U.S. Department of Labor

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

BRB No. 15-0005 BLA

EARL PRATER Claimant-Respondent v. ARCH ON THE NORTH FORK, INCORPORATED, c/o ARCH COAL, INCORPORATED and SELF-INSURED THROUGH ARCH COAL INCORPORATED, c/o UNDERWRITERS SAFETY & CLAIMS Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 10/29/2015 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

Ronald E. Gilbertson (Gilbertson Law, LLC), Columbia, Maryland, for employer.

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

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2011-BLA-6138) of Administrative Law Judge John P. Sellers, III, rendered on a subsequent claim[1] filed on June 16, 2010, pursuant to the provisions of the Black Lung Benefits Act, as amended 30 U.S.C. §§901-944 (2012) (the Act). Applying amended Section 411(c)(4),[2] 30 U.S.C. §921(c)(4), the administrative law judge credited claimant with 20.75 years of coal mine employment, with 1.25 years of underground mining and 19.5 years of surface mining. The administrative law judge also found that, because the evidence established that claimant's work at a surface mine was in conditions substantially similar to those in an underground mine, claimant established the fifteen years of qualifying coal mine employment required to invoke the amended Section 411(c)(4) presumption. The administrative law judge also determined that the medical evidence developed since the denial of claimant's prior claim was sufficient to prove that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge concluded, therefore, that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis set forth at amended Section 411(c)(4), and demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. The administrative law judge further found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

[1] Claimant filed his initial claim for benefits on March 13, 1991, which was finally denied by the district director on August 15, 1991, because claimant failed to establish any element of entitlement. Director's Exhibit 1. Claimant filed a second application for benefits on September 27, 1995, which was denied by the district director as an abandoned claim. Director's Exhibit 2.

[2] Amended Section 411(c)(4) of the Act provides claimant a rebuttable presumption of total disability due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment are established. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305.

On appeal, employer argues that the administrative law judge erred in finding that claimant established at least fifteen years of qualifying coal mine employment and, therefore, erred in determining that claimant invoked the amended Section 411(c)(4) presumption. With regard to rebuttal of the presumption, employer asserts that the administrative law judge erred: in determining claimant's actual smoking history; in failing to make a specific finding with respect to the existence of clinical pneumoconiosis; and in rejecting the opinion of Dr. Jarboe. Claimant responds in support of the administrative law judge's award of benefits.[3] The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, asserting that employer misinterpreted the standard for establishing that the conditions at claimant's surface mine were substantially similar to those in an underground mine. Employer filed a reply brief, reiterating its arguments.[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 Amended Section 411(c)(4) Presumption

To invoke the presumption at amended Section 411(c)(4), claimant must establish at least fifteen years of "employment in one or more underground coal mines," or "employment in a coal mine other than an underground mine," in conditions that were "substantially similar to conditions in an underground mine." 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305(b)(1)(i), (2); *see Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-29 (2011). Claimant bears the burden of establishing the comparability

[3] Claimant also asserts that he would be entitled to an award of benefits pursuant to 20 C.F.R. Part 718, without the benefit of the amended Section 411(c)(4) presumption.

[4] We affirm, as unchallenged by the parties on appeal, the administrative law judge's findings that claimant established 20.75 years of coal mine employment, consisting of 1.25 years of underground mine employment and 19.5 years of surface mine employment, and that he is suffering from a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3-4, 15-16.

[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. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 6.

between dust conditions in underground and surface mine employment. In order to establish such comparability, claimant need only "establish that [he] was exposed to sufficient coal dust in his surface mine employment." *Director, OWCP v. Midland Coal Co.* [*Leachman*], 855 F.2d 509, 512-13 (7th Cir. 1988); *see Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 664, BLR (6th Cir. 2015); *Harris v. Cannelton Indus.*, 24 BLR 1-217, 1-223 (2011). Pursuant to 20 C.F.R. §718.305(b)(2), "[t]he conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if [claimant] demonstrates that [he] was regularly exposed to coal-mine dust while working there." It is then the function of the administrative law judge "to compare the surface mining [dust] conditions established by the evidence to [the dust] conditions known to prevail in underground mines." *Leachman*, 855 F.2d at 512. A miner's unrebutted testimony can support a finding of substantial similarity. *See Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 479-80, 22 BLR 2-265, 2-275-76 (7th Cir. 2001).

In this case, claimant provided testimony at the hearing as to the dust conditions that he experienced in his 19.5 years of work at the surface mine. Claimant testified that he worked in various positions, including oiler, blaster and bulldozer operator. Hearing Transcript at 21, 23, 37. Claimant reported that he operated bulldozers, with and without enclosed cabs, for at least fourteen years and drove oil trucks for four to five years. *Id*. Claimant described his work on the bulldozer as dusty, and indicated that the dust conditions were similar to those he experienced in underground mining. *Id*. at 24. Claimant also stated that he was exposed to coal dust during every shift that he worked as an oiler, which involved driving an oil truck to service heavy equipment, frequently located in the pit, where coal was being swept and loaded. *Id*. at 28.

The administrative law judge credited claimant with 1.25 years of underground coal mining prior to his 19.5 years of surface mining, for a total of 20.75 years of coal mine employment. Decision and Order at 4. When addressing the issue of the extent to which claimant's aboveground employment was substantially similar to his underground employment, the administrative law judge initially summarized claimant's hearing testimony regarding the dust conditions he experienced during his work at the surface mine. *Id*. at 17-18. The administrative law judge correctly noted that claimant testified that his work as a bulldozer operator exposed him to dusty conditions. *Id*. at 17, *citing* Hearing Transcript at 22, 27. The administrative law judge also specifically referenced the following testimony regarding claimant's surface job, which included work as a bulldozer operator:

> Q: Okay. How would you compare the dust in the underground mine that you worked in to the surface dust that you were exposed to?
>
> A: Well, it never made no difference.

Id. at 17, *citing* Hearing Transcript at 17. The administrative law judge also noted that claimant reiterated, on cross-examination, that the dust conditions he experienced during his surface work and his underground work were the same. Decision and Order at 17, *citing* Hearing Transcript at 24. Regarding the four or five years that claimant testified to working as an oiler, the administrative law judge cited claimant's statement that, although he worked in the pit only two to three days per week, he was exposed to coal dust from other sources every day. Decision and Order at 18, *citing* Hearing Transcript at 30, 33. Based on this testimony, the administrative law judge found that claimant worked for at least fifteen years in dust conditions substantially similar to those in an underground mine. Decision and Order at 17-18.

Employer argues that the administrative law judge's finding must be vacated, as claimant's written coal mine employment history only supports "about [ten] years" of work as a bulldozer operator, as reflected on Form CM-913 ("Description of Coal Mine Work and Other Employment"), rather than the fourteen years that claimant testified to at the hearing. Employer's Brief in Support of Petition for Review at 11, *citing* Director's Exhibit 6. Employer also notes that the administrative law judge did not address evidence establishing that claimant worked on a blasting crew for three years or make a finding as to the dust conditions that claimant experienced in that job. Employer alleges, therefore, that the administrative law judge did not adequately consider seven years of the dust conditions in claimant's surface coal mine employment, thereby violating 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).[6] Alternatively, employer maintains that claimant only established 12.87 years of dust exposure at the surface, because his "testimony reflects that he was only exposed to dust two-thirds of the time while working at the surface." Employer's Brief in Support of Petition for Review at 11.

Employer has not identified error requiring remand. Despite the discrepancy of approximately 3.5 years between claimant's testimony and the information listed on Form CM-913 regarding the length of his tenure as a bulldozer operator, the administrative law judge's finding, that claimant established fifteen years of qualifying coal mine employment, is supported by substantial evidence. If the administrative law judge had relied on Form CM-913 to establish the length of claimant's service as a bulldozer operator and as an oiler, the respective figures would be ten years and six years,

[6] The Administrative Procedure Act provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

for a total of sixteen years.[7] Director's Exhibit 6. Including the 1.25 years of underground employment that the administrative law judge credited to claimant results in a total of 17.25 years of qualifying coal mine employment, which is consistent with claimant's hearing testimony and Form CM-913. Further, employer's contention that the administrative law judge's failure to address the three years and eleven months that claimant reported on Form CM-913 for his tenure as a blaster does not alter this fact.[8]

Also, employer's additional assertion, that claimant was only exposed to coal mine dust for two-thirds of his 19.5 years of surface mining, is based on an incomplete characterization of claimant's testimony in response to a number of questions posed by the administrative law judge. The administrative law judge initially asked claimant if he was "exposed to dust on a regular basis for all of your coal mine employment." Hearing Transcript at 29. Claimant replied, "No, not all of it. Most of it." *Id*. The administrative law judge then inquired as to what claimant meant by "most." *Id*. Claimant stated, "[w]ell that's about two-thirds of the time." *Id*. The administrative law judge sought clarification, asking "[w]hen you weren't exposed to coal dust, why weren't you exposed to coal dust?" *Id*. at 30. Claimant responded that, as an oiler, he was not exposed to coal dust "when I was fueling up stuff every morning." *Id*. When the administrative law judge inquired as to whether claimant was nevertheless exposed to coal dust "during the course of the day," he replied in the affirmative. *Id*. In addition, when replying to the administrative law judge's question as to whether there were any work days when he was not exposed to coal dust, claimant stated, "I was exposed to it ever[y]day." *Id*.

Based on the administrative law judge's accurate review of the entirety of claimant's testimony, he acted within his discretion as fact-finder in concluding that claimant was regularly exposed to coal-mine dust when working as a bulldozer operator and an oiler. *See Summers*, 272 F.3d at 479, 22 BLR at 2-275. The administrative law judge rationally concluded, therefore, that the conditions experienced by claimant in his aboveground employment were substantially similar to those in an underground mine. 20 C.F.R. §718.305(b)(1)(i), (2); *see Kennard,* 790 F.3d at 664 . Accordingly, we affirm the administrative law judge's determination that claimant had at least fifteen years of coal

[7] The time period that claimant reported on Form CM-913 for his tenure as a bulldozer operator is somewhat ambiguous because claimant indicated that he began in "1-1981" and ended in "1-1991½." Director's Exhibit 6. For the purpose of reviewing the administrative law judge's finding of fifteen years of qualifying coal mine employment, the first month of 1991 was not credited to claimant, nor was his tenure as a blaster.

[8] Claimant briefly mentioned his job as a blaster at the conclusion of the hearing. Hearing Transcript at 36-37.

mine employment sufficient to satisfy the requirement set forth in amended Section 411(c)(4). *See Muncy*, 25 BLR at 1-29; *Harris*, 24 BLR at 1-223. Further, as employer has conceded that claimant established that he is totally disabled, Employer's Brief in Support of Petition for Review at 10, we affirm the administrative law judge's finding that claimant invoked the presumption of total disability due to pneumoconiosis at amended Section 411(c)(4). 20 C.F.R. §718.305(b)(1)(i), (iii).

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

Based on claimant's invocation of the presumption of total disability due to pneumoconiosis, the burden of proof shifted to employer to establish rebuttal by disproving the existence of both clinical and legal pneumoconiosis, or by proving that no part of claimant's total respiratory or pulmonary disability was caused by pneumoconiosis as defined in 20 C.F.R. §718.201. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305(d)(1)(i), (ii); *see Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1070, 25 BLR 2-431, 2-444 (6th Cir. 2013); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 479-80, 25 BLR 2-1, 2-8 (6th Cir. 2011). In addressing rebuttal of the amended Section 411(c)(4) presumption, the administrative law judge initially stated:

> Because the presumption at 20 C.F.R. §718.305 has been invoked, the Claimant is presumed to have legal pneumoconiosis, which is defined to include "any chronic [restrictive or obstructive] pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b), (a)(2). Given this overlap, the issue of legal pneumoconiosis and disability causation will be discussed together.

Decision and Order at 18. The administrative law judge found that the medical opinion evidence was insufficient to rebut the presumed existence of legal pneumoconiosis and the presumed fact of total disability causation. *Id*. at 22-23.

Employer contends that, in weighing the medical opinions relevant to the presumed existence of legal pneumoconiosis, the administrative law judge relied on an erroneous calculation of claimant's smoking history. Employer maintains that the administrative law judge found that claimant smoked one-half of a package of cigarettes per day for fifty years and that this finding significantly understates claimant's actual smoking history. *See* Employer's Brief in Support of Petition for Review at 15. Employer also asserts that the administrative law judge's finding does not satisfy the APA because he did not resolve the conflicts in the evidence and did not adequately explain his finding that employer did not rebut the amended Section 411(c)(4) presumption. Employer's arguments are without merit.

With respect to claimant's smoking history, the administrative law judge reviewed the various histories that appear in the record and observed that:

> The Claimant testified at the hearing and at his deposition that he smoked "about a half pack a day" for approximately fifty years, which stopped in either 2006 or 2008. (DX 23-24; Tr. 18.) In 1991 and 2010, Dr. Baker obtained relatively consistent histories, reporting first that the Claimant smoked one-half package per day since 1958 and then reporting between one-half and one package of cigarettes per day since approximately 1956. (LM1-42; DX 14; Tr. 26.) Dr. Jarboe originally obtained a similar smoking history of approximately one-half package of cigarettes per day from 1958 to 2008. (DX 16-5.) However, in a supplemental report, he noted that the Claimant's treatment records documented an ongoing smoking habit of one package of cigarettes per day through 2011. (EX 5.) Dr. Jarboe cited a treatment record from Juniper Health from August 28, 2007, that reported one package of cigarettes per day for 40-45 years. (EX 5; EX 3.) Similarly, he cited a January 20, 2011, visit to Aaron K. Jonan Memorial Clinic wherein it was noted that the Claimant smoked one package of cigarettes per day. (EX 5.) However, I note that the Claimant was reportedly "cutting down" at one point in 2008, and was later reported smoking ten cigarettes per day. (EX 4.) During office visits in 2008 and 2009, the Claimant was also reportedly "urged" and "strongly urged" to stop smoking after having failed to quit. (*Id*.) The same treatment notes document that the Claimant was encouraged to "stay of[f] smoking" on January 28, 2010, March 29, 2010, and May 24, 2010. (*Id*.) In December 2012, the Claimant's treating physicians noted that he smoked one package of cigarettes per day. (EX 6.)

Decision and Order at 19. In summary, the administrative law judge stated that, over the years, the smoking histories that the physicians reported "consistently" documented a smoking habit of "at least one-half package of cigarettes per day beginning in the mid-1950s and continuing to 2008," but that "some treatment notes suggest continued smoking after 2008, [while] other notes confirm periods of cessation." *Id*.

Contrary to employer's assertion, the administrative law judge considered all of the relevant evidence, as he specifically outlined the smoking histories obtained by Drs. Baker and Jarboe, as well as those listed in the treatment records and claimant's hearing testimony. Decision and Order at 19. In addition, the administrative law judge did not conclude that claimant smoked "one-half pack-per-day for fifty years," as stated by employer. Employer's Brief in Support of Petition for Review at 15. Taking into consideration all of the evidence, including claimant's testimony, the administrative law judge ultimately found that claimant "consistently smoked a *minimum* of one-half

package of cigarettes per day for *at least* fifty years, from 1958 until *at least* 2008." Decision and Order at 19 (emphasis added). We hold that the administrative law judge's determination, that the evidence established the minimum extent of claimant's smoking history, rather than specific consumption rates and starting and ending dates, was within his discretion as fact-finder. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-325-26 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003).[9]

In evaluating whether employer rebutted the presumed existence of legal pneumoconiosis, the administrative law judge considered the medical opinions of Drs. Jarboe, Baker and Rasmussen. Dr. Jarboe diagnosed pulmonary emphysema and chronic bronchitis. Director's Exhibit 16; Employer's Exhibit 5. Dr. Jarboe opined that claimant does not have legal pneumoconiosis, but suffers from a severe obstructive ventilatory impairment with severe hyperinflation caused by smoking. Director's Exhibit 16. In contrast, Drs. Baker and Rasmussen both diagnosed legal pneumoconiosis, in the form of chronic obstructive pulmonary disease due, in part, to coal dust exposure. Director's Exhibit 1; Claimant's Exhibit 1.

The administrative law judge determined that Dr. Jarboe's medical opinion was entitled to little weight because he did not adequately explain why coal dust exposure is not a contributing cause of claimant's disabling impairment and relied on premises that are inconsistent with the scientific evidence accepted by the Department of Labor (DOL) in the preamble to the 2001 revised regulations. Decision and Order at 21-22. The administrative law judge further found that the opinions of Drs. Baker and Rasmussen, diagnosing legal pneumoconiosis, do not support employer's burden on rebuttal. *Id*. at 22. The administrative law judge concluded, therefore, that employer failed to rebut the amended Section 411(c)(4) presumption. *Id*. at 22-23.

Employer asserts that, contrary to the administrative law judge's finding, Dr. Jarboe sufficiently explained why coal dust exposure did not contribute to claimant's impairment. Employer further maintains that Dr. Jarboe relied upon factors supported by the medical literature to rule out any relationship between coal dust exposure and claimant's impairment, including: claimant's high residual volume and reduced diffusion capacity; the absence of a disabling respiratory impairment when claimant stopped working, but continued to smoke; and the nature of his surface employment.

[9] We also reject employer's contention that the administrative law judge's finding regarding the length of claimant's smoking history rendered his credibility finding regarding Dr. Jarboe's opinion erroneous. As discussed *infra*, the administrative law judge provided valid reasons for discrediting Dr. Jarboe's opinion, independent of his finding regarding the length of claimant's smoking history.

We reject employer's allegations of error. Contrary to employer's contention, the administrative law judge provided valid rationales for discounting Dr. Jarboe's opinion that claimant's totally disabling impairment is solely the result of smoking. As noted by the administrative law judge, Dr. Jarboe concluded that claimant's impairment is unrelated to his coal mine dust exposure because he should have had evidence of reduced lung function in 1991, when he last worked in mining. Decision and Order at 20; Employer's Exhibit 5. The administrative law judge properly determined that Dr. Jarboe's view is contrary to the scientific evidence accepted by the DOL that "pneumoconiosis is a latent and progressive condition that may be detectable after exposure to coal dust has ceased." 20 C.F.R. §718.201(c); 65 Fed. Reg. 79,920, 79,971 (Dec. 20, 2000); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02, 25 BLR 2-203, 2-210-11 (6th Cir. 2012); Decision and Order at 20. In addition, the administrative law judge reasonably found that Dr. Jarboe's statement, that "employment in surface mining was not likely to cause either the development of clinical coal-worker's pneumoconiosis or clinically significant respiratory impairment," due to the possibility of lower dust exposure levels for surface miners, "appears to rely on generalities, rather than specifics." Decision and Order at 20, *quoting* Employer's Exhibit 5. An expert opinion that relies on generalities, rather than the specifics of a particular claimant, may be assigned less weight. *See Adams*, 694 F.3d at 802-03, 25 BLR at 2-210-12; *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985).

We further reject employer's contention that the administrative law judge misapplied the preamble in discrediting the opinion of Dr. Jarboe as to the cause of claimant's obstructive airways disease and emphysema. Noting that the preamble to the revised regulations acknowledges the prevailing view of the medical community, that the risks of smoking and coal mine dust exposure are additive and that dust-induced emphysema and smoke-induced emphysema occur through similar mechanisms, the administrative law judge permissibly discredited the opinion of Dr. Jarboe because he disputed the view that coal dust exposure may cause injury to the lungs at the same rate, and in the same manner, as smoking. *See* 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000); *Morrison*, 644 F.3d at 480, 25 BLR at 2-9; *Adams*, 694 F.3d 798, 801-02, 25 BLR 2-203, 2-210-11; *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007);; Decision and Order at 21-22.

The determination of whether a medical opinion is adequately reasoned is committed to the discretion of the administrative law judge. *See Director, OWCP v. Rowe*, 710 F. 2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). Because the administrative law judge permissibly exercised his discretion in discrediting the opinion of Dr. Jarboe, attributing claimant's disabling obstructive impairment solely to smoking, we affirm his finding that employer failed to disprove the existence of legal pneumoconiosis by a preponderance of the evidence. *Id.* We, therefore, affirm, as rational and supported by substantial evidence, the administrative law judge's finding that

employer did not establish rebuttal of the amended Section 411(c)(4) presumption by disproving the existence of legal pneumoconiosis.

Employer alleges that the errors the administrative law judge made in his determination that employer did not rebut the presumed existence of legal pneumoconiosis are also present in his finding that employer did not rebut the presumed fact of total disability causation. Because we have affirmed the administrative law judge's determination that Dr. Jarboe's opinion is insufficient to affirmatively disprove the existence of legal pneumoconiosis, we also affirm the administrative law judge's finding that his opinion is insufficient to affirmatively establish that no part of claimant's total respiratory or pulmonary disability was caused by pneumoconiosis as defined in 20 C.F.R. §718.201. 20 C.F.R. §718.305(d)(1)(ii); *see Ogle*, 737 F.3d at 1074, 25 BLR at 2-452; *see also Scott v. Mason Coal Co.*, 289 F.3d 263, 269, 22 BLR 2-372, 2-383-84 (4th Cir. 2002); *Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995); Decision and Order at 23. We further affirm, therefore, the administrative law judge's determination that employer did not rebut the amended Section 411(c)(4) presumption that claimant is totally disabled due to pneumoconiosis arising out of coal mine employment.[10]

[10] Based on our decision to affirm the administrative law judge's findings concerning legal pneumoconiosis, it is not necessary to address employer's contention that the administrative law judge erred in failing to render a specific finding as to whether claimant suffers from clinical pneumoconiosis. *See Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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