BRB No. 12-0660 BLA

DANNY DALE BROWN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
NEW HOPE COMPANY OF KENTUCKY	)	DATE ISSUED: 09/18/2013
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand Awarding Benefits of Robert B. Rae, Administrative Law Judge, United States Department of Labor.

William A. Lyons (Lewis and Lewis Law Offices), Hazard, Kentucky, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand Awarding Benefits (2009-BLA-05445) of Administrative Law Judge Robert B. Rae, rendered on a subsequent claim filed on May 1, 2008, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act).[1] This case is before the Board for the second time. In a Decision and Order issued on January 25, 2011, the administrative law judge credited claimant with twenty-two years of underground coal

[1] Claimant filed an initial claim for benefits on November 25, 1996, which was denied by Administrative Law Judge Edward Terhune Miller on October 15, 1999, because the evidence was insufficient to establish any of the requisite elements of entitlement. Director's Exhibit 1.

mine employment and found, based on the newly submitted evidence, that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), total disability pursuant to C.F.R. §718.204(b)(2), and a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Because of the filing date of the claim and his determinations that claimant established at least fifteen years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment, the administrative law judge found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis pursuant to amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[2] The administrative law judge further found that employer failed to rebut that presumption. Accordingly, benefits were awarded.

Upon consideration of employer's appeal, the Board affirmed, as unchallenged, the administrative law judge's finding that claimant has worked for twenty-two years in underground coal mine employment. *D.D.B.* [*Brown*] *v. New Hope Co. of Ky.*, BRB No. 11-0383 BLA, slip op. at 2 n.3 (Feb. 14, 2012) (unpub.). The Board, however, held that the administrative law judge "failed to sufficiently discuss and explain his reasons for finding that the pulmonary function study and medical opinion evidence established total respiratory disability" at 20 C.F.R. §718.204(b)(2), as required by the Administrative Procedure Act (APA), and did not weigh the evidence supportive of a finding of total disability against the contrary probative evidence, prior to concluding that claimant satisfied his burden of proof.[3] *Id*. at 3. The Board, therefore, vacated the administrative law judge's finding that the amended Section 411(c)(4) presumption was invoked, vacated the award of benefits, and remanded the case for further consideration. *Id*. The Board specifically instructed the administrative law judge to reconsider his findings relevant to invocation of the presumption and rebuttal, if reached. *Id*. at 3-4.

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[2] 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 claim, amended Section 411(c)(4) provides a rebuttable presumption that claimant is totally disabled due to pneumoconiosis if he establishes at least fifteen years of underground coal mine employment, or employment in conditions substantially similar to those in an underground mine, and also suffers from a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556(a), 124 Stat. 119, 260 (2010).

[3] The Administrative Procedure Act requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all 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 5 U.S.C. §554(c)(2), 33 U.S.C. §919(d) and 30 U.S.C. §932(a); *see also Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989).

In his Decision and Order on Remand Awarding Benefits, dated September 5, 2012, the administrative law judge again determined that claimant established total respiratory disability and is entitled to the amended Section 411(c)(4) presumption. The administrative law judge also found that employer failed to satisfy its burden to rebut the presumed facts that claimant has pneumoconiosis and that his respiratory disability arose out of, or in connection with, his coal mine employment.

On appeal, employer contends that the administrative law judge failed to follow the Board's remand instructions, and that he erred in finding total respiratory disability established for invocation of the amended Section 411(c)(4) presumption. Employer also argues that the administrative law judge erred in finding that employer did not establish rebuttal of the presumption. Claimant has not responded to employer's appeal. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response, unless specifically requested to do so by the Board.

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).

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 "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); *see 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."[5] 20 C.F.R. §725.309(d)(2). In this case, because claimant's prior claim was denied for failure to establish any of the requisite elements of entitlement, he was required, pursuant to 20

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

[5] In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, that he is totally disabled and that his disability is due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes a finding of entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

C.F.R. §725.309(d), to establish at least one of the elements of entitlement in order to obtain a review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3; Director's Exhibit 1.

I. Invocation of the Amended Section 411(c)(4) Presumption

Employer challenges the administrative law judge's finding that claimant is totally disabled, asserting that he "violated the APA and did not follow the instructions of the [Board] regarding his obligations to reexamine the issue on remand." Employer's Brief in Support of Petition for Review at 18. We disagree. The administrative law judge was instructed on remand to explain the basis for his finding of total disability. Relevant to 20 C.F.R. §718.204(b)(2)(i), the record contains the results of five pulmonary function studies. *See* January 25, 2011 Decision and Order at 7. The March 27, 2008 study, by Dr. Craven, yielded qualifying[6] values for total disability, pre-bronchodilator, and no post-bronchodilator testing was conducted. Director's Exhibit 14. The June 6, 2008 study, by Dr. Baker, and the August 13, 2008 study, by Dr. Dahhan, each yielded qualifying pre-bronchodilator values, but non-qualifying post-bronchodilator values. Director's Exhibits 16, 18. The October 23, 2008 study, by Dr. Fino, and the January 5, 2009 study, by Dr. Craven, each yielded non-qualifying values both pre-bronchodilator and post-bronchodilator. Director's Exhibit 20; Claimant's Exhibit 3.

The administrative law judge concluded that the pulmonary function testing, standing alone, was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), and explained:

> None of the studies has been challenged as being invalid or otherwise being improperly conducted. Considering all the medical evidence of record with regard to the [pulmonary function] studies, a finding of total disability is not wholly supported by the [pulmonary function] test results due to their variability. While three of the five pre-bronchodilator results in the present claim are "qualifying," none of the post-bronchodilator results are "qualifying." The two performed by Dr. Craven counter each other with the most recent [January 5, 2009 test] resulting in non-qualifying values [pre-bronchodilator]. The most recent of the other three [pulmonary function tests], the one performed by Dr. Fino, shows minimal (5%)

[6] A "qualifying" pulmonary function test yields results that are equal to, or less than, the appropriate values set out in the table at 20 C.F.R. Part 718, Appendix B. Specifically, the FEV1 and either the MVV, FVC or the FEV1/FVC values must qualify. A "non-qualifying" test yields results that exceed those values. *See* 20 C.F.R. §718.204(b)(2)(i).

> improvement after bronchodilator while the other two show more significant improvement (10% and 13%). Exactly what can be construed from these varied and conflicting results is anyone's guess.

Decision and Order on Remand at 3.

Relevant to 20 C.F.R. §718.204(b)(2)(iv),[7] the administrative law judge considered the newly submitted opinions of Drs. Baker, Dahhan and Fino.[8] Dr. Baker examined claimant on June 6, 2008, at the request of the Department of Labor (DOL). Director's Exhibit 16. Dr. Baker stated that the pulmonary function studies showed a "moderate obstructive defect that improved to a mild obstructive defect following bronchodilators." *Id*. Based on the non-qualifying post-bronchodilator results, Dr. Baker opined that claimant "does have the respiratory capacity to do the work of a coal miner or comparable work in a dust free environment[.]" *Id*. In an addendum report dated July 14, 2008, Dr. Baker indicated that he was asked by the DOL to address whether claimant's pre-bronchodilator results, which were qualifying for total disability, would preclude claimant from performing his usual coal mine work. *Id*. Dr. Baker stated that the pre-bronchodilator results reflect "where [claimant] is on an everyday basis," and "[if] we do use the pre[-]bronchodilator study, he does meet the federal disability standard, and would have a totally disabling respiratory impairment." *Id*.

Dr. Dahhan examined claimant on August 13, 2008 and, based on the results of the pulmonary function testing he conducted, opined that claimant suffers from a moderate obstructive respiratory impairment. Director's Exhibit 18. Dr. Dahhan noted that claimant was employed half the time in underground coal mines as a shuttle operator and loader operator, and the other half as a dozer operator. *Id*. He stated that "[f]rom a respiratory standpoint, [claimant] does not retain the physiological capacity to return to his previous coal mining work or job of comparable physical demand." *Id*. Dr. Fino examined claimant on October 23, 2008, and stated that the pulmonary function testing revealed a "moderate obstructive ventilatory defect as evidenced by a reduction in the FEV1 and FEV1/FVC ratio." Employer's Exhibit 2. He noted that claimant's last job in the coal mines was that of an "end loader operator" and stated that, "[f]rom a respiratory

[7] The administrative law judge determined that claimant is unable to establish total disability based on the blood gas study evidence pursuant to 20 C.F.R. §718.204(b)(2)(ii). January 25, 2011 Decision and Order at 8.

[8] The administrative law judge noted in his prior decision that he accords greater weight to the evidence submitted with the subsequent claim due to the progressive nature of pneumoconiosis. January 25, 2011 Decision and Order at 14.

standpoint, [claimant] is disabled from returning to his last mining job or a job requiring similar effort." *Id*.

The administrative law judge gave "great weight" to Dr. Baker's opinion because he found that it was reasoned and documented. Decision and Order on Remand at 4. The administrative law judge concluded that claimant established total disability at 20 C.F.R. 718.204(b)(2)(iv), as "the experts all agree that [claimant] is totally disabled from a respiratory or pulmonary impairment." *Id*.

Employer asserts on appeal that the administrative law judge did not give proper weight to the *non-qualifying* post-bronchodilator test results, and erred in basing his finding of total disability on Dr. Baker's opinion, insofar as Dr. Baker specifically opined that claimant could work in light of the non-qualifying post-bronchodilator results. Contrary to employer's argument, however, the DOL has specifically stated that the use of a bronchodilator "does not provide an adequate assessment of the miner's disability, [although] it may aid in determining the presence or absence of pneumoconiosis." *See* 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980). Based on our review of the record, we conclude that the administrative law judge acted properly in relying on the *qualifying pre-bronchodilator* pulmonary function tests, in combination with the medical opinions, to find that claimant is totally disabled.[9]

Furthermore, the fact that claimant was unable to establish total disability, based on the pulmonary function tests, as a whole, does not undermine the administrative law judge's rational finding that claimant established total disability, based on the medical opinion evidence. The regulation at 20 C.F.R. §718.204(b)(2)(iv) specifically provides:

> Where total disability cannot be shown under paragraphs (b)(2)(i), (ii), or (iii) of this section, or where pulmonary function tests and/or blood gas studies are medically contraindicated, total disability may nevertheless be found if a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques,

[9] Employer contends that the administrative law judge's finding of total disability is irrational insofar as the physicians' opinions are "based upon the invalidated" pulmonary function tests that "were discredited by the administrative law judge." Employer's Brief in Support of Petition for Review at 16. Employer, however, mischaracterizes the administrative law judge's finding with regard to the pulmonary function testing. The administrative law judge did not conclude that the pulmonary function tests were invalid, only that the results were "variable" in whether they qualified for total disability under the regulatory criteria. Decision and Order on Remand at 3.

> concludes that a miner's respiratory or pulmonary condition prevents or prevented the miner from engaging in employment as described in paragraph (b)(1) of this section.

20 C.F.R. §718.204(b)(2)(iv).

In this case, the administrative law judge permissibly determined that Dr. Baker provided a well-reasoned and well-documented opinion, that claimant is totally disabled, based "on all the objective medical evidence (tests and studies) as well as his personal examination of [claimant]," and a "complete social, work and medical history[.]"[10] Decision and Order on Remand at 4; *see Tennessee 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). Furthermore, as Drs. Baker, Dahhan and Fino each opined that claimant's obstructive respiratory impairment, based on qualifying pre-bronchodilator results, prevents claimant from engaging in his usual coal mine employment, we affirm, as supported by substantial evidence, the administrative law judge's finding that claimant is totally disabled.[11] *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 306, 23 BLR 2-261, 2-285 (6th Cir. 2005); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576, 22 BLR 2-107, 2-121 (6th Cir. 2000); *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 on Remand at 4.

Based on the filing date of claimant's subsequent claim, and the administrative law judge's findings that claimant worked at least fifteen years in underground coal mine employment and suffers from a totally disabling respiratory or pulmonary impairment,

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[10] Employer argues that Dr. Baker's opinion is not well-documented because no other physician diagnosed bronchitis. Employer's Brief in Support of Petition for Review at 16. Contrary to employer's contention, Dr. Fino diagnosed chronic obstructive bronchitis. Employer's Exhibit 2.

[11] In challenging the administrative law judge's reliance on the opinions of Drs. Dahhan and Fino to support a finding of total disability, employer states that, "it is important to note that neither of them believed that [claimant] was disabled due to a coal dust related disease." Employer's Brief in Support of Petition for Review at 19. However, the proper inquiry at 20 C.F.R. §718.204(b) is whether claimant has a totally disabling respiratory or pulmonary impairment. The etiology of that impairment is addressed at 20 C.F.R. §718.204(c), or, if claimant has successfully invoked the Section 411(c)(4) presumption, when evaluating the evidence on rebuttal. *See* 20 C.F.R. §718.204(b)(2); 30 U.S.C. §921(c)(4).

we affirm the administrative law judge's determination, on remand, that claimant invoked the presumption at amended Section 411(c)(4). 30 U.S.C. §921(c)(4). We further affirm the administrative law judge's finding that claimant demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(d).

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

In order to rebut the presumption of total disability due to pneumoconiosis at amended Section 411(c)(4), employer must affirmatively establish either that claimant does not have pneumoconiosis or that his disability did not arise out of, or in connection with, coal mine employment. *See Morrison v. Tenn. Consol. Coal Co*., 644 F.3d 473, 479, 25 BLR 2-1, 2-8 (6th Cir. 2011). In considering whether employer disproved the existence of clinical pneumoconiosis,[12] the administrative law judge evaluated six ILO-classified readings of three analog x-rays dated June 6, 2008, August 18, 2008 and January 29, 2009. January 25, 2011 Decision and Order at 5-6. The June 6, 2008 x-ray was read as positive for simple pneumoconiosis by Dr. Baker, a B reader, and by Dr. Alexander, dually qualified as a Board-certified radiologist and B reader, but was read as negative for pneumoconiosis, by Dr. Wheeler, also a dually-qualified radiologist. Director's Exhibits 15, 16; Employer's Exhibit 1. The August 18, 2008 x-ray was read as positive for simple pneumoconiosis by Dr. Alexander, but as negative for pneumoconiosis by Dr. Dahhan, a B reader. Director's Exhibits 15, 18. The January 29, 2009 x-ray has only one reading, by Dr. Ahmed, a dually qualified radiologist, as positive for pneumoconiosis. Claimant's Exhibit 2. Additionally, the administrative law judge noted that an October 23, 2008 digital x-ray was read as positive for simple pneumoconiosis by Dr. Ahmed, but as negative for pneumoconiosis by Dr. Fino, a B reader. Director's Exhibit 20; Claimant's Exhibit 1.

The administrative law judge assigned greater weight to the radiologists who are dually qualified and found that the "overwhelming weight of the x-ray evidence, as

[12] The regulations provide:

> "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. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

20 C.F.R. §718.201(a)(1).

determined by the most credentialed and qualified physicians of record, support[s] a finding of clinical [coal workers' pneumoconiosis]." Decision and Order on Remand at 5-6. With regard to the issue of disability causation, the administrative law judge found that the opinions of Drs. Dahhan and Fino, that claimant's disability is due to smoking and not coal dust exposure, were not persuasive. *Id*. at 4, 8. The administrative law judge also found that Dr. Baker provided a reasoned and documented opinion that claimant suffers from clinical pneumoconiosis and that his disability is due to coal dust exposure. *Id*. at 5, 8. Thus, the administrative law judge concluded that employer failed to rebut the amended Section 411(c)(4) presumption by establishing either that claimant does not suffer from pneumoconiosis or that his disability did not arise out of, or in connection with, coal mine employment. *Id*.

Employer challenges the administrative law judge's finding that claimant has clinical pneumoconiosis, alleging that the small opacities identified on the x-rays "were not those associated with coal workers' pneumoconiosis." Employer's Brief in Support of Petition for Review at 17. In his prior Decision and Order, the administrative law judge considered employer's argument and explained why it was not persuasive. Dr. Dahhan and Dr. Fino, each a B reader, reviewed Dr. Ahmed's x-ray report, and refuted a finding of simple coal workers' pneumoconiosis, based on the location of the opacities, in the lower lung zones, and the shape of the opacities, irregular and not rounded, that Dr. Ahmed reported. *See* January 25, 2011 Decision and Order at 6; Employer's Exhibits 2, 4. The administrative law judge, however, permissibly found that this explanation "falls far short of being able to negate the opinion of a dually [qualified] physician" that claimant has radiographic evidence of pneumoconiosis, or otherwise establish that claimant's pneumoconiosis is unrelated to his twenty-two years of coal mine employment. January 25, 2011 Decision and Order at 5-6; *see* 20 C.F.R. §718.203; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *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). Because the administrative law judge's weighing of the x-ray evidence is rational and supported by substantial evidence, we affirm his finding that employer failed to rebut the amended Section 411(c)(4) presumption by establishing that claimant does not have clinical pneumoconiosis.

With regard to the issue of disability causation, we reject employer's contention that the administrative law judge did not give proper weight to the opinions of Drs. Dahhan and Fino. The administrative law judge observed correctly that Drs. Dahhan and Fino exclude claimant's thirty-three year history of coal dust exposure as a causative factor for his disability, in part, because neither physician found radiographic evidence for pneumoconiosis. Decision and Order on Remand at 8. We affirm the administrative law judge's rational determination to assign "little weight" to the opinion of employer's experts on the issue of disability causation, as they failed to diagnose pneumoconiosis, contrary to the administrative law judge's determination that the x-ray evidence

"overwhelmingly established the presence of clinical [coal workers' pneumoconiosis]."[13] *Id.* at 7-8; *see Adams v. Director, OWCP*, 886 F.2d 818, 13 BLR 2-52 (6th Cir. 1989); *see also Scott v. Mason Coal Co.*, 289 F.3d 263, 22 BLR 2-372 (4th Cir. 2002); *Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 19 BLR 2-70 (4th Cir. 1995). Furthermore, although Dr. Fino attributed claimant's disability solely to smoking, and stated that his opinion would not change, even if there was radiographic evidence for pneumoconiosis, the administrative law judge permissibly determined that Dr. Fino's "contingency finding" was "less than persuasive[.]" Decision and Order on Remand at 4 n. 2; *see Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Clark*, 12 BLR at 1-155.

Employer's arguments on appeal amount to a request that the Board reweigh the evidence, which we are not empowered to do. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). The administrative law judge, as the trier-of-fact, has discretion to assess the credibility of the medical evidence, and the Board will defer to the administrative law judge's credibility determinations, unless they are inherently incredible or patently unreasonable. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 22 BLR 2-320 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003). Thus, we affirm, as supported by substantial evidence, the administrative law judge's determination that employer failed to rebut the presumption at amended Section 411(c)(4) by affirmatively establishing that claimant does not have pneumoconiosis or that his disability did not arise out of, or in connection with, coal mine employment. We therefore affirm the award of benefits in this case.

[13] Employer asserts that the administrative law judge did not address all of the reasons provided by Drs. Dahhan and Fino for excluding coal dust exposure as a causative factor for claimant's respiratory disability. However, as the administrative law judge provided a valid rationale for the weight accorded employer's experts, we consider the administrative law judge's error, if any, to be harmless. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). Furthermore, as employer bears the burden of proof on rebuttal, and we affirm the administrative law judge's determination that employer's evidence is insufficient to affirmatively establish that claimant's disability is unrelated to his coal mine employment, it is not necessary that we address employer's arguments with regard to the weight accorded claimant's evidence. *See Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 479, 25 BLR 2-1, 2-8 (6th Cir. 2011).

Accordingly, the administrative law judge's Decision and Order on Remand 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