**U.S. Department of Labor**

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

BRB No. 19-0144 BLA

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| TIMOTHY BRIAN COLEMAN | ) | |
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| Claimant-Respondent | ) | |
| | ) | |
| v. | ) | |
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| CAM MINING, LLC | ) | |
| | ) | |
| and | ) | |
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| ROCKWOOD CASUALTY INSURANCE COMPANY | ) | DATE ISSUED: 02/28/2020 |
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| Employer/Carrier-Petitioners | ) | |
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| 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 Tracy A. Daly, Administrative Law Judge, United States Department of Labor.

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

Paul E. Jones and Denise Hall Scarberry (Jones & Walters, PLLC), Pikeville, Kentucky, for employer/carrier.

Before: BOGGS, Chief Administrative Appeals Judge, ROLFE and GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2015-BLA-05889) of Administrative Law Judge Tracy A. Daly rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's claim filed on January 23, 2014.

The administrative law judge accepted the parties' stipulation to twenty-four years of qualifying coal mine employment and found the evidence established a totally disabling pulmonary or respiratory impairment. Thus, he found claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] The administrative law judge further found employer did not rebut the presumption and awarded claimant benefits.

On appeal, employer contends the administrative law judge erred in finding it did not rebut the Section 411(c)(4) presumption. Employer also contends the administrative law judge erred in finding the miner's stepson a properly designated augmentee. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[2]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order Awarding Benefits must be affirmed if it is rational, supported by

[1] Under Section 411(c)(4) of the Act, a miner is presumed to be totally disabled due to pneumoconiosis if he has 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 impairment. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305.

[2] We affirm, as unchallenged by employer on appeal, the administrative law judge's findings that claimant established twenty-four years of qualifying coal mine employment, a totally disabling respiratory impairment, and 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 at 5, 7, 17.

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).

**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 he has neither legal nor clinical pneumoconiosis,[4] 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 employer did not rebut the presumption by either method.

**Legal Pneumoconiosis**

To disprove legal pneumoconiosis employer must establish that claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-154-56 (2015) (Boggs, J., concurring and dissenting). The United States Court of Appeals for the Sixth Circuit has held that this standard requires employer to establish that claimant's "coal mine employment did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, F.3d , No. 19-3113, 2020 WL 284522, at *4 (6th Cir. Jan 21, 2020);[5] *see also generally Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014).

[3] As the record indicates claimant's last coal mine employment occurred in Kentucky, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[4] Legal pneumoconiosis "includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic pulmonary disease or respiratory or pulmonary impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). Clinical pneumoconiosis consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

[5] The Sixth Circuit further explained that "an employer may prevail under the not 'in part' standard by showing that coal dust exposure had no more than a *de minimis* impact

The administrative law judge considered the reports of Drs. Dahhan and Jarboe who each opined that claimant does not have legal pneumoconiosis[6] but rather a ventilatory impairment largely due to morbid obesity.[7] Director's Exhibits 12, 19, 20; Employer's Exhibits 1, 2, 4, 5. The administrative law judge found both opinions inadequately explained and insufficient to rebut the presumption of legal pneumoconiosis. Decision and Order at 19-21.

Employer asserts the administrative law judge applied an incorrect legal standard by requiring employer's medical experts to "rule out" coal mine dust exposure as a cause of claimant's respiratory impairment. Employer's Brief at 11-13. We disagree. The administrative law judge correctly stated employer has the burden of establishing that claimant does not have a lung disease significantly related to, or substantially aggravated by, dust exposure in coal mine employment and his analysis of the opinions of Drs. Dahhan and Jarboe in terms of rebuttal conforms to the appropriate "in part" standard. *See* 20 C.F.R. §§718.201(b), 718.305(d)(1)(i); *Young*, F.3d , No. 19-3113, 2020 WL 284522, at *4; Decision and Order at 19-22. Moreover, in discounting the opinions of Drs. Dahhan

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on the miner's lung impairment." *Island Creek Coal Co. v. Young*, F.3d , No. 19-3113, 2020 WL 284522, at *11 (6th Cir. Jan 21, 2020), *citing Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014).

[6] The administrative law judge also considered the opinions of Drs. Copley and Green that claimant has legal pneumoconiosis. Decision and Order at 21; Director's Exhibit 11; Claimant's Exhibit 1.

[7] Dr. Dahhan diagnosed claimant with morbid obesity and sleep apnea which, he opined, are causing claimant's disabling restrictive ventilatory impairment. Director's Exhibits 12, 19; Employer's Exhibit 2, 4, 5. Dr. Dahhan added that these are conditions of the general public at large not caused by, related to, contributed to, or aggravated by the inhalation of coal dust. *Id.* Dr. Dahhan thus opined, "I find no evidence of pulmonary impairment and/or disability caused by, related to, contributed to, or aggravated by inhalation of coal dust, hence, no evidence of legal pneumoconiosis." Director's Exhibit 19 at 4. Dr. Jarboe, who diagnosed claimant with chronic bronchitis, bronchial asthma, morbid obesity, obstructive sleep apnea and hypertension, opined that claimant has a severe ventilatory impairment caused primarily by his super morbid obesity, but also with a minor contribution from his bronchial asthma. Director's Exhibit 20; Employer's Exhibit 1. Dr. Jarboe, however, stated that asthma is a disease of the general population that is not caused by the inhalation of coal mine dust and further stated that if claimant's restriction was due to coal dust exposure, there should be some evidence of a fibrotic process in the lung parenchyma visible on chest x-ray. *Id*.

and Jarboe, the administrative law judge did not, as employer asserts, require the physicians to "rule out" all contribution from coal mine dust exposure to the miner's ventilatory impairment in order to disprove legal pneumoconiosis. Rather, the administrative law judge concluded that neither physician adequately explained why coal dust exposure did not contribute to, or aggravate, the miner's obstructive impairment. *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668 (6th Cir. 2015); *Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); Decision and Order at 19-21.

As the trier-of-fact, the administrative law judge has the discretion to assess the credibility of the medical opinions and to assign those opinions appropriate weight, and the Board may not reweigh the evidence or substitute its own inferences on appeal. *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1072-73 (6th Cir. 2013); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988). Because the administrative law judge permissibly discredited the opinions of Drs. Dahhan and Jarboe, the only opinions supportive of a finding that claimant does not have legal pneumoconiosis,[8] we affirm his finding that employer did not disprove the existence of legal pneumoconiosis.[9] *Ogle*, 737 F.3d at 1072-73; *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714 (6th Cir. 2002); *Anderson*, 12 BLR at 1-113. We, therefore, 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 pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

**Disability Causation**

Employer raises no separate allegations of error with respect to the administrative law judge's finding that it failed to establish that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. Decision and Order at 28. We

[8] Employer does not otherwise challenge the administrative law judge's reasons for discrediting the opinions of Drs. Dahhan and Jarboe. Consequently, we affirm his finding that their opinions are insufficient to rebut the presumption that claimant has legal pneumoconiosis. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); Decision and Order at 22.

[9] Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i). Therefore, we need not address employer's contentions of error regarding the administrative law judge's finding that employer did not disprove clinical pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 5-11.

therefore affirm the administrative law judge's determination that employer did not rebut the Section 411(c)(4) presumption under 20 C.F.R. §718.305(d)(1)(ii). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Because claimant invoked the Section 411(c)(4) presumption and employer did not rebut it, claimant has established his entitlement to benefits.

**Augmented Benefits**

We also reject employer's contention that the administrative law judge erred in awarding augmented benefits on behalf of claimant's stepchild, Bryce David Blackburn. *See* Employer's Brief at 13-14. A miner's benefits may be augmented on behalf of a child if relationship and dependency standards are met. *See* 20 C.F.R. §§725.201(c), 725.208, 725.209. With regard to relationship, an individual will be considered to be the child of a miner if the individual is a stepchild of the miner through marriage.[10] 20 C.F.R. §725.208(c). Claimant married Amy Rachelle Dorton Blackburn on August 30, 2012. Director's Exhibit 7. At the time of the marriage, Amy Rachelle Dorton Blackburn had a son, Bryce David Blackburn, born on August 4, 2003. Director's Exhibit 9. Thus, Bryce David Blackburn is considered claimant's child under the regulations. 20 C.F.R. §725.208(c).

A miner's child is considered dependent on the miner if the child is unmarried and under eighteen years of age. 20 C.F.R. §725.209(a)(1), (2)(i). Bryce David Blackburn is unmarried and under eighteen years of age. Director's Exhibit 8; Hearing Transcript at 19-20. Because claimant's stepchild satisfies relationship and dependency requirements, we affirm the administrative law judge's finding that claimant is entitled to augmented benefits on behalf of his stepchild, Bryce David Blackburn.

[10] The language of Section 725.208(c) therefore belies employer's contention that the stepson must be formally adopted by the miner in order to be considered the miner's child for purposes of augmentation of the miner's benefits. 20 C.F.R. §725.208(c).

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge