U.S. Department of Labor

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

BRB No. 18-0061 BLA

CARL VERNON MULLINS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
TATOO TRUCKING	)	
	)	
and	)	
	)	
KENTUCKY EMPLOYERS MUTUAL INSURANCE	)	DATE ISSUED: 01/17/2019
	)	
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 of Steven D. Bell, 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: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.
PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order (2013-BLA-06128) of Administrative Law Judge Steven D. Bell awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent claim filed on November 26, 2012.[1]

The administrative law judge found that claimant had seventeen years and three months of qualifying coal mine employment[2] and a totally disabling respiratory or pulmonary impairment. He therefore found that claimant invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis,[3] 30 U.S.C. §921(c)(4) (2012), and established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c). He further determined that employer failed to rebut the presumption and awarded benefits.

On appeal, employer argues that the administrative law judge erred in crediting claimant with at least fifteen years of qualifying coal mine employment. It also argues that the administrative law judge erred in finding that claimant is totally disabled, in invoking the Section 411(c)(4) presumption, and in finding that it did not rebut the presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

[1] Claimant filed three previous claims, all of which were finally denied. Director's Exhibits 1-3. Claimant's most recent prior claim, filed on April 5, 2010, was denied by the district director on October 4, 2010, because claimant did not establish any element of entitlement. Director's Exhibit 3.

[2] The record reflects that claimant's last coal mine employment was in Kentucky. Hearing Transcript at 16-17. Accordingly, 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).

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

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).

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

Qualifying Coal Mine Employment

To invoke the Section 411(c)(4) presumption, claimant must establish at least fifteen years of employment in "underground coal mines," or in "coal mines other than underground coal mines in conditions substantially similar to those in underground mines." 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305(b)(1)(i). "The conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if the claimant demonstrates that the miner was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2).

At the May 16, 2016 hearing, claimant testified that he worked for twenty-five to thirty years in coal mining. Hearing Transcript at 18. He estimated that he worked for five to six years at deep mines, and for fifteen to twenty years at strip mines. *Id.* at 18-20. At both the deep mines and the strip mines, he testified that he worked outside as a truck driver hauling raw coal to the tipple. *Id.* at 20-2. He testified that he also performed various other jobs, including operating a loader in order to get the raw coal into his truck. *Id.* at 21.

The administrative law judge noted that the parties stipulated to twenty-one years of coal mine employment. Decision and Order at 4. He credited claimant with six years of underground coal mine employment while working at "deep mines." *Id.* at 6. He further found that claimant was regularly exposed to coal mine dust while working as a truck driver for fifteen years at aboveground strip mines, thereby establishing up to fifteen additional years of qualifying coal mine employment. *Id.* The administrative law judge acknowledged that claimant testified that there "wasn't hardly no dust" in the winter. *Id.*; Hearing Transcript at 22. He found, however, that even if claimant "was not regularly exposed to coal mine dust for three months out of the year during the [fifteen] years that he worked as a truck driver," the evidence "would still support regular exposure to coal mine dust for [eleven] years and [three] months during the time he was at surface mines." *Id.* at 6. Combining that figure with claimant's six years of employment at underground mines, he found that claimant had "at least [seventeen] years and [three] months of qualifying coal mine employment either at an underground coal mine or above ground with substantially similar dust conditions." *Id.*

Employer challenges the administrative law judge's decision to credit claimant with six years of coal mine employment at underground mines, noting that claimant failed to

identify the coal companies he worked for when hauling coal at the deep mines.[4] Employer's Brief at 6. Employer, however, cites no case law or regulation requiring a miner to identify the deep mines where he was employed. Instead, in his role as fact-finder, the administrative law judge evaluates the credibility of the evidence of record, including witness testimony. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986). In the absence of any conflicting evidence, the administrative law judge permissibly credited claimant's uncontradicted testimony that he spent six years working as a truck driver at deep mine sites.[5] *Rowe*, 710 F.2d at 255.

Employer also contends that claimant's Social Security Earnings Statement (SSES) lists only trucking companies, not coal mine operators. *Id.* Being employed by trucking companies during his tenure hauling coal does not negate his status as a miner, however. *See* 20 C.F.R. §725.202(b) (including "transportation workers" within definition of "miner"). Further, since claimant indicated that he was often employed by trucking companies during his coal mine work, the names of the companies that operated the mines where he hauled coal would not be expected to appear on his SSES. Director's Exhibits 6, 20 at 6-8. Claimant's SSES corroborates his testimony that he worked as a truck driver hauling raw coal to the tipple, documenting his employment with various trucking companies from 1978 through 2001.[6] Director's Exhibit 3 at 193-195. Because it is supported by substantial evidence, we affirm the administrative law judge's finding that claimant's hearing testimony establishes six years of underground coal mine employment.

The administrative law judge next found that claimant's testimony, along with his descriptions of his coal mine dust exposure set forth by the physicians of record in their medical reports, established that he was regularly exposed to coal mine dust during at least eleven years and three months of his surface coal mine employment. *See* 20 C.F.R. §718.305(b)(2); Decision and Order at 6. Employer does not contest that claimant had at

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[4] A miner who worked aboveground at an underground mine need not establish that the work conditions there were substantially similar to those in an underground mine. *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1058-59 (6th Cir. 2013); *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-29 (2011).

[5] Notably, employer failed to ask for the location or names of the deep mine sites where claimant worked during its cross-examination of claimant.

[6] Contrary to employer's assertion, in addition to employment with trucking companies from 1978 to 2001, claimant's Social Security Earnings Statement also lists employment with three different coal companies in 1975, 1976, 1977, 1978, and 1980. Director's Exhibit 3 at 191-92.

least eleven years and three months of aboveground coal mine employment, *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983), but instead challenges the finding that such work was in conditions substantially similar to those underground. We reject this argument. Employer has not demonstrated that the administrative law judge's method is unreasonable, i.e, that his finding is not supported by substantial evidence. *See Greene v. King James Coal Mining, Inc.*, 575 F.3d 628, 633 (6th Cir. 2009) ("Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.") (internal quotation marks omitted). It is the administrative law judge's function to weigh the evidence, draw appropriate inferences, and determine credibility, *Cumberland River Coal Co. v. Banks*, 690 F.3d 477 (6th Cir. 2012), and we may not substitute our inferences for those of the administrative law judge. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). Because it is based on substantial evidence,[7] we affirm the administrative law judge's determination that claimant established that he was regularly exposed to coal mine dust for at least eleven years and three months of his coal mine employment at surface mines. 20 C.F.R. §718.305(b)(2); *see Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 490-91 (6th Cir. 2014); Decision and Order at 6. We therefore affirm the administrative law judge's determination that claimant established a total of at least seventeen years and three months of qualifying coal mine employment.

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 and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability

[7] The administrative law judge noted that claimant testified during the adjudication of his 2010 claim that he was exposed to coal mine dust during his work as a truck driver and running a loader. Decision and Order at 6; Director's Exhibit 3 at 61-62. The administrative law judge further noted that claimant testified during the May 16, 2016 hearing that he "ran the loader to load his truck with coal before hauling it," and "breathed in dust off the belt line from crushing coal." Decision and Order at 6; Hearing Transcript at 19, 21. The administrative law judge found that this testimony was consistent with the coal mine dust exposures listed in medical reports prepared by Drs. Klayton, Marantz, and Copley. *Id.* They each noted that claimant reported coal mine dust exposure during his employment from 1984 to 2001. Director's Exhibit 14; Claimant's Exhibits 4, 6. Dr. Klayton reported variable coal mine dust exposure, Dr. Marantz reported mild to moderate coal mine dust exposure, and Dr. Copley reported moderate to heavy coal mine dust exposure. *Id.* In response to employer's interrogatories, claimant also indicated that he was exposed to coal mine dust in all his jobs. Director's Exhibit 18 at 6.

based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 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).

The administrative law judge initially considered the pulmonary function studies. Although Dr. Jarboe's July 25, 2013 pulmonary function study produced non-qualifying[8] values both before and after the administration of a bronchodilator, two more recent pulmonary function studies – Dr. Marantz's October 29, 2013 study and Dr. Copley's March 20, 2014 study – produced qualifying values both before and after the administration of a bronchodilator.[9] Decision and Order at 21-22. The administrative law judge permissibly found the two most recent pulmonary function studies were entitled to the greatest weight and established total disability. 20 C.F.R. §718.204(b)(2)(i); *Id.* We affirm this finding as unchallenged on appeal. *See Skrack*, 6 BLR at 1-711.

Employer contends that the administrative law judge erred in finding that the medical opinion evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).[10] The administrative law judge considered the opinions of Drs.

[8] 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).

[9] The administrative law judge also considered three earlier pulmonary function studies conducted on February 21, 2012, January 13, 2013, and May 10, 2013. Decision and Order at 10, 21-23. The February 21, 2012 and January 13, 2013 studies were non-qualifying. Director's Exhibit 14; Claimant's Exhibit 1. Although the May 10, 2013 pulmonary function study was qualifying, the administrative law judge noted that it was invalidated by Dr. Jarboe. Decision and Order at 21; Director's Exhibit 16; Employer's Exhibit 7.

[10] The administrative law judge found that the blood gas study evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2), and that there was no evidence of cor pulmonale with right-sided congestive heart failure pursuant to 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 20-22.

Copley, Marantz, Jarboe, and Dahhan.[11] Drs. Copley and Marantz opined that claimant is totally disabled from a pulmonary standpoint.[12] Claimant's Exhibits 4, 6. Conversely, Drs. Jarboe and Dahhan found that claimant does not suffer from a totally disabling pulmonary impairment. Employer's Exhibits 6, 7.

In resolving the conflicting evidence, the administrative law judge accorded less weight to the opinions of Drs. Jarboe and Dahhan because they failed to take into account the results of the most recent qualifying pulmonary function study. Decision and Order at 22-23. Conversely, he found the opinions of Drs. Copley and Marantz documented, reasoned, and sufficient to establish that claimant is totally disabled. *Id.*

Employer argues that the administrative law judge erred in his consideration of Drs. Copley and Marantz.[13] It contends Dr. Copley's opinion should not be credited because it was improperly based upon an x-ray interpretation. Employer's argument is incomplete:

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[11] The administrative law judge also considered Dr. Klayton's opinion that claimant has a totally disabling pulmonary impairment. The administrative law judge noted that Dr. Klayton based his opinion on a qualifying blood gas study. Because the administrative law judge found that the blood gas study evidence did not support a finding of total disability, he gave Dr. Klayton's opinion no weight. Decision and Order at 22; Director's Exhibit 14. Employer is thus incorrect that the administrative law judge improperly credited Dr. Klayton on the issue of total disability. Employer's Brief at 7.

[12] Employer asserts that neither Dr. Copley nor Dr. Marantz had an understanding of the physical requirements of claimant's job as a truck driver. Employer's Brief at 8. Contrary to employer's assertion, Dr. Copley noted that the miner worked for trucking companies as a "mine to tipple worker." Claimant's Exhibit 6. Dr. Copley also noted that claimant worked as a loader and dozer operator. *Id.* Dr. Marantz noted that claimant moved coal from the mines to the tipple, ran the loader, and drove a truck. Claimant's Exhibit 4. The administrative law judge could rationally conclude that Drs. Copley and Marantz adequately understood the demands of working as a truck driver. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714 (6th Cir. 2002)(holding that the administrative law judge could rationally conclude that physicians understood the demands of working as a repairman because the position has a precise meaning in the context of coal mining).

[13] Because employer does not challenge the administrative law judge's findings that the opinions of Drs. Jarboe and Dahhan are entitled to less weight on the issue of total disability, these findings are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

the administrative law judge accurately noted, and employer acknowledges, that Dr. Copley also based her assessment on the results of claimant's March 20, 2014 qualifying pulmonary function study. Decision and Order at 22 (noting that, in addition to a positive x-ray, "Dr. Copley found that claimant would be unable to return to his previous coal mine employment from a pulmonary standpoint based on his qualifying PFT"); Claimant's Exhibit 6.

Employer further contends that the administrative law judge erred in excluding Dr. Marantz's July 16, 2014 deposition testimony[14] that the non-qualifying July 25, 2013 pulmonary function study conducted by Dr. Jarboe does not support total disability. Employer's Brief at 8. Employer's version of that testimony is again incomplete, however. Dr. Marantz testified that if she had to base her assessment *only* on the results of that study, she would not opine that claimant suffers from a totally disabling pulmonary impairment. Excluded Exhibit at 15. Dr. Marantz further noted, however, that the results of the more recent qualifying pulmonary function study that she conducted on October 29, 2013 are "significantly abnormal," and she reiterated her opinion that claimant is totally disabled from a pulmonary standpoint. *Id.* at 21, 24.

Regardless, as discussed above, employer has not challenged the administrative law judge's decision to accord the greatest weight to the more recent qualifying pulmonary function study evidence. Based upon that decision, any error in excluding Dr. Marantz's testimony is harmless: it cannot affect the outcome of the case. *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"). Because employer has not asserted any additional error, we affirm the administrative law judge's finding that the medical opinion evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

We further affirm the administrative law judge's conclusion that the evidence, weighed together, establishes total disability pursuant to 20 C.F.R. §718.204(b)(2).[15] *See Shedlock*, 9 BLR at 1-198; Decision and Order at 23. In light of our affirmance of the administrative law judge's findings that claimant established at least fifteen years of

[14] The administrative law judge excluded this evidence as being in excess of the evidentiary limitations applicable to employer under 20 C.F.R. §725.414(a)(3)(i), (c). Decision and Order at 13.

[15] In light of our affirmance of the administrative law judge's finding that the new evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2), we also affirm his determination that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309.

qualifying coal mine employment and a totally disabling impairment pursuant to 20 C.F.R. §718.204(b)(2), claimant successfully invoked the Section 411(c)(4) presumption.

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 claimant has neither legal nor clinical pneumoconiosis,[16] 20 C.F.R. §718.305(d)(1)(i), 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)(ii). The administrative law judge found that employer failed to establish rebuttal by either method.

The administrative law judge initially considered interpretations of five x-rays. Decision and Order at 25-26. He found the January 13, 2013 x-ray negative for pneumoconiosis, the May 10, 2013 and October 29, 2013 x-rays inconclusive, and the July 25, 2013 and March 20, 2014 x-rays positive. *Id.* at 26. Noting that the most recent x-ray is positive while only the oldest of record is negative, the administrative law judge found that the preponderance of the evidence does not assist employer in establishing that claimant does not suffer from clinical pneumoconiosis. *Id.*

Employer argues that the administrative law judge erred in determining that the July 25, 2013 x-ray is positive for pneumoconiosis. We disagree. Although Dr. Kendall, a B reader, interpreted this x-ray as negative for pneumoconiosis, Employer's Exhibit 1, Dr. Alexander, a B reader and Board-certified radiologist, interpreted it as positive. Claimant's Exhibit 5. The administrative law judge permissibly credited Dr. Alexander's positive interpretation over Dr. Kendall's negative interpretation, based upon Dr. Alexander's superior radiological qualifications. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 58-60 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993); *Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984); Decision and Order at 26.

[16] "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). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment that is 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).

Employer asserts that Dr. Kendall is dually qualified as a B reader and Board-certified radiologist, but it does not point to anything in the record documenting the doctor's status as a Board-certified radiologist. Moreover, even if Dr. Kendall's radiological qualifications were identical to Dr. Alexander's, employer has not explained how that would assist it: the interpretations of the July 25, 2013 x-ray would then be, at best, in equipoise, based on the administrative law judge's decision to give equal weight to readings by dually-qualified physicians. *See Shinseki*, 556 U.S. at 413. Because employer does not raise any other challenge, we affirm the finding that it failed to prove that claimant does not suffer from clinical pneumoconiosis. *Skrack*, 6 BLR at 1-711.

To establish that claimant does not suffer from legal pneumoconiosis, employer must demonstrate that he does not have a chronic lung disease or impairment that is "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-1-55 n.8 (2015) (Boggs, J., concurring and dissenting). In evaluating whether employer met its burden, the administrative law judge considered the opinions of Drs. Jarboe and Dahhan.[17]

Neither doctor believed that coal dust inhalation contributed to claimant's impairment. Dr. Jarboe opined that claimant has a restrictive defect "caused by a combination of obesity, elevation of the left diaphragm, congestive heart failure, and likely restrictive airways disease (asthma)[.]" Employer's Exhibit 7 at 22. Dr. Dahhan opined that smoking caused claimant's pulmonary impairment and that claimant's coronary artery disease and elevated left hemidiaphragm also contributed. Director's Exhibit 16 at 5; Employer's Exhibit 6 at 6. The administrative law judge discredited their opinions as not well-reasoned. Decision and Order at 28.

[17] Employer contends that the administrative law judge improperly required it to establish that no part of claimant's respiratory or pulmonary impairment was caused by coal mine dust exposure, rather than establishing that it was more likely than not that claimant's respiratory or pulmonary impairment was not "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.305(d)(1)(i)(A). Contrary to employer's argument, as we explain above, the administrative law judge permissibly discredited the opinions of Drs. Jarboe and Dahhan based on the rationale each doctor provided for finding that claimant's coal mine dust exposure did not contribute to his impairment. The administrative law judge rejected their opinions as being unreasoned, not because of an alleged failure to satisfy a heightened legal standard. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

We reject employer's argument that the administrative law judge erred. Employer's Brief at 9-10. Dr. Jarboe relied on the absence of radiographic evidence of clinical pneumoconiosis in determining that claimant's restrictive defect is not related to coal mine dust exposure. Decision and Order at 28; Employer's Exhibit 7 at 21. The administrative law judge appropriately found that reasoning inconsistent with the definition of legal pneumoconiosis. *See* 20 C.F.R. §718.201(a)(2); *see also* 65 Fed. Reg. 79,920, 79,937 (Dec. 20, 2000) (recognizing that both restrictive and obstructive lung disease may fall within the definition of pneumoconiosis if shown to have arisen from coal mine employment). The administrative law judge, therefore, permissibly accorded less weight to Dr. Jarboe's opinion. *Id.*

The administrative law judge likewise noted that Dr. Dahhan opined that claimant's "pulmonary impairment is obstructive in nature" and that he "rul[ed] out any restrictive component that could have resulted from inhalation of coal dust as a contributing factor." Decision and Order at 28; Director's Exhibit 16 at 4. He similarly found the doctor's reasoning inconsistent with the definition of legal pneumoconiosis, which recognizes that legal pneumoconiosis may be purely obstructive in nature, and is not limited to conditions causing a mixed obstructive and restrictive defect. Decision and Order at 28; *see* 20 C.F.R. §718.201(a)(2); *Banks*, 690 F.3d at 487-88.

Because the administrative law judge permissibly discredited the opinions of Drs. Jarboe and Dahhan,[18] the only opinions supportive of a finding that claimant does not have legal pneumoconiosis, we affirm his finding that employer failed to establish that claimant does not have legal pneumoconiosis. Accordingly, we 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. *See* 20 C.F.R. §718.305(d)(1)(i). Further, because it is unchallenged on appeal, we affirm the administrative law judge's determination that employer failed to establish that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(ii); *Skrack*, 6 BLR at 1-711.

[18] Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Jarboe and Dahhan, any error in discrediting their opinions for other reasons would be harmless. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983). Therefore, we need not address employer's remaining arguments regarding the weight accorded to their opinions.

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge