U.S. Department of Labor

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

BRB No. 17-0351 BLA

RALPH W. ROSS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CONSOLIDATION COAL COMPANY/ CONSOL ENERGY INCORPORATED, c/o WELLS FARGO DISABILITY MANAGEMENT	)	DATE ISSUED: 04/27/2018
	)	
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 on Remand Awarding Benefits of Stephen R. Henley, Administrative Law Judge, United States Department of Labor.

Joseph E. Allman (Allman Law LLC), Indianapolis, Indiana, for claimant.

Cheryl L. Intravaia (Feirich/Mager/Green/Ryan), Carbondale, Illinois, for employer.

Sarah M. Hurley (Kate S. O'Scannlain, Solicitor of Labor; Maia S. 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, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order on Remand Awarding Benefits (2013-BLA-05145) of Administrative Law Judge Stephen R. Henley, 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 is before the Board for the second time.

Initially, the administrative law judge credited claimant with at least fifteen years of coal mine employment,[1] either in underground mines or in conditions substantially similar to those in an underground mine. The administrative law judge found that the medical evidence did not establish that claimant has a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Specifically, the administrative law judge found that although claimant's qualifying[2] exercise blood gas studies supported a finding of total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(ii), the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv) indicated that claimant's blood gas study results show that claimant has hypoxemia due to a cardiac defect. The administrative law judge therefore found that the evidence, when weighed together,[3] did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2). Because claimant did not establish total disability, the administrative law judge determined that he did not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[4] The administrative law judge also found that claimant did not

[1] Claimant's last coal mine employment was in Illinois. Director's Exhibit 4. Accordingly, the Board will apply the law of the United States Court of Appeals for the Seventh Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[2] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B and C. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[3] The relevant evidence included pulmonary function study evidence under 20 C.F.R. §718.204(b)(2)(i), which the administrative law judge found did not establish total disability.

[4] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption that he is totally disabled due to pneumoconiosis if he establishes at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially

establish complicated pneumoconiosis under 20 C.F.R. §718.304 and, therefore, could not invoke the irrebuttable presumption of death due to pneumoconiosis under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). Accordingly, the administrative law judge denied benefits.

Claimant appealed, challenging the finding that he failed to establish total disability at 20 C.F.R. §718.204(b)(2).[5] Employer responded in support of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), responded that the administrative law judge erred by combining the issues of total disability and disability causation, and otherwise erred in his analysis of the medical opinion evidence regarding total disability.

In considering claimant's appeal, the Board first denied employer's Motion to Strike the Director's response brief. *Ross v. Consolidation Coal Co.*, BRB No. 15-0007 BLA, slip op. at 3 (Oct. 20, 2015) (unpub.). Turning to the merits, the Board held that the administrative law judge erred in combining his analysis of the issue of total disability with his analysis of the issue of disability causation. The Board noted that "the cause of claimant's disabling hypoxemia, manifested by his qualifying post-exercise blood gas study results, is properly addressed at 20 C.F.R. §718.204(c), or in consideration of whether the . . . Section 411(c)(4) presumption has been rebutted . . . ." *Ross*, BRB No. 15-0007 BLA, slip op. at 7. Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the Board further held that substantial evidence did not support the administrative law judge's reasons for discrediting Dr. Tazbaz's medical opinion that claimant is totally disabled. *Id*. In addition, the Board held that the administrative law judge did not adequately explain the basis for his determination that the contrary opinions of Drs. Selby and Tuteur were better supported by the totality of the medical evidence. *Id*.

Accordingly, the Board vacated the administrative law judge's findings that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), and that the totality of the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2), and remanded the case for further consideration of

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similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305.

[5] Because claimant did not challenge the finding that he failed to establish the existence of complicated pneumoconiosis at 20 C.F.R. §718.304, the Board affirmed that finding. *Ross v. Consolidation Coal Co.*, BRB No. 15-0007 BLA, slip op. at 3 n.3 (Oct. 20, 2015) (unpub.). The Board also affirmed the administrative law judge's unchallenged finding of at least fifteen years of qualifying coal mine employment. *Id*.

the relevant evidence. *Ross*, BRB No. 15-0007 BLA, slip op. at 8. Therefore, the Board also vacated the administrative law judge's finding that claimant failed to invoke the Section 411(c)(4) presumption. *Id*. Employer moved for reconsideration,[6] which the Board summarily denied. *Ross v. Consolidation Coal Co.*, BRB No. 15-0007 BLA (Feb. 10, 2016) (Order) (unpub.).

On remand, at the parties' request the administrative law judge admitted supplemental medical reports from Drs. Tazbaz, Selby, and Tuteur into the record. In a Decision and Order on Remand issued on March 7, 2017, the administrative law judge found that the medical opinion evidence established total disability at 20 C.F.R. §718.204(b)(2)(iv) and, that all the evidence, when weighed together, established total disability at 20 C.F.R. §718.204(b)(2). Therefore, the administrative law judge determined that claimant invoked the Section 411(c)(4) presumption. The administrative law judge further found that employer did not rebut the presumption, and awarded benefits accordingly.

On appeal, employer renews its argument that the Board exceeded its scope of review when it accepted the Director's arguments and vacated the administrative law judge's initial Decision and Order denying benefits. Employer contends that the Board directed the administrative law judge on remand to find that claimant is totally disabled, thereby depriving employer of its due process rights. Employer argues further that the administrative law judge erred in weighing the medical opinion evidence on the issue of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv) and, therefore, erred in finding that claimant invoked the Section 411(c)(4) presumption. Additionally, employer argues that the administrative law judge erred in finding that it failed to rebut the presumption. Claimant responds, urging affirmance of the award of benefits. The Director has filed a limited response, asserting that the Board did not exceed the scope of its authority when it vacated the administrative law judge's initial Decision and Order, and urging the Board to reject employer's argument that invocation of the Section 411(c)(4) presumption does not

[6] Employer argued that the Board exceeded the scope of its review by engaging in a de novo review of the case and making its own findings of fact. Motion for Reconsideration at 14-17. Employer also argued that the Board erred in denying its motion to strike the Director's brief, which, employer contended, improperly addressed the administrative law judge's credibility determinations regarding the medical evidence. *Id*. Additionally, employer argued that the Board improperly adopted the position taken by the Director with respect to the administrative law judge's credibility determinations. *Id*. Employer maintained that, in vacating the denial of benefits and remanding the case for further consideration, the Board usurped the administrative law judge's fact-finding authority. *Id*.

give rise to a presumption of legal pneumoconiosis. Employer has filed reply briefs to the responses of both claimant and the Director, reiterating its position on appeal.[7]

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. 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. THE BOARD'S PRIOR DECISION

We decline to consider employer's argument that the Board exceeded its scope of review by vacating the administrative law judge's initial Decision and Order. Employer's Brief at 14-25. As noted *supra*, employer raised this argument in its Motion for Reconsideration, which the Board denied. Because employer has not shown that the Board's decision was clearly erroneous, or set forth any other valid exception to the law of the case doctrine, we decline to disturb the Board's prior disposition. *See Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-150-151 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984).

Further, we reject employer's argument that the Board directed the administrative law judge to make particular factual findings on remand regarding total disability. Employer argues that the Board instructed the administrative law judge to find that Dr. Tazbaz's opinion was well-reasoned and documented and to discredit the opinions of Drs. Selby and Tuteur. Employer's Brief at 16-18. Contrary to employer's argument, after vacating the administrative law judge's finding that claimant did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), the Board instructed the administrative law judge to reconsider the relevant evidence. *Ross*, BRB No. 15-0007 BLA, slip op. at 7-8. On remand, additional medical opinion evidence was submitted, and the administrative law judge independently evaluated the evidence regarding total disability. Decision and Order on Remand at 7-9.

We also reject employer's argument that its due process rights were violated. Due process requires that a party be allowed to exercise its rights at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Roberts & Schaefer Co. v. Director, OWCP* [*Williams*], 400 F.3d 992, 997, 23 BLR 2-302, 2-315 (7th Cir. 2005). On remand, the administrative law judge permitted employer the opportunity to

[7] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established total disability based on the blood gas study evidence pursuant to 20 C.F.R. §718.204(b)(2)(ii). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Remand at 3.

submit supplemental reports from Drs. Selby and Tuteur, and to file a brief advocating its position. Because employer was provided a meaningful opportunity to be heard, its due process rights were not violated.

II. INVOCATION OF THE SECTION 411(c)(4) PRESUMPTION – TOTAL DISABILITY

On remand, pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the medical opinions of Drs. Tazbaz, Selby, and Tuteur. The administrative law judge credited Dr. Tazbaz's opinion that claimant is totally disabled by a respiratory or pulmonary impairment, finding the doctor's opinion to be well-reasoned and documented. Decision and Order on Remand at 7-8. The administrative law judge found Dr. Selby's opinion that claimant is not totally disabled to be unpersuasive, because Dr. Selby did not address claimant's qualifying exercise blood gas studies or explain why claimant could perform the duties of his usual coal mine employment. *Id*. at 8. The administrative law judge found that Dr. Tuteur diagnosed claimant with a totally disabling respiratory or pulmonary impairment and, therefore, found that Dr. Tuteur's opinion supports a finding of total disability. *Id*. at 7-8.

Employer argues that the administrative law judge erred in evaluating the opinions of Drs. Tazbaz, Selby, and Tuteur. Employer's Brief at 16-24. Employer's arguments lack merit.

Contrary to employer's contention, the administrative law judge permissibly found that Dr. Tazbaz's opinion set forth a documented and reasoned diagnosis of total disability. *See Stalcup v. Peabody Coal Co.*, 477 F.3d 482, 484, 24 BLR 2-33, 2-37 (7th Cir. 2007). Dr. Tazbaz opined that claimant's exercise blood gas testing evidenced hypoxemia. Director's Exhibit 10; Claimant's Exhibit 6. He identified the duties of claimant's most recent coal mine employment as a plant mechanic and maintenance worker,[8] and concluded that, based on the hypoxemia, claimant has a "severe [respiratory or pulmonary] impairment with desaturation on exercise test," and that he is therefore unable to perform his most recent coal mine employment. Director's Exhibit 10 at 7. Dr. Tazbaz further opined that claimant needs home oxygen therapy. *Id*. at 4, 21. Contrary to employer's argument, the administrative law judge permissibly found that Dr. Tazbaz's opinion is well-reasoned, as Dr. Tazbaz explained "that [c]laimant suffers from a severe impairment with desaturation on exercise [blood gas testing]" and that the opinion is well-documented because it is "supported by the underlying objective tests and various work . . . and medical

[8] The administrative law judge previously found that claimant's most recent coal mine employment was as a plant mechanic. September 8, 2014 Decision and Order at 15.

histories." Decision and Order on Remand at 7; *see Stalcup*, 477 F.3d at 484, 24 BLR at 2-37; *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 895, 13 BLR 2-348, 2-355-56 (7th Cir. 1990).

Further, substantial evidence supports the administrative law judge's analysis of Dr. Selby's opinion. Dr. Selby acknowledged that claimant's exercise blood gas studies evidenced a drop in pO2 values and, therefore, reflected that claimant suffers from hypoxemia. Employer's Exhibit 5 at 55. However, Dr. Selby opined that this impairment is due to a cardiac problem, based on claimant's normal diffusion capacity. Employer's Exhibit 5 at 55. In his supplemental report, Dr. Selby opined that objective testing verified the presence of a cardiac shunt,[9] which caused the lowering of claimant's pO2 values on blood gas testing, and claimant's shortness of breath and oxygen desaturation. Employer's Exhibit 18 at 1-2. Dr. Selby therefore concluded that claimant is not totally disabled by a respiratory or pulmonary impairment. *Id*. at 3.

As the administrative law judge recognized, claimant has established total disability through qualifying exercise blood gas study evidence at 20 C.F.R. §718.204(b)(2)(ii). Decision and Order on Remand at 8. Because Dr. Selby focused on the cause of the impairment evidenced by the blood gas testing, the administrative law judge permissibly found that Dr. Selby's opinion on total disability was not well-reasoned, as Dr. Selby "does not discuss the significance of the [qualifying] exercise blood gas studies" or discuss whether claimant is able to perform his usual coal mine employment despite those blood gas study results. *Id*. at 8; *see* 20 C.F.R. §718.204(a)(providing that "[i]f . . . a nonpulmonary . . . condition or disease causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered in determining whether the miner is or was totally disabled due to pneumoconiosis"); *Stalcup*, 477 F.3d at 484, 24 BLR at 2-37; *Smith v. Director, OWCP*, 843 F.2d 1053, 1057, 11 BLR 2-125, 2-130 (7th Cir. 1988).

Further, contrary to employer's contention, the administrative law judge did not mischaracterize Dr. Tuteur's opinion. Employer's Brief at 21. As summarized by the administrative law judge, in his supplemental reports Dr. Tuteur opined that claimant "is

[9] Employer's physicians diagnosed claimant with a right-to-left cardiac shunt, which is defined as "the diversion of blood from the right side of the heart to the left side or from the pulmonary to the systemic circulation through an anomalous opening [such] as a septal defect or patent ductus arteriosus." Dorland's Illustrated Medical Dictionary 1704 (32d ed. 2012). Previously, the Board noted Dr. Tuteur's explanation that in this type of shunt, blood returning to the heart from the body does not pass through the lungs to be re-oxygenated, but instead bypasses the lungs. *Ross*, BRB No. 15-0007 BLA, slip op. at 6 n.10.

totally and permanently disabled from engaging in work as a coal miner or work requiring effort. [T]his disability is due to the . . . pathophysiology where [claimant] becomes hypoxemic with exercise." Employer's Exhibit 17 at 1; *see also* Employer's Exhibit 19 at 1 ("Physiologically, [claimant] is totally and permanently disabled demonstrating significant impairment of oxygen gas exchange . . . ."). Although Dr. Tuteur further opined that this "impairment of gas exchange is due to a circulatory deficit allowing for a right to left shunt," Employer's Exhibit 17 at 2, the relevant inquiry for the administrative law judge at 20 C.F.R. §718.204(b)(2) was whether a totally disabling respiratory or pulmonary impairment exists; the cause of the totally disabling impairment is a separate issue. *See* 20 C.F.R. §§718.204(a), 718.305(d); *Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81, 13 BLR 2-196, 2-212-13 (10th Cir. 1989).

Because Dr. Tuteur opined that claimant is totally disabled by the impairment of gas exchange, a respiratory or pulmonary impairment, the administrative law judge reasonably found that his opinion supports a finding of total disability. *See* 20 C.F.R. §718.204(a),(b)(2)(iv). We therefore affirm the administrative law judge's finding that the preponderance of the medical opinion evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

We also affirm the administrative law judge's conclusion that the evidence, when weighed together, established total disability pursuant to 20 C.F.R. §718.204(b)(2). *See Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc); Decision and Order on Remand at 8-9. 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 or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2), we affirm the administrative law judge's determination that claimant invoked the Section 411(c)(4) presumption.

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

Because claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to employer to rebut the presumption by establishing that claimant has neither legal nor clinical pneumoconiosis,[10] or by establishing that "no

[10] "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). "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 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).

part of 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)(i), (ii). The administrative law judge found that employer failed to establish rebuttal by either method. Decision and Order on Remand at 9-13.

In determining whether employer established that claimant does not have legal pneumoconiosis,[11] the administrative law judge considered the medical opinions of Drs. Selby and Tuteur. Decision and Order on Remand at 10-12. Both doctors opined that claimant does not suffer from any chronic obstructive respiratory impairment. Employer's Exhibits 4, 5, 7, 8, 17-20. Further, both doctors attributed the hypoxemia detected on claimant's blood gas studies to coronary artery disease and a right-to-left cardiac shunt. Therefore, the physicians opined that claimant does not suffer from a chronic pulmonary impairment that can be attributed to coal mine dust exposure. *Id*. The administrative law judge found that the opinions of Drs. Selby and Tuteur were "not sufficiently reasoned or documented to rebut the presumed existence of legal pneumoconiosis," and accorded them "little weight." Decision and Order on Remand at 10-12.

Employer argues that the administrative law judge erred in discounting the opinions of Drs. Selby and Tuteur. Employer's Brief at 28-32. Employer's argument lacks merit. The administrative law judge noted that claimant's treatment records include multiple diagnoses of chronic obstructive pulmonary disease (COPD) and emphysema.[12] Decision

[11] Employer's argument that invocation of the Section 411(c)(4) presumption does not include a presumption of legal pneumoconiosis lacks merit and is rejected. *See* 20 C.F.R. §718.305(d)(1)(i)(A); *Consolidation Coal Co. v. Director, OWCP* [*Bailey*], 721 F.3d 789, 795-96, 25 BLR 2-285, 2-295 (7th Cir. 2013) (affirming the administrative law judge's determination that the employer failed to rebut the presumed fact of legal pneumoconiosis); *see also Consolidation Coal Co. v. Director, OWCP* [*Noyes*], 864 F.3d 1142, 1146-50 (10th Cir. 2017)(rejecting the employer's argument that the Section 411(c)(4) presumption applies only to clinical pneumoconiosis and does not include legal pneumoconiosis); Employer's Brief at 26-27.

[12] Specifically, the administrative law judge noted that records from Barnes Jewish Hospital include a January 29, 2008 diagnosis of mild centrilobular emphysema and a March 27, 2010 diagnosis of moderate emphysema. Decision and Order on Remand at 10; Employer's Exhibit 10. He noted further that records from Marshall Browning Hospital include a chest x-ray diagnosing chronic obstructive pulmonary disease (COPD) on July 16, 2005, and treatment notes identifying a history of COPD on March 27, 2008, emphysematous changes on November 20, 2008, and COPD with underlying emphysematous changes on August 23, 2009. Decision and Order on Remand at 10; Employer's Exhibit 12. The administrative law judge also noted that claimant's treating

and Order on Remand at 10. Moreover, he noted that Dr. Meyer interpreted a February 22, 2012 chest CT scan as revealing mild to moderate centrilobular emphysema. *Id*. Although Drs. Selby and Tuteur denied that claimant suffers from an obstructive respiratory impairment that could constitute legal pneumoconiosis, the administrative law judge permissibly found that neither physician adequately explained why claimant does not suffer from such an impairment in light of claimant's treatment records documenting diagnoses of COPD, and the CT scan diagnosis of emphysema.[13] *Id*. at 10-11; *see Stalcup*, 477 F.3d at 484, 24 BLR at 2-37; *Smith*, 843 F.2d at 1057, 11 BLR at 2-130.

The administrative law judge also noted that, in his initial report, Dr. Tuteur diagnosed chronic bronchitis and an associated minimal obstructive impairment. Decision and Order on Remand at 10; Employer's Exhibits 4, 7 at 30. Dr. Tuteur opined that the impairment was unrelated to coal mine dust exposure, and was attributable to cigarette smoking and air-trapping. *Id*. Subsequently, however, Dr. Tuteur revised his opinion and opined that claimant has no "meaningful" obstructive ventilatory impairment, nor does claimant suffer from COPD. Employer's Exhibit 19. The administrative law judge permissibly found that Dr. Tuteur's opinion was entitled to little weight because it was inconsistent on whether claimant has chronic bronchitis and an obstructive impairment. *See Stalcup*, 477 F.3d at 484, 24 BLR at 2-37; *Smith*, 843 F.2d at 1057, 11 BLR at 2-130; Decision and Order on Remand at 10.

Substantial evidence supports the administrative law judge's credibility determinations regarding the opinions of Drs. Selby and Tuteur, and the Board is not empowered to reweigh the evidence.[14] *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-

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physician, Dr. Tucker, diagnosed COPD "as early as August 16, 2005 continuing through September 9, 2013." Decision and Order on Remand at 10; Employer's Exhibits 11, 16.

[13] The administrative law judge noted that Dr. Tuteur was specifically asked during his deposition to address "the diagnosis of COPD provided by [c]laimant's primary care physician, but instead responded that extensive surgical and medical treatment with respect to coronary artery disease were also documented in the record." Decision and Order on Remand at 10; Employer's Exhibit 19.

[14] Because the administrative law judge provided valid reasons for according less weight to the opinions of Drs. Selby and Tuteur, which we have affirmed, we need not address employer's challenges to the administrative law judge's decision to discount their opinions for other reasons. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n. 4 (1983).

111, 1-113 (1989). We therefore affirm the administrative law judge's finding that employer failed to disprove legal pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i).[15]

Upon finding that employer was unable to disprove the existence of legal pneumoconiosis, the administrative law judge addressed whether employer could establish rebuttal by showing that no part of claimant's respiratory or pulmonary disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order on Remand at 12-13. The administrative law judge rationally discounted the disability causation opinions of Drs. Selby and Tuteur because neither physician diagnosed claimant with legal pneumoconiosis, contrary to the administrative law judge's finding that employer failed to disprove the existence of the disease. *See Consolidation Coal Co. v. Director, OWCP* [*Burris*], 732 F.3d 723, 735, 25 BLR 2-405, 2-425 (7th Cir. 2013); *see also Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 25 BLR 2-725 (6th Cir. 2015); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 25 BLR 2-713 (4th Cir. 2015); Decision and Order on Remand at 12-13. We, therefore, affirm the administrative law judge's determination that employer failed to establish that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(ii). Consequently, we affirm the award of benefits.[16]

[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). We therefore reject employer's argument that the administrative law judge erred in declining to consider whether employer disproved clinical pneumoconiosis. Employer's Brief at 26.

[16] Claimant's counsel has filed a complete, itemized statement requesting a fee for services performed before the Board in the prior appeal, BRB No. 15-0007 BLA. 20 C.F.R. §802.203. Employer may file a response within ten (10) days from receipt of this Decision and Order. 20 C.F.R. §802.203(g).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge