U.S. Department of Labor

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

BRB No. 19-0303 BLA

LINDA BARNETT (o/b/o JACK BARNETT, deceased) Claimant-Respondent v. SQUAW CREEK COAL COMPANY and PEABODY ENERGY CORPORATION Employer/Carrier- Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 11/28/2022 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Colleen A. Geraghty, Administrative Law Judge, United States Department of Labor.

Joseph E. Allman (Allman Law LLC), Indianapolis, Indiana, for Claimant.

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

Rita A. Roppolo (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BOGGS, Chief Administrative Appeals Judge, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law (ALJ) Judge Colleen A. Geraghty's Decision and Order Awarding Benefits (2017-BLA-05933) rendered on a miner's claim[1] filed on May 14, 2015, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found that Squaw Creek Coal Company (Squaw Creek) is the responsible operator and Peabody Energy Corporation (Peabody Energy) is the responsible carrier. She also accepted the parties' stipulation that the Miner had thirty-two years of qualifying coal mine employment and found he was totally disabled. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant invoked the presumption that the Miner was totally disabled due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018). The ALJ further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ lacked the authority to decide the case because she was not appointed in accordance with the Appointments Clause of the Constitution, Art. II § 2, cl. 2.[3] It also contends the district director, the Department of Labor (DOL)

[1] The Miner died on October 8, 2015. Director's Exhibit 13. Claimant, the Miner's widow, is pursuing the claim on his behalf. Director's Exhibit 15.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability 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 impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

[3] Article II, Section 2, Clause 2, sets forth the appointing powers:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

official who processes black lung claims, is an inferior officer who was not appointed in a manner consistent with the Appointments Clause. It next argues the ALJ erred in finding Peabody Energy is the liable carrier. On the merits, Employer contends the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption.[4] Claimant responds, urging affirmance of the award. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Benefits Review Board to reject Employer's Appointments Clause challenges and affirm the ALJ's finding that Employer is liable for benefits.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[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 (1965).

Appointments Clause - Administrative Law Judge

Employer urges the Board to vacate the award and remand the case to be heard by a different, constitutionally appointed ALJ pursuant to *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044 (2018).[6] Employer's Brief at 3-5, 6. It acknowledges the Secretary of Labor (the Secretary) ratified the prior appointments of all sitting DOL ALJs on December 21, 2017,[7]

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[4] We affirm, as unchallenged on appeal, the ALJ's determination that Claimant invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 2-3, 5-14.

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

[6] *Lucia* involved an Appointments Clause challenge to the selection of a Securities and Exchange Commission (SEC) ALJ. The United States Supreme Court held that, similar to Special Trial Judges at the United States Tax Court, SEC ALJs are "inferior officers" subject to the Appointments Clause. *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044, 2055 (2018) (citing *Freytag v. Comm'r*, 501 U.S. 868 (1991)).

[7] The Secretary of Labor (Secretary) issued a letter to the ALJ on December 21, 2017, stating:

> In my capacity as head of the Department of Labor, and after due consideration, I hereby ratify the Department's prior appointment of you as an Administrative Law Judge. This letter is intended to address any claim

but maintains the ratification was insufficient to cure the constitutional defect in the ALJ's prior appointment.[8] *Id*.

The Director argues the ALJ had the authority to decide this case because the Secretary's ratification brought the appointment into compliance. Director's Brief at 11-12. He also maintains Employer failed to rebut the presumption of regularity that applies to the actions of public officers like the Secretary. *Id*. at 12. We agree with the Director's arguments.

An appointment by the Secretary need only be "evidenced by an open, unequivocal act." Director's Brief at 11 (quoting *Marbury v. Madison*, 5 U.S. 137, 157 (1803)). Ratification "can remedy a defect" arising from the appointment of an official when an agency head "has the power to conduct an independent evaluation of the merits [of the appointment] and does so." *Wilkes-Barre Hosp. Co. v. NLRB*, 857 F.3d 364, 371 (D.C. Cir. 2017) (internal quotations omitted). It is permissible so long as the agency head: 1) had at the time of ratification the authority to take the action to be ratified; 2) had full knowledge of the decision to be ratified; and 3) made a detached and considered affirmation of the earlier decision. *Wilkes-Barre*, 857 F.3d at 372; *Advanced Disposal Servs. E., Inc. v. NLRB*, 820 F.3d 592, 603 (3d Cir. 2016); *CFPB v. Gordon*, 819 F.3d 1179, 1191 (9th Cir. 2016). Under the "presumption of regularity," courts presume that public officers have properly discharged their official duties, with "the burden shifting to the attacker to show the contrary." *Advanced Disposal*, 820 F.3d at 603 (citing *Butler v. Principi*, 244 F.3d 1337, 1340 (Fed. Cir. 2001)).

Congress has authorized the Secretary to appoint ALJs to hear and decide cases under the Act. 30 U.S.C. §932a; *see also* 5 U.S.C. §3105. Under the presumption of regularity, we therefore presume the Secretary had full knowledge of the decision to be ratified and made a detached and considered affirmation. *Advanced Disposal*, 820 F.3d at 603. Moreover, the Secretary did not generally ratify the appointment of all ALJs in a single letter. Rather, he specifically identified ALJ Geraghty and gave "due consideration"

> that administrative proceedings pending before, or presided over by, administrative law judges of the U.S. Department of Labor violate the Appointments Clause of the U.S. Constitution. This action is effective immediately.

Secretary's December 21, 2017 Letter to ALJ Geraghty.

[8] On July 20, 2018, the Department of Labor (DOL) conceded that the Supreme Court's holding in *Lucia* applies to the DOL's ALJs. *Big Horn Coal Co. v. Sadler*, 10th Cir. No. 17-9558, Brief for the Fed. Resp. at 14 n.6.

to her appointment. Secretary's December 21, 2017 Letter to ALJ Geraghty. The Secretary further stated he was acting in his "capacity as head of [DOL]" when ratifying the appointment of Judge Geraghty "as an [ALJ]." *Id.* Having put forth no contrary evidence, Employer has not overcome the presumption of regularity. *Advanced Disposal*, 820 F.3d at 603-04 (mere lack of detail in express ratification is not sufficient to overcome the presumption of regularity); *see also Butler*, 244 F.3d at 1340.

The Secretary thus properly ratified the ALJ's appointment.[9] *See Edmond v. United States*, 520 U.S. 651, 654-66 (1997) (appointment of civilian members of the United States Coast Guard Court of Criminal appeals were valid where the Secretary of Transportation issued a memorandum "adopting" assignments "as judicial appointments of [his] own"); *Advanced Disposal*, 820 F.3d at 604-05 (National Labor Relations Board's retroactive ratification of the appointment of a Regional Director with statement it "confirm[ed], adopt[ed], and ratif[ied] *nunc pro tunc*" all its earlier actions was proper).

Employer further argues *Lucia* precludes the ALJ from hearing this case notwithstanding the Secretary's ratification because she took significant action while not properly appointed when she issued a Notice of Hearing. Employer's Brief at 3-4. The Director responds the issuance of a Notice of Hearing conveys general information, and therefore its issuance does not require reassignment to a new ALJ. Director's Brief at 12-13. We agree with the Director's position.

The ALJ issued a Notice of Hearing on September 27, 2017. The issuance of the Notice alone did not involve any consideration of the merits, nor could it color the ALJ's consideration of the merits of this case. It simply reiterated the statutory and regulatory requirements governing the hearing procedures.[10] *Noble v. B & W Res., Inc.*, 25 BLR 1-

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[9] While Employer notes that the Secretary's ratification letter was signed "with an autopen," Employer's Brief at 5, this does not render the appointment invalid. *See Nippon Steel Corp. v. Int'l Trade Comm'n*, 239 F.Supp.2d 1367, 1373, 1375 n.14 (Ct. Int'l Trade 2002) (autopenned signing of the Recess Appointment Order satisfies the requirement that an appointment be evidenced by an "open and unequivocal act").

[10] The Notice of Hearing informed the parties of the date for a hearing, set time limits for completion of discovery and submission of evidence, provided general advice to parties proceeding without counsel, and addressed other routine hearing matters. *See* Sept. 27, 2017 Notice of Reassignment, Notice of Hearing, and Pre-Hearing Order. We reject Employer's argument that the discovery deadlines in the Order tainted this case with an Appointments Clause violation by preventing Employer from conducting post-hearing depositions of three liability witnesses. Employer's Brief at 4-5. Setting a regulatory discovery deadline does not involve consideration of the merits and the ALJ's discovery

267, 1-271-72 (2020). It therefore did not taint the adjudication with an Appointments Clause violation requiring remand, and we decline to remand this case to the Office of Administrative Law Judges (OALJ) for a new hearing before a different ALJ. *Noble*, 25 BLR at 1-272.

Responsible Insurance Carrier

Employer does not challenge the ALJ's findings that Squaw Creek is the correct responsible operator and was self-insured through Peabody Energy on the last day Squaw Creek employed Claimant; thus, we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 711 (1983); 20 C.F.R. §§725.494(e), 725.495, 726.203(a); Decision and Order at 4-5. Patriot Coal Corporation (Patriot) was initially another Peabody Energy subsidiary. In 2007, after Claimant ceased his coal mine employment with Squaw Creek, Peabody Energy sold a number of its subsidiaries, including Squaw Creek, to Patriot. Director's Exhibits 4, 8; Director's Response 2. That same year, Patriot was spun off as an independent company. Decision and Order at 5; Employer's Brief at 23. In 2011, the Department of Labor (DOL) authorized Patriot to self-insure itself and its subsidiaries, retroactive to 1973. Director's Response at 2; Employer's Brief at 23. Although Patriot's self-insurance authorization made it retroactively liable for the claims of miners who worked for Squaw Creek, Patriot later went bankrupt and can no longer provide for those benefits. Director's Exhibit 46; Director's Response at 2; Employer's Brief at 23. Neither Patriot's self-insurance authorization nor any other arrangement relieved Peabody Energy of liability for paying benefits to miners last employed by Squaw Creek when Peabody Energy owned and provided self-insurance to that company. Decision and Order at 4-5.

Employer raises several arguments to support its contention that Peabody Energy was improperly designated as the responsible carrier in this claim and that the Black Lung Disability Trust Fund (Trust Fund), not Peabody Energy, is responsible for the payment of benefits following Patriot's bankruptcy. Employer's Brief at 14-37. It argues the ALJ erred in finding Peabody Energy liable for benefits because: (1) the district director is an inferior officer not properly appointed under the Appointments Clause and his or her initial determination of the responsible carrier violates due process;[11] (2) the DOL released Peabody Energy from liability; (3) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; (4) the Director is equitably estopped from imposing liability on Peabody Energy; and (5) the ALJ erroneously excluded liability evidence and erred in not permitting liability

order was not issued until after the Secretary's ratification of her appointment. May 3, 2018 Order.

[11] Employer did not raise these arguments at any time prior to its appeal to the Board.

depositions. *Id.* It 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. Employer's Brief at 18-23.

The Board has previously considered and rejected arguments (1) through (4) 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.*, BLR , BRB No. 20-0229 BLA, slip op. at 5-17 (Oct. 18, 2022); and *Graham v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0221 BLA, slip op. at 7-8 (June 23, 2022). For the reasons set forth in *Bailey*, *Howard* and *Graham*, we reject Employer's arguments. We also reject Employer's argument with respect to the exclusion of its liability evidence, as described more fully below.

Exclusion of Liability Evidence

To support its assertion that Patriot is the liable insurance carrier, Employer submitted documentary evidence to the ALJ marked Director's Exhibits 58, 73 through 75, and Employer's Liability Exhibits 1 through 7.[12] Employer also requested to take the depositions of David Benedict and Steven Breeskin, two former DOL Division of Coal Mine Workers' Compensation (DCMWC) employees, as well as that of Michael Chance, a current employee of DCMWC. The ALJ denied its request to take the depositions and excluded the documentary evidence because she found it was not timely submitted to the district director and Employer did not establish extraordinary circumstances for failing to do so. May 13, 2018 Order; Decision and Order at 2 n.2; *see* 20 C.F.R. §725.456(b)(1).

[12] Employer's Exhibit 1, Patriot's authorization to self-insure, and Employer's Exhibit 2, the March 4, 2011 letter from Mr. Breeskin to Patriot, were previously submitted to the district director as Director's Exhibit 58.

Employer submitted for the first time to the ALJ: Employer's Exhibit 3, a November 23, 2010 letter from Mr. Breeskin; Employer's Exhibit 4, an undated letter from Mr. Chance regarding Patriot's self-insurance reauthorization audit; Employer's Exhibit 5, a March 4, 2011 indemnity agreement releasing Bank of America from liability; Employer's Exhibit 6, documentation dated November 17, 2015, showing a transfer of funds from Patriot to the Black Lung Disability Trust Fund; and Employer's Exhibit 7, Peabody's Indemnity Bond.

Director's Exhibits 73 through 75 were documents the Director had filed with the district director. Director's Exhibit 73 is an SEC Form 8-K filed by Peabody Energy. Director's Exhibit 74 is a Proof of Claim DOL filed against Patriot. Director's Exhibit 75 is the bankruptcy court's authorization and approval of a settlement between Peabody Energy and the United Mine Workers of America.

Employer argues the ALJ erred in excluding the liability evidence, and therefore, requests the Board remand this case for the ALJ to admit the evidence and reconsider the responsible carrier issue. Employer's Brief at 5-7.

The Director responds, conceding the ALJ erred in excluding Director's Exhibit 58 as untimely submitted. Director's Brief at 24. He contends the error is harmless, however, because these documents do not establish that DOL released Peabody Energy from liability. *Id*. at 24-25. Moreover, the Director argues that although the ALJ was incorrect that Employer did not timely identify Messrs. Benedict and Breeskin as liability witnesses, she reasonably declined to permit Employer to conduct their depositions for a different reason. *Id*. Finally, the Director contends the ALJ permissibly excluded the remainder of Employer's liability evidence as untimely and correctly found that Employer did not timely identify Mr. Chance as a liability witness. Director's Brief at 25-27 & n. 17.

Procedural History

There were various Notice of Claims issued in this claim; however, ultimately, the district director issued a Notice of Claim on June 28, 2016, designating Squaw Creek and Peabody Energy as the potentially liable operator and insurer. Director's Exhibit 49. Peabody Energy controverted its liability, alleging Patriot Coal should be liable, but submitted no documentary evidence. Director's Exhibit 50.

On October 14, 2016, the district director issued a Schedule for the Submission of Additional Evidence (SSAE), identifying Squaw Creek, self-insured through Peabody Energy as the responsible operator and insurer and setting December 13, 2016 as the deadline to submit documentary evidence relevant to liability and identify any liability witnesses they intended to rely on if the case was referred to the OALJ. Director's Exhibit 54. The district director advised that "[a]bsent a showing of extraordinary circumstances, no documentary evidence relevant to liability, or testimony of a witness not identified at this stage of the proceedings, may be admitted into the record once a case is referred to the [OALJ]." *Id*. at 3, (citing 20 C.F.R. §725.456(b)(1)).

Employer responded to the SSAE on October 26, 2016 and November 18, 2016, contesting its liability. Director's Exhibits 55, 56. In a November 22, 2016 letter enclosing documentary evidence, Employer asserted that a separation agreement between Peabody Energy and Patriot transferred all liabilities to Patriot and now that Patriot was bankrupt, the Trust Fund was the liable party. Director's Exhibit 58. In the same letter, Peabody Energy identified potential liability witnesses, among others, Messrs. Breeskin and Benedict. *Id.* The district director received the letter on November 29, 2016. *Id*.

The district director issued a Proposed Decision and Order (PDO) on March 23, 2017, awarding benefits and designating Squaw Creek and Peabody Energy as the

responsible operator and carrier, respectively. Director's Exhibit 66. In response, Employer denied liability and requested a hearing. Director's Exhibit 67. On June 6, 2017, the Director submitted Director's Exhibits 73 through 75. Thereafter, the case was referred to the OALJ for a hearing. Director's Exhibit 76.

After the case was transferred to the OALJ, Employer submitted additional documentary evidence marked Employer's Exhibits 1 through 7, identified above, pertaining to its liability. Thereafter, Employer requested to take the depositions of Messrs. Breeskin, Benedict, and Chance. The Director opposed Employer's request. Director's Oppos. to Employer's Request; Hearing Transcript at 12-15.

The ALJ denied Employer's request to admit Director's Exhibits 58, 73 through 75, and Employer's Liability Exhibits 1-7, finding them untimely filed[13] and that no extraordinary circumstances excused Employer's late submission. May 3, 2018 Order. She also found Employer untimely identified Messrs. Benedict, Breeskin, and Chance as liability witnesses. *Id.* She found it was unclear the depositions could be held by the requested May 1, 2018 date, and thus allowing the late depositions would unnecessarily delay the case. *Id.* The ALJ subsequently denied Employer's motion for reconsideration. June 15, 2018 Order.

The ALJ issued her Decision and Order on February 25, 2019. In addressing liability, the ALJ noted that none of the evidence Employer relied upon to support its arguments was before her. Decision and Order at 4-5. She ultimately found Employer is the properly designated responsible operator because it most recently employed the Miner for at least one year and did not establish that it was incapable of paying benefits. *Id*. at 5 (citing 20 C.F.R. §725.495(c)).

Exclusion of Director's Exhibits and Denial of Breeskin and Benedict Depositions

Because an ALJ exercises broad discretion in resolving procedural and evidentiary matters, *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc), a party seeking to overturn the disposition of an evidentiary issue must establish the ALJ's action represented an "abuse of . . . discretion." *V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009).

The deadline for submitting documentary liability evidence and identifying liability witnesses before the district director was December 13, 2016. Director's Exhibit 54. As

[13] The ALJ misidentified the deadline for submitting documentary liability evidence and identifying liability witnesses as November 13, 2016. The correct deadline was December 13, 2016. Director's Exhibit 54 at 3.

summarized above, on November 22, 2016, Employer submitted Director's Exhibit 58 and 73 through 75 and identified Messrs. Breeskin and Benedict as liability witnesses prior to that time. Thus, the ALJ erred in excluding those Director's Exhibits as untimely and in finding that Employer did not timely identify Messrs. Breeskin and Benedict as liability witnesses.

However, the errors are harmless. The documents contained within the Director's Exhibits and the deposition testimony of Messrs. Breeskin and Benedict are the same documents and depositions obtained and submitted by employers in numerous other claims in support of the identical arguments at issue here. In *Bailey*, the same evidence was admitted and the Board affirmed the ALJ's finding they do not support Employer's argument the DOL released Peabody Energy from liability when it authorized Patriot to self-insure and released a letter of credit 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 the Board has previously held the evidence does not support Employer's argument, any error in excluding it 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).

Exclusion of the Remainder of Employer's Liability Evidence

Employer further contends the ALJ abused her discretion in finding extraordinary circumstances do not exist in allowing the late liability evidence and Mr. Chance's deposition because the evidence it sought to have admitted were in DOL's possession and "Employer was attempting to discover this information from the Director at the time."[14] Employer's Brief at 6. Employer does not explain this contention. The mere fact that the exhibits were in DOL's possession does not show extraordinary circumstances or that Employer was constrained from timely obtaining them. It is Employer's responsibility, not the Director's, to seek and submit any documentation relevant to its liability by the deadline set forth in the SSAE. *See* 20 C.F.R. §§725.410, 725.412(a), 725.456(b)(1); *see*

[14] Contrary to Employer's argument that it was only required to show good cause to submit late evidence, the applicable regulations require the ALJ to reject liability evidence that was not submitted first to the district director unless extraordinary circumstances are established. 20 C.F.R. §§ 725.456(b)(1), 725.457(c)(1); *Graham v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0221 BLA, slip op. at 6-7 (June 23, 2022); *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 12-13 (Oct. 25, 2022) (en banc).

also Bailey, BRB No. 20-0094 BLA, slip op. at 12 (rejecting employer's argument that only good cause was required when the Director did not voluntarily share liability exhibits).

Based on these facts, the ALJ did not abuse her discretion in finding Employer failed to establish extraordinary circumstances justifying the late submission of Employer's Liability Exhibits 3-7 and untimely identifying Mr. Chance[15] as a liability witness.[16] 20 C.F.R. §§725.414(c), 725.456(b)(1), 725.457(c)(1); *Blake*, 24 BLR at 1-113; May 3, 2018 Order at 5-6, 6-8; Decision and Order at 2 n.2.

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

Citing *Texas v. United States*, 945 F.3d 355 (5th Cir. 2019), Employer generally contends the Affordable Care Act (ACA), which reinstated the Section 411(c)(4) presumption, Pub. L. No. 111-148, §1556 (2010), is unconstitutional. Employer's Brief at 37-38.

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 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 total disability due to pneumoconiosis, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[17] or that "no part of the [M]iner's respiratory or pulmonary

[15] Employer claims it identified Mr. Chance as a potential witness before the district director; however, that statement is inaccurate. Employer's Brief at 5; Director's Exhibit 58.

[16] Employer states that it wants to "preserve" its arguments that the ALJ cut off discovery "prematurely." Employer's Brief at 35-37. We decline to address Employer's argument as impermissibly vague. 20 C.F.R. §802.211(b); *see Bailey*, BRB No. 20-0094 BLA, slip op. at 12; *Fish v. Director, OWCP*, 6 BLR 1-107, 1- 109 (1983).

[17] "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). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial

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.

Legal Pneumoconiosis

To disprove legal pneumoconiosis,[18] 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 considered the opinions of Drs. Broudy and Rosenberg that the Miner did not have legal pneumoconiosis but instead had diffuse, bullous emphysema due solely to smoking. Employer's Exhibits 3 at 2; 4 at 7-10; 11 at 11-12, 20. She found these opinions not sufficiently reasoned to rebut the existence of legal pneumoconiosis. Decision and Order at 23-24.

Employer contends the ALJ erred in discrediting the opinions of Drs. Broudy and Rosenberg. Employer's Brief at 38-41. We disagree. The ALJ noted that the primary reason for Drs. Broudy's and Rosenberg's conclusion was that the Miner had diffuse, bullous emphysema, which they opined is typically associated with smoking and not coal mine dust exposure. Decision and Order at 23; Employer's Exhibits 3 at 2; 4 at 7-10; 11 at 11-12, 20. The ALJ acted within her discretion in finding Drs. Rosenberg's and Broudy's opinions inadequately explained given the DOL's recognition in the preamble to the 2001 regulatory revisions that coal mine dust can cause centrilobular emphysema-which is a diffuse-type emphysema and that coal dust-induced emphysema and smoke-induced emphysema occur through similar mechanisms.[19] 65 Fed. Reg. 79,920, 79,941, 79,943 (Dec. 20, 2000); *see Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 672 (4th

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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).

[18] The ALJ found Employer established the Miner did not have clinical pneumoconiosis. Decision and Order at 22.

[19] Because the ALJ provided a valid reason for discrediting Dr. Broudy's opinion, we need not address Employer's remaining arguments regarding the ALJ's consideration of his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 38-41.

Cir. 2017); Decision and Order at 23; Employer's Exhibits 3 at 2; 4 at 7-10; 11 at 11-12, 20.

It is within the ALJ's purview as fact-finder to weigh the evidence, draw appropriate inferences, and determine credibility. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012). Employer's arguments are a request for the Board to reweigh the evidence, which it is not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because it is supported by substantial evidence, we affirm the ALJ's finding Employer did not disprove legal pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 14-26. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next addressed whether Employer established "no part of the [M]iner'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). She permissibly discounted the opinions of Drs. Broudy and Rosenberg on disability causation because neither diagnosed legal pneumoconiosis, contrary to the ALJ's determination that Employer failed to disprove the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995); Decision and Order at 24-26.

Thus, we affirm the ALJ's determination that Employer did not rebut the Section 411(c)(4) presumption by establishing the Miner's respiratory disability was unrelated to pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge