U.S. Department of Labor

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

BRB No. 15-0231 BLA

JERRY E. WILLIAMS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WABASH MINE HOLDING COMPANY	)	
	)	DATE ISSUED: 03/28/2016
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 of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Sandra M. Fogel (Culley & Wissore), Carbondale, Illinois, for claimant.

Cheryl L. Intravaia (Feirich/Mager/Green/Ryan), Carbondale, Illinois, 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, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (2013-BLA-5254) of Administrative Law Judge Alice M. Craft awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a claim filed on January 27, 2012.

Applying Section 411(c)(4), 30 U.S.C. §921(c)(4) (2012),[1] the administrative law judge credited claimant with at least twenty-one years of underground coal mine employment,[2] and found that the evidence established that claimant has a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge, therefore, found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis set forth at Section 411(c)(4). The administrative law judge further found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that, because the administrative law judge erred in finding that claimant established twenty-one years of underground coal mine employment, and total disability pursuant to 20 C.F.R. §718.204(b)(2), she erred in finding that claimant invoked the Section 411(c)(4) presumption. Employer also argues that the administrative law judge erred in applying the rebuttal provisions of Section 411(c)(4), and erred in finding that employer failed to rebut the Section 411(c)(4) presumption. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging the Board to reject employer's arguments that Section 411(c)(4) may not be applied to this claim, and that the administrative law judge applied an improper standard on rebuttal. Employer replied to both claimant and the Director, reiterating its arguments on appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where a miner worked fifteen or more years in underground coal mine employment or comparable surface coal mine employment, and a totally disabling respiratory impairment is established. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[2] The record reflects that claimant's coal mine employment was in Illinois. Director's Exhibit 2. 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).

U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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

Length of Coal Mine Employment

Initially, we decline to address employer's argument that the administrative law judge erred in finding that claimant established "at least 21 years" of underground coal mine employment. Decision and Order at 4. Employer has not explained how it was prejudiced by that finding, given its concession that claimant had 18.4 years of underground coal mine employment, more than the fifteen years needed to invoke the Section 411(c)(4) presumption.[3] *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-278 (1984); Employer's Brief at 11. We therefore affirm the administrative law judge's determination that claimant had "sufficient underground coal mine employment to trigger the [Section 411(c)(4)] presumption." Decision and Order at 26.

Total Disability

Employer argues that the administrative law judge erred in finding that the pulmonary function study and medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (iv).

The record contains three pulmonary function studies conducted on November 8, 2011, March 15, 2012, and June 28, 2012. The November 8, 2011 pulmonary function study produced qualifying values,[4] both before and after the administration of a bronchodilator. Employer's Exhibit 6. The March 15, 2012 pulmonary function study also produced qualifying values, both before and after the administration of a bronchodilator. Director's Exhibit 11. The June 28, 2012 pulmonary function study produced qualifying values before the administration of a bronchodilator, but non-qualifying values after the administration of a bronchodilator. Director's Exhibit 26.

[3] The administrative law judge did not discredit either of employer's physicians for relying on a history of less than twenty-one years of coal mine employment.

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

The administrative law judge disregarded the November 8, 2011 pulmonary function study, because the record reflected that it was performed while claimant was hospitalized for an exacerbation of chronic obstructive pulmonary disease (COPD).[5] Decision and Order at 10, 26. The administrative law judge further found that there was no evidence that claimant was experiencing an exacerbation of COPD or other pulmonary illness when either the March 15, 2012 or June 28, 2012 pulmonary function study was conducted. Decision and Order at 26. Addressing the conflicting results of the March 15, 2012 and June 28, 2012 pulmonary function studies, the administrative law judge accorded greater weight to the qualifying, pre-bronchodilator results, based on the Department of Labor's (DOL) recognition that, although the use of a bronchodilator may aid in determining the presence or absence of pneumoconiosis, it does not provide an adequate assessment of a miner's disability. Decision and Order at 26-27, *citing* 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980). Because both of the 2012 pulmonary function studies produced qualifying, pre-bronchodilator values and the March 15, 2012 study also produced qualifying values after the administration of bronchodilators, the administrative law judge found that the weight of the pulmonary function study evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i).[6] Decision and Order at 27, 28.

Employer argues that the administrative law judge erred in relying on the March 15, 2012 pulmonary function study, asserting that it was performed only four months after claimant had pneumonia and a pleural effusion. Employer's Brief at 14-15. Contrary to employer's contention, in crediting the March 15, 2012 pulmonary function study results, the administrative law judge specifically found that the record contained no evidence that claimant was experiencing an exacerbation of his pulmonary condition when the study was performed. Decision and Order at 26; 20 C.F.R. Part 718, App. B (2)(i).

[5] As recognized by the administrative law judge, Appendix B to 20 C.F.R. Part 718 provides that pulmonary function "[t]ests shall not be performed during or soon after an acute respiratory illness." 20 C.F.R. Part 718, App. B (2)(i).

[6] The administrative law judge also found that, because both of the arterial blood gas studies of record produced qualifying values, the blood gas study evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 27. We affirm this finding as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Additionally, because there is no evidence of cor pulmonale with right-sided congestive heart failure, the administrative law judge found that claimant could not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 26.

Employer argues further that the administrative law judge erred in "ignoring" the June 28, 2012 pulmonary function study results, which employer asserts are more probative as the most recent results, and in disregarding that study's non-qualifying, post-bronchodilator results. Employer's Brief at 14-15. Employer's contentions lack merit. Where the record contains both a pre-bronchodilator and post-bronchodilator result and one qualifies while the other does not, the administrative law judge must weigh the values and explain those results she finds more probative. *Keen v. Jewell Ridge Coal Corp.*, 6 BLR 1-454, 1-459 (1983). Here, the administrative law judge explained that she accorded greater weight to the pre-bronchodilator results of the most recent study, because DOL recognized that the use of a bronchodilator does not provide an adequate assessment of disability. Decision and Order at 27, *citing* 45 Fed. Reg. at 13,682. It was within the administrative law judge's discretion to consult the 1980 preamble as a statement of medical principles accepted by DOL, when she weighed the pulmonary function study evidence. *See Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008).

Further, employer argues that the administrative law judge erred in finding claimant's June 28, 2012 pre-bronchodilator study to be qualifying, given claimant's age when the study was administered. Employer's Brief at 16. This argument lacks merit. Claimant was 74 years of age at the time of the March 15, 2012 and June 28, 2012 pulmonary function studies. Absent medical evidence to the contrary, pulmonary function studies performed on a miner who is over age 71 must be treated as qualifying if the values produced by the miner would be qualifying for a 71 year old. *K.L.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-47 (2008). Under that standard, the administrative law judge properly found claimant's June 28, 2012 pre-bronchodilator pulmonary function study to be qualifying.[7] Decision and Order at 10, 26-27. Because it is supported by substantial evidence, we affirm the administrative law judge's finding

[7] Employer accurately notes that, in the case of an older miner, the opposing party may offer medical evidence to prove that a pulmonary function study that yields qualifying values for age 71 is actually normal or otherwise does not represent a totally disabling pulmonary impairment. *K.L.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-47 (2008); Employer's Reply Brief at 11. Employer contends that claimant's physician, Dr. Houser, offered such evidence, noting the doctor's statements that claimant's diffusing capacity results were in the "moderate" range, and that the June 28, 2012 post-bronchodilator pulmonary function study revealed "mild" obstruction. Claimant's Exhibit 7 at 61-62. Employer, however, submitted no medical evidence to prove that the pre-bronchodilator values upon which the administrative law judge relied were actually normal, or did not demonstrate total disability. *See Meade*, 24 BLR at 1-47. Therefore, we reject employer's contention that the administrative law judge overlooked relevant evidence.

that the weight of the pulmonary function study evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i).

Employer next challenges the administrative law judge's consideration of the medical opinion evidence pursuant to 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge considered the medical opinions of Drs. Murthy, Houser, Selby, and Zaldivar. Drs. Murthy and Houser opined that claimant is totally disabled from performing his last coal mine work from a respiratory standpoint. Director's Exhibit 11; Claimant's Exhibits 2, 5; Joint Exhibit 1. Dr. Selby diagnosed a significant pulmonary impairment, but initially stated that he could not say for certain whether claimant is disabled. Director's Exhibit 26. Dr. Selby subsequently testified that claimant is not disabled because "most, if not all" of his impairment could be lessened or eliminated with physical conditioning and treatment. Employer's Exhibit 4 at 11-13. Dr. Zaldivar initially opined that claimant is totally disabled, but subsequently testified that if claimant were to receive proper treatment and lose weight, his disability would not be permanent. Employer's Exhibits 3; 5 at 21-22.

The administrative law judge credited the opinions of Drs. Murthy and Houser, finding their opinions that claimant is totally disabled to be consistent with the objective evidence on which they relied, and with the medical evidence as a whole. Decision and Order at 27. The administrative law judge discredited the contrary opinions of Drs. Selby and Zaldivar. The administrative law judge found that Dr. Selby's conclusions were speculative and not consistent with the objective testing of record. The administrative law judge similarly discredited Dr. Zaldivar's assessment, that claimant's disability would not be permanent if he received treatment for asthma and lost weight, as speculative and not well-reasoned. *Id*.

Employer argues that the administrative law judge erred in discrediting the opinions of Drs. Selby and Zaldivar. We disagree. The administrative law judge permissibly discounted Dr. Selby's opinion, that claimant is not totally disabled since it is "possible" that claimant's pulmonary function "could" return to normal with treatment, because she found the opinion to be speculative. *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 893-94, 13 BLR 2-348, 2-355-56 (7th Cir. 1990); *Amax Coal Co. v. Burns*, 855 F.2d 499, 501 (7th Cir. 1988). The administrative law judge further permissibly discredited Dr. Selby's opinion because she found it to be inconsistent with the weight of the objective testing of record. *See Stalcup v. Peabody Coal Co.*, 477 F.3d 482, 484, 24 BLR 2-33, 2-37 (7th Cir. 2007). For the same reasons, the administrative law judge permissibly discredited Dr. Zaldivar's opinion, that "if" claimant received proper treatment for his asthma and lost weight, the "expectation" was that claimant's pulmonary impairment would improve to the point where he could exercise. *See Stalcup*, 477 F.3d at 484, 24 BLR at 2-37; *Burns*, 855 F.2d at 501; Decision and Order at 22, 27; Employer's Exhibit 5 at 21-22.

Employer also asserts that the administrative law judge failed to explain her determination to credit the opinions of Drs. Murthy and Houser that claimant is totally disabled. Employer's Brief at 16-19. We disagree. The administrative law judge found that Dr. Murthy based his opinion on a review of claimant's medical records, the results of the physical examination he performed, and the qualifying pulmonary function study and blood gas study results he obtained. Decision and Order at 27. The administrative law judge found that Dr. Houser also based his opinion on a review of the medical evidence of record, including the reports of Drs. Selby and Zaldivar. Further, the administrative law judge permissibly found that the opinions of Drs. Murthy and Houser were "in better accord" with the objective evidence of record. Decision and Order at 27; *see Stalcup*, 477 F.3d at 484, 24 BLR at 2-37. Thus, the administrative law judge rationally found their opinions to be documented, reasoned, and entitled to probative weight.[8] *See Stalcup*, 477 F.3d at 484, 24 BLR at 2-37; *Peabody Coal Co. v. McCandless*, 255 F.3d 465, 468-69, 22 BLR 2-311, 2-318 (7th Cir. 2001).

Because substantial evidence supports the administrative law judge's determination to accord greater weight to the opinions of Drs. Murthy and Houser, than to the opinions of Drs. Selby and Zaldivar, we affirm the administrative law judge's finding that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Amax Coal Co. v. Beasley*, 957 F.2d 324, 327, 16 BLR 2-45, 2-48 (7th Cir. 1992). Moreover, as the administrative law judge properly considered the medical opinion evidence in light of the pulmonary function and arterial blood gas study evidence, we affirm the administrative law judge's finding that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

In light of our affirmance of the administrative law judge's findings that claimant established at least fifteen years of underground coal mine employment, and the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2), we affirm the administrative law judge's finding that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4). 30 U.S.C. §921(c)(4).

[8] Employer argues that the administrative law judge should have excluded portions of the depositions of Drs. Murthy and Houser. Employer's Brief at 8-10. A review of the administrative law judge's Decision and Order reflects that she did not rely on the doctors' deposition testimony to find total disability established. Therefore, relevant to invocation, we need not address employer's argument. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1985).

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

Because 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 does not have either legal or clinical pneumoconiosis,[9] 20 C.F.R. §718.305(d)(1)(i), or by establishing 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)(1)(ii). The administrative law judge found that employer failed to establish rebuttal by either method.

Employer initially challenges the administrative law judge's application of the rebuttal provisions at 20 C.F.R. §718.305 to this case. Relying upon the language of 30 U.S.C. §921(c)(4), and the United States Supreme Court's holding in *Usery v. Turner-Elkhorn Mining Co.*, 428 U.S. 1, 37-38, 3 BLR 2-36, 2-58-59 (1976), employer asserts that the rebuttal limitations in the Act are inapplicable to coal mine operators and, therefore, 20 C.F.R. §718.305(d) is invalid. Employer's Brief at 36-37. Employer's contentions are substantially similar to the ones the Board rejected in *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 (2015) (Boggs, J., concurring & dissenting) and *Owens v. Mingo Logan Coal Co.*, 25 BLR 1-1, 1-4 (2011), *aff'd on other grounds*, 724 F.3d 550, 25 BLR 2-339 (4th Cir. 2013) (Niemeyer, J., concurring), and we reject employer's arguments here for the reasons set forth in those decisions. *See also W.Va. CWP Fund v. Bender*, 782 F.3d 129, 137-43, BLR (4th Cir. 2015) (rejecting the same arguments).

In evaluating whether employer established that claimant does not have legal pneumoconiosis, the administrative law judge considered the opinions of Drs. Selby and Zaldivar.[10] Drs. Selby and Zaldivar opined that claimant does not have legal

[9] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). "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." 20 C.F.R. §718.201(a)(1).

[10] The administrative law judge also considered the opinions of Drs. Murthy and Houser. The administrative law judge correctly noted that, as these physicians each attributed claimant's impairment, in part, to coal mine dust exposure, their opinions do not assist employer in carrying its burden to establish that claimant does not have legal

pneumoconiosis, but suffers from pulmonary impairments that are due solely to obesity, and to asthma, chronic bronchitis, and emphysema caused or exacerbated by smoking. Director's Exhibit 26-2; Employer's Exhibits 3-5. The administrative law judge discredited the opinions of Drs. Selby and Zaldivar because she found them to be poorly reasoned and inadequately explained. Decision and Order at 32-33. The administrative law judge, therefore, found that employer failed to disprove the existence of legal pneumoconiosis.

Employer asserts that the administrative law judge did not properly address whether the opinions of Drs. Selby and Zaldivar are sufficient to disprove legal pneumoconiosis. Employer's Brief at 28, 33. Employer asserts that the administrative law judge erred in requiring it to exclude any contribution by coal mine dust exposure to claimant's respiratory impairment "when employer is only required to demonstrate" that claimant's pulmonary impairment is not "significantly related to or substantially aggravated by" coal mine dust. Employer's Brief at 28, 33. Further, employer contends that the administrative law judge provided invalid reasons for discrediting the opinions of Drs. Selby and Zaldivar, and that the administrative law judge's "erroneous . . . assessment of the smoking histories relied upon by the physicians" further undermined her conclusions. Employer's Brief at 12-13, 25-37; Employer's Reply Brief at 8-9. Employer's contentions lack merit.

The administrative law judge correctly stated that in order to rebut the presumption, employer must "establish that [claimant does] not have pneumoconiosis as defined in the regulations." Decision and Order at 29; *see* 20 C.F.R. §718.305(d)(1)(i). Contrary to employer's assertion, the administrative law judge did not find the opinions of Drs. Selby and Zaldivar to be insufficient to disprove the existence of legal pneumoconiosis because they failed to rule out coal mine dust exposure as a cause of claimant's respiratory impairment. Decision and Order at 32-33. Rather, she found that their opinions on the existence of legal pneumoconiosis were not credible, taking into consideration the rationales provided by each physician. *Id*.

Specifically, the administrative law judge accurately noted that Drs. Selby and Zaldivar each opined that other factors or conditions, such as asthma, cigarette smoke

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pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 33; Director's Exhibit 11; Claimant's Exhibit 5. Therefore, relevant to rebuttal, we need not address employer's argument that the administrative law judge should have excluded portions of those physicians' deposition testimony, or its challenge to the administrative law judge's analysis of their opinions. Employer's Brief at 25.

exposure, and obesity, could fully account for claimant's pulmonary impairment.[11] Decision and Order at 32-33; Employer's Exhibits 3 at 6; 4 at 14-15. The administrative law judge permissibly discredited their opinions, however, because she found that neither physician adequately explained why claimant's years of coal mine dust exposure did not contribute, along with those other factors, to his obstructive lung disease and gas exchange impairment.[12] *See Beeler*, 521 F.3d at 726, 24 BLR at 2-103; *Poole*, 897 F.2d at 893-94, 13 BLR at 2-355-56; Decision and Order at 32-33.

The administrative law judge also considered Dr. Selby's testimony that he could exclude coal mine dust as a cause of claimant's impairment because it is "unusual or almost rare for the coal mine dust inhaled in this [geographical] area to cause emphysema or chronic obstructive pulmonary disease." Employer's Exhibit 4 at 14. The administrative law judge permissibly discredited Dr. Selby's opinion because she found that Dr. Selby relied on generalized anecdotal evidence that did not adequately address claimant's specific condition. *See Consolidation Coal Co. v. Director, OWCP* [*Burris*], 732 F.3d 723, 735 (7th Cir. 2013); *Beeler*, 521 F.3d at 726, 24 BLR at 2-103-04; *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); Decision and Order at 32.

Further, the administrative law judge permissibly found that, in relying on the reversibility of claimant's obstructive impairment to conclude that it is due solely to asthma unrelated to coal mine dust exposure, Dr. Zaldivar did not adequately explain why the irreversible portion of claimant's pulmonary impairment was not due, in part, to

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[11] Dr. Selby testified that he excluded coal mine dust exposure as a cause of claimant's impairment, in part, because claimant "had more than enough cigarette smoke exposure to explain any obstructive lung disease that he had." Employer's Exhibit 4 at 14-15. Dr. Zaldivar similarly opined that coal mine dust exposure "did not contribute to [claimant's] impairment in any manner, not even minimally. The impairment is fully explained by the obesity, longstanding asthma, longstanding smoking and diastolic dysfunction with fluid retention." Employer's Exhibit 3 at 6.

[12] We need not address employer's contention that the administrative law judge's evaluation of claimant's smoking history undermined her analysis of the physicians' opinions. The record reflects that all of the physicians of record agreed that cigarette smoking contributed to claimant's impairment. The dispute is whether coal mine dust was also a contributory factor. As we have affirmed the administrative law judge's determination to discredit the opinions of Drs. Selby and Zaldivar because they failed to adequately explain why coal mine dust exposure did not also contribute to claimant's respiratory impairment, any error in the administrative law judge's finding that claimant had "at most" a forty-nine pack year smoking history, is harmless. *See Larioni*, 6 BLR at 1-1278.

coal mine dust exposure. *See* 20 C.F.R. §718.201(a)(2); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 483, 22 BLR 2-265, 2-279 (7th Cir. 2001); *Consolidation Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004).

As the administrative law judge rationally discredited the opinions of Drs. Selby and Zaldivar, we affirm her finding that employer failed to disprove the existence of legal pneumoconiosis. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis.[13] *See* 20 C.F.R. §718.305(d)(1)(i). Accordingly, we affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption by establishing that claimant does not have pneumoconiosis.

Finally, employer contends that the administrative law judge erred in her consideration of whether employer rebutted the presumed fact of disability causation. Employer's Brief at 37-40. Employer must establish that "no part" of claimant's total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). We reject employer's assertion that the administrative law judge erroneously required it to rule out coal mine dust exposure, rather than pneumoconiosis, as a cause of the miner's disability. The administrative law judge accurately paraphrased the rebuttal standard, stating that employer could "rebut the presumption by establishing that pneumoconiosis did not contribute to the [c]laimant's pulmonary disability." Decision and Order at 33; *see* 20 C.F.R. §718.305(d)(1)(ii).

The administrative law judge permissibly discounted the disability causation opinions of Drs. Selby and Zaldivar because the physicians did not diagnose claimant with legal pneumoconiosis, contrary to the administrative law judge's finding that employer failed to disprove legal pneumoconiosis. *See Burris*, 732 F.3d at 735, 25 BLR at 2-425. Thus, we affirm the administrative law judge's finding that employer failed to establish that pneumoconiosis did not contribute to claimant's total disability, and we affirm the award of benefits. *See* 20 C.F.R. §718.305(d)(1)(ii).

[13] Therefore, we need not address employer's arguments challenging the administrative law judge's admission of claimant's rebuttal x-ray reading, or her weighing of the x-ray and other medical evidence in finding that employer also failed to disprove clinical pneumoconiosis. *See Larioni*, 6 BLR at 1-1278; Employer's Brief at 19-25.

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