U.S. Department of Labor

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

BRB No. 22-0093 BLA

W. E. QUISENBERRY o/b/o KENNETH L. POWERS	)	
Claimant-Respondent	)	
v.	)	
PEABODY COAL COMPANY	)	
and	)	
PEABODY ENERGY CORPORATION	)	DATE ISSUED: 6/06/2023
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 Noran J. Camp, Administrative Law Judge, United States Department of Labor.

H. Brett Stonecipher and Tighe A. Estes (Reminger Co., L.P.A.), Lexington, Kentucky, for Employer and its Carrier.

Steven Winkelman (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: BOGGS, ROLFE and JONES, Administrative Appeals Judges.

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Noran J. Camp's Decision and Order Awarding Benefits (2018-BLA-05352) rendered on

a subsequent claim filed May 6, 2016,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[2]

The ALJ found Peabody Coal Company (Peabody Coal), self-insured through its parent company Peabody Energy Corporation (Peabody Energy), is the responsible operator liable for the payment of benefits. He found the Miner had fifteen years of coal mine employment in both underground coal mines and surface coal mines 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). Therefore, he found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018) and established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer asserts the ALJ erred in excluding deposition transcripts purportedly relevant to Peabody Energy's liability and erred in finding it liable for the payment of benefits. It asserts the ALJ erred in finding the Miner had at least fifteen years of coal mine employment and a totally disabling pulmonary or respiratory impairment, thereby invoking the Section 411(c)(4) presumption. Finally it argues he erred in finding it did not rebut the presumption. Claimant has not filed a response brief. The Director,

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[1] The Miner filed this subsequent claim but died on December 3, 2018, while it was pending. Employer's Exhibit 20. The Miner's widow continued the claim on behalf of his estate, but she passed away on June 28, 2020, before the claim was concluded. November 16, 2020 Order Granting Motion to Substitute Party. Claimant is the executor of the Miner's estate and is now pursuing this claim. *Id*.

[2] 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 he 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). ALJ Robert Hillyard denied the Miner's prior claim on May 11, 2001, for failure to establish any element of entitlement. Director's Exhibit 1. Therefore, Claimant had to submit new evidence establishing at least one element of entitlement in order to obtain review of the merits of this claim. 20 C.F.R. §725.309(c).

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if he had 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.

Office of Workers' Compensation Programs (the Director), responds, urging the Benefits Review Board to affirm the ALJ's determination that Peabody Energy 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.[4] 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 Carrier

Employer does not challenge the ALJ's findings that Peabody Coal is the correct responsible operator and it was self-insured by Peabody Energy on the last day Peabody Coal employed the Miner; thus, we affirm these findings.[5] *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§725.494(e), 725.495, 726.203(a); Decision and Order at 4 n.4, 27-30. Rather, it alleges Patriot Coal Corporation (Patriot) should have been named the responsible carrier and thus liability for the claim should transfer to the Black Lung Disability Trust Fund.

Patriot was initially another Peabody Energy subsidiary. Director's Exhibit 27. In 2007, after the Miner ceased his coal mine employment with Peabody Coal, Peabody Energy transferred a number of its other subsidiaries, including Peabody Coal, to Patriot. *Id*. On March 4, 2011, Patriot was authorized to insure itself and its subsidiaries, retroactive to 1973. *Id*. Although Patriot's self-insurance authorization made it retroactively liable for the claims of miners who worked for Peabody Coal, Patriot later went bankrupt and can no longer provide for those benefits. *Id*. Neither Patriot's self-insurance authorization nor any other arrangement, however, relieved Peabody Energy of liability for paying benefits to miners last employed by Peabody Coal when Peabody

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because the Miner performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 5 n.7; Employer's Exhibits 12 at 9, 19; Director's Exhibit 1 at 232.

[5] Employer also "preserve[s]" its "ability to challenge" Black Lung Benefits Act (BLBA) Bulletin No. 16-01 as an invalid rule. Employer's Brief at 70-71 (unpaginated). Employer generally argues Bulletin No. 16-01 contradicts liability rules under the Act, was issued without notice and comment, and violates the Administrative Procedure Act. *Id*. Apart from one sentence summarizing its arguments, Employer has not set forth sufficient detail to permit the Board to consider the merits of the issues identified. *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); 20 C.F.R. §802.211(b).

Energy owned and provided self-insurance to that company, as the ALJ held. Decision and Order at 29-30.

Employer raises several arguments[6] to support its contention that Peabody Energy was improperly designated the self-insured carrier in this claim and thus the Trust Fund, not Peabody Energy, is responsible for the payment of benefits following Patriot's bankruptcy: (1) the district director and claims examiner are inferior officers not properly appointed under the Appointments Clause;[7] (2) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; (3) before transferring liability to Peabody Energy, the Department of Labor (DOL) must establish it exhausted any available funds from the security bond Patriot gave to secure its self-insurance status; (4) the DOL released Peabody Energy from liability; (5) the Director is equitably estopped from imposing liability on the company; (6) the ALJ's reliance on 20 C.F.R. §§725.495(a)(2)(i) and 725.493(b)(2) is misplaced; and (7) the DOL violated its due process rights by not maintaining adequate records with respect to Patriot's bond and failing to comply with its duty to monitor

[6] Employer also argues 20 C.F.R. §725.456(b)(1) violates the Longshore and Harbor Workers' Compensation Act and the Administrative Procedure Act (APA). Employer's Brief at 71-72 (unpaginated). We disagree. That regulation specifies "[d]ocumentary evidence pertaining to the liability of a potentially liable operator and/or the identification of a responsible operator which was not submitted to the district director shall not be admitted into the hearing record in the absence of extraordinary circumstances." 20 C.F.R. §725.456(b)(1). Section 932(a) incorporated the provisions of the Longshore Act and the APA into the Black Lung Benefits Act "except as otherwise provided . . . by regulations of the Secretary." 30 U.S.C. §932(a). Thus, even if we were to accept Employer's interpretation of the regulation, the Secretary of Labor has the authority to adopt regulations that differ from the APA and the Longshore Act. *See Nat'l Mining Ass'n v. Chao*, 160 F. Supp. 2d 47 (D.D.C. 2001), *rev'd in part on other grounds*, *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 869 (D.C. Cir. 2002). Further, although ALJ Camp rendered the decision at issue in the present appeal, Employer asserts "ALJ [John P. Sellers, III] and the Director's actions in this matter ultimately devest [sic] the ALJ of any control over the discovery and development of the record on the liability issue which is inconsistent with the Act." Employer's Brief at 71-72 (unpaginated). Employer has failed to identify any action or finding by either ALJ Sellers or "the Director" pertinent to this case which implicates the issue raised in its argument. Thus we decline to address this argument. *See Cox*, 791 F.2d at 446-47; 20 C.F.R. §802.211(b).

[7] Employer first raised this argument before the ALJ in response to the Director's June 3, 2019 Objection to Admission of the Depositions of David Benedict and Steven Breeskin, Employer's Exhibits 1-4. *See* July 9, 2019 Response to Director's Objection at 4-6.

Patriot's financial health.[8] Employer's Brief at 33-78 (unpaginated). Employer also maintains that a separation agreement – a private contract between Peabody Energy and Patriot – released it from liability and the DOL endorsed this shift of complete liability when it authorized Patriot to self-insure. *Id.*

The Board has previously considered and rejected these arguments in *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 3-19 (Oct. 25, 2022) (en banc); *Howard v. Apogee Coal Co.*, 25 BLR 1-301, , 1-308-19 (2022); and *Graham v. E. Assoc. Coal Co.*, 25 BLR 1-289, 1-295-99 (2022). For the reasons set forth in *Bailey*, *Howard*, and *Graham*, we reject Employer's arguments. Thus, we affirm the ALJ's determination that Peabody Coal and Peabody Energy are the responsible operator and carrier, respectively, and are liable for this claim.

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

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner 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). Claimant bears the burden of establishing the number of years the Miner worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold an ALJ's determination based on a reasonable method of calculation that is supported by substantial evidence. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

In calculating the length of the Miner's coal mine employment, the ALJ considered his employment history forms, Social Security Administration (SSA) earnings record, and

[8] Employer additionally argues the ALJ erred in excluding the deposition testimony of two former Department of Labor (DOL) employees, Steven Breeskin and David Benedict, as Employer's Exhibits 1 through 4. Employer's Brief at 33-39 (unpaginated). In *Bailey*, the same depositions were admitted and the Board held they do not support Employer's argument that the DOL released Peabody Energy from liability when it authorized Patriot to self-insure and released a letter of credit that Patriot financed under Peabody Energy's self-insurance program. *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 15 n.17 (Oct. 25, 2022). Given that the Board has previously held the depositions do not support Employer's argument, any error in excluding them here is harmless. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

sworn testimony, and a statement from Dorothy Parker, Employer's representative. Director's Exhibits 1, 4-6; Employer's Exhibits 16, 18. The ALJ found this evidence establishes two years of coal mine employment with Six Vein before 1972 and thirteen years of coal mine employment with Employer from 1972 to 1985. Decision and Order at 31-32.

Employer argues the ALJ erred in crediting Claimant with thirteen years of coal mine employment with Employer because he failed to account for the fact that Claimant did not start working for Employer until July 31, 1972, and thus did not work for it for seven months in that year, was laid off for two months from November 20, 1976 until January 24, 1977, and stopped working on October 18, 1985, two months shy of one whole year. Employer's Brief at 18-19 (unpaginated). Thus it asserts the ALJ should have reduced Claimant's employment with Employer by eleven months (7 +2+2). *Id.*

This argument is not persuasive because the ALJ accounted for Employer's contention when crediting Claimant with thirteen years of employment for Employer. The ALJ noted Dorothy Parker's statement indicates the Miner worked for Employer from July 31, 1972 to November 20, 1976, and from January 24, 1977 to October 18, 1985.[9] Decision and Order at 31, *citing* Employer's Exhibit 18. He found "[t]his statement from Employer is consistent with the Miner's SSA [record] which documents *one-half a year of employment in 1972*, and employment from 1973 to 1985." Decision and Order at 31 (emphasis added). Based on this evidence alone, the ALJ found the "record establishes that the Miner worked thirteen and one-half years for Employer from July 1972 to October 1985." *Id.* The ALJ then acknowledged Employer's contention that one additional month "should be taken off since the Miner did not start until July 31, 1972, two months should be taken off when he was laid off from November 20, 1976 to January 24, 1977, and two months should be taken off since his employment ended in October 1985," for a total of five additional months. *Id.* Even accounting for Employer's argument, the ALJ found "the evidence establishes at least thirteen years of coal mine employment with Employer." *Id.*[10]

[9] The ALJ also noted Ms. Parker stated the Miner worked for Employer from "January 3, 1994, to the present," but recognized the Miner stated he was "injured during the first week he worked in January 1994 after being called back following the lay-off in October 1985." Decision and Order at 31. The ALJ did not credit the Miner with any employment in 1994 or onward.

[10] Recognizing the Miner worked 5 months in 1972 plus all of 1973 through 1985 (which would be 13 additional years), less 2 months for his lay-off in 1976 to 1977 as Employer suggests, and 2 months, as Employer suggests, to account for terminating

Employer next contends the ALJ erred in finding Claimant established the Miner worked two years for Six Vein. Employer's Brief at 19-20 (unpaginated). We cannot agree.

At a deposition taken for a state workers' compensation claim, the Miner testified he had "about fifteen" years of exposure to coal and rock dust due to his work for two coal companies, Employer and Six Vein. Employer's Exhibit 17 at 5-6. In a deposition taken for this federal claim, the Miner testified that he worked "about two years" for Six Vein, working six- to eight-hour days, approximately four days a week, but was paid in cash and did not report the earnings. Employer's Exhibit 16 at 10. The ALJ found the Miner's testimony consistent and credible, and thus found it established two years of coal mine employment for Six Vein. Decision and Order at 31.

Employer contends that the Miner's testimony was too general and is contradicted by other evidence and thus is not credible. Employer's Brief at 19-20 (unpaginated). It contends the Miner initially alleged less than fifteen years when he first filed a state workers' compensation claim and that his counsel in that claim indicated the Miner had thirteen to fourteen years of coal mine employment. *Id.* We are not persuaded by this argument.

The ALJ evaluates the credibility and weight of the evidence, including witness testimony. *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983) (ALJ is granted broad discretion in evaluating the credibility of the evidence, including witness testimony); *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017) (declining to reweigh witness testimony on smoking history in spite of alleged inconsistencies that the employer identified); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989). The Board will not disturb an ALJ's credibility findings unless they are inherently unreasonable. *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc). The ALJ recognized that when the Miner was under oath in the state workers' compensation claim he identified his work with "both Employer and Six Vein Coal Company and that he worked about fifteen years in coal mine employment." Decision and Order at 31. The ALJ then noted when the Miner testified in this federal claim, he again identified his work for Six Vein and stated "he worked for about two years underground for [it] in Dawson Springs, Kentucky" and "he was paid in cash and he worked there as a young man four days a week for six to eight hours a day." *Id.* We discern no error in the ALJ's finding that the Miner's testimonies in both claims are consistent with one another and adequately detailed to establish two years

employment on October 18, 1985, the length of the Miner's employment would be 13 years and 1 month.

of coal mine employment with Six Vein.[11] *Id*. Employer's argument amounts 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).

Finally, we reject Employer's argument that the ALJ misapplied the burden of proof in this case by finding Claimant established "about" fifteen years of coal mine employment rather than a precise number of years. Employer's Brief at 20 (unpaginated). The ALJ specifically found "Claimant has established that the Miner had fifteen years of qualifying coal mine employment." Decision and Order at 32. As Employer raises no further argument, we affirm the ALJ's finding Claimant established fifteen years of coal mine employment. *Id*. Further, Employer does not challenge the ALJ's finding that all of the Miner's coal mine employment was qualifying. Decision and Order at 32. We therefore affirm this finding. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.305(b)(1)(i).

Invocation of the Section 411(c)(4) Presumption – Total Disability

A miner is totally disabled if the miner's pulmonary or respiratory impairment, standing alone, prevents the miner from performing the miner's usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). A miner may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of 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 1-236 (1987) (en banc). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

[11] We are not persuaded that the evidence Employer identifies from the Miner's 1996 state workers' compensation claim necessarily contradicts his testimony in this federal black lung claim. Employer identifies the Miner's initial statements in that claim that he had thirteen to fourteen years of coal mine employment, but it does not identify any evidence undermining his testimony that he worked for Six Vein for two years. Employer's Brief at 19-20 (unpaginated), *citing* Employer's Exhibit 19 at 2, 7. Further, as the ALJ recognized, the Miner ultimately testified that he had fifteen years of coal mine employment between Employer and Six Vein when he was deposed by Employer's counsel in that claim. Employer's Exhibit 17 at 5-6.

The ALJ found Claimant established total disability based on the arterial blood gas study and medical opinion evidence, and in consideration of the evidence as a whole.[12] 20 C.F.R. §718.204(b)(2)(ii), (iv); Decision and Order at 34-35. Specifically, he found a preponderance of the blood gas testing is qualifying[13] for total disability and "there is a consensus among the medical experts that the Miner was totally disabled based on the results of [blood gas testing] which demonstrated an impairment in gas exchange and, thus, the Miner was unable to perform his [usual] coal mine job." *Id*.

Employer does not directly challenge the ALJ's finding that the arterial blood gas studies establish total disability. Instead, Employer contends the medical opinions of Drs. Tuteur and Selby establish that the qualifying arterial blood gas studies were the result of cardiac impairment, rather than pulmonary or respiratory impairment; thus the ALJ erred in finding there is a "consensus" amongst the physicians of record that the Miner totally disabled. Employer's Brief at 21. However, Employer's argument fails to recognize that the relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether a totally disabling respiratory or pulmonary impairment was present, not its underlying cause. Consequently, considering a chronic respiratory impairment which arises from an abnormality in cardiac functioning is proper for these purposes, and Employer has not shown that the opinions of Drs. Tuteur and Selby constituted contrary evidence at this juncture in the ALJ's consideration of the issues. *See* 20 C.F.R. §§718.204(a), 718.305(d); *see also Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989).[14] Decision and Order at 34-35; Employer's Exhibits 7 at 8; 8 at 13, 18-20; 23 at 17, 30-31.

As Employer raises no further arguments, we also affirm the ALJ's finding that Claimant established total disability based on the blood gas testing and medical opinion evidence. 20 C.F.R. §718.204(b)(2)(ii), (iv). Further, we affirm the ALJ's finding Claimant established total disability in consideration of the evidence as a whole, 20 C.F.R.

[12] The ALJ found the pulmonary function studies do not establish total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii); Decision and Order at 33, 34.

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

[14] If "a nonpulmonary or nonrespiratory condition or disease causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered in determining whether the miner is or was totally disabled due to pneumoconiosis." 20 C.F.R. §718.204(a).

§718.204(b)(2); *Rafferty*, 9 BLR at 1-232, invoked the Section 411(c)(4) presumption, 20 C.F.R. §718.305(b)(1), and established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c).

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 the Miner had 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 did not establish rebuttal by either method.

Legal Pneumoconiosis

Employer argues the ALJ erred in finding it failed to rebut the presumption of legal pneumoconiosis. We disagree. To disprove legal pneumoconiosis, Employer must establish the Miner did 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 ALJ weighed the opinions of Drs. Selby and Tuteur. Decision and Order at 37-42. Both doctors diagnosed emphysema due to cigarette smoking and unrelated to coal mine dust exposure. Employer's Exhibits 7, 8, 23. The ALJ found their opinions inadequately reasoned, contrary to the regulations, and inconsistent with the medical science set forth in the preamble to the 2001 revised regulations. *Island Creek Coal Co. v. Young*, 947 F.3d 399, 407 (6th Cir. 2020); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); *Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 37-42.

[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).

Employer generally asserts the opinions of Drs. Tuteur and Selby are well-reasoned. Employer's Brief at 27-29. Employer's argument amounts to a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. Because the ALJ permissibly discredited the only opinions supportive of Employer's burden on rebuttal, we affirm his finding Employer did not disprove legal pneumoconiosis. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis.[16] 20 C.F.R. §718.305(d)(2)(i).

Disability Causation

The ALJ next considered whether Employer established "no part of the [Miner's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii). The ALJ rationally discredited the opinions of Drs. Tuteur and Selby on disability causation because they did not diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer failed to disprove the disease.[17] *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Island Creek*

[16] Employer contends the ALJ erred by failing to address whether it disproved the existence of clinical pneumoconiosis before addressing legal pneumoconiosis. Employer's Brief at 27. Employer's argument is not convincing. The regulations consider clinical and legal pneumoconiosis as separate diagnoses and require that a party disprove the existence of both diseases in order to establish rebuttal, but they do not prescribe any order in which the diseases must be addressed. 20 C.F.R. §718.305(d)(1)(i). The ALJ correctly noted that, having found Employer failed to rebut the presumption of legal pneumoconiosis, Employer was precluded from a rebuttal finding by establishing the Miner did not have pneumoconiosis. *Id.*; *see* Decision and Order at 42 n.27. Further, as Employer has not identified any specific grounds on which the ALJ's consideration of the evidence on clinical pneumoconiosis might have affected his consideration of the issue of legal pneumoconiosis, we reject its argument. *See Cox*, 791 F.2d at 446-47; *Sarf*, 10 BLR at 1-120-21; 20 C.F.R. §802.211(b).

[17] Contrary to Employer's argument, the ALJ did not misapply the rebuttal standard and correctly stated the regulations require Employer prove that "no part of the [M]iner's respiratory or pulmonary total disability was caused by pneumoconiosis[,]" and considered the evidence in light of this correct standard. Decision and Order at 43; *see Island Creek Coal Co. v. Young*, 947 F.3d 399, 407 (6th Cir. 2020) (upholding ALJ's use of "rule out" standard under the second rebuttal prong); *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); 20 C.F.R. §718.305(d)(1)(ii); Employer's Brief at 32-33.

Ky. Mining v. Ramage, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order at 43-44. Because it is supported by substantial evidence, we affirm the ALJ's finding that Employer failed to establish no part of the Miner's total disability was due to pneumoconiosis, and therefore failed to rebut the Section 411(c)(4) presumption. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 44.

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

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge