

U.S. Department of Labor

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



BRB No. 15-0145 BLA

RICHARD N. BURDEN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WARRIOR COAL, LLC	)	
	)	DATE ISSUED: 01/15/2016
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 Peter B. Silvain, Jr., Administrative Law Judge, United States Department of Labor.

Brent Yonts, Greenville, Kentucky, for claimant.

Carl M. Brashear (Hoskins Law Offices, LLC), Lexington, Kentucky, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2011-BLA-5981) of Administrative Law Judge Peter B. Silvain, Jr., rendered on a claim filed pursuant to

the provisions of the Black Lung Benefits Act, 30 U.S.C. as amended 30 U.S.C. §§901-944 (2012). This case involves a claim filed on July 15, 2010.<sup>1</sup> Director's Exhibit 2.

Applying Section 411(c)(4), 30 U.S.C. §921(c)(4),<sup>2</sup> the administrative law judge credited claimant with thirty-seven years of qualifying coal mine employment,<sup>3</sup> as stipulated by the parties and supported by the record, and found that the evidence established that claimant has a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge, therefore, found that claimant invoked the rebuttable presumption that the miner is totally disabled due to pneumoconiosis set forth at Section 411(c)(4). The administrative law judge also found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in his analysis of the medical opinion evidence when he found that employer did not rebut the Section 411(c)(4) presumption. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.<sup>4</sup>

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<sup>1</sup> A formal hearing was held in this case on July 18, 2012. At the hearing, following the admission of Director's Exhibits 1-33, Claimant's Exhibits 1-9, and Employer's Exhibits 1-7, the record was held open for any additional evidentiary development. Following the hearing, employer submitted the August 24, 2012 deposition testimony of Dr. Chavda and the September 25, 2012 deposition testimony of Dr. Repsher. In his Decision and Order, the administrative law judge discussed the testimony of both physicians, but the exhibits are not numbered.

<sup>2</sup> Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where at least fifteen years in underground coal mine employment, or in surface mine employment in conditions substantially similar to those of an underground mine, and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

<sup>3</sup> The record reflects that claimant's coal mine employment was in Kentucky. Director's Exhibits 3, 10, 11. Accordingly, this case arises within the jurisdiction 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).

<sup>4</sup> Because employer does not challenge the administrative law judge's finding that invocation of the Section 411(c)(4) presumption was established, this finding is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

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. 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).

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

Because claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to employer to rebut the presumption by establishing that claimant does not have either legal or clinical pneumoconiosis,<sup>5</sup> 20 C.F.R. §718.305(d)(1)(i), or by establishing that "no part of the miner'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). The administrative law judge found that employer failed to establish rebuttal by either method.

In evaluating whether employer established that claimant does not have legal pneumoconiosis, the administrative law judge considered the medical opinions of Drs. Castle and Repsher.<sup>6</sup> Dr. Castle opined that claimant does not suffer from legal pneumoconiosis, but suffers from hypoxemia, as reflected by the arterial blood gas study results, and has a history of asthma and cardiac disease. Dr. Castle opined that claimant's

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<sup>5</sup> "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 encompasses any chronic respiratory or pulmonary disease or 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).

<sup>6</sup> The administrative law judge also considered the opinions of Drs. Chavda and Houser. Dr. Chavda diagnosed legal pneumoconiosis, in the form of hypoxia due to coal mine dust exposure and smoking. Decision and Order at 10-15; Director's Exhibit 15; Claimant's Exhibit 9; Dr. Chavda's Deposition at 10-11. Dr. Chavda also diagnosed chronic obstructive pulmonary disease (COPD) but did not specify its cause. Claimant's Exhibit 9. Dr. Houser diagnosed legal pneumoconiosis, in the form of mild COPD and hypoxemia due to the inhalation of coal mine dust and cigarette smoking. Claimant's Exhibit 5.

hypoxemia is most likely due to obesity, and is not related to coal mine dust exposure. Employer's Exhibit 6 at 8-10. Dr. Repsher similarly opined that claimant does not have legal pneumoconiosis, but suffers from hypoxemia, and has a history of asthma. Employer's Exhibit 2 at 3; Dr. Repsher's Deposition at 8. Dr. Repsher stated that the cause of claimant's hypoxemia is "multifactorial, [and] most prominently [due to] his obesity and his coronary disease," and emphasized that claimant does not suffer from any pulmonary or respiratory condition either caused or aggravated by coal mine dust exposure. Employer's Exhibit 2 at 3; Dr. Repsher's Deposition at 7, 9-10, 27. The administrative law judge discredited the opinions of Drs. Castle and Repsher because he found that neither was well-reasoned. Decision and Order at 29-33. The administrative law judge, therefore, found that employer failed to disprove the existence of legal pneumoconiosis. Decision and Order at 33.

Employer argues that the administrative law judge erred in his consideration of the opinions of Drs. Castle and Repsher. We disagree. The administrative law judge permissibly questioned the opinions of Drs. Castle and Repsher, regarding the cause of claimant's hypoxemia, because neither doctor adequately explained how he eliminated claimant's coal mine dust exposure as a source of the impairment. *See Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); *Tenn. 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); Decision and Order at 30-32. Specifically, the administrative law judge found that while Dr. Castle acknowledged claimant's work history, stating that claimant "certainly worked in or around the underground mining industry for a sufficient enough time" to have developed pneumoconiosis, he did not adequately explain why he believes that claimant's thirty-seven years of coal mine dust exposure did not contribute to, or exacerbate, claimant's impairment. *See Barrett*, 478 F.3d at 356, 23 BLR at 2-483; *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 at 31-32.

Likewise, the administrative law judge permissibly found that while Dr. Repsher opined that the causes of claimant's hypoxemia are "multifactorial," the physician offered no creditable explanation why claimant's thirty-seven years of coal mine dust exposure was not one of the contributing causes, or why coal mine dust exposure did not exacerbate claimant's impairment. Decision and Order at 30-31. Further, as noted by the administrative law judge, Dr. Repsher excluded coal mine dust exposure as a cause of claimant's impairment based, in part, on his opinion that miners who worked entirely or mostly after 1970 are less likely to develop coal workers' pneumoconiosis because they have been exposed to lower concentrations of coal dust. Decision and Order at 30; Employer's Exhibit 2. The administrative law judge permissibly found that, to the extent Dr. Repsher's opinion is based on generalities, rather than on the specifics of claimant's

case, his opinion is entitled to diminished weight. *See Consolidation Coal Co. v. Director, OWCP [Beeler]*, 521 F.3d 723, 726, 24 BLR 2-97, 2-103-04 (7th Cir. 2008); *Knizer v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); Decision and Order at 31. As the administrative law judge's bases for discrediting the opinions of Drs. Castle and Repsher are rational and supported by substantial evidence, these findings are affirmed. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005).

Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Castle and Repsher, the only opinions supportive of a finding that claimant does not suffer from legal pneumoconiosis, we affirm the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption by disproving the existence of legal pneumoconiosis. Employer's failure to disprove the existence of legal pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis.<sup>7</sup> *See* 20 C.F.R. §718.305(d)(1).

The administrative law judge next addressed whether employer could establish rebuttal by showing that no part of claimant's respiratory or pulmonary disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 33. The administrative law judge permissibly discounted the disability causation opinions of Drs. Castle and Repsher because the physicians did not diagnose legal pneumoconiosis, contrary to the administrative law judge's finding that employer failed to disprove legal pneumoconiosis. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-452 (6th Cir. 2013); *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05, BLR (4th Cir. 2015). Thus, we affirm the administrative law judge's finding that employer failed to establish that no part of the miner's respiratory disability was caused by pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(ii).

Because claimant established invocation of the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis, and employer did not rebut the presumption, claimant established all of the elements of entitlement. *See* 20 C.F.R. §§718.305(c); 718.202(a)(3); 718.204(c)(2).

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<sup>7</sup> Thus, to the extent employer challenges the administrative law judge's finding that employer also failed to disprove the existence of clinical pneumoconiosis, we need not address these allegations. *See* 20 C.F.R. §718.305(d)(1); Employer's Brief at 2-3.

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

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

JUDITH S. BOGGS  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge