U.S. Department of Labor

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

BRB No. 22-0168 BLA

DAVID E. KEEFER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SHIELD MINING, INCORPORATED	)	
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY, INCORPORATED	)	DATE ISSUED: 7/21/2023
	)	
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 Patricia J. Daum, Administrative Law Judge, United States Department of Labor.

Dennis James Keenan (Hinkle & Keenan P.S.C.), South Williamson, Kentucky, for Claimant.

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

David Casserly (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, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Patricia J. Daum's Decision and Order Awarding Benefits (2018-BLA-05892) rendered on a subsequent claim filed on August 22, 2016, pursuant to the Black Lung Benefits Act, as amended 30 U.S.C. §§901-944 (2018) (Act).[1]

The ALJ credited Claimant with 15.67 years of underground coal mine employment and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus she determined Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[2] 30 U.S.C. §921(c)(4) (2018), and established a change in an applicable condition of entitlement.[3] 20 C.F.R. §725.309(c). She further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer challenges the designation of Shield Mining, Inc. (Shield Mining), as the responsible operator. On the merits, it argues the ALJ erred in finding Claimant established at least fifteen years of coal mine employment and therefore invoked the Section 411(c)(4) presumption. Finally, it argues she erred in finding it failed to rebut

[1] This is Claimant's second claim for benefits. The record from his prior claim, filed June 14, 1996, was destroyed on August 28, 2015. Director's Exhibits 1, 2, 54.

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

[3] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the ALJ proceeded as if Claimant did not establish any element of entitlement in his prior claim, he had to submit evidence establishing at least one element to obtain review of the merits of his current claim. Decision and Order at 2 (unpaginated).

the presumption.[4] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response urging the Benefits Review Board to reject Employer's argument against Shield Mining's designation as the responsible operator.

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.[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, 362 (1965).

Responsible Operator

The responsible operator is the potentially liable operator that most recently employed the miner.[6] 20 C.F.R. §725.495(a)(1). The district director is initially charged with identifying and notifying operators that may be liable for benefits, and then identifying the "potentially liable operator" that is the responsible operator. 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b). Once the district director designates a responsible operator, that operator may be relieved of liability only if it proves either that it is financially incapable of assuming liability for benefits or that another "potentially liable operator" financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R. §725.495(c).

The ALJ found Shield Mining meets the regulatory definition of a potentially liable operator. 20 C.F.R. §725.494(a)-(e); Decision and Order at 11 (unpaginated). We affirm this finding as unchallenged. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[4] We affirm, as unchallenged on appeal, the ALJ's finding Claimant established total disability. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.204(b); Decision and Order at 27 (unpaginated).

[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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 31; Director's Exhibit 7.

[6] For a coal mine operator to meet the regulatory definition of a "potentially liable operator" the miner's disability must have arisen at least in part out of employment with the operator, the operator or its successor must have been in business after June 30, 1973, the operator must have employed the miner for a cumulative period of not less than one year, at least one working day of the employment must have occurred after December 31, 1969, and the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

Employer does not allege it is financially incapable of assuming liability for benefits. Thus, it can avoid liability only by establishing that another financially capable operator more recently employed Claimant for at least one year.

Employer argues Claimant's testimony establishes that operators that employed Claimant after Shield Mining were part of the same company and thus the length of his employment with these subsequent operators should have been aggregated. Employer's Brief at 7-8. It contends this aggregation would have resulted in a finding of at least one year of coal mine employment with another "potentially liable operator" subsequent to Claimant's employment with Shield Mining. *Id.*

But Employer concedes that with regard to Claimant's subsequent employers, "[t]he relationship between those mines and the ownership, and the availability of insurance or assets from the owners identified at this late date is not determinable from the record." Employer's Brief at 8. Thus Employer acknowledges it has not submitted evidence sufficient to show Claimant's subsequent employers were all part of the same company.[7]

We also reject Employer's contention it was prejudiced by the destruction of the prior claim file because it theoretically would have contained evidence establishing Shield Mining is not the last "potentially liable operator" to employ Claimant. Employer's Brief at 3-8.

In the absence of deliberate misconduct, "the mere failure to preserve evidence [from a prior black lung claim] – evidence that may be helpful to one or the other party in some hypothetical future proceeding – does not violate [a party's right to due process]." *Energy W. Mining Co. v. Oliver*, 555 F.3d 1211, 1219 (10th Cir. 2009) (rejecting coal mine operator's argument that due process is violated whenever the Black Lung Disability Trust Fund loses or destroys evidence from a miner's prior claim). Instead, Employer must demonstrate it was deprived of a fair opportunity to mount a meaningful defense against the claim. *See Consol. Coal Co. v. Borda*, 171 F.3d 175, 183 (4th Cir. 1999). Specifically,

[7] Employer also argues the ALJ should have credited Claimant's testimony that he subsequently worked for Gillette Coal Co. (Gillette) for one year because she credited other portions of Claimant's testimony. Employer's Brief at 7. While Claimant testified that he worked for Gillette "[p]robably a year maybe[,]" Employer does not challenge the ALJ's reliance on Social Security Administration (SSA) earnings records to find Claimant's work for Gillette amounted to only 0.35 years of coal mine employment. *See Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984) (ALJ may credit SSA records over testimony and other sworn statements); *Skrack*, 6 BLR at 1-711; Hearing Tr. at 42; Decision and Order at 8 (unpaginated). Thus we affirm her finding Claimant did not work for Gillette for one year or more. Decision and Order at 11 (unpaginated).

Employer must establish the claim proceedings included a "prejudicial, fundamentally unfair element[,]" by establishing "the contents of [the] lost claim file were so vital to its case that it would be fundamentally unfair to make the company live with the outcome of this proceeding without access to those records." *Oliver*, 555 F.3d at 1219, *citing Betty B Coal Co. v. Director, OWCP* [*Stanley*], 194 F.3d 491, 501 (4th Cir. 1999).

Employer has not indicated it was prevented from developing evidence or obtaining testimony regarding Claimant's employment, nor that any such evidence admitted in the prior claim has since been lost and rendered unavailable. As the Director states, Employer's mere assertion that information from the prior claim might hypothetically help its case cannot establish that it was deprived of its opportunity to mount a meaningful defense against this claim. Director's Brief at 2. Employer has not explained how the record from Claimant's prior claim is necessary to determine the correct responsible operator and thus has not met its burden. *Oliver*, 555 F.3d at 1219; *Borda*, 171 F.3d at 183. We therefore reject its argument that it was prejudiced.

Because Employer has not established that another "potentially liable operator" financially capable of assuming liability more recently employed the miner for at least one year, we affirm Shield Mining's designation as the responsible operator. 20 C.F.R. §725.495(c)(2); Decision and Order at 11-12 (unpaginated).

Invocation of the Section 411(c)(4) Presumption – Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mines, or "substantially similar" surface coal mine employment. 20 C.F.R. §713.305(b)(1)(i). Claimant bears the burden to establish the number of years he worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-711 (1985). The Board will uphold an ALJ's determination based on a reasonable method of calculation that is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

Employer argues the ALJ erred in finding Claimant established at least fifteen years of coal mine employment. Employer's Brief at 3-9. We disagree.

The ALJ considered Claimant's employment history form (CM-911a), Social Security Administration (SSA) earnings records, and hearing testimony.[8] Decision and

[8] To the extent Employer argues the ALJ erred in crediting Claimant's hearing testimony, we disagree. Employer's Brief at 4-5. An ALJ is granted broad discretion in evaluating the credibility of the evidence of record, including witness testimony, and we discern no error in her decision to credit Claimant's uncontradicted testimony. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017) (ALJ evaluates the

Order at 4 (unpaginated); Director's Exhibits 6, 7, 11, 12. She permissibly found Claimant's SSA earnings records to be the most probative evidence, although she also considered them together with Claimant's CM-911a and testimony. *Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984); Decision and Order at 5-8 (unpaginated).

For Claimant's pre-1978 coal mine employment, the ALJ credited him with a quarter of a year of coal mine employment for each quarter in which his SSA records indicate he earned at least $50.00 from coal mine operators. Decision and Order at 5 (unpaginated). Using this method, the ALJ permissibly credited Claimant with nine years of coal mine employment between 1968 and 1977. *See Shrader v. Califano,* 608 F.2d 114, 117 n.3 (4th Cir. 1979) (income exceeding fifty dollars is "an appropriate yardstick for determining quarters which will be fully credited to a black lung claimant in determining the duration of his coal mine employment"); *Tackett,* 6 BLR at 1-841 n.2.

Regarding Claimant's employment from 1978 to 1983, the ALJ found the evidence of record could not establish the beginning and ending dates of Claimant's employment. Decision and Order at 5 (unpaginated). However, she found Claimant's testimony and SSA earnings records establish a calendar-year employment relationship with each of Claimant's employers from 1978 to 1983. *Id.* The ALJ then applied the formula at 20 C.F.R. §725.101(a)(32)(iii) to determine Claimant's number of working days in each calendar year.[9] Decision and Order at 6-8 (unpaginated). She divided Claimant's yearly earnings from coal mine employers as set forth in his SSA records by the coal mine industry's average yearly earnings as reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual*. *Id.* Claimant's earnings met or exceeded the Exhibit 610 average yearly earnings for 125 days of employment for each year she considered, and thus she credited him with a full year of coal mine employment for each year from 1978 to 1983. 20 C.F.R. §725.101(a)(32)(i), (iii); Decision and Order at 6-8 (unpaginated). Based on this method of calculation, she found Claimant had a total of six additional years of coal mine employment. *Id.*

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credibility of the evidence of record, including witness testimony); Decision and Order at 4 (unpaginated).

[9] If the beginning and ending dates of a miner's coal mine employment cannot be ascertained or the miner's coal mine employment lasted less than a calendar year, the ALJ may determine the length of the miner's work history by dividing the miner's yearly income from work as a miner by the average daily earnings of employees in the coal mining industry for that year, as reported by the Bureau of Labor Statistics. 20 C.F.R. §725.101(a)(32)(iii).

Considering Claimant's remaining employment from 1988 to 1991, the ALJ found his CM-911a established the beginning and ending dates of his employment with Sweet Water Coal Co., Inc., Lazy Rock Coal Co., and Meador Energy, and that he worked for each operator for less than a calendar year. Decision and Order at 5 (unpaginated). She further found the record does not establish the beginning and ending dates for Claimant's remaining employers during this time period. *Id.* Because Claimant's employment with Sweet Water, Lazy Rock, and Meador was for less than a calendar year, and Claimant's earnings from 1988 to 1991 were generally "much lower," she found Claimant established only partial calendar years of employment with all his employers from 1988 to 1991. *Id.*

Thus the ALJ again applied the formula at 20 C.F.R. §725.101(a)(32)(iii) to determine Claimant's number of working days in each calendar year from 1988 to 1991. *Daniels Co. v. Mitchell*, 479 F.3d 321, 334-36 (4th Cir. 2007); *Clark v. Barnwell Coal Co.*, 22 BLR 1-277, 1-280 (2003); Decision and Order at 6-8 (unpaginated). She divided the yearly earnings from coal mine employers reflected in Claimant's SSA earnings records by the coal mine industry's daily average earnings, reported in Exhibit 610, to determine the number of Claimant's working days. Decision and Order at 7-8 (unpaginated). Then she divided the number of working days she had calculated for each year of Claimant's employment by 250 days, representing fifty weeks of five working days, to credit Claimant with fractional years of employment. *Id.* She thus found Claimant had 0.67 year of coal mine employment between the years of 1988 and 1991, and a total of 15.67 years from 1967 to 1991. *Id.* at 6-8 (unpaginated).

In challenging the ALJ's finding, Employer reiterates its contention that it has been prejudiced by the destruction of Claimant's prior claim record because it may have contained additional information about the length of his coal mine employment. Employer's Brief at 3-9. We disagree.

The ALJ determined Claimant's employment history forms, testimony, and SSA earnings records contain sufficient evidence to accurately determine the length of Claimant's coal mine employment. Decision and Order at 4 (unpaginated). Employer had the opportunity to obtain documentary evidence and cross-examine Claimant. As discussed above, Employer has not indicated that it was prevented from developing evidence regarding Claimant's employment, nor that any such evidence admitted in the prior claim has since been lost and rendered unavailable. Employer has thus failed to explain how the record from Claimant's prior claim is necessary to determine the length of his coal mine employment. *Oliver*, 555 F.3d at 1219. Because it has not established it was deprived of a fair opportunity to mount a meaningful defense against the claim, we reject Employer's argument that its due process rights have been violated. *Id.*; *Borda*, 171 F.3d at 183.

Because Employer does not otherwise challenge the ALJ's calculations regarding the length of Claimant's coal mine employment, we affirm her finding Claimant established a total of 15.67 years of coal mine employment and therefore invoked the Section 411(c)(4) presumption. *See Muncy*, 25 BLR at 1-27; 20 C.F.R. §718.305(b)(1)(i); Decision and Order at 8 (unpaginated).

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

Because Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,[10] or "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.[11]

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).

Employer relies on the opinions of Drs. Zaldivar and Rosenberg that Claimant does not have legal pneumoconiosis. Both physicians opined that Claimant's obstructive impairment is due to smoking and unrelated to coal mine dust exposure. Director's Exhibit 24; Employer's Exhibit 2. The ALJ found their opinions that Claimant does not suffer from legal pneumoconiosis unpersuasive and insufficient to rebut the presumption of legal

[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 that is 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).

[11] The ALJ found Employer disproved the existence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 37 (unpaginated).

pneumoconiosis.[12] Decision and Order at 35-37 (unpaginated); Director's Exhibit 24; Employer's Exhibit 2.

Employer argues the ALJ erred in discrediting the opinions of Drs. Zaldivar and Rosenberg.[13] Employer's Brief at 11-25. We disagree.

Dr. Zaldivar diagnosed asthma based on Claimant's symptoms and the improvement seen on his pulmonary function study after the administration of bronchodilators. Director's Exhibit 24. He attributed the residual impairment after administration of bronchodilators to Claimant's history of cigarette smoking. *Id.* Dr. Rosenberg acknowledged Claimant's impairment did not completely resolve in response to bronchodilators, but opined the non-reversible portion of Claimant's impairment was due to airway remodeling unrelated to coal mine exposure. Employer's Exhibit 2 at 9. The ALJ noted Claimant displayed a positive response to bronchodilators on his pulmonary function studies, but that his post-bronchodilator values were still qualifying.[14] Decision and Order at 35-36 (unpaginated). She then permissibly discredited the opinions of Drs. Zaldivar and Rosenberg as inadequately reasoned because they provided no explanation as to why Claimant's coal dust exposure could not have caused or contributed to the fixed portion of Claimant's impairment. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012); *Consol. Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); Decision and Order at 35-36 (unpaginated).

Additionally, Dr. Rosenberg opined Claimant's obstructive respiratory impairment is inconsistent with legal pneumoconiosis based, in part, on the marked reduction in his FEV1 value on pulmonary function testing in relationship to his FVC value. Employer's

[12] The ALJ also considered the opinion of Dr. Ammisetty that Claimant has legal pneumoconiosis. Director's Exhibit 22. Because his opinion does not aid Employer on rebuttal, we need not address its argument that the ALJ erred in weighing his opinion. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 9-11.

[13] To the extent Employer argues the ALJ imposed a higher level of scrutiny on Dr. Rosenberg's opinion, we disagree. Employer's Brief at 18. The ALJ properly considered whether Dr. Rosenberg credibly explained his opinion that Claimant does not have legal pneumoconiosis and permissibly found he failed to do so. *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 33, 35-37 (unpaginated).

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

Exhibit 2 at 3-5. The ALJ permissibly discredited Dr. Rosenberg's opinion because it is based on premises inconsistent with studies the Department of Labor cited in the preamble to the 2001 revised regulations that coal mine dust exposure can cause clinically significant obstructive disease, which can be shown by a reduction in the FEV1/FVC ratio. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 (4th Cir. 2017); *see also Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491-92 (6th Cir. 2014); 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000); Decision and Order at 35-36 (unpaginated).

Finally, the ALJ permissibly found Dr. Rosenberg's opinion that Claimant's obstructive impairment is caused by smoking because smoking is much more harmful than coal mine dust exposure does not adequately explain why Claimant's pulmonary impairment was not significantly related to, or substantially aggravated by, coal mine dust exposure.[15] *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *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 34-35 (unpaginated).

Because the ALJ acted within her discretion in discrediting the opinions of Drs. Zaldivar and Rosenberg, we affirm her finding that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); Decision and Order at 37 (unpaginated). Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. Therefore, we affirm the ALJ's finding that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(2)(i).

Upon finding Employer did not disprove pneumoconiosis, the ALJ addressed whether Employer established that no part of Claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). The ALJ rationally discredited the opinions of Drs. Zaldivar and Rosenberg concerning the cause of Claimant's total disability because they failed to diagnose legal pneumoconiosis, contrary to the ALJ's finding Employer failed to disprove Claimant has the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015); *Toler v. E. Assoc. Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995); Decision and Order at 38-39 (unpaginated). We therefore affirm the ALJ's determination that Employer failed to establish that no part of Claimant's respiratory or pulmonary total disability was caused by pneumoconiosis at 20 C.F.R. §718.305(d)(1)(ii), and the award of benefits.

[15] Because the ALJ provided valid bases for discrediting the opinions of Drs. Rosenberg and Zaldivar, we need not address Employer's remaining arguments regarding the ALJ's weighing of their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 11-25.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge