**U.S. Department of Labor**

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

BRB No. 19-0379 BLA

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| R.D. STURGILL | ) | |
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| Claimant-Respondent | ) | |
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| v. | ) | |
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| JENT & FRANKS COAL COMPANY, INCORPORATED | ) | DATE ISSUED: 02/27/2020 |
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| and | ) | |
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| OLD REPUBLIC INSURANCE COMPANY | ) | |
| | ) | |
| 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 Awarding Benefits of Christopher Larsen, Administrative Law Judge, United States Department of Labor.

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

Michelle S. Gerdano (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, 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: ROLFE, GRESH and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2016-BLA-05134) of Administrative Law Judge Christopher Larsen rendered 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 December 19, 2014.

Because the administrative law judge credited claimant with less than fifteen years of coal mine employment, he found claimant did not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[1] He also found no evidence of complicated pneumoconiosis and, therefore, claimant could not invoke the irrebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2012); 20 C.F.R. §718.304. Considering whether claimant could establish entitlement to benefits without these presumptions, the administrative law judge found claimant established legal pneumoconiosis[2] caused his total respiratory disability. 20 C.F.R. §718.204(b)(2), (c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues the administrative law judge lacked authority to decide the case because he had not been appointed consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2. Employer also challenges the validity of the administrative law judge's appointment in light of the removal provisions governing administrative law judges. On the merits, employer argues the administrative law judge improperly found legal pneumoconiosis established. Claimant has not responded to employer's appeal. The Director, Office of Workers' Compensation Programs (the

[1] Under Section 411(c)(4) of the Act, claimant 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 or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305.

[2] 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).

Director), has filed a limited response, arguing the administrative law judge had authority to decide the case. In a reply brief, employer reiterates its previous contentions.[3]

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order Awarding Benefits if it is rational, supported by substantial evidence and in accordance with applicable law.[4] 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).

**Appointments Clause**

Employer alleges the administrative law judge did not have the authority to hear and decide this case, noting the United States Supreme Court held in *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044 (2018), that Securities and Exchange Commission (SEC) administrative law judges were not appointed in accordance with the Appointments Clause[5] of the Constitution.[6] Employer's Brief in Support of Petition for Review at 12-18. Employer

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established total respiratory disability. 20 C.F.R. §718.204(b)(2); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 26-27.

[4] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as claimant was last employed in the coal mining industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 2.

[5] Article II, Section 2, Clause 2, sets forth the appointing powers:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Art. II, § 2, cl. 2.

[6] Employer raised this issue before the administrative law judge in a Motion to Place Claim in Abeyance. The administrative law judge denied employer's motion, finding that the Secretary of Labor's ratification of his appointment on December 21, 2017, foreclosed employer's argument. The administrative law judge also ratified any actions he took prior

argues the administrative law judge in this case was similarly appointed improperly. Employer acknowledges the Secretary of Labor ratified the prior appointment of all sitting Department of Labor (DOL) administrative law judges on December 21, 2017,[7] but maintains it was insufficient as there was no prior valid appointment to ratify. *Id*. at 16-17. Employer further alleges no evidence demonstrates the Secretary engaged in a "genuine . . . thoughtful consideration of potential candidates for these positions" or "interviewed them, or administered an oath or took any other action that suggests that these appointment were his own." *Id*. at 17.

The Director responds the administrative law judge had the authority to decide this case because the Secretary's ratification brought the appointment into compliance. Director's Brief at 4-5. She also maintains employer failed to rebut the presumption of regularity that applies to the actions of public officers such as the Secretary. We agree with the Director.

As the Director notes, an appointment by the Secretary need only be "evidenced by an open, unequivocal act." Director's Brief at 6, *quoting Marbury v. Madison*, 5 U.S. 137, 157 (1803). Further, ratification "can remedy a defect" arising from the appointment of an official when an agency head "has the power to conduct an independent evaluation of the merits [of the appointment] and does so." *Wilkes-Barre Hosp. Co. v. NLRB*, 857 F.3d 364, 371 (D.C. Cir. 2017) (internal quotations omitted); *see also McKinney v. Ozburn-Hessey Logistics, LLC*, 875 F.3d 333, 338 (6th Cir. 2017). Ratification is permissible so long as the agency head: 1) had at the time of ratification the authority to take the action to be ratified; 2) had full knowledge of the decision to be ratified; and 3) made a detached and considered affirmation of the earlier decision. *Wilkes-Barre*, 857 F.3d at 372; *Advanced*

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to December 21, 2017. *Sturgill v. Jent & Franks Coal Co*., 2016-BLA-05134 (March 27, 2018) (unpub. Order).

[7] The Secretary of Labor issued a letter to the administrative law judge on December 21, 2017, stating:

> In my capacity as head of the Department of Labor, and after due consideration, I hereby ratify the Department's prior appointment of you as an Administrative Law Judge. This letter is intended to address any claim that administrative proceedings pending before, or presided over by, administrative law judges of the U.S. Department of Labor violate the Appointments Clause of the U.S. Constitution. This action is effective immediately.

Secretary's December 21, 2017 Letter to Administrative Law Judge Larsen.

*Disposal Servs. E., Inc. v. NLRB*, 820 F.3d 592, 603 (3d Cir. 2016); *CFPB v. Gordon*, 819 F.3d 1179, 1191 (9th Cir. 2016). Thus, under the "presumption of regularity," courts presume that public officers have properly discharged their official duties, with "the burden shifting to the attacker to show the contrary." *Advanced Disposal*, 820 F.3d at 603, *citing Butler v. Principi*, 244 F.3d 1337, 1340 (Fed. Cir. 2001).

At the time of the ratification of the administrative law judge's appointment, the Secretary had the authority to take the action to be ratified. *Wilkes-Barre*, 857 F.3d at 372; *Advanced Disposal*, 820 F.3d at 603. Congress has authorized the Secretary to appoint administrative law judges to hear and decide cases under the Act. 30 U.S.C. §932a; *see also* 5 U.S.C. §3105.

Under the presumption of regularity, it thus is presumed the Secretary had full knowledge of the decision to be ratified and made a detached and considered affirmation. *Advanced Disposal*, 820 F.3d at 603. Moreover, the Secretary did not generally ratify the appointment of all administrative law judges in a single letter. Rather, he specifically identified Administrative Law Judge Larsen and gave "due consideration" to his appointment. Secretary's December 21, 2017 Letter to Administrative Law Judge Larsen. The Secretary further acted in his "capacity as head of the Department of Labor" when ratifying the appointment of Judge Larsen "as an Administrative Law Judge." *Id*. Having put forth no contrary evidence, employer has not overcome the presumption of regularity.[8] *Advanced Disposal*, 820 F.3d at 603-04 (mere lack of detail in express ratification is not sufficient to overcome the presumption of regularity); *see also Butler*, 244 F.3d at 1340.

Based on the foregoing, we hold that the Secretary's action constituted a valid ratification of the appointment of the administrative law judge.[9] *See Edmond v. United*

[8] While employer notes correctly that the Secretary's ratification letter was signed "with an autopen," Employer's Brief in Support of Petition for Review at 17, this does not render the appointment invalid. *See Nippon Steel Corp. v. Int'l Trade Comm'n*, 239 F.Supp.2d 1367, 1373, 1375 n.14 (Ct. Int'l Trade 2002) (autopenned signing of the Recess Appointment Order satisfies the requirement that an appointment be evidenced by an "open and unequivocal act.").

[9] We also reject employer's argument that Executive Order 13843, which removes administrative law judges from the competitive civil service, "confirms" its Appointments Clause argument because incumbent administrative law judges remain in the competitive service pending promulgation of implementing regulations. Employer's Brief in Support of Petition for Review at 17-18. We agree with the Director's assertion that employer's argument has no merit because the Executive Order does not state that the

*States*, 520 U.S. 651, 654-66 (1997) (appointment valid where the Secretary of Transportation issued a memorandum "adopting" assignments "as judicial appointments of [his] own"); *Advanced Disposal*, 820 F.3d 592, 604-05 (National Labor Relations Board retroactively ratified the appointment of a Regional Director with statement it "confirm[ed], adopt[ed], and ratif[ied] *nunc pro tunc*" all its earlier actions).

Employer next argues that *Lucia* precludes the administrative law judge from hearing this case, notwithstanding the Secretary's ratification, because the administrative law judge took significant action while not properly appointed. Employer asserts the proper remedy is a new hearing before a constitutionally appointed administrative law judge. Employer's Brief in Support of Petition for Review at 12, 15-16. We disagree.

Unlike *Lucia*, in which the judge presided over a hearing and issued an initial decision while he was not properly appointed, the only action this administrative law judge took before he was properly appointed was the issuance of a Notice of Hearing. The issuance of a Notice of Hearing does not involve any consideration of the merits, nor color consideration of the case. Rather, it simply reiterates the statutory and regulatory requirements governing the hearing procedures. Because it does not affect the administrative law judge's ability "to consider the matter as though he had not adjudicated it before," *Lucia*, 138 S.Ct. at 2055, it did not taint the adjudication with an Appointments Clause violation.

**Removal Provisions**

Employer further contends the administrative law judge lacked the authority to adjudicate this claim after being "ratified" because he is "subject to the removal provisions of the Civil Service rules." Employer's Brief in Support of Petition for Review at 13. Employer maintains that 5 U.S.C. §7521, governing the removal of administrative law judges, violates the separation of powers doctrine by providing two levels of "for cause" removal protections similar to the statutory scheme the Supreme Court invalidated in *Free Enterprise Fund*.[10] Employer's Brief in Support of Petition for Review at 13-14, *citing Lucia* and *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010).

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prior appointment procedures were impermissible or violated the Appointments Clause. Director's Brief at 5 n.5. The Order also affects only the government's internal management and, therefore, does not create a right enforceable against the United States and is not subject to judicial review. *See Air Transport Ass'n of Am. v. FAA*, 169 F.3d 1, 8-9 (D.C. Cir. 1999).

[10] The Supreme Court determined that the two level removal protection provided the Public Company Accounting Oversight Board resulted in a constitutionally

In response, the Director counters the Supreme Court expressly stated its *Free Enterprise Fund* holding "does not address that subset of independent agency employees who serve as administrative law judges" and also described the Public Company Accounting Oversight Board removal protections at issue as "significant and unusual." *Free Enter. Fund*, 561 U.S. at 507 n.10; *see* Director's Brief at 6. Further, the majority in *Lucia* declined to address the removal provisions for administrative law judges.[11] *Lucia*, 138 S.Ct. at 2050 n.1. Accordingly, we agree with the Director that employer has failed to establish 5 U.S.C. §7521 is unconstitutional.

**Entitlement to Benefits**

Without the Section 411(c)(4) presumption, claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 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 an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

**Legal Pneumoconiosis**

To establish legal pneumoconiosis, claimant must prove he has a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust

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impermissible "diffusion of accountability." *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 497 (2010).

[11] Employer's reliance on portions of Justice Breyer's concurring and dissenting opinion in *Lucia* and the Solicitor General's brief in which the removal provisions are addressed is misplaced. Justice Breyer noted "*Free Enterprise Fund's* holding may not invalidate the removal protections applicable to [] administrative law judges even if the judges are inferior 'officers of the United States' for purposes of the Appointments Clause." *Lucia*, 138 S.Ct. at 2060 (Breyer, J., concurring and dissenting). Similarly, the Solicitor General argued in *Lucia* that 5 U.S.C. §7521 is constitutional if properly construed and offered a construction of the statute that would pass constitutional muster. *See* Brief for Respondent Supporting Petitioners, 2018 WL 1251862 at 45-55.

exposure in coal mine employment."[12] 20 C.F.R. §718.201(b). The administrative law judge considered the opinions of Drs. Forehand, Castle, and Dahhan. Decision and Order at 22-26. Dr. Forehand diagnosed legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) due to cigarette smoking and coal mine dust exposure. Director's Exhibit 10. Drs. Castle and Dahhan did not diagnose legal pneumoconiosis. Dr. Castle opined that claimant's COPD is due to cigarette smoking with a significant asthmatic component, and Dr. Dahhan opined that claimant's impairment is due to hyperactive airway disease and bronchial asthma from cigarette smoking. Director's Exhibit 14; Employer's Exhibits 1, 7, 8.

The administrative law judge credited Dr. Forehand's opinion because it is consistent with the medical science the DOL accepted in the preamble to the regulations and because he adequately accounted for both claimant's exposure to coal mine dust and his smoking history. Decision and Order at 22-23. He discredited the opinions of Drs. Castle and Dahhan as "inconsistent with the regulations and legislative fact," and because they "failed to adequately explain why [claimant's] history of coal dust exposure was not a contributing or aggravating factor to his [COPD]." *Id*. at 23-26. He therefore found the medical opinion evidence established legal pneumoconiosis. 20 C.F.R. §718.202(a)(4). Employer's challenges to these determinations lack merit. Employer's Brief in Support of Petition for Review at 11-14, 19.

We reject employer's assertion the administrative law judge improperly applied sections of the preamble to create a presumption claimant's COPD is legal pneumoconiosis. Employer's Brief in Support of Petition for Review at 19-21. Contrary to employer's argument, the administrative law judge recognized that "claimant bears the burden" to establish each element of entitlement and "must establish by a preponderance of the evidence, that [] he has pneumoconiosis." Decision and Order at 2, 18. Substantial evidence supports the administrative law judge's determination that Claimant met his burden because Dr. Forehand's diagnosis of legal pneumoconiosis outweighed the contrary opinions of Drs. Castle and Dahhan. *Id*. at 13. Moreover, the administrative law judge did not substitute the preamble for evidence establishing claimant's COPD is legal pneumoconiosis because it is significantly related to, or substantially aggravated by, dust exposure in coal mine employment. Rather, he reasonably found that Drs. Castle and Dahhan relied on premises in conflict with the preamble, which resulted in their failure to consider the possibility that dust exposure, in addition to smoking, was a significant causal

[12] The administrative law judge found claimant failed to establish the existence of clinical pneumoconiosis through any of the available methods at 20 C.F.R. §§718.107, 718.202(a)(1)-(4). Decision and Order at 19-21, 26.

factor in claimant's chronic lung disease. *See* discussion infra at 10-11; Decision and Order at 23-24.

We also reject employer's allegation that the administrative law judge's reference to the preamble constitutes a violation of the Administrative Procedure Act. Employer's Brief in Support of Petition for Review at 19-22. An administrative law judge may evaluate expert opinions in conjunction with the preamble, as it sets forth the DOL's resolution of questions of scientific fact relevant to the elements of entitlement. *See A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); *see also Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012); *Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 257 (3d Cir. 2011), *aff'g J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-125-26 (2009); *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726 (7th Cir. 2008). Contrary to employer's contention, the preamble does not constitute evidence outside the record requiring the administrative law judge to give notice and an opportunity to respond. *See Adams*, 694 F.3d at 802.

Further, there is no merit to employer's contention the administrative law judge erred in crediting Dr. Forehand's opinion establishing legal pneumoconiosis. Employer's Brief in Support of Petition for Review at 19. Dr. Forehand initially opined "claimant's workplace exposure to coal mine dust and silica interacted with cigarette smoking to cause claimant's obstructive lung disease.[13] The contributions of coal mine dust exposure and cigarette smoking were substantial." Director's Exhibit 10. In his supplemental report, he

[13] Contrary to employer's assertion, Dr. Forehand's reference to "silica" does not "detract" from his opinion. Employer's Brief in Support of Petition for Review at 19. The administrative law judge properly recognized the legal definition of pneumoconiosis encompasses any respiratory or pulmonary condition significantly related to, or substantially aggravated by, dust exposure in coal mine employment. 20 C.F.R. §718.201(a)(2), (b); Decision and Order at 22. The exposure referenced in the regulations is not limited to dust from coal, but includes dust produced by any substance during the extraction or preparation of coal. 65 Fed. Reg. 79,920, 79,970 (Dec. 20, 2000) (studies establish coal contains a number of non-organic materials, including quartz, which is the source of silica; quartz exposure is an important factor contributing to pneumoconiosis in some miners; and miners who drill into hard rock, such as those who bore shafts or work as roof bolters, are exposed to higher concentrations of quartz); *see Garrett v. Cowin & Co., Inc*., 16 BLR 1-77, 1-81 (1990); *Pershina v. Consolidation Coal Co*., 14 BLR 1-55, 1-57 (1990) (the definition of "coal-mine dust" is not limited to coal dust specifically, but encompasses "the various dusts around a coal mine."). Dr. Forehand specifically noted claimant's years [of] working at the face of coal mines as a roof bolt operator and driller/shooter where he "blasted solid hard rock." Director's Exhibit 10.

further stated "[claimant's] coal mine dust exposure in the course of his coal mine employment substantially contributed to his chronic lung disease, totally disabling respiratory impairment, and work-limiting shortness of breath." Unmarked Exhibit (Dr. Forehand's supplemental report dated August 15, 2017). Dr. Forehand's specific opinion that coal dust exposure "significantly contributed" to claimant's impairment satisfies the definition of legal pneumoconiosis. 20 C.F.R. §718.201(a)(2), (b); *see Consolidation Coal Co. v. Williams*, 453 F.3d 609, 622 (4th Cir. 2006); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-18-19 (2003).

Employer's challenge to the administrative law judge's reliance on the preamble to discredit the opinions of Drs. Dahhan and Castle is also without merit. Employer's Brief in Support of Petition for Review at 19-22. In concluding that coal mine dust was not a contributing factor to claimant's respiratory impairment, Dr. Dahhan relied in part on the partial reversibility of the miner's impairment after the administration of a bronchodilator. Director's Exhibit 14; Employer's Exhibit 1.[14] The administrative law judge permissibly determined Dr. Dahhan did not adequately explain why the miner's response to bronchodilators necessarily eliminated coal mine dust as a substantially aggravating factor of his impairment. *See Crockett Collieries, Inc. v. Director, OWCP* [*Barrett*], 478 F.3d 350, 356 (6th Cir. 2007); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); Decision and Order at 23-24. Dr. Dahhan also excluded legal pneumoconiosis, in part, because claimant has not had any exposure to coal mine dust since 1998. Decision and Order at 23. The administrative law judge permissibly found his reasoning in this regard contrary to the principle that pneumoconiosis is a latent and progressive disease. *See* 20 C.F.R. §718.201(c); *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 737-40 (6th Cir. 2014); *Id.*, *citing* 65 Fed. Reg. 79,920, 79,971 (Dec. 20, 2000).

The administrative law judge further noted correctly that Dr. Castle relied, in part, on his view that claimant's reduced FEV1/FVC ratio is inconsistent with obstruction due to coal mine dust exposure. Decision and Order at 24-25; Employer's Exhibits 7, 8. The administrative law judge permissibly discredited his reasoning because it conflicts with the medical science the DOL has accepted that coal mine dust exposure can cause clinically significant obstructive disease that can be shown by a reduction in the FEV1/FVC ratio. *See* 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000); *Cent. Ohio Coal Co. v. Director, OWCP*

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[14] Dr. Dahhan stated:

> The fact that the patient has a significant response to the administration of bronchodilators in the laboratory is more suggestive of cigarette induced obstructive impairment rather than coal dust induced process.

Employer's Exhibit 1.

[*Sterling*], 762 F.3d 483, 491 (6th Cir. 2014); Decision and Order at 25. The administrative law judge further permissibly discredited Dr. Castle's opinion because he did not adequately explain why claimant's years of coal mine dust exposure did not aggravate his obstructive impairment or asthma. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558, 25 BLR 2-339, 2-353 (4th Cir. 2013); *Barber v. Director, OWCP*, 43 F.3d 899, 901, 19 BLR 2-61, 2-67 (4th Cir. 1995); Decision and Order 24-25.

Because the administrative law judge provided valid rationales for crediting Dr. Forehand's diagnosis of legal pneumoconiosis and rejecting the contrary opinions of Drs. Dahhan and Castle, we affirm his finding that the medical opinion evidence established the existence of legal pneumoconiosis. 20 C.F.R. §718.202(a)(4); *see Martin v. Ligon Preparation Co*., 400 F.3d 302, 305-06 (6th Cir. 2005); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002). As employer raises no further allegations of error, we also affirm the administrative law judge's finding of total disability due to pneumoconiosis at 20 C.F.R. §718.204(c) and the award of benefits. Decision and Order at 28; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge