U.S. Department of Labor

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

BRB No. 21-0556 BLA

RONNIE G. HORN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
EXTRA ENERGY, INCORPORATED	)	
	)	DATE ISSUED: 8/24/2022
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 Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

Mark J. Grigoraci (Robinson & McElwee PLLC), Charleston, West Virginia, for Employer.

Steven Winkelman (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Awarding Benefits (2018-BLA-05914) rendered on a claim filed

pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a claim filed on December 12, 2016.

The ALJ determined Employer is the properly designated responsible operator. She found Claimant established at least 16.27 years of employment in underground coal mines or surface coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she 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). She further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding it is the responsible operator. It also argues she erred in finding Claimant established at least fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption. Finally, it argues she erred in finding it did not rebut the presumption.[2] Claimant has not filed a response in this appeal. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response urging the Benefits Review Board to affirm the ALJ's responsible operator determination.

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

Responsible Insurance Carrier

The responsible operator is the "potentially liable operator, as determined in accordance with [20 C.F.R.] §725.494, that most recently employed the miner." 20 C.F.R.

[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 or pulmonary 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 total disability. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.204(b)(2); Decision and Order at 3.

[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 Exhibit 4.

§725.495(a)(1). A coal mine operator is a "potentially liable operator" if it meets the criteria set forth at 20 C.F.R. §725.494(a)-(e).[4] Once the Director identifies a potentially liable operator, that operator may be relieved of liability only if it proves it is financially incapable of assuming liability for benefits, or another operator more recently employed the miner for a cumulative period of at least one year and is financially capable of assuming liability for benefits. *See* 20 C.F.R. §725.495(c).

On December 22, 2016, the district director issued a Notice of Claim informing Employer it had been identified as a potentially liable operator. Director's Exhibit 23. The district director advised Employer to file a response within thirty days from receipt of the Notice of Claim indicating whether it wished to accept or contest its identification as a potentially liable operator. *Id*. She further notified Employer to accept or deny each of the five operator assertions controverting its liability, including that Claimant was exposed to coal mine dust while working for Employer.[5] 20 C.F.R. §725.408(a)(2); Director's Exhibit

[4] In order for a coal mine operator to meet the regulatory definition of a "potentially liable operator," the miner's disability or death must have arisen at least in part out of employment with the operator, the operator must have been in business after June 30, 1973, the operator must have employed the miner for a cumulative period of not less than one year, one working day of the employment must have occurred after December 31, 1969, and the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

[5] The regulation at 20 C.F.R. §725.408(a)(2) provides:

> If the operator contests its identification, it shall, on a form supplied by the district director, state the precise nature of its disagreement by admitting or denying each of the following assertions. In answering these assertions, the term "operator" shall include any operator for which the identified operator may be considered a successor operator pursuant to § 725.492.
>
> (i) That the named operator was an operator for any period after June 30, 1973;
>
> (ii) That the operator employed the miner as a miner for a cumulative period of not less than one year;
>
> (iii) That the miner was exposed to coal mine dust while working for the operator;

23. Finally, she informed Employer that if it failed to respond within thirty days of receipt of the Notice of Claim or request an extension, it would no longer be able "to contest [its] liability for payment of benefits on any of the grounds set forth in 20 C.F.R. 725.408(a)(2)." *Id*. Employer did not respond to the Notice of Claim.

Thereafter the district director issued a Proposed Decision and Order designating Employer as the responsible operator. Director's Exhibit 27. Employer requested a hearing and the case was forwarded to the Office of Administrative Law Judges where it was assigned to the ALJ. Director's Exhibit 33. In addressing the responsible operator issue, she found Employer is the potentially liable operator that most recently employed Claimant and is financially capable of assuming liability. Decision and Order at 6. Thus she found Employer is the properly designated responsible operator. *Id*.

Employer argues the ALJ erred in finding it is a potentially liable operator because Claimant's hearing testimony establishes he was not exposed to coal mine dust while working for it. Employer's Brief at 7-9. We agree with the Director's argument that by failing to timely respond to the district director's Notice of Claim, Employer forfeited its right to dispute its status as a potentially liable operator.[6] Director's Response Letter at 3-5, *citing* 20 C.F.R. §725.408(a)(3).

The regulation at 20 C.F.R. §725.408 provides that an operator which receives notice of a claim, and fails to file a response within thirty days of receipt, "shall not be allowed to contest its liability for the payment of benefits on any of the grounds set forth in paragraph (a)(2)." 20 C.F.R. §725.408(a)(3). One of the grounds specified in paragraph (a)(2) is "the miner was exposed to coal mine dust while working for the operator." 20 C.F.R. §725.408(a)(2)(iii). Employer does not dispute that it did not respond to the December 22, 2016 Notice of Claim. As a consequence, Employer is precluded from arguing Claimant was not exposed to coal mine dust while working for Employer, the sole

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> (iv) That the miner's employment with the operator included at least one working day after December 31, 1969; and
>
> (v) That the operator is capable of assuming liability for the payment of benefits.

20 C.F.R. §725.408(a)(2).

[6] In addition, the Director asserts Employer is precluded from relying on Claimant's testimony as liability evidence because it failed to timely designate Claimant as a liability witness before the district director. Director's Response Letter at 3-5, *citing* 20 C.F.R. §725.414.

ground upon which it relies to contest its designation as the responsible operator.[7] We therefore affirm the ALJ's determination that Employer is the responsible operator.

Invocation of the Section 411(c)(4) Presumption – Qualifying 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 "substantially similar" surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). The "conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if [Claimant] demonstrates that [he] was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2); *see Zurich Am. Ins. Grp. v. Duncan*, 889 F.3d 293, 304 (6th Cir. 2018); *Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 663 (6th Cir. 2015).

In concluding Claimant established at least fifteen years of qualifying coal mine employment, the ALJ found Claimant was regularly exposed to coal mine dust while working for Employer, as well as Raven Coal Company (Raven), CB Ratliff Mining, Troy Absher, Winston Mining Company (Winston), and David Freeman Trucking. Decision and Order at 7-8.

Employer first argues the ALJ erred in finding Claimant was regularly exposed to coal mine dust while working for Employer. Employer's Brief at 7-10. We disagree.

Claimant testified he worked for Employer from 2008 to 2013 at a strip mine driving a truck. Hearing Tr. at 22-23. He cleaned rock and dust from the coal and hauled the coal away. Hearing Tr. at 22-23. The process of cleaning coal with a broom caused "quite a bit" of dust. *Id*. at 46. With respect to the conditions inside of the trucks he drove, Claimant

[7] The Director also notes that because Claimant worked for Employer as a truck driver, there is a rebuttable presumption that he was exposed to coal mine dust during all periods of such employment occurring in or around a coal mine or coal preparation facility for purposes of determining whether he is a miner. Director's Response Letter at 3-5, *citing* 20 C.F.R. §725.202(b)(1)(i). Employer can rebut the presumption by demonstrating that Claimant was not regularly exposed to coal mine dust, or he did not work regularly in or around a coal mine or coal preparation facility. 20 C.F.R. §725.202(b)(2). As discussed below, we have affirmed the ALJ's finding that Claimant was regularly exposed to coal mine dust while working for Employer. Moreover, Employer does not allege Claimant did not work regularly in or around a coal mine or coal preparation facility while working for Employer.

stated they "always had dust in them[;] it [did not] matter what [was] done" to address the dust. *Id*. at 48. Dust was present in his truck even if the windows were rolled up. *Id*. Although he drove trucks with air conditioning, it did not work half of the time. *Id*. at 31. Describing his work for Employer, Claimant stated "it was dusty, and it was rough." *Id*. On his employment history form, Claimant stated he was exposed to dust while working for Employer. Director's Exhibit 3. Contrary to Employer's argument, the ALJ permissibly found Claimant was regularly exposed to coal mine dust while working for Employer. *Duncan*, 889 F.3d at 304; *Kennard*, 790 F.3d at 663; Decision and Order at 7-8.

Employer next argues Claimant was not regularly exposed to coal mine dust while working for Winston. We are not persuaded by its argument. Employer's Brief at 11. During the hearing, Claimant described his work for both CB Ratliff and Winston.

Claimant testified he worked as a truck driver for CB Ratliff from 1973 to 1976 hauling raw coal from the mine site to the tipple. Hearing Tr. at 12. This mine was located at the Dry Fork site in Vansant, Virginia. *Id*. He was exposed to coal and rock dust when his truck was loaded with coal. *Id*. To load the coal, he had to back the truck into a tunnel and open the door on a chute, and the "coal would drop out into [the] bed" of the truck. *Id*. There was coal dust in the air at the loading site and he had to walk on top of coal to open the chute. *Id*. He described the conditions as "very dusty." *Id*. In addition, he was exposed to coal mine dust when unloading at the tipple. *Id*. at 12-13. When the coal was dumped, there was "quite a bit of dust" in the air. *Id*.

Claimant testified he also worked as a truck driver for Winston and hauled raw coal from the mine to the tipple. Hearing Tr. at 11. He stated this mine was also at the Dry Fork site in Vansant, Virginia – the same site as the work he did with CB Ratliff. *Id*.

The ALJ permissibly found the dust conditions at CB Ratliff and Winston were the same because Claimant was a truck driver hauling raw coal at the Dry Fork mine site in Vansant, Virginia for both entities. *Consolidation Coal Co. v. Held*, 314 F.3d 184, 187 (4th Cir. 2002) (Board cannot disturb factual findings that are supported by substantial evidence even if it might reach a different conclusion if it were reviewing the evidence de novo); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997) (an ALJ has the discretion to weigh the evidence and draw inferences therefrom); Decision and Order at 7-8. Based on Claimant's testimony with respect to his working conditions at CB Ratliff, the ALJ permissibly found he was regularly exposed to coal mine dust while working for both CB Ratliff and Winston. *Duncan*, 889 F.3d at 304; *Kennard*, 790 F.3d at 663; Decision and Order at 7-8.

Employer also asserts Claimant did not have any qualifying coal mine employment with Raven Coal. Employer's Brief at 10-12. We note Claimant testified that when he worked for Raven Coal, he worked at an underground mine site. Hearing Tr. at 18-20 (Claimant agreeing with his counsel that in his job with Raven, he worked underground). The type of mine (underground or surface), rather than the location of the particular worker (below ground or aboveground), determines whether a miner is required to show comparability of conditions. *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1058 (6th Cir. 2013); *Muncy v. Elkay Mining Co*., 25 BLR 1-21, 1-28-29 (2011); Decision and Order at 7. Thus, a miner who worked aboveground at an underground mine site need not otherwise establish that his working conditions were substantially similar to those in an underground mine. *Ramage*, 737 F.3d at 1058-59; *Muncy*, 25 BLR at 1-29. Because Claimant worked at an underground mine site for Raven, we affirm the ALJ's finding Claimant established this is qualifying coal mine employment.[8]

Finally, Employer argues the ALJ erred in finding Claimant was regularly exposed to coal mine dust while working for Troy Absher and David Freeman Trucking. Employer's Brief at 10-12. With respect to Troy Absher, Claimant testified he worked for this entity from 1977 to 1982 hauling raw coal. Hearing Tr. at 15-16. He hauled raw coal from the Jewel Smokeless mine site to the tipple. *Id*. On his employment history form, he stated he was exposed to dust during this time. Employer's Exhibit 3. Claimant testified he also hauled raw coal for David Freeman Trucking to the same Jewel Smokeless mine site. *Id*. He again indicated he was exposed to dust while hauling coal for this operator on his employment history form. Employer's Exhibit 3. In light of Claimant's testimony that he hauled raw coal from the mine site to the tipple for both of these entities and his statement that he was exposed to dust when doing so, the ALJ permissibly found Claimant was regularly exposed to coal mine dust for Troy Absher and David Freeman Trucking. *Consolidation Coal Co. v. Director, OWCP* [*Burris*], 732 F.3d 723, 732 (7th Cir. 2013) (miner "testified credibly that, no matter what his job title, he was often called upon to perform repair jobs at the hopper and tipple, two particularly dusty areas"); *Consolidation Coal Co. v. Director, OWCP* [*Stein*], 294 F.3d 885, 893 (7th Cir. 2002) (tipple is a notoriously dusty area where coal is crushed for shipment to customers); *Director, OWCP v. Midland Coal Co.* [*Leachman*], 855 F.2d 509, 512-13 (7th Cir. 1988) (ALJ may use

[8] Even if Raven Coal was a surface mine, we note Claimant testified he was exposed to "a lot of dust" on the surface at the tipple, and this mine was as "dusty as an underground mine." Hearing Tr. at 20. The ALJ permissibly found this testimony establishes regular coal mine dust exposure. *Duncan*, 889 F.3d at 304; *Kennard*, 790 F.3d at 663; Decision and Order at 7-8.

certain appropriate objective factors such as whether the surface miner was employed near the tipple, where conditions are apparently known to be very dusty, in evaluating whether he was regularly exposed to coal mine dust); Decision and Order at 7-8.

As Employer raises no further argument, we affirm the ALJ's finding that Claimant established at least fifteen years of qualifying coal mine employment. We therefore affirm the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305.

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,[9] 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 rebut the presumption by either method.

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." *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(2)(i)(A); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ considered the opinions of Drs. Rosenberg and McSharry that Claimant does not have legal pneumoconiosis.[10] Decision and Order at 15-16. Dr. Rosenberg opined Claimant has severe hypoxemia due to his "obesity with hypoventilation" and "ground-

[9] "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).

[10] The ALJ also considered the opinions of Drs. Forehand, Raj, and Green that Claimant has legal pneumoconiosis. She found their opinions persuasive because each physician considered the impact of Claimant's smoking history and obesity, and opined his coal mine dust exposure was a significant factor to his hypoxemia. Decision and Order at 15; Director's Exhibit 15; Claimant's Exhibits 1, 2.

glass changes within his lung parenchyma." Employer's Exhibits 1, 4. Dr. McSharry diagnosed pulmonary hypertension due to obstructive sleep apnea syndrome and restrictive lung disease due to obesity. Employer's Exhibit 3. Both physicians opined the pulmonary conditions they diagnosed are unrelated to coal mine dust exposure. Employer's Exhibits 1, 3, 4. The ALJ found the opinions of Drs. Rosenberg and McSharry unpersuasive and thus insufficient to rebut the presumption of legal pneumoconiosis. Decision and Order at 15-16.

We reject Employer's argument that the ALJ erred in discrediting the opinions of Drs. Rosenberg and McSharry. Employer's Brief at 14-17.

Dr. Rosenberg excluded legal pneumoconiosis because there "is no evidence or basis to conclude" Claimant's hypoxemia "relates to a coal mine dust related disorder." Employer's Exhibit 4 at 4. But Claimant's hypoxemia is presumed to be legal pneumoconiosis,[11] and it is Employer's burden to establish it is not significantly related to, or substantially aggravated by, coal mine dust exposure. *See W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018). The ALJ acted within her discretion in rejecting Dr. Rosenberg's opinion on the grounds that he did not explain how he "eliminated Claimant's [sixteen]-year history of occupational exposure as a potential cause" of Claimant's pulmonary impairment. Decision and Order at 16; *see Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 n.4 (4th Cir. 2017); *Hobet Mining, LLC v. Epling*, 783 F.3d 498 (4th Cir. 2015).

We are also unpersuaded by Employer's argument that the ALJ mischaracterized Dr. McSharry's opinion. Employer's Brief at 19. Dr. McSharry opined "there is no compelling evidence to suggest coal [mine] dust exposure has contributed in anyway [sic]

[11] Employer avers the ALJ erred in finding that the presence of hypoxemia and chronic respiratory impairment, as evidenced by Claimant's treatment records and the medical opinions, compels a finding that these pulmonary conditions are significantly related to, or substantially aggravated by, coal mine dust exposure. Employer's Brief at 15-16. We disagree. Once Claimant invokes the Section 411(c)(4) presumption, "there is no need for [him] to prove the existence of pneumoconiosis; instead, pneumoconiosis arising from coal mine employment is presumed, subject only to rebuttal by [Employer]." *W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018). The rebuttal inquiry is "whether [Employer] has come forward with affirmative proof that [Claimant] does not have legal pneumoconiosis, because his impairment is not in fact significantly related to his years of coal mine employment." *Id.*

to [Claimant's] impairments," but also opined Claimant's bronchitic symptoms, cough and wheezing "may be the result of coal dust exposure or cigarette smoking" and "it is possible . . . that legal pneumoconiosis is present in this [C]laimant." Employer's Exhibit 3 at 4. The ALJ permissibly found Dr. McSharry's opinion did not establish rebuttal because it was inconsistent. *See U.S. Steel Mining Co. v. Director, OWCP* [*Jarrell*], 187 F.3d 384, 389 (4th Cir. 1999); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16, 1-19 (1987); Decision and Order at 16.

Finally we reject Employer's argument that the ALJ did not adequately explain her credibility determinations and, therefore, her findings do not satisfy the explanatory requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).[12] Employer's Brief at 15. Because we can discern the ALJ's rationale underlying her credibility findings, we are not persuaded by Employer's argument that her findings do not satisfy the APA. *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012) (if a reviewing court can discern what the ALJ did and why she 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 15-16.

We therefore affirm the ALJ's determination that Employer failed to rebut the Section 411(c)(4) presumption by establishing Claimant does not have legal pneumoconiosis.[13] 20 C.F.R. §718.305(d)(1)(i)(A). Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have

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

[13] Because the ALJ permissibly discredited the opinions of Drs. Rosenberg and McSharry, the only opinions supportive of Employer's burden, we need not address Employer's arguments regarding the opinions of Drs. Forehand, Raj, and Green that Claimant has legal pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 17-18.

pneumoconiosis.[14] Thus, we affirm the ALJ's finding that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(1)(i).[15]

Disability Causation

Upon finding Employer did not disprove pneumoconiosis, the ALJ addressed whether Employer established that 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).

Drs. Rosenberg and McSharry opined Claimant is not totally disabled due to pneumoconiosis based on their opinions that he does not have the disease. Employer's Exhibits 1, 3, 4. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises. has held where a physician fails to diagnose legal pneumoconiosis, his opinion regarding the cause of Claimant's disability may be entitled to little weight. *Epling*, 783 F.3d at 504-05; *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995). Because Drs. Rosenberg and McSharry failed to diagnose legal pneumoconiosis, substantial evidence supports the ALJ's finding that their disability causation opinions are not credible. *See Epling*, 783 F.3d at 504-05; *Ogle*, 737 F.3d at 1074; *Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); Decision and Order at 15-16. We therefore affirm the ALJ's conclusion 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).

[14] We therefore need not address Employer's argument that the ALJ erred in finding it failed to disprove clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i); *see Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 12-14.

[15] Employer argues the ALJ erred in finding the evidence establishes Claimant's pneumoconiosis arose out of coal mine employment. Employer's Brief at 18. Because Claimant established at least ten years of coal mine employment, he invoked the rebuttable presumption that his pneumoconiosis arose out of such employment. 20 C.F.R. §718.203(b). Employer identifies no evidence to rebut this presumption other than arguing the evidence does not establish Claimant has legal pneumoconiosis. Moreover, to the extent that there is a question of the cause of Claimant's pneumoconiosis, it also is subsumed in the Section 411(c)(4) presumption. As discussed above, we are not persuaded by its arguments and affirm the ALJ's finding that Employer failed to rebut the presumption Claimant has legal pneumoconiosis. Thus we are not persuaded by Employer's arguments with respect to disease causation.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge