U.S. Department of Labor

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

BRB No. 21-0508 BLA

HOMER HARRINGTON COLE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CONSOLIDATION COAL COMPANY	)	
	)	DATE ISSUED: 04/12/2023
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 Timothy J. McGrath, Administrative Law Judge, United States Department of Labor.

Catherine A. Karczmarczyk (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Timothy J. McGrath's Decision and Order Awarding Benefits (2018-BLA-05845) rendered on a claim filed pursuant to the

provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim filed on March 14, 2016.[1]

The ALJ found Claimant established 17.5 years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore determined that Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[2] and established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c). The ALJ further found Employer did not rebut the presumption, and thus awarded benefits.

On appeal, Employer argues the ALJ erred in finding that Claimant established at least fifteen years of qualifying coal mine employment and a totally disabling respiratory impairment and, therefore, in finding that Claimant invoked the Section 411(c)(4) presumption. Employer also argues the ALJ erred in finding that it failed to rebut the presumption. Neither Claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in

[1] Claimant previously filed a claim on May 2, 2007, which the district director denied for failing to establish a totally disabling respiratory or pulmonary impairment. Director's Exhibit 1. Claimant requested modification, which the district director denied, and Claimant did not further pursue the claim. *Id*.

Where a claimant files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds "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)(1); *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). Because Claimant failed to establish total disability in his prior claim, he had to submit new evidence establishing this element to obtain review of the merits of his current claim. *White*, 23 BLR at 1-3; Director's Exhibit 1.

[2] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

accordance with applicable law.[3] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Invocation of the Section 411(c)(4) Presumption--Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mine employment, or "substantially similar" surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden of proof to establish the number of years he worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold an ALJ's determination on length of coal mine employment if it is based on a reasonable method of computation and supported by substantial evidence. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

Length of Coal Mine Employment

The ALJ determined that Claimant's Social Security Administration (SSA) earnings record provided "the most reliable evidence" regarding Claimant's employment. Decision and Order at 5; Director's Exhibit 10. Addressing the employment identified in Claimant's application[4] and correlating it with the information in his SSA earnings record, for the years prior to 1978, the ALJ credited the Miner with a quarter-year of employment for each quarter in which he earned at least $50.00 from coal mine operators. Decision and Order at 6; *see Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984). Using this method, the ALJ credited Claimant with forty-two quarters of coal mine employment from 1960 to 1977, including ten quarters with Employer in the years 1975 through 1977. Decision and Order at 5-6.

[3] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4; Hearing Transcript at 16.

[4] In addition to work for Employer, Claimant's CM-911a form lists employment with Quinton White Auger Company, Red Oak Coal Company, Lowe Coal Company (Lowe Coal), Stanton Coal Company, Wild Cat Coal Company, and Jewell Ridge Coal Corporation (Jewell Ridge). Director's Exhibit 4. While Claimant did not list the dates or length of his employment for these companies on his current application, he did so in his prior claim. Director's Exhibit 1.

Then, the ALJ addressed Claimant's coal mine employment after 1978, all of which was with Employer. *Id.* at 6. Calculating this employment using the method provided in 20 C.F.R. §725.101(a)(32)(iii),[5] the ALJ found Claimant worked another seven years in the nine calendar years he worked for Employer. *Id*. Adding those seven years to the 10.5 years, the ALJ found Claimant had 17.5 years of coal mine employment. *Id.* at 6-7.

Employer maintains the ALJ erred in calculating Claimant's years of coal mine employment, as he ignored evidence of the exact dates of employment with Employer, when an ALJ is required to determine, if possible, the beginning and ending dates of all periods of coal mine employment.[6] Employer's Brief at 3; *see* 20 C.F.R §725.101(a)(32)(ii); Director's Exhibit 9.

There is evidence of record that, if credited, would establish the beginning and ending dates of Claimant's employment with Employer from 1976 to 1982 and 1990 to 1993. *See Osborne v. Eagle Coal Co.*, 25 BLR 1-195, 1-204-05 (2016) (recognizing the preference for the use of direct evidence to compute the length of coal mine employment); Director's Exhibit 9. While the ALJ noted this evidence, he did not make a finding as to its reliability or use it in his calculations. Decision and Order at 4 n.4. However, Employer has not demonstrated how the outcome would be different had the ALJ considered this

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[5] Section 725.101(a)(32)(iii) provides, in pertinent part:

> If the evidence is insufficient to establish the beginning and ending dates of the miner's coal mine employment, or the miner's employment lasted less than a calendar year, then the adjudication officer may use the following formula: divide the miner's yearly income from work as a miner by the coal mine industry's average daily earnings for that year, as reported by the Bureau of Labor Statistics (BLS).

20 C.F.R. §725.101(a)(32)(iii).

[6] We affirm, as unchallenged on appeal, that Claimant established thirty-two quarters (eight years) of employment in the years 1960 through 1975 with companies other than Employer. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5-6. Moreover, we reject Employer's argument that there is no evidence this employment constituted coal mine employment. Employer's Brief at 6. Claimant testified all his work was in coal mining and his prior claim application specifies that all the employment listed on his CM-911a was coal mine employment. Hearing Transcript at 16-17; Director's Exhibit 1.

evidence. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

In its argument to the ALJ, Employer noted the dates provided in Claimant's employment history form, but then provided a calculation of Claimant's employment using the method provided in 20 C.F.R. §725.101(a)(32)(iii). Employer's Closing Argument at 15-18. Using this method of calculation, Employer indicated that Claimant had "at most" a total 14.20 years of coal mine employment, with either 8.91 or 9.12 years with Employer. *See* Employer's Closing Argument at 16-18. On appeal, however, Employer submits that when counting the days based on the specific beginning and ending days of employment provided in Claimant's employment history document that it employed Claimant for 8.23 years. Employer's Brief at 5.

Notwithstanding the varying calculations Employer has provided, even if we were to assume Employer adequately raised the issue below and that its least generous calculation of 8.23 years is reasonable, this finding would not lead to less than fifteen years of coal mine employment (eight years of coal mine employment with other employers and 8.23 years with Employer would equal 16.23 years). Thus, any error the ALJ made in failing to adequately consider the document providing the beginning and ending dates of Claimant's work with Employer is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). We therefore affirm the ALJ's determination that Claimant had more than fifteen years of coal mine employment. Decision and Order at 7.

Qualifying Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must also establish he worked at least fifteen years in "underground coal mines" or in surface mines in conditions "substantially similar to conditions in an underground mine." 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(b)(1)(i). Under 20 C.F.R. §718.305(b)(2), "[t]he conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if the claimant demonstrates that the miner was regularly exposed to coal-mine dust while working there."

Employer argues the ALJ erred in failing to consider whether Claimant established his coal mine employment prior to working for Employer constituted qualifying coal mine employment for purposes of invoking the Section 411(c)(4) presumption.[7] Employer's

[7] We affirm, as unchallenged on appeal, that Claimant's employment with Employer constitutes qualifying coal mine employment for purposes of invoking the Section

Brief at 6. Rather, Employer contends the ALJ only considered Claimant's "broad" testimony that he worked in dusty conditions. *Id.* We disagree.

Initially, the ALJ considered Claimant's testimony that he worked "five or six years" underground, with the remainder of his employment on the surface. Decision and Order at 4, 8; Hearing Transcript at 11. The ALJ also considered Claimant's testimony detailing his dust exposure when he worked as a driller on the surface. Decision and Order at 4, 8. Claimant testified that he was exposed to a lot of limestone dust and that although he often had an enclosed cab on the drilling machine, dust still came inside. Decision and Order at 8; Hearing Transcript at 13. He also testified that he was exposed to coal dust when the drill hit the coal seam and when the other equipment stirred up coal dust around him. Decision and Order at 8; Hearing Transcript at 29, 31. Finally, Claimant testified he was covered in dust at the end of the day and would have to blow himself off with an air hose. Decision and Order at 8; Hearing Transcript at 13-14. The ALJ permissibly credited Claimant's uncontradicted testimony to find he was regularly exposed to coal mine dust during his surface coal mine employment. *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 664 (6th Cir. 2015) (claimant's "uncontested lay testimony" regarding his dust conditions "easily supports a finding" of regular dust exposure); Decision and Order at 4, 8.

While Employer argues Claimant provided no evidence regarding his employment with prior employers, Employer's Brief at 6, Claimant indicated on his CM-911a form that he worked as a drill operator or drill helper not only for Employer, but also for Quinton White Auger, Red Oak Coal Company, Stanton Coal Company, and Wild Cat Coal Company.[8] Director's Exhibit 4. Thus, the ALJ permissibly attributed Claimant's testimony regarding the dust conditions he encountered as a driller to his other drilling employment, particularly since Claimant indicated he was exposed to "dust, gases, or fumes" during this employment. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); Director's Exhibit 4.

Therefore, we affirm the ALJ's findings that Claimant's surface employment was qualifying under the regulations and, considering Claimant's uncontradicted testimony that

411(c)(4) presumption. 20 C.F.R. §718.305(b)(2); *see Skrack*, 6 BLR at 1-711; Decision and Order at 8; Employer's Brief at 6.

[8] The ALJ found Claimant's employment with these companies totaled fourteen quarters (3.5 years). Decision and Order at 5-6.

his remaining coal mine employment of approximately five years was underground,[9] that Claimant established sufficient qualifying coal mine employment to invoke the Section 411(c)(4) presumption. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012) (if substantial evidence supports an ALJ's findings, the ALJ's decision must be sustained); Decision and Order at 8.

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

To invoke the Section 411(c)(4) presumption, Claimant must also establish that he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). 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 ALJ must weigh all the 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 ALJ found total disability established based on the pulmonary function studies, medical opinion evidence, and the evidence as a whole.[10] Decision and Order at 21-23.

[9] Relevant to his underground coal mine employment, Claimant indicated he "ran motor" for Jewell Ridge and was a motor operator for Lowe Coal. Director's Exhibit 4. The ALJ found he worked for eighteen quarters (4.5 years) with Jewell Ridge and two quarters (half a year) with Lowe Coal. Decision and Order at 5-6; Director's Exhibit 10. Claimant provided in his prior claim that he worked for Jewell Ridge from 1970 until 1975 and for Lowe Coal from 1960 until 1961. Director's Exhibit 1; *see also* Director's Exhibit 5. Dr. Ajjarapu noted in her evaluation that Claimant was employed underground as a roof bolter and motor operator for Jewell Ridge from 1970 until November 1975. Director's Exhibit 17.

[10] We affirm, as unchallenged, the ALJ's determination that the pulmonary function studies establish total disability at 20 C.F.R. §718.204(b)(2)(i). *See Skrack*, 6 BLR at 1-711; Decision and Order at 21. The ALJ further found the arterial blood gas study evidence does not establish total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii)-(iii). Decision and Order at 21.

The ALJ considered the medical opinions of Drs. Ajjarapu, McSharry, and Sargent. *Id.* Dr. Ajjarapu opined Claimant is totally disabled from performing his usual coal mine employment, finding "severe" impairment based on the qualifying spirometry[11] and hypoxemia. Director's Exhibits 17, 22. Drs. McSharry and Sargent disagreed, finding Claimant capable of performing his usual coal mine employment based on his non-qualifying exercise blood gases and the non-qualifying January 7, 2019 pulmonary function study conducted by Dr. Jawad, Claimant's treating physician. Director's Exhibits 20, 21; Employer's Exhibits 8, 10. The ALJ found Dr. Ajjarapu's opinion well-reasoned and supported by the objective evidence. Decision and Order at 23. He accorded little weight to the contrary opinions of Drs. McSharry and Sargent, finding their reliance on the January 7, 2019 pulmonary function study unpersuasive as two more recent pulmonary function studies conducted in August 2019 were qualifying for total disability. *Id.* at 22-23. Thus, the ALJ found the medical opinion evidence established total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.* at 23.

Employer argues the ALJ erred in according less weight to the opinions of Drs. McSharry and Sargent because they believed Dr. Jawad's pulmonary function study was performed on July 1, 2019 rather than on January 7, 2019.[12] Employer's Brief at 7; Employer's Exhibit 5. Specifically, Employer argues the doctors were correct that Dr. Jawad administered the pulmonary function study on July 1, 2019, and it suggests the ALJ transposed numbers in his summary of the evidence (i.e., typing "01/07/2019" rather than "07/01/2019"). *Id.* at 7-8. However, Employer fails to acknowledge that at the hearing, the parties addressed the date Claimant performed Dr. Jawad's pulmonary function study and agreed it was January 7, 2019, consistent with the ALJ's summary. Decision and Order at 8 n.6; Hearing Transcript at 6-8.

Employer's counsel stated at the hearing that he had "determined that [Dr. Jawad's] pulmonary function study was in fact performed on January 7th and the day and the month were . . . transposed" in the printout of the study. Hearing Transcript at 7. Counsel noted Dr. Jawad's treatment records, at Claimant's Exhibit 9, also seemed to verify January 7,

[11] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[12] We affirm, as unchallenged on appeal, the ALJ's findings that Dr. Ajjarapu's opinion was well-reasoned and documented and thus supports a finding that Claimant is totally disabled. *See Skrack*, 6 BLR at 1-711; Decision and Order at 23.

2019, was the correct date.[13] *Id*. Thus, we reject Employer's argument that the ALJ's findings are undermined due to his alleged misunderstanding regarding the date of Dr. Jawad's pulmonary function study.

Moreover, even assuming the ALJ had misunderstood the date of Dr. Jawad's pulmonary function study, the ALJ's credibility findings as to Drs. Sargent's and McSharry's opinions are not solely reliant on this alleged misunderstanding. Dr. Sargent relied on Dr. Jawad's non-qualifying study as most representative of Claimant's lung function. Employer's Exhibit 8 at 24-25. He acknowledged the two more recent studies performed in August 2019 showed lower values but opined the values were "effort dependent" or were based on "some other process." *Id.* at 26. However, the ALJ noted that the technicians who performed the tests indicated Claimant showed good effort and the physicians who reviewed the tests indicated they were acceptable. Decision and Order at 22; Claimant's Exhibit 7; Employer's Exhibit 9. Thus, the ALJ found Dr. Sargent did not adequately explain why the subsequent testing in August 2019 did not represent Claimant's function or demonstrate that he is totally disabled. Decision and Order at 22.

Dr. McSharry also relied on Dr. Jawad's pulmonary function study to find Claimant is not totally disabled. Employer's Exhibit 10 at 27-28. While the ALJ found Dr. McSharry's opinion undermined given his confusion regarding the date of Dr. Jawad's pulmonary function study, the ALJ also provided other bases for according his opinion less weight. Decision and Order at 22-23. Dr. McSharry acknowledged that Claimant had moderate restriction that would be disabling under the regulations, but he opined that if Claimant's age of seventy-seven were used to analyze the pulmonary function study results, then the restriction would not be disabling. Employer's Exhibit 10 at 23-24. The ALJ found Dr. McSharry's opinion inadequately reasoned and speculative because he did not provide his calculations or explain how he came to his conclusion. Decision and Order at 23.

Employer does not specifically challenge any of these credibility findings regarding Drs. Sargent's and McSharry's opinions; thus, we affirm them. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Consequently, we also affirm the ALJ's finding that the medical opinion evidence supports total disability. 20 C.F.R. §718.204(b)(2)(iv);

[13] In response to Claimant's objection to Dr. McSharry's report, Employer's counsel also stipulated that when Dr. McSharry refers to the July 1, 2019 spirometry in his report, he is referring to Employer's Exhibit 5, the January 7, 2019 pulmonary function study by Dr. Jawad. Hearing Transcript at 8. While specific to Dr. McSharry's report, the stipulation would reasonably apply to any other evidence that addresses the January 7, 2019 study given the basis for the stipulation.

Decision and Order at 23. Employer does not further contest the ALJ's weighing of the evidence; thus, we affirm the ALJ's finding that Claimant established a totally disabling respiratory impairment. 20 C.F.R. §718.204(b)(2); Decision and Order at 23. Based on the foregoing, we affirm the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b); Decision and Order at 23.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[14] or "no part of [his] 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)(i), (ii). The ALJ found Employer failed to establish rebuttal by either method.[15] Decision and Order at 29-30.

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 Co*., 25 BLR 1-149, 1-159 (2015).

The ALJ considered the opinions of Drs. Sargent and McSharry that Claimant does not have legal pneumoconiosis.[16] Decision and Order at 27-29; Director's Exhibits 20, 21;

[14] "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). The definition 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). "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).

[15] The ALJ found Employer rebutted the presence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 26.

[16] The ALJ also considered Dr. Ajjarapu's opinion that Claimant has legal pneumoconiosis; however, her opinion does not support rebuttal. Decision and Order at 27; Director's Exhibits 17, 22.

Employer's Exhibits 8, 10. Both explained that, as Claimant has a restrictive impairment without interstitial changes on x-ray, any such impairment could not be attributed to coal mine dust exposure. Director's Exhibit 20; Employer's Exhibit 8 at 28; Employer's Exhibit 10 at 30-31. Rather, they opined that Claimant's restriction is due to either obesity, underperformance on pulmonary function studies, or diaphragm disfunction. Director's Exhibits 20, 21; Employer's Exhibits 8 at 27-28; 10 at 30-32. The ALJ found their opinions to be inconsistent with the principles underlying the regulations and inadequately explained, and he therefore accorded them little weight. Decision and Order at 28-29. Thus, the ALJ found legal pneumoconiosis unrebutted. *Id.* at 29.

Employer argues the ALJ erred in discrediting Drs. Sargent's and McSharry's opinions, as he did not consider the "depth and breadth" of their testimony on this issue, and asserts both explained how they used the objective evidence to determine Claimant did not have legal pneumoconiosis. Employer's Brief at 9-11. We disagree.

The ALJ permissibly found Drs. Sargent's and McSharry's opinions that Claimant would not have restriction due to coal mine dust absent interstitial changes on x-ray to be inconsistent with the Department of Labor's recognition that clinical and legal pneumoconiosis are distinct diseases and legal pneumoconiosis may exist in the form of either an obstructive or restrictive impairment. *See* 20 C.F.R. §718.201(a)(2), (b); 65 Fed. Reg. 79,922, 79,943 (Dec. 20, 2000); *Hobbs v. Clinchfield Coal Co.*, 45 F.3d 819, 821 (4th Cir. 1995); Decision and Order at 28.

Moreover, the ALJ found both doctors' opinions undermined as they failed to adequately explain why, even if obesity were a cause of Claimant's restrictive impairment, coal mine dust exposure did not also contribute to or aggravate the impairment. Decision and Order at 28-29. As the ALJ's findings are supported by substantial evidence, we affirm them. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000). Employer's arguments amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Thus, we affirm the ALJ's finding that Employer failed to rebut the presence of legal pneumoconiosis. 20 C.F.R §718.305(d)(1)(i)(A); Decision and Order at 29. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

To disprove disability causation, Employer must establish "no part of [Claimant's] respiratory or pulmonary total disability was caused by pneumoconiosis." 20 C.F.R. §718.305(d)(1)(ii). Employer argues the ALJ erred in finding it failed to rebut the presumed fact of disability causation. Employer's Brief at 11. However, it raises no arguments independent of those we have already rejected. Further, the ALJ permissibly discounted Drs. Sargent's and McSharry's opinions regarding disability causation as they did not diagnose legal pneumoconiosis, contrary to the ALJ's finding. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995) (such an opinion "may not be credited at all" on disability causation absent "specific and persuasive reasons" for concluding the physician's view on disability causation is independent of his or her erroneous opinion on pneumoconiosis); Decision and Order at 29-30. Thus, we affirm the ALJ's finding that Employer failed to rebut disability causation. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 30. Consequently, we affirm the ALJ's conclusion that Employer did not rebut the Section 411(c)(4) presumption.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge