U.S. Department of Labor

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

BRB No. 16-0331 BLA

JAY H. WILKERSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK 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 Timothy J. McGrath, Administrative Law Judge, United States Department of Labor.

Brent Yonts (Brent Yonts, PSC), Greenville, Kentucky, for claimant.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2013-BLA-5419) of Administrative Law Judge Timothy J. McGrath (the administrative law judge) rendered 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 May 23, 2012.

The administrative law judge credited claimant with at least twenty-five years of qualifying coal mine employment,[1] and adjudicated the claim pursuant to the regulatory provisions at 20 C.F.R. Part 718.[2] After determining that the claim was timely filed and that there was no evidence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, the administrative law judge found that claimant established total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2) and, therefore, was entitled to invocation of the rebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[3] The administrative law judge further found that employer failed to establish rebuttal of the presumption. Accordingly, he awarded benefits.

On appeal, employer argues that the administrative law judge erred in finding that the evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2) and, therefore, erred in finding that claimant invoked the Section 411(c)(4) presumption. Employer also argues that the administrative law judge erred in finding that employer did not rebut the presumption. Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[4]

[1] The parties stipulated to twenty-five years of coal mine employment. Joint Exhibit 1; Hearing Transcript at 5-6. The administrative law judge, based on the evidence of record, found that claimant had at least twenty-five years of coal mine employment performed either underground or on the surface at an underground mine. Decision and Order at 3.

[2] The parties further stipulated that claimant is a retired coal miner who last worked in September of 1994 as an electrician; that employer is the properly designated responsible operator; and that claimant has one dependent for purposes of augmentation of benefits. Joint Exhibit 1; Hearing Transcript at 5-6.

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

[4] We affirm, as unchallenged on appeal, the administrative law judge's findings that the claim was timely filed; that claimant had at least fifteen years of qualifying coal mine employment; and that employer is the responsible operator. *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.[5] 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).

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

Employer challenges the administrative law judge's weighing of the medical opinion evidence and his finding that the evidence overall established total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2).

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. *See* 20 C.F.R. §718.204(b)(1). In the absence of contrary probative evidence, a miner's disability is established by: 1) pulmonary function 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) medical evidence showing that the miner has pneumoconiosis and cor pulmonale with right-sided congestive heart failure; or 4) the opinion of a physician who, exercising reasoned medical judgment, concludes that a miner's respiratory or pulmonary condition is totally disabling, based on medically acceptable clinical and laboratory diagnostic techniques. 20 C.F.R. §718.204(b)(2)(i)-(iv).

At Section 718.204(b)(2)(i), the administrative law judge considered five pulmonary function studies conducted on June 13, 2012, December 6, 2012, May 12, 2014, September 2, 2014, and June 15, 2015, and correctly noted that each of the studies yielded qualifying values for total disability prior to the use of a bronchodilator.[6] Decision and Order at 8-10; Director's Exhibit 11; Employer's Exhibits 1, 7; Claimant's Exhibits 4, 5. The administrative law judge determined that a bronchodilator was not administered for Dr. Chavda's June 13, 2012 study; that Dr. Tuteur's May 12, 2014 study produced non-qualifying results post-bronchodilation; and that Dr. Selby's December 6, 2012 study and Dr. Chavda's September 2, 2014 and June 15, 2015 studies produced

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as claimant's coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Decision and Order at 2.

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

qualifying values post-bronchodilation. *Id.* The administrative law judge therefore found that a preponderance of the pulmonary function study evidence supported a finding of total respiratory disability.[7] Decision and Order at 10.

Because there are no qualifying arterial blood gas studies, the administrative law judge found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). *Id*. at 10-11; Director's Exhibit 11; Employer's Exhibits 1, 7. Furthermore, as there is no evidence in the record indicating that claimant suffered from cor pulmonale with right-sided congestive heart failure, the administrative law judge found that total disability was not established at 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 11.

Prior to evaluating the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge determined that claimant's usual coal mine work as an electrician required him to perform heavy manual labor. *Id*. at 11-12. The administrative law judge then considered the medical opinions of Drs. Chavda, Baker, Tuteur, and Selby regarding whether claimant could perform such work. *Id*. at 13-19. The administrative law judge noted that Drs. Chavda[8] and Baker[9] opined that claimant is unable to perform his usual coal mine work, while Drs. Tuteur and Selby determined that claimant's airflow obstruction is insufficient to render him unable to perform his usual coal mine work. Decision and Order at 12-22; Director's Exhibit 11; Claimant's Exhibit 7; Employer's Exhibits 1, 7, 9, 12, 15. The administrative law judge gave little weight to the opinions of Drs. Tuteur[10] and Selby[11] because they did not adequately explain how they concluded

[7] We affirm, as unchallenged on appeal, the administrative law judge's finding that the pulmonary function study evidence established total respiratory disability at 20 C.F.R. §718.204(b)(2)(i). *See Skrack*, 6 BLR at 1-711.

[8] In a report dated June 14, 2012, a supplemental report dated August 21, 2012, and in his deposition on July 11, 2014, Dr. Chavda opined that claimant's pulmonary function study results met the federal guidelines for total pulmonary disability and that the reduction in lung function is so severe that claimant would not be able to perform his last coal mine job on an eight-hour basis. Director's Exhibit 11; Employer's Exhibit 9.

[9] Dr. Baker opined that claimant has a severe obstructive ventilatory defect that rendered him unable to perform the duties required of his last coal mine job. Claimant's Exhibit 7.

[10] In a report dated May 12, 2014, Dr. Tuteur opined that claimant is "totally and completely disabled from returning to work in the coal mine industry or work requiring similar effort," which is fully accounted for by over fifteen years of coronary artery disease. Employer's Exhibit 7. Dr. Tuteur later testified that claimant has the chronic

that claimant's moderate obstructive impairment was not disabling in light of claimant's coal mine employment duties. The administrative law judge accorded no weight to Dr. Baker's opinion because it was based on an April 3, 2015 pulmonary function study that was not admitted into evidence. By contrast, the administrative law judge accorded determinative weight to Dr. Chavda's opinion because he found it to be well-reasoned and supported by objective testing. Because the administrative law judge accorded the most weight to Dr. Chavda's opinion, he found that claimant established total respiratory disability at 20 C.F.R. §718.204(b)(2)(iv).

Employer argues that the administrative law judge failed to meaningfully address the limited clinical data that Dr. Chavda considered in finding that claimant is totally disabled. Employer asserts that Dr. Chavda relied on the results of a June 13, 2012 pulmonary function study performed with submaximal effort, and did not explain how his assessment of disability incorporated the results of claimant's normal exercise blood gas testing. Further, employer maintains that Dr. Chavda never addressed the variability in claimant's pulmonary function study values, as he was not aware that Dr. Tuteur's post-bronchodilator pulmonary function testing of May 12, 2014 produced "FEV1 values

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obstructive pulmonary disease phenotype, emphysema, and a moderate airflow obstruction that alone would not be of sufficient severity and profusion to cause him to be disabled from working in the coal mines. He agreed that while claimant becomes breathless with exercise that prevents him from working in the coal mines, it does not necessarily mean that he has significant lung disease. Employer's Exhibit 15 at 28-30. He opined that the dominant cause of claimant's breathlessness that renders him unable to work in the coal mines, or perform work of similar effort, is claimant's heart disease complicated by hypertension. *Id*. at 38.

[11] Dr. Selby examined claimant on December 6, 2012, and diagnosed a moderate obstructive impairment without improvement post-bronchodilation. Employer's Exhibit 1 at 3. He opined that "[claimant] has the respiratory or pulmonary capacity to perform any and all of his previous coal mine duties including his last job working as a dozer operator." *Id*. at 4. Dr. Selby opined that the decline in claimant's respiratory function is due to untreated or undertreated asthma, heavy tobacco smoke exposure, moderate to severe kyphosis and scoliosis, severe coronary artery disease, and the fact that claimant is overweight. He concluded that "despite all the causes for shortness of breath, [claimant] had an excellent power output with preservation of excellent oxygenation even to the end of the exercise protocol. . . [and that] there is no exercise limitation in him from a respiratory standpoint." *Id*. Dr. Selby later testified that claimant has no pulmonary disability and that "he would be able to do virtually any coal mine job with his particular pulmonary capacity" based on the exercise blood gas testing which, he stated, "trumps" the pulmonary function studies. Employer's Exhibit 12 at 27, 42-44.

substantially higher" than those recorded by Dr. Chavda, which "contradicted" Dr. Chavda's results. Employer's Brief at 15-16. Employer also argues that Dr. Chavda was alone in assessing a "possible restriction," and that the administrative law judge failed to resolve the scientific conflicts in the evidence. *Id*. at 12-16. Employer's arguments lack merit.

In crediting Dr. Chavda's opinion, the administrative law judge found that the doctor was a "qualified medical expert" based on his credentials as a Board-certified pulmonologist. Decision and Order at 13, 20. The administrative law judge found that Dr. Chavda's opinion was entitled to probative weight because it was "consistent with the evidence available to him," including claimant's relevant histories, coal mine employment duties, physical examination findings, and the qualifying pulmonary function study results he obtained in 2012, 2014 and 2015. *Id*. at 20. Contrary to employer's argument, the administrative law judge specifically considered that Drs. Chavda and Tuteur disagreed as to the presence of a restrictive impairment,[12] but agreed that their respective pulmonary function study results indicated that claimant has a moderate obstructive airway impairment. The administrative law judge noted that while Dr. Chavda was not aware that Dr. Tuteur's post-bronchodilator results from May 12, 2014 were non-qualifying, Dr. Tuteur's pre-bronchodilator results on that date were qualifying, as were the pre-bronchodilator and post-bronchodilator results from Dr. Chavda's two more recent studies conducted on September 2, 2014 and June 15, 2015.[13] Decision and Order at 20-21; Director's Exhibit 11; Employer's Exhibit 7; Claimant's Exhibits 4, 5. Further noting that the results of a post-bronchodilator pulmonary function study are not necessarily dispositive of the issue of total disability, the administrative law judge acted within his discretion in crediting Dr. Chavda's opinion as reasoned and documented. *See Cornett v. Benham Coal Co.*, 227 F.3d 569, 577, 22 BLR 2-107, 2-122 (6th Cir. 2000); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980). We therefore affirm the administrative law judge's determination to credit the opinion of Dr. Chavda as supported by substantial evidence.

Employer also argues that the administrative law judge "failed to grasp" Dr. Tuteur's testimony and, thus, erred in finding his opinion to be inadequately reasoned. Employer's Brief at 16-18. We disagree.

[12] We find no merit in employer's assertion that Dr. Chavda was alone in assessing a mild restriction, as Dr. Selby also testified that claimant's testing revealed "a hint" of a restrictive defect. Employer's Brief at 13; *see* Employer's Exhibits 9 at 8, 12 at 15.

[13] Based on his 2014 and 2015 pulmonary function studies, Dr. Chavda diagnosed severe obstructive airway disease and a moderate restrictive impairment. Claimant's Exhibits 4, 5.

Contrary to employer's argument, the administrative law judge correctly noted Dr. Tuteur's testimony that while claimant retains the pulmonary capacity and sufficient oxygenation to perform his usual coal mine employment, claimant's breathlessness with exercise, attributable primarily to cardiac dysfunction, totally disables him from working in the coal mines. Decision and Order at 17-18; Employer's Exhibit 15 at 30, 38. As Dr. Tuteur stated in his medical report that claimant has breathlessness and tachypnea "from a cardiorespiratory symptom standpoint," the administrative law judge reasonably inferred that Dr. Tuteur's assessment recognized a connection between claimant's "breathing issues, heart condition, *and* his respiratory system," as evidenced by Dr. Tuteur's testimony that claimant suffers from lung disease manifested by a moderate obstructive impairment. Decision and Order at 19. Further, as Dr. Tuteur failed to provide any explanation for his conclusion that claimant's moderate obstructive pulmonary impairment, as evidenced by qualifying pulmonary function study results, did not prevent claimant from performing his usual coal mine employment involving heavy manual labor, the administrative law judge permissibly found that Dr. Tuteur's opinion was inadequately reasoned. Decision and Order at 18, 19; Employer's Exhibit 15 at 38; *see Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). We, therefore, affirm the administrative law judge's finding that Dr. Tuteur's opinion was entitled to little weight.

Employer next contends that the administrative law judge erred in discounting Dr. Selby's opinion on the ground that the physician, without demonstrating an awareness of the specific exertional requirements of claimant's usual coal mine employment, failed to adequately explain why a moderate obstructive impairment shown on pulmonary function studies did not disable claimant. Employer argues that Dr. Selby acknowledged that the pulmonary function studies indicated an obstructive defect, but determined that the results were "irrelevant" in light of claimant's exercise blood gas study results. Employer's Brief at 18. Employer maintains that Dr. Selby's understanding of the exertional rigors of claimant's job is not relevant in this case, as the doctor explained that the exercise protocol was similar to "almost running up hill" and was consistent with heavy labor. Employer's Brief at 18-20.

Contrary to employer's contention, and as the administrative law judge noted, pulmonary function studies and blood gas studies measure different types of impairments, and the non-qualifying blood gas study evidence does not necessarily negate the results of the qualifying pulmonary function study evidence. *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41, 17 BLR 2-16, 2-22 (6th Cir. 1993); *Sheranko v. Jones and Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984); Decision and Order at 20. Therefore, the administrative law judge acted rationally in finding that Dr. Selby failed to explain why claimant's qualifying pre-bronchodilator and post-bronchodilator pulmonary

function study results did not demonstrate a disabling respiratory or pulmonary impairment, despite the non-qualifying resting and exercise blood gas study evidence.[14] *See Tussey*, 982 F.2d at 1040-41, 17 BLR at 2-22. As the administrative law judge did not err in his consideration of Dr. Selby's opinion, we affirm, as supported by substantial evidence, the administrative law judge's finding that claimant established total disability based on the medical opinion evidence under 20 C.F.R. §718.204(b)(2)(iv).

As substantial evidence also supports the administrative law judge's finding that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2) after consideration of the contrary probative evidence, it is affirmed. Decision and Order at 21; *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon*., 9 BLR 1-236 (1987) (en banc). Because claimant met his burden of establishing total disability, 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). *See* 20 C.F.R. §718.305(b).

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,[15] 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)(i), (ii). The administrative law judge found that employer failed to establish rebuttal by either method.

[14] The administrative law judge additionally noted Dr. Chavda's explanation for the lack of correlation between the results of claimant's qualifying pulmonary function testing and his non-qualifying blood gas testing, *i.e.*, that not many people with low FEV1 and FVC values develop hypoxia, and that not developing hypoxia with exercise does not rule out underlying lung problems. Decision and Order at 14, 20; Employer's Exhibit 9 at 11-12.

[15] "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 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).

A. Legal Pneumoconiosis

Employer contends that the administrative law judge erred in finding that it failed to disprove the existence of legal pneumoconiosis. The administrative law judge considered the opinions of Drs. Tuteur and Selby,[16] together with claimant's hospitalization and treatment records. Dr. Tuteur opined that claimant's moderate obstructive ventilatory defect is not due to coal dust exposure, but is most likely associated with left ventricular dysfunction and the effects of fossil fuel exposure during childhood.[17] Employer's Exhibit 15 at 30. Dr. Selby opined that claimant does not have legal pneumoconiosis, but suffers from a moderate obstructive impairment attributable to untreated asthma, cigarette smoking, moderate to severe kyphosis and scoliosis, severe coronary artery disease, and the fact that claimant is overweight. Employer's Exhibit 1 at 4. The administrative law judge found that the opinions of Drs. Tuteur and Selby were not well reasoned and, therefore, did not rebut the presumed fact of legal pneumoconiosis. Decision and Order at 35, 37.

Employer argues that the administrative law judge erred in his consideration of the opinions of Drs. Tuteur and Selby. We disagree. The administrative law judge permissibly discounted the physicians' opinions that claimant's obstructive impairment did not constitute legal pneumoconiosis because he found that neither doctor adequately explained why claimant's twenty-five years of coal dust exposure did not cause, contribute to, or exacerbate his condition. *See Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; Decision and Order at 35-37.

With regard to Dr. Tuteur's opinion that legal pneumoconiosis was not present, the administrative law judge found that even if claimant's "COPD (chronic obstructive pulmonary disease) phenotype" was due to fossil fuel exposure and left ventricular dysfunction, Dr. Tuteur did not adequately explain why claimant's twenty-five years of

[16] The administrative law judge also considered the opinions of Drs. Chavda and Baker, that claimant suffers from legal pneumoconiosis, in the form of chronic obstructive pulmonary disease (COPD) due to coal mine dust exposure. Decision and Order at 26-27, 33, 34-35; Director's Exhibit 11; Claimant's Exhibit 7. The administrative law judge discounted the opinion of Dr. Baker, as not well-documented, but found the opinion of Dr. Chavda entitled to probative weight. The administrative law judge properly noted, however, that these opinions do not assist employer in establishing rebuttal of the Section 411(c)(4) presumption. Decision and Order at 35.

[17] Dr. Tuteur indicated that claimant's mother cooked on a coal-fueled cook stove. Employer's Exhibit 7 at 3.

coal dust exposure did not contribute to or aggravate claimant's condition in light of Dr. Tuteur's acknowledgment that coal dust exposure can produce COPD phenotype and that claimant "was exposed to sufficient amounts of coal mine dust to produce coal workers' pneumoconiosis and other coal mine dust induced processes in a susceptible host." Decision and Order at 37; Employer's Exhibit 15 at 28, 32. Consequently, the administrative law judge permissibly determined that Dr. Tuteur's opinion was insufficiently reasoned and entitled to diminished weight. *See Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2008).

With regard to Dr. Selby's opinion that claimant does not have legal pneumoconiosis, the administrative law judge determined that the physician relied on the variability of claimant's pulmonary function study results to support his diagnosis of asthma, and excluded coal dust exposure as a cause of claimant's obstructive impairment in part because claimant's breathing issues worsened after he stopped mining. Decision and Order at 35-36. The administrative law judge properly found that Dr. Selby's opinion was inconsistent with the regulations, which recognize pneumoconiosis as a latent and progressive disease that may first become detectable only after the cessation of coal dust exposure. Decision and Order at 36; *see* 20 C.F.R. §718.201(c). Further, the administrative law judge permissibly discounted Dr. Selby's opinion on the ground that, regardless of any variability in claimant's pulmonary function testing, Dr. Selby failed to adequately explain why he excluded coal dust exposure as a cause of the fixed portion of claimant's impairment.[18] *See* 20 C.F.R. §718.201(a)(2); *Barrett*, 478 F.3d at 356, 23 BLR at 2-483; *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 483, 22 BLR 2-265, 2-279 (7th Cir. 2001); Decision and Order at 35-36.

Because the administrative law judge provided valid bases for according less weight to the opinions of Drs. Tuteur and Selby,[19] the only opinions supportive of a

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[18] The administrative law judge also noted:

> Dr. Selby's assertion that his diagnosis of asthma is "clinched" by reversibility after bronchodilator use seen on Dr. Tuteur's pulmonary function testing is contradicted by Dr. Tuteur, who testified that his pulmonary function testing showed the "moderate obstructive abnormality . . . did not at all change following the administration of aerosolized bronchodilator, *i.e.*, there was no evidence of bronchial reactivity, or twitchy airways, or asthma."

Decision and Order at 36 n.13; *see* Employer's Exhibits 12 at 19, 15 at 23.

[19] Because the administrative law judge provided valid bases for discrediting the opinions of Drs. Tuteur and Selby, we need not address employer's remaining arguments

finding that claimant did not suffer from legal pneumoconiosis, we affirm his finding that employer failed to establish rebuttal of the presumed fact of legal pneumoconiosis.[20] As employer has failed to establish rebuttal pursuant to 20 C.F.R. §718.305(d)(2)(i)(A), we decline to address employer's arguments regarding the administrative law judge's weighing of the evidence relevant to the issue of clinical pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(2)(i)(B).

B. Disability Causation

The administrative law judge next addressed whether employer could establish the second method of rebuttal by showing that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). The administrative law judge rationally discounted the opinions of Drs. Tuteur and Selby that claimant's obstructive impairment was not caused by pneumoconiosis because neither physician diagnosed legal pneumoconiosis, contrary to the administrative law judge's finding that employer failed to disprove the presence of the disease. *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668 (6th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-452 (6th Cir. 2013); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995); Decision and Order at 39. As substantial evidence supports the administrative law judge's findings, we affirm his determination that employer did not rebut the Section 411(c)(4) presumption that claimant is totally disabled due to pneumoconiosis.

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regarding the weight he accorded to these opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-3 n.4 (1983).

[20] We decline to address employer's contentions of error regarding the administrative law judge's consideration of the opinion of Dr. Chavda, as his opinion does not assist employer in establishing rebuttal of the Section 411(c)(4) presumption. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

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