U.S. Department of Labor

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

BRB No. 17-0068 BLA

STANLEY A. DAUGHERTY Claimant-Respondent v. SCOTT MACHINE & HYDRAULICS, INCORPORATED and FIRE & CASUALTY COMPANY OF CONNECTICUT c/o ARROWPOINT CAPITAL Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 11/29/2017 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits in a Subsequent Claim of Peter B. Silvain, Jr., Administrative Law Judge, United States Department of Labor.

Matthew Moynihan (Penn, Stuart & Eskridge), Bristol, Virginia/Tennessee, for employer/carrier.

Emily Goldberg-Kraft (Nicholas C. Geale, Acting Solicitor of Labor; Maia S. Fisher, 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.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits in a Subsequent Claim (2012-BLA-6181) of Administrative Law Judge Peter B. Silvain, Jr., rendered on a subsequent claim filed on July 11, 2011[1] pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).

Applying Section 411(c)(4) of the Act,[2] 30 U.S.C. §921(c)(4), the administrative law judge credited claimant with more than fifteen years of underground coal mine employment[3] and found that the evidence established a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge therefore found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) and established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c). The administrative law judge also found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

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

[1] This is claimant's fifth claim. Director's Exhibit 4. Claimant's first claim, filed on February 13, 2001, and second claim, filed on January 27, 2005, were withdrawn by claimant and, therefore, are considered not to have been filed. *See* 20 C.F.R. §725.306(b); Decision and Order at 2. Claimant's third claim, filed on February 26, 2007, was finally denied by the district director on November 26, 2007 because claimant failed to establish any of the elements of entitlement. Director's Exhibit 1. Claimant's fourth claim, filed on June 12, 2009, was finally denied by the district director on February 19, 2010 because claimant failed to establish a totally disabling respiratory or pulmonary impairment. Director's Exhibit 2.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where a 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.

[3] The administrative law judge found that claimant has a total of twenty-five years of coal mine employment based on the parties' stipulation. Decision and Order at 5, *citing* Hearing Tr. at 8.

Section 411(c)(4) presumption. Claimant has not filed a response brief in this appeal. The Director, Office of Workers' Compensation Programs (the Director), responds in support of the award of benefits.[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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

When a miner files an application 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). Claimant's prior claim was denied because he did not establish a totally disabling respiratory or pulmonary impairment. Director's Exhibit 2. Consequently, to obtain review on the merits of his current claim, claimant had to submit new evidence establishing that he has a totally disabling respiratory or pulmonary impairment. *See* 20 C.F.R. §725.309(c); *Buck Creek Coal Co. v. Sexton*, 706 F.3d 756, 758-59, 25 BLR 2-221, 2-227-28 (6th Cir. 2013).

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

The regulations provide that a miner is considered totally disabled if his respiratory or pulmonary impairment, standing alone, prevents him from performing his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). In the absence of contrary probative evidence, a miner's disability is established by: 1) pulmonary function studies showing values equal to or less than those listed in Appendix B to 20 C.F.R Part 718; 2) arterial blood gas studies showing values equal to or less than those listed in Appendix C to 20 C.F.R. Part 718; 3) medical evidence showing that the miner has pneumoconiosis and cor pulmonale with right-sided congestive heart failure; or 4) the opinion of a

[4] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established more than fifteen years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as claimant's coal mine employment was in Kentucky and Tennessee. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 6; Hearing Tr. at 12.

physician who, exercising reasoned medical judgment, concludes that a miner's respiratory or pulmonary condition is totally disabling, based on medically acceptable clinical and laboratory diagnostic techniques. 20 C.F.R. §718.204(b)(2)(i)-(iv).

Employer challenges the administrative law judge's weighing of the pulmonary function study and medical opinion evidence pursuant to 20 C.F.R. §718.204(b)(2)(i), (iv).[6]

Pulmonary Function Studies

Relevant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered the results of four new pulmonary function studies dated August 17, 2011, March 22, 2012, June 18, 2013 and March 30, 2016,[7] and correctly noted that all of the studies produced qualifying[8] values.[9] Decision and Order at 16; Director's Exhibits 11, 12; Claimant's Exhibit 3; Employer's Exhibit 1. Considering the validity of the studies, the administrative law judge found the August 17, 2011 study "fully reliable," the March 22, 2012 and March 30, 2016 studies "less reliable, but still probative as to total disability," and the June 18, 2013 study invalid. Decision and Order at 16. Evaluating the

[6] The administrative law judge found that the new blood gas studies do not support a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 16; Director's Exhibits 11, 12; Employer's Exhibit 1. Further, the administrative law judge found that the record contains no evidence of cor pulmonale with right-sided congestive heart failure; therefore, total disability could not be demonstrated under 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 15.

[7] The administrative law judge resolved the height discrepancy recorded on the pulmonary function studies, finding that claimant's average reported height was 68 inches and he would use the closest table height of 68.1 inches for purposes of assessing the pulmonary function studies for total disability. *See Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 15 n.62.

[8] 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).

[9] The August 17, 2011 pulmonary function study produced qualifying values before the administration of a bronchodilator; a post-bronchodilator study was not performed. Director's Exhibit 11. The March 22, 2012, June 18, 2013 and March 30, 2016 pulmonary function studies produced qualifying values both before and after the administration of bronchodilators. Director's Exhibit 12; Claimant's Exhibit 3; Employer's Exhibit 1.

pulmonary function study evidence as a whole, and taking into consideration that the August 17, 2011 pulmonary function study was "fully reliable" and qualifying as to total disability, the administrative law judge found that the preponderance of the new pulmonary function study evidence supported a finding of total disability at 20 C.F.R. §718.204(b)(2)(i). *Id.*

Employer argues that the administrative law judge erred in weighing the August 17, 2011 pulmonary function study. Employer's Brief at 7-8. Employer assertions lack merit.

A pulmonary function study is determined to be qualifying for total disability if it yields an FEV_1 value that is qualifying "for an individual of the miner's age, sex, and height," *and* also yields either an FVC or an MVV value that is qualifying, or an FEV_1/FVC ratio of 55 percent or less. 20 C.F.R. §718.204(b)(2)(i). Because the August 17, 2011 pulmonary function study yielded qualifying FEV_1 and FVC values for claimant's height and age, we affirm the administrative law judge's determination that the August 17, 2011 pulmonary function study results are qualifying pursuant to 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 16; Director's Exhibit 11.

We also reject employer's assertion that the administrative law judge improperly substituted his opinion for that of the medical expert by discrediting Dr. Long, who invalidated the August 17, 2011 study. Employer's Brief at 8. *Id.* Dr. Long reviewed the results of the August 17, 2011 study and stated that "[it] is not valid . . . because there are only two flow volume loops and two spirometric tracings." Director's Exhibit 13.

Contrary to employer's assertion, however, the administrative law judge accurately noted that "[the] results of three attempts were recorded" and that "a review of the tracings shows three lines." Decision and Order at 16; *see* Director's Exhibit 11. The administrative law judge thus permissibly discredited Dr. Long's opinion because Dr. Long inaccurately described the number of tracings recorded for the flow-volume loops of the study. *See 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); *Tennessee 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). We therefore affirm the administrative law judge's finding that the August 17, 2011 pulmonary function study is probative of total disability.[10]

[10] Moreover, contrary to Dr. Long, Dr. Burrell, who administered the August 17, 2011 study as part of his Department of Labor (DOL)-sponsored examination of claimant, indicated that claimant's effort and cooperation were "good." Director's

Employer additionally asserts that the administrative law judge erred in determining that the March 22, 2012 and March 30, 2016 pulmonary function study results are valid. Employer's Brief at 7-9. A finding that the March 22, 2012 and March 30, 2016 qualifying pulmonary function study results are invalid would not alter the administrative law judge's finding that the new pulmonary function study evidence established total disability, however, as the administrative law judge permissibly found that the August 17, 2011 pulmonary function study results are qualifying and probative of total disability. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); *see also Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (holding that the appellant must explain how the "error to which [it] points could have made any difference"). We therefore affirm, as supported by substantial evidence, the administrative law judge's finding that the new pulmonary function study evidence established total disability at 20 C.F.R. §718.204(b)(2)(i).

Medical Opinions

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the new medical opinions of Drs. Burrell, Rosenberg and Dahhan, and the medical treatment records of Drs. Schuldheisz and Perry.[11] Claimant's Exhibits 1, 2. Drs. Burrell and Rosenberg opined that claimant has a disabling pulmonary impairment, Director's Exhibits 11, 12; Employer's Exhibit 2, while Dr. Dahhan opined that claimant does not have a pulmonary disability.[12] The administrative law judge accorded greater weight to

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Exhibit 11. Dr. Mettu also prepared a validation report on behalf of the DOL and indicated that the August 17, 2011 "[v]ents are acceptable."

[11] Dr. Schuldheisz found that "[b]ecause of his diagnosis [of coal workers' pneumoconiosis], [claimant] has limitations with shortness of breath with exertion and requires oxygen at times during the day." Claimant's Exhibit 1. Dr. Schuldheisz further noted that "[claimant] also experiences cough with mucus production and wheezing" and "is on various respiratory medications[,] including nebulizer treatments and inhalers." *Id*. Based on his symptoms, Dr. Schuldheisz opined that claimant would not be able to work in coal mines. *Id*.

Dr. Perry noted that he has been claimant's physician for over fifty years, and has treated claimant for chronic obstructive pulmonary disease and pulmonary infections many times. Claimant's Exhibit 2.

[12] Dr. Dahhan opined that claimant has a mild, non-disabling ventilatory impairment. Employer's Exhibit 1.

Drs. Burrell and Rosenberg and found that the new medical opinion evidence established total disability. Decision and Order at 17.

Employer argues that the administrative law judge erred in crediting Drs. Burrell and Rosenberg. Employer's Brief at 9. Employer asserts that Dr. Burrell relied on the invalid pulmonary function study dated August 17, 2011, and Dr. Rosenberg relied on invalid pulmonary function studies dated August 17, 2011 and March 22, 2012. Contrary to employer's assertion, as discussed above, we have affirmed the administrative law judge's finding that the August 17, 2011 pulmonary function study, on which Drs. Burrell and Rosenberg[13] principally relied, produced valid results. Moreover, Dr. Rosenberg's disability opinion was not based on the March 22, 2012 pulmonary function study. Noting that the March 22, 2012 pulmonary function study was performed with incomplete effort and was not valid, Dr. Rosenberg concluded that the study could not be used to assess the level of claimant's impairment. Director's Exhibit 12. Thus we reject employer's assertion that Drs. Burrell and Rosenberg relied on invalid pulmonary function studies.

Employer also asserts that Dr. Burrell's disability opinion is based on an inaccurate smoking history of only twenty pack-years, and that Dr. Burrell failed to provide a reason for "linking claimant's coal dust exposure to his specific objective medical testing." Employer's Brief at 9. Contrary to employer's assertions, the relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether the evidence establishes the presence of a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(1). The etiology of that respiratory or pulmonary impairment is properly addressed at 20 C.F.R. §718.204(c), or in consideration of whether an employer has rebutted the Section 411(c)(4) presumption. 20 C.F.R. §§718.204(a), (c), 718.305(d)(1)(ii).

In addition, the administrative law judge noted that Dr. Burrell's and Dr. Rosenberg's opinions are based, in part, on the valid August 17, 2011 pulmonary function study results and further supported by Dr. Schuldheisz's treatment note that claimant currently uses "constant supplemental oxygen." Decision and Order at 17. The administrative law judge thus permissibly accorded greater weight to their opinions as well-supported and well-reasoned. *See Groves*, 277 F.3d at 836, 22 BLR at 2-330; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103. In contrast,

[13] In an April 16, 2012 report, Dr. Rosenberg considered the August 17, 2011 and March 22, 2012 pulmonary function studies. Director's Exhibit 12. Regarding the August 17, 2011 study, Dr. Rosenberg noted that Dr. Mettu found the study acceptable. *Id*. After noting that the study revealed significant restriction without an oxygenation abnormality, Dr. Rosenberg opined that claimant's restriction is considered disabling despite his preserved oxygenation. *Id*.

the administrative law judge noted that Dr. Dahhan's opinion was based on older pulmonary function study results from 2007 and 2009 and that he did not explain his opinion in view of Dr. Schuldheisz's treatment note. Decision and Order at 17. The administrative law judge thus permissibly accorded less weight to Dr. Dahhan's opinion, finding it not well-supported or reasoned. *See Groves*, 277 F.3d at 836, 22 BLR at 2-330; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

It is the province of the administrative law judge to evaluate the medical evidence, draw inferences, and assess probative value. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Crisp*, 866 F.2d at 185, 12 BLR at 2-129. The determination of whether a medical opinion is documented and reasoned is for the administrative law judge, and we may not substitute our judgment. *See Moseley v. Peabody Coal Co*., 769 F.2d 357, 360, 8 BLR 2-22, 2-25 (6th Cir. 1985). As substantial evidence supports the administrative law judge's credibility determinations, we affirm his finding that the medical opinions of Drs. Burrell and Rosenberg are well-documented and well-reasoned, and thus establish total disability. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987).

Because employer raises no other specific allegation of error with regard to the administrative law judge's weighing of the new medical opinion evidence, we affirm his findings that claimant established total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2), a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c), and invoked the Section 411(c)(4) presumption.

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,[14] 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); *see Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25

[14] "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). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

BLR 2-1, 2-9 (6th Cir. 2011). The administrative law judge found that employer failed to establish rebuttal by either method.

Legal Pneumoconiosis

In finding that employer failed to rebut the presumed fact of legal pneumoconiosis,[15] employer argues that the administrative law judge erred in discrediting the medical opinions of Drs. Rosenberg and Dahhan that claimant does not have legal pneumoconiosis as inadequately explained. Director's Exhibit 12; Employer's Exhibits 1, 2; Decision and Order at 22-24.

Dr. Rosenberg opined that claimant's restriction relates to pleural changes with subpleural fat deposition and rheumatoid arthritis, but not to coal mine dust exposure. Director's Exhibit 12; Employer's Exhibit 2. Dr. Rosenberg also observed that claimant does not have chronic cough and sputum production or airflow obstruction. Director's Exhibit 12. Dr. Dahhan opined that claimant has a mild ventilatory impairment caused by a history of bronchial asthma, rheumatoid arthritis, and a lengthy smoking habit, but unrelated to coal mine dust exposure. Employer's Exhibit 1. The administrative law judge noted that although Drs. Rosenberg and Dahhan found that claimant's rheumatoid arthritis, obesity and smoking history are contributing factors to claimant's impairment, the doctors did not offer any credible explanation as to why they eliminated claimant's lengthy coal mine dust exposure history as a cause or contributing factor to claimant's impairment. Decision and Order at 22-23. Contrary to employer's assertion, the administrative law judge thus permissibly found that Drs. Rosenberg and Dahhan failed to adequately explain their conclusions that claimant's impairment was not also due to coal dust exposure. *See* 20 C.F.R. §718.201(a)(2); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489, 25 BLR 2-135, 2-152-53 (6th Cir. 2012); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); *Clark*, 12 BLR at 1-155; Decision and Order at 23, 24. Moreover, the administrative law judge permissibly found that they further failed to adequately explain why claimant's twenty-seven years of coal dust exposure did not *exacerbate* claimant's pulmonary condition. *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668, 25 BLR 2-725, 2-740 (6th Cir. 2015).

As the administrative law judge permissibly discredited the opinions of Drs. Rosenberg and Dahhan, the only opinions supportive of a finding that claimant does not

[15] The administrative law judge found that employer disproved the existence of clinical pneumoconiosis based on the x-ray, biopsy and medical opinion evidence. Decision and Order at 21-24.

have legal pneumoconiosis,[16] we affirm the administrative law judge's finding that employer failed to disprove the existence of legal pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(A).[17] Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis. *See Morrison*, 644 F.3d at 480, 25 BLR at 2-9.

Total Disability Due to Pneumoconiosis

The administrative law judge next addressed whether employer could establish rebuttal by showing that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). The administrative law judge permissibly discredited the medical opinions of Drs. Rosenberg and Dahhan that claimant's pulmonary impairment was not caused by pneumoconiosis because the physicians did not diagnose legal pneumoconiosis, contrary to the administrative law judge's finding that employer failed to disprove the existence of the disease. 20 C.F.R. §718.305(d)(1)(ii); *see Kennard*, 790 F.3d at 668, 25 BLR at 2-741; *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062, 25 BLR 2-453, 2-473-73 (6th Cir. 2013); Decision and Order at 25. Moreover, employer raises no specific challenge to this determination. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). We therefore affirm the administrative law judge's determination that employer failed to establish that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(ii).

[16] Because the administrative law judge provided a valid reason for discrediting the opinions of Drs. Rosenberg and Dahhan, we need not address employer's remaining arguments regarding the weight accorded to those opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 6-7.

[17] Employer asserts that the administrative law judge did not adequately explain his basis for finding that claimant has only a twenty-two pack-year smoking history, and that the administrative law judge failed to consider all of the descriptions of claimant's smoking history, as set forth in the medical reports and treatment records. Employer's Brief at 5-6. We need not address this argument, however, as employer has failed to show how any error in the administrative law judge's calculation of claimant's smoking history would impact the weighing of the opinions of its physicians which, as discussed *supra*, were permissibly rejected by the administrative law judge. The administrative law judge did not reject any of the medical opinions in this record on the ground that the physician relied on an inaccurate smoking history. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Because claimant invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis and employer did not rebut the presumption, we affirm the administrative law judge's finding that claimant is entitled to benefits.

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

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge