U.S. Department of Labor

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

BRB No. 18-0218 BLA

THOMAS RAY BAILEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
A E P KENTUCKY COAL, LLC	)	
c/o EAST COAST RISK MANAGEMENT	)	DATE ISSUED: 04/30/2019
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

Paul Jones and Denise Hall Scarberry (Jones & Walters, PLLC), Pikeville, Kentucky, for employer/carrier.

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

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2016-BLA-05456) of Administrative Law Judge John P. Sellers, III, rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a claim filed on March 21, 2013.

The administrative law judge credited claimant with twenty-eight years of underground coal mine employment or surface employment performed in conditions substantially similar to those in an underground mine, and found the evidence establishes total respiratory or pulmonary disability pursuant to 20 C.F.R. §718.204(b)(2). He therefore found claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[1] The administrative law judge further found employer did not rebut the presumption and awarded benefits.

On appeal, employer argues the administrative law judge erred in finding that claimant established total disability and invocation of the Section 411(c)(4) presumption. Employer also contends the administrative law judge erred in finding that employer did not rebut the presumption. Neither claimant nor the Director, Office of Workers' Compensation Programs, filed a response brief in this appeal.[2]

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[3] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Invocation of the Section 411(c)(4) Presumption – Total Disability

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work. *See* 20 C.F.R.

[1] 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 similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established twenty-eight years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3, 26-27.

[3] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as claimant was last employed in the coal mining industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 3; Director's Exhibit 3; Hearing Transcript at 18.

§718.204(b)(1). A miner's total disability may be established by qualifying[4] pulmonary function or arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must weigh the relevant evidence supporting a finding of total disability against the contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). Qualifying evidence in any of the four categories establishes total disability, however, when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

The administrative law judge found that the weight of the pulmonary function study evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), but that claimant did not establish respiratory disability at 20 C.F.R. §718.204(b)(2)(ii) because none of the blood gas studies produced qualifying values.[5] Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge found that there are no probative medical opinions that contradict the pulmonary function study evidence establishing total respiratory disability at 20 C.F.R. §718.204(b)(2)(i). Finally, considering all contrary probative evidence together, the administrative law judge found that claimant established total respiratory disability at 20 C.F.R. §718.204(b)(2).[6]

Employer contends the administrative law judge erred in his analysis of the pulmonary function studies. We disagree. He considered the results of five pulmonary function studies dated February 25, 2013, August 21, 2013, October 9, 2013, December 17, 2014, and March 9, 2015.[7] Decision and Order at 7-8, 17-23; Director's Exhibits 11,

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

[5] The administrative law judge found that the record contains no evidence of cor pulmonale with right-sided congestive heart failure pursuant to 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 16.

[6] The administrative law judge found that the non-qualifying blood gas studies do not preclude a finding of total disability based on the pulmonary function studies, because they measure different types of impairment. Decision and Order at 23; Director's Exhibits 11, 13.

[7] The administrative law judge resolved the height discrepancy recorded on the pulmonary function studies, finding that claimant's height is 67 inches. *See Toler v.*

13; Claimant's Exhibits 5, 6, 8. The February 25, 2013, August 21, 2013 and March 9, 2015 studies, performed without bronchodilators, and the October 9, 2013 and December 17, 2014 studies, performed before and after bronchodilation, produced qualifying values. Director's Exhibits 11, 13; Claimant's Exhibits 5, 6, 8-13.

The administrative law judge found the August 21, 2013 and December 17, 2014 studies invalid, however.[8] He also found the MVV values of the October 9, 2013 study invalid which,[9] in turn, rendered the post-bronchodilator portion of the study non-qualifying.[10] In contrast, he found the February 25, 2013 study, the October 9, 2013 pre-bronchodilator study, and the March 9, 2015 study valid and reliable.[11] Decision and Order

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Eastern Associated Coal Corp., 43 F.3d 109, 114, 19 BLR 2-70, 2-80-81 (4th Cir. 1995); *K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-44 (2008); *Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 7 n.6. He used the table values for the closest height of 66.9 inches to evaluate the studies. Decision and Order at 7 n.6.

[8] The administrative law judge correctly noted that the August 21, 2013 study lacks tracings and a computer printout and contained no indication of claimant's cooperation or comprehension. Decision and Order at 19, Claimant's Exhibit 8. Dr. Dahhan invalidated the December 17, 2014 study he conducted based on claimant's sub-optimal effort. Decision and Order at 22; Director's Exhibit 13.

[9] Dr. Ajjarapu, who performed the October 9, 2013 study, invalidated the MVV values on both the pre- and post-bronchodilator studies but opined that the remaining values are reliable. Decision and Order at 19-21; Employer's Exhibit 3 at 20-23.

[10] For a pulmonary function study to constitute evidence of total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), it must produce *both* a qualifying FEV1 value *and* either an FVC or MVV value equal to or less than the values appearing in the tables set forth in Appendix B, or an FEV1 to FVC ratio equal to or less than 55%. *See* 20 C.F.R. §718.204(b)(2)(i)(A)-(C). As the October 9, 2013 study demonstrated qualifying pre-bronchodilator FEV1 and MVV values and a qualifying FEV1 to FVC ratio, the pre-bronchodilator study remains qualifying even when the MVV value is disregarded. Claimant's Exhibit 8. On the post-bronchodilator study, however, only the FEV1 and MVV values were qualifying; the post-bronchodilator study is not qualifying when the MVV value is disregarded. *Id.*

[11] The administrative law judge incorrectly determined that the December 17, 2014 pulmonary function study is non-qualifying prior to the administration of a bronchodilator. As both the FEV1 and the MVV values are qualifying, the pre-bronchodilation study is

at 19-22. Giving greater weight to the studies performed before the use of bronchodilators, the administrative law judge concluded that the preponderance of the reliable pulmonary function study evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(i).[12] Decision and Order at 22-23.

Employer asserts the administrative law judge erred in relying on the February 25, 2013 and March 9, 2015 studies,[13] contending the studies fail to include several factors listed in the quality standards at 20 C.F.R. §718.103.[14] Employer's Brief at 5-9. Employer

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qualifying under 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 22-23; Director's Exhibit 15. Any error is harmless, however, as the administrative law judge ultimately determined that the weight of the pulmonary function studies support total disability. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[12] The administrative law judge explained that he accorded greater weight to the pre-bronchodilator results based on reasoning credited by the Department of Labor (DOL) in the preamble to the 1980 regulations, that although the use of a bronchodilator may aid in determining the presence or absence of pneumoconiosis, it "'does not provide an adequate assessment of the miner's disability . . . .'" Decision and Order at 12, *quoting* 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980). In assessing the credibility of the pulmonary function study evidence in this case, it was within the administrative law judge's discretion to consult the preamble as an authoritative statement of medical principles accepted by the DOL. *See Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008). Moreover, as employer raises no challenge to this determination, it is affirmed. *See Skrack*, 6 BLR at 1-711.

[13] Employer also asserts the administrative law judge erred in relying on the August 21, 2013 pulmonary function study performed at the Western Lee County Health Clinic as part of claimant's medical treatment. Employer's Brief at 5-7. Contrary to employer's argument, the administrative law judge declined to credit this study, finding it not sufficiently reliable. *See* 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000); Decision and Order at 18-19; Claimant's Exhibit 8 at 13. Specifically, he found it "has no tracings and no computer printout, and no indication of the Claimant's comprehension and cooperation." Decision and Order at 19. Consequently, we need not address employer's argument that the study does not conform to the quality standards at 20 C.F.R. §718.103.

[14] Employer contends, as it did before the administrative law judge, that the February 25, 2013 study does not include claimant's degree of cooperation and comprehension, the paper speed, or the name of the physician or technician supervising the test. Employer's Brief at 6. Employer asserts the March 9, 2015 study "fails to include all

asserts that despite being conducted in conjunction with claimant's treatment, they "must comply with the Federal requirements" because both studies were submitted as affirmative evidence by claimant. *Id.* at 7. Employer's contentions lack merit.

Because the February 25, 2013 and March 9, 2015 pulmonary function studies were obtained in conjunction with claimant's treatment, they are not subject to the specific quality standards set forth at 20 C.F.R. §718.103 and Appendix B. *J.V.S.* [*Stowers*] *v. Arch of W. Va.*, 24 BLR 1-78, 1-89, 1-92 (2008); 20 C.F.R. §718.101(b). The administrative law judge nevertheless properly considered whether the studies are sufficiently reliable to support a finding of total disability.[15] He accurately observed "the absence of a single physician of record invalidating any of these tests" and noted that, contrary to employer's contention, both studies reported claimant's effort and cooperation as "good."[16] Decision and Order at 18; Claimant's Exhibits 5, 6. On this basis, he permissibly found the February 25, 2013 and March 9, 2015 qualifying studies sufficiently reliable to support a finding of total disability.[17] *See* 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000); *Director, OWCP v.*

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of the elements required by 20 C.F.R. §718.103," and "the physician acknowledged that the effort was not maximum and that a third MVV trial was not obtainable." *Id.*

[15] The DOL's comments to the regulations explain that evidence not subject to the quality standards must still be assessed for reliability by the fact finder:

> The Department note[s] that [20 C.F.R.] § 718.101 limits the applicability of the quality standards to evidence "developed * * * in connection with a claim for benefits" governed by [20 C.F.R.] [P]arts 718, 725, or 727. Despite the inapplicability of the quality standards to certain categories of evidence, the adjudicator still must be persuaded that the evidence is reliable in order for it to form the basis for a finding of fact on an entitlement issue.

65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000).

[16] The February 25, 2013 and March 9, 2015 studies were conducted at the St. Charles Respiratory Care Clinic, which is one of the clinic locations for Stone Mountain Health Services (Stone Mountain). Dr. Esther S. Ajjarapu is employed by Stone Mountain and her curriculum vitae is attached to the March 9, 2015 study. The February 25, 2013 study contains the notation, "adequate for testing," and the March 9, 2015 study contains the notation, "adequate for interpretation." Underneath both notations are the initials "ESA, MD" and the date "May 11, 2017." Claimant's Exhibits 5, 6.

[17] There is no merit to employer's assertion that the March 9, 2015 pulmonary function study is non-qualifying because "only the FEV1 value meets federal criteria for

Rowe, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); Decision and Order at 18-19. We thus affirm this 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). Because employer raises no specific allegation of error with regard to the October 9, 2013 study, we further affirm the administrative law judge's finding that the February 25, 2013, October 9, 2013, and March 9, 2015 qualifying pre-bronchodilator studies support a finding of total disability. *See* 20 C.F.R. §718.204(b)(2)(i); *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 740, 25 BLR 2-675, 2-687-88 (6th Cir. 2014); Decision and Order at 23.

Employer also asserts the administrative law judge's statement that the pulmonary function study evidence "is not solidly one way or the other" is inconsistent with his finding that the "preponderant weight of the pulmonary function studies is qualifying" and supports total disability. Employer's Brief at 5, *quoting* Decision and Order at 23. Contrary to employer's contention, the administrative law judge's recognition that not all of the pulmonary function study results were valid and qualifying does not contradict his finding that a preponderance of the studies supports a finding of total disability. Decision and Order at 23. As employer raises no further arguments pertaining to the administrative law judge's weighing of the pulmonary function studies, we affirm his finding that they support a finding of total disability. *See* 20 C.F.R. §718.204(b)(2)(i); *Keathley*, 773 F.3d at 740, 25 BLR at 2-687-88; Decision and Order at 23.

Having found that the pulmonary function studies establish total respiratory disability, the administrative law judge next considered the medical opinions of Drs.

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disability." Employer's Brief at 6. The March 9, 2015 study reflects qualifying FEV1, FEV1/FVC, and MVV values. Claimant's Exhibit 6.

Ajjarapu, Dahhan, and Vuskovich,[18] together with the treatment records.[19] Decision and Order at 8-15, 24-25. Based, in part, on the October 9, 2013 qualifying pulmonary function study results, Dr. Ajjarapu[20] opined claimant is totally disabled and does not have the pulmonary capacity to perform his previous coal mine employment. Director's Exhibit 11; Employer's Exhibit 3. In contrast, Dr. Dahhan[21] found no evidence of a disabling pulmonary impairment and opined claimant retains the physiological capacity to return to his previous coal mine employment. Director's Exhibit 13; Employer's Exhibits 2, 4. Similarly, Dr. Vuskovich[22] opined claimant retains the pulmonary capacity to perform his previous coal mine employment. Director's Exhibit 15.

The administrative law judge found Dr. Ajjarapu's opinion consistent with his own finding that the pulmonary function study evidence establishes total disability.[23] *See*

[18] The administrative law judge noted that claimant also relied on Dr. Jarboe's opinion that claimant has a disabling pulmonary impairment that prevents him from performing his job in the coal mines. Decision and Order at 15; Claimant's Exhibit 7. He noted, however, that as only the final page of Dr. Jarboe's eight-page report was submitted into evidence, it is unclear which objective tests Dr. Jarboe evaluated in arriving at his conclusion and whether those tests were admitted into evidence. Decision and Order at 15; Claimant's Exhibit 7. The administrative law judge did not further address Dr. Jarboe's opinion and, thus, does not appear to rely on it in rendering his disability determination. Decision and Order at 15; Claimant's Exhibit 7.

[19] The administrative law judge found that none of the treating physicians offered an opinion as to whether claimant is totally disabled from a respiratory or pulmonary standpoint. Decision and Order at 25.

[20] Dr. Ajjarapu examined claimant on October 9, 2013 as part of the DOL pulmonary evaluation and determined that claimant's testing indicated moderate hypoxemia and a moderate pulmonary impairment. Director's Exhibit 11; Employer's Exhibit 3. She submitted a supplemental report dated August 3, 2015 and testified by deposition on April 19, 2017. Director's Exhibit 11; Employer's Exhibit 3.

[21] Dr. Dahhan examined claimant on December 17, 2014 and found that his testing indicated no evidence of a disabling pulmonary impairment. Director's Exhibit 13; Employer's Exhibits 2, 4.

[22] Dr. Vuskovich reviewed the pulmonary function study and blood gas study conducted by Dr. Ajjarapu on October 9, 2013. Director's Exhibit 15.

[23] As referenced by the administrative law judge, the regulation at 20 C.F.R. §718.204(b)(2)(i) provides that a qualifying pulmonary function study is sufficient to

Tennessee 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 24, *referencing* 20 C.F.R. §718.204(b)(2). He discredited the contrary opinions of Drs. Dahhan and Vuskovich as inadequately explained and unpersuasive. Decision and Order at 24-25.

We disagree with employer's assertion that the administrative law judge erred in discrediting the opinions of Drs. Dahhan and Vuskovich. Employer's Brief at 8-9. Based on his December 17, 2014 examination of claimant, Dr. Dahhan opined that he has a "possible restrictive ventilatory impairment with a severity that cannot be assessed" due to suboptimal effort on his pulmonary function study. Director's Exhibit 13 at 4. He explained that claimant "has a reduction in his FVC and FEV1 which [sic] is primarily due to poor effort, however, [the] added impact of possible restrictive impairment cannot be ruled out." *Id.* Based on claimant's normal clinical chest examination and normal blood gases at rest and with exercise, Dr. Dahhan opined that he "[found] no evidence of [a] disabling pulmonary impairment" and concluded that claimant retained the physiological capacity to return to his previous coal mine work. Director's Exhibit 13 at 5.

Contrary to employer's argument, the administrative law judge acknowledged Dr. Dahhan's opinion that claimant is not totally disabled based on his normal blood gas values and normal clinical chest examination. Decision and Order at 24; Employer's Brief at 8. The administrative law judge permissibly found Dr. Dahhan's conclusion unpersuasive, however, based on his concession that claimant may also have a restrictive impairment, but that he could not assess its severity without a valid pulmonary function study.[24] *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41 (6th Cir. 1993) (noting that blood gas studies measure a different type of impairment than pulmonary function studies); Decision and Order at 24; Director's Exhibit 13 at 4-5. The administrative law judge further

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establish total disability "[i]n the absence of contrary probative evidence." 20 C.F.R. §718.204(b)(2); Decision and Order at 23.

[24] Dr. Dahhan's remarks possibly could have been interpreted differently, as a statement that the severity of claimant's restrictive impairment could not be entirely assessed, but in any event would not cause qualifying test results. However, the construction found by the administrative law judge, that the extent of the restrictive impairment could not be determined and could account for qualifying results was also within the administrative law judge's discretion. Under these circumstances, the administrative law judge's determination is affirmed. *See Tennessee 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).

discounted Dr. Dahhan's opinion as inconsistent with the weight of the pulmonary function study evidence. *See Rowe*, 710 F. 2d at 255, 5 BLR at 2-103; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc); Decision and Order at 24-25.

Nor did the administrative law judge err in his consideration of Dr. Vuskovich's opinion. He found Dr. Vuskovich's view that the October 9, 2013 pulmonary function study was invalid to be contrary to his own finding.[25] Further, Dr. Vuskovich did not review the valid and qualifying pre-bronchodilator results of the February 25, 2013 and March 9, 2015 studies. In light of these factors, the administrative law judge permissibly concluded that Dr. Vuskovich's opinion that claimant's ventilatory capacity could not be evaluated is not well-documented, and merited little weight. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-155 Decision and Order at 25.

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. *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1072-73, 25 BLR 2-431, 2-446-47 (6th Cir. 2013); *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 provided valid reasons for discrediting the opinions of Drs. Dahhan and Vuskovich,[26] the only physicians to opine that claimant is not disabled, we affirm the administrative law judge's determination that their opinions do not constitute "contrary probative evidence to preclude the use of the pulmonary function studies to establish total disability." Decision and Order at 25.

[25] The administrative law judge's finding that the October 9, 2013 test results are valid, based on Dr. Gaziano's verification (on the grounds that Dr. Gaziano, as a board-certified pulmonologist, was better qualified to judge the results than Dr. Vuskovich, who is board-certified in vocational medicine), and the technician's notation of good effort and good cooperation, is not challenged on appeal. *See Skrack*, 6 BLR at 1-711.

[26] Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Dahhan and Vuskovich, we need not address employer's remaining arguments regarding the weight accorded to their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 8-9.

We further reject employer's contention that the administrative law judge "failed to consider the like and unlike evidence together" in finding that claimant established total disability at 20 C.F.R. §718.204(b)(2) overall. Employer's Brief at 9. Referencing his prior findings, which we have affirmed above, the administrative law judge permissibly concluded that, weighed together, neither the non-qualifying blood gas studies nor the medical opinions constituted probative contrary evidence that would undermine the qualifying pulmonary function studies. Decision and Order at 25. We therefore affirm his finding that the medical evidence establishes total disability overall. 20 C.F.R. §718.204(b)(2); *see Shedlock*, 9 BLR at 1-198; Decision and Order at 25.

Because we have affirmed the administrative law judge's findings that claimant established twenty-eight years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2), we affirm his determination that claimant invoked the Section 411(c)(4) presumption. Decision and Order at 27.

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 establish that claimant has neither legal nor clinical pneumoconiosis,[27] or that "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The administrative law judge found employer failed to rebut under either prong.

After finding employer disproved clinical pneumoconiosis, 20 C.F.R. §§718.201(a)(1), 718.305(d)(1)(i)(B), the administrative law judge addressed legal pneumoconiosis. Decision and Order at 28-33. To disprove legal pneumoconiosis, employer must establish that claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015) (Boggs, J., concurring and dissenting).

[27] "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).

Dr. Dahhan found no evidence of pulmonary impairment or disability related to coal dust exposure and, thus, no evidence of legal pneumoconiosis. Director's Exhibit 13. Rather, he concluded that claimant has a possible restrictive impairment due to the effects of hypothyroidism, old trauma to the right chest wall, and old spine and hip fractures.[28] The administrative law judge found Dr. Dahhan's opinion inadequately explained and, therefore, insufficient to disprove legal pneumoconiosis.[29] Decision and Order at 31-32.

Employer asserts the administrative law judge applied an incorrect legal standard in stating that employer bears the burden to "show that the [c]laimant's dust exposure did not play even a minimal role in the development of any pulmonary disease or impairment."[30] Employer's Brief at 10; *referencing* Decision and Order at 30. This argument lacks merit. The administrative law judge accurately observed that Dr. Dahhan did not offer any explanation why claimant's twenty-eight years of coal dust exposure did not contribute, along with the other factors Dr. Dahhan identified, to his impairment. Decision and Order at 32; Director's Exhibit 13; Employer's Exhibits 2, 4. The administrative law judge therefore provided a valid rationale for discrediting Dr. Dahhan's opinion that claimant does not have legal pneumoconiosis. *See Brandywine Explosives & Supply v. Director,*

[28] Dr. Dahhan explained that these conditions can result in the development of a restrictive impairment by impacting claimant's ability to expand his thorax adequately. Director's Exhibit 13.

[29] The administrative law judge noted that Dr. Vuskovich did not provide an opinion on legal pneumoconiosis, and Dr. Ajjarapu's opinion that claimant has legal pneumoconiosis does not aid employer is rebutting the Section 411(c)(4) presumption. Decision and Order at 32.

[30] The administrative law judge's statement is based on his interpretation of *Arch On The Green, Inc. v. Groves*, 761 F.3d 594, 25 BLR 2-615 (6th Cir. 2014). Decision and Order at 30-31. The proper inquiry for rebuttal of legal pneumoconiosis is whether employer established, by a preponderance of the evidence, that claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011). The court in *Groves* held that while the miner was required by 20 C.F.R §718.201(b) to prove that his chronic obstructive pulmonary disease was "significantly related to, or substantially aggravated by, dust exposure in coal mine employment," he could do so by showing that the impairment was caused, "in part," by dust exposure in coal mine employment. *Groves*, 761 F.3d at 598-99, 25 BLR at 2-618. The court did not address employer's burden for rebutting legal pneumoconiosis.

OWCP [*Kennard*], 790 F.3d 657, 668 (6th Cir. 2015); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); Decision and Order at 32. Moreover, the administrative law judge clarified that he would find Dr. Dahhan's "conclusory statements" insufficient to rebut the presumption of legal pneumoconiosis regardless of the standard applied.[31] Decision and Order at 32. As the administrative law judge permissibly discredited the only medical opinion supportive of a finding that claimant does not have legal pneumoconiosis, we affirm his finding that employer did not rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(i)(A). *See Napier*, 301 F.3d at 713-14, 22 BLR at 2-553; *Clark*, 12 BLR at 1-155. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis. *See Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011).

The administrative law judge next addressed whether employer proved 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). The administrative law judge permissibly discredited Dr. Dahhan's opinion on the cause of claimant's total disability as the physician did not diagnose legal pneumoconiosis, contrary to the administrative law judge's finding that employer failed to disprove the disease. 20 C.F.R. §718.305(d)(1)(ii); *see Ogle*, 737 F.3d at 1074, 25 BLR at 2-452; *Island Creek Kentucky Mining v. Ramage*, 737 F.3d 1050, 1062, 25 BLR 2-453, 2-473 (6th Cir. 2013); Decision and Order at 32-33. We therefore affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305(d)(1)(ii).

[31] The administrative law judge stated that, "for the purposes of appellate review . . . Dr. Dahhan's opinion [is] insufficient to demonstrate that coal dust played an insignificant role in contributing to the Claimant's coal dust exposure, or that it did not contribute in part or to a minor degree." Decision and Order at 32 n.25.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge