U.S. Department of Labor

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

BRB No. 17-0609 BLA

RICHARD L. CREE (deceased)

Claimant-Petitioner

v.

CENTRAL CAMBRIA DRILLING COMPANY

Employer-Respondent

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR

Party-in-Interest

DATE ISSUED: 10/16/2018

DECISION and ORDER

Appeal of the Decision and Order on Remand Denying Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Mark A. Rowan (Rowan Law Office), Connellsville, Pennsylvania, for claimant.

Christopher Pierson (Burns White LLC), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant[1] appeals the Decision and Order on Remand Denying Benefits (2013-BLA-5328) of Administrative Law Judge Drew A. Swank rendered 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 miner's claim filed on December 30, 2011, and is before the Board for the second time.

In the initial decision, the administrative law judge credited claimant with 27.94 years of coal mine employment and found, based on the parties' stipulation, that he had a totally disabling respiratory 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 pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[2] He also found that employer failed to rebut the presumption, and awarded benefits accordingly.

On appeal, the Board affirmed the administrative law judge's finding that claimant had a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2). *Cree v. Central Cambria Drilling Co.*, BRB No. 16-0135 BLA, slip op. at 2 n.4 (Dec. 13, 2016) (unpub.). The Board vacated, however, the administrative law judge's finding that claimant established fifteen years of qualifying coal mine employment. *Cree*, BRB No. 16-0135 BLA, slip op. at 3. The Board noted that the administrative law judge adopted the district director's determination that claimant had 27.94 years of coal mine employment and concluded, without further analysis, that claimant had fifteen years of qualifying coal mine employment. *Id*. The Board pointed out that the administrative law judge did not make any specific findings regarding the length of time claimant spent in underground coal mine employment, or whether claimant's coal mine work occurred at a surface mine in conditions that were substantially similar to conditions in an underground mine. *Id*.

The Board therefore remanded the case for the administrative law judge to make specific findings regarding whether claimant established any qualifying coal mine

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[1] Claimant died on August 5, 2014, while his case was pending before the Office of Administrative Law Judges. Decision and Order at 5. His widow is pursuing this claim. She also filed a survivor's claim on August 29, 2014, which has not been consolidated with the miner's claim.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where at least fifteen years in underground coal mine employment, or in surface 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.

employment pursuant to 20 C.F.R. §718.305(b)(2). *Id*. As the Board vacated the administrative law judge's finding that claimant established fifteen years of qualifying coal mine employment, the Board also vacated the administrative law judge's finding that claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4). *Id*. The Board advised the administrative law judge that should he determine that claimant had fifteen years of qualifying coal mine employment, claimant will have established invocation of the Section 411(c)(4) presumption. *Id*.

In the interest of judicial economy, the Board also addressed employer's allegations of error in the administrative law judge's findings that employer did not rebut the Section 411(c)(4) presumption. The Board considered employer's assertion that the administrative law judge erred in failing to consider whether employer could establish rebuttal of the Section 411(c)(4) presumption by establishing that claimant's clinical pneumoconiosis did not arise out of coal mine employment. The Board noted that employer did not challenge the administrative law judge's finding that the x-ray evidence established the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). *Cree*, BRB No. 16-0135 BLA, slip op. at 5. The Board agreed with employer, however, that the administrative law judge failed to consider relevant evidence regarding its cause, pursuant to 20 C.F.R. §718.203(b). *Id.* The Board therefore vacated the administrative law judge's finding that employer failed to establish that claimant's clinical pneumoconiosis did not arise out of his coal mine employment. *Id.* Thus, the Board vacated the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption and remanded the case for further consideration. *Id*.

The administrative law judge was advised that if employer established that claimant's clinical pneumoconiosis did not arise out of his coal mine employment, employer would have to also establish that claimant did not suffer from legal pneumoconiosis, pursuant to 20 C.F.R. §718.305(d)(1)(i)(A), in order to rebut the presumed fact of pneumoconiosis. *Cree*, BRB No. 16-0135 BLA, slip op. at 5. If employer did not rebut the presumption by establishing that claimant had neither legal nor clinical pneumoconiosis, the Board instructed the administrative law judge to consider whether employer can rebut the presumption by establishing that no part of claimant's totally disabling respiratory impairment was caused by pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(ii). *Cree*, BRB No. 16-0135 BLA, slip op. at 5-6. Finally, the Board rejected employer's assertion that the rule out standard set forth in 20 C.F.R. §718.305(d)(1)(ii) does not apply to coal mine operators. *Cree*, BRB No. 16-0135 BLA, slip op. at 6 n.8.

On remand, the administrative law judge found that while the parties stipulated that claimant had 27.94 years of coal mine employment, Hearing Tr. at 6, claimant did not establish fifteen years of underground coal mine employment or coal mine employment in conditions substantially similar to those in an underground mine. The administrative law judge therefore found that claimant could not invoke the Section 411(c)(4) presumption of total disability due to pneumoconiosis. Considering whether claimant could establish entitlement without the aid of the Section 411(c)(4) presumption, the administrative law judge found that claimant established that his clinical pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b). The administrative law judge further found, however, that claimant did not establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), or that his total disability was due to clinical pneumoconiosis pursuant to 20 C.F.R. §718.204(c), and denied benefits accordingly.

In the present appeal, claimant contends that the administrative law judge erred in finding that he did not establish the fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption. Claimant also contends that the administrative law judge erred in finding that he did not establish that his totally disabling respiratory impairment is due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, did not file a response brief in this appeal.[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.[4] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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

Qualifying Coal Mine Employment

To invoke the presumption, claimant must establish that he had at least fifteen years of employment either "in one or more underground coal mines," or in conditions that were "substantially similar to conditions in an underground mine." 30 U.S.C. §921(c)(4).

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant failed to establish the existence of legal pneumoconiosis, pursuant to 20 C.F.R. §718.202(a)(4). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Remand at 6.

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, as claimant's coal mine employment was in Pennsylvania. Director's Exhibit 3; *see Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

Aboveground employment at an underground coal mine is qualifying for purposes of invoking the Section 411(c)(4) presumption, however, without separate proof of substantial similarity. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-29 (2011).

The administrative law judge again accepted the parties' stipulation that claimant had 27.94 years of coal mine employment. Decision and Order on Remand at 5. The administrative law judge found, however, that employer did not stipulate that claimant worked in underground coal mine employment or in surface mine employment in conditions substantially similar to those in an underground mine. *Id*. Thus the administrative law judge considered whether claimant's coal mine employment, which all occurred above ground, was qualifying.[5] *Id.* Finding that there is "no evidence of record regarding whether [c]laimant worked at an underground mine, or the amount of dust he was exposed to as a hoist operator," the administrative law judge concluded that claimant failed to establish the requisite fifteen years of qualifying coal mine employment. *Id.* at 6.

Claimant argues that the parties' stipulation to 27.94 years in coal mine employment subsumed a stipulation to the requisite fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption. Claimant's Brief at 7. We disagree. Claimant must establish at least fifteen years of employment either in underground coal mines or in conditions that were substantially similar to those in an underground mine. *See* 30 U.S.C. §921(c)(4); *Muncy*, 25 BLR at 1-29. Contrary to claimant's assertion, the administrative law judge correctly determined that employer did not stipulate that claimant's coal mine employment was in an underground mine or in conditions substantially similar to those in underground mines. Decision and Order on Remand at 5. Therefore, the administrative law judge properly considered whether claimant's 27.94 years of coal mine employment included the requisite fifteen years of qualifying coal mine employment for purposes of Section 411(c)(4) invocation.

Claimant also argues that the administrative law judge erred in finding that there is no evidence to establish that his aboveground coal mine work occurred at the site of an underground mine and, therefore, constituted qualifying coal mine employment. Claimant's Brief at 9. Claimant asserts that his work history, including the description of his job titles and duties, supports the conclusion that his work occurred at an underground mine. *Id.* Claimant's assertions have merit.

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[5] While claimant did not specify whether his work was underground or above ground, he reported to Drs. Koliner and Fino that his jobs as a driller and hoist operator took place "outside." Director's Exhibits 14, 15. Moreover, claimant dos not allege that any of his work took place underground. Claimant's Brief at 8-9.

The administrative law judge began his analysis of the nature claimant's coal mine work by correctly noting that "[a]n 'underground coal mine' is defined as 'a coal mine in which the earth and other materials which lie above and around the natural deposit of coal (i.e., overburden) are not removed in mining; including all land, structures, facilities, machinery, tools, equipment, *shafts*, *slopes*, tunnels, excavations, and other property, real or personal, appurtenant thereto.'" Decision and Order on Remand at 4, *quoting* 20 C.F.R. §725.101(a)(30) (emphasis added). The administrative law judge also found that claimant's coal mine employment positions "all involved mine shaft construction."[6] Decision and Order on Remand at 5, *citing* Director's Exhibit 3. The administrative law judge also noted that Dr. Koliner described claimant's work as a driller as including "shaft drilling." Decision and Order on Remand at 6, *quoting* Director's Exhibit 14.

As claimant correctly asserts, given these findings, the administrative law judge has not adequately explained his conclusion that "[t]here is no evidence of record regarding whether [c]laimant worked at an underground mine." Decision and Order on Remand at 6; Claimant's Brief at 8-9. Thus, the administrative law judge's decision fails to comply with the Administrative Procedure Act (APA), which requires that every adjudicatory decision 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 on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Therefore, we must vacate the administrative law judge's finding that claimant did not establish the fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption, and remand the case for further consideration of the evidence.

We must also vacate the administrative law judge's additional finding that, assuming his work did not take place at the site of an underground mine, claimant did not establish that his work took place in conditions "substantially similar" to conditions in underground mines. 30 U.S.C. §921(c)(4). Conditions at a mine other than an underground mine will be considered substantially similar to those in an underground mine if the miner

[6] On his Employment History Form CM-911a, claimant indicated that every coal mine employer he worked for was in the business of shaft and slope construction. Director's Exhibit 3. He stated that his coal mine jobs included drill runner, rock loader, and hoist runner or operator. *Id.* His job as a driller, from 1964 to 1968, involved "working in hole on slope." Director's Exhibit 4. His job as a hoist operator, from 1970 to 2000, entailed "pouring concrete, putting men in and out of the hole, mucking, and putting forms in." *Id*. Claimant also indicated that the tools and machines used consisted of a "crane, derrick, [and] high lift." *Id.*

was "regularly exposed to coal-mine dust while working there."[7] 20 C.F.R. §718.305(b)(2). Exposure to any kind of coal mine dust, in sufficient quantity, may support a finding of qualifying coal mine employment, *see Garrett v. Cowin & Co., Inc*., 16 BLR 1-77 (1990), and the definition of coal mine dust is not limited to dust coming from coal but encompasses "the various dusts around a coal mine." *See Williamson Shaft Contracting Co. v. Phillips*, 794 F.2d 865, 869, 9 BLR 2-79, 2-87 (3d Cir. 1986); *Pershina v. Consolidation Coal Co*., 14 BLR 1-55, 1-57 (1990).

On his employment history form, claimant indicated that he had been exposed to "dust, gases, or fumes" in all of his above ground coal mine work as a drill runner and hoist operator. Director's Exhibit 3. Although claimant died prior to the hearing and was therefore unable to testify, as the administrative law judge noted, both Drs. Koliner and Fino described the conditions of claimant's work. Decision and Order on Remand at 6. In a report dated May 10, 2017, Dr. Koliner noted that claimant first worked as a driller and then became a crane or hoist operator. He stated that claimant worked "outside but did drill in a dusty mix concrete environment" and that claimant was in an open cab, that was closed in winter, and that no protection was used at that time. Director's Exhibit 14. While Dr. Koliner stated that claimant's job as a hoist operator appeared to be "outside and not in direct exposure to *coal* dust," specifically, he also noted three times that claimant quit working as a hoist operator because of the dusty environment. Director's Exhibit 14 (emphasis added). In his report dated September 26, 2012, Dr. Fino similarly noted that,

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[7] The comments accompanying the Department of Labor's regulations clarify claimant's burden in establishing substantial similarity:

> [T]he claimant need only focus on developing evidence addressing the dust conditions prevailing at the non-underground mine or mines at which the miner worked. The objective of this evidence is to show that the miner's duties regularly exposed him to coal mine dust, and thus that the miner's work conditions approximated those at an underground mine. The term "regularly" has been added to clarify that a demonstration of sporadic or incidental exposure is not sufficient to meet the claimant's burden. The fact-finder simply evaluates the evidence presented, and determines whether it credibly establishes that the miner's non-underground mine working conditions regularly exposed him to coal mine dust. If that fact is established to the fact-finder's satisfaction, the claimant has met his burden of showing substantial similarity.

78 Fed. Reg. 59,105 (Sept. 25, 2013).

according to claimant, "the hardest part of the job [as a hoist operator]" was breathing cement and coal dust." Director's Exhibit 15.

While the administrative law judge considered the statements provided by Drs. Koliner and Fino, he nonetheless concluded that "[t]here is no evidence of record regarding . . . the amount of coal dust he was exposed to during his tenure as a hoist operator" or "any evidence of the conditions of his coal mine employment." Decision and Order on Remand at 6. We note that if the administrative law judge found claimant's evidence to be insufficient because he did not quantify his coal mine dust exposure, that was erroneous, as the regulatory provision at 20 C.F.R. §718.305(b)(2) does not require a claimant to do so. If the administrative law judge had other reasons for declining to credit claimant's evidence, he did not adequately explain them and, thus, failed to fulfill the requirements of the APA. *See Wojtowicz*, 12 BLR at 1-165.

Because we have vacated the administrative law judge's finding that claimant did not establish fifteen years of qualifying coal mine employment, we must also vacate his finding that claimant did not invoke the Section 411(c)(4) presumption. Based on this determination, we must further vacate the denial of benefits.

Entitlement under 20 C.F.R. Part 718

Disability Causation

In the interest of judicial economy, we will address claimant's assertion that the administrative law judge erred in finding that he did not establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Without the benefit of the Section 411(c)(3)[8] and Section 411(c)(4) presumptions, claimant has the burden to establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements

[8] Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304, provides that there is an irrebuttable presumption of total disability or death due to pneumoconiosis if the miner suffers or suffered from a chronic dust disease of the lung which: (a) when diagnosed by chest x-ray, yields one or more large opacities (greater than one centimeter in diameter) classified as Category A, B, or C; (b) when diagnosed by biopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, is a condition which would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The irrebuttable presumption is not available in this case because the record contains no evidence of complicated pneumoconiosis.

precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

To establish total disability due to pneumoconiosis,[9] claimant must establish that pneumoconiosis was a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause of a miner's totally disabling impairment if it had "a material adverse effect on the miner's respiratory or pulmonary condition," or if it "[m]aterially worsen[ed] a totally disabling respiratory or pulmonary impairment which [was] caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii). Because claimant established the existence of clinical pneumoconiosis, but not legal pneumoconiosis, the relevant inquiry before the administrative law judge was whether claimant's clinical pneumoconiosis was a substantially contributing cause of his total disability. 20 C.F.R. §718.204(c).

Pursuant to 20 C.F.R. §718.204(c), the administrative law judge considered the medical opinions of Drs. Koliner,[10] Fino,[11] and Wecht.[12] Dr. Koliner opined that claimant's clinical pneumoconiosis and emphysema contributed to his significant disability. Director's Exhibit 14. Dr. Fino opined that claimant's total respiratory disability was due to idiopathic pulmonary fibrosis unrelated to coal dust exposure. Director's Exhibit 15. Dr. Wecht diagnosed chronic obstructive pulmonary disease, anthracosilicosis (coal workers' pneumoconiosis), pulmonary emphysema, pulmonary fibrosis, and cor

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[9] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established that his clinical pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Remand at 8. As noted by the administrative law judge, employer did not challenge his prior findings that claimant established the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and total disability pursuant to 20 C.F.R. §718.204(b)(2). Decision and Order on Remand at 6; *Cree v. Central Cambria Drilling Co.*, BRB No. 16-0135 BLA, slip op. at 2 n.4, 5 (Dec. 13, 2016) (unpub.).

[10] Dr. Koliner conducted a complete pulmonary evaluation of claimant on May 10, 2012. Director's Exhibit 14.

[11] In his narrative report dated September 26, 2012, Dr. Fino reviewed medical records of claimant's condition. Director's Exhibit 15.

[12] Dr. Wecht performed an autopsy of claimant on August 6, 2014. Claimant's Exhibit 1.

pulmonale, but did not render a disability causation opinion. Claimant's Exhibit 1. The administrative law judge discredited the opinions of Drs. Koliner, Fino, and Wecht[13] and concluded that the medical opinion evidence did not establish total disability due to pneumoconiosis.

Claimant asserts that the administrative law judge erred in finding that Dr. Koliner's opinion does not establish that pneumoconiosis was a substantially contributing cause of claimant's disability.[14] Claimant's Brief at 12. We disagree. The administrative law judge permissibly discredited Dr. Koliner's opinion because he did not explain how or why he attributed claimant's disabling impairment to both pneumoconiosis and smoking-related emphysema.[15] *See Balsavage v. Director, OWCP*, 295 F.3d 390, 396-97, 22 BLR 2-386,

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[13] The administrative law judge found that Dr. Koliner did not explain how he determined the cause of claimant's disability or state whether clinical pneumoconiosis was a substantially contributing cause of his disability. Decision and Order on Remand at 9. The administrative law judge accorded less weight to Dr. Fino's disability causation opinion because he did not diagnose pneumoconiosis. *Id*. The administrative law judge accorded less weight to Dr. Wecht's opinion because his qualifications were not in the record and he did not provide the etiology of his diagnoses of chronic obstructive pulmonary disease, emphysema, pulmonary fibrosis, and pneumoconiosis. *Id*.

[14] Claimant also asserts that the administrative law judge erred in discrediting Dr. Wecht's opinion. Claimant argues that the administrative law judge should have taken judicial notice of Dr. Wecht's pathological qualifications. Claimant's Brief at 10. Claimant also argues that Dr. Wecht's failure to address the etiology of claimant's conditions was irrelevant. *Id*. Dr. Wecht's opinion does not assist claimant in meeting his burden at 20 C.F.R. §718.204(c). Thus, any error in the administrative law judge's weighing of Dr. Wecht's opinion is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[15] The administrative law judge also discredited Dr. Koliner's opinion because he "did not explain whether [coal workers pneumoconiosis] was a 'substantially contributing cause' to his disability. Decision and Order on Remand at 9. Dr. Koliner's opined that claimant's significant limitations "are no doubt [due to] a combination" of his pneumoconiosis and smoking-related emphysema, that each contributed "probably 50%" to claimant's disability, and were "probably . . . of equal importance in contribution." Director's Exhibit 14. As claimant correctly contends, if found credible, Dr. Koliner's attribution of claimant's disabling impairment to both pneumoconiosis and smoking-related emphysema could meet the threshold of substantial contributing cause. *See Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-18-19 (2003) (a credible opinion that pneumoconiosis is one of the two causes of a miner's totally disabling respiratory

2-396 (3d Cir. 2002); *Kertesz v. Director, OWCP*, 788 F.2d 158, 163, 9 BLR 2-1, 2-8 (3d Cir. 1986); Decision and Order on Remand at 9.

As the administrative law judge permissibly discredited the only supporting medical opinion, we affirm his finding that claimant failed to establish that clinical pneumoconiosis was a substantially contributing cause of his disability, pursuant to 20 C.F.R. §718.204(c).

Remand Instructions

The administrative law judge must reconsider whether claimant established the fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §§718.305. The administrative law judge must consider all of the relevant evidence and fully explain his findings as to whether claimant worked at an underground mine and, if reached, whether he worked in conditions substantially similar to those in an underground mine. *See Wojtowicz,* 12 BLR at 1-165.

If the administrative law judge determines that claimant established fifteen years of qualifying coal mine employment, claimant will be entitled to invocation of the Section 411(c)(4) presumption in light of the administrative law judge's finding that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2). 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305(b)(1). The administrative law judge must then determine whether employer has rebutted the presumption, in accordance with the Board's prior instructions. *See* 20 C.F.R. §718.305(d)(i), (ii); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-159 (2015) (Boggs, J., concurring & dissenting); *Cree*, BRB No. 16-0135 BLA, slip op. at 5-6.

If the administrative law judge finds that claimant did not have fifteen years of qualifying coal mine employment, claimant is not entitled to the Section 411(c)(4) presumption. In that case, as we have affirmed the administrative law judge's finding that claimant failed to establish that his totally disabling impairment was due to clinical pneumoconiosis pursuant to 20 C.F.R. §718.204(c), an essential element of entitlement, benefits are precluded. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

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impairment is legally sufficient to establish that pneumoconiosis is a "substantially contributing cause of" his total disability pursuant to 20 C.F.R. §718.204(c)); Claimant's Brief at 12; Director's Exhibit 14. Because the administrative law judge provided a valid alternative basis for discrediting Dr. Koliner's opinion, however, this error is harmless. *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 on Remand Denying Benefits is affirmed in part and vacated in part, and the case is remanded for further proceedings consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge