U.S. Department of Labor

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

BRB No. 15-0289 BLA

WILLIAM B. NEFF Claimant-Respondent v. BIG FORK COAL COMPANY, INCORPORATED and WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 05/19/2016 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Heath M. Long (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

Christopher M. Green (Jackson Kelly PLLC), Charleston, West Virginia, 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 (2012-BLA-5685) of Administrative Law Judge Drew A. Swank 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 subsequent claim filed on March 23, 2011.[1]

Applying Section 411(c)(4), 30 U.S.C. §921(c)(4),[2] the administrative law judge credited claimant with 16.45 years of underground coal mine employment, and found that the new evidence established that claimant has a totally disabling respiratory or pulmonary impairment. The administrative law judge, therefore, found that claimant established that one of the applicable conditions of entitlement had changed since the date upon which the denial of claimant's prior claim became final, *see* 20 C.F.R. §725.309(c), and invoked the rebuttable presumption of total disability due to pneumoconiosis set forth at Section 411(c)(4). The administrative law judge further found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erred in finding that claimant has a totally disabling respiratory or pulmonary impairment, and therefore erred in finding that claimant invoked the Section 411(c)(4) presumption. Employer also contends that the administrative law judge erred in finding that employer did not rebut the presumption. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[3]

[1] Claimant's first application for benefits, filed on April 24, 1986, was denied by the district director on August 20, 1986 because claimant failed to establish any element of entitlement. Director's Exhibit 1. Claimant's second claim, filed on December 3, 1997, was denied by reason of abandonment. Director's Exhibit 3. On September 8, 1999, claimant filed a third claim, which was denied by the district director on January 4, 2000 because claimant failed to establish any element of entitlement. Director's Exhibit 3. On March 23, 2011, claimant filed the current claim, his fourth. Director's Exhibit 5.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more 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 impairment are established. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305(b).

[3] We affirm, as unchallenged on appeal, the administrative law judge's determination that claimant established 16.45 years of underground coal mine

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 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

Employer argues that the administrative law judge erred in finding that claimant established that he is totally disabled pursuant to 20 C.F.R. §718.204(b)(2), and thus erred in finding that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4). 30 U.S.C. §921(c)(4); Employer's Brief at 6-7. Specifically, employer contends that the administrative law judge based his finding of total disability solely on the arterial blood gas study evidence, without considering the medical opinion evidence, and without weighing the evidence supportive of total disability against the contrary probative evidence. Employer argues, therefore, that the administrative law judge failed to comply with 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), which requires that the administrative law judge consider all relevant evidence, render findings on all material issues of fact, law, or discretion, and set forth the rationale underlying his findings.

After reviewing the arguments on appeal, the administrative law judge's findings, and the relevant evidence, we affirm the administrative law judge's determination that claimant established total disability under 20 C.F.R. §718.204(b)(2). Turning first to the pulmonary function studies of record, pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered the results of three new studies conducted on July 20, 2011, December 14, 2011, and May 11, 2012. The July 20, 2011 pulmonary function study, which was conducted as part of Dr. Rasmussen's Department of Labor (DOL)-sponsored medical evaluation, produced qualifying[5] values, both before and after the

---

employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6-7.

[4] The record reflects that claimant's coal mine employment was in West Virginia. Director's Exhibits 1, 2, 3. 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).

[5] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718,

administration of a bronchodilator. Director's Exhibit 16. The December 14, 2011 pulmonary function study, administered by Dr. Zaldivar, produced qualifying values before the administration of a bronchodilator, but non-qualifying values after the administration of a bronchodilator. Director's Exhibit 17. Finally, the May 11, 2012 pulmonary function study, administered by Dr. Begley, produced non-qualifying values, both before and after the administration of a bronchodilator. Claimant's Exhibit 1.

Noting that three of the six pulmonary function study results were non-qualifying, including the two most recent results, the administrative law judge found that claimant failed to establish total respiratory disability by a preponderance of the pulmonary function study evidence, pursuant to 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 17.

Next, the administrative law judge considered the results of three new blood gas studies conducted on July 20, 2011, December 14, 2011, and May 11, 2012. Decision and Order at 18. The July 20, 2011 blood gas study, conducted by Dr. Rasmussen, produced qualifying values at rest. Director's Exhibit 16. The December 14, 2011 blood gas study, administered by Dr. Zaldivar, produced non-qualifying values at rest. Director's Exhibit 17. Finally, the May 11, 2012 blood gas study, conducted by Dr. Begley, yielded qualifying values, both at rest and during exercise. Claimant's Exhibit 1.

Noting that three of the four blood gas study results were qualifying, and that the most recent blood gas study produced qualifying results, both at rest and during exercise, the administrative law judge found that claimant established the existence of a totally disabling respiratory or pulmonary impairment through the blood gas study evidence. Decision and Order at 18. Although employer correctly points out that the administrative law judge failed to consider the medical opinion evidence pursuant to 20 C.F.R. §718.204(b)(2)(iv), and further failed to weigh the evidence supportive of a finding of total disability against the contrary probative evidence of record, *see Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), employer has not explained how consideration of that evidence would alter the administrative law judge's finding.[6] *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (holding that the appellant must explain how "error to which [it] points could have made any difference"); Employer's Brief at 6-7. While the administrative law judge found that the preponderance of the pulmonary

---

Appendices B and C. *See* 20 C.F.R. §718.204(b)(2)(i). A "non-qualifying" study exceeds those values.

[6] There is no evidence in the record of cor pulmonale with right-sided congestive heart failure. *See* 20 C.F.R. §718.204(b)(2)(iii).

function studies yielded non-qualifying results, Drs. Rasmussen,[7] Zaldivar,[8] and Begley,[9] who conducted both the pulmonary function study and blood gas study testing, and provided medical opinions, all agreed that claimant is totally disabled from performing his usual coal mine work,[10] regardless of the conflicting objective evidence. Director's Exhibits 16, 17; Claimant's Exhibit 1; Employer's Exhibit 6. Although Dr. Spagnolo,[11] who reviewed the medical evidence of record, initially opined that claimant's disability stems from his underlying heart disease, back and hip problems, he subsequently clarified that claimant would only be able to perform his usual coal mine work from a pulmonary

[7] Dr. Rasmussen examined claimant on July 20, 2011. In his initial report dated August 16, 2011, Dr. Rasmussen opined that based on claimant's post-bronchodilator spirometry, "he retains the pulmonary capacity to perform his regular coal mine employment." Director's Exhibit 16. In a supplemental report dated September 7, 2011, at the request of the district director, Dr. Rasmussen clarified his opinion on the issue of total disability. Dr. Rasmussen opined that, on further review, a comparison of claimant's test results with the Knudson values reflected that claimant "does not retain the pulmonary capacity to perform his regular coal mine employment." *Id.*

[8] Dr. Zaldivar opined that, from a pulmonary standpoint, claimant "is sufficiently impaired to prevent him from performing his usual coal mine work or any kind of significant minor labor." Director's Exhibit 17.

[9] Dr. Begley opined that claimant's severe pulmonary impairment would preclude him from being able to return to his previous coal mine employment, as demonstrated by his "markedly abnormal pulmonary function studies and arterial blood gas studies." Claimant's Exhibit 1.

[10] Drs. Rasmussen, Zaldivar, and Begley reported that claimant's last coal mine employment was as a continuous miner operator and that it involved heavy labor. Director's Exhibits 16, 17; Claimant's Exhibit 1.

[11] In his May 12, 2013 report, Dr. Spagnolo reviewed the available evidence of record and stated that claimant's "underlying heart disease and back and hip problems would prevent him from performing [the] heavy labor" required during his last coal mine employment. Employer's Exhibit 6. During his deposition, while Dr. Spagnolo initially testified that claimant is not disabled from a pulmonary standpoint, he clarified that his conclusion was based on the results of the last post-bronchodilator pulmonary function testing he reviewed, and emphasized that claimant could perform his usual coal mine work "if" he received "proper therapy for his asthma." Employer's Exhibit 21 at 45-48.

standpoint "if he's on proper therapy for his asthma."[12] Employer's Exhibits 7; 21 at 47. In light of the administrative law judge's permissible determination that the weight of the blood gas study results demonstrate a finding of total pulmonary disability, *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), and the uncontradicted opinions of Drs. Rasmussen, Zaldivar, Begley, and Spagnolo that claimant's objective test results demonstrate that, at a minimum, without medication claimant's pulmonary impairment precludes him from performing his usual coal mine work, we affirm the administrative law judge's finding of total respiratory disability. *See* 20 C.F.R. §718.204(b)(2). Consequently, we also affirm the administrative law judge's findings that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309, and invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(4).

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,[13] 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 [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii). The administrative law judge found that employer failed to establish rebuttal by each method.[14]

---

[12] Dr. Spagnolo indicated that claimant had various jobs including roof bolter, miner operator, shuttle car operator, and electrician, and stated that claimant "was required to perform heavy labor in his last job." Employer's Exhibit 6.

[13] "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). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). "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).

[14] In considering whether employer rebutted the Section 411(c)(4) presumption, the administrative law judge combined his discussion of whether employer disproved the existence of pneumoconiosis, with his discussion of whether employer proved that no

Relevant to whether employer established that claimant does not have legal pneumoconiosis, the administrative law judge considered the opinions of Drs. Rasmussen, Begley, Zaldivar, and Spagnolo. Dr. Rasmussen diagnosed legal pneumoconiosis, in the form of chronic obstructive pulmonary disease (COPD) with associated hypoxemia, due to both coal mine dust exposure and smoking, and non-occupational asthma and cardiac disease. Director's Exhibits 16, 17. Dr. Begley also diagnosed legal pneumoconiosis, in the form of a severe obstructive impairment related to chronic bronchitis and emphysema due, in significant part, to both coal mine dust exposure and smoking. Claimant's Exhibits 1; 3 at 38-39. In contrast, Dr. Zaldivar opined that claimant does not have legal pneumoconiosis, but has an obstructive pulmonary impairment related to emphysema and asthma, that is due to smoking and hereditary factors, and is not related to coal mine dust exposure. Director's Exhibit 17; Employer's Exhibit 20 at 36, 38-39. Similarly, Dr. Spagnolo opined that claimant does not have legal pneumoconiosis, but has an obstructive pulmonary impairment primarily due to asthma and underlying heart disease, that is unrelated to coal mine dust exposure. Employer's Exhibits 6; 21 at 45, 51.

The administrative law judge accorded little weight to the opinions of Drs. Rasmussen, Begley, and Zaldivar, finding them to be inadequately explained and poorly reasoned. Decision and Order at 21-22, 24-25, 28. The administrative law judge found that, in contrast, Dr. Spagnolo's opinion was "well-documented and well-reasoned," and "entitled to a moderate amount of weight," but he ultimately found that it was "not enough to rebut the presumption" that claimant is totally disabled due to pneumoconiosis. Decision and Order at 26-27, 28. Therefore, the administrative law judge concluded that employer failed to rebut the Section 411(c)(4) presumption by disproving the existence of legal pneumoconiosis. Decision and Order at 28.

Employer argues that the administrative law judge erred in his consideration of the opinions of Drs. Spagnolo and Zaldivar. Employer's Brief at 7-24. Employer's contention has merit. The administrative law judge found that "inconsistencies" between Dr. Spagnolo's written report and his deposition testimony, regarding the contribution by smoking to claimant's pulmonary impairment, reduced the "overall persuasive value" of Dr. Spagnolo's opinion.[15] Decision and Order at 26. As employer correctly asserts,

---

part of the miner's totally disabling respiratory impairment was due to pneumoconiosis. Decision and Order at 19-28.

[15] The administrative law judge also criticized Dr. Spagnolo's opinion because his assessment of claimant's smoking history "was based mostly on generalities," rather than on claimant's specific medical history. Decision and Order at 26.

however, Dr. Spagnolo's written statement, that claimant's impairment is due to asthma, complications from cigarette smoking, and cardiac disease, is not necessarily inconsistent with Dr. Spagnolo's testimony that cigarette smoking has not played a "major role" in claimant's pulmonary functioning. Employer's Brief at 24; Employer's Exhibits 6; 21 at 44. Further, the record reflects that the administrative law judge has not considered the entirety of Dr. Spagnolo's opinion regarding the effects of smoking. When deposed, Dr. Spagnolo explained that while some of claimant's past respiratory complaints and symptoms were related to his prior smoking habit, none of claimant's current lung function deficits is attributable to cigarette smoking. Employer's Exhibit 21 at 34, 44, 48-51. Given Dr. Spagnolo's conclusion that smoking plays no role in claimant's impairment, the administrative law judge has not adequately explained how any perceived inconsistencies or flaws in Dr. Spagnolo's analysis of claimant's smoking history undercut his opinion that claimant's impairment is unrelated to coal mine dust, and is entirely due to non-occupational asthma and underlying heart disease. Employer's Brief at 24. Moreover, the administrative law judge failed to explain why he found Dr. Spagnolo's opinion insufficient to establish rebuttal, in light of his determination that it is well-reasoned and well-documented. Decision and Order at 26, 28; Employer's Brief at 11-12. For these reasons, the administrative law judge's decision fails to comport with the APA. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). We must therefore vacate the administrative law judge's finding that employer failed to disprove the existence of legal pneumoconiosis.

We must also vacate the administrative law judge's determination to discredit Dr. Zaldivar's opinion. The administrative law judge found that Dr. Zaldivar's opinion is insufficient to establish rebuttal because the doctor "displayed an incorrect understanding of the definition of legal pneumoconiosis," which led him to "incorrect[ly] assert[] that asthma and emphysema are not related to pneumoconiosis." Decision and Order at 24. The administrative law judge found that Dr. Zaldivar's opinion was contrary to the regulations, which provide that both diseases can constitute legal pneumoconiosis if they arose out of coal mine employment. Decision and Order at 24; *citing* 20 C.F.R. §718.201(a)(2).

As employer asserts, the administrative law judge has taken Dr. Zaldivar's comments out of context. Contrary to the administrative law judge's characterization, Dr. Zaldivar specifically acknowledged that coal mine dust can cause, aggravate, or worsen asthma and emphysema, Employer's Exhibit 20 at 38, 69-70, 89-90, 106, but stated that other factors such as heredity and cigarette smoke exposure can also cause or contribute to asthma and emphysema. Director's Exhibit 17 at 3; Employer's Exhibits 20 at 70-72; 23 at 5. Therefore, Dr. Zaldivar explained, when a miner has an impairment, but does not have positive x-ray evidence of clinical pneumoconiosis, a physician must carefully analyze the case "to determine if the most likely diagnosis is pneumoconiosis . . . or something else" and whether "coal mining actually played a role in the obstruction or

whatever other disease the person has." Employer's Exhibit 20 at 46, 106-107. Further, in opining that claimant does not have legal pneumoconiosis, Dr. Zaldivar did not assert "that asthma and emphysema are not related to pneumoconiosis," but concluded that claimant suffers from a "combination of asthma and emphysema, neither one of which *in his case*, are related to pneumoconiosis." Director's Exhibit 17 at 4 (emphasis added). Thus, substantial evidence does not support the administrative law judge's conclusion that Dr. Zaldivar had an incorrect understanding of the definition of legal pneumoconiosis. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208, 22 BLR 2-162, 2-168 (4th Cir. 2000); *Lane v. Union Carbide Corp.*, 105 F.2d 166, 174, 21 BLR 2-34, 2-48 (4th Cir 1997). We therefore vacate the administrative law judge's determination to accord Dr. Zaldivar's opinion less weight.

The administrative law judge also observed that in attributing the irreversible portion of claimant's obstructive impairment to asthma-related airway remodeling, and not to coal mine dust exposure, Dr. Zaldivar stated that such remodeling generally occurs in people who have had asthma since childhood. Decision and Order at 25; Director's Exhibit 17 at 3-4; Employer's Exhibit 23 at 4-6. The administrative law judge found that Dr. Zaldivar's conclusion that childhood asthma was the cause of claimant's irreversible impairment was undermined, however, by the fact Dr. Zaldivar examined claimant in 1986, when claimant was approximately 57 years old, but did not diagnose asthma at that time. As employer correctly asserts, however, during his deposition, Dr. Zaldivar explained why he did not diagnose asthma in 1986, but still believes that claimant suffered from it at that time. Decision and Order at 25; Employer's Exhibit 20 at 55-57, 60-61. On remand, the administrative law judge should reconsider Dr. Zaldivar's opinion, in its entirety, and explain his findings. *See Wojtowicz*, 12 BLR at 1-165.

Finally, we note that the administrative law judge found that the opinions of claimant's physicians, Drs. Rasmussen and Begley, did not weigh against the rebuttal opinions of employer's experts because each suffered from fundamental flaws. Decision and Order at 21-22, 27-28. Specifically, the administrative law judge found that, in opining that claimant suffers from legal pneumoconiosis, Dr. Rasmussen "never addressed [c]laimant's smoking history or explained why he was able to dismiss smoking as a potential cause of [c]laimant's respiratory or pulmonary impairment." Decision and Order at 22. Contrary to the administrative law judge's finding, in both his initial and supplemental reports, Dr. Rasmussen specifically attributed claimant's COPD to both coal mine dust exposure and cigarette smoking. Director's Exhibit 16. Thus, substantial evidence does not support the administrative law judge's conclusion. *See Wojtowicz*, 12 BLR at 1-165. The administrative law judge also discounted Dr. Rasmussen's opinion, as inconsistent, because he originally stated that claimant could perform his last coal mine job from a respiratory standpoint, but stated in his follow-up report that claimant could not return to his regular coal mine work. Decision and Order 22. The administrative law judge has not explained, however, why Dr. Rasmussen's opinion as to

the degree of claimant's respiratory impairment necessarily undercut his opinion regarding the cause of the impairment. *See* 20 C.F.R. §718.201; *Wojtowicz*, 12 BLR at 1-165.

Considering Dr. Begley's diagnosis of legal pneumoconiosis, the administrative law judge noted that, in attributing claimant's impairment to both coal mine dust exposure and cigarette smoking, Dr. Begley opined that he was unable to distinguish between coal mine dust exposure and smoking as possible causes. The administrative law judge concluded that because, at best, the opinion of Dr. Begley established that it is impossible to know whether smoking, coal dust, or both, caused claimant's impairment, his opinion was just as flawed as those offered by employer. Decision and Order at 27-28. Contrary to the administrative law judge's finding, the fact that a doctor cannot distinguish between the effects of smoking and coal mine dust exposure as a contributing cause of a miner's pulmonary impairment does not, *by itself*, render unreasoned a physician's identification of coal mine dust exposure as a contributing cause of a miner's pulmonary impairment. *See* 20 C.F.R. §718.201(a)(2); *Consolidation Coal Co. v. Williams*, 453 F.3d 609, 622, 23 BLR 2-345, 2-2-372 (4th Cir. 2006); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-121 (6th Cir. 2000). Dr. Begley unequivocally opined that coal mine dust exposure was a "significant contributing factor[]" to claimant's disabling impairment. Claimant's Exhibit 3 at 22, 24. The administrative law judge erred in discrediting his opinion without considering the underlying documentation and the totality of his reasoning. *See Cornett*, 227 F.3d at 576, 22 BLR at 2-121; Director's Exhibits 11, 13; Claimant's Exhibit 4.

In sum, on remand, because employer bears the burden of proof on rebuttal, the administrative law judge must consider the opinions of Drs. Spagnolo and Zaldivar, in their entirety, together with the other credible medical opinions of record, and determine whether the opinions of Drs. Spagnolo and Zaldivar are sufficient to carry employer's burden to establish that claimant does not have legal pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i); *Compton*, 211 F.3d at 211, 22 BLR at 2-175; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). In resolving any conflicts among the medical opinions, the administrative law judge must explain his findings. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 803, 21 BLR 2-302, 2-311 (4th Cir. 1998); *Wojtowicz*, 12 BLR at 1-165. Because we have vacated the administrative law judge's finding that employer failed to disprove the existence of legal pneumoconiosis, we also vacate the administrative law judge's 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).

Consequently, we must also vacate the administrative law judge's related finding that employer failed to establish that no part of claimant's respiratory or pulmonary

disability is caused by pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(ii). Decision and Order at 28.

The administrative law judge should begin his analysis at 20 C.F.R. §718.305(d)(1)(i)(A) by considering all relevant and credible evidence to determine whether employer has proved that claimant does not have legal pneumoconiosis, as defined in 20 C.F.R. §718.201(a)(2). Even if legal pneumoconiosis is not disproved, the administrative law judge must determine whether employer has disproved the existence of clinical pneumoconiosis[16] arising out of coal mine employment at 20 C.F.R. §718.305(d)(1)(i)(B), as both of these determinations are necessary to satisfy the statutory mandate to consider all relevant evidence pursuant to 30 U.S.C. §923(b), and to provide a framework for the analysis of the credibility of the medical opinions at 20 C.F.R. §718.305(d)(1)(ii), the second method of rebuttal. *See Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-159 (2015) (Boggs, J., concurring & dissenting). If the administrative law judge finds that employer has disproved the existence of both legal and clinical pneumoconiosis, employer has rebutted the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(i), and the administrative law judge need not reach the issue of disability causation. If employer fails to rebut the presumption at 20 C.F.R. §718.305(d)(1)(i), the administrative law judge must determine whether employer is able to rebut the presumed fact of disability causation at 20 C.F.R. §718.305(d)(1)(ii) with credible proof that no part, not even an insignificant part, of claimant's pulmonary or respiratory disability was caused by either legal or clinical pneumoconiosis. *See Minich*, 25 BLR at 1-159; *see also West Virginia CWP Fund v. Bender*, 782 F.3d 129, 143-44, BLR (4th Cir. 2015).

[16] With respect to whether employer disproved the existence of clinical pneumoconiosis, the administrative law judge found that the weight of the x-ray evidence is negative for pneumoconiosis, and that the record contains no biopsy or autopsy evidence. Decision and Order at 24; *see* 20 C.F.R. §718.202(a)(1), (2). However, the administrative law judge did not conduct an analysis of the digital x-ray, computed tomography scan, or medical opinion evidence, or make an explicit finding, considering all of the relevant evidence, as to whether employer disproved the existence of clinical pneumoconiosis. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 208-11, 22 BLR 2-162, 2-169-74 (4th Cir. 2000); Director's Exhibits 1, 2, 16, 17; Claimant's Exhibits 1-3; Employer's Exhibits 1-3, 6, 16-23.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge