U.S. Department of Labor

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

BRB No. 15-0074 BLA

JOHN M. CHINN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HIGHLAND MINING COMPANY, LLC	)	
	)	
and	)	
	)	
PEABODY INVESTMENTS, INCORPORATED	)	DATE ISSUED: 10/19/2015
	)	
	)	
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 Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Laura Metcoff Klaus (Greenberg Traurig, LLP), Washington, D.C., for employer/carrier.

Before: BUZZARD, GILLIGAN, and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order (2009-BLA-5421) of Administrative Law Judge Alice M. Craft awarding benefits on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's claim filed on June 16, 2008.

Applying Section 411(c)(4), 30 U.S.C. §921(c)(4),[1] the administrative law judge credited claimant with twenty-eight years of underground coal mine employment,[2] and found that the evidence established that claimant has 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 set forth at Section 411(c)(4). The administrative law judge further found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding that claimant is totally disabled, and therefore erred in determining that claimant invoked the Section 411(c)(4) presumption. Employer also contends that the administrative law judge erred in finding that employer failed to rebut the Section 411(c)(4) presumption. Neither claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.[3]

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

[1] As part of the Patient Protection and Affordable Care Act, Public Law No. 111-148, Congress enacted amendments to the Black Lung Benefits Act (the Act), which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, Congress reinstated Section 411(c)(4) of the Act, which provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where the miner worked at least fifteen years in underground coal mine employment, or in surface mine employment in conditions substantially similar to those of an underground mine, and where a totally disabling respiratory impairment is established. 30 U.S.C. §921(c)(4). The Department of Labor revised the regulations to implement the amendments to the Act. The revised regulations became effective on October 25, 2013, and are codified at 20 C.F.R. Parts 718, 725.

[2] The record reflects that claimant's coal mine employment was in Kentucky. Director's Exhibit 3. 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 (1989) (en banc).

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

U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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

Employer argues that the administrative law judge erred in finding that the evidence established the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2) and, therefore, erred in finding that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4). 30 U.S.C. §921(c)(4). Specifically, employer contends that the administrative law judge erred in weighing the pulmonary function study and medical opinion evidence pursuant to 20 C.F.R. §718.204(b)(2)(i), (iv), in finding total disability established. Employer's Brief at 14-19.

Section 718.204(b)(2)(i)

Employer argues that the administrative law judge erred in finding that the pulmonary function study evidence supports a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(i). The administrative law judge considered four pulmonary function studies conducted on July 25, 2008, October 28, 2008, January 4, 2011 and May 29, 2013. All four studies produced qualifying[4] results; one study also yielded non-qualifying results in its pre-bronchodilator values only.[5] Decision and Order at 6-7, 15; Director's Exhibit 14; Claimant's Exhibits 9, 10; Employer's Exhibit 2.

[4] 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).

[5] The administrative law judge initially resolved the height discrepancy recorded on the pulmonary function studies, finding that claimant's height for purposes of the studies was 68.1 inches. *See Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 7. The administrative law judge further noted, correctly, that the study dated July 25, 2008, conducted in conjunction with Dr. Baker's examination of claimant, produced qualifying values both before, and after, the administration of bronchodilators. Decision and Order at 7; Director's Exhibit 14. The study dated October 28, 2008, conducted in conjunction with Dr. Repsher's examination of claimant, produced non-qualifying pre-bronchodilator values, but qualifying post-bronchodilator values. Decision and Order at 7; Employer's Exhibit 2. Finally, the January 4, 2011 and May 29, 2013 studies, conducted in conjunction with Dr. Chavda's treatment of claimant, both produced qualifying pre-bronchodilator results. Dr. Chavda did not obtain post-bronchodilator results. Claimant's Exhibits 9, 10.

Evaluating the pulmonary function study evidence, the administrative law judge first determined that the July 2008 pulmonary function study, administered by Dr. Baker, is valid. The administrative law judge further found that the October 2008 and January 2011 pulmonary function studies are invalid, as indicated by the opinions of the administering physicians.[6] Decision and Order at 15. Finally, the administrative law judge found that the most recent study, dated May 2013, was determined to be valid by the administering physician, Dr. Chavda, and that "no doctor contradicted him." Decision and Order at 12. Based on the valid July 2008 and May 2013 studies, which yielded entirely qualifying values, the administrative law judge concluded that the pulmonary function study evidence supported a finding of total disability, pursuant to 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 15.

Initially, we reject employer's contention that the administrative law judge erred in finding Dr. Baker's July 2008 pulmonary function study to be valid. As the administrative law judge noted, Dr. Gaziano validated the study on behalf of the Department of Labor. Decision and Order at 15; Director's Exhibit 14. The administrative law judge further correctly noted that the validity of the July 2008 pulmonary function study was called into question by Dr. Fino, who opined that "both [the July 2008 and October 2008] studies were technically invalid and underestimated [claimant's] true lung function" because of a premature termination to exhalation, lack of reproducibility in the expiratory tracings, and a lack of an abrupt onset to exhalation. Decision and Order at 12, 15; Employer's Exhibit 3. In concluding that the July 2008 pulmonary function study is valid, the administrative law judge found that Dr. Fino's opinion, which referenced both the July 2008 and October 2008 studies, was "so general[] that [she could] not tell how he determined that the July 2008 testing was invalid, especially in light of Dr. Gaziano's opinion that it met the requirements of the regulations." Decision and Order at 12, 15; Employer's Exhibit 3. Thus the administrative law judge discredited the opinion of Dr. Fino, and credited the validation by Dr. Gaziano.

Employer asserts that the administrative law judge mischaracterized Dr. Fino's opinion. Employer's Brief at 15. We disagree. A review of Dr. Fino's report reveals that, while Dr. Fino provided several reasons for invalidating the July 2008 and October

[6] We affirm, as unchallenged on appeal, the administrative law judge's findings that the October 2008 and January 2011 pulmonary function study results are invalid. *See Skrack*, 6 BLR at 1-711. Thus, there is no merit to employer's contention that, in evaluating the October 2008 study, the administrative law judge was required to weigh its non-qualifying pre-bronchodilator results together with the qualifying post-bronchodilator results and explain which she found more probative. *See* 20 C.F.R. §718.103(c); Employer's Brief at 15-16.

2008 studies, he did not specify whether the various defects he observed pertained to the July 2008 test, the October 2008 test, or both, and did not explain how he was able to discern the alleged defects. Employer's Exhibit 3. Further, the record reflects that Dr. Baker reported that claimant's comprehension and cooperation during the July 2008 study were "good," and that the results reflected a "moderate restrictive ventilatory defect" with "no significant change following bronchodilators." Director's Exhibit 14. Additionally, the technician who administered the July 2008 test also stated that claimant's effort, cooperation and comprehension were "good" and that the spirometry data was "acceptable" and "reproducible." Director's Exhibit 14. In light of these factors, the administrative law judge acted within her discretion in crediting Dr. Gaziano's validation of the study, and in discrediting Dr. Fino's contrary opinion, as inadequately explained. *See Tenn. 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); *see also Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 744, 21 BLR 2-203, 2-212 (6th Cir. 1997) (noting that an administrative law judge may rely on the opinion of the physician who actually administered the ventilatory studies); *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 231, 18 BLR 2-290, 2-297 (6th Cir. 1994). We therefore affirm the administrative law judge's finding that the July 2008 pulmonary function study is valid.

Moreover, the administrative law judge properly found that the remaining May 2013 study, the validity of which she determined is uncontradicted, produced qualifying values supportive of total disability. Decision and Order at 15; Claimant's Exhibit 9. Employer challenges the administrative law judge's finding that the validity of Dr. Chavda's May 2013 qualifying pulmonary function study is uncontradicted, asserting that the administrative law judge overlooked the opinions of Drs. Baker and Jones. Employer's Brief at 17. Contrary to employer's contention, while Drs. Baker and Jones expressed doubts as to claimant's physical and mental ability to complete further testing prior to the May 2013 pulmonary function study, the administrative law judge correctly observed that no physician of record reviewed the results of the May 2013 pulmonary function study and contradicted Dr. Chavda's opinion that claimant gave a good effort and the results are valid. Decision and Order at 15; Employer's Brief at 17. Therefore, we affirm, as supported by substantial evidence, the administrative law judge's finding that the May 2013 pulmonary function study produced valid, qualifying results. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305-06, 23 BLR 2-261, 2-283 (6th Cir. 2005); Decision and Order at 15. Because the May 2013, valid, qualifying pulmonary function study constitutes substantial evidence in support of the administrative law judge's finding of total disability, even if the July 2008 pulmonary function study were found to be invalid, any error in the administrative law judge's additional reliance on the July 2008 pulmonary function study would be harmless. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). As it is supported by substantial evidence, we affirm the administrative law judge's finding

that the pulmonary function study evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i). *See Martin*, 400 F.3d at 305-06, 23 BLR at 2-283; Decision and Order at 15.

Section 718.204(b)(2)(iv)

Employer next asserts that the administrative law judge erred in finding that the medical opinion evidence supports a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge considered the opinions of Drs. Baker, Chavda, Repsher, and Fino. Drs. Baker and Chavda opined that claimant is totally disabled from a respiratory standpoint, while Drs. Repsher and Fino opined that claimant does not have any respiratory impairment. The administrative law judge accorded the greatest weight to the opinions of Drs. Baker and Chavda, and discredited the opinions of Drs. Repsher and Fino, to find that claimant is totally disabled from performing his usual coal mine work as a belt mechanic. Decision and Order at 16.

Employer contends that the administrative law judge erred in discrediting the opinion of Dr. Repsher. Employer's Brief at 17-18. We disagree. The administrative law judge correctly observed that Dr. Repsher's opinion, that claimant has no respiratory impairment whatsoever and can perform his usual coal mine work, was based, in part, on his opinion that the record contains no valid pulmonary function study evidence reflecting that claimant has a pulmonary impairment. Decision and Order at 15; Employer's Exhibits 2, 3, 5. The administrative law judge further correctly observed that Dr. Repsher had access only to his own, invalid, pulmonary function study testing, and did not review either the July 2008 or May 2013, valid, qualifying, pulmonary function study results. Thus, contrary to employer's assertion, the administrative law judge permissibly concluded that Dr. Repsher's opinion, that there is no valid evidence of a pulmonary impairment in the record, was not well-documented, and merited little weight. *See Martin*, 400 F.3d at 307, 23 BLR at 2-286-87; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 15.

The administrative law judge similarly discredited the opinion of Dr. Fino. The administrative law judge found that, while Dr. Fino reviewed the July 2008 pulmonary function testing, he concluded it was invalid, contrary to the administrative law judge's finding. Further, like Dr. Repsher, Dr. Fino did not review the May 2013 valid, qualifying, pulmonary function study results. In light of these factors, the administrative law judge permissibly concluded that Dr. Fino's opinion, that there is no valid evidence of a pulmonary impairment in the record, was not well-documented, and merited little weight. *See Martin*, 400 F.3d at 307, 23 BLR at 2-286-87; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-155; Decision and Order at 15.

Employer also contends that the administrative law judge erred in finding that Dr. Chavda's opinion supports a finding that claimant is totally disabled by a respiratory or pulmonary impairment. Decision and Order at 16; Employer's Brief at 17-18. Dr. Chavda is Board-certified in Internal Medicine and Pulmonary Disease. Based on his physical examinations and his valid, qualifying, May 2013 pulmonary function study results, Dr. Chavda diagnosed claimant with moderately severe obstructive and severe restrictive airway disease and concluded that claimant has "total pulmonary disability" and would not be able to perform his usual coal mine work. Claimant's Exhibits 9; 11 at 18, 32.

Employer contends that Dr. Chavda's opinion does not constitute sufficient evidence to meet claimant's burden of proof to establish total disability. Employer's Brief at 17-18. Employer argues that in diagnosing claimant with a totally disabling respiratory impairment, Dr. Chavda did not consider the full extent of claimant's heart disease, or consider whether the pulmonary function study results reflected the effects of claimant's multiple head injuries, rather than a respiratory or pulmonary impairment. *Id.* These arguments lack merit.

Contrary to employer's characterization of Dr. Chavda's opinion, and as the administrative law judge correctly noted, in his deposition Dr. Chavda fully addressed the potential impact of heart disease on claimant's pulmonary function. Decision and Order at 13-14; Claimant's Exhibit 11. Dr. Chavda acknowledged that he did not have claimant's complete medical records before him, and thus could not comment on claimant's exact cardiac status. However, Dr. Chavda explained that if a person has no lung problem, congestive heart failure by itself should not cause an obstructive-restrictive pattern, such as reflected on claimant's May 2013 testing. Decision and Order at 13-14; Claimant's Exhibit 11 at 24-25. Further, Dr. Chavda explained that, while acute congestive heart failure can affect respiration, a person with acute congestive heart failure would be incapable of performing a pulmonary function study. *Id.* Moreover, Dr. Chavda emphasized that on the day of his May 2013 testing, claimant's cardiac examination was normal, and there was no indication of congestive heart failure or any cardiac condition that would have affected the pulmonary function test results. Decision and Order at 13-14; Claimant's Exhibit 11 at 29-20, 35. Additionally, contrary to employer's contention, Dr. Chavda was aware that claimant is cognitively impaired due to brain injury, but explained that claimant's slow cognition did not mean that he could not perform the pulmonary function testing. Decision and Order at 13; Claimant's Exhibit 11 at 10, 18-19. Dr. Chavda stated that he had reviewed the May 2013 test results, and agreed with the administering technician's assessment that claimant gave good effort and cooperation. Dr. Chavda concluded that the results met the standards for

acceptability and reproducibility, and are valid.[7] Claimant's Exhibit 11 at 17-18, 32. Finally, based on the results of the May 2013 pulmonary function study, which reflected moderately severe obstructive and severe restrictive airway disease, Dr. Chavda concluded that claimant is unable to perform his usual coal mine work. Therefore, Dr. Chavda's opinion is sufficient to establish that claimant is totally disabled from a pulmonary standpoint, pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Cornett v. Benham Coal Co.*, 227 F.3d 569, 577, 22 BLR 2-107, 2-122 (6th Cir. 2000). We therefore affirm, as supported by substantial evidence, the administrative law judge's determination to credit the opinion of Dr. Chavda. *See Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

Moreover, employer does not set forth any arguments directed at the administrative law judge's credibility determinations respecting the opinions of Drs. Baker and Fino regarding the issue of total disability. Because the administrative law judge examined the medical opinions of Drs. Baker, Chavda, Repsher and Fino "in light of the studies conducted and the objective indications upon which the medical opinion or conclusion is based," *see Rowe*, 710 F.2d at 255, 5 BLR at 2-103, and explained whether their diagnoses constituted reasoned medical judgments, we affirm the administrative law judge's finding that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; Decision and Order at 16.

Finally, the administrative law judge found that, when all of the relevant evidence was considered, the pulmonary function study and medical opinion evidence supported a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2). Decision and Order at 16. Contrary to employer's contention, the administrative law judge fully considered the probative value of the blood gas study evidence, and permissibly found that the qualifying pulmonary function studies were not undermined by the non-qualifying blood gas study results.[8] Decision and Order at 16. Because blood gas studies and pulmonary function studies measure different types of impairment, the validity of a qualifying pulmonary function study is not called into question by a contemporaneous normal blood gas study. *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41, 17 BLR 2-16, 2-22 (6th Cir. 1993); *Sheranko v. Jones & Laughlin Steel Corp.* 6 BLR 1-797 (1984). Consequently, we affirm the administrative law judge's conclusion that the evidence,

[7] As noted above, we have affirmed the administrative law judge's finding that the validity of the May 2013 pulmonary function study is uncontradicted.

[8] The administrative law judge properly found that, because the three blood gas studies of record produced non-qualifying results, claimant could not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 8, 15.

when weighed together, established total disability pursuant to 20 C.F.R. §718.204(b)(2). *See Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon*. 9 BLR 1-236 (1987) (en banc); Decision and Order at 16.

In light of our affirmance of the administrative law judge's findings that claimant established at least fifteen years of qualifying coal mine employment, and the existence of a totally disabling pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2), we affirm the administrative law judge's determination that claimant invoked the Section 411(c)(4) presumption. Decision and Order at 14, 16, 19.

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 does not have either legal or clinical pneumoconiosis,[9] 20 C.F.R. §718.305(d)(1)(i), or by establishing that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in §718.201." 20 C.F.R. §718.305(d)(1)(ii). The administrative law judge found that employer failed to establish rebuttal by either method.

In addressing whether employer established that claimant does not have legal pneumoconiosis, the administrative law judge considered the medical opinions of Drs. Repsher and Fino. Drs. Repsher and Fino opined that there was no objective evidence that claimant suffered from legal pneumoconiosis. Employer's Exhibits 2, 3, 5. The administrative law judge discredited the opinions of Drs. Repsher and Fino because she found that each was not well-reasoned or well-documented. Decision and Order at 19. The administrative law judge therefore found that employer failed to disprove the existence of legal pneumoconiosis. *Id.*

[9] "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). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). "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).

Employer argues that the administrative law judge erred in her consideration of the opinions of Drs. Repsher and Fino. We disagree. As the administrative law judge properly found, in concluding that claimant does not suffer from legal pneumoconiosis, both Drs. Repsher and Fino emphasized that there was no objective evidence of any pulmonary or respiratory impairment. Decision and Order at 19. The administrative law judge noted, however, that she had previously discredited the opinions of Drs. Repsher and Fino, in part, because both physicians dismissed the July 2008 qualifying pulmonary function study as invalid, contrary to her findings, and because neither physician reviewed the results of claimant's valid, qualifying, May 2013 pulmonary function study, which reflected moderately severe obstructive and severe restrictive airway disease. The administrative law judge, therefore, permissibly found that because Dr. Repsher's and Dr. Fino's primary reason for concluding that claimant does not suffer from a respiratory or pulmonary impairment significantly related to, or substantially aggravated by, coal mine dust exposure (the lack of any pulmonary impairment at all) was not supported by the evidence of record, their opinions were not credible. *See* 20 C.F.R. §718.201(a)(2); *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; Decision and Order at 19.

Employer also contends that the opinions of Drs. Chavda and Baker, diagnosing legal pneumoconiosis, are not credible. Employer's Brief at 23-24. Contrary to employer's argument, the sufficiency of claimant's evidence is not at issue on rebuttal, since employer bears the burden of proof and must disprove the existence of pneumoconiosis. 30 U.S.C. §921(c)(4).

Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Repsher and Fino, we affirm her finding that employer failed to establish that claimant does not have legal pneumoconiosis.[10] Employer's failure to disprove the existence of legal pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis.[11] *See* 20 C.F.R. §718.305(d)(1)(i). Accordingly, we affirm the

[10] Because the administrative law judge provided valid bases for according less weight to the opinions of Drs. Repsher and Fino, we need not address employer's remaining arguments regarding the weight she accorded to their opinions. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 13, 21-23.

[11] We, therefore, need not address employer's allegations of error with respect to the administrative law judge's application of the evidentiary limitations at 20 C.F.R. §725.414 to exclude certain x-ray evidence, or her evaluation of the x-ray and computerized tomography evidence, as these arguments pertain to whether employer disproved the existence of clinical pneumoconiosis. *See Central Ohio Coal Co. v.*

administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption by establishing that claimant does not have pneumoconiosis.

The administrative law judge next addressed whether employer could establish rebuttal by showing that no part of claimant's respiratory or pulmonary disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). The administrative law judge reasonably found that the same reasons she provided for discrediting the opinions of Drs. Repsher and Fino, that claimant does not suffer from any pulmonary impairment, also undercut their opinions that claimant does not suffer from a totally disabling respiratory or pulmonary impairment caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); *see Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *see also Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-452 (6th Cir. 2013) (holding that the administrative law judge permissibly discounted a doctor's disability causation opinion because the doctor did not diagnose the miner with legal pneumoconiosis, where the presumed fact of legal pneumoconiosis was not rebutted); Decision and Order at 19. Thus, we affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption by establishing that no part of claimant's total disability was caused by pneumoconiosis.[12] *See* 20 C.F.R. §718.305(d)(1)(ii).

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 award of benefits.

Director, OWCP [*Sterling*], 762 F.3d 483, 492, 25 BLR 2-633, 2-647 (6th Cir. 2014) Employer's Brief at 13.

[12] We reject employer's contention that the administrative law judge erred in failing to consider whether claimant's disability stemmed from pre-existing or coexisting nonrespiratory impairments, including his head injuries and obesity. Employer's Brief at 20-21, *citing Freeman United Coal Mining Co. v. Foster*, 30 F.3d 834, 18 BLR 2-329 (7th Cir. 1994) and *Peabody Coal Co. v. Vigna*, 22 F.3d 1388, 18 BLR 2-215 (7th Cir. 1994). As noted above, we must apply the law of the Sixth Circuit, which did not adopt the standard of *Foster* and *Vigna*. *Bateman v. E. Associated Coal Corp.*, 22 BLR 1-255, 1-267 (2003). Moreover, in claims filed after January 19, 2001, a nonpulmonary condition that causes an independent disability unrelated to the miner's pulmonary disability "shall not be considered in determining whether a miner is totally disabled due to pneumoconiosis." 20 C.F.R. §718.204(a); *see Gulley v. Director, OWCP*, 397 F.3d 535, 538-39, 23 BLR 2-242, 2-248-49 (7th Cir. 2005).

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

SO ORDERED.

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GREG J. BUZZARD
Administrative Appeals Judge

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RYAN GILLIGAN
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge