U.S. Department of Labor

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

BRB No. 14-0347 BLA

HERB SALLEY, JR.[1] (o/b/o HERBERT HOOVER SALLEY)	)	
Claimant-Respondent	)	
v.	)	
KENTUCKY PRINCE MINING COMPANY	)	DATE ISSUED: 03/18/2015
and	)	
ARROWPOINT CAPITAL/SECURITY INSURANCE COMPANY OF HARTFORD	)	
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 Alan L. Bergstrom, Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

John C. Morton and Austin P. Vowels (Morton Law LLC), Henderson, Kentucky, for employer.

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.

[1] Claimant is the son of the miner, who died on August 11, 2012. Claimant is pursuing the miner's claim on behalf of his estate for past due benefits. Director's Exhibits 21, 39; Claimant's Brief at 5.

Before: HALL, Acting Chief Administrative Appeals Judge, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer and its carrier (collectively "employer") appeal the Decision and Order - Awarding Benefits (2013-BLA-5260) of Administrative Law Judge Alan L. Bergstrom (the administrative law judge) rendered on a subsequent claim[2] filed 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 the miner with thirty-four years and four months of coal mine employment, as stipulated by the parties; determined that employer is the properly designated responsible operator herein; and adjudicated this claim, filed on November 30, 2011, pursuant to the regulatory provisions at 20 C.F.R. Parts 718 and 725. The administrative law judge found that the new evidence established total respiratory disability pursuant to 20 C.F.R. §718.204(b), thereby establishing a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309.[3] Applying amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4),[4] the administrative law

[2] The miner filed his initial claim for benefits on November 27, 1990, which was denied by the district director as an abandoned claim. Director's Exhibit 1. The miner's second claim, filed on February 18, 1994, was finally denied by the district director on June 13, 1995, because the miner failed to establish any element of entitlement. Director's Exhibit 2.

[3] Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309; *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309.

[4] Congress enacted amendments to the Act, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this miner's claim, the amendments reinstated the presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), which provides, in pertinent part, that if a miner worked fifteen or more years in underground coal mine employment or comparable surface coal mine employment, and if the evidence establishes a totally disabling respiratory impairment, there is a rebuttable presumption that the miner is totally disabled due to pneumoconiosis. Under the implementing regulations, once the presumption is invoked, the burden shifts to employer to rebut the presumption by showing that the miner did not have

judge determined that the miner's work in surface mines was performed in conditions substantially similar to those in underground coal mining, and that claimant was entitled to invocation of the presumption of total disability due to pneumoconiosis at amended Section 411(c)(4). Considering the entire record, the administrative law judge determined that employer failed to establish rebuttal of the presumption, and awarded benefits.

On appeal, employer challenges its designation as the responsible operator and the administrative law judge's determination that the miner's surface mine employment occurred in dust conditions substantially similar to those in an underground mine, entitling claimant to invocation of the amended Section 411(c)(4) presumption. Employer also challenges the administrative law judge's findings on rebuttal. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, asserting that employer is the properly designated responsible operator herein. Employer has filed a brief in reply to the Director's response.[5]

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.[6] 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).

Employer, Kentucky Prince Mining Company (Kentucky Prince Mining), contends that the administrative law judge erred in finding it to be the properly designated responsible operator herein. Employer maintains that liability should have been assessed against either of the miner's more recent employers, Star Mining Company

---

pneumoconiosis, or that no part of his disability was caused by pneumoconiosis. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305(d)(1)(i), (ii).

[5] We affirm, as unchallenged on appeal, the administrative law judge's determination that claimant established greater than fifteen years of coal mine employment; the presence of a totally disabling respiratory impairment at 20 C.F.R. §718.204(b); and a change in an applicable condition of entitlement at 20 C.F.R. §725.309. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner's coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc); Director's Exhibit 2.

(Star Mining) or Amax Coal Company, Incorporated (Amax Coal) as successor operators. Employer asserts further that because it is no longer in business and could not have employed the miner after June 30, 1990,[7] there is no evidence that it has sufficient assets to assume liability on this claim and, therefore, employer cannot meet the requirements of a potentially liable operator pursuant to 20 C.F.R. §725.495. Employer's Brief at 4-9. Employer's arguments are without merit.

Generally, the most recent coal mine operator that employed a miner for at least one year will be held liable as the operator responsible for the payment of any benefits awarded. 20 C.F.R. §725.495(a)(1). The applicable regulations provide that the Director bears the burden of proving that the designated responsible operator initially found liable for the payment of benefits pursuant to 20 C.F.R. §725.410 is a potentially liable operator that, *inter alia*, employed the miner for a period of not less than one year and is capable of assuming liability for the payment of continuing benefits. 20 C.F.R. §§725.494(e), 725.495. If the miner's most recent employer does not qualify as a potentially liable operator pursuant to 20 C.F.R. §725.494, then the responsible operator will be the potentially liable operator that next most recently employed the miner. 20 C.F.R. §725.495(a)(3). From a procedural standpoint, after a claim is filed and upon receipt of the miner's employment history, the district director has the duty to investigate whether any operator may be held liable for the payment of benefits as a responsible operator pursuant to 20 C.F.R. §§725.407(a), 725.494. The district director then makes preliminary findings as to the miner's entitlement and the identity of the responsible operator. 20 C.F.R. §725.410(a).

In the present case, the record reflects, and the district director found, that the miner's most recent coal mine employment was with Jimmy Branham Enterprises in 1994 and with Rowe & Robinson Construction Company from 1993 to 1994, but that the evidence does not support a full calendar year of employment by the miner with either company.[8] The miner's next most recent coal mine employment, according to the Social

[7] The record reflects that articles of dissolution for Kentucky Prince Mining Company (Kentucky Prince Mining) were filed and became effective on June 30, 1990. Employer's Exhibit 1; Director's Exhibit 38.

[8] The district director determined that the evidence does not support a full calendar year of employment with Jimmy Branham Enterprises, because the Social Security Administration (SSA) records reported only $2,166.45 in earnings in 1994. Director's Exhibits 5, 17, 40. Similarly, the district director determined that the evidence does not support a full calendar year of employment with Rowe & Robinson Construction Company, because SSA records reported earnings of $2,121.55 in 1993 and $99.00 in 1994. The district director further determined that "there was no apparent relationship between Rowe & Robinson Construction Company and/or Jimmy Branham Enterprises

Security Administration (SSA) records, was with Star Mining in 1992 and 1993. Director's Exhibit 17. The miner testified that, prior to working with Star Mining, he worked for "Kentucky Prince" from 1981 to 1992. Director's Exhibit 5 at 6. The SSA records indicate that the miner was employed by "Kentucky Prince Mining Company PTR, Roaring Creek Coal Corporation as general partner" from 1988 to 1992; by Kentucky Prince Mining from 1985 to 1987; and by Kentucky Prince Coal Corporation from 1981 to 1984. Director's Exhibit 17.

In his liability analysis of Star Mining, the district director concluded that even though the miner stated he worked for a full calendar year with Star Mining, the evidence of record showed less than one year of employment, as the president of Star Mining verified that the miner worked from April 15, 1992 to February 8, 1993, and the SSA records reflected earnings of $15,391.00 in 1992 and $3,264.75 in 1993. Director's Exhibits 15, 17, 40. The district director acknowledged employer's argument that Star Mining is a successor operator[9] to Kentucky Prince Mining, and that the miner's employment with Star Mining should be combined with his employment at Kentucky Prince Mining to establish over one year of coal mine employment. However, the district director determined that although "it appears that the two companies mined the same sites," a successor relationship between the two companies could not be confirmed by the Department of Labor, and that even if a successor relationship could be established, "the records maintained by the. . . [Department of Labor] show that Star Mining is no longer in business and that it was uninsured on [February 8, 1993, the miner's] last day of work for them." Director's Exhibits 18, 40. In his liability analysis of Kentucky Prince Mining, the miner's next most recent employer, the district director noted that "[a]n employer statement from Cannelton Inc./Amax [Coal] verifies employment with Kentucky Prince Mining Company from June 22, 1981 to January 1, 1992," and that SSA earnings were reported "with Kentucky Prince Coal Corporation from 1981 through 1984; Kentucky Prince Mining Company from 1985 through 1987; and Kentucky Prince Mining Company [as partner with Roaring Creek Coal Corporation] from 1988 through

---

to any other company for either company to be considered as a successor operator." Director's Exhibit 40. Employer does not contest these findings.

[9] A "successor operator" is defined as "[a]ny person who, on or after January 1, 1970, acquired a mine or mines, or substantially all of the assets thereof, from a prior operator, or acquired the coal mining business of such operator, or substantially all of the assets thereof[.]" 20 C.F.R. §725.492(a). Additionally, Section 725.492(b) provides that a successor operator is created when an operator ceases to exist by reorganization, liquidation, sale of assets, merger, consolidation, or division. 20 C.F.R. §725.492(b)(1)-(3).

1992." Director's Exhibit 40; *see also* Director's Exhibit 17. The district director further determined that because the records maintained by the Department of Labor show that Kentucky Prince Mining was insured by Security Insurance Company of Hartford on January 1, 1992, the claimant's last day of employment with Kentucky Prince Mining, it met all of the requirements of a potentially liable operator pursuant to 20 C.F.R. §725.494.

In finding that employer was properly designated as the responsible operator herein, the administrative law judge considered employer's argument that either Star Mining or Amax Coal is a successor operator to Kentucky Prince Mining. Reviewing the evidence of record, the administrative law judge found that "employer produced some evidence suggesting that Star Mining may qualify as a successor operator,"[10] but it failed to meet its burden of establishing that Star Mining "possesses sufficient assets to secure the payment of benefits." Decision and Order at 34. The administrative law judge noted that the district director produced a signed statement averring that the Office of Workers' Compensation Programs searched the black lung insurance records maintained by the Department of Labor and determined that Star Mining was neither covered by a policy of insurance, nor approved to self-insure its liability, on the date the miner was last employed by that operator.[11] Director's Exhibit 18. The administrative law judge correctly concluded that such a statement by the Department of Labor is sufficient, pursuant to 20 C.F.R. §725.495(d),[12] to establish a *prima facie* case that Star Mining was

[10] The administrative law judge noted the following evidence in support of a successor relationship: (1) the miner's statement that in 1992, Kentucky Prince Mining sold out to Star Mining Company (Star Mining), Director's Exhibit 37; (2) records from the Kentucky Mine Mapping Information System showing the two companies mined at the same location, Director's Exhibit 38, Exhibits C&D; and (3) Star Mining's response to the March 30, 1994 Notice of Claim for the miner's prior claim, in which Star Mining noted that the miner previously worked the same job for a different company. Director's Exhibit 2; Decision and Order at 34.

[11] The regulations require that a miner's last day of employment with an operator occur within the policy period. Each operator that is not authorized to self-insure must provide an insurance endorsement stating, in part, that "[i]nsuring Agreement IV (2) is amended to read 'by disease caused or aggravated by exposure of which the last day of the last exposure, in the employment of the insured, to conditions causing the disease occurs during the policy period, or occurred prior to (effective date) and claim based on such disease is first filed against the insured during the policy period.'" 20 C.F.R. §726.203(a).

[12] The regulations provide that: "[i]n any case . . . in which the operator finally designated as responsible . . . is not the operator that most recently employed the miner,

not financially capable of assuming liability for benefits. Decision and Order at 34-35. As employer failed to produce affirmative evidence to the contrary, by showing that Star Mining had an insurance policy in place on the miner's last day of employment or otherwise met the requirements of a potentially liable operator,[13] substantial evidence supports the administrative law judge's finding that Star Mining is incapable of paying benefits.

With respect to whether Amax Coal was a successor to Kentucky Prince Mining, the administrative law judge determined that "Amax Coal Industries, Inc. or Amax Coal are not mentioned in the Miner's Social Security records, W-2 forms, or Department of Labor filings, and neither Claimant nor the Miner ever stated that Amax was one of the Miner's employers." Decision and Order at 33-34; Director's Exhibits 2, 5, 17. The administrative law judge found that although the record suggests that Amax Coal/Amax Coal Industries, Inc. and employer were affiliated during the time the miner's prior claim was litigated,[14] "there is no actual evidence that Amax [Coal] was a successor operator to

---

the record shall contain a statement from the district director explaining the reasons for such designation." 20 C.F.R. §725.495(d). If the reasons include the most recent operator's failure to meet the conditions of Section 725.494(e), that it be capable of assuming liability for benefits, the district director must include in the record a statement that the Office of Workers' Compensation Programs has searched the files it maintains pursuant to Part 726, and that the Office has no record of insurance coverage or authorization to self-insure for that operator. "*Such a statement shall be prima facie evidence that the most recent employer is not financially capable of assuming its liability for a claim.*" 20 C.F.R. §725.495(d)(emphasis added).

[13] The regulation at 20 C.F.R. §725.495(c)(2) provides that employer may also satisfy its burden of establishing that the more recent employer possesses sufficient assets by presenting evidence that the owner, partners, or officers [depending on the company structure] that failed to secure the payment of benefits, possess assets sufficient to secure the payment of benefits, provided such assets may be reached.

[14] The administrative law judge noted that the May 14, 1994 Notice of Claim designates Amax Coal a/k/a Kentucky Prince Mining as the putative responsible operator; the operator's May 31, 1994 response lists the operator's name as Amax Coal/Kentucky Prince Coal Company; a letter dated October 21, 1994 from the operator's law firm indicates that it was representing Amax Coal/Kentucky Prince Mining through Underwriters Safety & Claims; and that the letter verifying the miner's employment dates with Kentucky Prince Mining was from Cannelton Incorporated, a subsidiary of Amax Coal Industries, Incorporated. Director's Exhibits 2, 16; Decision and Order at 34.

employer or that Amax [Coal] employed the miner." Decision and Order at 34. Thus, the administrative law judge concluded, and substantial evidence supports his finding, that employer failed to meet its burden of showing that Amax Coal or Amax Coal Industries, Incorporated are potentially liable operators that more recently employed the miner.

With respect to his designation of employer, Kentucky Prince Mining as the responsible operator, the administrative law judge noted employer's argument that it ceased to exist effective June 30, 1990 and, therefore, could not have employed the miner after that date and could not have insured the miner during the insurance coverage period of December 4, 1991 through December 4, 1992.[15] As the record indicates that: the miner testified he worked for employer until 1992; the SSA records show earnings for the miner with Kentucky Prince Mining from 1985 to 1987, and with Kentucky Prince Mining in partnership with Roaring Creek Coal Corporation from 1988 to 1992; the personnel administrator for Amax Coal Industries Incorporated, in response to a Department of Labor inquiry, affirmed that the miner worked from June 22, 1981 to January 1, 1992 for Kentucky Prince Mining; and employer acknowledged in its Response to the Notice of Claim that "this operator or its insurer is financially capable of assuming liability for the payment of benefits during coverage period of December 4, 1991 through December 4, 1992," substantial evidence supports the administrative law judge's finding that employer was capable of assuming liability for the payment of benefits as of the miner's last day of employment. Director's Exhibits 2, 16, 17, 33. While the record does not reveal the reason that a valid insurance policy existed in 1992 for a company that supposedly dissolved in 1990, an operator's dissolution does not relieve its carrier of the obligation to pay benefits. *See* 20 C.F.R. §726.204(b). Accordingly, we affirm the administrative law judge's determination that Kentucky Prince Mining and its carrier are capable of assuming liability for the payment of benefits, and that Kentucky Prince Mining is the properly designated responsible operator herein.

Employer next challenges the administrative law judge's invocation of the presumption at amended Section 411(c)(4). While employer agrees that the miner is disabled from a pulmonary perspective and that he worked over fifteen years in surface mining, employer asserts that claimant failed to prove that the miner's working conditions were substantially similar to those of an underground miner. Employer specifically argues that claimant provided no evidence as to the dust conditions prevailing

[15] In the Notice of Claim issued to Kentucky Prince Mining, the district director referenced workers' compensation insurance policy number WC-97-05-95, which employer agrees covered a policy period of December 4, 1991 through December 4, 1992. Director's Exhibits 30, 33.

in the miner's surface coal mine employment and, thus, cannot show that they were comparable to the conditions to which an underground miner would be exposed. Employer's Brief at 9-10. Employer's argument lacks merit.

To invoke the amended Section 411(c)(4) presumption, a miner must establish at least fifteen years of "employment in one or more underground coal mines," or of "employment in a coal mine other than an underground mine," in conditions "substantially similar to conditions in an underground mine." 30 U.S.C. §921(c)(4). In order for a surface miner to prove that his or her work conditions were substantially similar to those in an underground mine, the implementing regulation requires that claimant demonstrate that the miner was "regularly exposed to coal mine dust while working there." 20 C.F.R. §718.305(b)(2);[16] *see Antelope Coal Co./Rio Tinto Energy America v. Goodin*, 743 F.3d 1331, 1344, 25 BLR 2-549, 2-566 (10th Cir. 2014)(noting that the clarified standard under the revised regulations at Section 718.305(b)(2) provides sufficient guidance to measure similarity).

In this case, the administrative law judge analyzed the miner's written statements and claimant's[17] testimony regarding the miner's working conditions as a surface miner. Decision and Order at 19-21. Based on his consideration of this uncontradicted evidence, the administrative law judge found that the miner's surface mine work took place in dusty conditions comparable to those in an underground mine. The administrative law judge noted the miner's general description of his employment from 1957 to 1997 as encompassing work as a coal sweeper, which created "enormous amounts of coal dust;" as an auger operator, which created "large amounts of coal dust;" and as a motor grader operator, which exposed him to "much dust exposure similar to that of underground." Decision and Order at 20; Director's Exhibits 6-14. On his employment history form, for each named coal company, the miner responded "yes" to the question "were you exposed to dust?" Further, in his answers to interrogatories, the miner stated that his work environment was "extremely" dusty, making it difficult to see, and that his coal dust exposure was "constant." Decision and Order at 20; Director's Exhibits 5, 8. The administrative law judge also credited claimant's testimony that a photograph he

[16] Section 718.305(b)(2) provides that "the conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if the claimant demonstrates that the miner was regularly exposed to coal mine dust while working there." 20 C.F.R. §718.305(b)(2).

[17] Claimant, the miner's son, testified that he worked with the miner at some job sites. He further testified that the miner swept the coal dust off the top of the coal and claimant, a truck driver, waited for the miner to perform his job, so he could load the coal and take it to the processing plant. Hearing Transcript at 13-14.

produced at the hearing, showing the miner covered in coal dust, represented how the miner "looked for about 28 or 29 years of his life . . . . [e]very day he came home, all you could see was the whites in his eyes." Hearing Transcript at 15. Because it is based on substantial evidence, the administrative law judge's finding, that the miner's surface mine employment occurred in dust conditions substantially similar to those in an underground mine, is affirmed. Consequently, we affirm his finding that claimant was entitled to invocation of the presumption at amended Section 411(c)(4).

Lastly, employer challenges the administrative law judge's weighing of the evidence in finding that employer failed to rebut the amended Section 411(c)(4) presumption. Employer asserts that the administrative law judge erred in crediting the opinion of Dr. Forehand, that the miner's pneumoconiosis was a contributing cause of his disabling respiratory impairment, over the miner's treatment records and evidence from the prior claim, which contain no mention of pneumoconiosis. Employer's Brief at 10-13. Employer's arguments lack merit.

In finding that employer failed to affirmatively establish that the miner did not suffer from pneumoconiosis, the administrative law judge initially found the evidence submitted in the current claim to be more probative than the evidence from the miner's prior claim, given the latent and progressive nature of pneumoconiosis [18]and the fact that the prior claim was filed approximately seventeen years before the current claim. Decision and Order at 25-26. The administrative law judge determined that Dr. Alexander, a dually qualified B reader and Board-certified radiologist, and Dr. Forehand, a B reader, both interpreted the February 27, 2012 x-ray as positive for clinical pneumoconiosis, and Dr. Forehand diagnosed clinical pneumoconiosis in his medical opinion of the same date. Decision and Order at 26-27; Director's Exhibits 26, 27. The administrative law judge further determined that the February 3, 2011 and August 3, 2011 CT scans contained in the treatment records, which did not diagnose pneumoconiosis, were entitled to diminished weight, because no party established the medical acceptability and relevance of CT scan evidence pursuant to 20 C.F.R. §718.107(b), and because there is no indication that the doctors who interpreted the CT scans specifically took pneumoconiosis into account when interpreting them. Decision and Order at 27; Claimant's Exhibit 3. Thus, finding no medical evidence to affirmatively contradict the findings and opinions of Drs. Forehand and Alexander, the administrative law judge acted within his discretion in finding that employer failed to establish the absence of clinical pneumoconiosis arising out of coal mine employment,

[18] Pneumoconiosis may be latent and progressive. *See* 20 C.F.R. §718.201(c); *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 23 BLR 2-124 (D.C. Cir. 2002), *aff'g in part and rev'g in part Nat'l Mining Ass'n v. Chao*, 160 F. Supp.2d 47 (D.D.C. 2001).

based on a preponderance of the evidence of record, pursuant to 20 C.F.R. §718.305(d)(1)(i)(B). *See Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 700 F.3d 878, 881, 25 BLR 2-213, 2-218 (6th Cir. 2012); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011). As substantial evidence supports the administrative law judge's finding, it is affirmed.

The administrative law judge next considered the evidence relevant to the existence of legal pneumoconiosis, and determined that Dr. Forehand diagnosed chronic obstructive pulmonary disease (COPD) with arterial hypoxemia caused by cigarette smoking and coal dust exposure, opining that the miner's disabling pulmonary impairment is due to the "additive and equivalent" effects of cigarette smoke and occupational coal dust. Decision and Order at 26; Director's Exhibit 26. The administrative law judge considered the large discrepancy between his own finding of 42.5 pack-years of smoking and Dr. Forehand's reliance on 8.5 pack-years of smoking, and acted within his discretion in finding that it did not affect the credibility of the opinion, as the doctor "fully accounted for the effects of cigarette smoking" and concluded that the miner's "lengthy history of coal mine dust exposure was independently and additively significant to his development of lung disease," and thus "a more extensive smoking history would not have lessened the independent significance of the miner's lengthy history of dust exposure." Decision and Order at 28-29; *see Gorzalka v. Big Horn Coal Co.*, 16 BLR 1-48, 1-52 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(en banc). Finding that Dr. Forehand based his opinion on the miner's physical examination, patient interview, and objective test results, the administrative law judge permissibly found that the opinion was well-reasoned, well-documented, and entitled to full probative weight. Decision and Order at 26; *see Clark*, 12 BLR at 1-155; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). The administrative law judge noted that, while the miner's treatment records do not contain a diagnosis of pneumoconiosis, neither do they contain a doctor's opinion ruling out coal dust exposure as a contributing factor to the miner's lung disease, and Dr. Huet expressly stated that the lung disease was likely caused by "occupational or recreational exposures." Claimant's Exhibit 3. Thus, the administrative law judge properly found that "the miner's treatment records chronicling his struggle with severe lung disease are entirely consistent with the evidence from Drs. Forehand and Alexander diagnosing pneumoconiosis, and do not affirmatively rebut the presumption of pneumoconiosis." Decision and Order at 26; *see Morrison*, 644 F.3d at 480, 25 BLR at 2-9. As substantial evidence supports the administrative law judge's findings, we affirm his determination that employer failed to establish the absence of legal pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(i)(A). 30 U.S.C. §921(c)(4); *see* 20 C.F.R. §718.201.

Lastly, the administrative law judge rationally found that the same reasons he provided for crediting the opinion of Dr. Forehand on the issue of legal pneumoconiosis were applicable in crediting the physician's opinion, that pneumoconiosis was a

contributing cause of the miner's disabling respiratory impairment, over the remaining evidence of record on the issue of disability causation. Decision and Order at 29. As substantial evidence supports his credibility determinations, we affirm the administrative law judge's finding that employer failed to establish rebuttal of the amended Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305(d)(1)(ii).

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

SO ORDERED.

_____
BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

_____
REGINA C. McGRANERY
Administrative Appeals Judge

_____
JUDITH S. BOGGS
Administrative Appeals Judge