U.S. Department of Labor

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

BRB No. 15-0285 BLA

LESLIE K. CARR	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MEADOW RIVER COAL COMPANY	)	DATE ISSUED: 05/16/2016
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	
	)	
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 Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

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

Jeffrey R. Soukup (Jackson Kelly PLLC), Lexington, Kentucky, for employer/carrier.

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

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2013-BLA-05182) of Administrative Law Judge Adele Higgins Odegard, rendered on a claim filed on April 5, 2011, 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 established 19.85 years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. Based on these findings, and the filing date of the claim,[1] the administrative law judge determined that claimant 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).[2] The administrative law judge further determined that employer failed to rebut the presumption. Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in finding that the claim was timely filed. Alternatively, employer asserts that if the claim is not time barred, the administrative law judge's decision on the merits must be vacated, as the administrative law judge erred in requiring employer to "rule out" the existence of pneumoconiosis, and did not properly weigh the medical opinions in considering whether employer established rebuttal of the Section 411(c)(4) presumption.[3] Claimant responds, asserting that the claim was timely filed and urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not submitted a brief in this appeal.

[1] At the December 3, 2012 hearing, employer moved to dismiss the claim, asserting that claimant's testimony established that he received a medical determination of total disability more than three years prior to filing his claim. By Order dated April 7, 2014, the administrative law judge found that the claim was timely filed.

[2] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption of total disability 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 also suffers from a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305.

[3] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant established 19.85 years of underground coal mine employment, total disability pursuant to 20 C.F.R. §718.204(b), and invocation of the Section 411(c)(4) presumption. Decision and Order at 2, 6, 7; *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.[4] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Timeliness of Claim

Employer initially challenges the administrative law judge's determination that claimant timely filed his claim. Section 422 of the Act provides that "[a]ny claim for benefits by a miner . . . shall be filed within three years after . . . a medical determination of total disability due to pneumoconiosis . . . ." 30 U.S.C. §932(f). In addition, the implementing regulation requires that the medical determination have "been communicated to the miner or a person responsible for the care of the miner," and further provides a rebuttable presumption that every claim for benefits is timely filed. 20 C.F.R. §725.308(a), (c). Therefore, in order to rebut the presumption of timeliness, employer must show by a preponderance of the evidence that the claim was filed more than three years after a "medical determination of total disability due to pneumoconiosis" was communicated to the miner or his agent. 30 U.S.C. §932(f); 20 C.F.R. §725.308(a). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, held in *Island Creek Coal Co. v. Henline*, 456 F.3d 421, 426-27, 23 BLR 2-321, 2-329-30 (4th Cir. 2006), that an oral communication of a medical determination of total disability due to pneumoconiosis is sufficient to trigger the running of the statute of limitations. *Id.*; *see also Peabody Coal Co. v. Director, OWCP* [*Brigance*], 718 F.3d 590, 595-96, 25 BLR 2-273, 2-283 (6th Cir. 2013).

Employer argues that claimant's hearing testimony establishes that he received a medical determination of total disability due to pneumoconiosis in 2000, more than three years prior to filing his claim on April 5, 2011. During the hearing on December 3, 2013, claimant testified on cross-examination as follows:

> Q. Have you ever been told – well, I know you have but can you tell me when – what doctors or when you've been told that you were totally disabled by black lung?
> A. Dr. Doyle at New River Health Center –
> Q. Doctor who? I'm sorry.
> A. Doyle.

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as claimant's coal mine employment was in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

Q. Doyle, D-o-y-l-e?
A. D-o-y-l-e at the New River Health Center, told me in December of 2000 that I was disabled with black lung.
Q. He told you in 2000?
A. Yes. I went there to file for black lung.
Q. Okay.
A. And he told me I should be filing for disability instead of black lung.

Hearing Transcript at 26. On redirect, claimant further testified:

Q. Dr. Doyle at New River Health Clinic –
A. Yes, sir.
Q. You say he told you [that] you [were] totally disabled and that you had black lung?
A. He told me both. He said I should be filing disability because of my black lung instead of filing for black lung.
Q. Okay. Is this the first federal claim you've filed?
A. First, yes.

Id. at 27.

At the conclusion of claimant's testimony on redirect examination, employer's counsel moved to dismiss the claim as untimely, on the grounds that claimant's testimony established that he did not file his claim within three years of Dr. Doyle's "diagnosis of total disability due to pneumoconiosis." Hearing Transcript at 28. Claimant's counsel opposed the motion, asserting that it was unclear what was communicated to claimant, and that his client "could be mistaken" about what he was told. *Id*. at 28-29.

The administrative law judge indicated that claimant's statements called into question the timeliness of the claim, in the absence of any contrary evidence. The administrative law judge postponed a final ruling on employer's motion to dismiss, and granted claimant's counsel's request to submit, post-hearing, any available treatment records from Dr. Doyle. Hearing Transcript at 29-30. During this discussion, claimant attempted to interject and the parties went off the record. *Id*. at 32. When they came back on the record, the administrative law judge asked claimant, "is there any clarification you want to make to your testimony?" *Id*. Claimant responded:

> The only thing that - - [Dr. Doyle] told me I should be filing for [was] disability instead of black lung, and I might have misspoke when I said he told me I was disabled from black lung. In other words, I never saw it in any record anyway, so I don't know.

Id. Following additional instructions for post-hearing submissions, the hearing was adjourned.

On January 31, 2014, claimant's counsel submitted nine pages of medical records from Dr. Doyle at New River Health Clinic, dated June 22, 2000 through February 12, 2004, and moved to admit them into the record, asserting that the records did not indicate that Dr. Doyle ever diagnosed claimant with totally disabling pneumoconiosis. Employer responded on February 6, 2014 by filing a Motion for Summary Decision. Employer asserted that claimant's testimony was sufficient to rebut the presumption of timeliness, because he explicitly stated that he was told by Dr. Doyle in 2000 that he was totally disabled due to pneumoconiosis, eleven years before filing his claim for benefits on April 5, 2011.

In a February 18, 2014 reply in support of its motion, employer also argued that Dr. Doyle's treatment records were consistent with claimant's testimony in the following respects:

> In a June 22, 2000 record, Dr. Doyle said spirometry showed severe obstruction. He concluded [claimant] had "severe [chronic obstructive pulmonary disease (COPD)] with partial reversibility," "probable OP [occupational pneumoconiosis]," and "DOE [dyspnea on exertion] with main appreciable contributing factors being occupational dust exposure, smoking, over weight." In a December 7, 2000 record, Dr. Doyle noted [claimant's] post-bronchodilator FEV1 (a measure of obstruction or COPD) was only 1.18 ml, significantly below the value qualifying for total disability, 2.27 ml. In this same record, Dr. Doyle noted [claimant] said he could no longer do his last work (caring for the mentally disabled) because of "his degree of respiratory impairment." In a January 25, 2011 record, Dr. Doyle noted [claimant] said he can only climb five steps before becoming short of breath (dyspnea), and said [claimant] "is requesting strongly that I dictate a letter on his behalf certifying that he is disabled due to his breathing condition." Evidently agreeing that [claimant] was totally disabled from his respiratory problems, Dr. Doyle said "Per patient request will dictate a letter on behalf for Social Security benefits," and consequently wrote a letter that same day saying [claimant] "suffers from severe COPD. According to the Social Security guidelines, he qualifies for benefits." An individual only qualifies for [S]ocial [S]ecurity disability benefits if he is totally disabled, meaning he has a severe impairment making him unable to do his past relevant work or any other substantial gainful work.

Employer's Reply in Support of Motion for Summary Decision at 2-3 (footnotes omitted), *quoting* Claimant's Exhibit 4.

Alternatively, employer asserted that, even if the records from Dr. Doyle were found not to convey a medical determination of total disability due to pneumoconiosis, claimant's testimony, standing alone, established what he was told by Dr. Doyle in 2000. Employer's Reply in Support of Motion for Summary Decision at 3. Employer pointed out that claimant "did not express any uncertainty over what he remembered Dr. Doyle telling him until after [employer] moved to dismiss the claim and after [employer] explained that Dr. Doyle's statement time-bars the claim." *Id*. at 3-4. Employer, therefore, asserted that the more credible testimony about what claimant remembered was given "before [claimant] learned the legal consequence of his recollection, not after." *Id*. at 4. Claimant, however, argued that Dr. Doyle's records do not satisfy employer's burden to establish that a medical determination of total disability due to pneumoconiosis was communicated to claimant and urged the administrative law judge to reject employer's efforts to "create this diagnosis through a piecemeal analysis." Claimant's Response in Opposition to Employer's Motion for Summary Decision at 5.

On April 7, 2014, the administrative law judge issued an Order Admitting Claimant's Submission of Evidence and Denying Employer's Motion for Partial Summary Decision; and Setting Dates for Submission of Evidence and Briefs. The administrative law judge found that claimant "exhibited a faulty memory when he presented conflicting testimony as to what Dr. Doyle conveyed to him thirteen years prior" and, in relying on the "flawed recollection," employer did not rebut the presumption that the claim was timely filed pursuant to 20 C.F.R. §725.308(c). April 7, 2014 Order at 2-3. The administrative law judge further found that the records from New River Health Clinic "do not corroborate, or even support, that Dr. Doyle informed [c]laimant that he was totally disabled due to pneumoconiosis," as they did not contain an "explicit diagnosis of total disability caused by pneumoconiosis outside of the three-year statute of limitations period." *Id*. at 3.

On appeal, employer argues that the administrative law judge erred in summarily crediting claimant's statement that he "might have misspoke" to find that claimant had a faulty memory about what Dr. Doyle told him. Employer's Brief in Support of Petition for Review at 8, *quoting* Hearing Transcript at 32. Employer argues:

> [T]he [administrative law judge] failed to address the strong possibility that [claimant's] convenient memory lapse was no lapse, but a calculated and disingenuous retraction made only to save his claim from being dismissed after realizing how damaging his previous unequivocal testimony was.

Id. at 8-9. Employer further argues that the administrative law judge erred in concluding that Dr. Doyle's records from New River Health Clinic do not corroborate that claimant was informed of a medical diagnosis of total disability due to pneumoconiosis more than three years before he filed his claim for benefits. *Id.* at 11. Employer maintains that the administrative law judge's ruling on the timeliness issue does not satisfy the Administrative Procedure Act (APA).[5]

Employer's arguments are without merit. The question of whether the evidence is sufficient to rebut the presumption of timeliness involves factual findings that are to be made by the administrative law judge. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc). Moreover, determining the reliability of witness testimony is within the sound discretion of the administrative law judge. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764, 21 BLR 2-589, 2-606 (4th Cir. 1999). In this case, the administrative law judge permissibly concluded that claimant's testimony was "equivocal" as to what he was told by Dr. Doyle in 2000, and that it was insufficient to rebut the presumption of timeliness. April 7, 2014 Order at 2; *see Mays*, 176 F.3d at 764, 21 BLR at 2-606; *Roberts & Schaefer Co. v. Director, OWCP* [*Williams*], 400 F.3d 992, 996-97, 23 BLR 2-302, 2-314-15 (7th Cir. 2005); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988). Furthermore, the administrative law judge permissibly determined that Dr. Doyle's treatment records "do not corroborate, or even support, that [he] informed claimant that he was totally disabled due to pneumoconiosis" and fail to show that he diagnosed claimant as being totally disabled due to pneumoconiosis:

> Employer points to the findings of severe COPD, probable occupational pneumoconiosis and dyspnea on exertion as well as [c]laimant's request that Dr. Doyle certify his total disability condition for purposes of Social Security benefits. . . . However, none of these items contain[s] a concrete diagnosis of total disability stemming from pneumoconiosis. Additionally, the documents submitted cite [c]laimant's long smoking history and overweight condition, in addition to his career as an underground miner, as potential causes of his compromised health. In reviewing the record, I find no explicit diagnosis of total disability caused by pneumoconiosis outside of the three-year statute of limitations period.

[5] The Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), requires that an administrative law judge set forth the rationale underlying his or her findings of fact and conclusions of law. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

April 7, 2014 Order at 3; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997).[6]

Contrary to employer's contention, the administrative law judge has satisfied the APA. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Because it is supported by substantial evidence, we affirm the administrative law judge's finding that neither claimant's hearing testimony nor Dr. Doyle's treatment records establish that claimant received a medical determination of total disability due to pneumoconiosis in 2000, sufficient to trigger the running of the statute of limitations for filing a black lung claim. *See Adkins v. Donaldson Mine Co.*, 19 BLR 1-34, 1-39-40 (1993); *see generally Director, OWCP v. Consolidation Coal Co.* [*Petracca*], 884 F.2d 926, 931, 13 BLR 2-38, 2-41-42 (6th Cir. 1989). Thus, we affirm the administrative law judge's conclusion that the claim was timely filed pursuant to 20 C.F.R. §725.308.

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

In order to rebut the Section 411(c)(4) presumption of total disability due to pneumoconiosis, employer must affirmatively establish that claimant does not have legal[7] and clinical[8] pneumoconiosis, or that "no part of [claimant's] respiratory or pulmonary

[6] Although employer interprets Dr. Doyle's notations in a different manner, an administrative law judge is tasked with "weigh[ing] conflicting evidence and draw[ing] inferences from it, and a reviewing court may not set aside an administrative law judge's inference merely because it finds another more reasonable or because it questions the factual basis." *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894, 13 BLR 2-348, 2-355 (7th Cir. 1990); *see* Employer's Brief in Support of Petition for Review at 11.

[7] Legal pneumoconiosis includes "any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The regulation also provides that "a disease 'arising out of coal mine employment' includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or *substantially aggravated by*, dust exposure in coal mine employment." 20 C.F.R. §718.201(b) (emphasis added).

[8] Clinical pneumoconiosis is defined as:

> [T]hose 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

total disability was caused by pneumoconiosis as defined in §718.201." 20 C.F.R. §718.305(d)(1); *see West Virginia CWP Fund v. Bender*, 782 F.3d 129, 137 (4th Cir. 2015); *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 Corp*., 25 BLR 1-149, 1-159 (2015) (Boggs, J., concurring and dissenting).

The administrative law judge determined that the opinions of employer's experts, Drs. Zaldivar and Bellotte, were insufficient to establish that claimant does not have legal pneumoconiosis. Dr. Zaldivar examined claimant on May 9, 2012. Employer's Exhibit 5. He noted that claimant underwent gastric sleeve resection surgery in September 2010 for weight loss, and had a left lower lobectomy in February 2012 to remove lung cancer. He also noted that claimant had a smoking history of sixty to eighty pack years and a coal mine work history of eighteen years. *Id*. Dr. Zaldivar indicated that claimant's pulmonary function study showed bronchospasm compatible with asthma, and that he had an abnormal blood gas study with exercise. *Id*. He diagnosed asthma and emphysema due to smoking. *Id*. During a deposition conducted on June 10, 2014, Dr. Zaldivar indicated that claimant's lungs were damaged by radiation, which caused pulmonary fibrosis and a restrictive impairment. Employer's Exhibit 19. He testified that claimant does not have legal pneumoconiosis because:

> [Claimant] had too many other diseases that fully explained the changes in the ventilatory capacity. He has the history of tobacco smoke exposure all of his life which resulted in cancer. . . .
>
> Plus, he developed the asthmatic problem very early in life, most likely. He's been wheezing and having trouble with his breathing for a long time. He has – So he has the asthmatic problem.
>
> He's had the problem with smoking and COPD resulting from it. He has partial resection of the lung and then more damage to the remaining lobe

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> reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

20 C.F.R. §718.201(a)(1).

> with the chemotherapy and radiation. All of this explains very well why his breathing is what it is. There is absolutely no evidence that his eighteen years of work in the coal mines could have contributed in any way to it.

Employer's Exhibit 19 at 24-25.

Dr. Bellotte examined claimant on May 13, 2014. Employer's Exhibit 17. He noted a smoking history of sixty to eighty pack years, claimant's coal mine work history of eighteen years, claimant's treatment for congestive heart failure in 2004, and his history of childhood polio. *Id*. Dr. Bellotte diagnosed chronic obstructive pulmonary disease with emphysema due to claimant's "long heavy smoking history," and "under treated asthma." *Id*. Dr. Bellotte stated:

> Asthma is a disease of the general population and is not caused by coal dust . . . . This gentleman has had [congestive heart failure] in the past, and a diastolic dysfunction of his heart diagnosed. This was at a time when he had morbid obesity, and an under treated [obstructive sleep apnea] which caused a hypoventilatory respiratory failure. This improved after his bariatric surgery which lead to a 120 pound weight loss. He has had polio which caused [the] left side of his body to be weakened and smaller than his right side. His weight problem [led] to his requiring hip replacement. He developed stasis dermatitis due to a massive fluid overload (anasarca). The history of alcohol abuse compounded these medical problems.
>
> This is not the clinical picture of progression and latency of [coal workers' pneumoconiosis.]

Id.

During a deposition conducted on June 25, 2014, Dr. Bellotte gave the following testimony with regard to whether claimant has legal pneumoconiosis:

> I do not believe he has legal coal workers' pneumoconiosis. I did not find anything that made me think – I've had plenty of patients who have never been in the coal mines but, with this kind of history, I would expect them to have the kind of physical examination and lung function that [claimant] has.
>
> If for some strange reason I could give him back any pulmonary impairment that his lungs could have suffered by coal dust, if I added that all back in, he would still be totally and permanently disabled from his pulmonary condition. Coal mine dust didn't impair him in any way.

Employer's Exhibit 20 at 35-36.

The administrative law judge rejected Dr. Zaldivar's explanations for why claimant does not have legal pneumoconiosis and stated that Dr. Zaldivar's diagnosis of asthma does not "rule out pneumoconiosis, as defined in [20 C.F.R.] §718.201, as a co-occurring factor" in claimant's respiratory disability or establish that "[c]laimant's asthma was not caused by coal mine employment." Decision and Order at 28. The administrative law judge also found that Dr. Bellotte's opinion was insufficient to disprove the existence of legal pneumoconiosis because the administrative law judge considered his statement that coal mine dust does not cause asthma to be inconsistent with the preamble to the revised regulations. *Id*. at 29. The administrative law judge determined that Drs. Zaldivar and Bellotte did not provide adequate explanations for why they eliminated a diagnosis of legal pneumoconiosis and for their exclusion of legal pneumoconiosis as a contributing cause of claimant's disability. *Id*. at 29-30.

Employer asserts that the administrative law judge did not apply a proper legal standard in considering whether the medical opinions were sufficient to disprove the existence of legal pneumoconiosis. Employer argues that the administrative law judge erred by requiring its experts to "rule out" or show that "no part" of claimant's obstructive respiratory impairment is related to coal dust exposure, rather than properly considering whether claimant has a respiratory condition significantly related to, or substantially aggravated by, coal dust exposure. Employer's Brief in Support of Petition for Review at 26-27, *quoting* Decision and Order at 28-29. Employer states that "[t]he rule out standard only describes the burden an operator must meet to prove a claimant's disabling impairment is not due to coal mine dust. It does not describe the standard an operator must meet to prove the claimant does not have coal workers' pneumoconiosis." Employer's Brief in Support of Petition for Review at 27. Employer maintains that this case must be remanded for application of the correct rebuttal standard. *Id*.

We agree with employer that the administrative law judge's rebuttal analysis blends the standards applicable to legal pneumoconiosis and disability causation. *See* Decision and Order at 25-31. The administrative law judge's error, however, does not require remand in this case. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). The administrative law judge considered the explanations given by Drs. Zaldivar and Bellotte for why *they* excluded coal dust exposure as a contributing factor in claimant's obstructive respiratory impairment, and she ultimately concluded that their opinions were not sufficiently explained. Thus, the administrative law judge determined that employer was unable to rebut the presumed fact of legal pneumoconiosis based on the *credibility* of the evidence, and not her application of a particular rebuttal standard. *See Minich*, 25 BLR at 1-156; Decision and Order at 28-31.

Employer also contends that the administrative law judge did not provide valid reasons for her credibility determinations with regard to the opinions of Drs. Zaldivar and Bellotte. We disagree. The administrative law judge observed correctly that one of the reasons given by both Dr. Zaldivar, and Dr. Bellotte, for why claimant's respiratory impairment is due to asthma, and has no relation whatsoever to coal dust exposure, was that claimant's pulmonary function study results showed improvement after the use of a bronchodilator. Decision and Order at 28; *see* Employer's Exhibit 19 at 18-19; Employer's Exhibit 20 at 28. The administrative law judge observed correctly, however, that while claimant's "pulmonary function test results improved post-bronchodilator, [claimant] still demonstrated qualifying results, indicating that his condition is irreversible." Decision and Order at 28. The administrative law judge also rationally found that although "Dr. Bellotte testified that medications can reduce the effect of a bronchodilator, which may explain why [claimant] responded to bronchodilators in some studies and not in others . . . [it] does not explain why [claimant] attained qualifying results in all of the post-bronchodilator tests."[9] *Id.*; *see Clark*, 12 BLR at1-155 (1989). Thus, contrary to employer's contention, based on the residual, irreversible respiratory impairment shown on claimant's pulmonary function tests, we see no error in the administrative law judge's conclusion that the opinions of Drs. Bellotte and Zaldivar failed to persuasively explain why claimant's disabling respiratory condition is not legal pneumoconiosis. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489, 25 BLR 2-135, 2-152-53 (6th Cir. 2012); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); *Consolidation Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004).

As the trier-of-fact, the administrative law judge has discretion to assess the credibility of the medical opinions, based on the explanations given by the experts for their diagnoses, and assign those opinions appropriate weight. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 25 BLR 2-255 (4th Cir. 2013) (Traxler, C.J., dissenting); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 314-15, 25 BLR 2-115, 2-129-30 (4th Cir. 2012); *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76. The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah,*

[9] We reject employer's contention that the administrative law judge failed to consider Dr. Bellotte's testimony that "[a]sthma leads to remodeling of the airways which ultimately causes fixed obstruction if not treated appropriately." Employer's Exhibit 17 at 13; *see* Employer's Brief in Support of Petition for Review at 18-19. The administrative law judge thoroughly summarized Dr. Bellotte's deposition testimony, and acted within her discretion in concluding that Dr. Bellotte's opinion is not persuasive to affirmatively establish that claimant does not have legal pneumoconiosis. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998).

Inc., 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988). Because it is supported by substantial evidence, we affirm the administrative law judge's finding that employer failed to disprove the existence of legal pneumoconiosis and rebut the presumption pursuant to 20 C.F.R. §718.305(d)(1)(i).[10] *Bender*, 782 F.3d at 137.

Relevant to the issue of disability causation, the record reflects that Drs. Zaldivar and Bellotte considered claimant to be totally disabled by a severe obstructive respiratory impairment. Employer's Exhibits 5, 17. As we affirm the administrative law judge's finding that their opinions are not credible to establish that claimant's severe obstructive respiratory impairment is not legal pneumoconiosis (an impairment that is significantly related to, or substantially aggravated by, coal dust exposure), we also affirm the administrative law judge's findings that employer failed to prove that no part of claimant's respiratory disability is due to pneumoconiosis as defined at 20 C.F.R. §718.201.[11] *See* 20 C.F.R. §718.305(d)(ii); *Cochran*, 718 F.3d at 324, 25 BLR at 2-258.[12] Consequently, we affirm the administrative law judge's finding that employer failed to establish rebuttal of the Section 411(c)(4) presumption. *See Bender*, 782 F.3d at 137; *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76.

[10] By failing to disprove the existence of legal pneumoconiosis, employer is precluded from establishing rebuttal under 20 C.F.R. §718.305(d)(1)(i), despite the fact that the administrative law judge determined that employer disproved the existence of clinical pneumoconiosis. *See West Virginia CWP Fund v. Bender*, 782 F.3d 129, 137 (4th Cir. 2015); Decision and Order at 26.

[11] Dr. Zaldivar opined that claimant's qualifying pulmonary function study results obtained by Drs. Gallai and Klayton were due to damage caused by radiation therapy for cancer. Employer's Exhibit 19 at 19-22. However, the administrative law judge rationally found that "[c]laimant's cancer treatment cannot explain Dr. Zaldivar's qualifying pulmonary function test results or Dr. Rasmussen's qualifying test results because these tests were conducted before [c]laimant's radiation treatment." Decision and Order at 30-31.

[12] Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Zaldivar and Bellotte, it is not necessary that we address employer's assertions that the administrative law judge misconstrued the preamble to the 2001 revised regulations relating to asthma, or that she erred in rejecting Dr. Bellotte's opinion based on the carboxyhemoglobin levels he obtained during his examination. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge