U.S. Department of Labor

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

BRB No. 19-0232 BLA

DONALD RAY MAGGARD Claimant-Respondent v. ENTERPRISE MINING COMPANY, INCORPORATED c/o ANR, INCORPORATED and AIG CASUALTY COMPANY c/o CHARTIS Employer/Carrier DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 05/29/2020 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Jason A. Golden, Administrative Law Judge, United States Department of Labor.

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

Cameron Blair (Fogle Keller Walker, PLLC), Lexington, Kentucky, for employer/carrier.

William M. Bush (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative

Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer and its carrier (employer) appeal the Decision and Order Awarding Benefits (2017-BLA-05838) of Administrative Law Judge Jason A. Golden rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).[1] This case involves a miner's subsequent claim filed on June 19, 2015.[2]

The administrative law judge credited claimant with at least thirty-five years of underground coal mine employment and found he established a totally disabling respiratory impairment. He therefore found claimant established a change in an applicable condition of entitlement at 20 C.F.R. §725.309(c)[3] and invoked the presumption of total disability

[1] Employer filed a Motion for Reconsideration of the administrative law judge's decision on January 7, 2019, which the administrative law judge denied on January 23, 2019.

[2] On November 20, 2013, the district director denied claimant's prior claim, filed on February 14, 2013, because although claimant established pneumoconiosis arising out of coal mine employment, he failed to establish a totally disabling respiratory impairment or total disability causation. Decision and Order at 3; Director's Exhibit 1.

[3] When a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim also must be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Claimant's most recent prior claim was denied because he did not establish total disability or total disability causation. Director's Exhibit 1. Consequently, claimant had to submit new evidence establishing one of those elements. *See* 20 C.F.R. §725.309(c).

due to pneumoconiosis at Section 411(c)(4) of the Act.[4] 30 U.S.C. §921(c)(4). He further determined employer did not rebut the presumption and awarded benefits.

On appeal, employer contends remand is required because the administrative law judge took significant action before he was properly appointed consistent with the Appointments Clause of the Constitution, Art. II §2, Cl. 2.[5] On the merits, it challenges the administrative law judge's determination that claimant established total respiratory disability and invoked the presumption. Further, it argues the administrative law judge erred in finding it failed to rebut the presumption if invoked. Claimant responds in support of the award. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response, arguing the administrative law judge had authority to decide the case.[6]

The 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.[7] 33 U.S.C. §921(b)(3), as incorporated

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[4] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

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

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

U.S. Const. art. II, § 2, cl. 2.

[6] We affirm, as unchallenged on appeal, the administrative law judge's finding of at least thirty-five years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6.

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, because claimant's coal mine employment occurred in Kentucky. *See*

by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Appointments Clause

Citing *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044 (2018), employer contends this case is "tainted with an appointments [clause] violation" because the administrative law judge "was not properly appointed at [the time he issued the Notice of Hearing on November 20, 2017]."[8] Employer's Brief at 12; *citing Lucia*, 138 S.Ct. at 2055. Employer states this action is not "innocuous" and therefore the case must be remanded to a different administrative law judge for a new hearing. Employer's Reply Brief at 13.

On December 21, 2017, the Secretary of Labor, exercising his power as the Head of a Department under the Appointments Clause, ratified the appointment of the administrative law judge.[9] The only action the administrative law judge took before that date was issuing a Notice of Hearing, however, issuing a Notice of Hearing does not involve or influence consideration of the merits of the case. It simply reiterates the statutory and regulatory requirements governing the hearing procedures. *See Noble v. B &*

Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 4; Hearing Transcript at 7.

[8] Employer raised its challenge to the administrative law judge's authority to render a decision in its July 3, 2018 Notice of Preservation of Constitutional Issue. Employer also preserved this issue at the February 22, 2018 hearing. Hearing Transcript at 6.

[9] The Secretary of Labor issued a letter to Judge Golden on December 21, 2017, stating:

> In my capacity as head of the Department of Labor, and after due consideration, I hereby ratify the Department's prior appointment of you as an Administrative Law Judge. This letter is intended to address any claim that administrative proceedings pending before, or presided over by, administrative law judges of the U.S. Department of Labor violate the Appointments Clause of the U.S. Constitution. This action is effective immediately.

Secretary's December 21, 2017 Letter to Administrative Law Judge Golden. Employer does not challenge the validity of the ratification of Judge Golden's appointment.

W Resources, Inc., BLR , 18-0533 BLA, slip op. at 4 (Jan. 15, 2020). Thus, unlike *Lucia*, in which the judge had presided over a hearing and had issued a decision while not properly appointed, in this case the administrative law judge's action prior to the ratification of his appointment did not affect his ability "to consider the matter as though he had not adjudicated it before." *Lucia*, 138 S.Ct. at 2055. It did not taint the adjudication of this case with an Appointments Clause violation, and therefore we decline to remand this case to the Office of Administrative Law Judges for a new hearing. *See Noble*, BRB No. 18-0533 BLA, slip op. at 4.

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

A miner is considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability 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 weigh all relevant supporting evidence against all relevant 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).

The administrative law judge found claimant did not establish total disability through pulmonary function studies because the five recent studies produced non-qualifying values.[10] 20 C.F.R. §718.204(b(2)(i); Decision and Order at 7-8; *see* Director's Exhibits 10, 58; Claimant's Exhibits 1, 6; Employer's Exhibit 9. He also determined there was no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 6.

The administrative law judge considered five blood gas studies administered since resolution of the prior claim.[11] Decision and Order at 8-9; Director's Exhibits 10, 58;

[10] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values contained in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study yields values that exceed those values. *See* 20 C.F.R. §718.204(b)(2)(i).

[11] The administrative law judge noted employer's objections to the August 1, 2016 and November 27, 2017 blood gas studies because they did not comply with the regulations' quality standards. Decision and Order at 8. He concluded however that their "lack of conformity with the specific non-critical quality standards . . . does not lessen the overall reliability of the studies." *Id*. at 8-9. Thus, we reject employer's contention the

Claimant's Exhibits 1, 6; Employer's Exhibit 9. The July 16, 2015 study produced non-qualifying values at rest but qualifying values after exercise.[12] Director's Exhibits 10, 58. The remaining studies, dated June 23, 2016, August 1, 2016, November 27, 2017, and May 31, 2018, produced non-qualifying values. Director's Exhibit 58; Claimant's Exhibits 1, 6; Employer's Exhibit 9. Because there was only one qualifying study and the subsequent four were non-qualifying, the administrative law judge concluded claimant did not establish disability based on the blood gas studies. Decision and Order at 9.

In weighing the medical opinion evidence, the administrative law judge determined claimant's usual coal mine work required heavy manual labor. Decision and Order at 6. He considered the opinions of Drs. Werchowski, Raj, Green, and Jarboe, who found claimant totally disabled, and Dr. Dahhan's contrary opinion. Decision and Order at 13; Employer's Exhibits 9, 18, 20; Claimant's Exhibits 1, 6; Director's Exhibits 10, 11, 19, 20.

The administrative law judge gave the most weight to the opinions of Drs. Raj, Green, and Jarboe because they compared the exertional requirements of claimant's last coal mine employment with the level of hypoxemia observed on the blood gas studies. Decision and Order at 11-14. The administrative law judge found Dr. Dahhan's opinion supported by the objective evidence obtained during his examination of claimant but gave it less weight because his testing was "an outlier" and because he did not "sufficiently address[] the exertional requirements of [c]laimant's last coal mining job." *Id*. at 13. He credited Dr. Werchowski's opinion, noting it was based on the objective study obtained during his examination, but gave it less weight because he did not discuss the exertional requirements of claimant's last coal mining job. Weighing the new evidence and the evidence as a whole, he determined claimant established total disability and a change in an applicable condition of entitlement.[13] *Id*. at 14.

Employer asserts the administrative law judge inconsistently and selectively evaluated the medical opinions of Drs. Werchowski, Dahhan, Raj, and Green and applied

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administrative law judge did not consider its objections to the August 1, 2016 study Dr. Raj administered. *See* Employer's Brief at 16.

[12] A "qualifying" blood gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendix C, for establishing total disability. 20 C.F.R. §718.204(b)(2)(ii). A "non-qualifying" study exceeds those values.

[13] The administrative law judge gave greater weight to the more recent evidence because he found it provides a more accurate representation of claimant's current condition. Decision and Order at 14.

a stricter standard of review to Dr. Dahhan's opinion.[14] *See* Employer's Brief at 15-20. We disagree.

Contrary to employer's contention, total disability can be established with reasoned medical opinions, even where objective studies do not produce results that qualify for total disability. 20 C.F.R. §718.204(b)(2)(iv); Employer's Brief at 16-20. Thus, a physician can offer a reasoned medical opinion diagnosing total disability even though the underlying objective studies are non-qualifying. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 587 (6th Cir. 2000). Therefore, we reject employer's argument that the opinions of Drs. Werchowski, Raj, and Green are not adequately reasoned because they rely on blood gas studies when the administrative law judge found that evidence insufficient to establish disability. *See* Employer's Brief at 16-18; Decision and Order at 11-13. As the administrative law judge rationally found, all of the physicians, except Dr. Dahhan, opined the blood gas studies showed hypoxemia after exercise and, unlike Dr. Dahhan, they did not attribute claimant's results to poor conditioning. *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 10-13. Therefore, the administrative law judge permissibly gave Dr. Dahhan's opinion little weight as it conflicted with the other medical opinions and the results obtained on all of the exercise blood gas studies except his. *Banks*, 690 F.3d at 489; *Rowe*, 710 F.2d at 255; Decision and Order at 11, 13-14.

Moreover, employer has not challenged the administrative law judge's finding that although Dr. Dahhan opined claimant could perform his last coal mine employment job, he failed to sufficiently address the exertional requirements of that job.[15] *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 13; *see also Cornett*, 227 F.3d at 578 (even a mild respiratory impairment can be totally disabling depending on the exertional requirements of claimant's usual coal mine work). Consequently, we affirm, as supported by substantial evidence, the administrative law judge's determination claimant established total disability based on the medical opinion

[14] Employer does not challenge the administrative law judge's finding that Dr. Jarboe's opinion, diagnosing a totally disabling respiratory impairment, is entitled to significant weight and we therefore affirm it. *Skrack*, 6 BLA at 1-711; *see* Decision and Order at 13-14.

[15] Dr. Dahhan testified claimant was employed as "a repairman, electrician, continuous miner, scoop, shuttle car, and roof bolter" and "worked in [fifteen] inches top and involved heavy lifting during the day." Employer's Exhibit 20 at 8. He answered affirmatively when asked if he believed claimant could perform his employment based on the blood gas study values he reviewed. *Id*. at 9.

evidence and the evidence as a whole.[16] *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); Decision and Order at 14.

In light of our affirmance of the administrative law judge's findings that claimant established at least fifteen years of qualifying coal mine employment and a totally disabling pulmonary impairment at 20 C.F.R. §718.204(b)(2), we further affirm his determination that claimant invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. *See* Decision and Order at 3, 14.

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

Because claimant invoked the Section 411(c)(4) presumption, the burden shifted to employer to rebut by establishing claimant has neither legal nor clinical pneumoconiosis,[17] or by establishing "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). The administrative law judge found employer did not establish rebuttal by either method.

Smoking History

Employer initially contends the administrative law judge's "approximate finding" of a forty pack-year smoking history is insufficient and requires remand for a "more exact" finding prior to assessing the credibility of the medical opinions on these issues. Employer's Brief at 13-15; *see* Decision and Order at 4-5. We disagree.

The length and extent of claimant's smoking history is a factual, not medical, determination committed to the administrative law judge's discretion. *See Bobick v.*

[16] Because we have affirmed the administrative law judge's crediting of the opinions of Drs. Werchowski, Raj, Green, and Jarboe, and his discrediting of Dr. Dahhan's opinion, we reject employer's assertion the administrative law judge selectively analyzed the medical opinions in violation of its due process and equal protection rights. *See* Employer's Brief at 15-18.

[17] 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).

Saginaw Mining Co., 13 BLR 1-52, 1-54 (1988); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683, 1-686 (1985). Further, witness credibility and the weight accorded to hearing testimony is within the administrative law judge's discretion. *See Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190, 1-192 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-151 (1989) (en banc). The administrative law judge found claimant's testimony that he smoked from about 1968 until 2012, with a five year cessation during that period credible and entitled to the most weight. Decision and Order at 4. He found the smoking histories Drs. Werchowski, Dahhan and Raj considered to be entitled to significant weight because they are consistent with claimant's testimony.[18] *Id*. at 4-5. In contrast, he gave "little weight" to the opinions of Drs. Green and Jarboe because the smoking histories they relied on "varied significantly" from both claimant's testimony and the reports of the other physicians.[19] *Id*. He also considered claimant's treatments records but gave them "little weight" as contradictory,[20] and noted employer asserted claimant had a total of forty-four pack-years. *Id*. at 5. Relying "primarily" on claimant's testimony, he found claimant established approximately a forty-pack-year smoking history. *Id*.

Employer has not shown how a specific pack-year finding, rather than the administrative law judge's finding of approximately forty pack-years, would have made a difference in this case. Because the administrative law judge considered the complete range of claimant's reported smoking histories, and explained his resolution of conflicting evidence, we affirm his determination the record supports a smoking history of approximately forty pack-years. *See Lafferty*, 12 BLR at 1-192; *Mabe*, 9 BLR at 1-68; *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Consequently, we find no error in the administrative law judge's reliance on that smoking history when assessing the weight to be given to the medical evidence. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

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[18] Dr. Werchowski relied on a smoking history of forty-six pack-years; Dr. Dahhan reported claimant smoked a pack a day from the age of 15 to 59, quitting for a five year period during that time; and Dr. Raj noted claimant smoked a pack a day from 1970 to 2011. Decision and Order at 4-5; Director's Exhibits 10, 20; Claimant's Exhibit 6.

[19] Dr. Green reported a smoking history of one-half pack daily over forty-one years, ending in 2009. Claimant's Exhibit 1. Dr. Jarboe reported a half-pack daily from age eighteen to 2009 when claimant quit. Employer's Exhibit 9.

[20] Claimant's treatment records from Baptist Health dated September 6, 2014, through June 8, 2017, noted he stopped smoking in May 2010 but also noted in a 2015 visit he was an active smoker with a "40+ years history." Claimant's Exhibit 4.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, employer must establish claimant does 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).

The administrative law judge considered the opinions of Drs. Dahhan and Jarboe that claimant does not have legal pneumoconiosis.[21] Director's Exhibit 20; Employer's Exhibits 9, 18, 20. Employer does not challenge the administrative judge's findings other than to suggest they relied on incorrect smoking histories. But the administrative law judge did not discount their opinions based on the smoking histories they relied on.[22] Rather, he permissibly gave less weight to Dr. Dahhan's opinion because even assuming Dr. Dahhan was correct that claimant's declining values on his blood gas study were due to conditioning, he did not sufficiently explain why coal dust could not also have contributed.[23] *See Morrison v. Tenn. Consol. Coal Co*., 644 F.3d 473, 479-80 (6th Cir. 2011); *Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); Decision and Order at 20; Director's Exhibit 20; Employer's Exhibit 20 at 10-11. Similarly, the administrative law judge permissibly determined Dr. Jarboe did not adequately explain why even if claimant's significant gas exchange during exercise is due to bronchial asthma,

[21] The administrative law judge also considered the opinions of Drs. Werchowski, Raj, and Green, as well as claimant's treatment records, but accurately found this evidence does not assist employer in rebutting the existence of legal pneumoconiosis. Decision and Order at 19, 21; Director's Exhibits 10, 19; Claimant's Exhibits 1, 4, 6. Thus, we need not address employer's contentions concerning the administrative law judge's consideration of this evidence. *See* Employer's Brief at 18, 20-22.

[22] Dr. Dahhan relied on a smoking history of thirty-nine pack-years. Director's Exhibit 20. Dr. Jarboe noted an approximately twenty pack-year history. Employer's Exhibit 9.

[23] Dr. Dahhan stated claimant's drop in pO2 on his blood gas study was due to poor conditioning. Director's Exhibit 20. Dr. Dahhan also testified that although claimant had sufficient exposure to coal dust to acquire the disease, his pulmonary evaluations "did not reveal the presence of the abnormality that fits [the] definition of legal pneumoconiosis." Employer's Exhibit 20 at 10-11.

coal dust did not also aggravate or contribute to his condition.[24] *See Banks*, 690 F.3d at 489; Decision and Order at 20-21; Employer's Exhibits 9, 18 at 9-13, 19-20. Because employer does not otherwise challenge the administrative law judge's conclusion their opinions,, are insufficient, we affirm his determination employer failed to rebut the Section 411(c)(4) presumption by establishing claimant does not have pneumoconiosis.[25] *See* 20 C.F.R. §718.305(d)(1)(i); Employer's Brief at 17-18, 20-22.

Total Disability Causation

The administrative law judge next considered whether employer established "no part of [claimant'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 permissibly found the same reasons he discredited the opinions of Drs. Dahhan and Jarboe that claimant does not suffer from legal pneumoconiosis also undercut their opinions that claimant's disabling impairment is unrelated to his coal mine employment. 20 C.F.R. §718.305(d)(1)(ii); *see Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668 (6th Cir. 2015); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order at 21. Employer does not raise any specific challenge to this finding. *See* 20 C.F.R. §§802.211(b), 802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Therefore, we affirm the administrative law judge's determination employer failed to prove that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(ii).

[24] Dr. Jarboe observed claimant has variable increases in his residual volume on his blood gas studies due to asthma and opined legal pneumoconiosis "would not cause such variability in the residual volume over such short periods of time." Director's Exhibit 9. He also diagnosed a significant gas exchange impairment on exercise but attributed it to coronary artery disease. *Id*. At his deposition, Dr. Jarboe stated "impaired gas exchange could be due to legal pneumoconiosis" but he believed the abnormal values on claimant's blood gas studies are due to coronary artery disease. Employer's Exhibit 18 at 9-13, 19-20.

[25] The administrative law judge did not render a specific finding that employer rebutted the presumed existence of clinical pneumoconiosis, but appears to have so concluded based on the x-ray, computed tomography scan, and medical opinion evidence. *See* Decision and Order at 19-21. As employer is required to disprove the presumed existence of both clinical and legal pneumoconiosis, even if employer rebutted the presumption of clinical pneumoconiosis, that finding would not alter the administrative law judge's determination that employer failed to satisfy the first method of rebuttal. 20 C.F.R. §718.305(d)(1)(i).

Because claimant invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis and employer did not rebut the presumption, claimant has established his entitlement to benefits.

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge