U.S. Department of Labor

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

BRB No. 15-0338 BLA

DONALD COLEMAN Claimant-Respondent v. JEWELL COAL & COKE CORPORATION/SUNCOKE ENERGY, INCORPORATED Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 05/31/2016 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Paul C. Johnson, Jr., Administrative Law Judge, United States Department of Labor.

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

Ronald E. Gilbertson (Gilbertson Law, LLC), Columbia, Maryland, for employer.

Rita Roppolo (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2014-BLA-05055) of Administrative Law Judge Paul C. Johnson, Jr., rendered on a claim filed on June 4, 2012, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge determined that claimant worked as a miner under the Act, and that employer was the properly designated responsible operator. Based on the filing date of the claim, and his findings that claimant established 16.66 years of qualifying coal mine employment and a totally disabling respiratory impairment under 20 C.F.R. §718.204(b), the administrative law judge found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[1] 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 claimant was a miner and that his work with employer qualified as coal mine employment under the Act. Based on these alleged errors, employer maintains that the administrative law judge also erred in finding that it is the responsible operator and in calculating the length of claimant's coal mine employment for invocation of the Section 411(c)(4) presumption. Employer further contends that the administrative law judge did not properly weigh the medical evidence in considering whether employer satisfied its burden to rebut the Section 411(c)(4) presumption. Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging the Board to reject employer's argument that claimant did not work as a miner, and to affirm his findings that employer is the responsible operator and that claimant established 16.66 years of qualifying coal mine employment. Employer has replied to the briefs filed by both claimant and the Director, reiterating its arguments on appeal.

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,

[1] 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 coal mine employment, or employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305.

and in accordance with applicable law.[2] 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).

I. Definition of Miner and Length of Coal Mine Employment

The administrative law judge found that claimant worked for employer from September 18, 1970 until June 9, 1971, and from May 10, 1973 to February 2, 2001, for a total of 28.45 years. Decision and Order at [12] (unpaginated). The administrative law judge further found that, of those 28.45 years,[3] claimant spent 12 years working at coke ovens and 16.45 years operating a coal dryer. *Id.* Pursuant to 20 C.F.R. §725.101(a)(19), the administrative law judge found that claimant's work at the coke ovens did not qualify as the work of a miner under the Act. *Id*. at [5, 8, 12]. In contrast, the administrative law judge concluded, based on his consideration of claimant's hearing testimony, that claimant's 16.45 years of employment at the coal dryer constituted the work of a miner. *Id*. at [10]. Thus, the administrative law judge credited claimant with 16.45 years of coal mine employment with employer. *Id*.

Employer contends that the administrative law judge erred in finding that claimant's work at the coal dryer satisfies the definition of a miner pursuant to 20 C.F.R. §725.101(a)(19) and *Fox v. Director, OWCP*, 889 F.2d 1037, 13 BLR 2-156 (11th Cir. 1989). Employer argues that claimant's work does not qualify as coal mine employment because he performed all of his duties either at a coke plant or adjacent to a coke plant. Employer specifically asserts that claimant's work at the coal dryer "was an extension of the coke oven operation." Employer's Brief in Support of Petition for Review at 5-10. Employer's arguments are rejected as without merit.

---

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, because claimant's coal mine employment was in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

[3] The administrative law judge noted that claimant testified that he left employer in 1971 and "spent approximately a year underground between 1971 and 1972 with Island Creek Coal Company," and then returned to employer, where he worked until 2001. Decision and Order at [13] (unpaginated). Although claimant testified that he worked for Island Creek Coal Company, the administrative law judge noted that claimant's Social Security Administration records show employment with Virginia Pocahontas Company during 1972, but there were no reported earnings with Island Creek Coal Company. *Id*. Based on these records, the administrative law judge found that claimant established "0.21 years of qualifying coal mine employment in 1972[.]" *Id*.; *see* Director's Exhibit 9.

Under the Act and the regulations, a miner is defined as any individual who works, or has worked, in or around a coal mine or coal preparation facility in the extraction, preparation, or transportation of coal. 30 U.S.C. §902(d); 20 C.F.R. §§725.101(a)(19), 725.202. The definition also includes any individual who works, or has worked, in coal mine construction or maintenance in or around a coal mine or coal preparation facility. *Id*. Pursuant to 20 C.F.R. §725.101(a)(19), however, coke oven workers are expressly excluded from being classified as miners. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this cases arises, has held that duties that meet situs and function requirements constitute the work of a miner as defined in the Act. *See Director, OWCP v. Consolidation Coal Co.* [*Krushansky*], 923 F.2d 38, 41, 14 BLR 2-139, 2-143 (4th Cir. 1991); *Collins v. Director, OWCP*, 795 F.2d 368, 372-73, 9 BLR 2-58, 2-64-66 (4th Cir. 1986); *Eplion v. Director, OWCP*, 794 F.2d 935, 937, 9 BLR 2-52, 2-55-57 (4th Cir. 1986). Under the situs requirement, the work must take place in or around a coal mine or coal preparation facility. *Krushansky*, 923 F.2d at 41, 14 BLR at 2-143. Under the function requirement, the miner must have been employed in the extraction or preparation of coal. *Id.*

The administrative law judge correctly observed that the key issue in this case is whether claimant's duties as a coal dryer meet the definition of coal preparation under 20 C.F.R. §725.101(a)(13), and the resolution of this issue depends on whether the coal that claimant encountered had entered the stream of commerce. The regulation at 20 C.F.R. §725.101(a)(13) provides, "[c]oal preparation means the breaking, crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal, lignite or anthracite, and such other work of preparing coal as is usually done by the operator of a coal mine." Once coal is processed and enters the stream of commerce, it is beyond the preparation stage. *Eplion*, 794 F.2d at 937, 9 BLR at 2-56-57. Therefore, an individual who processes or works around raw coal will satisfy the situs-function prongs, but an individual who works around coal that is prepared and already in the stream of commerce will not satisfy these prongs. *Norfolk and Western Ry. Co. v. Roberson*, 918 F.2d 1144, 1150, 14 BLR 2-106, 2-112-113 (4th Cir. 1990), *cert. denied*, 111 S.Ct. 2012 (1991). Moreover, the Fourth Circuit has explained that "traditionally[,] the tipple marks the demarcation point between the mining and the marketing of coal, . . . [and] [w]hen coal leaves the tipple, [the] extraction and preparation [processes] are complete and [the coal has entered] the stream of commerce." *Collins*, 795 F.2d at 372, 9 BLR at 2-65, *citing Eplion*, 794 F.2d at 935, 9 BLR at 2-57. There is no requirement that the preparation itself be at the tipple, however; only that the preparation process cannot yet be complete. *Sexton v. Mathews*, 538 F.2d 88 (4th Cir. 1976) (shoveling coal from tipple into lorry constitutes coal preparation).

In this case, the administrative law judge highlighted the following portions of claimant's testimony regarding his work as a coal dryer operator:

> [Claimant] testified that in his work as a coal dryer operator, the coal was sent from the tipple, was graded, washed and cleaned, and then dried to a particular moisture content at the coal dryer before being sent back on the belt lines through a tube, where it was put into a bin and then loaded into railroad cars. [Claimant] also credibly testified that the coal drying was part of processing the coal, and the *coal processed at the coal dryer was not used in the coke ovens*. . . . [Claimant] stated the coal that was dried at the dryer was from the coal tipple, *but that the coal tipple controlled the entire process* of washing, grading, drying, and storing the coal in bins before being loaded into railroad cars. . . . [Claimant] engaged in those 15 to 18 years with operating a coal dryer as a part of a process that washed, graded, and dried the raw coal *before it was sent back through the tipple and then out to railroad cars to enter the stream of commerce*.

Decision and Order at [8-10] (emphasis added), *citing* Hearing Transcript at 16-20, 25-26.

Contrary to employer's arguments on appeal, the administrative law judge rationally found that claimant's testimony was credible and, therefore, sufficient to establish "that a significant part of his employment involved the operation of a coal dryer that dried coal as part of its preparation before it was loaded into railroad cars at the tipple." Decision and Order at [10]; *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67 (1986). The administrative law judge also permissibly determined that employer "was engaged in both coke production and coal production and preparation," and that claimant's duties at the coal dryer were "part of the preparation process at the tipple, which is the 'demarcation point between the mining and marketing of coal.'" Decision and Order at [10], *quoting Collins*, 795 F.2d at 372, 9 BLR at 2-65; *see Clark*, 12 BLR at 1-151.

We further reject employer's argument that the reasoning of the United States Court of Appeals for the Eleventh Circuit in *Fox* can be applied to hold, as a matter of law, that claimant does not meet the definition of a miner.[4] As the administrative law judge found, employer's reliance on *Fox* is misplaced. In determining that a claimant was not a miner under the Act, the Eleventh Circuit emphasized in *Fox* that the coal that was being washed and dried had long since left the tipple, had already entered the stream of commerce, and was being utilized by a consumer. *Fox*, 889 F.2d at 1042, 13 BLR at

[4] In support of its argument, employer points to evidence it submitted reflecting that claimant's employment was at the coke plant, and to claimant's testimony that he used the heat from the coke oven to dry the coal as part of his coal drying duties.

2-160 (explaining that employer "utilized coal as a raw material in the manufacture of coke; the plant operated as a consumer of coal, not as a processor of the mineral for further distribution"). As discussed *supra*, the administrative law judge in this case found that employer was engaged in *both coal and coke production* and, therefore, permissibly rejected employer's position that only coke production took place at this site. Decision and Order at [10]. Moreover, unlike the facts in *Fox*, the administrative law judge here credited claimant's testimony that the "coal processed at the coal dryer was not used in the coke ovens" and that the coal drying process was still within the control of the tipple.[5] *Id*. at [9-10]. In addition, in *Sexton*, the Fourth Circuit held that the mere fact that a miner performed some of his duties at a coke oven did not preclude him from establishing that the remainder of his work was that of a miner. *Sexton*, 538 F.2d at 88.

The determination of whether an individual satisfies the definition of a miner is a factual determination for the administrative law judge. *Amigo Smokeless Coal Co. v. Director, OWCP*, 642 F.2d 68, 69-71, 2 BLR 2-68, 2-73 (4th Cir. 1981); *Etzweiler v. Cleveland Brothers Equipment Co.*, 16 BLR 1-38, 1-40-41 (1992) (en banc). As it is rational and supported by substantial evidence, we affirm the administrative law judge's finding that claimant's "employment at the coal dryer is qualifying employment because it satisfies both the function and situs requirements[.]" Decision and Order at [10]; *Krushansky*, 923 F.2d at 41, 14 BLR at 2-143; *Collins*, 795 F.2d at 372, 9 BLR at 2-65, *Eplion*, 794 F.2d at 935, 9 BLR at 2-57.

II. Responsible Operator

The regulations impose liability for the payment of benefits on the potentially liable operator that most recently employed claimant for a cumulative period of not less than one year. 20 C.F.R. §§725.494, 725.495(a)(1). We affirm, as unchallenged by employer on appeal, the administrative law judge's finding that it was the last coal mine operator to employ claimant for at least one year. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at [13]. Based on the administrative law judge's finding that claimant's coal dryer work satisfies the definition of a miner, and because employer raises no other arguments with respect to its designation as the responsible operator, we affirm the administrative law judge's finding that employer is the responsible operator liable for benefits under 20 C.F.R. §725.495. *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983).

[5] Specifically, the administrative law judge found that claimant was engaged in "operating a coal dryer as part of the process that washed, graded, and dried the raw coal before it was sent back through the tipple and then out to railroad cars to enter the stream of commerce." Decision and Order at [10].

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

Because claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis,[6] the burden shifted to employer to rebut the presumption by establishing that claimant has neither legal[7] nor clinical[8] pneumoconiosis, 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); *see W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137 (4th Cir. 2015); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480, 25 BLR 2-1, 2-9 (6th Cir. 2011); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-154-56 (2015) (Boggs, J., concurring and dissenting).

---

[6] We affirm, as unchallenged by employer on appeal, the administrative law judge's findings that claimant worked as a coal dryer for "a period of 16.45" years, that his work as a coal dryer exposed him to surface mining conditions that were substantially similar to those in an underground mine, and that claimant is totally disabled by a respiratory or pulmonary impairment under 20 C.F.R. §718.204(b)(2). Decision and Order at [27-30]; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Thus, we affirm the administrative law judge's finding that claimant invoked the Section 411(c)(4) presumption.

[7] Legal pneumoconiosis includes "any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). The regulation also provides that "a disease 'arising out of coal mine employment' 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) (emphasis added).

[8] Clinical pneumoconiosis is defined as:

> [T]hose 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. This definition includes, but is not limited to, coal workers' pneumoconiosis, anthracosilicosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis, arising out of coal mine employment.

20 C.F.R. §718.201(a)(1).

In considering whether employer disproved the existence of legal pneumoconiosis, the administrative law judge weighed the opinions of employer's experts, Drs. McSharry and Fino, each of whom opined that claimant suffers from an obstructive respiratory impairment due to cigarette smoke-induced emphysema. Decision and Order at [34-38]; *see* Director's Exhibit 17; Employer's Exhibit 3. The administrative law judge rejected Dr. McSharry's opinion, that coal dust exposure was not a contributing factor in claimant's respiratory impairment, as being inconsistent with the definition of legal pneumoconiosis set forth at 20 C.F.R. §718.201, and the medical science credited by the Department of Labor in the preamble to the 2001 revised regulations. Decision and Order at [35, 37]. The administrative law judge also found that Dr. Fino's opinion was unpersuasive and based on generalities, and that he also relied on premises that were inconsistent with the preamble to the 2001 revised regulations. *Id*. at [35-37]. Therefore the administrative law judge assigned their opinions "little weight" and found that employer failed to rebut the presumption of legal pneumoconiosis.[9] *Id*. at [38].

Employer argues that the administrative law judge's credibility findings with respect to Drs. McSharry and Fino are not supported by substantial evidence. We disagree. In his May 10, 2013 medical report, Dr. McSharry explained that the "pulmonary function abnormalities which might be expected in [coal workers'] pneumoconiosis vary significantly from that [of a smoker] in that they include a significant restrictive component." Director's Exhibit 17. He noted that the "respiratory findings in this case include severe obstructive lung disease *only* with diffusion abnormalities and hyperinflation." *Id*. (emphasis added). Based on the absence of a restrictive respiratory impairment on objective testing, Dr. McSharry indicated that claimant's presentation argues "against the presence of injury to the lungs from coal dust exposure." *Id*. Contrary to employer's assertion, we see no error in the administrative law judge's determination that Dr. McSharry's opinion was entitled to little weight because his views are inconsistent with the definition of legal pneumoconiosis at 20 C.F.R. §718.201, which recognizes that coal dust exposure may cause either a "chronic restrictive *or* obstructive pulmonary disease." 20 C.F.R. §718.201 (emphasis added); *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 308, 25 BLR 2-115, 2-120 (4th Cir. 2012); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); Decision and Order at [35].

[9] The administrative law judge also considered the opinions of Drs. Splan, Panchal, and Copley, each of whom opined that claimant suffers from legal pneumoconiosis. Decision and Order at [37-38]. The administrative law judge assigned Dr. Panchal's opinion "less weight" because he relied on an inaccurate cigarette smoking history, but assigned the opinions of Drs. Splan and Copley "significant weight," finding that their opinions are well-reasoned. *Id*.

With respect to Dr. Fino's opinion, the administrative law judge accurately noted that Dr. Fino excluded a diagnosis of legal pneumoconiosis based, in part, on the following rationale:

> Dr. Fino also focused his opinion on the average loss of FEV1 in miners, which he argues may be indicative of whether the respiratory or pulmonary impairment is caused by cigarette smoking or by coal mine dust. Dr. Fino gave the opinion that it was *unlikely* this obstructive condition arose from coal mine employment because smoking was *more likely* to be the contributing factor, and that based on medical literature, a moderate to severe impairment in diffusing capacity "would not be consistent with coal mine dust related disease." Furthermore, Dr. Fino found that because [claimant] worked above ground, obstruction was "*less likely, but certainly not impossible*, to occur in miners who worked above ground." Thus, based on [claimant's] significantly reduced diffusing capacity and work history, Dr. Fino concluded that [claimant's] obstructive pulmonary impairment did not arise out of coal mine employment. . . . Additionally, Dr. Fino found that the degree of reduction in diffusing capacity can distinguish whether an obstructive lung disease was caused by smoking or coal dust based on three studies dating from 1975 and 1987. . . . One study cited by Dr. Fino concluded it would "be *unusual* to have significant reductions of diffusing capacity as a result of coal workers' pneumoconiosis."

Decision and Order at [36], *quoting* Employer's Exhibit 3 (emphasis added). The administrative law judge permissibly found that Dr. Fino's opinion is not well-reasoned because Dr. Fino put "emphasis" on "generalities," and "fail[ed] to explain why [claimant] could not be a rare case" of a miner who develops obstructive lung disease or impairments. Decision and Order at [36] (internal quotations omitted); *see Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 24 BLR 2-97 (7th Cir. 2008) (general reference to medical literature, and not the miner's specific condition, is not probative); *Knizer v. Bethlehem Mines Corp.*, 8 BLR 1-5 (1985).

Moreover, in excluding coal dust exposure as a factor in claimant's obstructive respiratory impairment, Dr. Fino relied, in part, on the fact that claimant worked in aboveground coal mines, and not underground coal mines. Employer's Exhibit 3. Specifically, Dr. Fino stated:

> The review of [claimant's] medical records shows that we have a history of 29 years working above ground in the mines. Certainly, working above ground in the mines can cause significant pneumoconiosis. However, the

> amount of obstruction is really due to the amount of coal mine dust inhaled and the highest quantities of coal dust have clearly been shown to be at the face. Because [claimant] worked outside of the mines he has a higher risk of other forms of pneumoconiosis, specifically silicosis. Obstruction is less likely, but certainly not impossible, to occur in miners who work above ground.

Id. at 14. The administrative law judge acted within his discretion in rejecting Dr. Fino's rationale because it was contrary to the administrative law judge's own finding that claimant "worked in 'substantially similar' conditions to that of underground [mines]" and because "there is no evidence in Dr. Fino's report that he understood the dust levels at [claimant's] job site."[10] Decision and Order at [27, 36]; *see Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015); *Scott v. Mason Coal Co.*, 289 F.3d 263, 269, 22 BLR 2-372, 2-384 (4th Cir. 2002). Further, in light of the administrative law judge's finding that claimant has a cigarette "smoking history of 35 pack years," he permissibly discounted Dr. Fino's opinion that claimant's impairment was due to cigarette smoke and not coal dust exposure, as it was based on a smoking history range of 25-70 years. Decision and Order at [37]; *see Trumbo v. Reading Anthracite Coal Co.*, 17 BLR 1-85, 1-89 (1993); *see also Hicks*, 138 F.3d at 536, 21 BLR at 2-341; *Akers*, 131 F.3d at 440-41, 21 BLR at 2-275-76; Employer's Exhibit 3.

As the trier-of-fact, the administrative law judge has discretion to assess the credibility of the medical opinions, based on the explanations given by the experts for their diagnoses, and to assign those opinions appropriate weight.[11] *See Looney*, 678 F.3d

[10] The administrative law judge found that claimant "credibly testified that the conditions at the coal dryer were comparable, if not dustier, to that of the conditions underground." Decision and Order at [27].

[11] Employer also argues that the administrative law judge improperly discounted Dr. McSharry's opinion because Dr. McSharry underestimated claimant's smoking history. Employer further asserts that the administrative law judge erred in finding that the opinions of Drs. McSharry and Fino were not persuasive because they did not "consider the additive effects of coal dust exposure and tobacco use." Decision and Order at [37]. As the administrative law judge provided valid reasons for giving less weight to the opinions of Drs. McSharry and Fino, we need not address employer's additional arguments concerning the administrative law judge's weighing of these opinions. *Kozele v. Rochester & Pittsburgh Coal Co*., 6 BLR 1-378, 1-382-3 n.4 (1983). Moreover, because employer bears the burden of proof on rebuttal, and we affirm the administrative law judge's finding that employer's evidence fails to affirmatively establish that claimant does not have legal pneumoconiosis, we decline to address employer's arguments regarding the weight accorded claimant's evidence. *See W. Va.*

at 315-16, 25 BLR at 2-130. The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988). Because it is supported by substantial evidence, we affirm the administrative law judge's findings that employer failed to disprove the existence of legal pneumoconiosis and is unable to rebut the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305(d)(1)(i).[12]

With regard to the presumed fact of disability causation, the administrative law judge rationally determined that the opinions of Drs. McSharry and Fino were not credible to establish that no part of claimant's total respiratory or pulmonary disability was due to legal pneumoconiosis, as neither physician diagnosed the disease. *See Epling*, 783 F.3d at 505; *Scott*, 289 F.3d at 269, 23 BLR at 2-384; *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995); Decision and Order at [39]. We specifically reject employer's argument that the administrative law judge should have credited Dr. Fino's opinion on the issue of disability causation because he stated that "even assuming pneumoconiosis, it was not a contributing factor in causing claimant's disability[.]" Employer's Brief in Support of Petition for Review at 34, *quoting* Employer's Exhibit 3. As the Fourth Circuit has explained, "it is not enough for the expert simply to recite, without more, that his causation opinion would not change if the claimant had pneumoconiosis." *Epling*, 783 F.3d at 505. Furthermore, as Dr. Fino opined that claimant was totally disabled by his obstructive respiratory impairment, and the administrative law judge permissibly determined, as discussed *supra*, that Dr. Fino's opinion was not reasoned as to the etiology of that impairment, we affirm, as supported

---

CWP Fund v. Bender, 782 F.3d 129, 137 (4th Cir. 2015); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[12] It is not necessary that we address employer's arguments regarding clinical pneumoconiosis, as employer's failure to disprove the existence of legal pneumoconiosis precludes rebuttal under 20 C.F.R. §718.305(d)(1)(i). *See Larioni*, 6 BLR at 1-1278.

by substantial evidence, the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305(d)(1)(ii). *See Bender*, 782 F.3d at 137; Employer's Exhibit 3.

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

JONATHAN ROLFE
Administrative Appeals Judge