U.S. Department of Labor

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

BRB No. 14-0442 BLA

EDDIE H. BULLOCK	)	
	)	
Claimant-Respondent	)	
v.	)	
	)	
HERITAGE COAL COMPANY	)	
	)	DATE ISSUED: 08/25/2015
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 of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Thomas E. Johnson (Johnson, Jones, Snelling, Gilbert & Davis), Chicago, Illinois, for claimant.

H. Brett Stonecipher and Mark E. Yonts (Fogle Keller Purdy, PLLC), Lexington, Kentucky, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (2013-BLA-5383) of Administrative Law Judge Daniel F. Solomon awarding benefits 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 miner's claim filed on January 26, 2012.

Applying amended Section 411(c)(4), 30 U.S.C. §921(c)(4),[1] the administrative law judge credited claimant with twenty-six years of qualifying coal mine employment,[2] 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). The administrative law judge, therefore, found that claimant invoked the rebuttable presumption set forth at Section 411(c)(4). Moreover, the administrative law judge found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues 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 argues that the administrative law judge erred in finding that employer did not rebut the Section 411(c)(4) presumption. Employer further challenges the constitutionality of the evidentiary limitations regarding the x-ray evidence set forth at 20 C.F.R. §725.414(a)(3)(i). Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[3]

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

[1] As part of the Patient Protection and Affordable Care Act, Public Law No. 111-148, Congress enacted amendments to the Black Lung Benefits Act (the Act), which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, Congress reinstated Section 411(c)(4) of the Act, which provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4). The Department of Labor revised the regulations to implement the amendments to the Act. The revised regulations became effective on October 25, 2013, and are codified at 20 C.F.R. Parts 718, 725 (2014).

[2] The record reflects that claimant's last coal mine employment was in Illinois. Director's Exhibit 3. 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 (1989) (en banc).

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant has twenty-six years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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

Employer argues that the administrative law judge erred in finding that claimant invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis. Employer specifically argues that the administrative law judge erred in determining that claimant is totally disabled pursuant to 20 C.F.R. §718.204(b)(2).

Employer contends that the administrative law judge committed several errors in finding that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge considered the medical opinions of Drs. Sanjabi, Cohen, Selby, and Broudy. Dr. Sanjabi opined that claimant suffers from a significant pulmonary impairment that would render him unable "to do what a coal miner has to do while working." Director's Exhibit 12. Dr. Cohen opined that claimant's "gas exchange abnormalities with exercise, his moderate restriction and his moderate diffusion impairment are significant and severe enough to be totally disabling for the heavy exertion required of an underground repairman." Claimant's Exhibit 1. Conversely, Drs. Selby and Broudy each opined that claimant retains the respiratory capacity to perform his last coal mine employment. Employer's Exhibits 6 at 27-28; 8 at 18.

After finding that claimant's usual coal mine employment as a mechanic required heavy work, Decision and Order at 9, the administrative law judge considered the conflicting medical opinion evidence. The administrative law judge credited Dr. Cohen's opinion that claimant suffers from a totally disabling respiratory impairment, finding that the doctor's opinion was well-documented, and was based upon the "objective clinical evidence." Decision and Order at 10, 13. The administrative law judge accorded less weight to Dr. Selby's opinion, finding that his rationale for determining that claimant retains the respiratory capacity to perform his last coal mine employment was "at best confusing." *Id.* at 10. The administrative law judge also found that Dr. Broudy's opinion was not well-reasoned. *Id.* at 11. The administrative law judge, therefore, found that the medical opinion evidence established the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2)(iv).[4] *Id.* at 13.

[4] It is unclear how much weight, if any, the administrative law judge accorded Dr. Sanjabi's assessment of claimant's pulmonary impairment. Although the administrative law judge noted that Dr. Sanjabi had no knowledge of several of claimant's significant conditions (bronchial asthma, cardiomegaly, obstructive sleep apnea), the administrative law judge did not explain how this would undermine the doctor's assessment of the severity of claimant's pulmonary impairment. Decision and Order at 12. The

Employer initially contends that the administrative law judge erred in determining that Dr. Cohen's opinion was sufficiently reasoned to support a finding of a totally disabling respiratory impairment. Employer's Brief at 16. Dr. Cohen interpreted claimant's pulmonary function study results as showing a moderate restrictive defect, and his diffusion capacity studies as revealing a moderate diffusion impairment. Claimant's Exhibit 1 at 5. Dr. Cohen further interpreted claimant's March 22, 2012 arterial blood gas study as revealing "significant gas exchange abnormalities with even minimal exercise." *Id.* at 9. Based upon the results of these objective studies, Dr. Cohen opined that claimant is totally disabled from a pulmonary standpoint:

> It is clear that [claimant's] gas exchange abnormalities with exercise, his moderate restriction and his moderate diffusion impairment are significant and severe enough to be totally disabling for the heavy exertion required of an underground repairman. [Claimant] would not be able to sustain the physical effort required to lift heavy parts weighing up to 50 pounds, carry bags of rock dust, and perform all of the tasks described . . . in his work history.

Claimant's Exhibit 1 at 13.

The administrative law judge credited Dr. Cohen's assessment of claimant's pulmonary impairment because he found that it was well-documented and supported by the objective test results. Employer contends that Dr. Cohen's opinion is unexplained, and unsupported by the non-qualifying pulmonary function and blood gas studies of record. We disagree. Dr. Cohen based his opinion that claimant is totally disabled on his review of the medical evidence, including the results of pulmonary function, diffusion, and blood gas studies, which he interpreted as revealing a moderate restrictive defect, a moderate diffusion impairment, and "significant gas exchange abnormalities with even minimal exercise." Claimant's Exhibit 1 at 13. Further, Dr. Cohen explained that the level of impairment revealed by the objective testing would prevent claimant from performing the duties of his employment, which required heavy exertion. *Id.* Contrary to employer's argument, a claimant may establish total disability with reasoned medical opinion evidence, even "[w]here total disability cannot be shown [by the objective studies identified] under paragraphs (b)(2)(i) [and] (ii) . . . of this section . . . ." 20 C.F.R. §718.204(b)(2)(iv). Thus, a doctor can offer a reasoned medical opinion diagnosing total

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administrative law judge ultimately "attribute[ed] less weight to [Dr. Sanjabi's] opinions, but not as to the test results." *Id.*

disability, even though the objective studies are non-qualifying.[5] *See Killman v. Director, OWCP*, 415 F.3d 716, 721-22, 23 BLR 2-250, 2-259 (7th Cir. 2005); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 587, 22 BLR 2-107, 2-124 (6th Cir. 2000). Moreover, the determination of whether a medical opinion is adequately reasoned is committed to the discretion of the administrative law judge. *See Stalcup v. Peabody Coal Co.*, 477 F.3d 482, 484, 24 BLR 2-33, 2-37 (7th Cir. 2007); *Consolidation Coal Co. v. Director, OWCP* [*Stein*], 294 F.3d 885, 895, 22 BLR 2-409, 2-426 (7th Cir. 2002); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46, 1-47 (1985). Because the administrative law judge specifically found that Dr. Cohen set forth his rationale for his findings, based on his interpretation of the medical evidence of record, and explained why he concluded that claimant is unable to perform the duties of his usual coal mine work, we affirm the administrative law judge's permissible finding that Dr. Cohen's opinion is well-reasoned and sufficient to support a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

We also reject employer's contention that the administrative law judge erred in not addressing the significance of Dr. Selby's opinion that claimant does not have a diffusion impairment. Employer's Brief at 23. The record reveals that, while Dr. Cohen based his assessment of a "moderate diffusion impairment" on claimant's abnormal values, Dr. Selby based his assessment of a "normal diffusion capacity," not on claimant's DLCO values, but on the fact that claimant's DLCO/VA value was 92 percent. Employer's Exhibit 6 at 44-45. A review of the record reflects that Dr. Cohen explained his view that reliance upon DLCO/VA values to assess diffusion capacity is not generally accepted:

> Some physicians are of the opinion that the diffusion capacity (DLCO) is not an important measurement, and rather the [DL/VA] ratio of diffusion capacity to alveolar volume is the most important measurement. This is totally incorrect. In the most recent statement regarding the performance and interpretation of pulmonary function testing, the American Thoracic Society and the European Respiratory Society, the leading bodies of lung physicians in the world stated clearly that the [DL/VA] is of indeterminate and little value compared to the absolute DLCO. They note, *"The relationship between DLCO and lung volume is not linear, so DLCO/VA or*

[5] Contrary to employer's contention, Dr. Cohen also permissibly linked his opinion to the results of claimant's diffusion capacity study, even though the regulations do not provide qualifying values for such a study. *See Walker v. Director, OWCP*, 927 F.2d 181, 184-85, 15 BLR 2-16, 2-24-25 (4th Cir. 1991).

DLCO/TLC do not provide an appropriate way to normalise DLCO for lung volume."

Claimant's Exhibit 1 at 10. Employer has not adequately explained why Dr. Cohen's reliance on claimant's DLCO values as evidence of a moderate diffusion impairment would be undermined by Dr. Selby's opinion based on a different test value, when Dr. Selby does not address the significance of claimant's DLCO values, or Dr. Cohen's reliance on those values.

Employer notes that Dr. Broudy, in addressing claimant's diffusion study results, explained that "it is important to adjust for lung volume." Employer's Brief at 24. Employer, however, ignores that Dr. Broudy's opinion is in accordance with that of Dr. Cohen, in that Dr. Broudy opined that claimant's DLCO score demonstrated "a gas exchange abnormality." Employer's Exhibit 8 at 41. Dr. Broudy explained that claimant's DLCO/VA value of 92 percent "suggests that perhaps *the diffusion abnormality* is due to some extra pulmonary cause rather than the lung disease itself."[6] *Id.* at 55 (emphasis added). Thus, while Dr. Broudy indicates that claimant's DLCO/VA value may be useful in identifying the source of the impairment, he does not indicate that it demonstrates that claimant's diffusion capacity results are normal.[7]

Employer next argues that the administrative law judge erred in his consideration of the opinions of Drs. Selby and Broudy. We disagree. Noting that Dr. Selby's rationale for dismissing evidence of a disabling pulmonary impairment was "at best confusing[,]" the administrative law judge permissibly accorded less weight to it. Decision and Order at 10. Although Dr. Selby opined that claimant retained the pulmonary capacity to perform his last coal mine employment, Employer's Exhibit 5, he, like Dr. Cohen, acknowledged that claimant's March 22, 2012 arterial blood gas study demonstrated a significant drop in oxygen with exercise (hypoxia). Employer's Exhibit 6 at 38-39. But unlike Dr. Cohen, Dr. Selby dismissed the exercise blood gas study results

[6] Dr. Broudy acknowledged that it is "a little bit controversial whether [a physician] should use the adjusted volume or just the absolute value for the diffusing capacity." Employer's Exhibit 8 at 54.

[7] Even if claimant's diffusion capacity study results were normal, Dr. Cohen did not base his disability assessment exclusively on this evidence. The record reflects that Dr. Cohen also based his opinion, that claimant is totally disabled, on his review of the results of claimant's pulmonary function and blood gas studies, which he interpreted as revealing a moderate restrictive defect, and significant gas exchange abnormalities. Claimant's Exhibit 1 at 13.

as evidence of a pulmonary impairment, opining that claimant's hypoxia was due to cardiac abnormalities. *Id.* at 39.

The administrative law judge found that Dr. Selby failed to adequately explain his distinction. Notably, the regulations provide that if a nonpulmonary condition (such as cardiac disease) causes a chronic respiratory or pulmonary impairment, that condition shall be considered in determining whether a miner is totally disabled, as the administrative law judge accurately noted. Decision and Order at 8, citing 20 C.F.R. §718.204(a). The administrative law judge permissibly found that Dr. Selby did not adequately consider the possible relationship between claimant's conditions as required by the regulation. Employer's Exhibit 6 at 51, 73. Because he failed to adequately explain his basis for determining that claimant's abnormal blood gas studies did not demonstrate a totally disabling pulmonary impairment, the administrative law judge accordingly was justified in discrediting Dr. Selby's opinion. *See Stein*, 294 F.3d at 895, 22 BLR at 2-426; *Clark*, 12 BLR at 1-155, *Lucostic*, 8 BLR at 1-47.

The administrative law judge noted that Dr. Broudy, like Dr. Cohen, acknowledged that claimant's March 22, 2012 arterial blood gas study demonstrated a gas exchange abnormality and interpreted claimant's pulmonary function study results as revealing a restrictive ventilatory defect. Decision and Order at 1; Employer's Exhibit 8 at 41-42. The administrative law judge noted that Dr. Broudy, in opining that these impairments did not render claimant totally disabled, relied solely upon the non-qualifying nature of the pulmonary function and arterial blood gas studies. Decision and Order at 11; Employer's Exhibit 8 at 27-28. The administrative law judge permissibly accorded less weight to Dr. Broudy's opinion because, unlike Dr. Cohen, the doctor did not address whether claimant's gas exchange abnormality and restrictive ventilatory impairment would prevent claimant from performing the heavy work required of an underground mechanic.[8] *See Stein*, 294 F.3d at 895, 22 BLR at 2-426; *Clark*, 12 BLR at 1-155, *Lucostic*, 8 BLR at 1-47. Because it is based upon substantial evidence, the administrative law judge's finding that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv) is affirmed.

In light of our affirmance of the administrative law judge's findings that claimant established over twenty-six years of qualifying coal mine employment, and the existence of a totally disabling respiratory impairment, we affirm the administrative law judge's

[8] Because the administrative law judge provided a valid basis for according less weight to the opinions of Drs. Selby and Broudy, we need not address employer's remaining arguments regarding the weight he accorded to their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

finding that claimant invoked the rebuttable presumption that he is totally disabled due to pneumoconiosis at Section 411(c)(4). 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305.

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 does not have either legal or clinical pneumoconiosis,[9] 20 C.F.R. §718.305(d)(1)(i), or by establishing that "no 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)(ii). The administrative law judge found that employer failed to establish rebuttal by either method.

Employer argues that the administrative law judge erred in finding that it failed to disprove the existence of clinical pneumoconiosis. In addressing whether employer disproved the existence of clinical pneumoconiosis, the administrative law judge initially considered the x-ray evidence. The administrative law judge considered eleven interpretations of three x-rays taken on February 20, 2012, July 18, 2012, and August 6, 2012. Drs. Cheema, Ahmed, and Alexander, each dually-qualified as a B reader and Board-certified radiologist, interpreted the February 20, 2012 x-ray as positive for pneumoconiosis. Director's Exhibit 12; Claimant's Exhibits 2, 3. Drs. Meyer and Wheeler, also dually-qualified physicians, interpreted the x-ray as negative for the disease. Director's Exhibit 21; Employer's Exhibit 4. While Dr. Smith, a B reader and Board-certified radiologist, interpreted the July 18, 2012 x-ray as positive for pneumoconiosis, Dr. Shipley, also a dually qualified physician, interpreted the x-ray as negative. Claimant's Exhibit 4; Employer's Exhibit 1. Finally, Drs. Ahmed, and Alexander interpreted the August 6, 2012 x-ray as positive for pneumoconiosis, while Drs. Seaman and Meyer, also dually-qualified physicians, interpreted the x-ray as negative. Claimant's Exhibits 5, 16; Employer's Exhibits 2, 3.

[9] "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 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).

Because all of the physicians who interpreted claimant's x-rays are dually qualified as B readers and Board-certified radiologists, the administrative law judge declined to find that any reader was "better qualified tha[n] the others." Decision and Order at 14. Moreover, because there are more positive x-ray interpretations than negative interpretations, the administrative law judge found that the x-ray evidence did not assist employer in establishing that claimant does not have clinical pneumoconiosis. *Id.*

Employer contends that the evidentiary limitations set forth at 20 C.F.R. §725.414(a)(3)(i), limiting employers from submitting more than two x-ray interpretations in support of its affirmative case,[10] are invalid, and violate its right to due process. Employer's Brief at 34-35. We disagree. The Board has held that the regulation at Section 725.414, placing limits on the evidence to be submitted by each party, is valid and does not contravene the Act or controlling precedent. *Ward v. Consolidation Coal Co.*, 23 BLR 1-151 (2006); *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-58 (2004) (en banc); *see also Elm Grove Coal Co. v. Director, OWCP* [*Blake*], 480 F.3d 278, 23 BLR 2-430 (4th Cir. 2007).

Moreover, because each of the three x-rays was interpreted as both positive and negative for pneumoconiosis by equally qualified physicians of record, the administrative law judge permissibly found that the x-ray evidence was insufficient to carry employer's burden to disprove the existence of clinical pneumoconiosis. *See Consolidation Coal Co. v. Director, OWCP* [*Burris*], 732 F.3d 723, 734, 25 BLR 2-405, 2-424 (7th Cir. 2013) (holding that where the administrative law judge properly considered the qualifications of the physicians reading the miner's x-rays and CT scans, there was nothing inherently wrong with the finding that the evidence was equally balanced); *Owens v. Mingo Logan Coal Co.*, 25 BLR 1-1, 1-6 (2011). Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence does not assist employer in establishing that claimant does not have clinical pneumoconiosis.

Employer also argues that the administrative law judge erred in his consideration of the CT scan evidence. The record contains two interpretations of a CT scan taken on February 2, 2011. While Dr. Shipley, a B reader and Board-certified radiologist, found that the CT scan revealed no findings consistent with coal workers' pneumoconiosis, Employer's Exhibit 9, Dr. Alexander, also a dually-qualified physician, interpreted the CT scan as revealing "small opacities in the upper lungs which would be consistent with . . . coal workers' pneumoconiosis of low profusion." Claimant's Exhibit 6. The administrative law judge found that "[t]hese evenly balanced readings leave the employer

[10] Section 725.414(a)(2)(i) imposes the same limitation on claimants. 20 C.F.R. §725.414(a)(2)(i).

unable to rebut the presence of [clinical pneumoconiosis] by CT scan." Decision and Order at 15. Because the sole CT scan of record was interpreted as both consistent and inconsistent with coal workers' pneumoconiosis by equally qualified physicians,[11] we affirm the administrative law judge's finding that the CT scan evidence does not assist employer in disproving the existence of clinical pneumoconiosis. *See Burris*, 732 F.3d at 734, 25 BLR at 2-424.

Employer also submitted the opinions of Drs. Selby and Broudy in support of its burden to disprove the existence of clinical pneumoconiosis. Although Drs. Selby and Broudy opined that claimant does not suffer from clinical pneumoconiosis, Employer's Exhibits 5, 7, the administrative law judge permissibly found that the x-rays that Drs. Selby and Broudy relied upon as negative for pneumoconiosis were inconclusive for the existence of the disease, thus calling into question the reliability of their opinions that claimant does not have clinical pneumoconiosis. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Arnoni v. Director, OWCP*, 6 BLR 1-423 (1983); Decision and Order at 15. Since employer makes no additional contentions of error regarding the administrative law judge's determination that employer failed to disprove the existence of clinical pneumoconiosis,[12] this finding is affirmed.

Employer also asserts that the administrative law judge erred in failing to find that employer rebutted the Section 411(c)(4) presumption by establishing that "no 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)(ii). Employer specifically contends that the opinions of Drs. Selby and Broudy are sufficient to establish this second means of rebuttal. Contrary to employer's contention, the administrative law judge rationally

[11] Employer asserts that Dr. Alexander's CT scan interpretation is "ambivalent" regarding the existence of clinical pneumoconiosis because the doctor noted that the CT appearance was "not specific" for coal workers' pneumoconiosis. Employer's Brief at 29, quoting Claimant's Exhibit 6. We disagree. As claimant notes, Dr. Alexander explained that the reason he indicated that the CT scan was "not specific" for coal workers' pneumoconiosis is that a CT scan cannot be used to make an ILO classification of coal workers' pneumoconiosis, or to exclude the presence of simple coal workers' pneumoconiosis, particularly when the opacities are small and the profusion is low. Claimant's Exhibit 6.

[12] In light of our affirmance of the administrative law judge's finding that employer did not disprove the existence of clinical pneumoconiosis, we need not address employer's contentions of error regarding the administrative law judge's finding that employer did not disprove the existence of legal pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

discounted the opinions of Drs. Selby and Broudy, that claimant's pulmonary impairment did not arise out of his coal mine employment, because neither physician diagnosed claimant with clinical pneumoconiosis. *See Burris*, 732 F.3d at 735, 25 BLR at 2-425; *Amax Coal Co. v. Director, OWCP* [*Chubb*], 312 F.3d 882, 890, 22 BLR 2-514, 2-528 (7th Cir. 2002); *Toler v. E. Associated Coal Co.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986). We, therefore, affirm the administrative law judge's finding that employer failed to meet its burden to establish that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis.

Because claimant established invocation of the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis, and employer did not rebut the presumption, we affirm the administrative law judge's award of benefits. Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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GREG J. BUZZARD
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge