U.S. Department of Labor

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

BRB Nos. 16-0048 BLA
and 16-0048 BLA-A

WARREN TROUT	)	
	)	
Claimant-Respondent	)	
Cross-Petitioner	)	
	)	
v.	)	
	)	
LECKIE SMOKELESS COAL COMPANY	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	DATE ISSUED: 11/03/2016
	)	
Employer/Carrier-Petitioners	)	
Cross-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for claimant.

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for employer/carrier.

Maia S. Fisher (M. Patricia Smith, Solicitor of Labor; Maia S. Fisher, Acting Associate Solicitor of Labor; 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, Chief Administrative Appeals Judge, BOGGS and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals, and claimant cross-appeals, the Decision and Order Awarding Benefits (2012-BLA-06016) of Administrative Law Judge Adele Higgins Odegard, rendered on a subsequent claim[1] filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §901-944 (2012)(the Act).[2] The administrative law judge credited claimant with eighteen years in underground coal mine employment, based on the parties' stipulation, and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. Although the administrative law judge found that the newly submitted evidence did not establish total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii), she found that the newly submitted medical opinion evidence established total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Consequently, the administrative law judge found that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309.[3] Further, the

[1] Claimant filed his initial claim on April 8, 1999. Director's Exhibit 1. It was finally denied by the district director on June 17, 1999, as claimant failed to establish total respiratory disability. *Id*. Claimant filed this subsequent claim on January 26, 2011. Director's Exhibit 3.

[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) (2012); 20 C.F.R §718.305.

[3] 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; *White v. New White Coal Co., Inc*., 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] Because claimant's prior claim was denied for failure to establish total respiratory disability, Director's Exhibit 1, claimant had to submit new evidence establishing total respiratory disability in order to obtain review of the merits of his claim. *See* 20 C.F.R. §725.309; *White,* 23 BLR at 1-3.

administrative law judge found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012). The administrative law judge also found that employer failed to rebut the Section 411(c)(4) presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that claimant invoked the Section 411(c)(4) presumption by establishing total respiratory disability. Employer also challenges the administrative law judge's finding that it failed to rebut the Section 411(c)(4) presumption. Claimant and the Director, Office of Workers' Compensation Programs, respond, urging the Board to affirm the award of benefits. Claimant has also filed a cross-appeal, contending that, if the award of benefits is vacated, the Board should hold that the administrative law judge erred in finding that the blood gas study evidence did not establish total respiratory disability at 20 C.F.R. §718.204(b)(2)(ii) and remand the case for further consideration of this issue. Employer responds to claimant's cross-appeal, urging affirmance of the administrative law judge's finding at Section 718.204(b)(2)(ii).[4]

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.[5] 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 initially contends that the administrative law judge erred in finding that claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis. Employer specifically contends that the administrative law judge erred in finding that the newly submitted medical opinion evidence established total respiratory disability at 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge considered the

[4] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant established eighteen years of qualifying coal mine employment, that claimant did not establish total respiratory disability at 20 C.F.R. §718.204(b)(2)(i)-(iii), and that his usual coal mine work as a continuous miner operator required "heavy manual labor." *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[5] As claimant's last coal mine employment was in West Virginia, 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 (1989)(en banc); Director's Exhibit 5 at 2.

opinion of Dr. Rasmussen[6] that claimant is unable to perform his usual coal mine work, and the opinions of Drs. Zaldivar and Basheda[7] that claimant can perform his usual coal

[6] Dr. Rasmussen diagnosed a moderate impairment in oxygen transfer during light exercise, and opined that claimant lacked the pulmonary capacity to perform heavy and some very heavy manual labor required by his usual coal mine work. Director's Exhibit 14; Claimant's Exhibit 2 (Rasmussen Depo. at 17). Dr. Rasmussen found that claimant's coal mine job required an oxygen consumption of 25 to 30 milliliters per kilo per minute, and that claimant's oxygen consumption of 13.4 milliliters demonstrated that he cannot perform his usual coal mine work. Claimant's Exhibit 2 (Rasmussen Depo. at 18). Dr. Rasmussen stated that claimant's A-gradient of a little over 30 indicates a moderate degree of impairment. Dr. Rasmussen explained that while from a ventilatory capacity aspect claimant could perform heavy labor, he is disabled because his PO2 dropped significantly after light exercise. Claimant's Exhibit 2 (Rasmussen Depo. at 18-19). Dr. Rasmussen stated that the general recommendation for length of exercise is "at least four minutes," and that he exercised claimant for approximately five minutes, which is "pretty much the minimal exercise." Claimant's Exhibit 2 (Rasmussen Depo. at 18). Dr. Rasmussen commented that Dr. Zaldivar's exercise duration of 3 minutes and 17 seconds was not long enough to "get an accurate depiction" because the patient, at that point, is "just barely getting up to the point where ventilation has caught up with the exercise itself and [has not] gone enough time to really demonstrate an efficiency of gas exchange." Claimant's Exhibit 2 (Rasmussen Depo. at 19-20). Dr. Rasmussen stated that the higher bicarbonate level shown in Dr. Zaldivar's blood gas study suggests a "very light degree of exercise." Claimant's Exhibit 2 (Rasmussen Depo. at 20).

[7] Dr. Zaldivar stated that the blood gas test he administered produced accurate, normal results demonstrating that claimant can perform heavy labor in his usual mining job. Director's Exhibit 27; Employer's Exhibits 1, 7 (Zaldivar Depo. at 29). Dr. Zaldivar testified that, compared to Dr. Rasmussen's results, claimant demonstrated at exercise "roughly the same oxygen consumption he achieved here." Director's Exhibit 27 at 2. Dr. Zaldivar was unable to explain the discrepancy between his test results and those of Dr. Rasmussen, as Dr. Rasmussen reported hypoxemia with exercise and Dr. Zaldivar did not, and the study results are "too far apart" to be reconciled. Employer's Exhibit 7 (Zaldivar Depo. at 24-25). Additionally, Dr. Zaldivar stated that his exercise test and Dr. Rasmussen's exercise test "lasted a similar amount of time," in that "[Dr. Rasmussen's] lasted somewhat over four minutes" while "[his] lasted three minutes, almost four minutes." Employer's Exhibit 7 (Zaldivar Depo. at 24).

Dr. Basheda reviewed medical records, and noted that Dr. Rasmussen's exercise values demonstrated a "significant decline" in PO2 after exercise, compared to normal exercise values in the 1999 blood gas testing and Dr. Zaldivar's 2012 blood gas study.

mine work. The administrative law judge gave "significant weight" to Dr. Rasmussen's opinion because she found it to be well-reasoned and supported by objective testing. By contrast, the administrative law judge gave "little" weight to the opinions of Drs. Zaldivar and Basheda because she found them not to be well-reasoned. Because the administrative law judge accorded the most weight to Dr. Rasmussen's opinion, she found that claimant established total respiratory disability at 20 C.F.R. §718.204(b)(2)(iv).

Employer asserts that the administrative law judge erred in finding that Dr. Rasmussen's opinion outweighed the opinions of Drs. Zaldivar and Basheda. Employer argues that the administrative law judge selectively analyzed the evidence and violated 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), by failing to explain why she found that Dr. Rasmussen's opinion is well-reasoned. Employer avers that the administrative law judge "glossed over the deficiencies in Dr. Rasmussen's opinion." Employer's Brief at 19. We disagree.

The determination of whether a medical opinion is reasoned is within the administrative law judge's discretion. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2- 323 (4th Cir. 1998); *see also Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1977). In this case, the administrative law judge noted that Dr. Rasmussen reviewed all of the objective evidence of record, and opined that claimant is totally disabled based on a gas exchange impairment seen on the doctor's exercise arterial blood gas study dated September 19, 2011. The administrative law judge also noted that Dr. Rasmussen explained why claimant would not be able to perform heavy manual labor based on the results of the exercise arterial blood gas study, observing that, while claimant testified that he achieved an oxygen consumption of 13.4 milliliters, a person needs an oxygen consumption of 25 or 30 milliliters per kilo per minute to perform heavy and very heavy manual labor.[8] The administrative law judge further stated:

Employer's Exhibit 4. Dr. Basheda concluded that claimant has no pulmonary impairment or disability and can perform his last coal mine work. *Id.*

[8] Employer also argues that the administrative law judge improperly credited Dr. Rasmussen's opinion regarding the oxygenation values obtained on exercise because she did not find that claimant's last coal mine job required "very heavy manual labor in his last coal mine work on a sustained basis." Employer's Brief at 27. Contrary to employer's argument, the administrative law judge permissibly determined that, in light of her finding that claimant's usual coal mine work required heavy labor, Dr. Rasmussen's opinion that claimant's exercise testing deficits preclude heavy labor

> [Dr. Rasmussen's disability opinion] takes into consideration the exertional nature of the [c]laimant's coal mine employment; its presumptions about the exertional requirements of the [c]laimant's coal mine work are consistent the other evidence of record; it is based on an analysis of the [c]laimant's objective testing, specifically the [c]laimant's arterial blood gas test results; it explains how the arterial blood gas test results show the [c]laimant is unable to perform his coal mine employment; it addresses the limitations in the test Dr. Zaldivar administered (particularly regarding the length of time the [c]laimant performed the exercise and other evidence suggesting that Dr. Zaldivar's exercise was light); it addresses how an individual can be considered to be disabled, notwithstanding normal pulmonary function test results.

Decision and Order at 15. Thus, in view of the aforementioned analysis by the administrative law judge, we reject employer's argument that the administrative law judge selectively analyzed the evidence and violated the APA in weighing Dr. Rasmussen's opinion.

Employer additionally argues that the administrative law judge erred in crediting Dr. Rasmussen's opinion because it is contrary to the Board's case law. As noted by employer, Dr. Rasmussen conceded, during a deposition, that he never found a miner not to be disabled when there were qualifying objective studies. Claimant's Exhibit 2 (Dr. Rasmussen's March 28, 2014 Depo. at 30). The Board has held that the fact that an objective study yields qualifying values does not preclude a physician from opining that a miner does not have total respiratory disability. *Bogan v. Consolidation Coal Co.*, 6 BLR 1-1000, 1-1002 (1984). In this case, Dr. Rasmussen specifically related the qualifying results to the requirements of claimant's work and did not rely on the qualifying study as a generality establishing disability. As the trier-of-fact, the administrative law judge is charged with assessing the credibility of the medical opinion evidence, and assigning those opinions appropriate weight. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 321, 25 BLR 2-255, 2-262 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 315-16, 25 BLR 2-115, 2-130 (4th Cir. 2012). The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge.

---

supports a finding of total respiratory disability. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); Claimant's Exhibit 2 (Rasmussen Depo. at 17-18). Thus, we reject employer's argument that the administrative law judge improperly credited Dr. Rasmussen's opinion regarding the oxygenation values obtained on exercise.

Anderson, 12 BLR at 1-113; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). The administrative law judge permissibly found that Dr. Rasmussen's opinion is well-reasoned. *See Hicks*, 138 F.3d at 533, 21 BLR 2-335; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149 (1989)(en banc). Thus, we reject employer's argument that the administrative law judge erred in crediting Dr. Rasmussen's opinion.

Employer also asserts that the administrative law judge erred in discounting Dr. Zaldivar's opinion on the basis that it is not well-reasoned. We disagree. The administrative law judge noted that Dr. Zaldivar acknowledged that, unlike his exercise arterial blood gas study dated January 4, 2012, Dr. Rasmussen's exercise arterial blood gas study dated September 19, 2011 produced qualifying values.[9] The administrative law judge considered Dr. Zaldivar's testimony that his arterial blood gas test and Dr. Rasmussen's arterial blood gas test "lasted for a similar duration, stating that his test lasted almost four minutes and Dr. Rasmussen's test lasted somewhat over four minutes." Decision and Order at 16; *see* Employer's Exhibit 7 (Zaldivar Depo. at 23-25). However, the administrative law judge found that "[Dr. Zaldivar] inaccurately describe[d] the differences in the administration of the arterial blood gas tests," as Dr. Rasmussen's exercise arterial blood gas test lasted five minutes, while Dr. Zaldivar's exercise arterial blood gas test lasted only three minutes and fourteen seconds. Decision and Order at 14 n.7, 16-17; Claimant's Exhibit 2 (Rasmussen Depo. at 18, 24-25). Based on her determination that Dr. Zaldivar mischaracterized the length of the exercise arterial blood gas studies, the administrative law judge permissibly found that Dr. Zaldivar did not adequately address the differences between the studies, and therefore did not adequately explain why he found that Dr. Rasmussen's exercise arterial blood gas study is invalid. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Clark*, 12 BLR at 1-155. Thus, we reject employer's assertion that the administrative law judge erred in discounting Dr. Zaldivar's opinion because it is not well-reasoned.

Employer further argues that the administrative law judge erred in discounting Dr. Basheda's opinion on the basis that it is not well-reasoned. Contrary to employer's argument, the administrative law judge permissibly gave "little weight" to Dr. Basheda's opinion because it was based, in part, on a 1999 non-qualifying arterial blood gas study that she permissibly found is not probative of claimant's current respiratory condition. *See Roberts v. West Virginia C.W.P. Fund*, 74 F.3d 1233, 20 BLR 2-67 (4th Cir. 1996);

[9] The administrative law judge, however, noted that Dr. Zaldivar's exercise arterial blood gas study suggests that claimant is disabled according to Dr. Rasmussen's opinion, as claimant did not attain an oxygen consumption level during the exam that was sufficient to perform heavy manual labor. Decision and Order at 16-17.

Cooley v. Island Creek Coal Co., 845 F.2d 622, 11 BLR 2-147 (6th Cir. 1988); *Parsons v. Wolf Creek Collieries*, 23 BLR 1-29 (2004) (en banc); *Workman v. E. Associated Coal Corp.*, 23 BLR 1-22 (2004) (en banc). In addition, the administrative law judge permissibly gave "little weight" to Dr. Basheda's opinion because Dr. Basheda did not adequately explain the wide discrepancy between the exercise arterial blood gas studies of Drs. Rasmussen and Zaldivar.[10] *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Clark*, 12 BLR at 1-155. Thus, we reject employer's assertion that the administrative law judge erred in discounting Dr. Basheda's opinion because it is not well-reasoned.

Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence established total respiratory disability at 20 C.F.R. §718.204(b)(2)(iv). We also affirm her finding that the evidence established total respiratory 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 (1986), *aff'd on recon*. 9 BLR 1-236 (1987)(en banc). Furthermore, we affirm the administrative law judge's finding that claimant established a change in an applicable condition of entitlement at 20 C.F.R. §725.309(c), and thus invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis.

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[11] nor clinical[12] pneumoconiosis, or by

[10] The administrative law judge specifically noted that "Dr. Basheda did not address the differences in the manner in which the tests were administered (particularly the length of exercise and the speed/grade of the treadmill)." Decision and Order at 16.

[11] Legal pneumoconiosis includes "any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

[12] Clinical pneumoconiosis is defined as "those diseases recognized by the medical community as pneumoconiosis, *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. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment." 20 C.F.R. §718.201(a)(1).

establishing that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in 718.201." 20 C.F.R. 718.305(d)(1)(i), (ii); *see Consolidation Coal Co. v. Director, OWCP* [*Burris*], 732 F.3d 723, 726-27, 25 BLR 2-405, 2-413 (7th Cir. 2013); *Minich v. Keystone Coal Mining Corp*., 25 BLR 1-149, 1-150 (2015) (Boggs, J., concurring and dissenting). 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. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 22. Employer's failure to disprove clinical pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i). Accordingly, we affirm the administrative law judge's finding 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). 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.

In addressing whether employer disproved the existence of legal pneumoconiosis, the administrative law judge considered the opinions of Drs. Zaldivar and Basheda that claimant does not have legal pneumoconiosis. The administrative law judge permissibly gave little weight to Dr. Zaldivar's opinion because Dr. Zaldivar found no respiratory impairment, contrary to her determination that claimant has a disabling respiratory impairment, and "fail[ed] to explain why coal mine dust exposure could not be a co-contributing factor" to the mild pulmonary abnormality he diagnosed. Decision and Order at 28; *see Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Clark*, 12 BLR at 1-155. Similarly, the administrative law judge permissibly gave little weight to Dr. Basheda's opinion because Dr. Basheda "failed to consider and explain the duration and degree of exercise" in the respective blood gas testing. Decision and Order at 28; *see Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Clark*, 12 BLR at 1-155. In addition, the administrative law judge permissibly found that Dr. Basheda's failure to adequately consider and explain why claimant showed better results on Dr. Zaldivar's exam undermined his theory that claimant's variable blood gas testing results signified a lack of progression inconsistent with pneumoconiosis.[13] *Id*. The administrative law judge therefore found that employer failed to disprove the existence of legal pneumoconiosis.

[13] The administrative law judge noted that Dr. Basheda attributed claimant's impairment solely to smoking or genetically acquired asthma based on his belief that claimant showed variability on his blood gas test results in a manner inconsistent with the

Employer argues that the administrative law judge applied an incorrect standard, by requiring Drs. Rasmussen and Basheda to "rule out" coal mine dust exposure as a cause of claimant's respiratory impairment in order to disprove the existence of legal pneumoconiosis. The administrative law judge, however, did not require Drs. Rasmussen and Basheda to "rule out" any connection between claimant's respiratory condition and his coal mine dust exposure. Rather, the administrative law judge found that the specific explanations of Drs. Rasmussen and Basheda as to why claimant does not have legal pneumoconiosis were not credible. Thus, any error in the administrative law judge's recitation of the legal standard for rebuttal is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). Consequently, we reject employer's assertion that the case must be remanded for consideration under the proper rebuttal standard. *See Minich*, 25 BLR at 1-154-56.

Employer also argues that the administrative law judge erred in finding that Drs. Zaldivar and Basheda did not adequately explain why coal dust exposure did not contribute to claimant's respiratory impairment. It is for the administrative law judge to assess the credibility of the evidence and determine how much weight to assign it. *See W. Va. CWP Fund v. Bender*, 782 F.3d 129, 144-45 (4th Cir. 2015). Because the administrative law judge permissibly discounted the opinions of Drs. Zaldivar and Basheda, the only evidence of record that supports a finding that claimant does not have legal pneumoconiosis, we affirm the administrative law judge's finding that employer failed to disprove the existence of legal pneumoconiosis.[14]

Finally, employer contends that the administrative law judge erred in refusing to decide the disability causation issue, thereby denying it an available means of rebutting the Section 411(c)(4) presumption. Employer argues that the administrative law judge created a "double presumption" for claimant, because she "interpreted the rebuttal

---

progressive nature of pneumoconiosis. She found his explanation inadequate because he did not address whether the disparity in the test results of Drs. Rasmussen and Zaldivar emanated from the manner in which the tests were conducted. Both of the other doctors attributed the disparity in results to the manner in which the test was conducted—Dr. Rasmussen attributing it to the shorter duration of Dr. Zaldivar's test, Dr. Zaldivar attributing it to one of the tests being improperly conducted. Decision and Order at 28.

[14] Because employer bears the burden to prove that claimant does not have pneumoconiosis, we need not address employer's arguments regarding the weight the administrative law judge accorded to Dr. Rasmussen's opinion that claimant has clinical and legal pneumoconiosis, and that coal mine dust is the primary cause of claimant's impairment. *See* 20 C.F.R. §718.305(d)(1)(i).

provisions [as providing] that a finding of legal pneumoconiosis precludes a finding of disability causation." Employer's Brief at 11-12. Contrary to employer's argument, the administrative law judge addressed the issue of whether employer rebutted the Section 411(c)(4) presumption by establishing that no part of claimant's totally disabling pulmonary impairment was caused by pneumoconiosis. Decision and Order at 29. The administrative law judge permissibly found that the same reasons she provided for discounting the opinions of Drs. Zaldivar and Basheda, that claimant does not suffer from legal pneumoconiosis, also undercut their opinions that claimant's disabling respiratory or pulmonary impairment was not caused by pneumoconiosis.[15] *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05, BLR (4th Cir. 2015); Decision and Order at 29. Thus, we affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption by establishing that no part of claimant's total disability was caused by pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(ii). We therefore affirm the award of benefits.[16]

[15] Additionally, the administrative law judge found that Dr. Basheda diagnosed clinical pneumoconiosis but failed to explain why claimant's clinical pneumoconiosis could not have contributed to his respiratory impairment. *See* Decision and Order at 28, 30 n.24.

[16] In view of our affirmance of the administrative law judge's award of benefits, we need not address claimant's contention, on cross-appeal, that the administrative law judge erred in finding that the blood gas study evidence did not establish total respiratory disability at 20 C.F.R. §718.204(b)(2)(ii).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge