U.S. Department of Labor

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

BRB No. 14-0215 BLA

LEROY W. DICKERSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HERITAGE/PATRIOT COAL COMPANY	)	DATE ISSUED: 06/29/2015
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order – Award of Benefits of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Joseph E. Allman (Macey, Swanson & Allman), Indianapolis, Indiana, for claimant.

Laura Metcoff Klaus (Greenberg Traurig, LLP), Washington, D.C., for employer.

Jeffrey S. Goldberg (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, Chief Administrative Appeals Judge, BUZZARD and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order – Award of Benefits (2012-BLA-06131) of Administrative Law Judge Daniel F. Solomon, rendered on an initial claim filed on November 3, 2011, pursuant to the provisions of the Black Lung Benefits Act, as

amended, 30 U.S.C. §§901-944 (the Act). Based on the filing date of this claim, the administrative law judge considered claimant's entitlement under amended Section 411(c)(4) of the Act.[1] The administrative law judge credited claimant with twenty-three years of surface coal mine employment, based upon a stipulation of the parties, and found that claimant's above-ground exposure was equivalent to at least fifteen years of underground coal mine employment. Because the administrative law judge also found that claimant's total disability was conceded by employer, the administrative law judge determined that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at amended Section 411(c)(4). The administrative law judge further determined that employer failed to rebut that presumption. Accordingly, benefits were awarded.

On appeal, employer argues that the administrative law judge erred in finding that claimant satisfied his burden to establish regular exposure to dust in his surface coal mine employment, sufficient to show substantial similarity between his working conditions above-ground, and those found in an underground coal mine. Employer also contends that the administrative law judge erred in failing to consider evidence relevant to the credibility of claimant's hearing testimony. With regard to rebuttal of the presumption, employer asserts that the administrative law judge confused the standards applicable for disproving the existence of legal pneumoconiosis and disability causation; erred in requiring employer to "rule out" any connection between claimant's respiratory disability and pneumoconiosis; improperly substituted his opinion for that of the medical experts by concluding that Dr. Selby's opinion overlooks the significance of claimant's shortness of breath and coughing; and erred in rejecting the opinions of Drs. Tuteur and Selby on the issue of whether employer could rebut the amended Section 411(c)(4) presumption.

Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging the Board to reject several of employer's arguments, and asserting that the Board may affirm the award of benefits. The Director maintains that claimant satisfied his burden to show substantial similarity of his surface coal mine employment for invocation of the amended Section 411(c)(4) presumption. The Director agrees with employer that the administrative law judge identified an incorrect rebuttal standard with regard to employer's burden to disprove the existence of legal pneumoconiosis, but argues that the error may be deemed harmless, as the administrative

[1] Pursuant to amended Section 411(c)(4), claimant is entitled to a rebuttable presumption of total disability due to pneumoconiosis, if he establishes at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305.

law judge ultimately determined that employer failed to rebut the presumption, based on his findings that employer's doctors lacked credibility, rather than their failure to meet a particular rebuttal standard. Employer filed a reply brief, reiterating its arguments.[2]

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.[3] 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 AMENDED SECTION 411(c)(4) PRESUMPTION – QUALIFYING COAL MINE EMPLOYMENT

Pursuant to 20 C.F.R. §718.305(b)(2), "[t]he conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if [claimant] demonstrates that [he] was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2); *see Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 479, 22 BLR 2-265, 2-275 (7th Cir. 2001); *Director, OWCP v. Midland Coal Co.* [*Leachman*], 855 F.2d 509, 512-13 (7th Cir. 1988). Although claimant bears the burden of establishing comparability between dust conditions in underground and surface mine employment, he "must only establish that he was exposed to sufficient coal dust in his surface mine employment." *Leachman*, 855 F.2d at 512-13; *see Blakley v. Amax Coal Co.*, 54 F.3d 1313, 1319, 19 BLR 2-192, 2-202 (7th Cir. 1995). Claimant is not required to directly compare his work environment to conditions underground, but

[2] Employer initially alleged in this appeal that the administrative law judge erred in failing to make a specific finding as to whether the evidence established that claimant has a totally disabling respiratory or pulmonary impairment. Employer's Brief in Support of Petition for Review at 11. Employer's counsel later acknowledged in its reply brief that the issue of total disability was not challenged before the administrative law judge and is not an issue in this appeal. Employer's Reply Brief (unpaginated) at 3 n.1. Therefore, we affirm, as unchallenged by the parties on appeal, the administrative law judge's findings that claimant established twenty-three years of surface coal mine employment and a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 2.

[3] The record indicates that claimant's coal mine employment was in Illinois. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

can establish similarity by proffering "sufficient evidence of the surface mining conditions in which he worked." *Leachman*, 855 F.2d at 512. It is then the function of the administrative law judge, based on his expertise and knowledge of the industry, "to compare the surface mining conditions established by the evidence to conditions known to prevail in underground mines." *Id*. A miner's unrebutted testimony can support a finding of substantial similarity. *Summers*, 272 F.3d at 479, 22 BLR at 2-275.

In this case, the administrative law judge credited the hearing testimony of the claimant and his spouse in finding that claimant established at least fifteen years of surface coal mine employment in conditions that were substantially similar to those in an underground mine. Claimant testified that he was exposed to coal dust while he drove trucks for two construction companies that built coal mines from 1970-1973. *See* November 12, 2013 Hearing Transcript (HT) at 10. In 1973, claimant began working for employer at strip mines in various positions. HT at 10. The administrative law judge observed that claimant worked for employer as a dozer operator for six to seven years, and referenced the following testimony as showing claimant's exposure to coal dust in that job:

> Q. [W]hat was your experience every day as far as coal dust was involved? Was it dusty?
> A. We was in the pit, yes.
> Q. And tell us what you mean by, you say you were in the pit?
> A. Well, you've got maybe ten haul trucks running. You've got the hoe loader going, the side wheel – sidewall drill drilling; and then there's somebody out there shooting the coal so you could load it; and then the shoveler, you know, it's stripping; and then you had that big wheeler taking the tops all off. So, I mean, it was just all confusion all the time and, you know, dust – that coal, when you're running on the dust with the machines and stuff, it just keeps a breaking up.

HT at 11; *see* Decision and Order at 4. Claimant indicated that it was dusty the whole time, except when it was raining. HT at 12.

Claimant next worked as a side wall driller for employer for three to four years, which required him to drill holes into the side wall of the mine and set off rounds of dynamite to blast out the coal. HT at 22. As noted by the administrative law judge, claimant indicated that this was the dustiest job he had in his twenty-three years of work in strip mining. Decision and Order at 4; HT at 22. After being a driller, claimant worked as a truck driver, hauling coal out of the pit, for one to two years. HT at 13. The administrative law judge noted that when asked whether he was exposed to coal dust, claimant stated: "anytime you're hauling coal, you're in the dust." Decision and Order

at 4, *quoting* HT at 13. Claimant also worked unloading railroad cars and loading barges, which exposed him to coal dust. HT at 13. During his last job as a mechanic, claimant testified that he was exposed to coal dust because in order to work on the machinery:

> [Y]ou had to blow it off, you know, to take care and blow it off to get the coal dust and stuff out of it to where you could see what you was doing, and that caused quite a bit of dust too.

HT at 14.

The administrative law judge also noted that claimant's wife was present at the hearing and testified that claimant had to change clothes before going home from work because of the coal dust and grease; that his clothes were full of coal dust the entire time he worked as a coal miner; and that there was so much dust it was even "in his underwear." Decision and Order at 4, *quoting* HT at 23-24. Based on the totality of the hearing testimony, the administrative law judge concluded:

> I find that the [c]laimant is credible that [seven] years work in the pit was directly comparable to [seven] years of underground mining. I find that the remaining [sixteen] years of surface mining are quantitatively comparable as [eight] years of underground mining. I find that the [c]laimant is credible that the work was dusty and that he has met his burden of proof on this issue.

Decision and Order at 5. The administrative law judge also noted that he accepted that claimant's "work clothes were filthy," which substantiated, in part, claimant's assertion of comparable dust exposure. *Id*.

Employer maintains that, while claimant testified to coal dust exposure during his surface coal mine employment, he did not satisfy his burden to establish that all of the exposure was regular. We disagree. As noted by the Director:

> [Claimant] testified that he was exposed to coal mine dust virtually every day (except when it rained) during his six or seven years as a bulldozer operator, [HT at 11-12]; during his three or four years working with drills, which he described as his dustiest job, [HT at 12, 22]; during his one or two years as a truck driver ("anytime you're hauling coal, you're in the dust), [HT 13]; while working on the tracks ("Anytime you was around trains, you know, unloading cars and loading barges is tough. Yes, the dust was there"), [HT 13]; and while working at the machine shop where he was exposed to "quite a bit of dust" "every day." [HT 14, 22]. [Claimant's] testimony is corroborated by his widow's testimony that he came home

> from work "dirty, dirty, dirty" throughout his entire employment with [employer]. [HT at 23, 24].

Director's Brief at 4.

It is well established that an administrative law judge has discretion to assess the credibility of the witnesses and evidence and draw his own inferences therefrom. *See Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989). We see no error in the administrative law judge's finding that claimant satisfied his burden to establish substantial similarity between the conditions of his surface coal mine employment and those of an underground mine, as required by 20 C.F.R. §718.305(b)(2). *Summers*, 272 F.3d at 480, 22 BLR at 2-726; *Leachman*, 855 F.2d at 512; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc).

Additionally, employer contends that the administrative law judge failed to properly consider a notation in claimant's treatment record by Dr. Jacobs, on November 1, 2001, that claimant "had worked in and around a coal mine but was above-ground and was not exposed to the dust per se." Employer's Exhibit 8 at 73. Employer maintains that the notation is relevant to the credibility of claimant's testimony. Based on our review of the record, it is unclear from the wording of the notation whether Dr. Jacobs was relating what he was told by claimant or whether Dr. Jacobs was expressing his own opinion that claimant was not exposed to coal dust, per se, because claimant worked in surface coal mine employment. During employer's cross-examination of claimant at the hearing, Dr. Jacobs's notation was not addressed, nor was the issue of the credibility of claimant's testimony raised in employer's post-hearing brief. Additionally, the Director notes correctly that three other medical reports corroborate claimant's testimony that he was regularly exposed to coal dust.[4] Director's Brief at 4. Because substantial evidence

[4] Dr. Tazbaz examined claimant on behalf of the Department of Labor on February 1, 2012, and described claimant's work history. Director's Exhibit 10 at 5-7. He related that, while working as a bull dozer operator, claimant "was continually exposed to the coal and rock dust;" that claimant "was exposed to large amounts of rock and coal dust" while working as a shooter/driller; and that, while working as a truck driver, claimant described the cab of the truck as "very dusty with build up on the dashboard and seats." Director's Exhibit 10 at 5-6. Dr. Mohan examined claimant on July 15, 2010, and reported that claimant worked in a surface mine for twenty-one years and "frequently he was exposed to fumes and dust." Employer's Exhibit 7. Dr. Tuteur examined claimant on June 20, 2013, and recorded claimant's work history. Employer's Exhibit 2. Dr. Tuteur stated that "[c]learly [claimant] was exposed to sufficient amounts of coal mine dust to produce coal workers' pneumoconiosis and other coal mine dust induced disease processes in a susceptible host." *Id.*

in the record supports the administrative law judge's conclusion that claimant was regularly exposed to coal dust in his surface coal mine employment, employer has not demonstrated a sufficient basis for the Board to remand the case for specific consideration of Dr. Jacobs's notation. *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."). Thus, we affirm the administrative law judge's finding that claimant established at least fifteen years of qualifying surface coal mine employment. We further affirm the administrative law judge's determination that claimant invoked the amended Section 411(c)(4) presumption.

II. REBUTTAL OF THE AMENDED SECTION 411(c)(4) PRESUMPTION

In order to rebut the amended Section 411(c)(4) presumption, employer must affirmatively prove both that claimant does not have legal pneumoconiosis[5] and clinical pneumoconiosis,[6] or establish that "no part of claimant's disabling respiratory or pulmonary impairment was caused by pneumoconiosis, as defined in § 718.201." 20 C.F.R. §718.305(d)(1); *see West Virginia CWP Fund v. Bender*, 782 F.3d 129, 137 (4th Cir. 2015); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011); *Minich v. Keystone Coal Mining Corp.*, BLR , BRB No. 13-0544 BLA, slip op. at 10-11 (April 21, 2015) (Boggs, J., concurring and dissenting).

Employer relies on the opinions of Drs. Tuteur and Selby to establish rebuttal. Dr. Tuteur examined claimant on June 20, 2013, and also reviewed medical records. Employer's Exhibit 2. He noted that claimant was a non-smoker with a history of heart

[5] Legal pneumoconiosis is defined as "any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

[6] Clinical pneumoconiosis is defined as:

> [T]hose diseases recognized by the medical community as pneumoconiosis, *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. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

20 C.F.R. §718.201(a)(1).

disease and myocardial infarction. *Id*. Dr. Tuteur opined that claimant was totally disabled by a restrictive impairment, based on the results of the pulmonary function testing. *Id*. However, he indicated that "a restrictive abnormality does not necessarily imply a restrictive lung disease." *Id*. With regard to whether claimant has legal pneumoconiosis, Dr. Tuteur stated:

> From a pulmonary problem [sic] there clearly is no obstructive lung disease. Therefore a diagnosis of "legal" coal workers' pneumoconiosis is not forthcoming for it requires airflow obstruction and a clinical condition mimicking chronic obstructive pulmonary disease such as that caused by cigarette smoking. . . .
>
> With respect [to] the diagnosis of medical coal workers' pneumoconiosis, one surely finds the characteristic symptom of breathlessness but, in this case, it is fully explained by the factors leading to a diagnosis of metabolic syndrome most prominently ischemic cardiomyopathy with left ventricular dysfunction and recurrent congestive heart failure. . . *It is true that with medical coal workers' pneumoconiosis one develops a restrictive abnormality*; in this case, this restrictive ventilatory abnormality is fully accounted for by the idiopathic right hemidiaphragmatic paralysis, obesity, recurrent congestive failure, and the consequences of the median sternotomy complicated by a serious staph infection.

Id. (emphasis added). Dr. Tuteur concluded that claimant's restrictive impairment and disability "are in no way related to, aggravated by, or caused by either the inhalation of coal mine dust or the development of coal workers' pneumoconiosis." *Id*.

Dr. Selby examined claimant on June 19, 2012, and also reviewed medical records. Employer's Exhibit 1. In his report, Dr. Selby diagnosed a restrictive defect caused by post-surgical scarring from claimant's open heart surgery; persistent shortness of breath and low PO_2 from severe coronary artery disease and heart damage from a myocardial infarction; chronic renal failure; prior stroke; diabetes mellitus; sleep apnea; and obesity. *Id*. at 35. Dr. Selby stated that "[a]ll of [claimant's] symptoms, physical findings and laboratory testing are consistent with his coronary artery disease and its sequelae and related to his paralyzed diaphragm with resultant loss of lung function and none is a result of prior coal mine dust inhalation." *Id*. at 33.

In considering whether employer rebutted the presumed existence of clinical pneumoconiosis, the administrative law judge found that the x-ray evidence was negative. Decision and Order at 5. However, the administrative law judge stated that employer was still required to "rule out legal pneumoconiosis" and "rule out any connection between [claimant's] impairment and his coal mine employment." *Id*. The

administrative law judge gave little weight to Dr. Tuteur's opinion, that claimant does not have legal pneumoconiosis, noting that "the regulation specifically states that the presumption cannot be rebutted on the basis of evidence demonstrating the existence of a totally disabling pulmonary disease of unknown origin." *Id*. at 6, *citing* 20 C.F.R. §718.305(d). The administrative law judge found that Dr. Selby failed to persuasively explain his conclusion that claimant does not have legal pneumoconiosis. Decision and Order at 8. The administrative law judge observed that, while Dr. Tuteur and Dr. Selby attribute claimant's disabling restrictive impairment to non-respiratory conditions, "none of employer's physicians account for [c]laimant's 23 years of coal mine dust exposure" and "their failure to account for mining exposure precludes rebuttal." *Id*. The administrative law judge concluded that employer failed to disprove the existence of legal pneumoconiosis and also failed to show that claimant's disability was unrelated to his coal mine employment. *Id*.

Initially, employer contends that the administrative law judge erred in applying "the rule-out standard" in consideration of whether employer rebutted the presumed facts of legal pneumoconiosis and disability causation. Employer's Brief in Support of Petition for Review at 16. Employer maintains that the standard of proof required for rebuttal "can be no higher" than that required for claimant to prove his case and further asserts that "no court, including the [United States] Supreme Court, has held that a claimant bears the burden of ruling out a connection with all other potential diagnoses in order to establish the existence of pneumoconiosis." *Id*., *citing Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993).

We agree that the administrative law judge misstated that "[e]mployer must rule out legal pneumoconiosis." Decision and Order at 5. The administrative law judge confused the standard for rebuttal of disability causation with the standard for rebuttal of the existence of legal pneumoconiosis.[7] *See Minich v. Keystone Coal Mining Corp*.,

[7] Contrary to employer's argument that the rule out standard is not applicable to rebutting the presumed fact of disability causation, the implementing regulation requires employer to establish that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(ii). The Department of Labor specifically endorsed the rule out standard in the preamble to the revised regulations implementing 20 C.F.R. §718.305. 78 Fed Reg. 59,102-07 (Sept. 25, 2013). Although the Seventh Circuit, within whose jurisdiction this case arises, has not addressed the validity of the rule out standard for rebuttal of the amended Section 411(c)(4) presumption, the United States Court of Appeals for the Fourth Circuit and the Board have affirmed its validity. *See West Virginia CWP Fund v. Bender*, 782 F.3d 129, 137 (4th Cir. 2015); *Minich v. Keystone Coal Mining Corp*., BLR , BRB No. 13-0544 BLA (April 21, 2015) (Boggs, J., concurring and dissenting).

BLR , BRB No. 13-0544 BLA, slip op. at 10-11 (April 21, 2015) (Boggs, J., concurring and dissenting). However, as discussed *infra*, we consider the administrative law judge's error to be harmless, as each of employer's experts specifically opined that coal dust exposure was not a causative factor for claimant's disabling restrictive impairment, and the administrative law judge's credibility findings with regard to employer's physicians and the issues on rebuttal were based on his conclusion that they did not persuasively explain their rationales, rather than his application of a particular rebuttal standard. *Larioni v. Director, OWCP*, 6 BLR 1-1276 (198).

With respect to the administrative law judge's specific credibility determinations, we reject employer's contention that the administrative law judge abused his discretion in giving little weight to the opinions of Drs. Tuteur and Selby that claimant does not have legal pneumoconiosis. Although Drs. Tuteur and Selby identified several non-respiratory factors as plausible causes for claimant's disabling restrictive impairment, the administrative law judge observed correctly that "pneumoconiosis is not necessarily mutually exclusive to a combination of obesity and right hemidiaphragm paralysis," in causing a restrictive impairment. Decision and Order at 8. We conclude that the administrative law judge acted within his discretion in finding that neither Dr. Tuteur, nor Dr. Selby, persuasively explained their rationale for concluding that twenty-three years of coal dust exposure could be excluded as a substantially contributing cause or significantly aggravating factor in claimant's restrictive respiratory impairment.[8] *See* 20 C.F.R. §§718.305(d)(i), (ii); 718.201(a)(2); *Summers*, 272 F.3d at 483, 22 BLR at 2-280; *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 893, 13 BLR 2-348, 2-355 (7th Cir. 1990); *Clark*, 12 BLR at 1-155; Decision and Order at 8.

Furthermore, we reject employer's argument that the administrative law judge improperly acted as a medical expert, insofar as he observed that "[s]hortness of breath, also termed dyspnea, is well known to be 'symptomatic of pneumoconiosis.'" Decision and Order at 8, *quoting Battaglia v. Peabody Coal Co*. 690 F.2d 106, 109 (7th Cir. 1982). The administrative law judge's observation is consistent with Dr. Tuteur's identification of shortness of breath as a symptom of coal workers' pneumoconiosis. Employer's Exhibits 2, 4 at 16. Moreover, although Dr. Selby attributed claimant's shortness of

[8] Employer asserts that the administrative law judge erred in referencing the regulation at 20 C.F.R. §718.305(d), in relation to whether Dr. Tuteur's opinion was legally sufficient to rebut the presumption. Because we affirm the administrative law judge's alternate finding that Dr. Tuteur did not persuasively explain why coal dust exposure did not substantially contribute to, or significantly aggravate, claimant's restrictive impairment and disability, it is not necessary that we address employer's arguments with respect to 20 C.F.R. §718.305(d). *See Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

breath to heart disease, the administrative law judge permissibly gave less weight to his opinion, that claimant does not have legal pneumoconiosis, as Dr. Selby did not address the effect, if any, of coal dust exposure on claimant's respiratory symptoms. Decision and Order at 8. Because determinations regarding the weight of the evidence and the credibility of the physicians are within the sound discretion of the trier-of-fact, we affirm the administrative law judge's findings that the opinions of Drs. Tuteur and Selby are insufficient to establish that claimant does not have legal pneumoconiosis. *See Summers*, 272 F.3d at 483, 22 BLR at 2-281; *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002); *Clark*, 12 BLR at 1-155.

Moreover, as neither Dr. Tuteur nor Dr. Selby diagnosed legal pneumoconiosis, the administrative law judge permissibly discounted their opinions relevant to the cause of claimant's disability. *See Amax Coal Co. v. Director, OWCP* [*Chubb*], 312 F.3d 882, 890, 22 BLR 2-514, 2-528 (7th Cir. 2002); *see also Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order at 9. Thus, we affirm the administrative law judge's finding that employer failed to establish rebuttal of the amended Section 411(c)(4) presumption. 20 C.F.R. §718.305(d)(i)(A), (ii); *see Morrison*, 644 F.3d at 479, 25 BLR at 2-8; *Barber v. Director, OWCP*, 43 F.3d 899, 901, 19 BLR 2-61, 2-67 (4th Cir. 1995).

Accordingly, the administrative law judge's Decision and Order – Award of Benefits is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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GREG J. BUZZARD
Administrative Appeals Judge

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RYAN GILLIGAN
Administrative Appeals Judge