U.S. Department of Labor

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

BRB No. 21-0624 BLA

DENVER L. BARNETT	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
TWIN STAR MINING OF KY, INCORPORATED	)	
	)	
and	)	
	)	
SELF-INSURED THROUGH ANR INCORPORATED	)	DATE ISSUED: 04/24/2023
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of Decision and Order Awarding Benefits of Theodore W. Annos, Administrative Law Judge, United States Department of Labor.

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

Kendra R. Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

Before: BOGGS, BUZZARD, and ROLFE, Administrative Appeals Judges.

BUZZARD and ROLFE, Administrative Appeals Judges:

Employer appeals Administrative Law Judge (ALJ) Theodore W. Annos's Decision and Order Awarding Benefits (2018-BLA-05518) rendered on a claim filed January 20, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with at least fifteen years 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). He therefore found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[1] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer asserts the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption. It also contends he erred in finding it did not rebut the presumption.[2] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), declined to file a brief, unless requested.

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 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).

[1] 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 impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

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

[3] 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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 6, 7; Hearing Transcript at 5.

Invocation of 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). A miner 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 Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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 pulmonary function studies, medical opinions, and record as a whole.[4] 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order at 14-26. Employer argues the ALJ erred in weighing the pulmonary function studies and medical opinion evidence. Employer's Brief at 3-13. We disagree.

Pulmonary Function Studies

The ALJ considered five pulmonary function studies conducted on March 10, 2017, August 24, 2017, August 1, 2018, August 5, 2018, and February 1, 2019. Decision and Order at 7-8, 14-15; Director's Exhibits 14, 24; Claimant's Exhibits 1, 2; Employer's Exhibit 3. He found all the studies valid. Decision and Order at 14. He found the pre-bronchodilator values for the studies conducted on March 10, 2017, August 1, 2018, and August 5, 2018 are qualifying while the post-bronchodilator values for these studies are non-qualifying. *Id.* He found the pre- and post-bronchodilator values for the studies conducted on August 24, 2017 and February 1, 2019 non-qualifying. *Id.* The ALJ noted three of the five pre-bronchodilator studies were qualifying and credited the results of the qualifying pre-bronchodilator studies over the results of the non-qualifying post-bronchodilator studies. *Id.* He further found the non-qualifying results from the most recent study were not entitled to heightened weight because the study was conducted within six months of the prior qualifying study. *Id.* at 14-15. As the preponderance of the pre-

[4] The ALJ found the arterial blood gas studies do not establish total disability and there is no evidence Claimant has cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 15.

bronchodilator studies produced qualifying values, the ALJ found the pulmonary function studies established total disability. *Id.*

Employer argues the ALJ erred in weighing the pulmonary function study evidence by failing to give more weight to the most recent study and failing to explain this decision. Employer's Brief at 5-8. We disagree.

Contrary to Employer's argument, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held it irrational to credit evidence solely because of recency where it shows the miner's condition has improved. *See Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992);[5] *Thorn v. Itmann Coal Co.*, 3 F.3d 713, 719 (4th Cir. 1993); *see also Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993). Moreover, even if that were not the case, the ALJ still considered but rejected Employer's argument that the non-qualifying February 1, 2019 study is entitled to additional weight on the basis of its recency, because "only six months or less separate" it from two qualifying tests conducted in August 2018. Decision and Order at 14-15; *see Greer v. Director, OWCP*, 940 F.2d 88 (4th Cir.1991) (pulmonary function studies conducted two months apart "should be considered contemporaneous" given that pneumoconiosis is "slowly-progressing").

Next, Employer argues the ALJ failed to review "contrary probative evidence" and failed to satisfy Administrative Procedure Act (APA).[6] Employer's Brief at 6-8. We reject its arguments. To the contrary, the ALJ considered and correctly found three of the five pulmonary function studies produced qualifying pre-bronchodilator values. Decision and

[5] In explaining the rationale behind the "later evidence rule," the court reasoned "a later test or exam is a more reliable indicator of [a] miner's condition than an earlier one" where "a miner's condition has worsened" given the progressive nature of pneumoconiosis. *Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992). As the test results do not conflict in such circumstances, "[a]ll other considerations aside, the later evidence is more likely to show the miner's condition." *Id.* at 52. But if "the tests or exams" show the miner's condition has improved, the reasoning "simply cannot apply" because one must be incorrect -- and "it is just as likely that the later evidence is faulty as the earlier." *Id.* The ALJ must therefore resolve conflicting tests when the miner's condition improves "without reference to their chronological relationship." *Id.*

[6] The APA requires every adjudicatory decision to include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

Order at 8, 14-15; Director's Exhibits 14, 24; Claimant's Exhibits 1, 2; Employer's Exhibit 3; Employer's Brief at 5. Furthermore, as discussed below, the ALJ considered and permissibly found the contrary opinions of Drs. Fino and Sargent not well-reasoned on the issue of total disability. 20 C.F.R. §718.204(b)(2)(iv). As the ALJ fully explained his finding that the pulmonary function studies establish Claimant is totally disabled and that finding is supported by substantial evidence, we affirm it. *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (explaining that substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 n.10 (4th Cir. 1999) ("If a reviewing court can discern what the ALJ did and why he did it, the duty of explanation is satisfied.") (quotation removed).

Medical Opinions

Prior to considering the medical opinions, the ALJ found Claimant's usual coal mine employment as a heavy equipment operator required a "medium level of exertion" and involved Claimant climbing both a ladder and stairs two to three times a day. Decision and Order at 4-5. As it is unchallenged, we affirm this finding. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); *see* Decision and Order at 4-5.

The ALJ weighed the opinions of Drs. Raj, Green, Fino, and Sargent. Decision and Order at 16-26; Director's Exhibits 14, 24-26; Claimant's Exhibits 1, 2; Employer's Exhibits 3, 4. Drs. Raj and Green opined Claimant is totally disabled from a pulmonary impairment. Director's Exhibits 14, 25, 26; Claimant's Exhibits 1, 2. In contrast, Drs. Fino and Sargent opined Claimant is not totally disabled from a pulmonary standpoint and would be able to perform his usual coal mine employment. Director's Exhibit 24; Employer's Exhibits 3-5. The ALJ accorded Drs. Raj's and Green's opinions "some weight."[7] Decision and Order at 16-17. He found Drs. Fino's and Sargent's opinions not well-reasoned and worth little weight. *Id.* at 18-26. He therefore found the medical opinion evidence supports a finding of total disability. *Id.* at 26; *see* 20 C.F.R. §718.204(b)(2)(iv).

[7] The ALJ found the persuasiveness of Dr. Raj's opinion "somewhat diminished by his inaccurate statement that the August 24, 2017 pulmonary function test 'meet[s] the Federal black lung standards for total disability.'" Decision and Order at 16. He found Dr. Green's conclusion that Claimant had complicated pneumoconiosis detracted from his opinion regarding total disability; however, because Dr. Green based his opinion in large part on qualifying pulmonary function study results, the ALJ found it still is entitled to some weight. *Id.*

Employer argues the ALJ erred in crediting the opinions of Drs. Raj and Green. Employer's Brief at 9-13. We are unpersuaded.

Dr. Raj opined Claimant has a "total pulmonary impairment" based on pulmonary function studies indicating a moderate obstructive defect with significant air trapping. Director's Exhibits 14 at 3-4, 26 at 4. Dr. Raj further observed Claimant would be unable to perform the exertional requirements of his usual coal mine job because he "gets short of breath after walking 15-20 yards uphill." Director's Exhibit 14 at 4-5. Similarly, Dr. Green opined Claimant is totally disabled from a pulmonary capacity standpoint based on the pulmonary function study results and would not be able to meet the exertional demands of his usual coal mine employment "operat[ing] heavy equipment and climb[ing] multiple steps per day." Claimant's Exhibits 1 at 3-4, 2 at 4.

The ALJ found both physicians' reliance on Claimant's pulmonary function studies in accord with his finding that the studies establish total disability. Decision and Order at 16-17. He found their opinions were based on Claimant's relevant histories, physical examination, and objective testing, and consistent with the underlying data. *Id.*; Employer's Brief at 12-13; *see* Decision and Order at 16-17; Director's Exhibit 26 at 4; Claimant's Exhibits 1 at 4, 2 at 3-4. Contrary to Employer's contentions, the ALJ permissibly found both opinions reasoned and well-documented. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 207-08, 211 (4th Cir. 2000); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21-22 (1987) (explaining a reasoned opinion is one in which the ALJ finds the underlying documentation adequate to support the physician's conclusions); Employer's Brief at 12-13.

Employer next argues the ALJ erred in rejecting the opinions of Drs. Fino and Sargent as both were well-reasoned and well-documented. Employer's Brief at 9-12. We disagree.

Dr. Fino testified he understood Claimant's usual coal mine employment as a heavy equipment operator required "[ninety] percent light labor, which is lifting or carrying less than [twenty-five] pounds and sitting most of the time" and "[ten] percent was moderate labor, which is lifting 25 to 50 pounds during the day, occasionally." Employer's Exhibit 5 at 7, 15. He opined Claimant's pulmonary function studies signify a "[m]oderate obstruction with improvement following bronchodilators." *Id.* at 11-12. He concluded, based on his understanding of Claimant's exertional requirements and objective testing, Claimant retained the respiratory capacity to return to his usual coal mine employment. *Id.* at 15-17, 27-28.

Dr. Sargent stated Claimant ran heavy equipment as part of his usual coal mine employment. Employer's Exhibit 4 at 6. He opined Claimant's pulmonary function study

shows "a mild impairment that goes away almost completely with bronchodilator, no evidence of restriction, and a normal diffusion capacity." *Id.* at 10. He concluded because Claimant's lung function improved after the administration of bronchodilators, there is no "significant respiratory impairment and even pre-bronchodilator his impairment is mild." *Id.* at 11-14; Employer's Exhibit 3 at 2. He opined Claimant's mild impairment would not prevent him from returning to his usual coal mine employment. Employer's Exhibit 4 at 11-14.

The ALJ found both doctors relied on post-bronchodilator results, which is contrary to the preamble's recognition that "the use of a bronchodilator does not provide an adequate assessment of the miner's disability," and that, while both physicians diagnosed Claimant with a respiratory impairment, neither explained "how Claimant could meet the physical demands of his last coal mine job notwithstanding the impairment." Decision and Order at 21, 25 (quoting 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980)). He further noted the question of total disability is whether Claimant can perform his usual coal mine employment, not whether Claimant "is able to perform his job after he takes medication." Decision and Order at 25 (quotation removed); *see* 45 Fed. Reg. at 13,682. Contrary to Employer's contentions, the ALJ permissibly found both opinions contrary to the preamble to the regulations and therefore unpersuasive. *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); 45 Fed. Reg. at 13,682; Decision and Order at 21, 25; Employer's Brief at 9-11.

Next, the ALJ found Dr. Fino's understanding of Claimant's exertional requirements as a heavy equipment operator, which he understood to require "[ten] percent moderate and [ninety] percent light labor," contradicts his finding that Claimant's usual coal mine employment required a "medium level of exertion." Decision and Order at 4-5; Employer's Exhibit 5 at 7. The ALJ also correctly noted Dr. Sargent failed to indicate his knowledge of the exertional requirements of Claimant's usual coal mine employment as a heavy equipment operator. Employer's Exhibits 3; 4 at 6. Thus, the ALJ permissibly discredited Dr. Fino for having an inaccurate understanding of the exertional requirements and Dr. Sargent for lacking knowledge of the exertional requirements. *See Eagle v. Armco, Inc.*, 943 F.2d 509, 512-13 (4th Cir. 1991) (explaining a physician who asserts a claimant is capable of performing assigned duties should state his knowledge of the physical efforts required and relate them to the miner's impairment); *Walker v. Director, OWCP*, 927 F.2d 181, 184-85 (4th Cir. 1991); Decision and Order at 21, 25. Moreover, the ALJ permissibly found Dr. Sargent's opinion deficient for failing to discuss the qualifying pre-bronchodilator results from the March 10, 2017, August 1, 2018, and August 5, 2018 pulmonary function studies. Decision and Order at 25; Employer's Exhibit 4 at 12-13; *see Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441.

As the ALJ sufficiently explained why he found the opinions of Drs. Fino and Sargent not well-reasoned and that finding is supported by substantial evidence, we affirm it. *Owens*, 724 F.3d at 557; *Mays*, 176 F.3d at 762 n.10. Employer's arguments on total disability are a request to reweigh that evidence, which we are not empowered to do. *See Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). We thus affirm the ALJ's determination that the medical opinion evidence supports a finding of total disability. Decision and Order at 26. Because we have rejected Employer's contentions of error, we affirm his finding that all the relevant evidence, when weighed together, establishes total disability. *See Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 26.

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,[8] or that "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.[9]

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).

[8] "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).

[9] The ALJ found Employer disproved clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 26-27.

The ALJ weighed the opinions of Drs. Fino and Sargent that Claimant's asthma did not constitute legal pneumoconiosis because the improvement in his pulmonary function studies indicates a reversible obstruction. Decision and Order at 28-32; Director's Exhibit 24; Employer's Exhibits 3 at 2; 4 at 16-17; 5 at 13, 16-17. Dr. Fino opined Claimant's emphysema and asthma are unrelated to coal dust. Employer's Exhibit 5 at 13-15. Similarly, Dr. Sargent opined Claimant's asthma is not related to coal dust as it is almost completely reversed with bronchodilators. Employer's Exhibits 3 at 2, 4 at 10. The ALJ discredited their opinions because he found them inadequately reasoned and contrary to the regulations, and thus he concluded Employer did not disprove legal pneumoconiosis. Decision and Order at 28-32.

Employer argues the ALJ erred in rejecting the opinions of Drs. Fino and Sargent as both were well-reasoned and well-documented. Employer's Brief at 16-23. We are unpersuaded.

First, the ALJ noted Dr. Fino testified that Claimant's pulmonary function studies are "consistent with asthma" and "asthma [is not] caused by coal dust exposure." Decision and Order at 28; Employer's Exhibit 5 at 12, 14. He also noted Dr. Sargent's similar statement that although coal dust can aggravate asthma, "[a]sthma is a disease of the general population that is not caused by coal dust exposure." Decision and Order at 30; Employer's Exhibit 3. The ALJ discredited their opinions that asthma cannot be caused by coal dust based on the medical science credited by the Department of Labor (DOL) in the preamble. Decision and Order at 29, 31 (citing 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000) (noting "valid support [exists in the record] for the proposition that coal mine dust exposure can cause obstructive pulmonary disease" and COPD includes three disease processes characterized by airway dysfunction: chronic bronchitis, emphysema, and asthma)); *see Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441. Next, the ALJ found unpersuasive their opinion that Claimant does not suffer from a pulmonary impairment due to coal dust exposure because Claimant's asthma improved with the administration of bronchodilators. Decision and Order at 29-31; Employer's Exhibits 4 at 16, 5 at 16. The ALJ permissibly found their explanations unpersuasive as they did not adequately explain why the irreversible portion of Claimant's impairment is not significantly related to, or substantially aggravated by, coal mine dust exposure. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 673-74 n.4 (4th Cir. 2017); *Owens*, 724 F.3d at 558; *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012); *Hicks*, 138 F.3d at 528; *see also Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); Decision and Order at 29-31.

Additionally, the ALJ found Dr. Fino's opinion not well reasoned because he failed to address Claimant's emphysema, or "explain how or why coal mine dust did not substantially aggravate Claimant's asthma" even assuming Claimant's coal dust exposure

did not cause it. Decision and Order at 29; *see Stallard*, 876 F.3d at 671-72 n.4; *Hobet Mining, LLC v. Epling*, 783 F.3d 498 (4th Cir. 2015).

Finally, the ALJ accurately noted Dr. Sargent excluded coal mine dust exposure as a cause of Claimant's asthma because it developed and progressed after he left the mines. Decision and Order at 31; Employer' Exhibit 4 at 15. He discredited Dr. Sargent's opinion on this basis because it is inconsistent with the DOL's recognition that pneumoconiosis is a latent and progressive disease that "may first become detectable only after the cessation of coal mine dust exposure." Decision and Order at 31; *see Epling*, 783 F.3d at 506; 20 C.F.R. §718.201(c); *see also Island Creek Coal Co. v. Young*, 947 F.3d 399, 408 (6th Cir. 2020). We therefore affirm the ALJ's rejection of the opinions of Drs. Fino and Sargent as it is supported by substantial evidence.

Because we can discern the ALJ's rationale underlying his credibility findings, we are not persuaded by Employer's additional argument that his findings do not satisfy the APA. *Looney*, 678 F.3d at 316 (if a reviewing court can discern what the ALJ did and why he did it, the duty of explanation under the APA is satisfied); *see also Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1072-73 (6th Cir. 2013); Decision and Order at 21, 25-26.

Employer next argues the ALJ impermissibly rejected the opinions of Drs. Fino and Sargent by requiring them to "rule out" coal mine dust exposure as a cause of Claimant's lung disease or impairment, a stricter standard than the regulations require. Employer's Brief at 14-16, 17-18; *see* 20 C.F.R. §§718.201(a)(2), 718.305(d)(1)(A). We disagree.

The ALJ correctly stated Employer has the burden to establish Claimant does not have legal pneumoconiosis, which he properly identified as any "chronic lung disease or impairment significantly related to, or substantially aggravated by, dust exposure from coal mine employment." *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); Decision and Order at 26, 28. Moreover, the ALJ did not reject the opinions of Drs. Fino and Sargent because they were insufficient to meet a "rule out" standard on the existence of legal pneumoconiosis; rather, he found both opinions not well-reasoned. Decision and Order at 29-31.

Employer generally argues the ALJ should have found the opinions of Drs. Fino and Sargent well-reasoned and documented. Employer's Brief at 16-23. We consider Employer's argument to be a request that the Board reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. As Employer raises no other challenge and because the ALJ acted within his discretion in rejecting the opinions of Drs. Fino and Sargent, we affirm his finding Employer did not disprove legal pneumoconiosis. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the 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 the [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 32-33. Contrary to Employer's argument, the ALJ permissibly discredited the disability causation opinions of Drs. Fino and Sargent because they failed to diagnose legal pneumoconiosis, contrary to his finding that Employer failed to disprove Claimant has the disease. *See Epling*, 783 F.3d at 504-05; Decision and Order at 32-33; Employer's Brief at 25-26. We therefore affirm the ALJ's finding that Employer failed to establish no part of Claimant's respiratory disability was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge:

I concur in result only.

JUDITH S. BOGGS
Administrative Appeals Judge