U.S. Department of Labor

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

BRB No. 19-0409 BLA

SYLVIA A. BRAGG (Widow of DANFORD E. BRAGG)	)	
Claimant-Respondent	)	
v.	)	
ISLAND CREEK COAL COMPANY	)	DATE ISSUED: 09/09/2020
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 Awarding Benefits of Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

Samuel B. Petsonk (Petsonk, PLLC), Beckley, West Virginia, for Claimant.

Joseph D. Halbert and Crystal L. Moore (Shelter, Branham & Halbert, PLLC), Lexington, Kentucky, for Employer.

Before: BUZZARD, GRESH, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge Theresa C. Timlin's Decision and Order Awarding Benefits (2017-BLA-05461) rendered on a survivor's claim filed on

September 17, 2015, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The administrative law judge found Claimant[1] established the Miner had twenty years of qualifying coal mine employment and was totally disabled. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant invoked the presumption that the Miner's death was due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018). The administrative law judge further determined Employer did not rebut the presumption and awarded benefits.

Employer contends the administrative law judge erred in finding the Miner totally disabled and that Claimant thereby invoked the Section 411(c)(4) presumption. Employer further argues the administrative law judge erred in finding the presumption unrebutted. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[3]

The Benefit Review Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order 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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

---

[1] Claimant is the widow of the Miner, who died on September 11, 2014. Director's Exhibit 17.

[2] Under Section 411(c)(4) of the Act, Claimant is entitled to a presumption that the Miner's death was due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and was totally disabled by a respiratory or pulmonary impairment at the time of his death. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

[3] We affirm, as unchallenged, the administrative law judge's finding that the Miner had twenty years of qualifying coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 8.

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

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

To invoke the Section 411(c)(4) presumption, a claimant must establish that the miner "had at the time of his death, a totally disabling respiratory or pulmonary impairment[.]" 20 C.F.R. §718.305(b)(1)(iii). A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). Total disability may be established based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must consider all relevant evidence and weigh the evidence supporting a finding of total disability against the contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). Employer challenges the administrative law judge's finding that Claimant established total disability based on the pulmonary function study and medical opinion evidence.[5] 20 C.F.R. §718.204(b)(2)(i), (iv).

Pulmonary Function Studies

The administrative law judge considered two pulmonary function studies. She noted Dr. Porterfied's December 17, 2012 study listed the Miner's height as 70.5 inches, while Dr. Gaziano's May 8, 2013 study did not have a recorded height. Decision and Order at 10; Claimant's Exhibits 1, 2. Relying on the December 17, 2012 recorded height of 70.5 inches when applying 20 C.F.R. Part 718, Appendix B, she found both studies qualifying for total disability[6] before and after use of bronchodilators. Decision and Order at 10.

[5] The administrative law judge found the parties did not designate arterial blood gas studies for consideration and that there is no evidence in the record indicating the Miner suffered from cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 11-12.

[6] A "qualifying" pulmonary function study yields values for a miner's applicable height and age that are equal to or less than the values specified in the table at 20 C.F.R. Part 718, Appendix B. A non-qualifying study exceeds these values. *See* 20 C.F.R. §718.204(b)(2)(i). The qualifying values are set forth by gender, height, and age, and are sixty-percent of normal predicted values. *See* 43 Fed. Reg. 17,722, 1729-31 (Apr. 25, 1978), *citing* R.J. Knudson, et al., The Maximal Expiratory Flow-volume Curve: Normal Standards, Variability, and Effects of Age, 113 Am. Rev. Respir. Dis. 587-660 (May 1976); 45 Fed. Reg. 13,711 (Feb. 29, 1980). The maximum age for which values are reported is 71 years. 20 C.F.R. Part 718, Appendix B.

Because the December 17, 2012 study did not have the three tracings the quality standards require, the administrative law judge gave it less probative weight; nonetheless, she noted the results were similar to those from the May 8, 2013 study. *Id*. at 11. Relying on the May 8, 2013 study, which she found both valid and qualifying, the administrative law judge determined the pulmonary function study evidence supported a finding that the Miner was totally disabled. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 11.

Employer contends the administrative law judge erred in finding the May 8, 2013 study valid because Dr. Tuteur indicated it occurred "*shortly after* the [Miner's] coronary artery bypass graft, [his] development of dysrhythmias, and the presence of congestive heart failure." Employer's Exhibit 3 (emphasis added). Dr. Tuteur stated the study was "valid and accurate as an assessment of physiologic status" but "may not truly represent [the Miner's] baseline pulmonary function."[7] *Id*. He thus concluded the study's results "are not useful." *Id*.

The administrative law judge specifically considered Dr. Tuteur's statements regarding the May 8, 2013 study. Contrary to Employer's contention, she permissibly found his opinion that the test may not represent the Miner's pulmonary function unpersuasive because, "although [he] is correct that [the] Miner's May 8, 2013 test occurred at a time of 'progressive cardiovascular illness,' it also occurred during a time when [the] Miner underwent treatment for various pulmonary impairments." Decision and Order at 11. Specifically, she noted the Miner had been diagnosed with emphysema, asthma, interstitial lung disease and hypoxemia, in addition to coronary artery disease. *Id*., *citing* Director's Exhibit 19, Claimant's Exhibit 10. Because the administrative law judge permissibly found Dr. Tuteur did not take into account the Miner's "respiratory issues," we affirm her rejection of his opinion and her determination that the May 8, 2013 pulmonary function study is valid.[8] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533

---

[7] Employer maintains the Miner's heart condition precludes reliance on the May 8, 2013 study and incorrectly states that the regulations do not specify what type of illness should be taken into consideration in determining the validity of a test. Employer's Brief at 7. The regulations specifically provide that "[t]ests shall not be performed during or soon after an *acute respiratory* illness." 20 C.F.R. Part 718, App. B (2)(i) (emphasis added).

[8] Substantial evidence further supports the administrative law judge's finding. Dr. Vuskovich opined that the May 8, 2013 pulmonary function study was valid based on the Miner's effort. Employer's Exhibit 3. Dr. Go correctly noted that the May 10, 2013 study was performed *before* the Miner underwent coronary artery graft surgery as part of the pre-operative testing. Claimant's Exhibit 3. Dr. Go stated that nothing in the record indicates

(4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 11.

Citing *K.J.M.* [*Meade*] v. *Clinchfield Coal Co.*, 24 BLR 1-40 (2008), Employer also contends the administrative law judge erred in treating the May 8, 2013 pulmonary function study as qualifying based on the table values for a 71 year old, when the Miner was 74 when he performed the test. Employer's Brief at 6. The Board held in *Meade* that, *in the absence of contrary probative evidence*, pulmonary function studies performed on a miner who is over the age of 71 must be treated as qualifying if the values produced would be qualifying for a 71 year old. *Meade*, 24 BLR at 1-147. The Board indicated that contrary probative evidence, such as using the Knudson formula to extrapolate different predicted values for a person over the age of 71, "relates to the credibility of the pulmonary function study results as an indicator of total disability" and likened it to evidence "challenging the technical validity" of a study. *Id*.

The totality of Employer's argument is that, pursuant to *Meade*, the administrative law judge erred in failing to consider that Drs. Tuteur and Vuskovich "both stated that the [pulmonary function study] evidence . . . revealed a non-disabling impairment." Employer's Brief at 6. Employer does not, however, identify any evidence calling into question utilizing the table values for a 71 year old to find it qualifying. Moreover, while Employer's post-hearing brief to the administrative law judge raised various challenges to the pulmonary function study evidence, it did not allege that the table values for a 71 year old should not be used to determine whether the Miner's testing is qualifying at 20 C.F.R. §718.204(b)(2)(i). Employer's Post-Hearing Brief at 9-13. We therefore affirm the administrative law judge's reliance on *Meade* and the table values for a 71 year old to find that the May 8, 2013 pulmonary function test is qualifying for total disability. Decision and Order at 10 n.8.

We further reject Employer's contention the claim must be remanded for the administrative law judge to resolve the purported conflict in the evidence regarding the Miner's height before applying the table values at Appendix B to find the May 8, 2013 study qualifying. Employer's Brief at 4-5. In weighing the two pulmonary function studies submitted as affirmative evidence, the administrative law judge accurately noted that Dr. Porterfield's December 17, 2012 study recorded a height of 70.5 inches while Dr. Gaziano's May 8, 2013 study failed to record a height. Decision and Order at 10. Thus, she permissibly resolved the discrepancy by applying "the height recorded by Dr. Porterfield for analysis of both pulmonary function studies." *Id*.; *see Toler v. Eastern*

---

that the Miner "was not at his baseline function at the time" the May 10, 2013 study was performed. *Id*.

Associated Coal Co., 43 F.3d 109, 114 (4th Cir. 1995) (administrative law judge must resolve discrepancy between recorded heights on pulmonary function studies).

Employer asserts the administrative law judge erred in finding the Miner's height to be 70.5 inches without considering other references to Claimant's height in the medical opinions and treatment records. Even assuming the administrative law judge should have considered heights beyond those recorded on the designated pulmonary function studies, for the purpose of determining whether those studies are qualifying, Employer has not established error in her finding that the May 8, 2013 study is qualifying.

Employer notes that the FEV1 value for this study would be non-qualifying (by one one-hundredth of a litre) only if the administrative law judge found the Miner's height to be 66.9 inches or less. Employer's Brief at 5. Yet, all of the heights recorded on the pulmonary function studies that Employer identifies in the record exceed 66.9 inches; thus the May 8, 2013 study would be qualifying at any of the following alternative heights: 70.5 inches, recorded during Dr. Porterfield's 2012 pulmonary function study and a treatment record pulmonary function study Dr. Rasmussen conducted in 1993; 67.5 inches, listed in a 1993 treatment record from Dr. Rasmussen; and 67 inches, recorded in a 1987 pulmonary function study in a treatment record. Director's Exhibit 18; Claimant's Exhibits 1, 2, 8; 9; Employer's Brief at 4-5; Employer's Post-Hearing Brief at 10.

To the extent Dr. Rasmussen's 1993 pulmonary function study similarly recorded a height of 70.5 inches, we reject Employer's assertion that the administrative law judge should have discredited Dr. Porterfield's measurement of 70.5 inches as "a drastic outlier to the other height measurements of record." Employer's Brief at 5. Additionally, the only evidence Employer identifies indicating a height below 66.9 inches is a medical report from Dr. Go, who did not measure the Miner but instead offered an estimate of his height as 66.6 inches based on an extrapolation using the Miner's "recorded weight and body mass index." Claimant's Exhibit 3. Employer does not, however, explain why Dr. Go's extrapolation of 66.6 inches is more credible than Dr. Porterfield's actual measurement of 70.5 inches or any of the other heights listed in the record which, if utilized, indicate that the values the May 8, 2013 study yielded are qualifying. *See Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993).

Moreover, the regulations specifically provide that despite non-qualifying pulmonary function studies or blood gas studies, total disability may be established if a physician, exercising reasoned medical judgment based on medically acceptable diagnostic techniques, concludes a miner's respiratory or pulmonary condition prevented him from performing his usual coal mine work. 20 C.F.R. §718.204(b)(2)(iv). Thus, a physician may offer a reasoned medical opinion diagnosing total disability even though the objective studies are non-qualifying. *See Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th

Cir. 2005); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 587 (6th Cir. 2000) ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"). As discussed below, the administrative law judge permissibly determined that Claimant established total disability based on Dr. Go's opinion.

We therefore affirm the administrative law judge's determination that the pulmonary function study evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(i).

Medical Opinion Evidence

The administrative law judge found the Miner's last coal mine employment as a heavy equipment operator required him to perform heavy manual labor. Decision and Order at 5. We affirm that finding as it is unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

In addition, she credited Dr. Go's opinion that the Miner was totally disabled over the contrary opinions of Drs. Tuteur and Vuskovich. *Id*. at 20. However, Employer contends Dr. Go's opinion is not credible because he relied on the May 8, 2013 pulmonary function study which Employer alleges is invalid. Employer's Brief at 7. Having affirmed the administrative law judge's finding that the May 8, 2013 study is both valid and probative of the Miner's respiratory capacity, we reject Employer's contention.[9]

Dr. Go opined the Miner was totally disabled from performing the heavy manual labor his usual coal mine work required. Claimant's Exhibit 3. Dr. Go noted the Miner last worked from 1985 to 1991 as a heavy equipment operator, which required him to climb for approximately two to three hours daily, lift 20-pound loads five to six times daily, and carry 30-pound loads twenty feet one to two times daily. *Id*. He indicated the pulmonary function studies[10] showed moderate to severe obstruction with associated air trapping, and

[9] Employer also contends Dr. Go's opinion is not credible because he indicated the Miner had hypoxemia whereas the administrative law judge found the blood gas study evidence "normal." Employer's Brief at 7. Contrary to Employer's characterization, the administrative law judge did not consider any blood gas study evidence at 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 11.

[10] In addition to the May 8, 2013 study, Dr. Go reviewed a September 17, 1987 pulmonary function study contained in the Miner's treatment records, as well as Dr. Rasmussen's August 26, 1993 pulmonary function study. Claimant's Exhibits 3, 8, 9. The administrative law judge summarized the results of these significantly older studies, but did not weigh them at 20 C.F.R. §718.204(b)(2)(i).

further noted the Miner "required oxygen supplementation continuously." *Id.* Dr. Go opined the Miner was "totally disabled for his last coal mine job as a heavy equipment operator as his pulmonary function abnormalities and his hypoxemia each would have kept him from being able to perform tasks related to his last coal mining job, which included frequent climbing, as well as lifting and carrying 30-pound loads." *Id*.

The administrative law judge found Dr. Go's opinion credible because the doctor considered the exertional requirements of the Miner's last coal mine job and "reviewed much, if not all, of the medical evidence of record." Decision and Order at 19. Because the administrative law judge acted within her discretion in finding Dr. Go's opinion "well-documented and well-reasoned," we affirm her finding that it is sufficient to establish the Miner was totally disabled. *Id.*; *see Compton v. Island Creek Coal Co.*, 211 F.3d 203, 211 (4th Cir. 2000); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997).

The administrative law judge permissibly rejected Dr. Tuteur's opinion that the Miner was not totally disabled because she discredited his explanation that there were no valid or "useful" pulmonary function studies upon which to assess the Miner's respiratory impairment. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 19; Employer's Exhibit 2.

We also affirm the administrative law judge's discrediting of Dr. Vuskovich's opinion that the Miner was not totally disabled. Employer's Exhibit 3. She noted correctly that Dr. Vuskovich listed the Miner's various coal mine jobs and opined he could have returned to his usual coal mine work. Decision and Order at 19. However, she also noted correctly that, unlike Dr. Go, Dr. Vuskovich did not identify the Miner's last coal mine job or specifically discuss whether he could have performed the physical demands of that job. *Id*. Because the administrative law judge was unable to discern whether Dr. Vuskovich understood the Miner's usual coal mine work required heavy manual labor, we affirm her determination to give his opinion less weight. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 19.

The administrative law judge has discretion to weigh the medical evidence and draw her own inferences therefrom. *See Grizzle*, 994 F.2d at 1096. The Board is not empowered to reweigh the evidence or substitute its judgment for that of the administrative law judge. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988). Because the administrative law judge acted within her discretion in finding the pulmonary function study evidence supports a finding of total disability and crediting Dr. Go's opinion, we affirm her finding that Claimant established

total disability based on the medical opinion evidence and the evidence as a whole. 20 C.F.R. §718.204(b)(2); *Compton*, 211 F.3d at 211; *Underwood*, 105 F.3d at 949; Decision and Order at 20. Thus, we affirm the administrative law judge's finding that Claimant invoked the Section 411(c)(4) presumption that the Miner's death was due to pneumoconiosis. 30 U.S.C. §921(c)(4) (2012); Decision and Order at 7, 25.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden of proof shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[11] or "no part of [his] death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(2)(i), (ii). The administrative law judge found Employer failed to establish rebuttal by either method.[12]

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish the Miner did not have a chronic lung disease or impairment "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).

Employer contends the administrative law judge erred in finding Dr. Tuteur's and Dr. Vuskovich's opinions inadequately reasoned to disprove the Miner had legal pneumoconiosis. Employer asserts that in rejecting Dr. Tuteur's opinion for relying on statistics, the administrative law judge improperly required it to "rule out" the Miner had legal pneumoconiosis. Employer's argument is without merit.

Dr. Tuteur opined the Miner had a mild obstructive impairment associated with very mild chronic bronchitis. Employer's Exhibit 2. He stated the 2012 and 2013 pulmonary function studies were "not useful" to determine the etiology of Miner's obstructive disease

[11] "Legal pneumoconiosis" includes "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial 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).

[12] The administrative law judge found Employer disproved clinical pneumoconiosis. Decision and Order at 28.

because the 2012 test was invalid and the 2013 test occurred "at a time of progressive cardiovascular illness." *Id.* Using a "relative risk" assessment and statistics from medical studies purporting to show that the chances of developing pneumoconiosis are rare, Dr. Tuteur attributed the Miner's obstructive lung disease to smoking with no contribution from coal mine dust exposure. *Id.*

Contrary to Employer's contention, the administrative law judge did not impose a "rule out" standard in analyzing Dr. Tuteur's rationale for excluding a diagnosis of legal pneumoconiosis. Employer's Brief at 10. She permissibly found that even if pneumoconiosis is statistically rare, Dr. Tuteur did not adequately explain why the Miner "could not be part of the cohort of individuals susceptible to pneumoconiosis." *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 27. We see no error in her determination that Dr. Tuteur's opinion is based on generalities and therefore not persuasive to disprove the Miner had legal pneumoconiosis.[13] *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 (4th Cir. 2017); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Knizer v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); Decision and Order at 27-28.

Employer also contends the administrative law judge mischaracterized Dr. Vuskovich's opinion as inconsistent with the preamble to the 2001 revised regulations. We disagree. Employer's Brief at 11. Dr. Vuskovich opined the Miner had asthma not caused by coal mine dust exposure. Employer's Exhibit 3. He diagnosed asthma based on the variance between the Miner's May 2013 and December 2012 FEV1 values. Employer's Exhibit 3. He explained that legal pneumoconiosis "is fixed and does not vary over time and may progress with time." *Id.* The administrative law judge accurately noted, however, that the preamble recognizes asthma as a form of chronic obstructive pulmonary disease that can constitute legal pneumoconiosis if it is caused or aggravated by coal mine dust exposure. Decision and Order at 29, *citing* 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000). She permissibly found Dr. Vuskovich's opinion inadequately reasoned because he did not address the possibility that the Miner "could concurrently have suffered from asthma related to coal mine dust exposure." *Id*. at 29; *see Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013) (Traxler, C.J., dissenting); *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441.

[13] Employer asserts the administrative law judge improperly discounted Dr. Tuteur's opinion by misapplying the Section 411(c)(4) presumption. Employer's Brief at 10. Having affirmed the administrative law judge's finding that Claimant invoked the presumption, we reject Employer's assertion.

Because the administrative law judge acted within her discretion in finding Employer did not disprove legal pneumoconiosis, we affirm that finding. *See Grizzle*, 994 F.2d at 1096; Decision and Order at 29-30. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis. 20 C.F.R. §718.305(d)(2)(i).

Disability Causation

The administrative law judge found Employer failed to establish that "no part of the miner's death was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(2)(ii). As Employer raises no specific challenge to the administrative law judge's finding it did not disprove the Miner's death was caused by legal pneumoconiosis, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order at 26. Thus, we affirm the administrative law judge's determination that Employer did not rebut the Section 411(c) (4) presumption and further affirm the award of benefits. 30 U.S.C. §921(c)(4) (2012).

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge