U.S. Department of Labor

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

BRB No. 17-0677 BLA

ROBERT J. STAIR	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	DATE ISSUED: 11/26/2018
	)	
Employer-Petitioner	)	
	)	
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 on Modification of Paul R. Almanza, Associate Chief Administrative Law Judge, United States Department of Labor.

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

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

Jeffrey S. Goldberg (Kate S. O'Scannlain, Solicitor of Labor; Kevin Lyskowski, Acting 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, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits on Modification (2013-BLA-05557) of Associate Chief Administrative Law Judge Paul R. Almanza, rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).

Claimant filed this claim on July 5, 2005. On February 29, 2008, Administrative Law Judge Thomas M. Burke denied benefits because the evidence did not establish any element of entitlement. Director's Exhibit 59. Claimant filed three subsequent requests for modification, each of which was denied by the district director because claimant failed to establish a mistake in a determination of fact or a change in conditions pursuant to 20 C.F.R. §725.310. Director's Exhibits 66, 75, 89. Claimant timely filed this fourth request for modification on September 12, 2012. Director's Exhibit 90.

Based on the parties' stipulation, the administrative law judge found that claimant established at least twenty-five and one-half years of coal mine employment,[1] with at least fifteen years of underground coal mine employment. The administrative law judge also found that claimant has a totally disabling respiratory or pulmonary impairment pursuant 20 C.F.R. §718.204(b)(2) and, therefore, invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[2] The administrative law judge further found that employer did not rebut the presumption and that claimant thus established a change in conditions pursuant to 20 C.F.R. §725.310. Finally, he determined that granting modification would render justice under the Act, and awarded benefits accordingly.

On appeal, employer contends that the administrative law judge erred in admitting x-ray readings proffered by claimant that employer argues exceed the evidentiary limitations at 20 C.F.R. §§725.414, 725.310(b). Employer also argues that the administrative law judge erred in finding that it did not rebut the Section 411(c)(4)

[1] Claimant's coal mine employment was in Virginia. Hearing Transcript at 15, 27, 33. Accordingly, 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, 1-202 (1989) (en banc).

[2] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption that he is totally disabled 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 or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305.

presumption.[3] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging the Board to reject employer's argument that the holding in *Rose v. Buffalo Mining Co.*, 23 BLR 1-221, 1-227-28 (2007) does not apply beyond the first modification proceeding and that any error in allowing claimant to "backfill" unused evidentiary slots from previous modification requests is harmless.

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). The Board reviews the administrative law judge's procedural rulings for abuse of discretion. *See McClanahan v. Brem Coal Co.*, 25 BLR 1-171, 1-175 (2016).

I. Evidentiary Limitations on Modification

Modification of a denial of benefits may be granted because of a change in conditions or a mistake in a determination of fact. 20 C.F.R. §725.310(a). Relevant to this appeal, the regulations permit each party to submit two affirmative x-ray readings when a claim is filed and, after a decision is rendered on the claim, one additional affirmative x-ray reading upon a request for modification of that decision. 20 C.F.R. §§725.414(a)(2)(i), 725.310(b). In *Rose*, the Board considered whether litigants could submit additional evidence in a modification proceeding, beyond that contemplated under 20 C.F.R. §725.310(b), if they had not already submitted their full complement of evidence under 20 C.F.R. §725.414 when the claim was initially filed. The Board agreed with the Director's interpretation that 20 C.F.R. §§725.414 and 725.310(b) work together such that, in a modification request, each party may submit the evidence allowed by 20 C.F.R. §725.310(b) and "its full complement of medical evidence allowed by 20 C.F.R. §725.414, i.e., additional evidence to the extent the evidence already submitted in the claim proceedings is less than the full complement allowed." *Id*.

Claimant did not designate any affirmative x-ray readings in the original claim proceedings or in his first two requests for modification. Director's Exhibits 59, 66, 75. In his third request for modification, claimant designated three x-ray readings as his affirmative evidence. Director's Exhibit 86. The district director excluded two of those

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

readings, and thus admitted only one x-ray reading.[4] *Id*. In this fourth request for modification, claimant submitted four affirmative x-ray readings to the administrative law judge.[5] Based on the Board's holding in *Rose*, the administrative law judge ruled that claimant was entitled to "backfill" the available evidentiary slots for affirmative x-ray readings from his initial claim proceedings and from his first and second requests for modification. Decision and Order at 2-4. Thus, over employer's objection, the administrative law judge admitted all four of claimant's affirmative x-ray readings, as well as rebuttal readings submitted by employer.[6] *Id*.

Employer argues that the administrative law judge erred in allowing claimant to use the available affirmative x-ray reading slots from the original claim proceedings and the first two requests for modification. Employer asserts that *Rose* applies only to an initial request for modification, and not a fourth request for modification. In other words, employer asserts that a claimant may backfill unused evidentiary slots under 20 C.F.R. §725.414, but only during the first modification request. Because this is claimant's fourth modification request, employer maintains that claimant is entitled to submit only one affirmative x-ray reading pursuant to 20 C.F.R. §725.310(b). Employer further argues that allowing claimant to use evidentiary slots in this manner would contravene the purpose of the evidentiary limitations. Employer's Brief at 4-6.

We agree with the Director that although the procedural posture of the claim in *Rose* was that of a first modification request, the Board's holding applies with equal force to subsequent modification proceedings. Under the evidentiary limitations, each party can submit "the full complement of evidence allowed by [20 C.F.R.]§§725.414 and 725.310 at *any stage of the combined proceedings*, including all of the evidence for the first time on modification." *Rose*, 23 BLR at 1-226-27 (internal quotations omitted). This interpretation "recognizes the unique nature of modification in reopening the underlying claim in the

[4] The district director admitted Dr. Ahmed's reading of an October 11, 2007 x-ray. Director's Exhibits 81, 86.

[5] Claimant designated Dr. DePonte's reading of a July 21, 2011 x-ray, Dr. Alexander's reading of a November 11, 2012 x-ray, and Dr. Crum's readings of x-rays taken on February 2, 2016 and February 6, 2016, as his affirmative x-ray evidence. Director's Exhibits 90, 93; Claimant's Exhibits 9, 10; Claimant's Evidence Form. Claimant also submitted one rebuttal reading by Dr. Alexander of the September 18, 2013 x-ray. Claimant's Exhibit 1; Employer's Exhibit 1.

[6] The administrative law judge also found that employer was not prejudiced because it was allowed to submit rebuttal readings for each affirmative reading claimant proffered. Decision and Order at 3 n.2.

context of limitations on the evidence used to adjudicate the claim." *Id*. Insofar as claimant permissibly reopened his claim by filing a subsequent request for modification, he was entitled to submit, at a minimum, one affirmative x-ray reading under 20 C.F.R. §725.310 and two additional affirmative x-rays that were still available to submit under 20 C.F.R. §725.414. *Id*. The administrative law judge therefore properly admitted at least three of claimant's new x-ray readings to account for two unused evidentiary slots from the initial claim proceeding and one additional reading permitted in this fourth modification request. *Rose*, 23 BLR at 1-226-27.

While *Rose* allows a litigant in a subsequent modification proceeding to submit evidence to account for unused evidentiary slots from the initial filing under 20 C.F.R. §725.414, the Board's holding did not clearly address whether a litigant may also submit additional evidence to account for unused evidentiary slots from a prior modification request under 20 C.F.R. §725.310. We agree with the Director that we need not answer this question, however, as any error in the administrative law judge's admission of a fourth x-ray reading is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Because claimant invoked the Section 411(c)(4) presumption, which is unchallenged on appeal, the burden shifted to employer to disprove that claimant has clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B). The administrative law judge weighed nineteen readings of ten x-rays dated September 29, 2005, February 8, 2006, October 26, 2006, October 11, 2007, July 21, 2011, November 11, 2012, September 18, 2013, January 21, 2016, February 2, 2016, and February 6, 2016. Decision and Order at 7-8, 27-28; Director's Exhibits 54, 81, 88, 90, 93, 94; Employer's Exhibits 1-5, 7, 8; Claimant's Exhibits 1, 9, 10. Giving more weight to the x-ray interpretations of physicians who are dually-qualified as B readers and Board-certified radiologists, the administrative law judge found: the September 29, 2005 x-ray is negative for pneumoconiosis; four x-rays are in equipoise; and five x-rays are positive for pneumoconiosis based on unanimous or uncontested readings by dually-qualified physicians.[7] Decision and Order at 27-28. Noting that only the oldest x-ray of record is negative for pneumoconiosis, while the remaining x-rays "have been either positive, or equivocal," with the most recent x-rays "uniformly interpreted as positive," the administrative law judge found that the x-ray evidence establishes clinical pneumoconiosis. Decision and Order at 28. Thus, it "does

[7] Notably, all five x-rays found to be positive by the administrative law judge were based in part on positive readings submitted by employer as either affirmative or rebuttal evidence: Dr. Wolfe's readings of the x-rays from October 26, 2006, November 11, 2012, and January 21, 2016, and Dr. Crum's readings of the x-rays from February 2 and 6, 2016. Employer's Exhibits 2, 4, 5, 7, 8.

not meet the [e]mployer's burden to establish that [claimant] does not have pneumoconiosis." *Id*.

In light of the administrative law judge's findings, employer has not explained how exclusion of any or all of the four new x-rays would satisfy its burden to disprove that claimant has pneumoconiosis. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (Appellant must explain how the "error to which [it] points could have made any difference."). The July 21, 2011 x-ray was in equipoise based on Dr. DePonte's positive reading and Dr. Meyer's negative rebuttal reading. Decision and Order at 27. The remaining three x-rays, dated November 11, 2012, February 2, 2016, and February 6, 2016, were positive based on the unanimous or uncontested readings by Drs. Alexander, Wolfe, and Crum. *Id*. at 28. Exclusion of all four x-rays would result in a record in which only the oldest x-ray is negative; three are in equipoise; and two are positive, including Dr. Wolfe's uncontested reading of the more recent January 21, 2016 x-ray, submitted by employer. Employer's Exhibit 4.

We have held that claimant was permitted to submit at least three of these x-rays. *Rose*, 23 BLR at 1-226-27. As the Director correctly points out, even assuming claimant is not permitted to submit evidence in unfilled evidentiary slots from his first two modification requests, only one of claimant's four new x-rays "would be considered excessive" and "excluding any one of those readings would not change the outcome." Director's Brief at 3. Therefore, error, if any, in the administrative law judge's admission of affirmative and rebuttal evidence on four of claimant's x-rays, rather than three, would be harmless. *Larioni*, 6 BLR at 1-1278.

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

Because claimant invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis, the burden shifted to employer to establish that claimant has neither legal nor clinical pneumoconiosis,[8] or that "no part of [his] 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.

[8] "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).

A. Clinical Pneumoconiosis

1. X-ray Evidence

Aside from its argument that interpretations of at least three of claimant's new x-rays should have been stricken from the record, employer sets forth only a general allegation that the x-ray evidence establishes that claimant does not have clinical pneumoconiosis.[9] Employer's Brief at 8. The Board must limit its review to contentions of error that are specifically raised by the parties. *See* 20 C.F.R. §§802.211(b), 802.301(a); *Cox v. Director, OWCP*, 791 F.2d 445, 446 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987). Because employer does not identify any specific error with regard to the administrative law judge's weighing of the x-rays, we affirm his finding that the x-ray evidence does not rebut the presumed fact of clinical pneumoconiosis. Decision and Order at 27-28.

2. CT Scans

The administrative law judge next considered the CT scan evidence. Dr. Ramkaransingh read a June 9, 2003 CT scan as consistent with a diagnosis of sarcoidosis. Director's Exhibit 64. Dr. Baweja read a March 27, 2007 CT scan also as consistent with

[9] In its brief, employer argues that the administrative law judge erred in crediting Dr. DePonte's medical opinion because she did not explain how the x-ray evidence supported the existence of clinical pneumoconiosis. Employer's Brief at 11-12. The record contains no medical opinion from Dr. DePonte. To the extent employer is challenging the administrative law judge's consideration of Dr. DePonte's two x-ray readings, we reject employer's arguments. First, the administrative law judge permissibly found that the October 26, 2006 x-ray is positive for simple clinical pneumoconiosis based on the uncontested readings of Dr. DePonte, submitted by claimant, and Dr. Wolfe, submitted by employer. *See Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992); Decision and Order at 27-28. The administrative law judge permissibly found the second x-ray read by Dr. DePonte, dated July 21, 2011, to be in equipoise and thus insufficient to disprove that claimant has pneumoconiosis, based on the positive and negative readings of Dr. DePonte and Dr. Meyer, both of whom are dually-qualified physicians. *Id*. Second, the administrative law judge's finding that employer did not rebut the presumption of clinical pneumoconiosis was based on his permissible determination that only the oldest x-ray is negative, while the remaining x-rays are in equipoise or are positive, including "the most recent x-rays" from 2016, which were "uniformly interpreted as positive" by Dr. Wolfe, whose reading was submitted by employer, and Dr. Crum, whose readings were submitted by both claimant and employer. Decision and Order at 27-28; *see Adkins*, 958 F.2d at 51-52.

sarcoidosis. *Id*. Dr. DePonte read CT scans taken on April 16, 2013 and July 17, 2013 as positive for clinical pneumoconiosis. Claimant's Exhibit 2. The administrative law judge found the CT scan readings by Drs. Ramkaransingh and Baweja inconclusive and, thus, insufficient to assist employer in rebutting the presumed fact of clinical pneumoconiosis. Decision and Order at 31. The administrative law judge found that Dr. DePonte's CT scan readings are credible and support a finding that claimant has clinical pneumoconiosis. *Id*.

Employer does not challenge the administrative law judge's finding that the CT scan readings of Drs. Ramkaransingh and Baweja are inconclusive. This finding is therefore affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Employer argues only that the administrative law judge erred in crediting Dr. DePonte's positive CT scan readings, asserting that Dr. DePonte failed to address claimant's "long and extensively documented history of sarcoidosis." Employer's Brief at 11-12. The administrative law judge acknowledged employer's argument, Decision and Order at 28 n. 12, but permissibly rejected it because, as noted by Drs. Castle and McSharry, a miner "can have sarcoidosis and pneumoconiosis at the same time." *Id*.; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th. Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Employer's Exhibits 9 at 30, 10 at 29-30. We therefore affirm the administrative law judge's finding that, based on Dr. DePonte's "detailed findings on her review of the 2013 CT scans," the CT scan evidence is positive for pneumoconiosis and does not rebut the presumed fact of clinical pneumoconiosis.[10] Decision and Order at 31.

3. Medical Opinions

Finally, the administrative law judge weighed the medical opinions of Drs. McSharry, Castle, and Hippensteel that claimant has sarcoidosis and not clinical pneumoconiosis. Decision and Order at 31-32; Director's Exhibits 49, 52; Employer's Exhibits 1, 4, 9, 10. The administrative law judge first discredited Dr. McSharry's opinion because he failed to indicate that he treated claimant for coal workers' pneumoconiosis from November 2011 to February 2014. Decision and Order at 31-32. The administrative law judge then separately found Dr. McSharry's opinion not well-reasoned or documented because he excluded clinical pneumoconiosis based on a comparison of CT scans taken on March 27, 2007 and June 9, 2003 without mentioning "later CT scans read by Dr. DePonte"

[10] Moreover, the administrative law judge found that, even had he discounted Dr. DePonte's positive CT scan interpretations, the CT scan evidence "would at best be in equipoise," and thus insufficient to disprove that claimant has clinical pneumoconiosis. Decision and Order at 31.

that "clearly include findings of pneumoconiosis."[11] Decision and Order at 31. The administrative law judge rejected the opinions of Drs. Castle and Hippensteel because they are not consistent with the weight of the x-ray and CT scan evidence.[12] *Id*. at 32-33.

We affirm, as unchallenged on appeal, the administrative law judge's finding that Dr. McSharry's opinion is poorly-reasoned and documented because he failed to address Dr. DePonte's CT scans.[13] *Skrack*, 6 BLR at 1-711; Decision and Order at 31-32. As the administrative law judge provided a valid reason for discrediting Dr. McSharry's medical opinion, we need not address employer's remaining argument that the record does not support a finding that he treated claimant for pneumoconiosis from November 2011 until February 2014. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-83 n.4 (1983).

We also reject employer's argument that the administrative law judge failed to give a valid reason for discrediting the medical opinions of Drs. Castle and Hippensteel. Employer's Brief at 12-13. The administrative law judge permissibly rejected their opinions because they based their diagnoses on a belief that the x-rays and CT scans of record are negative for clinical pneumoconiosis, which is inconsistent with the administrative law judge's findings regarding the weight of the x-ray and CT scan evidence. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 32-33. Thus, we affirm the administrative law judge's determination that the medical opinion evidence does not support employer's burden to disprove that claimant has clinical pneumoconiosis.[14] We therefore affirm the administrative law judge's finding that

[11] The administrative law judge also noted that Dr. McSharry opined that comparing claimant's CT scans "was 'one of the most important aspects of this case.'" Decision and Order at 32, *quoting* Employer's Exhibit 4 at 11.

[12] The administrative law judge found that the opinions of Drs. Habre and Gallai, diagnosing clinical pneumoconiosis, are credible because they are consistent with the weight of the x-rays and CT scans. Decision and Order at 32; Director's Exhibits 90, 93.

[13] Even if employer's brief could be read as having raised a specific argument, we would hold that substantial evidence supports the administrative law judge's credibility determination. The administrative law judge permissibly found that Dr. McSharry's opinion is not well-reasoned or documented because he failed to address the positive CT scan readings of Dr. DePonte. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th. Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 31-32.

[14] Because it is employer's burden to affirmatively establish that claimant does not have clinical pneumoconiosis, *Morrison v. Tenn. Consol. Coal Co*., 644 F.3d 473 (6th Cir.

employer did not rebut the existence of clinical pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(B).[15]

B. Legal Pneumoconiosis

To prove that claimant does not have legal pneumoconiosis, employer must demonstrate that he does not have a chronic lung disease or impairment that is "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-1-55 n.8 (2015) (Boggs, J., concurring and dissenting). In determining whether employer met its burden, the administrative law judge considered the opinions of Drs. McSharry, Castle, and Hippensteel that sarcoidosis unrelated to coal dust exposure caused claimant's respiratory impairment. Director's Exhibits 49, 52; Employer's Exhibits 1, 4, 9, 10. The administrative law judge found each opinion poorly-reasoned and Dr. Castle's opinion equivocal. *Id*. at 33.

Employer argues that the administrative law judge erred in failing to accord controlling weight to the opinions of Drs. Castle and McSharry as better reasoned and documented than the remaining opinions of record.[16] Employer's Brief at 14-17. Employer's arguments are essentially a request for a reweighing of the evidence, which the Board is not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). As the trier-of-fact, the administrative law judge has the authority to assess the credibility of the medical opinions based on the explanations given by the experts for their diagnoses, and to assign those opinions appropriate weight. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013) (Traxler, C.J., dissenting); *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441. Accordingly, we affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption by

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2011), we decline to address employer's argument that the administrative law judge erred in crediting the opinions of Drs. Habre and Gallai, as they do not assist employer in establishing rebuttal.

[15] 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). Nevertheless, because legal pneumoconiosis is relevant to the second method of rebuttal, we will address the administrative law judge's finding that employer also failed to disprove legal pneumoconiosis. *See Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 159 (2015) (Boggs, J., concurring and dissenting).

[16] We affirm the administrative law judge's rejection of Dr. Hippensteel's opinion as unchallenged on appeal. *See Skrack*, 6 BLR at 1-711; Decision and Order at 35; Director's Exhibits 49, 52.

establishing that claimant does not have legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A).

C. Disability Causation

The administrative law judge next considered whether employer rebutted the Section 411(c)(4) presumption by establishing 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). Employer argues only that where, as here, pneumoconiosis is established by the Section 411(c)(4) presumption, it was improper for the administrative law judge to discount the physicians' causation opinions because they did not diagnose the disease. Decision and Order at 35; Employer's Brief at 17-18. This argument has no merit. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015) (in such circumstances, the administrative law judge may not credit physician's opinion absent "specific and persuasive" reasons, and may give the opinion at most "little weight"); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013) (rejecting the employer's argument that the administrative law judge "erred by discrediting an opinion that ruled out legal pneumoconiosis where legal pneumoconiosis is only presumed, rather than factually found"). 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.[17] *See* 20 C.F.R. §718.305(d)(1)(ii).

[17] We affirm, as unchallenged on appeal, the administrative law judge's finding that granting modification would render justice under the Act. *See Skrack*, 6 BLR at 1-711; Decision and Order at 4-5.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge