U.S. Department of Labor

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

BRB No. 16-0382 BLA

VERNON NOBLE, JR.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WARCO MINING COMPANY, INCORPORATED	)	DATE ISSUED: 05/30/2017
	)	
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Larry A. Temin, 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.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2011-BLA-05823) of Administrative Law Judge Larry A. Temin, 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 June 1, 2010.[1]

The administrative law judge credited claimant with 12.63 years of coal mine employment[2] and found that employer was properly designated as the responsible operator. The administrative law judge further found that the new evidence established that claimant has a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2) and, therefore, demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c). Considering the claim on the merits, the administrative law judge found that claimant established legal pneumoconiosis,[3] in the form of chronic obstructive pulmonary disease (COPD) due to both smoking and coal mine dust exposure, pursuant to 20 C.F.R. §718.202(a)(4), and that he is totally disabled due to legal pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges its designation as the responsible operator, contending that it did not employ claimant for at least one year. Employer further asserts that the administrative law judge erred in finding that the evidence established legal pneumoconiosis and that claimant's total disability is due to pneumoconiosis. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal. Employer filed a reply brief, reiterating its arguments.[4]

[1] This is claimant's third claim for benefits. Claimant's two prior claims were finally denied by the district director because the evidence failed to establish any element of entitlement. Director's Exhibits 1, 2.

[2] Claimant's coal mine employment was in Kentucky. Hearing Transcript at 13; Director's Exhibit 5. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[3] "'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).

[4] We affirm, as unchallenged on appeal, the administrative law judge's findings of 12.63 years of coal mine employment, total disability pursuant to 20 C.F.R. §718.204(b)(2), and a change in an applicable condition of entitlement at 20 C.F.R. §725.309(c). *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. 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. RESPONSIBLE OPERATOR

The responsible operator is the potentially liable operator that most recently employed the miner for a cumulative period of not less than one year.[5] 20 C.F.R. §§725.494(c), 725.495(a)(1); *see Ark. Coals, Inc. v. Lawson*, 739 F.3d 309, 313, 25 BLR 2-521, 2-530 (6th Cir. 2014). Claimant alleged coal mine employment from 1970 to 1990. Director's Exhibit 9. The administrative law judge considered evidence that during 1988 and 1989,[6] claimant was employed by Warco Mining Company, Inc. (Warco or employer) and Ernco Mining Company, Inc. (Ernco). Decision and Order at 5-8; Director's Exhibit 9.

Based on claimant's hearing testimony, his paystubs with Warco and Ernco, and his Social Security Administration (SSA) earnings records, the administrative law judge found that Warco and Ernco were "in effect, the same employer" due to the "close relationship and centralized control between" the two companies. Decision and Order at 7-8. The administrative law judge therefore determined that it was "appropriate to combine the time [that] [c]laimant worked for both companies." *Id*. at 8. The administrative law judge found that claimant's combined earnings during 1988 and 1989 with Warco and Ernco established "more than one year of coal mine work."[7] *Id*. at 7.

[5] The remaining criteria for a potentially liable operator, set forth at 20 C.F.R. §725.494(a),(b),(d),(e), are not at issue.

[6] It is undisputed that in 1990, claimant's final year of coal mine employment, claimant was employed by several different coal mine operators, none of which employed him for at least one year. Decision and Order at 6; *see* 20 C.F.R. §725.494(c).

[7] The administrative law judge noted that claimant's Social Security Administration (SSA) earnings records reflected that in 1988, claimant earned $19,725.38 with Warco Mining Company, Inc. (Warco) and $1,250.00 with Ernco Mining Company, Inc. (Ernco), and that in 1989, he earned $4,320.31 with Warco and $4,671.87 with Ernco. Decision and Order at 5-8; Director's Exhibit 9. The administrative law judge applied the formula at 20 C.F.R. §725.101(a)(32)(iii) and considered whether claimant's earnings for each of these years equaled or exceeded the average earnings of employees in coal mining, as set forth in Exhibit 610 of the *Office of*

The administrative law judge therefore found that Warco was properly designated as the responsible operator. Decision and Order at 8.

Employer argues that substantial evidence does not support the administrative law judge's finding that Warco and Ernco were the same employer. Employer's Brief at 20-23. We disagree.

At the hearing, claimant testified that Warco was the last coal mine operator he was employed with for at least one year.[8] Hearing Transcript at 18. On cross-examination, claimant was asked how long he worked for Ernco, and he stated that "that's also Warco." *Id*. at 25. According to claimant, "the same people owned both of those mines and [if] they had trouble at the other mines," claimant "went up there and worked for a while, but it was the same people that owned it." *Id*. When asked what his duties were with these mines, claimant testified that with Warco he "bossed for a while" and ran the shuttle car, and with Ernco, he "was a boss" and helped run the miner and the scoop. *Id*. at. 26. Claimant reiterated that the same "two brothers" owned both mines, that he was asked to work at the other mine as needed, that "nothing changed" when he worked in either mine, and that the "[p]ay was the same." *Id*. at 26-27. When asked if he received different checks from Warco and Ernco, claimant testified that he did not notice any difference. *Id*. at 28. He reiterated that "nothing changed as far as pay" and that Warco and Ernco were "the same outfit, just different names . . . ." *Id*. Claimant also testified that when he "subbed at Ernco," Warco was still in operation. *Id*. at 30.

Workers' Compensation Programs Coal Mine (BLBA) Procedure Manual. Decision and Order at 6.

[8] Employer argues that the administrative law judge's decision "to name Warco as the last employer rather than Ernco finds no reliable support in the underlying record." Employer's Brief at 22. Given that we have affirmed the administrative law judge's finding that the two companies operated as the same entity, the argument is moot. Regardless, the administrative law judge correctly found that claimant "testified that of the two companies, he last worked for Warco." Decision and Order at 7; Director's Exhibit 21 at 5-6. Although employer maintains that claimant's testimony was inconsistent, employer has not identified any testimony from claimant that he worked for Ernco after Warco. Rather, employer cites claimant's testimony indicating that he worked for less than a year with Sun Glo Coal Company after he worked for Warco. Employer's Brief at 22-23, *citing* Hearing Transcript at 18, 23, 28.

An administrative law judge is granted broad discretion in evaluating the credibility of the evidence of record, including witness testimony. *See Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67, 1-68 (1986). Contrary to employer's argument, the administrative law judge permissibly found that claimant's uncontradicted testimony established that claimant "did not . . . cease working at one mine and seek new employment" at the other, but instead worked interchangeably for Warco and Ernco: "when there was a personnel shortage at one mine, the company owners worked so closely together that the workforce at one mine was merely supplemented with employees from the other mine." Decision and Order at 8; *see Lafferty*, 12 BLR at 1-192.

Further, the administrative law judge accurately noted that claimant's SSA earnings records reflected that Warco and Ernco had the same address. Director's Exhibits 2 at 336; 9 at 7. In addition, the administrative law judge found that all of claimant's paystubs in 1989 were "nearly identical," and matched the gross pay from both Warco and Ernco reported in the SSA earnings records. *Id*. at 8; Director's Exhibits 7, 9.

Because it is supported by substantial evidence and is in accordance with law, we affirm the administrative law judge's finding that because of the "close relationship and centralized control between" Warco and Ernco, "they [were], in effect, the same employer" of claimant.[9] *See Ridings v. C & C Coal Co.*, 6 BLR 1-227, 1-231 (1983)(affirming administrative law judge's determination that two successive coal mine employers with the same officers and mailing address were a single entity). The administrative law judge therefore properly combined the time that claimant worked for both companies in 1988 and 1989. *See Ridings*, 6 BLR at 1-231. Employer does not dispute that the combined time yielded a cumulative period of at least one year. We therefore affirm the administrative law judge's finding that Warco is the responsible operator. *See Lawson*, 739 F.3d at 322-23, 25 BLR at 2-546-47; *Kentland Elkhorn Coal Corp. v. Hall*, 287 F.3d 555, 565, 22 BLR 2-349, 2-365 (6th Cir. 2002); 20 C.F.R. §§725.494(c), 725.495(a)(1).

[9] Employer's argument that the administrative law judge did not apply the proper standard in determining that Warco and Ernco were a single employer lacks merit. Employer's Brief at 20-22. The administrative law judge's analysis is consistent with *Ridings v. C & C Coal Co.*, 6 BLR 1-227 (1983), in which the Board held that the administrative law judge reasonably credited uncontradicted evidence of common ownership and control.

II. ENTITLEMENT UNDER 20 C.F.R. PART 718

A. Legal Pneumoconiosis

To be entitled to benefits under the Act, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Employer argues that the administrative law judge erred in finding that the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge considered the medical opinions of Drs. Al-Khasawneh, Forehand, Klayton, Rosenberg, and Jarboe. Drs. Al-Khasawneh, Forehand, and Klayton diagnosed claimant with COPD due to both smoking and coal mine dust exposure. Director's Exhibit 13; Claimant's Exhibits 4, 5; Employer's Exhibit 15. Drs. Rosenberg and Jarboe opined that claimant does not suffer from legal pneumoconiosis, but has obstructive lung disease due to cigarette smoking and asthma. Employer's Exhibits 3; 5-9; 10-12; 20.

The administrative law judge found that the opinions of Drs. Al-Khasawneh and Forehand were well-reasoned and documented, and consistent with the medical science set forth in the preamble to the 2001 regulatory revisions. Decision and Order at 27-29, 34. The administrative law judge therefore assigned their opinions substantial weight.[10] The administrative law judge discounted the contrary opinions of Drs. Rosenberg and Jarboe because he found their reasoning to be unpersuasive and inconsistent with the preamble to the 2001 regulatory revisions. *Id*. at 29-34. The administrative law judge, therefore, found that a preponderance of the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Employer asserts that the administrative law judge erred in referring to the preamble when determining the credibility of the medical opinion evidence on the issue of legal pneumoconiosis. Employer's Brief at 23-32. This assertion lacks merit. As part

[10] The administrative law judge discounted Dr. Klayton's opinion because the physician relied on a cigarette smoking history that was only "half of the 60-pack year smoking history" that the administrative law judge found established. Decision and Order at 28-29.

of the deliberative process, an administrative law judge may permissibly evaluate expert opinions in conjunction with the discussion by the Department of Labor (DOL) of the prevailing medical science set forth in the preamble to the 2001 revised regulations. *See Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491, 25 BLR 2-633, 2-645 (6th Cir. 2014); *A&E Coal Co. v. Adams*, 694 F.3d 798, 801 25 BLR 2-203, 2-210 (6th Cir. 2012); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17, 25 BLR 2-115, 2-133 (4th Cir. 2012). Furthermore, the administrative law judge did not, as employer suggests, utilize the preamble as a legal rule, or as a presumption that all obstructive lung disease is pneumoconiosis; he permissibly consulted it as a statement of credible medical research findings accepted by the DOL when it revised the definition of pneumoconiosis to include obstructive impairments arising out of coal mine employment.[11] *See Adams*, 694 F.3d at 801, 25 BLR at 2-210; *Looney*, 678 F.3d at 314-15, 25 BLR at 2-129-32. We therefore reject employer's assertions that the administrative law judge erred in referring to the preamble.

We also reject employer's argument that the administrative law judge erred in crediting the opinions of Drs. Al-Khasawneh and Forehand. Employer's Brief at 36-37. As summarized by the administrative law judge, Drs. Al-Khasawneh and Forehand both opined that claimant suffers from a disabling obstructive respiratory impairment due to his cigarette smoking history, but that coal mine dust exposure substantially contributed to, and aggravated, his obstructive respiratory impairment. Decision and Order at 13, 20-21; Director's Exhibit 13; Claimant's Exhibit 4; Employer's Exhibit 15. Contrary to employer's argument, the administrative law judge permissibly found that their opinions were well-reasoned and documented, because they were supported by the objective evidence of record, their physical examinations of claimant, and accurate smoking and coal mine employment histories, and because their reasoning for opining that coal mine

[11] Contrary to employer's argument, the administrative law judge acknowledged Dr. Rosenberg's statement "that new studies show that smoking results in a loss of 9 cc/year and thus he concluded that cigarette smoking is more destructive [of lung function] than previously believed" since the preamble was issued. Decision and Order at 16; Employer's Exhibit 12; Employer's Brief at 29-30. However, the administrative law judge was not required to find that the studies cited by Dr. Rosenberg negated the medical literature addressing the effects of coal mine dust exposure on lung function that was credited by the Department of Labor (DOL) in the preamble to the 2001 revised regulations. *See Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 490-91, 25 BLR 2-633, 2-644-45 (6th Cir. 2014); *Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324, 25 BLR 2-255, 2-265 (4th Cir. 2013) (observing that neither of employer's medical experts "testified as to scientific innovations that archaized or invalidated the science underlying the [p]reamble").

dust exposure contributed to claimant's COPD was consistent with the medical science credited by the DOL in the preamble to the 2001 revised regulations.[12] *See Adams*, 694 F.3d at 801-02, 25 BLR at 2-210-11; *see Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 28-29.

We also reject employer's argument that the administrative law judge erred in discounting the opinions of Drs. Rosenberg and Jarboe. Employer's Brief at 31-34. Dr. Rosenberg opined that when coal mine dust exposure causes an obstructive respiratory impairment, the FEV1/FVC ratio is normally preserved. Employer's Exhibit 3 at 5, 10 at 8. Because claimant's FEV1/FVC ratio was decreased, Dr. Rosenberg opined that claimant's COPD was due to smoking, rather than coal mine dust exposure. Employer's Exhibit 10 at 9. Contrary to employer's argument, the administrative law judge permissibly found that this reasoning conflicted with the medical science credited by the DOL, recognizing that coal mine dust exposure can cause clinically significant obstructive disease, which can be shown by a reduction in the FEV1/FVC ratio. *See Sterling*, 762 F.3d at 491, 25 BLR at 2-645; *Adams*, 694 F.3d at 801-02, 25 BLR at 2-210-11; 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000); Decision and Order at 30.

Dr. Jarboe testified that coal mine dust exposure can cause obstructive lung disease, even with a negative x-ray. Director's Exhibit 7 at 23. Dr. Jarboe, however, also opined that claimant's COPD is associated with emphysema, and that when coal mine dust exposure causes pulmonary emphysema, "there should be some evidence of dust deposition in the lungs." Employer's Exhibit 4 at 7. Relying partly on the fact that claimant's x-rays showed "no evidence of a profusion of simple dust lesions[,]" Dr. Jarboe opined that claimant does not suffer from legal pneumoconiosis. *Id*. at 8; Employer's Exhibits 5 at 8-11, 7 at 20-22. Contrary to employer's argument, the administrative law judge permissibly found Dr. Jarboe's reasoning unpersuasive because "legal pneumoconiosis may exist in [the] absence of clinical pneumoconiosis." Decision

[12] The administrative law judge noted that, in the preamble to the 2001 revised regulations, the DOL took "the position that both coal [mine] dust and cigarette smoke are equally harmful to the lungs and produce clinically significant obstructive lung disease and chronic bronchitis at roughly the same incidence." Decision and Order at 28, *citing* 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000). He further noted that the DOL "also concluded that the two exposures have an additive effect on each other." *Id*. The administrative law judge summarized Dr. Forehand's reasoning that both smoking and coal mine dust cause COPD in 15% of people exposed to them and that their effects on the lungs are additive. Decision and Order at 21; Employer's Exhibit 15 at 10-15.

and Order at 33; *see Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 488-89, 25 BLR 2-135, 2-151 (6th Cir. 2012)(holding that the administrative law judge permissibly discounted Dr. Jarboe's opinion that emphysema could not have been caused by coal mine dust exposure because insufficient dust retention was shown on the miner's x-rays); 20 C.F.R. §718.202(a)(4), (b); 65 Fed. Reg. at 79,945.

Drs. Rosenberg and Jarboe also opined that claimant does not suffer from legal pneumoconiosis in part because his pulmonary function testing revealed a bronchodilator response. Employer's Exhibits 4 at 5, 8; 5 at 7; 10 at 9. The administrative law judge found that no pulmonary function study of record "indicated that [claimant's] lung function improved to what could be considered normal for his age" and noted that "a majority of the post-bronchodilator values of record continued to be qualifying under the regulations."[13] Decision and Order at 29-30, 33. The administrative law judge rationally concluded that neither Dr. Rosenberg nor Dr. Jarboe adequately explained why claimant's responsiveness to treatment with bronchodilators necessarily eliminated a finding of legal pneumoconiosis. *See Banks*, 690 F.3d at 489, 25 BLR at 2-152-53; *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007).

In addition, Dr. Rosenberg explained that claimant does not suffer from legal pneumoconiosis because studies show that the loss of FEV1 caused by smoking exceeds the loss associated with coal mine dust exposure. Employer's Exhibit 10 at 9. Dr. Jarboe opined that most miners do not have elevated residual volumes, and that a reduced diffusion capacity is not characteristic of a disease related to coal mine dust. Employer's Exhibit 4 at 6-7. The administrative law judge permissibly found that the physicians' reasoning was not persuasive, because they relied on generalizations regarding the effects of coal mine dust exposure on the lungs, rather than specifically focusing on claimant's condition. Decision and Order at 31, 34; *see Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985). The administrative law judge also permissibly found that neither Dr. Rosenberg nor Dr. Jarboe adequately explained why, even assuming that claimant's COPD was smoking-related, claimant's twelve years of coal mine dust exposure did not significantly contribute to, or aggravate, claimant's COPD.[14] Decision and Order at 31-

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

[14] As the administrative law judge provided valid reasons for assigning less weight to the opinions of Drs. Rosenberg and Jarboe, we need not address employer's additional

32, 34; *see Barrett*, 478 F.3d at 356, 23 BLR at 2-483; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; 20 C.F.R. 718.201(b).

Further, we reject employer's assertion that the administrative law judge shifted the burden of proof to employer to eliminate coal mine dust exposure as a cause of claimant's COPD. Employer's Brief at 33. The administrative law judge evaluated the conflicting medical opinions to determine whether claimant established, by a preponderance of the evidence, that his pulmonary condition was significantly related to, or substantially aggravated by, coal mine dust exposure. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 280-81, 18 BLR 2A-1, 2A-6-9 (1994); 20 C.F.R. §718.201(b); Decision and Order at 23-24, 27-35. As substantial evidence supports the administrative law judge's findings with respect to the medical opinion evidence, we affirm his finding that the weight of the medical opinion evidence established the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4).

B. Total Disability Due to Pneumoconiosis

To establish that he is totally disabled due to pneumoconiosis, claimant must establish that pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment.[15] 20 C.F.R. §718.204(c)(1). The administrative law judge found that the opinions of Drs. Al-Khasawneh and Forehand met that standard, as both physicians opined that legal pneumoconiosis contributes "substantially" to claimant's total disability. Decision and Order at 36-37; Director's Exhibit 13 at 38; Claimant's Exhibit 4 at 4. The administrative law judge discounted the opinions of Drs. Rosenberg and Jarboe because they did not diagnose claimant with legal pneumoconiosis, contrary to the administrative law judge's finding. Decision and Order at 37-38; *see Skukan v. Consolidated Coal Co.*, 993 F.2d 1228, 1233, 17 BLR 2-97, 2-104 (6th Cir. 1993), *vacated sub nom., Consolidation Coal Co. v. Skukan*, 512 U.S. 1231 (1994), *rev'd on other grounds, Skukan v. Consolidated Coal Co.*, 46 F.3d 15, 19 BLR 2-44 (6th Cir. 1995).

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arguments concerning the administrative law judge's weighing of these opinions. *See Kozele v. Rochester & Pittsburgh Coal Co*., 6 BLR 1-378, 1-382-3 n.4 (1983).

[15] Pneumoconiosis is a "substantially contributing cause" of total disability if it has "a material adverse effect on the miner's respiratory or pulmonary condition," or if it "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii).

Employer raises no separate arguments with respect to 20 C.F.R. §718.204(c). Consequently, we affirm the administrative law judge's finding that legal pneumoconiosis is a substantially contributing cause of claimant's total disability pursuant to 20 C.F.R. §718.204(c). *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987).

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