U.S. Department of Labor

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

BRB No. 20-0210 BLA

JERRY COBB	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
EASTERN ASSOCIATED COAL COMPANY	)	
	)	
and	)	
	)	DATE ISSUED: 11/29/2022
PEABODY ENERGY CORPORATION	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Patricia J. Daum, Administrative Law Judge, United States Department of Labor.

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

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

Cynthia Liao (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, Administrative Appeals Judge, BUZZARD, and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Patricia J. Daum's Decision and Order Awarding Benefits (2017-BLA-06272) rendered on a subsequent claim filed on April 29, 2016, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[1]

The ALJ initially found Eastern Associated Coal Company (Eastern) is the responsible operator and Peabody Energy Corporation (Peabody Energy) the responsible carrier. She credited Claimant with twenty-two years of qualifying coal mine employment, and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, the ALJ determined Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[2] and demonstrated a change in an applicable condition of entitlement.[3] She further found Employer failed to rebut the presumption and awarded benefits.

[1] Claimant filed four prior claims. He filed his third claim on July 26, 2010, which the district director denied on July 7, 2011 because Claimant failed to establish any element of entitlement. Director's Exhibit 3. Claimant filed a fourth claim, but withdrew it. Director's Exhibit 4. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

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

[3] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R.

On appeal, Employer argues the district director, the Department of Labor (DOL) official who initially processes claims, is an inferior officer who was not appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2.[4] It also asserts the duties performed by the district director create an inherent conflict of interest that violates its due process. It further argues the ALJ erred in finding it liable for the payment of benefits. Employer also argues the ALJ erred in applying a page limit to its Post-Hearing Brief. On the merits, Employer argues the ALJ erred in invoking the Section 411(c)(4) presumption and in finding it not rebutted. Claimant filed a response brief, urging the Board to affirm the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), also filed a response brief, urging the Benefits Review Board to reject most of Employer's arguments, declining to address its arguments on the merits except urging rejection of Employer's argument the ALJ applied the wrong standard at disability causation, and contending the ALJ properly determined Employer is responsible for the payment of 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).

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§725.309(c)(3). The district director denied Claimant's prior claim because he did not establish any element of entitlement; therefore, Claimant had to submit new evidence establishing at least one element of entitlement in order to have his claim reviewed on the merits. 20 C.F.R. §725.309(c).

[4] 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.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West

Due Process Challenge - Page Limit

Employer first argues the ALJ denied it due process by applying a twenty-page limit to its Post-Hearing Brief. Employer's Brief at 9. Employer asserts the page limit was arbitrary and capricious because it required all parties to abide by this limit, without considering Claimant only had to brief entitlement issues and the Director only had to brief liability issues, whereas Employer had to brief both entitlement and liability issues. *Id*. We disagree.

The ALJ's Notice of Hearing provided, "No brief shall exceed twenty (20) pages, except with prior permission of the [ALJ]. If a brief exceeding twenty (20) pages is submitted without prior permission, the excess pages may be returned to the author." August 27, 2018 Notice of Hearing at 4, paragraph 8 (emphasis added). At the Hearing, the ALJ advised the parties to submit briefs by April 9, 2019. Hearing Transcript at 35. The day before the ALJ's deadline, Employer submitted its forty-four page brief, along with a motion to submit the brief in excess of the page limitation, or alternatively to extend the time for it to file a brief within the twenty page limitation. April 15, 2019 Order Denying Motion to Submit Brief in Excess of Page Limitations at 1. The ALJ denied Employer's motions as untimely and returned the pages of the brief past the first twenty pages because she found Employer did not show good cause for exceeding the page limit. *Id*. at 2. The ALJ noted that Employer knew or should have known the day before the brief was due that it would exceed twenty-pages, based on its prior lengthy submissions to the ALJ. *Id*. at 3. Moreover, the ALJ found Employer failed to act with "reasonable" diligence in its request to submit its brief exceeding the twenty-page limit by mailing it only one day before the brief was due. *Id*. at 3-4. Finally, the ALJ denied Employer's request for an extension of time because she concluded it was prejudicial to Claimant to allow Employer the chance to respond to his arguments when Claimant did not equally have that opportunity. *Id*. at 4.

We see no abuse of discretion in the ALJ's procedural rulings and we reject Employer's assertion of a due process violation. Due process requires that a party be given notice and the opportunity to respond. *See Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 807 (4th Cir. 1998). Employer was given notice that its closing argument had a page limitation. *See Lockhart*, 137 F.3d at 807; August 27, 2018 Notice of Hearing at 4, paragraph 8. Moreover, Employer was given the opportunity to exceed the twenty-page limitation with "prior permission." *Id*. Here, however, Employer acted at its own peril by not timely requesting the opportunity to exceed the twenty-page limitation

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Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 9; Hearing Transcript at 19-20.

until one day before its brief was due. We therefore reject Employer's assertion that the ALJ abused her discretion in denying Employer's motions and returning the pages of Employer's closing argument in excess of twenty pages. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc).

Responsible Insurance Carrier

Employer does not challenge the ALJ's findings that Eastern is the correct responsible operator and it was self-insured by Peabody Energy on the last day Eastern employed Claimant; thus we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 711 (1983); *see* 20 C.F.R. §§725.494(e), 725.495, 726.203(a); Decision and Order at 9-13. 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 (the Trust Fund).

Patriot was initially another Peabody Energy subsidiary. Director's Exhibits 9, 34. In 2007, after Claimant ceased his coal mine employment with Eastern, Peabody Energy transferred a number of its other subsidiaries, including Eastern, to Patriot. Director's Exhibit 34. That same year, Patriot was spun off as an independent company. *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 Eastern, Patriot later went bankrupt and can no longer provide for those benefits. Director's Exhibits 26-28. Neither Patriot's self-insurance authorization nor any other arrangement, however, relieved Peabody Energy of liability for paying benefits to miners last employed by Eastern when Peabody Energy owned and provided self-insurance to that company, as the ALJ held. Decision and Order at 9-13.

Employer raises several arguments 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. Employer's Brief at 10-45. 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[6]; (2) the DOL released Peabody Energy from

[6] Employer first challenged the district director's authority nearly a year and a half after the claim had already been transferred to the ALJ, and only after the ALJ had issued an order denying its request to subpoena Mr. Breeskin, Mr. Benedict, Mr. Chance, and an unnamed DOL representative about their knowledge of its arguments regarding its liability. December 6, 2018 Order Denying Employer's Subpoena Request at 7; Employer's Request

liability; (3) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; (4) before transferring liability to Peabody Energy, the DOL must establish it exhausted any available funds from the security bond Patriot gave to secure its self-insurance status; (5) the Director is equitably estopped from imposing liability on the company; (6) the regulatory scheme whereby the district director determines the liability of a responsible carrier and its operator, while also administering the Trust Fund, creates a conflict of interest that violates its due process right to a fair hearing; 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 Patriot's financial health. *Id*. Employer 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*. at 27, 28, 32.

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.*, 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.[7] We also reject Employer's arguments with regard to the exclusion of evidence for the reasons set forth below.

Employer asserts the ALJ erred in excluding liability evidence submitted as Employer's Exhibits 1-7 and the depositions of Messrs. David Benedict and Steven Breeskin, two former Department of Labor (DOL) Division of Coal Mine Workers' Compensation officials. Employer's Brief at 4-5. In *Bailey*, the same documentary evidence and depositions were admitted and the Board held 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-

for Reconsideration dated December 11, 2018 at 5. Employer also raised the issue in its Post-Hearing Brief to the ALJ on April 11, 2019. Employer's Post-Hearing Brief at 6-12.

[7] Contrary to Employer's additional argument, the ALJ did not rely on 20 C.F.R. §725.493(b)(2) to determine Peabody Energy is liable. Rather, she determined Peabody Energy is liable for this claim as Eastern's self-insurer, and not as the responsible operator. *Howard*, BLR , BRB No. 20-0229 BLA, slip op. at 14 n.19; Decision and Order at 9-13; Employer's Brief at 46-47.

insurance program.[8] *Bailey*, BLR , BRB No. 20-0094 BLA at 15 n. 17. Given the Board has previously held the documentary and deposition evidence do not support Employer's argument, any error in excluding them here is harmless.[9] *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). Thus, we affirm the ALJ's determination that Eastern and Peabody Energy are the responsible operator and carrier, respectively, and are liable for this claim.[10]

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

To invoke the Section 411(c)(4) presumption, a claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable and gainful work. *See* 20 C.F.R. §718.204(b)(1). Claimant may establish total disability based on qualifying[11] pulmonary function studies, arterial blood gas studies, evidence of

[8] This determination was necessary to the conclusion that Peabody was liable for benefits. *Bailey*, BLR , BRB No. 20-0094 BLA, slip op. at 15 n. 17.

[9] The ALJ excluded Employer's Exhibits 1 through 7 because she found Employer did not submit them to the district director or establish extraordinary circumstances for failing to do so. December 6, 2018 Order Denying Employer's Submission of Liability Documentation at 6-7; February 19, 2019 Order Denying Employer's Request for Reconsideration at 2-3; *see* 20 C.F.R. §§725.414(d), 725.456(b)(1); 65 Fed. Reg. 79,989 (Dec. 20, 2000). This was proper. *Bailey*, BLR , BRB No. 20-0094 BLA, slip op. at 11-13; *Graham*, BLR , BRB No. 20-0221 BLA, slip op. at 6-7. The ALJ excluded the depositions of Messrs. Benedict and Breeskin because, while Employer timely identified these witnesses, it did not establish extraordinary circumstances to warrant the admission of their depositions. February 19, 2019 Order Denying Employer's Request for Reconsideration of Subpoena Request Denial at 9.

[10] Employer states that it wants to "preserve" its argument that its due process rights were violated because the ALJ "cut off" discovery "prematurely." Employer's Brief at 45-46. Employer neither asks the Board to address this issue nor sets forth any argument that would permit our review. *See Cox v. Director*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); 20 C.F.R. §802.211(b).

[11] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R.

pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions.[12] 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 9 BLR 1-27, 1-28-29 (1988); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). The ALJ found Claimant established total disability based on the medical opinion evidence and the evidence overall. Decision and Order at 44.

Medical Opinion Evidence/Evidence as a Whole

The ALJ considered four medical opinions in determining whether Claimant is totally disabled. Dr. Shamma-Othman conducted the DOL complete pulmonary evaluation on July 22, 2016, and opined Claimant's respiratory impairments on the pulmonary function and blood studies he obtained would prevent Claimant from performing his usual coal mine work.[13] Director's Exhibits 19 at 4; 24 at 2. Dr. Raj examined Claimant on October 19 and November 16, 2017, and opined he is totally disabled based on the abnormal pulmonary function studies reflecting a moderate obstructive defect, resting blood gas studies reflecting severe hypoxemia, and Claimant's becoming short of breath when walking uphill. Claimant's Exhibits 1 at 4; 2 at 4.

Dr. Zaldivar examined Claimant on March 28, 2018, and opined he lacks the respiratory capacity to perform the heavy exertional requirements of his last coal mine job due to a reduction in his FEV1 value on pulmonary function testing. Employer's Exhibits 12 at 7; 17 at 2. Dr. Rosenberg evaluated Claimant on May 15, 2018, and opined, from a pulmonary perspective, he can return to his usual coal mine work requiring lifting twenty-

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Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[12] The ALJ found the pulmonary function study and blood gas study evidence did 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), (ii), (iii); Decision and Order at 36 n.53, 38, 40. She also found Claimant did not establish complicated pneumoconiosis and, thus, could not invoke the irrebuttable presumption that he is totally disabled due to pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 35.

[13] The ALJ found Claimant's usual coal mine work as a tipple employee was heavy work because it required constant hand shoveling of coal weighing at least ten pounds and up to fifty pounds. Decision and Order at 8-9. Employer does not challenge that finding; thus we affirm it. *See Skrack*, 6 BLR at 1-711.

five to thirty pounds, based on the abnormal blood gas studies reflecting hypoventilation due to obesity and the pulmonary function studies reflecting variable obstruction not due to coal mine dust exposure. Employer's Exhibits 13 at 6-7; 18 at 19-21, 27-29.

The ALJ found Claimant established total disability based on a preponderance of the medical opinion evidence, and the evidence as a whole. Decision and Order at 40-44.

Employer contends the ALJ erred in finding the opinions of Drs. Shamma-Othman and Raj reasoned and documented because they did not review the more recent non-qualifying pulmonary function studies and blood gas studies obtained by Drs. Zaldivar and Rosenberg. Employer's Brief at 6-9. We disagree.

The ALJ accurately found that the opinions of Drs. Raj and Shamma-Othman corroborate the opinion of Employer's own expert, Dr. Zaldivar, who relied on non-qualifying pulmonary function study values to find Claimant has a totally disabling respiratory impairment given the exertional requirements of his last coal mine job.[14] Decision and 40-44. The ALJ rationally gave Drs. Raj's and Zaldivar's opinions significant weight because he found they had an accurate understanding of Claimant's heavy lifting requirements in that he was constantly required to hand-shovel coal, weighing at least ten pounds and as much as fifty pounds. *See Lane v. Union Carbide Corp*., 105 F.3d 166, 172 (4th Cir. 1997); *Eagle v. Armco, Inc.*, 943 F.2d 509, 512 (4th Cir. 1991) (a physician who asserts a claimant is capable of performing assigned duties should state his knowledge of the physical efforts required and relate them to the miner's impairment); *Walker v. Director, OWCP*, 927 F.2d 181, 184 (4th Cir. 1991); Decision and Order at 8-9, 42; Claimant's Exhibits 1 at 1, 4; 2 at 1, 4; Employer's Exhibit 17 at 2.

[14] Dr. Zaldivar testified during his February 18, 2019 deposition that Claimant is not totally disabled if his job required shoveling coal weighing approximately ten pounds. Employer's Exhibit 27 at 29-30, 34-36, 44. The ALJ permissibly rejected Dr. Zaldivar's testimony because he relied on an erroneous premise that Claimant's last coal mine work required lifting up to ten pounds when it actually required lifting up to fifty pounds. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). Thus, we affirm the ALJ's crediting of Dr. Zaldivar's initial opinion that Claimant is totally disabled as it is consistent with the exertional requirements of Claimant's usual coal mine work. The ALJ also noted Dr. Raj correctly identified the exertional requirements of Claimant's usual coal mine work as requiring Claimant to lift up to fifty pounds at any given time. Decision and Order at 42; Claimant's Exhibits 1 at 1, 4; 2 at 1, 4

Additionally, we reject Employer's contention that the ALJ erred in discrediting Dr. Rosenberg's opinion that Claimant is not totally disabled. The ALJ permissibly found Dr. Rosenberg's opinion unpersuasive to the extent he focused on *the cause* of Claimant's pulmonary function and blood gas study impairments, rather than whether those impairments were totally disabling. *See W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 698 (4th Cir. 2018); Decision and Order at 43 ("Dr. Rosenberg's conclusion that the Claimant is not totally disabled from a pulmonary/respiratory perspective is tied to his view on the etiology of the abnormal but still not qualifying ABG and PFS values."); Employer's Exhibits 13 at 6-7; 18 at 19-21, 27-29.

As the trier of fact, the ALJ determines the credibility of the evidence and whether a physician's opinion is adequately documented and reasoned. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 (4th Cir. 1999). Employer's arguments are a request that the Board 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 it is supported by substantial evidence, we affirm the ALJ's finding that Claimant established total disability based on the credible medical opinions at 20 C.F.R. §718.204(b)(2)(iv), and her overall conclusion that Claimant has a totally disabling respiratory or pulmonary impairment.[15] Thus, we affirm the ALJ's conclusions that Claimant invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §725.309(c); *see Eastern Associated Coal Corp. v. Director, OWCP* [*Toler*], 805 F.3d 502, 511 (4th Cir. 2015).

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[16] or "no part of

[15] Employer argues the ALJ failed to properly explain why she used a median height in determining the qualifying nature of the pulmonary function studies. Employer's Brief at 3. We need not address this assertion as Employer does not explain how the ALJ's use of the median height affects the outcome of the case. *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, 1-1278 (1984); Decision and Order at 36-38. In any event, the ALJ permissibly concluded that Claimant is totally disabled based on the medical opinions without regard to whether the pulmonary function studies were qualifying. Decision and Order at 40-44.

[16] "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

[his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer failed to establish rebuttal by either method.[17]

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish Claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A). The United States Court of Appeals for the Sixth Circuit requires Employer establish the miner's "coal mine employment did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). "An employer may prevail under the not 'in part' standard by showing that coal dust exposure had no more than a *de minimis* impact on the miner's lung impairment." *Id.* at 407 (citing *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014)).

The ALJ found the opinions of Employer's experts, Drs. Zaldivar and Rosenberg, inadequately reasoned and insufficient to satisfy Employer's burden of proof. Decision and Order at 44-53. Employer claims the ALJ applied the wrong "causation" standard. Employer's arguments are without merit. Employer's Brief at 3-4.

The ALJ correctly stated the standard for disproving legal pneumoconiosis, explaining Employer must establish by a preponderance of the evidence that Claimant does not have a lung disease "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 35, *citing* 20 C.F.R. §718.201(b). The ALJ found Drs. Zaldivar's and Rosenberg's opinions unpersuasive that coal mine dust exposure was not a significant contributing factor in Claimant's disabling respiratory impairment. Decision and Order at 51-53. Because the ALJ applied the correct legal standard and Employer does not allege any error regarding the ALJ's rationale for her credibility determinations, we affirm them and her conclusion that Employer did not

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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).

[17] We affirm, as unchallenged, the ALJ's finding that Employer did not disprove clinical pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order at 49, 51-53; Employer's Brief at 3-4.

disprove legal pneumoconiosis. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Skrack*, 6 BLR at 1-711; Decision and Order at 51-53.

Disability Causation

To disprove disability causation, Employer must establish "no part of the [m]iner's respiratory or pulmonary total disability was caused by pneumoconiosis." 20 C.F.R. §718.305(d)(1)(ii). Contrary to Employer's contention, the ALJ also correctly identified this legal standard and found Drs. Zaldivar's and Rosenberg's opinions on disability causation unpersuasive because they did not diagnose legal pneumoconiosis. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order at 53-54. As Employer does not challenge the ALJ's credibility findings, we affirm them. *See Skrack*, 6 BLR at 1-711. We therefore affirm the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption by establishing no part of Claimant's respiratory impairment was due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 53-54.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge