U.S. Department of Labor

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

BRB No. 17-0173 BLA

JOHNNY SMITH	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HAWKEYE COAL COMPANY, C/O ARCH COAL	)	
	)	
and	)	
	)	
self-insured through ARCH COAL, INCORPORATED, c/o UNDERWRITERS SAFETY & CLAIMS	)	DATE ISSUED: 01/23/2018
	)	
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 Granting Claimant's Request for Modification and Awarding Benefits of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

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

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

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

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Granting Claimant's Request for Modification and Awarding Benefits (2014-BLA-05258) of Administrative Law Judge John P. Sellers, III, rendered on claimant's request for modification of a subsequent claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).[1]

The administrative law judge credited claimant with at least seventeen years of coal mine employment[2] and found that his working conditions were substantially similar

[1] This is claimant's second claim for benefits. His initial claim, filed on April 29, 1999, was denied by Administrative Law Judge Daniel J. Roketenetz on May 30, 2002, for failure to establish any elements of entitlement. Director's Exhibit 1. Claimant requested modification, which was denied on June 22, 2004 by Administrative Law Judge Gerald M. Tierney, who determined that claimant had a totally disabling respiratory or pulmonary impairment but did not have pneumoconiosis. *Id.*

Claimant filed this claim on August 11, 2005. Director's Exhibit 3. The district director denied benefits on June 1, 2006, for failure to establish total disability or the existence of pneumoconiosis. Director's Exhibit 46. Claimant requested modification, which the district director denied on March 14, 2007. Director's Exhibit 61. Claimant's second request for modification was ultimately denied by Administrative Law Judge Larry S. Merck on January 11, 2012, after the Board vacated Judge Merck's initial award of benefits. *Smith v. Hawkeye Coal Co.*, BRB No. 10-0186 BLA (Nov. 24, 2010) (unpub.); Director's Exhibit 121. On remand, Judge Merck found that claimant established that he had legal pneumoconiosis, but failed to establish that he was totally disabled. Director's Exhibit 121. Claimant filed the current request for modification on September 11, 2012. Director's Exhibit 123.

[2] Claimant's coal mine employment was in Kentucky. Director's Exhibit 1. Accordingly, this case arises within the jurisdiction 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).

to those in underground coal mines. Considering the new evidence submitted on modification, the administrative law judge found that claimant established that he has a totally disabling respiratory or pulmonary impairment, pursuant to 20 C.F.R. §718.204(b)(2). Consequently, the administrative law judge found that claimant established a change in conditions pursuant to 20 C.F.R. §725.310, and invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis, 30 U.S.C. §921(c)(4) (2012).[3] The administrative law judge further found that employer failed to rebut the presumption. Accordingly, the administrative law judge granted claimant's modification request and awarded benefits.

On appeal, employer argues that the administrative law judge erred in finding that claimant is totally disabled, and therefore erred in finding that claimant invoked the Section 411(c)(4) presumption.[4] Employer also contends that the administrative law judge erred in finding that it failed to rebut the Section 411(c)(4) presumption. Finally, employer argues that the administrative law judge erred in determining that granting modification renders justice under the Act. Claimant has filed a response in support of the award of benefits. Employer has filed a reply, reiterating its contentions. The Director, Office of Workers' Compensation Programs, has not filed a response.[5]

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[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if the claimant 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); *see* 20 C.F.R. §718.305.

[4] We reject employer's contention that the executive order issued by President Trump on January 20, 2017, has called into question the validity of Section 411(c)(4). Employer notes that in the order, the president sought the repeal of the Patient Protection and Affordable Care Act (PPACA), Public Law No. 111-148, and directed all agencies to exercise their authority and discretion to minimize the "economic and regulatory burdens" of the PPACA. *See* Exec. Order No. 13,765, 82 Fed. Reg. 8,351 (Jan. 20, 2017); Employer's Brief at 5 n.1. Because neither Congress nor the Department of Labor has taken action with regard to the PPACA's amendments of the Black Lung Benefits Act, Section 411(c)(4) remains in effect.

[5] We affirm, as unchallenged on appeal, the administrative law judge's determination that claimant had at least seventeen years of coal mine employment in conditions substantially similar to those in an underground mine. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4, 14-15.

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. 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).

Total Disability

A miner is considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function testing evidence, arterial blood gas study evidence, evidence of cor pulmonale with right-sided congestive heart failure, or medical opinion evidence. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must consider all of the relevant evidence and weigh the evidence supporting a finding of total disability against the contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

In this case, the administrative law judge considered the new evidence submitted on modification and found that the pulmonary function study and medical opinion evidence support a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (iv).[6] Decision and Order at 13-14. Because the pulmonary function study evidence was qualifying, the medical opinion evidence supported a finding of total disability, and there was no contrary probative evidence, the administrative law judge determined that claimant has a totally disabling respiratory or pulmonary impairment, pursuant to 20 C.F.R. §718.204(b)(2).[7] *Id*. Therefore, the administrative law judge found that claimant established a change in condition, pursuant to 20 C.F.R. §725.310.

Employer contends that the administrative law judge erred by failing to make a finding regarding the exertional requirements of claimant's usual coal mine work, and by failing to address the "sedentary nature" of claimant's employment before finding him to

[6] The administrative law judge also determined that the blood gas study evidence does not support a finding of total disability. Decision and Order at 13. There is no evidence in the record of cor pulmonale with right-sided congestive heart failure.

[7] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i).

be totally disabled. Employer's Brief at 14-19. Specifically, employer argues that the medical opinion evidence does not support a finding of total disability because Drs. Castle and Splan, the two physicians who provided new opinions, did not conclude that claimant is unable to perform his sedentary work because of his impairment. *Id.* at 17. Employer also contends that the administrative law judge failed to explain why the pulmonary function study evidence establishes total disability, given the sedentary nature of claimant's work. *Id.* at 16.

Employer is correct that an administrative law judge is required to determine the exertional requirements of claimant's usual coal mine work and then consider them in conjunction with the medical opinions assessing disability. *See Cornett v. Benham Coal, Inc.,* 227 F.3d 569, 578, 22 BLR 2-107, 2-124 (6th Cir. 2000); *Cross Mountain Coal, Inc. v. Ward*, 93 F.3d. 211, 218-19, 20 BLR 2-360, 2-374 (6th Cir. 1996). Claimant's usual coal mine work is the most recent job he performed regularly and over a substantial period of time. *See Pifer v. Florence Mining Co.*, 8 BLR 1-153, 1-155 (1985); *Shortridge v. Beatrice Pocahontas Coal Co.*, 4 BLR 1-534, 1-539 (1982).

The administrative law judge noted that claimant's usual coal mine work was as a heavy equipment operator, but failed to determine that job's exertional requirements. Decision and Order at 13-14. Moreover, employer is correct that the record contains evidence, in the form of claimant's own testimony, that his work was sedentary. Claimant testified that, as a heavy equipment operator, he operated "anything that they had that needed to be run," including bulldozers, rock drills, rock trucks, graders, and end loaders, although he most often loaded coal with a front end loader. Hearing Transcript at 15, 24, 31. The administrative law judge then asked claimant about the physical requirements of his job:

> WITNESS: Well, on a dozer, it was just sitting in the seat long enough to get your job done, bouncing on top of big rocks. If it was an end loader, it was keeping up with the trucks. As far as physical labor, there really wasn't any. I sat.
>
> JUDGE SELLERS: Did you ever have to get out of any of the equipment?
>
> WITNESS: Not to do my job, no.

Hearing Transcript at 32. Employer also points out that claimant previously described his job as requiring him to sit for eight to twelve hours per day, with no crawling, lifting, or carrying, and either no standing or one hour of standing. Director's Exhibits 5, 1 at 615.

Nevertheless, the administrative law judge's failure to determine claimant's exertional requirements and assess the evidence regarding total disability in light of those

requirements is harmless error, even if claimant's job was sedentary. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (holding that the appellant must explain how the "error to which [it] points could have made any difference"). Claimant's qualifying pulmonary function study evidence establishes that he is totally disabled "[i]n the absence of contrary probative evidence." 20 C.F.R. §718.204(b)(2).

As an initial matter, we affirm the administrative law judge's determination that the pulmonary function study evidence is qualifying, which employer has not challenged on appeal. *See Skrack*, 6 BLR at 1-711; Decision and Order at 13. We reject employer's argument that the administrative law judge was required to take the exertional requirements of claimant's job into account and explain how the pulmonary function study evidence was qualifying. Employer's Brief at 16. Pulmonary function study evidence is qualifying if it meets the objective requirements of the table in Appendix B of 20 C.F.R. Part 718. Requiring the administrative law judge to go beyond the regulatory criteria and assess whether objective medical evidence is qualifying would require him to act as a medical expert, which he may not do. *See Marcum v. Director, OWCP*, 11 BLR 1-23, 1-24 (1987); *Casella v. Kaiser Steel Corp.*, 9 BLR 1-131, 1-135 (1986).

Furthermore, none of the other new evidence is contrary to the qualifying pulmonary function study evidence.[8] The medical opinions of Drs. Castle and Splan that claimant is totally disabled would not support a determination that claimant is *not* totally disabled, even if the administrative law judge were to weigh the opinions in light of claimant's exertional requirements. Dr. Castle diagnosed claimant as having a "moderately severe airway obstruction with a significant degree of bronchoreversibility," and concluded that claimant is "disabled as a result of tobacco smoke induced airway obstruction and asthma." Director's Exhibit 131 at 12-13. Dr. Splan diagnosed chronic bronchitis and chronic obstructive pulmonary disease (COPD), and concluded that claimant's impairment is "severe, and [that] based upon his pulmonary impairment the patient should not return to work in the mines." Director's Exhibit 123 at 4.

Employer argues that medical opinions that do not address exertional requirements cannot establish the existence of a totally disabling respiratory or pulmonary impairment.

[8] Employer's contention that the non-qualifying arterial blood gas study evidence weighs against a finding of total disability lacks merit. Employer's Brief at 16. The administrative law judge correctly noted that pulmonary function studies and blood gas studies assess different types of impairments, and he determined that the blood gas study evidence therefore was not contrary probative evidence precluding the use of the pulmonary function study evidence to establish total disability. *See Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984); Decision and Order at 13.

Because, in employer's view, neither Dr. Castle nor Dr. Splan concluded that claimant's impairment would prevent him from performing his sedentary duties, employer contends that their opinions do not support a finding of total disability. Employer's Brief at 17. This argument lacks merit.

Initially, we note that Dr. Castle does appear to have taken claimant's exertional requirements into account. Dr. Castle observed that claimant "indicates there was not a lot of heavy labor involved" in claimant's work before ultimately concluding that he is totally disabled. Director's Exhibit 131 at 3, 12-13. Regardless, even if employer is correct that Drs. Castle and Splan both failed to consider adequately claimant's exertional requirements, their opinions are not contrary probative evidence, pursuant to 20 C.F.R. §718.204(b)(2), because neither physician opined that claimant is *not* totally disabled, or that he would be able to perform his usual work as a heavy equipment operator. For the administrative law judge to draw that conclusion from their opinions would require him to improperly substitute his own medical judgment for theirs. *See Marcum*, 11 BLR at 1-24; *Casella*, 9 BLR at 1-135. At most, the administrative law judge could discredit the opinions of Drs. Castle and Splan and assign them no weight. In that case, the medical opinion evidence would not support a finding of total disability, but neither would it weigh against such a finding. *See Rafferty*, 9 BLR at 1-232.

Because there is no "contrary probative evidence," the qualifying pulmonary function study evidence establishes that claimant is totally disabled. 20 C.F.R. §718.204(b)(2). Therefore, we affirm the administrative law judge's finding that claimant has a totally disabling respiratory or pulmonary impairment. Consequently, we also affirm the administrative law judge's determination that claimant invoked the Section 411(c)(4) presumption and established a change in conditions pursuant to 20 C.F.R. §725.310.[9]

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[9] We reject employer's argument that the administrative law judge erred by failing to consider Dr. Jarboe's opinion in 2007 that claimant retained the capacity to work as a heavy equipment operator. Employer's Brief at 18-19. Dr. Jarboe's opinion — which employer submitted into the record when this claim was before Judge Merck, and thus prior to this request for modification of Judge Merck's denial of benefits — is not new evidence. *See* 20 C.F.R. §725.310(b), (c). In determining whether claimant established a change in conditions, the administrative law judge needed only to consider whether new evidence established that claimant is totally disabled; he was not required to compare old and new evidence. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 485-86, 25 BLR 2-135, 2-147 (6th Cir. 2012).

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

Because claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to employer to rebut the presumption by establishing that the miner has neither clinical nor legal pneumoconiosis,[10] 20 C.F.R. §718.305(d)(1)(i), or by establishing that "no part of the miner's 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)(ii). The administrative law judge found that employer failed to rebut the presumption by either method. Decision and Order at 15-22.

The administrative law judge first found that the evidence established that claimant does not have clinical pneumoconiosis, Decision and Order at 16-18, and then considered whether employer established that claimant does not have legal pneumoconiosis. Decision and Order at 18-21. He began by noting that, upon his review, he agreed with Administrative Law Judge Larry S. Merck's finding — which the Board affirmed — that the previously submitted evidence affirmatively established the existence of legal pneumoconiosis. Decision and Order at 19; *see Smith v. Hawkeye Coal Co.*, BRB No. 10-0186 BLA, slip op. at 4-8 (Nov. 24, 2010) (unpub.). Turning to the new evidence submitted on modification, the administrative law judge credited Dr. Splan's opinion that claimant has legal pneumoconiosis, and discredited Dr. Castle's contrary opinion. Decision and Order at 19-21; Director's Exhibits 123 at 4, 131 at 12. Giving the most weight to the new evidence, the administrative law judge found that employer failed to rebut the presumption that claimant has legal pneumoconiosis. Decision and Order at 21.

Employer first argues that the administrative law judge erred by "failing to correctly resolve the conflict in the record regarding claimant's actual smoking history." Employer's Brief at 21-22. We disagree. The administrative law judge found a smoking history of "at least forty-five pack years," based on claimant's testimony and the record evidence. Decision and Order at 5. Employer contends that the administrative law judge failed to explain that finding, and argues that treatment records support a smoking history greater than eighty pack-years, and that other evidence indicated that claimant may have

[10] "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). "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).

smoked as many as two packs a day for as long as forty-six years, which would result in a smoking history of ninety-two pack-years. The administrative law judge, however, cited claimant's hearing testimony that he smoked up to two packs a day only "[o]n occasions," and that, on average, he smoked one pack a day. Decision and Order at 4; Hearing Transcript at 22, 27. It was within the administrative law judge's discretion to credit claimant's testimony and rely on it in determining his smoking history.[11] *See Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989).

Employer also argues that the administrative law judge used an erroneous legal standard, citing a portion of the Decision and Order in which he stated that rebutting the presumption of legal pneumoconiosis required employer to establish that claimant "has no disease or impairment even minimally related to coal dust exposure." Employer's Brief at 22-23; Decision and Order at 18. This argument lacks merit. Employer has accurately quoted one sentence of the Decision and Order, but a review of the administrative law judge's analysis as a whole makes clear that he did not impose that standard on employer. As will be shown below, the administrative law judge consistently applied the rebuttal standard based on the definition of legal pneumoconiosis, which includes any chronic pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment."[12] 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); Decision and Order at 18-21.

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[11] Moreover, employer has failed to explain how any error regarding claimant's smoking history could have made any difference in the administrative law judge's decision to discredit Dr. Castle's opinion and find that employer failed to rebut the presumed fact of legal pneumoconiosis. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009). The administrative law judge accepted Dr. Castle's view that claimant's smoking history — which Dr. Castle assessed to be forty-five to ninety pack years — was sufficient to have caused his chronic obstructive pulmonary disease (COPD), finding that conclusion "reasonable." Decision and Order at 19; Director's Exhibit 131 at 11.

[12] The administrative law judge's statement that rebutting the presumption of legal pneumoconiosis required employer to establish that claimant "has no disease or impairment even minimally related to coal dust exposure" appears to have been based on his reading of *Arch On The Green, Inc. v. Groves*, 761 F.3d 594, 25 BLR 2-615 (6th Cir. 2014). Decision and Order at 18. The Sixth Circuit held in *Groves* that a claimant seeking to affirmatively establish legal pneumoconiosis could prove his pulmonary impairment was "significantly related to, or substantially aggravated by, dust exposure in coal mine employment," 20 C.F.R. §718.201(b), by showing that the impairment was caused "in part" by dust exposure in coal mine employment. *Groves*, 761 F.3d at 598-99, 25 BLR at 2-618. Contrary to the administrative law judge's understanding, *Groves* did

Next, employer contends that the administrative law judge erred by "substituting his own analysis" for that of Dr. Castle. Employer's Brief at 23-26. We disagree. Dr. Castle assumed that claimant had twenty-two years of coal mine employment and noted that claimant's employment history was "a sufficient enough exposure history to cause him to develop coal workers' pneumoconiosis if he were a susceptible host." Director's Exhibit 131 at 11. However, Dr. Castle concluded that claimant does not have legal pneumoconiosis "because he does not demonstrate the physiologic findings indicating that process." *Id.* at 12. In Dr. Castle's opinion, legal pneumoconiosis generally results in a "mixed, irreversible obstructive and restrictive ventilatory defect," but claimant's moderately severe airway obstruction demonstrated "a significant degree of bronchoreversibility." *Id.* Therefore, in Dr. Castle's opinion, claimant displays indications of smoking-induced airway obstruction and asthma. *Id.*

As we have noted, the administrative law judge accepted as "reasonable" Dr. Castle's conclusion that claimant's extensive smoking history was sufficient to have caused his COPD. Decision and Order at 19; Director's Exhibit 131 at 11. However, the administrative law judge permissibly discredited Dr. Castle opinion for failing to explain why claimant's coal mine employment did not contribute to or aggravate his COPD, given the Department of Labor's position that coal mine dust exposure can cause obstructive impairment, and that the effects of smoking and coal mine dust exposure are additive. *See* 65 Fed. Reg. 79,920, 79,940, 79,943 (Dec. 20, 2000); *Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491-92, 25 BLR 2-633, 2-644-45 (6th Cir. 2014); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02, 25 BLR 2-203, 2-210-11 (6th Cir. 2012); *see also Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-74 (4th Cir. 2017); *Energy West Mining Co. v. Estate of Blackburn,* 857 F.3d 817, 828-31 (10th Cir. 2017); Decision and Order at 19-20. The administrative law judge noted further that claimant's pulmonary function studies showed that his obstruction was only partially reversible, because his testing results did not return to normal after claimant received bronchodilators. Decision and Order at 20. Thus, the administrative law judge also permissibly discredited Dr. Castle's opinion for not explaining why coal mine dust exposure did not significantly contribute to or aggravate the irreversible component of

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not hold that an impairment only "minimally related" to coal dust exposure would establish legal pneumoconiosis, or imply that an employer seeking to rebut the presumption of legal pneumoconiosis would have to show "no disease or impairment even minimally related to coal dust exposure." That error is harmless, however, because the administrative law judge found that employer failed to meet its rebuttal burden whether the definition of legal pneumoconiosis "requires a significant contribution by dust exposure or a minimal contribution." Decision and Order at 19 n.11, 21 n.13.

claimant's obstruction. *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668, 25 BLR 2-725, 2-740 (6th Cir. 2015); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); Decision and Order at 20. Therefore, we affirm the administrative law judge's determination that Dr. Castle's opinion is not sufficiently credible to rebut the presumed fact of legal pneumoconiosis.

Finally, we reject employer's contentions that the administrative law judge improperly relied on Judge Merck's prior finding of legal pneumoconiosis, and erred by failing to analyze Dr. Jarboe's 2007 opinion that claimant did not have legal pneumoconiosis. Employer's Brief at 23, 26-27; Director's Exhibit 67. The administrative law judge noted Judge Merck's finding but properly considered the new evidence submitted on modification and reasonably gave it the most weight. *See Woodward v. Director, OWCP*, 991 F.2d 314, 319-20, 17 BLR 2-77, 2-83-85 (6th Cir. 1993).

In sum, the administrative law judge permissibly gave more weight to the new evidence and discredited Dr. Castle's opinion, the only new opinion to conclude that claimant does not have legal pneumoconiosis. Therefore, we affirm his determination that employer failed to establish that the miner does not have legal pneumoconiosis. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1069-70, 25 BLR 2-431, 2-443-44 (6th Cir. 2013). Consequently, we affirm the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption by proving that claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i); Decision and Order at 21, 24.

Similarly, in determining whether employer could rebut the Section 411(c)(4) presumption by establishing that "no part" of claimant's disabling impairment was caused by pneumoconiosis, 20 C.F.R. §718.305(d)(1)(ii), the administrative law judge gave greater weight to the more recent evidence and permissibly discounted the opinions of Drs. Castle and Jarboe because they did not diagnose legal pneumoconiosis, contrary to his finding that employer failed to disprove its existence. *See Ogle*, 737 F.3d at 1074, 25 BLR at 2-452; Decision and Order at 22. We therefore affirm the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption by proving that claimant is not totally disabled due to pneumoconiosis, pursuant to 20 C.F.R. §718.305(d)(1)(ii). Consequently, we affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption.

Modification

Finally, we reject employer's argument that the administrative law judge erred in finding that granting modification rendered justice under the Act. *See O'Keeffe v.*

Aerojet-General Shipyards, Inc., 404 U.S. 254, 256 (1971); *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 230, 18 BLR 2-290, 2-296 (6th Cir. 1994); Employer's Brief at 29-31. Employer contends that the administrative law judge failed to explain his finding "in light of the complete history of this case," failed to consider the interest in finality, and failed to adequately consider whether claimant diligently pursued his claim or sought to thwart employer's good-faith defense against this claim. Employer's Brief at 30-31, *citing Sharpe v. Director, OWCP*, 495 F.3d 125, 132-33, 24 BLR 2-56, 2-68-70 (4th Cir. 2007).

These contentions lack merit. The administrative law judge properly identified the factors to be considered when determining whether granting modification renders justice under the Act. Decision and Order at 22-23. Moreover, contrary to employer's arguments, the administrative law judge determined that claimant timely requested modification, with no evidence of an improper motive, and noted that the interest in accuracy when deciding a claim outweighs the interest in finality. *Id*. at 23, *citing Old Ben Coal Co. v. Director, OWCP* [*Hilliard*], 292 F.3d 533, 541-42, 22 BLR 2-429, 2-444-45 (7th Cir. 2002). Because the administrative law judge did not abuse his discretion, we affirm his determination that granting modification renders justice under the Act. *See Worrell*, 27 F.3d at 230, 18 BLR at 2-296; *Branham v. BethEnergy Mines*, 20 BLR 1-27, 1-34 (1996); Decision and Order at 23.

Accordingly, the administrative law judge's Decision and Order Granting Claimant's Request for Modification and Awarding Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge