U.S. Department of Labor

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

BRB No. 16-0610 BLA

MICHAEL HALL Claimant-Respondent v. PARAMOUNT COAL COMPANY OF VIRGINIA, LLC and BIRMINGHAM FIRE INSURANCE/ CHARTIS Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 07/31/2017 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of William Dorsey, Administrative Law Judge, United States Department of Labor.

Wes Addington (Appalachian Citizens' Law Center, Inc.), Whitesburg, Kentucky, for claimant.

H. Brett Stonecipher (Fogle Keller Purdy, PLLC), Lexington, 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 Awarding Benefits (2013-BLA-05520) of Administrative Law Judge William Dorsey, rendered on a subsequent claim[1] filed on March 12, 2012, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge credited claimant with at least thirty-three years of underground coal mine employment[2] pursuant to the parties' stipulation, and found that the new evidence established that claimant has a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Therefore, the administrative law judge found that claimant demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c),[3] and invoked the Section 411(c)(4) presumption of total disability

[1] Claimant filed two previous claims for benefits, both of which were finally denied. Director's Exhibits 1, 2. Claimant's second claim, filed on May 28, 2010, was denied by the district director on February 2, 2011, because claimant did not establish total disability. Director's Exhibit 2.

[2] Without citation to the record, the administrative law judge found that claimant's last coal mine employment was in Kentucky. Decision and Order at 3. The record, however, reflects that claimant's last coal mine employment was in Virginia. Director's Exhibits 5 at 1; 10 at 5. Accordingly, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[3] Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Claimant's prior claim was denied because he failed to establish total disability. Director's Exhibit 2. Consequently, to obtain review of the merits of his claim, claimant had to submit new evidence establishing total disability. 20 C.F.R. §725.309(c)(3), (4).

due to pneumoconiosis.[4] 30 U.S.C. §921(c)(4) (2012). The administrative law judge further found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding total disability established pursuant to 20 C.F.R. §718.204(b)(2) and, therefore, erred in finding that claimant invoked the Section 411(c)(4) presumption. Employer argues further that the administrative law judge erred in finding that it did not rebut the presumption.[5] Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief 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. 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

Employer argues that the administrative law judge erred in finding that claimant established a totally disabling respiratory or pulmonary impairment. A miner is totally disabled if he has a respiratory or pulmonary impairment which, standing alone, prevents the miner from performing his usual coal mine work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability using any of four types of evidence: pulmonary function testing evidence, arterial blood gas study evidence, evidence of cor pulmonale with right-sided congestive heart failure, and 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

[4] 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 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.

[5] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established at least thirty-three years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3-4.

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). In this case, employer contends that the administrative law judge erred in weighing the new pulmonary function study and medical opinion evidence under 20 C.F.R. §718.204(b)(2)(i), (iv).[6]

A. Pulmonary Function Studies

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered the results of three new pulmonary function studies: an April 18, 2012 study conducted by Dr. Alam, a September 10, 2012 study conducted by Dr. Rosenberg, and a March 27, 2014 study conducted by Dr. Dahhan. Director's Exhibit 14; Employer's Exhibits 1, 4. Before determining whether the studies were qualifying[7] for total disability, the administrative law judge noted a discrepancy in the measurements of claimant's height. Decision and Order at 10. Specifically, claimant's height was recorded as 70 inches for the April 18, 2012 study, 66 inches for the September 10, 2012 study, and 65.8 inches for the March 27, 2014 study. Additionally, claimant's treatment records, and the medical evidence in his prior claims, listed varying height measurements.[8] The administrative law judge found no convincing evidence in the record that the "heights stated were likely to be biased in a specific direction or by how much." *Id*. The administrative law judge therefore resolved the evidentiary conflict by finding claimant's correct height to be 67.5 inches, because that measurement "roughly represents the median among the heights that range between 65.8 and 70 inches." *Id*. Further, because the Appendix B table contains no listed height for 67.5 inches, the administrative law judge explained that he "rounded up" to the next listed table height of 67.7 inches to determine whether the pulmonary function studies were qualifying. *Id*.

[6] The administrative law judge found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii),(iii).

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

[8] As summarized by the administrative law judge, claimant's height was recorded as 67 inches in an Appalachian Regional Healthcare treatment record, 67.5 inches for a September 14, 2010 pulmonary function study, and was twice recorded as 70 inches for pulmonary function studies dated February 12, 2008 and December 7, 2007. Director's Exhibits 1 at 52, 76; 2 at 63; 16 at 30.

Based on that height, and claimant's age at the time of each study, the administrative law judge found that: 1) both the pre-bronchodilator and post-bronchodilator values for the April 18, 2012 pulmonary function study were qualifying; 2) the pre-bronchodilator values for the September 10, 2012 study were qualifying and its post-bronchodilator values were non-qualifying; and 3) the pre-bronchodilator values for the March 27, 2014 study were non-qualifying and its post-bronchodilator values were qualifying. *Id*. at 10, 21-22.

Because four of the six study results were qualifying for total disability, the administrative law judge found that the preponderance of the new pulmonary function study evidence established total disability at 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 22. In so finding, the administrative law judge additionally determined that the March 27, 2014 pulmonary function study was "more probative of claimant's current condition" because it was a year and a half more recent than the two earlier studies. The administrative law judge found that the qualifying post-bronchodilator values of the March 27, 2014 pulmonary function study "best represent . . . [c]laimant's respiratory condition when it is medically controlled."[9] *Id*.

Employer first argues that the administrative law judge erred in relying on a height of 67.5 inches to determine if claimant's pulmonary function testing was qualifying. Employer asserts that the administrative law judge should have relied on the heights of 66 inches and 65.8 inches recorded by Drs. Rosenberg and Dahhan, respectively, because they explained that their office procedure is to measure a claimant's height with his shoes off. Employer's Brief at 13-18. Employer's argument lacks merit.

If there are substantial differences in the recorded heights among the pulmonary function studies, the administrative law judge must make a factual finding to determine the miner's actual height. *Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983). The task of weighing the evidence and rendering findings of fact is committed to the administrative law judge. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997); *see also Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149, 1-155 (1989) (en banc). The administrative law judge identified the varying heights documented in claimant's medical records and recorded by the various physicians who examined claimant. Decision and Order at 10-11. Further, he acknowledged that "Dr. Rosenberg and Dr. Dahhan explained [that] they customarily have tested individuals

[9] The administrative law judge noted that the pre-bronchodilator FEV1 value of the March 27, 2014 pulmonary function study was "marginally non-qualifying . . . ." Decision and Order at 22.

remove their shoes before measuring height." *Id*. at 10. Contrary to employer's contention, the administrative law judge permissibly declined to rely on the height measurements from Drs. Rosenberg and Dahhan because he found that "neither [physician] personally recorded [claimant's] height; nurses or technicians measured it." *Id*.; *see Underwood*, 105 F.3d at 949, 21 BLR at 2-28; *Napier*, 301 F.3d at 713-714, 22 BLR at 2-553; *Clark*, 12 BLR at 1-155. Moreover, the administrative law judge reasonably found that 67.5 inches is claimant's actual height, because it "roughly represents the median" among the listed heights of record.[10] *See Protopappas*, 6 BLR at 1-223. We therefore reject employer's assertion that the administrative law judge erred in determining claimant's height.

Employer next argues that the administrative law judge erred in his weighing of the pulmonary function study evidence. Employer argues that, because the March 27, 2014 study was more recent, its non-qualifying, pre-bronchodilator results should have been credited over the qualifying studies of April 18, 2012 and September 10, 2012. Employer's Brief at 19. We disagree. While an administrative law judge may accord greater weight to more recent medical evidence where he or she finds that is appropriate to do so, the administrative law judge need not mechanically credit more recent, non-qualifying test results over earlier qualifying results merely because they are more recent. *See Thorn v. Itmann Coal Co.*, 3 F.3d 713, 719, 18 BLR 2-16, 2-24 (4th Cir. 1993); *Adkins v. Director, OWCP*, 958 F.2d 49, 51-52, 16 BLR 2-61, 2-64-65 (4th Cir. 1992); *see also Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 739, 25 BLR 2-675, 2-685-86 (6th Cir. 2014); *Woodward v. Director, OWCP*, 991 F.2d 314, 319-20, 17 BLR 2-77, 2-84-85 (6th Cir. 1993).

Employer next argues that the administrative law judge erred in finding that the qualifying, post-bronchodilator results of the March 27, 2014 pulmonary function study were more probative than the non-qualifying, pre-bronchodilator results, because he did

[10] Although the administrative law judge accurately summarized the heights recorded by the various sources, Decision and Order at 10, employer correctly notes that the administrative law judge later stated incorrectly that Appalachian Regional Healthcare recorded a height of 67.5 inches. Employer's Brief at 9. The record reflects that Dr. Al-Khasawneh recorded a height of 67.5 inches for a September 14, 2010 pulmonary function study, and Appalachian Regional Healthcare recorded a height of 67 inches. Director's Exhibits 2 at 63; 16 at 30. We consider the administrative law judge's error to be harmless, as it does not alter the administrative law judge's finding that the height of 67.5 inches represents the median among the seven listed heights that he considered. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

not address Dr. Rosenberg's testimony that the post-bronchodilator results were invalid.[11] Employer's Brief at 21. Employer asserts that Dr. Rosenberg explained that a pulmonary function study should not detect worsening values after the administration of a bronchodilator, and therefore he opined that the qualifying, post-bronchodilator results for the March 27, 2014 study are invalid. Employer's Brief at 18-22. Employer argues further that even if the qualifying, post-bronchodilator results were valid, the administrative law judge's reliance on them was "inconsistent with the [p]reamble [to the 1980 revised regulations] . . . regarding the significance of pre-bronchodilator studies compared to post-bronchodilator studies." *Id*. at 18-19.

We need not resolve these issues. A finding that the March 27, 2014 qualifying, post-bronchodilator results are invalid or less credible than the pre-bronchodilator results of that study would not alter the administrative law judge's finding that a preponderance of the pulmonary function study evidence was qualifying for total disability. Decision and Order at 22. Therefore, employer has not explained how the administrative law judge's error, if any, regarding the March 27, 2014 pulmonary function study undermines his assessment of the weight of the pulmonary function study evidence at 20 C.F.R. §718.204(b)(2)(i). *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"). Therefore we affirm, as supported by substantial evidence, the administrative law judge's finding that claimant established total disability by a preponderance of the pulmonary function study evidence under 20 C.F.R. §718.204(b)(2)(i).

B. Medical Opinions

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the medical opinions of Drs. Alam, Baker, Dahhan, and Rosenberg. Decision and Order at 23-24. Drs. Alam and Baker opined that claimant is totally disabled by a respiratory or

[11] Employer does not challenge the administrative law judge's findings that the April 18, 2012 pulmonary function study conducted by Dr. Alam and the September 10, 2012 pulmonary function study conducted by Dr. Rosenberg are valid. Decision and Order at 22. Therefore, these findings are affirmed. *See Skrack*, 6 BLR at 1-711. Employer argues that Dr. Dahhan invalidated the March 27, 2014 pulmonary function study he administered, and the administrative law judge failed to address the issue. Employer's Brief at 22. However, as the administrative law judge found, at his deposition, Dr. Dahhan testified that the March 27, 2014 pulmonary function study was valid. Decision and Order at 16; Employer's Exhibit 2 at 16.

pulmonary impairment, whereas Drs. Dahhan[12] and Rosenberg opined that claimant is not totally disabled. Director's Exhibit 14; Claimant's Exhibit 1; Employer's Exhibits 1, 2, 4, 5. Before weighing the medical opinions, the administrative law judge determined the exertional requirements of claimant's usual coal mine employment.

The administrative law judge found that claimant's usual coal mine work as a shuttle car operator required heavy to very heavy manual labor, because claimant testified that he had to perform a variety of strenuous tasks. Decision and Order at 24**.** Specifically, the administrative law judge found as follows:

> Based on [claimant's] testimony at the hearing, I find that he performed heavy to very heavy manual labor as work is rated in the Dictionary of Occupational Titles in his last coal mine employment. In addition to his operation of a shuttle car, coal belt, and continuous miner, [claimant] would hang cables and water conveyor belt lines, set timbers, and built brattices for equipment that broke down. [Claimant] also had to move belts and anchored cables, including "very heavy" concrete block structures, belt structures that weighed 100 pounds or more, and 500 bags of rock dust that weighed 50 pounds each. He explained that hanging cables required two people to lift 200 to 300 pounds.

Decision and Order at 24, *citing* Hearing Transcript at 12-18. Employer does not challenge the administrative law judge's finding that claimant's usual coal mine employment required heavy to very heavy manual labor and, therefore, it is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The administrative law judge discounted the opinions of Drs. Dahhan and Rosenberg, because he found that they erroneously assumed that none of claimant's pulmonary function studies were qualifying, due to the shorter height that they recorded. Decision and Order at 24. Additionally, the administrative law judge found that the opinions of Drs. Alam and Baker that claimant is totally disabled "best represent the strenuousness of [claimant's] last coal mine employment." *Id*. The administrative law judge therefore found that the preponderance of the medical opinion evidence established total disability at 20 C.F.R. §718.204(b)(2)(iv).

[12] Although Dr. Dahhan opined that claimant is not totally disabled by the level of respiratory impairment he has, when deposed Dr. Dahhan testified that if claimant needed to help move belt structures as part of his job, his impairment would not allow him to do so, because "these [structures] are heavy." Employer's Exhibit 2 at 21.

Employer asserts that the administrative law judge erred in crediting the opinions of Drs. Alam and Baker because, employer alleges, claimant's pulmonary function studies were not qualifying and because Drs. Alam and Baker lacked "an in depth understanding of claimant's job duties." Employer's Brief at 24-26. We disagree. The administrative law judge noted that Dr. Alam diagnosed claimant with a moderate to severe mixed airflow defect based on pulmonary function testing. Decision and Order at 12; Director's Exhibit 14. The administrative law judge further noted that, based on the qualifying pulmonary function testing, "Dr. Alam thought [claimant was] incapable of much physical exertion, including simple chores" and he "regarded [claimant] as disabled from impaired [respiration]." *Id*. The administrative law judge summarized Dr. Baker's opinion, diagnosing claimant with a "significant" restrictive ventilatory defect. Decision and Order at 13-14; Claimant's Exhibit 4. Dr. Baker opined that this defect would prevent claimant from performing his usual coal mine employment, as claimant "could not perform activities that would be considered physically demanding." *Id*.

Contrary to employer's argument, the administrative law judge took into consideration the physical restrictions imposed by Drs. Alam and Baker, and permissibly credited their opinions on the issue of total disability, finding that their opinions "best represent the strenuousness of [claimant's usual] coal mine employment," which required heavy to very heavy manual labor. Decision and Order at 24-25; *see Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141, 19 BLR 2-257, 2-263-64 (4th Cir. 1995); *see also 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).

We also reject employer's argument that the administrative law judge erred in assigning diminished weight to the contrary opinions of Drs. Dahhan and Rosenberg. Employer's Brief at 26-30. The administrative law judge rationally discounted the opinions of Drs. Dahhan and Rosenberg, based on his determination that the physicians displayed an incomplete knowledge of the "strenuousness of [claimant's usual] coal mine employment."[13] Decision and Order at 24; *see Eagle v. Armco Inc.*, 943 F.2d 509, 512,

[13] The administrative law judge noted that Dr. Rosenberg opined that claimant was not totally disabled based, in part, on his opinion that claimant "was able to lift up to 100 pounds." Decision and Order at 23-24. As noted *supra*, the administrative law judge found that claimant's job duties required him to lift "concrete block structures [and] belt structures that weighed 100 pounds or more," and hang cables that "required two people to lift 200 to 300 pounds." *Id*. at 24. The administrative law judge additionally noted that although Dr. Dahhan opined that the duties of a shuttle car operator typically do not involve heavy physical demands, he "conceded that if . . . [c]laimant were required to lift belt structures, these would have exceeded his physical capacity." *Id*.

15 BLR 2-201, 2-205 (4th Cir. 1991); *Walker v. Director, OWCP*, 927 F.2d 181, 183, 15 BLR 2-16, 2-21 (4th Cir. 1991); *see also Cornett*, 227 F.3d at 578, 22 BLR at 2-124. Further, the administrative law judge permissibly found that the opinions of Drs. Dahhan and Rosenberg were unpersuasive, as they were based on the physicians' incorrect belief that none of claimant's pulmonary function studies were qualifying, contrary to the administrative law judge's determination that the preponderance of the pulmonary function study evidence was qualifying. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997); *see also Tenn. Consolidated Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); Decision and Order at 24. As it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence established total disability at 20 C.F.R. §718.204(b)(2)(iv).

We also affirm the administrative law judge's conclusion that the evidence, when weighed together, established total disability pursuant to 20 C.F.R. §718.204(b)(2) and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. *See Shedlock*, 9 BLR at 1-198; Decision and Order at 24-25. In light of our affirmance of the administrative law judge's findings that claimant established at least fifteen years of qualifying coal mine employment and the existence of a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2), we affirm the administrative law judge's determination that claimant invoked the Section 411(c)(4) presumption.

II. 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 claimant has neither legal nor clinical pneumoconiosis,[14] or by establishing that "no part of the miner'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).

[14] "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).

The administrative law judge found that employer failed to establish rebuttal by either method.

The administrative law judge found that employer failed to establish that claimant does not have clinical pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §718.305(d)(1)(i)(B).[15] Decision and Order at 27-29, 30-31. Employer does not challenge that determination, which is therefore affirmed. *See Skrack*, 6 BLR at 1-711. Employer's failure to disprove clinical pneumoconiosis precludes a rebuttal finding pursuant to 20 C.F.R. §718.305(d)(1)(i). We therefore 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.

The administrative law judge further found that the medical opinions of Drs. Dahhan and Rosenberg failed to establish that no part of claimant's total disability was caused by pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(ii). Specifically, the administrative law judge noted that Drs. Dahhan and Rosenberg ruled out a causal connection because they opined "that coal mine dust does not cause restriction without parenchymal abnormalities, opacities, or scarring on a chest x-ray." Decision and Order at 32. The administrative law judge, however, discounted their disability causation opinions because he had already found that the chest x-ray evidence "favored a finding of clinical pneumoconiosis." *Id*.; *see Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05, 25 BLR 2-713, 2-721 (4th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-452 (6th Cir. 2013).

Employer argues that the administrative law judge erred in finding that it failed to rebut the presumed fact of disability causation because he ignored his earlier finding that the opinions of Drs. Dahhan and Rosenberg established that claimant "had *no evidence of an obstructive defect or other disease or impairment* caused by coal mine dust." Employer's Brief at 31, *quoting* Decision and Order at 30 (emphasis in Employer's Brief). Employer's argument lacks merit.

Employer quotes the administrative law judge's finding that claimant does not have legal pneumoconiosis, a chronic respiratory or pulmonary impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). Employer, however, needed to also establish that claimant does not have clinical pneumoconiosis arising out of coal mine employment at 20 C.F.R.

[15] The administrative law judge found that employer established that claimant does not have legal pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(A). Decision and Order at 29-30.

§718.305(d)(1)(i)(B). Because it failed to do so, the only remaining method of rebuttal required employer to establish that "no part" of claimant's total disability was caused by clinical pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(ii). *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-154-56 (2015) (Boggs, J., concurring and dissenting).

Contrary to employer's contention, employer could not meet the "no part" standard by establishing that claimant's impairment is not significantly related to coal dust; it had to "rule out" pneumoconiosis as a cause of claimant's total disability. *Epling*, 783 F.3d at 502, 25 BLR at 2-716; *Ogle*, 737 F.3d at 1069-71, 25 BLR at 2-443-45. The administrative law judge permissibly found that employer failed to do so because its physicians based their opinions on the assumption that claimant does not have clinical pneumoconiosis, contrary to the administrative law judge's finding. *See Epling*, 783 F.3d at 504-05, 25 BLR at 2-721; *Ogle*, 737 F.3d at 1074, 25 BLR at 2-452. We therefore reject employer's allegation of error, and affirm the administrative law judge's finding that employer did not rebut the Section 411(c)(4) presumption of total disability due to pneumoconiosis. 30 U.S.C. §921(c)(4).

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