U.S. Department of Labor

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

BRB No. 23-0031 BLA

RONNIE STACY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
JEWELL COAL & COKE COMPANY, INCORPORATED	)	DATE ISSUED: 01/26/2024
	)	
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 Awarding Benefits of Theodore W. Annos, Administrative Law Judge, United States Department of Labor.

Charity A. Barger (Street Law Firm, LLP), Grundy, Virginia, for Employer.

Before: GRESH, Chief Administrative Appeals Judge, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Theodore W. Annos's Decision and Order Awarding Benefits (2018-BLA-06214) rendered on a claim filed on October 14,

2016,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established thirty-five years of underground and surface coal mine employment in conditions substantially similar to those in an underground mine and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[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 lacked the authority to hear and decide the case because he was not appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2.[3] It also argues the removal provisions applicable to ALJs rendered his appointment unconstitutional. On the merits of entitlement, it argues the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption. It also argues he erred in finding it did not rebut the presumption.[4]

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[1] Claimant filed and withdrew a prior claim. Director's Exhibit 1. A withdrawn claim is considered not to have been filed. *See* 20 C.F.R. §725.306(b).

[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] 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.

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established thirty-five years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 12.

Neither Claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

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/Removal Protections

Employer urges the Board to vacate the ALJ's Decision and Order and remand the case to be heard by a different, constitutionally appointed ALJ pursuant to *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044 (2018).[6] Employer's Brief at 12-21. In addition, it challenges the constitutionality of the removal protections afforded DOL ALJs. *Id.* at 19-21. It generally argues the removal provisions for ALJs contained in the Administrative Procedure Act, 5 U.S.C. §7521, are unconstitutional. *Id.* at 19-20. Moreover, 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), as well as the opinion of the United States Court of Appeals for the Federal Circuit in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019), *vacated*, 594 U.S. , 141 S. Ct. 1970 (2021). *Id.* at 20-21. For the reasons set forth in *Johnson v. Apogee Coal Co.*, BLR , BRB No. 22-0022 BLA, slip op. at 3-6 (May 26, 2023), *appeal docketed*, No. 23-3612 (6th Cir. July 25, 2023), we reject Employer's Appointments Clause arguments.

As for Employer's arguments with respect to ALJ removal protections, in *Howard v. Apogee Coal Co.*, 25 BLR 1-301 (2022), the Board rejected similar arguments in part because the employer did not sufficiently allege "it suffered any harm due to the ALJ's removal protections." *Howard*, 25 BLR at 1-307 (applying *Calcutt v. FDIC*, 37 F.4th 293,

[5] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 20.

[6] *Lucia* involved an Appointments Clause challenge to the appointment of a Securities and Exchange Commission (SEC) ALJ. The United States Supreme Court held that, 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)). The Department of Labor (DOL) has conceded that the Supreme Court's holding applies to its ALJs. *Big Horn Coal Co. v. Sadler*, 10th Cir. No. 17-9558, Brief for the Fed. Resp. at 14 n.6.

319 (6th Cir. 2022)). Subsequently, in *K&R Contractors, LLC v. Keene*, 86 F.4th 135 (4th Cir. 2023), the United States Court of Appeals for the Fourth Circuit, whose law applies to this claim, held that "the Board has no authority to remedy the alleged separation-of-powers violation."[7] *Keene*, 86 F.4th at 145. The court nevertheless denied the employer's request for a new hearing because, like the Board's holding in *Howard*, the employer did not show that the alleged "constitutional violation caused [it] harm." *Id.* at 149. So too here. Thus, even if the Board had authority to remedy the violation presented by Employer's removal protections arguments, we would decline to do so because Employer has failed to identify a harm.

Invocation of the 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. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305(b)(1)(i). 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. *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 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 pulmonary function studies, medical opinions, and evidence as a whole.[8] 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order at 22, 35.

[7] The effect of this aspect of the court's holding was that the employer's forfeiture of its ALJ removal protections arguments before the Board by failing to adequately brief the issue did not preclude the employer from raising its arguments on appeal to the circuit, particularly where the Director waived the employer's forfeiture and asked the court to resolve the arguments on the merits. *K&R Contractors, LLC v. Keene*, 86 F.4th 135, 144-46 (4th Cir. 2023).

[8] The ALJ found Claimant did not establish total disability based on either the arterial blood gas studies or evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 22-23.

Pulmonary Function Studies

The ALJ considered five pulmonary function studies dated March 1, 2017, December 14, 2017, September 14, 2018, December 12, 2018, and March 13, 2019. Decision and Order at 17-22; Director's Exhibits 12, 16; Employer's Exhibit 2 at 6; Claimant's Exhibits 1, 2. The March 1, 2017 and March 13, 2019 studies produced qualifying[9] results without the administration of bronchodilators. Director's Exhibit 12; Claimant's Exhibit 2. The December 14, 2017 and September 14, 2018 studies produced qualifying results before and after the administration of bronchodilators. Director's Exhibit 16; Employer's Exhibit 2. The December 12, 2018 study produced qualifying results before the administration of bronchodilators and non-qualifying results after the administration of bronchodilators. Claimant's Exhibit 1. The ALJ found that the December 14, 2017, September 14, 2018, December 12, 2018, and March 13, 2019 studies are invalid. Decision and Order at 19-21. He further found that the March 1, 2017 study is valid and "the only reliable test of record [that] produced qualifying results." *Id.* at 18-19, 22. Thus, he found the pulmonary function study evidence supports a finding of total disability. *Id.* at 22.

We reject Employer's assertion that the ALJ erred in finding the March 1, 2017 pulmonary function study valid because Claimant "did not continue expiration for [seven] seconds." Employer's Brief at 9-10.

When considering pulmonary function studies, an ALJ must determine whether they are in substantial compliance with the quality standards.[10] 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, Appendix B; *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc). In the absence of evidence to the contrary, compliance with the quality standards is presumed. 20 C.F.R. §718.103(c); *see Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984) (party challenging the validity of a study has the burden to establish the results are unreliable); 20 C.F.R. Part 718, Appendix B. If a study does not precisely conform to the quality standards, but is in substantial compliance, it

[9] A "qualifying" pulmonary function study yields values equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study yields values greater than those values. 20 C.F.R. §718.204(b)(2)(i).

[10] An ALJ must consider a reviewing physician's opinion regarding the validity and reliability of a pulmonary function study. *See Revnack v. Director, OWCP*, 7 BLR 1-771, 1-773 (1985). A physician's opinion regarding the reliability of a pulmonary function study may constitute substantial evidence for an ALJ's decision to credit or reject the results of the study. *Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985).

"constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b). The ALJ, as the fact-finder, must determine the probative weight to assign the study. *See Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-55 (1987).

Dr. Fino opined the March 1, 2017 study is invalid because the volume-time curves show Claimant stopped exhaling after three and a half to four seconds. Employer's Exhibit 6 at 3. In contrast, Dr. Green opined the March 1, 2017 study is valid because it came "very close to the [six] second mark on the expiratory effort [and t]he spirometry and flow volume loop show good effort and good reproducibility." Director's Exhibit 17 at 4. Dr. Michos opined the March 1, 2017 study is "acceptable" but had "suboptimal MVV performances." Director's Exhibit 11 at 1. Finally, Dr. Rosenberg opined the March 1, 2017 study "appeared valid." Employer's Exhibit 8 at 1.

In finding the study valid, the ALJ noted "Dr. Green reviewed Dr. Fino's objections" to the validity of the March 1, 2017 study and "explained his rationale" for disagreeing "with Dr. Fino's assessment." Decision and Order at 19. He also stated Dr. Rosenberg noted the March 1, 2017 study "overall appeared valid"[11] and "that Dr. Michos validated the test." *Id.* Considering all of the validity reports, he permissibly found the opinions of Drs. Green, Michos, and Rosenberg more persuasive and entitled to greater weight than Dr. Fino's contrary opinion. *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 19.

We also reject Employer's assertion that more than one qualifying pulmonary function study is required to establish total disability. Employer's Brief at 9. The regulations do not require multiple pulmonary function tests; rather, one qualifying pulmonary function study can establish total disability. *See* 20 C.F.R. §718.204(b)(2)(i).

Because Employer has not shown the ALJ erred in determining that the March 1, 2017 pulmonary function study is valid and qualifying,[12] we affirm his finding that the

[11] Dr. Rosenberg reviewed the March 1, 2017, December 14, 2017, December 12, 2018, and March 13, 2019 pulmonary function studies. Employer's Exhibit 8 at 1-4. He stated the March 1, 2017 pulmonary function study values "overall appeared valid." *Id.* at 1. While Dr. Rosenberg subsequently stated that all of Claimant's pulmonary function studies "have been performed with incomplete efforts," he did not specifically find the March 1, 2017 study invalid. *Id.* at 4.

[12] Employer's reliance on *Mahan v. Kerr-McGhee Coal Corp.*, 7 BLR 1-159 (1984), for the proposition that one qualifying pulmonary function study cannot establish total disability is misplaced. Employer's Brief at 9. In *Mahan*, the record contained two blood

study establishes total disability.[13] 20 C.F.R. §718.204(b)(2)(i); *see Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion); Decision and Order at 22. Further, the pulmonary function tests found to be invalid do not "constitute evidence of the presence or absence of a respiratory or pulmonary impairment," and thus do not contradict the valid and qualifying March 1, 2017 study. 20 C.F.R. §718.103(c).

Medical Opinions

The ALJ considered the medical opinions of Drs. Green, Nader, Fino, and Rosenberg. Decision and Order at 23-35. Drs. Green and Nader opined Claimant is totally disabled, while Drs. Fino and Rosenberg opined he is not. Director's Exhibit 12; Claimant's Exhibit 1; Employer's Exhibits 6, 8. The ALJ found Dr. Green's opinion persuasive and Drs. Nader's,[14] Fino's, and Rosenberg's opinions unpersuasive. Decision and Order at 34-35. He thus found the medical opinion evidence supports a finding of total disability based on Dr. Green's opinion. *Id*. at 35.

We initially reject Employer's argument that the ALJ erred in crediting Dr. Green's opinion because he relied on an invalid pulmonary function study. Employer's Brief at 10. Contrary to Employer's assertion, as we have held, the ALJ permissibly found the March

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gas studies. The 1976 study produced qualifying values at rest and non-qualifying values during exercise, while the 1978 study produced non-qualifying values. The Board held the ALJ rationally found the 1976 study unreliable based on a doctor's opinion. *Mahan*, 7 BLR at 1-162. Here, the record contains only one valid and qualifying pulmonary function study. Decision and Order at 19, 22.

[13] We also reject Employer's assertion that the ALJ is biased against it based on his finding that the March 1, 2017 pulmonary function study is valid. Employer's Brief at 10. A charge of bias against an ALJ is not substantiated by a mere allegation but must be established by concrete evidence of prejudice against a party's interest. *Cochran v. Consolidation Coal Co.*, 16 BLR 1-101, 107 (1992). Here, Employer points to no evidence establishing the ALJ exhibited a bias based on his finding that the March 1, 2017 pulmonary function study is valid.

[14] As the ALJ's finding that Dr. Nader's opinion is not credible on the issue of total disability is unchallenged, we affirm it. *Skrack*, 6 BLR at 1-711; Decision and Order at 34-35.

1, 2017 pulmonary function study Dr. Green conducted valid. Decision and Order at 22; *see Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441.

We also reject Employer's argument that the ALJ provided invalid reasons for finding Drs. Fino's and Rosenberg's opinions not credible. Employer's Brief at 11-12. Dr. Fino noted Claimant became short of breath and "dyspneic when walking at his own pace on level ground or ascending one flight of steps." Director's Exhibit 16 at 2. He opined Claimant is not totally disabled and could perform his last coal mine employment because all of his pulmonary function tests are invalid. Director's Exhibit 16 at 7; Employer's Exhibit 9 at 24. Further, he opined Claimant's February 13, 2009 pulmonary function study "is the most valid" study and showed "no pulmonary impairment." Employer's Exhibit 11 at 4. Similarly, Dr. Rosenberg noted Claimant reported a regular cough with sputum production and shortness of breath. Employer's Exhibit 2. He stated Claimant's PO_2 on blood gas testing is "only mildly reduced" and his invalid pulmonary function test results "cannot be used" to assess disability. Employer's Exhibits 2 at 3; 8 at 4. Thus, he opined Claimant is not totally disabled. Employer's Exhibit 2 at 3.

Contrary to Employer's assertion, the ALJ permissibly discredited Drs. Fino's and Rosenberg's opinions because they are based, in part, on the doctors' conclusions that "all of the pulmonary function tests [are] invalid," contrary to his finding that the March 1, 2017 pulmonary function study is both valid and qualifying for total disability. Decision and Order at 34-35; *see Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Employer's Exhibits 2, 6, 8.

We further reject Employer's argument that the ALJ erred in discrediting the opinions of Drs. Fino and Rosenberg because they failed to adequately explain why Claimant's respiratory symptoms are not totally disabling. Employer's Brief at 11. Contrary to Employer's assertion, a physician may base his disability opinion on a miner's lung disease-induced respiratory symptoms, and the ALJ rationally found Drs. Fino and Rosenberg did not adequately explain whether Claimant's shortness of breath limited his ability to perform his usual coal mine work. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995) (physician's identification of the miner's symptoms of "shortness of breath," "acute shortness of breath," and "mild shortness of breath" with various activities constitutes a "reasoned medical opinion"); *Jordan v. Benefits Review Bd. of the U.S. Dep't of Labor*, 876 F.2d 1455, 1460 (11th Cir. 1989) (physician's "recitation of [the miner's] symptoms" constituted relevant evidence that the ALJ must consider absent a specific "basis for a finding that the listed limitations are the patient's rather than the doctor's conclusions").

In addition, we reject Employer's argument that the ALJ erred in finding Claimant is totally disabled because both Drs. Fino and Rosenberg attributed his inability to return

to work to "his heart and other health issues" unrelated to coal mine dust exposure. Employer's Brief at 12. The relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether Claimant has a totally disabling respiratory or pulmonary impairment; 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).

Employer's arguments on total disability 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). As substantial evidence supports the ALJ's credibility determinations, we affirm his finding that the medical opinion evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 35. Further, we affirm his finding that Claimant established total disability based on the evidence as a whole. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 35. Thus, we affirm his finding that Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

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,[15] or that "no part 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.[16]

[15] "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).

[16] The ALJ found Employer disproved the existence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 44.

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 Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ considered the medical opinions of Drs. Fino and Rosenberg that Claimant does not have legal pneumoconiosis.[17] Decision and Order at 41-42; Employer's Exhibits 2 at 3; 8 at 4; 9 at 23-26; 11 at 4. He found their opinions not well-reasoned and documented, and thus insufficient to disprove the disease. Decision and Order at 41-42.

We reject Employer's argument that the ALJ "erred in not reviewing and weighing the opinions of Drs. Fino and Rosenberg." Employer's Brief at 12. Contrary to Employer's argument, the ALJ both considered and weighed their opinions. Decision and Order at 27-32, 41-43.

Dr. Fino stated that because legal pneumoconiosis is a lung disease caused, contributed to, hastened, or aggravated by coal mine dust exposure, "the first step is does [Claimant] have a lung disease." Employer's Exhibit 9 at 25-26. He found "no evidence of [a lung disease] based on no objective evidence of pulmonary function abnormalities, and . . . normal diffusing capacity." *Id.* at 25. For this reason, he found "no legal pneumoconiosis." *Id.* Dr. Rosenberg stated that Claimant's pulmonary function tests "suggest the presence of restriction" but were performed with incomplete efforts" and "cannot be used to gauge an absolute level of impairment and hence, disability." Employer's Exhibit 2 at 3. He further stated that even assuming Claimant has a "disabling restriction, it does not relate to [his] past coal mine dust exposure . . . [because] advanced parenchymal changes related to past coal mine dust exposure would be present" and "[t]here is no objective evidence of airflow obstruction." *Id.*

While Employer generally asserts that Drs. Fino and Rosenberg "thoroughly explained" their opinions, the ALJ permissibly found them not well-reasoned and documented because they are "primarily" based on the physicians' "assessment[s] that there were no valid pulmonary function tests in evidence, which is contrary to [his] finding that the March 1, 2017 test was valid." Decision and Order at 42; *see Hicks*, 138 F.3d at

[17] The ALJ also considered Drs. Green's and Nader's opinions that Claimant has legal pneumoconiosis. Decision and Order at 41; Director's Exhibit 12; Claimant's Exhibit 1. He correctly found they do not aid Employer in rebutting the Section 411(c)(4) presumption. Decision and Order at 41.

533; *Akers*, 131 F.3d at 441. Employer does not identify any specific error in the ALJ's credibility finding, which we find supported by substantial evidence and within the ALJ's authority as the factfinder. *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). We thus affirm it.

We consider Employer's general arguments to be a request that the Board reweigh the evidence which, again, we cannot do. *Anderson*, 12 BLR at 1-113; Employer's Brief at 11-12. Because the ALJ permissibly discredited Drs. Fino's and Rosenberg's opinions, the only medical opinions supportive of Employer's burden on rebuttal, we affirm his finding that Employer failed to disprove the existence of 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); Decision and Order at 42-44. Therefore, we affirm the ALJ's finding that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ also found Employer did not rebut the presumption by establishing "no part of [Claimant'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. Because Employer raises no specific allegations of error regarding the ALJ's findings on disability causation, we affirm his finding that Employer failed to establish no part of Claimant's respiratory or pulmonary disability was due to legal pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 45-46. We therefore affirm the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption and the award of benefits.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge