U.S. Department of Labor

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

BRB No. 17-0413 BLA

JAMES E. FENNELL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
R & PCC, LLC	)	DATE ISSUED: 08/06/2018
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of Decision and Order Awarding Benefits of Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Heath M. Long (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

Norman A. Coliane (Thompson, Calkins & Sutter, LLC), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2016-BLA-05302) of Administrative Law Judge Thomas M. Burke rendered on a claim filed pursuant to the

provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's claim filed on February 4, 2015.

The administrative law judge credited claimant with approximately seventeen years of underground coal mine employment and found that claimant is totally disabled pursuant to 20 C.F.R. §718.204(b)(2), thereby invoking 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 that employer failed to rebut the presumption and awarded benefits accordingly.

On appeal, employer argues that the administrative law judge erred in finding that claimant established the fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption. Employer also argues that the administrative law judge erred in finding that it did not rebut the presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief in this appeal.[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).

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[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where the evidence establishes fifteen or more 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) (2012); *see* 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant has a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[3] The record indicates that claimant's coal mine employment was in Pennsylvania. Director's Exhibits 3, 5. 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).

Invocation of the Section 411(c)(4) Presumption

Length of Coal Mine Employment

Claimant bears the burden of proof to establish the number of years he worked in coal mine employment.[4] *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). As the regulations provide only limited guidance for the computation of time spent in coal mine employment, the Board will uphold the administrative law judge's determination if it is based on a reasonable method and supported by substantial evidence in the record. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Dawson v. Old Ben Coal Co.*, 11 BLR 1-58 (1988) (en banc).

In addressing the length of claimant's coal mine employment, the administrative law judge considered claimant's testimony, his application for benefits, his employment history form, a United Mine Workers Health and Retirement Funds Pension Calculation Worksheet, and his Social Security Administration (SSA) earnings records.[5] Decision and Order at 3. The administrative law judge noted that the district director, in his Proposed Decision and Order, credited claimant with 16.96 years of coal mine employment based on a comparison of the Average Earnings of Employees in Coal Mining[6] with the years of coal mine employment listed on claimant's SSA earnings records. Decision and Order at 3; Director's Exhibit 13. After considering all of the documentation, the administrative law judge accepted the district director's calculation and credited claimant with "about seventeen years" of coal mine employment. Decision and Order at 3.

Employer asserts that the administrative law judge erred in finding that claimant's SSA earning records reflect coal mine employment in excess of fifteen years. Employer's Brief at 15-16. Employer contends that while SSA earnings records are "probative documentary evidence of length of employment," they are flawed in this case because

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[4] The administrative law judge found that claimant worked as an underground coal miner. Decision and Order at 13; Hearing Tr. at 9. Because this finding is unchallenged on appeal, it is affirmed. *Skrack*, 6 BLR at 1-711.

[5] The administrative law judge found that claimant's Social Security Administration (SSA) earnings records show employment for Helvetia Coal Company from 1978 to 1988 and 1995 to 2000, and for Consolidation Coal Company from 2002 to 2003. Decision and Order at 3; Director's Exhibit 5. Both companies are affiliated with R & PCC, LLC. Hearing Tr. at 9, 22, 24-25.

[6] *See* Exhibit 610, *BLBA Procedure Manual*, available at: https://www.dol.gov/owcp/dcmwc/blba/indexes/Exhibit610TR16.02.pdf.

claimant testified that he experienced layoffs during his coal mine employment that, employer contends, are not reflected in the SSA earnings records. *Id*. at 15. Further, employer asserts that claimant's testimony does not reliably establish fifteen years of coal mine employment as he "admit[ted] that he has no idea how long these layoffs lasted or totaled" and he "denied taking the periods of layoffs into account" in testifying that he worked for eighteen years as a coal miner. Employer's Brief at 16. Thus, employer concludes, there "is no other documentary evidence of record to support [c]laimant's claim that he worked underground for more than fifteen years in the mines." *Id*. at 15.

Employer's assertion that the SSA earnings records are the only documentary evidence to support claimant's assertion of more than fifteen years of coal mine employment is incorrect. Employer's Brief at 15. The administrative law judge noted that claimant's application for benefits states that he worked as a miner for sixteen years, his employment history form shows coal mine employment from 1978 to 1988 and from 1998 to 2002, and a United Mine Workers Health and Retirement Funds Pension Calculation Worksheet shows 15.50 years of coal mine employment. Decision and Order at 3; Director's Exhibits 2, 5, 6. Moreover, employer concedes that an administrative law judge may rely on evidence such as "employment history forms [and] employment records" to determine the length of a miner's coal mine employment. Employer's Brief at 15.

Further, employer's characterization of claimant's testimony regarding his layoffs is imprecise. While claimant acknowledged that there were layoffs during his employment and that he could not remember how long they lasted, he testified that he "didn't use the time [he] was laid off" in estimating his years of coal mine employment. Hearing Tr. at 23. Claimant additionally testified that the SSA earnings records adequately reflected his years of employment and that the district director's calculation of 16.96 years, based on the SSA earning records, sounds "about right." *Id*. at 9. Moreover, employer does not point to any evidence that shows the specific amount of time that claimant was laid off or that otherwise undermines the documentary evidence relied on by the administrative law judge.

It is the administrative law judge's function to weigh the evidence and draw his conclusions and inferences from it. *Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). Here, the administrative law judge considered all of the evidence of record and reasonably concluded that the district director's calculation of 16.96 years of coal mine employment is accurate, based on claimant's SSA earnings records as supported by the other documentary evidence and claimant's testimony. *See Muncy*, 25 BLR at 1-27. Because it is supported by substantial evidence, we affirm the administrative law judge's determination that claimant established at least fifteen years of underground coal mine employment. *See Soubik v. Director, OWCP*, 366

F.3d 226, 233 (3d Cir. 2004); *Mancia v. Director, OWCP*, 130 F.3d 579, 584 (3d Cir. 1997). The administrative law judge therefore properly concluded that claimant is entitled to the Section 411(c)(4) presumption of total disability due to pneumoconiosis. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305; Decision and Order at 14.

Rebuttal of the Section 411(c)(4) Presumption

Because claimant invoked the Section 411(c)(4) presumption, the burden shifted to employer to establish that claimant has neither legal nor clinical pneumoconiosis,[7] 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 that employer failed to establish rebuttal by either method.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, employer must establish that claimant does not have a chronic lung disease or impairment that is "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b); *see Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015) (Boggs, J., concurring and dissenting). In evaluating whether employer met its burden, the administrative law judge considered the pathology report of Dr. Yousem, the medical reports of Drs. Schroedl, Rosenberg, and Basheda, and the treatment records from Dr. Synan, St. Margaret Hospital, Presbyterian Hospital, and Armstrong County Memorial Hospital. Decision and Order at 5-12, 17-19; Claimant's Exhibits 1-3; Employer's Exhibits 2-6, 8-10.

Dr. Yousem examined tissue obtained from wedge biopsies of claimant's right middle and lower lung lobes performed on December 5, 2014. Claimant's Exhibit 1. He diagnosed "usual interstitial pneumonia (UIP) associated with multiple pleural adhesions and anthracosilicotic nodules." *Id.* While he did not explicitly attribute claimant's UIP to coal mine dust exposure, he stated that before UIP could be characterized as idiopathic pulmonary fibrosis (IPF) exclusion of known etiologies, including pneumoconiosis, is

[7] "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).

recommended.[8] *Id.* Dr. Schroedl diagnosed legal pneumoconiosis in the form of diffuse dust-related fibrosis and chronic bronchitis caused by coal dust exposure. Decision and Order at 17; Claimant's Exhibit 3. Dr. Synan diagnosed UIP/pulmonary fibrosis and stated that there was a high probability it was related to coal mine dust exposure. Claimant's Exhibit 2 at 11. Thus, claimant's physicians do not support employer's burden to disprove that claimant has legal pneumoconiosis.

In contrast, Dr. Rosenberg opined that claimant has UIP or IPF, as well as chronic bronchitis, unrelated to coal mine dust exposure. Employer's Exhibits 8, 10. Similarly, Dr. Basheda opined that claimant does not have legal pneumoconiosis, but has UIP or IPF, as well as intermittent asthma, unrelated to coal mine dust exposure. Employer's Exhibits 2, 9. The administrative law judge discredited their opinions as to the cause of claimant's pulmonary fibrosis, chronic bronchitis, and intermittent asthma and therefore found that employer failed to disprove the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(i). Decision and Order at 19.

Employer initially contends that the administrative law judge erred in discrediting the opinions of Drs. Rosenberg and Basheda that claimant has UIP or IPF that is unrelated to coal mine dust exposure. Employer's Brief at 17. Employer asserts that UIP cannot be credibly associated with coal mine dust exposure based on the medical evidence in this case and there is no credible evidence that such a correlation has been accepted by the medical community. *Id.* at 22.

Contrary to employer's arguments, the administrative law judge correctly observed that all of the physicians in this case, including Drs. Rosenberg and Basheda, agree that occupational and environmental exposures must be assessed before determining whether a case of pulmonary fibrosis is "idiopathic," i.e., its cause is unknown.[9] Decision and Order

[8] Dr. Yousem noted that in this case, a hypersensitivity panel positive for pigeon/bird feathers raises the possibility of hypersensitivity pneumonitis as an underlying cause, but added that the characteristic granulomas or bronchiolocentricity of infiltrate that one would usually identify was not seen. Claimant's Exhibit 1.

[9] Dr. Rosenberg concurred that before establishing a diagnosis of idiopathic pulmonary fibrosis (IPF), various environmental exposures need to be excluded as causative factors. Employer's Exhibit 8B. Dr. Basheda stated that if he sees a patient with computed tomography scan findings and pathology showing features of usual interstitial pneumonia (UIP), like claimant has, he asks about their occupation. Employer's Exhibit 9 at 28. He stated that a diagnosis of IPF is appropriate if no other etiology is identified, such as asbestos exposure. Employer's Exhibit 2b at 5; 9 at 16, 28.

at 19. Further, all of the physicians except Dr. Basheda acknowledged that coal mine dust exposure, specifically, is a possible cause of pulmonary fibrosis and should be considered before a diagnosis of IPF is made. *Id.* Dr. Yousem stated that while most cases of UIP are idiopathic, exclusion of known etiologies, including pneumoconiosis, is recommended before categorizing the fibrosis as IPF. Claimant's Exhibit 1; *see* Decision and Order at 19.

Dr. Synan, claimant's treating physician, stated that pulmonary fibrosis may be related to an autoimmune disease, medication, prior occupational and environmental exposures, or may be idiopathic. Claimant's Exhibit 2 at 31; *see* Decision and Order at 10-11. He noted that an autoimmune workup was negative and that claimant denied any concerning medication use. *Id.* He further noted that while claimant had prior exposure to asbestos, and a [hypersensitivity pneumonitis] panel was positive for pigeon/bird feathers, he had no evidence of asbestosis on computed tomography scan and had no known exposures to pigeon/bird feathers. *Id.* Additionally, he noted that recent testing was not consistent with sarcoidosis. *Id.* Following the biopsy, Dr. Synan concluded that, "given the patient's significant exposures of silica and coal dust as well as wedge biopsy revealing anthracosilicotic material, there is a high probability [that claimant's] UIP [is] related to pneumoconiosis." Claimant's Exhibit 2 at 24; *see* Decision and Order at 19.

Dr. Schroedl similarly noted that diffuse interstitial fibrosis is recognized in the medical literature as a lesion resulting from exposure to coal dust, silica, and dusts containing a mixture of minerals. Claimant's Exhibit 3 at 10; *see* Decision and Order at 17, 19. She further explained that the American Thoracic Society and the European Respiratory Society accept that a definite diagnosis of IPF or UIP requires exclusion of other known causes of interstitial lung disease such as drug toxicities and "*environmental exposures*." Claimant's Exhibit 3 at 12; *see* Decision and Order at 17. Thus, UIP should not be considered "idiopathic" unless exposure to known causes of lung scarring can be excluded. Claimant's Exhibit 3 at 11-12; *see* Decision and Order at 17. Dr. Schroedl stated that this was not the case with claimant, as he had extensive exposure to coal mine dust while working at the face of the mine as a continuous miner operator.[10] Claimant's Exhibit

[10] Dr. Schroedl also considered other exposures. She noted that claimant had asbestos exposure while he was in the Navy, but emphasized that there are no pleural plaques or calcifications to support a diagnosis of asbestos-related pleural disease and no evidence of asbestos was noted on the pathology report. Claimant's Exhibit 3 at 10. She additionally noted that a diagnosis of hypersensitivity pneumonitis was considered because a serologic panel demonstrated an increased titer to pigeon/bird feathers. *Id.* Claimant had no known environmental exposures to these antigens. His radiographic findings were not

3 at 11; *see* Decision and Order at 17. She also noted that IPF is associated with very severe restrictive defects, while claimant has only diffusion capacity and gas exchange abnormalities characteristic of pneumoconiosis. Claimant's Exhibit 3 at 11. Dr. Schroedl concluded, given that "[claimant's] biopsy showed features of pneumoconiosis, and he does have a significant occupational exposure" claimant has "diffuse dust-related fibrosis as a result of his coal mine dust exposure." Claimant's Exhibit 3 at 10; see Decision and Order at 17, 19.

Dr. Rosenberg stated that the American Thoracic Society does not list coal mine dust exposure among the environmental exposures that need to be excluded before diagnosing IPF. Employer's Exhibits 8, 8b; *see* Decision and Order at 18. Dr. Rosenberg acknowledged, however, that there is a body of literature concluding that coal mine dust may be a possible cause of diffuse interstitial fibrosis with an IPF-type presentation. Employer's Exhibit 10 at 28-29; *see* Decision and Order at 18. He stated that if that were the case here, however, extensive coal mine dust deposition would have been found intermixed with the observed pulmonary fibrosis. Employer's Exhibits 8b; 10 at 20, 44; *see* Decision and Order at 18-19. Because the pathology report did not describe such intermixed coal dust deposition, he concluded that claimant suffers from IPF, a disorder of the general public. Employer's Exhibits 8b; 10 at 20, 44; *see* Decision and Order at 18-19.

Finally, Dr. Basheda stated that coal dust is not in the differential diagnosis when evaluating chronic interstitial lung disease, according to Clinics in Chest Medicine published in March 2012 (volume 33-#1). Employer's Exhibit 2b at 6-7; 9 at 18; *see* Decision and Order at 18. Thus he did not consider coal mine dust exposure to be even a possible cause of claimant's UIP. Employer's Exhibit 2b at 6-7; 9 at 18; *see* Decision and Order at 18.

The test in assessing a medical opinion is one of credibility and persuasiveness. *See* 20 C.F.R. § §718.202(a)(4); *Balsavage v. Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *Kertesz v. Director, OWCP*, 788 F.2d 158, 163 (3d Cir. 1986). In light of Dr. Basheda's acknowledgment that environmental exposures must be considered before diagnosing IPF, claimant's years of coal and silica dust exposure, and the explanations provided by Drs. Yousem, Synan, and Schroedl, the administrative law judge permissibly declined to credit Dr. Basheda's opinion that coal dust is not a differential diagnosis for UIP and thus could not have been a cause in this case. *Balsavage*, 295 F.3d at 396; *Kertesz*,

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consistent with chronic hypersensitivity pneumonitis, and his lung pathology did not demonstrate granulomatous reaction with the lung parenchyma. *Id.*

788 F.2d at 163; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 19.

The administrative law judge also permissibly discredited Dr. Rosenberg's opinion that there was insufficient coal mine dust observed on biopsy in the areas of fibrosis to consider coal mine dust to have been a contributory cause. Decision and Order at 19. The regulations do not require the presence of anthracotic pigment or pneumoconiotic nodules to support a finding of pneumoconiosis. *See* 20 C.F.R. §718.106(c) ("A negative biopsy is not conclusive evidence that a miner does not have pneumoconiosis."); *Consol. Coal Co. v. Director, OWCP* [*Funka*], 2019 WL 3409144, slip op. at *8 (3d Cir. 2018) (unpub). Moreover, as the administrative law judge noted, here the pathology evidence affirmatively demonstrates "usual interstitial pneumonia associated with multiple pleural adhesions and anthracosilicotic nodules."[11] Decision and Order at 19. Thus, the administrative law judge permissibly found that Dr. Rosenberg failed to persuasively exclude coal mine dust as a cause of claimant's UIP. *Balsavage*, 295 F.3d at 396; *Kertesz*, 788 F.2d at 163; *Clark*, 12 BLR at 1-155. In asserting that Drs. Rosenberg and Basheda are the better reasoned and documented opinions, employer is asking for a reweighing of the evidence, which the Board is not empowered to do.[12] *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-

[11] We reject employer's assertion that the administrative law judge erred in relying in part on the biopsy evidence to support a finding of legal pneumoconiosis because no physician opined that the anthracosilicotic nodules seen on biopsy caused a respiratory impairment. Employer's Brief at 21. Contrary to employer's argument, a miner can be found to have pneumoconiosis regardless of whether it causes an impairment. The regulatory definition of pneumoconiosis is not limited to "respiratory and pulmonary impairments" arising out of coal mine employment, but includes coal mine dust-related lung "diseases." 20 C.F.R. §718.201(a)(1), (2). Whether that pneumoconiosis caused a respiratory impairment is a separate inquiry at 20 C.F.R. §718.204(c), or on rebuttal at 20 C.F.R §718.305(d)(1)(ii), (2)(ii).

[12] Employer contends that in evaluating the evidence, the administrative law judge failed to adequately consider the credentials of Drs. Rosenberg and Basheda which employer contends are superior to those of Dr. Schroedl. Employer's Brief 17, 24-25. Because the administrative law judge permissibly discredited the opinions of Drs. Rosenberg and Basheda as unpersuasive and contrary to the weight of the evidence, and not on the basis of their credentials, we need not address this argument. Any error in the administrative law judge's evaluation of the physicians' relative qualifications is harmless. *See Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53, 1-55 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988); Employer's Brief at 17.

Turing to claimant's other diagnosed conditions, the administrative law judge found that Drs. Rosenberg and Basheda did not credibly explain why claimant's coal mine dust exposure did not contribute to his chronic bronchitis or intermittent asthma.[13] Decision and Order at 6, 10; Employer's Exhibits 9 at 21; 10 at 39. As employer makes no specific challenge to the administrative law judge's discrediting of their opinions, we affirm his finding that employer did not disprove that these conditions constitute legal pneumoconiosis.[14] *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

As the trier-of-fact, the administrative law judge has broad discretion to assess the credibility of the medical opinions and assign them appropriate weight. *See Balsavage*,

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[13] Dr. Rosenberg agreed that coal mine dust can cause bronchitis but stated he would not expect bronchitis caused by coal dust to be present here since claimant left coal mine employment in 2002, and industrial bronchitis would be expected to dissipate within months after the dusty work environment is removed." Decision and Order at 10; *see* Employer's Exhibit 10 at 41-42; *but see* 20 C.F.R. §718.201(c) (pneumoconiosis "is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure"); *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987). Dr. Basheda did not address the cause of claimant's intermittent asthma.

[14] Employer argues instead that Drs. Rosenberg and Basheda opined that chronic bronchitis and intermittent asthma are not the causes of claimant's disability. Employer's Brief at 23-24. Whether claimant's asthma and chronic bronchitis are disabling, however, is not the relevant inquiry at 20 C.F.R. §§718.202(a)(4), 718.305(b). Rather, the proper inquiry is whether employer has shown that claimant does not have a chronic lung disease or impairment that is "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b); *see Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-159 (2015) (Boggs, J., concurring and dissenting). Employer also asserts Dr. Schroedl "offered no explanation . . . as to why she believes that Claimant suffers from chronic bronchitis/intermittent asthmatic condition due to coal dust exposure." Employer's Brief at 23. To the extent employer contends that Dr. Schroedl's opinion is not credible, we need not address this argument as Dr. Schroedl's opinion does not assist employer in rebutting the Section 411(c)(4) presumption. *See Larioni*, 6 BLR at 1-1276. For this reason, we further decline to address employer's remaining contentions of error regarding the administrative law judge's consideration of Dr. Schroedl's opinion diagnosing legal pneumoconiosis.

295 F.3d at 396; *Kertesz*, 788 F.2d at 163; *Clark*, 12 BLR at 1-155. The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *See Anderson*, 12 BLR at 1-113; *Fagg*, 12 BLR at 1-79. Because the administrative law judge permissibly declined to credit the opinions of Drs. Rosenberg and Basheda,[15] the only opinions supportive of a finding that claimant does not suffer from legal pneumoconiosis, we affirm his finding that employer failed to establish that claimant does not have legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); *see Clark*, 12 BLR at 1-155; Decision and Order at 19. Accordingly, we affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption by establishing that claimant does not have legal pneumoconiosis.

Clinical Pneumoconiosis

Employer also asserts that the administrative law judge erred in his evaluation of the x-ray and medical opinion evidence on the issue of clinical pneumoconiosis. Employer's Brief at 17-20.

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered five interpretations of three x-rays dated May 22, 2015,[16] March 29, 2016, and April 21, 2016; and interpretations of x-rays contained in claimant's treatment records.[17] Decision and Order at 3, 15. Dr. Wolfe, dually-qualified as a Board-certified radiologist and B reader, interpreted the May 22, 2015 x-ray as positive for pneumoconiosis, whereas Dr. Meyer, also dually-qualified, interpreted it as negative. Director's Exhibit 10; Employer's Exhibit 1. The administrative law judge permissibly found this x-ray to be in equipoise based on the equal number of positive and negative readings by the dually-qualified readers. *See*

[15] Because the administrative law judge provided a valid basis for finding the opinions of Drs. Basheda and Rosenberg insufficient to rebut the presumed existence of legal pneumoconiosis, we need not address employer's remaining arguments regarding the weight he accorded their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Decision and Order at 17-19.

[16] Dr. Gaziano, a B reader, read the May 22, 2015 x-ray film for quality only. Director's Exhibit 10.

[17] The administrative law judge noted that the x-rays in the treatment records are silent concerning the presence of clinical pneumoconiosis. Decision and Order at 15. He found that because these x-rays were taken for the purpose of treatment, they did not establish the presence or absence of pneumoconiosis. *Id*.

Director, OWCP v. Greenwich Collieries [*Ondecko*], 512 U.S. 267; Decision and Order at 15.

Dr. Basheda, a B reader, interpreted the March 29, 2016 x-ray as positive for pneumoconiosis, while Dr. Meyer interpreted it as negative. Director's Exhibit 10; Employer's Exhibit 2. The administrative law judge permissibly found this x-ray to be negative for pneumoconiosis based on Dr. Meyer's dual-qualifications. *See Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-300 (2003); *Bateman v. E. Associated Coal Corp.*, 22 BLR 1-255, 1-261 (2003); Decision and Order at 15.

Finally, Dr. Cohen, a B reader, interpreted the April 21, 2016 x-ray as positive for pneumoconiosis. Claimant's Exhibit 3. The administrative law judge permissibly found this x-ray to be positive for pneumoconiosis based on Dr. Cohen's uncontradicted reading. *See Mancia*, 130 F.3d at 584; Decision and Order at 15.

Having found one x-ray negative, one inconclusive, and the most recent positive for pneumoconiosis, the administrative law judge concluded that the x-ray evidence "in total" is insufficient to meet employer's burden to disprove the existence of clinical pneumoconiosis. Decision and Order at 15.

Employer argues that the administrative law judge erred by relying on Dr. Cohen's positive interpretation of the April 21, 2016 x-ray. Employer asserts that he failed to explain why Dr. Cohen's positive reading is entitled to greater weight than the negative readings by Dr. Meyer, who is better qualified. Employer's Brief at 17-19. Employer's assertion lacks merit.

Contrary to employer's argument, the administrative law judge did not credit Dr. Cohen's positive reading over Dr. Meyer's negative readings. Rather, the administrative law judge properly weighed the conflicting interpretations of each individual x-ray at 20 C.F.R. §718.202(a)(1), in order to determine whether each x-ray was positive or negative for pneumoconiosis, before weighing the x-ray evidence as a whole. *See Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 148-49 (1987); *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-65 (2004) (en banc); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1983). The administrative law judge permissibly resolved the conflict in interpretations of the same x-ray by assigning greater weight to the readings by the reader with dual qualifications. *See* 20 C.F.R. §§718.102, 718.202(a)(1); *Zeigler Coal Co. v. Director, OWCP* [*Hawker*], 326 F.3d 894, 899 (7th Cir. 2003); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59 (6th Cir. 1995); *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); *Chaffin*, 22 BLR at 1-300. In the case of the April 21, 2016 x-ray, however, the administrative law judge permissibly credited Dr. Cohen's reading because it is uncontradicted. *See Mullins*, 484 U.S. at 148-49; *Mancia*, 130 F.3d at 584; Decision and

Order at 15. Contrary to employer's contention, the administrative law judge was not required to find the accuracy of Dr. Cohen's uncontradicted reading of the April 21, 2016 x-ray undermined by Dr. Meyer's reading of a different x-ray. Thus, we affirm the administrative law judge's finding that the x-ray evidence "in total" is insufficient to disprove the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). *See Chaffin*, 22 BLR at 1-300; *Bateman*, 22 BLR at 1-261.

The administrative law judge next considered the pathology evidence pursuant to 20 C.F.R. §718.202(a)(2). He rationally concluded that Dr. Yousem's identification of "usual interstitial pneumonia associated with multiple pleural adhesions and *anthracosilicotic nodules*," constituted a diagnosis of clinical pneumoconiosis.[18] *See* 20 C.F.R. §718.202(a)(1) (anthracosilicosis arising out of coal mine employment is recognized by the medical community as pneumoconiosis); *Dagnan v. Black Diamond Coal Mining Co.*, 994 F.2d 1536, 18 BLR 2-203 (11th Cir. 1993); *Youghiogheny & Ohio Coal Co. v. Milliken*, 866 F.2d 195, 12 BLR 2-136 (6th Cir. 1989); *Hapney v. Peabody Coal Co.*, 22 BLR 1-104 (2001) (en banc) (Dolder and Smith, JJ, dissenting in part and concurring in part); Decision and Order at 16; Claimant's Exhibit 1 (emphasis added).

Relevant to 20 C.F.R. §718.202(a)(4), Dr. Schroedl reviewed Dr. Yousem's opinion and agreed that the biopsy "showed features of pneumoconiosis." Claimant's Exhibit 3 at 12. In contrast, Drs. Rosenberg and Basheda opined that the biopsy does not support a diagnosis of clinical pneumoconiosis.[19] The administrative law judge discredited the opinions of Drs. Rosenberg and Basheda as not well-reasoned and, therefore, found that the medical opinion evidence does not disprove the existence of clinical pneumoconiosis.

Employer asserts that the administrative law judge erred in discrediting the opinions of Drs. Rosenberg and Basheda because they are well-qualified pulmonologists and explained that because the anthracosilicotic nodules identified on biopsy were located in the pleura, not the lung parenchyma, they did not support a diagnosis of clinical

[18] Because employer does not challenge this determination, it is affirmed. *Skrack*, 6 BLR at 1-711.

[19] The pleura is the serous membrane investing the lungs and lining the thoracic cavity, completely enclosing a space known as the pleural cavity. Dorland's Illustrated Medical Dictionary 1460 (32 ed. 2012). The pleura divides into the visceral pleura, which covers the lung, and the parietal pleura, which lines the chest wall. Mosby's Medical Dictionary 932 (3 ed. 1990). For the purposes of the Act, "pneumoconiosis" means "a "chronic dust disease of the lung and its sequelae . . . arising out of coal mine employment." 20 C.F.R. §718.201(a).

pneumoconiosis.[20] Employer's Brief at 10, 14, 19-20. Contrary to employer's argument, the administrative law judge permissibly discredited their opinions as inconsistent with the regulatory definition of coal workers' pneumoconiosis, which includes anthracosilicosis and does not exclude consideration of nodules in the pleural area. *See* 20 C.F.R. §718.201(a)(1); *Clark*, 12 BLR at 1-155; Decision and Order at 16, *citing Dagnan*, 994 F.2d at 1541.

Nor is there merit to employer's suggestion that the biopsy results demonstrated anthracotic pigmentation alone. Employer's Brief at 21, *citing* 20 C.F.R. §718.202(a)(2). Drs. Yousem, Schroedl, Rosenberg, and Basheda all acknowledged the presence of anthracosilicotic *nodules*. Claimant's Exhibits 1, 3; Employer's Exhibits 9 at 30; 10 at 43. Because the administrative law judge permissibly discredited the opinions of Drs. Rosenberg and Basheda, we affirm his finding that employer failed to prove that claimant does not have clinical pneumoconiosis, and therefore failed to rebut the Section 411(c)(4) presumption by establishing that claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

Finally, the administrative law judge addressed whether employer established that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. Decision and Order at 20-21. The administrative law judge rationally discredited the opinions of Drs. Basheda and Rosenberg that claimant's pulmonary impairment was not caused by pneumoconiosis because neither doctor diagnosed legal or clinical pneumoconiosis, contrary to the administrative law judge's finding that employer failed to disprove that claimant has the diseases. *See Soubik*, 366 F.3d at 234; *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 20. We therefore affirm the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption by establishing that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. *See* 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(d)(1)(ii).

[20] Dr. Rosenberg stated that the pleural anthracosilicotic nodules identified on biopsy are not pneumoconiosis which, "by definition involves a lung parenchyma." Employer's Exhibit 10 at 43-44. Dr. Basheda similarly stated that the miner did not have pneumoconiosis, in part, because the biopsy showed that the coal dust nodules were not in the parenchyma of the lung but were "in the pleura, which is the lining around the lung, and not the lung itself." Employer's Exhibit 9 at 32-33.

Because claimant invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis, and employer did not rebut the presumption, claimant has established his entitlement to benefits.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge