U.S. Department of Labor

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

BRB No. 21-0546 BLA

LARRY E. HALEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ICG KNOTT COUNTY, LLC, C/O ARCH COAL	)	
	)	
	)	DATE ISSUED: 01/06/2023
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Larry W. Price, Administrative Law Judge, United states Department of Labor.

James D. Holliday, Hazard, Kentucky, for Claimant.

Scott A. White (White & Risse, LLC), Arnold, Missouri, for Employer.

Sarah M. Hurley (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, BUZZARD, and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Larry W. Price's Decision and Order Granting Benefits (2017-BLA-05248) rendered on a miner's claim filed on September 16, 2014 pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulation that Claimant's thirty-three years of coal mine employment are qualifying for purposes of invoking the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305. He also found Claimant has a totally disabling respiratory or pulmonary impairment and thus invoked the presumption. Finally, he found Employer failed to rebut the presumption and awarded benefits from September 2014.[2]

On appeal, Employer argues the ALJ lacked the authority to preside over the case because he was not appointed in a manner consistent with the Appointments Clause of the United States Constitution.[3] It also argues the removal provisions applicable to Department of Labor (DOL) ALJs violate the separation of powers doctrine and render his appointment unconstitutional. As to the merits of entitlement, Employer argues the ALJ erred in denying its request to obtain additional testing to rebut the qualifying February 21, 2020

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

[2] The ALJ found Claimant did not establish complicated pneumoconiosis and thus could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §718.304; Decision and Order at 35, 37-40.

[3] 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.

blood gas study. It further contends the ALJ erred in analyzing the medical opinions on total disability, in finding Claimant invoked the Section 411(c)(4) presumption, and in finding Employer did not rebut it. Employer also challenges the date benefits commence.

Claimant filed a response, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a response urging rejection of Employer's challenges to the ALJ's appointment and removal protections, but declined to address Employer's remaining challenges to the ALJ's evidentiary ruling and his findings on the merits of entitlement. Employer filed separate reply briefs to the responses filed by Claimant and the Director, reiterating its arguments on appeal.[4]

The Benefits Review 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.[5] 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).

Appointments Clause

This case was initially assigned to ALJ Dana Rosen (Judge Rosen), who conducted a hearing on June 27, 2017. Prior to her issuance of a Decision and Order in this case, Employer challenged her appointment. As a result, the case was reassigned to ALJ Price (the ALJ). He informed the parties he was assigned the case and granted Employer's motions to amend the issues for consideration to include its renewed constitutional challenge to his appointment. ALJ's Order dated October 22, 2019. Employer again renewed its challenge to the ALJ's appointment before the ALJ in its closing argument, but the ALJ did not address it. Employer's Closing Argument at 2 n.1.

Employer requests the Board vacate the ALJ's decision and remand the case to be heard by a constitutionally appointed ALJ pursuant to *Lucia v. SEC*, 585 U.S. , 138 S.

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established thirty-three years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3; Hearing Transcript at 14-15.

[5] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order 3; Hearing Transcript at 18.

Ct. 2044 (2018).[6] Employer's Brief at 21-27; Employer's Reply to Director at 1-3; Employer's Reply to Claimant at 1-2. It acknowledges the Secretary of Labor (the Secretary) ratified the prior appointments of all sitting Department of Labor (DOL) ALJs on December 21, 2017,[7] prior to ALJ Price being assigned the case, but maintains the ratification was insufficient to cure the constitutional defect in the ALJ's prior appointment. Employer's Brief 22. We disagree, as the Secretary's ratification of ALJ Price's appointment was proper.

An appointment by the Secretary need only be "evidenced by an open, unequivocal act." *Marbury v. Madison*, 5 U.S. 137, 157 (1803). Ratification "can remedy a defect" arising from the appointment of an official when an agency head "has the power to conduct an independent evaluation of the merits [of the appointment] and does so." *Wilkes-Barre Hosp. Co. v. NLRB*, 857 F.3d 364, 371 (D.C. Cir. 2017) (internal quotations omitted); *see also McKinney v. Ozburn-Hessey Logistics, LLC*, 875 F.3d 333, 338 (6th Cir. 2017). It is permissible so long as the agency head: 1) had at the time of ratification the authority to take the action to be ratified; 2) had full knowledge of the decision to be ratified; and 3) made a detached and considered affirmation of the earlier decision. *Wilkes-Barre*, 857 F.3d at 372; *Advanced Disposal Servs. E., Inc. v. NLRB*, 820 F.3d 592, 603 (3d Cir. 2016); *CFPB v. Gordon*, 819 F.3d 1179, 1191 (9th Cir. 2016). Under the "presumption of regularity," courts presume public officers have properly discharged their official duties,

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[6] *Lucia* involved an Appointments Clause challenge to the appointment of an ALJ at the Securities and Exchange Commission (SEC). The United States Supreme Court held, similar to Special Trial Judges at the United States Tax Court, SEC ALJs are "inferior officers" subject to the Appointments Clause. *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044, 2055 (2018) (citing *Freytag v. Comm'r*, 501 U.S. 868 (1991)).

[7] The Secretary issued a letter to the ALJ on December 21, 2017, stating:

> In my capacity as head of the Department of Labor, and after due consideration, I hereby ratify the Department's prior appointment of you as an Administrative Law Judge. This letter is intended to address any claim that administrative proceedings pending before, or presided over by, administrative law judges of the U.S. Department of Labor violate the Appointments Clause of the U.S. Constitution. This action is effective immediately.

Secretary's December 21, 2017 Letter to ALJ Price.

with "the burden shifting to the attacker to show the contrary." *Advanced Disposal,* 820 F.3d at 603, citing *Butler v. Principi,* 244 F.3d 1337, 1340 (Fed. Cir. 2001).

Congress authorized the Secretary to appoint ALJs to hear and decide cases under the Act. 30 U.S.C. §932a; *see also* 5 U.S.C. §3105. Under the presumption of regularity, we therefore presume the Secretary had full knowledge of the decision to be ratified and made a detached and considered affirmation. *Advanced Disposal,* 820 F.3d at 603. Moreover, the Secretary did not generally ratify the appointment of all ALJs in a single letter. Rather, he specifically identified ALJ Price and gave "due consideration" to his appointment. Secretary's December 21, 2017 Letter to ALJ Price. The Secretary further acted in his "capacity as head of [DOL]" when ratifying the appointment of ALJ Price "as an Administrative Law Judge." *Id.*

Employer does not assert the Secretary had no knowledge of all material facts, but generally speculates he "simply ratified someone else's invalid choice."[8] Employer's Brief at 22; Employer's Reply to Claimant at 2. Employer therefore has not overcome the presumption of regularity. *Advanced Disposal,* 820 F.3d at 603-04 (mere lack of detail in express ratification is not sufficient to overcome the presumption of regularity); *see also Butler*, 244 F.3d at 1340. The Secretary properly ratified the ALJ's appointment.[9] *See Edmond v. United States,* 520 U.S. 651, 654-66 (1997) (appointment of civilian members of the United States Coast Guard Court of Criminal Appeals valid where Secretary of Transportation issued a memorandum "adopting" assignments "as judicial appointments of [his] own"); *Advanced Disposal,* 820 F.3d at 604-05 (National Labor Relations Board's retroactive ratification appointment of a Regional Director with statement it "confirm[ed], adopt[ed], and ratif[ied] *nunc pro tunc*" its earlier invalid actions was proper).

[8] Employer's assertion that the Secretary, in his December 21, 2017 letter to ALJ Price, did not "approve[]" the appointment "as his own" ignores that the Secretary explicitly approved the ALJ's prior appointment "in [his] capacity as head of the Department of Labor." Employer's Brief at 26; *c.f.* The Secretary's December 21, 2017 Letter to ALJ Price.

[9] While Employer notes the Secretary's ratification was unaccompanied by any ceremony, this does not render the appointment invalid. *See Nippon Steel Corp. v. Int'l Trade Comm'n*, 239 F. Supp. 2d 1367, 1373, 1375 n.14 (Ct. Int'l Trade 2002) (autopenned signing of the Recess Appointment Order satisfies the requirement that an appointment be evidenced by an "open and unequivocal act"); Employer's Brief at 26; Director's Brief at 5 n.5; Employer's Reply to Director at 2.

Consequently, we reject Employer's argument that this case should be remanded for yet another hearing before a different ALJ.

Removal Provisions

Employer challenges the constitutionality of the removal protections afforded ALJs. Employer's Brief at 21, 23-24, 26-27; Employer's Reply to Director at 3-5; Employer's Reply to Claimant at 1-2. It generally argues the removal provisions for ALJs contained in the Administrative Procedure Act (APA), 5 U.S.C. §7521, are unconstitutional, citing Justice Breyer's separate opinion and the Solicitor General's argument in *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044 (2018). *Id*. In addition, it relies on the United States Supreme Court's holdings in *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010), and *Seila Law v. CFPB*, 591 U.S. , 140 S. Ct. 2183 (2020). *Id*. We reject this argument in accordance with our decision in *Howard v. Apogee Coal Co.*, BLR , BRB No. 20-0229 BLA, slip op. at 3-5 (Oct. 18, 2022).

Evidentiary Challenge

Employer also contends the ALJ erred by denying its request that Claimant undergo a new blood gas study to rebut the September 2020 blood gas study submitted by Claimant. Employer's Brief at 27-30; Employer's Reply to Claimant at 2-3. We disagree because the ALJ acted within his discretion.

On February 21, 2020, Claimant's counsel mailed Employer's counsel a copy of Dr. Forehand's qualifying February 21, 2020 blood gas study, advising Claimant would submit the study as evidence. Claimant's February 21, 2020 letter to Employer's Counsel. In response, on September 16, 2020, Employer filed a motion with the ALJ requesting that it be given the opportunity to submit rebuttal evidence, including a new pulmonary function study or blood gas study of Claimant. Employer's September 16, 2020 Motion. Claimant opposed Employer's motion and the ALJ denied it, ruling that because Employer had already submitted its complement of objective testing – two pulmonary function studies and two blood gas studies – it was not permitted to have Claimant undergo further medical testing, and Employer had not shown good cause for an exception "at this late date," since the hearing was scheduled for October 16, and it was unclear if Claimant would have adequate time for review and rebuttal. ALJ's Order Denying Request for Additional Testing dated September 24, 2020 (citing *McClanahan v. Brem Coal Co., LLC*, 25 BLR 1-171, 1-175 (2016)).

Because an ALJ exercises broad discretion in resolving procedural and evidentiary matters, *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc), a party seeking to overturn an ALJ's disposition of a procedural or evidentiary issue must establish

the ALJ's action represented an abuse of discretion. *V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009). In *McClanahan*, 25 BLR at 1-175, the Board held the evidentiary limitation at 20 C.F.R. §725.414, permitting an employer to "obtain" no more than two of each objective test (including "the results of no more than two arterial blood gas studies"), precludes an employer from requiring a miner to undergo testing beyond those two, unless good cause is shown.[10] It further held the employer's argument – that "more recent evidence" would provide a more accurate picture of the miner's condition – was insufficient to establish good cause as a matter of law, because "if good cause exists to permit all evidence that is relevant, the good cause exception . . . would render the evidence-limiting rules of 20 C.F.R. §725.414 'meaningless.'" *McClanahan*, 25 BLR at 1-178, quoting *Elm Grove Coal Co. v. Director, OWCP* [*Blake*], 480 F.3d 278, 297 n.18 (4th Cir. 2007).

The rationale in *McClanahan* applies with equal force here. Having already obtained and submitted the results of two affirmative blood gas studies administered by its medical experts, Employer identifies only its interest in securing more recent evidence as a basis for good cause to exceed the evidentiary limitations.

Moreover, Employer has failed to show that the ALJ deprived it of a fair opportunity to respond to Claimant's February 21, 2020 blood gas study. The regulations allow any party to rebut blood gas study evidence submitted in support of an opposing party's affirmative case, by submitting "no more than one physician's *interpretation* of each . . . arterial blood gas study" that the opposing party submits. 20 C.F.R. §725.414(a)(2)(ii), (3)(ii) (emphasis added); *see generally Bethlehem Mines Corp. v. Henderson*, 939 F.2d 143, 147-48 (4th Cir. 1991) (right to respond to other party's evidence does not include automatic right to have the miner undergo testing). Employer's Evidence Summary Form indicates it designated as its affirmative case blood gas studies dated October 20, 2015 and November 19, 2015, and did not submit any rebuttal evidence to the February 21, 2020 blood gas study Claimant designated. Employer's Evidence Summary Form dated February 1, 2021 at 3, 4.

[10] The purpose underlying this regulation is to allow the parties a fair opportunity to present their case while also limiting the number of "physically demanding and often invasive" tests a miner must undergo. *McClanahan*, 25 BLR at 1-176. If each party obtains its full complement of affirmative evidence, the miner in each claim will have undergone five pulmonary evaluations: the DOL-sponsored pulmonary evaluation, the two pulmonary evaluations allowed to the claimant, and the two pulmonary evaluations allowed to the employer.

We further reject Employer's suggestion that Claimant's delay in the submission of some evidence within twenty days of the hearing prejudiced its ability to rebut the February 21, 2020 blood gas study. *See* 20 C.F.R. §725.456(b)(2). Given that Claimant provided Employer with a copy of his blood gas study nearly eight months before the hearing, Employer has failed to explain how Claimant's late submission of other evidence prevented it from obtaining a rebuttal interpretation of the timely-exchanged blood gas study, either before the hearing or during the months-long post-hearing extension granted by the ALJ for Employer to address Claimant's untimely evidence.[11] And while Employer did not submit a rebuttal interpretation, it did submit a supplemental opinion from its own medical expert, Dr. Dahhan, who reviewed Dr. Forehand's deposition testimony regarding the February 21, 2020 blood gas study and concluded Claimant "has [a] disabling pulmonary impairment that is obstructive in nature as confirmed by all of the pulmonary function studies and blood gases." Employer's Exhibit 30 at 2.

Employer has failed to show how the ALJ abused his discretion in denying its request to have Claimant undergo a new blood gas study having already obtained and submitted two such studies as part of its affirmative case. *Blake*, 24 BLR at 1-113; *McClanahan*, 25 BLR at 1-175; *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983). Employer also had the opportunity to submit a rebuttal interpretation. Thus, we reject Employer's assertion of error and affirm the ALJ's ruling. *See Dempsey*, 23 BLR at 1-63.

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

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying

[11] At the October 16, 2020 hearing, Employer generally objected to the admission of Claimant's exhibits on the grounds that it did not receive many of them at least twenty days before the hearing. Hearing Transcript at 8-9. Employer, however, stated it would not object to their admission if it was granted an extension of time to modify its evidentiary designations and "respond appropriately" to Claimant's newly-submitted evidence. *Id*. Claimant did not object; therefore, the ALJ gave Employer 60 days to address any of Claimant's evidence "that [it] didn't get . . . 20 days [prior to the hearing]" and to file its evidence summary form. *Id*. at 8-9, 29. After the hearing, the ALJ granted Employer an extension until February 1, 2021. ALJ's January 22, 2021 Order.

pulmonary function studies or arterial blood gas studies,[12] 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 Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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 blood gas studies, medical opinions, and the evidence as a whole. Decision and Order at 35-36. In the section of its brief addressing disability causation, i.e., whether pneumoconiosis caused Claimant's disability, Employer generally states the ALJ "failed to properly analyze the medical opinion evidence finding total disability" and "held Drs. Dahhan and Rosenberg to a higher standard than he held Dr. Forehand." Employer's Brief at 38. Even assuming those statements were intended to address disability, not disability causation, Employer has not explained its arguments or set forth any detail from which we could conclude the ALJ erred. *See Jones Bros. v. Sec'y of Labor*, 898 F.3d 669, 677 (6th Cir. 2018); *Cox v. Benefits Review Bd.*, 791 F.2d 445, 446-47 (6th Cir. 1986); 20 C.F.R. §802.211(b). Moreover, all of the physicians, including Employer's experts, ultimately concluded Claimant is totally disabled from performing his usual coal mine work by the blood gas testing, pulmonary function studies, or both. Director's Exhibit 59 at 4, 9; Claimant's Exhibit 6 at 4-13, 23-24; Employer's Exhibits 30 at 1-2; 31 at 2.

Consequently, we affirm the ALJ's finding that Claimant established total disability based on the medical opinions at 20 C.F.R. §718.204(b)(2)(iv) and the evidence as a whole. We thus affirm the ALJ's findings that Claimant invoked the Section 411(c)(4) presumption.

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,[13] or that "no part

[12] A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[13] "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

of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer failed to establish rebuttal by either method.[14]

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." 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 United States Court of Appeals for the Sixth Circuit requires Employer to show that [the miner's] "coal mine employment did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 403-06 (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, 597-99, 600 (6th Cir. 2014)).

Employer relies on the opinions of Drs. Rosenberg and Dahhan to disprove legal pneumoconiosis. Decision and Order at 42-45. Both attributed his respiratory impairment (an obstructive impairment and hypoventilation or hyperventilation) shown on the pulmonary function studies and blood gas studies to smoking[15] and obesity. Employer's Exhibits 27 at 4-5; 30 at 3; 28 at 4-5; 31 at 3. Dr. Rosenberg excluded coal mine dust exposure as a causative factor because Claimant did not develop his impairment until after leaving the mines and pneumoconiosis is rarely progressive or latent. Employer's Exhibits 28 at 4-5; 31 at 3. Contrary to Employer's contention, the ALJ permissibly found Dr. Rosenberg's opinion unpersuasive because he did not adequately address why Claimant is not one of the allegedly rare cases of latent and progressive pneumoconiosis. *See Tenn.*

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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).

[14] The ALJ found Employer disproved clinical pneumoconiosis. 20 C.F.R. §718.305(d)(i)(B); Decision and Order at 41.

[15] The ALJ found Claimant smoked for approximately thirty years. Decision and Order at 33.

Consol. Coal Co. v. Crisp, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); Decision and Order at 44-45; Employer's Exhibits 28 at 4-5; 31 at 3.

Similarly, the ALJ permissibly found that while Dr. Dahhan indicated Claimant's impairment could be explained by smoking and obesity, he failed to adequately explain why coal mine dust exposure is not also a contributing factor in Claimant's pulmonary impairment.[16] *Young*, 947 F.3d at 407; *Rowe*, 710 F.2d at 255; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 43-44; Employer's Exhibits 27 at 4-5; 30 at 3.

Employer's arguments misstate that Claimant has the burden to prove he has legal pneumoconiosis. To the contrary, by virtue of Claimant's invocation of the Section 411(c)(4) presumption, Employer has the burden to disprove, by a preponderance of the evidence, the existence of the disease. Moreover, Employer requests reweighing of the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because the ALJ permissibly discredited the only opinions supportive of Employer's burden of proof, we affirm his finding that Employer did not disprove Claimant has legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A). Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 45-46. The ALJ discredited the opinions of Drs. Rosenberg and Dahhan on disability causation for the same reasons he found their opinions unpersuasive on legal pneumoconiosis. Employer again misstates the burden of proof as being on Claimant and generally requests a reweighing of the evidence. Employer's Brief at 35-38. Having affirmed the ALJ's finding that Employer failed to prove Claimant's disabling impairment does not constitute legal pneumoconiosis, we affirm the ALJ's finding that Employer failed to prove that no part of that disability was due to pneumoconiosis. *See Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013) (legal pneumoconiosis inquiry "completed the causation chain from coal mine employment to legal pneumoconiosis which caused [the miner's]

[16] Dr. Dahhan reasoned that Claimant's impairment is not related to his coal mine dust exposure because his loss in FEV1 is much greater than one would expect with such exposure. Employer's Exhibits 27 at 4-5; 30 at 3.

pulmonary impairment that led to his disability"); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013) (same); Decision and Order at 45 n.39.

Consequently, we affirm the ALJ's conclusion that Employer did not rebut the Section 411(c)(4) presumption and affirm the award of benefits.

Commencement Date of Benefits

Benefits commence in the month the miner became totally disabled due to pneumoconiosis. 20 C.F.R. §725.503(b); *see Lykins v. Director, OWCP*, 12 BLR 1-181, 1-182 (1989). If that date is not ascertainable, benefits commence the month the claim was filed, unless credible evidence establishes the Miner was not totally disabled due to pneumoconiosis at any subsequent time. 20 C.F.R. §725.503(b); *see Edmiston v. F&R Coal Co.*, 14 BLR 1-65, 1-69 (1990); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47, 1-50 (1990).

The ALJ found the record did not establish a specific onset date of Claimant's total disability due to pneumoconiosis and awarded benefits as of September 2014, the month Claimant filed his claim. Decision and Order at 47.

Employer asserts benefits should not begin until at least February 21, 2020, consistent with the ALJ's crediting of the most recent February 21, 2020 qualifying blood gas study. Employer's Brief at 38-39. Contrary to Employer's contention, the ALJ permissibly found that the qualifying objective evidence only showed Claimant "became disabled at some earlier date" and therefore permissibly declined to rely on it as establishing an onset date for total disability [17] *Id.*, *citing Owens*, 14 BLR at 1-50. Thus, we affirm the ALJ's finding that benefits commence as of September 2014. 20 C.F.R. §725.503(b); Decision and Order at 47.

[17] The ALJ's finding is supported by Dr. Forehand's August 31, 2020 deposition testimony that he could not say "exactly when [Claimant] met the disability standard," but "imagine[d] that that occurred much before [February 21, 2020]." Claimant's Exhibit 6 at 10.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge