**U.S. Department of Labor**

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

BRB No. 21-0256 BLA

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| STELLA HOLSTEIN<br>(Widow of CHARLES HOLSTEIN) | ) | |
| v. | ) | |
| EASTERN ASSOCIATED COAL COMPANY | ) | |
| and | ) | |
| PEABODY ENERGY CORPORATION | ) | DATE ISSUED: 01/11/2023 |
| 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 Lystra Harris, Administrative Law Judge, United States Department of Labor.

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

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

Ann Marie Scarpino (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: ROLFE, GRESH, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Lystra Harris' Decision and Order Awarding Benefits (2019-BLA-05610) rendered on a survivor's claim filed on April 2, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Eastern Associated Coal (Eastern), self-insured through its parent company Peabody Energy Corporation (Peabody Energy), is the responsible operator liable for the payment of benefits. She found the Miner had twenty-nine years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Therefore, she found Claimant[1] invoked the presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act,[2] 30 U.S.C. §921(c)(4) (2018). Further, she found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Peabody Energy liable for the payment of benefits. It asserts the ALJ erred in excluding Dr. Caffrey's autopsy report. Additionally, it argues she erred in finding the Miner was totally disabled at the time of his death, thereby invoking the Section 411(c)(4) presumption. Finally, it argues she erred in finding it did not rebut the presumption.[3] 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 affirm the ALJ's determination that Employer is liable for benefits.

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

[1] Claimant is the widow of the Miner, who died on September 6, 2008. Director's Exhibit 2.

[2] Under Section 411(c)(4) of the Act, Claimant is entitled to a rebuttable presumption that the Miner's death was 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 at the time of his death. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305(b).

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established twenty-nine years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 2-3.

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 Carrier**

Employer does not challenge the ALJ's findings that Eastern is the correct responsible operator and it was self-insured by Peabody Energy on the last day Eastern employed the Miner; thus, we affirm these findings.[5] *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 7-8. 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 23. In 2007, after the Miner ceased his coal mine employment with Eastern, Peabody Energy transferred a number of its other subsidiaries, including Eastern, 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 Eastern, Patriot later went bankrupt and can no longer provide for those benefits. Director's Exhibit 23; Employer's Brief at 28. Neither Patriot's self-insurance authorization nor any other arrangement, however, 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, as the ALJ held. Decision and Order at 7-8.

[4] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because the Miner performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

[5] Employer argues there is no evidence of record that Peabody Energy Corporation (Peabody Energy) was the self-insurer of Eastern Associated Coal Company (Eastern). Employer's Brief at 22. However, the Notice of Claim specifically identifies Peabody Energy as Eastern's self-insurer, Director's Exhibit 19, and Employer's other arguments acknowledge Peabody Energy was the self-insurer of Eastern on the Miner's last date of employment with it. *See, e.g.*, Employer's Brief at 25-26 (e.g., arguing Peabody Energy "put the DOL on notice that it was not the insurer of Eastern employees for this claim since it was filed after March 4, 2011, the date on which the DOL made Patriot Coal the insurer of future claims of past Eastern employees" and the "insurer is not the insurer on the actual date of last employment but rather the insurer that the DOL made the insurer" for the applicable period).

Employer raises several arguments to support its contention that Peabody Energy was improperly designated the self-insured carrier in this claim and thus the Trust Fund, not Peabody Energy, is responsible for the payment of benefits following Patriot's bankruptcy: (1) the Department of Labor (the DOL) released Peabody Energy from liability; (2) the ALJ erred in finding the responsible self-insurer is the insurer on the date of the Miner's last coal mine employment with the responsible operator; (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 Director is equitably estopped from imposing liability on Peabody Energy; (6) because Patriot cannot pay benefits, Black Lung Benefits Act Bulletin Nos. 12-07 and 14-02 place liability on the Trust Fund; and (7) the DOL violated Employer's due process rights by not maintaining adequate records with respect to Patriot's bond and failing to comply with its duty to monitor Patriot's financial health. Employer's Brief at 22-35. Employer 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.[6] *Id*.

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.*, 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 Employer's arguments. Thus, we affirm the ALJ's determination that Eastern and Peabody Energy are the responsible operator and carrier, respectively, and are liable for this claim.

[6] Employer also alleges the ALJ erred in failing to require the Director to name the Black Lung Disability Trust Fund (the Trust Fund) as a party to this claim, and that the district director failed to act on its request for reconsideration of the Proposed Decision and Order (PDO). Employer's Brief at 22-24. The Director represents the Trust Fund's interests and is a party to all claims under the Act. 30 U.S.C. §932(k); *see also Boggs v. Falcon Coal Co.*, 17 BLR 1-62, 1-65-66 (1992); *Truitt v. N. Am. Coal Corp.*, 2 BLR 1-199, 1-202 (1979). Further, while Employer requested reconsideration of Peabody Energy's designation as the responsible carrier in the district director's PDO, it also requested that the district director forward the claim for a hearing before the Office of Administrative Law Judges (OALJ). Director's Exhibit 38. The district director forwarded the claim to the OALJ as Employer requested. Director's Exhibit 41.

## 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 declining to consider Dr. Caffrey's autopsy report. Employer's Brief at 2-4. We disagree.

The regulations set limits on the number of specific types of medical evidence the parties can submit into the record. *See* 20 C.F.R. §§725.414; 725.456(b)(1). Medical evidence that exceeds those limitations "shall not be admitted into the hearing record in the absence of good cause." 20 C.F.R. §725.456(b)(1). Each party may submit, in support of its affirmative case, no more than one report of an autopsy, one report of each biopsy, and two medical reports. 20 C.F.R. §725.414(a)(2)(i), (a)(3)(i). In rebuttal of the case presented by the opposing party, each party may submit "no more than one physician's interpretation of each . . . autopsy or biopsy submitted by" the opposing party. 20 C.F.R. §725.414(a)(2)(ii), (a)(3)(ii).

At the hearing for this claim, the ALJ informed the parties that she would hold them to their written evidentiary designations. Hearing Tr. at 41. Employer incorrectly designated Dr. Caffrey's autopsy report as an affirmative biopsy report on its evidentiary designation form. *See* Employer's Evidence Form. Because Dr. Caffrey's report is an autopsy report, and Employer had already selected Dr. Oesterling's pathology slide review as its one affirmative autopsy report, the ALJ found Dr. Caffrey's autopsy report inadmissible as exceeding the limitations without a good cause basis to include it. Decision and Order at 23-24; *see* Employer's Evidence Form.

In challenging the ALJ's finding, Employer argues that the ALJ should have admitted Dr. Caffrey's autopsy report as rebuttal evidence under 20 C.F.R. §725.414(a)(3)(ii) as it had this slot available on its evidentiary designation form. Employer's Brief at 2-4. It does not dispute, however, that it mis-designated the autopsy report as an affirmative biopsy report rather than properly designating it as rebuttal evidence on its written evidentiary designations. Because the ALJ informed the parties that she would hold them to their written evidentiary designations, and Employer is the party that committed the error in this case, we reject its contention that the ALJ abused her discretion and affirm her exclusion of this evidence. *See Blake*, 24 BLR at 1-113; Employer's Brief at 2-4.

## 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 miner may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of 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 total disability based on the medical opinion evidence and in consideration of the evidence as a whole.[7] Decision and Order at 10-20. Employer contends the ALJ erred. Employer's Brief at 4-8. We disagree.

Drs. Rosenberg and Perper diagnosed the Miner with a totally disabling respiratory or pulmonary impairment, and Dr. Tuteur opined the Miner was not totally disabled. Decision and Order at 19-20. The ALJ found the opinions of Drs. Rosenberg and Perper reasoned and documented, and Dr. Tuteur's opinion not reasoned or documented. *Id.* Thus she found the medical opinions establish total disability. *Id.*

Employer argues Dr. Rosenberg did not diagnose total disability. Employer's Brief at 4-6. We disagree. Dr. Rosenberg stated the Miner "was totally disabled from a pulmonary perspective" because of "a severe gas exchange abnormality towards the end of his life." Employer's Exhibit 6 at 6. In his deposition, he reiterated that, "towards the end of his life, [the Miner] obviously was disabled from a pulmonary perspective" because of lung cancer. Employer's Exhibit 17 at 6-7. Thus he clearly diagnosed a disabling respiratory or pulmonary impairment.

Employer contends Dr. Rosenberg's opinion does not support total disability because he attributed the blood gas exchange impairment to the effects of end-stage lung cancer. Employer's Brief at 5-6. Because the Miner was not totally disabled before he developed the lung cancer that caused his death, Employer contends Dr. Rosenberg did not diagnose a chronic lung impairment. *Id.*

We disagree. The relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether the Miner had a totally disabling respiratory or pulmonary impairment at the time of his death; the cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305. *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989). Thus Dr. Rosenberg's opinion that lung cancer caused the Miner to develop hypoxemia near the end of his life that would prevent him from performing his usual coal mine

[7] The ALJ found the pulmonary function and arterial blood gas studies do not establish 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 9-10.

employment supports a finding of total disability. Because Employer does not challenge the ALJ's finding that his opinion is reasoned and documented, we affirm it. *Skrack*, 6 BLR at 711; Decision and Order at 19-20.

Employer next argues the ALJ erred in discrediting Dr. Tuteur's opinion. Employer's Brief at 6-8. We disagree. As the ALJ correctly noted, Dr. Tuteur cited pulmonary function testing from 2001 and 2002 that is not in the record. Decision and Order at 11-12; Employer's Exhibit 5. The ALJ permissibly discredited his opinion on this basis. *Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-108 (2006) (en banc); *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-67 (2004); Decision and Order at 19-20. She also noted Dr. Tutuer opined the Miner was not totally disabled by a respiratory or pulmonary impairment before developing end-stage lung cancer, but permissibly discredited the doctor's opinion because he did not address whether the Miner was totally disabled by a respiratory condition at the time of his death.[8] *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 19.

We therefore affirm the ALJ's finding Dr. Rosenberg's credible opinion establishes total disability.[9] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 19-20. Further, we

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[8] In his deposition, Dr. Tuteur was asked if the Miner was totally disabled by a respiratory or pulmonary impairment at the time of his death. He answered:

> Insomuch as respiratory impairment implies ability to efficiently transfer oxygen, the answer is yes, and that's exemplified by the June 2007 arterial blood gas analysis when he was on mechanical ventilation due to congestive heart failure and pneumonia apparently, as well as the [August 16, 2008] arterial blood gas which showed mild impairment of oxygen-gas exchange, but that was not due to a pneumoconiosis, but due to failing left ventricle in combination with the carcinoma of the lung and its sequelae.

Employer's Exhibit 14 at 17-18. As discussed above, the relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether the Miner had a totally disabling respiratory or pulmonary impairment at the time of his death; the cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305. *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989). Thus Dr. Tuteur's opinion also appears to support a finding of total disability.

[9] Because Claimant established total disability through Dr. Rosenberg's opinion, we need not address Employer's arguments that the ALJ erred in crediting Dr. Perper's opinion or admitting his opinion into the record in excess of the evidentiary limitations. *See Larioni*

affirm the ALJ's finding Claimant established total disability in consideration of the evidence as a whole, 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232, and invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1).

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

Because Claimant invoked the Section 411(c)(4) presumption of death due to pneumoconiosis, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[10] or that "no part of [his] death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(2)(i), (ii). The ALJ found Employer did not establish rebuttal by either method.

**Legal Pneumoconiosis**

Employer argues the ALJ erred in finding it failed to rebut the presumption of legal pneumoconiosis. We disagree. To disprove legal pneumoconiosis, Employer must establish the Miner 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 Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ weighed the opinions of Drs. Tuteur, Rosenberg, and Oesterling that the Miner did not have a lung disease or impairment significantly related to, or substantially aggravated by, coal mine dust exposure. Decision and Order at 31-35. Substantial evidence supports the ALJ's finding that all three opinions are unpersuasive.

As the ALJ correctly noted, Dr. Tuteur conceded that the Miner's autopsy was consistent with centrilobular emphysema. Decision and Order at 14; *see* Employer's

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*v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); 20 C.F.R. §718.204(b)(2)(iv); Employer's Brief at 3-8.

[10] "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).

Exhibit 14 at 31-32. Although he acknowledged coal mine dust exposure can cause centrilobular emphysema, he excluded legal pneumoconiosis because:

> centrilobular emphysema associated with the Miner's cigarette-smoking history "is orders of magnitude stronger than the stimulus or the risk factor posed by the inhalation of coal mine dust, so that with reasonable medical certainty, the minimal or mild emphysematous change seen at autopsy was due to the chronic inhalation of tobacco smoke, not coal mine dust.

Employer's Exhibit 14 at 31-32. Contrary to Employer's argument, the ALJ permissibly discredited Dr. Tuteur's opinion because "even if, as claimed by Dr. Tuteur, the Miner's chances of developing emphysema due to coal dust exposure were low," he "did not explain why Miner could not be one of those statistically rare cases." Decision and Order at 31-32; *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012); *Spring Creek Coal Company v. McLean*, 881 F.3d 1211, 1224-6 (10th Cir. 2018); *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 76 (7th Cir. 2008); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985). The ALJ also permissibly found Dr. Tuteur failed to explain why coal mine dust could not be a contributing or aggravating factor to emphysema, even if smoking was a more likely cause. *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 32.

The ALJ noted Dr. Rosenberg excluded legal pneumoconiosis because the Miner's coal mine dust exposure occurred decades earlier. Decision and Order at 33. Dr. Rosenberg opined that chronic bronchitis "present towards the end of [the Miner's] life was unrelated to past coal mine dust exposure which ended decades before," as "chronic bronchitis dissipates within months after exposure ceases." Employer's Exhibit 6 at 6-7. The ALJ permissibly found this reasoning inconsistent with the regulations, which state that pneumoconiosis "is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *see also* 65 Fed. Reg. 79.920, 79,971 (Dec 20, 2000) ("it is clear that a miner who may be asymptomatic and without significant impairment at retirement can develop a significant pulmonary impairment after a latent period"); Decision and Order at 33.

The ALJ also found Dr. Rosenberg's rationale "that continued cigarette smoking is one of the main causes of chronic bronchitis, and that smoking increases the odds of having or developing chronic bronchitis" is unpersuasive as it is based on "statistical probabilities" and does not address whether the chronic bronchitis is significantly related to, or substantially aggravated by, coal mine dust exposure. Decision and Order at 33; *see Looney*, 678 F.3d at 316; *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; *Knizner*, 8 BLR

at 1-7. Employer does not specifically challenge this finding. Thus we affirm it.[11] *Skrack*, 6 BLR at 711.

Finally, Dr. Oesterling opined the Miner was "clearly experiencing significant small airway disease in the form of chronic bronchitis and respiratory bronchiolitis, a condition associated with the inhalation of tobacco smoke." Director's Exhibit 17 at 5-6. He concluded that the "primary chronic respiratory disease was produced by . . . chronic bronchiolitis and respiratory bronchiolitis with associated interstitial disease. It is not related to coal dust." *Id*. The ALJ rationally discredited Dr. Oesterling's opinion because he "did not offer any rationale for his summary conclusion, or explain why the Miner's significant history of coal mine dust exposure did not contribute to his chronic lung disease." Decision and Order at 34; *see Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441.

Because the ALJ permissibly discredited the only opinions supportive of Employer's burden on rebuttal,[12] we affirm her finding Employer did not disprove legal pneumoconiosis. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis. 20 C.F.R. §718.305(d)(2)(i).

**Death Causation**

The ALJ next considered whether Employer established "no part of the [M]iner's death was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(2)(ii). The ALJ rationally discredited the death causation opinions of Drs. Rosenberg and Tuteur because they did not diagnose legal pneumoconiosis, contrary to her finding that Employer failed to disprove the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order at 40. She also permissibly discredited Dr. Oesterling's opinion because he did not address whether no part of the Miner's death was caused by emphysema, which she found constitutes legal pneumoconiosis in this case. *Id*. As it is supported by substantial evidence, we affirm the ALJ's finding that Employer failed

[11] Because the ALJ gave valid reasons for discrediting the opinions of Drs. Tuteur and Rosenberg, we need not address Employer's other contentions regarding the ALJ's weighing of these opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 13-18.

[12] Because Dr. Perper diagnosed pneumoconiosis and his opinion does not aid Employer in rebutting the Section 411(c)(4) presumption, we decline to address Employer's arguments regarding the ALJ's weighing of his opinion. *See Larioni*, 6 BLR at 1-1278; Employer's Brief at 4-13. Further, as we have affirmed the ALJ's finding that Employer failed to rebut legal pneumoconiosis, we need not consider Employer's argument that the ALJ erred in finding it also failed to disprove clinical pneumoconiosis. *Id.*

to establish no part of the Miner's death was due to pneumoconiosis. 20 C.F.R. §718.305(d)(2)(ii).

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge