U.S. Department of Labor

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

BRB No. 18-0569 BLA

GWEN E. CONLEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
COAL RIVER MINING, LLC	)	
	)	
and	)	
	)	
BRICKSTREET MUTUAL INSURANCE COMPANY	)	DATE ISSUED: 01/31/2020
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and M. Rachel Wolfe (Wolfe Williams & Reynolds), Norton, Virginia, for claimant.

Andrea L. Berg and Ashley M. Harman (Jackson Kelley PLLC) Morgantown, West Virginia, for employer/carrier.

Sarah M. Hurley (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative

Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BUZZARD, ROLFE, and GRESH, Administrative Appeals Judges.
ROLFE, Administrative Appeals Judge:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2017-BLA-05868) of Administrative Law Judge Richard A. Morgan rendered on a claim filed on February 11, 2016, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge found that claimant established 15.77 years of underground coal mine employment and a totally disabling respiratory impairment. Thus, he found claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[1] He further determined employer failed to rebut the presumption and awarded benefits.

On appeal, employer argues the administrative law judge erred in excluding Dr. Raj's January 25, 2018 medical report and Dr. Crum's readings of two x-rays dated December 18, 2017 and January 25, 2018. Employer also argues the administrative law judge erred in finding that claimant invoked the Section 411(c)(4) presumption because he did not adequately explain his determinations on the length of claimant's coal mine employment and total disability. Additionally, employer challenges the administrative law judge's finding that the presumption is unrebutted. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response, arguing the administrative law judge properly excluded employer's evidence.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order Awarding Benefits must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[2] 33 U.S.C. §921(b)(3), as

[1] 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 substantially similar surface coal mine employment, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305(b).

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

incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Evidentiary Challenge

At the hearing held on March 20, 2018, employer offered ten exhibits into evidence. They included Employer's Exhibit 7, Dr. Raj's January 15, 2018 medical report, and Employer's Exhibit 8, Dr. Crum's two negative readings of x-rays dated December 19, 2017 and January 25, 2018.[3] Employer indicated that Employer's Exhibits 7 and 8 were submitted as impeachment evidence only. The administrative law judge admitted all of employer's evidence into the hearing without objection. Hearing Transcript at 27-28.

After the hearing, the administrative law judge issued an order reconsidering whether Employer's Exhibits 7 and 8 were admissible. May 25, 2018 Order. He questioned whether Employer's Exhibits 7 and 8 were obtained from claimant pursuant to the evidence disclosure rules. *Id.* at 3; *see* 20 C.F.R. §725.413 (requiring the parties to disclose to other parties medical information developed in connection with a claim). He noted the regulation specifically states that "[m]edical information disclosed under this section must not be considered in adjudicating any claim unless a party designates the information as evidence in the claim." *Id., quoting* 20 C.F.R. §725.413(d). He found that Employer's Exhibits 7 and 8 exceeded employer's limit on affirmative evidence and did not qualify as rebuttal or rehabilitative evidence. *Id.* at 4. Additionally, he noted there is no regulatory provision allowing for "impeachment" evidence that exceeds the evidentiary limitations.[4] 20 C.F.R. §725.414. *Id.* Thus, the administrative law judge offered employer an opportunity to establish good cause for the admission of Employer's Exhibits 7 and 8 in excess of the evidentiary limitations or to redesignate their evidence. *Id.* at 5.

Employer responded to the administrative law judge's order, asserting that Employer's Exhibits 7 and 8 were admissible as the equivalent of cross-examination. June

[3] Claimant submitted Dr. Raj's December 18, 2017 and February 27, 2018 reports as his two affirmative medical reports. Claimant's Exhibits 3, 4. He also submitted Dr. Crum's positive readings for pneumoconiosis of two films dated September 14, 2016 and May 19, 2017 as rebuttal evidence. Claimant's Exhibits 1, 2.

[4] The administrative law judge noted that the Office of Administrative Law Judge's Rules of Evidence, 29 C.F.R. Part 18, Subpart B, which allow for the admission of impeachment evidence, do not apply to black lung claims to the extent the rules conflict with specific regulations, such as 20 C.F.R. §§725.413(d), 725.414. May 25, 2018 Order at 4, 4 n.1.

8, 2018 Response to Evidentiary Order. Employer further argued the exhibits were necessary for a full disclosure of the facts regarding the credibility of claimant's experts because they establish claimant's physicians offered conflicting opinions. *Id*.

After considering the parties' responses,[5] the administrative law judge issued a second order excluding Employer's Exhibits 7 and 8. June 21, 2018 Order. He specifically rejected employer's argument that the evidence was the equivalent of cross-examination and thus did not violate the evidentiary limitations. *Id*. at 2. He also found that while the exhibits had probative value, their relevancy alone did not establish good cause for admitting them. *Id*. at 2-3. Thus, the administrative law judge found that employer failed to establish good cause and excluded the exhibits from the record. *Id*. at 5. He subsequently issued his Decision and Awarding Benefits on August 8, 2018.

Employer contends the administrative law judge violated its due process rights and the Administrative Procedure Act (APA) by excluding Employer's Exhibits 7 and 8.[6] Employer asserts that Dr. Raj's additional medical report and Dr. Crum's negative x-ray readings constitute valid cross examination evidence that must be admitted for a full and true disclosure of the facts in this case. We disagree.

An administrative law judge exercises broad discretion in resolving procedural and evidentiary matters. *See Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-152 (1989) (en banc). Thus, a party seeking to overturn an administrative law judge's disposition of a procedural or evidentiary issue must establish that the administrative law judge's action represented an abuse of discretion. *See V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009). We conclude that employer has not satisfied its burden.

Employer does not refute that Employers' Exhibits 7 and 8 exceed the evidentiary limitations. 20 C.F.R. §725.414. The administrative law judge properly found that while the exhibits may be relevant to the credibility of claimant's experts, relevancy alone is insufficient to establish good cause for their admission into the record. *Elm Grove Coal*

[5] The Director, Office of Workers' Compensation Programs, responded in agreement with the administrative law judge's Order. Claimant did not respond to it.

[6] Section 556(d) of the Administrative Procedure Act provides that "[a] party is entitled to present his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts." 5 U.S.C. §556(d), as incorporated into the Act by 30 U.S.C. §932(a).

Co. v. Director, OWCP, 480 F.3d. 278, 297, n.18 (4th Cir. 2007) (if "[employer's] contention is correct, good cause exists to permit all evidence that is relevant, and the good cause exception . . . would render [the limitations of Section] 725.414 meaningless."); *Dempsey*, 23 BLR at 1-61-62.

Furthermore, we see no error in the administrative law judge's finding that Employer's Exhibits 7 and 8 are inadmissible as a substitute for cross-examination. Although employer has a right to cross-examine claimant's experts, the administrative law judge correctly noted that the regulations provide options that do not violate the evidentiary limitations (interrogatories, depositions, and hearing testimony). 20 C.F.R. §§725.414(c); 725.457; 725.458; June 21, 2108 Order at 2; *see* Director's Brief at 3. The administrative law judge accurately noted that employer offered no explanation as to why it did not attempt to either depose Drs. Raj and Crum or call them to appear at the hearing for cross-examination. June 21, 2018 Order at 2. We also agree with the administrative law judge that allowing employer to submit Employer's Exhibits 7 and 8 as a form of cross-examination in excess of the evidentiary limitations would circumvent 20 C.F.R. §725.413(b). *Id*.

Lastly, we reject employer's assertion that due process requires Employer's Exhibits 7 and 8 be admitted into the record for a full disclosure of the facts. Due process requires only that employer be afforded the opportunity to mount a meaningful defense against the claim. *See Consolidation Coal Co. v. Borda*, 171 F.3d 175, 184 (4th Cir. 1999); *Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 807 (4th Cir. 1998). Employer had multiple options to cross-examine claimant's experts and refute their credibility based on the information disclosed in Employer's Exhibits 7 and 8, but it chose not to do so. Employer was also given the opportunity to re-designate its evidence, but it chose not to do so. Employer therefore bore the risk of its litigation strategy and has not shown a violation of due process under these facts.

Because we discern no abuse of discretion by the administrative law judge in excluding Employer's Exhibits 7 and 8 from the record, we affirm his evidentiary ruling.[7] *See Blake*, 24 BLR at 1-113.; *Dempsey*, 23 BLR at 1-63; *Clark*, 12 BLR at 1-152.

[7] We also conclude any error by the administrative law judge in excluding Employer's Exhibits 7 and 8 would be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). Indeed, even employer concedes the failure to consider Dr. Crum's negative x-ray readings "may be harmless" as their admission would not change the administrative law judge's finding employer rebutted clinical pneumoconiosis. Employer's Brief at 7 n.2. We further agree with the Director that Dr. Raj's opinion "played little role" in the administrative law judge's analysis of total disability, as all of the record physicians opined claimant is totally disabled and substantial evidence supports the

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

Length of Coal Mine Employment

In order to invoke the Section 411(c)(4) presumption, claimant must establish at least fifteen years of underground or substantially similar surface coal mine employment. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305. Claimant bears the burden of proof to establish the number of years he worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold an administrative law judge's determination on length of coal mine employment if it is based on a reasonable method of computation and supported by substantial evidence. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

Claimant alleged nineteen years of coal mine employment. Hearing Transcript at 13-14. He completed a Form CM-911a (employment history) which specified the month and year he began and ended his coal mine employment with various operators. Director's Exhibit 3. Comparing claimant's Form CM-911(a) with the Social Security Administration (SSA) records, the administrative law judge credited claimant with 6.36 years of coal mine employment with employer from September 19, 2008 until October 11, 2014.[8] Decision and Order at 6. Using this same method, he also credited claimant with seven full calendar years of coal mine employment with WP Coal Company (WP Coal) from January 1979 through December 1985. *Id.* at 5-6.

Because the administrative law judge was unable to determine the exact beginning and ending dates for claimant's other coal mine employment listed on his Form CM-911(a), he applied the formula at 20 C.F.R. §725.101(a)(32)(iii) to calculate partial years of coal mine employment.[9] Decision and Order at 6; Director's Exhibit 3. He concluded claimant

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administrative law judge's conclusion that claimant is totally disabled, with or without Dr. Raj's opinion. Director's Brief at 4. Additionally, excluding Dr. Raj's opinion does not adversely affect employer's rebuttal burden since it relies on the opinions of Drs. Zaldivar and Basheda.

[8] We affirm as unchallenged the administrative law judge's finding that claimant established 6.36 years of coal mine employment with employer. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[9] The regulation states:

> (iii) If the evidence is insufficient to establish the beginning and ending dates of the miner's coal mining employment, or the miner's employment lasted

established 15.77 years of coal mine employment, counting full years and partial years together. Decision and Order at 5.

Employer argues there is insufficient evidence to establish the beginning and ending dates of claimant's employment with WP Coal.[10] Employer therefore contends the administrative law judge erred in not using the formula at 20 C.F.R. §725.101(a)(32)(iii) to calculate claimant's coal mine employment with WP Coal for the years 1978 through 1985.[11] We disagree.

Contrary to employer's suggestion, there is no requirement that the administrative law judge apply the formula at 20 C.F.R. §725.101(a)(32)(iii), even if he is unable to determine the beginning and ending dates of claimant's coal mine employment. *See* 20 C.F.R. §725.101(a)(32)(iii) (if beginning and ending dates cannot be determined or last less than a calendar year, administrative law judge "*may* use the following formula . . .") (emphasis added). Rather, the administrative law judge must only use a reasonable method in calculating the length of coal mine employment. *See Muncy*, 25 BLR at 1-27; *Clark v. Barnwell Coal Co.*, 22 BLR 1-275, 1-280-81 (2003).

Claimant alleged on his CM-911 employment history form that he worked for WP Coal from September 1978 through July 1986. The administrative law judge rationally found "these [to be] clear beginning and end dates" the SSA earnings records corroborated, that show claimant earned at least $18,000 per year with WP Coal from 1978 through 1986. He also accurately found claimant had no other income reported with any other employer

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> less than a calendar year, then the adjudication officer may use the following formula: divide the miner's yearly income from work as a miner by the coal mine industry's average daily earnings for that year, as reported by the Bureau of Labor Statistics (BLS). A copy of the BLS table must be made a part of the record if the adjudication officer uses this method to establish the length of the miner's work history.

20 C.F.R. §725.101(a)(32)(iii).

[10] Employer notes that WP Coal did not provide an employment history for claimant and did not enter a stipulation regarding the length of claimant's coal mine employment. Employer's Brief at 12-13.

[11] Employer asserts that the administrative law judge's method was flawed because claimant was credited with a partial year in 1986 when he earned $18,915.47, but received a full year credit in 1985 when he earned $18,850.36.

during that same timeframe. Based on that evidence, the administrative law judge permissibly concluded WP Coal continuously employed claimant from at least January 1979 through December 1985. *See Muncy*, 25 BLR at 1-27; *Clark*, 22 BLR at 1-280-81. Thus, we affirm the administrative law judge's finding claimant established seven full years of coal mine employment with WP Coal as it is supported by substantial evidence. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 n.10 (4th Cir. 1999) (explaining that if a reviewing court can discern what the administrative law judge did and why he did it, the duty of explanation under the APA is satisfied).

Because employer raises no error with regard to the administrative law judge's calculation of claimant's partial years of coal mine employment with WP Coal or any other employer from 1974 through 2014,[12] those findings are affirmed.[13] *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Thus, we affirm the administrative law judge's overall finding that claimant established at least fifteen years of qualifying coal mine employment[14] and invoked Section 411(c)(4) presumption.

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

[12] The administrative law judge credited claimant with the following partial years of coal mine employment: .05 years with Ford Coal Company from 1974 through 1975; .45 years with Coal Mine Services Inc. from 1976 to 1977; .25 years with Continental Engineering in 1977; 0.18 years with Metco Mining Corp in 1977; .17 years with WP Coal in 1978; .59 years with WP Coal in 1986; .63 years with Rose Energy, Inc. from1990 through 1991; and .08 years with Strata Mine Services LLC (Strata) in 2014. These partial years total 2.4 years. When added to claimant's 6.36 years of coal mine employment with employer and his seven years of coal mine employment with WP Coal from 1979 through 1985, claimant established 15.76 years of coal mine employment from 1974 through 2014.

[13] Because claimant established at least fifteen years of coal mine employment, we need not address employer's contention that the administrative law judge erred in crediting claimant with 0.01 years of coal mine employment with Strata mine in 2015. *See Larioni*, 6 BLR at 1-1278.

[14] We affirm as unchallenged the administrative law judge's finding that claimant worked in underground coal mines. *See Skrack*, 6 BLR at 1-711; Decision and Order 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 weigh all relevant supporting evidence against all relevant 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).

Employer contends the administrative law judge erred in finding that claimant established total disability based on the arterial blood gas studies.[15] Decision and Order at 21, 23. We disagree.

The record contains four blood gas studies administered by Dr. Green on April 12, 2016, Dr. Zaldivar on September 14, 2016, Dr. Basheda on May 19, 2017, and Dr. Raj on December 18, 2017. The administrative law judge found that all of the resting studies are non-qualifying, while all of the exercise studies are qualifying.[16] Relying on the qualifying exercise values, he concluded claimant established total disability by a preponderance of the blood gas study evidence. 20 C.F.R. §718.204(b)(2)(ii). Additionally, the administrative law judge found that Drs. Green, Raj, Zaldivar and Basheda each opined that claimant is totally disabled based, in part, on the results of the blood gas testing. 20 C.F.R. §718.204(b)(2)(iv), Decision and Order at 22-23.

Employer notes that Dr. Green's blood gas testing included three exercise draws, and only the last draw was qualifying, after claimant was exercised for five minutes at seven METS. Employer's Brief at 16; Director's Exhibit 12. Although employer correctly states the administrative law judge did not mention the non-qualifying exercise draws Dr. Green obtained, we consider any potential error to be harmless. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); Employer's Brief at 16.

As the administrative law judge noted, Dr. Green specifically opined that claimant is totally disabled because the blood gas studies "at peak exercise" showed significant hypoxemia which would preclude claimant from performing the exertional requirements of his usual coal mine employment. Decision and Order at 12; Director's Exhibit 12. The

[15] The administrative law judge found that the pulmonary function studies do not establish total disability and there is no evidence that claimant has cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii). Decision and Order at 21.

[16] Dr. Basheda did not conduct an exercise study. Employer's Exhibit 2.

administrative law judge permissibly credited Dr. Green's assessment of the blood gas studies in finding claimant totally disabled. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). Moreover, the administrative law judge's finding of total disability is supported by substantial evidence, including the qualifying exercise studies Drs. Zaldivar and Raj obtained and the totality of the medical opinion evidence.[17] 20 C.F.R. §718.202(a)(4). Thus, we affirm the administrative law judge's findings that claimant established a totally disabling respiratory impairment and invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305; Decision and Order at 37.

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

Because claimant invoked the Section 411(c)(4) presumption, the burden shifted to employer to establish that he has neither legal nor clinical pneumoconiosis,[18] or that "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The administrative law judge found employer failed to establish rebuttal by either method.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, employer must establish that claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 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, 1-155 n.8 (2015) (Boggs, J., concurring and dissenting). Employer contends the administrative law judge erred in rejecting the opinions of Drs. Zaldivar and Basheda that claimant does not have legal pneumoconiosis. We disagree.

As the administrative law judge noted, Drs. Zaldivar and Basheda excluded coal dust exposure as a causative factor in claimant's exercise blood gas impairment, in part,

[17] Claimant may establish total disability based on a reasoned medical opinion even if he is unable to establish total disability based on objective testing. 20 C.F.R. §718.202(a)(4).

[18] "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). "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).

because he had normal pulmonary function studies (no evidence of obstruction or restriction), a normal diffusion study, and no x-ray evidence of clinical pneumoconiosis. Director's Exhibit 22 at 3; Employer's Exhibits 2, 10 at 21. Dr. Basheda testified during his deposition, however, that pulmonary function testing and blood gas testing "may have no correlation since pneumoconiosis can manifest itself in different types of impairment." Employer's Exhibit 9 at 7; Decision and Order at 32. The administrative law judge permissibly found that Dr. Basheda's testimony "undercuts the very reasoning" for his opinion and Dr. Zaldivar's opinion on legal pneumoconiosis.[19] *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 32.

Additionally, the administrative law judge did not error in finding that neither Dr. Zaldivar nor Dr. Basheda adequately account for the fact that claimant may have legal pneumoconiosis with a negative chest x-ray. *See* 20 C.F.R. §718.201(a)(2); 65 Fed. Reg. 79,920, 79,971 (Dec. 20, 2000); Decision and Order at 31-32; Employer's Exhibits 9 at 29, 32; Exhibit 10 at 18, 41. He also permissibly found neither physician persuasively explained why they completely excluded claimant's "significant coal dust exposure" as a causative factor for claimant's disabling hypoxemia. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Newport News Shipbldg. & Dry Dock Co. v. Tann*, 841 F.2d 540, 543 (4th Cir. 1988). We therefore affirm the administrative law judge's finding that the opinions of Dr. Zaldivar and Basheda are not reasoned to disprove claimant has legal pneumoconiosis.[20] *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Employer's Exhibits 9 at 29, 32; Exhibit 10 at 18, 41. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i).

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[19] Drs. Zaldivar and Basheda indicated that claimant's pattern of impairment with exercise-induced hypoxemia but a normal pulmonary function study and negative chest x-ray is not consistent with a coal-dust related disease. Employer's Exhibits 9 at 29, 32; Exhibit 10 at 18, 41.

[20] Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Zaldivar and Basheda, we need not address employer's additional assertions of error regarding the administrative law judge's weighing of their opinions *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 18-25. Moreover, we need not address employer's contentions regarding the opinions of Drs. Green and Raj, as they diagnose legal pneumoconiosis and cannot aid employer in rebutting the Section 411(c)(4) presumption. *See Larioni*, 6 BLR at1-1278; Employer's Brief at 25-27.

Disability Causation

The administrative law judge next addressed whether employer established that no part of claimant's respiratory or pulmonary disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 31-32. The administrative law judge rationally discounted the opinions of Drs. Zaldivar and Basheda on the cause of claimant's respiratory disability because neither physician diagnosed legal pneumoconiosis, contrary to his finding that employer failed to disprove the existence of the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 36. We therefore affirm the administrative law judge's finding that employer failed to establish that no part of claimant's total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

I concur.

DANIEL T. GRESH
Administrative Appeals Judge

BUZZARD, Administrative Appeals Judge, concurring:

I concur in the majority's decision and its affirmance of the award of benefits. As for Dr. Raj's January 25, 2018 report, I agree with the majority that employer has not shown it was harmed by its exclusion from the record. Supra, p. 5 n.7. I therefore would not address employer's assertion it was entitled to admit the report in excess of the evidentiary limitations. *See* 20 C.F.R. §725.456(b)(1).

GREG J. BUZZARD
Administrative Appeals Judge