U.S. Department of Labor

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

BRB No. 20-0423 BLA

POLLIE STEENBERGEN (Widow of VICTOR STEENBERGEN)	)	
Claimant-Respondent	)	
v.	)	
ICG KENTUCKY, LLC, c/o ARCH COAL, INCORPORATED	)	DATE ISSUED: 11/29/2021
Employer-Petitioner	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of Decision and Order Granting Request for Modification and Awarding Benefits of Steven D. Bell, Administrative Law Judge, United States Department of Labor.

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

Steven Winkelman (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Christian P. Barber, Acting 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 ROLFE, Administrative Appeals Judges.

BUZZARD, Administrative Appeals Judge:

Employer appeals Administrative Law Judge (ALJ) Steven D. Bell's Decision and Order Granting Request for Modification and Awarding Benefits (2019-BLA-05179) 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 request for modification of a survivor's claim.

Claimant filed her survivor's claim on June 9, 2014.[1] In an August 8, 2017 Decision and Order, ALJ Larry W. Price denied it because Claimant failed to establish the existence of pneumoconiosis and death due to pneumoconiosis. Director's Exhibit 48. Claimant requested modification of that denial on October 12, 2017. Director's Exhibit 49. Because Claimant submitted no new evidence, the district director transferred the claim to the Office of Administrative Law Judges, which assigned it to ALJ Steven D. Bell (the ALJ). Director's Exhibits 53, 54.

In his June 17, 2020 Decision and Order, the subject of the current appeal, the ALJ found Claimant established the Miner had more than fifteen years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment at the time of his death. 20 C.F.R. §718.204(b)(2). He therefore found Claimant invoked the presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018). He also found Employer did not rebut the presumption. Thus he found Claimant established modification based on a mistake in a determination of fact. 20 C.F.R. §725.310. He further found granting modification would render justice under the Act and awarded benefits.[3]

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[1] Claimant is the widow of the Miner, who died on May 30, 2009. Director's Exhibit 11. The Miner never successfully established a claim for benefits during his lifetime. Hearing Tr. at 13. Thus Claimant is not entitled to benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), which provides that a survivor of a miner determined to be eligible to receive benefits at the time of his death is automatically entitled to receive survivor's benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[2] Section 411(c)(4) provides a rebuttable presumption that a miner's death was 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 at the time of his death. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[3] Notably, the ALJ held that he was required to make a "threshold" determination of whether granting modification would render justice under the Act prior to considering

On appeal, Employer challenges the constitutionality of the Section 411(c)(4) presumption. Alternatively, it contends the ALJ erred in finding it did not rebut the presumption.[4] Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs, has filed a limited response, urging the Benefits Review Board to reject Employer's constitutional arguments.

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 Associates, Inc.*, 380 U.S. 359 (1965).

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

Citing *Texas v. United States*, 340 F. Supp. 3d 579, *decision stayed pending appeal*, 352 F. Supp. 3d 665, 690 (N.D. Tex. 2018), Employer contends the Affordable Care Act

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the modification petition on the merits. Decision and Order at 3-4, *citing Sharpe v. Director, OWCP* [*Sharpe I*], 495 F.3d 125, 128 (4th Cir. 2007). While *Sharpe I* held that an ALJ must consider the question before ultimately granting *the relief* requested in a modification petition, nothing in it establishes that an ALJ may make the determination at the outset, before *considering the merits* of the petition, even in cases with no new evidence. While it might make sense to make a threshold determination in cases of obvious bad faith, it does not follow that a threshold determination is appropriate in cases such as this where there is no indication of an improper motive. In such a case, the ALJ must first consider the merits, which will generally resolve the *Sharpe I* inquiry. *See O'Keeffe v. Aerojet General Shipyards, Inc.*, 404 U.S. 254, 255 (1971) (the plain purpose of modification is to vest an adjudicator with "discretion to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted."). Given the ALJ considered the merits of Employer's petition, however, any error in finding he had the discretion to refuse to consider the petition is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1985).

[4] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established the Miner had at least fifteen years of underground coal mine employment, a totally disabling respiratory impairment at the time of his death, and invocation of the Section 411(c)(4) presumption that the Miner's death was due to pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 10.

[5] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because the Miner performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

(ACA), which reinstated the Section 411(c)(4) presumption, Pub. L. No. 111-148, §1556 (2010), is unconstitutional. Employer's Brief at 8-9. Employer cites the district court's rationale in Texas that the ACA requirement for individuals to maintain health insurance is unconstitutional and the remainder of the law is not severable. *Id.* Employer's arguments with respect to the constitutionality of the ACA and the severability of its amendments to the Black Lung Benefits Act are now moot. *California v. Texas*, 593 U.S. , 141 S. Ct. 2104, 2120 (2021).

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

Because Claimant invoked the Section 411(c)(4) presumption of death due to pneumoconiosis, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[6] or that "no part of [his] death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(2)(i), (ii). The ALJ found Employer did not establish rebuttal by either method.[7]

Legal Pneumoconiosis

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)(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 this standard requires Employer to show the Miner's coal mine dust exposure "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

[6] "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).

[7] The ALJ found Employer disproved the existence of clinical pneumoconiosis. *See* 20 C.F.R. §718.305(d)(2)(i)(B); Decision and Order at 11.

impairment." *Id*. at 407 (citing *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014)).

The ALJ considered the opinions of Drs. Tuteur and Vuskovich that the Miner did not have legal pneumoconiosis. He found neither doctor provided an "adequately reasoned" opinion as to whether the Miner's respiratory impairment was related to his coal mine dust exposure. Decision and Order at 13.

We first reject Employer's argument that the ALJ applied an improper legal standard with respect to rebuttal of the presumption of legal pneumoconiosis. Employer's Brief at 13-15. Insofar as Drs. Tuteur and Vuskovich acknowledged the Miner had a lung impairment in the form of chronic obstructive pulmonary disease (COPD), the ALJ correctly noted "Employer must establish that [the Miner's] impairment was not 'significantly related to, or substantially aggravated by, dust exposure in coal mine employment.'" Decision and Order at 12; 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(2)(i)(A). Moreover, the ALJ did not reject Dr. Tuteur's and Dr. Vuskovich's opinions based on their failure to meet a heightened legal standard; he found their opinions inadequately reasoned.[8] *See Crockett Colleries, Inc. v. Director, OWCP* [*Barrett*], 478 F.3d 350, 356 (6th Cir. 2007); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 12-14.

Indeed, a plain reading of Drs. Tuteur's and Vuskovich's opinions and the ALJ's order belies our colleague's assertion that the ALJ "clearly tied his explanations for rejecting [their opinions] to a more heightened legal standard." Dissent at 12. As the ALJ recognized, Dr. Tuteur himself purported to completely exclude coal dust from contributing in any way to the Miner's disabling COPD or his death, opining: the Miner's COPD was "uniquely" due to chronic inhalation of tobacco smoke, not coal dust; that neither coal mine dust nor pneumoconiosis "played any role in causing carcinoma of the lung," or "caused, contributed to, or in any way hastened [the Miner's] death"; and that if the Miner "never inhaled coal mine dust, his clinical picture would be no different." Decision and Order at 7, citing Employer's Exhibit 1 at 6. As demonstrated below, it was Dr. Tuteur's failure to persuade the ALJ by a preponderance of the evidence that any of

[8] Because the ALJ identified the correct legal standard and found the physicians' explanations for completely excluding coal mine dust as a contributor to Claimant's impairment not credible, any error in his also using the phrases "rule out exposure to coal mine dust" and "exclude coal dust exposure" is harmless. *See Larioni*, 6 BLR at 1-1278; Decision and Order at 12-14.

this was actually true that led the ALJ to discredit his opinion, not the application of any particular legal standard. *See Barrett*, 478 F.3d at 356; *Rowe*, 710 F.2d at 255.

On the other hand, and as the ALJ further recognized, Dr. Vuskovich simply did not discuss the relationship (or lack thereof) between the Miner's coal dust exposure and his COPD. Decision and Order at 12. The complete failure to discuss the issue cannot meet Employer's burden to disprove legal pneumoconiosis, regardless of the standard applied. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994).

In addition to rejecting our colleague's suggestion that the purported application of an improper legal standard had any effect on this case, we further reject Employer's argument that the ALJ did not provide valid reasons for discrediting the physicians' opinions under the correct standard. Employer's Brief at 12-15.

Dr. Tuteur opined the Miner had COPD and lung cancer related to smoking.[9] Employer's Exhibit 1 at 1-2. He further opined the Miner's COPD was unrelated to coal mine dust exposure because twenty percent of adult smokers who never engage in coal mining develop COPD, whereas one percent of adult miners who never smoke cigarettes develop the disease. *Id*. at 4, 6. Contrary to Employer's argument, the ALJ permissibly found "Dr. Tuteur's reliance on statistical probabilities undermines his conclusion that [the Miner] did not have legal pneumoconiosis" because, even assuming "[the Miner's] chances of developing [COPD] as a result of his coal dust exposure, as opposed to cigarette smoking, were minimal," the doctor did not address why the Miner "could not be one of the statistically rare individuals who develop obstruction as a result of coal mine dust exposure." Decision and Order at 13. This exact rationale for discrediting opinions relying on general statistics rather than a miner's specific condition has been repeatedly upheld in an unbroken line of cases. *See, e.g., Young*, 947 F.3d at 408-09; *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).

Dr. Vuskovich summarized the Miner's treatment records and acknowledged they indicate he had both lung cancer and COPD. Director's Exhibit 45. With respect to the etiology of the Miner's diseases, however, he focused his analysis exclusively on whether coal mine dust caused the cancer, opining it was due to "[c]umulative cigarette smoke exposure combined with a genetic predisposition," not coal mine dust exposure, and concluding "[it] killed [him] after significantly degrading his pulmonary function." *Id*. Although Dr. Vuskovich stated generally that the Miner's medical records do not show that

[9] Dr. Tuteur also opined the Miner had arteriosclerotic heart disease. Employer's Exhibit 1 at 1-2.

he was totally disabled by pneumoconiosis or a coal dust-induced disease, the ALJ accurately noted "it is presumed that [the Miner] had legal pneumoconiosis" and Dr. Vuskovich failed to address whether the Miner's COPD was related to his coal mine dust exposure and thus constitutes legal pneumoconiosis.[10] Decision and Order at 12. He therefore permissibly found Dr. Vuskovich's opinion not "adequately reasoned" because he did not explain why the Miner's significant history of coal mine dust exposure was not a contributing or aggravating factor in his pulmonary or respiratory impairment. Decision and Order at 13, *see Barrett*, 478 F.3d at 356; *Rowe*, 710 F.2d at 255; Employer's Brief at 12-13.

It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Rowe*, 710 F.2d at 255. We consider Employer's arguments on legal pneumoconiosis 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). Because the ALJ permissibly discredited the opinions of Drs. Tuteur and Vuskovich, the only opinions supportive of Employer's burden on rebuttal, we affirm his finding that Employer did not disprove legal pneumoconiosis.[11] Employer's failure to disprove legal pneumoconiosis

[10] Dr. Vuskovich stated the Miner's treatment records "did not show [he] had disabling pulmonary impairment arising in whole or in part out of coal dust exposure" and his treating physicians "did not consider pneumoconiosis as a factor contributing to [his] fatal lung cancer or respiratory failure" when developing his treatment plan. While these statements purport to exclude pneumoconiosis and coal dust exposure as causes of the Miner's disability and death, i.e., the disability/death causation element, the ALJ accurately concluded they do not address the relevant inquiry for rebuttal of legal pneumoconiosis under these facts, i.e., whether the Miner's COPD itself, regardless of whether it was totally disabling, was significantly related to his coal mine dust exposure. *See* 20 C.F.R. 718.305(d)(1), (2) (differentiating between whether the Miner had a lung disease or impairment significantly related to coal mine dust exposure (legal pneumoconiosis) and whether no part of his disability or death was due to the legal pneumoconiosis).

[11] Because the ALJ provided valid reasons for discrediting the opinions of Drs. Tuteur and Vuskovich, any error in discrediting their opinions for other reasons is harmless. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 12-15.

precludes a rebuttal finding that the Miner did not have pneumoconiosis. 20 C.F.R. §718.305(d)(2)(i).[12]

Death Causation

The ALJ next addressed whether Employer established "no part of the [M]iner's death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(2)(ii). Employer argues the ALJ erred in finding the opinions of Drs. Tuteur[13] and Vuskovich[14] insufficient to satisfy its burden.[15] Employer's Brief at 14-15.

[12] Employer argues the ALJ erred in failing to address the treatment records of Dr. Somasundaram on the issue of rebuttal of legal pneumoconiosis. Employer's Brief at 11. It asserts the ALJ should have accorded controlling weight to Dr. Somasundaram's opinion based on his status as Claimant's treating physician. *Id.* The ALJ considered the treatment records from Dr. Somasundaram and Charleston Area Medical Center in addressing the issue of total disability, but did not consider them in addressing the issue of pneumoconiosis. Decision and Order at 9-10; Director's Exhibits 12, 13. We consider the ALJ's error to be harmless. *See Larioni*, 6 BLR at 1-1278. Dr. Somasundaram opined the Miner had chronic obstructive pulmonary disease (COPD), but never stated if this disease was significantly related to, or substantially aggravated by coal mine dust exposure. Director's Exhibit 12. Thus, even if Employer is correct that Dr. Somasundaram did not diagnose pneumoconiosis, his opinion is insufficient to meet Employer's burden to rebut the presumption of legal pneumoconiosis. *See Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015); Employer's Brief at 11-12.

[13] Dr. Tuteur opined the Miner's death was caused by "tobacco smoke associated COPD and carcinoma of the lung," and not the inhalation of coal mine dust or the development of pneumoconiosis. Employer's Exhibit 1.

[14] Dr. Vuskovich opined the Miner's death was caused by his lung cancer. Director's Exhibit 45. He further opined "[the Miner's] fatal lung cancer did not arise in whole or in part out of coal dust exposure." *Id.* He therefore opined the Miner's death was not caused, significantly contributed to, substantially aggravated by, or hastened by his coal mine dust exposure. *Id.*

[15] The record contains a death certificate that lists metastatic lung cancer as the primary cause with COPD as a significant condition contributing to the Miner's death. Director's Exhibit 11. Because the death certificate does not aid Employer's burden on rebuttal, we need not address Employer's argument that the ALJ erred in failing to consider it. *See Kozele*, 6 BLR at 1-382 n.4; Director's Exhibit 11.

Contrary to Employer's assertion, the ALJ permissibly discredited the death causation opinions of Drs. Tuteur and Vuskovich because neither doctor diagnosed legal pneumoconiosis, contrary to his determination that Employer failed to disprove the Miner had the disease. *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 15; Employer's Brief at 15. We therefore affirm the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(2)(ii).[16]

In view of the foregoing, we affirm the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption. *See* 30 U.S.C. §921(c)(4). We also affirm his finding that Claimant established a mistake in a determination of fact at 20 C.F.R. §725.310 and the award of benefits.[17]

[16] We note the ALJ misstated the standard for rebuttal of death causation. The ALJ stated "Employer must affirmatively rule out a causal relationship between [the Miner's] death and his *coal mine employment*," Decision and Order at 14 (emphasis added); the correct standard is whether Employer disproved death causation by showing no part of the Miner's death was caused by *pneumoconiosis*. *See* 20 C.F.R. §718.305(d)(2)(ii). But Employer has not raised this issue. Moreover, any error is harmless, as the ALJ ultimately rejected Drs. Tuteur's and Vuskovich's opinions because their failure to diagnose legal pneumoconiosis, contrary to his finding Employer did not rebut that the Miner has the disease, rendered their opinions not credible on whether legal pneumoconiosis played a role in the Miner's death. *See Larioni*, 6 BLR at 1-1278.

[17] We further affirm, as unchallenged, the ALJ's finding that granting modification would render justice under the Act. *See Skrack*, 6 BLR at 1-711 (1983); Decision and Order at 4.

Accordingly, the ALJ's Decision and Order Granting Request for Modification and Awarding Benefits is affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

I concur.

JONATHAN ROLFE
Administrative Appeals Judge

BOGGS, Chief Administrative Appeals Judge, concurring and dissenting:

I concur in the majority opinion that Employer's arguments with respect to the constitutionality of the Affordable Care Act, which reinstated the Section 411(c)(4) presumption, Pub. L. No. 111-148, §1556 (2010), and the severability of non-health care provisions are now moot. *California v. Texas*, 593 U.S. , 141 S. Ct. 2104, 2120 (2021). I also concur with my colleagues' decision to affirm the ALJ's findings that Claimant established the Miner had at least fifteen years of underground coal mine employment and a totally disabling respiratory impairment at the time of his death. Further, I concur with their decision to affirm the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption that the Miner's death was due to pneumoconiosis. I respectfully dissent, however, from their decision to affirm the ALJ's finding that Employer failed to disprove legal pneumoconiosis. I would vacate his finding that Employer did not rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(2)(i) and remand the case for further consideration. Employer's argument that the ALJ applied an improper legal standard has merit. Employer's Brief at 13-15.

The ALJ began his rebuttal analysis by correctly recognizing that to disprove legal pneumoconiosis, "Employer must establish [the Miner's] impairment was not 'significantly related to, or substantially aggravated by, dust exposure in coal mine employment.'" Decision and Order at 12; *see* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(2)(i)(A); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8

(2015). He then considered the opinions of Drs. Tuteur and Vuskovich that the Miner did not have legal pneumoconiosis. Decision and Order at 12-14; Director's Exhibit 45; Employer's Exhibit 1. Noting that Dr. Vuskovich opined the Miner's lung cancer did not arise in whole or in part out of his coal mine dust exposure and that his medical records did not show that he had a disabling pulmonary impairment arising in whole or in part out of his coal mine dust exposure, the ALJ concluded Dr. Vuskovich's "opinions are clearly insufficient to meet the Employer's burden to establish that [the Miner] did not have legal pneumoconiosis." Decision and Order at 12. The ALJ next stated "Employer has also proffered the opinions of Dr. Tuteur in an attempt to meet its burden to *rule out* exposure to coal mine dust as a factor in [the Miner's] total respiratory disability." *Id.* (emphasis added). Moreover, in addressing Dr. Tuteur's references to statistics about the Miner's chances of developing an obstruction related to coal dust exposure as opposed to cigarette smoking, the ALJ stated "Employer's burden is not to establish a clinical diagnosis, but to *exclude* coal dust exposure as a factor in [the Miner's] respiratory impairment." *Id.* at 13 (emphasis added). He then stated "Dr. Tuteur did not explain why [the Miner] *could not be* one of the statistically rare individuals who develop obstruction as a result of coal mine dust exposure." *Id.* (emphasis added).

Contrary to the ALJ's analysis, Employer is not required to "exclude" or "rule out" any contribution from coal dust exposure to the Miner's respiratory disease or impairment in order to disprove legal pneumoconiosis.[18] As discussed, the proper inquiry is whether Employer has shown by a preponderance of the evidence that the Miner did not have a chronic lung disease or impairment that was "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b); *see Minich*, 25 BLR at 1-155 n.8. Thus, although the ALJ accurately stated the rebuttal standard relating to legal pneumoconiosis at the outset of his analysis, he erred by applying a more rigorous standard in concluding Employer failed to disprove legal pneumoconiosis. *See Island Creek Coal Co. v. Young*, 947 F.3d 399, 405-07 (6th Cir. 2020). Unlike my

[18] The "no part" standard, often characterized as a requirement to "rule out" a connection between the miner's pneumoconiosis and his disability, applies to rebuttal of disability causation, not disease. 20 C.F.R. §718.305(d)(2)(ii); *see Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1071 (6th Cir. 2013) (an employer's burden on rebuttal of disability causation is to rule out coal mine employment as a cause of disability, or show that pneumoconiosis played no part in causing disability); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155-56 (2015). By contrast, an employer may disprove legal pneumoconiosis "by showing that coal dust exposure had no more than a de minimis impact on the miner's lung impairment." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 407 (6th Cir. 2020) (citing *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014)).

colleagues, I do not find the ALJ's error in using the phrases "rule out exposure to coal mine dust" and "exclude coal dust exposure" harmless because he clearly tied his explanations for rejecting the medical opinions of Drs. Tuteur and Vuskovich to a more heightened legal standard. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983).

Because the ALJ considered the evidence under an incorrect rebuttal standard, I would vacate his finding that Employer failed to rebut the presumed fact of legal pneumoconiosis at 20 C.F.R. §718.305(d)(2)(i)(A) and remand the case for a reweighing of the medical opinion evidence. 30 U.S.C. §923(b); *see Young*, 947 F.3d at 405-407. Further, as the ALJ's evaluation of the evidence relevant to rebuttal of legal pneumoconiosis may have affected his evaluation of the evidence relevant to disability causation, I would also vacate that rebuttal finding. 20 C.F.R. §718.305(d)(2)(ii). Therefore, I would vacate the award of benefits and remand the case to the ALJ for further consideration. In evaluating the medical opinions on remand, I would instruct the ALJ to apply the proper legal standard and address the physicians' explanations for their diagnoses, the documentation underlying their medical judgments, and the sophistication of, and bases for, their conclusions. *See Rowe*, 710 F.2d at 255*Milburn Colliery Co. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

For these reasons, I respectfully concur in part and dissent in part from the opinion of the majority.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge