U.S. Department of Labor

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

BRB No. 21-0222 BLA

CARL R. SIGLEY (deceased)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
EASTERN ASSOCIATED COAL COMPANY	)	
	)	
and	)	
	)	DATE ISSUED: 12/21/2022
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 Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for Claimant.

Paul E. Frampton (Bowles Rice, LLP), Charleston, West Virginia, for Employer and its Carrier.

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 JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits (2020-BLA-05140) 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 miner's claim filed on September 24, 2018.[1]

The ALJ found Eastern Associated Coal Company (Eastern) is the responsible operator, accepted the parties' stipulation that Claimant had sixteen years of qualifying coal mine employment, and found he had a totally disabling respiratory 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.[2] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Eastern the responsible operator and in not addressing its arguments that Peabody Energy Corporation (Peabody Energy) is not the liable carrier. Employer also contends the ALJ erred in excluding certain liability evidence. On the merits, it argues the ALJ erred in finding total disability established and that it failed to rebut the Section 411(c)(4) presumption.[3] Claimant

[1] Claimant's counsel notified the Office of Workers' Compensation Programs (OWCP) of Claimant's death and provided his death certificate, which indicates he died on August 11, 2021, while his case was pending before the Benefits Review Board. *See* Aug. 12, 2021 Correspondence to OWCP; Death Certificate.

[2] Section 411(c)(4) provides a rebuttable presumption that Claimant was totally disabled due to pneumoconiosis if he 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.

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established sixteen years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (Director), responds, arguing the ALJ properly excluded the liability evidence at issue, but agrees with Employer that the ALJ failed to address its liability arguments. The Director therefore requests that the Benefits Review Board vacate the ALJ's finding that Employer is liable for benefits and remand this case for the ALJ to address the liability issues.

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.[4] 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).

Responsible Operator

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. §725.495(a)(1). Once the district director identifies a potentially liable operator, that operator may be relieved of liability only if it proves either that it is financially incapable of assuming liability for benefits or that another operator financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R. §725.495(c). Employer argues the ALJ did not consider its argument that Claimant had coal mine employment with a more recent operator for at least one year after he worked for Eastern. Employer's Brief at 4-6. Further, it argues that even if Eastern is the properly named responsible operator, the ALJ failed to consider its arguments that 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 20-21.

Eastern was identified as a potentially responsible operator, as self-insured by Peabody Energy, in the Notice of Claim issued October 16, 2018. Director's Exhibit 17. Employer timely contested its designation. Director's Exhibits 21-22. In the Schedule for the Submission of Additional Evidence (SSAE), the district director identified Eastern as the responsible operator; Claimant worked for that company from October 13, 1969 through November 3, 1985. Director's Exhibit 25. The district director acknowledged that Claimant indicated he worked in the coal mines for Fairfax Fuel, Inc./Squires Creek Coal

[4] 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 and Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 5; Director's Exhibit 3.

Company (Squires Creek) from August 6, 1989 until December 28, 1989,[5] at which time he became disabled due to an injury, but found he worked there for less than one year.[6] Director's Exhibits 25, 31. Employer continued to controvert the responsible operator issue before the district director and the ALJ. Director's Exhibits 30, 38, 41; Hearing Transcript at 6; Employer's Closing Argument at 3-4.

Employer contends Claimant's time recovering from his disabling mining injury while at Squires Creek should be considered and would result in more than one year of employment with Squires Creek, making it the proper responsible operator. Employer's Brief at 4-6; *see* 20 C.F.R. §725.101(a)(32). It submits the ALJ failed to make any findings addressing this argument and failed to consider Claimant's indication on his application that he was disabled from mining, or his testimony that he was recovering from the injury sustained at Squires Creek for more than one year. Employer's Brief at 4-5. The Director agrees the ALJ did not address Employer's liability argument and remand is required for him to address it in the first instance.[7] Director's Response Brief at 6-7.

In finding that Eastern was the proper responsible operator, the ALJ stated only that "[b]ased upon a totality of the evidence," Employer is "the properly designated responsible operator based upon Claimant's employment with said company for at least one year." Decision and Order 5. The ALJ must provide "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); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Because the ALJ made no findings in response to Employer's arguments regarding the responsible operator issue, we agree the case must be remanded for him to make such findings in the first instance.

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[5] While listed as two separate companies on the Social Security Administration earnings statement, Claimant referred to them as the same company. Director's Exhibits 3, 5, 7; Hearing Transcript at 32-33.

[6] Claimant provided he worked for Squires Creek from August 6, 1989 until December 28, 1989 on his application for benefits. Director's Exhibits 3, 5; *see also* Director's Exhibit 7. Claimant also worked for AS&K, Inc. from June 13, 1988 until July 28, 1989, but there is a statement in the record that it was not insured on the last date of Claimant's employment. 20 C.F.R. §725.495(d); Director's Exhibits 3, 7, 15.

[7] The Director argues the evidence supports a finding that Claimant worked for Squires Creek for less than a year. Director's Response at 9-11. He does not specifically address Employer's argument regarding Claimant's alleged time recovering from a mining injury he suffered while employed by Squires Creek. *Id.*

See, e.g., *Arch Coal, Inc. v. Acosta*, 888 F.3d 493, 497 (D.C. Cir. 2018) (explaining an ALJ must make a de novo determination of an operator's liability); *See v. Wash. Metro. Area Trans. Auth.*, 36 F.3d 375, 383-84 (4th Cir. 1994) (the ALJ is the factfinder; thus, the Board should not rule on an issue before the ALJ has considered it).

On remand, the ALJ must consider all relevant liability evidence submitted before the district director to determine if Squires Creek retained Claimant on its payroll for at least one year. 20 C.F.R. §725.101(a)(32); *see Daniels Co. v. Mitchell*, 479 F.3d 321, 334-36 (4th Cir. 2007); *Thomas v. Bethenergy Mines Inc.*, 21 BLR 1-12, 1-16-1-18 (1997) (on recon.). Before considering Claimant's testimony on the issue, however, the ALJ must determine if Claimant was timely designated as a liability witness and if not, whether extraordinary circumstances exist for the consideration of his testimony. 20 C.F.R. §725.414(c).

If the ALJ finds Claimant was employed by Squires Creek for more than one year, Eastern must be dismissed and liability must fall on the Trust Fund. *See* 20 C.F.R. §725.407(d); 65 Fed. Reg. 79,920, 79,985 (Dec. 20, 2000) (regulations place "the risk that the district director has not named the proper operator on the [Trust Fund]"). However, if the ALJ finds Employer failed to establish subsequent employment with Squires Creek for more than one year, then the ALJ may reinstate his holding that Eastern is the responsible operator.

Responsible Carrier

We will next address Employer's arguments regarding responsible carrier in the event the ALJ again finds Eastern is the responsible operator.

Employer alleges Patriot should have been named the responsible carrier in the event Eastern is the responsible operator and thus liability should transfer to the Trust Fund. Patriot was initially another Peabody Energy subsidiary. In 2007, after Claimant ceased his coal mine employment with Eastern, Peabody Energy sold a number of its subsidiaries, including Eastern, to Patriot. Director's Exhibits 21, 38. That same year, Patriot was spun off as an independent company. In 2011, the Department of Labor (DOL) authorized Patriot to self-insure itself and its subsidiaries, retroactive to July 1, 1973. Director's Exhibits 21, 38. Although Patriot's self-insurance authorization made it retroactively liable for the claims of miners who worked for Eastern, Patriot later went bankrupt and can no longer provide for those benefits. Director's Exhibits 21, 38. Neither Patriot's self-insurance authorization nor any other arrangement relieved Peabody Energy of liability for

paying benefits to miners last employed by Eastern when Peabody Energy owned and provided self-insurance to that company.[8]

Employer argues the ALJ erred by failing to address several arguments that Peabody Energy should not be held liable in this case if Eastern is the responsible operator.[9] Employer's Brief at 20-21. The Board has previously considered and rejected arguments (1) through (3) 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). *Bailey*, *Howard*, and *Graham* mandate the same result here. Any error by the ALJ in failing to address these arguments thus is 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 hold that any error by the ALJ in excluding Employer's liability depositions was harmless.

Exclusion of Liability Depositions

Employer argues the ALJ erred in excluding the depositions of David Benedict and Steven Breeskin, two former DOL Division of Coal Mine Workers' Compensation (DCMWC) employees.[10] Employer's Brief at 20-21; Excluded Director's Exhibits 39-40; Hearing Transcript at 12-13. The Director argues the ALJ properly excluded the deposition testimony as irrelevant. Director's Response at 6-9.

[8] Employer seems to acknowledge that Eastern was self-insured through Peabody Energy on the last date of Claimant's employment with that company. *See* Employer's Closing Argument at 11-14.

[9] Employer argues Peabody Energy is not liable for benefits in such an event because: (1) the DOL released Peabody Energy from liability; (2) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; (3) the Director is equitably estopped from imposing liability on Peabody Energy; and (4) the ALJ erroneously excluded liability depositions. Employer's Brief at 20-21; Employer's Closing Argument at 10-17. It maintains that a separation agreement – a private contract between Peabody Energy and Patriot – released it from liability and the DOL endorsed this shift of complete liability when it authorized Patriot to self-insure. Employer's Closing Argument at 11-12.

[10] The ALJ excluded the depositions as irrelevant because neither deposition mentioned Claimant or the responsible operator in this case. Hearing Transcript at 13.

In *Bailey*, the same depositions were admitted, and the Board held they do not support Employer's argument the DOL released Peabody Energy from liability when it authorized Patriot to self-insure and released a letter of credit Patriot financed under Peabody Energy's self-insurance program. *Bailey*, BRB No. 20-0094 BLA, slip op. at 15 n. 17. Given the Board has previously held the depositions do not support Employer's argument, any error in excluding them here was harmless. *See Shinseki*, 556 U.S. at 413; *Larioni*, 6 BLR at 1-278.

Invocation of the 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 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 the relevant evidence supporting a finding of total disability against the 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 total disability based on the medical opinions, and in consideration of the evidence as a whole.[11] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 21-23. He credited the opinions of Drs. Basheda, Zaldivar, and Klayton to find that Claimant was totally disabled over the opinion of Dr. Jaworski that he was not disabled. *Id*.

Employer argues the ALJ erred by failing to assess the reliability of the pulse oximetry test relied upon by the physicians to find total disability, pointing to evidence it alleges demonstrates Claimant was having a "severe reaction" to albuterol at the time, affecting the results. Employer's Brief at 6-10. We disagree.

As the ALJ found, Drs. Basheda, Zaldivar, and Klayton all opined that Claimant would be unable to perform his usual coal mine employment based on the pulse oximetry results that demonstrated exercise-induced oxygen desaturation. Employer's Exhibit 5 at 29-30, 37; Employer's Exhibit 6 at 15; Claimant's Exhibit 2 at 15. The ALJ found Dr. Jaworski's opinion that Claimant was not totally disabled undermined because he did not

[11] The ALJ found Claimant did not establish total disability based on the pulmonary function studies or arterial blood gas studies, and there was 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 18-20.

consider the pulse oximetry testing.[12] Decision and Order at 23. While Employer argues the ALJ failed to consider evidence that the pulse oximetry test was unreliable due to an "acute reaction," it does not identify any medical opinion asserting that the study was unreliable. Employer's Brief at 7-10. Indeed, none of the experts opined the study was unreliable or addressed the evidence Employer alleges supports its argument.[13] *See* Employer's Exhibits 2-3, 5-6; Claimant's Exhibit 2.

The interpretation of medical data is a medical determination, and an ALJ may not substitute his opinion for that of a physician. *Marcum v. Director, OWCP*, 11 BLR 1-23, 1-24 (1987). Because it is based on substantial evidence, we affirm the ALJ's finding that the preponderance of the medical opinions established total disability. 20 C.F.R. §718.204(b)(2)(iv); *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 21-23. We also affirm the ALJ's determinations that Claimant established total disability and invoked the Section 411(c)(4) presumption. 20 C.F.R. §§718.204(b)(2), 718.305; Decision and Order at 7, 23.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he had neither legal nor clinical pneumoconiosis,[14] or "no part of

[12] Employer does not contest the ALJ's finding that Dr. Jaworski's opinion regarding total disability is entitled to little weight; thus, it is affirmed. *See Skrack*, 6 BLR at 1-711; Decision and Order at 23.

[13] In support of its argument, Employer notes the technician performing Claimant's testing indicated Claimant was unable to perform the necessary pant frequency in the post-bronchodilator pulmonary function study and his hands began to shake. Employer's Brief at 8-10 (citing Director's Exhibit 11). Claimant testified he was prescribed albuterol. Hearing Transcript at 30.

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

[his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer failed to establish rebuttal by either method.[15] Decision and Order at 15, 25.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish Claimant did not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Co*., 25 BLR 1-149, 159 (2015).

The ALJ considered the opinions of Drs. Jaworski, Basheda, and Zaldivar that Claimant did not have legal pneumoconiosis.[16] Director's Exhibit 11; Employer's Exhibits 2-3, 5-6. Dr. Jaworski diagnosed Claimant with mild restrictive lung disease and chronic sputum production likely due to obesity, heart failure, and post-nasal drip, unrelated to coal mine dust exposure. Decision and Order at 12; Director's Exhibit 11. Dr. Basheda diagnosed Claimant with an oxygenation impairment unrelated to his coal mine dust exposure. Employer's Exhibits 2; 6 at 9-14. Dr. Zaldivar opined Claimant had a mild reduction of forced vital capacity due to obesity, and low diffusing capacity and hypoxemia due to an unknown cause. Employer's Exhibit 5. The ALJ found the physicians' opinions not well-reasoned and thus inadequate to rebut the presumption of legal pneumoconiosis. Decision and Order at 15-16. Employer argues the ALJ erred in discrediting Drs. Jaworski's, Basheda's and Zaldivar's opinions. Employer's Brief at 11-20.

The ALJ found that Dr. Jaworski's opinion was not well-reasoned because he was unaware of the subsequent testing and his opinion that Claimant's chronic bronchitis would not be related to his coal mine dust exposure given it ceased in 1989 did not account for the "latent and progressive nature of coal workers' pneumoconiosis." Decision and Order 15; Director's Exhibit 11. Employer argues the ALJ did not consider the subsequent testing also showed no restriction, and thus "supported" Dr. Jaworski's conclusion and, even so, the testing was obtained only ten months later, making it "essentially contemporaneous." Employer's Brief at 11-12. However, Employer ignores that the subsequent testing also included the pulse oximetry testing, and all the experts who considered it agreed it showed an oxygenation impairment. Thus, the ALJ permissibly found Dr. Jaworski's opinion

[15] The ALJ found Employer disproved clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 14-15.

[16] The ALJ also considered Dr. Klayton's opinion that Claimant had legal pneumoconiosis; however, his opinion does not support rebuttal. Decision and Order at 16; Claimant's Exhibit 2.

undermined because he did not address this relevant evidence. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000); *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993) (the ALJ has exclusive power to make credibility determinations and resolve inconsistencies in the evidence); Decision and Order at 15.

Dr. Zaldivar explained Claimant's mild restriction was due to obesity but testified there was not enough information to determine why Claimant's blood oxygenation dropped during exercise or to explain the decreased diffusion; however, he opined that these decreases were not due to coal mine dust exposure. Employer's Exhibit 5 at 34-38. Employer argues the ALJ erred in finding Dr. Zaldivar's opinion not well-reasoned. Employer's Brief at 17-18. We disagree. The ALJ permissibly rejected Dr. Zaldivar's opinion as inadequately explained, as he indicated Dr. Zaldivar could not rule out a contribution from coal mine dust exposure to Claimant's decreased diffusion and oxygenation abnormality, although he claims to do so, given Dr. Zaldivar's acknowledgement that he could not explain the etiology of Claimant's disabling abnormalities without additional testing. *See Grizzle*, 994 F.2d at 1096; *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988) ("It is the role of ALJ, as the trier of fact, to determine both the credibility of the evidence and the inferences to be drawn from it."); Decision and Order at 16. Employer's arguments amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

We therefore affirm the ALJ's discrediting of Drs. Jaworski's and Zaldivar's opinions on the issue of legal pneumoconiosis.[17] *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Director's Exhibit 11; Employer's Exhibits 3, 5.

Finally, the ALJ considered Dr. Basheda's opinion, which attributed Claimant's decreased oxygenation to cardiovascular disease rather than pulmonary disease. Decision and Order at 15; Employer's Exhibit 6. The ALJ noted that Dr. Basheda could not confirm whether Claimant had a chronic restrictive pulmonary disease because Dr. Basheda lacked lung volume measurements; thus, his opinion could not disprove legal pneumoconiosis because he lacked the testing data that he said was required to render a diagnosis. Decision and Order at 15. Employer argues the ALJ erred in not considering that Dr. Basheda later

[17] Because the ALJ provided valid reasons for discrediting the opinions of Drs. Jaworski and Zaldivar, we need not address Employer's additional assertions of error regarding the ALJ's weighing of their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

confirmed there was no restriction based on the more recent lung volumes. Employer's Brief at 13 (citing Employer's Exhibit 6). Employer's argument has merit.

Dr. Basheda indicated in his initial report, after considering the January 2019 testing, that he could not confirm restriction due to the lack of lung volume measurements in that testing. Employer's Exhibit 2 at 7. However, as Employer argues, Dr. Basheda later considered the November 2019 testing, which he indicated included lung volumes and opined it showed no evidence of restriction. Employer's Brief at 12-13, 18; Employer's Exhibit 6 at 7-8. Because the ALJ's discrediting of Dr. Basheda's opinion regarding legal pneumoconiosis is based solely on the ALJ's erroneous finding that Dr. Basheda could not address the presence of restriction, we must vacate his finding regarding Dr. Basheda's opinion. Decision and Order at 15. Consequently, we must also vacate the ALJ's determination that Employer failed to disprove legal pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i); Decision and Order at 16. As the ALJ's findings regarding rebuttal of disability causation are dependent on his findings regarding legal pneumoconiosis, we must also vacate these findings. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 25-27.

On remand, the ALJ must reconsider Dr. Basheda's opinion that Claimant did not have legal pneumoconiosis and determine whether it can meet Employer's burden to disprove the disease. 20 C.F.R. §718.305(d)(1)(i). The ALJ must determine if it is adequately reasoned, taking into consideration his credentials, the explanation for his conclusions, the documentation underlying his medical judgment, and the sophistication, and bases for, his opinion. *Akers*, 131 F.3d at 441.

If the ALJ finds legal pneumoconiosis disproven, then Employer has rebutted the Section 411(c)(4) presumption. *See* 20 C.F.R. §718.305(d)(1)(i). If legal pneumoconiosis is not disproven, the ALJ must reconsider whether Employer can establish that "no part of [Claimant's] respiratory or pulmonary total disability was caused by" his legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). If the ALJ finds the Section 411(c)(4) presumption unrebutted, he may reinstate his award of benefits. If the presumption is found rebutted, benefits must be denied.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Awarding Benefits and remand the case to the ALJ for further consideration consistent with this decision.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge