U.S. Department of Labor

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

BRB No. 15-0123 BLA

MARVIN LEE LAWRENCE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ITMANN COAL COMPANY c/o WELLS FARGO DISABILITY MANAGEMENT	)	DATE ISSUED: 01/29/2016
	)	
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 on Remand – Awarding Benefits of Alan L. Bergstrom, Administrative Law Judge, United States Department of Labor.

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

Christopher M. Green (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand – Awarding Benefits (2011-BLA-06156) of Administrative Law Judge Alan L. Bergstrom, rendered on a claim filed on October 13, 2010, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case is before the Board for the second time. In his initial Decision and Order issued on March 25, 2013, the administrative law judge credited claimant with at least sixteen years of qualifying coal mine employment, and determined that claimant established a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iv).[1] Based on these findings and the filing date of the claim, the administrative law judge found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[2] Further, the administrative law judge found that employer did not establish rebuttal of the presumption. Accordingly, the administrative law judge awarded benefits.

In response to employer's appeal, the Board initially rejected employer's constitutional challenges to the application of Section 411(c)(4) to this case. *Lawrence v. Itmann Coal Co.*, BRB No. 13-0351 BLA, slip op. at 3-4 (Apr. 22, 2014) (unpub.). The Board, however, vacated the administrative law judge's finding that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii), because the administrative law judge misstated the quality standards of 20 C.F.R. §718.105 in giving less weight to the results of a non-qualifying[3] resting arterial blood gas study, obtained by Dr. Castle. *Id*. at 4-6. Insofar as the administrative law judge's consideration of the arterial blood gas

[1] The Board affirmed, as unchallenged by the parties on appeal, the administrative law judge's finding that claimant established at least sixteen years of qualifying coal mine employment. *Lawrence v. Itmann Coal Co.*, BRB No. 13-0351 BLA, slip op. at 2 n.1 (Apr. 22, 2014) (unpub.). The Board also affirmed the administrative law judge's determination that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (iii). *Id*.

[2] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption that he is totally disabled 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) (2012), as implemented by 20 C.F.R. §718.305.

[3] A "qualifying" blood gas study yields values that are equal to or less than the applicable values specified in the tables at Appendix C to Part 718. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(ii).

study evidence also affected his credibility determinations with regard to the medical opinion evidence, the Board vacated the administrative law judge's determination that claimant established total disability under 20 C.F.R. §718.204(b)(2)(iv), and his overall finding of total disability at 20 C.F.R. §718.204(b)(2). *Id*. at 6, 11. Because the Board vacated the administrative law judge's determination that claimant established a totally disabling respiratory or pulmonary impairment, the Board further vacated his finding that claimant invoked the Section 411(c)(4) presumption. *Id*. On remand, the administrative law judge was instructed to determine the weight to accord Dr. Castle's non-qualifying resting arterial blood gas study and the medical opinion evidence, and determine whether claimant established total disability for invocation of the Section 411(c)(4) presumption. *Id*. at 11. The administrative law judge was also instructed to reconsider the opinions of Drs. Ghio and Castle relevant to rebuttal of the Section 411(c)(4) presumption.[4] *Id*. at 12.

In his Decision and Order on Remand, issued on December 11, 2014, the administrative law judge found that claimant established total disability by a preponderance of the qualifying arterial blood gas studies, and based on the medical opinions of Drs. Forehand and Gallai. Thus, the administrative law judge found that claimant invoked the Section 411(c)(4) presumption. Further, the administrative law judge found that employer did not establish rebuttal of the presumption through the opinions of Drs. Ghio and Castle. Accordingly, the administrative law judge again awarded benefits.

On appeal, employer argues that the administrative law judge failed to follow the Board's instructions and erred in weighing the arterial blood gas study and medical opinion evidence pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iv), in finding that claimant is totally disabled and entitled to the Section 411(c)(4) presumption. Employer also challenges the administrative law judge's finding that it failed to establish rebuttal of the Section 411(c)(4) presumption through the opinions of Drs. Ghio and Castle. Claimant responds, urging affirmance of the administrative law judge's award of benefits. The

[4] In the interest of judicial economy, the Board addressed employer's arguments on rebuttal and determined that, regarding legal pneumoconiosis, the administrative law judge erred in rejecting the opinions of Drs. Ghio and Castle, that claimant did not suffer from legal pneumoconiosis, based on their failure to diagnose total respiratory disability. *Lawrence*, BRB No. 13-0351 BLA, slip op. at 11-12. However, the Board affirmed the administrative law judge's finding that Drs. Gallai and Klayton provided reasoned and documented opinions that claimant suffers from legal pneumoconiosis, and rejected employer's assertion that the administrative law judge provided claimant with "an irrebuttable double presumption" of legal pneumoconiosis. *Id.* at 12-13.

Director, Office of Workers' Compensation Programs, has declined to file a substantive response unless specifically requested to do so by the Board.

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

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

On remand, the administrative law judge reconsidered the four arterial blood gas studies of record, dated February 7, 2011, October 2, 2011, November 14, 2011 and May 22, 2012, along with Dr. Ghio's interpretation of those studies. The administrative law judge reiterated his conclusion that the February 7, 2011 study, administered by Dr. Forehand, produced qualifying values at rest and during exercise, that the October 2, 2011 study, administered by Dr. Gallai, produced qualifying values at rest, and that the November 14, 2011 study, administered by Dr. Klayton, was not probative on the issue of total disability because Dr. Klayton "questioned the results of his [arterial blood gas study] data[.]" Decision and Order on Remand at 7; *see* Director's Exhibit 8; Claimant's Exhibits 3, 4. The administrative law judge again rejected Dr. Ghio's opinion, that the February 7, 2011 and October 2, 2011 studies do not support a finding of total disability, because he was not persuaded by Dr. Ghio's explanation that the qualifying arterial blood gas study obtained by Dr. Gallai was normal when viewed under guidelines other than those in the regulations, and that the qualifying arterial blood gas study by Dr. Forehand was unreliable.[6] Decision and Order on Remand at 8.

In accordance with the Board's instructions, the administrative law judge reconsidered the results of the May 22, 2012 arterial blood gas study conducted by Dr. Castle. Although the study was non-qualifying for total disability at rest, the administrative law judge found that the test "is suspect and presents an incomplete

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as claimant's coal mine employment was in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

[6] Although the award of benefits was vacated, the Board previously affirmed the administrative law judge's rejection of Dr. Ghio's interpretations of the arterial blood gas study evidence. *Lawrence*, BRB No. 13-0351 BLA, slip op. at 7-8.

picture of [c]laimant's lung function in terms of gas exchange[.]" Decision and Order on Remand at 8. Therefore, the administrative law judge found that claimant established total disability under 20 C.F.R. §718.204(b)(2)(ii), because "the highly probative data from Drs. Forehand and Gallai supporting a finding of total disability outweighs the contrary data from Dr. Castle and the opinion of Dr. Ghio." *Id*. at 8.

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge reiterated his explanation for rejecting, as unpersuasive, the opinions of Drs. Klayton and Castle, that claimant is not totally disabled by a respiratory or pulmonary impairment. Decision and Order on Remand at 9, 11-12. In addition, the administrative law judge assigned "great weight" to the opinions of Drs. Forehand and Gallai, that claimant is totally disabled from performing his usual coal mine work, because their opinions are "well-documented and well-reasoned."[7] *Id*. at 9-10. Therefore, the administrative law judge found that claimant established total disability through medical opinion evidence under 20 C.F.R. §718.204(b)(2)(iv). *Id*. at 12. Based on his consideration of all of the evidence, the administrative law judge found that claimant established total disability at 20 C.F.R. §718.204(b)(2). *Id*. at 13.

Employer first argues that the administrative law judge substituted his opinion for that of a medical expert when he "discredited Dr. Ghio's medical assessment of the significance of [the] conflicting clinical tests." Employer's Brief in Support of Petition for Review at 12-13. Specifically, employer asserts that Dr. Ghio credibly explained why the qualifying arterial blood gas testing is "inconsistent with the normal diffusing capacity or the normal pulse oximetry results." *Id*. However, as discussed *supra* at n. 6, the Board rejected this argument when this case was previously before it, and affirmed the administrative law judge's rejection of Dr. Ghio's opinion. *Lawrence*, BRB No. 13-0351 BLA, slip op. at 7-8. The Board's holding constitutes the law of the case, and

[7] The Board also previously held that the administrative law judge permissibly discounted Dr. Castle's opinion on total disability. *Lawrence*, BRB No. 13-0351 BLA, slip op. at 7-10. Specifically, the Board affirmed the finding that Dr. Castle did not adequately explain why it was necessary to adjust the arterial blood gas study data to account for claimant's age and the barometric pressure, when those variables are already accounted for in the tables designating arterial blood gas values that qualify under the regulations. *Id*. Furthermore, the Board declined to address employer's assertions that the administrative law judge selectively discounted employer's evidence and failed to properly consider whether the pulmonary function and arterial blood gas testing by Drs. Forehand, Klayton, and Gallai conformed to the quality standards under the regulations. *Id*. at 10-11. The Board explained that employer did not raise its arguments regarding the validity of that evidence before the administrative law judge. *Id*.

employer has not advanced any arguments establishing an exception to that doctrine. *Coleman v. Ramey Coal Co.*, 18 BLR 1-9, 1-15 (1993); *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-150-51 (1990). We decline, therefore, to revisit the Board's prior holding.[8]

Employer next argues that the administrative law judge erred in assigning "low probative weight" to Dr. Castle's May 22, 2012 arterial blood gas study, which was non-qualifying for total disability at rest. Decision and Order on Remand at 8. Employer asserts that the administrative law judge ignored the Board's instructions when finding that "Dr. Castle's blood gas study is suspect and presents an incomplete picture of [c]laimant's lung function in terms of gas exchange[.]" Decision and Order on Remand at 8; *see* Employer's Brief in Support of Petition for Review at 16. Therefore, employer contends that the administrative law judge's finding of total disability at 20 C.F.R. §718.204(b)(2)(ii) must again be vacated and the case remanded for further consideration. We disagree.

The May 22, 2012 arterial blood gas study conducted by Dr. Castle produced non-qualifying values for total disability at rest. Employer's Exhibit 5. Dr. Castle had claimant perform an exercise pulse oximetry but not an exercise arterial blood gas study. *Id*. He interpreted the exercise pulse oximetry results as establishing that claimant is not

[8] Employer raises many of the same arguments in this appeal that it did in the prior appeal. Employer's Brief in Support of Petition for Review at 11 n. 8. Specifically, employer continues to assert the following:

> [T]he [administrative law judge] inconsistently scrutinized the objective testing; the [administrative law judge] erred in discrediting Drs. Castle and Ghio for considering barometric pressure, age, and altitude; the [administrative law judge] erred in finding physicians cannot rely on American Thoracic Society, Intermountain Thoracic Society, or any other guidelines other than those in the regulations when interpreting objective testing; [the administrative law judge erred in finding that] the opinions of Drs. Klayton, Forehand and Gallai are reasoned [on the issue of legal pneumoconiosis,] [and] that opinions that always diagnose legal pneumoconiosis based on exposure alone are hostile to the [Black Lung Benefits Act].

Id. The Board rejects employer's arguments for the reasons set forth in the prior decision. *Coleman v. Ramey Coal Co.*, 18 BLR 1-9, 1-15 (1993); *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-150-51 (1990); *see Lawrence*, BRB No. 13-0351 BLA, slip op. at 3-13.

totally disabled from a pulmonary or respiratory impairment. *Id*. In remanding this case, the Board held that the administrative law judge erred in rejecting this study based on his finding that "an [exercise blood gas study] *must* be performed, unless medically contraindicated[.]" *Lawrence*, BRB No. 13-0351 BLA, slip op. at 5, *quoting* Decision and Order at 30. The Board explained that the regulations do not state that an exercise blood gas study must be administered, but that "an exercise arterial [blood gas] study shall be *offered* to the miner if the resting arterial [blood gas] study was non-qualifying." *Id*. at 5-6, *quoting* 20 C.F.R. §718.105(b).

On remand, the administrative law judge acknowledged the specific language of 20 C.F.R. §718.105(b) and reached the following conclusions with regard to Dr. Castle's testing:

> In this case Dr. Castle reported the [arterial blood gas] study performed at rest was a blood sample draw tested within minutes of the sample being taken at 7:48 AM. . . . Dr. Castle reported the [c]laimant was exercised by walking approximately 390 feet in six minutes and that [claimant's] "resting pulse oximetry was 96% and a six minute oximetry was 98%." No blood sample was drawn for the exercise test performed. A pulse oximeter is not the regulatory arterial blood gas study required for disability evaluation under 20 CFR §718.105, which involves submitting arterial blood for laboratory testing in calibrated machinery. By exercising [claimant], Dr. Castle demonstrated that an exercise test was not medically contraindicated. By performing a resting blood draw for testing he demonstrated he had the capacity to perform an exercise blood draw for study under 20 CFR §718.105. Dr. Castle failed to provide any rationale why he did not draw a blood sample during the six minute exercise when he had the means and opportunity to do so. He failed to indicate if he even offered [claimant] a blood draw for the exercise portion of blood gas study. Without conducting a blood draw during the exercise test and relying on a pulse oximeter reading, Dr. Castle's blood gas study is suspect and presents an incomplete picture of [c]laimant's lung function in terms of gas exchange under 20 CFR §718.105. Accordingly, this presiding Judge finds that Dr. Castle's test data is entitled to low probative weight and his pulse oximeter readings are given no weight for the purposes of 20 CFR §718.105.

Decision and Order on Remand at 7-8.

Employer asserts that the administrative law judge "erred by speculating[,] based on Dr. Castle's lack of an [exercise] arterial blood gas [study,] that Dr. Castle did not

offer an exercise blood gas [study] to [claimant]." Employer's Brief in Support of Petition for Review at 15. We disagree. The administrative law judge observed that Dr. Castle gave no indication in his report as to whether claimant was offered an *exercise* blood gas study. The administrative law judge acted within his discretion in drawing the inference that an exercise blood gas study was not medically contraindicated, as Dr. Castle specifically exercised claimant during the pulse oximetry and demonstrated the capacity to perform a blood draw. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528, 21 BLR 2-323, 2-326 (4th Cir. 1998); Decision and Order on Remand at 7-8; Employer's Exhibit 5. Employer suggests that claimant may have refused to perform an exercise arterial blood gas study during Dr. Castle's examination, noting *Dr. Ghio's* statement that claimant asked that an arterial blood gas study not be performed during Dr. Ghio's examination, because such studies can be "uncomfortable." Employer's Brief in Support of Petition for Review at 17. However, we see no error in the administrative law judge's finding that *Dr. Castle* failed to explain whether claimant was offered an exercise blood gas study, whether claimant refused to perform such a study, or whether it was medically contraindicated. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764, 21 BLR 2-587, 2-606 (4th Cir. 1999); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31-32 (4th Cir. 1997); Decision and Order on Remand at 7-8.

Furthermore, we see no error in the administrative law judge's conclusion that neither Dr. Castle's *non-qualifying resting* arterial blood gas study nor his *exercise pulse oximetry* test, were sufficient to outweigh the probative value of the two arterial blood gas studies showing that claimant is totally disabled. Specifically, the administrative law judge found that the February 7, 2011 resting blood gas study by Dr. Forehand, and the October 2, 2011 resting blood gas study by Dr. Gallai, "indicate a degree of hypoxemia severe enough to push [c]laimant just into the range of numbers that qualify for total disability." Decision and Order on Remand at 7. The administrative law judge also noted that Dr. Forehand's exercise blood gas study on February 7, 2011 was interpreted as showing "exercise-induced hypoxemia and meets the criteria for total disability." *Id.*

The weight to accord conflicting medical evidence is within the discretion of the administrative law judge, as the trier-of-fact. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31-32 (4th Cir. 1997); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764, 21 BLR 2-587, 2-606 (4th Cir. 1999). Because the administrative law judge acted within his discretion in reaching his credibility determinations, we affirm his finding that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). Decision and Order on Remand at 8.

Because the administrative law judge acted within his discretion in giving little weight to Dr. Castle's arterial blood gas testing, he rationally gave little weight to Dr. Castle's opinion on the issue of whether claimant is totally disabled. *See Mays*, 176 F.3d

at 764, 21 BLR at 2-606. We, therefore, affirm the administrative law judge's finding that claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv), based on the reasoned and documented opinions of Drs. Forehand and Gallai, who reported that claimant is totally disabled from performing his usual coal mine work in light of the arterial blood gas study results. *See Hicks*, 138 F.3d at 528, 21 BLR at 2-326; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; Decision and Order on Remand at 9, 10, 12; Director's Exhibit 8; Claimant's Exhibit 3. We also affirm the administrative law judge's overall finding that claimant established total disability, taking into consideration all of the contrary probative evidence under 20 C.F.R. §718.204(b)(2). *See* 20 C.F.R. §718.204(b)(2); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon*. 9 BLR 1-236 (1987) (en banc). As claimant met his burden of establishing total disability, we affirm the administrative law judge's finding that claimant is entitled to the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4).

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

In order to rebut the presumption of total disability due to pneumoconiosis under Section 411(c)(4), employer must affirmatively establish that claimant does not have either legal[9] or clinical[10] pneumoconiosis, or that "no part of [claimant'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 W. Va. CWP Fund v. Bender*, 782 F.3d 129, 138-43 (4th Cir. 2015); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9

[9] Legal pneumoconiosis includes "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).

[10] Clinical pneumoconiosis is defined as:

> [T]hose 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. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

20 C.F.R. §718.201(a)(1).

(6th Cir. 2011); *Minich v. Keystone Coal Mining Corp*., BRB No. 13-0544 BLA, slip op. at 10-11 (Apr. 21, 2015) (Boggs, J., concurring and dissenting).

The administrative law judge found that the explanations by Drs. Ghio and Castle for why claimant does not have legal pneumoconiosis were premised on their disagreement with the administrative law judge's finding that claimant's arterial blood gas studies show a respiratory or pulmonary impairment, and were based on medical principles that are inconsistent with the regulatory criteria for interpreting arterial blood gas evidence. Decision and Order on Remand at 16-17. Employer argues that the administrative law judge committed the same errors in weighing employer's evidence on rebuttal, by confusing the issue of whether claimant is totally disabled with the issue of whether employer disproved the existence of legal pneumoconiosis. We disagree.

The Board previously held that it was error for the administrative law judge to discredit the opinions of Drs. Ghio and Castle, that claimant does not have legal pneumoconiosis, "merely because they did not opine that claimant has a *totally disabling* pulmonary or respiratory impairment." *Lawrence*, BRB No. 13-0351 BLA, slip op. at 7-11 (emphasis added). On remand, the administrative law judge observed correctly that both Dr. Ghio and Dr. Castle opined that claimant does not have legal pneumoconiosis, in part, because they maintain that claimant does not have any respiratory impairment whatsoever.[11] Decision and Order on Remand at 16-17.

The definition of legal pneumoconiosis includes "any respiratory or pulmonary impairment" significantly related to, or substantially aggravated by, coal dust exposure. 20 C.F.R. §718.201. As neither Dr. Ghio nor Dr. Castle was of the opinion that claimant has an impairment, and we have affirmed the administrative law judge's determination that the opinions of Drs. Ghio and Castle were not reasoned with regard to the

[11] Dr. Ghio opined that there was insufficient evidence to support a diagnosis of legal pneumoconiosis because claimant has no permanent respiratory or pulmonary impairment. Employer's Exhibits 1, 10 at 26-27, 31, 37-38. He further explained that claimant "hasn't been diagnosed by any physician to have any disease, certainly none that would be covered by legal pneumoconiosis," and that the only diagnosis he would have for claimant is "back pain." *Id.* at 35. Dr. Castle concluded that claimant "does not have *legal pneumoconiosis* because his ventilatory function *is entirely within normal limits* and he does not demonstrate a disabling abnormality of ventilatory function." Employer's Exhibit 5 (emphasis added). He stated that the arterial blood gas study "done at the time of [his] evaluation demonstrated a normal level of oxygenation for a man [claimant's] age at the barometric pressure at which it was done" and the study conducted by Dr. Forehand "was within the normal range[.]" *Id*.

interpretation of claimant's blood gas studies, we affirm the administrative law judge's conclusion that employer failed to present affirmative and credible evidence to disprove that claimant has legal pneumoconiosis, as defined in the regulations.[12] *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17, 25 BLR 2-115, 2-133 (4th Cir. 2012); *Hicks*, 138 F.3d at 528, 21 BLR at 2-326; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76. Thus, we affirm his finding that employer did not rebut the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305(d)(1)(i).[13] *See Looney*, 678 F.3d at 316-17, 25 BLR at 2-133; *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-1621, 1-165 (1988).

Based on the administrative law judge's permissible determination that the opinions of Drs. Ghio and Castle are not adequately reasoned regarding the etiology of claimant's disabling blood gas exchange impairment, we also affirm the administrative law judge's finding that they are insufficient to affirmatively establish that no part of claimant's respiratory or pulmonary disability is due to pneumoconiosis as defined in 20 C.F.R. §718.201.[14] *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, BLR (4th Cir.

[12] We also affirm the administrative law judge's alternate rationale, that Dr. Castle's opinion was insufficient to satisfy employer's burden of proof because, while Dr. Castle acknowledged the possibility that claimant may have "a mild airway abnormality of no clinical significance," he did not offer a specific explanation regarding the cause of such an impairment or why it would not be significantly related to, or substantially aggravated by, coal dust exposure. Decision and Order on Remand at 17-18; *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).

[13] Employer argues that the administrative law judge's analysis of whether employer disproved the existence of pneumoconiosis "intertwines and confuses the opinions of Drs. Ghio, Castle and Klayton," and employer maintains that "it is impossible to parse out the [administrative law judge's] reasoning." Employer's Brief in Support of Petition for Review at 18-19. We disagree that the bases for the administrative law judge's findings of fact and conclusions of law are not discernible, and we conclude that his Decision and Order satisfies the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Black Lung Benefits Act by 30 U.S.C. §932(a). *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-1621, 1-165 (1988); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc).

[14] We reject employer's assertion that Dr. Ghio offered an alternate rationale, other than the absence of a respiratory impairment, for why claimant's disability is not due to pneumoconiosis. Employer argues that Dr. Ghio "explained that even if impairment is

2015); *Bender*, 782 F.3d at 143; *Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002); *Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995); Decision and Order at 17-18. Thus, we affirm the administrative law judge's

present, it is due to [claimant's] lengthy cigarette smoke exposure." Employer's Brief in Support of Petition for Review at 22. However, Dr. Ghio specifically testified that "the only abnormality that [claimant] has are symptoms," that "any abnormalities of hypoxemia with exercise" are attributable to "error in the methodology," and that "[i]t's possible that [claimant] may have been smoking shortly before his test, but the pulmonary function tests predict that his arterial blood gases *should be normal*." Employer's Exhibit 10 at 31 (emphasis added). Based on the totality of Dr. Ghio's testimony, we see no error in the administrative law judge's finding that "[s]ince [Dr. Ghio] did not consider [c]laimant impaired[,] he did not set forth an alternate cause for the [c]laimant's established disabling respiratory impairment." Decision and Order on Remand at 17; *see Hicks*, 138 F.3d at 528, 21 BLR at 2-326; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76.

finding that employer failed to rebut the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305(d)(1)(ii).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge