disagree. The administrative law judge considered the medical opinions of Drs. Dahhan and Jarboe. Decision and Order at 18-20; Director's Exhibit 15; Employer's Exhibits 1, 3. Dr. Dahhan opined that claimant does not suffer from pneumoconiosis, but suffers from a severe obstructive ventilatory impairment that is due entirely to smoking. Director's Exhibit 15 at 2-3. Dr. Jarboe similarly opined that claimant's chronic bronchitis, severe obstructive airways disease, pulmonary emphysema, and reactive airways disease are due to smoking and are not due to coal mine dust exposure. Employer's Exhibit 3 at 7-13. The administrative law judge discredited their opinions as poorly reasoned and inadequately explained and, therefore, found that they did not rebut the presumption of legal pneumoconiosis. Decision and Order at 18-20.

The administrative law judge permissibly discredited Dr. Dahhan's opinion because he did not adequately explain how he eliminated claimant's coal mine dust exposure as a source of his impairment. *See Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); Decision and Order at 19. Given that the preamble to the revised regulations acknowledges the prevailing view of the medical community that the risks of smoking and coal mine dust exposure are additive, Dr. Dahhan did not adequately explain why claimant's significant history of coal mine dust exposure was not a contributing or exacerbating factor, along with cigarette smoking, to his pulmonary impairment. *See* 20 C.F.R. §718.201(a)(2), (b); *Barrett*, 478 F.3d at 356, 23 BLR at 2-483 (administrative law judge rejected physician's opinion where physician failed to adequately explain why coal dust exposure did not exacerbate claimant's smoking-related impairments); Decision and Order at 19.

The administrative law judge next considered Dr. Jarboe's opinion that he could exclude coal mine dust as a cause of claimant's chronic bronchitis because it had been more than thirty years since claimant's coal mine dust exposure had ended. Decision and Order at 19-20; Employer's Exhibit 3 at 12. The administrative law judge permissibly found that this reasoning is inconsistent with the regulations, which recognize that pneumoconiosis is a latent and progressive disease that "may first become detectable only

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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).

after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151, 11 BLR 2-1, 2-9 (1987); *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 739, 25 BLR 2-675, 2-685-86 (6th Cir. 2014); Decision and Order 20.

Moreover, as noted by the administrative law judge, Dr. Jarboe relied upon a study indicating that miners have shown very minor elevations of residual volume as a basis to conclude that claimant's elevated residual volume is inconsistent with an obstructive impairment caused by coal mine dust inhalation. Decision and Order at 19; Employer's Exhibit 3 at 9. The administrative law judge permissibly discredited Dr. Jarboe's opinion because he did "not explain why this statistic would exclude coal dust as a contributor to [c]laimant's elevated residual volume." Decision and Order at 19; *see A & E Coal Co. v. Adams*, 694 F.3d 798, 802-03, 25 BLR 2-203, 2-210-12 (6th Cir. 2012); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985).

Employer also asserts that the administrative law judge selectively considered Dr. Jarboe's opinion. Employer's Brief at 14. Contrary to employer's contention, the administrative law judge recognized that Dr. Jarboe provided multiple reasons in support of his conclusion that coal mine dust exposure did not contribute to claimant's obstructive impairment. Decision and Order at 7-8, 19-20. The administrative law judge permissibly discounted Dr. Jarboe's opinion, however, for the reasons discussed *supra*. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-451 (6th Cir. 2013); *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-83 n.4 (1983).

As the trier-of-fact, the administrative law judge has discretion to assess the credibility of the medical opinions, based on the explanations given by the experts for their diagnoses, and to assign those opinions appropriate weight. *Ogle*, 737 F.3d at 1072-73, 25 BLR at 2-446-47; *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-512 (6th Cir. 2002). The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988). Because the administrative law judge has provided sufficient bases for finding that the only opinions supportive of employer's burden are not credible, we affirm his finding that employer did not establish rebuttal at 20 C.F.R. §718.305(d)(1)(i). We therefore affirm the administrative law judge's finding that employer failed to rebut

the Section 411(c)(4) presumption by establishing that claimant does not have pneumoconiosis.[15] *See* 20 C.F.R. §718.305(d)(1)(i).

The administrative law judge next considered whether employer could establish rebuttal by showing that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 20-22. The administrative law judge rationally discounted the opinions of Drs. Dahhan and Jarboe that claimant's totally disabling respiratory impairment was not caused by pneumoconiosis because neither physician diagnosed legal pneumoconiosis, contrary to the administrative law judge's finding that employer failed to disprove the presence of the disease. *See Ogle*, 737 F.3d at 1074, 25 BLR at 2-452; *see also Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995); Decision and Order at 21. We therefore affirm the administrative law judge's determination that employer did not rebut the Section 411(c)(4) presumption that claimant is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(4) (2012).

[15] Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i). Therefore, we need not address employer's contentions of error regarding the administrative law judge's finding that employer also failed to disprove clinical pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge