U.S. Department of Labor

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

BRB No. 20-0479 BLA

ARTHUR G. GRACE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PEABODY COAL COMPANY	)	
	)	
and	)	
	)	
PEABODY ENERGY CORPORATION	)	DATE ISSUED: 01/24/2023
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Jerry R. DeMaio, Administrative Law Judge, United States Department of Labor.

Brent Yonts (Yonts, Sherman & Driskill, PSC), Greenville, Kentucky, for Claimant.

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

Kathleen H. Kim (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, 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-05134) 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 subsequent claim filed on April 27, 2016.[1]

The ALJ found Peabody Coal Company (Peabody Coal), self-insured through Peabody Energy Corporation (Peabody Energy), is the responsible operator liable for the payment of benefits. He also found Claimant established thirty-one years of coal mine employment, including more than fifteen years in underground mines or at substantially similar surface coal mines, and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Therefore, he 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), and established a change in an applicable condition of entitlement.[3] 20 C.F.R. §§718.204(b)(2), 725.309(c). He further found Employer did not rebut the presumption and thus awarded benefits.

[1] This is Claimant's second claim for benefits. On February 19, 2003, the district director denied Claimant's first claim, filed on December 6, 2001, because he failed to establish total disability. Director's Exhibit 1. Claimant took no further action until filing the current claim. Director's Exhibit 3.

[2] 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.

[3] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). The ALJ found Claimant did not establish total disability in his prior claim; thus he had to submit evidence establishing this element of entitlement to obtain review of the merits of his current claim. *Id.*; Decision and Order at 20.

On appeal, Employer contends the district director, the Department of Labor (DOL) official who initially processes claims, is an inferior officer who was not appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2.[4] It also asserts the duties the district director performs create an inherent conflict of interest that violates its due process rights. In addition, Employer contends the ALJ erred in finding Peabody Energy liable for the payment of benefits. Employer further asserts the ALJ erred in applying a page limit to its post-hearing brief and in excluding Employer's Exhibit 9A from the record in his Decision and Order. Finally, on the merits of entitlement, it argues the ALJ erred in finding it failed to rebut the Section 411(c)(4) presumption.[5]

Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Benefits Review Board to reject Employer's Appointments Clause and conflict of interest arguments, and affirm the ALJ's determination that Employer is liable for benefits. He also urges the Board to reject Employer's arguments concerning the ALJ's limitation on the pages of the parties' post-hearing briefs and his evidentiary ruling in his Decision and Order.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[6] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a);

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[4] 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.

[5] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established more than fifteen years of qualifying coal mine employment, total disability, a change in an applicable condition of entitlement, and invocation of the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 18-19, 20-24.

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See*

O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc., 380 U.S. 359 (1965).

Due Process Challenge - Page Limit

Employer argues the ALJ denied it due process by applying a twenty-five page limit to its post-hearing brief. Employer's Brief at 14. It asserts the page limit was arbitrary and capricious because it required all parties to abide by this limit, without considering Claimant only had to brief entitlement issues and the Director only had to brief liability issues, whereas Employer had to brief both entitlement and liability issues. *Id*. We disagree.

The ALJ's Briefing Order set the deadline for post-hearing briefs as March 5, 2019, and provided, "Briefs shall not exceed 25 pages in 12-point Times New Roman font, [one]-inch margins, double-spaced. Non-conforming briefs will not be accepted by the presiding judge." December 26, 2018 Briefing Order at 2. On February 22, 2019, the Director filed his brief and, on the same day, Claimant requested an extension of time to file his brief. The ALJ granted Claimant's request, giving the parties until March 20, 2019, to file briefs. On March 20, 2019, Employer submitted its eighty-eight page post-hearing brief, along with a motion requesting the ALJ to accept the non-conforming brief because it was unaware of the page limit or, alternatively, to allow Employer to submit a revised brief.

The ALJ denied Employer's motion to accept the non-conforming brief because the page limitation was clearly set forth in his December 26, 2018 Briefing Order, but he granted its request to submit a compliant post-hearing brief no later than April 11, 2019. March 29, 2019 Order Denying Motion to Submit Brief at 2. Employer subsequently submitted its Corrected Brief consisting of twenty-two pages on April 11, 2019.

We see no abuse of discretion in the ALJ's procedural rulings and we reject Employer's assertion of a due process violation. Due process requires that a party be given notice and the opportunity to respond. *See Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 807 (4th Cir. 1998). Employer was given notice that its post-hearing brief had a page limitation. *See Lockhart*, 137 F.3d at 807; December 26, 2018 Briefing Order at 2. Here, however, Employer acted at its own peril by not timely requesting the ALJ's permission to allow it to exceed the twenty-five page limitation until the day its brief was due.[7] Further, the ALJ granted Employer's request to "re-submit" a

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Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 1, 7.

[7] The certificate of service attached to Employer's non-conforming post-hearing brief states Employer mailed it to the ALJ and the parties on March 20, 2019, the same day

post-hearing brief that complied with the page limitation.[8] March 29, 2019 Order Denying Motion to Submit Brief at 2. We therefore reject Employer's assertion that the ALJ abused his discretion in denying Employer's motion and requiring it to file a brief compliant with his December 26, 2018 Briefing Order. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc).[9]

Evidentiary Issue

ALJs are afforded significant discretion in rendering evidentiary orders. *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc). Such orders may be overturned only if the party challenging them demonstrates the ALJ's action represented an abuse of discretion. *See V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009). Employer argues the ALJ erred in excluding Employer's Exhibit 9A from the record in his Decision and Order. Employer's Brief at 2-3.

We agree with the Director's argument that we need not resolve this issue. Director's Response Brief at 40. Employer's Exhibit 9A contains Dr. Adcock's negative interpretation of the October 12, 2017 chest x-ray. Employer's Exhibit 9A. The ALJ excluded Employer's Exhibit 9A from the record because he found it "identical to [Employer's Exhibit 3], which [Employer] had identified on its evidence summary as a [computed tomography (CT) scan] reading, and which the parties identified on the Joint Prehearing Report . . . as the reading of a CT scan." Decision and Order at 2-3; Employer's Exhibit 3. Further, he stated that "[i]f, in fact, it is an x-ray reading, [Employer's Exhibit 9A] was not timely identified for exchange, and there was no timely motion for its admission out of time for good cause." Decision and Order at 2, *citing* 20 C.F.R. §725.456(a)(2), (3). He explained "the enumerated reasons contained in [Employer's August 22, 2018 motion for extension of time] did not include a reading of [an October 12, 2017] x-ray." Decision and Order at 2. But as the ALJ found Employer disproved the

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briefs were due to the ALJ. The ALJ stated he received Employer's brief on March 25, 2019. March 29, 2019 Order Denying Motion to Submit Brief at 2.

[8] The ALJ admitted Employer's non-complying 88-page post-hearing brief into the record for appellate review, but declined to rely on it for adjudication purposes. March 29, 2019 Order Denying Motion to Submit Brief at 2.

[9] We note that Employer does not argue it was unable to adequately address any particular issue because of the page limit. Rather, it argues that there was an "asymmetry" because the briefs of the Director and Claimant each focused on particular issues, while Employer's brief addressed the issues covered by those briefs combined. Employer's Brief at 14.

existence of clinical pneumoconiosis based in part on the x-ray and CT scan evidence, Employer has not shown how the ALJ's exclusion of Employer's Exhibit 9A alters the outcome of this case. *See* 20 C.F.R. §718.305(d)(1)(i)(B); *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 24-25; Employer's Exhibits 3, 9A; Director's Response Brief at 40. We therefore decline to address Employer's assertion that the ALJ erred in excluding Employer's Exhibit 9A.

Responsible Insurance Carrier

Employer does not challenge the ALJ's findings that Peabody Coal is the correct responsible operator and was self-insured by Peabody Energy on the last day it employed Claimant; thus we affirm these findings.[10] *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§725.494, 725.495, 726.203(a); Decision and Order at 14-15. 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 (the Trust Fund).

Patriot was initially another Peabody Energy subsidiary. Director's Exhibit 41. In 2007, after Claimant ceased his coal mine employment with Peabody Coal, Peabody Energy transferred a number of its subsidiaries, including Peabody Coal, to Patriot. *Id*. That same year, Patriot was spun off as an independent company. *Id*. On March 4, 2011, Patriot was authorized to insure itself and its subsidiaries, retroactive to 1973. *Id*. Although Patriot's self-insurance authorization made it retroactively liable for the claims of miners who worked for Peabody Coal, Patriot later went bankrupt and can no longer provide for those benefits. Director's Exhibit 29. Neither Patriot's self-insurance authorization nor any other arrangement, however, relieved Peabody Energy of liability for

[10] Employer also states it wants to "preserve" its "ability to challenge" Black Lung Benefits Act (BLBA) Bulletin No. 16-01 as an invalid rule. Employer's Brief at 57-58. Generally, Employer argues Bulletin No. 16-01 contradicts liability rules under the Act, was issued without notice and comment, and violates the Administrative Procedure Act (APA). *Id*. Employer's one sentence summary of its arguments does not set forth sufficient detail to permit the Board to consider the merits of these issues. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); 20 C.F.R. §802.211(b).

paying benefits to miners last employed by Peabody Coal when Peabody Energy owned and provided self-insurance to that company.

Employer raises several arguments to support its contention that Peabody Energy was improperly designated as the self-insured carrier in this claim and thus the Trust Fund is responsible for the payment of benefits:[11] (1) the district director is an inferior officer not properly appointed under the Appointments Clause;[12] (2) the regulatory scheme, whereby the district director must determine the liability of a responsible operator and its carrier when at the same time the DOL administers the Trust Fund, creates a conflict of interest that violates its due process right to a fair hearing; (3) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; (4) before transferring liability to Peabody Energy, the DOL must establish it exhausted any available funds from the security bond Patriot gave to secure its self-insurance status; (5) the DOL released Peabody Energy from liability; (6) the Director is equitably estopped from imposing liability on Peabody Energy; and (7) the DOL violated its due process rights by not maintaining adequate records with respect to Patriot's bond and failing to monitor Patriot's financial health.[13] Employer's Brief at 14-60. Moreover, it maintains that a separation agreement – a private contract

[11] Employer argues the time limitation for its submission of liability evidence at 20 C.F.R. §725.456(b)(1) violates the Longshore and Harbor Workers' Compensation Act (Longshore Act) and the APA, 5 U.S.C. §556(d), because it divests the ALJ of authority under those Acts to receive evidence and adjudicate issues de novo. Employer's Brief at 60. We reject this argument. As the Director correctly argues, 30 U.S.C. §932(a) incorporated the provisions of the Longshore Act and the APA into the BLBA "except as otherwise provided . . . by regulations of the Secretary." Director's Brief at 34, *citing* 30 U.S.C. §932(a). Thus, even if we were to accept Employer's interpretation of the regulation, the Secretary of Labor has the "authority to adopt regulations that differ from the APA and the Longshore Act." Director's Brief at 34, *citing Nat'l Mining Ass'n v. Chao*, 160 F. Supp. 2d 47 (D.D.C. 2001), *rev'd in part on other grounds*, *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 869 (D.C. Cir. 2002).

[12] Employer raised this argument for the first time in its March 20, 2019 post-hearing brief to the ALJ. Employer's March 20, 2019 Post-Hearing Brief at 47-54.

[13] Employer also states it wants to preserve its argument that its due process rights were violated because the ALJ "cut off" discovery "prematurely." Employer's Brief at 55-58. It neither asks the Board to address this issue nor sets forth any argument that would permit our review. *See Cox*, 791 F.2d at 446-47; 20 C.F.R. §802.211(b).

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.

The Board has previously considered and rejected these arguments 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.*, 25 BLR 1-289, 1-295-99 (2022). For the reasons set forth in *Bailey*, *Howard*, and *Graham*, we reject Employer's arguments. We also reject Employer's arguments with regard to the exclusion of evidence for the reasons set forth below.

Employer argues the ALJ erred in excluding the depositions of David Benedict and Steven Breeskin, two former DOL Division of Coal Mine Workers' Compensation employees. Employer's Brief at 3-8. In *Bailey*, the same depositions were admitted 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*, BLR , BRB No. 20-0094 BLA, slip op. at 15 n.17. Given that the Board has previously held these depositions do not support Employer's argument, any error in excluding them here is harmless. *See Shinseki*, 556 U.S. at 413; *Larioni*, 6 BLR at 1-1278. Thus, we affirm the ALJ's determination that Peabody Coal and Peabody Energy are the responsible operator and carrier, respectively, and are liable for this claim.

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,[14] or "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in

[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).

[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]

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 United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, requires Employer to establish Claimant's "coal mine employment did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). "An employer may prevail under the not 'in part' standard by showing that coal dust exposure had no more than a de minimis impact on the miner's lung impairment." *Id*. at 407, *citing Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014).

The ALJ considered the opinions of Drs. Tuteur and Selby that Claimant does not have legal pneumoconiosis but has chronic obstructive pulmonary disease (COPD) and emphysema due to cigarette smoking.[16] Employer's Exhibits 1, 2, 5, 6. He found neither physician's opinion persuasive or well-reasoned, and therefore determined Employer did not disprove the existence of legal pneumoconiosis. Decision and Order at 26-30.

Employer asserts the ALJ erred in discrediting Drs. Tuteur's and Selby's opinions. Employer's Brief at 8-13. We disagree.

Dr. Tuteur excluded coal mine dust exposure as a causative factor for Claimant's COPD based on statistics showing the relative risks of developing COPD if you are smoker but not a coal miner versus a coal miner who never smoked cigarettes. Employer's Exhibits 2, 6. The ALJ permissibly found Dr. Tuteur's opinion unpersuasive because he relied on statistical generalities not specific to Claimant's case. *See Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); 65 Fed. Reg.

[15] As discussed above, the ALJ found Employer disproved the existence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 24-25.

[16] The ALJ also considered Drs. Chavda's, Baker's, and Sood's opinions that Claimant has legal pneumoconiosis. Decision and Order at 29; Director's Exhibit 13; Claimant's Exhibits 1, 2. He correctly determined their opinions do not aid Employer in rebutting the Section 411(c)(4) presumption. *Id*.

79,920, 79,941 (Dec. 20, 2000) (statistical averaging can hide the effect of coal mine dust exposure in individual miners); Decision and Order at 29. In addition, the ALJ permissibly discounted Dr. Tuteur's opinion because he did not adequately explain why Claimant's history of coal mine dust exposure is not an additive factor along with smoking in causing his respiratory impairment. *See* 65 Fed. Reg. at 79,940; *Barrett*, 478 F.3d at 356; *Rowe*, 710 F.2d at 255; Decision and Order at 29.

Similarly, Dr. Selby excluded coal dust exposure as a cause of Claimant's emphysema because in his "35 to 40 years of experience, … [it] does not occur with any regularity" and, "[i]n fact, it's relatively infrequent, probably significantly less than [one] percent of those coal miners who have had enough exposure." Employer's Exhibit 5 at 31. Contrary to Employer's assertion, the ALJ permissibly discounted Dr. Selby's opinion because it is based, in part, on a relative risk assessment and statistical probabilities rather than Claimant's particular condition. *See Barrett*, 478 F.3d at 356; *Rowe*, 710 F.2d at 255; *Knizner*, 8 BLR at 1-7; Decision and Order at 27-28; Employer's Brief at 8-10. Further, the ALJ permissibly found that like Dr. Tuteur, Dr. Selby's explanation that Claimant's smoking was sufficient to cause his respiratory disease did not explain why coal mine dust exposure is not an additive factor. *See* 65 Fed. at 79,940; *Barrett*, 478 F.3d at 356; *Rowe*, 710 F.2d at 255; Decision and Order at 28.

The ALJ has discretion to weigh the evidence, draw appropriate inferences, and determine credibility. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 482-83 (6th Cir. 2012); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002). Employer's arguments amount to a request for the Board to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988). Because the ALJ's credibility findings with respect to Employer's experts are supported by substantial evidence, we affirm the ALJ's finding that Employer did not disprove the existence of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 29-30. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. Thus, we affirm the ALJ's finding that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(1)(i). Decision and Order at 29-30.

Disability Causation

To disprove disability causation, Employer must establish "no part of [Claimant's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201.[17] 20 C.F.R. §718.305(d)(1)(ii); *see Minich*, 25 BLR at 1-154-56. The

[17] We reject Employer's argument that the ALJ erred in failing to apply the legal standard for total disability causation enunciated in *Island Creek Coal Co. v. Young*, 947

ALJ discredited the disability causation opinions of Drs. Selby and Tuteur because they do not diagnose legal pneumoconiosis, contrary to his finding that Employer did not disprove the existence of the disease. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order at 30. As Employer does not specifically identify any error in the ALJ's credibility finding, we affirm it. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Skrack*, 6 BLR at 1-711; *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983). Consequently, we affirm the ALJ's finding that Employer failed to establish no part of Claimant's respiratory or pulmonary total disability is caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); *see Minich*, 25 BLR at 154-56.

We therefore affirm the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption and the award of benefits.

F.3d 399, 408-08 (6th Cir. 2020). Employer's Brief at 13-14. The legal standard enunciated in *Young* is relevant to an employer's burden to rebut the presumed fact of legal pneumoconiosis, not to its burden to rebut the presumed fact of total disability due to pneumoconiosis. *See Young*, 947 F.3d at 405. The ALJ correctly stated, "an employer may alternatively rebut the element of disability causation by establishing that no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis." Decision and Order at 30; *see Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1071 (6th Cir. 2013) (an employer's burden on rebuttal of disability causation is to rule out coal mine employment as a cause of disability or show that pneumoconiosis played no part in causing disability).

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge