U.S. Department of Labor

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

BRB No. 22-0009 BLA

BOB REED	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
KEN LICK COAL COMPANY, INCORPORATED	)	
	)	
and	)	DATE ISSUED: 7/12/2023
	)	
KENTUCKY CENTRAL INSURANCE COMPANY, c/o AMERICAN RESOURCES, INCORPORATED	)	
	)	
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 John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

Thomas W. Moak (Moak & Nunnery, P.S.C.), Prestonsburg, Kentucky, for Claimant.

Thomas L. Ferreri and Matthew J. Zanetti (Ferreri Partners, PLLC), Louisville, Kentucky, for Employer and its Carrier.

Ann Marie Scarpino (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) John P. Sellers, III's Decision and Order Awarding Benefits (2020-BLA-05602) rendered on a subsequent claim filed on October 15, 2018,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Employer is the responsible operator based on its stipulation in Claimant's prior claim. He credited Claimant with 16.54 years of qualifying coal mine employment and found he is totally disabled, thus invoking the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[2] and establishing a change in applicable condition of entitlement. 20 C.F.R.

[1] Claimant filed two prior claims. Director's Exhibits 1, 2. In a decision dated August 6, 2009, ALJ Richard Malamphy denied his previous claim, filed on July 24, 2007, because he failed to establish pneumoconiosis and disability causation. Decision and Order at 2; Director's Exhibit 2. On August 19, 2010, in response to Claimant's appeal, the Benefits Review Board remanded the case to ALJ Malamphy, directing him to determine whether Claimant could invoke the Section 411(c)(4) presumption. *Reed v. Ken Lick Coal Co., Inc.*, BRB No. 09-0807 BLA (Aug. 19, 2010) (unpub.). In a decision on remand dated April 7, 2011, ALJ Malamphy found Claimant failed to invoke the presumption and again denied benefits. Decision and Order at 2; Director's Exhibit 2. Following an appeal by the Director, Office of Workers' Compensation Programs (Director), the Board affirmed ALJ Malamphy's finding that Claimant failed to either invoke the presumption or establish the existence of pneumoconiosis and therefore affirmed the denial of benefits. *Reed v. Ken Lick Coal Co., Inc.*, BRB No. 11-0516 BLA (Apr. 20, 2012) (unpub.).

[2] Section 411(c)(4) of the Act provides a miner with a rebuttable presumption that he 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.

§§718.305, 725.309. Further, he found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding it is the responsible operator. It also contends the ALJ erred in concluding Claimant established fifteen years of qualifying coal mine employment and total disability, and thus that Claimant invoked the Section 411(c)(4) presumption. Alternatively, it argues he erred in finding it failed to rebut the presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (Director), responds, urging the 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 with applicable law.[3] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Responsible Operator

The responsible operator is the "potentially liable operator, as determined in accordance with [20 C.F.R.] §725.494, that most recently employed the miner" for at least one year. 20 C.F.R. §§725.494(c), 725.495(a)(1). The Director bears the burden of establishing the responsible operator is a potentially liable operator. 20 C.F.R. §725.495(b). Once designated, however, that operator may be relieved of liability only if it proves either it is financially incapable of assuming liability for benefits or another operator is financially capable of assuming liability and more recently employed the miner for at least one year. *See* 20 C.F.R. §725.495(c).

The ALJ accurately observed Employer stipulated it was the responsible operator in Claimant's 2007 claim, it did not challenge its status as responsible operator on appeal to the Board, and it did not seek to withdraw its stipulation when that case was remanded to ALJ Richard Malamphy. Decision and Order at 7-8; Director's Exhibit 2. Thus, having determined Employer fairly entered into its stipulation, he found the stipulation binding and concluded Employer is the properly designated responsible operator.

Employer contends the ALJ erred. Employer's Brief at 7-11. Although it concedes it stipulated it was the responsible operator in Claimant's 2007 claim, it asserts it is not

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 12-13; Director's Exhibit 5.

bound by that stipulation because of an intervening change in law, which it argues changed the method of calculating a year of coal mine employment. *Id.* at 9-11 (citing *Shepherd v. Incoal*, 915 F.3d 392, 402 (6th Cir. 2019). Arguing application of this alternate method of calculation would result in a finding that a later operator employed Claimant for at least one year, it contends it should have been relieved from its stipulation. *Id.* We agree with the Director's argument that Employer is bound by its prior stipulation. Director's Response at 6-11.

The regulation at 20 C.F.R. §725.309(c)(5) provides that "any stipulation made by any party in connection with the prior claim will be binding on the party in the adjudication of the subsequent claim." 20 C.F.R. §725.309(c)(5). For a stipulation to be binding, it must be fairly entered into by the parties. *See Consolidation Coal Co. v. Director, OWCP* [*Burris*], 732 F.3d 723, 730 (7th Cir. 2013); *Richardson v. Director, OWCP*, 94 F.3d 164 (4th Cir. 1996).

Employer does not deny that it stipulated to being the responsible operator in the prior claim, nor does it argue the stipulation was not fairly entered into. Rather, it argues that, because there was a "change in law" after it stipulated to being the responsible operator, "fundamental fairness" requires relief from its stipulation. Employer's Brief at 7-11. Employer relies on *Styka v. Jeddo-Highland Coal Co.*, 25 BLR 1-61 (2012), submitting the Board held an employer who had entered into a stipulation should not be bound by the stipulation when there had been a change in law as to the allocation of the burden of proof. *Id.* at 8. As the Director argues, however, Employer's reliance on *Styka* is misplaced, as the Board found in that case that the employer had not entered into a stipulation. *Styka*, 25 BLR at 1-65; Director's Response at 8. Moreover, while the Board in *Styka* suggested in dicta that fundamental fairness could require relief from even a formal stipulation if there was an intervening change in law, the relevant change in law in that case was a revision of the applicable regulations which shifted the burden of proof on the parties. *Styka*, 25 BLR at 1-65. Such a change to the applicable regulation did not occur here.[4] Rather, as the Director asserts, in *Shepherd* the United States Court of Appeals for the Sixth Circuit "merely interpreted a regulation that had been the law for nearly twenty years." Director's Response at 8; *see Shepherd*, 915 F.3d at 402.

[4] Employer also cites other Board cases which do not apply here as they do not address the effect of a stipulation but rather whether collateral estoppel applied to previously litigated issues. Employer's Brief at 8 (citing *Sturgill v. Old Ben Coal Co.*, 22 BLR 1-318 (2003); *Collins v. Pine Creek Mining Co.*, 22 BLR 1-229 (2003)); Director's Response at 10.

Because the ALJ rationally found Employer "fairly entered into" the stipulation that it is the responsible operator, we affirm his determination that Employer is bound by it. Decision and Order at 8; *see* 20 C.F.R. §725.309(c)(5); *Burris*, 732 F.3d at 730; *Richardson*, 94 F.3d at 164; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). Thus, we affirm his determination that Employer is the responsible operator. Decision and Order at 8.

Section 411(c)(4) Presumption: Qualifying Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must first establish he worked at least fifteen years in underground coal mines or in "substantially similar" surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). The "conditions in a mine other than an underground mine will be considered 'substantially similar' to those in an underground mine if [Claimant] demonstrates that [he] was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2); *see Zurich Am. Ins. Grp. v. Duncan*, 889 F.3d 293, 304 (6th Cir. 2018); *Freeman United Coal Mining Co. v. Summers*, 272 F.3d 473, 479 (7th Cir. 2001).

As the ALJ observed, Employer conceded Claimant had fourteen years of qualifying coal mine employment working as its employee. Decision and Order at 4 (citing Employer's Post-Hearing Brief at 7). It contested, however, whether Claimant's work with Green Valley Hydro Seeding and Reclamation, Incorporated (Green Valley), and JPR, Incorporated (JPR), were performed in conditions substantially similar to those in an underground mine. Decision and Order at 5; Employer's Post-Hearing Brief at 8. Crediting Claimant's testimony that his work took place approximately five hundred feet from active coal mining and that he was constantly exposed to rock, coal, and sand dust while working for Green Valley and JPR, the ALJ found Claimant's work with these employers constitutes qualifying coal mine employment.[5] Decision and Order at 6; Hearing Tr. at 17-20. Adding Claimant's years of employment with Green Valley and JPR to his time with Employer, he determined Claimant established 16.54 years of qualifying coal mine employment. Decision and Order at 7.

Employer argues the ALJ erred in finding Claimant's employment with Green Valley and JPR occurred in conditions "substantially similar" to those in underground coal mines. Employer's Brief at 11-14. It argues ALJ Malamphy specifically addressed this

[5] The ALJ noted Claimant had checked a box on a 2007 questionnaire indicating the employment with Green Valley and JPR was not coal mine employment, but he found Claimant's testimony "more credible than a simple checkmark in response to a yes-or-no question." Decision and Order at 8; Director's Exhibit 7.

issue in Claimant's 2007 claim and the evidence was insufficient at that time to establish whether Claimant's employment with Green Valley and JPR was qualifying. *Id*. Thus, it asserts the ALJ was collaterally estopped from considering the issue in the current claim. *Id*.

We reject Employer's assertions regarding the application of collateral estoppel, as it waived this affirmative defense by not raising it before the ALJ. *See Dankle v. Duquesne Light Co.*, 20 BLR 1-1, 1-6 (1995); *Prater v. Director, OWCP*, 8 BLR 1-461, 1-462 (1986); *Lyon v. Pittsburgh & Midway Coal Co.*, 7 BLR 1-199, 1-201 (1984). Employer did not mention collateral estoppel during the proceedings before the ALJ or submit any evidence or argument to establish its requisite elements,[6] either at the hearing or in its post-hearing brief. Rather, it argued, as a factual matter, that Claimant's testimony was insufficient to meet his burden to establish his employment with Green Valley and JPR occurred in conditions substantially similar to those in an underground mine. Employer's Post-Hearing Brief at 7-8. Employer, therefore, may not rely on this defense for the first time before the Board. *See Gilbert v. Ferry,* 413 F.3d 578, 579 (6th Cir. 2005). Because Employer raises no other challenge to the ALJ's finding that Claimant established 16.64 years of qualifying coal mine employment, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 18.

The Section 411(c)(4) Presumption: Total Disability

To invoke the Section 411(c)(4) presumption, Claimant must also 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. *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 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

[6] A party seeking to rely on the doctrine of collateral estoppel must establish four elements: (1) the precise issue was raised and actually litigated in the prior proceeding; (2) the determination of the issue was necessary to the outcome of the prior proceeding; (3) the prior proceeding resulted in a final judgment on the merits; and (4) the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the prior proceeding. *Ark. Coals, Inc. v. Lawson*, 739 F.3d 309, 313 (6th Cir. 2014); *see also Sedlack v. Braswell Servs. Grp., Inc.*, 134 F.3d 219, 224 (4th Cir. 1998).

1-236 (1987) (en banc). The ALJ found Claimant established total disability based on the pulmonary function studies, medical opinion evidence, and the evidence as a whole.[7] Decision and Order at 13, 16-17.

We affirm, as unchallenged on appeal, the ALJ's determination that the pulmonary function studies support a finding of total disability. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 13.

The ALJ considered the medical opinions of Drs. Mettu and Broudy that Claimant is totally disabled, and Dr. Rosenberg's opinion that he is not. Decision and Order at 13-16; Director's Exhibits 17, 23; Employer's Exhibits 6, 7, 11. The ALJ found Dr. Mettu's opinion consistent with the evidence the physician reviewed as well as the other objective testing of record; he thus accorded Dr. Mettu's opinion "full probative weight." Decision and Order at 14. Although he found Dr. Broudy's opinion inadequately explained, he concluded it did not weigh against a finding of total disability. *Id.* at 15. Finally, the ALJ gave Dr. Rosenberg's opinion less probative weight because it is inadequately explained. *Id.* at 16. Weighing the opinions together, he found the medical opinion evidence supports a finding of total disability. *Id.*

Employer argues the ALJ erred in crediting Dr. Mettu's opinion and discrediting Dr. Rosenberg's opinion as he made no findings regarding the exertional requirements of Claimant's usual coal mine employment. Consequently, Employer argues the ALJ erred in not comparing the physicians' opinions with those job requirements. Employer's Brief at 15-18. We disagree.

A physician can render a reasoned and documented opinion regarding total disability based on his own examination of a miner, objective test results, or both. 20 C.F.R. §718.204(b)(2)(iv); *see Church v. Eastern Assoc. Coal Corp.*, 20 BLR 1-8, 1-13 (1996). Dr. Mettu opined that Claimant has "severe" obstruction as demonstrated by the pulmonary function studies, rendering him totally disabled from his last coal mine employment. Director's Exhibit 17. Having affirmed the ALJ's finding that the pulmonary function studies support a finding of total disability at 20 C.F.R. §718.204(b)(2)(i), we see no error in his determination that Dr. Mettu's opinion is reasoned and documented, as supported by the pulmonary function studies, and does not constitute contrary evidence regarding total disability. 20 C.F.R. §718.204(b)(2); *Tenn. Consol. Coal Co. v. Crisp*,

[7] The ALJ found the arterial blood gas testing does not support a finding of total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 10, 13.

866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 14.

Dr. Rosenberg opined that Claimant is not totally disabled because the Knudson predictive equation establishes that the April 15, 2019 pulmonary function study is non-qualifying when accounting for Claimant's age of 77. Employer's Exhibit 7 at 5-6. The ALJ correctly observed, however, that the November 21, 2018 pulmonary function study produced qualifying values even using Dr. Rosenberg's extrapolations, but that Dr. Rosenberg did not address this study except to assert the pre-bronchodilator values are invalid, contrary to the ALJ's finding that the study is valid.[8] Decision and Order at 12, 16; Employer's Exhibit 7 at 1, 5-6, 11-13. Thus, the ALJ permissibly discredited Dr. Rosenberg's opinion as inadequately explained.[9] *See Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; Decision and Order at 16. Therefore, we affirm the ALJ's determination that the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(iv).

Employer raises no further challenge to the ALJ's finding that Claimant established total disability at 20 C.F.R. §718.204(b). Thus, because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant established total disability, invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, and established a change in an applicable condition of entitlement. 30 U.S.C. §921(c)(4); 20 C.F.R. §725.309(c); *see Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 17-18.

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,[10] or "no part of

[8] The ALJ found the pulmonary function studies valid, a finding we affirm as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 12.

[9] Because the ALJ provided a valid basis for rejecting Dr. Rosenberg's opinion on total disability, we need not address Employer's additional challenges to the ALJ's consideration of his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 17-18.

[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). This definition includes any chronic pulmonary disease or respiratory or pulmonary impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine

[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.[11]

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)(2)(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 holds Employer can "disprove the existence of legal pneumoconiosis by showing that [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)).

Employer relies on the opinions of Drs. Broudy and Rosenberg to disprove legal pneumoconiosis, both of whom opined Claimant has obstructive disease caused by cigarette smoking that is unrelated to coal mine dust exposure. Decision and Order at 20-22; Director's Exhibit 23; Employer's Exhibits 6, 7, 11. The ALJ found their opinions unpersuasive and therefore insufficient to rebut the presumption. Decision and Order at 21-22.

Employer argues the ALJ erred in discrediting Dr. Rosenberg's opinion.[12] Employer's Brief at 18-20. We disagree.

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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).

[11] The ALJ found Employer disproved clinical pneumoconiosis. Decision and Order at 20.

[12] We affirm, as unchallenged, the ALJ's finding that Dr. Broudy's opinion is insufficient to rebut the presumption. *See Skrack*, 6 BLR at 1-711; Decision and Order at 21.

As the ALJ observed, Dr. Rosenberg excluded coal mine dust exposure as a causative factor for Claimant's obstructive impairment because he asserted Claimant's coal mine dust exposure should result in a reduction of only thirty-five cubic centimeters in his FEV1 result on pulmonary function testing, whereas the April 15, 2019 pulmonary function study showed a reduction of 1,280 cubic centimeters. Decision and Order at 21; Employer's Exhibit 7 at 6. He thus opined Claimant's impairment was caused by cigarette smoke and coal dust is unlikely to have contributed to it. Decision and Order at 21; Employer's Exhibit 7 at 6. Further, he opined latent and progressive pneumoconiosis is rare and unlikely in this case because Claimant left coal mine employment in 1991 and did not seek medical attention for any respiratory complaints at that time. Employer's Exhibit 7 at 8.

Contrary to Employer's contention, the ALJ permissibly discredited Dr. Rosenberg's opinion because he relied heavily on general statistics, not Claimant's specific situation. *See Young*, 947 F.3d at 407; *Antelope Coal Co./Rio Tinto Energy Am. v. Goodin*, 743 F.3d 1331, 1345-46 (10th Cir. 2014); *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726 (7th Cir. 2008); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); 65 Fed. Reg. 79,920, 79,940-41 (Dec. 20, 2000) (statistical averaging can hide the effect of coal mine dust exposure in individual miners); Decision and Order 22. He further permissibly discredited Dr. Rosenberg's reasoning as contrary to the regulations recognizing pneumoconiosis "as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure," without "indicating such latency is rare and limited by dose exposure, as suggested by Dr. Rosenberg." 20 C.F.R. §718.201(c); *see Young*, 947 F.3d at 407; *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 738 (6th Cir. 2014); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477 (6th Cir. 2012); *Beeler*, 521 F.3d at 726; *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); Decision and Order at 21-22.

It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255. Employer's arguments constitute 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). Because the ALJ permissibly discredited Dr. Rosenberg's opinion, we affirm his finding that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §718.305(d)(2)(i); Decision and Order at 22. 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 also found Employer failed to establish "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 23-24. He permissibly discredited the opinions of Drs. Broudy and Rosenberg on the cause of Claimant's respiratory disability because they did not diagnose legal pneumoconiosis, contrary to his determination. *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 23-24. Consequently, we affirm the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption and the award of benefits.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge