U.S. Department of Labor

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

BRB No. 18-0005 BLA

WILLIAM A. SIMS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PINNACLE MINING COMPANY, LLC[1]	)	
	)	
and	)	
	)	DATE ISSUED: 10/18/2018
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	
	)	
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 Awarding Benefits of Dana Rosen, Administrative Law Judge, United States Department of Labor.

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

[1] The administrative law judge's September 5, 2017 decision and order contains a transcription error listing an incorrect employer in the heading. The body of the decision, however, correctly refers to Pinnacle Mining Corporation as the responsible operator, and employer does not contest this designation. Decision and Order at 2; *see* Employer's Brief at 1 n.2.

Andrea L. Berg and Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for employer/carrier.

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

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2015-BLA-05089) of Administrative Law Judge Dana Rosen 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 subsequent claim filed on July 8, 2013.[2] Director's Exhibit 3.

The administrative law judge credited claimant with twenty-six years of underground coal mine employment, as stipulated by the parties, and found that he has a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2).[3] Therefore, she found that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c),[4] and invoked the rebuttable

[2] Claimant's prior claim, filed on September 17, 2007, was denied by Administrative Law Judge Linda S. Chapman on January 22, 2010 because he failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Director's Exhibit 1; *see Sims v. Pinnacle Mining Co.*, ALJ No. 2008-BLA-5777 (Jan. 22, 2010) (unpub.). Claimant filed a timely request for modification, which the district director denied on December 9, 2010 because the evidence submitted to support modification was "inadequate to establish that [claimant] has a disabling respiratory impairment." Director's Exhibit 1; *see* Decision and Order at 2 n.1. Claimant took no further action on that claim.

[3] The administrative law judge also found that claimant does not have complicated pneumoconiosis pursuant to 20 C.F.R. §718.304 and therefore could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3).

[4] When a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that at least "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because claimant's prior claim was denied for failure to

presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[5] The administrative law judge found that employer did not rebut the Section 411(c)(4) presumption, and awarded benefits accordingly.

On appeal, employer contends that the administrative law judge erred in weighing the medical opinion evidence in finding total disability established at 20 C.F.R. §718.204 and, therefore, erred in invoking the Section 411(c)(4) presumption. Employer also asserts that the administrative law judge erred in finding that it did not rebut the presumption. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, did not file a brief in this appeal.[6]

The Board's scope of review is limited 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.[7] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Hinchman & Grylls Associates, Inc*., 380 U.S. 359 (1965).

Invocation of the Section 411(c)(4) Presumption: Total Disability

A miner is considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of cor pulmonale with right-sided congestive

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establish a totally disabling respiratory impairment, to obtain review of the merits of his claim, claimant had to establish this element of entitlement. 20 C.F.R. §725.309(c)(4).

[5] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis where the claimant 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 impairment. 30 U.S.C. §921(c)(4); *see* 20 C.F.R. §718.305.

[6] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant established twenty-six years of qualifying coal mine employment and a smoking history of approximately ten pack-years. *Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 6.

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as claimant's coal mine employment was in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); 2016 Hearing Transcript at 17; Director's Exhibit 4.

heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must consider all of the relevant evidence and weigh the evidence supporting a finding of total disability against the contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

The administrative law judge found that the new pulmonary function studies and blood gas studies do not establish total disability and that the record contains no evidence of cor pulmonale with right-sided congestive heart failure.[8] 20 C.F.R. §718.204(b)(2)(i), (ii), (iii); Decision and Order at 8-9, 35-36. The administrative law judge further found, however, that the new medical opinion evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 36-39.

The administrative law judge considered the opinions of Drs. Raj and Zaldivar.[9] Decision and Order at 10-22, 25-28. Dr. Raj opined that claimant suffers from a totally disabling pulmonary impairment. Claimant's Exhibit 1. Dr. Zaldivar opined in his 2014 medical report that claimant is totally disabled from a pulmonary impairment, but at his 2016 deposition he retracted that opinion and stated that claimant is not disabled. Director's Exhibit 36; Employer's Exhibits 7, 8. The administrative law judge also

[8] The administrative law judge considered four new pulmonary function studies performed on September 29, 2013, May 28, 2014, May 21, 2016, and June 4, 2016. After permissibly averaging the differing heights recorded on the studies to determine claimant's height, the administrative law judge correctly found that all four studies are non-qualifying both before and after administration of a bronchodilator. *K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-44 (2008); *see Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 8-9; 35; Director's Exhibits 14, 36; Claimant's Exhibits 1, 2. The administrative law judge also considered four new resting blood gas studies conducted on September 29, 2013, May 28, 2014, May 21, 2016, and June 4, 2016, all of which produced non-qualifying values. Decision and Order at 9, 36; Director's Exhibits 14, 36; Claimant's Exhibits 1, 2. Exercise studies were not performed.

[9] The administrative law judge also considered, and discredited, the opinions of Drs. Al Jaroushi, Green, and Hippensteel, that claimant is totally disabled from performing his usual coal mine work. She found that Drs. Al Jaroushi and Green opined that claimant is totally disabled based on their diagnoses of complicated pneumoconiosis, contrary to her own finding that claimant does not suffer from the disease. Decision and Order at 37; Director's Exhibit 14; Claimant's Exhibit 2. The administrative law judge found Dr. Hippensteel's opinion unclear as to whether claimant is totally disabled by a respiratory or pulmonary impairment standing alone. Decision and Order at 38; Employer's Exhibit 3.

considered claimant's 2009 and 2016 hearing testimony and the information he provided with his applications for benefits regarding the exertional requirements of his usual coal mine work. Decision and Order at 6-7, 36.

Claimant indicated that he worked as a longwall mechanic and electrician. Decision and Order at 4; Director's Exhibit 1. He wrote that his job required him to set up and tear down jacks and work on shields on the longwall, and involved sitting for one hour a day, crawling 500 feet up to seven hours a day, lifting 50-100 pounds three times a day, and carrying 20 pounds for 500 feet four times a day. Director's Exhibit 1. Claimant similarly testified that he had to carry a 60-70 pound tool bag, lift items weighing up to 100 pounds, including jacks and pump meters, and "roll[ ] big miners around." 2016 Hearing Transcript at 12-13. He also stated that he spent most of his time on his back or crawling on his belly. 2009 Hearing Transcript at 14. The administrative law judge found that claimant's credible statements establish that his last coal mine job required heavy manual labor on a regular basis, including lifting 75 to 100 pounds several times daily and long periods of crawling.[10] Decision and Order at 36.

Considering the medical opinions in light of claimant's description of his job, the administrative law judge found that Dr. Raj had an accurate understanding of the exertional requirements of claimant's usual coal mine work and provided a well-reasoned, well-documented opinion. Decision and Order at 18-19. Conversely, while the administrative law judge found that Dr. Zaldivar's initial 2014 opinion merited significant weight, she found Dr. Zaldivar's revised 2016 opinion to be inconsistent, unpersuasive, and inadequately explained in light of the "unusually high physical demands of [claimant's] former job." *Id.* at 38-39. Thus, she concluded that Dr. Raj's opinion is sufficient to establish total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

Employer argues that the administrative law judge erred in crediting Dr. Raj's opinion and in discrediting Dr. Zaldivar's opinion in finding that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Employer contends that Dr. Raj's opinion is not well-reasoned and documented because he relied solely on his own objective test results and did not review the other objective evidence of record. Contrary to employer's argument, a medical opinion need not be discounted because the physician did not review additional medical evidence of record. *See Minnich v. Pagnotti Enterprises, Inc*., 9 BLR 1-89, 1-90 n.1 (1986) (administrative law judge properly considered whether the objective data offered as documentation adequately supported the opinion). Here, the administrative law judge acknowledged that Dr. Raj relied upon his own testing, and further noted that those test results were non-qualifying.

[10] As these findings are not contested, they are affirmed. *Skrack*, 7 BLR at 1-711.

Decision and Order at 37, 39. She determined, however, that Dr. Raj had an accurate understanding of the physical requirements of claimant's usual coal mine work and explained that based on his observations, claimant's need for home oxygen, and the moderate obstructive impairment reflected on claimant's testing, claimant could not meet the exertional requirements of his usual coal mine job despite the non-qualifying nature of the testing. *Id.* at 37. Thus, she permissibly concluded that Dr. Raj's opinion is persuasive, well-reasoned, and merited significant weight. Decision and Order at 37, 39; Claimant's Exhibit 1; *see* 20 C.F.R. §718.204(b)(2)(iv); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc) (it is within the administrative law judge's discretion to determine whether a physician's opinion is reasoned).

Nor is there merit to employer's assertion that the administrative law judge erred in discrediting Dr. Zaldivar's 2016 opinion that claimant is not totally disabled. Employer's Brief at 11-12. In his 2014 medical report, Dr. Zaldivar noted that claimant's usual coal mine work as an electrician included heavy labor, but stated that he did not know specifically how much weight claimant had to lift or carry. Director's Exhibit 36. Based on a pulmonary function study he performed, Dr. Zaldivar diagnosed a moderate irreversible obstructive impairment and a moderate diffusion impairment and concluded that from a pulmonary standpoint claimant is severely impaired and unable to perform his usual coal mine job. *Id.* At his 2016 deposition, however, Dr. Zaldivar retracted that opinion. He stated that while he originally assessed a severe impairment because claimant's low diffusing capacity suggested that he would experience disabling hypoxemia under exercise, without an exercise blood gas study, which claimant cannot perform, "[w]e do not know what would happen with exercise . . . ." Employer's Exhibit 7 at 23-24. Thus, Dr. Zaldivar concluded that claimant could return to work. *Id.* at 24. Additionally, Dr. Zaldivar testified that an "FEV1 of two or greater allows anybody to do heavy labor," and noted that claimant had recently obtained such results both before and after bronchodilators. *Id.* at 25, *referencing* Claimant's Exhibit's 1, 2.

Contrary to employer's argument, the administrative law judge acknowledged that Dr. Zaldivar characterized claimant's usual coal mine work as involving heavy labor and further acknowledged his opinion that claimant's FEV1 values of two or greater indicated that he could perform such work. Decision and Order at 38; Employer's Brief at 11-12. She permissibly found, however, that Dr. Zaldivar failed to adequately explain how the pulmonary function studies supported his conclusion in light of the near-qualifying values of the most recent pre-bronchodilator FEV1 and the specific "extraordinary physical requirements" of claimant's job.[11] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533,

[11] Contrary to employer's contention, the administrative law judge correctly noted that the May 21, 2016 post-bronchodilator FEV1 is approximately .08 liters above the qualifying value, and the most recent June 4, 2016 pre-bronchodilator FEV1 is only .03

21 BLR 2-323, 2-335 (4th. Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *Clark*, 12 BLR at 1-155; Decision and Order at 38-39. Further, she permissibly found that Dr. Zaldivar failed to reconcile his conclusion that claimant can perform heavy labor with claimant's credible description of his physical limitations, including his shortness of breath when walking or climbing stairs and supplemental oxygen usage. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Clark*, 12 BLR at 1-155; Decision and Order at 39. Thus, the administrative law judge permissibly concluded that Dr. Zaldivar's opinion that claimant is not disabled is unpersuasive and merits little weight.[12] *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Clark*, 12 BLR at 1-155; Decision and Order at 38-39.

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. 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). Because it is supported by substantial evidence, we affirm the administrative law judge's finding that claimant established a totally disabling respiratory impairment through the new medical opinion of Dr. Raj, pursuant to 20 C.F.R. §718.204(b)(2)(iv).[13]

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liters above the qualifying value. Further, the June 4, 2016 pre-bronchodilator FVC, MVV, and FEV1/FVC ratio are all qualifying. Decision and Order at 38; Claimant's Exhibits 1, 2; Employer's Brief at 10.

[12] Because the administrative law judge provided valid reasons for discounting Dr. Zaldivar's 2016 opinion on total disability, we need not address employer's remaining arguments on this issue. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378 (1983).

[13] Employer asserts that in evaluating the medical opinions, the administrative law judge failed to adequately discuss the credentials of the physicians. *See* Employer's Brief at 12-13. The administrative law judge identified and summarized the respective medical credentials of the physicians, and took official notice of Dr. Raj's credentials, which were not of record. Decision and Order at 11 n.10, 12 n.11, 20 n.15, 21 n.16, 23 n.18. She noted that Dr. Zaldivar is Board-certified in internal, pulmonary, critical care, and sleep disorder medicine and that Dr. Raj is Board-certified in internal, pulmonary, critical care, and geriatric medicine. Decision and Order at 12, 21. Employer does not challenge the accuracy of the summaries, or the exercise of the administrative law judge's discretion to

We also affirm her conclusion that when weighed together with the contrary probative evidence, Dr. Raj's persuasive opinion, corroborated by claimant's testimony, establishes total disability overall pursuant to 20 C.F.R. §718.204(b)(2), and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Shedlock*, 9 BLR at 1-198; Decision and Order at 39-40. Contrary to employer's contention, a finding of total disability may be based on a reasoned medical opinion even where the pulmonary function studies and blood gas studies are non-qualifying. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577, 22 BLR 2-107, 2-123 (6th Cir. 2000); Employer's Brief at 7. In light of our affirmance of the administrative law judge's findings that claimant had twenty-six years of underground coal mine employment and a totally disabling respiratory impairment, we further affirm her determination that claimant invoked the Section 411(c)(4) presumption.[14]

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 establish that he had neither legal nor clinical pneumoconiosis,[15] or that "no part of [his] respiratory or pulmonary total disability

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take official notice of Dr. Raj's credentials. *See Troup v. Reading Anthracite Coal Co.*, 22 BLR 1-14, 1-21 (1999) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc). Rather, employer states that simply taking official notice of Dr. Raj's Board-certifications does not provide insight into any additional credentials he may hold which "may have made his opinion more or less reliable" compared to other physicians with similar Board-certifications. Employer's Brief at 12-13. Because the administrative law judge permissibly discredited Drs. Zaldivar's opinion as unpersuasive, and not on the basis of his credentials, we need not address this argument. Error, if any, in the administrative law judge's evaluation of the physicians' relative qualifications is harmless. *See Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53, 1-55 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[14] The administrative law judge also considered the evidence from claimant's prior claim and permissibly found that it merited less weight due to its age. *See Parsons v. Wolf Creek Collieries*, 23 BLR 1-29, 1-35 (2004) (en banc); Decision and Order at 40 n.27.

[15] "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

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.

To disprove legal pneumoconiosis, employer must establish that claimant 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(b); *see Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015) (Boggs, J., concurring and dissenting). In evaluating whether employer met its burden, the administrative law judge considered the opinions of Drs. Zaldivar and Hippensteel.[16] Dr. Zaldivar opined that claimant does not have legal pneumoconiosis but has a respiratory impairment due to smoking-related bullous emphysema and asthma. Director's Exhibit 36 at 5; Employer's Exhibit 7 at 32-33; Decision and Order at 44. Dr. Hippensteel similarly opined that claimant's respiratory impairment is due to smoking-related bullous emphysema, with an asthmatic component, unrelated to coal mine dust exposure. Decision and Order at 46; Employer's Exhibit 3 at 15. The administrative law judge found that their opinions are poorly reasoned and inadequately explained and, therefore, do not rebut the presumption of legal pneumoconiosis. Decision and Order at 44-46, 52.

We reject employer's argument that the administrative law judge erred in his consideration of the opinion of Dr. Zaldivar. Employer's Brief at 22-30. In excluding coal mine dust as a cause of claimant's impairment, Dr. Zaldivar referenced medical studies linking emphysema to cellular DNA damage caused by smoking, and noted that similar damage to the DNA was not being published in the literature pertaining to coal workers' pneumoconiosis. Decision and Order at 14, 45; Director's Exhibit 36 at 5; Employer's Exhibit 7 at 32. The administrative law judge permissibly found Dr. Zaldivar's opinion to be unpersuasive because the doctor relied, at least in part, on generalities, without identifying any medical information establishing that *claimant's* lung disease is the result of smoking-related damage to the cellular DNA of his lungs. *See Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); Decision and Order at 45. The administrative law judge further found that even if Dr. Zaldivar is correct, he did not adequately explain why claimant's twenty-six years of coal mine dust exposure did not contribute, along with

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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).

[16] The administrative law judge also considered the opinions of Drs. Raj, Al Jaroushi, and Green and correctly noted that because they each diagnosed legal pneumoconiosis their opinions cannot assist employer in establishing that claimant does not have the disease. Decision and Order at 43.

cigarette smoking and asthma, to his obstructive impairment. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558, 25 BLR 2-339, 2-353 (4th Cir. 2013); *Barber v. Director, OWCP*, 43 F.3d 899, 901, 19 BLR 2-61, 2-67 (4th Cir. 1995); Decision and Order at 45-46.

We also reject employer's contention that the administrative law judge erred in her consideration of Dr. Hippensteel's opinion. In concluding that claimant does not have legal pneumoconiosis, Dr. Hippensteel stated that his obstructive impairment is due to bullous emphysema, a form of emphysema he stated is not related to coal mine dust exposure. He stated that the variable and partially reversible nature of claimant's obstruction indicated that it has an asthmatic component, a condition he opined is also unrelated to coal mine dust exposure. Finally, Dr. Hippensteel stated that claimant has a diffusion impairment "without evidence of coal macules or nodules to cause such an impairment." Employer's Exhibit 3 at 15. The administrative law judge permissibly discredited Dr. Hippensteel's opinion in part because he did not explain why claimant's partial response to bronchodilators necessarily eliminated coal mine dust exposure as a cause of the irreversible portion of his obstructive impairment.[17] *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 25 BLR 2-135 (6th Cir. 2012); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); *Consolidation Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004); Decision and Order at 46. She further permissibly found that to the extent Dr. Hippensteel relied on the absence of x-ray evidence of clinical pneumoconiosis to exclude coal mine dust as a cause of claimant's diffusion impairment, his opinion is inconsistent with the position of the Department of Labor that coal mine dust exposure can be associated with significant deficits in lung function in the absence of clinical pneumoconiosis. *See* 65 Fed. Reg. 79,941 (Dec. 20, 2000); 20 C.F.R. §718.201(a)(2); Decision and Order at 46. Based on the foregoing, we affirm the administrative law judge's finding that the opinions of Drs. Zaldivar and Hippensteel failed to disprove the presumed fact of legal pneumoconiosis.[18]

[17] Dr. Hippensteel concluded that claimant "has had mostly mild ventilatory impairment that has been variable and partially reversible." Employer's Exhibit 3 at 15. Additionally, Dr. Raj's pulmonary function testing showed a moderate obstructive defect with "no positive bronchodilator response." *See* Claimant's Exhibit 1 at 3-4; Decision and Order at 22.

[18] Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the miner does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i). Therefore, we need not address employer's allegations of error regarding the administrative law judge's

The administrative law judge next addressed whether employer established rebuttal by proving that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 51-52. She permissibly discredited the opinions of Drs. Zaldivar and Hippensteel because neither physician diagnosed claimant with legal pneumoconiosis, and there were no "specific and persuasive reasons" for concluding that their opinions on the issue of disability causation were independent of their opinions regarding the existence of legal pneumoconiosis. Decision and Order at 51-52; *see* 20 C.F.R. §718.305(d)(1)(ii); *see Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05, 25 BLR 2-713, 2-721 (4th Cir. 2015); *see also Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995). Because the administrative law judge permissibly discredited the opinions of Drs. Zaldivar and Hippensteel, the only opinions supportive of employer's burden on the cause of claimant's total disability, we affirm her determination that employer did not rebut the Section 411(c)(4) presumption by proving that no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 52.

Accordingly, the 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

finding that employer also failed to establish that the miner did not have clinical pneumoconiosis. *See Larioni*, 6 BLR at 1-1278; Employer's Brief at 14-21.