BRB No. 14-0028 BLA

CHARLES L. CUTLIP	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BROOKS RUN MINING COMPANY LLC	)	DATE ISSUED: 08/28/2014
	)	
and	)	
	)	
COASTAL COAL COMPANY LLC	)	
	)	
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 Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

Timothy C. MacDonnell and Katriel Statman (Washington and Lee University School of Law, Legal Practice Clinic), Lexington, Virginia, for claimant.

William S. Mattingly and Tiffany B. Davis (Jackson Kelly PLLC), Morgantown, West Virginia, for employer/carrier.

Rebecca J. Fiebig (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Acting Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2011-BLA-05971) of Administrative Law Judge Adele Higgins Odegard, rendered on a claim filed on July 16, 2010, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge found that claimant established total disability at 20 C.F.R. §718.204(b)(2). The administrative law judge credited claimant with 29.41 years of coal mine employment, and further found that claimant established at least fifteen years of qualifying coal mine employment and invoked the amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[1] The administrative law judge further found that employer did not rebut the presumption. Accordingly, benefits were awarded.

On appeal, employer argues that the administrative law judge erred in finding that claimant established at least fifteen years of qualifying coal mine employment for invocation of the amended Section 411(c)(4) presumption. Employer asserts that the administrative law judge applied an improper rebuttal standard and did not rationally weigh the evidence. Both claimant and the Director, Office of Workers' Compensation Programs (the Director) respond, urging affirmance of the award of benefits. Employer also filed a reply brief, reiterating its arguments.[2]

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.[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).

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

[2] We affirm, as unchallenged on appeal, the administrative law judge's determination that claimant established a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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

I. Invocation of the Amended Section 411(c)(4) Presumption

In order to invoke the amended Section 411(c)(4) presumption, claimant must establish at least fifteen years of "employment in one or more underground coal mines," or in surface coal mine employment, in conditions that were "substantially similar to conditions in an underground mine." 30 U.S.C. §921(c)(4); *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-29 (2011). In this case, the administrative law judge first determined, based on claimant's testimony and the Social Security records, that claimant worked for employer for 26.73 years at a mine site located in Clearco, West Virginia (Clearco site) and that all of his work was performed above-ground. Decision and Order at 9-10. The administrative law judge determined that "the Clearco site was an integrate[d] site encompassing underground and above-ground operations, and that claimant established 26.73 years of qualifying coal mine employment as he "worked above[-]ground at underground sites on a regular basis during his employment at the Clearco site." *Id*. at 12. Alternatively, the administrative law judge found that, regardless of the nature of the mining operation at the Clearco site, claimant's hearing testimony established that his surface coal mine work constituted qualifying coal mine employment because "the level of dust exposure" was substantially similar to that of an underground mine. *Id*.

Employer contends that the administrative law judge misapplied the Board's holding in *Muncy* in determining that claimant established 26.73 years of qualifying above[-]ground work at an underground coal mine. In *Muncy*, 25 BLR 1-21, 1-28-29 (2011), the Board held that an above-ground worker for an underground mining operation was not required to show comparability of conditions, as a dichotomy is drawn under Section 411(c)(4) regarding the type of mine (underground or surface), rather than the location of the particular worker (surface or below the ground), and it is the type of mining operation that determines whether a miner is required to show comparability of conditions. Although employer concedes that claimant worked for an underground coal mine operation for ten years, employer contends that the remainder of claimant's work was performed at a surface coal mine at the Clearco site. Employer further argues that claimant did not demonstrate substantial similarity between his surface coal mine work[4] and that of an underground mine.

It is not necessary that we address employer's assertion that *Muncy* is not applicable to claimant's coal mine employment, as we affirm her alternate finding that

[4] Employer notes that claimant testified that he "spent approximately 10 years of his employment doing above[-]ground work at a surface mine, approximately 10 years of above[-]ground work at a deep mine, five years [of] above[-]ground work at a preparation plant, and five years of above[-]ground work at our load out facility." Employer's Brief in Support of Its Petition for Review at 8.

claimant established fifteen years of coal mine employment in conditions that were substantially similar to those in an underground mine. The regulations implementing amended Section 411(c)(4) provide that "[t]he conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if the claimant demonstrates that the miner was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2); *see also Antelope Coal Co./Rio Tinto Energy America v. Goodin*, 743 F.3d 1331, BLR (10th Cir. 2014); *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 479, 22 BLR 2-265, 2-275 (7th Cir. 2001); *Director, OWCP v. Midland Coal Co.* [*Leachman*], 855 F.2d 509, 512-13 (7th Cir. 1988). It is then for the administrative law judge "to compare the surface mining conditions established by the evidence to conditions known to prevail in underground mines." *Leachman*, 855 F.2d at 512; *see Alexander*, 2 BLR at 1-49.

Contrary to employer's arguments, the administrative law judge performed the correct analysis by assessing whether claimant's above-ground work, whether at an underground mine site or a surface coal mine site, exposed him to levels of coal dust that were comparable to an underground mine. She summarized claimant's detailed testimony regarding the levels of dust he experienced as follows:

> Regarding his work at surface mining facilities, the Claimant said he operated an end loader to extract coal. He described the conditions as "hot and dusty," and he remarked that he dealt with float dust "all the time." The Claimant stated that, most of the time, the equipment did not have air conditioning, so the doors and windows would be open and dust would get inside. He stated that the doors were often kept open in winter, because the equipment produced a lot of heat, and shutting the doors made the conditions "terrible." Even if the equipment was closed, the Claimant said, the seals would fail after a while and dust would coat the inside. At the preparation plant, the Claimant stated, his work involved carrying coal and loading trucks, and he stated that on occasion he used his loader to dump coal into the bins to be cleaned. Additionally, the Claimant testified, he worked a little bit in the inside of the preparation plant, and he indicated this was not as dusty a job as working the loader on the outside of the plant. The conditions at the coal stock piles, the Claimant stated, were also hot and dusty, and there was float dust at the prep plant as well. . . . On cross examination, the Claimant stated . . . that his equipment did not have air conditioning until Coast[al] Coal group bought the property and brought in better equipment, in the 1990s. . . . On re-direct examination, the Claimant stated that the air conditioning in his equipment worked very seldom, and he estimated that it operated about six months in the 11 years the cabs had such equipment. The Claimant also stated that the air conditioning did not cause him to change his practice regarding keeping the cab doors open, and

> he remarked that the dust came into the cabs even if the cab was sealed. The Claimant remarked that, due to the dust, he wiped down the dash in his cab four to five times a day. . . . Upon my questioning, the Claimant stated that, in his last regular coal mine employment at Brooks Run, he swept out his cab daily. . . . The Claimant stated that, overall, the dust exposure was highest when he was working at the deep mines but the other places were hot and dusty, too.

Decision and Order at 3-4. The administrative law judge observed correctly that claimant's testimony was unrebutted,[5] and rationally found that it was credible and sufficient to establish that claimant was exposed to "quite significant dust conditions, and exposure to rock and coal dust on a daily basis."[6] Decision and Order at 11; *see Summers*, 272 F.3d at 479, 22 BLR at 2-275 (explaining that a claimant's unrebutted testimony can support a finding of substantial similarity). The administrative law judge also permissibly concluded that claimant's above-ground dust exposure was substantially similar to those of an underground miner, given the administrative law judge's "familiarity with the conditions in underground mine sites" and her "experience" in adjudicating black lung claims. Decision and Order at 12; *Leachman*, 855 F.2d at 512; *see Alexander*, 2 BLR at 1-49. We, therefore, affirm the administrative law judge's finding that claimant established at least fifteen years of qualifying coal mine

[5] Employer maintains that claimant's testimony is not sufficient to establish substantial similarity because the "machinery he operated had closed cabs, air conditioning and air filtration from 1998 to 2008" and because claimant "noted variation in dust conditions between different sites." Employer's Brief in Support of Its Petition for Review at 8; *see also* Employer's Reply Brief at 4. The administrative law judge permissibly determined, however, that claimant's testimony established that "there was no significant difference between the conditions the Claimant experienced before he got equipment with air conditioned cabs and the conditions he experienced afterwards." Decision and Order at 12; *see Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 479, 22 BLR 2-265, 2-275 (7th Cir. 2001). In addition, even discounting the years claimant worked in air conditioned cabs, the administrative law judge noted that claimant still would have established 15.48 years of dust exposure from 1972-1990. Decision and Order at 12. Moreover, she acknowledged that claimant "did comment that the dust at the underground mine sites was heaviest," but he "never stated, nor suggested that the dust exposure levels at the surface mine or preparation plants were insignificant." *Id*. at 11.

[6] We reject employer's contention that the administrative law judge improperly shifted the burden of proof in this case. Employer's Reply Brief at 5.

employment and that he was entitled to invoke the amended Section 411(c)(4) presumption.

II. Rebuttal of the Amended Section 411(c)(4) Presumption

A. Constitutionality

Employer contends that the rebuttal provisions of amended Section 411(c)(4), 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305 do not apply to claims brought against responsible operators. Employer's Brief in Support of Its Petition for Review at 10-20, 27-32. This argument is virtually identical to the one the Board rejected in *Owens v. Mingo Logan Coal Co.*, 25 BLR 1-1, 1-4 (2011), *aff'd on other grounds*, 724 F.3d 550 (4th Cir. 2013) (Niemeyer, J., concurring). We, therefore, reject it here for the reasons set forth in that decision. *Owens*, 25 BLR at 1-4; *see also Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 37-38, 3 BLR 2-36, 2-58-59 (1976); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1070 (6th Cir. 2013); *Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 938-40, 2 BLR 2-38, 2-43-44 (4th Cir. 1980). Moreover, the Department of Labor (DOL) has promulgated regulations implementing amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), that make clear that the rebuttal provisions apply to responsible operators. *See* 20 C.F.R. §718.305(d). Contrary to employer's argument on appeal, the revised 2013 regulations, specifically 20 C.F.R. §718.305, properly implement the 2010 amendments to the Act. *See* 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556(a), 124 Stat. 119, 260 (2010); Employer's Brief in Support of Its Petition for Review at 27-32.

B. Rebuttal Standard

In order to establish rebuttal of the presumption, employer must affirmatively establish either that claimant does not have clinical or legal pneumoconiosis,[7] or that his

[7] The regulation at 20 C.F.R. §718.201 provides:

> "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. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

respiratory disability did not arise out of, or in connection with, coal mine employment. 30 U.S.C. §921(c)(4), implemented by 20 C.F.R. §718.305; *Rose*, 614 F.2d at 939, 2 BLR at 2-43-44; *see also Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 478, 25 BLR 2-1 (6th Cir. 2011).

Employer asserts that the administrative law judge applied an improper rebuttal standard under amended Section 411(c)(4), by requiring employer to rule out coal mine dust exposure as a cause of claimant's disabling respiratory impairment. Employer maintains that it need prove only that pneumoconiosis was not a contributing cause of claimant's disability. Contrary to employer's assertion, the regulation implementing amended Section 411(c)(4), which became effective on October 25, 2013, provides that the party opposing entitlement must establish 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)(ii). The DOL has also explained that the "no part" standard recognizes that the courts have interpreted amended Section 411(c)(4) "as requiring the party opposing entitlement to 'rule out' coal mine employment as a cause of the miner's disabling respiratory or pulmonary impairment." 78 Fed. Reg. 59,105 (Sept. 25, 2013); *see also Ogle*, 737 F.3d at 1071 (holding that there is no meaningful difference between the "play[ed] no part" standard and the "rule-out" standard); *Rose*, 614 F.2d at 939, 2 BLR at 2-43-44. The DOL also explicitly chose not to use the "contributing cause" standard set forth in 20 C.F.R. §718.204(c), and stated that the application of a different standard on rebuttal "is warranted by the statutory section's underlying intent and purpose," which "effectively singled out" totally disabled miners who had fifteen years of qualifying coal mine employment "for special treatment." 78 Fed. Reg. 59,106-07 (Sept. 25, 2013). Therefore, we conclude that the administrative law judge applied the correct rebuttal standard in this case.

C. Legal Pneumoconiosis

In considering whether employer rebutted the amended Section 411(c)(4) presumption, the administrative law judge initially found that employer failed to disprove the existence of legal pneumoconiosis. Employer argues that the administrative law judge erred in determining that the opinions of Drs. Shamma-Othman, Castle and Repsher were insufficiently reasoned and documented to disprove that claimant has legal pneumoconiosis. Employer argues that the administrative law judge failed to take into account the totality of the evidence that these physicians considered and their

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20 C.F.R. §718.201(a)(1). 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).

qualifications. Employer also maintains that the administrative law judge substituted her opinion for that of a medical expert in concluding that claimant's respiratory disease was unrelated to coal dust exposure. Employer's arguments are rejected as they are without merit.

The record reflects that Drs. Shamma-Othman, Castle and Repsher opined that claimant has chronic obstructive pulmonary disease (COPD) and that he is totally disabled by that condition. The administrative law judge observed correctly that, in excluding coal dust exposure as a causative factor for claimant's disabling COPD, Dr. Shamma-Othman and Dr. Castle each cited to the fact that claimant's pulmonary function study results improved with the use of a bronchodilator and showed partial reversibility of his airway obstruction. *See* Decision and Order at 16, 36; Director's Exhibit 12; Employer's Exhibits 1, 2, 7. The administrative law judge observed correctly, however, that, even with partial reversibility, claimant's pulmonary function tests remained qualifying for total disability. Decision and Order at 36. The administrative law judge concluded that neither Dr. Shamma-Othman, nor Dr. Castle, credibly rebutted the presumption that claimant has legal pneumoconiosis, as "neither of the physicians explained why the irreversible portion of the Claimant's impairment was not related to coal dust exposure, or why his partial response to bronchodilators eliminated such exposure as a cause of the Claimant's disabling residual impairment."[8] *Id.* Contrary to employer's argument, we see no error in the administrative law judge's rational credibility finding and affirm it as supported by substantial evidence. *See Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007); *Consolidation Coal Co. v. Swiger*, 98 Fed. Appx. 227, 237 (4th Cir. May 11, 2004) (unpub.).

With respect to the opinions of Drs. Castle and Repsher, the administrative law judge also observed correctly that they cited to "a diminished FEV1/FVC ratio as a basis for a determination that the [c]laimant's pulmonary condition was not related to coal dust inhalation[.]" Decision and Order at 36-37; *see* Director's Exhibit 22; Employer's Exhibits 2, 6, 7. The administrative law judge properly found that this line of reasoning is "antithetical to the statements contained in the preamble to the current regulations, and also inconsistent with the studies that the [DOL] cited with approval, when it

[8] The administrative law judge also acknowledged Dr. Castle's explanation that variability in the results of the pulmonary function tests over time was consistent with asthma. *See* Decision and Order at 37-38; Employer's Exhibit 7 at 18-27. The administrative law judge permissibly found Dr. Castle did not persuasively explain why, even if claimant had asthma, his disabling respiratory condition was not also due to coal dust exposure. *See Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007); *Consolidation Coal Co. v. Swiger*, 98 Fed. Appx. 227, 237 (4th Cir. May 11, 2004) (unpub.); Decision and Order at 37-38.

promulgated the current regulations," which indicate that "coal miners have an increased risk of developing COPD [and] COPD may be detected from decrements in . . . the ratio of FEV1/FVC." Decision and Order at 36-37, *quoting* 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000); *see Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 211, 22 BLR 2-467, 2-481 (3d Cir. 2002); *see also Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 314, 25 BLR 2-115, 2-130 (4th Cir. 2012); *J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117 (2009), *aff'd sub nom. Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F. 3d 248, 24 BLR 2-369 (3rd Cir. 2011).

In addressing the etiology of claimant's emphysema, the administrative law judge noted that "Dr. Castle agreed that coal mine dust can cause clinically significant obstructive lung disease in the absence of clinical pneumoconiosis, but also reiterated that the Claimant's emphysema has the characteristics of smoking-induced emphysema." Decision and Order at 38. She rationally found that "Dr. Castle did not rule out coal mine dust exposure as a contributory cause to the Claimant's emphysema," as Dr. Castle admitted "that there may be some overlap in the causal mechanism for smoking-induced and coal mine dust-induced emphysema, [indicating] a recognition that coal mine dust exposure cannot be categorically excluded as a source of the Claimant's emphysema." *Id*. at 39; *see Ogle*, 737 F.3d at 1071; *Rose*, 614 F.2d at 939, 2 BLR at 2-43-44.

With regard to Dr. Repsher's opinion, the administrative law judge further found that he excluded coal dust exposure as a cause of claimant's emphysema, based on the fact that claimant's coal dust exposure ceased in 2002, but claimant continued to smoke until 2008. Decision and Order at 38; Employer's Exhibit 6. The administrative law judge rationally rejected Dr. Repsher's explanation because it is "at odds with the regulation [at 20 C.F.R. §718.201(c)], which specifically states that pneumoconiosis can be both latent and progressive . . . and that it may become detectable only after coal mine dust exposure ceases." Decision and Order at 39; *see Kramer*, 305 F.3d at 211, 22 BLR at 2-481. For all of the above stated reasons, we conclude that substantial evidence supports the administrative law judge's determination that employer failed to affirmatively establish that claimant does not have legal pneumoconiosis.[9] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 n.9, 21 BLR 2-323, 2-335 n.9 (4th Cir. 1998). Because employer must disprove both clinical and legal pneumoconiosis, we affirm the

[9] Employer asserts that the administrative law judge did not give proper consideration to the qualifications of its physicians. Contrary to employer's contention, the administrative law judge outlined the qualifications of Drs. Shamma-Othman, Repsher and Castle, but she permissibly rejected their opinions on rebuttal, based on the explanations they provided. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 n.9, 21 BLR 2-323, 2-335 n.9 (4th Cir. 1998); Decision and Order at 16, 18-19.

administrative law judge's finding that employer failed to rebut the amended Section 411(c)(4) presumption by establishing that claimant does not have pneumoconiosis.

D. Disability Causation

Employer contends that the Board should remand this case for further consideration because the administrative law judge "failed to separately consider and weigh the evidence as to the existence of pneumoconiosis and total disability causation[.]" Employer's Brief in Support of Its Petition for Review at 33. Employer argues that "[e]ach of these issues requires an independent weighing of the relevant evidence in the record," in determining rebuttal of the amended Section 411(c)(4) presumption. *Id*. Although the administrative law judge combined his analysis on rebuttal, we conclude that the error was harmless. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (Appellant must explain how the "error to which [it] points could have made any difference."); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). As discussed *supra*, employer's physicians agreed that claimant is totally disabled by COPD, and we have affirmed the administrative law judge's findings that Dr. Shamm-Othman, Dr. Castle, and Dr. Repsher did not provide well-reasoned and well-documented opinions on the issue of the etiology of the claimant's totally disabling respiratory impairment. Decision and Order at 40. Because the administrative law judge's credibility determinations are supported by substantial evidence,[10] we affirm the administrative law judge's conclusion that the opinions of Drs. Shamm-Othman, Castle, and Repsher are insufficient to establish that claimant's respiratory disability did not arise out of, or in connection with, coal mine employment. *See Balsavage v. Director, OWCP*, 295 F.3d 390, 396-97, 22 BLR 2-386, 2-396 (3d Cir. 2002); *Soubik v. Director, OWCP*, 366 F.3d 226, 23 BLR 2-82 (3d Cir. 2004); *see also Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149, 1-155 (1989) (en banc). Consequently, we affirm the administrative law judge's finding that

[10] Employer argues that the administrative law judge erred in crediting the opinions of Drs. Houser and Rasmussen, that claimant's respiratory disability is due to pneumoconiosis *See* Employer's Brief in Support of Its Petition for Review at 46-55. Because employer bears the burden of proof on rebuttal, and we affirm the administrative law judge's finding that employer's evidence fails to affirmatively establish that claimant does not have pneumoconiosis or that claimant's totally disabling obstructive impairment did not arise out of, or in connection with, his coal mine employment, it is not necessary that we address employer's arguments regarding the weight accorded claimant's evidence. *See Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 478, 25 BLR 2-1 (6th Cir. 2011); *Barber v. Director, OWCP*, 43 F.3d 899, 901, 19 BLR 2-61, 2-67 (4th Cir. 1995); *Rose v. Clinchfield Coal Co*., 614 F.2d 936, 939, 2 BLR 2-38, 2-43-44 (4th Cir. 1980).

employer did not rebut the amended Section 411(c)(4) presumption, and further affirm the award of benefits.

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

SO ORDERED.

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BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge