U.S. Department of Labor

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

BRB No. 17-0075 BLA

WILLIAM D. SALYER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
STONEY FORK COAL COMPANY, INCORPORATED	)	
	)	
	)	
and	)	DATE ISSUED: 11/28/2017
	)	
TRAVELERS INDEMNITY 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 of Adele H. Odegard, Administrative Law Judge, United States Department of Labor.

Clayton Daniel Scott (Porter, Banks, Baldwin & Shaw, PLLC), Paintsville, Kentucky, for employer/carrier.

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

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order (2014-BLA-05178) of Administrative Law Judge Adele H. Odegard awarding benefits 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 December 4, 2012.[1]

After crediting claimant with 15.85 years of underground coal mine employment,[2] the administrative law judge found that claimant suffers from a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2).[3] The administrative law judge therefore found that claimant invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis.[4] 30 U.S.C. §921(c)(4) (2012). The administrative law judge further found that employer did not rebut the presumption and awarded benefits accordingly.

On appeal, employer contends that the administrative law judge erred in crediting claimant with 15.85 years of underground coal mine employment, and erred in finding that the evidence established total disability. Employer therefore argues that the

[1] Claimant's initial claim, filed on January 7, 1991, was finally denied by the district director on June 18, 1991, because claimant failed to establish any element of entitlement. Director's Exhibit 1. Claimant filed two additional claims in 2003 and 2005, but he withdrew both. *Id.* They are therefore considered not to have been filed. 20 C.F.R. §725.306(b). Claimant filed a fourth claim on November 26, 2007. *Id.* An administrative law judge denied that claim on February 24, 2010, because the evidence did not establish that claimant had a totally disabling respiratory or pulmonary impairment. *Id.* Claimant requested modification, which the district director denied on December 8, 2010. *Id.* Claimant filed a fifth claim on January 20, 2012, which he withdrew. Director's Exhibit 34.

[2] Claimant's coal mine employment was in Kentucky. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[3] Because the administrative law judge determined that the new evidence established that claimant is totally disabled pursuant to 20 C.F.R. §718.204(b)(2), she found that claimant established a change in the applicable condition of entitlement. 20 C.F.R. §725.309(c).

[4] 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); *see* 20 C.F.R. §718.305.

administrative law judge erred in finding that claimant invoked the Section 411(c)(4) presumption. Additionally, employer contends that the administrative law judge erred in finding that it did not rebut the presumption. Neither claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Invocation of the Section 411(c)(4) Presumption

Length of Coal Mine Employment

Claimant bears the burden of proof to establish the number of years he worked in coal mine employment.[5] *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). As the regulations provide only limited guidance for the computation of time spent in coal mine employment, the Board will uphold the administrative law judge's determination if it is based on a reasonable method and supported by substantial evidence in the record. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Dawson v. Old Ben Coal Co.*, 11 BLR 1-58 (1988) (en banc).

In addressing the length of claimant's coal mine employment, the administrative law judge considered claimant's testimony, reported work histories, Social Security Earnings Statement (SSES), and W-2 forms. Decision and Order at 8-12. Because the evidence was insufficient to establish the beginning and ending dates of claimant's coal mine employment, the administrative law judge elected to apply the formula set forth at 20 C.F.R. §725.101(a)(32)(iii). Section 725.101(a)(32)(iii) provides that, if the beginning and ending dates of the miner's coal mine employment cannot be ascertained, or the miner's coal mine employment lasted less than a calendar year, the administrative law judge may determine the length of the miner's work history by dividing the miner's yearly income from work as a miner by the coal mine industry's average daily earnings for that year, as reported by the Bureau of Labor Statistics (BLS). 20 C.F.R.

[5] The administrative law judge found that all of claimant's coal mine employment took place underground. Decision and Order at 12; Hearing Transcript at 15. Because this finding is unchallenged on appeal, it is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

§725.101(a)(32)(iii). Applying this formula, the administrative law judge credited claimant with 15.85 years of coal mine employment from 1966 to 1990.[6] *Id.*

Employer accurately notes that the regulations require that a copy of the BLS table be made a part of the record if the administrative law judge uses the formula at Section 725.101(a)(32)(iii) to establish the length of the miner's work history. Employer's Brief at 14-15. Employer argues that the administrative law judge failed to make a copy of the BLS table part of the record and, therefore, his findings that were based on that table should be vacated. *Id.* at 15. We disagree. The administrative law judge complied with the regulations by noting that the BLS *Average Earnings of Employees in Coal Mining* table is located at Exhibit 610 of the *BLBA Procedure Manual*, and can be accessed at http://www.dol.gov/owcp/dcmwc/exh610.htm. *See* Decision and Order at 10 n.5. Moreover, the administrative law judge provided the figures that she used from Exhibit 610 when using the formula at 20 C.F.R. §725.101(a)(32)(iii). *Id*. at 10-12. Employer does not allege that any of the figures used by the administrative law judge are inaccurate.

Employer, however, contends that the administrative law judge committed additional errors in crediting claimant with at least fifteen years of qualifying coal mine employment for the purpose of invoking the Section 411(c)(4) presumption. Employer first argues that the administrative law judge erred in finding that claimant was self-employed as a coal miner from 1978 to 1980. Employer's Brief at 18-20. We disagree. The administrative law judge reasonably determined that claimant's CM-911 Employment History form that he completed in 1991 was the most reliable evidence of the years in which he performed his coal mine work, because claimant completed the form only a year after he stopped working when "his employment history was much fresher in his mind." Decision and Order at 9; Director's Exhibit 1 at 676. The administrative law judge noted that this form indicated that claimant worked for "Salyer Coal Company" as a miner from 1978 through 1980. *Id.* The administrative law judge observed that claimant's SSES showed that he was self-employed from 1978 through 1980. *Id.* The administrative law judge, therefore, inferred that claimant worked for

[6] Contrary to employer's argument, the administrative law judge did not credit claimant with each quarter in which he earned at least $50.00 from coal mine employment. Rather, the administrative law judge excluded coal mine employment when claimant's Social Security earnings statement (SSES) demonstrated that claimant did not engage in coal mine employment in a given quarter. *See* Decision and Order at 11 n.9. Moreover, contrary to employer's contention, the administrative law judge provided a clear explanation for his calculations using the formula set forth at 20 C.F.R. §725.101(a)(32)(iii).

himself as a miner, doing business as "Salyer Coal Company," from 1978 through 1980. *Id.* at 9-10.

It is the administrative law judge's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 25 BLR 2-135 (6th Cir. 2012); *Gray v. SLC Coal Co.*, 176 F.3d 382, 388, 21 BLR 2-615, 2-626 (6th Cir. 1999). Because the administrative law judge's inference is reasonable, we affirm his decision to include the self-employment income listed on claimant's SSES from 1978 through 1980 in calculating the length of claimant's coal mine employment.[7] Because employer does not otherwise challenge the administrative law judge's decision to credit claimant with 2.35 years of coal mine employment from 1978 through 1980, this finding is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). The administrative law judge's crediting of claimant with 0.26 of a year of coal mine employment in 1966, 1.75 years of coal mine employment from 1976 through 1977, and 3.53 years of coal mine employment from 1981 through 1990 are also affirmed, as unchallenged on appeal.

The administrative law judge also credited claimant with 7.0 years of coal mine employment with Navistar International Transportation Corporation (Navistar) from 1968 through 1974. Decision and Order at 10-11. Employer argues that, because claimant's SSES does not reflect any reported earnings from Navistar in the final quarters of 1969, 1970, and 1971, the administrative law judge should not have credited claimant with those three quarters of coal mine employment. Employer's Brief at 16. Employer, however, fails to account for the fact that a miner's SSES may underreport his true wages because it will not normally show income greater than the Social Security Administration wage base amount for a given year.[8] *See Osborne v. Eagle Coal Co.*, 25 BLR 1-195, 1-203 n.10 (2016). For the years 1969, 1970, and 1971, the wage base amount was $7,800.00. Because claimant had already received a total of $7,800.00 in wages by the end of the third quarter in 1969, 1970, and 1971, his SSES does not list any fourth quarter

[7] Moreover, we note that, because claimant indicated on his 1991 Form CM-911 that his work for Salyer Coal Company took place in a mine, claimant is entitled to a rebuttable presumption that this work was that of a "miner." *See* 20 C.F.R. §725.202(a). Employer did not submit any evidence to rebut the presumption.

[8] The Social Security Administration's wage base table sets forth the maximum amount of an employee's yearly earnings that are subject to the Social Security tax. It is set forth at Exhibit 609 of the *BLBA Procedure Manual*, and can be accessed at https://www.dol.gov/owcp/dcmwc/blba/indexes/Exhibit609TR16.02.pdf.

earnings for these years.[9] Director's Exhibit 1 at 650. Moreover, the administrative law judge noted that claimant testified, without contradiction, that he worked for Navistar from 1968 to 1975. Decision and Order at 9; Director's Exhibit 13. Because it is based upon substantial evidence, we affirm the administrative law judge's decision to credit claimant with the .25 year of coal mine employment in each of the final quarters of 1969, 1970, and 1971. Because employer does not challenge the remaining 6.25 years of coal mine employment credited by the administrative law judge from 1968 through 1974, we affirm the administrative law judge's decision to credit claimant with 7.0 years of coal mine employment with Navistar from 1968 through 1974.

The administrative law judge also credited claimant with an additional 0.96 year of coal mine employment with Navistar in 1975. Employer contends that the administrative law judge erred in crediting claimant with 0.46 of a year of coal mine employment during the last two quarters of 1975.[10] We agree. Claimant's SSES indicates that claimant earned a total of $7,106.18 in wages with Navistar over the first two quarters of 1975, but no wages thereafter for the remainder of the year. Director's Exhibit 1 at 650. Because claimant's 1975 Wage and Tax Statement reveals that $7,106.18 was the total amount of wages that claimant earned while working for Navistar in 1975, Director's Exhibit 1 at 489, the administrative law judge erred in crediting claimant with 0.46 year of coal mine employment during the last two quarters of 1975.[11] The administrative law judge's error, however, does not require remand. We have affirmed the administrative law judge's findings that claimant established a total of 15.39 years of coal mine employment, without including the 0.46 year of contested coal mine employment from 1975. Consequently, the administrative law judge's error would not

[9] The record confirms that claimant's SSES underreported his true wages. While claimant's SSES reports wages of $7,800.00 during the first three quarters of 1969 and 1970 from Navistar International Transportation Corporation (Navistar), claimant's Wage and Tax Statements reveal that he actually received total wages from Navistar of $11,584.20 in 1969 and $14,537.04 in 1970. Director's Exhibit 1 at 491. The record does not include claimant's Wage and Tax Statement for 1971.

[10] Employer does not challenge the administrative law judge's finding that claimant is entitled to credit for 0.50 of a year of coal mine employment with Navistar during the first two quarters of 1975. This finding is therefore affirmed. *Skrack*, 6 BLR at 1-711.

[11] Claimant's SSES also indicates that claimant received significant wages ($2,286.60) from non-coal mine employment during the final two quarters of 1975. Director's Exhibit 1 at 650.

affect her determination that claimant established at least fifteen years of coal mine employment necessary to invoke the Section 411(c)(4) presumption. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). We, therefore, affirm the administrative law judge's finding that claimant established at least fifteen years of underground coal mine employment.

Total Disability

Employer also argues that the administrative law judge erred in finding that the new pulmonary function study and medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (iv).[12] Although the administrative law judge considered six new pulmonary function studies, she found that only two of the studies, those conducted on April 16, 2013 and June 20, 2014, were valid.[13] Decision and Order at 16. Because these two pulmonary function studies produced qualifying values,[14] the administrative law judge found that the new pulmonary function study evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i).[15] Decision and Order at 16.

Employer argues that the two qualifying studies credited by the administrative law judge are also invalid and thus do not support a finding of total disability. Employer's Brief at 32-34. Employer initially contends that the administrative law judge erred in not

[12] The administrative law judge found that the blood gas study evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 17. Because there is no evidence of cor pulmonale with right-sided congestive heart failure, the administrative law judge also found that total disability was not established pursuant to 20 C.F.R. §718.204(b)(2)(iii). *Id.*

[13] The administrative law judge found that the other four new pulmonary function studies conducted on January 17, 2013, October 29, 2014, February 5, 2015, and February 25, 2015 were invalid. Decision and Order at 14-16.

[14] A qualifying pulmonary function study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendix B. A non-qualifying study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i).

[15] The April 16, 2013 pulmonary function study produced qualifying values before the administration of a bronchodilator, and non-qualifying values after the administration of a bronchodilator. Director's Exhibit 8. The administrative law judge, however, noted that "the Board has never required a miner to use bronchodilators in order to return to his previous coal mine employment." Decision and Order at 26.

addressing Dr. Fino's invalidation of the April 16, 2013 pulmonary function study.[16] Although Dr. Fino indicated that the study was "invalid," he provided no reason for his assessment. Employer's Exhibit 4 at 7. Because Dr. Fino did not explain the basis upon which he invalidated the study, the administrative law judge could not have relied upon his opinion to call into question its reliability. *See Shrader v. Califano*, 608 F.2d 114, 118 (4th Cir. 1979) (administrative law judge erred in accepting an unexplained invalidation of a pulmonary function study). We, therefore, reject employer's argument that the April 16, 2013 pulmonary function study was invalid.

Employer also argues that the June 20, 2014 pulmonary function study is not in substantial compliance[17] with the quality standards set forth at 20 C.F.R. §718.103.[18] Employer's Brief at 33-34. Although employer did not raise any objection to the June 20, 2014 pulmonary function study while the case was before the administrative law judge, she nevertheless reviewed the study and found that it was in substantial compliance with the quality standards. She explained:

> The poor photocopy included in the file only shows one flow volume loop; however, it appears that two other tracings are present on the original, but did not come through on the photocopied version of the record. The test includes the date and time of the test; Claimant's name, age, height, and

[16] In its post-hearing brief to the administrative law judge, employer did not reference Dr. Fino's statement that the April 16, 2013 pulmonary function study was invalid, or argue that the study was invalid.

[17] Section 718.101(b) provides that "[a]ny clinical test or examination" developed in connection with a claim must be "in substantial compliance with the applicable [quality] standard in order to constitute evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b).

[18] The quality standards require that the studies be accompanied by three tracings of each test performed, FEV_1, FVC, and MVV. The standards also require that test results developed in connection with a claim for benefits include a statement signed by the physician or technician that sets forth the following: (1) date and time of test; (2) name, claim number, age, height, and weight of the claimant; (3) name of the technician; (4) signature of the physician supervising the test; (5) claimant's ability to understand the instructions, ability to follow directions, and degree of cooperation in performing the tests; (6) paper speed; (7) name of the instrument used; (8) whether a bronchodilator was used; and (9) that the test is in compliance with the quality standards. 20 C.F.R. §718.103(b).

> weight; and Claimant's ability to comprehend and follow the instructions. Although the test does not include the "name and signature of the physician supervising the test," . . . I find that the test is in substantial conformity to the regulatory requirements.

Decision and Order at 14 n.15.

Employer initially contends that the administrative law judge mischaracterized the study in that it does not list claimant's ability to comprehend and follow instructions. Employer's Brief at 33. Employer, however, acknowledges that the study indicates that claimant provided good effort and cooperation. *Id.* We hold that claimant's noted "good cooperation" is sufficient evidence that he was able to understand the instructions and follow directions.

Employer next notes that the study indicates that the test interpretation is unconfirmed, and should be reviewed by a physician. Employer's Brief at 33. Employer, however, has not explained how the fact that the report advises that a physician review the computer generated interpretation of the study[19] renders the study not in compliance with the quality standards.

Employer further notes that the study has only one flow volume loop. The administrative law judge, however, addressed this issue, explaining that it appeared that the "two other tracings [were] present on the original, but did not come through on the photocopied version of record." Decision and Order at 14 n.15. Employer does not allege that the administrative law judge's explanation was unreasonable.

Employer next notes that there is no indication that the instrument used for the study was approved by National Institute for Occupational Safety and Health (NIOSH). Employer's Brief at 33. Although Appendix B provides that instruments used for the administration of pulmonary function tests shall be approved by NIOSH, there is a presumption that this requirement has been met.[20] 20 C.F.R. §718.103(c). Employer has

[19] The computer generated interpretation interpreted the results as revealing "very severe obstruction" and "moderately severe restriction." Claimant's Exhibit 5.

[20] Section 718.103(c) provides that "no results of a pulmonary function study shall constitute evidence of a respiratory or pulmonary impairment unless it is conducted and reported in accordance with . . . Appendix B. In the absence of evidence to the contrary, compliance with the requirements of Appendix B shall be presumed." 20 C.F.R. §718.103(c).

not produced any evidence to rebut the presumption that the instruments used for the June 20, 2014 study were approved by NIOSH.

Finally, although employer notes that there is "no indication of the temperature of the equipment," Employer's Brief at 34, neither the regulations nor Appendix B imposes such a requirement.[21] We, therefore, affirm the administrative law judge's determination that the June 20, 2014 pulmonary function study is valid and in substantial compliance with the provisions of 20 C.F.R. Part 718.[22]

Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the new pulmonary function study evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(i).

With respect to the medical opinion evidence, employer argues that the administrative law judge erred in finding that Dr. Alam's opinion was sufficient to establish that claimant is totally disabled.[23] According to employer, it "appears that Dr. Alam questions whether [c]laimant is truly disabled from a pulmonary standpoint," because Dr. Alam indicated that if claimant became hypoxemic after an exercise blood gas study, such a finding would confirm his opinion that claimant is totally disabled. Employer's Brief at 30. Employer thus argues that this observation by Dr. Alam renders his opinion equivocal. *Id.* We disagree.

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[21] Employer also alleges that the June 20, 2014 study is nonconforming because there is no paper speed indicated on the report, as required under 20 C.F.R. §718.103(b)(6). Employer's Brief at 34. Employer has not explained how a paper speed is relevant to the reliability of the June 20, 2014 study in light of the fact that the tracings from the study were generated by a computer rather than on a graph (spirogram). Employer also has not explained how the lack of a recorded paper speed in this instance calls into question the reliability of the study.

[22] Furthermore, even if the June 20, 2014 pulmonary function study was not valid, it would not undermine the validity of the qualifying April 16, 2013 study. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[23] Drs. Jarboe and Fino opined that claimant is not totally disabled from a pulmonary standpoint. Exhibits 1, 4-6. The administrative law judge found, however, that their opinions were entitled to little weight because they were not well-reasoned. Decision and Order at 27. Because employer does not challenge these findings, they are affirmed. *Skrack*, 6 BLR at 1-711.

The administrative law judge noted that Dr. Alam, as claimant's treating physician, "accurately understood the exertional requirement[s] of [c]laimant's last coal mine employment." Decision and Order at 25. The administrative law judge further found that Dr. Alam's opinion that claimant is totally disabled from a pulmonary standpoint was supported by the results of claimant's valid qualifying pulmonary function study from April 16, 2013. *Id.* at 26. Moreover, although Dr. Alam noted in his May 23, 2013 report that it was unfortunate that claimant could not perform an exercise blood gas study because the test would confirm his disability from a pulmonary standpoint if he became hypoxemic after exercise, Dr. Alam did not indicate that the lack of an exercise blood gas study undermined his assessment of claimant's pulmonary function. Director's Exhibit 8. Additionally, in his most recent report dated March 4, 2015, Dr. Alam opined, without qualification, that claimant is totally disabled from a pulmonary standpoint. Claimant's Exhibit 6. Because it is supported by substantial evidence, we affirm the administrative law judge's finding that Dr. Alam's opinion was well-reasoned. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). As employer does not allege any additional error with respect to the administrative law judge's weighing of the medical opinion evidence, we affirm her finding that the new medical opinion evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

The administrative law judge properly weighed the medical opinion evidence with the pulmonary function and blood gas study evidence, and found that, when weighed together, the new evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2). *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); Decision and Order at 28. Because employer does not allege any error in the administrative law judge's weighing of the evidence together at 20 C.F.R. §718.204(b)(2), this finding is affirmed.[24] *Skrack*, 6 BLR at 1-711.

In light of our affirmance of the administrative law judge's findings that claimant established at least fifteen years of underground coal mine employment, and a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2), we affirm her finding that claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis. 30 U.S.C. §921(c)(4).

[24] In light of our affirmance of the administrative law judge's finding that the new evidence established total disability pursuant to 20 C.F.R. §718.204(b), we also affirm her determination that claimant established a change in the applicable condition of entitlement pursuant to 20 C.F.R. §725.309.

Rebuttal of the Section 411(c)(4) Presumption

Because claimant invoked the Section 411(c)(4) presumption, the burden shifted to employer to rebut the presumption by establishing that claimant has neither legal nor clinical pneumoconiosis,[25] or that "no part of the miner'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.

In finding that employer failed to disprove the existence of legal pneumoconiosis,[26] the administrative law judge considered Dr. Jarboe's opinion that claimant has bronchial asthma, chronic bronchitis, and a possible mild restrictive ventilatory defect, but that none of these conditions were caused by claimant's coal mine dust exposure. Employer's Exhibit 1. The administrative law judge accorded less weight to Dr. Jarboe's opinion because it was not well-reasoned, explaining:

> Dr. Jarboe opined that [c]laimant had asthma due to the "large response" of [c]laimant's FEV1 level after application of bronchodilators. Nevertheless, . . . Dr. Jarboe testified that [c]laimant "gave an inconsistent effort" during the pre-bronchodilator pulmonary function test he administered (and reviewed) and further stated that the test was invalid. The fact that Dr. Jarboe based his opinion concerning his diagnosis of asthma on an invalid pulmonary function test casts doubt on his conclusion that [c]laimant does not suffer from legal pneumoconiosis.

Decision and Order at 32-33.[27]

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[25] "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).

[26] The administrative law judge found that employer established that claimant does not have clinical pneumoconiosis. Decision and Order at 33.

[27] The administrative law judge also considered Dr. Fino's opinion that claimant does not have legal pneumoconiosis and found that it was not well-reasoned because Dr. Fino failed to adequately explain why claimant's chronic bronchitis was not due, at least

Employer contends that the administrative law judge erred in her consideration of Dr. Jarboe's opinion. We disagree. The administrative law judge permissibly discredited Dr. Jarboe's opinion because she found that it was based in part on an invalid pulmonary function study, which thereby affected his ability to adequately address whether claimant's pulmonary impairment was related to his coal mine dust exposure. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-155; *Street v. Consolidation Coal Co.*, 7 BLR 1-65, 1-67 (1984). 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.[28] *See* 20 C.F.R. §718.305(d)(1)(i).

The administrative law judge next addressed whether employer established rebuttal by proving that "no part of the miner'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)(ii). The administrative law judge reasonably discounted the opinions of Drs. Jarboe and Fino, because the physicians failed to diagnose claimant with legal pneumoconiosis, contrary to the administrative law judge's determination that employer failed to disprove the existence of the disease. *See 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). 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).

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in part, to his coal mine dust exposure. Decision and Order at 33. Because it is unchallenged on appeal, we affirm the administrative law judge's finding that Dr. Fino's opinion did not establish that claimant does not have legal pneumoconiosis. *Skrack*, 6 BLR at 1-711.

[28] Because the administrative law judge provided a valid basis for according less weight to Dr. Jarboe's opinion, we need not address employer's remaining arguments regarding the weight she accorded to his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge