U.S. Department of Labor

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

BRB No. 20-0330 BLA

SHARON TORAIN (o/b/o the Estate of WENDELL E. TORAIN)	)	
Claimant-Respondent	)	
v.	)	
HERITAGE COAL COMPANY, LLC	)	
and	)	
	)	DATE ISSUED: 12/20/2022
PEABODY ENERGY CORPORATION	)	
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 Awarding Benefits of Jerry R. DeMaio, Administrative Law Judge, United States Department of Labor.

Austin P. Vowels (Vowels Law PLC), Henderson, Kentucky, for Claimant.

H. Brett Stonecipher and Tighe A. Estes (Reminger Co., L.P.A.), Lexington, Kentucky, for Employer and its Carrier.

Jeffrey S. Goldberg (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: BUZZARD, GRESH, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Jerry R. DeMaio's Decision and Order Awarding Benefits (2018-BLA-05014) rendered on a subsequent claim filed on December 22, 2016,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[2]

The ALJ found that Heritage Coal Company, LLC (Heritage Coal) is the responsible operator and Peabody Energy Corporation (Peabody Energy) is the responsible carrier. He also accepted the parties' stipulation that the Miner had twenty years of underground coal mine employment, and found she had a totally disabling respiratory impairment. 20 C.F.R. §718.204(b)(2). Thus, he found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4)(2018),[3] and established a change in an applicable condition of entitlement. 20 C.F.R. §725.309.[4] He further found Employer did not rebut the presumption and awarded benefits.

[1] This claim is the Miner's third claim for Benefits. Director's Exhibits 1-2. The district director denied the Miner's prior claim on October 9, 2015, for failure to establish total disability. Director's Exhibit 2.

[2] The Miner died on November 7, 2018. *See* Notice of Death/Motion to Substitute Parties. Claimant, the Miner's daughter, is pursuing the claim on behalf of the Miner's estate. Decision and Order at 2; Notice of Death/Motion to Substitute Parties.

[3] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability was due to pneumoconiosis if she had 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.

[4] Where 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 "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 the Miner did not establish total disability in her prior claim, Claimant had to submit evidence establishing this element to obtain review of the merits of the current claim. *Id.*

On appeal, Employer contends the district director, the Department of Labor (DOL) official who processes black lung claims, is an inferior officer who was not appointed in a manner consistent with the Appointments Clause.[5] It also argues the ALJ erred in finding Peabody Energy is the liable carrier and abused his discretion in excluding certain liability evidence. On the merits, Employer argues the ALJ erred in finding total disability established and that it failed to rebut the Section 411(c)(4) presumption.[6] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (Director), responds, urging the Benefits Review Board to reject Employer's Appointments Clause challenge. In addition, the Director contends the ALJ permissibly excluded some liability evidence but agrees with Employer that the ALJ improperly excluded deposition evidence and failed to adequately address Employer's liability arguments. Thus, the Director requests that the Board vacate the ALJ's finding that Employer is liable for benefits and remand this case for the ALJ to readdress the liability issue.

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.[7] 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).

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

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

U.S. Const. art. II, § 2, cl. 2.

[6] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established the Miner had twenty years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3, 15.

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because the Miner performed her coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 7; Hearing Transcript at 11.

Responsible Insurance Carrier

Employer does not challenge the ALJ's findings that Heritage Coal is the correct responsible operator and was self-insured through Peabody Energy on the last day Heritage Coal employed the Miner; thus, we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 711 (1983); 20 C.F.R. §§725.494(e), 725.495, 726.203(a); Decision and Order at 19-20; Employer's Brief at 20. 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).

Patriot was initially another Peabody Energy subsidiary. In 2007, after the Miner ceased her coal mine employment with Heritage Coal, Peabody Energy sold a number of its subsidiaries, including Heritage Coal, to Patriot. Director's Exhibits 5-8, 28. That same year, Patriot was spun off as an independent company. In 2011, the DOL authorized Patriot to self-insure itself and its subsidiaries, retroactive to July 1, 1973. Director's Exhibit 28. Although Patriot's self-insurance authorization made it retroactively liable for the claims of miners who worked for Heritage Coal, Patriot later went bankrupt and can no longer provide for those benefits. Director's Exhibits 20-21, 28. Neither Patriot's self-insurance authorization nor any other arrangement relieved Peabody Energy of liability for paying benefits to miners last employed by Heritage Coal when Peabody Energy owned and provided self-insurance to that company.

Employer argues the ALJ erred by failing to address several arguments that Peabody Energy should not be held liable in this case.[8] Employer's Brief at 20-21. The Board has

[8] Employer argues Peabody Energy is not liable for benefits because: (1) the district director is an inferior officer not properly appointed under the Appointments Clause (Employer did not raise this argument prior to its appeal to the Board.); (2) allowing the district director to make an initial determination of the responsible carrier in instances involving potential liability of the Black Lung Disability Trust Fund violates its due process rights; (3) the DOL released Peabody Energy from liability; (4) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; (5) the Director is equitably estopped from imposing liability on Peabody Energy; (6) 20 C.F.R. §725.456(b)(1) violates the Longshore and Harbor Workers' Compensation Act and the Administrative Procedure Act (APA); (7) the DOL violated its due process rights by not maintaining adequate records with respect to Patriot's indemnity bond and by failing to monitor Patriot's financial health; and (8) the ALJ erroneously excluded liability evidence and erred in not permitting the submission of depositions relevant to its liability. Employer's Brief at 21-62. It maintains that a separation agreement – a private contract between Peabody Energy and Patriot – released

previously considered and rejected arguments (1) through (7), *see* n.8 *infra*, in *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 3-19 (Oct. 25, 2022) (en banc); *Howard v. Apogee Coal Co.*, BLR , BRB No. 20-0229 BLA, slip op. at 5-17 (Oct. 18, 2022); and *Graham v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0221 BLA, slip op. at 7-8 (June 23, 2022). For the reasons set forth in *Bailey*, *Howard* and *Graham*, we reject these arguments. Any error by the ALJ in failing to address these arguments is thus harmless. *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, 1-278 (1984). Further, as set forth below, we reject Employer's arguments that the ALJ erred in excluding its documentary liability evidence and hold that any error by the ALJ in excluding Employer's liability depositions was harmless.

Exclusion of Liability Evidence

To support its assertion that Patriot is the liable carrier, Employer submitted documentary evidence to the ALJ identified as Employer's Exhibits 1 through 7.[9] At the hearing, Employer also moved the ALJ to issue subpoenas for deposition testimony, including from Steven Breeskin and David Benedict, two former DOL Division of Coal Mine Workers' Compensation (DCMWC) employees. Hearing Transcript at 5-8. The ALJ excluded the documentary evidence as untimely submitted and denied Employer's request for the issuance of deposition subpoenas. Nov. 1, 2018 Order. Thereafter, the ALJ denied Employer's motion for additional time to submit deposition transcripts of Mr. Benedict and Mr. Breeskin obtained in other claims. Jan. 15, 2019 Order.

Employer argues the ALJ erred in excluding its liability evidence and this evidence establishes the actions the DOL took subsequent to the Miner's employment with Heritage Coal relieved Peabody Energy of liability. Employer's Brief at 16-55. The Director argues the ALJ properly excluded this documentary liability evidence and denied Employer's

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it from liability and the DOL endorsed this shift of complete liability when it authorized Patriot to self-insure. *Id*. at 32-55.

[9] These exhibits included: (1) Patriot's authorization to self-insure; (2) a letter dated March 4, 2011, from Steven Breeskin; (3) a November 23, 2010 letter from the Director to Patriot; (4) an undated letter from the Director to Patriot regarding its self-insurance re-authorization; (5) a March 4, 2011 indemnity agreement between the DOL and Bank of America; (6) a November 17, 2015 letter regarding transfer of Patriot's security deposit; and (7) Peabody Energy's indemnity bond dated April 29, 2013. Items (1) and (2) were also submitted to the district director in Director's Exhibit 28. In the ALJ's November 1, 2018 Order, he referred to these exhibits as Employer's Exhibits 8 through 14.

request for subpoenas; however, he agrees with Employer that the ALJ erred in excluding the deposition testimony and urges remand for the ALJ to consider Employer's arguments regarding its admissibility. Director's Response at 19-27.

For the reasons set forth in *Bailey*, BRB No. 20-0094 BLA, slip op. at 11-13; *Howard*, BRB No. 20-0229 BLA, slip op. at 10-12; and *Graham*, BRB No. 20-0221 BLA, slip op. at 6-7, we affirm the ALJ's determination that Employer's failure to timely submit certain documentary evidence or establish extraordinary circumstances justifying its failure to do so precluded admission of this evidence before the ALJ. As for the depositions, the same depositions were admitted in *Bailey* and the Board held they do not support Employer's argument that the DOL released Peabody Energy from liability when it authorized Patriot to self-insure and released a letter of credit that Patriot financed under Peabody Energy's self-insurance program. *Bailey*, BRB No. 20-0094 BLA, slip op. at 15 n. 17. Given that the Board has previously held the depositions do not support Employer's argument, error, if any, in excluding them in this claim was harmless. *See Shinseki*, 556 U.S. at 413; *Larioni*, 6 BLR at 1-278. Therefore, we affirm the ALJ's finding that Heritage Coal and Peabody Energy are the responsible operator and carrier, respectively, and are liable for this claim.

Section 411(c)(4) Presumption - Total Disability

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying[10] pulmonary function studies or 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). The ALJ found Claimant established the Miner

[10] 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).

was totally disabled by a respiratory impairment based on the medical opinion evidence.[11] Decision and Order at 15; 20 C.F.R. §718.204(b)(2)(iv).

The ALJ considered the medical opinions of Drs. Chavda, Krefft, Broudy, and Rosenberg. Decision and Order at 5-9, 12-15. Drs. Chavda and Krefft opined that the Miner was totally disabled and lacked the respiratory capacity to perform her last coal mine job, while Drs. Broudy and Rosenberg opined she was not disabled. Director's Exhibit 11; Claimant's Exhibits 3-4; Employer's Exhibits 3-5, 7. The ALJ gave greater weight to the opinions of Drs. Chavda and Krefft as documented and well-reasoned. Decision and Order at 13. He gave less weight to the opinions of Drs. Broudy and Rosenberg, finding them documented, but not well-reasoned. *Id*. at 14-15. Thus, based on the opinions of Drs. Chavda and Krefft, the ALJ found Claimant established total respiratory disability at Section 718.204(b)(2)(iv). *Id*. at 15.

Employer argues that the ALJ erred in weighing the medical opinions. It contends he improperly credited Drs. Chavda's and Krefft's opinions, alleging they are based on flawed pulse oximetry testing in light of what it alleges is the more reliable non-qualifying blood gas study evidence. Employer's Brief at 10-13. We disagree.

Dr. Chavda examined the Miner on January 31, 2017, on behalf of the DOL. Director's Exhibit 11. The Miner was unable to perform any blood gas testing with exercise, but Dr. Chavda conducted a pulse oximetry test while the Miner performed a six-minute walk. *Id*. at 5-6. Dr. Chavda concluded the pulse oximetry test showed a totally disabling respiratory impairment because the Miner's oxygen saturation fell to eighty-four percent as she walked. *Id.* As the ALJ noted, Dr. Chavda's opinion was based primarily on the Miner's significant decrease in oxygenation during exercise; however, he also based his opinion on the Miner's results on other objective tests and her physical limitations, including restriction indicated on a pulmonary function study, a reduced diffusion capacity, and the inability to walk for more than four and a half minutes on level ground. Decision and Order at 6-7, 12-13; Director's Exhibit 11; Claimant's Exhibit 4. Similarly, while Dr. Krefft pointed to the Miner's reduction in oxygenation with exertion during the pulse oximetry test, Dr. Krefft also considered the Miner's reduced lung volumes and reduced diffusion in concluding she was totally disabled. Decision and Order at 13, Claimant's Exhibit 3. Thus, even assuming, *arguendo*, that the ALJ should have found the pulse

[11] The ALJ found the pulmonary function studies and arterial blood gas studies did not support total disability, 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 5, 11-12.

oximetry testing was somehow flawed or inaccurate, Drs. Chavda and Krefft did not rely solely on this testing. *See Shinseki*, 556 U.S. at 413; *Larioni*, 6 BLR at 1-278.

Relatedly, Employer argues the ALJ failed to consider Drs. Broudy's and Rosenberg's opinions that the pulse oximetry test conducted in this claim was flawed. Employer's Brief at 11. Contrary to Employer's contention, the ALJ addressed their opinions that the pulse oximetry testing is less reliable than the non-qualifying blood gas testing but found them undermined and thus less persuasive than those of Drs. Chavda and Krefft. Decision and Order at 13-15; Employer's Exhibit 7 at 15, 24-27; Employer's Exhibit 5.[12]

It is the province of an ALJ to evaluate medical opinions. *See Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Marcum v. Director, OWCP*, 11 BLR 1-23, 1-24 (1987). An ALJ is not required to accept the opinion or theory of any medical expert. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000); *Kertesz v. Director, OWCP*, 788 F.2d 158, 163 (3d Cir. 1986). The ALJ permissibly weighed the conflicting opinions regarding the pulse oximetry testing and found Drs. Broudy's and Rosenberg's opinions that it was flawed in this case were less persuasive than the conflicting opinions of the physicians who relied on that testing and other factors to diagnose total disability.[13] *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713 (6th Cir.

[12] Specifically, the ALJ found that Dr. Broudy did not address the Miner's observed hypoxia after exercise and acknowledged that her pulse oximetry test results were similar to what would be expected of an individual with restrictive lung disease. Decision and Order at 14. He also found that Dr. Broudy failed to address Dr. Chavda's observation that the Miner had to stop walking and sit down or Dr. Chavda's attribution of the Miner's recovery from low oxygen saturation to normal at the five-minute-thirty-second mark to hyperventilation. *Id.* In addition, the ALJ noted that Dr. Broudy opined Dr. Chavda's non-qualifying exercise blood draw was valid without commenting on the blood sample being taken after the point of peak exercise. *Id.*

As for Dr. Rosenberg, the ALJ found he failed to address the Miner's symptoms, twice used incorrect values when assessing the Miner's spirometry and residual volume results, failed to fully address the Miner's exercise oximetry readings, and cursorily relied on Dr. Chavda's exercise arterial blood draw that he acknowledged was taken some time after the exercise had been completed. *Id*. at 15.

[13] We further reject Employer's contention that Drs. Chavda and Krefft erroneously favored the pulse oximetry testing over the arterial blood gas study because pulse oximetry testing is not addressed by the regulations while arterial blood gas studies are. Employer's Brief at 12. Employer acknowledges that reliance on pulse oximetry data is "not forbidden

2002); *Crisp*, 866 F.2d at 185; *Marcum*, 11 BLR at 1-24; Decision and Order at 12-15. Thus, we affirm the ALJ's crediting of Drs. Chavda's and Krefft's opinions that the Miner was totally disabled from performing her usual coal mine employment.[14] Decision and Order at 14-15.

Employer also argues the ALJ erred in discrediting Drs. Broudy's and Rosenberg's opinions that the Miner was not totally disabled. It contends the ALJ's noting that Dr. Rosenberg "twice utilized incorrect assessment values" when assessing the Miner's spirometry and residual volume results to find his opinion undermined is "too vague to interpret." Employer's Brief at 13. We disagree. The ALJ specified that in Dr. Rosenberg's evaluation of the evidence, he incorrectly used the values for a man in determining the Miner's spirometry was normal when, in fact, the Miner was a woman. Decision and Order at 14. Moreover, the ALJ found that in opining the Miner's decreased residual volume was due to obesity, Dr. Rosenberg "misstated her height by 3.75 inches."[15] *Id.* at 14-15. The ALJ made specific findings that are supported by substantial evidence in finding Dr. Rosenberg's opinion undermined; thus, we affirm them. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); Decision and Order at 14-15.

Similarly, Employer argues the ALJ's discrediting of Dr. Broudy's opinion for "fail[ing] to address Dr. Chavda's concerns" cannot be affirmed because this finding, too, is vague. Employer's Brief at 14. To the contrary, the ALJ pointed to Dr. Chavda's explanations regarding what occurred during the pulse oximetry test, including the Miner's observed hypoxia and inability to walk on level ground for more than four and one-half minutes. Decision and Order at 6-7, 14.

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by the regulations," as consideration of such "other medical evidence" is permitted under the regulations. 20 C.F.R. §718.107; Employer's Brief at 12. Moreover, an ALJ is permitted to find total disability based on reasoned medical opinion evidence, notwithstanding non-qualifying pulmonary function and arterial blood gas studies. 20 C.F.R. §718.204(b)(2)(iv).

[14] We need not address Employer's remaining argument that Dr. Krefft's opinion impermissibly relied on the "inadvisability of returning to coal mine employment" as a basis for finding total disability. Employer's Brief 13. Even if the Employer's characterization is accurate, this was not the sole basis for Dr. Krefft's disability opinion.

[15] Employer also argues the ALJ erred in finding that Dr. Rosenberg did not address the exercise pulse oximetry readings. Employer's Brief at 13. However, the ALJ did not find that Dr. Rosenberg failed to consider the exercise pulse oximetry readings at all; rather, he found Dr. Rosenberg did not fully address them. Decision and Order at 15.

Moreover, the ALJ found that Drs. Broudy's and Rosenberg's opinions on total disability were also undermined given their reliance on the exercise arterial blood gas study without adequately addressing Dr. Chavda's concern that it did not accurately assess the Miner's ability to perform work as the sample was taken after exercise had stopped. Decision and Order at 12, 14-15; *see* 20 C.F.R. §718.105 ("If an exercise blood-gas test is administered, blood shall be drawn during exercise."). Employer does not challenge these credibility findings; thus, they are affirmed. *Skrack*, 6 BLR at 711.

Employer's arguments are a request to reweigh the evidence, which the Board is not empowered to do.[16] *Crockett Colleries, Inc. v. Director, OWCP* [*Barrett*], 478 F.3d 350, 352-353 (6th 2007); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Therefore, we affirm the ALJ's finding that the medical opinions established total disability. 20 C.F.R. §718.204(b)(2)(iv); *Napier*, 301 F.3d at 713; *Crisp*, 866 F.2d at 185; Decision and Order at 15. Because Employer raises no further arguments regarding the ALJ's weighing of the relevant evidence, we further affirm the ALJ's determination that Claimant established total disability and thus invoked the Section 411(c)(4) presumption. 20 C.F.R. §§718.204(b)(2), 718.305(b); Decision and Order at 15.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[17] or "no part of [her] 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. Decision and Order at 17-18.

Employer does not challenge the ALJ's findings that it failed to rebut both clinical and legal pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i); thus, we affirm them. *See*

[16] Employer simply points to Dr. Broudy's testimony that the Miner's blood gas testing was non-qualifying and not disabling. Employer's Brief at 14. As noted, however, the ALJ permissibly discredited Dr. Broudy's reliance on the exercise blood gas testing because he did not address that it was drawn after peak exercise.

[17] "Legal pneumoconiosis" includes "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

Skrack, 6 BLR at 711; Decision and Order at 17. Rather, Employer contends the ALJ applied an incorrect legal standard for rebutting disability causation by requiring it to establish "no part" of the Miner's totally disabling impairment was caused by pneumoconiosis. Employer's Brief at 15-16. Employer's argument is not persuasive.

Contrary to Employer's assertion,[18] the ALJ correctly observed that to rebut disability causation, Employer must establish that "no part of the miner's respiratory or pulmonary disability was caused by pneumoconiosis." Decision and Order at 17; 20 C.F.R. §718.305(d)(1); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1070-71 (6th Cir. 2013). The ALJ permissibly found the opinions of Drs. Broudy and Rosenberg unpersuasive because neither diagnosed the Miner with pneumoconiosis, contrary to the ALJ's finding that Employer failed to disprove the existence of the disease.[19] *See Ogle*, 737 F.3d at 1074; *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order at 17-18; Employer's Exhibits 3-5, 7. We thus affirm the ALJ's determination that Employer failed to establish that no part of the Miner's respiratory or pulmonary total disability was caused by pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(ii). Therefore, we affirm the ALJ's conclusion that Employer did not rebut the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018).

[18] In asserting the ALJ applied an incorrect legal standard at disability causation, Employer quotes extensively from the Sixth Circuit's opinion in *Island Creek Coal Co. v. Young*, 947 F.3d 399 (6th Cir. 2020). Employer's Brief at 15-16. We note, however, that rebuttal of the existence of pneumoconiosis and rebuttal of disability causation are separate inquiries, and the portion of *Young* that Employer quotes is concerned with rebutting legal pneumoconiosis, not disability causation. Employer's Brief at 14 (quoting *Young*, 947 F.3d at 406) ("An employer *rebuts the presumption of legal pneumoconiosis* by showing that a miner's coal mine employment did not contribute, even in part, to his pneumoconiosis.") (emphasis added). In contrast, as the Sixth Circuit has held, an employer "must show that coal mine employment played no part in causing the total disability" to disprove disability causation. *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1070-71 (6th Cir. 2013); 20 C.F.R. §718.305(d)(1)(ii).

[19] Neither physician explained why pneumoconiosis played no part in the Miner's disability other than saying it did not exist.

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge