U.S. Department of Labor

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

BRB No. 16-0271 BLA

HOWARD LEE BOWYER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CENTRAL APPALACHIAN COAL COMPANY	)	DATE ISSUED: 03/21/2017
	)	
	)	
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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Daniel K. Evans and Timothy C. MacDonnell (Black Lung Legal Clinic, Washington and Lee University School of Law), Lexington, Virginia, for claimant.

Mark J. Grigoraci (Robinson & McElwee PLLC), Charleston, West Virginia, for employer.

Sarah M. Hurley (Nicholas C. Geale, Acting Solicitor of Labor; Maia Fisher, 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 Awarding Benefits (2012-BLA-6200) of Administrative Law Judge Richard A. Morgan (the administrative law judge), rendered on a miner's claim filed pursuant to provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves claimant's request for modification of a subsequent claim filed on May 26, 2006.[1]

The administrative law judge credited claimant with "about" twenty-two years of coal mine employment, of which at least fifteen years were in an underground coal mine, and adjudicated the claim pursuant to the regulations contained in 20 C.F.R. Parts 718 and 725. Decision and Order at 4. The administrative law judge accepted employer's concession that claimant has a totally disabling respiratory or pulmonary impairment, finding that it was supported by the record. Based on his findings that claimant had at least fifteen years of underground coal mine employment and is totally disabled, the administrative law judge determined that claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis.[2] The administrative law judge further found that employer did not rebut the presumption. Consequently, the administrative law judge determined that claimant established a basis for modification of

[1] Claimant filed claims on July 19, 1985, October 8, 1996, and September 28, 1999. Director's Exhibit 1. Claimant's September 28, 1999 claim was denied by Administrative Law Judge Richard A. Morgan on December 10, 2004, because claimant failed to establish the existence of pneumoconiosis. *Id*. Claimant took no further action until he filed the current subsequent claim on May 26, 2006. Director's Exhibit 3. In a Decision and Order dated March 3, 2010, Administrative Law Judge Ralph A. Romano found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Director's Exhibit 62. Judge Romano therefore found that claimant failed to establish a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309, and denied benefits. *Id*. Claimant filed a timely request for modification on August 12, 2010. Director's Exhibit 63.

[2] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption that he is totally disabled 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.

his denied subsequent claim pursuant to 20 C.F.R. §725.310, and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. The administrative law judge then concluded that granting claimant's request for modification would render justice under the Act and awarded benefits accordingly.

On appeal, employer challenges the administrative law judge's determination that granting claimant's request for modification would render justice under the Act, as well as his finding that there was a mistake in a determination of fact in the prior denial of benefits. Employer also challenges the administrative law judge's determination that the Section 411(c)(4) presumption is applicable in modification proceedings. Finally, employer asserts that the administrative law judge erred in finding that it failed to rebut the Section 411(c)(4) presumption by disproving the existence of pneumoconiosis or by disproving total disability causation. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, responds and urges affirmance of the administrative law judge's granting of claimant's request for modification of his denied subsequent claim.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[3] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

I. MODIFICATION OF A DENIED SUBSEQUENT CLAIM

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); *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(c)(3). In this case, claimant's prior claim was denied because he failed to prove that he has pneumoconiosis. Director's Exhibit 1. Claimant therefore had to establish this element of entitlement in order to have a review of his current claim on the merits. 20 C.F.R. §725.309(c); *see Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 20 BLR 2-227 (4th Cir. 1996) (en banc), *rev'g* 57 F.3d 402, 19 BLR 2-223 (4th

[3] 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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 2.

Cir. 1995). Additionally, because claimant seeks modification of the denial of his 2006 subsequent claim under 20 C.F.R. §725.310, the administrative law judge was required to determine whether the prior denial contained a mistake in a determination of fact as to whether the newly developed medical evidence (i.e., the evidence developed since the March 3, 2010 denial of benefits) was sufficient to establish a change in an applicable condition of entitlement at 20 C.F.R. §725.309, or whether newly developed medical evidence submitted with the request for modification was sufficient to establish a change in the applicable condition of entitlement. *See Betty B Coal Co. v. Director, OWCP* [*Stanley*], 194 F.3d 491, 497, 22 BLR 2-1, 2-11 (4th Cir. 1999); *Hess v. Director, OWCP*, 21 BLR 1-141, 1-143 (1998).

Before granting the relief requested in a petition for modification, the administrative law judge must determine whether doing so would render justice under the Act. *See Banks v. Chi. Grain Trimmers Ass'n*, 390 U.S. 459, 464 (1968); *Westmoreland Coal Co. v. Sharpe* (*Sharpe II*), 692 F. 3d 317, 327-28, 25 BLR 2-157, 2-173-174 (4th Cir. 2012), *cert. denied*, 133 S.Ct. 2852 (2013). The United States Court of Appeals for the Fourth Circuit has held that an administrative law judge should consider: the requesting party's diligence and motive; the preference for accuracy as weighed against the interest in finality in decision-making; and the futility or mootness of a favorable ruling. *See Sharpe v. Director, OWCP* [*Sharpe I*], 495 F.3d 125, 128, 24 BLR 2-56, 2-68 (4th Cir. 2007); *Old Ben Coal Co. v. Director, OWCP* [*Hilliard*], 292 F.3d 533, 541, 22 BLR 2-429, 2-444 (7th Cir. 2002).

A. MODIFICATION BASED ON INVOCATION OF THE SECTION 411(c)(4) PRESUMPTION

Employer initially argues that claimant cannot establish a basis for modification by invoking the Section 411(c)(4) presumption, as modification is not available based on a change in law. This contention is without merit. Because modification can be established by demonstrating a mistake in a determination of fact, including the ultimate fact of entitlement, the administrative law judge properly determined that claimant was entitled to modification of the prior denial of his subsequent claim based on invocation of the Section 411(c)(4) presumption. *See Mullins v. ANR Coal Co.*, 25 BLR 1-49, 1-52-53 (2012); *see also V.M.* [*Matney*] *v. Clinchfield Coal Co.*, 24 BLR 1-65, 1-70-71 (2008) (A change in the ultimate factual issue may be grounds for finding a mistake in a determination of fact under 20 C.F.R. §725.310). We therefore affirm the administrative law judge's conclusion that claimant has established a basis for modification of the denial of his subsequent claim pursuant to 20 C.F.R. §725.310.

B. MODIFICATION RENDERS JUSTICE UNDER THE ACT

As the Fourth Circuit recognized in *Sharpe I*, 495 F.3d at 133, 24 BLR at 2-69, whether to grant or deny a request for modification is a decision committed to the discretion of the administrative law judge. In this case, the administrative law judge found that granting modification would render justice under the Act because the issue of the existence of legal pneumoconiosis had not been considered in Administrative Law Judge Ralph A. Romano's 2010 denial of the current subsequent claim or by the district director in denying the current request for modification. Decision and Order at 22-23. The administrative law judge also cited claimant's submission of evidence developed through a more recent examination which includes more recent x-ray evidence, "which is sufficiently compelling to serve justice under the Act." *Id*. at 23.

Employer argues that the administrative law judge's finding must be vacated because he erred in determining that the issue of legal pneumoconiosis was not addressed in the denials of claimant's 2006 subsequent claim and claimant's request for modification.[4] We need not address this argument. Because employer does not contest the administrative law judge's finding that claimant's submission of "compelling" new evidence established that modification would render justice under the Act, we affirm this finding as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-610, 1-611 (1983). Accordingly, we affirm the administrative law judge's findings of a mistake in a determination of fact under 20 C.F.R. §725.310, a change in an applicable condition of entitlement under 20 C.F.R. §725.310, and further affirm the administrative law judge's granting of claimant's request for modification because it renders justice under the Act.[5]

[4] The district director and Judge Romano discredited the medical opinions diagnosing pneumoconiosis because the physicians relied on positive x-ray interpretations that were outweighed by negative x-ray interpretations performed by a physician with better radiological qualifications. Director's Exhibits 62, 73.

[5] We note that the administrative law judge held that he was required to make a "threshold" determination of whether granting modification would render justice under the Act prior to considering the modification petition on the merits. Decision and Order at 22, *citing Sharpe v. Director, OWCP* [*Sharpe I*], 495 F.3d 125, 128, 24 BLR 2-56, 2-68 (4th Cir. 2007). While *Sharpe I* held that an administrative law judge must consider the question before ultimately granting the relief requested in a modification petition, nothing in *Sharpe I* establishes that an administrative law judge must make the determination at the outset. Instead, the timing of the inquiry will be dictated by the individual facts of the case. While it might make sense to make a threshold determination in cases of bad faith, for example, it does not follow that a threshold determination is appropriate in cases such as this where newly submitted evidence

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

Because claimant invoked the Section 411(c)(4) presumption, the burden shifted to employer to rebut the presumption by establishing that claimant does not have legal[6] or clinical[7] pneumoconiosis, or 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, 25 BLR 2-689, 2-699 (4th Cir. 2015); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 154-56 (2015) (Boggs, J., concurring and dissenting).

A. EXISTENCE OF PNEUMOCONIOSIS ARISING OUT OF COAL MINE EMPLOYMENT

Based on a review of the relevant x-ray and medical opinion evidence, the administrative law judge determined that employer rebutted the presumed fact that claimant has clinical pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(i)(B).[8]

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establishes a mistake in the ultimate fact of entitlement, which depends on a thorough consideration of the merits. *See O'Keeffe v. Aerojet General Shipyards, Inc.*, 404 U.S. 254, 255 (1971) (the plain purpose of modification is to vest an adjudicator "with broad discretion to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted."). Given our affirmance of the award of benefits, however, any error is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1985).

[6] Pursuant to 20 C.F.R. §718.201(a)(2), legal pneumoconiosis is defined as "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The regulations also provide, "a disease 'arising out of coal mine employment' includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[7] Clinical pneumoconiosis is defined as "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).

[8] The administrative law judge found the x-ray evidence negative for pneumoconiosis. Decision and Order at 32. With respect to the medical opinion evidence, the administrative law judge credited the opinions of Drs. Zaldivar, Bellotte, and Rosenberg, each of which opined that claimant does not have clinical

Decision and Order at 32, 36. In considering whether employer disproved the existence of legal pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(A), the administrative law judge weighed the medical opinions of Drs. Rasmussen, Cohen, Zaldivar, Bellotte, and Rosenberg. Drs. Rasmussen and Cohen opined that claimant suffers from legal pneumoconiosis, in the form of chronic obstructive pulmonary disease (COPD) due, in part, to coal mine dust exposure.[9] Director's Exhibits 29, 71. In contrast, Drs. Zaldivar, Bellotte and Rosenberg opined that claimant does not have legal pneumoconiosis, but suffers from an obstructive impairment caused solely by cigarette smoking.[10] Director's Exhibits 11, 28; Employer's Exhibits 2, 3, 4, 8.

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pneumoconiosis. Decision and Order at 36; Director's Exhibits 11, 28; Employer's Exhibit 8. He accorded little weight to the diagnoses of clinical pneumoconiosis made by Drs. Rasmussen and Cohen because they were based on their positive interpretations of x-rays that the administrative law judge had determined were negative for the disease. Decision and Order at 36; Director's Exhibits 10, 29, 71.

[9] Dr. Rasmussen submitted a report dated August 29, 2006, which the administrative law judge discredited because Dr. Rasmussen did not identify any documentation in support of his opinion that claimant's obstructive impairment had progressed since he left the mines. Decision and Order at 34; Director's Exhibit 10. In a subsequent report dated May 14, 2010, which the administrative law judge credited, Dr. Rasmussen diagnosed chronic obstructive pulmonary disease (COPD) and emphysema attributable to both coal mine dust exposure and cigarette smoking. Director's Exhibit 71. Dr. Cohen submitted a report dated August 20, 1997, in which he diagnosed chronic bronchitis, an early obstructive defect with moderate diffusion impairment, and mild resting hypoxemia caused by coal mine dust exposure and smoking. Director's Exhibit 29.

[10] Dr. Zaldivar provided reports dated January 2, 2007 and September 2, 2008. Director's Exhibit 28; Employer's Exhibit 4. He diagnosed moderate irreversible airway obstruction and emphysema and stated that they are unrelated to coal mine dust exposure, based on the absence of radiological evidence of pneumoconiosis and the results of claimant's objective studies. *Id.* Dr. Bellotte submitted a report dated August 1, 2007, that included a diagnosis of COPD with emphysema, due entirely to cigarette smoking with no contribution from coal dust exposure. Director's Exhibit 28; Employer's Exhibits 2, 3. Dr. Bellotte cited the lack of radiological evidence of pneumoconiosis and claimant's reduced diffusing capacity in support of his opinion. *Id.* In a report dated February 28, 2015, Dr. Rosenberg diagnosed COPD with emphysema, due to cigarette smoking and unrelated to coal mine dust exposure, based on claimant's reduced diffusing capacity. Employer's Exhibit 8.

The administrative law judge credited the diagnoses of legal pneumoconiosis made by Drs. Rasmussen and Cohen, finding them to be well-reasoned and well-documented. Decision and Order at 34-36. In contrast, the administrative law judge found that Dr. Zaldivar's opinion ruling out the presence of legal pneumoconiosis was "poorly reasoned" because he relied on an inaccurate definition of the disease and failed to consider coal mine dust as an aggravating factor in claimant's obstructive impairment. *Id*. at 34-35. The administrative law judge discredited Dr. Bellotte's opinion because it was inconsistent with the medical science accepted by the Department of Labor in the preamble to the 2001 regulatory revisions, and Dr. Bellotte did not discuss whether coal mine dust was an aggravating factor in claimant's lung disease. *Id*. at 35. Finally, the administrative law judge concluded that Dr. Rosenberg's opinion was entitled to less weight because it contained an "inconsistency," in that "Dr. Rosenberg described observations that indicate that the Claimant's alveolar bed is intact and also described that the reduced diffusing capacity indicated that the Claimant has widespread, diffuse destruction of the alveolar bed caused by smoking." *Id*. at 35-36.

Upon weighing the medical opinion evidence together, the administrative law judge found that the opinions of Drs. Zaldivar, Bellotte, and Rosenberg were insufficient to rebut the presumption that the claimant suffers from a "chronic lung disease significantly related to or substantially aggravated by coal mine dust exposure," i.e., legal pneumoconiosis. Decision and Order at 35-36. Therefore, the administrative law judge concluded that employer failed to rebut the presumption by establishing that claimant does not have legal pneumoconiosis under 20 C.F.R. §718.305(d)(1)(i)(A). *Id.* at 36.

Employer contends that the administrative law judge erred in according diminished weight to the opinions of Drs. Zaldivar, Bellotte, and Rosenberg on the issue of the existence of legal pneumoconiosis.[11] We disagree. The administrative law judge permissibly discounted Dr. Zaldivar's opinion because, in the course of excluding coal dust exposure as a cause of claimant's COPD and emphysema, Dr. Zaldivar "did not discuss whether the Claimant's twenty-two years of coal mine dust exposure could have substantially aggravated the Claimant's emphysema or obstruction." Decision and Order

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[11] Employer also alleges error in the administrative law judge's crediting of the diagnoses of legal pneumoconiosis made by Drs. Rasmussen and Cohen. We decline to address employer's contentions, because the opinions of Drs. Rasmussen and Cohen are not supportive of employer's burden to rebut the presumed existence of legal pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(A). Accordingly, error, if any, in the administrative law judge's weighing of these opinions is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1284 (1984).

at 35; *see Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558, 25 BLR 2-339, 2-353 (4th Cir. 2013); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th. Cir. 1998). The administrative law judge's discrediting of Dr. Bellotte's opinion was also within his discretion as fact-finder, based on Dr. Bellotte's failure to "offer any opinion as to whether or not the Claimant's emphysema was substantially aggravated by coal mine dust exposure," or to "explain how he excluded twenty-two years of coal mine dust exposure as a cause of the Claimant's emphysema." Decision and Order at 35; *see Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 253-54, 25 BLR 2-779, 2-788 (4th Cir. 2016).

With respect to Dr. Rosenberg's opinion, it is well-established that an administrative law judge may discredit a physician's finding if the physician makes inconsistent statements in the course of reaching his or her conclusion. *See Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985). The administrative law judge therefore reasonably found that Dr. Rosenberg's opinion was entitled to little weight because Dr. Rosenberg based his identification of smoking as the sole cause of claimant's COPD on a determination that claimant's reduced diffusing capacity indicated "widespread destruction of the alveolar capillary bed," while stating at another point that claimant's exercise blood gas study results established that his alveolar capillary beds "were generally intact." Employer's Exhibit 8; *see Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); Decision and Order at 36.

As the trier-of-fact, the administrative law judge has discretion to assess the credibility of the medical opinions, based on the explanations given by the experts for their diagnoses, and assign those opinions appropriate weight. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 323, 25 BLR 2-255, 2-263 (4th Cir. 2013) (Traxler, C.J., dissenting); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 315-16, 25 BLR 2-115, 2-130 (4th Cir. 2012). The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988). Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Zaldivar, Bellotte, and Rosenberg, the opinions supportive of a finding that claimant does not suffer from legal pneumoconiosis, we affirm his finding that employer failed to rebut the presumed fact of legal pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(A).[12] *See Bender*, 782 F.3d at 137, 25 BLR at 2-699; *Hicks*, 138 F.3d at 533, 21 BLR at 2-335.

[12] Because the administrative law judge acted within his discretion in giving less weight to the opinions of Drs. Zaldivar and Bellotte for failure to adequately address coal dust exposure as an aggravating factor in claimant's COPD, and to Dr. Rosenberg's opinion because it was internally inconsistent, we need not address employer's challenges

Employer also alleges that the administrative law judge erred in determining that it failed to establish rebuttal of the presumption set forth in 20 C.F.R. §718.203(b), that claimant's presumed legal pneumoconiosis arose out of coal mine employment. We reject employer's argument. The administrative law judge properly concluded that his finding that employer did not affirmatively disprove the existence of legal pneumoconiosis, subsumed a determination that claimant's presumed legal pneumoconiosis arose out of his coal mine employment. *See Kiser v. L & J Equipment Co.*, 23 BLR 1-246, 1-259 n.18 (2006); Decision and Order at 37.

B. TOTAL DISABILITY CAUSATION

Finally, employer contends that the administrative law judge erred in determining that it did not rebut the presumed fact of total disability causation under 20 C.F.R. §718.305(d)(1)(ii), reiterating the allegations of error it raised with respect to the administrative law judge's findings on legal pneumoconiosis. Employer's contention does not have merit. As Drs. Zaldivar, Bellotte, and Rosenberg did not diagnose legal pneumoconiosis, the administrative law judge rationally concluded that their opinions were not credible to disprove the presumed fact of disability causation. *See Scott v. Mason Coal Co.*, 289 F.3d 263, 270, 22 BLR 2-372, 2-384 (4th Cir. 2002); *see also Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062, 25 BLR 2-453, 2-474 (6th Cir. 2013); Decision and Order at 40. Thus, we affirm the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305(d)(1)(ii), by establishing that no part of claimant's total respiratory or pulmonary disability was caused by pneumoconiosis. *See Bender*, 782 F.3d at 143-44, 25 BLR at 2-708-10.

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to the additional rationales the administrative law judge provided. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (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