U.S. Department of Labor

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

BRB No. 21-0599 BLA

GLASTON D. DEHART	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HOBET MINING, INCORPORATED	)	
	)	
and	)	
	)	
ARCH RESOURCES, INCORPORATED	)	DATE ISSUED: 04/20/2023
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Reconsideration Awarding Benefits of Sean M. Ramaley, Administrative Law Judge, United States Department of Labor.

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

Michael A. Pusateri (Greenberg Traurig LLP), Washington, D.C., for Employer and its Carrier.

Ann Marie Scarpino (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor, Andrea J. Appel, Counsel for Administrative Appeals),

Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order on Reconsideration[1] Awarding Benefits (2018-BLA-05512) rendered on a subsequent claim filed on April 19, 2017,[2] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Hobet Mining (Hobet) is the responsible operator and Arch Coal, Incorporated (Arch) is the responsible carrier. He credited Claimant with 26.97 years of surface coal mine employment in conditions substantially similar to those in an underground mine and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus the ALJ found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption. Thus

[1] The ALJ initially issued a Decision and Order Awarding Benefits on September 29, 2020. Employer subsequently sought reconsideration because the ALJ had erroneously held that Dr. Green's deposition testimony was not in the record. The ALJ granted the reconsideration motion and vacated his prior Decision and Order Awarding Benefits. Thereafter he issued the Decision and Order on Reconsideration Awarding Benefits that is the subject of this appeal.

[2] This is Claimant's second claim. Director's Exhibit 1. Claimant filed his initial claim on March 6, 1998. Director's Exhibit 1 at 883-86. ALJ Daniel L. Leland denied benefits because Claimant failed to establish he was totally disabled due to pneumoconiosis. The Board affirmed this determination in consideration of Claimant's appeal. *DeHart v. Hobet Mining, Inc.*, BRB Nos. 00-0454 BLA & 00-0454 BLA-A (Jan. 12, 2001).

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled 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.

he found Claimant established a change in an applicable condition of entitlement[4] and awarded benefits.

On appeal, Employer argues the ALJ lacked the authority to hear and decide the case because the removal provisions applicable to ALJs rendered his appointment unconstitutional. It also argues the ALJ erred in finding Arch is the liable carrier. On the merits, it asserts he erred in finding Claimant established that his coal mine employment occurred in conditions substantially similar to those in an underground mine and that he is totally disabled, thereby invoking the Section 411(c)(4) presumption. Finally, it argues he erred in finding it did not rebut the presumption.[5] Claimant responds, urging affirmance of the award. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response urging the Benefits Review Board to reject Employer's constitutional challenge and affirm the ALJ's responsible carrier determination. Employer filed a separate reply to each brief reiterating its arguments.

The 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 accordance with applicable law.[6] 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).

[4] When a miner 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 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). Because Claimant's initial claim was denied for failure to establish total disability due to pneumoconiosis, Claimant had to submit new evidence establishing this element in order to obtain review of the merits of his current claim. *Id*.

[5] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 26.97 years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6.

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 20-21.

Removal Provisions

Employer challenges the constitutionality of the removal protections afforded ALJs. Employer's Brief at 9-14. It generally argues the removal provisions for ALJs in the Administrative Procedure Act (APA), 5 U.S.C. §7521, are unconstitutional, citing Justice Breyer's separate opinion and the Solicitor General's argument in *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044 (2018).[7] Employer's Brief at 11-12. Employer also relies on the United States Supreme Court's holdings in *Free Enterprise Fund v. Public Co. Accounting Oversight Board.*, 561 U.S. 477 (2010) and *Seila Law v. CFPB*, 591 U.S. , 140 S. Ct. 2183 (2020), as well as the United States Court of Appeals for the Federal Circuit's holding in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019), *vacated*, 594 U.S. , 141 S. Ct. 1970 (2021). Employer's Brief at 12-14.

For the reasons set forth in *Howard v. Apogee Coal Co.*, BLR , BRB No. 20-0229 BLA, slip op. at 3-5 (Oct. 18, 2022), we hold Employer's arguments are unpersuasive.

Responsible Insurance Carrier

Employer does not challenge the ALJ's findings that Hobet is the correct responsible operator, and it was self-insured by Arch on the last day Hobet employed Claimant; thus, we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§725.494(e), 725.495, 726.203(a); Decision and Order at 33-34; Employer's Brief at 28. Rather, it alleges Patriot Coal Corporation (Patriot) should have been named the responsible carrier and thus liability for the claim should transfer to the Black Lung Disability Trust Fund (Trust Fund). Employer's Brief at 15-36; Employer's Reply to Director Brief at 8-13.

In 2005, after Claimant ceased his employment with Hobet, Arch sold Hobet to Magnum Coal (Magnum), and in 2008 Magnum was sold to Patriot. Employer's Brief at 33; Director's Brief at 2; *see* Director's Exhibit 38 at 1-2. In 2011, Patriot was authorized to insure itself and its subsidiaries, retroactive to July 1, 1973. Director's Brief at 14-15; *see* Director's Exhibit 28 at 2. In 2015, Patriot went bankrupt. *Id*. Neither Patriot's self-insurance authorization nor any other arrangement, however, relieved Arch of liability for

[7] *Lucia* involved an Appointments Clause challenge to the appointment of an ALJ at the Securities and Exchange Commission (SEC). The United States Supreme Court held, similar to Special Trial Judges at the United States Tax Court, SEC ALJs are "inferior officers" subject to the Appointments Clause. *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044, 2055 (2018) (citing *Freytag v. Comm'r*, 501 U.S. 868 (1991)).

paying benefits to miners last employed by Hobet when Arch owned that company and provided self-insurance to it.

Employer raises several arguments to support its contention that Arch was improperly designated the self-insured carrier in this claim and thus the Trust Fund, not Arch, is responsible for the payment of benefits following Patriot's bankruptcy. Employer's Brief at 15-36; Employer's Reply to Director Brief at 8-13 (unpaginated). It argues the ALJ erred in finding Arch liable for benefits because: (1) the district director is an inferior officer not properly appointed under the Appointments Clause;[8] (2) its liability evidence was erroneously excluded[9] because a carrier's liability is not subject to the limitations set forth at 20 C.F.R. §725.456(b)(1);[10] (3) the district director improperly "pierce[d] Arch's corporate veil [to] hold it responsible for" Hobet's employee, the Claimant; (4) the ALJ evaluated Arch's liability for the claim as a responsible operator or commercial insurance carrier rather than as a self-insurer; (5) no evidence establishes

[8] Employer first contested the district director's appointment in its brief before the Board. Employer's Brief at 19-20.

[9] Before this case was assigned to the ALJ, Employer requested the Office of Administrative Law Judges issue subpoenas so it could depose Michael Chance and Kim Kasmeier, two Department of Labor Office of Workers' Compensation Programs' employees and obtain documents related to Arch's liability. ALJ Richard A. Morgan denied the discovery request because Employer failed to timely identify the two witnesses or submit liability evidence to the district director and did not establish extraordinary circumstances for failing to do so. August 10, 2018 Order Denying Employer's Subpoena Request and Request for Production of Document at 7 (August 10, 2018 Order); *see* 20 C.F.R. §§725.414(c), 725.456(b)(1).

[10] Employer also argues the time limitation for its submission of liability evidence at 20 C.F.R. §725.456(b)(1) violates the Longshore and Harbor Workers' Compensation Act (Longshore Act) and the Administrative Procedure (APA) because it divests the ALJ of authority under the Longshore Act, 33 U.S.C. §919(d), and the APA, 5 U.S.C. §556(d), to receive evidence and adjudicate issues de novo. Employer's Brief at 16-18. We reject this argument. 30 U.S.C. §932(a) incorporated the provisions of the Longshore Act and the APA into the Black Lung Benefits Act (BLBA) "except as otherwise provided . . . by regulations of the Secretary." 30 U.S.C. §932(a). Thus, even if we were to accept Employer's interpretation of the regulation, the Secretary of Labor has the "authority to adopt regulations that differ from the APA and the Longshore Act." Director's Brief at 17-18, *citing Nat'l Mining Ass'n v. Chao*, 160 F. Supp. 2d 47 (D.D.C. 2001), *rev'd in part on other grounds*, *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 869 (D.C. Cir. 2002).

Arch's self-insurance covered Hobet for this claim; (6) the Department of Labor (DOL) released Arch from liability; (7) the Director changed the DOL's policy by naming Arch as the responsible carrier; (8) the DOL's issuance of Black Lung Benefits Act (BLBA) Bulletin No. 16-01[11] reflects a change in policy through which the DOL began to retroactively impose new liability on self-insured mine operators and bypass traditional rulemaking; and (9) Employer's procedural due process rights have been violated based on the denial of its request for discovery regarding BLBA Bulletin No. 16-01. Employer's Brief at 15-36; Employer's Reply to Director Brief at 4-13 (unpaginated).

The Board has previously addressed these same and similar arguments under the same material facts in *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 10-19 (Oct. 25, 2022) (en banc); *Howard*, BRB No. 20-0229 BLA, slip op. at 5-17; and *Graham v. E. Assoc. Coal Co.*, 25 BLR 1-289, 1-295-99 (2022). For the reasons set forth in *Bailey*, *Howard*, and *Graham*, we reject Employer's arguments.

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

Nature of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mines or surface coal mines in conditions substantially similar to conditions in an underground mine. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-29 (2011). The conditions in a surface mine are "substantially similar" to those underground if "the miner was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2).

Employer argues the ALJ erred by failing to compare the conditions of Claimant's surface coal mine employment to those known to prevail in underground mines before addressing whether Claimant established regular dust exposure. Employer's Brief at 40-42. It further asserts he did not adequately apportion Claimant's coal mine employment by considering which of his individual job duties occurred in substantially similar conditions. *Id.* We disagree. Claimant is not required to prove the dust conditions aboveground were identical to those underground, *see* 78 Fed. Reg. 59,102, 59,105 (Sept. 25, 2013), nor does he have to prove he "was around surface coal dust for a full eight hours on any given day for that day to count." *Freeman United Coal Mining Co. v. Summers*,

[11] The BLBA Bulletin No. 16-01 is a memorandum the Director of the Division of Coal Mine Workers' Compensation issued on November 12, 2015, to "provide guidance for district office staff in adjudicating claims" affected by Patriot's bankruptcy.

272 F.3d 473, 481 (7th Cir. 2001). Rather, Claimant need only establish he was "regularly exposed to coal-mine dust" while working at surface mines. 20 C.F.R. §718.305(b)(2).

Employer next argues the ALJ erred in finding Claimant established he was regularly exposed to coal mine dust during his employment. Employer's Brief at 40-42. We disagree.

Claimant testified he worked "seven years" for Employer as a "maintainer/operator," which "involved going out into the coal pits and fueling all the equipment and changing oil and hydraulic filters . . . and the dust filters in the equipment." Hearing Transcript at 18. He stated the coal pits "had highwall drills there" and he "had to change orifices and other mechanical things . . . in the dust suppression system." *Id*. Additionally, he testified he worked for Employer as "a coal auger operator" from 1970 to 1974 and again from 1980 "to approximately" 1983, as well as "about three years for Carolina Coal." *Id*. He also testified he drove a coal truck at strip mines anywhere from eight to fourteen hours per day five to six days per week for the last "[t]wo to three years" he worked for Employer. *Id*. at 15, 16, 21. Further, he testified that although the truck had a closed cab, "it was an old truck," the door "wasn't sealed very good," and "you would get coal dust inside the cab." *Id*. at 20. In addition, he stated he was exposed to dust, gases, or fumes during all of his coal mine employment.[12] Director's Exhibit 4. Claimant further testified he had to perform a "pre-shift exam of the truck," which required him to walk around the truck and clean the mirror. Hearing Transcript at 16.

The ALJ found Claimant "credibly testified about the dusty conditions, especially as a coal auger operator, and his later duties [which] include[ed] cleaning dust off

[12] Dr. Green noted Claimant had "heavy coal and rock dust exposure" from 1974 to 1998. Director's Exhibit 25 at 6; Claimant's Exhibits 1 at 1, 2 at 1. He also testified Claimant "operated a coal auger and a drill" and "serviced mining equipment" and "drove a truck." Employer's Exhibit 16 at 75. He further stated that because Claimant "was near the coal auger . . . he had . . . many years of exposure there." *Id*. Additionally, he stated that "a lesser concentration of dust" from driving in an air-conditioned truck for several years "represents a significant cumulative exposure combined with . . . all the other jobs that he did, including operating a drill." *Id*. at 78. Similarly, Dr. Rosenberg noted Claimant "worked on the surface operating an auger and a drill" and "drove a coal truck." Director's Exhibit 30 at 32; Employer's Exhibit 2 at 2. Further, Dr. Tuteur noted Claimant operated "an auger" and drove "a coal truck . . . [on] his last job" and "was exposed to sufficient amounts of coal mine dust." Employer's Exhibit 3 at 3.

equipment, and operating equipment with poorly sealed, enclosed cabs." Decision and Order at 6.

Contrary to Employer's contentions, the ALJ permissibly relied on Claimant's credible, uncontested testimony and employment history form detailing his working conditions to find he was regularly exposed to coal mine dust for 26.97 years. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764 (4th Cir. 1999); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *see also Zurich American Insurance Group v. Duncan*, 889 F.3d 293, 304 (6th Cir. 2018) (widow's testimony that miner's face and clothes were very dirty when he returned from work, in conjunction with statement that he was exposed to dust, gases, and fumes for his entire coal mine employment, establish regular coal mine dust exposure); *Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 664-65 (6th Cir. 2015); *Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 490 (6th Cir. 2014) (claimant's testimony that the conditions throughout his employment were "very dusty" met his burden to establish he was regularly exposed to coal mine dust); *Antelope Coal Co./Rio Tinto Energy Am. v. Goodin*, 743 F.3d 1331, 1343-44 & n.17 (10th Cir. 2014) (claimant's testimony that he was exposed to "pretty dusty" conditions "provided substantial evidence of regular exposure to coal mine dust"); 78 Fed. Reg. at 59,105; Decision and Order at 4-6.

As it is supported by substantial evidence, we affirm the ALJ's determination that Claimant was regularly exposed to coal mine dust during his employment. We therefore affirm the ALJ's finding that Claimant established at least fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption.

Total Disability

A miner is totally disabled if he has a pulmonary or respiratory impairment that, standing alone, prevents him from performing his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). 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 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). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

The ALJ found Claimant established total disability based on the arterial blood gas studies, the medical opinions, and the evidence as a whole.[13] 20 C.F.R. §718.204(b)(2)(ii), (iv); Decision and Order at 17-19.

We affirm, as unchallenged on appeal, the ALJ's finding that the arterial blood gas study evidence establishes total disability. *Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 17.

Employer argues the ALJ erred in finding the medical opinions establish total disability. Employer's Brief at 42-43. The ALJ considered the opinions of Drs. Green, Rosenberg, and Tuteur. Director's Exhibits 25, 30, 32; Claimant's Exhibits 1, 2; Employer's Exhibits 2, 3, 16. Drs. Green and Rosenberg opined Claimant is totally disabled by a respiratory or pulmonary impairment. Director's Exhibit 25 at 3; Employer's Exhibits 2 at 31; 16 at 67, 73; Claimant's Exhibits 1 at 3-4; 2 at 3-4. The ALJ found their opinions reasoned and documented. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 17-18. Dr. Tuteur opined Claimant's arterial blood gas exchange impairment would not prevent him from "engaging in his last coal mine work as a truck driver." Employer's Exhibit 3 at 12. The ALJ found Dr. Tuteur did not adequately explain why Claimant is not totally disabled in light of the qualifying arterial blood gas studies. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 18.

Employer does not specifically challenge the ALJ's discrediting of Dr. Tuteur's opinion. Employer's Brief at 42-43. Thus we affirm this credibility finding. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); 20 C.F.R. §802.211(b); Decision and Order at 18.

We further reject Employer's argument that the ALJ erred in crediting Dr. Green's opinion because the doctor did not understand the "largely sedentary nature of [Claimant's] job as a surface trucker."[14] Employer Brief at 42-43. Contrary to Employer's argument,

[13] The ALJ found Claimant did not establish total disability based on the pulmonary function testing and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii); Decision and Order at 8-9, 16-17.

[14] Dr. Rosenberg also acknowledged Claimant's job as a truck driver and stated Claimant "really did not have to do any manual labor." Employer's Exhibit 2 at 2. Nonetheless, he still opined Claimant is totally disabled. Employer's Exhibits 2 at 31; 16

and as the ALJ found, Dr. Green was aware of Claimant's job as a coal truck driver and repeatedly testified that Claimant is totally disabled based on his objective testing which demonstrated hyperventilation, abnormal gas exchange, hypoxemia, hyperinflation, and air trapping. Employer's Exhibit 16 at 52-53, 55, 57, 67, 73-74, 85-86, 91. The ALJ also specifically found Dr. Green had an understanding of how Claimant's impairment would affect his ability to work as a truck driver because: "[w]hen asked about Claimant's ability to drive a coal truck for eight hours per day, while he was able to make a nine-hour drive [in a personal vehicle] for vacation, Dr. Green explained that the arterial blood gas study demonstrated that Claimant was 'working hard to maintain adequate oxygenation'" and "[t]hat would affect his judgment and reaction time [when driving a coal truck]." Decision and Order at 12 (*quoting* Employer's Exhibit 16 at 114), 18.

Although Employer argues that Dr. Green's opinion is not adequately explained, Employer's argument is 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). Because it is supported by substantial evidence, we affirm the ALJ's finding that Dr. Green's opinion is reasoned and documented. Decision and Order at 17-18. Thus, we affirm the ALJ's findings that Claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv) and in consideration of the evidence as a whole. Decision and Order at 19. We therefore affirm the ALJ's conclusion that Claimant invoked the Section 411(c)(4) presumption. *Id.*

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,[15] or that "no part

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at 67, 73; Claimant's Exhibits 1 at 3-4; 2 at 3-4. Thus we also affirm the ALJ's finding that Dr. Rosenberg's opinion is reasoned and documented. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 17-18.

[15] "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).

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.[16]

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). Employer relied on the medical opinions and deposition testimony of Drs. Rosenberg and Tuteur to disprove legal pneumoconiosis. Director's Exhibit 30; Employer's Exhibits 2, 3.

Dr. Rosenberg opined Claimant has diffuse pulmonary fibrosis due to his prior surgeries and unrelated to coal mine dust exposure, and has a mild obstructive pulmonary impairment due to cigarette smoking which is also unrelated to coal mine dust exposure. Director's Exhibit 30 at 3-4; Employer's Exhibit 2 at 3-4. In excluding coal mine dust exposure as a cause of Claimant's obstructive defect, Dr. Rosenberg stated the condition "likely relates to his long smoking history since smoking causes a much greater adverse effect than coal dust exposure." *Id*. The ALJ discredited Dr. Rosenberg's opinion because it is "based on generalities" rather than the specifics of Claimant's condition. Decision and Order at 26, 29; *see Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 (4th Cir. 2017); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Knizer v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985). Employer does not specifically challenge this credibility finding. Employer's Brief at 43-44. Thus we affirm it. *See Cox*, 791 F.2d at 446-47; *Sarf*, 10 BLR at 1-120-21; *Fish*, 6 BLR at 1-109; 20 C.F.R. §802.211(b).

Dr. Tuteur diagnosed emphysema and opined that because this disease was first detected in 1966 before Claimant worked in the mines or smoked cigarettes, the emphysema was caused by "recurrent pneumothoraces" and not due to either his coal mine dust exposure or smoking. Employer's Exhibit 3 at 11. The ALJ found Dr. Tuteur did not explain why Claimant's emphysema was not significantly related to, or substantially aggravated by, coal mine dust exposure. *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 27, 29. Employer does not specifically challenge this credibility

[16] The ALJ found Employer disproved clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 7, 18.

finding. Employer's Brief at 43-44. Thus we affirm it.[17] *See Cox*, 791 F.2d at 446-47; *Sarf*, 10 BLR at 1-120-21; *Fish*, 6 BLR at 1-109; 20 C.F.R. §802.211(b).

We therefore affirm the ALJ's finding Employer did not disprove legal pneumoconiosis.[18] 20 C.F.R. §718.305(d)(1)(i)(A). Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant did not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ 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); Decision and Order at 30-31. The ALJ permissibly discounted the opinions of Drs. Rosenberg and Tuteur because they did not diagnose pneumoconiosis, contrary to the ALJ's finding that Employer failed to disprove the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order at 31. Thus, we affirm the ALJ's finding that Employer failed to establish that no part of Claimant's respiratory or pulmonary total disability was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). We therefore affirm the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption.

[17] Because the ALJ provided valid reasons for discrediting the opinions of Drs. Rosenberg and Tuteur, we need not address Employer's remaining arguments regarding the weight accorded to their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 43-44.

[18] As Employer does not assert Dr. Green's opinion would aid it on rebuttal, we need not address Employer's argument that the ALJ failed to adequately consider his opinion. *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"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 37-40.

Accordingly, the ALJ's Decision and Order on Reconsideration Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge