



BRB No. 14-0219 BLA

ALAN E. BUSCH, SR.)	
)	
Claimant-Respondent)	
)	
v.)	
)	
PINE RIDGE COAL COMPANY)	DATE ISSUED: 02/27/2015
)	
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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

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

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

PER CURIAM:

Employer appeals the Decision and Order (2012-BLA-6039) of Administrative Law Judge Richard A. Morgan (the administrative law judge) awarding benefits on a

subsequent claim¹ filed pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge credited claimant with at least 32 years in underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Parts 718 and 725. The administrative law judge also found that the new evidence established total respiratory disability pursuant to 20 C.F.R. §718.204(b). Consequently, the administrative law judge found that the new evidence established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. The administrative law judge also found that claimant was entitled to invocation of the presumption of total disability due to pneumoconiosis at amended Section 411(c)(4) of the Act. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305 (2014). Further, the administrative law judge found that employer did not establish rebuttal of the presumption. Accordingly, the administrative law judge awarded benefits, commencing as of February 1, 2011, the beginning of the month in which the subsequent claim was filed.

On appeal, employer challenges the administrative law judge's findings that the new evidence established total respiratory disability at 20 C.F.R. §718.204(b), that the new evidence established a change in an applicable condition of entitlement at 20 C.F.R. §725.309, and that claimant was entitled to invocation of the presumption of total disability due to pneumoconiosis at amended Section 411(c)(4). Employer also challenges the administrative law judge's finding that it failed to establish rebuttal of the amended Section 411(c)(4) presumption by showing the absence of pneumoconiosis and total disability due to pneumoconiosis. Lastly, employer challenges the administrative law judge's determination that benefits commence as of February 1, 2011. Claimant responds, urging affirmance of the administrative law judge's award of benefits.² The Director, Office of Workers' Compensation Programs (the Director), has filed a letter, declining to file a substantive brief in this appeal, but stating that the administrative law judge may take official notice of documents regarding the credibility of Dr. Wheeler's x-ray readings, if the Board vacates the administrative law judge's award of benefits and remands the case for further consideration. The Director specifically states that the administrative law judge may take official notice of Black Lung Benefits Act Bulletin

¹ Claimant filed his first claim on May 15, 2002. Director's Exhibit 1. It was finally denied by the district director on June 23, 2003, because claimant failed to establish the existence of pneumoconiosis and total respiratory disability. *Id.* Claimant filed this claim (a subsequent claim) on February 9, 2011. Director's Exhibit 3.

² Employer has filed a brief in reply to claimant's response brief, reiterating its prior contentions.

No. 14-09, which was issued by the Department of Labor on June 2, 2014;³ an October 30, 2013 Center for Public Integrity news article, *Breathless and Burdened*, Part 2; an October 30, 2013 ABC News report, *For Top-Rated Hospital, Tough Questions About Black Lung and Money*; and a November 1, 2013 statement from Johns Hopkins Medicine regarding the report by ABC News.⁴

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law.⁵ 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish that he is totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). Where a claimant files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of

³ Employer has also filed a brief in reply to the letter of the Director, Office of Workers' Compensation Programs (the Director), contending that the Board should ignore the Director's comment that the administrative law judge may take official notice of documents regarding the credibility of Dr. Wheeler's x-ray readings. Employer argues that the Director's comment is gratuitous and irrelevant. Employer also argues that Black Lung Benefits Act (BLBA) Bulletin No. 14-09 is an invalid rule because it was issued without notice and comment. Further, employer argues that BLBA Bulletin No. 14-09 is unlawful because it violates the Administrative Procedure Act and the United States Constitution.

⁴ Because the administrative law judge's length of coal mine employment finding is not challenged on appeal, we affirm this finding. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

⁵ The record indicates that claimant was employed in the coal mining industry in West Virginia. Director's Exhibits 1, 4, 6, 7. Accordingly, the law of the United States Court of Appeals for the Fourth Circuit is applicable. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(en banc).

entitlement” are “those conditions upon which the prior denial was based.” 20 C.F.R. §725.309(d)(2). Claimant’s prior claim was denied because he failed to establish the existence of pneumoconiosis and total respiratory disability. Director’s Exhibit 1. Consequently, claimant had to submit evidence establishing the existence of pneumoconiosis or total respiratory disability in order to obtain review of the merits of this claim. 20 C.F.R. §725.309(d).

In 2010, Congress enacted amendments to the Act, which apply to claims filed after January 1, 2005 that were pending on or after March 23, 2010. Relevant to this living miner’s claim, 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 15 or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305 (2014).

Employer initially contends that the administrative law judge erred in finding that the new evidence established total respiratory disability at 20 C.F.R. §718.204(b). Specifically, employer asserts that the new arterial blood gas study evidence is insufficient to establish total respiratory disability at 20 C.F.R. §718.204(b)(2)(ii). Employer argues that “the doctors agreed that the hypoxemia disclosed on [claimant’s] arterial blood gas tests reflected obesity, not a respiratory or pulmonary disease.” Employer’s Brief at 16.

A miner shall be considered totally disabled if his respiratory or pulmonary impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). In the absence of contrary probative evidence, a miner’s disability shall be established by blood gas studies showing values equal to, or less than, those set forth in Appendix C. *See* 20 C.F.R. §718.204(b)(2)(ii).

The record contains four new arterial blood gas studies dated September 28, 2011, January 18, 2012, July 9, 2012 and November 13, 2012. The September 28, 2011 study produced non-qualifying values at rest, Director’s Exhibit 13, and the January 18, 2012 study produced non-qualifying values at rest and during exercise, Director’s Exhibit 25. By contrast, the July 9, 2012 and November 13, 2012 studies produced qualifying values at rest. Claimant’s Exhibits 1, 2. The administrative law judge reasonably accorded greater weight to the July 9, 2012 and November 13, 2012 qualifying studies than to the September 28, 2011 and January 18, 2012 non-qualifying studies, based on the recency of those studies. *See* 20 C.F.R. §718.204(b)(2)(ii); *Roberts v. West Virginia C.W.P. Fund*, 74 F.3d 1233, 20 BLR 2-67 (4th Cir. 1996); *Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 11 BLR 2-147 (6th Cir. 1988); *Parsons v. Wolf Creek Collieries*, 23 BLR 1-29, 1-35 (2004) (en banc); *Workman v. E. Associated Coal Corp.*, 23 BLR 1-22, 1-27 (2004) (en

banc). Thus, we reject employer's assertion that the new arterial blood gas study evidence is insufficient to establish a totally disabling respiratory or pulmonary impairment.

Employer also asserts that the administrative law judge erred in finding that the new medical opinion evidence established total respiratory disability at 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge considered the opinions of Drs. Zaldivar, Rosenberg, Rasmussen and Klayton. In a February 9, 2012 report, Dr. Zaldivar opined that, from a pulmonary standpoint, claimant was incapable of performing his usual coal mine work due to the severity of the restrictive impairment. Director's Exhibit 25. During a May 20, 2012 deposition, however, Dr. Zaldivar opined that claimant was disabled by a respiratory impairment, and not a pulmonary impairment. Employer's Exhibit 5 (Dr. Zaldivar Depo. at 43). In a May 6, 2013 report, Dr. Rosenberg opined that "[claimant] is likely disabled from a pulmonary perspective." Employer's Exhibit 4. During a May 24, 2013 deposition, Dr. Rosenberg opined that claimant's impairment was a restriction. Employer's Exhibit 6 (Dr. Rosenberg Depo. at 5, 6, 18). In reports dated October 18, 2011 and July 9, 2012, Dr. Rasmussen opined that claimant does not have the pulmonary capacity to perform his regular coal mine employment.⁶ Director's Exhibit 13; Claimant's Exhibit 1. Lastly, in a November 13, 2012 report, Dr. Klayton opined that claimant was totally disabled because of his severe hypoxemia. Claimant's Exhibit 2.

Based on his findings that claimant's last coal mining positions required him to perform heavy manual labor, and that claimant's symptoms rendered him unable to perform the duties of his prior coal mining job, the administrative law judge concluded that "[claimant] is incapable of performing his prior coal mine employment." Decision and Order at 25. Further, the administrative law judge determined that "[a]ll the physicians providing opinions herein found [that claimant] suffers a total respiratory disability." *Id.* The administrative law judge noted that, "[w]hile Drs. Zaldivar and Rosenberg make a distinction between 'respiratory' and 'pulmonary' impairments,⁷ Drs. Rasmussen and Klayton do not." *Id.* at 25-26. The administrative law judge also noted that "[t]he primary dispute here deals with causation." *Id.* at 26. Hence, the

⁶ Dr. Rasmussen noted that claimant's regular coal mine employment required him to perform heavy and some very heavy manual labor. Director's Exhibit 13; Claimant's Exhibit 1.

⁷ The administrative law judge noted that, "[a]lthough[,] according to Drs. Zaldivar and Rosenberg, obesity does not cause a 'pulmonary' (or 'intrinsic') impairment, it can cause a 'respiratory impairment,' albeit 'extrinsic.'" Decision and Order at 25.

administrative law judge found that the new medical opinion evidence established total respiratory disability at 20 C.F.R. §718.204(b)(2)(iv).

Employer asserts that the administrative law judge's finding that claimant's last coal mine job required him to perform heavy manual labor violated the Administrative Procedure Act (APA). Specifically, employer argues that the administrative law judge erred in failing to identify the physical demands of claimant's last coal mine job as an electrician. Employer maintains that "[the administrative law judge's] interpretation of [claimant's] 'usual coal mine employment' as the hardest parts of any job that [claimant] performed as a miner rather than the demands of his most recent job, constitutes error." Employer's Brief at 12.

The APA, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), requires that an administrative law judge independently evaluate the evidence and provide an explanation for his findings of fact and conclusions of law. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). In this case, the administrative law judge considered claimant's coal mine employment history. Based on claimant's testimony, Form CM-913 ("Description of Coal Mine Work and Other Employment") and the instant claim, the administrative law judge determined that "[t]he [c]laimant's last position in the coal mines was that of an electrician, but he also worked as a laborer, shuttle car operator, roof bolter and miner operator."⁸ Decision and Order at 5. The administrative law judge also determined that "[t]he claimant, as part of his duties, was required to lift and carry heavy tools and equipment and 50-pound rock dust bags."⁹ *Id.* Thus, the administrative law judge reasonably found that claimant's last coal mine job required him to perform heavy manual labor. *Wojtowicz*, 12 BLR at 1-165. Consequently, we reject employer's assertion that the administrative law judge erred on this basis.

Employer alternatively asserts that, even if claimant's last coal mine job required him to perform heavy manual labor, the administrative law judge erred by relying on claimant's symptoms as a medical basis for finding claimant totally disabled. As

⁸ During the June 4, 2013 hearing, claimant stated that "[he] started out [as a] general laborer, shuttle car operator, miner operator, [and] roof bolter," but "[w]ound up as an electrician." Hearing Tr. at 12. Claimant further stated that he was an electrician most of the time. *Id.*

⁹ Claimant testified that some parts that he had to carry as an electrician were heavier than a 50-pound bag of rock dust. Hearing Tr. at 13. Specifically, claimant stated that he had to carry "motors that weighed over 100 pounds" at least once a week. *Id.* at 14. Claimant also stated that he had to roll some parts with a slate bar because he could not lift them. *Id.* at 13.

discussed, *supra*, the administrative law judge found that claimant was unable to perform his last coal mine employment. In so finding, the administrative law judge relied on claimant's symptoms and the fact that his last coal mine job required him to perform heavy manual labor. Decision and Order at 25. A mere recitation of symptoms is not a finding of the existence, or a conclusion as to the degree or severity, of an impairment based on those symptoms. See *Heaton v. Director, OWCP*, 6 BLR 1-1222 (1984); *Bushilla v. North American Coal Corp.*, 6 BLR 1-365 (1983). However, the administrative law judge also found that the new medical opinion evidence established total respiratory disability at 20 C.F.R. §718.204(b)(2)(iv), see *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983), namely, he reasonably found that all of the physicians opined that claimant has a totally disabling respiratory or pulmonary impairment, see *Beatty v. Danri Corp.*, 16 BLR 1-11, 1-13-14 (1991). We, therefore, affirm the administrative law judge's finding that the new medical opinion evidence established total respiratory disability at 20 C.F.R. §718.204(b)(2)(iv), as supported by substantial evidence.

Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the new evidence established total respiratory disability at 20 C.F.R. §718.204(b). Further, in light of our affirmance of the administrative law judge's finding that the new evidence established total respiratory disability at 20 C.F.R. §718.204(b), we affirm the administrative law judge's finding that the new evidence established a change in an applicable condition of entitlement at 20 C.F.R. §725.309.

We also affirm the administrative law judge's application of amended Section 411(c)(4) to this claim, as it was filed after January 1, 2005, and was pending after March 23, 2010. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305(a) (2014). Additionally, because claimant established 15 or more years of qualifying coal mine employment and total respiratory disability, we affirm the administrative law judge's finding that claimant is entitled to invocation of the presumption of total disability due to pneumoconiosis at amended Section 411(c)(4), as supported by substantial evidence. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305(b)(1)(i)-(iii) (2014).

Because claimant invoked the presumption of total disability due to pneumoconiosis at amended Section 411(c)(4), the burden of proof shifted to employer to establish rebuttal by disproving the existence of pneumoconiosis, or by proving that claimant's respiratory or pulmonary impairment "did not arise out of, or in connection with," coal mine employment. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305(d)(1)(i), (ii) (2014). The administrative law judge found that employer failed to establish rebuttal by either method.

Employer contends that the administrative law judge erred in finding that it failed to establish rebuttal of the presumption at amended Section 411(c)(4) by showing the

absence of legal pneumoconiosis.¹⁰ Specifically, employer asserts that the administrative law judge erroneously “overlooked” or “mischaracterized” the opinions of Drs. Zaldivar and Rosenberg. Employer’s Brief at 18. Employer also asserts that the administrative law judge violated the APA by failing to adequately explain why he found that the opinions of Drs. Zaldivar and Rosenberg were insufficient to establish the absence of legal pneumoconiosis. We disagree.

In addressing the issue of legal pneumoconiosis at Section 718.202(a)(4), the administrative law judge considered the opinions of Drs. Zaldivar, Rosenberg, Rasmussen and Klayton.¹¹ The administrative law judge also considered a West Virginia Occupational Pneumoconiosis Board determination that there was sufficient evidence to justify a diagnosis of occupational pneumoconiosis with 15% pulmonary functional impairment attributable to the disease.¹² Director’s Exhibit 10. Although the

¹⁰ Employer’s failure to disprove the existence of clinical pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305(d)(1)(i) (2014). Nevertheless, we will address employer’s contention that the administrative law judge erred in finding that it failed to disprove the existence of legal pneumoconiosis because this finding affects his disability causation finding.

¹¹ In a February 9, 2012 report and during a May 20, 2012 deposition, Dr. Zaldivar opined that claimant does not have legal pneumoconiosis. Director’s Exhibit 25; Employer’s Exhibit 5 (Dr. Zaldivar’s Depo. at 41). Dr. Zaldivar opined that claimant’s physiologic abnormalities are caused by pulmonary fibrosis and obesity hypoventilations syndrome, and not coal mine dust exposure. *Id.* Similarly, in a May 6, 2013 report, Dr. Rosenberg opined that, from a functional perspective, claimant has a severe restriction that is not related to coal dust exposure, and thus that he does not have legal pneumoconiosis. Employer’s Exhibit 4. Further, during a May 24, 2013 deposition, Dr. Rosenberg opined that claimant does not have legal pneumoconiosis. Employer’s Exhibit 6 (Dr. Rosenberg’s Depo. at 14). By contrast, in reports dated October 18, 2011 and July 16, 2012, Dr. Rasmussen opined that claimant has a chronic restrictive lung disease related to coal mine dust exposure, and thus that he has legal pneumoconiosis. Director’s Exhibit 13; Claimant’s Exhibit 1. In a November 13, 2012 report, Dr. Klayton diagnosed coal workers’ pneumoconiosis with cor pulmonale related to coal dust exposure and cigarette smoking. Claimant’s Exhibit 2. In addressing the etiology of his diagnoses, Dr. Klayton stated, “I am unable to state the relative contributions of each, but smoking does not cause restrictive lung disease or produce small opacities on chest x-ray.” *Id.*

¹² The administrative law judge accorded “some weight” to the determination of the West Virginia Occupational Pneumoconiosis Board with regard to the existence of pneumoconiosis. Decision and Order at 23.

administrative law judge noted that “Drs. Zaldivar and Rosenberg...concluded [that claimant’s] affliction was solely due to his obesity and some degree of sleep apnea and ruled out any coal mine dust contribution,” Decision and Order at 22, he found that they were insufficient to prove the absence of legal pneumoconiosis. The administrative law judge permissibly discredited Dr. Zaldivar’s opinion because the doctor’s explanation for retreating from his initial diagnosis of pulmonary fibrosis due to smoking and obesity “is somewhat lacking as he only gave his view of the radiology as the reason for the change, but had considered the same radiology results earlier.” *Id.*; see *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528, 21 BLR 2-323, 2-326 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997). In addition, the administrative law judge permissibly discredited Dr. Zaldivar’s opinion because “his reliance on the negative radiology in ruling out any coal dust etiology is somewhat misplaced.” Director’s Exhibit 22; see *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 31-12, 25 BLR 2-115, 2-125 (4th Cir. 2012); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02, 25 BLR 2-203, 2-210-11 (6th Cir. 2012). Further, the administrative law judge permissibly discredited Dr. Rosenberg’s opinion because “Dr. Rosenberg relied upon the absence of any micro-nodularity on x-ray in reaching his view,” even though, “[u]nder the Act, such micro-nodularity is not a prerequisite of legal pneumoconiosis.” Director’s Exhibit 22; see *Looney*, 678 F.3d at 311-12, 25 BLR at 2-125; *Adams*, 694 F.3d at 801-02, 25 BLR at 2-210-11 (6th Cir. 2012). Thus, we reject employer’s assertions that the administrative law judge erred in discrediting the opinions of Drs. Zaldivar and Rosenberg, and that his findings regarding the opinions of Drs. Zaldivar and Rosenberg violated the APA. Because the administrative law judge permissibly discredited the only medical opinions of record that could support a finding that disproves the existence of legal pneumoconiosis, we affirm the administrative law judge’s finding that employer failed to establish the absence of legal pneumoconiosis.¹³

We, therefore, affirm the administrative law judge’s finding that employer failed to establish rebuttal of the amended Section 411(c)(4) presumption by establishing the absence of clinical and legal pneumoconiosis. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305(d)(1)(i) (2014).

Employer further contends that the administrative law judge erred in finding that it failed to establish rebuttal of the presumption at amended Section 411(c)(4) by proving

¹³ Employer argues that the administrative law judge erred in according weight to the determination of the West Virginia Occupational Pneumoconiosis Board. Because the administrative law judge permissibly discredited the opinions of Drs. Zaldivar and Rosenberg, the only medical opinions of record that could support a finding that employer disproved the existence of legal pneumoconiosis, we need not address employer’s assertion regarding the West Virginia Occupational Pneumoconiosis Board’s determination.

that claimant’s respiratory or pulmonary impairment “did not arise out of, or in connection with,” coal mine employment. We disagree. Regarding the issue of disability causation, the administrative law judge considered the opinions of Drs. Zaldivar, Rosenberg, Rasmussen, and Klayton.¹⁴ The administrative law judge stated that, “[a]lthough Drs. Zaldivar and Rosenberg persuasively show that much of [claimant’s] impairment is related to obesity, neither diagnosed legal pneumoconiosis as I have found.” Decision and Order at 31. The administrative law judge therefore discounted the disability causation opinions of Drs. Zaldivar and Rosenberg. Hence, the administrative law judge found that employer failed to meet its burden of disproving that claimant’s disabling respiratory or pulmonary impairment is due to pneumoconiosis.

Employer asserts that the administrative law judge erred in discrediting the disability causation opinions of Drs. Zaldivar and Rosenberg. Contrary to employer’s assertion, the administrative law judge permissibly discounted the disability causation opinions of Drs. Zaldivar and Rosenberg because the doctors opined that claimant does not have legal pneumoconiosis, contrary to the administrative law judge’s finding on this issue. *See Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002); *Toler v. Eastern Associated Coal Co.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986). Thus, we reject employer’s assertion that the administrative law judge erred on this basis.¹⁵ We, therefore, affirm the administrative law judge’s finding that employer failed to establish rebuttal of the amended Section 411(c)(4) presumption by proving that claimant’s pulmonary or respiratory impairment “did not arise out of, or in connection with,” coal mine employment. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305(d)(1)(ii) (2014).

¹⁴ Dr. Zaldivar opined that coal mine dust exposure did not contribute to, or cause, claimant’s respiratory impairment. Employer’s Exhibit 5 (Dr. Zaldivar’s Depo. at 41, 43). Dr. Rosenberg opined that claimant’s disabling pulmonary impairment is not related to coal mine dust exposure. Employer’s Exhibit 4. Dr. Rosenberg also opined that he was able to rule out coal mine dust exposure as a cause of claimant’s restrictive impairment. Employer’s Exhibit 6 (Dr. Rosenberg’s Depo. at 13, 18). Dr. Rasmussen opined that claimant’s legal pneumoconiosis is a significant cause of his disabling chronic lung disease. Claimant’s Exhibit 1. Dr. Klayton opined that claimant has coal workers’ pneumoconiosis related to coal dust exposure and that he is totally disabled based on his severe hypoxemia. Claimant’s Exhibit 2. However, Dr. Klayton did not render an opinion regarding the issue of disability causation.

¹⁵ Employer also argues that the administrative law judge applied an improper rebuttal standard with regard to the issue of disability causation. Because we hold that the administrative law judge permissibly discredited the disability causation opinions of employer’s experts, we need not address employer’s arguments regarding the rebuttal standard for disability causation at amended Section 411(c)(4).

Finally, employer contends that the administrative law judge erred in determining that February 1, 2011 is the date from which benefits commence in this claim. Employer asserts that “the earliest possible date upon which benefits could commence would be July 2012,” given that the first objective evidence of total disability that the administrative law judge relied on was the July 2012 arterial blood gas study. Employer’s Brief at 22-23. Contrary to employer’s contention, if the medical evidence does not establish the date that the miner became totally disabled due to pneumoconiosis, an administrative law judge may determine that the miner is entitled to benefits as of the filing date of his claim, unless credible medical evidence indicates that the miner was not totally disabled at some point subsequent to the filing date of his claim.¹⁶ See 20 C.F.R. §725.503; *Edmiston v. F&R Coal Co.*, 14 BLR 1-65 (1990); see also *Lykins v. Director, OWCP*, 12 BLR 1-181 (1989) (holding that where evidence established no disability up to a certain date, an administrative law judge cannot award benefits prior to that date when the precise onset date of disability was unclear from the record). In this case, the administrative law judge stated that “no specific onset date is evident from the record.” Decision and Order at 32. Citing 20 C.F.R. §725.503, the administrative law judge therefore determined that benefits commence as of February 1, 2011, the beginning of month that the subsequent claim was filed.¹⁷ Employer fails to point to specific medical evidence that establishes that claimant was not disabled due to pneumoconiosis after February 1, 2011, the date from which the administrative law judge ordered benefits to commence. *Lykins*, 12 BLR at 1-183. Thus, we reject employer’s assertion that the administrative law judge could not order benefits to commencement before July 2012. Because it is supported by substantial evidence, we affirm the administrative law judge’s determination that benefits in the instant claim commence as of February 1, 2011. See 20 C.F.R. §725.503; *Edmiston*, 14 BLR at 1-69; *Lykins*, 12 BLR at 1-183.

¹⁶ Section 725.503 provides that “[w]here the evidence does not establish the month of onset, benefits shall be payable to such miner beginning with the month during which the claim was filed.” 20 C.F.R. §725.503(b).

¹⁷ As discussed, *supra*, claimant filed the instant claim in February 2011. Director’s Exhibit 3.

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge