BRB No. 13-0485 BLA

TIMOTHY MAHON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HIGHLAND MINING COMPANY	)	
	)	
and	)	
	)	
A.T. MASSEY	)	DATE ISSUED: 06/25/2014
	)	
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 Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Christopher M. Green (Jackson Kelly PLCC), Charleston, West Virginia, for employer/carrier.

Rita Roppolo (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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: HALL, Acting Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (10-BLA-5664) of Administrative Law Judge Thomas M. Burke rendered on a claim

filed on August 3, 2009 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 twenty-six and one-half years of coal mine employment,[1] and initially found that the evidence did not establish the existence of complicated pneumoconiosis. Therefore, the administrative law judge determined that claimant did not invoke the irrebuttable presumption of total disability due to pneumoconiosis provided at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). Next, applying amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4),[2] the administrative law judge found that claimant had at least thirteen years of underground coal mine employment, and nine and one-half years of substantially similar coal mine employment. The administrative law judge further found that the evidence established the existence of a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Thus, based on claimant's years of qualifying coal mine employment and the finding of total disability, the administrative law judge found that claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis. 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 refusing to allow it to submit rehabilitative evidence from one of its physicians, pursuant to 20 C.F.R. §725.414(a)(3)(ii), and failed to adequately explain another evidentiary ruling.

[1] The record reflects that claimant's last coal mine employment was in West Virginia. Director's Exhibit 3. 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).

[2] Congress enacted amendments to the Black Lung Benefits Act, which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, Congress reinstated Section 411(c)(4) of the Act, which provides a rebuttable presumption of total disability due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4) (2012). The Department of Labor revised the regulations at 20 C.F.R. Parts 718 and 725 to implement the amendments to the Act, eliminate unnecessary or obsolete provisions, and make technical changes to certain regulations. 78 Fed. Reg. 59,102 (Sept. 25, 2013) (to be codified at 20 C.F.R. Parts 718 and 725). The revised regulations became effective on October 25, 2013. *Id.* We will indicate when a regulatory citation in this decision refers to a regulation as it appears in the September 25, 2013 Federal Register. Otherwise, all regulations cited in this Decision and Order may be found in 20 C.F.R. Parts 718, 725 (2013).

Employer further asserts that the administrative law judge erred in his analysis of the blood gas study evidence and medical opinion evidence when he found that claimant established total disability, and therefore erred in finding that claimant invoked the Section 411(c)(4) presumption. Additionally, employer contends that the administrative law judge erred in finding that it failed to rebut the Section 411(c)(4) presumption, because he did not adequately address whether employer rebutted the presumed fact of total disability causation. Claimant did not file a response brief. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, arguing that the administrative law judge did not err in denying employer's request to submit rehabilitative evidence. The Director also urges the Board to reject employer's argument that the administrative law judge erred in finding total respiratory disability established.[3] Employer filed a Reply Brief, reiterating its contentions on appeal.[4]

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).

Evidentiary Rulings

Employer argues that the administrative law judge abused his discretion in denying employer's request to submit rehabilitative evidence from its physician, Dr. Basheda, pursuant to 20 C.F.R. §725.414(a)(3)(ii). Employer's Brief at 9-11. Employer's request arose from the administrative law judge's decision to permit claimant to submit a supplemental report from one of his physicians, Dr. Gaziano, in which Dr.

[3] Alternatively, the Director argues that, if the Board remands this case, it should instruct the administrative law judge to reconsider his findings that claimant did not establish complicated pneumoconiosis, and that employer disproved clinical pneumoconiosis, based on his decision to credit the negative x-ray readings of Drs. Wheeler and Scott, submitted by employer. Director's Brief at 3-4. In a Reply Brief, employer argues that the Director improperly cites "partisan website based content" to argue that the administrative law judge should reconsider the x-ray readings of Drs. Wheeler and Scott. Employer's Reply Brief at 7. As will be discussed, we affirm the administrative law judge's award of benefits. Therefore, we need not address the issues raised by the Director in his alternative argument.

[4] Employer does not challenge the administrative law judge's findings of at least thirteen years of underground coal mine employment, and nine and one-half years of substantially similar coal mine employment. Therefore, those findings are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Gaziano could respond to Dr. Basheda's medical report. Claimant requested the opportunity to submit a supplemental report from Dr. Gaziano because he received Dr. Basheda's medical report from employer "fairly late." Hr'g Tr. at 32. Employer did not object to claimant's having Dr. Gaziano review and respond to Dr. Basheda's medical report, but requested to submit rehabilitative evidence. Hr'g Tr. at 33. The administrative law judge denied the request, ruling that the provision for rehabilitative evidence under 20 C.F.R. §725.414 did not apply to Dr. Gaziano's review of Dr. Basheda's medical report.[5] *Id*.

Employer argues that the administrative law judge erred in failing to permit it to submit rehabilitative evidence from Dr. Basheda, because 20 C.F.R. §725.414(a)(3)(ii) mandates that employer be permitted to submit a rehabilitative statement from its physician. Employer's Brief at 10. This contention lacks merit. As the Director notes, the provision upon which employer relies is applicable where a party submits rebuttal evidence, that is, a physician's review of a specific objective test, such as a chest x-ray or a pulmonary function study, and that "rebuttal evidence tends to undermine the conclusion of a physician who prepared a medical report submitted by the responsible operator. . . ." 20 C.F.R. §725.414(a)(3)(ii). In such a situation, the responsible operator "shall be entitled to submit an additional statement from the physician who prepared the medical report explaining his conclusion in light of the rebuttal evidence." *Id*. That situation did not occur here, because claimant did not submit rebuttal evidence; he submitted a supplemental report from Dr. Gaziano in which Dr. Gaziano reviewed Dr. Basheda's medical report.[6] Therefore, the administrative law judge did not err in declining to permit employer to submit a rehabilitative statement from Dr. Basheda pursuant to 20 C.F.R. §725.414(a)(3)(ii).

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[5] Thereafter, claimant submitted a September 21, 2012 supplemental report from Dr. Gaziano, which the administrative law judge admitted into the record. Decision and Order at 2; Claimant's Exhibit 7.

[6] The regulations do not provide for the rebuttal of medical reports themselves. Instead, a separate provision allows a party to respond to the other party's medical opinion evidence by having one or both of the doctors who prepared its affirmative medical reports review and address the medical opinion evidence, and submit a supplemental report. Specifically, 20 C.F.R. §725.414(a) provides that "[a] medical report may be prepared by a physician who examined the miner and/or *reviewed the available admissible evidence*." 20 C.F.R. §725.414(a) (emphasis added); *see also* 64 Fed.Reg. 54,965, 54,995 (Oct. 8, 1999)(recognizing that a physician who prepares a medical report may address medical reports prepared by other physicians that are in the record and in conformance with the limitations); *C.L.H.* [*Hill*] *v. Arch on the Green, Inc.*, BRB No. 07-0133 BLA, slip op. at 4 (Oct. 31, 2007)(unpub.).

In its Reply Brief, employer argues that even if 20 C.F.R. §725.414(a)(3)(ii) does not apply, the administrative law judge erred because he should have allowed employer to submit a supplemental report from Dr. Basheda responding to Dr. Gaziano's supplemental report. Reply at 5-7. However, employer did not request permission to submit a supplemental report. Because employer failed to make that request with the administrative law judge, it cannot now raise it before the Board.[7] *See Dankle v. Duquesne Light Co.*, 20 BLR 1-1, 1-6 (1995).

Employer next argues that the administrative law judge did not adequately explain his ruling admitting Dr. Alexander's December 14, 2011 report, which was submitted by claimant. Employer's Brief at 15-17. We disagree. When claimant submitted the reports of Drs. Crisalli and Gaziano as his two affirmative medical reports, employer objected that claimant had one medical report too many, because Dr. Alexander's December 14, 2011 report constituted a third medical report for claimant. The administrative law judge overruled employer's objection, finding that Dr. Alexander's report was not a medical report, as defined in 20 C.F.R. §725.414(a)(1),[8] because Dr. Alexander, a radiologist, did not assess claimant's respiratory or pulmonary condition, but instead assessed Dr. Scott's negative readings of an August 24, 2010 digital x-ray, and a June 19, 2009 CT scan.[9]

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[7] Additionally, employer contends that the administrative law judge erred by admitting Dr. Gaziano's supplemental report, because it went "beyond the scope permitted at the hearing." Employer's Brief at 10. We conclude that any error was harmless. Following claimant's submission of Dr. Gaziano's supplemental report, employer objected that Dr. Gaziano's report exceeded its permissible scope because Dr. Gaziano also addressed the deposition testimony of Dr. Spagnolo, employer's second medical expert. Employer's Closing Argument at 15 n.6. The administrative law judge apparently overlooked the objection, as he did not address it in his decision. A review of the administrative law judge's decision, however, does not reflect that he relied on Dr. Gaziano's review of Dr. Spagnolo's testimony to discredit Dr. Spagnolo's opinion. Therefore, employer has not demonstrated how it was prejudiced by the administrative law judge's oversight. *See Shinseki v. Sanders*, 556 U.S. 396, 407-08 (2009); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[8] Section 725.414(a)(1) provides that, for purposes of the evidentiary limitations, "a medical report shall consist of a physician's written assessment of the miner's respiratory or pulmonary condition," but that "[a] physician's written assessment of a single objective test, such as a chest X-ray or a pulmonary function test, shall not be considered a medical report. . . ." 20 C.F.R. §725.414(a)(1).

[9] Dr. Alexander stated that digital x-rays are not accepted by NIOSH "to provide a B-reading for pneumoconiosis." Claimant's Exhibit 1 at 1. He noted further that the June 19, 2009 CT scan read by Dr. Scott was a "standard" CT scan, not a "high

Decision and Order at 2 n.2; Hr'g Tr. at 36. Employer argues that this determination was insufficient because the administrative law judge did not go on to make a specific finding as to "where Dr. Alexander's report supposedly now fit in the evidentiary limitations," Employer's Brief at 16, thereby violating the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). Contrary to employer's argument, the administrative law judge adequately explained that Dr. Alexander's report was not a medical report, but constituted rebuttal to Dr. Scott's x-ray and CT scan readings under 20 C.F.R. §725.414(a)(2)(ii).[10] We therefore reject employer's allegations of error in the administrative law judge's evidentiary rulings.

Application of Amended Section 411(c)(4)

Employer asserts that the administrative law judge's application of amended Section 411(c)(4) to this case was premature because the Department of Labor (DOL) had yet to promulgate implementing regulations. Employer's Brief at 8. We reject employer's assertion of error, as the mandatory language of the amended portions of the Act supports the conclusion that the provisions are self-executing. *See Fairman v. Helen Mining Co.*, 24 BLR 1-225, 1-229 (2011); *Mathews v. United Pocahontas Coal Co.*, 24 BLR 1-193, 1-201 (2010). Moreover, after employer filed its brief, the DOL issued regulations implementing amended Section 411(c)(4), and those regulations are consistent with the provisions applied by the administrative law judge. Employer also contends that the rebuttal provisions of amended Section 411(c)(4) do not apply to claims brought against a responsible operator. Employer's Brief at 7. Employer's contention is substantially similar to the one that the Board rejected in *Owens v. Mingo Logan Coal Co.*, 25 BLR 1-1, 1-4 (2011), *aff'd on other grounds*, 724 F.3d 550 (4th Cir. 2013) (Niemeyer, J., concurring), and we reject it here for the reasons set forth in that decision.[11] Therefore, the administrative law judge did not err in considering this claim pursuant to amended Section 411(c)(4).

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resolution" CT scan, the kind that Dr. Alexander opined would be necessary "to exclude the presence of small opacities. . . ." *Id*. He therefore stated that it was "not accurate" for Dr. Scott to say that the June 19, 2009 CT scan showed no small opacities. *Id*.

[10] Moreover, since employer disproved the existence of clinical pneumoconiosis based on the x-ray and CT scan evidence, Decision and Order at 17, any deficiency in the administrative law judge's explanation of "how Dr. Alexander's report fit within the evidence limiting rules," Employer's Brief at 16, did not prejudice employer. *See Shinseki*, 556 U.S. at 407-08; *Larioni*, 6 BLR at 1-1278.

[11] Moreover, as noted, the DOL has promulgated regulations implementing amended Section 411(c)(4). Those regulations make clear that the rebuttal provisions

Total Disability and Invocation of the Section 411(c)(4) Presumption

Employer argues that the administrative law judge erred in finding that the evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2). Employer specifically challenges the administrative law judge's findings that the arterial blood gas study and medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iv).[12] Employer argues further that the administrative law judge did not weigh the contrary probative evidence at 20 C.F.R. §718.204(b)(2).

Pursuant to 20 C.F.R. §718.204(b)(2)(ii), the administrative law judge considered two arterial blood gas studies. The October 27, 2009 blood gas study, performed by Dr. Rasmussen, produced non-qualifying values at rest, and qualifying[13] values with exercise. Director's Exhibit 10. The August 23, 2010 blood gas study, performed by Dr. Crisalli, produced non-qualifying values at rest and did not include an exercise portion. Employer's Exhibit 4.

The administrative law judge found that the qualifying exercise results obtained by Dr. Rasmussen were valid, and that they were uncontradicted by any other exercise blood gas study, as Dr. Crisalli did not administer one. Decision and Order at 4, 14. Finding that Dr. Rasmussen's qualifying exercise blood gas study better reflected claimant's ability to meet the exertional requirements of his job as a drill operator,[14] the administrative law judge determined that the October 27, 2009 exercise blood gas study "evidence[d] a pulmonary disability. . . ." Decision and Order at 14. Employer contends

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apply to responsible operators. 78 Fed. Reg. at 59,115 (to be codified at 20 C.F.R. §718.305(d)(1)).

[12] The administrative law judge found that the two pulmonary function studies of record did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 4, 14. The administrative law judge did not address whether claimant could establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). However, review of the record does not disclose any evidence that claimant suffers from cor pulmonale with right-sided congestive heart failure. *See* 20 C.F.R. §718.204(b)(2)(iii).

[13] A "qualifying" pulmonary function or blood gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B and C, for establishing total disability. 20 C.F.R. §718.204(b)(2)(i), (ii). A "non-qualifying" study exceeds those values.

[14] The administrative law judge noted that claimant had to help change the drill bits, and assist mechanics in making repairs to and servicing the drilling rig. Decision and Order at 14, *citing* Director's Exhibit 10.

that the administrative law judge erred by focusing on a single qualifying blood gas study result to find total disability established. Employer's Brief at 11-15. This contention lacks merit. The administrative law judge reasonably chose to accord greater weight to the qualifying blood gas study results obtained when claimant exercised, as he found that those results more clearly related to "claimant's exertional requirements to perform his last coal mine job." Decision and Order at 14; *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). We therefore affirm the administrative law judge's finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii).

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the medical opinions of Drs. Rasmussen, Gaziano, Basheda, and Spagnolo. Drs. Rasmussen and Gaziano opined that claimant lacks the pulmonary capacity to perform his usual coal mine work, because of his impairment in blood gas exchange detected on his exercise blood gas study, and on his diffusing capacity test. Director's Exhibit 10; Claimant's Exhibit 4. Drs. Basheda and Spagnolo reviewed the medical reports and testing and concluded that claimant is able to perform his usual coal mine employment from a pulmonary standpoint. Employer's Exhibits 6 at 7; 11 at 15.

The administrative law judge found that Dr. Rasmussen's opinion, as supported by that of Dr. Gaziano, merited greater weight than those of Drs. Basheda and Spagnolo, because Dr. Rasmussen's conclusion, that claimant has a "marked impairment in oxygen transfer" was consistent with, and supported by, claimant's qualifying exercise blood gas study results. Decision and Order at 15. The administrative law judge therefore credited Dr. Rasmussen's opinion as "well[-]reasoned and well[-]documented and supported by the objective evidence of record," and found that it established total disability. *Id*. Employer argues that the administrative law judge erred in relying on the qualifying blood gas study results to discount the opinions of Drs. Basheda and Spagnolo that claimant is not totally disabled. Employer's Brief at 11-15. We disagree. As discussed *supra*, the administrative law judge explained that he found that claimant's exercise blood gas study results more clearly reflected claimant's ability to perform his job duties as a drill operator. The administrative law judge acted within his discretion in finding that Dr. Rasmussen's opinion, that claimant is totally disabled from a pulmonary standpoint, was better supported by those qualifying exercise blood gas study results. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274; *Wetzel v. Director, OWCP*, 8 BLR 1-139, 1-141 (1985). We therefore reject employer's argument, and affirm the administrative law judge's finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

The administrative law judge concluded that the blood gas study evidence, the medical opinion evidence, and the lay testimony[15] "support[ed] a finding of total disability" pursuant to 20 C.F.R. §718.204(b)(2). Decision and Order at 16. For the reasons set forth above, we reject employer's argument that the administrative law judge's total disability determination focused unduly on a single qualifying blood gas study, without adequately accounting for contrary evidence. The administrative law judge explained why he accorded greater weight to claimant's exercise blood gas study results, and to the medical opinions of the physicians who considered claimant's objective tests in reaching their conclusions that he is totally disabled by his impairment in blood oxygen transfer. *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41, 17 BLR 2-16, 2-22 (6th Cir. 1993); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(en banc).

Therefore, we affirm the administrative law judge's finding of total disability pursuant to 20 C.F.R. §718.204(b)(2). Because claimant also established at least fifteen years of qualifying coal mine employment, we affirm the administrative law judge's finding that claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis.

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

Because claimant invoked the presumption that the miner's total disability was due to pneumoconiosis at Section 411(c)(4), the burden of proof shifted to employer to establish rebuttal by disproving the existence of both clinical[16] and legal[17]

[15] In addition to the medical evidence of record, the administrative law judge considered claimant's testimony describing his respiratory problems and his pulmonary treatment, and relating that he has been told that he will need a lung transplant. Decision and Order at 15. The administrative law judge found claimant's testimony to be "consistent with hi[s] suffering from a total pulmonary disability." Decision and Order at 15.

[16] "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 to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

[17] 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). This definition encompasses any chronic respiratory or pulmonary disease or impairment

pneumoconiosis, or by establishing that the miner's totally disabling respiratory or pulmonary impairment did not arise out of, or in connection with, coal mine employment. *See* 30 U.S.C. §921(c)(4); *Barber v. Director, OWCP*, 43 F.3d 899, 901, 19 BLR 2-61, 2-67 (4th Cir. 1995)*; Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 939, 2 BLR 2-38, 2-43-44 (4th Cir. 1980). The administrative law judge found that employer disproved the existence of clinical pneumoconiosis, but did not disprove the existence of legal pneumoconiosis, and failed to establish that claimant's impairment did not arise out of his coal mine employment. Decision and Order at 17-19.

Apart from challenging the administrative law judge's evidentiary rulings, which we have affirmed, employer has not challenged the administrative law judge's finding that employer failed to disprove the existence of legal pneumoconiosis. That finding is therefore affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Thus, we affirm the administrative law judge's determination that employer did not rebut the Section 411(c)(4) presumption by disproving the existence of pneumoconiosis.

Employer contends that the administrative law judge did not adequately address whether employer was able to rebut the presumed fact of total disability causation, by establishing that claimant's disabling impairment did not arise out of, or in connection with, coal mine employment. Employer's Brief at 17-21. We disagree. As discussed, employer has not challenged the administrative law judge's finding that it failed to disprove the existence of legal pneumoconiosis. In making that finding, the administrative law judge discounted the medical opinions of Drs. Basheda and Spagnolo, that claimant's impairment is unrelated to coal mine dust exposure, and specifically determined that "[t]he arguments presented by [e]mployer to show that coal dust is not an etiology for [c]laimant's pulmonary impairment fail for the above reasons." Decision and Order at 19. Since the only issue remaining was the etiology of claimant's totally disabling impairment, the remainder of the administrative law judge's rebuttal analysis, though brief, was sufficient.[18] Under the facts of this case, the administrative law judge's finding subsumed a determination that the opinions of Drs. Basheda and Spagnolo were also insufficient to establish that claimant's totally disabling impairment did not arise out of, or in connection with his coal mine employment pursuant to Section 411(c)(4). *See Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995); *see*

"significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[18] The administrative law judge stated that his legal pneumoconiosis inquiry "necessarily subsume[d]" a determination of the etiology of claimant's disease. Decision and Order at 19 n.3. He concluded that claimant's "pulmonary impairment is caused by his coal dust exposure." Decision and Order at 19.

also Island Creek Ky. Mining v. Ramage, 737 F.3d 1050, 1062 (6th Cir. 2013); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013). Thus, we affirm the administrative law judge's determination that employer did not rebut the Section 411(c)(4) presumption, and further affirm the award of benefits.

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

SO ORDERED.

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BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge