U.S. Department of Labor

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

BRB No. 16-0188 BLA

DANNY A. TEMPLETON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DEBRA LYNN COALS, INCORPORATED	)	DATE ISSUED: 02/13/2017
	)	
and	)	
	)	
APPOLO FUELS, INCORPORATED	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand of Adele H. Odegard, Administrative Law Judge, United States Department of Labor.

Evan B. Smith (Appalachian Citizens' Law Center), Whitesburg, Kentucky, for claimant.

Ronald E. Gilbertson (Gilbertson Law, LLC), Columbia, Maryland, for employer/carrier.

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

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order on Remand (2011-BLA-06036) awarding benefits of Administrative Law Judge Adele H. Odegard, rendered on a subsequent claim filed on September 16, 2010, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (the Act). This case is before the Board for the second time.[1] In her initial Decision and Order Denying Benefits, dated December 13, 2012, the administrative law judge determined that claimant established a totally disabling respiratory or pulmonary impairment and fifteen years of coal mine employment, but failed to prove that his work was performed in conditions substantially similar to those in an underground mine. Thus, the administrative law judge found that claimant was unable to invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4), 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305(b).[2] The administrative law judge further determined that claimant failed to establish the existence of pneumoconiosis, a requisite element of entitlement under 20 C.F.R. Part 718, and she denied benefits accordingly.

In consideration of claimant's appeal, the Board held that the administrative law judge failed to properly consider that "[c]laimant's testimony regarding his working conditions, if credited, is sufficient under *Director, OWCP v. Midland Coal Co.* [*Leachman*], 855 F.2d 509, 512-13 (7th Cir. 1988), and the regulations, to satisfy the 'substantially similar' requirement of Section 411(c)(4)." *Templeton v. Debra Lynn Coals Inc.*, BRB No. 13-0161 BLA, slip. op. at 4 (Nov. 22, 2013) (unpub.). Thus, the Board vacated the administrative law judge's award of benefits and remanded the case for further consideration of whether claimant invoked the Section 411(c)(4) presumption.[3]

On remand, the administrative law judge reconsidered claimant's testimony and determined that it established that claimant worked at least fifteen years in coal mine employment in conditions that were substantially similar to those in an underground

[1] We incorporate by reference herein the Board's prior decision in *Templeton v. Debra Lynn Coals Inc.*, BRB No. 13-0161 BLA (Nov. 22, 2013) (unpub.).

[2] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption of total disability due to pneumoconiosis if he establishes at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305(b).

[3] In the interest of judicial economy, the Board also affirmed the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). *Templeton*, slip op. at 4-7.

mine. Thus, the administrative law judge found that claimant established at least fifteen years of qualifying coal mine employment for invocation of the Section 411(c)(4) presumption. The administrative law judge further found that employer failed to rebut the presumption and she awarded benefits.

Employer appeals, arguing that the administrative law judge erred in finding that claimant established a totally disabling respiratory or pulmonary impairment for invocation of the Section 411(c)(4) presumption. Employer also contends that the administrative law judge erred in weighing the evidence relevant to rebuttal of the presumption. Claimant responds, urging affirmance of the award of benefits. Claimant asserts that employer waived the right to contest whether he is totally disabled because employer did not cross-appeal or otherwise challenge the administrative law judge's finding of total disability when the case was previously before the Board on claimant's appeal. The Director, Office of Workers' Compensation Programs, has not filed a substantive response to employer's appeal.[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 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).

Where a miner 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(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3).

In this case, claimant's two prior claims, filed on April 12, 1996 and October 29, 2003 were denied for failure to establish any element of entitlement. Director's Exhibits

[4] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established at least fifteen years of qualifying coal mine employment for invocation of the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Remand at 4.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as claimant's coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5.

1, 2. Accordingly, in order to satisfy the requirements of 20 C.F.R. §725.309, claimant had to submit new evidence in this subsequent claim to establish at least one of the elements of entitlement. *White*, 23 BLR at 1-3. As discussed below, claimant may establish a change in an applicable condition of entitlement and invocation of the Section 411(c)(4) presumption, if he establishes total disability.

I. Invocation of the Section 411(c)(4) Presumption – Total Disability

The administrative law judge determined in her initial Decision and Order that claimant established total disability and she did not make any additional findings with regard to that issue on remand. Employer challenges the administrative law judge's finding that claimant is totally disabled. Claimant, however, asserts that employer "waived any argument with regard to his disability by failing to raise it as an issue before the Board previously or on remand[.]" Claimant's Response Brief at 2. Alternatively, claimant argues that the Board should "decline to reconsider this issue based on law of the case." *Id*. Because the administrative law judge's finding that claimant established total disability is supported by substantial evidence, as discussed below, it is not necessary that we address claimant's arguments pertaining to waiver and the doctrine of law of the case.

The administrative law judge determined that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i) and (ii), as the two newly submitted pulmonary function and blood gas studies, submitted in conjunction with the current subsequent claim, are non-qualifying for total disability.[6] 2012 Decision and Order Denying Benefits at 14-15. The administrative law judge also found that there no evidence in the record indicating that claimant has cor pulmonale with right-sided congestive heart failure by which claimant could establish total disability under 20 C.F.R. §718.204(b)(2)(iii). *Id*. We affirm the administrative law judge's findings at 20 C.F.R. §718.204(b)(2)(i)-(iii), as they are unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge weighed the opinions of Drs. Dahhan, Jarboe and Baker. Drs. Dahhan and Jarboe diagnosed that claimant is totally disabled, while Dr. Baker did not. Observing that "each doctor possess[es] similar credentials," the administrative law judge found that "the weight of

[6] A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values contained in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" study yields values that exceed the requisite table values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

the [medical] opinion evidence tends to show that [c]laimant is totally disabled from a respiratory standpoint." 2012 Decision and Order at 18.

Employer first argues that the administrative law judge failed to explain why she found Dr. Dahhan's opinion that claimant is totally disabled to be credible, when all of claimant's pulmonary function and blood gas studies are non-qualifying.[7] Employer maintains that Dr. Dahhan's opinion does not support claimant's burden of proof, as Dr. Dahhan attributed claimant's disability to a non-respiratory condition.

Contrary to employer's contention, the fact that claimant was unable to establish total disability based on pulmonary function or blood gas study evidence does not preclude a finding of total disability based on the medical opinion evidence. The regulation at 20 C.F.R. §718.204(b)(2)(iv) specifically states:

> Where total disability cannot be shown under paragraphs (b)(2)(i), (ii), or (iii) of this section, or where pulmonary function [studies] and/or blood gas studies are medically contraindicated, total disability may nevertheless be found if a physician exercising reasoned medical judgment, based on medically accepted clinical and laboratory diagnostic techniques, concludes that a miner's respiratory or pulmonary condition prevents or prevented the miner from engaging in [his or her usual coal mine] employment as described in paragraph (b)(1) of this section.

20 C.F.R. §718.204(b)(2)(iv). Furthermore, the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has specifically held that even a mild respiratory impairment may prevent a miner from performing his usual coal mine work, when considered in conjunction with the specific physical requirements of the miner's coal mine job. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-121 (6th Cir. 2000).

Additionally, although employer is correct that Dr. Dahhan attributed claimant's mild respiratory impairment to obesity, the relevant inquiry at 20 C.F.R.

[7] Dr. Dahhan performed an examination of claimant on February 24, 2011, and diagnosed a mild respiratory impairment. Director's Exhibit 18. Dr. Dahhan stated that "[f]rom a respiratory standpoint [claimant] does not retain the physiological capacity to return to his previous coal mine work due to his obesity induced restrictive ventilatory defect and respiratory impairment due to congestive heart failure worsened by his sleep apnea and marked obesity." *Id*.

§718.204(b)(2)(iv) is whether claimant's respiratory or pulmonary impairment precluded the performance of his usual coal mine work. The etiology of claimant's disabling respiratory or pulmonary impairment concerns the issue of disability causation, which is addressed at 20 C.F.R. §718.204(c), or in consideration of whether employer is able to successfully rebut the Section 411(c)(4) presumption. *See* 20 C.F.R. §718.305(b), (c); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011). To the extent that Dr. Dahhan opined that claimant's mild restrictive impairment would preclude claimant from performing his usual coal mine job, we see no error in the administrative law judge's reliance on Dr. Dahhan's opinion to find that claimant is totally disabled. *See Cornett*, 227 F.3d at 576, 22 BLR at 2-121; *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc); 2012 Decision and Order Denying Benefits at 9-10, 17-18; Director's Exhibit 18.

Employer's next argues that the administrative law judge selectively analyzed Dr. Jarboe's opinion. We disagree. Contrary to employer's contention, although Dr. Jarboe indicated in earlier reports and deposition testimony in 2004 that claimant was not totally disabled, the administrative law judge permissibly relied on Dr. Jarboe's most recent report, dated December 5, 2011, wherein he reviewed, *inter alia*, claimant's pulmonary function studies conducted by Dr. Baker on October, 22, 2010, and Dr. Dahhan on February 24, 2011. Employer's Exhibit 1. Dr. Jarboe stated in that report that claimant's pulmonary function studies showed a mild restrictive ventilatory defect due to obesity. He opined that claimant "is likely disabled as a whole man" from obesity and severe congestive heart failure. *Id.* Dr. Jarboe further stated that "[i]t is likely that these conditions would render him totally and permanently disabled from *a pulmonary standpoint*." *Id.* (emphasis added). Because the administrative law judge permissibly construed Dr. Jarboe's opinion as supporting a finding of total disability, her determination is affirmed. 2012 Decision and Order at 18; *see Cornett*, 227 F.3d at 576, 22 BLR at 2-121; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-153.

Lastly, we reject employer's contention that the administrative law judge failed to explain her weighing of Dr. Baker's opinion against Dr. Dahhan's opinion. The administrative law judge observed correctly that Dr. Baker opined that claimant "would have the respiratory capacity, on the basis of his pulmonary symptoms and pulmonary function studies, *to perform the work of a miner or comparable work in a dust free environment*." 2012 Decision and Order at 16, *quoting* Director's Exhibit 14 (emphasis added). The administrative law judge found that Dr. Baker's opinion "did not necessarily constitute" an opinion that claimant was totally disabled. She also observed correctly that "an opinion that a miner should work in a dust-free environment is lacking in probative value on the issue of whether the miner is totally disabled from a respiratory perspective." 2012 Decision and Order at 17 n.10, *citing White*, 23 BLR at 1-6. Taking into consideration Dr. Baker's qualified statement, we see no error in the administrative

law judge's determination to give Dr. Baker's opinion less weight. Furthermore, having acknowledged that Drs. Baker, Dahhan and Jarboe "[e]ach possess similar credentials,"[8] the administrative law judge permissibly concluded that claimant established a totally disabling respiratory impairment, based on the weight of the opinions by Drs. Dahhan and Jarboe. 2012 Decision and Order at 18; *see Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark,* 12 BLR at 1-153. We therefore affirm the administrative law judge's finding that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), as it is supported by substantial evidence. *See Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-325 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103. We further affirm her overall conclusion that claimant suffers from a respiratory or pulmonary impairment. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

In light of our affirmance of the administrative law judge's findings that claimant established at least fifteen years of qualifying coal mine employment and a totally disabling pulmonary impairment at 20 C.F.R. §718.204(b)(2), we affirm the administrative law judge's determination that claimant invoked the Section 411(c)(4) presumption and also established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Decision and Order on Remand at 4; 2012 Decision and Order at 19 .

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

In order to rebut the Section 411(c)(4) presumption, employer must establish that claimant has neither legal nor clinical pneumoconiosis,[9] or that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii); *see Morrison,* 644 F.3d at 480, 25 BLR at 2-

[8] The administrative law judge found that Drs. Baker, Dahhan and Jarboe are "each Board-certified in internal and pulmonary medicine." 2012 Decision and Order at 17.

[9] Legal pneumoconiosis is defined as "any chronic lung disease or impairment, and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease 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).

9; *Minich v. Keystone Coal Mining Corp*., 25 BLR 1-149, 1-159 (2015) (Boggs, J., concurring and dissenting). The administrative law judge found that employer disproved the existence of clinical pneumoconiosis. Decision and Order on Remand at 5-6. As to whether employer disproved the existence of legal pneumoconiosis, the administrative law judge noted that Dr. Baker "stated in conditional terms" that claimant's obstructive respiratory impairment was significantly related to coal dust exposure and; therefore, did not aid employer in rebutting the presumption. *Id*. at 7. Conversely, the administrative law judge found that while Drs. Dahhan and Jarboe "both concluded that [c]laimant's pulmonary condition is not related to his coal mine employment," their opinions were not persuasive to affirmatively establish that claimant does not have legal pneumoconiosis. *Id*. at 8.

Employer does not specifically challenge the administrative law judge's rejection of Dr. Dahhan's opinion, but states that it corroborates Dr. Jarboe's opinion that claimant does not have legal pneumoconiosis and should be given weight. However, we see no error in the administrative law judge's conclusion that Dr. Dahhan's opinion is not well-reasoned. In his February 26, 2011 report, Dr. Dahhan stated that the pulmonary function study is "compatible with non-parenchymal restrictive ventilatory defect such as seen secondary to marked obesity comparable to what [claimant] suffers from." Director's Exhibit 18. The administrative law judge rationally found that Dr. Dahhan's opinion is insufficient to satisfy employer's burden to disprove that claimant has legal pneumoconiosis, as Dr. Dahhan "did not explain why [c]laimant's coal mine dust exposure could not also have been a factor in his restrictive impairment." Decision and Order on Remand at 8; *see Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-155.

In considering whether Dr. Jarboe's opinion was sufficient to disprove the existence of legal pneumoconiosis, the administrative law judge noted that, unlike Dr. Dahhan, "Dr. Jarboe provided an analysis of why he concluded that [claimant's] restrictive pulmonary impairment does not constitute legal pneumoconiosis." Decision and Order on Remand at 9; *see* Employer's Exhibit 1. The administrative law judge noted that Dr. Jarboe opined that if coal dust exposure had been a significant contributor in claimant's respiratory impairment, he expected a "fibrotic reaction and scarring which would have resulted in restriction" or evidence of "air trapping due in turn to airflow obstruction." *Id.* The administrative law judge found Dr. Jarboe's opinion, that claimant does not have legal pneumoconiosis, is supported by the evidence of record relating to the current subsequent claim. However, the administrative law judge determined that Dr. Jarboe did not adequately address evidence in the prior claim and stated:

> In formulating his opinion in conjunction with [claimant's] current claim, Dr. Jarboe summarized the prior evaluations [in the prior claims] but did not specifically discuss the import of [claimant's] diagnosed obstructive

> impairment in the past. Notably, one of the rationales Dr. Jarboe cited for his conclusion that [claimant's] condition was not related to coal mine dust exposure (and thus was not legal pneumoconiosis) was that coal mine dust exposure can produce air trapping due to airflow obstruction. But Dr. Jarboe did not discuss the prior evaluations in which an obstructive impairment was diagnosed; nor did he address whether the prior evaluations showed air trapping.

Decision and Order on Remand at 8; *see* Employer's Exhibit 1.[10]

Employer contends that the administrative law judge's analysis of Dr. Jarboe's opinion is not rational because she previously credited his opinion. Employer maintains that the prior claim evidence is not relevant to claimant's current condition and therefore the administrative law judge should not evaluate the credibility of Dr. Jarboe's opinion as to the existence of legal pneumoconiosis, based on whether he considered the earlier evidence. Employer also argues that the administrative law judge mischaracterized Dr. Jarboe's opinion. Employer's assertions of error have merit, in part.

Contrary to employer's contention, the administrative law judge acted within her discretion in reconsidering the weight to accord Dr. Jarboe's opinion on remand, as she is not bound by her prior credibility findings in the 2012 Decision and Order Denying Benefits, which was vacated by the Board. *See Dale v. Wilder Coal Co.*, 8 BLR 1-119 (1985). Moreover, the administrative law judge had discretion to consider whether evidence in the prior claim contradicted Dr. Jarboe's opinion that claimant did not have legal pneumoconiosis. *See Groves*, 277 F.3d at 836, 22 BLR at 2-330; *Clark*, 12 BLR at 1-155. We disagree that evidence from the prior claim is necessarily of less probative value than the evidence developed in conjunction with the current subsequent claim. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that it is irrational to credit evidence solely on the basis of recency. *See Woodward v. Director, OWCP*, 991 F.2d 314, 319-20, 17 BLR 2-77, 2-84-85 (6th Cir. 1993), *citing Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992).

[10] The administrative law judge noted that in the first claim, Dr. Vaezy conducted the Department of Labor (DOL)-sponsored pulmonary evaluation in September 1996, and diagnosed a "mild obstructive defect." Decision and Order on Remand at 9; Director's Exhibit 1. She further noted that in the second claim, Dr. Baker conducted the DOL-sponsored pulmonary evaluation in January 2004, and diagnosed a "moderate obstructive defect." Decision and Order on Remand at 9; *see* Director's Exhibit 2.

Notwithstanding, employer is correct that the administrative law judge erred in finding that Dr. Jarboe did not address Dr. Baker's diagnosis of obstruction in the prior claim. Dr. Jarboe specifically explained in his December 5, 2011 report why he considered Dr. Baker's earlier diagnosis of a moderate obstructive respiratory impairment, based on the January 13, 2004 pulmonary function study, to be incorrect:

> Pulmonary function [study] showed an FVC of 3.10 liters (64 %) and an FEV1 of 2.29 (58%). FEV1% was 74%. Dr. Baker interpreted this study as showing a moderate obstructive ventilator[y] defect. In fact, the spirogram shows a moderate restrictive defect and no airflow obstruction as the FEV1% is greater than 70%.

Employer's Exhibit 1 at 2. Dr. Jarboe similarly challenged Dr. Baker's diagnosis of an obstructive impairment, based on the October 22, 2010 pulmonary function study, noting that, "the FEV1% was 76% prior to [broncho]dilators and 74% after [bronchodilators]. This study simply does not show airflow obstruction." Employer's Exhibit 1 at 5-6.

Because the administrative law judge mischaracterized Dr. Jarboe's opinion, we vacate the administrative law judge's finding that Dr. Jarboe's opinion is insufficient to satisfy employer's burden of proof to establish that claimant does not have legal pneumoconiosis. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984). Thus, we vacate the administrative law judge's finding that employer did not rebut the Section 411(c)(4) presumption under 20 C.F.R. §718.305(d)(1)(i)(A).[11]

With regard to whether employer disproved the presumed fact of disability causation, the administrative law judge stated that "Dr. Jarboe did not address the [c]laimant's obstructive impairment as demonstrated in the [c]laimant's prior claims, and in particular did not indicate why such impairment was not coal mine dust induced." Decision and Order on Remand at 12. To the extent we have vacated the administrative law judge's finding that Dr. Jarboe did not discuss the evidence for obstruction in the prior claim, we vacate her rejection of Dr. Jarboe's opinion on the issue of disability causation and we vacate her finding that employer did not establish the second method of rebuttal by establishing that no part of claimant's respiratory or pulmonary disability was caused by legal pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(ii).

[11] It is not necessary to address employer's contentions of error regarding the weight accorded Dr. Baker's opinion, as it does not assist employer in establishing rebuttal of the Section 411(c)(4) presumption. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

III. Remand Instructions

On remand, we instruct the administrative law judge to reconsider whether employer has disproved the existence of legal pneumoconiosis, based on Dr. Jarboe's opinion. We instruct the administrative law judge to explain the basis for her credibility findings with regard to Dr. Jarboe, in view of the underlying rationale and the objective evidence that either supports or contradicts his conclusions. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997). As employer has disproved the existence of clinical pneumoconiosis, if the administrative law judge finds on remand that employer has satisfied its burden to disprove the existence of legal pneumoconiosis, the administrative law judge must find that employer has successfully rebutted the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305(d)(1)(i). *See Morrison*, 644 F.3d at 480, 25 BLR at 2-9. However, if employer fails to disprove that claimant suffers from legal pneumoconiosis, rebuttal is precluded under 20 C.F.R. §718.305(d)(1)(i). *Id.* Thereafter, the administrative law judge must consider whether employer is able to rebut the Section 411(c)(4) presumption by establishing that no part of the miner's respiratory or pulmonary disability was caused by pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(ii). *Id.*; *see also Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668, 25 BLR 2-275, 2-741 (6th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-452 (6th Cir. 2013). In rendering her findings on remand, the administrative law judge must explain the bases for her credibility determinations as required by the Administrative Procedure Act.[12] *See Wojtowicz*, 12 BLR at 1-165.

Accordingly, the administrative law judge's Decision and Order on Remand awarding benefits is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

[12] The Administrative Procedure Act, 5 U.S.C. §500 *et seq.*, as incorporated into the Act by 30 U.S.C. §932(a), requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge