U.S. Department of Labor

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

BRB No. 17-0463 BLA

EDWARD L. WILBURN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DICKENSON-RUSSELL COAL COMPANY, LLC	)	
	)	
and	)	
	)	DATE ISSUED: 05/24/2018
CHARTIS CASUALTY COMPANY	)	
	)	
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 in a Subsequent Claim of Larry S. Merck, 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.

Kendra Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits in a Subsequent Claim (2013-BLA-05653) of Administrative Law Judge Larry S. Merck (the administrative law judge) 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, 2012.[1]

The administrative law judge credited claimant with at least forty-two years of underground coal mine employment and found that the new evidence established total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2). He therefore found that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c),[2] and invoked the rebuttable presumption of total disability due to pneumoconiosis set forth at Section 411(c)(4).[3] The administrative law judge further found that employer did not rebut the presumption and awarded benefits accordingly.

On appeal, employer argues that the administrative law judge erred in finding that claimant established total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2) and,

[1] This is claimant's second claim for benefits. His prior claim, filed on November 4, 2008, was denied on January 19, 2011 by Administrative Law Judge Linda S. Chapman, who found that claimant did not establish that he had a totally disabling respiratory or pulmonary impairment. Director's Exhibit 1.

[2] Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3).

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where the claimant 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); *see* 20 C.F.R. §718.305.

therefore, erred in finding that claimant invoked the Section 411(c)(4) presumption. Employer also argues that the administrative law judge erred in finding that employer did not rebut the presumption.[4] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, did not file a response brief in this appeal.[5]

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.[6] 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).

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[4] Approximately nine months after filing its brief in support of the petition for review, and seven months after the briefing schedule closed, employer moved to hold this case in abeyance pending a decision from the United States Supreme Court in *Lucia v. SEC*, 832 F.3d 277 (D.C. Cir. 2016), *aff'd on reh'g*, 868 F.3d 1021 (Mem.) (2017), *cert. granted*, U.S. , 2018 WL 386565 (Jan. 12, 2018). In its motion, employer argues for the first time that the manner in which Department of Labor administrative law judges are appointed may violate the Appointments Clause of the Constitution, Art. II § 2, cl. 2. Employer's Motion at 1-4. Because the Supreme Court will address in *Lucia* whether Securities and Exchange Commission administrative law judges are "inferior officers" within the meaning of the Appointments Clause, employer requests that this case be held in abeyance until the Court resolves that issue. *Id.* at 1-2. The Board generally will not consider new issues raised by the petitioner after it has filed its brief identifying the issues to be considered on appeal. *See Williams v. Humphreys Enters., Inc.*, 19 BLR 1-111, 1-114 (1995); *Senick v. Keystone Coal Mining Co.*, 5 BLR 1-395, 1-398 (1982). While the Board retains the discretion in exceptional cases to consider nonjurisdictional constitutional claims that were not timely raised, *Freytag v. Comm'r*, 501 U.S. 868, 879 (1991), employer has not attempted to show why this case so qualifies. Because employer did not raise the Appointments Clause issue in its opening brief, it waived the issue. Therefore, employer's motion to hold this case in abeyance is denied.

[5] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established at least forty-two years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[6] 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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4.

Invocation of the Section 411(c)(4) Presumption – Total Disability

Employer argues that the administrative law judge erred in weighing the pulmonary function study, arterial blood gas study, and medical opinion evidence in finding that claimant is totally disabled pursuant to 20 C.F.R. §718.204(b)(2).[7]

Pulmonary Function Studies

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered the results of five new pulmonary function studies dated April 11, 2012, November 6, 2012, June 5, 2013, December 19, 2013, and January 16, 2016. Decision and Order at 14-15; Director's Exhibits 14, 16; Claimant's Exhibits 4, 5; Employer's Exhibit 3. The earliest study, dated April 11, 2012 and administered by Dr. Gallai, and the most recent study, dated January 16, 2016 and administered by Dr. Green, produced qualifying values both pre-bronchodilation and post-bronchodilation.[8] Director's Exhibit 14; Claimant's Exhibit 5. The three remaining studies conducted by Dr. Castle on November 6, 2012, Dr. Klayton on June 5, 2013, and Dr. Fino on December 19, 2013 produced non-qualifying values both pre-bronchodilation and post-bronchodilation.[9] Decision and Order at 14; Director's Exhibit 16; Claimant's Exhibit 4; Employer's Exhibit 3. Observing that the January 16, 2016 study produced qualifying results and is "significantly more recent" than the previous study by more than two years, the administrative law judge gave it determinative weight and found that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 14.

Employer contends that the administrative law judge erred in not crediting Dr. Castle's opinion that "the variability in claimant's pulmonary function study results did not demonstrate a permanently and totally disabling pulmonary impairment." Employer's Brief at 7-9. Contrary to employer's argument, the administrative law judge considered

[7] Because there is no evidence of cor pulmonale with right-sided congestive heart failure, claimant is precluded from establishing total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii).

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

[9] The administrative law judge resolved the height discrepancy recorded on the pulmonary function studies, finding that claimant's height for purposes of the studies was 69 inches. *See Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 14 n.14.

Dr. Castle's opinion that claimant's mild to moderate airway obstruction with significant reversibility and variability is due to bronchial asthma rather than coal dust.[10] Director's Exhibit 16 at 24-25. The administrative law judge permissibly determined, however, that Dr. Castle relied on the variable nature of the pulmonary function study results to determine the etiology of claimant's impairment, as opposed to the existence of an impairment at 20 C.F.R. §718.204(b)(2).[11] *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); Decision and Order at 14. Thus, the administrative law judge permissibly concluded that Dr. Castle's opinion did not undermine the probative value of the January 16, 2016 pulmonary function study. *Id.* Because employer raises no other argument with respect to the pulmonary function study evidence, we affirm the administrative law judge's finding that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i). *Schetroma v. Director, OWCP*, 18 BLR 1-17, 1-22 (1993); *see also Parsons v. Wolf Creek Collieries*, 23 BLR 1-29, 1-35 (2004) (en banc); Decision and Order at 14-15.

Blood Gas Studies

Pursuant to 20 C.F.R. §718.204(b)(ii), the administrative law judge considered five new blood gas studies conducted on April 11, 2012, November 6, 2012, June 5, 2013, December 19, 2013, and January 16, 2016. Decision and Order at 15; Director's Exhibits 14, 16; Claimant's Exhibits 4, 5; Employer's Exhibit 3. The administrative law judge

[10] As the administrative law judge correctly noted, Dr. Castle relied on the variability between the pulmonary function studies he conducted which produced non-qualifying results, and the studies conducted by Dr. Gallai which produced qualifying results. Dr. Castle did not, however, invalidate Dr. Gallai's qualifying results. Decision and Order at 14; Director's Exhibit 16 at 24-25.

[11] Dr. Castle's statements relating to variability all were accompanied by observations as to etiology. Director's Exhibit 16 at 24-25. Dr. Castle's statement specifically addressing disability made no explicit mention of variability. With respect to disability, Dr. Castle stated: "It is my opinion with a reasonable degree of medical certainty [that claimant] is not permanently and totally disabled as a result of coal workers' pneumoconiosis or a coal mine dust induced lung disease. From a purely pulmonary point of view, based upon the most contemporary studies, he is not permanently and totally disabled from performing his previous coal mining employment duties. It is possible that as a whole man, he is disabled as a result of multiple medical problems including bronchial asthma, hypertension, obesity, and other medical problems. None of these are related to the inhalation of coal mine dust or coal workers' pneumoconiosis." *Id.* at 25-26.

determined that the April 11, 2012 blood gas study administered by Dr. Gallai, who measured only resting blood gases, produced qualifying values. Director's Exhibit 14. The November 6, 2012 blood gas study conducted by Dr. Castle, who measured only resting blood gases, produced non-qualifying values. Director's Exhibit 16. The June 5, 2013 study conducted by Dr. Klayton, who measured only resting blood gases, produced qualifying values. The December 19, 2013 blood gas study conducted by Dr. Fino produced non-qualifying results both at rest and with exercise.[12] Employer's Exhibit 4. Finally, the January 16, 2016 study conducted by Dr. Green, who measured only resting blood gases, produced qualifying values.[13] Claimant's Exhibit 5. According the greatest weight to the most recent study, the administrative law judge found that the blood gas study evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 15.

Employer contends that the administrative law judge failed to adequately consider Dr. Castle's opinion that the variability in claimant's blood gas study results indicated that his impairment was due to bronchial asthma rather than coal dust exposure. Employer's Brief at 5-7. Contrary to employer's argument, the administrative law judge permissibly found that Dr. Castle's opinion regarding the variability of the blood gas study results from Dr. Gallai's April 11, 2012 qualifying study to Dr. Castle's November 6, 2012 non-qualifying study relates to the etiology of claimant's impairment, which is not relevant at 20 C.F.R. §718.204(b)(2). *See Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274; Decision and Order at 15; Director's Exhibit 16 at 25. Noting that three of the five blood gas studies produced qualifying values, and that the January 16, 2016 qualifying study is "significantly more recent" than the other studies by over two years, the administrative law judge permissibly accorded it greater weight as the most probative of claimant's current condition.[14] *See Schetroma*, 18 BLR at 1-22; *see also Parsons*, 23 BLR at 1-35. As it is supported by substantial evidence, we affirm the administrative law judge's finding that the blood gas study evidence supports a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208, 22 BLR 2-162, 2-168 (4th Cir. 2000).

[12] Dr. Fino's exercise blood gas study was terminated after three minutes due to claimant's shortness of breath. Employer's Exhibit 4 at 9.

[13] Dr. Green stated that an exercise study was not performed due to claimant's significant resting hypoxemia. Claimant's Exhibit 5 at 3.

[14] The administrative law judge correctly noted that no physician questioned the validity of the qualifying blood gas studies. Decision and Order at 15.

Medical Opinions

Before addressing the conflicting medical opinion evidence, the administrative law judge considered the exertional requirements of claimant's usual coal mine work as a section boss. Employer contends that the administrative law judge failed to resolve the discrepancies in claimant's testimony regarding the exertional requirements of his coal mine employment. Employer's Brief at 12-14. We disagree.

Contrary to employer's argument, the administrative law judge acknowledged that claimant's description of his job duties given at the 2010 hearing "differed" from that given at the 2016 hearing, but noted that at both hearings claimant credibly testified that his activities involved crawling. Decision and Order at 6, 7, *citing* 2010 Hearing Transcript at 19-22; 2016 Hearing Transcript at 21. Further, at the hearing in 2010, claimant testified that he had to carry equipment weighing approximately seven pounds.[15] The administrative law judge also credited as "reasonable" claimant's testimony that, at times, he helped with rock dusting, building a stopping out of concrete block, hanging a cable, or hanging a curtain for safety purposes and to keep production running smoothly. *Id*. at 7, *citing* 2016 Hearing Transcript at 13, 16-21. Taking judicial notice of the *Dictionary of Occupational Titles*[16] the administrative law judge determined that claimant's usual coal mine work as a section boss, involving crawling while carrying safety equipment, required him to perform at least a medium level of work. Decision and Order at 7.

The administrative law judge, in his role as fact-finder, evaluates the credibility of the evidence of record, including witness testimony. *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986). Because it is supported by substantial evidence, we affirm the administrative law judge's permissible finding that claimant's usual coal mine employment involved "a medium level

[15] Claimant testified that he had to keep equipment such as a battery powered light, a self-rescuer, and an anemometer with him at all times. 2010 Hearing Transcript at 22.

[16] The administrative law judge noted that the *Dictionary of Occupational Titles* defines a medium level of work as exerting 20 to 50 pounds of force occasionally, *and/or* 10 to 25 pounds of force frequently, *and/or* greater than negligible up to 10 pounds of force constantly to move objects. Decision and Order at 7 n.11. The administrative law judge found that claimant's requirement to constantly carry seven pounds of equipment suffices to meet the definition. As employer does not challenge this determination, it is affirmed. *See Skrack*, 6 BLR at 1-711.

of work." Decision and Order at 7; *see Stallard*, 876 F.3d at 670; *Compton*, 211 F.3d at 207-208, 22 BLR at 2-168.

The administrative law judge next considered the new opinions of Drs. Gallai, Green, Klayton, and Castle. Decision and Order at 15-24; Director's Exhibits 14, 16; Claimant's Exhibits 4, 5. Drs. Gallai,[17] Green,[18] and Klayton[19] opined that claimant is totally disabled and does not have the pulmonary capacity to perform his usual coal mine employment. Director's Exhibit 14; Claimant's Exhibits 4, 5. Dr. Castle[20] opined that claimant is not totally disabled "from a purely pulmonary point of view." Director's Exhibit 16 at 26. The administrative law judge found that the opinions of Drs. Gallai, Green, and Klayton are reasoned and supported by the results of the objective studies. Decision and Order at 21-22. In contrast, the administrative law judge discounted Dr. Castle's opinion as inadequately explained, and found that the weight of the medical opinion evidence supports a finding of total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *Id*. at 22-24. Finally, weighing all of the relevant new evidence together, the administrative law judge found that claimant established total disability by a preponderance of the evidence, pursuant to 20 C.F.R. §718.204(b)(2). *Id*. at 26.

Employer contends that the administrative law judge erred in relying on Dr. Gallai's opinion, asserting the physician did not have an accurate picture of claimant's health because he was "unaware of claimant's history of variable [objective test results]. Employer's Brief at 14. We disagree.

Dr. Gallai opined that claimant's objective testing reflected a "severe decrease in diffusing capacity" and "acute mild hyperventilation with respiratory alkalosis, severe

[17] Dr. Gallai examined claimant on April 11, 2012 for the Department of Labor and determined that claimant's testing indicated moderately severe obstructive lung disease, moderate restrictive disease, and severe hypoxia. Director's Exhibit 14.

[18] Dr. Green examined claimant on January 16, 2016 and opined that claimant's testing revealed a severe chronic airflow obstruction, moderate restriction, and significant resting hypoxemia. Claimant's Exhibit 5.

[19] Dr. Klayton examined claimant on June 5, 2013 and diagnosed mild restrictive lung disease and severe resting hypoxemia. Claimant's Exhibit 4.

[20] Dr. Castle examined claimant on November 6, 2012 and reviewed claimant's medical records from 2006 to 2012. He determined that claimant's pulmonary function study results indicated a mild to moderate airway obstruction with a slight bronchodilator response, and that claimant's blood gas results were normal. Director's Exhibit 16.

hypoxia." Director's Exhibit 14. Further, Dr. Gallai explained that the level of impairment revealed by the objective testing would prevent claimant from returning to his prior coal mine work. *Id.* Contrary to employer's argument, the administrative law judge permissibly found that Dr. Gallai's opinion that claimant lacks the pulmonary capacity to perform his usual coal mine employment, was well-reasoned and entitled to full probative weight, as it was supported by his physical examination, his understanding of claimant's work history, and the results of the pulmonary function study and blood gas study he performed. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274; Decision and Order at 15-16, 21; Director's Exhibit 14.

Employer next asserts that the opinions of Drs. Green and Klayton are not credible because they overstated claimant's exertional requirements. Employer's Brief at 12. Contrary to employer's argument, the administrative law judge acknowledged that Drs. Green and Klayton erroneously believed that claimant's employment required him to lift fifty pounds on occasion. Decision and Order at 22. The administrative law judge observed, however, that Dr. Green opined that claimant is totally disabled based, in part, on the severe ventilatory insufficiency and significant resting hypoxemia demonstrated by the qualifying pulmonary function study and blood gas study he performed. Decision and Order at 22; Claimant's Exhibit 5. Similarly, Dr. Klayton relied, in part, on the severe hypoxemia evidenced by claimant's qualifying resting blood gas study to conclude that claimant is totally disabled. Decision and Order at 22; Claimant's Exhibit 4. Noting correctly that qualifying pulmonary function studies and blood gas studies may independently establish total disability, regardless of claimant's job requirements, the administrative law judge permissibly found that the opinions of Drs. Green and Klayton are sufficiently reasoned and documented to support a finding of total disability. 20 C.F.R. §718.204(b)(2)(i), (ii); *Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 22; Claimant's Exhibits 4, 5.

Employer further argues that Dr. Castle's opinion is reasoned and documented, and that the administrative law judge offered inadequate explanation for discrediting it. Employer's Brief at 9-11. Employer, however, has not identified any specific error of law or fact in the administrative law judge's weighing of Dr. Castle's opinion relevant to disability. *Id.* Instead, employer points to Dr. Castle's qualifications, extensive review of documentation, and medical conclusions. *Id.* As such, employer's contention amounts to no more than a request for reweighing of the evidence. Because the Board is not empowered to reweigh the evidence, or engage in a de novo proceeding or unrestricted review of a case brought before it, the Board must limit its review to contentions of error that are specifically raised by the parties. *See* 20 C.F.R. §§802.211, 802.301; *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); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113

(1989). We therefore reject employer's argument that the administrative law judge committed error in his consideration of Dr. Castle's opinion.

It is the province of the administrative law judge to evaluate the medical evidence, draw inferences, and assess probative value. *See Compton*, 211 F.3d at 211, 22 BLR at 2-174; *Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997); *Clark*, 12 BLR at 1-155. The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson*, 12 BLR at 1-113; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988). Because employer has not shown error in the administrative law judge's weighing of the evidence we affirm the administrative law's finding that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 24.

We also affirm the administrative law judge's finding that the new evidence, when weighed together, established total disability at 20 C.F.R. §718.204(b)(2) overall. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc); Decision and Order at 26. Therefore, we affirm the administrative law judge's determination that claimant invoked the Section 411(c)(4) presumption, and established a change in an applicable condition of entitlement.[21] 30 U.S.C. §921(c)(4); 20 C.F.R. §725.309; Decision and Order at 27.

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, or by establishing that "no part of [claimant'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)(i), (ii). The administrative law judge found that employer failed to establish rebuttal by either method.

We affirm the administrative law judge's finding that employer failed to disprove the existence of clinical pneumoconiosis, as it is unchallenged on appeal.[22] *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Employer's failure to disprove clinical

[21] The administrative law judge also considered the evidence from claimant's prior claim and permissibly found that it merited less weight due to its age. *See Parsons v. Wolf Creek Collieries*, 23 BLR 1-29, 1-35 (2004) (en banc); Decision and Order at 27.

[22] Employer concedes that claimant has clinical pneumoconiosis arising out of coal mine employment. Employer's Brief at 15.

pneumoconiosis precludes a rebuttal finding that claimant did not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i). Nevertheless, because legal pneumoconiosis is relevant to the second method of rebuttal, we will address employer's contention that the administrative law judge erred in finding that it failed to disprove the existence of legal pneumoconiosis. *See Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 159 (2015) (Boggs, J., concurring and dissenting).

In determining whether employer disproved the existence of legal pneumoconiosis, the administrative law judge considered Dr. Castle's medical opinion.[23] Decision and Order at 28-30; Director's Exhibit 16. Dr. Castle opined that claimant does not have legal pneumoconiosis, but suffers from a mild to moderate airway obstruction with significant reversibility and variability associated with normal lung volumes, which he attributed to bronchial asthma rather than a coal dust-induced lung disease. Director's Exhibit 16 at 25. The administrative law judge discounted Dr. Castle's opinion because he found that it was inadequately explained. The administrative law judge therefore found that employer failed to disprove the existence of legal pneumoconiosis. Decision and Order at 30-31.

Employer argues that the administrative law judge erred in his consideration of Dr. Castle's opinion. Employer's Brief at 17-19. We disagree. The administrative law judge observed that Dr. Castle's conclusion that claimant suffers from bronchial asthma "rather than" a coal mine dust induced-lung disease suggests that asthma and coal dust-induced lung disease are mutually exclusive conditions. Decision and Order at 30, *quoting* Director's Exhibit 16 at 25. The administrative law judge permissibly discounted Dr. Castle's opinion because he found that Dr. Castle did not adequately explain how he determined that claimant's asthma is not related to, or aggravated by, his over forty years of underground coal dust exposure.[24] *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324, 25 BLR 2-255, 2-258 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 314-15, 25 BLR 2-115, 2-129-30 (4th Cir. 2012); *Crockett*

[23] The administrative law judge also considered the medical opinions of Drs. Gallai, Green, and Klayton. Decision and Order at 15, 18-21, 28; Director's Exhibit 14; Claimant's Exhibits 4, 5. Because these doctors opined that claimant suffers from legal pneumoconiosis, the administrative law judge noted that their opinions do not assist employer in establishing rebuttal of the presumption. Decision and Order at 28 n.17.

[24] "Legal pneumoconiosis" encompasses any chronic pulmonary disease or respiratory or pulmonary impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." *See* 20 C.F.R. §718.201(a)(2), 718.201(b).

Collieries, Inc. v. Barrett, 478 F.3d 350, 23 BLR 2-472 (6th Cir. 2007); Decision and Order at 30-31.

Because the administrative law judge permissibly discredited Dr. Castle's opinion, the only opinion relevant to whether employer can establish rebuttal, we affirm his finding that employer failed to disprove legal pneumoconiosis. Accordingly, we affirm 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).

Disability Causation

Upon finding that employer was unable to disprove the existence of pneumoconiosis, the administrative law judge addressed whether employer could establish rebuttal by showing that no part of claimant's respiratory or pulmonary disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 31. The administrative law judge recognized that employer had to establish that both clinical and legal pneumoconiosis did not contribute to claimant's disability. The administrative law judge acknowledged that Dr. Castle diagnosed clinical pneumoconiosis and opined that it was not totally disabling. Decision and Order at 31; Director's Exhibit 16 at 26. The administrative law judge further noted, however, that Dr. Castle did not diagnose legal pneumoconiosis, contrary to the administrative law judge's finding that employer failed to disprove the existence of the disease. Decision and Order at 32. Therefore, the administrative law judge rationally discounted Dr. Castle's opinion that claimant's pulmonary impairment was not caused by pneumoconiosis.[25] *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-452 (6th Cir. 2013); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995); Decision and Order at 31-32. We therefore affirm the administrative law judge's determination that employer did not rebut the Section 411(c)(4) presumption by proving that claimant's totally disabling impairment did not arise out of, or in connection with, his coal mine employment. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(d)(1)(ii).

[25] Dr. Castle did not proffer an explanation which, if accepted, would constitute rebuttal despite the existence of legal pneumoconiosis.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge