U.S. Department of Labor

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

BRB No. 15-0320 BLA

BETTY ROUSH[1] (o/b/o CLAUDE ROUSH, deceased)	)	
Claimant-Respondent	)	
v.	)	
CONSOLIDATION COAL COMPANY	)	DATE ISSUED: 06/22/2016
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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Heath M. Long (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

Ashley M. Harmon (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

[1] The miner died on February 13, 2014. Decision and Order at 15 n.20, 17; Hearing Tr. at 9-10. Claimant, the miner's surviving spouse, is pursuing the miner's claim.

Employer appeals the Decision and Order Awarding Benefits (2013-BLA-05757) of Administrative Law Judge Richard A. Morgan rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's claim filed on June 6, 2012.

Applying Section 411(c)(4), 30 U.S.C. §921(c)(4),[2] the administrative law judge credited the miner with twenty-five years of qualifying coal mine employment, and found that the evidence established that the miner had 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 was totally disabled due to pneumoconiosis set forth at Section 411(c)(4). The administrative law judge further found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erred in finding that employer did not rebut the Section 411(c)(4) presumption. Specifically, employer asserts that the administrative law judge erred in weighing the relevant evidence, and that his decision violated the requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief. Employer filed a reply brief reiterating its contentions.[3]

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,

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305(b).

[3] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant established twenty-five years of qualifying coal mine employment and the existence of a totally disabling respiratory or pulmonary impairment, pursuant to 20 C.F.R. §718.204(b)(2). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3, 29.

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).

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 the miner had neither legal nor clinical pneumoconiosis,[5] or by establishing that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii).

Having found that employer disproved the existence of clinical pneumoconiosis, the administrative law judge addressed whether employer established that the miner did not have legal pneumoconiosis. The administrative law judge found that while the physicians agreed that the miner suffered from a disabling gas exchange impairment due to interstitial pulmonary fibrosis or other medical conditions, they disagreed as to the contribution, if any, by coal mine dust to the miner's diagnosed conditions or impairment. The administrative law judge noted that Drs. Cohen, Begley, and Allen diagnosed legal pneumoconiosis, in that they each attributed the miner's severe pulmonary impairment, at least in part, to coal mine dust exposure. Decision and Order at 24-26; Director's Exhibits 13, 32; Claimant's Exhibits 1, 4; Employer's Exhibit 8. In contrast, Drs. Spagnolo and Bellotte opined that the miner did not suffer from legal pneumoconiosis, and attributed his severe pulmonary impairment to interstitial fibrosis due to cardiac

[4] The record reflects that the miner's coal mine employment was in West Virginia. Director's Exhibit 4; Hearing Tr. at 8-9. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[5] "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).

failure and other medical problems, unrelated to coal mine dust exposure.[6] Decision and Order at 25-27; Director's Exhibit 31; Employer's Exhibits 6, 11.

The administrative law judge began his analysis of the medical opinions by comparing the physicians' qualifications and expertise. Having summarized their qualifications in detail, the administrative law judge found that Drs. Cohen and Bellotte are the most highly qualified physicians of record, as both are Board-certified in Internal Medicine with a sub-specialty in Pulmonary Disease, both served as hospital directors and professors in the areas of pulmonary and respiratory medicine, and both published articles about lung disease. The administrative law judge then found that Drs. Spagnolo and Begley are the next best qualified, as they are also both Board-certified in Internal Medicine with a sub-specialty in Pulmonary Disease. Finally, the administrative law judge found that Dr. Allen is the least well-qualified, as she does not have a subspecialty in pulmonary medicine.

The administrative law judge then examined the physicians' reasoning and found that Dr. Cohen's diagnosis of legal pneumoconiosis was well-documented and well-reasoned. Decision and Order at 22, 26-27. The administrative law judge found that the opinions of Drs. Begley and Allen, diagnosing legal pneumoconiosis, were also well-reasoned, but entitled to "slightly less weight," due to weaknesses in the documentation of their reports. Decision and Order at 25-27. Reviewing the contrary medical opinions, the administrative law judge found that the opinion of Dr. Spagnolo, that the miner did not have legal pneumoconiosis, was also well-reasoned and well-documented. The administrative law judge discounted Dr. Bellotte's opinion, however, finding it to be inadequately explained. Decision and Order at 23-24.

Weighing the medical opinions together, the administrative law judge noted that Dr. Cohen, whom he found to be one of the two best qualified physicians of record, and Drs. Begley and Allen, each offered a well-reasoned opinion diagnosing legal pneumoconiosis while, in contrast, only Dr. Spagnolo offered a well-reasoned opinion concluding that the miner did not have legal pneumoconiosis. Decision and Order at 27. Therefore, the administrative law judge concluded that employer failed to meet its burden

[6] The administrative law judge also considered the opinion of Dr. Selby, who treated the miner, together with the miner's other hospitalization and treatment records. Decision and Order at 16-17, 24. The administrative law judge noted that while the miner's hospitalization and treatment records document various pulmonary and cardiac conditions, they do not contain an opinion as to whether the miner had legal pneumoconiosis. Decision and Order at 24; Employer's Exhibits 1, 2, 10.

of proof to disprove the existence of legal pneumoconiosis by a preponderance of the evidence. Decision and Order at 27.

Employer argues that the administrative law judge erred in discrediting Dr. Bellotte's opinion. Employer's Brief at 7-13. We disagree. As summarized by the administrative law judge, Dr. Bellotte excluded coal mine dust exposure as a cause of the miner's pulmonary fibrosis and associated gas exchange impairment based, in part, on his opinion that the length of time between when the miner left the mines and when his symptoms began,[7] together with the x-ray changes in the lower lung zones, supported a non-coal mine dust-related etiology.[8] Director's Exhibit 31 at 7; Employer's Exhibit 11 at 19, 28, 35. The administrative law judge permissibly found that this reasoning was inconsistent with the regulations, which recognize that pneumoconiosis is a latent and progressive disease that "may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151, 11 BLR 2-1, 2-9 (1987); *Peabody Coal Co. v. Odom*, 342 F.3d 486, 22 BLR 2-612 (6th Cir. 2003); Decision and Order 25.

Further, there is no merit to employer's contention that, in discrediting Dr. Bellotte's opinion, the administrative law judge "determin[ed] that [Dr. Bellotte's] diagnosis of idiopathic pulmonary fibrosis automatically precludes exclusion of coal workers' pneumoconiosis." Employer's Brief at 9. Rather, the administrative law judge permissibly found that, in light of Dr. Bellotte's acknowledgement that coal mine dust exposure can cause diffuse interstitial fibrosis, Dr. Bellotte did not adequately explain why the miner's twenty-five years of coal mine dust exposure did not aggravate or contribute to the miner's interstitial fibrosis and associated gas exchange impairment, along with his acid reflux disease, cardiac disease, and possible smoking-related lung cancer. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th

[7] Dr. Bellotte stated: "[T]he reason that I chose that [the miner] probably didn't have occupational pneumoconiosis causing his [pulmonary fibrosis] is because, when he leaves the mines in 1995, he's really not having problems with his breathing. He has myocardial infarction and has multiple cardiac problems after that. There's not much in the way of pulmonary problems or abnormal chest x-rays between 1995 and 2010 . . . most of that progression would develop in the first decade and [would be] less likely to develop in the second decade." Employer's Exhibit 11 at 28-29.

[8] Dr. Bellotte opined that the x-ray changes over time in this case are not typical of a latent and progressive pneumoconiosis and do not follow the expected course of coal worker's pneumoconiosis, because there are no conglomerate masses and the x-ray changes predominate in the lower lung zones, which fits the clinical pictures of the miner's other medical diagnoses. Decision and Order at 12-13, 25-26; Director's Exhibit 31 at 7.

Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *Barber v. Director, OWCP*, 43 F.3d 899, 901, 19 BLR 2-61, 2-67 (4th Cir. 1995); *Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 939, 2 BLR 2-38, 2-43-44 (4th Cir. 1980); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 24-25. As the administrative law judge's basis for discrediting the opinion of Dr. Bellotte is rational and supported by substantial evidence, this finding is affirmed. *Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208, 22 BLR 2-162, 2-168 (4th Cir. 2000); *Lane v. Union Carbide Corp.*, 105 F.2d 166, 174, 21 BLR 2-34, 2-48 (4th Cir 1997).

Employer also argues that the administrative law judge erred in crediting the opinions of Drs. Cohen, Begley, and Allen that the miner suffered from legal pneumoconiosis, over the contrary opinion of Dr. Spagnolo.[9] Employer's Brief at 13-21, 27-28. Employer specifically argues that the administrative law judge erred in finding that the diagnoses of legal pneumoconiosis by Drs. Cohen, Begley, and Allen were sufficiently reasoned. Employer's Brief at 13-21. We disagree.

Dr. Cohen reviewed the available medical evidence of record, and Drs. Begley and Allen examined the miner, recorded his employment, smoking, and medical histories, and performed objective testing. Decision and Order at 11, 13-16; Director's Exhibits 13, 32; Claimant's Exhibits 1, 4; Employer's Exhibit 8. In finding Dr. Cohen's opinion to be well-reasoned and well-documented, the administrative law judge initially noted that Dr. Cohen is Board-certified in Internal Medicine, with subspecialties in pulmonary disease and critical care,[10] and that he considered a coal mine employment history of twenty-five

[9] Dr. Spagnolo opined that the miner's respiratory complaints are "most likely explained by his many years of severe and progressive cardiac disease." Employer's Exhibit 6 at 12. He stated that the miner had no "primary" pulmonary impairment, that all of his impairment was "secondary to heart failure," and that "whatever impairment was related to [the miner's] blood gases, DLCO was secondary to his heart failure." Employer's Exhibit 11 at 51-52. He opined that the miner did not have clinical or legal pneumoconiosis and did not have a pulmonary or respiratory impairment or condition that has been aggravated in any way by the inhalation of coal dust. Employer's Exhibits 6 at 12; 11 at 30, 34, 37-38, 56. Dr. Spagnolo also opined that cigarette smoking did not contribute to the miner's pulmonary impairment. Employer's Exhibit 11 at 33.

[10] Summarizing Dr. Cohen's credentials, the administrative law judge further noted:

> He is the Voluntary Attending Physician in the Division of Pulmonary and Critical Care Medicine at the Cook County Health and Hospitals System, the Chief of the Respiratory Studies Branch at the Great Lakes Center for

years performing heavy labor, and a smoking history of twenty-nine to sixty pack-years.[11] Decision and Order at 15; Claimant's Exhibit 4. Additionally, the administrative law judge noted that Dr. Cohen considered whether the miner's fibrosis could be considered "idiopathic,"[12] and explained that the most important piece of clinical information necessary to diagnose "idiopathic" pulmonary fibrosis is the absence of any exposure which is known to cause lung scarring, which is not the case here, where the miner had extensive exposure to coal mine dust.[13] Decision and Order at 16; Claimant's Exhibit 4 at 8.

Contrary to employer's argument, the administrative law judge permissibly credited the opinion of Dr. Cohen as well-reasoned and well-documented because he found that Dr. Cohen adequately considered the numerous potential factors that could

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> Occupational and Environmental Health with the University of Illinois School of Public Health, Chicago, the Medical Director of Black Lung Clinics Program in Stroger Hospital of Cook County and of the National Coalition of Black Lung and Respiratory Disease Clinics, Inc. He has held several positions as consultant for coal miner's health programs and for coal workers' lung diseases. Dr. Cohen is also an Associate Professor of Medicine at Rush University College of Medicine and is very well published.

Decision and Order at 15; Claimant's Exhibit 4.

[11] Dr. Cohen explained that his opinion was based on the miner's exposure histories, the severe diffusion impairment and gas exchange abnormalities seen on pulmonary function and blood gas testing, the evidence of severe pulmonary fibrosis seen on chest imaging, and the miner's symptoms of dyspnea. Decision and Order at 15-16; Claimant's Exhibit 4.

[12] The administrative law judge noted that Dr. Cohen also considered whether the miner's fibrosis could be attributed wholly to histoplasmosis or cardiac disease, and explained why that was not the case. Decision and Order at 16, 26-27; Claimant's Exhibit 4 at 8-9.

[13] The administrative law judge considered Dr. Cohen's explanation that, in addition to causing round upper lobe opacities, coal mine dust can also cause irregular fibrosing disease, and that diffuse interstitial fibrosis, while less common than nodular lesions, is a recognized lesion following exposure to coal dust, silica, and dusts containing a mixture of minerals. Decision and Order at 15-16; Claimant's Exhibit 4 at 7-8.

have caused the miner's lung disease, based on his review of the objective evidence and the medical literature, and explained the basis for his conclusions. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; Decision and Order at 15-16, 26. Moreover, because Dr. Cohen specifically opined that that the miner's "[twenty-five] years of coal mine dust exposure [were] significantly contributory"[14] to the development of the miner's pulmonary fibrosis with associated severe diffusion impairment and gas exchange abnormalities, we affirm the administrative law judge's conclusion that Dr. Cohen's opinion supports a finding of legal pneumoconiosis. *See* 20 C.F.R. §718.201(a)(2), (b); *Consolidation Coal Co. v. Williams*, 453 F.3d 609, 622, 23 BLR 2-345, 2-372 (4th Cir. 2006); *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; Decision and Order at 26; Claimant's Exhibit 4 at 9.

In evaluating Dr. Begley's opinion, the administrative law judge noted that Dr. Begley is Board-certified in Internal, Pulmonary, and Critical Care Medicine,[15] and had examined the miner, performed objective testing, reviewed medical records, and considered his "many years" of coal mine employment and a twenty pack-year smoking history. Decision and Order at 13-14. The administrative law judge further found that Dr. Begley listed his primary diagnosis as advanced interstitial fibrosis with honeycombing, and also diagnosed mild obstructive lung disease with reduced diffusion capacity and air trapping, consistent with emphysema. The administrative law judge also noted that Dr. Begley explained why he believed that the miner's heart disease did not account for his hypoxemia or his interstitial lung disease.[16] Decision and Order at 14; Employer's Exhibit 8 at 32, 43. The administrative law judge correctly noted that Dr. Begley also explained that, while the miner's tobacco use and coal mine dust exposure were significant contributing factors to his obstructive lung disease, he could not opine with any degree of certainty whether coal mine dust also contributed to the miner's

[14] Dr. Cohen opined that the miner's extensive cigarette smoking history "was also significantly contributory." Claimant's Exhibit 4 at 9.

[15] The administrative law judge noted that, in addition to his Board-certifications, "[Dr. Begley] is a clinical assistant professor at Temple University. He had been an assistant clinical professor and holds various medical director positions at several medical facilities, including the Federal Black Lung Clinic. He has served on the Pennsylvania Federal Black Lung Coalition Advisory Committee since 2003 and has published several articles unrelated to coal workers' pneumoconiosis." Decision and Order at 13.

[16] The administrative law judge noted that, in opining that the miner's hypoxemia was not due to his cardiac disease, Dr. Begley explained that the miner's diffusion capacity was severely reduced, which is an indicator of pulmonary parenchymal problems. Decision and Order at 14; Employer's Exhibit 8 at 32.

interstitial lung disease.[17] Decision and Order at 13-14; Claimant's Exhibit 1. Because the administrative law judge found that Dr. Begley set forth the rationale for his findings, based on his interpretation of the medical evidence of record, and explained why he concluded that the miner's obstructive impairment was due to both smoking and coal mine dust exposure, we affirm the administrative law judge's permissible finding that Dr. Begley's diagnosis of legal pneumoconiosis is "well-reasoned."[18] *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Clark*, 12 BLR at 1-155; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46, 1-47 (1985); Decision and Order at 25-26.

Considering Dr. Allen's opinion, the administrative law judge noted that Dr. Allen is Board-certified in Family Medicine and Occupational Medicine,[19] and had examined the miner on behalf of the Department of Labor, performed objective testing, and considered the miner's twenty-four years of coal mine employment and a thirty-three to sixty-six pack year smoking history. Decision and Order at 11; Director's Exhibit 13. Relevant to the existence of legal pneumoconiosis, Dr. Allen diagnosed interstitial fibrosis with associated gas exchange impairment, and explained that interstitial fibrosis can be caused by multiple issues and the miner's occupational risk factors were coal dust and silica. Director's Exhibit 13. Dr. Allen further explained that it was likely the miner's smoking-related cardiac disease was a substantial contributor to his impairment. *Id.* Dr. Allen attributed approximately twenty-percent of the miner's pulmonary impairment to his pulmonary fibrosis, and about forty-percent of his impairment to his cardiac involvement. *Id.* Given the miner's documented lung disease and documented heart disease, Dr. Allen testified that she could not "tease [the contributing factors] apart"

[17] The administrative law judge summarized Dr. Begley's explanation that, while miners have a higher incidence of pulmonary fibrosis and he could not exclude coal mine dust as a factor, it is very difficult to diagnose the cause of pulmonary fibrosis at the end stage of the disease. Decision and Order at 14; Employer's Exhibit 8 at 35.

[18] We reject employer's contention that the administrative law judge failed to adequately consider whether Dr. Begley's reliance on an understated smoking history undermined the credibility of his diagnosis of legal pneumoconiosis. Employer's Brief at 20. Noting that Dr. Begley's opinion was well-reasoned, but based on a "significantly" lower smoking history, the administrative law judge permissibly accorded Dr. Begley's diagnosis of legal pneumoconiosis "slightly less weight." Decision and Order at 26.

[19] The administrative law judge noted that, while Dr. Allen does not have a subspecialty in pulmonary disease, in addition to her Board-certifications, she has a Masters of Public Health, serves as an assistant professor of Occupational Medicine at West Virginia University, and has published several articles unrelated to coal workers' pneumoconiosis. Decision and Order at 11, 22.

and that she believed the miner's impairment was due to a "combination of the two." Director's Exhibit 32 at 18-19, 22.

Initially, we reject employer's contention that, in finding that Dr. Allen's opinion supported a finding of legal pneumoconiosis, the administrative law judge "erroneously failed to account for [Dr. Allen's] uncertainty and equivocalness prior to crediting her opinion." Employer's Brief at 18. Contrary to employer's contention, the administrative law judge specifically acknowledged that Dr. Allen expressed some uncertainty in apportioning the causes of the miner's impairment. Decision and Order at 11. Moreover, the administrative law judge found that Dr. Allen had considered the miner's exposure histories and the other potential causes of his disease, set forth the rationale for her findings, and explained why she nonetheless concluded that the miner's pulmonary impairment was due to a combination of coal mine-dust-related lung disease and cigarette smoke-induced cardiac disease. Decision and Order at 11, 25. We, therefore, affirm the administrative law judge's permissible finding that Dr. Allen's diagnosis of legal pneumoconiosis is well-reasoned, and supportive of the opinions of Drs. Cohen and Begley.[20] *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 322-23, 25 BLR 2-255, 2-263 (4th Cir. 2013); *Kertesz v. Director, OWCP*, 788 F.2d 158, 163, 9 BLR 2-1, 2-8 (3d Cir. 1986); *Clark*, 12 BLR at 1-155; Decision and Order at 25, 27.

Finally, we reject employer's argument that the administrative law judge failed to adequately consider Dr. Spagnolo's opinion that the miner did not have legal pneumoconiosis. Employer's Brief at 21-23. Contrary to employer's contention, the administrative law judge fully considered Dr. Spagnolo's credentials, noting that he is Board-certified in Internal Medicine with a subspecialty in Pulmonary Diseases, is "well-

[20] We further reject employer's contention that, when deposed, "Dr. Allen affirmatively stated that [the miner] did not have legal pneumoconiosis." Employer's Brief at 18-19. Employer has taken Dr. Allen's testimony out of context. After Dr. Allen acknowledged that the miner did not have an obstructive or restrictive impairment, employer's counsel stated:

> Q. The Department of Labor defines legal pneumoconiosis as obstructive lung disease or restrictive lung disease. He doesn't have either one of those, so he doesn't have legal pneumoconiosis. The Department of Labor also defines clinical pneumoconiosis as x-ray changes.
>
> To which Dr. Allen answered:
>
> A. Right.

Director's Exhibit 32 at 21.

published on pulmonary topics with a few publications concerning coal workers' pneumoconiosis," is "a professor of medicine at George Washington University School of Medicine and is affiliated with George Washington University Hospital and Virginia Medical Center . . . and also serves as a consultant at the Washington Hospital Center." Decision and Order at 14; Employer's Brief at 28. Further, the administrative law judge considered the quality of Dr. Spagnolo's opinion, finding that because Dr. Spagnolo considered the miner's coal mine dust and cigarette smoke exposure histories, objective test results, and multiple other health problems, and explained why he believed the miner's pulmonary fibrosis and associated impairment were entirely due to his cardiac condition, his opinion was well-reasoned and well-documented. Decision and Order at 26. However, having addressed all of the physicians' qualifications and the quality of their reasoning, the administrative law judge permissibly concluded that Dr. Spagnolo's opinion, standing alone, was not sufficient to outweigh the well-reasoned contrary opinions of Drs. Cohen, Begley, and Allen, and, therefore, was not sufficient to meet employer's burden to disprove the existence of legal pneumoconiosis.[21] Decision and Order at 27. Because substantial evidence supports the administrative law judge's finding that employer failed to establish that the miner did not have legal pneumoconiosis, it is affirmed. *See Compton*, 211 F.3d at 207-208, 22 BLR at 2-168; Decision and Order at 27. The failure to disprove legal pneumoconiosis precludes a rebuttal finding that the miner did not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i); *Barber*, 43 F.3d at 901, 19 BLR at 2-67; *Rose*, 614 F.2d at 939, 2 BLR at 2-43-44. Accordingly, we affirm the administrative law judge's finding that employer

[21] We reject employer's assertion that the administrative law judge should have found that Dr. Selby's treatment notes, which do not include a diagnosis of legal pneumoconiosis, support the opinion of Dr. Spagnolo. Employer's Brief at 21-23. Contrary to employer's contention, the administrative law judge specifically considered Dr. Selby's treatment records, correctly noting that they do not include a diagnosis of legal pneumoconiosis among the various cardiac, pulmonary and other conditions listed. Decision and Order at 16-17, 24; Employer's Exhibits 1, 2. To the extent that employer seeks to argue that because Dr. Selby's treatment notes do not include a diagnosis of pneumoconiosis, his opinion, together with Dr. Spagnolo's, "would have successfully rebutted the presumption of legal pneumoconiosis," that contention is rejected. Employer's Brief at 23. Because Dr. Selby did not specifically address the absence of legal pneumoconiosis, his opinion cannot support employer's burden to rebut the Section 411(c)(4) presumption by affirmatively establishing that the miner did not suffer from legal pneumoconiosis. 30 U.S.C. §921(c)(4); *see W. Va. CWP Fund v. Bender*, 782 F.3d 129, 144-45 (4th Cir. 2015); *Barber v. Director, OWCP*, 43 F.3d 899, 900-011, 19 BLR 2-61, 2-65-66 (4th Cir. 1995); *Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 939, 2 BLR 2-38, 2-43-44 (4th Cir. 1980); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155-56 (2015) (Boggs, J., concurring and dissenting). Thus, employer has not demonstrated any error in the administrative law judge's consideration of Dr. Selby's opinion.

failed to rebut the Section 411(c)(4) presumption by establishing that the miner did not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i).

The administrative law judge next addressed whether employer rebutted the presumed fact of total disability causation, by establishing that no part of the miner's total pulmonary or respiratory disability was caused by pneumoconiosis, as defined in 20 C.F.R. §718.201. *See* 20 C.F.R. §718.305(d)(ii). Having permissibly found that the opinions of Drs. Bellotte and Spagnolo are not sufficient to disprove the existence of legal pneumoconiosis, the administrative law judge rationally concluded that their opinions are also not sufficient 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); *see Scott v. Mason Coal Co.*, 289 F.3d 263, 269, 22 BLR 2-372, 2-383-84 (4th Cir. 2002); *Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995); *see also Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-452 (6th Cir. 2013).

We, therefore, affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption, and affirm the award of benefits. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(d)(i), (ii); *see Barber*, 43 F.3d at 900-01, 19 BLR at 2-65-66; *Compton*, 211 F.3d at 207-208, 22 BLR at 2-168.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge