U.S. Department of Labor

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

BRB No. 15-0331 BLA

CALVIN R. CLYBURN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WESTMORELAND COAL COMPANY	)	DATE ISSUED: 06/30/2016
	)	
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 Awarding Benefits of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

Timothy C. MacDonnell and Marc E. Foto (Washington and Lee University School of Law, Legal Practice Clinic), Lexington, Virginia, for claimant.

Paul E. Frampton and Thomas M. Hancock (Bowles Rice LLP), Charleston, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2012-BLA-05077) of Administrative Law Judge Adele Higgins Odegard, rendered on a subsequent claim

filed on September 7, 2010,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). Because the newly submitted evidence was sufficient to establish that claimant is totally disabled, the administrative law judge found that claimant demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Based on the filing date of the subsequent claim, and her determinations that claimant established 15.63 years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment, the administrative law judge also found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[2] The administrative law judge further determined that employer failed to rebut the Section 411(c)(4) presumption. Accordingly, benefits were awarded.

On appeal, employer argues that the administrative law judge improperly invalidated Dr. Zaldivar's September 21, 2011 arterial blood-gas test, without any medical or legal basis. Employer contends that the administrative law judge erred in weighing the arterial blood-gas study and medical opinion evidence in finding that claimant established total disability for invocation of the Section 411(c)(4) presumption. Employer further maintains that the administrative law judge's errors in weighing the evidence on total disability also tainted her credibility determinations on rebuttal. Lastly, employer asserts that the administrative law judge erred in reviewing evidence submitted in conjunction with the prior claim in consideration of whether claimant established a change in an applicable condition of entitlement under 20 C.F.R. §725.309. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers'

[1] This is claimant's tenth claim for benefits. Director's Exhibit 10. Each of the nine prior claims was denied by a deputy commissioner/district director. Director's Exhibits 1-9. Claimant's last claim, filed on December 2, 2008 was denied by the district director because, while claimant established the existence of pneumoconiosis, he failed to establish total disability. Director's Exhibit 9. Claimant took no action with regard to that denial of benefits, until he filed his current subsequent claim on September 7, 2010. Director's Exhibit 11.

[2] Under 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 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.

Compensation Programs, has declined to file a brief in this appeal, unless specifically requested to do so by the Board.[3]

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.[4] 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

In this case involving a subsequent claim, the issue of total respiratory or pulmonary disability is relevant to invoking the Section 411(c)(4) presumption and establishing a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309.[5] The regulations provide that a miner shall be considered totally disabled if his respiratory or pulmonary impairment, standing alone, prevents the performance of his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). In the absence of contrary probative evidence, a miner's disability is established by: 1) pulmonary function tests showing values equal to or less than those listed in Appendix B to 20 C.F.R Part 718; or 2) arterial blood-gas tests showing values equal to or less than those listed in Appendix C of 20 C.F.R. Part 718; or 3) the miner has pneumoconiosis and is shown by the evidence

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established 15.63 years of underground coal mine employment. Decision and Order at 6; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as claimant's coal mine employment was in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 14.

[5] 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). The applicable conditions of entitlement are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because claimant's prior claim was denied for failure to establish total disability, claimant had to establish that element, based on the newly submitted evidence, in order to obtain review of his claim. 20 C.F.R. §725.309(c)(2), (3); *White v. New White Coal Co*., 23 BLR 1-1, 1-3 (2004).

to suffer from cor pulmonale with right-sided congestive heart failure; or 4) where total disability cannot be established by the preceding methods, a physician exercising reasoned medical judgment concludes that a miner's respiratory or pulmonary condition is totally disabling. 20 C.F.R. §718.204(b)(2)(i)-(iv).

The administrative law judge determined that claimant was unable to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), as the two newly submitted pulmonary function tests, dated February 25, 2011 and September 21, 2011, were non-qualifying.[6] Decision and Order at 8; Director's Exhibit 20; Employer's Exhibit 5. Pursuant to 20 C.F.R. §718.204(b)(2)(ii), the administrative law judge considered the two newly submitted blood-gas tests, also dated February 25, 2011 and September 21, 2011. The administrative law judge noted that the February 25, 2011 test, obtained by Dr. Rasmussen, had non-qualifying values at rest, but qualifying values with exercise. Decision and Order at 9; Director's Exhibit 20. In contrast, the September 21, 2011 test, conducted by Dr. Zaldivar, had non-qualifying values at rest and with exercise.[7] Decision and Order at 9; Employer's Exhibit 5. Based on her finding that a preponderance of the arterial blood-gas study evidence was non-qualifying, the administrative law judge determined that claimant was unable to establish total disability under 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 9. Furthermore, because there is no evidence in the record to establish that claimant suffers from cor pulmonale with right-sided congestive heart failure, the administrative law judge found that claimant was unable to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). *Id*.

[6]A "qualifying" pulmonary function test or blood-gas test 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. A "non-qualifying" test exceeds those values. See 20 C.F.R. §718.204(b)(2)(i), (ii).

[7] In his chart of the arterial blood-gas study evidence, the administrative law judge mistakenly reported that, during Dr. Zaldivar's September 21, 2011 blood-gas testing, claimant had a resting PCO2 of 40 and a PO2 of 80, and a post-exercise PCO2 of 39 and a PO2 of 97. Decision and Order at 9. The actual values reported by Dr. Zaldivar for the resting study were a PCO2 of 39 and a PO2 of 97, while the exercise study showed a PCO2 of 40 and a PO2 of 80. Employer's Exhibit 5. Although the administrative law judge inverted the values obtained by Dr. Zaldivar, we consider the administrative law judge's error to be harmless, as the administrative law judge correctly found that neither the resting nor the exercise blood-gas study obtained by Dr. Zaldivar was qualifying under the regulatory criteria. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge weighed the newly submitted medical opinions of Drs. Rasmussen, Zaldivar, and Rosenberg. Dr. Rasmussen examined claimant for the Department of Labor on February 25, 2011, and described in his report that claimant worked as a continuous miner operator, which required "heavy and some very heavy manual labor." Director's Exhibit 20. Dr. Rasmussen opined that claimant suffered from "minimal impairment in oxygen transfer during exercise," but he did not address whether claimant was totally disabled. *Id*. In a supplemental report dated March 26, 2013, Dr. Rasmussen indicated that he reviewed the results of "[twelve] evaluations of [claimant's] pulmonary function and gas exchange between July 11, 1994 and September 21, 2011." Claimant's Exhibit 3. Dr. Rasmussen observed that claimant had qualifying blood-gas values in 2009 and 2011 and stated that "there has been a gradual deterioration in gas exchange except in the case of Dr. Zaldivar." *Id*. In an August 8, 2013 supplemental report, Dr. Rasmussen also stated that claimant "exhibited a steady fall in arterial saturation," indicating "primary gas exchange abnormalities" that satisfied the standards for disability under the regulations. Claimant's Exhibit 7. He opined that claimant's "impairment in gas exchange with exercise" is significantly related to his coal mine dust exposure. *Id*.

Dr. Zaldivar examined claimant on September 21, 2011, and opined that claimant's lung volumes, diffusing capacity, and blood-gas tests were normal. Employer's Exhibit 5. Dr. Zaldivar reviewed Dr. Rasmussen's blood-gas testing from February 25, 2011, and opined that it was "not reconcilable" with his own testing. *Id*. Dr. Zaldivar considered his own blood-gas testing to be "accurate" and opined, based on the totality of his examination findings, that claimant has no respiratory or pulmonary impairment. *Id*. During his deposition conducted on July 8, 2013, Dr. Zaldivar opined that Dr. Rasmussen's blood-gas testing showed a rise in the PCO2 value with a corresponding decrease in the PO2 value, which he attributed to bronchospasm caused by asthma. Employer's Exhibit 10.

Dr. Rosenberg reviewed claimant's medical records, prepared a March 25, 2013 report, and was deposed on July 12, 2013. Employer's Exhibits 6, 9. Dr. Rosenberg diagnosed "an oxygenation abnormality, which has improved over time," and opined that it "probably relates to cardiac dysfunction" because claimant "had multiple myocardial infarctions with the need for bypass surgery and multiple stents with cardiomegaly being appreciated." Employer's Exhibit 6 at 3. During his deposition, when asked how he reconciled the different exercise PO2 values obtained by Drs. Rasmussen and Zaldivar, Dr. Rosenberg testified:

> Part of it is the difference in barometric pressures. Dr. Rasmussen's blood[-]gases are done with a barometric pressure of around 700. Dr. Zaldivar's were done around 750, in that range, 747. That's about a

> difference of 50 millimeters. Oxygen is around 21 percent of the 50 percent, so you are talking, you know, there's a difference of 10 millimeters of mercury from one reading to the next just based on altitude.
>
> So if Dr. Rasmussen's blood[-]gas studies had been done at the altitude of where Dr. Zaldivar's were, his would not have been qualifying.

Employer's Exhibit 9 at 15.

In considering the weight to accord the conflicting medical opinion evidence, the administrative law judge found it necessary to resolve the "widely divergent test results" obtained by Drs. Rasmussen and Zaldivar. Decision and Order at 17. Comparing the procedures conducted with regard to each of the exercise blood-gas studies, the administrative law judge noted that "the quantum of exercise" that claimant performed in each study was similar and that both Dr. Rasmussen and Dr. Zaldivar used an indwelling catheter as the means for collecting the exercise blood-gas sample. *Id*. The administrative law judge found that the "grade of the treadmill was greater" in the study by Dr. Rasmussen on February 25, 2011, but "the speed at which claimant exercised was greater" during the study conducted by Dr. Zaldviar on September 21, 2011. *Id*.

Taking into consideration Dr. Zaldivar's deposition testimony, regarding how claimant's exercise blood-gas study was conducted in his office, the administrative law judge concluded that "there is some evidence to suggest there was a delay in the draw of [claimant's] blood"[8] during Dr. Zaldivar's exercise study.[9] Decision and Order at

[8] The regulation at 20 C.F.R. §718.105(b) states, in pertinent part, that "[if] the results of the blood-gas test at rest do not satisfy the requirements of Appendix C to this part, an exercise blood-gas test shall be offered to the miner unless contraindicated. *If an exercise blood-gas test is administered, blood shall be drawn during exercise*." 20 C.F.R. §718.105(b) (emphasis added).

[9] The administrative law judge noted Dr. Zaldivar's testimony that "every attempt is made to draw blood before the individual being tested stops exercising, but on occasion this is delayed and the blood is drawn during the 'recovery' phase of the test, when the treadmill is slowing down." Decision and Order at 18; *see* Employer's Exhibit 10. She also noted that Dr. Zaldivar "could not recall precisely what occurred with claimant," although "the record indicates, and [he] testified that [claimant] asked to stop the exercise test because of shortness of breath." Decision and Order at 18. Reviewing the times recorded on Dr. Zaldivar's report of the arterial blood-gas testing, the administrative law judge observed that "the [exercise] arterial blood[-]gas sample was drawn at 14:23, 14

18. She concluded that this could possibly explain the discrepancy between the exercise arterial blood[-]gas test results" of February 25, 2011, and those of September 21, 2011. *Id*. The administrative law judge found Dr. Zaldivar's explanation, that the February 25, 2011 qualifying exercise values were the result of an asthmatic episode, to be "unlikely, because the record of the [c]laimant's arterial blood[-]gas tests, going back more than a decade to 2000, consistently showed the [c]laimant's PO2 level dropping with significant exercise." *Id*. at 21. The administrative law judge continued:

> In order to accept Dr. Zaldivar's hypothesis that the test result of [February 25, 2011] was skewed because the [c]laimant was experiencing an "asthmatic episode," I would have to accept that the [c]laimant's arterial blood[-]gas tests, dating back to 2000, were all affected by asthma. I find this to be improbable.

Id. at 22. The administrative law judge specifically noted that, while claimant had a family history of asthma, the medical records did not show that he was ever diagnosed with, or treated for, asthma. *Id*.

With regard to Dr. Rosenberg's opinion, the administrative law judge found that his consideration of the difference in altitudes between the testing facilities of Drs. Rasmussen and Zaldivar was "not relevant" under the regulations. Decision and Order at 18. The administrative law judge ultimately concluded that Dr. Zaldivar's exercise blood-gas study was "anomalous," and that his results were "not consistent with a record going back almost two decades and containing nine other exercise arterial blood[-]gas tests" showing reduced PO2 values. *Id*. at 22.

Crediting Dr. Rasmussen's opinion, the administrative law judge found that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 22. Weighing all of the evidence together, the administrative law judge concluded that claimant established that he has a totally disabling respiratory or

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minutes after the resting blood-gas sample was drawn at 14:09, but the total length of [claimant's] test was about 11 minutes and 13 seconds (9 minutes, 27 seconds of exercise plus 1 minute, 46 seconds of 'resting phase' before the exercise test began)." Decision and Order at 18. The administrative law judge found that the times recorded for the study "suggest that there may have been a lag between the end of the timed exercise phase of the test and the time that the blood was drawn" of "as much as two minutes and 47 seconds." *Id*.

pulmonary impairment pursuant to 20 C.F.R. §718.204(b). *Id*. at 22-23. She further found that claimant demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c). *Id*. at 23.

Employer argues that the administrative law judge erred by "ignoring" Dr. Zaldivar's non-qualifying exercise study in weighing the physician opinion evidence. Employer's Brief in Support of Petition for Review ("Employer's Brief") at 6. We disagree. Contrary to employer's characterization, the administrative law judge did not ignore Dr. Zaldivar's exercise study, nor did she improperly act as a medical expert in considering the weight to accord Dr. Zaldivar's medical opinion. Rather, in an effort to resolve the conflict in the evidence, as she is required to do as the trier-of-fact, the administrative law judge permissibly considered factors that could account for the divergent blood-gas study results. *See generally McGinnis v. Freeman United Coal Mining Co.*, 10 BLR 1-4 (1987). We see no error in the administrative law judge's consideration of Dr. Zaldivar's deposition testimony regarding how claimant's exercise arterial blood-gas study was conducted and her ultimate conclusion that "a delay in the draw of claimant's blood" during Dr. Zaldivar's testing "could possibly explain the discrepancy" between the results of the blood-gas tests on February 25, 2011, and September 21, 2011.[10] Decision and Order at 19. The administrative law judge has discretion to weigh the evidence and draw inferences therefrom, and the Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge.[11] *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *see also Poole v. Freeman United Coal Mining*

[10] The administrative law judge found that there is no evidence in the record addressing how a delay in the draw of an exercise arterial blood[-]gas sample affects the PO2 value obtained, but she "presume[d] there would be some effect" as the "the regulations mandate that blood obtained in an exercise arterial blood[-]gas test be drawn at the time of exercise." Decision and Order at 18 *citing* 20 C.F.R. §718.105(b). Contrary to employer's contention, we consider the administrative law judge's inference to be reasonable, in view of the plain language of 20 C.F.R. §718.105(b). *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

[11] Even if we were to conclude that the administrative law judge erred in drawing any inferences from Dr. Zaldivar's testimony, that error would be harmless, as the administrative law judge permissibly rejected Dr. Zaldivar's explanation that claimant's exercise blood-gas study values were qualifying with Dr. Rasmussen because he had an asthmatic episode during Dr. Rasmussen's examination. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-278 (1984).

Co., 897 F.2d 888, 893-94, 13 BLR 2-348, 2-355-56 (7th Cir. 1990) (An administrative law judge is tasked with "weigh[ing] conflicting evidence and draw[ing] inferences from it, and a reviewing court may not set aside an administrative law judge's inference merely because it finds another more reasonable or because it questions the factual basis.").

We also see no error in the administrative law judge's decision to credit Dr. Rasmussen's opinion, that claimant is totally disabled, as the administrative law judge rationally found that it is supported by the qualifying exercise blood-gas study and is better supported by the objective evidence of record.[12] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 n.9, 21 BLR 2-323, 2-335 n.9 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997). The administrative law judge permissibly concluded:

> Due to the qualifying arterial blood[-]gas test results, as well as the record of earlier tests showing a progressively worsening [sic] oxygen[] transfer impairment, I find that Dr. Rasmussen's conclusion that the [c]laimant has a disabling gas exchange impairment that would preclude his coal mine work is supported by the evidence of record. Further, I find that Dr. Rasmussen's conclusion that the [c]laimant has demonstrated a progressively worsening respiratory impairment on arterial blood[-]gas testing is also supported by evidence of record.

Decision and Order at 21; *see Lane v. Union Carbide Corp.*, 105 F.3d 166, 172, 21 BLR 2-34, 2-44 (4th Cir. 1997).

Lastly, there is no merit to employer's argument that the administrative law judge "ignored" Dr. Rosenberg's testimony regarding the effect of barometric pressure on the arterial blood gas tests.[13] Employer's Brief at 8. The regulations provide that a miner "shall be found to be totally disabled, in the absence of rebutting evidence," if the values are met in the applicable tables. 20 C.F.R. Part 718, Appendix C. There are three tables found at Appendix C: 1) For arterial blood-gas studies performed at test sites up to 2,999

[12] The administrative law judge included a chart of blood-gas studies dated August 2, 2000, October 21, 2002, January 26, 2005, January 11, 2007, and January 13, 2009. Each of these studies was a part of the record in claimant's prior claims and show that his PO2 values progressively declined from 69 in 2000, 67 in 2002, 63 in 2005, 62 in 2007, to 60 in 2009. Decision and Order at 20; Director's Exhibits 6-9.

[13] The regulations require that a blood-gas test specify the altitude and barometric pressure at which the test was conducted. 20 C.F.R. §718.105(c)(2)

feet above sea level; 2) For arterial blood-gas studies performed at test sites 3,000 to 5,999 feet above sea level; and 3) For arterial blood- gas studies performed at test sites 6,000 feet or more above sea level. *Id*.

In this case, Dr. Rasmussen check-marked a box on Form CM-1159, indicating that his blood gas study was performed at an elevation up to 2,999 feet above sea level, and that the barometric pressure was 684. Director's Exhibit 20. The parties do not dispute that Dr. Rasmussen's exercise blood-gas study results are qualifying for total disability, based on the first table values found at Appendix C for elevations up to 2,999 feet. Specifically, Dr. Rasmussen indicated that claimant's exercise study showed a PCO2 of 44 and a PO2 of 59. *Id*. The table values at Appendix C provide that if a miner has a PCO2 of 44, arterial PO2 values that are equal to or less than (mm Hg) 60 are qualifying for total disability.

The administrative law judge observed correctly that, while Dr. Rosenberg disagrees that Dr. Rasmussen's blood-gas test should be considered qualifying for total disability, the regulation "differentiates between altitudes that are less than 2,999 feet and altitudes above that level" in setting forth what values qualify for total disability under Appendix C.[14] Decision and Order at 18. Because the administrative law judge found that Beckley and Charleston are each below 2,999 feet,[15] she was correct to evaluate the blood gas study results from Drs. Rasmussen and Zaldivar under the same table at Appendix C. We therefore affirm the administrative law judge's conclusion that the difference in altitude between Beckley and Charleston is "not relevant" under the regulation. Decision and Order at 18; *see* 20 C.F.R. Part 718, Appendix C. Thus, we affirm the administrative law judge's decision to assign less weight to Dr. Rosenberg's opinion that claimant is not totally disabled. Decision and Order at 18; *see Cannelton Industries, Inc. v. Director, OWCP* [*Frye*], 93 Fed.Appx. 551, 2004 WL 720254 (4th Cir. Apr. 5, 2004) (unpub.) (upholding the administrative law judge's discrediting of a doctor's opinion which contradicts Appendix C); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951, 21 BLR 2-23, 2-31-32 (4th Cir. 1997).

[14] In addressing comments received before the final version of Appendix C was promulgated, the Department of Labor (DOL) acknowledged that altitude affects arterial blood-gas values, but explained that there is not a "straight-forward linear lowering of arterial blood oxygen tension as the oxygen pressure in the atmosphere decreases with altitude." 45 Fed. Reg. 13,678, 13,712 (Feb. 29, 1980). Consequently, the DOL adopted a sliding scale that designated three levels of altitude. *Id*.

[15] Charleston's altitude is 600 feet and Beckley's altitude is about 2,500 feet. Decision and Order at 18 at n. 30.

Because the administrative law judge acted within her discretion in rendering her credibility determinations, we affirm her finding that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76. We further affirm her overall finding, based on the evidence as a whole, that claimant suffers from a totally disabling respiratory or pulmonary impairment. We therefore affirm the administrative law judge's finding that claimant invoked the Section 411(c)(4) presumption.[16]

II. REBUTTAL OF THE SECTION 411(C)(4) PRESUMPTION

Once 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, 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); *see W. Va. 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.*, 25 BLR 1-149, 1-150 (2015) (Boggs, J., concurring and dissenting). The administrative law judge found that employer did not rebut the presumption under either method. Specifically, the administrative law judge rejected the opinions of Drs. Zaldivar and Rosenberg, that claimant does not have legal pneumoconiosis, because they failed to explain why coal dust exposure was not a substantial contributing factor for claimant's oxygen impairment, as shown by Dr. Rasmussen's qualifying exercise blood-gas study. The administrative law judge further determined that the opinions of Drs. Zaldivar and Rosenberg were not reasoned to disprove the presumed disability causation element. Decision and Order at 33.

[16] Additionally, there is no merit in employer's contention that the administrative law judge improperly relied on evidence from the prior claim to find a change in an applicable condition of entitlement. The administrative law judge permissibly considered the prior blood-gas studies, which were part of the record, in order to assess the credibility of the newly submitted blood-gas study and medical opinion evidence submitted for the subsequent claim. *Clark*, 12 BLR at 1-155. Contrary to employer's suggestion, the administrative law judge's finding that claimant established total disability is based solely on Dr. Rasmussen's newly submitted blood-gas test and his newly submitted medical opinion. We therefore affirm the administrative law judge's findings that claimant demonstrated a change in an applicable condition of entitlement under 20 C.F.R. §725.309. *See White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004).

Employer generally asserts that the administrative law judge's "interpretations of the medical opinion evidence regarding clinical pneumoconiosis, legal pneumoconiosis, and disability causation [relevant to rebuttal of the presumption] were all tainted by [her] errors in interpreting the evidence on disability." Employer's Brief at 12. However, because we have affirmed the administrative law judge's weighing of the evidence on total disability, employer's argument is moot. Decision and Order at 33; *see* 20 C.F.R. §718.305(d)(1)(i), (ii). As employer does not identify any other error by the administrative law judge in weighing the evidence on rebuttal, we affirm the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption, and we affirm the award of benefits. *See Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge