U.S. Department of Labor

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

BRB No. 14-0321 BLA

LUCIAN LOVE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HERITAGE COAL COMPANY	)	DATE ISSUED: 06/23/2015
	)	
and	)	
	)	
PEABODY ENERGY CORPORATION, c/o OLD REPUBLIC INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioner	)	
	)	
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 on Remand of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Thomas E. Springer III (Springer Law Firm, PLLC), Madisonville, Kentucky, for claimant.

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

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Employer/Carrier (employer) appeals the Decision and Order Awarding Benefits on Remand (2010-BLA-05853) of Administrative Law Judge Alice M. Craft, rendered on a miner's subsequent claim, filed on November 16, 2009, pursuant to the provisions of

the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (the Act).[1] This case is before the Board for a second time. In her prior decision, the administrative law judge credited claimant with thirty-two years of underground coal mine employment. However, because the administrative law judge also determined that the evidence was insufficient to establish a totally disabling respiratory or pulmonary impairment, she found that claimant was unable to invoke the rebuttable presumption of total disability due to pneumoconiosis pursuant to amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[2] The administrative law judge further found that claimant failed to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d), and denied benefits under 20 C.F.R. Part 718.

In consideration of claimant's appeal, the Board vacated the administrative law judge's findings that claimant did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii) and (iv).[3] *Love v. Heritage Coal Co.*, BRB No. 13-0015 BLA, slip op. at 6 (Sept. 26, 2013) (unpub.). Specifically, the Board held that the administrative law judge erred in discrediting a qualifying exercise blood gas study[4] obtained by Dr. Chavda, on December 28, 2009, based on the views of Dr. Jarboe and Dr. Repsher "that the one week interval between the resting study and the exercise study rendered the

[1] Claimant filed an initial claim on December 6, 2001, which was denied by the district director on June 23, 2003, because claimant failed to establish total disability. Director's Exhibit 1. No further action was taken by claimant until he filed the current subsequent claim. Director's Exhibit 3.

[2] Pursuant to amended Section 411(c)(4) of the Black Lung Benefits Act, 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 surface coal mine employment in conditions substantially similar to those of an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4).

[3] The Board affirmed, as unchallenged by the parties, the administrative law judge's determination that claimant established at least thirty-two years of underground coal mine employment, and her findings that claimant did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii), or complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. *Love v. Heritage Coal Co.*, BRB No. 13-0015 BLA slip op. at 2 n.3, 13 n.8 (Sept. 26, 2013) (unpub.).

[4] A qualifying blood gas study yields results that are equal to, or less than, the values set out in the tables at 20 C.F.R. Part 718, Appendix C. A nonqualifying study produces results that exceed those values. *See* 20 C.F.R. §718.204(b)(2)(ii).

qualifying exercise values invalid."[5] *Id*. at 5. The Board further held that the administrative law judge erred in failing to address the deposition testimony from Dr. Chavda, pertaining to the validity of his testing, and erred in discrediting Dr. Chavda's diagnosis of total disability because it was based on the discredited blood gas study. *Id*. at 6. Thus, the Board vacated the denial of benefits and remanded the case for further consideration of whether claimant established a totally disabling respiratory or pulmonary impairment for invocation of the amended Section 411(c)(4) presumption, and a change in an applicable condition of entitlement under 20 C.F.R. §725.309. *Id*. at 6-7. Additionally, if claimant invoked the presumption on remand, the administrative law judge was instructed to consider whether employer established rebuttal. *Id*. at 7.

On remand, the administrative law judge determined that claimant established total disability, a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d), and invocation of the amended Section 411(c) presumption. In consideration of rebuttal, the administrative law judge found that employer failed to disprove that claimant has legal pneumoconiosis or establish that claimant's disability was not due to pneumoconiosis. Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that claimant has failed to prove that he has a totally disabling respiratory or pulmonary impairment. Employer maintains that the December 29, 2009 exercise blood gas study is invalid; the administrative law judge improperly rejected the opinions of Drs. Jarboe and Repsher, regarding the cause of the exercise results; and that she did not explain the basis for her finding of total disability, as required by the Administrative Procedure Act.[6] Employer further argues that the administrative law judge erred in weighing the evidence on rebuttal. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to respond to employer's appeal, unless requested to do so by the Board.

[5] The Board noted that the applicable quality standards, set forth in 20 C.F.R. 718.105, "do not add any requirement related to the timing of the exercise study relative to the resting study, nor do they mandate a comparison of resting and exercise values." *Love*, BRB No. 13-0015 BLA at 5. The Board explained that the sole inquiry for the fact-finder is to determine whether the blood gas studies "show the values listed in Appendix C." *Id*.

[6] The Administrative Procedure Act provides that every adjudicatory decision must include a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

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.[7] 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).

When 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); *see White v. New White Coal Co., Inc.*, 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). In this case, claimant established the existence of pneumoconiosis in the prior claim but failed to prove total disability. Director's Exhibit 1. Claimant, therefore, had to submit new evidence establishing that he is totally disabled in order to obtain review of the merits of his claim. *See* 20 C.F.R. §725.309(c); *White*, 23 BLR at 1-3. Further, claimant was required to establish total disability in order to invoke the amended Section 411(c)(4) presumption.

I. INVOCATION OF THE PRESUMPTION – TOTAL DISABILITY

Relevant to 20 C.F.R. 718.204(b)(2)(ii),[8] the record consists of four blood gas studies that were submitted in conjunction with this subsequent claim. Two resting blood gas studies, dated June 8, 2010 and September 10, 2010, were non-qualifying for total disability. Claimant's Exhibit 2; Employer's Exhibit 5. Dr. Chavda conducted a resting blood gas study on December 21, 2009, which was also non-qualifying. Director's Exhibit 12. Eight days later, on December 29, 2009, Dr. Chavda conducted an exercise study, which resulted in qualifying values.[9] *Id*.

[7] Because claimant's last coal mine employment was in Kentucky, we will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

[8] The administrative law judge determined correctly that none of the newly submitted pulmonary function studies are qualifying for total disability under 20 C.F.R. §718.204(b)(2)(i). Decision and Order on Remand at 8; Director's Exhibit 1, 12, 14.

[9] Dr. Chavda explained during his deposition that resting and exercise blood gas studies were performed on separate days in his clinic, in order for him to be present for the exercise portion of the study. Employer's Exhibit 6 at 16-19.

On remand, the administrative law judge indicated that there were three issues to be resolved: 1) whether the exercise testing was valid; 2) whether the result reflects a pulmonary or cardiac condition; and 3) whether the qualifying exercise study satisfies claimant's burden of proof at 20 C.F.R. 718.204(b)(2)(ii). Decision and Order on Remand at 18. She observed that Dr. Jarboe "questioned the validity of the exercise study because oxygen saturation recorded with pulse oximetry during the test measured 95 to 98 [percent] higher than the saturation on the arterial sample of 93.8 [percent]." *Id*. The administrative law judge gave little weight to Dr. Jarboe's invalidation because "nothing in the regulations requires a correlation between pulse oximetry and blood gas results." *Id*. Because Dr. Chavda testified that claimant gave good effort on the exercise study,[10] and Dr. Gaziano indicated on a CM Form that the tests were acceptable, the administrative law judge concluded that the December 29, 2009 study was valid. *Id*. at 9.

The administrative law judge next considered the opinions of Drs. Chavda and Jarboe regarding the *cause* of claimant's exercise blood gas study results.[11] Dr. Chavda examined claimant and opined that the qualifying exercise study showed a disabling respiratory impairment. Director's Exhibit 12; Employer's Exhibit 6. In a consultative report dated July 26, 2001, Dr. Jarboe opined that claimant does not have a respiratory or pulmonary impairment. He observed that claimant's x-rays showed an enlarged heart and stated, "when [claimant] was examined by Dr. Repsher[,] his BNP [brain natriuretic peptide] was significantly elevated compatible with chronic congestive heart failure." Employer's Exhibit 4 at 8. Dr. Jarboe further stated: "[I]t is possible that [claimant] was in congestive heart failure. If resting gases had been obtained at the same time[,] they may have reflected that even at rest his arterial gases were abnormal due to some underlying medical condition." *Id*. Dr. Jarboe also opined: "It is entirely possible that [on the day of Dr. Chavda's exercise testing claimant] was hyperventilating and suffering from hypoxemia because of a flare of his heart disease." *Id*.

Unlike Dr. Jarboe, although Dr. Repsher indicated that claimant has severe heart disease, he did not associate that condition with the results of Dr. Chavda's exercise blood gas study. During his deposition, Dr. Repsher was informed that Dr. Chavda obtained a blood gas study that showed a drop in the PO2 value with exercise.

[10] Dr. Chavda testified that claimant "tried to perform the best he [could] on that day" but was only able to exercise for eight minutes until he became hypoxic. Employer's Exhibit 6 at 48

[11] The Board instructed the administrative law judge to address whether claimant is totally disabled, without regard to the cause of the qualifying exercise blood gas study values. *Love*, BRB No. 13-0015 BLA at 5. We consider the administrative law judge's error in failing to follow that instruction to be harmless, insofar as we affirm, *infra*, the administrative law judge's determination that claimant established total disability. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Employer's Exhibit 5 at 16. Dr. Repsher indicated that claimant's exercise impairment was "probably" due to claimant's stroke, which may have prevented claimant from taking a deep breath. *Id*.

In resolving the conflict in the evidence, the administrative law judge gave little weight to the opinions of employer's physicians and explained:

> Dr. Jarboe said that the exercise impairment was due to a cardiac condition, congestive heart failure, diagnosed by Dr. Repsher. Dr. Repsher diagnosed congestive heart failure based on a purported elevated BNP (brain natriuretic peptide) of 537. But the BNP value does not appear in any of the test results that accompanied Dr. Repsher's report. As a result, I find that Dr. Repsher's opinion on this issue is not documented. Because Dr. Jarboe relied on it, his opinion also fails . . .

Decision and Order on Remand at 19. The administrative law judge found that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii) because she considered "the exercise study [to be] a better indicator of the [c]laimant's ability to exert himself as would be required for him to work in the mines. *Id*. at 20. Moreover because the exercise study resulted in qualifying values, [claimant] has established that he is disabled based on it without regard to the particular requirements of his last job as a pinner." *Id*.

In considering the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge referenced her credibility determinations with regard to the exercise blood gas study, and gave controlling weight to Dr. Chavda's opinion that claimant has a totally disabling respiratory impairment. Decision and Order on Remand at 19. After her consideration of all the contrary probative evidence, the administrative law judge concluded that claimant proved that he is totally disabled by a respiratory or pulmonary impairment and, therefore, invoked the amended Section 411(c)(4) presumption. *Id*. at 20.

Employer asserts that the December 28, 2009 exercise blood gas study is not valid in the "absence of a contemporaneous baseline, resting test" conducted on the same date. Employer's Brief in Support of Petition for Review at 17. Employer's argument, however, was previously rejected in the prior appeal and the Board's decision now constitutes the law of the case. *See Coleman v. Ramey Coal Co.*, 18 BLR 1-9, 1-15 (1993); *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-150-51 (1990); *Love*, BRB No. 13-0015 BLA, slip op. at 5-6.

Employer also states that "it is well established that the validity of a test does not depend on the comments of the technician or doctor who performed the test." Employer's Brief in Support of Petition for Review at 15. Employer asserts that the

administrative law judge erred in relying on Dr. Gaziano's validation report because he check-marked a box indicating that the exercise study was technically acceptable, but did not otherwise explain his opinion. Director's Exhibit 12. Contrary to employer's contention, the administrative law judge had discretion to rely on Dr. Gaziano's validation report, in the absence of *contrary probative evidence* challenging the validity of the study, based on the quality standards set forth at 20 C.F.R. §718.105. The administrative law judge observed correctly that, despite Dr. Jarboe's criticisms of the exercise study, the quality standards do not require a correlation between pulse oximetry and blood gas results. *See* 20 C.F.R. §718.105; Decision and Order on Remand at 18-19. We affirm the administrative law judge's finding that the December 29, 2009 exercise study is valid, as "[t]here is no evidence that the testing did not meet the quality standards" contained in the regulations. Decision and Order on Remand at 19; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc).

With regard to the cause of the exercise impairment, employer contends that the administrative law judge overlooked that "Dr. Chavda did not dispute Dr. Jarboe's concerns" regarding claimant's heart condition or Dr. Jarboe's view that claimant "was unable to achieve maximum effort on exercise," because he was "experiencing an episode of congestive heart failure." Employer's Brief in Support of Petition for Review at 17. Contrary to employer's characterization, when asked during his deposition whether claimant was in congestive heart failure on the day he conducted the exercise study, Dr. Chavda stated: "I would say that he did not have any active problem that day." Employer's Exhibit 6 at 21. The administrative law judge observed correctly that Dr. Chavda "found no evidence of any acute cardiac problem when he examined [claimant], or when he supervised the exercise testing." Decision and Order on Remand at 19; *see* Employer's Exhibit 5. Moreover, as noted by the administrative law judge, Dr. Repsher testified at his deposition that, if there was a drop in claimant's PO2 with exercise, he would attribute it to claimant's stroke, which "undermined Dr. Jarboe's opinion that any deficit in his blood gases was 'possibly' the result of an exacerbation of heart failure." Decision and Order on Remand at 19; *see* Employer's Exhibit 5.

We also reject employer's contention that the administrative law judge erred in finding the opinions of Drs. Jarboe and Repsher to be insufficiently documented. *See Clark*, 12 BLR at 1-155. Employer does not dispute that Dr. Repsher diagnosed congestive heart failure, based on an alleged BNP measurement, which was not included in the test results attached to Dr. Repsher's report, and that Dr. Jarboe relied on the same BNP measurement in rendering his opinion. We therefore affirm these findings as unchallenged. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

The Sixth Circuit has made clear that questions regarding the credibility of the evidence is within the sound discretion of the administrative law judge.[12] *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1071 (6th Cir. 2013); *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983). Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the exercise blood gas study establishes a totally disabling respiratory or pulmonary impairment. The administrative law judge also permissibly determined that the exercise blood gas study was more probative than the resting blood gas studies regarding whether claimant was capable of performing coal mine work. *See Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-512 (6th Cir. 2002; *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-325 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003). We therefore affirm the administrative law judge's finding that claimant established total disability at 20 C.F.R. §718.204(b)(2)(ii).

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), employer contends that the administrative law judge erred in crediting Dr. Chavda's opinion that claimant is totally disabled because Dr. Chavda did not know the exertional requirements of claimant's usual coal mine employment. We disagree. On the Form CM-988, Dr. Chavda completed in conjunction with his examination, Dr. Chavda wrote:

> [Claimant] was employed as a pinner. He worked 6 days a week 10-12 [hour] shifts. He worked all shifts. Pins weigh 20-30 [pounds] and he would load them twice a shift. The cement blocks weighed 70 pounds. He walked the belt lines. He worked at the face of the coal . . .

Director's Exhibit 12. Dr. Chavda included claimant's own description of his physical limitations in the report, indicating that claimant could walk 300-400 feet before noticing

[12] Employer maintains that the administrative law judge's decision conflicts with the holding of the United States Court of Appeals for the Seventh Circuit in *Peabody Coal Co. v. Durbin*, 165 F.3d 1126, 21 BLR 2-538 (7th Cir. 1999). In *Durbin*, the Seventh Circuit held that, consistent with Federal Rule of Evidence 703, a medical opinion can be fully credited, even if the physician refers to items that are not in the record, "provided that they are the sort of thing on which a responsible expert draws in formulating a professional opinion." *Durbin*, 165 F.3d 1126, 1128, 21 BLR 2-538, 2-543. Contrary to employer's argument, because this case arises within the Sixth Circuit, the holding in *Durbin* is not controlling. Pursuant to 20 C.F.R. §725.455(b), an administrative law judge is not bound by statutory rules of evidence. 20 C.F.R. §725.455(b). The Board has also declined to apply *Durbin* in the context of cases arising under the revised regulations which provide for evidentiary limitations. *Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-107-108 (2006) (en banc) (McGranery & Hall, JJ., concurring and dissenting).

a change in breathing; climb one flight of stairs, and lift up to 5-60 pounds before noticing a change in his breathing. *Id*. In a progress note, Dr. Chavda stated:

> Due to the exercise hypoxia I can clinically say that [claimant] has substantial legal pneumoconiosis causing him total disability. This legal and clinical pneumoconiosis were substantially caused and aggravated by dust exposure during his coal mine employment. Due to total disability [claimant] will not be able to go back to coal mining employment.

Director's Exhibit 12 at 24. Based on Dr. Chavda's statements, we see no error in the administrative law judge's reliance on Dr. Chavda's opinion to find that claimant is totally disabled. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576-77, 22 BLR at 2-107, 2-121-22 (6th Cir. 2000); *Rowe*, 710 F.2d at 255, 5 BLR at 2-103. Furthermore, because the administrative law judge permissibly determined that Dr. Chavda's opinion is reasoned and documented, we affirm her finding that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).[13] *See* C*lark*, 12 BLR at 1-155.

Lastly, we reject employer's argument that the administrative law judge failed to give proper consideration to the non-qualifying pulmonary function studies in determining whether claimant satisfied his burden of proof. The administrative law judge observed correctly that pulmonary function tests and blood gas studies measure different types of impairment, and she rationally found that while "the pulmonary function tests did not result in qualifying values, they do not contradict the [qualifying exercise] blood gas study." Decision and Order on Remand at 20; *see Sheranko v. Jones and Laughlin Steel Corp.*, 6 BLR 1-797 (1984). Because the administrative law judge properly considered all the contrary probative evidence and explained the basis for her credibility determinations in accordance with the APA, we affirm her finding that claimant established total disability at 20 C.F.R. §718.204(b). *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987); Decision and Order on Remand at 20. We therefore affirm the administrative law judge's finding that claimant is entitled to invocation of the amended Section 411(c)(4) presumption of total disability due to pneumoconiosis, and has, thereby, established a change in an applicable condition of entitlement at 20 C.F.R. §725.309(d).

[13] The administrative law judge was instructed by the Board to resolve on remand whether Dr. Chavda treated claimant. *Love*, BRB No. 13-0015 BLA, slip op. at 6-7 n. 11. The administrative law judge found that he was not a treating physician. Decision and Order on Remand at 11-12.

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

Because claimant invoked the amended Section 411(c)(4) presumption, the burden shifted to employer to affirmatively disprove the existence of both clinical and legal pneumoconiosis, or establish 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) and (ii); *see Ogle*, 737 F.3d at 1072; *Island Creek Kentucky Mining v. Ramage*, 737 F.3d 1050, 1062, 25 BLR 2-453, 2-474 (6th Cir. 2013). The administrative law judge found that employer disproved the existence of clinical pneumoconiosis.[14] Decision and Order on Remand at 21-22. However, because neither Dr. Jarboe nor Dr. Repsher diagnosed a respiratory or pulmonary impairment, contrary to the administrative law judge's finding with respect to the exercise arterial blood gas study, we affirm the administrative law judge's finding that employer is unable to disprove that claimant has legal pneumoconiosis[15] or that claimant's disability is unrelated to pneumoconiosis.[16]

[14] "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. 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).

[15] "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).

[16] The administrative law judge observed that Dr. Repsher did not diagnose a respiratory or pulmonary impairment, in part, because he believed that "imposition of dust standards would have greatly reduced the concentration of coal mine dust [claimant] would have been exposed to." Decision and Order on Remand at 22; *see* Employer's Exhibit 5. The administrative law judge permissibly concluded that Dr. Repsher's testimony with regard to claimant's level of dust exposure was speculative and that Dr. Repsher "demonstrated no specific knowledge of the conditions [c]laimant was exposed to" in his coal mine employment. Decision and Order on Remand at 22; *see Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1071 (6th Cir. 2013); *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983). The administrative law judge also found that Dr. Jarboe's opinion was not sufficient to rebut the presumption "because Dr. Jarboe relied on Dr. Repsher's diagnosis of congestive heart failure," which, as discussed *supra* at 7, resulted in this Board's affirmance of the administrative law judge's finding that their opinions were insufficiently documented. Decision and Order on Remand at 22.

See Ogle, 737 F.3d at 1074; *Ramage*, 737 F.3d at 1062, 25 BLR at 2-474; *Peabody Coal Co. v. Smith*, 127 F.3d 504, 507, 21 BLR 2-180, 2-185-86 (6th Cir. 1997). Thus, we affirm, as supported by substantial evidence, the administrative law judge's determination that employer failed to rebut the presumption.[17]

Accordingly, the administrative law judge's Decision and Order Awarding Benefits on Remand 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 C. GILLIGAN
Administrative Appeals Judge

[17] Because the administrative law judge gave permissible reasons for rejecting the opinions of Drs. Repsher and Jarboe, it is not necessary that we address employer's argument that the administrative law judge did not consider all of the explanations provided by these physicians for their opinion that claimant does not have a respiratory or pulmonary impairment. *See Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983). We also consider any error by the administrative law judge in misstating whether Dr. Repsher reviewed Dr. Chavda's blood gas studies to be harmless, given the administrative law judge's alternative explanations for rejecting Dr. Repsher's opinion, which we have affirmed. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).