BRB No. 14-0118 BLA

ROBERT E. STEWART	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLIFFCO ENTERPRISES, INCORPORATED	)	DATE ISSUED: 11/25/2014
	)	
and	)	
	)	
NATIONAL UNION FIRE/CHARTIS	)	
	)	
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 Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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

H. Brett Stonecipher and Cameron Blair (Fogle Keller Purdy, PLLC), Lexington, Kentucky, for employer.

Richard A. Seid (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2011-BLA-05108) of Administrative Law Judge Joseph E. Kane, rendered on a claim filed on September 4, 2009, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).[1] The administrative law judge determined that the claim was timely filed and accepted the parties' stipulation that claimant worked twenty-seven years as an underground coal miner. Based on the filing date of the claim, and because claimant established at least fifteen years of underground coal mine employment, and a totally disabling respiratory or pulmonary impairment, the administrative law judge concluded that claimant invoked the amended Section 411(c)(4) presumption.[2] The administrative law judge further found that employer failed to rebut the presumption. Accordingly, benefits were awarded.

On appeal, employer contends that the administrative law judge erred in finding that claimant's September 4, 2009 claim was timely filed pursuant to 20 C.F.R. §725.308. Alternatively, employer asserts that, if the claim is not time-barred, the administrative law judge's decision on the merits must be vacated, as he erred in finding that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2). Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response brief addressing the timeliness of the claim.

The Board's scope of review is defined by statute. The administrative law judge's findings must be affirmed if they are rational, supported by substantial evidence, and in accordance with applicable law.[3] 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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[1] Claimant filed a claim on April 23, 2002. Employer's Exhibit 6. At a hearing held on September 10, 2004, Administrative Law Judge Robert L. Hillyard, granted claimant's request to withdraw his claim. Transcript of September 10, 2004 Hearing at 6-10.

[2] Under amended Section 411(c)(4), claimant may invoke 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 a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305.

[3] The record reflects that claimant's coal mine employment was in Kentucky. Director's Exhibits 4, 7, 10. Accordingly, this case arises within the jurisdiction of the

I. Timeliness of the Claim

When this case was before the administrative law judge, employer argued that Dr. Ammisetty's July 9, 2002 report triggered the running of the three-year statute of limitations set forth in 20 C.F.R. §725.308(a), thereby rendering claimant's September 4, 2009 claim untimely. Claimant responded, urging the administrative law judge to reject employer's allegation. The record indicates that Dr. Ammisetty examined claimant on July 9, 2002 at the request of the Department of Labor (DOL) and obtained an x-ray, a pulmonary function study, and a blood gas study.[4] Director's Exhibit 45. On DOL Form CM-988, Report of Physical Examination, Dr. Ammisetty recorded diagnoses of mild obstructive lung disease and chronic bronchitis. *Id*. He identified smoking as the primary cause of these conditions, with occupational dust exposure as a secondary cause. *Id*. With respect to the issue of total disability, Dr. Ammisetty indicated that the severity of claimant's impairment was "30%." *Id*. In an addendum to his report, Dr. Ammisetty noted that claimant had an occupational lung disease caused by coal mine employment and a mild pulmonary impairment. *Id*. Dr. Ammisetty checked the "no" box in response to a question as to whether claimant has the respiratory capacity to perform the work of a miner or comparable work. *Id*. Claimant's spouse signed a certified mail receipt on January 10, 2003, indicating that Dr. Ammisetty's report was successfully delivered to claimant's home on that date.

In the administrative law judge's Decision and Order, he found that, although the certified mail receipt signed by claimant's wife on January 10, 2003, suggests that claimant received Dr. Ammisetty's medical report, the report does not contain a medical determination that claimant is totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §725.308(a). Decision and Order at 15. The administrative law judge reasoned that: Dr. Ammisetty checked a box indicating that claimant had only a "Mild Impairment;" did not explicitly identify pneumoconiosis as the cause of claimant's impairment; and wrote "no pneumoconiosis" next to his summary of the x-ray results. *Id., quoting* Director's Exhibit 45. The administrative law judge stated, "[a]lthough an attorney may recognize that Dr. Ammisetty's medical determination met the regulatory definition of legal pneumoconiosis, the report lacked a clear statement that [c]laimant was totally disabled due to pneumoconiosis." Decision and Order at 16. The administrative law judge also cited hearing testimony from claimant and his wife that they did not recall that Dr. Ammisetty orally communicated to them a determination that

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United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc).

[4] Dr. Ammisetty's report was submitted in support of claimant's withdrawn claim. *See* Director's Exhibit 45.

claimant is totally disabled due to pneumoconiosis. *Id*. at 16-17; Transcript of May 1, 2012 Hearing at 26, 31, 39, 41. Based on his review of the relevant evidence, the administrative law judge concluded that the claim was timely filed under 20 C.F.R. §725.308(a). *Id*.

Relying on *Peabody Coal Co. v. Director, OWCP* [*Brigance*], 718 F.3d 590, 25 BLR 2-273 (6th Cir. 2013), employer argues that the administrative law judge erred in finding that Dr. Ammisetty's failure to use the words "total disability" rendered the report insufficient to trigger the running of the statute of limitations, as 20 C.F.R. §725.308 contains no specific requirement that the term "total disability" must be used. Employer's Brief in Support of Petition for Review at 25. Employer contends that Dr. Ammisetty's opinion, that claimant does not retain the respiratory capacity to perform his previous coal mine work, establishes that claimant was advised that he was totally disabled. *Id.* Employer similarly asserts that the administrative law judge erred in requiring Dr. Ammisetty to use the term "pneumoconiosis," and in finding that Dr. Ammisetty's identification of "coal dust exposure" as the cause of the impairment, did not trigger the running of the limitations period. *Id*. at 25-26.

Claimant responds that the Board must reject employer's argument, as the administrative law judge rationally found that employer failed to rebut the presumption that claimant timely filed his 2009 claim for benefits. The Director also responds, and maintains that substantial evidence supports the administrative law judge's inference that claimant believed that Dr. Ammisetty did not consider him totally disabled because he diagnosed only a "mild" pulmonary impairment and "disregarded the totally disabled option in his supplemental report." Director's Letter Brief at 6. The Director further maintains that the administrative law judge reasonably found that claimant could not be expected to appreciate the significance of a diagnosed lung disease linked to coal dust exposure as "pneumoconiosis," particularly when Dr. Ammisetty indicated that claimant's x-ray showed "no pneumoconiosis." *Id*.

We agree with the Director, and claimant, that the administrative law judge properly found that Dr. Ammisetty's report lacked a clear statement informing claimant that he was totally disabled due to pneumoconiosis. Under 20 C.F.R. §725.308(a), "a claim for benefits . . . shall be filed within three years after a medical determination of total disability due to pneumoconiosis which has been communicated to the miner." 20 C.F.R. §725.308(a), *implementing* 30 U.S.C. §932(f). There is a rebuttable presumption that every claim for benefits is timely filed, thereby shifting the burden of proof to the party opposing entitlement to establish that the claim was filed more than three years after a medical determination of total disability due to pneumoconiosis has been communicated to the miner. 20 C.F.R. §725.308(c). In *Brigance*, the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, clarified

when a "medical determination" sufficient to trigger the running of the limitations period has been made, stating:

> Construing the text of the statute as written, we hold that when a diagnosis of total disability due to pneumoconiosis by a physician trained in internal and pulmonary medicine is communicated to the miner, a "medical determination" sufficient to trigger the running of the limitations period has been made. No more is required. Additional findings regarding whether the medical determination is well-reasoned and well-documented are unnecessary.

Brigance, 718 F.3d at 594, 25 BLR at 2-280.

In this case, the administrative law judge noted that Dr. Ammisetty reported that claimant has an occupational lung disease caused by his coal mine employment, and identified the presence of chronic bronchitis and claimant's history of occupational dust exposure as the bases for his conclusion. Decision and Order at 15; Director's Exhibit 45. The administrative law judge further observed that, in response to a question posed on the addendum to Dr. Ammisetty's report, the physician indicated that the etiology of claimant's pulmonary impairment involved coal dust exposure and smoking. *Id*. The administrative law judge reasonably concluded:

> Nowhere on the form did Dr. Ammisetty indicate [c]laimant's impairment was due to pneumoconiosis. In fact, next to the summary of x-ray results, Dr. Ammisetty wrote "no pneumoconiosis." Although an attorney may recognize that Dr. Ammisetty's medical determination met the regulatory definition of legal pneumoconiosis, the report lacked a clear statement that [c]laimant was totally disabled due to pneumoconiosis.

Decision and Order at 15-16 (citation omitted); *see Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002); *Tennessee Consolidated Coal Co. v. Kirk*, 264 F.3d 602, 22 BLR 2-288 (6th Cir. 2001). We therefore affirm the administrative law judge's finding that, because Dr. Ammisetty failed to clearly diagnose pneumoconiosis or link claimant's impairment to pneumoconiosis, his report did not constitute a medical determination of total disability due to pneumoconiosis pursuant to 20 C.F.R. §725.308(a).[5] *See Brigance*, 713 F.3d at 594, 25 BLR at 2-280; *Adkins v. Donaldson*, 19

[5] Based on our holding that the administrative law judge properly determined that Dr. Ammisetty's report did not contain a diagnosis of total disability due to pneumoconiosis sufficient to trigger the running of the three-year statute of limitations period set forth in 20 C.F.R. §725.308(a), we need not reach employer's allegations of error regarding the administrative law judge's finding that Dr. Ammisetty did not

BLR 1-34, 1-43 (1993). Accordingly, we further affirm the administrative law judge's finding that employer did not rebut the presumption that claimant's 2009 claim was timely filed. 20 C.F.R. §725.308(c).

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

The administrative law judge found that claimant did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (ii), as all of claimant's pulmonary function studies were nonqualifying, and only one of claimant's five blood gas studies was qualifying.[6] Decision and Order at 18. The administrative law judge found that there was no evidence of cor pulmonale with right-sided congestive heart failure relevant to 20 C.F.R. §718.204(b)(2)(iii). *Id*. at 19. Upon considering the medical opinions of Drs. Rasmussen, Klayton, Splan, Westerfield and Broudy at 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge gave greatest weight to the opinions of Drs. Rasmussen and Klayton, that claimant is totally disabled, and discredited the contrary opinions of Drs. Westerfield and Broudy.[7] *Id*. at 21-22. Weighing all of the relevant evidence together, the administrative law judge concluded that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2). *Id*. at 22.

Employer argues that, because the administrative law judge found that claimant's last coal mine job required "moderately heavy manual labor," Dr. Rasmussen's opinion, that claimant does not retain the pulmonary capacity to perform "heavy and very heavy manual labor," is not probative. Employer's Brief in Support of Petition for Review at 16, *quoting* Decision and Order at 19; Director's Exhibit 14. Employer also contends that the administrative law judge erred in crediting Dr. Rasmussen's opinion without addressing the physician's failure to "address the impact of the claimant's non[]qualifying pulmonary function measurements on his findings regarding total disability." Employer's Brief in Support of Petition for Review at 11. Employer further

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communicate his diagnoses to claimant. *See Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

[6] A "qualifying" pulmonary function study or arterial blood gas study yields results that are equal to or less than the values set out in the tables at 20 C.F.R. Part 718, Appendices B, C. A "nonqualifying" study produces results that exceed those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[7] The administrative law judge accorded little weight to Dr. Splan's opinion, that claimant is totally disabled, as he did not have an adequate understanding of the exertional requirements of claimant's last coal mine job. Decision and Order at 21; Claimant's Exhibit 2.

alleges that the administrative law judge erred in crediting Dr. Klayton's diagnosis of a totally disabling impairment, as it was based on claimant's subjective complaints and did not include a consideration of the nonqualifying objective studies. Employer also maintains that the administrative law judge did not properly weigh the opinions of Drs. Westerfield and Broudy that claimant retains the respiratory capacity to perform his usual coal mine work. Employer's contentions lack merit.

The administrative law judge determined that claimant's usual coal mine employment as a foreman required "moderately heavy manual labor," based on claimant's hearing testimony and the documentary evidence. Decision and Order at 19. The administrative law judge observed correctly that Dr. Rasmussen described claimant's last job as a "working foreman". . . "at the face," where he "operated equipment," "made belt and power moves," "set timbers," "shoveled," "did pre-shift exams with much walking and crawling," and "did *heavy* and some *very heavy* manual labor." Decision and Order at 7, *quoting* Director's Exhibit 14 (emphasis added). We hold that employer has failed to establish that there is a meaningful distinction between "moderately heavy" exertional requirements, as found by the administrative law judge, and "heavy" requirements, as set forth by Dr. Rasmussen. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577, 22 BLR 2-107, 2-123 (6th Cir. 2000).

In addition, the administrative law judge permissibly found that Dr. Rasmussen's diagnosis of a totally disabling respiratory impairment was entitled to full probative weight at 20 C.F.R. §718.202(a)(2)(iv), because his opinion was "supported by objective medical evidence and is based on an accurate understanding of [c]laimant's job description." Decision and Order at 19; *see Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-512 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003). The administrative law judge judge's determination that Dr. Rasmussen's opinion is supported by objective medical evidence is consistent with the pulmonary function studies of record, as Drs. Rasmussen, Westerfield and Broudy indicated that they revealed an obstructive impairment, while Drs. Rasmussen and Westerfield also diagnosed an impairment in diffusing capacity. Director's Exhibit 14; Employer's Exhibits 1, 2. In addition, the administrative law judge's finding is consistent with the blood gas study evidence, because all three physicians stated that the results of claimant's resting studies showed that he suffers from hypoxemia. *Id.* Similarly, the administrative law judge's crediting of Dr. Rasmussen's description of claimant's usual coal mine work as requiring heavy and very heavy manual labor, is supported by claimant's employment history forms and hearing testimony. Director's Exhibit 5; Transcript of May 1, 2012 Hearing at 20-21. Thus, contrary to employer's allegation, the administrative law judge acted within his discretion in according full weight to Dr. Rasmussen's diagnosis of a totally disabling respiratory impairment, despite the

physician's reliance, in part, on a nonqualifying pulmonary function study, and the sole qualifying blood gas study of record. *See Cornett*, 227 F.3d at 577, 22 BLR at 2-123.

The administrative law judge's decision to discredit the medical reports in which Drs. Westerfield and Broudy determined that claimant is capable of performing his usual coal mine employment was also within his discretion. Based on an examination of claimant, and a review of the other medical reports of record, Dr. Westerfield determined that claimant has a mild to moderate obstructive impairment, a reduced diffusing capacity, and hypoxia. Employer's Exhibits 1, 2 at 15, 20. Dr. Westerfield noted in his reports, and in his deposition testimony, that claimant last worked as a section foreman in an underground mine, and stated that he was aware of what this job entailed. Employer's Exhibits 1, 2 at 8, 2-2. Dr. Westerfield concluded that claimant retains the respiratory and pulmonary capacity to perform his usual coal mine employment. Employer's Exhibits 2 at 24-25, 3, 4. However, in light of Dr. Westerfield's omission of a specific description of the exertional requirements of claimant's job as a section foreman, and his failure to address his findings of impairment in the context of those requirements, the administrative law judge rationally determined that Dr. Westerfield's opinion on the issue of total disability was entitled to little weight.[8] *See Napier*, 301 F.3d at 713-714, 22 BLR at 2-553; *Cornett*, 227 F.3d at 578, 22 BLR at 2-124.

Regarding the administrative law judge's discrediting of Dr. Broudy's opinion, Dr. Broudy conducted a physical examination of claimant and reviewed the medical evidence, including the opinions of Drs. Rasmussen and Klayton. Director's Exhibit 16; Employer's Exhibit 3 at 7-8. Dr. Broudy diagnosed "borderline hypoxemia," and "mild obstructive airways disease." Employer's Exhibit 3 at 7-8. Dr. Broudy stated: "The results of spirometry easily exceed the minimum Federal criteria for disability in coal workers. I do believe this gentleman retains the respiratory capacity to perform the work of an underground coal miner." Director's Exhibit 16 at 6. Referring to Dr. Rasmussen's opinion, Dr. Broudy stated: "Dr. Rasmussen found mild to moderate obstruction on spirometry with results far exceeding the minimum Federal criteria for disability in coal workers." *Id.* at 16 at 3. After reviewing the opinions of Drs. Klayton and Splan, Dr. Broudy observed:

> Even though there has been a mild decrease in lung function on the subsequent examinations, there remains sufficient capacity to perform his previous work as described in the deposition and my evaluation report. *As noted, the results still exceed the minimum Federal criteria for disability* in

[8] Based on this holding, we decline to address the additional reasons the administrative law judge provided for discrediting Dr. Westerfield's opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

> coal workers with regards to both arterial blood gases and the pulmonary function studies.

Employer's Exhibit 5 (emphasis added). During his deposition testimony, Dr. Broudy stated that his opinion, that claimant was able to perform his prior duties as a working foreman, is supported by the pulmonary function study and blood gas study values "above disability standards." Employer's Exhibit 3 at 18.

Based on these statements, the administrative law judge permissibly found that Dr. Broudy's opinion on the issue of total disability was entitled to diminished weight because the doctor did not indicate recognition that nonqualifying studies that show evidence of an impairment can form the basis for a reasoned medical opinion sufficient to establish total disability. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett*, 227 F.3d at 577, 22 BLR at 2-123. Accordingly, we affirm the administrative law judge's decision to discredit Dr. Broudy's opinion ruling out the presence of a totally disabling respiratory or pulmonary impairment.

Finally, we are mindful that the administrative law judge's crediting of Dr. Klayton's opinion is problematic, as Dr. Klayton relied primarily on claimant's own description of his physical limitations to diagnose a totally disabling pulmonary impairment.[9] *See Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990) (en banc), *rev'd on other grounds*, 60 F.3d 1138, 19 BLR 2-257 (4th Cir. 1995); Claimant's Exhibit 1. Nevertheless, because the administrative law judge rationally accorded great weight to Dr. Rasmussen's diagnosis of a totally disabling respiratory impairment, and rationally discredited the contrary opinions of Drs. Westerfield and Broudy, we affirm the administrative law judge's finding that claimant established total disability and invoked

[9] In the portion of Dr. Klayton's report containing a summary of claimant's current symptoms, he noted that claimant "has to stop to rest after walking one block on the level," and "can lift up to 10 pounds but is unable to carry it far because of shortness of breath and leg pain." Claimant's Exhibit 1. Dr. Klayton opined that claimant has a severe impairment that prevents his return to his usual coal mine work because he "cannot walk more than one block without having to stop and rest due to his shortness of breath and he cannot lift and carry more than 10 pounds . . . ." *Id*. We do not agree, however, with employer's allegation that Dr. Klayton's opinion is devoid of probative value on the issue of total disability. As noted by the administrative law judge, Dr. Klayton reported that claimant's usual coal mine job required him to lift up to 100 pounds and, based on the results of claimant's objective studies, Dr. Klayton diagnosed "dyspnea on mild exertion, a chronic productive cough, decreased diffusing capacity on pulmonary function tests, [and] hypoxemia at rest . . . ." Decision and Order at 11, 21, *quoting* Claimant's Exhibit 1.

the amended Section 411(c)(4) presumption.[10] *See Napier*, 301 F.3d at 713-714, 22 BLR at 2-553; *Cornett*, 227 F.3d at 578, 22 BLR at 2-124.

III. Rebuttal of the Amended Section 411(c)(4) Presumption

Upon invocation of the amended Section 411(c)(4) presumption, the burden shifts to employer to rebut the presumption with affirmative proof that claimant does not have clinical and legal pneumoconiosis, or that no part of his disabling respiratory or pulmonary impairment was caused by pneumoconiosis.[11] 20 C.F.R. §725.305(d)(1); *see Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 25 BLR 2-1 (6th Cir. 2011); *Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 2 BLR 2-38 (4th Cir. 1980). Employer does not allege error in the administrative law judge's finding that employer did not establish rebuttal of the amended Section 411(c)(4) presumption. Rather, employer asserts only that claimant cannot meet his burden to establish total disability causation because he failed to establish that he is totally disabled. That argument is misplaced, because claimant is not required to establish causation in order to invoke the amended Section 411(c)(4) presumption. Having rejected employer's arguments challenging the administrative law judge's finding that claimant established total disability at 20 C.F.R. §718.204(b)(2) and invoked the amended Section 411(c)(4) presumption, we affirm the administrative law judge's finding that employer failed to rebut the presumption. *See* 20 C.F.R. §§802.211(b), 802.301(a); *Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983).

[10] Although the administrative law judge did not separately weigh Dr. Rasmussen's diagnosis of a totally disabling impairment against the contrary probative evidence of record, we hold that his permissible finding that Dr. Rasmussen's opinion is supported by the objective evidence encompassed this inquiry. *See* 20 C.F.R. §718.204(b)(2)(iv); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.* 9 BLR 1-236 (1987) (en banc).

[11] Employer does not challenge the regulatory requirements implementing the statute relating to rebuttal of the presumption.

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

SO ORDERED.

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BETTY JEAN HALL, Acting
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge