U.S. Department of Labor

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

BRB No. 14-0412 BLA

JOHNNY M. FORTNER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WESTMORELAND COAL COMPANY	)	DATE ISSUED: 09/30/2015
	)	
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 – Award of Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

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

Paul E. Frampton, Thomas M. Hancock (Bowles Rice LLP), Charleston, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand – Award of Benefits (2010-BLA-5181) of Administrative Law Judge Richard T. Stansell-Gamm, rendered on a subsequent claim filed on February 27, 2008, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (the Act). This case is before the

Board for the second time.[1] In its prior decision, the Board affirmed the administrative law judge's award of benefits pursuant to the amended Section 411(c)(4) presumption, 30 U.S.C. §921(c)(4). *Fortner v. Westmoreland Coal Co.*, BRB No. 12-0163 BLA, slip op. at 8-9 (Dec. 12, 2012) (unpub.).[2] The United States Court of Appeals for the Fourth Circuit vacated the award on appeal. *Westmoreland Coal Co. v. Director, OWCP* [*Fortner*], 538 F.App'x 247 (4th Cir. 2013). The court found that the administrative law judge engaged in an impermissible headcount of the medical opinions by deciding that the consensus of two physicians, Drs. Agarwal and McSharry, outweighed Dr. Hippensteel's single opinion without providing further analysis. The court remanded the case for the administrative law judge to reweigh the evidence of total disability. After reviewing the medical opinion evidence in detail, the administrative law judge again found on remand that claimant established that he has a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2). Based on his prior findings that claimant invoked the Section 411(c)(4) presumption, and employer failed to rebut it, the administrative law judge awarded benefits.

In this appeal, employer contends that the administrative law judge exceeded his authority and repeated the mistakes he made in his prior decision. Claimant responds, urging the Board to affirm the award of benefits. The Director, Office of Workers' Compensation Programs, 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 on Remand must be affirmed if it is rational, supported by substantial

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[1] Claimant's original claim, filed on December 15, 1995, was ultimately denied by Administrative Law Judge Thomas M. Burke on April 9, 2002. Director's Exhibit 1. Judge Burke found that claimant established the existence of pneumoconiosis, but did not establish total respiratory or pulmonary disability. *Id.*

[2] Amended Section 411(c)(4) sets forth a rebuttable presumption of total disability due to pneumoconiosis that is invoked if the miner establishes at least fifteen years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305(b). In this case, the Board previously affirmed, as unchallenged on appeal, the administrative law judge's findings that claimant established twenty-eight years of underground coal mine employment and that the arterial blood-gas test evidence was sufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(ii), thereby establishing a change in a condition of entitlement from his prior claim and invoking the Section 411(c)(4) presumption. *Fortner v. Westmoreland Coal Co.*, BRB No. 12-0163 BLA, slip op. at 3 n.5 (Dec. 12, 2012) (unpub.).

evidence, and in accordance with applicable law. 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). Because the administrative law judge's Decision and Order on Remand meets these standards, we affirm the award of benefits.[3]

I. Invocation of the Section 411(c)(4) Presumption – Total Disability

In his decision on remand, the administrative law judge acknowledged the Fourth Circuit's holding that he erred by "counting heads," and he extensively summarized and reweighed the medical opinions regarding disability. Decision and Order on Remand at 3-7, 10, 12-13. After considering the record, the administrative law judge properly exercised his discretion in finding Dr. Hippensteel's opinion "speculative," inadequately explained, and entitled to little weight. *See 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); Decision and Order on Remand at 12.[4]

The administrative law judge first summarized Dr. Hippensteel's opinion on disability. The administrative law judge noted that Dr. Hippensteel opined that claimant has a mild restrictive impairment and hypoxemia related to obesity, and chronic bronchitis unrelated to coal mine dust exposure. Decision and Order on Remand at 12-13; Employer's Exhibits 11 at 12-13, 12 at 19. Dr. Hippensteel further asserted that claimant is disabled as a whole man due to extrinsic factors, but is not disabled by an

[3] Employer argues that because claimant did not file a cross-appeal when his claim was last before the Board, and did not challenge the administrative law judge's crediting of Dr. Hippensteel's opinion, it now constitutes the law of the case. We reject this argument. Once the United States Court of Appeals for the Fourth Circuit vacated the Board's affirmance of total disability, the issue was no longer resolved, the administrative law judge was not bound by his prior finding, and the issue of whether claimant was required to file a cross-appeal was rendered moot. *See Williams v. Healy-Ball-Greenfield*, 22 BRBS 234, 237 (1989) (Brown, J., dissenting); *Dale v. Wilder Coal Co.* 8 BLR 1-119, 1-120 (1985).

[4] The administrative law judge again found Dr. Agarwal's opinion, that claimant has a severe pulmonary impairment that prevents him from working as a coal miner, well-documented and well-reasoned. Decision and Order on Remand at 12; Director's Exhibit 15. Likewise, he again determined that Dr. McSharry's similar opinion was well-documented and well-reasoned. Decision and Order on Remand at 12-13; Employer's Exhibit 8.

"intrinsic" lung disease.[5] Employer's Exhibit 11 at 12-13. Dr. Hippensteel further indicated that claimant is capable of performing his usual coal mine job, "[f]rom the standpoint of intrinsic pulmonary function, but the extrinsic problems that this man has makes [sic] him unable to exercise." Employer's Exhibit 12 at 31.

It is the role of the finder-of-fact to evaluate the medical opinion evidence, draw inferences therefrom, and assess the probative value of each opinion. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76. In this case, the administrative law judge rationally found that Dr. Hippensteel made a number of statements that undercut the certainty of his opinion. First, the administrative law judge observed that, while Dr. Hippensteel attributed claimant's hypoxia to his obesity, Dr. Hippensteel also acknowledged that not every obese person develops a respiratory impairment. Decision and Order on Remand at 12. The administrative law judge also noted that, rather than specifically explaining why claimant's obesity was the cause of his impairment in this case, Dr. Hippensteel instead rested his conclusion on the more general assertion that "the more obese a person becomes[,] the more likely the individual will have an associated respiratory impairment[,]" which the administrative law judge permissibly determined to be "speculative." *Id.;* Employer's Exhibit 12 at 26. Second, the administrative law judge found that Dr. Hippensteel's assumptions regarding claimant's anticipated reaction to exercise conflicted with the actual observations Drs. Agarwal and McSharry made after witnessing claimant walking and displaying only minimal exertion. Decision and Order on Remand at 12. Finally, the administrative law judge found that Dr. Hippensteel's opinion was entitled to little weight because he

[5] Dr. Hippensteel identified the "extrinsic factors" as claimant's "highly obese status," "diastolic heart dysfunction," "deep vein thrombosis with a vena cava filter," and "some ongoing chronic bronchitis." Employer's Exhibits 11, 12 at 19, 31. We initially note that the proper inquiry under each subsection of 20 C.F.R. §718.204(b) is whether claimant has established the presence of a totally disabling respiratory or pulmonary impairment by the methods set forth in 20 C.F.R. §718.204(b)(2)(i)-(iv). The cause of the totally disabling respiratory or pulmonary impairment is considered separately at 20 C.F.R. §718.204(c), or in consideration of whether the Section 411(c)(4) presumption has been rebutted by proving that no part of claimant's total respiratory or pulmonary disability was caused by pneumoconiosis. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305(d)(1)(ii); *see W.Va. CWP Fund v. Bender*, 782 F.3d 129, 134-35, BLR (4th Cir. 2015). When weighing Dr. Hippensteel's opinion on remand, however, the administrative law judge determined that the physician's conclusion, that claimant is totally disabled by extrinsic factors, was equivalent to a determination that claimant does not have a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Decision and Order on Remand at 12-13. For the sake of clarity, we will address employer's allegations in this context.

diagnosed "some ongoing chronic bronchitis," but did not discuss why that bronchitis, an intrinsic lung disease, did not contribute to claimant's respiratory impairment. *Id*. at 13; Employer's Exhibits 11, 12 at 29.

Because the administrative law judge provided rational reasons to discredit Dr. Hippensteel's opinion, we reject employer's allegation that the administrative law judge improperly discredited Dr. Hippensteel's opinion on remand, and affirm his finding that Dr. Hippensteel's opinion "suffers a loss of probative value" because it is speculative and inadequately explained. Decision and Order on Remand at 13; *see Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Underwood v. Elkay Mining, Inc*., 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997). We further affirm, as unchallenged on appeal, the administrative law judge's crediting of the disability opinions of Drs. Agarwal and McSharry, and his weighing of all the relevant evidence supportive of a finding of total disability against the contrary probative evidence of record. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon*., 9 BLR 1-236 (1987) (en banc); *Skrack v. Island Creek Coal Co*., 6 BLR 1-710 (1983); Decision and Order on Remand at 13-14. We therefore affirm the administrative law judge's findings that claimant established that he is totally disabled, establishing a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309, and invoking of the Section 411(c)(4) presumption.[6]

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

Because claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4), the burden of proof shifted to employer to establish rebuttal by proving that claimant does not have both legal and clinical pneumoconiosis,[7]

[6] 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); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement shall be limited to those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2). Claimant's prior claim was denied because he did not prove that he was totally disabled. Director's Exhibit 1. Accordingly, claimant was required to establish this element of entitlement in order to have his subsequent claim considered on the merits.

[7] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). This definition also encompasses "any chronic restrictive or obstructive pulmonary disease arising out of

or that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis as defined by 20 C.F.R. §718.201. 20 C.F.R. §718.305(d)(1); *see W. Va. CWP Fund v. Bender*, 782 F.3d 129, 134-35, BLR (4th Cir. 2015); *see also Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011); *Minich v. Keystone Mining Coal Mining Corp*., BLR , BRB No. 13-0544 BLA, slip op. at 10-11 (April 21, 2015) (Boggs, J., concurring and dissenting). Based on the undisturbed findings that he rendered in his 2011 Decision and Order, the administrative law judge determined that employer rebutted the presumed existence of clinical pneumoconiosis, but did not rebut the presumed existence of legal pneumoconiosis, based on his discrediting of Dr. Hippensteel's opinion. Decision and Order on Remand at 13, 14. The administrative law judge further found that employer failed to establish that no part of claimant's totally disabling respiratory or pulmonary impairment was due to pneumoconiosis as defined in 20 C.F.R. §718.201(a). *Id*. Accordingly, the administrative law judge concluded that employer failed to rebut the Section 411(c)(4) presumption. *Id*.

A. Rebuttal under 20 C.F.R. §718.305(d)(1)(i)(A)

On the issue of the presumed existence of legal pneumoconiosis, employer argues that the administrative law judge erred in discrediting Dr. Hippensteel's opinion, that industrial bronchitis usually stops after cessation of coal mine dust exposure, because Dr. Hippensteel's opinion is contrary to the regulation at 20 C.F.R. §718.201(c), which recognizes legal pneumoconiosis as a "latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." Brief in Support of Petition for Review at 16, *quoting* 2011 Decision and Order at 38; *see* 20 C.F.R. §718.201(c). Employer maintains that it is consistent with the regulation, because pneumoconiosis is only "recognized" as a disease that "may" be latent and progressive. *Id*. Employer also argues that the administrative law judge "applied the regulation in an absolute fashion." Brief in Support of Petition for Review at 17. Employer asserts that the regulation "does not mean that all coal workers' pneumoconiosis must be latent and progressive" and that "the regulation does not state that industrial bronchitis is a latent and progressive disease that does not subside after coal dust exposure ceases." *Id.* Finally, employer argues that the administrative law judge substituted "his own analysis of the medical information for that of the physician" and "creat[ed] a new presumption, an inference of progressivity. . . ." *Id.* at 18. We reject these arguments.

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coal mine employment." *Id*. "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

Chronic bronchitis, when arising out of coal mine employment, is recognized as legal pneumoconiosis, and is one of the disease processes that the Department of Labor identified as falling within the category of chronic obstructive pulmonary disease. 20 C.F.R. §718.201(a)(2); 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000). Pursuant to 20 C.F.R. §718.201(c), legal pneumoconiosis "is recognized as a latent and progressive disease." 20 C.F.R. §718.201(c); *see* 65 Fed. Reg. 79,920, 79,937, 79,971 (Dec. 20, 2000); *Mullins Coal Co., Inc. of Virginia v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Lane Hollow Coal Co. v. Director, OWCP*, 137 F.3d 799, 21 BLR 2-302 (4th Cir. 1998). Contrary to employer's argument, the regulation's "may" contingency refers to when pneumoconiosis "may first be detectable," not to its latent and progressive nature. 20 C.F.R. §718.201(c); 65 Fed. Reg. 79,937, 79,971. The administrative law judge therefore rationally discredited Dr. Hippensteel's opinion, that claimant's chronic bronchitis is unrelated to his coal dust exposure because industrial chronic bronchitis should subside months after leaving the mines, as inconsistent with the regulation, which does not state a time limit on when legal pneumoconiosis may become detectable. *See* 20 C.F.R. §718.201(c); 65 Fed. Reg. 79,937, 79,971; *J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-125-26 (2009), *aff'd sub nom. Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F. 3d 248, 24 BLR 2-369 (3d Cir. 2011); *see also Barnes v. Mathews*, 562 F.2d 278, 279 (4th Cir. 1977) ("pneumoconiosis is a slow, progressive disease often difficult to diagnose at early stages.").

Employer further argues that the administrative law judge erred in finding that Dr. Hippensteel's opinion that claimant's restrictive impairment is solely due to obesity conflicts with the definition of legal pneumoconiosis. Employer's Brief in Support of Petition for Review at 19.[8] On cross-examination Dr. Hippensteel explained:

> When you see it as a pure restriction, it is more compatible with obesity than it is with coal mine dust exposure . . . .
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> . . . because obstructive disease is also a part of what can happen with coal mining and that combination tied in with the development of coal macules in the lung, and especially with the development of complicated

[8] Citing "65 Fed. Reg. 79,943, *et. seq*.," employer asserts that the preamble to the 2001 revised regulations, and the science underlying the preamble, demonstrate that, for certain manifestations of legal pneumoconiosis, a mixed impairment is far more common than pure restriction. Brief in Support of Petition for Review at 19. Because employer did not identify the specific passages that support its allegation, and we cannot discern them from a review of the preamble, we reject employer's argument. *See Sarf v. Director, OWCP*, 10 BLR 1-119, 1-121 (1987).

> pneumoconiosis creates a combination effect, and there are other diseases that do that same thing, but coal workers' pneumoconiosis is one that commonly produces that combination.

Employer's Exhibit 12 at 27-28.[9]

Based on the administrative law judge's accurate summary of Dr. Hippensteel's view that pneumoconiosis typically causes a mixed impairment, the administrative law judge reasonably found that Dr. Hippensteel's opinion is inconsistent with the definition of legal pneumoconiosis at 20 C.F.R. § 718.202(a)(2), which includes, but is not limited to, "any chronic restrictive *or* obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.202(a)(2) (emphasis added); *see Compton v. Island Creek Coal Co.*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); 2011 Decision and Order at 38-39. The administrative law judge, therefore, permissibly accorded diminished probative value to Dr. Hippensteel's reasoning and found his opinion insufficient to rebut the Section 411(c)(4) presumption by establishing that claimant does not have legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i); *see Bender*, 782 F.3d at 134-35; Decision and Order on Remand at 14; 2011 Decision and Order at 39.

Employer next argues that the administrative law judge erred in discrediting the opinion of Dr. McSharry because he was unable to reach a definitive conclusion on the existence of pneumoconiosis. Employer specifically argues that the administrative law judge failed to consider Dr. McSharry's opinion on legal pneumoconiosis and improperly used Dr. McSharry's analysis regarding clinical pneumoconiosis to discredit his opinion regarding legal pneumoconiosis. These allegations are without merit.

The administrative law judge fully considered Dr. McSharry's opinion before rejecting it as equivocal and conflicting. The administrative law judge indicated that Dr. McSharry reviewed the evidentiary record, which included, among other things, conflicting chest x-ray interpretations. Decision and Order on Remand at 4; Director's Exhibit 15; Employer's Exhibit 8. The administrative law judge further acknowledged Dr. McSharry's conclusion that there was insufficient evidence to justify a diagnosis of coal workers' pneumoconiosis, particularly in light of conflicting radiographic findings, in which the most recent chest x-ray was read by at least one B reader as positive for pneumoconiosis and by two B readers as negative for pneumoconiosis. Decision and Order on Remand at 4. In addition, the administrative law judge observed that Dr.

[9] When asked if he reviewed medical literature about obese individuals exposed to high amounts of coal mine dust, Dr. Hippensteel stated that he did not know of any particular medical literature. Employer's Exhibit 12 at 27.

McSharry opined, nevertheless, that the "progressive nature of the pulmonary function tests and their character of both restrictive and obstructive lung disease without reversibility were compatible with a diagnosis of pneumoconiosis." Director's Exhibit 15. Dr. McSharry also stated that there was no "strong history of longstanding tobacco abuse" and that he would support a diagnosis of coal workers' pneumoconiosis if the chest radiographs showed signs of coal workers' pneumoconiosis. Employer's Exhibit 8. Given Dr. McSharry's equivocation, the administrative law judge found his opinion insufficient to rebut the presumed existence of legal pneumoconiosis in his 2011 Decision and Order, and he relied on that finding on remand. Decision and Order on Remand at 13; 2011 Decision and Order at 38.

In light of Dr. McSharry's statements, that the evidence he reviewed weighed for *and* against a diagnosis of "coal workers' pneumoconiosis," and that he would attribute claimant's impairments to "coal workers' pneumoconiosis" if there was definitive x-ray evidence of the disease, the administrative law judge reasonably determined that Dr. McSharry's opinion was inconclusive to rebut the presumed existence of legal pneumoconiosis.[10] Director's Exhibit 15; Employer's Exhibit 8; *see Compton*, 211 F.3d at 207-208, 22 BLR at 2-168; 2011 Decision and Order at 39. We further hold, therefore, that substantial evidence supports the administrative law judge's finding that the opinions of Drs. Hippensteel and McSharry are insufficient to disprove the existence of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); *see Bender*, 782 F.3d at 134-35; Decision and Order on Remand at 14.

[10] The fact that Dr. McSharry used the term "coal workers' pneumoconiosis" and indicated that he would diagnose this disease and identify it as the cause of claimant's impairments if there was conclusive x-ray evidence, supports the administrative law judge's determination that Dr. McSharry's opinion did not assist employer in rebutting the presumed existence of "legal pneumoconiosis" as defined in 20 C.F.R. §718.201(b)(2). *See* Director's Exhibit 15; Employer's Exhibit 8. Moreover, excluding a diagnosis of pneumoconiosis on the ground that the x-ray evidence is negative conflicts with the Department of Labor's recognition that pneumoconiosis may be diagnosed "notwithstanding a negative X-ray." 20 C.F.R. §§718.201, 718.202(a)(4), 718.202(b); 65 Fed. Reg. 79,920, 79,971 (Dec. 20, 2000) (recognizing that coal mine dust can cause clinically significant obstructive lung disease, even in the absence of x-ray evidence of clinical pneumoconiosis); *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 311-12, 25 BLR 2-115, 2-125 (4th Cir. 2012); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 479, 25 BLR 2-1, 2-8 (6th Cir. 2011); *Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 257, 24 BLR 2-369, 2-382-83 (3d Cir. 2011), *aff'g J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-125-26 (2009).

B. Rebuttal under 20 C.F.R. §718.305(d)(1)(ii)

With respect to the second method of rebuttal, employer asserts that the administrative law judge erred in incorporating his prior finding that Dr. Hippensteel's opinion on the cause of claimant's disability was entitled to less probative value because of Dr. Hippensteel's failure to diagnose a respiratory disability or legal pneumoconiosis, contrary to the administrative law judge's findings on those issues. Brief in Support of Petition for Review at 20-21; 2011 Decision and Order at 39. Specifically, employer asserts that the administrative law judge erred in not separately considering disability causation pursuant to 20 C.F.R. §718.204. Brief in Support of Petition for Review at 21. We reject employer's argument.

Based on claimant's successful invocation of the Section 411(c)(4) presumption of total disability due to pneumoconiosis, and our affirmance of the administrative law judge's finding that employer did not rebut the presumed existence of legal pneumoconiosis, employer was required to rebut the presumption by proving that "no part of claimant'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); *see Bender*, 782 F.3d at 134-35; *see also Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1069, 25 BLR 2-431, 2-446-47 (6th Cir. 2013). Contrary to employer's argument, the administrative law judge appropriately afforded Dr. Hippensteel's opinion little probative value on this issue because of "the well-established rule discrediting causation testimony by a doctor who fails to diagnose pneumoconiosis, when, as here, an [administrative law judge] has made a contrary finding." *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 503, BLR (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) (recognizing that a doctor's judgment as to whether pneumoconiosis is a cause of a miner's disability is necessarily influenced by the accuracy of his underlying diagnosis). Indeed, a doctor's opinion as to causation may not be credited at all in such cases "unless there are 'specific and persuasive reasons' for concluding that the doctor's view is independent of his or her mistaken belief that the claimant does not have pneumoconiosis, in which case it may be assigned, at most, 'little weight.'" *Epling*, 783 F.3d at 503, *quoting Scott v. Mason Coal Co.*, 289 F.3d 262, 269-70, 22 BLR 2-373, 2-384 (4th Cir. 2002). Employer has identified no such reasons. Accordingly, we affirm the administrative law judge's finding that the evidence was insufficient to prove that no part of claimant's total respiratory disability is caused by pneumoconiosis as defined in 20 C.F.R. §718.201(a)(2). *See Bender*, 782 F.3d at 141-42; *Island Creek Kentucky Mining v. Ramage*, 737 F.3d 1050, 1062, 25 BLR 2-453, 2-474 (6th Cir. 2013); *Ogle*, 737 F.3d at 1069, 25 BLR at 2-446-47.

As employer does not raise any other allegations of errors, we affirm the administrative law judge's finding that employer did not meet its burden to rebut the Section 411(c)(4) presumption, and further affirm the award of benefits. 30 U.S.C. §921(c)(4); *see Bender*, 782 F.3d at 134-35; *Morrison*, 644 F.3d at 480, 25 BLR at 2-9; Decision and Order on Remand at 14.

Accordingly, the administrative law judge's Decision and Order on Remand – Award of Benefits is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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GREG J. BUZZARD
Administrative Appeals Judge

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JONATHAN ROLFE
Administrative Appeals Judge