U.S. Department of Labor

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

BRB No. 15-0078 BLA

LONNIE B. ABSHER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
J & L MINING, INCORPORATED	)	DATE ISSUED: 12/15/2015
	)	
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 Awarding Benefits of Paul R. Almanza, Administrative Law Judge, United States Department of Labor.

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, for employer.

Mackenzie Fillow (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, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2012-BLA-5482) of Administrative Law Judge Paul R. Almanza[1] on a subsequent claim filed on April 25,

[1] By Order of January 28, 2013, the Office of Administrative Law Judges reassigned this case in light of the retirement of Administrative Law Judge Ralph A. Romano, who conducted the administrative hearing.

2011, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012)(the Act).[2] The administrative law judge found that employer stipulated to seventeen years in underground coal mine employment. Additionally, the administrative law judge found that that the record independently established that claimant worked for seventeen years in underground coal mining. He also found that claimant established total respiratory disability pursuant to 20 C.F.R §718.204(b)(2)(ii), (iv). Therefore, the administrative law judge found that claimant was entitled to invocation of the rebuttable presumption of total disability due to pneumoconiosis provided at Section 411(c)(4) of the Act. 30 U.S.C. §921(c)(4).[3] Further, the administrative law judge found that the presumption was not rebutted because, even though employer disproved the existence of clinical pneumoconiosis, it failed to disprove the existence of legal pneumoconiosis or to establish that no part of claimant's disability was due to pneumoconiosis. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(d)(i)(A), (B), (ii). The administrative law judge therefore found that claimant also established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding that *all* of claimant's truck driving work qualified as underground coal mine employment because it occurred at underground mine sites. Alternatively, employer contends that claimant failed to establish that *all* of his truck driving work occurred in conditions "substantially similar" to those in underground mining. Hence, employer contends that the administrative law judge erred in finding that claimant established the requisite fifteen years of qualifying coal mine employment needed to invoke the Section 411(c)(4)

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[2] Claimant filed a previous claim for benefits on January 6, 1987. Director's Exhibit 1. The district director denied that claim on April 29, 1987, because claimant failed to establish any of the elements of entitlement. *Id*. at 10-11. There is no indication in the record that claimant took any further action with regard to the denial of his 1987 claim.

[3] On March 23, 2010, amendments to the Act were enacted, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, amended Section 411(c)(4) provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if the miner establishes a totally disabling respiratory or pulmonary impairment and at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine. Once the presumption is invoked, the burden shifts to employer to rebut the presumption by showing that the miner did not have pneumoconiosis, or that no part of his disability was caused by pneumoconiosis. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305.

presumption.[4] Employer also argues that the administrative law judge erred in finding that the medical opinion evidence failed to rebut the presumption. Claimant has not responded to employer's appeal. The Director, Office of Workers' Compensation Programs (the Director), notes that, should the Board vacate the administrative law judge's finding that the presumption was not rebutted, the administrative law judge should be instructed to provide a more detailed review of the x-ray evidence regarding the existence of clinical pneumoconiosis. Specifically, the Director notes that, on reviewing the x-ray evidence, the administrative law judge may take official notice of documents regarding the credibility of Dr. Wheeler's x-ray readings.

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.[5] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

I. INVOCATION OF THE SECTION 411(c)(4) PRESUMPTION

Employer argues that claimant does not have seventeen years in *underground* coal mine employment, as "more than half" of claimant's seventeen years of coal mine employment "was for various trucking companies." Employer's Brief at 3. Specifically, employer contends that "[t]he evidence establishes that *some* of this work was performed at underground mine sites, but does not establish that *all* of his truck driving work was at underground mines." Employer's Brief at 3. Employer contends, therefore, that claimant is not entitled to consideration under the Section 411(c)(4) presumption because the evidence fails to establish that *all* of his truck driving was at underground mines. We disagree.

In finding that claimant had seventeen years of qualifying underground coal mine employment, the administrative law judge found that claimant's Social Security Earnings Records (SSERs) and his testimony demonstrated that he worked "both to extract coal and to transport it from underground to the mine tipple." Decision and Order at 4. Specifically, the administrative law judge found that claimant's SSERs showed that he

[4] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established total respiratory disability pursuant to 20 C.F.R §718.204(b)(2)(ii), (iv). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 12-13.

[5] Because claimant's last coal mine employment was in Kentucky, we will apply the law of the United States Court of Appeals for the Sixth Circuit. *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc); Director's Exhibit 4.

was employed as an underground coal miner in 1966-73, 1983-85, and 1990-1991.[6] Additionally, the administrative law judge found that claimant was employed by truck driving companies in 1972, 1977-83, 1986, and 1989-90. The administrative law judge further noted that, on a Department of Labor questionnaire, claimant stated that "as a truck driver he hauled coal from underground to the tipple." Decision and Order at 4; Director's Exhibit 6 at 1. In a subsequent deposition, the administrative law judge noted that claimant "stated again that as a truck driver his only job duty was to haul coal." Decision and Order at 4; Employer's Exhibit 1 at 12-14. Based on the documentary evidence and claimant's testimony, therefore, the administrative law judge found that claimant's truck driving work qualifies as underground coal mining employment and that, together with his other periods of underground mining, claimant established a total of seventeen years of underground coal mine employment.

To invoke the 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); *see Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-29 (2011). The Board has held that the *type* of mine (underground or surface), rather than the *location* of the particular worker (surface or below ground), is the factor that determines whether claimant's coal mine employment is qualifying. *See Muncy*, 25 BLR at 1-29; *Alexander v. Freeman United Coal Mining Co.*, 2 BLR 1-497, 1-503-504 (1979)(Smith, Chairman, dissenting). Hence, if claimant worked above-ground at an underground coal mine, the administrative law judge may conclude that all of his coal mine employment at the underground mine site is qualifying and claimant need not show either that he was regularly exposed to coal dust or the substantial similarity between his above-ground work conditions and those in an underground mine. *See Island Creek Kentucky Mining v. Ramage*, 737 F.3d 1050, 25 BLR 2-453 (6th Cir. 2013); *Muncy*, 25 BLR at 1-28-29. Moreover, the administrative law judge, as fact-finder, is charged with determining the credibility of both the documentary evidence and testimony. *See Big Branch Resources, Inc. v. Ogle*, 737 F.3d 1063, 25 BLR 2-431 (6th Cir. 2013); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983).

In this case, the administrative law judge found that claimant's SSERs, employment questionnaires, depositions, and hearing testimony established that *all* of his truck driving jobs, hauling coal from underground to the mine tipple, occurred at underground mine sites. *See* Decision and Order at 4-5, 12. Although employer asserts that the evidence does not establish that *all* of claimant's work as a truck driver was at underground mines, it fails to identify with any specificity what truck driving

[6] At the hearing, claimant described his work running the shuttle car, running the scoop, hauling coal to the belt, shooting coal, and loading coal. Hearing Transcript at 11-12.

employment of claimant's was not at an underground mine or identify how the administrative law judge's finding was not supported by the evidence of record. The administrative law judge's finding that all of claimant's truck driving work was at underground mine sites is therefore affirmed. *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986).

Because the administrative law judge found that all of claimant's truck driving work was at underground mine sites, he was not required to determine whether it occurred in conditions substantially similar to those in underground mining.[7] *Ramage*, 737 F.3d at 1058-59, 25 BLR at 2-465. Consequently, we affirm the administrative law judge's finding that claimant's various truck driving jobs hauling coal at underground mine sites qualified at underground mining. *See Ramage*, 737 F.3d at 1058-59, 25 BLR at 2-465; *Muncy*, 25 BLR at 1-28-29. Additionally, we affirm the administrative law judge's finding that that work, combined with claimant's underground coal mine employment running the shuttle car, running the scoop, hauling coal to the belt, and shooting and loading coal, established the requisite fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c) presumption. 30 U.S.C. §921(c)(4); Decision and Order at 4-5, 12. Further, because we affirm the administrative law judge's uncontested finding that claimant established total respiratory disability pursuant to 20 C.F.R §718.204(b)(2)(ii), (iv), we affirm the administrative law judge's finding that claimant is entitled to invocation of the Section 411(c)(4) presumption of total disability due to pneumoconiosis. 30 U.S.C. §921(c)(4). Additionally, because we affirm the administrative law judge's finding that claimant is entitled to invocation of the Section 411(c)(4) presumption, we also affirm his finding that a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c) is established. Decision and Order at 12-13.

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

In order to rebut the Section 411(c)(4) presumption, employer must establish that claimant does not suffer from clinical and legal pneumoconiosis,[8] or that no part of his

[7] Employer also contends that the administrative law judge erred in finding that it stipulated that all of claimant's seventeen years of coal mine employment was *underground*. Employer's Brief at 2-3. However, because the administrative law judge found that the evidence independently established seventeen years of *underground* coal mine employment, we need not consider whether employer stipulated to seventeen years of *underground* coal mine employment. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[8] "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

disability is caused by pneumoconiosis. 20 C.F.R. §718.305(d)(i), (ii); *see Ogle*, 737 F.3d at 1069-70, 25 BLR at 2-443; *Morrison v. Tenn. Consol. Coal Co*., 644 F.3d 473, 479, 25 BLR 2-1, 2-8 (6th Cir. 2011); *Barber v. Director, OWCP*, 43 F.3d 899, 901, 19 BLR 2-61, 2-67 (4th Cir. 1995). In addressing the existence of pneumoconiosis, the administrative law judge found that employer disproved the existence of clinical pneumoconiosis. Decision and Order at 14. The administrative law judge, however, found that employer failed to disprove the existence of legal pneumoconiosis, as he accorded less weight to the opinions of Drs. Dahhan[9] and Rosenberg,[10] who found that

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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.

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).

[9] Dr. Dahhan, in addition to conducting a physical examination, took family, social, medical, and occupational histories of claimant. He also performed an x-ray, electrocardiogram, and pulmonary function and blood gas testing on claimant. He found that claimant's "examination and pulmonary function testing revealed a restrictive, but not obstructive, defect and that this indicated that [claimant's] condition did not result from the inhalation of coal dust." Director's Exhibit 24; Decision and Order at 10. He concluded, therefore, that claimant's bilateral amputation, diabetes, heart condition and moderate obesity, rather than coal dust inhalation, caused his restrictive defect. Decision and Order at 10; Director's Exhibit 24.

[10] Dr. Rosenberg reviewed a number of claimant's medical reports, treatment records, x-ray interpretations, and pulmonary function and blood gas studies. He assessed a disabling degree of restriction that "relates to whole body disorders," and was "not related to past coal mine dust exposure," based on claimant's objective testing, comorbid conditions, and because he had not worked as a coal miner "for decades." On deposition, he opined that claimant's pulmonary restriction is not due in any significant degree to his coal mine dust exposure, and is not substantially caused by, or significantly aggravated by, coal mine dust exposure. Decision and Order at 11-12, 15-16; Employer's Exhibits 5 at 4-5, 6 at 8.

claimant did not have legal pneumoconiosis, than to the opinion of Dr. Baker,[11] who found the existence of legal pneumoconiosis. *Id.* Specifically, the administrative law judge accorded "little weight" to Dr. Dahhan's opinion on the issue of legal pneumoconiosis because the "opinion is based on an interpretation of the evidence inconsistent with the regulations, and because Dr. Dahhan's diagnosis is insufficiently reasoned." Decision and Order at 14. In particular, the administrative law judge noted that Dr. Dahhan impermissibly relied on x-ray evidence to find that claimant did not have legal pneumoconiosis and impermissibly relied on the fact that the physical examination and pulmonary function testing results suggested a restrictive defect, rather than an obstructive defect due to coal dust exposure. The administrative law judge also accorded little weight to Dr. Dahhan's opinion because, although he diagnosed a number of alternative causes of claimant's respiratory impairment, he failed to "satisfactorily explain the effect of [claimant's] seventeen years of coal mine employment on his respiratory [impairment]." Decision and Order at 15. Regarding Dr. Rosenberg's opinion, the administrative law judge accorded it less weight because Dr. Rosenberg relied on "unadmitted evidence" and "ma[de] broad conclusions regarding [claimant's] condition without identifying the specific evidence relied on in reaching each of his conclusions." Decision and Order at 11, 15.

Employer contends, however, that the reasons the administrative law judge gave for according less weight to Dr. Dahhan's opinion are improper. Specifically, employer contends that the administrative law judge erred in finding that Dr. Dahhan "took a position contrary to the regulations when he stated that [c]laimant did not have [an] obstructive pulmonary defect which could be caused by coal dust exposure but had only a restrictive defect." Employer's Brief at 5. Rather, employer contends that Dr. Dahhan did not state that coal dust exposure cannot cause a restrictive defect, but that "[w]hen coal dust exposure … causes a restrictive defect it will manifest itself by interstitial lung disease on the chest x-ray with pulmonary fibrosis and reduction in the diffusion capacity [and] none of that is seen in [claimant's] data indicating that the restrictive abnormality is not due to inhalation of coal dust…." Employer's Brief at 5, *citing* Director's Exhibit 24 at 5.

Contrary to employer's argument, however, the administrative law judge could properly accord little weight to Dr. Dahhan's opinion because the doctor impermissibly relied on x-ray evidence to exclude a diagnosis of legal pneumoconiosis, namely the

[11] Dr. Baker, conducted a physical examination, x-ray, electrocardiogram, and pulmonary function and blood gas testing on claimant. In addition, he took family, social, medical and occupational histories. He diagnosed the existence of legal pneumoconiosis, based on consideration of claimant's chronic respiratory conditions, the qualifying values yielded by his pulmonary function testing and his long-term employment as a coal miner. Decision and Order at 9, 14; Director's Exhibit 22.

absence of interstitial lung disease on x-ray. Additionally, contrary to employer's argument, the administrative law judge rationally accorded little weight to Dr. Dahhan's opinion based on claimant's pulmonary function study results, namely reduced FEV_1 and FVC values, and a normal FEV_1/FVC ratio, that were "suggestive of a restrictive defect and not an obstructive defect."[12] Decision and Order at 15; Director's Exhibit 24 at 5. As the administrative law judge noted, citing 20 C.F.R. §718.305(a)(2), "[t]he regulations state that legal pneumoconiosis includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." Decision and Order at 15. Thus, the administrative law judge rationally concluded that "Dr. Dahhan's opinion cannot be squared with a regulatory definition that includes *both* restrictive and obstructive diseases." Decision and Order at 15; *see* 20 C.F.R. §718.201(a)(2); *see also* 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000); *Central Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491, 25 BLR 2-633, 2-645 (6th Cir. 2014); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02, 25 BLR 2-203, 2-210-11 (6th Cir. 2012); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489, 25 BLR 2-135, 2-151 (6th Cir. 2012). Finally, the administrative law judge properly found that Dr. Dahhan's opinion was "insufficiently reasoned" because the doctor failed to "sufficiently explain" his basis for not diagnosing legal pneumoconiosis, as his consideration of "a number of conditions as alternative explanations for claimant's disabling respiratory condition" fails to "satisfactorily explain" the effect of claimant's seventeen years of coal mine employment. Decision and Order at 15; *see Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558, 25 BLR 2-339, 2-353 (4th Cir. 2013); *Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007).

The determination of whether a medical opinion is sufficiently reasoned is within the purview of the fact-finder, and that finding will be affirmed if it is supported by substantial evidence. *See Ogle*, 737 F.3d at 1068, 25 BLR at 2-442; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103. Further, the administrative law judge may examine the credibility of the medical opinion evidence in light of the scientific evidence relied on in promulgating the regulations. *See Greene v. King James Coal Mining, Inc.*, 575 F.3d 628, 24 BLR 2-199 (6th Cir. 2009); *see also Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 25 BLR 2-255 (4th Cir. 2013)(Traxler, C.J., dissenting). Consequently, we conclude that the administrative law judge permissibly accorded little weight to Dr. Dahhan's opinion because he found it "out of line with the regulations," and because it "cannot be squared with" the regulatory definition of pneumoconiosis. Decision and Order at 15; 20 C.F.R. §718.201(a)(2).

[12] The administrative law judge also noted that Dr. Dahhan opined that claimant "has no evidence of obstructive ventilator defect that can be attributed to the inhalation of coal dust." Decision and Order at 15; Director's Exhibit 24 at 5.

Next, employer contends that the administrative law judge erred in according little weight to the opinion of Dr. Rosenberg because he "relied on unadmitted evidence," and "ma[de] broad conclusions regarding [claimant's] condition without identifying the specific evidence relied on in reaching each of his conclusions." Decision and Order at 11, 15.

A physician's opinion must set forth the data and observations underlying its diagnosis and medical conclusions. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1983). It is within the administrative law judge's authority to determine whether a physician's conclusions are adequately based. *Ogle*, 737 F.3d at 1074, 25 BLR at 2-451; *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985).

The administrative law judge accorded little weight to Dr. Rosenberg's opinion, in part, because it was based on "broad conclusions regarding [claimant's] condition without identifying the specific evidence relied on in reaching each of his conclusions." Decision and Order at 11, 15-16. Employer, however, fails to challenge this finding. Employer's Brief at 6. Accordingly, we affirm the administrative law judge's decision to accord little weight to Dr. Rosenberg's opinion for this reason.[13] *See Cox*, 791 F.2d at 446, 9 BLR at 2-48; *see also Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(en banc); *Knizer v. Bethlehem Mining Corp.*, 8 BLR 1-5, 1-7 (1985). Because the administrative law judge properly accorded little weight to the opinions of Drs. Dahhan and Rosenberg, he properly found that employer failed to rebut the presumption by disproving the existence of legal pneumoconiosis.[14]

Turning to the remaining method of rebuttal, namely that no part of claimant's disability was caused by pneumoconiosis, the administrative law judge properly discounted the opinions of Drs. Dahhan and Rosenberg because they found that claimant does not have legal pneumoconiosis, contrary to the administrative law judge's finding.

[13] Inasmuch as we affirm the administrative law judge's decision to accord little weight to Dr. Rosenberg's opinion because the doctor did not adequately explain the bases of his conclusions, we need not address employer's argument that the administrative law judge also erred in according little weight to the opinion because it was based on unadmitted evidence. *See generally Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983)(errors committed by administrative law judge in analyzing evidence are harmless, as long as administrative law judge provides a valid reason).

[14] We will not address employer's argument concerning the opinion of Dr. Baker. Dr. Baker diagnosed the existence of legal pneumoconiosis. Accordingly, his opinion could not support a finding of rebuttal by disproving the existence of pneumoconiosis. *See* 20 C.F.R. §718.305(d)(i), (A); *see Larioni*, 6 BLR at 1-1278.

See Ramage, 737 F.3d at 1062, 25 BLR at 2-473-74; *Ogle*, 737 F.3d at 1074, 25 BLR at 2-452. Thus, the administrative law judge rationally discounted the disability causation opinions of Drs. Dahhan and Rosenberg pursuant to 20 C.F.R. §718.305(d)(ii). *Skukan v. Consol. Coal Co.*, 993 F.2d 1228, 17 BLR 2-97 (6th Cir. 1993), *vacated sub nom.*, *Consol. Coal Co. v. Skukan*, 512 U.S. 1231 (1994), *rev'd on other grounds*, *Skukan v. Consol. Coal Co.*, 46 F.3d 15, 19 BLR 2-44 (6th Cir. 1995); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, BLR (4th Cir. 2015); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-17-19 (2004). The administrative law judge's finding that claimant failed to rebut the presumption under the second method of rebuttal is therefore affirmed. 20 C.F.R. §718.305(d)(ii).

Because the administrative law judge found that employer failed to disprove the existence of legal pneumoconiosis or that no part of claimant's disability was due to pneumoconiosis, we affirm the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption. *See* 30 U.S.C. §921(c)(4); *Morrison*, 644 F.3d at 479, 25 BLR at 2-8.

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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RYAN GILLIGAN
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge