U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 17-0278 BLA

PATRICIA DENNIS (Widow of, and on behalf of, JAMES W. DENNIS)	)	
Claimant-Respondent	)	
v.	)	
CHEVRON MINING, INCORPORATED/ P&M COAL MINING	)	DATE ISSUED: 03/30/2018
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 Collen A. Geraghty, Administrative Law Judge, United States Department of Labor.

Brent Yonts (Yonts, Sherman, & Driskill, PSC) Greenville, Kentucky for claimant.

John C. Morton and Austin P. Vowels (Morton Law LLC), Henderson, 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 (2016-BLA-05055) of Administrative Law Judge Collen A. Geraghty, rendered on a miner's claim filed on January 14, 2014, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-044 (2012) (the Act). The administrative law judge credited the miner with 15.22 years of employment in conditions substantially similar to those in underground mines, and found that the miner had a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge therefore determined that claimant[1] invoked the rebuttable presumption that the miner's total disability was due to pneumoconiosis pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[2] The administrative law judge also found that employer failed to rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that claimant invoked the Section 411(c)(4) presumption, arguing that she erred in finding 15.22 years of qualifying coal mine employment and total disability pursuant to 20 C.F.R. §718.204(b)(2). Employer also argues that the administrative law judge erred in finding that employer did not rebut the Section 411(c)(4) presumption. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, did not file a response brief. Employer has filed a reply brief reiterating its contentions.[3]

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,

[1] Claimant, the miner's widow, is pursuing the miner's claim on behalf of his estate. *Dennis v. Chevron Mining, Inc.*, BRB No. 17-0278 BLA (May 9, 2017) (unpub. Order); Director's Exhibit 2.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where the evidence establish at least fifteen years of underground coal mine employment, or coal mine 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); *see* 20 C.F.R. §718.305.

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that the blood-gas study evidence was sufficient to establish total respiratory or pulmonary disability at 20 C.F.R. §718.204(b)(2)(ii). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1984).

and in accordance with applicable law.[4] 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. Invocation of the Section 411(c)(4) Presumption

A. Length of Coal Mine Employment

In order to invoke the Section 411(c)(4) presumption, claimant bears the burden of establishing at least fifteen years in "underground coal mines, or in coal mines other than underground mines in conditions substantially similar to those in underground mines, or in any combination thereof[.]" 20 C.F.R. §718.305(b)(1)(i); *see Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985); *Shelesky v. Director, OWCP*, 7 BLR 1-34, 1-36 (1984). Because the Act does not provide specific guidelines for calculating the time spent in coal mine employment, the administrative law judge is granted broad discretion in deciding this issue, and her determination will be upheld if it is based on a reasonable method of computation and supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986); *Maggard v. Director, OWCP*, 6 BLR 1-285, 1-286 (1983).

The administrative law judge found 15.22 years of coal mine employment based on the miner's hearing testimony and his Social Security Administration (SSA) Earnings Statement showing that he worked for employer from 1976 to 1985 and from 1987 to 1992, and for R&D Construction in 1994 and 1995. Decision and Order at 6; Hearing Transcript 18-19; Director's Exhibit 5. The administrative law judge noted that at the hearing, the miner agreed with the district director's determination that he worked at coal mines for fifteen years between 1976 to June 3, 1995. Decision and Order at 6; Hearing Transcript at 18-19; Director's Exhibit 25-2.

Employer contends that the administrative law judge miscalculated the length of the miner's coal mine employment in eleven of the sixteen years that the miner's SSA Earnings Statement shows coal mine employment. Employer maintains that the administrative law judge ignored the miner's testimony about the starting date of his coal mine employment in 1976, and failed to treat years of lower earnings as partial years of coal mine

[4] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as the miner's last coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

employment. Employer asserts that when proper methods of calculation are used, the miner had less than fifteen years of coal mine employment.[5]

Employer's allegations are without merit. The administrative law judge permissibly rejected as "speculation" employer's argument that because the miner's earnings in 1978 were lower than his earnings in 1977, the miner did not work for a complete year in 1978.[6] Decision and Order at 7; *see Muncy*, 25 BLR at 1-27; *Clark v. Barnwell Coal Co.*, 22 BLR 1-277, 1-280-81 (2003). For 1979, the administrative law judge reasonably found that the miner's hearing testimony that he "was laid off for two months" established ten months or 0.833 years of coal mine employment. *Muncy*, 25 BLR at 1-27. Similarly, the administrative law judge rationally determined that, absent evidence of gaps in the miner's coal mine employment in 1987, 1989 and 1990, lower earnings during these years are insufficient to establish that the miner had less than a full calendar year of such employment. *See Clark*, 22 BLR at 1-280-81; Decision and Order at 7. The administrative law judge also permissibly dismissed as "speculative" employer's allegation that the miner "was *likely* not engaged in year[-]round employment with [e]mployer in 1981, 1982, 1987

[5] Employer also asserts incorrectly that because the miner's pension from the United Mine Workers of America (UMWA) was based on 14.5 years of coal mine employment, it supports a finding of less than fifteen years of coal mine employment. As established by the administrative law judge's accurate summary of the miner's Social Security Administration Earnings Statement, the UMWA pension did not account for coal mine employment in 1992, 1994 and 1995. Decision and Order at 6; Director's Exhibits 5-1, 7-1. In addition, employer's contentions that the administrative law judge was required to subtract a two-month period when the miner was unable to work due to illness and a three-month period when he was laid-off, are without foundation. In determining the extent of a miner's coal mine employment, "any day for which the miner received pay while on an approved absence, such as vacation or sick leave may be counted as part of the calendar year or as partial periods totaling one year." 20 C.F.R. §725.101(a)(32).

[6] The administrative law judge was not persuaded to treat the miner's 1977 earnings as average annual earnings for the purpose of calculating the extent of the miner's coal mine employment in 1978 and 1979. Decision and Order at 7. The administrative law judge found that, unlike 1977, when there was a work stoppage due to a strike, there is no evidence of a gap in the miner's coal mine employment in 1978. *Id.* The administrative law judge further found that the miner's earnings for 1978 exceeded the average annual earnings reported in Exhibit 610 of the *Coal Mine* (*Black Lung Benefits Act*) *Procedure Manual*, thereby providing additional support for a finding of one full year of coal mine employment. *Id*. n.5.

and 1989" because he had earnings from Ray Jones Trucking, Inc. and self-employment.[7] Decision and Order at 7 (emphasis added); *see Muncy*, 25 BLR at 1-27.

For 1994, the administrative law judge acknowledged that employer calculated 0.15 years of coal mine employment for R&D Construction by relying on evidence showing that the miner worked for R&D Construction for forty-five hours per week at an hourly rate of $10.80, to arrive at a figure that it could compare to the total annual earnings reported on the miner's SSA Earnings Statement. Decision and Order at 8. However, the administrative law judge found that employer's calculation is inconsistent with a July 14, 2014 letter from Ray Jones Trucking, Inc., that provides direct evidence that the miner worked at R&D Construction from September 1994 to June 1995. *Id.*; Director's Exhibit 19 at 13. The administrative law judge therefore rationally determined, based on the assumption that the miner started working at R&D Construction at the end of September 1994 and stopped at the beginning of June 1995, the miner had at least three months (or 0.25 years) of coal mine employment in 1994, and at least five months (or 0.4166 years) of coal mine employment in 1995. *See Muncy*, 25 BLR at 1-27; *Clark*, 22 BLR at 1-280-81. Because the administrative law judge used reasonable methods to compute the miner's coal mine employment in the years challenged by employer, we affirm her determination that the miner had 15.22 years of coal mine employment as supported by substantial evidence. *See Vickery*, 8 BLR at 1-432; *Maggard*, 6 BLR at 1-286.

Finally, we reject employer's alternative argument that claimant established, at most, 14.89 years of coal mine employment based on comparing the miner's "expected" yearly income, as derived from the miner's testimony regarding his wage rate and hours worked,[8] and "assumed" annual pay increases of $0.63 per hour. Employer's Petition for Review and Brief at 13. Using this method of calculation, employer would credit the miner with 0.8224 of a year for 1978, rather than the full year credited by the administrative law judge; 0.5150 of a year for 1979, rather than 0.8333; 0.0719 for 1992 rather than 0.1349;

[7] Employer also includes 1976 and 1986 in its contention that the administrative law judge erroneously credited the miner with qualifying coal mine employment. However, the administrative law judge credited the miner with 0.75 years of coal mine employment in 1976, the same total employer's calculation produced, and correctly found that the miner did not engage in coal mine employment in 1986. Decision and Order at 6, 8; Employer's Petition for Review and Brief at 11.

[8] The miner testified that he worked for employer 7.25 hours per day for five days per week and earned "maybe" $7.04 an hour when he started and earned $17.05 an hour at the end of his tenure. Hearing Transcript at 42. He testified that he "typically" worked forty–five hours a week for R&D Construction and earned $10.80 per hour. *Id.*

and 0.15 rather than 0.25 for 1994. *Id*. at 13-14. Because we have held that the methods of computation used by the administrative law judge are reasonable, however, we reject employer's argument that she committed error by failing to apply employer's suggested alternative method. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-83 n.4 (1983).

B. Substantial Similarity of Surface Coal Mine Employment

Employer further challenges the administrative law judge's determination that the conditions in the miner's surface coal mine employment were substantially similar to those in an underground coal mine. The conditions in a mine other than an underground mine will be considered "'substantially similar' to those in an underground mine if the claimant demonstrates that the miner was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2). Employer argues that the miner's working conditions were not similar to those in an underground mine based on the miner's testimony that he always worked above ground and that all but one year of his coal mine employment was spent inside an enclosed cab.

We reject employer's argument. In resolving the issue of substantial similarity, the administrative law judge relied on the miner's uncontradicted testimony on the dust conditions he experienced while working as a truck driver hauling coal. It is the administrative law judge's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Tennessee 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). Assessing the credibility of witness testimony is also for the administrative law judge as fact-finder, and the Board will not disturb her findings unless they are inherently unreasonable. *See Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc). The administrative law judge reviewed the miner's testimony in detail and permissibly found credible the miner's unrefuted testimony[9] that he was regularly

[9] The miner testified that when he worked as a truck driver for Chevron, "[a]whole lot of dust" was created when he dumped loads of coal into the truck; "[s]ometimes you couldn't see the truck" due to the coal dust; driving the truck from the pit to the wash plant, the conditions would be "very dusty," which led to "horrible" visibility and required him to slow down to avoid running into other vehicles; "you had to have the windows down because there was no air condition[ing]" so he breathed "[a] lot of dust; and he had to sweep the dust out of the cab at the end of each shift." Hearing Transcript at 25-28. When the miner worked as a dozer operator, he testified that he worked in an open cab dozer in conditions that were "[v]ery dusty: with a little coating of dust on everything in the dozer." *Id.* at 21-22. He was not offered a mask to keep him from inhaling the dust. *Id.* at 22. Because the equipment was very dusty, the miner had to clean it up at the end of the day

exposed to coal dust throughout his coal mine employment. *See Central Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 489-90, 25 BLR 2-633, 2-642-43 (6th Cir. 2014); *Antelope Coal Co./Rio Tinto Energy America v. Goodin*, 743 F.3d 1331, 25 BLR 2-549 (10th Cir. 2014); Decision and Order at 9; Hearing Transcript at 21-22, 24-31, 33, 40; Director's Exhibit 14 at 9-15. We therefore affirm her finding that the miner had 15.22 years of qualifying coal mine employment for purposes of invoking the Section 411(c)(4) presumption. *See Martin v. Ligon Preparation Co*., 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005).

C. Total Respiratory or Pulmonary Disability

The regulations provide that a miner will be considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. 20 C.F.R. §718.204(b)(1). In the absence of contrary probative evidence, a claimant may establish total disability based on pulmonary function tests, arterial blood gas studies, evidence of cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). If the administrative law judge finds that total disability has been established under one or more subsections, she must weigh the evidence supportive of a finding of total disability against the contrary probative evidence of record. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988).

The administrative law judge found that the four blood-gas studies of record were sufficient to establish total disability under 20 C.F.R. §718.204(b)(2)(ii), as they were all

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with a broom and an air hose. *Id.* at 22. Although he worked in a closed cab operating the newer dozer, the conditions were still "[p]retty dusty." *Id.* at 24. The miner had to clean the cab out each day due to the dust inside. *Id*. at 24. He testified that he loaded explosives into a drilled hole, sometimes getting "quite a bit" of coal dust from the explosion." *Id.* at 29-30. When the miner worked loading the train in a "good closed cab," the cab still "had a skim of dust" that had to be cleaned out each day. *Id.* at 31. The miner testified that even when pumping water out of the pit he was "[s]omewhat" exposed to coal mine dust. *Id.* at 33. He testified that when he left the mines at night, he could barely see his eyes in the mirror and his face and clothes would be black due to the coal dust; that his wife frequently had to wash his uniforms twice to get them clean and would change the bed linens every other day. *Id.* at 34. At his deposition, the miner testified that he was regularly exposed to coal mine dust when he worked at R&D Construction as a truck driver, hauling raw coal from the pit to the wash plant, which "[a]bsolutely" exposed him to coal dust as the trucks "didn't always have air condition[ing]" and he had to ride with the window open. Director's Exhibit 14 at 9-15.

qualifying.[10] Decision and Order at 13; Director's Exhibits 11 at 20, 11a at 5; Claimant's Exhibit 4; Employer's Exhibit 1. Under 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge determined that all of the physicians agreed that the miner was totally disabled and based their conclusions, in part, on the qualifying blood-gas studies. Decision and Order at 14-15. The administrative law judge then rejected employer's argument in its post-hearing brief that Dr. Tuteur's opinion was contrary probative evidence that the miner's impairment was not respiratory or pulmonary, and found that total disability was established under 20 C.F.R. §718.204(b)(2).[11] *Id.*

On appeal, employer reiterates its argument before the administrative law judge that Dr. Tuteur's opinion that the blood-gas study results were due to cardiovascular diseases establishes that the miner was not disabled from a pulmonary perspective. Contrary to employer's contention, the administrative law judge rationally found that "this argument goes to the issue of causation, not total disability. Employer conflates distinct issues, which must be addressed separately."[12] Decision and Order at 14; *see Mabe v. Bishop Coal Co.*, 9 BLR 1-67, 1-68 (1986); *Sisak v. Helen Mining Co.*, 7 BLR 1-178, 1-181 (1984). The administrative law judge also permissibly determined that to the extent Dr. Tuteur opined that the miner was totally disabled solely from a cardiac perspective, his opinion is internally contradictory and, therefore, insufficient to undermine the probative value of the blood-gas studies.[13] *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14, 22 BLR 2-

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[10] A "qualifying" blood-gas study yields values that are equal to or less than the applicable table values listed in Appendix C of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(ii).

[11] The administrative law judge found that claimant cannot establish total disability at 20 C.F.R. §718.204(b)(2)(i), (iii), because the pulmonary function studies were uniformly non-qualifying and there is no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 11, 12.

[12] The relevant inquiry at 20 C.F.R. §718.204(b) is whether the miner's respiratory or pulmonary impairment precluded the miner from performing his usual coal mine work. 20 C.F.R. §718.204(b)(1). The cause of the miner's pulmonary impairment relates to the issue of disability causation, which is addressed at 20 C.F.R. §718.204(c), or in consideration of whether employer is able to rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(ii).

[13] Dr. Tuteur stated:

> In terms of *cardiopulmonary symptoms*, [the miner] is unable to walk more than a city block and unable to climb stairs. He only rarely coughs and does

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) ; Decision and Order at 15. Accordingly, we affirm the administrative law judge's finding that the preponderance of the evidence established that the miner was totally disabled due to a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); Decision and Order at 15.

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

II. Rebuttal of the 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 the miner did not have either legal or clinical pneumoconiosis,[14] 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 §718.201." 20 C.F.R. §718.305(d)(1)(ii). *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 479-80, 25 BLR 2-1, 2-8-9 (6th Cir. 2011); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-159

> not expectorate. Wheezing is similarly a rare phenomenon, and he does not currently experience chest pain. Nevertheless, medications include DuoNeb via nebulizer, albuterol via metered dose inhaler, and low dose theophylline.

Employer's Exhibit 1 at 2 (emphasis added).

[14] 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). This definition "includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." *Id*. 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).

(2015) (Boggs, J., concurring and dissenting). The administrative law judge found that employer failed to establish rebuttal by either method.

A. Existence of Legal Pneumoconiosis

As an initial matter, we reject employer's suggestion that, after invocation of the Section 411(c)(4) presumption, claimant continued to have the burden to establish the existence of pneumoconiosis.[15] 20 C.F.R. §718.305(d)(1)(i). Employer also contends that the administrative law judge erred in finding that Dr. Tuteur's opinion was insufficient to rebut the presumed existence of legal pneumoconiosis. Employer maintains Dr. Tuteur's explanation that the miner's oxygen exchange impairment was "caused by his heart problem," and that the miner did not have a "primary pulmonary process" eliminates coal dust exposure as an aggravating factor in the miner's impairment. *Id*. at 20.

We disagree, as the administrative law judge permissibly determined that Dr. Tuteur's opinion attributing the miner's gas exchange impairment entirely to advanced coronary artery disease, vascular disease and diabetes was not reasoned. *See Napier*, 301 F.3d at 713-14, 22 BLR at 2-553; Decision and Order at 24; Employer's Exhibit 1 at 2, 3. The administrative law judge noted Dr. Tuteur's additional statement that the miner "was exposed to [a] sufficient amount of coal mine dust to produce . . . coal mine dust[-]induced disease process in a susceptible host," and permissibly found that Dr. Tuteur did not explain how he excluded coal dust exposure as a substantially aggravating factor in the miner's gas exchange abnormalities. 20 C.F.R. §718.201(b); *see Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1072-73, 25 BLR 2-431, 2-446-47 (6th Cir. 2013); Decision and Order at 24. In addition, the administrative law judge rationally found the opinion flawed because Dr. Tuteur "appears to have relied on the pulmonary function study results to exclude coal dust exposure as a cause of [the miner's] impairment of gas exchange, which was revealed by the blood-gas study results. Blood-gas studies and ventilatory studies measure different types of impairment." Decision and Order at 24-25, *citing 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).

As the administrative law judge gave valid reasons for discrediting Dr. Tuteur's opinion, we affirm her finding that employer failed to disprove the existence of legal pneumoconiosis. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en

[15] Employer alleges "claimant has failed to produce" medical treatment records to establish that the miner "received treatment for a chronic pulmonary condition" and that claimant "failed to meet [her] burden of proving that the miner had legal pneumoconiosis." Employer's Petition for Review and Brief at 21.

banc); Decision and Order at 25. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the miner did not have pneumoconiosis.[16] We therefore affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305(d)(1)(i).[17] *See Morrison*, 644 F.3d at 479-80, 25 BLR at 2-8-9.

B. Disability Causation

Referencing her findings on legal pneumoconiosis, the administrative law judge determined that Dr. Tuteur also failed to adequately explain why no part of the miner's respiratory disability was caused by pneumoconiosis. Decision and Order at 26. As we have affirmed the administrative law judge's findings on legal pneumoconiosis, we see no error in her determination that Dr. Tuteur opinion is not credible on the issue of disability causation. *See Ogle*, 737 F.3d at 1074, 25 BLR at 452; *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05, 25 BLR 2-713, 2-721 (4th Cir. 2015); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995). We therefore 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).

[16] We need not address the arguments that employer raises concerning the administrative law judge's weighing of the opinions of Drs. Baker, Sood, and Chavda, as these physicians diagnosed legal pneumoconiosis and therefore do not aid employer in rebutting the presumption. Director's Exhibits 11, 16; Claimant's Exhibit 3.

[17] Pursuant to 20 C.F.R. §718.305(d)(1)(i), employer is required to disprove the existence of both legal and clinical pneumoconiosis. Accordingly, because we have affirmed the administrative law judge's finding that employer did not disprove legal pneumoconiosis, we need not address employer's challenges to the administrative law judge's finding that employer did not disprove clinical pneumoconiosis. Decision and Order at 23.

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