U.S. Department of Labor

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

BRB No. 24-0257 BLA

EDWARD HOWARD MCPHERSON Claimant-Respondent v. ARCH OF ILLINOIS, INCORPORATED and Self-Insured Thru ARCH COAL, INCORPORATED Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 02/06/2026 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Willow Eden Fort, Administrative Law Judge, United States Department of Labor.

Austin P. Vowels and David Littrell III (Vowels Law PLC), Henderson, Kentucky, for Claimant.

Michael A. Pusateri (Greenberg Traurig LLP), Washington, D.C., for Employer and its Carrier.

Amanda Torres (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for

Administrative Appeals), Washington, D.C., for the Acting Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Willow Eden Fort's Decision and Order Awarding Benefits (2022-BLA-05399) rendered on a claim filed on January 27, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Arch of Illinois, Incorporated (Apogee) is the responsible operator and Arch Coal, Incorporated (Arch) is the responsible carrier.[1] She also credited Claimant with 23.81 years of coal mine employment in underground coal mines or surface coal mine employment in conditions substantially similar to those in an underground mine and found he established a totally disabling respiratory or pulmonary 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,[2] 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305. She further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the removal provisions applicable to ALJs rendered the ALJ's appointment unconstitutional and she erred in admitting Dr. Majmudar's supplemental opinion under the Department of Labor's (DOL) pilot program. Additionally, it asserts the ALJ erred in finding Arch is the liable carrier. On the merits, it argues the ALJ erred in finding Claimant has sufficient qualifying coal mine employment to invoke the Section 411(c)(4) presumption and in finding it did not rebut the presumption.

Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Benefits Review Board to reject Employer's removal provisions and pilot program arguments but to remand for the ALJ to consider Employer's new liability evidence. In the alternative, the Director

[1] Arch of Illinois subsequently became a part of Apogee, another Arch subsidiary. *See* Employer's Brief at 3 n.1.

[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); *see* 20 C.F.R. §718.305.

argues the Board should affirm the ALJ's determination that Arch is liable for benefits.[3] Employer filed replies to Claimant's and the Director's responses, reiterating its contentions.[4]

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, 361-62 (1965).

Removal Provisions

Employer challenges the constitutionality of the removal protections afforded DOL ALJs. Employer's Brief at 18-21; Employer's Reply to Claimant's Response at 1-3. It generally argues the removal provisions for ALJs contained in the Administrative Procedure Act (APA), 5 U.S.C. §7521, are unconstitutional, citing Justice Breyer's separate opinion and the Solicitor General's argument in *Lucia v. SEC*, 585 U.S. 237, 138 S. Ct. 2044 (2018). *Id.* It also relies on the United States Supreme Court's holdings in

[3] The Director previously filed a Motion to Remand requesting the case be remanded to the ALJ for her to reconsider the responsible carrier issue given the decision of the United States Court of Appeals for the Seventh Circuit in *Apogee Coal Co. v. Director, OWCP* [*Grimes*], 113 F.4th 751 (7th Cir. 2024). Claimant objected to the Director's motion as it would delay the final adjudication of his claim and instead requested the case be remanded for the limited purpose of awarding benefits paid by the Black Lung Disability Trust Fund (Trust Fund) pursuant to *Grimes.* Claimant's Response to Motion to Remand 1-3. Employer responded, arguing remand is unnecessary and that under *Grimes* the Board should dismiss Employer and transfer liability to the Trust Fund. Employer's Opposition to Director's Motion to Remand at 2-8. The Board denied the Director's motion on the basis that it can resolve the issues of whether the case should be remanded for further consideration based on *Grimes* and Claimant's entitlement in its Decision and Order. Mar. 12, 2025 Order.

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 19.

[5] The Board will apply the law of the United States Court of Appeals for the Seventh Circuit because Claimant performed his last coal mine employment in Illinois. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Tr. at 23.

Free Enter. Fund v. Pub. Co. Acct. Oversight Bd., 561 U.S. 477 (2010) and *Seila Law v. CFPB*, 591 U.S. 197, 140 S. Ct. 2183 (2020). *Id.*

For the reasons set forth in *Johnson v. Apogee Coal Co.*, 25 BLR 1-351, 1-353-55 (2023), *aff'd, Apogee Coal Co., LLC v. Director, OWCP* [*Johnson*], 112 F.4th 343 (6th Cir. 2024), and *Howard v. Apogee Coal Co*., 25 BLR 1-301, 1-307-308 (2022), *aff'd sub nom., Apogee Coal Co. v. Director, OWCP* [*Howard*], 112 F.4th 343 (6th Cir. 2024), *cert. denied*, 605 U.S. , (May 27, 2025), we reject Employer's argument.

Evidentiary Issue – DOL's Pilot Program

Employer contends the ALJ erred by considering Dr. Majmudar's supplemental opinion obtained as part of the DOL pilot program.[6] Employer's Brief at 46-52; Employer's Reply to Claimant's Response at 6. It asserts the DOL has no legal authority to request supplemental opinions under the pilot program, the pilot program deprives it of due process, the implementation of the pilot program without notice and comment violates the APA, and the pilot program transforms the DOL into an advocate for claimants. *Id.* For the reasons set forth in *Smith v. Kelly's Creek Res.*, 26 BLR 1-15, 1-20-24 (2023), we reject Employer's arguments.

Responsible Insurance Carrier

Employer does not challenge the ALJ's findings that Apogee is the correct responsible operator and that it was self-insured by Arch on the last day Apogee employed Claimant; thus we affirm these findings.[7] *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-

[6] In 2014, the DOL established a pilot program allowing the district director, in certain claims, to request a supplemental opinion from the physician who performed the DOL-sponsored complete pulmonary evaluation of a miner. *See* BLBA Bulletin No. 14-05 (Feb. 24, 2014). The program became standard procedure in 2019. *See* BLBA Bulletin No. 20-01 (Oct. 24, 2019).

[7] Employer argues there is no insurance policy or self-insurance agreement establishing Arch's liability. Employer's Brief at 26-28. But the Notice of Claim specifically identifies Arch as Apogee's insurance carrier, Director's Exhibit 36, and Employer's other arguments acknowledge that Arch was the self-insurer of Apogee at the time of Claimant's last date of employment. *See, e.g.*, Employer's Brief at 31-38.

Employer also asserts the DOL's "new approach to transactions completed over a decade ago [] offends Arch's due process rights." Employer's Brief at 42. Due process requires a party be given notice and an opportunity to mount a meaningful defense. *See Consolidation Coal Co. v. Borda*, 171 F.3d 175, 184 (4th Cir. 1999). Because Employer

710, 1-711 (1983); 20 C.F.R. §§725.494(e), 725.495, 726.203(a). Rather, it alleges Patriot Coal Corporation (Patriot) should have been named the responsible carrier and thus liability for the claim should transfer to the Trust Fund. Employer's Brief at 21-44; Employer's Reply to Director's Response at 1-14; Employer's Reply to Claimant's Response at 4-5.

In 2005, after Claimant ceased his employment with Apogee, Arch sold Apogee to Magnum Coal (Magnum), and in 2008 Magnum was sold to Patriot. Employer's Brief at 29-30; Director's Response at 2; Director's Exhibit 47 at 50, 79. In 2011, Patriot was authorized to self-insure itself and its subsidiaries retroactive to July 1, 1973. Director's Response at 2-3; Director's Exhibit 47 at 57. Although Patriot's self-insurance authorization made it retroactively liable for the claims of miners who worked for Apogee, Patriot later went bankrupt and can no longer provide for those benefits. Director's Response at 3; Director's Exhibit 47 at 45. However, the ALJ found nothing relieved Arch of liability for paying benefits to miners last employed by Apogee when Arch owned and provided self-insurance to that company. Decision and Order at 34.

Employer raises several arguments to support its contention that Arch was improperly designated the self-insured carrier in this claim and thus the Trust Fund, not Arch, is responsible for the payment of benefits following Patriot's bankruptcy. Employer's Brief at 21-44. It argues the ALJ erred in finding Arch liable for benefits because: (1) no evidence establishes Arch's self-insurance covered Apogee for this claim; (2) without proof of coverage, the DOL improperly pierced Arch's corporate veil in holding it liable; (3) the ALJ treated Arch as a commercial insurer under the regulations rather than a self-insurer; (4) retroactive application of the policy reflected in Black Lung Benefits Act (BLBA) Bulletin No. 16-01[8] imposes new liability on self-insured mine operators that bypasses traditional rulemaking in violation of the APA; and (5) the sale of Apogee to Magnum released Arch from liability for the claims of miners who worked for Apogee, and the DOL endorsed this shift of liability. *Id*.

The ALJ rejected Employer's arguments based on the Board's decision in *Howard*, 25 BLR at 1-312-18. Decision and Order at 34. Employer contends, however, *Howard* is

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was properly notified of its designation as the potentially responsible carrier, Director's Exhibit 36, and has not identified how it was deprived of notice or an opportunity to respond, we reject its argument. *Id.*

[8] BLBA Bulletin No. 16-01 is a memorandum the DOL issued on November 12, 2015, to "provide guidance for district office staff in adjudicating claims" affected by Patriot's bankruptcy.

inapplicable because it submitted new evidence not considered in *Howard* that establishes BLBA Bulletin No. 16-01, and the DOL's change in policy that it represents, are unlawful and the ALJ did not adequately address this evidence. Employer's Brief at 26 (citing *Arch Coal, Inc. v. Acosta*, 888 F.3d 493 (D.C. Cir. 2018)); Employer's Reply to Director's Response at 12-13. We agree with the arguments raised by Employer and the Director that the ALJ has not specifically addressed Employer's new evidence and any effect it may have, and thus her findings do not satisfy the explanatory requirements of the APA.[9] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); Director's Response at 7-8; Director's Exhibits 45 at 4; 58 at 37; 62 at 35. We therefore vacate the ALJ's determination that Arch is the responsible insurance carrier.

On remand, the ALJ must reconsider the evidence regarding whether Arch is the responsible insurance carrier and explain what effect, if any, Director's Exhibits 45, 58, and 62 have on her liability determination.

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

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mines or in "substantially similar" surface coal mine employment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305(b)(1)(i). The conditions in a mine other than an underground mine will be considered "substantially similar" to those in an underground mine if "the miner was regularly exposed to coal-mine dust while working there." 20 C.F.R. §718.305(b)(2).

The ALJ found Claimant established 23.81 years of coal mine employment between the years of 1973 and 1999. Decision and Order at 5-7. She noted the parties agreed Claimant worked in underground mines for nine years and determined he worked in substantially similar coal mine employment for the remaining 14.81 years. *Id.* at 4, 7-8. Thus, she found Claimant established at least fifteen years of qualifying coal mine employment. *Id*. at 8.

Employer argues the ALJ erred in considering whether Claimant's surface coal mine employment was substantially similar to underground coal mine employment because

[9] The APA, 5 U.S.C. §§500-591, provides every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

Claimant did not adequately brief the issue.[10] Employer's Brief at 45-46; Employer's Reply to Claimant's Response at 5. We disagree.

Claimant testified he was regularly exposed to coal mine dust throughout his coal mining career at both underground and surfaces mines. Hearing Tr. at 27-28; Claimant's Post-Hearing Brief at 3-4 (unpaginated). At surface mines, he stated he worked as a welder which required him to blow coal mine dust off the surfaces he welded and that he could not remove all of it so it would be torched and turned into smoke. *Id.* at 43-44. He also testified he worked "down in the pits" where coal was being loaded onto trucks and the trucks driving past caused enough coal mine dust in the air that he "couldn't even hardly see at times." *Id.* at 28, 44. Further, he stated his skin was black with coal mine dust at the end of every shift, it got into the vehicle he drove to and from the mine, and even if he showered before leaving the mine he would leave black dust stains on his clothing and bedsheets at home. *Id*. at 28-29.

Claimant's spouse testified she worked at the same surface coal mine as Claimant as a payroll clerk and would see him every afternoon when he finished work and that he would be black and dirty. Hearing Tr. at 48. She stated she cleaned Claimant's work clothes at a laundromat because the dust ruined other family members' clothing and they used so much bleach to remove black stains that Claimant's clothes did not last long. *Id*. at 48-49. In addition, she stated Claimant's clothing was consistently dirty throughout the length of his coal mine employment. *Id*. at 49.

The ALJ acknowledged that pursuant to the Seventh Circuit's holding in *Director, OWCP v. Midland Coal Co.* [*Leachman*], 855 F.2d 509, 512-13 (7th Cir. 1988), Claimant was "required only to produce sufficient evidence of the surface mining conditions under which he worked" to establish his surface coal mine employment was substantially similar to conditions in an underground mine. Decision and Order at 7-8. She then considered the evidence before her and rationally concluded the uncontradicted testimony of Claimant and his spouse establishes he was regularly exposed to coal mine dust during his surface coal mining employment. *See Freeman United Coal Min. Co. v. Summers*, 272 F.3d 473, 479

[10] We reject Employer's argument on the merits as explained below, but note Employer forfeited its argument as it failed to raise it before the ALJ. *See Edd Potter Coal Co. v. Director, OWCP* [*Salmons*], 39 F.4th 202, 210 (4th Cir. 2022) (forfeiture results when a party fails to raise an issue at the appropriate time); *Joseph Forrester Trucking v. Director, OWCP* [*Davis*], 987 F.3d 581, 591 (6th Cir. 2021) (parties forfeit arguments before the Board not first raised to the ALJ). Moreover, Claimant explicitly argued in his post-hearing brief that he had at least fifteen years of underground or substantially similar coal mine employment. Claimant's Post-Hearing Brief at 7 (unpaginated).

(7th Cir. 2001); *see also Zurich v. Am. Ins. Grp. v. Duncan*, 889 F.3d 293, 304 (6th Cir. 2018) (rejecting argument that a miner must provide evidence of "the actual dust conditions" and citing with approval the DOL's position that "dust exposure evidence will be inherently anecdotal"); *Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 664 (6th Cir. 2015) (claimant's "uncontested lay testimony" regarding his dust conditions "easily supports a finding" of regular dust exposure); *Central Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 487-88 (6th Cir. 2014) (testimony that a surface miner's clothes were covered in dust at the end of his shift supports a finding of regular dust exposure, as it is "typical" of testimony from underground miners who "similarly complain about being exposed to dust while in the mines and having significant dust on their clothes when they return home from work").

Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant established 23.81 years of qualifying coal mine employment and invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b); Decision and Order at 8, 19.

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[11] 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 did not establish rebuttal by either method. Decision and Order at 19-32.

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),

[11] "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).

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. Tuteur and Rosenberg that Claimant has a mild ventilatory impairment caused by diaphragm paralysis and obesity and unrelated to coal mine dust exposure.[12] Decision and Order at 26-29; Director's Exhibit 30 at 15; Employer's Exhibits 1; 2; 10; 11. The ALJ discredited their opinions as inadequately reasoned and thus insufficient to rebut the presumption of legal pneumoconiosis. Decision and Order at 26-29, 31.

Employer argues the ALJ erred in discrediting the opinions of Drs. Tuteur and Rosenberg. Employer's Brief at 55-57. We disagree.

Dr. Tuteur summarized Claimant's coal mine employment and opined he had sufficient coal mine dust exposure to produce legal pneumoconiosis. Employer's Exhibit 1 at 1, 11. He opined Claimant has a mild restrictive and obstructive defect but does not have legal pneumoconiosis "of sufficient severity and profusion to produce clinical symptoms, physical examination abnormalities, [or] impairment of pulmonary function." Employer's Exhibits 1 at 2-3, 13; 11 at 3. He attributed Claimant's restrictive ventilatory defect to obesity and left hemidiaphragm paralysis caused by an electrocution Claimant suffered in the 1980s, and his obstructive defect to intermittent lower respiratory infections unrelated to coal mine dust exposure. Employer's Exhibits 1 at 2-3, 13; 11 at 3-6.

Contrary to Employer's argument, the ALJ permissibly found Dr. Tuteur's opinion unpersuasive because he did not adequately explain how Claimant's paralyzed hemidiaphragm causes his restrictive and obstructive impairment or his daily productive cough and wheezing or address why Claimant's significant coal mine dust exposure did not also contribute to or aggravate his respiratory impairment. *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 893 (7th Cir. 1990); Decision and Order at 26-28.

Dr. Rosenberg opined Claimant's "obesity coupled with the elevated diaphragm are preventing adequate expansion of the chest bellows (structures around the lungs) leading to the finding of small or restricted lungs." Employer's Exhibits 2 at 3; 10 at 4, 12-14. He stated the mild obstruction seen on a pulmonary function study relates to hyperreactive airways or asthma based on his bronchodilator response and coal dust does not cause asthma. Employer's Exhibits 2 at 3; 10 at 17, 20-21. He also opined Claimant does not

[12] The ALJ also considered the medical opinions of Drs. Majmudar and Pearle that Claimant has legal pneumoconiosis, but she correctly observed their opinions do not aid Employer in rebutting the Section 411(c)(4) presumption. Decision and Order at 29-30; Director's Exhibits 21; 25; 28; Claimant's Exhibit 7; Employer's Exhibit 12.

have legal pneumoconiosis because he does not have an obstruction and legal pneumoconiosis does not cause restriction. Employer's Exhibit 10 at 15-20. Finally, he opined Claimant does not have legal pneumoconiosis because obstruction caused by coal mine dust occurs within the first few years of a miner beginning coal mine employment and Claimant did not seek treatment for respiratory complaints around the time he quit mining in 1999. Director's Exhibit 30 at 17-18; Employer's Exhibits 2 at 3; 10 at 15-16.

The ALJ discredited Dr. Rosenberg's opinion as internally inconsistent, noting his opinion that Claimant does not have an obstructive impairment was at odds with his prior diagnosis of an obstructive impairment caused by asthma or hyperreactive airway, as well as his acknowledgement of obstruction seen on the March 3, 2022 pulmonary function study. *See Poole*, 897 F.2d at 893; Decision and Order at 29. She further permissibly discredited his opinion as contrary to the regulations' recognition that pneumoconiosis is a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure. 20 C.F.R. §718.201(c); *see Roberts & Schaefer Co. v. Director, OWCP,* [*Williams*], 400 F.3d 992, 999 (7th Cir. 2005); *see also Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 738-39 (6th Cir. 2014); Decision and Order at 29.

Because the ALJ permissibly discredited the only opinions supportive of Employer's burden on rebuttal, we affirm her finding Employer did not disprove legal pneumoconiosis. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis.[13] 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

To disprove disability causation, Employer must establish "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). Because Drs. Tuteur and Rosenberg failed to diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer failed to rebut the presumption that Claimant has legal pneumoconiosis, substantial evidence supports the ALJ's finding that their disability causation opinions are not credible. *See Consolidation Coal Co. v. Director, OWCP* [*Burris*], 732 F.3d 723, 735 (7th Cir. 2013); *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 32. We therefore affirm the ALJ's conclusion that Employer failed to establish no part of

[13] Because we affirm the ALJ's findings on the issue of legal pneumoconiosis, we need not address Employer's arguments on the issue of clinical pneumoconiosis. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 53-54; Employer's Reply to Claimant's Response at 6-7.

Claimant's respiratory disability was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Awarding Benefits and remand the case for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge