U.S. Department of Labor

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

BRB No. 18-0479 BLA

ALLEN R. MADDEN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CONSOL OF KENTUCKY, INCORPORATED	)	DATE ISSUED: 09/09/2019
	)	
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 of Richard M. Clark, Administrative Law Judge, United States Department of Labor.

Wes Addington (Appalachian Citizens' Law Center, Inc.), Whitesburg, Kentucky, for claimant.

William S. Mattingly and Jeffrey R. Soukup (Jackson Kelly PLLC), Lexington, Kentucky, for employer.

Sarah M. Hurley (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals the Decision and Order on Remand (2013-BLA-05593) of Administrative Law Judge Richard M. Clark, awarding benefits on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent claim filed on May 21, 2012[1] and is before the Board for a second time.

In his initial decision, the administrative law judge found that claimant's 2012 claim was timely filed. He rejected employer's argument that claimant's denied 2005 claim was withdrawn and thus found that Dr. Rasmussen's diagnoses of total disability due to pneumoconiosis preceding the denial of that claim did not trigger the statute of limitations. Addressing the merits of the claim, he credited claimant with twenty-two years of coal mine employment,[2] at least 16.5 years of which took place in underground coal mines. Additionally, he accepted employer's concessions that claimant has a totally disabling respiratory or pulmonary impairment and demonstrated a change in an applicable condition of entitlement. 20 C.F.R. §§718.204(b)(2), 725.309. The administrative law judge therefore determined that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[3] He further found that employer did not rebut the presumption, and awarded benefits.

[1] Claimant's initial claim for benefits, filed on December 9, 2002, was denied by the district director on November 24, 2003. Director's Exhibit 1. He filed a second claim on February 5, 2005, which was denied by Administrative Law Judge Alan Bergstrom on September 27, 2007 because he did not establish any element of entitlement. After claimant timely requested modification on April 3, 2008, the district director denied the modification request on September 12, 2008 by reason of abandonment. Although the claim was forwarded to the Office of Administrative Law Judges for a formal hearing, claimant moved to withdraw his hearing request. By Order dated November 5, 2009, Administrative Law Judge Theresa C. Timlin granted claimant's motion, advising the parties that "this matter is administratively closed and the file will be returned to the [d]istrict [d]irector for appropriate handling." Post-Remand Evidence, *see* discussion, *infra*.

[2] Claimant's last coal mine employment was in Kentucky. Director's Exhibits 1, 4, 5. Accordingly, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[3] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption that he is totally disabled due to pneumoconiosis if he establishes at least fifteen years of underground or substantially similar surface coal mine employment, and a totally disabling

On appeal, the Board rejected employer's argument that the 2005 claim was withdrawn and held that Dr. Rasmussen's diagnoses preceding the denial of that claim "were misdiagnoses that could not trigger the statute of limitations."[4] *Madden v. Consol of Ky, Inc.*, BRB No. 16-0386 BLA, slip op. at 6 (May 18, 2017) (unpub.). However, the Board stated it was unable to affirm the administrative law judge's finding that the 2012 claim was timely, as the record was incomplete. *Id.* at 7. It noted that, when the case was forwarded to the Office of Administrative Law Judges, the record did not contain the evidence from claimant's 2005 claim (his second claim), including evidence offered in connection with his modification request filed after Administrative Law Judge Alan Bergstrom's September 2007 denial of benefits. *Id.*

Because the regulations mandate that any evidence submitted in connection with any prior claim be included in the record in the subsequent claim, 20 C.F.R. §725.309(c)(2), the Board remanded the case for the administrative law judge to admit all evidence from claimant's 2005 subsequent claim that was not excluded in the adjudication of that claim.[5] *Id.* at 8. The Board instructed the administrative law judge to address whether any testimony or evidence, post-dating the September 27, 2007 Decision and Order denying benefits in the 2005 claim, supported employer's burden to rebut the presumption of timeliness under 20 C.F.R. §725.308(a). *Id.* at 9. If the administrative law judge found the claim timely, the Board instructed him to reconsider whether employer

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respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305.

[4] As the Board noted, a medical determination of total disability due to pneumoconiosis that predates a prior denial of benefits is legally insufficient to trigger the three-year time limit for filing a subsequent claim, because the medical determination must be deemed a misdiagnosis in view of the superseding denial of benefits. *Arch of Ky., Inc. v. Director, OWCP* [*Hatfield*], 556 F.3d 472, 483 (6th Cir. 2009). Thus, any medical opinion that predates the denial of claimant's 2005 claim cannot trigger the statute of limitations.

[5] The Board noted that the Director, Office of Workers' Compensation Programs (the Director), indicated that the evidence from the 2005 claim had been located and could "be submitted to the [administrative law judge] on remand for inclusion in the record." *Madden v. Consol of Ky, Inc.*, BRB No. 16-0386 BLA, slip op. at 8 (May 18, 2017) (unpub.).

rebutted the Section 411(c)(4) presumption,[6] taking into account all relevant evidence of record. *Id.*

On remand, the Director, Office of Workers' Compensation Programs (the Director), submitted the evidence from claimant's 2005 claim. After reviewing it and the other evidence of record, the administrative law judge found claimant's 2012 claim timely. He also rejected employer's argument that the Director's delay in submitting the evidence from claimant's 2005 claim violated its due process rights. Finally, he found employer did not rebut the Section 411(c)(4) presumption and awarded benefits.

On appeal, employer argues the administrative law judge lacked the authority to hear and decide the case because he had not been appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2.[7] Employer further contends the administrative law judge erred in finding this claim timely. It also argues the Director's delay in submitting the record from the 2005 claim violated its due process rights. Finally, employer contends the administrative law judge erred in finding it did not rebut the Section 411(c)(4) presumption. Claimant responds in support of the award of benefits. The Director has filed a limited response, arguing that employer waived its Appointments Clause argument by failing to raise it in its previous appeal to the Board. The Director further responds that employer's due process rights were not violated. Employer has filed a reply brief, reiterating its previous contentions.

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,

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[6] The Board affirmed, as unchallenged on appeal, the administrative law judge's determinations that claimant invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement. *Madden*, slip op. at 7 n.9.

[7] Article II, Section 2, Clause 2, sets forth the appointing powers:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Art. II, § 2, cl. 2.

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).

Appointments Clause

We agree with the Director that employer forfeited its Appointments Clause argument by failing to raise it when the case previously was before the Board. *See Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044, 2055 (2018) (requiring "a timely challenge to the constitutional validity of the appointment of an officer who adjudicates [a party's] case"); *Island Creek Coal Co. v. Wilkerson*, 910 F.3d 254, 256 (6th Cir. 2018) ("Appointments Clause challenges are not jurisdictional and thus are subject to ordinary principles of waiver and forfeiture.") (citation omitted); *see also Williams v. Humphreys Enters., Inc.*, 19 BLR 1-111, 1-114 (1995) (the Board generally will not consider new issues raised by the petitioner after it has filed its opening brief); Director's Brief at 5-7.

The exception for considering a forfeited argument due to extraordinary circumstances recognized in *Jones Brothers v. Sec'y of Labor*, 898 F.3d 669 (6th Cir. 2018) is inapplicable because, unlike the Federal Mine Safety and Health Review Commission, the Board has the long-recognized authority to address properly raised questions of substantive law. *See Gibas v. Saginaw Mining Co.*, 748 F.2d 1112, 1116-17 (6th Cir. 1984) (holding that because the Board performs the identical appellate function previously performed by the district courts, Congress intended to vest in the Board the same judicial power to rule on substantive legal questions as was possessed by the district courts); *Duck v. Fluid Crane & Constr. Co.*, 36 BRBS 120, 121 n.4 (2002) (the Board "possesses sufficient statutory authority to decide substantive questions of law including the constitutional validity of statutes and regulations within its jurisdiction").

Moreover, after the issuance of *Lucia*, employer failed to raise the issue before the administrative law judge on remand. At that time, the administrative law judge could have addressed employer's arguments and, if appropriate, referred the case to the Office of Administrative Law Judges for assignment for a new hearing before a new judge. *See Kiyuna v. Matson Terminals, Inc.*, BRBS , BRB No. 19-0103 at 4 (June 25, 2019). Therefore, we reject employer's argument that this case should be remanded to the Office of Administrative Law Judges for a new hearing before a different administrative law judge.

Timeliness of Claim

A miner's claim must be filed within three years of the date a medical determination of total disability due to pneumoconiosis has been communicated to the miner. 30 U.S.C. §932(f); 20 C.F.R. §725.308(a). A rebuttable presumption provides that every claim for benefits is timely filed, 20 C.F.R. §725.308(c), and thus the "burden falls on the employer to prove that the claim was filed outside the limitations period." *Peabody Coal Co. v.*

Director, OWCP [*Brigance*], 718 F.3d 590, 595-96 (6th Cir. 2013). Whether the evidence rebuts the presumption of timeliness involves factual findings by the administrative law judge. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-152 (1989) (en banc).

Employer contends claimant's wife's testimony at the August 26, 2015 hearing establishes that this claim is untimely. Employer's Brief at 20-22. It points to her testimony that claimant sought modification of Judge Bergstrom's September 2007 denial of benefits, and "[t]hat's when we had to go back over there again to [Dr.] Rasmussen, and we [did] that. Then [his attorney] sent him to [Dr.] Baker." Employer's Brief at 21; Hearing Transcript at 36-37. Because Dr. Baker examined claimant in July of 2008, employer contends that claimant's wife's testimony establishes that "Dr. Rasmussen told [claimant] that he is totally disabled after the 2007 benefits denial and at least three years before the 2012 claim was filed." Employer's Reply Brief at 8. We disagree.

The administrative law judge found claimant's wife's testimony "vague on precisely when [c]laimant saw Dr. Rasmussen, and what Dr. Rasmussen told him . . . ." Decision and Order on Remand at 6. Substantial evidence supports the administrative law judge's characterization of the testimony. Claimant's wife did not specify when claimant saw Dr. Rasmussen in regard to his request for modification of his denied 2005 claim. Moreover, employer acknowledges the vagueness of claimant's wife's testimony, stating that, given her reference to 2010 court proceedings,[8] it is possible that Dr. Rasmussen's examination "is from another withdrawn modification proceeding (or from a West Virginia state claim) . . . ." Employer's Brief at 22.[9] Employer also fails to point to any evidence by claimant's wife establishing what Dr. Rasmussen communicated to the miner after the denial of his

[8] Immediately after stating that claimant's counsel "sent him to [Dr.] Baker," claimant's wife testified that claimant was "[t]hen…supposed to have court in . . . December of 2010" but that his counsel "had to postpone it." Hearing Transcript at 37.

[9] Dates matter here. Claimant's current claim was filed May 21, 2012. If claimant saw Dr. Rasmussen as late as 2010, in connection with a state claim or some other withdrawn modification request, it would have been less than three years before this filing. If claimant saw Dr. Rasmussen in connection with his 2008 modification request, it could have been any time after Judge Bergstrom's 2007 denial of benefits and before Judge Timlin's November 5, 2009 Order Cancelling Hearing And Granting Withdrawal of Request for Hearing. The reference to a subsequent referral to Dr. Baker, if credited, could place the examination in 2008. Claimant's wife, however, did not specify the date on which the examination took place, and it was within the administrative law judge's discretion to determine how to construe her testimony. Consequently, substantial evidence supports the administrative law judge's finding that claimant's wife's testimony was too vague to establish an examination and communication that would make the claim untimely.

2005 claim. Thus, the administrative law judge permissibly found employer failed to meet its burden to establish that Dr. Rasmussen communicated to claimant that he was totally disabled due to pneumoconiosis after the denial of his 2005 claim but three years before he filed his 2012 claim.[10] *Brigance*, 718 F.3d at 595-96.

Accordingly we affirm the administrative law judge's finding that claimant's 2012 subsequent claim was timely filed. 30 U.S.C. §932(f); 20 C.F.R. §725.308(a).

Due Process

By order dated October 11, 2017, the administrative law judge instructed the Director to submit the evidence from claimant's 2005 claim. After submitting some evidence and receiving at least two extensions to find additional missing evidence, the Director submitted the last of the evidence from the 2005 claim by April 11, 2018. Employer contends it was deprived of its right to a full and fair hearing by the administrative law judge's "arbitrary and capricious" decision to allow the Director additional time to submit missing evidence from claimant's 2005 claim, and by the Director's lack of diligence in submitting that evidence. Employer's Brief at 9-19. Consequently, employer contends it should be dismissed as a party and liability for benefits should be transferred to the Black Lung Disability Trust Fund.[11] *Id*. We disagree.

In its prior decision, the Board directed the administrative law judge, on remand, to admit the evidence from the 2005 claim, as mandated by 20 C.F.R. §725.309(c)(2).

[10] As employer correctly points out, the administrative law judge erred to the extent he found it necessary that Dr. Rasmussen's purported medical determination of total disability due to pneumoconiosis be a reasoned opinion and provided to claimant in writing. Employer's Brief at 20-21; *see Peabody Coal Co. v. Director, OWCP* [*Brigance*], 718 F.3d 590, 594 (6th Cir. 2013); *Island Creek Coal Co. v. Henline*, 456 F.3d 421, 425-26 (4th Cir. 2006). However, because the administrative law judge properly determined that the evidence as to Dr. Rasmussen's opinion was insufficient to trigger the statute of limitations for other valid reasons, these errors were harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[11] We reject employer's argument its due process rights were violated by the Director's failure to include the evidence from the 2005 claim when the 2012 claim was transferred to the Office of Administrative Law Judges. Employer's Brief at 11. The Board previously held that employer's due process rights were not violated by the Director's initial failure to include evidence from the 2005 claim. *Madden*, slip. op. at 8-9. Because employer has not shown that the Board's decision was clearly erroneous, or set forth any other valid exception to the law of the case doctrine, we decline to disturb the Board's prior disposition. *See Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-150-51 (1990).

Madden, slip. op. at 8. As the Director acknowledges, the process of providing the evidence from that claim "could have been better handled."[12] Director's Brief at 3. Nevertheless, the Director eventually located and submitted all the evidence from the 2005 claim. At that time, the administrative law judge provided the parties additional time to request discovery, submit evidence responsive to the evidence from the 2005 claim, and file closing arguments.

An administrative law judge exercises broad discretion in resolving procedural and evidentiary matters. *See Dempsey v. Sewell Coal Corp*., 23 BLR 1-47, 1-63 (2004) (en banc); *Clark*, 12 BLR at 1-153. Thus, a party seeking to overturn an administrative law judge's disposition of a procedural or evidentiary issue must establish that the administrative law judge's action represented an abuse of discretion. *See V.B.* [*Blake*] *v. Elm Grove Coal Co*., 24 BLR 1-109, 1-113 (2009). While the Director's failure to promptly and properly submit the evidence in question is concerning, it was within the administrative law judge's discretion to keep the record open until all the evidence from the 2005 claim was admitted.

We further reject employer's argument that its due process rights were violated by the Director's delay in submitting the evidence from the 2005 claim. Employer's Brief at 9-19. Due process "is concerned with procedural outrages, not procedural glitches." *Energy W. Mining v. Oliver*, 555 F.3d 1211, 1219 (10th Cir. 2009). Employer must demonstrate it was deprived of a fair opportunity to mount a meaningful defense against the claim. *See Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 883-84 (6th Cir. 2000); *see also Consolidation Coal Co. v. Borda*, 171 F.3d 175, 184 (4th Cir. 1999). The

[12] Pursuant to an October 11, 2017 Order from the administrative law judge, the Director submitted the evidence from claimant's 2005 claim on October 27, 2017. Upon reviewing employer's closing arguments, the administrative law judge became aware that the record of the 2005 claim remained incomplete. Consequently, the administrative law judge's office contacted the Director to locate Dr. Rasmussen's January 19, 2006 examination, Dr. Baker's July 25, 2008 examination, claimant's answers to interrogatories, and claimant's evidence summary. On March 19, 2018, the Director again submitted documents from claimant's 2005 claim, but the submission again failed to include the missing exhibits. On March 28, 2018, the administrative law judge conducted a conference call, at which time claimant and employer requested that the record be closed. However, the administrative law judge instead issued an Order giving the Director until April 14, 2018 to submit the missing evidence. The Director complied with the administrative law judge's Order and, on April 12, 2018, the administrative law judge issued an order granting the parties additional time for discovery and to file supplemental briefing. The parties filed no additional evidence and did not timely file any additional briefs. Consequently, on May 15, 2018, the administrative law judge issued an Order closing the record.

administrative law judge permissibly found that employer failed to explain how it was deprived of a meaningful opportunity to form a knowledgeable defense,[13] noting that employer was a party to the prior 2005 claim and, as a result, should have been previously provided with that evidence during the adjudication of that claim. Moreover, employer ultimately received all of the evidence from the 2005 claim, and was provided an opportunity to address that evidence. Consequently, we reject employer's contention that its due process rights were violated by the administrative law judge's procedural rulings and the Director's delay in submitting evidence from claimant's 2005 claim.

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

Because claimant invoked the Section 411(c)(4) presumption, the burden shifted to employer to establish that claimant has neither legal nor clinical pneumoconiosis,[14] 20 C.F.R. §718.305(d)(1)(i), or that "no part of [his] 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). The administrative law judge found that employer failed to establish rebuttal by either method.

To establish that claimant does not have legal pneumoconiosis, employer must demonstrate he 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(a)(2),(b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015) (Boggs, J., concurring and dissenting). The

[13] Employer argues that the Director's initial omission of the evidence from the 2005 claim prevented it from "fully evaluating" Dr. Rasmussen's 2012 opinion "to elicit potentially favorable evidence for rebutting the [Section 411(c)(4)] presumption." Employer's Brief at 15. However, as the Director notes, employer does not explain how questioning Dr. Rasmussen's 2012 opinion that claimant is totally disabled due to pneumoconiosis would assist it in meeting its burden to establish rebuttal of the Section 411(c)(4) presumption. *Id.* at 4.

[14] "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). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). "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).

administrative law judge considered the opinions of Drs. Dahhan and Fino, both of whom opined that claimant does not have legal pneumoconiosis. Dr. Dahhan opined that claimant has obstructive lung disease due to cigarette smoking, sleep apnea, and obesity. Employer's Exhibits 6, 9, 10. Dr. Fino opined that claimant has both a restrictive and obstructive impairment due to asbestosis. Employer's Exhibits 1 at 9, 8 at 23-24. He also opined that the reversible portion of the obstruction was due to cigarette smoking, while the fixed airways obstruction was due to emphysema. *Id.*

The administrative law judge considered Dr. Dahhan's reasons for concluding that claimant's obstructive impairment is more likely to have come from smoking than from the inhalation of coal mine dust. Decision and Order at 10. He permissibly discredited Dr. Dahhan's opinion because he found Dr. Dahhan did not adequately address the additive effects of coal mine dust exposure and smoking, or why coal dust exposure did not contribute, along with smoking, to claimant's obstructive impairment.[15] *See Arch On The Green, Inc. v. Groves*, 761 F.3d 594, 599 (6th Cir. 2014) (holding that legal pneumoconiosis includes lung disease "caused 'in part' by coal mine employment"); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007) (holding that an administrative law judge permissibly rejected physician's opinion where physician failed to adequately explain why coal dust exposure did not exacerbate claimant's smoking-related impairments); 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000); Decision and Order at 10.[16]

[15] The administrative law judge found the fact that claimant's smoking history may have "put him at greater risk for developing COPD than his coal mine dust exposure, does not explain why, in his particular circumstances, his coal mine dust exposure could not be a factor in his" COPD. Decision and Order at 10. He further found that Dr. Dahhan did not "adequately discuss any additive effects of coal mine dust exposure, or explain why, even if the primary cause . . . was [claimant's] cigarette smoking, his significant history of coal mine dust exposure did not play a role." *Id.*

[16] Employer argues that the administrative law judge applied an improper standard by requiring Dr. Dahhan to "rule out" the existence of legal pneumoconiosis in order to rebut the Section 411(c)(4) presumption. Employer's Brief at 37-38. We disagree. The administrative law judge correctly stated that employer has the burden of establishing that claimant does not have legal pneumoconiosis, i.e., a lung disease or impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment. Decision and Order on Remand at 8; *see* 20 C.F.R. §§718.201(b), 718.305(d)(1)(i). Moreover, the administrative law judge did not reject Dr. Dahhan's opinion because it was insufficient to meet a "rule out" standard on the existence of legal pneumoconiosis. Rather, he found Dr. Dahhan's opinion not credible because he did not

The administrative law judge also permissibly discredited Dr. Fino's opinion because he failed to adequately explain how he eliminated claimant's 16.5 years of coal mine dust exposure as a significant contributor to his obstructive pulmonary impairment.[17] *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313-14 (4th Cir. 2012); *see also Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668 (6th Cir. 2015); Decision and Order on Remand at 11. Because the administrative law judge permissibly discredited Dr. Fino's explanation for excluding claimant's coal dust exposure as a cause of his disabling obstructive pulmonary impairment, we need not address his findings regarding the doctor's diagnosis of a restrictive impairment due to asbestosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

As the administrative law judge permissibly discredited the opinions of Drs. Dahhan and Fino,[18] the only opinions supportive of a finding that claimant does not suffer from legal pneumoconiosis, we affirm his finding that employer failed to disprove the existence of legal pneumoconiosis. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i). Accordingly, we affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption by establishing that claimant does not have pneumoconiosis.

The administrative law judge next considered whether employer rebutted the Section 411(c)(4) presumption by establishing that "no part of the miner's respiratory or

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adequately address the additive effect of coal mine dust with smoking or adequately explain why claimant's years of coal mine dust exposure did not also contribute to his impairment.

[17] The administrative law judge noted that Dr. Fino "stated that the reversible portion of [c]laimant's obstruction was related to his cigarette smoking and emphysema was the cause of his fixed, disabling airways obstruction." Decision and Order on Remand at 11. The administrative law judge found, however, that Dr. Fino "did not . . . discuss the relationship between [c]laimant's history of coal mine dust exposure and his disabling obstructive impairment, or his emphysema, or offer any support or rationale for his summary claim that [c]laimant's work in the coal mines did not cause or contribute to his disability." *Id.*

[18] Because the administrative law judge provided valid reasons for according less weight to the opinions of Drs. Dahhan and Fino, error, if any, in his other reasons for according less weight to the opinions is harmless. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983). Therefore, we need not address employer's remaining arguments regarding the weight accorded to the opinions of Drs. Dahhan and Fino.

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). He rationally discounted the opinions of Drs. Dahhan and Fino that claimant's disability is not due to pneumoconiosis because neither doctor diagnosed legal pneumoconiosis, contrary to the administrative law judge's finding that employer failed to disprove the existence of the disease, and they offered no explanation for their disability causation opinions apart from their determination that pneumoconiosis did not exist. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013). Therefore, we affirm the administrative law judge's determination that employer failed to prove that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis, and affirm the award of benefits. *See* 20 C.F.R. §718.305(d)(1)(ii).

Accordingly, the administrative law judge's Decision and Order on Remand awarding benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge