U.S. Department of Labor

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

BRB No. 16-0276 BLA

ARLIN R. CURNEAL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CHRISTUS TRUCKING, LLC	)	DATE ISSUED: 03/21/2017
	)	
and	)	
	)	
KENTUCKY EMMPLOYER'S MUTUAL INSURANCE	)	
	)	
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 Timothy J. McGrath, Administrative Law Judge, United States Department of Labor.

Brent Yonts, Greenville, Kentucky, for claimant.

Paul E. Jones and Denise Hall Scarberry (Jones, Walters, Turner & Shelton PLLC), Pikeville, Kentucky, for employer.

Emily Goldberg-Kraft (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, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Christus Trucking, LLC (Christus Trucking or employer) appeals the Decision and Order Awarding Benefits (2013-BLA-05438) of Administrative Law Judge Timothy J. McGrath, rendered on a claim filed on April 13, 2012, 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 accepted the parties' stipulation that claimant worked twenty-six years in coal mine employment. He found that twenty-one years of claimant's employment were in underground mines, that claimant established a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2), and that claimant therefore 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).[1] The administrative law judge further found that employer did not rebut the presumption, and awarded benefits accordingly.

On appeal, employer challenges its designation as the responsible operator liable for payment of benefits. Employer also argues that the administrative law judge erred in finding that claimant is totally disabled and is therefore entitled to the Section 411(c)(4) presumption. Additionally, employer challenges the administrative law judge's finding that it failed to rebut the presumption. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, asserting that employer was properly designated as the responsible operator.[2]

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[1] Section 411(c)(4) of the Act provides a rebuttable presumption that claimant is totally disabled due to pneumoconiosis if he establishes at least fifteen years of underground coal mine employment, or coal mine employment in conditions that are 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.

[2] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established more than fifteen years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

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).

Responsible Operator

The regulations impose liability for the payment of benefits on the "potentially liable operator" that most recently employed the miner for a cumulative period of not less than one year.[4] 20 C.F.R. §§725.494(c), 725.495(a)(1). To avoid liability, the designated responsible operator has the burden to prove either that it does not possess sufficient assets to secure the payment of benefits or that it is not the potentially liable operator that most recently employed the miner. 20 C.F.R. §725.495(c). If a successor relationship is established, a miner's tenure with a prior and successor operator may be aggregated to establish the requisite one year period of employment, such that liability may be imposed on the successor operator. *See* 20 C.F.R. §§725.101(a)(32), 725.103, 725.492, 725.494(c).

Christus Trucking/employer does not dispute that it employed claimant for more than one year. Instead, relying on claimant's hearing testimony, Christus Trucking asserts that JMJ Trucking, Inc. (JMJ Trucking) is liable for benefits because it qualifies as a successor operator of Christus Trucking and two other companies, all of which were

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[3] As claimant's coal mine employment was in Kentucky, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. Director's Exhibit 3; *see Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[4] The regulation at 20 C.F.R. §725.494 sets forth the following criteria for identifying a potentially liable operator: (a) the miner's disability or death arose out of employment with that operator; (b) the operator, or any person with respect to which the operator may be considered a successor operator, was an operator for any period after June 30, 1973; (c) the miner was employed by the operator, or any person with respect to which the operator may be considered a successor operator, for a cumulative period of not less than one year; (d) the miner's employment included at least one working day after December 31, 1969; and (e) the operator is financially capable of assuming liability for the claim. 20 C.F.R §725.494(a)-(e).

owned by the same individual, Mr. Harold Thomas, but operated under different names.[5] Christus Trucking requests that it be dismissed as a party to the claim and that liability for benefits be transferred to the Black Lung Disability Trust Fund, as JMJ Trucking was not properly identified as a potentially liable operator by the district director. We reject employer's arguments, as they are without merit.

An itemized statement of earnings report from the Social Security Administration indicates that claimant was employed with: 1) Thomas and Thomas, Inc. in 2002, 2003, and 2004; 2) L & J Trucking, Inc. in 2004; 3) Christus Trucking/employer in 2004, 2005, and 2006; and 4) JMJ Trucking, Inc. in 2006. Decision and Order at 6; Director's Exhibit 9.

The administrative law judge summarized relevant portions of claimant's hearing testimony as follows:

> Claimant testified that he worked for Mr. Harold Thomas from 2002 through 2006. [Director's Exhibit] 9. He agreed the compan[ies] changed names but the companies had the same address at 218 Jim Veatch Road in Morganfield, Kentucky. *Claimant testified that to his knowledge, none of these companies shut down*. He testified [that] all of the work he did during this time was with the same boss and with trucks from the same work site. Claimant testified, ". . . even if you [were] a Christus [Trucking] employee, you might drive a JMJ truck." [Hearing Transcript at] 44-45. Claimant was not sure when [the] company names changed but knew he worked for

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[5] Employer asserts that JMJ Trucking, Inc. is a successor operator of Christus Trucking, L & J Trucking, Inc., and Thomas and Thomas, Inc., all of which were owned by Mr. Harold Thomas. Employer's Brief at 7–10. With respect to liability, employer argues:

> Although[] [claimant's] employment with JMJ Trucking was less than one year, when it is combined with the employment of Christus Trucking, L & J Trucking and Thomas and Thomas Inc., which are all companies that were liquidated into a parent company or successor corporation, it is clear that [claimant] was employed [by] such entity(ies) for more than one (1) year. As such JMJ [T]rucking is a successor operator within the meaning of 20 C.F.R. [§]725.492.

Id. at 9.

> Mr. Thomas under the same supervision from 2002 to 2006. [Hearing Transcript at] 33-50.

Decision and Order at 6 (emphasis added).

In considering Christus Trucking's argument that it is not the responsible operator, the administrative law judge determined that the record establishes that claimant worked for less than one year for JMJ Trucking. Decision and Order at 6. He also determined that claimant worked for Christus Trucking/employer for a cumulative period of not less than one year and that it has "secured payment of benefits." *Id*. Finding no documentary support for Christus Trucking's position that JMJ Trucking qualifies as a successor operator, and also finding that claimant had no knowledge of whether any of the companies that he worked for had closed down or were acquired by a successor operator, the administrative law judge concluded that employer was properly designated as the responsible operator in this case. *Id*. Contrary to employer's assertion in this appeal, we see no error in the administrative law judge's finding.

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). 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).

In this case, the administrative law judge correctly found that there is no evidence of record to establish that JMJ Trucking acquired substantially all of the assets of any of the prior operators. 20 C.F.R. §725.492(a). Decision and Order at 6. Employer also did not submit any evidence to show that Christus Trucking/employer ceased to exist by reason of reorganization, liquidation, sale or merger into JMJ Trucking. 20 C.F.R. §725.492(b)(1)-(3); *see Ridings v. C & C Coal Co.*, 6 BLR 1-227, 1-231 (1983) (Where the putative responsible operator's theory of non-liability depends upon information within its exclusive control, it must carry the burden of producing evidence to support its theory); *see also Kentland Elkhorn Coal Corp. v. Hall*, 287 F.3d 555, 564-65, 22 BLR 2-349, 367 (6th Cir. 2002).

With regard to claimant's testimony, we also affirm the administrative law judge's determination that it fails to satisfy employer's burden of proof because claimant specifically stated that he did not know whether Christus Trucking dissolved into JMJ Trucking. Hearing Transcript at 47. The administrative law judge observed correctly that claimant testified that he had no knowledge of whether any of Mr. Thomas's companies were closed down and the assets acquired by a successor operator. Decision

and Order at 6; Hearing Transcript at 34, 45, 48, 51. Thus, the administrative law judge rationally found that claimant's testimony, at best, establishes that "Mr. Thomas moved employees and equipment between the different ongoing businesses for his own reasons." Decision and Order at 6; *see Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986) (An administrative law judge is granted broad discretion in evaluating the credibility of the evidence of record, including witness testimony).

The designated responsible operator bears the burden to prove that it is not the potentially liable operator that most recently employed the miner. 20 C.F.R. §725.495(c). Because the administrative law judge rationally found that there is no evidence to support employer's assertion that JMJ Trucking is a successor operator pursuant to 20 C.F.R. §725.492(b) or (c), and the record shows that claimant worked for Christus Trucking for a cumulative period of at least one year, we affirm the administrative law judge's determination that Christus Trucking/employer is the responsible operator liable for payment of benefits. 20 C.F.R §§725.494, 725.495.

Invocation of the Section 411(c)(4) Presumption – Total Disability

Employer next contests the administrative law judge's finding that claimant established that he suffers from a totally disabling respiratory or pulmonary impairment and therefore is entitled to invocation of the Section 411(c)(4) presumption. Specifically, employer asserts that the administrative law judge erred in his consideration of the pulmonary function studies and medical opinion evidence. We reject employer's allegations of error.

The regulations provide that a miner is considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work. 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 studies showing values equal to or less than those listed in Appendix B to 20 C.F.R Part 718; 2) arterial blood gas studies showing values equal to or less than those listed in Appendix C to 20 C.F.R. Part 718; 3) the presence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure; or 4) a physician exercising reasoned medical judgment concluding that a miner's respiratory or pulmonary condition is totally disabling. 20 C.F.R. §718.204(b)(2)(i)-(iv). If an administrative law judge finds that total disability has been established under one or more subsections, he must weigh the evidence supportive of a finding of total disability against the contrary probative evidence of record. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-20-21 (1987).

The administrative law judge found that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), as each of the five pulmonary function studies in

the record, dated May 14, 2012, July 19, 2012, September 6, 2012, April 28, 2015, and August 10, 2015, was qualifying for total disability under the regulatory criteria.[6] Decision and Order at 8; Director's Exhibits 12, 15; Claimant's Exhibits 1, 5; Employer's Exhibit 5. Employer's sole challenge to the administrative law judge's crediting of the qualifying pulmonary function studies is that he failed to properly address Dr. Vuskovich's opinion that claimant showed a significant response to bronchodilators on the April 28, 2015 pulmonary function study. Employer's Exhibit 4. However, because the April 28, 2015 study was qualifying for total disability, both before and after the use of a bronchodilator, we see no error in the administrative law judge's determination that claimant established total disability based on the April 28, 2015 study and the four other qualifying pulmonary function studies.[7] *See* 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980) (the use of a bronchodilator does not provide an adequate assessment of a miner's disability). Consequently, we affirm the administrative law judge's determination that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i).

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the medical opinions of Drs. Chavda, Houser, Baker, Tuteur, and Selby. The administrative law judge determined that the opinions of Drs. Chavda, Houser, and Baker that claimant is totally disabled by a severe respiratory or pulmonary impairment were reasoned and documented and sufficient to establish that claimant is unable to perform his usual coal mine work.[8] Decision and Order at 14; Director's Exhibit 12; Claimant's Exhibits 1, 2. The administrative law judge further determined that Dr. Tuteur's diagnosis of *severe* chronic obstructive pulmonary disease (COPD) lent support to the disability findings of Drs. Chavda, Houser, and Baker, although the administrative law

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[6] "A qualifying" pulmonary function or arterial blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" pulmonary function or arterial blood gas study exceeds those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[7] The administrative law judge found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii), as none of the newly submitted arterial blood gas studies was qualifying. Decision and Order at 10. Furthermore, as there was no evidence in the record indicating that claimant suffers from cor pulmonale with right-sided congestive heart failure, the administrative law judge found that total disability was not established under 20 C.F.R. §718.204(b)(2)(iii). *Id.*

[8] The administrative law judge found that claimant's most recent coal mine work was as a truck driver from 2002 to 2006. Decision and Order at 3.

judge found that Dr. Tuteur did not specifically address whether claimant was capable of performing his usual coal mine work.[9] Decision and Order at 14; Employer's Exhibit 5.

With regard to Dr. Selby's opinion, the administrative law judge determined that he failed to adequately explain the basis for his conclusion that claimant is not totally disabled. Decision and Order at 14; Director's Exhibit 15. Finding that Dr. Selby's opinion was outweighed by the better-reasoned opinions of Drs. Chavda, Houser, and Baker, the administrative law judge determined that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 14.

Employer argues that the administrative law judge did not properly consider Dr. Selby's explanation that claimant is not totally disabled because the records shows that claimant worked at Borden Dairy Company after leaving the mines, where he performed physical labor that was similar to the labor required in his last coal mine job. Employer's Brief at 11-12; Director's Exhibit 15. Employer's assertion of error is without merit.

The question of claimant's ability to perform his usual coal mine work is to be assessed at the time of the hearing, not at the time he ceased his employment. *See Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 624, 11 BLR 2-147, 2-149 (6th Cir. 1988); *Coffey v. Director, OWCP*, 5 BLR 1-404, 1-407 (1982). Even if employer is correct that the exertional requirements of claimant's last coal mine employment were comparable to his job as a dairy truck driver, the record establishes that claimant retired from being a dairy truck driver in March 2011, *see* Hearing Transcript at 13, 43; Director's Exhibit 9, prior to the administration of his 2012 and 2015 pulmonary function studies, all five of which were qualifying for total disability. Dr. Selby's opinion that claimant is not totally disabled because he was employed as a dairy truck driver in 2011 does not undercut the qualifying pulmonary function tests obtained after claimant retired from his dairy employment, or explain why claimant was not totally disabled as of the date of the hearing on September 1, 2015. Director's Exhibits 12, 15; Claimant's Exhibits 1, 5; Employer's Exhibit 5. Thus, although the administrative law judge acknowledged but did not specifically address Dr. Selby's opinion regarding claimant's work as a dairy truck driver, the error is harmless. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (holding that the appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

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[9] Dr. Tuteur opined that claimant "is totally and permanently disabled from returning to work in the coal mine industry or work requiring similar effort due to advanced chronic obstructive pulmonary disease." Employer's Exhibit 5.

We also reject employer's argument that the administrative law judge failed to properly consider Dr. Selby's opinion that claimant "would experience significant improvement in his pulmonary function and exercise tolerance" if claimant were properly treated for asthma and lost weight. Employer's Brief at 12. The relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether the evidence establishes the presence of a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(1). Dr. Selby's explanation concerns the etiology of that respiratory or pulmonary impairment, which is properly addressed at 20 C.F.R. §718.204(c), or in consideration of whether an employer has rebutted the Section 411(c)(4) presumption. 20 C.F.R. §§718.204(a), (c), 718.305(d)(1)(ii).

The administrative law judge is charged with determining the weight to accord the evidence, and his findings must be upheld if they are supported by substantial evidence. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-325-26 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003). Because we see no error in the administrative law judge's determination that Dr. Selby's opinion is "less well-reasoned," that finding is affirmed. Decision and Order at 14; s*ee Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489, 25 BLR 2-135, 2-152-53 (6th Cir. 2012); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). Additionally, because employer raises no other specific error with regard to the administrative law judge's weighing of the medical opinion evidence,[10] we affirm his finding that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). We further affirm the administrative law judge's determination that claimant established a totally disabling respiratory or pulmonary impairment based on his consideration of all of the evidence together. We therefore affirm the administrative law judge's finding that claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. § 921(c)(4) (2012).

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 has neither legal nor clinical pneumoconiosis,[11] or by

[10] We affirm the administrative law judge's credibility findings with regard to the opinions of Drs. Chavda, Houser, Baker, and Tuteur, as they are not challenged by employer on appeal. *Skrack,* 6 BLR at 1-711.

[11] "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). "Clinical

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 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 Co.*, 25 BLR 1-149, 1-154-56 (2015) (Boggs, J., concurring and dissenting).

The administrative law judge found that employer disproved the existence of clinical pneumoconiosis, but he rejected the opinions of Drs. Tuteur and Selby that claimant does not have legal pneumoconiosis. Contrary to employer's contention, the administrative law judge permissibly discredited Dr. Tuteur's opinion to the extent that Dr. Tuteur "relie[d] upon general statistics" to support his opinion that [claimant's] COPD was caused exclusively by smoking," and did not adequately address the specifics of this case.[12] Decision and Order at 20; *see Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103-04 (7th Cir. 2008); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985). Additionally, given the Department of Labor's recognition that the effects of coal dust exposure and smoking are additive, the administrative law judge permissibly found that Dr. Tuteur's opinion was entitled to little weight because he did not explain why twenty-six years of coal dust exposure did not contribute, along with smoking, to claimant's COPD. Decision and Order at 20 n.10; 21; 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000); *Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); *Clark*, 12 BLR at 1-155.

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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).

[12] Dr. Tuteur explained that claimant does not have legal pneumoconiosis based on a "relative risk assessment" and stated:

> It is based on careful review of medical literature that determines that approximately 20% of never-mining cigarette smokers develop a clinical picture of chronic bronchitis such as present in [claimant]. In contrast, never-smoking coal miners develop such a picture [at a rate] of about 1%.

Employer's Exhibit 5.

Similarly, the administrative law judge found that "Dr. Selby's insistence on attributing [c]laimant's obstruction solely to cigarette smoking and not coal mine dust exposure, ignores any possibility that cigarette smoke and coal mine dust exposure have an additive or synergistic impact on pulmonary function."[13] Decision and Order at 21; *see* 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000); Director's Exhibit 15. We see no error in the administrative law judge's determination that Dr. Selby's opinion is not sufficiently reasoned on the issue of legal pneumoconiosis because Dr. Selby "fail[ed] to provide a rational explanation for why [c]laimant's [twenty-six] years of coal mine employment and dust exposure did not contribute to his COPD, in addition to smoking." *See Barrett*, 478 F.3d at 356, 23 BLR at 2-483; *Clark*, 12 BLR at 1-155; Decision and Order at 21.

Therefore, as the administrative law judge permissibly rejected the medical opinions of employer's physicians who opined that claimant does not have legal pneumoconiosis, 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)(i).[14] *See Banks*, 690 F.3d at 489, 25 BLR at 2-152-53.

In considering whether employer disproved the presumed fact of disability causation, the administrative law judge rejected the opinions of Drs. Tuteur and Selby, that claimant's disability was not caused by legal pneumoconiosis, because neither physician diagnosed the disease. Decision and Order at 22; *see Big Branch Resources, Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-452 (6th Cir. 2013); *Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995). Employer raises no specific error by the administrative law judge, except to assert that claimant does not have legal pneumoconiosis. However, as we have affirmed the administrative

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[13] Dr. Selby summarily stated that claimant does not have legal pneumoconiosis and that claimant would have no respiratory condition if he had not been a smoker and if he had received proper treatment for asthma. Director's Exhibit 15. Dr. Selby, however, did not give a specific rationale for why coal dust exposure did not substantially contribute to, or significantly aggravate, claimant's respiratory condition. *Id*.

[14] It is not necessary that we address employer's assertion that the administrative law judge erred in weighing the x-ray evidence, as the administrative law judge ultimately found that employer disproved the existence of clinical pneumoconiosis. Although employer disproved that claimant has clinical pneumoconiosis, because employer failed to disprove that claimant has legal pneumoconiosis, rebuttal is precluded under 20 C.F.R. §718.305(d)(1)(i). *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011).

law judge's finding that employer failed to disprove the existence of legal pneumoconiosis, employer's argument with respect to disability causation is similarly rejected. We therefore affirm the administrative law judge's finding that employer failed to rebut the Section 411 (c)(4) presumption by establishing that "no part of [claimant's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in § 718.201." 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 23. Thus, as employer failed to establish rebuttal of the Section 411(c)(4) presumption, we affirm the administrative law judge's finding that claimant is entitled to benefits. 30 U.S.C. §921(c)(4); *Morrison,* 644 F.3d at 480, 25 BLR at 2-9.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge