U.S. Department of Labor

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

BRB No. 20-0286 BLA

LARRY THACKER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
EASTERN COAL CORPORATION	)	
	)	
and	)	
	)	
Self-insured through PITTSTON COMPANY, c/o HEALTHSMART CASUALTY CLAIMS SOLUTIONS	)	DATE ISSUED: 06/25/2021
	)	
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 Jason A. Golden, Administrative Law Judge, United States Department of Labor.

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

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for Employer and its Carrier.

William M. Bush (Elena S. Goldstein, Deputy Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals Administrative Law Judge Jason A. Golden's Decision and Order Awarding Benefits (2019-BLA-05168) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim filed on November 22, 2016.[1]

The administrative law judge found Employer is the responsible operator. He credited Claimant with at least fifteen 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). He therefore found Claimant established a change in an applicable condition of entitlement and 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); 20 C.F.R. §725.309. He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer challenges its designation as the responsible operator. It also argues the administrative law judge erred in admitting Dr. Green's medical opinion as the Department of Labor (DOL)-sponsored medical report rather than the opinion of Dr. Vernon. It further argues he erred in finding it did not rebut the Section 411(c)(4) presumption. 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 affirm the administrative law judge's finding that Employer is the responsible operator and reject its evidentiary challenge.

[1] Claimant filed two previous claims. Director's Exhibits 1, 2. The district director denied the most recent prior claim on November 5, 2003, because Claimant failed to establish any element of entitlement. Director's Exhibit 2.

[2] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is 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.

The Board's scope of review is defined by statute. We must affirm the administrative law judge'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 Associates, 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." 20 C.F.R. §725.495(a)(1). To meet the regulatory definition of a "potentially liable operator," the coal mine operator must have employed Claimant for a cumulative period of not less than one year.[4] 20 C.F.R. §725.494(c). 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 the 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 another operator financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R. §725.495(c).

In finding Employer is the responsible operator, the administrative law judge considered its argument that South Fork Energies[5] (South Fork) is a potentially liable

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5; Hearing Tr. at 45.

[4] For a coal mine operator to meet the regulatory definition of a "potentially liable operator," each of the following conditions must be met: a) the miner's disability or death must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) 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).

[5] Claimant's Social Security Administration (SSA) records list earnings with both South Fork Energies Inc. and Southfork Energies in 1992 and 1993. Director's Exhibit 10. The administrative law judge observed the same address is listed for both entities on his

operator that more recently employed Claimant for at least one year. Decision and Order at 5-9. He found, however, that the evidence did not establish South Fork employed Claimant for at least one year and therefore is not a potentially liable operator. *Id*.

Employer argues the administrative law judge failed to adequately consider relevant evidence that establishes the beginning and ending dates of Claimant's employment with South Fork. Employer's Brief at 3-5. It also asserts a "Detailed Earnings Query" document, Claimant's testimony, and his Social Security Administration (SSA) earnings records establish South Fork employed Claimant for one year. *Id.*; *see* Director's Exhibit 9. This argument lacks merit.

The administrative law judge accurately set forth Claimant's relevant testimony. Decision and Order at 6-7. Claimant testified in a deposition that he worked for South Fork immediately before working for another operator, J&S Collieries.[6] Director's Exhibit 54 at 15. He stated he worked for South Fork "in the 90's," but could not "remember exactly" the days he worked there. *Id*. at 16. He indicated "December of 1992 until August of 1993" was "pretty close." *Id*. He stated he stopped working for South Fork because the mine flooded and shut down. *Id*. at 18. He testified Ronnie and Freddie Thacker owned the company. *Id*. at 17-18.

At the hearing, he confirmed he worked for the "Thacker boys" at the South Fork site and then he went to work at J&S Collieries but could not remember the exact year he worked at South Fork. Hearing Tr. at 30-31. He indicated he could have worked there 125 days in four to seven months but could have worked there "a little bit longer than that." *Id*. at 32. Ultimately he stated he was not "completely sure," and may have worked there "in that range." *Id*. Contrary to Employer's argument, the administrative law judge permissibly found Claimant's testimony unreliable and entitled to little weight because he "inconsistently reported the dates he worked for [South Fork]." Decision and Order at 7; *see Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983) (the administrative law judge is granted broad discretion in evaluating the credibility of the evidence, including witness testimony); *Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989); *Mabe v. Bishop Coal Co.*, 9 BLR 1-67, 1-68 (1986).

SSA records, and the parties refer to them as the same entity. Decision and Order at 6-8; Director's Exhibit 10. Thus he considered them as one operator. *Id.*

[6] The administrative law judge noted Claimant testified during a deposition that he worked about six months in 1993 for J&S Collieries. Decision and Order at 6, citing Director's Exhibit 54 at 12-13.

The administrative law judge then summarized the "Detailed Earnings Query" wage statement. Decision and Order at 7-8; *see* Director's Exhibit 9. This form lists Claimant's bi-weekly earnings from November 21, 1992 to December 5, 1992, and then from March 28, 1993 to June 19, 1993. Director's Exhibit 9. To the right of redacted information, it lists as employers "SOUTHFORK ENERG," "EASTERN COAL CO," and "TEMPORARY POOL." *Id*. The administrative law judge permissibly found this evidence unreliable because the total earnings do not correlate with the earnings set forth in Claimant's SSA earnings records, and there is no indication the earnings listed there are solely from South Fork. *See Rowe*, 710 F.2d at 255; Decision and Order at 7-8; Director's Exhibit 9. Moreover, contrary to Employer's assertion that Claimant's wage record in Director's Exhibit 9 is "relevant to dates of employment that exceeds [sic] 125 days" for South Fork, the administrative law judge rationally found aggregating the date ranges from this evidence amounts to only 103 days in total. *See Rowe*, 710 F.2d at 255; Decision and Order at 9; Director's Exhibit 9; Employer's Exhibit 4.

Based on these findings, the administrative law judge found the evidence does not establish the beginning and ending dates of Claimant's employment with South Fork and thus permissibly relied on the formula at 20 C.F.R. §725.101(a)(32)(iii) to calculate the number of days Claimant worked there.[7] *Shepherd v. Incoal, Inc*., 915 F.3d 392, 401-02 (6th Cir. 2019); Decision and Order at 6-9. He divided Claimant's yearly earnings as reported in his SSA records by the coal mine industry's average daily earnings, as reported in Exhibit 610 of the *Coal Mine (Black Lung Benefits Act) Procedure Manual*, to find Claimant worked for a total of 47.8 days for South Fork, or 0.38 years (based on a 125-day work-year). *Shepherd*, 915 F.3d at 401-02 (a miner need only establish 125 working days during a calendar year, regardless of the duration of his actual employment relationship, to establish one year of coal mine employment); Decision and Order at 8-9.

Employer identifies no error in the administrative law judge's calculation. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Because it is supported by

[7] The regulation at 20 C.F.R. §725.101(a)(32)(iii) provides, in pertinent part:

> If the evidence is insufficient to establish the beginning and ending dates of the miner's coal mine employment, or the miner's employment lasted less than a calendar year, then the adjudication officer may use the following formula: divide the miner's yearly income from work as a miner by the coal mine industry's average daily earnings for that year, as reported by the Bureau of Labor Statistics (BLS).

20 C.F.R. §725.101(a)(32)(iii).

substantial evidence, we affirm the administrative law judge's finding that Employer failed to establish Claimant worked at least one year for South Fork. 20 C.F.R. §725.495(c); Decision and Order at 9. We therefore affirm his finding that Employer was correctly designated as the responsible operator. *Id*.

Evidentiary Issue

We next address Employer's contention that the administrative law judge erred in admitting Dr. Green's medical opinion, instead of Dr. Vernon's, as the DOL-sponsored medical report.

Dr. Vernon conducted a DOL-sponsored pulmonary evaluation of Claimant on January 19, 2017, and issued an initial report diagnosing clinical pneumoconiosis and legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) arising out of coal mine employment. Employer's Supplemental Post-Hearing Brief Exhibit A. He also opined, however, Claimant is not totally disabled because his pulmonary function study "FEV1 is above the 60% threshold for total disability." *Id.*

In an April 13, 2017 letter, the district director asked Dr. Vernon to clarify his opinion on total disability considering that "the results of [Claimant's] pre-bronchodilator FEV1 and MVV are below federal disability standards." Director's Exhibit 26. The district director was unable to obtain a response from Dr. Vernon, however, because he was "no longer employed by Norton Community Hospital and his location is unknown." Director's Exhibit 59; *see also* Director's Exhibits 39, 50. Thus the district director arranged for Dr. Green to examine Claimant, review Dr. Vernon's testing, and issue a medical opinion. Director's Exhibit 14. Dr. Green diagnosed clinical and legal pneumoconiosis and a totally disabling respiratory or pulmonary impairment due to pneumoconiosis. *Id*. He also issued a supplemental report pursuant to a DOL pilot program[8] after the district director asked him to respond to the medical opinions of Drs. Rosenberg and Vuskovich. Director's Exhibit 25.

Although it made no objection at the hearing, in its post-hearing brief before the administrative law judge, Employer argued the district director impermissibly obtained an additional medical opinion from Dr. Green, notwithstanding Dr. Vernon's non-

[8] The Department of Labor (DOL) established this pilot program in BLBA (Black Lung Benefits Act) Bulletin No. 14-05 (Feb. 24, 2014). It provides for the supplementation of a miner's complete pulmonary examination in claims where the miner had fifteen or more years of coal mine employment, the DOL-sponsored pulmonary evaluation indicates the miner is entitled to benefits, and the employer has submitted evidence contrary to a claims examiner's initial proposed finding of entitlement.

responsiveness. Employer's Post-Hearing Brief at 3-4. Thus it argued the administrative law judge should exclude Dr. Green's opinion and admit Dr. Vernon's opinion as the DOL-sponsored medical report. *Id*.

The administrative law judge rejected Employer's argument. Decision and Order at 16-17. He found Employer did not cite "any specific regulation that would preclude" the district director from obtaining a medical opinion from Dr. Green, nor had it shown "it was prejudiced by the substitution in this de novo review." *Id*. Thus he admitted Dr. Green's opinion as the DOL-sponsored medical report and excluded Dr. Vernon's opinion from the record. *Id*.

Employer argues the administrative law judge abused his discretion in rendering this evidentiary finding. Employer's Brief at 5-9. We disagree.

First, Employer has not demonstrated how it was prejudiced by the administrative law judge's evidentiary ruling or the district director's decision to obtain a report from Dr. Green. *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (the appellant must explain how the "error to which [it] points could have made any difference"). While Drs. Vernon and Green disagreed as to whether Claimant is totally disabled, Employer does not challenge the administrative law judge's finding that Claimant established total disability based on the preponderance of the pulmonary function studies and the credible medical opinions, including Employer's expert, Dr. Rosenberg.[9]

Moreover, we agree with the Director's argument that Employer has not established the administrative law judge abused his discretion. Director's Brief at 11-12. An administrative law judge exercises broad discretion in resolving procedural and evidentiary matters. *See Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-152 (1989). Thus, a party seeking to overturn the disposition of a procedural or evidentiary issue must establish an abuse of discretion. *See McClanahan v. Brem Coal Co.*, 25 BLR 1-171, 1-175 (2016); *V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009).

The administrative law judge correctly held neither the Act nor the regulations preclude the district director from obtaining a substitute medical report. Decision and Order at 16-17. Rather, the regulations allow the district director to do so in factual

[9] We affirm, as unchallenged on appeal, the administrative law judge's findings that Claimant established at least fifteen years of underground coal mine employment and total disability, and therefore established a change in an applicable condition of entitlement and invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§718.204(b)(2), 725.309(c); Decision and Order at 10, 20.

circumstances such as this case: "If any medical examination or test conducted under [20 C.F.R. §725.406(a)] is not administered or reported in substantial compliance with the provisions of Part 718 of this subchapter, or does not provide sufficient information to allow the district director to decide whether the miner is eligible for benefits, the district director must schedule the miner for further examination and testing." 20 C.F.R. §725.406(c). The district director permissibly obtained a new medical report from Dr. Green, as Dr. Vernon's report did not provide sufficient information to allow her to decide whether Claimant is eligible for benefits.[10]

Based on the forgoing, we affirm the administrative law judge's admission of Dr. Green's opinion as the DOL-sponsored medical report, and the exclusion of Dr. Vernon's report.[11] *McClanahan*, 25 BLR at 1-175; *Dempsey*, 23 BLR at 1-63; *see* 20 C.F.R. §§718.101(a), 725.414(a)(3)(iii), 725.406(c), 725.456(e); Decision and Order at 16-17.

[10] The purpose of providing a miner with a complete pulmonary evaluation is to "develop the medical evidence necessary to determine each claimant's entitlement to benefits." 20 C.F.R. §718.101(a). Consistent with that purpose, a complete pulmonary evaluation must include "a report of physical examination, a pulmonary function study, a chest radiograph, and, unless medically contraindicated, a blood gas study." 20 C.F.R. §725.406(a). Importantly, the complete pulmonary evaluation must also "address the relevant conditions of entitlement . . . in a manner which permits resolution of the claim." 20 C.F.R. §725.456(e). As the Director points out, Dr. Vernon's report did not clearly address the issue of total disability in a manner permitting resolution of the claim. Director's Brief at 12.

[11] As the Director notes, Employer and the administrative law judge mistakenly refer to the substitution of Dr. Vernon's medical report by Dr. Green's report as a part of the pilot program. Decision and Order at 16; Employer's Brief at 6-7; Director's Brief at 12. Dr. Green's report did not replace Dr. Vernon's report as part of this program. Director's Response Brief at 11. Rather, as discussed above, Dr. Vernon's report was replaced because it did not provide sufficient information for the district director to decide Claimant's eligibility for benefits. 20 C.F.R. §725.406(c). Dr. Green was subsequently asked to provide a supplemental report under the pilot program in response to the opinions of Drs. Rosenberg and Vuskovich. Director's Exhibit 25.

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,[12] 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 administrative law judge found Employer failed to establish rebuttal by either method.[13]

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 holds this standard 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, 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 argues the administrative law judge erred in finding the medical opinions of Drs. Rosenberg and Vuskovich unpersuasive. Employer's Brief at 9-13; Decision and Order at 25-29. We disagree.

Dr. Rosenberg opined Claimant's COPD is due to cigarette smoking, not coal mine dust exposure, because his pulmonary function testing reveals a reduced FEV1/FVC ratio, which is not a pattern of impairment consistent with legal pneumoconiosis. Director's Exhibit 23 at 7. The administrative law judge permissibly found this rationale conflicts

[12] "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).

[13] The administrative law judge found Employer rebutted the presumption of clinical pneumoconiosis. Decision and Order at 21-24.

with the medical science set forth in the preamble to the 2001 revised regulations that "coal miners have an increased risk of developing COPD," and that COPD "may be detected from decrements in certain measures of lung function," including "the ratio of FEV1/FVC." 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000); *see Central Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491-92 (6th Cir. 2014); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); Decision and Order at 25-26; Employer's Brief at 10.

Dr. Rosenberg also opined that Claimant does not have legal pneumoconiosis because he has diffuse emphysema, which is caused by cigarette smoking and not coal mine dust. Director's Exhibit 23 at 9-10. However, the administrative law judge permissibly concluded that even if this were the case, Dr. Rosenberg failed to adequately explain how Claimant's coal dust exposure did not aggravate this condition. Decision and Order at 27.

Dr. Rosenberg also explained that coal mine dust exposure did not contribute to Claimant's chronic bronchitis because his coal mine employment ended in 1993 and "chronic bronchitis dissipates within months after exposure ceases." Director's Exhibit 23 at 10. The administrative law judge permissibly discredited Dr. Rosenberg's opinion because it "neglects the fact that disabling pneumoconiosis, whether clinical or legal, can develop years after a miner leaves the mines." Decision and Order at 27; *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 737-40 (6th Cir. 2014); 20 C.F.R. §718.201(c) (recognizing pneumoconiosis is a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure).

Finally, Dr. Rosenberg cited recent medical studies establishing the significant adverse effects of cigarette smoking on the lungs to exclude legal pneumoconiosis. Director's Exhibit 23 at 7-9. The administrative law judge permissibly found this reasoning does not address why coal mine dust exposure did not contribute to Claimant's cigarette smoke-induced COPD. *See Young*, 947 F.3d at 405-09; *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 673-74, n.4 (4th Cir. 2017) (administrative law judge permissibly discredited medical opinions that "solely focused on smoking" as a cause of obstruction and "nowhere addressed why coal dust could not have been an additional cause"); 20 C.F.R. §718.201(b); Decision and Order at 25.

Dr. Vuskovich opined Claimant's obstructive respiratory impairment is unrelated to coal mine dust exposure because it is partially reversible after the administration of bronchodilators. Director's Exhibit 24 at 12-13. He explained coal mine dust exposure does not cause a reversible obstructive impairment, and thus the obstruction is caused by asthma. *Id*. The administrative law judge permissibly found this reasoning unpersuasive

because Dr. Vuskovich failed to adequately explain why the irreversible portion of Claimant's obstructive impairment was not significantly related to, or substantially aggravated by, coal mine dust exposure. *See Young*, 947 F.3d at 405-09; *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); Decision and Order at 29. Moreover, the administrative law judge permissibly found Dr. Vuskovich failed to adequately explain how he was able to exclude any contribution or aggravation from Claimant's coal dust exposure to his condition. *See Young*, 947 F.3d at 405-09; *Stallard*, 876 F.3d at 673 n.4; *Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013).

Employer generally argues the opinions of Drs. Rosenberg and Vuskovich are well-reasoned as the doctors adequately explain why Claimant does not have legal pneumoconiosis. Employer's Brief at 9-13. We consider Employer's arguments to be 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); *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988); Employer's Brief at 9-12. Thus we affirm the administrative law judge's finding that Employer failed to disprove Claimant has legal pneumoconiosis. 20 C.F.R. §§718.201(a)(2),(b), 718.305(d)(1)(i)(A); *Young*, 947 F.3d at 405; Decision and Order at 29.

Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. Therefore, we affirm the administrative law judge's finding that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(1)(i). *Young*, 947 F.3d at 409.

The administrative law judge 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). Contrary to Employer's arguments, he permissibly discredited the disability causation opinions of Drs. Rosenberg and Vuskovich because neither diagnosed legal pneumoconiosis, contrary to his finding that Employer failed to disprove Claimant has the disease.[14] *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 30; Employer's Brief at 12-13. We therefore affirm the administrative law judge's finding that Employer did not rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(ii) and the award of benefits.

[14] Neither physician offered an opinion on disability causation independent of his reasoning relating to the existence of pneumoconiosis.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge