

U.S. Department of Labor

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



BRB No. 25-0151 BLA

MICHAEL H. STANLEY )  
 )  
 Claimant-Respondent )  
 )  
 v. )  
 )  
 ISLAND CREEK COAL COMPANY c/o )  
 CONSOL ENERGY )  
 )  
 Employer-Petitioner )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest )

**NOT-PUBLISHED**

DATE ISSUED: 04/13/2026

DECISION and ORDER

Appeal of the Decision and Order on Remand Granting Benefits of Heather C. Leslie, Administrative Law Judge, United States Department of Labor.

Jason A. Mullins (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

Before: GRESH, Chief Administrative Appeals Judge, JONES and ULMER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Heather C. Leslie's Decision and Order on Remand Granting Benefits (2021-BLA-05283) rendered on a claim filed on September 9, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act). This case is before the Benefits Review Board for a second time.

In her initial Decision and Order Granting Benefits, the ALJ credited Claimant with twenty-five years of qualifying coal mine employment and found he established a totally disabling respiratory impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,<sup>1</sup> 30 U.S.C. §921(c)(4). She further found Employer did not rebut the presumption and awarded benefits.

In consideration of Employer's appeal, the Board affirmed the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); *Stanley v. Island Creek Coal Co.*, BRB No. 23-0336 BLA, slip op. at 2 n.2 (Aug. 27, 2024) (unpub.); see 20 C.F.R. §718.305. However, the Board vacated the ALJ's conclusion that Employer failed to rebut the presumption by establishing Claimant does not have legal pneumoconiosis because she erred in her consideration of Dr. McSharry's opinion on the issue. 20 C.F.R. §718.305(d)(1)(i); *Stanley*, BRB No. 23-0336 BLA, slip op. at 4. Additionally, the Board held the ALJ did not address whether Employer rebutted the presumption by establishing "no part of Claimant's respiratory or pulmonary total disability is caused by pneumoconiosis." 20 C.F.R. §718.305(d)(1)(ii); *Stanley*, BRB No. 23-0336 BLA, slip op. at 4. Thus, the Board vacated the ALJ's finding that Employer failed to rebut the Section 411(c)(4) presumption and remanded the case for further consideration. *Stanley*, BRB No. 23-0336 BLA, slip op. at 4-5.

On remand, the ALJ again found Employer did not rebut the Section 411(c)(4) presumption. She therefore again awarded benefits.

In its current appeal, Employer argues the ALJ erred in finding it did not rebut the presumption of disability causation. Neither Claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

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

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<sup>1</sup> Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has 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); see 20 C.F.R. §718.305.

applicable law.<sup>2</sup> 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,<sup>3</sup> or “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 failed to rebut the presumption. Decision and Order on Remand at 8.

Employer relies on the medical opinion of Dr. McSharry, who diagnosed asthma unrelated to coal mine dust exposure, to disprove the existence of legal pneumoconiosis.<sup>4</sup> Employer’s Exhibit 11 at 3-4. The ALJ discredited his opinion and found it entitled to little weight. Decision and Order on Remand at 8. We affirm this credibility determination as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Thus, having discredited Dr. McSharry’s opinion, the only opinion supportive of Employer’s burden, the ALJ found Employer failed to rebut the presumption by disproving the existence of legal pneumoconiosis. Decision and Order on Remand at 8; *see* 20 C.F.R. §718.305(d)(1)(i).

Employer does not challenge the ALJ’s finding that it did not rebut the presumption of legal pneumoconiosis; thus, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and

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<sup>2</sup> 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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director’s Exhibit 3.

<sup>3</sup> “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).

<sup>4</sup> The Board previously affirmed the ALJ’s finding that Dr. Fino’s opinion does not aid Employer in its burden to disprove legal pneumoconiosis. *Stanley v. Island Creek Coal Co.*, BRB No. 23-0336 BLA, slip op. at 3-4 (Aug. 27, 2024) (unpub.).

Order on Remand at 8. Rather, it asserts remand is required because the ALJ did not specifically address whether Employer rebutted the presumption of disability causation. Employer's Brief at 3-4. We are not persuaded.

Employer may rebut the Section 411(c)(4) presumption by establishing that “no part of [Claimant'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). Employer relies on Dr. McSharry's opinion to disprove disability causation.<sup>5</sup> Dr. McSharry's disability causation opinion cannot assist Employer in its burden, however, because he did not diagnose legal pneumoconiosis, contrary to the ALJ's finding that Claimant has the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995) (such an opinion “may not be credited at all” on disability causation absent “specific and persuasive reasons” for concluding the physician's view on disability causation is independent of his or her erroneous opinion on pneumoconiosis); Decision and Order at 21.

Except to note the ALJ did not render any specific findings regarding disability causation, Employer does not advance any arguments why the evidence supports rebuttal under 20 C.F.R. §718.305(d)(1)(ii). Employer's Brief at 4. Because Employer has submitted no evidence that supports its burden, it cannot, as a matter of law, disprove disability causation. *See* 20 C.F.R. §718.305(d)(1)(ii). Any error by the ALJ in failing to specifically address disability causation was, therefore, 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, 1-1278 (1984); *see also Youghioghney & Ohio Coal Co. v. Webb*, 49 F.3d 244, 249 (6th Cir. 1995) (“If the outcome of a remand is foreordained, we need not order one.”). Consequently, we affirm the ALJ's findings that Employer did not rebut the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305.

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<sup>5</sup> Employer also submitted the opinion of Dr. Fino. Employer's Exhibits 1, 10. Dr. Fino did not specifically address disability causation, and his opinion thus cannot assist Employer in meeting its burden. Furthermore, even had Dr. Fino provided a disability causation opinion, such an opinion could not be credited, as Dr. Fino opined Claimant is not totally disabled, contrary to the ALJ's finding that Claimant established a totally disabling respiratory impairment. Decision and Order at 9; *see Scott v. Mason Coal Co.*, 289 F.3d 263, 269 (4th Cir. 2002).

Accordingly, we affirm the ALJ's Decision and Order on Remand Granting Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge

GLENN E. ULMER  
Administrative Appeals Judge