BRB No. 12-0627 BLA

CHARLES W. STRAWSER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PATRIOT MINING COMPANY, INCORPORATED	)	DATE ISSUED: 09/23/2013
	)	
and	)	
	)	
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 Thomas M. Burke, Administrative Law Judge, United States Department of Labor.

Karin L. Weingart (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2010-BLA-5359) of Administrative Law Judge Thomas M. Burke rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011)(the Act). This case involves a subsequent claim filed on April

22, 2009.[1] The administrative law judge credited claimant with at least fifteen years of qualifying coal mine employment,[2] and found that the medical evidence developed since the denial of claimant's prior claim established that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Consequently, the administrative law judge found that claimant demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d). Considering the entire record, the administrative law judge found that the evidence as a whole established that claimant is totally disabled, and that claimant is entitled to invocation of the rebuttable presumption of total disability due to pneumoconiosis set forth at amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[3] The administrative law judge further found that employer failed to establish rebuttal of the presumption with affirmative proof that claimant does not have pneumoconiosis, or that his disabling respiratory impairment is not due to pneumoconiosis. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's findings that claimant has sufficient qualifying coal mine employment, that he is totally disabled pursuant to 20 C.F.R. §718.204(b)(2), and that he is entitled to invocation of the amended Section 411(c)(4) presumption. Additionally, employer asserts that the administrative law judge erred in his analysis of the x-ray and medical opinion evidence when he found

[1] Claimant filed prior claims on July 16, 1992, and August 13, 2002. His first claim was denied on April 11, 1994, for failure to establish the existence of pneumoconiosis, and that denial was affirmed by the Board. *Strawser v. Patriot Mining Co.*, BRB No. 94-2584 BLA (Apr. 20, 1995)(unpub.). His second claim was denied by the district director on October 24, 2003, for failure to establish any of the elements of entitlement. *See* Director's Exhibits 1, 2.

[2] Both underground coal mine employment and surface coal mine employment in conditions that are substantially similar to those in an underground mine constitute "qualifying" coal mine employment pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).

[3] Congress enacted amendments to the Black Lung Benefits 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 fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556(a), 124 Stat. 119, 260 (2010).

that employer did not rebut the amended Section 411(c)(4) presumption. Neither claimant, nor the Director, Office of Workers' Compensation Programs, has responded to employer's appeal.

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 & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Invocation of the Amended Section 411(c)(4) Presumption
Qualifying Coal Mine Employment

In order to invoke the amended Section 411(c)(4) presumption, 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); *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-29 (2011). The administrative law judge credited claimant with six months of underground coal mine employment, and 16.67 years of coal mine employment at a surface mine in conditions that were substantially similar to those in an underground mine. Decision and Order at 3, 9-10, 15. Employer argues that the administrative law judge's findings respecting claimant's surface coal mine employment were based on a "simplistic" view of claimant's testimony. Employer's Brief at 5-8. Employer maintains that claimant's "exposure was to rock dust and only occasionally coal dust" and, moreover, that "[claimant] described processes which would create dust, but did not indicate the frequency of the exposure, the duration, or the amount." *Id*. Employer also argues that, while claimant stated that dust blew on him when he was drilling, his "all inclusive" job duties included driving a truck, loading holes with explosives and detonating the charges, working in the coal pits, and cleaning and shoveling coal into the loader. Employer asserts that claimant "never fully described the amount of time spent on these other activities or their relative level of dust production." *Id.* Thus, employer maintains, the finding of substantial similarity is based on a mischaracterization that "claimant did nothing but drill." *See* Decision and Order at 10; Employer's Brief at 6-7. Further, employer asserts that claimant "clearly did not

[4] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as claimant was last employed in the coal mining industry in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc); Director's Exhibit 4 at 2.

spend six days a week in the coal pits;" instead, he worked in the coal pits for four to five years, and thereafter only "once in a while." *Id*.

Claimant bears the burden of establishing comparability between dust conditions in underground and surface mine employment, but "must 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 at 512-13 (7th Cir. 1988); *see Blakley v. Amax Coal Co.*, 54 F.3d 1313, 19 BLR 2-192 (7th Cir. 1995). Claimant is not required to directly compare his work environment to conditions underground, but can establish similarity by proferring "sufficient evidence of the surface mining conditions in which he worked," whereupon it is the function of the administrative law judge, based on his expertise and knowledge of the industry, "to compare the surface mining conditions established by the evidence to conditions known to prevail in underground mines." *Leachman*, 855 F.2d at 512. Further, a claimant's unrefuted testimony is sufficient to support a finding of substantial similarity. *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 22 BLR 2-265 (7th Cir. 2001).

At the outset, contrary to employer's assertion, exposure to any kind of coal mine dust, in sufficient quantity, may constitute qualifying coal mine employment. *See Williamson Shaft Contracting Co. v. Phillips*, 794 F.2d 865, 9 BLR 2-79 (3d Cir. 1986); *Garrett v. Cowin & Co., Inc.*, 16 BLR 1-77 (1990). In this case, the administrative law judge reviewed claimant's testimony, that he worked at the strip mines "mostly drilling" and that he "helped with the blasting." Hearing Transcript at 12. Claimant explained that his job was drilling and blasting "mostly" rock and overburden, and that, "on occasion," he test-drilled coal and took samples every few feet. He described drilling and blasting as "real dusty" work, because "it keeps blowing that dust and stuff back out on you." *Id*. at 12-13. Hence, substantial evidence supports the administrative law judge's finding that "the drilling and blasting of rock with explosives continually blew dust back onto [claimant]." *Id*.; Decision and Order at 10; Director's Exhibits 6, 7. Additionally, the administrative law judge found that claimant's work in the coal pits, cleaning and shoveling coal onto a loader and driving a truck, likewise exposed him to coal dust. Consequently, the administrative law judge rationally found that the dusty work environment claimant experienced six days a week for 16.67 years, was substantially similar to the conditions in an underground coal mine. *Id*.; *see* Director's Exhibit 6, 7 at 1-2. We therefore reject employer's arguments that the administrative law judge considered only claimant's drilling work in assessing his coal dust exposure, or misconstrued his testimony. As substantial evidence, in the form of claimant's uncontradicted testimony, consistent with the employment histories of record,[5] supports

[5] Dr. Bellotte recorded claimant's coal mine duties as "drilling holes and loading them with explosives to blow them up…[h]e worked in the coal pits…[h]e also cleaned

the administrative law judge's findings, we affirm his determination that claimant established at least fifteen years of qualifying coal mine employment for purposes of amended Section 411(c)(4). *See Blakley*, 54 F.3d at 1319, 19 BLR at 2-202; Decision and Order at 3, 10, 16; Hearing Transcript at 12-13.

Total Disability and a Change in an Applicable Condition of Entitlement

Where 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 "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(d); *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(d)(2). Claimant's last claim was denied because claimant did not establish any of the elements of entitlement. Decision and Order at 3; Director's Exhibit 2. Consequently, to obtain review of the merits of his claim, claimant had to submit new evidence establishing any one of the elements of entitlement. 20 C.F.R. §725.309(d)(2), (3).

Although the administrative law judge found that the new pulmonary function study evidence did not support a finding of total disability at Section 718.204(b)(2)(i), and that the record contained no evidence of cor pulmonale with right-sided congestive heart failure at Section 718.204(b)(2)(iii), he found that all three of the new blood gas studies produced qualifying values[6] and, thus, established total disability pursuant to Section 718.204(b)(2)(ii). Pursuant to Section 718.204(b)(2)(iv), the administrative law judge credited the new medical opinions of Drs. Bellotte, Crisalli, and Begley, all of whom agreed that claimant is totally disabled by a respiratory impairment, and is unable to return to his usual coal mine employment. Thus, the administrative law judge found that the new blood gas studies, together with the consistent medical opinion evidence and claimant's testimony that he uses supplemental oxygen and a nebulizer multiple times a

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and shoveled coal on the loaders and drove truck." Director's Exhibit 15 at 23. Dr. Begley recorded that claimant "worked in the coal mines for many years…[h]is last job was that of a driller and a blaster." Claimant's Exhibit 3 at 1. Dr. Crisalli recorded that from 1974 to 1990, claimant was "a driller and a blaster on a surface mine." Employer's Exhibit 6 at 1.

[6] A "qualifying" arterial blood gas study yields values that are equal to or less than the applicable table values, *i.e.* Appendix C of Part 718. A "non-qualifying" study yields values that exceed the requisite table values.

day, established total disability pursuant to Section 718.204(b)(2) and a change in an applicable condition of entitlement at Section 725.309(d). Decision and Order at 11. Reviewing the entire record, the administrative law judge found that the more recent evidence developed in the current claim was entitled to greater weight, and he concluded that total disability and invocation of the presumption at amended Section 411(c)(4) were established. As employer has not identified any specific legal or factual errors in the administrative law judge's consideration and weighing of the evidence,[7] we affirm his determination that claimant has established a change in an applicable condition of entitlement pursuant to Section 725.309(d) and total respiratory disability pursuant to Section 718.204(b)(2), and is entitled to invocation of the presumption at amended Section 411(c)(4). *See* 20 C.F.R. §802.211(b); *Etzweiler v. Cleveland Bros. Equip. Co.*, 16 BLR 1-38 (1992); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 10107 (1983).

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

Employer contends that the administrative law judge erred in weighing the x-ray and medical opinion evidence in finding that claimant has both clinical and legal pneumoconiosis.[8]

On the issue of clinical pneumoconiosis, employer specifically challenges the administrative law judge's weighing of the April 19, 2010 x-ray, and argues that, because Dr. Willis's curriculum vitae was "inadvertently omitted from the record," the administrative law judge should have verified his dual radiological credentials as a Board-certified radiologist and B reader "by consulting the American Board of Medical Specialties." Employer's Brief at 11. Moreover, employer asserts that the administrative law judge "should have taken judicial notice" of Dr. Willis's credentials, based on Dr.

[7] Employer's assertion that: "[c]laimant has failed to establish total disability pursuant to any of the provisions of 20 C.F.R. §718.204(b)(2) and [the administrative law judge] erred in finding otherwise," is belied by its concessions that all of claimant's blood gas studies produced qualifying results, and that "all of the physicians agree" claimant does not retain the pulmonary capacity to perform his usual coal mine employment or a job requiring similar effort. *See* Employer's Brief at 19, 27.

[8] Employer's argument that claimant "failed to establish the existence of pneumoconiosis" misstates the burden of proof in this case, which shifted to employer upon invocation of the amended Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4). Consequently, we construe employer's arguments as challenging the administrative law judge's findings on rebuttal. *See* Employer's Brief at 9-14, 18.

Crisalli's reference to Dr. Willis as being dually-qualified. *Id*. We disagree. The administrative law judge considered the conflicting interpretations of analog x-rays taken on June 4, 2009 and April 19, 2010, and a digital x-ray taken on December 17, 2010. Decision and Order at 4-5, 12-13. Weighing the conflicting interpretations in light of the physicians' respective radiological credentials, the administrative law judge determined that the June 4, 2009 x-ray, interpreted as negative by dually-qualified Drs. Shipley and Wiot, and interpreted as positive by dually-qualified Dr. Ahmed and B reader Dr. Bellotte, was negative for the presence of pneumoconiosis.[9] He then determined that, since "Dr. Willis' curriculum vita is not in the record, only his status as a B-reader, as documented by the x-ray form, is recognized." Decision and Order at 4, n.3. Thus, the administrative law judge found that the April 19, 2010 x-ray, interpreted as positive by dually-qualified Dr. Ahmed and as negative by Dr. Willis, was positive for pneumoconiosis. Decision and Order at 4; Claimant's Exhibit 4; Employer's Exhibit 6. He also found that the positive interpretations by Drs. Ahmed and Begley of the December 17, 2010 digital x-ray were entitled to less weight than the analog x-ray interpretations, because the record contained no statement regarding the acceptability or relevancy of the digital x-ray. Decision and Order at 4-5, 13; *see Webber v. Peabody Coal Co.*, 23 BLR 1-123 (2006)(en banc)(Boggs, J., concurring).

While an administrative law judge has a duty to insure a full and fair hearing on all issues, *see Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987)(en banc), this duty does not relieve a party of its obligation to submit evidence in a timely and proper manner pursuant to the provisions at 20 C.F.R. §725.456. Contrary to employer's assertions, therefore, the administrative law judge was not required to refer to sources outside the record to ascertain the extent of Dr. Willis's radiological credentials. Rather, exercising his broad discretion in resolving procedural issues, the administrative law judge rationally considered Dr. Willis's interpretation in light of the B reader qualification reflected on the x-ray interpretation form he completed, *see* 20 C.F.R. §§725.455(c), 725.456; *Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229 (2007)(en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(en banc), and permissibly assigned greater weight to the positive reading by Dr. Ahmed, based on his superior qualifications. Decision and Order at 13; *see Sheckler v. Clinchfield Coal Co.*, 7 BLR 1-128 (1984). Because the administrative law judge performed both a quantitative and qualitative analysis of the x-ray evidence, and explained how he resolved the conflicts in the evidence, we affirm, as supported by substantial evidence, his finding that the x-ray evidence was in equipoise and, thus, that employer failed to meet its burden on

[9] In so finding, the administrative law judge determined that the dually-qualified physicians' qualifications were "equivalent and superior to" those of B reader Dr. Bellotte. Decision and Order at 13.

rebuttal. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 18 BLR 2A-1 (1994); *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); *see also Rose*, 614 F.2d at 939, 2 BLR at 2-43-44.

Employer next asserts that the opinion of Dr. Crisalli,[10] that claimant does not have pneumoconiosis, is the only well-reasoned opinion of record, and argues that the administrative law judge construed the physician's rationale too narrowly in discounting the opinion. Employer maintains that Dr. Crisalli relied on the absence of upper zone nodular changes on x-ray to exclude a diagnosis of clinical pneumoconiosis,[11] and also explained that the pattern of claimant's impairment, *i.e.*, a severe diffusion impairment with minimal obstruction and no restriction, was inconsistent with legal pneumoconiosis. Employer's Brief at 15-18. Employer essentially seeks a reweighing of the evidence, which is beyond the scope of the Board's review. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Noting that Dr. Crisalli is only a B reader and that a preponderance of x-ray interpretations by dually-qualified readers failed to rebut the amended Section 411(c)(4) presumption, the administrative law judge permissibly discredited Dr. Crisalli's opinion that claimant does not have clinical pneumoconiosis. Decision and Order at 15; *see Adkins*, 958 F.2d at 52, 16 BLR at 2-66. Addressing the issue of legal pneumoconiosis, the administrative law judge determined that the opinions of Drs. Bellotte[12] and Begley[13]

[10] Dr. Crisalli, who examined claimant on April 19, 2010, diagnosed an isolated severe diffusion impairment, attributed the impairment to an unidentifiable factor, and opined that he does not have clinical or legal pneumoconiosis. Decision and Order at 14-17; Employer's Exhibit 6 at 2-3, 7.

[11] Contrary to employer's argument, the regulations do not foreclose a diagnosis of clinical pneumoconiosis when the opacities are irregular in shape and located in the mid and lower zones. *See* 20 C.F.R. §718.202.

[12] Dr. Bellotte, who conducted the Department of Labor pulmonary evaluation on June 4, 2009, assessed a "severe impairment of pulmonary gas exchange," and diagnosed occupational pneumoconiosis, chronic obstructive pulmonary disease with asthmatic bronchitis, emphysema, coronary artery disease, and left pleural effusion possibly related to a history of asbestos dust exposure. He concluded that there was a "minor but significant contribution to [claimant's] impairment from his coal dust, silica, and asbestos exposure." Decision and Order at 6-7, 14, 16-17; Director's Exhibit 15 at 3, 21-23.

supported a finding of legal pneumoconiosis, whereas Dr. Crisalli[14] eliminated coal dust exposure as a factor in claimant's pulmonary impairment. The administrative law judge considered Dr. Crisalli's finding, that claimant's pulmonary function studies showed, at most, a minimal degree of obstruction to air flow and no restrictive defect, and his explanation that if claimant's severe diffusion impairment were related to pneumoconiosis, there would be a corresponding moderate to severe obstructive impairment. The administrative law judge noted that Dr. Crisalli "could not identify the cause of the impairment," but stated that coal dust exposure was not a contributing factor in claimant's severe diffusion impairment and hypoxemia. Decision and Order at 15; Claimant's Exhibit 6 at 7.

Acting within his discretion as trier-of-fact, the administrative law judge found that Dr. Crisalli's rationale was not persuasive, and concluded that the physician's reliance on the lack of significant obstruction in finding that claimant does not suffer from legal pneumoconiosis is contrary to the definition of pneumoconiosis at 20 C.F.R.

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[13] Dr. Begley, who examined claimant on December 17, 2010, diagnosed legal pneumoconiosis in the form of chronic bronchitis caused by exposure to coal dust. Decision and Order at 7, 14-17; Claimant's Exhibit 3 at 2.

[14] Dr. Crisalli stated that claimant does not have pneumoconiosis because his pulmonary function studies:

> show either no obstruction to air flow or a very minimal degree of obstruction to air flow and these studies show no restrictive defect. Coal workers' pneumoconiosis most commonly causes an obstruction to air flow. The diffusion of carbon monoxide is severely impaired. If this diffusion impairment were related to coal workers' pneumoconiosis, I would have expected a moderate to severe obstruction to air flow. In [claimant's] case, however, the obstruction, if present, is very minimal.
>
> [Claimant's x-ray] shows linear changes involving the mid and upper zones. Coal worker's pneumoconiosis typically causes nodular changes which start in both upper lung zones and may progress to the lower zones.
>
> The cause of [claimant's] shortness of breath, his hypoxemia, and severe diffusion impairment is unknown, but it is not related to coal dust exposure or coal workers' pneumoconiosis.

Employer's Exhibit 6 at 1-3, 7.

§718.201, which does not require the presence of an obstructive impairment. Employer's Exhibit 6 at 1-3, 7. Further, since all of claimant's blood gas studies revealed hypoxemia and produced qualifying results, including the study administered by Dr. Crisalli, the administrative law judge rationally found that the exclusion of coal dust as a contributing factor in claimant's condition "merely because of the absence of an obstructive impairment" fails to account for the fact that pneumoconiosis can manifest in different ways. Decision and Order at 15; *see generally Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41, 17 BLR 2-16, 2-22 (6th Cir. 1993)(recognizing that results from pulmonary function and blood gas testing may consistently have no correlation since pneumoconiosis may manifest itself in different types of pulmonary impairment); *Sheranko v. Jones and Laughlin Steel Corp.*, 6 BLR 1-797 (1984)(pulmonary function and arterial blood gas studies measure different types of impairment). Additionally, the administrative law judge permissibly discounted Dr. Crisalli's opinion for failure to adequately explain why coal dust exposure did not exacerbate claimant's pulmonary condition. *See Barber v. Director, OWCP*, 43 F.3d 899, 901, 19 BLR 2-61, 2-67 (4th Cir. 1995); *Milburn Colliery Co., v. Hicks*, 138 F.3d 524, 533, 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 15. As substantial evidence supports his finding that Dr. Crisalli's opinion was not well-reasoned and merited little weight, we affirm the administrative law judge's conclusion that employer failed to establish rebuttal of the amended Section 411(c)(4) presumption with affirmative proof that claimant does not have pneumoconiosis.[15] *See* Decision and Order at 15-16; *Barber*, 43 F.3d at 901, 19 BLR at 2-67; *Rose*, 614 F.2d at 939, 2 BLR at 2-43-44; *see also Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 25 BLR 2-1 (6th Cir. 2011).

Because the administrative law judge did not find Dr. Crisalli's opinion credible on the issue of pneumoconiosis, he could not credit the opinion regarding the cause of claimant's disabling respiratory impairment absent "specific and persuasive reasons for concluding that the doctor's judgment on the question of disability causation does not rest

[15] Because we affirm the administrative law judge's discrediting of the only medical opinion sufficient to support employer's burden on rebuttal, we need not consider employer's remaining arguments concerning the reliability of the opinions of Drs. Bellotte and Begley, who opined that claimant has clinical and legal pneumoconiosis, and that his disabling respiratory impairment arose out of his coal mine employment. Employer's Brief at 15-17, 20-22; Decision and Order at 6-7, 14; *see Mingo Logan Coal Co. v. Owens*, F.3d , 2013 WL 3929081 (4th Cir. 2013)(Niemeyer, J., concurring); *see also Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 479-480, 25 BLR 2-1, 2-8-9 (6th Cir. 2011).

upon [his] disagreement with the [administrative law judge's] finding…." *Toler v. E. Associated Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995); *see Scott v. Mason Coal Co.*, 289 F.3d 263, 269, 22 BLR 2-372, 2-383-84 (4th Cir. 2002); Employer's Exhibit 6; Decision and Order at 7-8, 14-17. Consequently, we affirm the administrative law judge's findings that employer failed to establish rebuttal of the amended Section 411(c)(4) presumption, and that claimant is entitled to benefits. 30 U.S.C. §921(c)(4); *see Mingo Logan Coal Co. v. Owens*, F.3d , 2013 WL 3929081 (4th Cir. 2013)(Niemeyer, J., concurring).

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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BETTY JEAN HALL
Administrative Appeals Judge