U.S. Department of Labor

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

BRB No. 18-0230 BLA

DWAYNE M. HOPKINS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HUMPHREYS ENTERPRISES, INCORPORATED	)	DATE ISSUED: 03/28/2019
	)	
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 William S. Colwell, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and M. Rachel Wolfe (Wolfe Williams & Reynolds), Norton, Virginia, for claimant.

Walter E. Harding (Boehl Stopher & Graves, LLP), Louisville, Kentucky, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2012-BLA-05835) of Administrative Law Judge William S. Colwell, rendered on a claim filed on December

31, 2010 pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).

The administrative law judge found that claimant has seventeen years of surface coal mine employment[1] in conditions substantially similar to those in an underground mine and a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). He therefore found that claimant invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis.[2] 30 U.S.C. §921(c)(4) (2012). He further determined that employer failed to rebut the presumption and awarded benefits.

On appeal, employer argues the administrative law judge erred in finding that claimant established at least fifteen years of qualifying coal mine employment. It further argues that the administrative law judge erred in finding claimant totally disabled, in invoking the Section 411(c)(4) presumption, and in finding that it did not rebut the presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

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

To invoke the Section 411(c)(4) presumption, claimant must establish at least fifteen years of employment in "underground coal mines," or in "coal mines other than underground coal mines in conditions substantially similar to those in underground mines."

[1] Claimant's coal mine employment was in Virginia. Director's Exhibit 3; Hearing Transcript at 23. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[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 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), as implemented by 20 C.F.R. §718.305.

30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305(b)(1)(i). "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 [he] was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2).

We reject employer's argument that the administrative law judge erred in finding that claimant's surface coal mine employment occurred in conditions substantially similar to those in underground mines.[3] Employer's Brief at 7-8. The administrative law judge noted that claimant testified at the April 28, 2016 hearing with respect to his coal mine dust exposure. Decision and Order at 5-7. He testified that he worked as a blaster for sixteen years and spent the last year working as a coal hauler. Hearing Transcript at 16. As a blaster, he was exposed to coal mine dust every day because he worked "right there with the drill" and worked "all day long in the dust." *Id*. On an average day, the dust conditions were "pretty bad," as the dust in the air prevented him from seeing twenty feet beyond his face. *Id*. at 17. He was exposed to "a lot of dust [that was] flying up in the air" and "was exposed to [dust] all day long." *Id*. Before he went home, he had to clear the dust off his clothes by using an "air hose on one of [the] powder trucks" to blow the dust off, as he was "pretty dusty." *Id*. at 17-18. The dust would blow back into his nose. *Id*.

The administrative law judge also noted that claimant made statements to medical professionals about his dust exposure. Decision and Order at 7. Dr. Gallai noted that claimant informed him that he had eighteen years "of coal and rock dust exposure," while Dr. Habre noted that claimant "described excessive dust" when he was hauling coal "and working with rock blasting." *Id*.; Claimant's Exhibits 1, 2.

Contrary to employer's argument, the administrative law judge permissibly found claimant's uncontradicted testimony persuasive,[4] *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997), and, along with his statements to medical professionals, establishes regular exposure to coal mine dust during his sixteen years as a blaster and one year as a coal hauler. *See Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d

[3] We affirm, as unchallenged, the administrative law judge's finding that claimant had seventeen years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[4] The administrative law judge acknowledged employer's argument that claimant "provided varying accounts as to the distance he kept from a drill or blast site," but permissibly found that "these accounts" do not "detract from the credibility of his testimony concerning his regular exposure to coal mine dust." Decision and Order at 6 n. 3; *see Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997).

483, 490 (6th Cir. 2014); *Antelope Coal Co./Rio Tinto Energy Am. v. Goodin*, 743 F.3d 1331, 1343-44 (10th Cir. 2014); *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 479 (7th Cir. 2001); Decision and Order at 5-7. Because it is supported by substantial evidence, we affirm the administrative law judge's finding that claimant established at least fifteen years of surface coal mine employment in conditions substantially similar to those in underground mines. *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 664 (6th Cir. 2015).

B. Total Disability

A miner is considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

The administrative law judge found that claimant established total disability based on the pulmonary function studies and medical opinions at 20 C.F.R. §718.204(b)(2)(i), (iv) and total disability at 20 C.F.R. §718.204(b)(2) when weighing the evidence as a whole.[5] Decision and Order at 11-23. Employer's argument that the administrative law judge erred in finding that the pulmonary function studies and medical opinions establish total disability is without merit. Employer's Brief at 8-10.

The administrative law judge considered four pulmonary function studies. Decision and Order at 11; Director's Exhibits 10-11; Claimant's Exhibits 1-2. The September 18, 2011 study produced qualifying[6] pre-bronchodilator and non-qualifying post-bronchodilator values; the January 4, 2012 pre-bronchodilator values were found invalid

[5] The administrative law judge found that the arterial blood gas studies do not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii) and there is no evidence of cor pulmonale with right-sided congestive heart failure pursuant to 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 10 n.10, 12-13.

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

while the post-bronchodilator values are non-qualifying; the August 10, 2012 study produced non-qualifying values pre- and post-bronchodilation; and the September 12, 2012 study produced qualifying values pre- and post-bronchodilation. Decision and Order at 11-12. The administrative law judge accorded greater weight to the pre-bronchodilator results. *Id*. Because two of the three pre-bronchodilator studies are qualifying for total disability, including the most recent study, he found claimant established total disability at 20 C.F.R. §718.204(b)(2)(i). *Id*.

We reject employer's argument that the administrative law judge erred in assigning greater weight to the qualifying pre-bronchodilator results than to the post-bronchodilator results. Employer's Brief at 9. Based on the recognition by the Department of Labor (DOL) that post-bronchodilator results do not provide an adequate assessment of a miner's disability, the administrative law judge rationally gave greater weight to the pre-bronchodilator results. *See Lane v. Union Carbide Corp*., 105 F.3d 166, 174 (4th Cir 1997); 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980); Decision and Order at 12. Because it is supported by substantial evidence, we affirm the administrative law judge's finding that claimant established total disability under 20 C.F.R. §718.204(b)(2)(i) based on the preponderance of the qualifying pre-bronchodilator pulmonary function studies.

Prior to considering the medical opinions, the administrative law judge found that claimant's usual coal mine employment was as a coal hauler, requiring him to "drive a hauler and, at times, lift or carry 50 to 100 pounds."[7] Decision and Order at 7-8; Director's Exhibit 4. The administrative law judge determined this was "heavy work" based on the *Dictionary of Occupational Titles*, which defines "heavy work" as including "[e]xerting 50 to 100 pounds of force occasionally." Decision and Order at 8 n.6, *quoting* Director's Exhibit 4.

We reject employer's contention that the administrative law judge erred in finding claimant's usual coal mine employment was a coal hauler because claimant was a blaster for the first sixteen years he worked in coal mine employment. Employer's Brief at 8. A miner's "usual coal mine employment" is "the most recent job the miner performed regularly and over a substantial period of time." *Shortridge v. Beatrice Pocahontas Coal Co.*, 4 BLR 1-534, 1-539 (1982). "This determination must be made on a case by case basis and will vary depending upon the employment history in the individual case." *Id*. The administrative law judge acknowledged that claimant worked as a blaster for sixteen years, but nevertheless permissibly found claimant's usual coal mine employment to be

[7] The administrative law judge also noted that claimant sat for nine and one-half hours a day and stood or crawled for less than one hour a day. Decision and Order at 7; Director's Exhibit 4.

that of a hauler based on the consistency of claimant's testimony and his Description of Coal Mine Employment (Form CM-913) that his last coal mining job was that of a hauler for one year.[8] *See Underwood*, 105 F.3d at 949; *Shortridge*, 4 BLR at 1-539; Decision and Order at 7-8.

We also reject employer's argument that the administrative law judge erred in finding the coal hauler position required "heavy work," Employer's Brief at 8, as employer does not allege specific error in this finding. *See Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

The administrative law judge next considered the medical opinions of Drs. Splan, Dahhan, Gallai, Habre, and Tuteur. Decision and Order at 13-21. He found the opinions of Drs. Gallai and Tuteur reasoned and documented and supportive of a finding of total disability, and the contrary opinions of Drs. Splan and Dahhan unpersuasive and entitled to no weight. *Id*. at 22.

Contrary to employer's argument, the administrative law judge did not err in finding that Dr. Gallai diagnosed total disability. Employer's Brief at 10-11. Dr. Gallai opined that claimant's pulmonary function testing revealed moderate restrictive and mild obstructive lung impairments. Claimant's Exhibit 1; Decision and Order at 15-16. He opined that claimant cannot "return to his former employment in the coal mine industry" because he "does not have the pulmonary capacity to walk up and down in the cab of a large hauler which is [seven to ten] feet, six to ten times a day." *Id*. We thus affirm the finding that Dr. Gallai diagnosed total disability. Decision and Order at 21-22.

We also reject employer's argument that the administrative law judge erred in finding that Dr. Tuteur's opinion supports total disability. Employer's Brief at 10-11. A physician need not phrase his opinion in terms of "total disability" in order to support a finding of total disability. *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990), *citing Black Diamond Coal Co. v. Benefits Review Board* [*Raines*], 758 F.2d 1532, 1534 (11th Cir. 1985). A diagnosis of physical limitations due to a pulmonary condition may be relevant to a total disability determination: it may support total disability if it provides sufficient information from which the administrative law judge can reasonably infer that a miner is unable to do his last coal mine job. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1142 (4th Cir. 1995); *Poole*, 897 F.2d at 894; *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988).

[8] The administrative law judge also found claimant's identification of coal hauler as his most recent coal mining employment consistent with statements he made to the claims examiner and to several physicians. Decision and Order at 8.

The administrative law judge noted that Dr. Tuteur diagnosed a "mild impairment of pulmonary function in the form of a combined mild obstructive and mild restrictive abnormality," which caused a "mild exercise intolerance." Decision and Order at 20; Employer's Exhibit 5. Although Dr. Tuteur opined that the "mild impairment of pulmonary function is of insufficient severity from a respiratory standpoint to cause disability," he stated further that from a pulmonary standpoint claimant is "limited to walking one block or climbing one flight of stairs." Employer's Exhibit 5. Based on his finding that claimant's usual coal mine employment required heavy work, and Dr. Tuteur's assessment that claimant's mild pulmonary impairment limits him to walking one block or climbing one flight of stairs, the administrative law judge permissibly found Dr. Tuteur's opinion supportive of a finding of total disability. Decision and Order at 21-22; *see Scott*, 60 F.3d at 1142; *Poole*, 897 F.2d at 894; *McMath* 12 BLR at 1-9.

We further affirm, as unchallenged, the administrative law judge's finding that the opinions of Drs. Gallai and Tuteur are adequately reasoned and documented.[9] *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 22. We thus affirm as supported by substantial evidence the administrative law judge's finding that claimant established total disability under 20 C.F.R. §718.204(b)(2)(iv).

Because employer has not raised any other allegation of error concerning the administrative law judge's finding under 20 C.F.R. §718.204(b)(2), we affirm his finding that claimant established total disability. Decision and Order at 22-23. In light of our affirmance of the administrative law judge's findings of at least fifteen years of qualifying coal mine employment and a totally disabling respiratory impairment, claimant invoked the presumption of total disability due to pneumoconiosis. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305; Decision and Order at 22-23.

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

Because claimant invoked the Section 411(c)(4) presumption, the burden shifted to employer to establish that he has neither legal nor clinical pneumoconiosis,[10] or that "no

[9] As employer does not challenge the administrative law judge's finding that the contrary opinions of Drs. Splan and Dahhan are entitled to no weight, this finding is affirmed. *Skrack*, 6 BLR at 1-711; Decision and Order at 22 n. 13.

[10] "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

part of [his] 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.

A. Legal Pneumoconiosis

To disprove legal pneumoconiosis, employer must establish that claimant does not suffer from a chronic lung disease or impairment that is "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2),(b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015) (Boggs, J., concurring and dissenting). In determining that employer failed to meet its burden, the administrative law judge considered the medical opinions of Drs. Tuteur and Dahhan. Decision and Order at 26-28. Dr. Tuteur diagnosed chronic bronchitis due to cigarette smoking and unrelated to coal mine dust exposure. Employer's Exhibits 5, 6. Dr. Dahhan opined that because claimant has "no objective findings to indicate any pulmonary impairment," he does not have legal pneumoconiosis. Director's Exhibit 11. The administrative law judge found their explanations for excluding a diagnosis of legal pneumoconiosis unpersuasive. Decision and Order at 27-28. He also found Dr. Dahhan's opinion undocumented because he did not consider claimant's treatment records or the other pulmonary function testing of record when opining that claimant has no pulmonary impairment. *Id*.

Employer argues that the administrative law judge erred in discrediting Dr. Tuteur's opinion.[11] Employer's Brief at 11-12. We disagree. In his initial report, Dr. Tutuer stated that claimant's chronic bronchitis could be caused by coal mine dust exposure or cigarette smoking. Employer's Exhibit 5 at 3. He excluded a diagnosis of legal pneumoconiosis, however, based on a relative "risk assessment" of claimant's cigarette smoke and coal mine dust exposures. *Id*. at 3-5. Citing medical literature, Dr. Tuteur explained that there is a twenty percent risk of chronic obstructive pulmonary disease (COPD) developing "among smokers who never mine" compared to a one percent to two percent risk "of non-smoking miners" developing the disease. *Id*. at 5. Thus, he opined that claimant's COPD is not significantly related to, or substantially aggravated by, coal mine dust exposure. *Id*. In a

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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).

[11] As it is unchallenged, we affirm the administrative law judge's finding that Dr. Dahhan's opinion is not well-reasoned or documented. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Skrack*, 6 BLR at 1-711; Decision and Order at 27.

supplemental report, he stated that pulmonary function testing indicated that claimant's COPD is at least "partially reversible" and a coal mine dust related pulmonary impairment "is not associated with a reversible component." Employer's Exhibit 6 at 2.

Contrary to employer's argument, the administrative law judge permissibly found Dr. Tuteur's opinion not well-reasoned because "it is based on generalities" and because Dr. Tuteur "fails to explain how [c]laimant could not be among the rare miners who do in fact develop COPD as a result of their coal mine dust exposure." Decision and Order at 28; *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985). Moreover, the administrative law judge permissibly found Dr. Tuteur's opinion unpersuasive because he did not address a study relied upon by the DOL in the preamble to the 2001 regulations which states that the "incidence of nonsmoking coal miners with intermediate dust exposure developing moderate obstruction . . . is roughly equal to the incidence of moderate obstruction in smokers with no mining exposure (15.5% v. 17.1%)." Decision and Order at 28, *quoting* 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000); *see Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441.

The administrative law judge also permissibly rejected Dr. Tuteur's opinion because he "has not sufficiently explained why [c]laimant's COPD is not significantly related, or substantially aggravated by, his coal mine dust exposure, in addition to his smoking history." Decision and Order at 28; *see Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; 20 C.F.R. §718.201(b). Because it is supported by substantial evidence, we affirm the administrative law judge's finding that employer failed to establish that claimant does not have legal pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(i)(A).[12]

B. Clinical Pneumoconiosis

We also reject employer's argument that the administrative law judge erred in weighing the x-rays and medical opinions in finding clinical pneumoconiosis unrebutted.[13]

[12] We need not address employer's argument that the administrative law judge erred in determining the length of claimant's smoking history. Employer's Brief at 8-9. Error, if any, in that finding is harmless given our affirmance of his rationale for discrediting the physicians' opinions, which does not concern the length of claimant's smoking history. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[13] The administrative law judge accurately found that the record contains no biopsy evidence. Decision and Order at 24 n. 16. We further affirm as unchallenged his finding

Employer's Brief at 10-11. The administrative law judge weighed seven readings of four x-rays. Decision and Order at 24. Dr. DePonte, a dually-qualified Board-certified radiologist and B reader, interpreted the September 18, 2011 x-ray as negative.[14] Director's Exhibit 10. Dr. Alexander, a dually-qualified radiologist, interpreted the January 4, 2012 x-ray as positive while Dr. Dahhan, a B reader, and Dr. Meyer, a dually-qualified radiologist, interpreted it as negative. Director's Exhibits 11, 12; Claimant's Exhibit 3. Dr. Alexander interpreted the August 10, 2012 x-ray as positive. Claimant's Exhibit 1. Dr. Alexander also interpreted the September 12, 2012 x-ray as positive while Dr. Tarver, also a dually-qualified radiologist, interpreted it as negative. Claimant's Exhibit 2; Employer's Exhibit 4.

Giving more weight to the x-ray interpretations of physicians who are dually-qualified, the administrative law judge found the January 4, 2012 and September 12, 2012 x-rays inconclusive, based on the conflicting interpretations of equally qualified readers. Decision and Order at 24. Based on the uncontradicted readings, he found the September 18, 2011 x-ray negative and the August 10, 2012 x-ray positive. *Id*. Because the record contains one positive, one negative, and two inconclusive x-rays, the administrative law judge found the preponderance of the x-ray evidence inconclusive. *Id*.

Contrary to employer's argument, the administrative law judge properly considered the physicians' radiological qualifications and permissibly assigned equal weight to the readings by the dually-qualified physicians. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); Decision and Order at 24-25. Because he performed both a qualitative and quantitative review of the x-rays, taking into consideration the number of interpretations, the readers' qualifications, and the dates of the films when resolving the conflict in the x-ray readings, we affirm his finding that the x-ray evidence is inconclusive and thus does not rebut the presumed fact of clinical pneumoconiosis. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins*, 958 F.2d at 52.

The administrative law judge next weighed the medical opinions of Drs. Dahhan and Tuteur that claimant does not have clinical pneumoconiosis, finding them not well-reasoned or documented. Decision and Order at 24-26. Employer argues that Dr. Tuteur's opinion is sufficient to disprove clinical pneumoconiosis. Employer's Brief at 10. Employer, however, does not allege any specific error in the administrative law judge's

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that claimant's hospital and treatment records are insufficient to disprove clinical pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order at 23 n.15.

[14] Dr. Barrett reviewed the September 18, 2011 x-ray to assess its film for quality purposes only. Director's Exhibit 10.

credibility finding.[15] Therefore, we affirm it. *See Sarf*, 10 BLR at 1-120-21; *Fish*, 6 BLR at 1-109. We further affirm, as unchallenged, the administrative law judge's finding that Dr. Dahhan's opinion is not well-reasoned or documented. *See Skrack*, 6 BLR at 1-711; Decision and Order at 24-25. Thus, we affirm the administrative law judge's determination that the medical opinion evidence does not support employer's burden to disprove clinical pneumoconiosis. We therefore affirm the administrative law judge's finding that employer failed to establish that claimant does not have clinical pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(B), and his determination that employer failed to rebut the Section 411(c)(4) presumption by establishing that claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i).

We also affirm, as unchallenged on appeal, the administrative law judge's finding that employer failed to establish that no part of claimant's total disability was caused by pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(ii). *See Skrack*, 6 BLR at 1-711; Decision and Order at 28-29. We therefore affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption. 20 C.F.R. §718.305(d)(1)(i), (ii).

[15] Even if employer's brief could be read as having raised a specific argument, substantial evidence supports the administrative law judge's credibility determination regarding Dr. Tuteur. He permissibly discredited Dr. Tuteur's reliance on negative x-ray readings without considering Dr. Alexander's uncontradicted positive reading of the September 12, 2012 x-ray. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 26. He also permissibly found Dr. Tuteur's opinion unpersuasive because the physician did not explain how claimant's obesity, along with the absence of "inspiratory crackles" on physical examination, allowed him to exclude clinical pneumoconiosis. Decision and Order at 26; *see Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441.

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