



BRB No. 25-0245 BLA

ARTHUR P. BLEVINS

Claimant-Respondent

v.

CLINCHFIELD COAL COMPANY

Employer-Petitioner

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 08/28/2026

DECISION and ORDER

Appeal of the Decision and Order on Remand Awarding Benefits of Carrie Bland, Associate Chief Administrative Law Judge, Department of Labor.

Joseph E. Wolfe, Donna E. Sonner, and Cameron Blair (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

Kendra R. Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

David Casserly (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; Olgamaris Fernandez, Acting Deputy Associate Solicitor; William M. Bush, Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals Associate Chief Administrative Law Judge (ALJ) Carrie Bland's Decision and Order on Remand Awarding Benefits (2019-BLA-05171) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act). This case involves a miner's subsequent claim filed on January 20, 2017,¹ and is before the Benefits Review Board a second time.²

In her initial Decision and Order Denying Benefits, the ALJ found Claimant established 14.45 years of underground coal mine employment and therefore could not invoke the rebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).³ Further finding Claimant did not establish total disability, the ALJ denied benefits.⁴ 20 C.F.R. §718.204(b)(2).

Pursuant to Claimant's appeal without representation, the Board held the ALJ erred in subtracting 165 days from Claimant's length of coal mine employment due to Employer's assertions at the formal hearing that a strike affecting Claimant's employment began April 5, 1989, and lasted until February 21, 1990. *See Blevins v. Clinchfield Coal*

¹ Claimant filed three prior claims, each of which were denied. Director's Exhibit 1 at 4-5, 128-29, 301-02. The district director denied Claimant's most recent, previous claim on July 10, 2013, for failure to establish total disability. *Id.* at 4-5.

² Acting Chief Administrative Appeals Judge Jonathan Rolfe is substituted on the panel for Administrative Appeals Judge Greg J. Buzzard, who is no longer a member of the Board.

³ 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 or pulmonary impairment. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305.

⁴ 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)(1); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the district director denied Claimant's most recent, previous claim for failure to establish total disability, Claimant had to submit new evidence establishing total disability to obtain a review of his current claim on the merits. *See White*, 23 BLR at 1-3; Director's Exhibit 1 at 4-5.

Co., BRB No. 22-0212 BLA, slip op. at 4 (May 8, 2023) (unpub.). The Board explained “there is no documentary evidence or sworn witness testimony to support when the strike occurred or for how long it extended.” *Id.* at 5. It therefore reversed the ALJ’s subtraction of this time to hold that Claimant established at least fifteen years of coal mine employment. *Id.* The Board further affirmed the ALJ’s findings that Claimant’s usual coal mine employment required heavy exertion, the pulmonary function study results are in equipoise, the blood gas studies are non-qualifying,⁵ and the record contains no evidence of cor pulmonale with right-sided congestive heart failure. *Id.* at 5-7; *see* 20 C.F.R. §718.204(b)(2)(i)-(iii). But the Board vacated the ALJ’s findings that the total disability diagnoses of Drs. Forehand and Fino are not well reasoned because she focused her analysis entirely on whether they reached conclusions consistent with her finding that the pulmonary function study results were in equipoise and did not adequately consider whether each physician provided a reasoned opinion that Claimant has an impairment that precludes the performance of his usual coal mine employment. *Blevins*, BRB No. 22-0212, slip op. at 8. The Board therefore vacated the ALJ’s denial of benefits and remanded the case for further consideration. *Id.* at 8-9.

Pursuant to Employer’s timely motion for reconsideration, the Board, in a split decision, vacated its holding that Claimant established fifteen years of qualifying coal mine employment because it had mischaracterized the record in indicating that there was no documentary evidence to support when the strike occurred or for how long it extended, and the ALJ did not consider all of the relevant evidence on the length of Claimant’s coal mine employment. *Blevins v. Clinchfield Coal Co.*, BRB No. 22-0212 BLA, slip op. at 3 (Jan. 30, 2024) (Buzzard, J., dissenting) (unpub.) (decision on recon.). Thus, the Board also vacated the ALJ’s length of coal mine employment determination and remanded the case for the ALJ to consider how many years of coal mine employment Claimant established based on all relevant evidence of record. *Id.* at 3-4.

On remand, the ALJ credited Claimant with 15.08 years of underground coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. Decision and Order on Remand at 5-6. She therefore found Claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c) and invoked the Section 411(c)(4) presumption. *Id.* at 6; *see* 20 C.F.R. §718.305. The ALJ further found Employer failed to rebut the presumption by establishing that Claimant did not have pneumoconiosis or that no part of his total disability was caused

⁵ A “qualifying” pulmonary function study or arterial blood gas study yields results that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A “non-qualifying” study exceeds those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

by pneumoconiosis. Decision and Order on Remand at 7-10. She therefore awarded benefits. *Id.* at 11.

On appeal, Employer challenges the ALJ's findings that Claimant established at least fifteen years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment and, therefore, invoked the Section 411(c)(4) presumption. Employer further argues the ALJ erred in finding it failed to rebut the presumption by disproving clinical and legal pneumoconiosis or establishing that no part of Claimant's total disability was caused by pneumoconiosis. Claimant responds in support of the award. The Director, Office of Workers' Compensation Programs, filed a limited response addressing only the length of Claimant's coal mine employment, arguing the ALJ erred in crediting days Claimant recuperated from a work-related injury in 1989 as working days and requesting remand for further analysis on that issue.

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.⁶ 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, 361-62 (1965).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mine employment or “substantially similar” surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden to establish the number of years he worked in coal mine employment. *See Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1710-11 (1985). The Board will uphold an ALJ's determination if it is based on a reasonable method of calculation that is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986). The United States Court of Appeals for the Fourth Circuit has recently held that a miner need only show he or she “worked 125 working days within a calendar year (or partial periods totaling one year) to establish a year of employment.” *Baldwin v. Director, OWCP*, 170 F.4th 273, 282 (4th Cir. 2026).

The ALJ incorporated the factual findings concerning Claimant's coal mine employment history that she made in her initial Decision and Order. Decision and Order on Remand at 4-5; 2022 Decision and Order at 6-9. Based on Employer's employment records identifying the start and end dates for each period of Claimant's coal mine

⁶ The Board has applied the law of the United States Court of Appeals for the Fourth Circuit as Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 14.

employment, the ALJ found Claimant worked 90 days in 1978, 170 days in 1979, 102 days in 1980, 247 days in 1981, 257 days in 1982, and 170 days in 1994. 2022 Decision and Order at 9. She also found Claimant was continuously employed throughout 1983 to 1993, subject to the disputed strike that spanned April 5, 1989, to February 21, 1990. *Id.* After reconsidering the strike evidence as instructed by the Board, the ALJ found Claimant had worked 130 days in 1989 and 217 days in 1990. Decision and Order on Remand at 5. She ultimately credited Claimant with 15.08 years of coal mine employment. *Id.*

Employer challenges the ALJ's calculation, arguing that she improperly credited Claimant with a full 365-day calendar year employment relationship in 1989 and 1990, and also erred in finding Claimant established at least 125 working days in 1989. Employer's Brief at 4-12. The Director likewise contends the ALJ erred in crediting days Claimant recuperated from a work-related injury in 1989 as working days. Director's Brief at 2-3. However, Employer's contention that Claimant must establish a 365-day employment relationship in addition to 125 working days is foreclosed by *Baldwin*. The Court of Appeals for the Fourth Circuit held that 20 C.F.R. §725.101(a)(32) requires no such additional employment-relationship showing; a miner who establishes at least 125 working days during a calendar year has established one year of coal mine employment for purposes of the Act. *Baldwin*, 170 F.4th at 282. Employer does not challenge the ALJ's determination to credit Claimant with nine full years of employment in 1983 to 1988 and 1991 to 1993. 20 C.F.R. §725.101(a)(32)(ii); see *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Further, the ALJ found Claimant worked more than 125 working days in each of the following years: 1979, 1981, 1982, 1990, and 1994, which amounts to an additional five full years of coal mine employment under *Baldwin*. She also found Claimant worked 90 days in 1978 and 102 days in 1980, entitling him to fractional credit of 0.72 and 0.816 years, respectively. See 20 C.F.R. §725.101(a)(32)(i). Because these periods total 15.54 years of coal mine employment even without any credit for 1989, we need not reach Employer's or the Director's challenges to the ALJ's consideration and treatment of days Claimant was absent for a work-related injury or the 1989 strike. Even assuming Employer is correct that Claimant is entitled to no coal mine employment credit for 1989, the ALJ's remaining factual findings establish more than fifteen years under the standard set forth in *Baldwin*. We therefore affirm that Claimant established at least fifteen years of coal mine employment. *Baldwin*, 170 F.4th at 282; Decision and Order on Remand at 5.

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

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical

opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

The ALJ reconsidered the medical opinions of Drs. Forehand and Fino, both of whom opined Claimant is totally disabled.

Dr. Forehand conducted the Department of Labor's complete pulmonary evaluation of Claimant on March 9, 2017. Director's Exhibit 16. He diagnosed Claimant with a "significant" obstructive impairment that precludes the physical demands of his last coal mining job and his ability to tolerate additional coal mine dust exposure. *Id.* at 6. Citing Claimant's FEV1 result of fifty-three percent on pulmonary function testing, Dr. Forehand explained Claimant would not have the "wind," or ability to increase ventilation in response to increased physical activity, necessary to perform his usual coal mine work. *Id.*

Dr. Fino examined Claimant on December 13, 2017. Director's Exhibit 22. Based on the pulmonary function study he obtained, Dr. Fino diagnosed a moderate and variable respiratory impairment and stated that from a respiratory standpoint Claimant is disabled from returning to his last coal mine employment, which involved varying degrees of heavy and very heavy manual labor. *Id.* at 4, 11. In his subsequent deposition on May 27, 2021, having reviewed all of the pulmonary function study evidence of record, Dr. Fino reiterated that Claimant is totally disabled. Employer's Exhibit 5 at 26. He explained Claimant's pre-bronchodilator results on pulmonary function testing are disabling and, while Claimant can achieve non-disabling values after administration of bronchodilators, "he's never going to stay bronchodilated all the time, so he's going to have lower lung function which would prevent him from returning to the mines." *Id.* at 26-27.

The ALJ found Drs. Forehand's and Fino's disability opinions well-reasoned because they understood the heavy exertional requirements of Claimant's usual coal mine work and credibly opined he lacked the pulmonary capacity to return to that work. Decision and Order on Remand at 6. She therefore accorded both opinions full probative weight and found they establish total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.* Considering the like and unlike evidence together, while acknowledging the pulmonary function and blood gas studies did not establish total disability, the ALJ found the medical opinions entitled to determinative weight and concluded Claimant established total disability overall. *Id.*

Employer contends the ALJ erred in crediting either physician's opinion as reasoned because neither one adequately reconciled his disability diagnosis with the later nonqualifying pulmonary function studies. Employer's Brief at 12-15. It further argues

Dr. Forehand's statement that Claimant could not tolerate additional coal-mine dust exposure amounts only to a recommendation against further exposure rather than an assessment that Claimant lacked the respiratory capacity to perform his usual work. *Id.*

We reject Employer's arguments. Contrary to Employer's contention, the ALJ did not rely on Dr. Forehand's recommendation against further coal mine dust exposure as the basis for finding his opinion establishes total disability. Rather, she credited his separate conclusion that Claimant lacked sufficient residual ventilatory capacity to meet the heavy exertional requirements of his usual coal mine employment. Decision and Order on Remand at 6; Director's Exhibit 16 at 6.

We also reject Employer's contention that the physicians failed to account for the later nonqualifying pulmonary function studies. The ALJ specifically noted Dr. Forehand recognized that the pulmonary function testing results did not meet the regulatory disability criteria but nevertheless explained that Claimant lacked sufficient "wind," or residual ventilatory capacity, to perform his usual coal mine work. Decision and Order on Remand at 6. She further noted Dr. Fino reviewed the pulmonary function study evidence and explained that, although Claimant achieved non-disabling values after bronchodilator administration, his lower pre-bronchodilator lung function would prevent him from returning to the mines because he would not remain bronchodilated continuously. *Id.*; Employer's Exhibit 5 at 26-27. Thus, the ALJ permissibly found both physicians adequately explained their total disability opinions notwithstanding the nonqualifying pulmonary function testing. 20 C.F.R. §718.204(b)(2)(iv). We therefore affirm that Claimant established total disability based on the medical opinion evidence. *See Eagle v. Armco, Inc.*, 943 F.2d 509, 512 n.4 (4th Cir. 1991).

We likewise reject Employer's contention that the ALJ failed to weigh the evidence as a whole. She expressly acknowledged that the pulmonary function and arterial blood gas studies did not independently establish total disability, but found the medical opinions entitled to determinative weight because the physicians considered the diagnostic testing together with Claimant's clinical findings, medical and employment histories, symptoms, and the heavy exertional requirements of his usual coal mine work. Decision and Order on Remand at 6. Thus, the ALJ considered the relevant contrary evidence and adequately explained why she found the medical opinions outweighed it. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 529 (4th Cir. 1998). Employer's arguments at total disability amount to a request to reweigh the evidence, which we are not empowered to do. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). We thus affirm the ALJ's finding that Claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2) and therefore also established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c).

Because we have affirmed the ALJ's findings that Claimant established at least fifteen years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment, we affirm that Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305.

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,⁷ 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); *Wolf Run Mining Co. v. Director, OWCP [Baisden]*, 172 F.4th 304, 308 (4th Cir. 2026); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015). The ALJ found Employer failed to establish rebuttal by either method.⁸ Decision and Order on Remand at 8-9.

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.” See 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *W. Va. CWP Fund v. Director, OWCP [Smith]*, 880 F.3d 691, 695 (4th Cir. 2018); *Minich*, 25 BLR at 1-155 n.8.

Employer relies on Dr. Fino's opinion that Claimant does not have legal pneumoconiosis.⁹ Director's Exhibit 22; Employer's Exhibits 2, 5. The ALJ found his

⁷ “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 that is 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).

⁸ The ALJ found Employer failed to disprove that Claimant has both clinical and legal pneumoconiosis. Decision and Order on Remand at 8-9.

⁹ Dr. Forehand's opinion does not assist Employer in rebutting the presumption because he diagnosed Claimant with legal pneumoconiosis. Director's Exhibits 16, 25.

opinion poorly reasoned and entitled to no weight and therefore insufficient to satisfy Employer's burden to establish that Claimant does not have legal pneumoconiosis. Decision and Order on Remand at 9.

Employer asserts the ALJ applied the wrong legal standard and did not adequately explain her credibility determinations. Employer's Brief at 17-26. We disagree.

Initially, we reject Employer's contention that the ALJ improperly required Dr. Fino either to "rule out" coal mine dust exposure or establish it had "absolutely no effect" in Claimant's respiratory or pulmonary impairment in order to disprove legal pneumoconiosis. Employer's Brief at 25-26. Contrary to Employer's characterization, the ALJ specifically required Dr. Fino to adequately explain why Claimant's asthma and partially reversible obstructive impairment is not "significantly related to, or substantially aggravated by, dust exposure in coal mine employment," consistent with the definition of legal pneumoconiosis at 20 C.F.R. §718.201(a)(2), (b). Decision and Order on Remand at 8; *see Baisden*, 172 F.4th at 313-14; *Smith*, 880 F.3d at 699. Further, as explained below, the ALJ discredited Dr. Fino's opinion because she found it was not well-reasoned, not because it failed to meet a heightened legal standard. Decision and Order on Remand at 9.

Dr. Fino examined Claimant on December 13, 2017, and reviewed his medical records. Director's Exhibit 22; Employer's Exhibits 2, 5. He opined that Claimant has a disabling obstructive ventilatory impairment caused by asthma and unrelated to coal mine dust exposure. Director's Exhibit 22 at 11. Dr. Fino excluded coal mine dust exposure as a causative factor for Claimant's impairment, in part, because Claimant had complete reversibility of his pulmonary function study results in 2007 and variable reversibility at the time of Dr. Fino's 2017 evaluation. Director's Exhibit 22 at 10-11; Employer's Exhibit 5 at 26-33. In addition, Dr. Fino explained that although coal dust exposure can exacerbate asthma, no scientific evidence indicates it can cause or permanently aggravate asthma. Director's Exhibit 22 at 11; Employer's Exhibit 5 at 27.

The ALJ permissibly considered the extent to which Dr. Fino's categorical view that asthma cannot be caused or permanently aggravated by coal mine dust exposure was consistent with the medical principles accepted by the Department of Labor in promulgating the regulations. Decision and Order on Remand at 9; 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000); *see Baisden*, 172 F.4th at 312-13. The preamble to the 2001 revised regulations recognizes asthma as a form of chronic obstructive pulmonary disease, while the regulations provide that a chronic obstructive pulmonary disease significantly related to, or substantially aggravated by, coal mine dust exposure constitutes legal

We therefore need not reach Employer's assertion that Dr. Forehand's diagnosis is not well-reasoned. Employer's Brief at 23-24.

pneumoconiosis. 20 C.F.R. §718.201(a)(2), (b); 65 Fed. Reg. at 79,939. The ALJ further permissibly found Dr. Fino’s reliance on significantly older pulmonary function studies as a reason to exclude legal pneumoconiosis inconsistent with the regulations which recognize pneumoconiosis “as a latent and progressive disease.” 20 C.F.R. §718.201(c); *see* 65 Fed. Reg. at 79,971 (“[I]t is clear that a miner who may be asymptomatic and without significant impairment at retirement can develop a significant pulmonary impairment after a latent period.”); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be both latent and progressive may be discredited); Decision and Order on Remand at 9. Moreover, the ALJ noted that Dr. Fino acknowledged only partial reversibility on Claimant’s December 2017 pulmonary function testing but did not explain what he attributed the irreversible portion of the impairment to. Decision and Order on Remand at 9. She permissibly found that omission undermined his conclusion that coal mine dust played no role in Claimant’s obstructive disease. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013).

Because the ALJ permissibly discredited Dr. Fino’s opinion, we affirm her determination that Employer failed to rebut the Section 411(c)(4) presumption by establishing Claimant does not have legal pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order on Remand at 9. Employer’s failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis.¹⁰ 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established “no part of the miner’s respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201.” 20 C.F.R. §718.305(d)(1)(ii); Decision and Order on Remand at 10. Contrary to Employer’s argument, the ALJ permissibly discounted Dr. Fino’s opinion regarding the cause of Claimant’s respiratory or pulmonary disability because he did not diagnose legal pneumoconiosis, contrary to her determination that Employer failed to disprove the disease.¹¹ *See Epling*, 783 F.3d at 504-05 (causation opinion that erroneously

¹⁰ Because we affirm the ALJ’s findings on legal pneumoconiosis, we need not address Employer’s contention that the ALJ erred in finding it did not disprove clinical pneumoconiosis. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order on Remand at 7-8; Employer’s Brief at 15-17.

¹¹ Dr. Fino did not address whether legal pneumoconiosis caused Claimant’s respiratory or pulmonary disability independent of his conclusion that Claimant did not have the disease. Director’s Exhibit 22; Employer’s Exhibits 2, 5.

fails to diagnose pneumoconiosis may not be credited at all absent “specific and persuasive reasons” that the physician’s judgment does not rest upon the misdiagnosis, in which case the opinion is entitled to at most “little weight”); Decision and Order on Remand at 10; Employer’s Brief at 26-28. We therefore affirm the ALJ’s finding that Employer failed to establish no part of Claimant’s respiratory or pulmonary total disability was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

Accordingly, we affirm the ALJ’s Decision and Order on Remand Awarding Benefits.

SO ORDERED.

JONATHAN ROLFE, Acting Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge