U.S. Department of Labor

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

BRB No. 21-0224 BLA

STEPHEN R. EGNOR	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
EASTERN ASSOCIATED COAL COMPANY	)	
	)	
and	)	
	)	DATE ISSUED: 01/27/2023
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 Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

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

Paul E. Frampton (Bowles Rice LLP), Charleston, West Virginia, for Employer and its Carrier.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Awarding Benefits (2018-BLA-06262) rendered on a claim filed on March 6, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found that Eastern Associated Coal, LLC (Eastern) is the responsible operator and Peabody Energy Corporation (Peabody Energy) is the responsible carrier. She accepted the parties' stipulation that Claimant has at least twenty-five years of coal mine employment, all of which she found is qualifying for purposes of invoking the Section 411(c)(4) presumption of total disability due to pneumoconiosis. 30 U.S.C. 921(c)(4) (2018).[1] She also found Claimant established a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2) and therefore invoked the presumption. She further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Peabody Energy is the liable carrier. It also contends the ALJ erred in concluding Claimant established a totally disabling respiratory or pulmonary impairment and thereby invoked the Section 411(c)(4) presumption. Alternatively, Employer asserts the ALJ erred 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 affirm the ALJ's determination that Employer is liable for benefits.[2]

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

[1] 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) (2018); *see* 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the ALJ's determination that Claimant established at least twenty-five years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6.

with applicable law.[3] 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).

Responsible Carrier

Employer does not challenge the ALJ's findings that Eastern is the correct responsible operator and was self-insured through Peabody Energy on the last day Eastern employed Claimant; thus, we affirm these findings.[4] *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 711 (1983); 20 C.F.R. §§725.494(e), 725.495, 726.203(a); Decision and Order at 9-12. 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 Brief at 2. In 2007, after Claimant ceased his coal mine employment with Eastern, Peabody Energy sold a number of its subsidiaries, including Eastern, to Patriot. Decision and Order at 10; Director's Brief at 2. That same year, Patriot was spun off as an independent company. Director's Brief at 2. On March 4, 2011, the Department of Labor (DOL) authorized Patriot to self-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. Decision and Order at 8 n.13; Director's Brief at 2. 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. Decision and Order at 10; Director's Brief at 2.

Employer raises several arguments to support its contention that Peabody Energy was improperly designated the responsible carrier in this claim and thus that the Trust Fund,

[3] 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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 47; Director's Exhibit 4.

[4] Employer argues there is no evidence of record that Peabody Energy was the self-insurer of Eastern. Employer's Brief at 2, 24. However, the Notice of Claim specifically identifies Peabody Energy as Eastern's self-insurer, Director's Exhibit 31, and Employer's other arguments tend to acknowledge that Peabody Energy was the self-insurer of Eastern at the time of Claimant's last date of employment. *See, e.g.*, Employer's Brief at 24, 26-27 (framing the decision to name Peabody Energy liable instead of Patriot as involving a choice between Eastern's "insurer on the date of last employment" and its "last insurer").

not Peabody Energy, is responsible for the payment of benefits following Patriot's bankruptcy: (1) the DOL released Peabody Energy from liability; (2) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; (3) 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; (4) the Director is equitably estopped from imposing liability on the company; and (5) because Patriot cannot pay benefits, Black Lung Benefits Act Bulletin Nos. 12-07 and 14-02 place liability on the Trust Fund. 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.[5] Employer's Brief at 21-33.

The Board has previously considered 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.*, 25 BLR 1-289, 1-295-99 (2022). For the reasons set forth in *Bailey*, *Howard*, and *Graham*, we reject Employer's arguments. 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.[6]

[5] Employer also alleges the ALJ erred in failing to require the Director to name the Trust Fund as a party to this claim, and that the district director failed to adequately address its request for reconsideration of the Proposed Decision and Order (PDO). Employer's Brief at 2-3. The Director represents the Trust Fund's interests and is a party to all claims under the Act. 30 U.S.C. §932(k); *see also Boggs v. Falcon Coal Co.*, 17 BLR 1-62, 1-65-66 (1992); *Truitt v. N. Am. Coal Corp.*, 2 BLR 1-199, 1-202 (1979). Further, while Employer requested reconsideration of Peabody Energy's designation as the responsible carrier in the district director's PDO, it also requested that the district director forward the claim for a hearing before the Office of Administrative Law Judges (OALJ). Director's Exhibit 52. Although the district director summarily denied Employer's request reiterating the findings of his PDO, the district director forwarded the claim to the OALJ as Employer requested. Director's Exhibits 53, 54.

[6] Employer argues the ALJ erred in excluding liability evidence submitted as Employer's Exhibits 5-9, the depositions of David Benedict and Steven Breeskin, two former Department of Labor (DOL) Division of Coal Mine Workers' Compensation officials. Employer's Brief at 22-23. In *Bailey*, the same depositions were admitted and the Board held they do not support Employer's argument that the DOL released Peabody Energy from liability when it authorized Patriot to self-insure and released a letter of credit that Patriot financed under Peabody Energy's self-insurance program. *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 15 n. 17 (Oct. 25, 2022). Given the Board has previously held the depositions do not support Employer's argument, any

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

To invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018), 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 gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, 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). The ALJ found Claimant's usual coal mine employment required heavy manual labor and that the medical opinion evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(iv) and on the record as a whole.[7] Employer challenges these findings.

Usual Coal Mine Employment

A miner's usual coal mine work is the most recent job he performed regularly and over a substantial period of time. *See Pifer v. Florence Mining Co.*, 8 BLR 1-153, 1-155 (1985); *Shortridge v. Beatrice Pocahontas Coal Co.*, 4 BLR 1-534, 1-539 (1982).

On his employment summary and description of coal mine work forms, Claimant indicated he last worked as an electrician. Director's Exhibits 4, 5. He also testified his last coal mine work was as an electrician at Employer's preparation (prep) plant, and that he performed this job for the last four to five years of his coal mine employment. Hearing Transcript at 42. The ALJ found Claimant last worked as an electrician in Employer's prep plant. Decision and Order at 6 (citing Hearing Transcript at 42; Director's Exhibits 4-5).[8]

---

error in excluding them here is harmless. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[7] The ALJ found Claimant did not establish total disability based on the pulmonary function or arterial blood gas testing, and there was no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 14-17.

[8] Although the ALJ cited these exhibits as establishing Claimant last worked as a "mechanic," each exhibit specifies that Claimant worked as an "electrician." Decision and Order at 6; Hearing Transcript at 42; Director's Exhibits 4-5. We consider the ALJ's

Relying on Claimant's credible testimony, the ALJ found his usual coal mine work required heavy manual labor because "as *part* of his duties, [Claimant] was required to walk 8 hours, including a mile and ½ along the beltway, repair equipment, lift 50 pound rollers, shovel along the belt, and move hoists which were so heavy that it took 4 to 5 persons to move." *Id.* (emphasis added) (citing Hearing Transcript at 42-44;[9] Director's Exhibit 5).

We reject Employer's assertion that the ALJ failed to adequately explain his basis for finding Claimant's electrician job required heavy manual labor. Employer's Brief at 7. The Dictionary of Occupational Titles (DOT) defines heavy work as exerting 50 to 100 pounds of force "occasionally," and/or exerting 25 to 50 pounds of force "frequently."[10] *See Dictionary of Occupational Titles*, Appendix C (4th Ed., Rev. 1991)), https://www.dol.gov/agencies/oalj/PUBLIC/DOT/REFERENCES/DOTAPPC, last accessed on Jan. 26, 2023. Although Employer correctly notes Claimant responded in the affirmative when asked if he had to "help" replace fifty-pound belt rollers after repairing a broken belt, Employer's Brief at 5 (referencing Hearing Transcript at 43), Claimant subsequently clarified the rollers were located every five feet along a 1.5-mile beltline and

---

reference to a "mechanic" to be a scrivener's error as she accurately summarized Claimant's hearing testimony as stating "[h]is last coal mine job was as an electrician in the plant for 4 to 5 years." Decision and Order at 4 (citing Hearing Transcript at 42).

[9] Claimant testified his last job required him to do "whatever" Employer wanted him to do and that his duties varied daily. Hearing Transcript at 42. He stated he would:

> Run a dozer maybe one day. The next day, run a[n] end-loader. Next day, a cutting weld. Next day, I'd be doing electrical work for repair on equipment. I have run the floors on the plant. Did coal samples. Shoveled belt. Washed the floors. Whatever.

Id. at 42-43. He stated his most frequent duty was to monitor lights and repair and replace belt rollers weighing "about 50 pounds" while walking a mile and a half beltline. *Id.* at 43. He further stated he was required to perform heavy labor, his "most physical [duty]" involved moving screen decks that "weighed tons," and that he performed this task in a crew of four or five and using hoists. *Id.* at 44.

[10] Employer contends Claimant's lifting requirements do not constitute heavy manual labor because they were not a regular part of his job, Employer's Brief at 6-7, but this is inconsistent with the DOT definition of heavy manual labor including occasional lifting of 50 to 100 pounds. *See* Notice of Hearing and Pre-Hearing Order at 2 (July 23, 2019) ("If necessary, the undersigned will take official notice of occupational exertion requirements described in the [DOT].")

that he had to lift individual rollers himself. Hearing Transcript at 43-44.[11] The ALJ thus permissibly credited Claimant's testimony that he had to lift fifty-pound rollers. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 310 (4th Cir. 2012) (it is the duty of the ALJ to make findings of fact and to resolve conflicts in the evidence); *Bizarri v. Consolidation Coal Co.*, 7 BLR 1-343, 1-344-345 (1984) (ALJ may rely on miner's testimony especially if the testimony is not contradicted by any documentation of record); *Miller v. Director, OWCP*, 7 BLR 1-693, 1-694 (1985) (holding that an ALJ is charged with determining the credibility of all witnesses); Decision and Order at 6; Hearing Transcript at 43-44. Similarly, as Claimant's testimony that his work using hoists to move screen decks was more physically demanding than his work replacing fifty-pound belt rollers is uncontradicted, the ALJ permissibly credited it as establishing Claimant's usual work required heavy exertion.[12] *See Looney*, 678 F.3d at 310; *Bizarri*, 7 BLR at 1-344-345; *Miller*, 7 BLR at 1-694; Decision and Order at 6; Hearing Transcript at 44. Because

[11] Claimant testified he was responsible for ensuring the belt and rollers along a 1.5 mile section of the beltline were working properly and that he would repair the belt and help replace the rollers if they were not working. Hearing Transcript at 43. He further testified as follows:

> Q: Were - - was working on the belts pretty - - pretty physical work as well?
>
> A: Yes. A dirty job.
>
> Q: Okay. How much would some of that belt structure have weighed that you were messing with?
>
> A: Well, a regular roller run about 50 pounds.
>
> Q: Okay.
>
> A: And you had them every five foot [of beltline], so.

Id. at 44.

[12] Although Claimant did not identify any daily lifting requirements on his employment history form, any intended or inadvertent omission of such duties on the form does not necessarily contradict his testimony that his duties varied daily and that some duties required heavy lifting and exertion. *See Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (distinguishing between testimony that is "not corroborated" and that which is "contradict[ed]"); Decision and Order at 6 (crediting Hearing Transcript at 42-44 and Director's Exhibit 5); Employer's Brief at 5.

it is supported by substantial evidence, we affirm the ALJ's finding that Claimant's usual coal mine employment required heavy labor.[13]

Medical Opinions

The ALJ considered four medical opinions.[14] Decision and Order at 17-32. The ALJ credited the opinions of Drs. Green and Raj that Claimant is totally disabled over the contrary opinions of Drs. Zaldivar and Tuteur. Employer asserts the opinions of Drs. Green and Raj are not credible because they rely on resting blood gas studies and do not account for Claimant's "normal" exercise blood gas study.[15] Employer's Brief at 4, 9-10. It also contends the ALJ failed to consider their opinions in view of Employer's challenges as to whether Claimant established the exertional requirements of his usual coal mine employment. We find Employer's arguments unpersuasive.

Dr. Green examined Claimant on October 10, 2019. Claimant's Exhibit 3. Based on the "marginal[ly]" non-qualifying[16] resting blood gas study he obtained, Dr. Green diagnosed Claimant with "significant hypoxemia at rest" that precludes heavy exertion. *Id.* at 5-6. Contrary to Employer's contention, the ALJ permissibly found Dr. Green's diagnosis of a disabling blood gas impairment well-documented and well-reasoned based on the objective testing he obtained. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987) (a physician's report is "documented" and "reasoned" if it sets forth the clinical

[13] We reject Employer's argument that the record is unclear as to whether Claimant last worked as an electrician at Employer's prep plant or at "the tipple." Employer's Brief at 5. Contrary to Employer's assertion, we see no necessary contradiction between Claimant's testimony to last working for Employer as an electrician in the "plant" and the notation in Dr. Werntz's medical report that Claimant last worked at the "prep plant and tipple." *See* Hearing Transcript at 42; Director's Exhibit 15 at 1, 4 (Dr. Werntz summarizing that Claimant last worked at "tipple" and subsequently summarizing that his "last job was as an electrician in [sic] prep plant and tipple").

[14] The ALJ also considered, but rejected as equivocal, the opinion of Dr. Werntz initially diagnosing a disabling blood gas impairment and subsequently opining that the data is "incomplete" as to whether Claimant could perform his usual work. Director's Exhibits 15, 24 at 3; *see* Decision and Order at 28.

[15] Neither Drs. Raj nor Dr. Green obtained an exercise blood gas study. Claimant's Exhibits 2, 3.

[16] A "qualifying" blood gas study yields values that are equal to or less than the appropriate values set out in the table at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study yields values that exceed those in the table. 20 C.F.R. §718.204(b)(2)(ii).

findings, observations, facts, etc., on which the doctor has based his diagnosis and that documentation supports the doctor's assessment of the miner's health.) Moreover, the ALJ permissibly credited Dr. Green's opinion to the extent he noted Claimant had to lift items weighing fifty pounds, and specifically opined Claimant's "significant" resting hypoxemia precluded him from performing heavy manual labor, consistent with the ALJ's findings as to the exertional requirements of Claimant's last job as an electrician. 20 C.F.R. §718.204(b)(2)(iv); *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441-42 (4th Cir. 1997); Decision and Order at 29.

Dr. Raj examined Claimant on October 9, 2019. Claimant's Exhibit 2. Based on the qualifying resting blood gas study he obtained, Dr. Raj diagnosed Claimant with "severe hypoxemia." Claimant's Exhibit 2 at 5-6. Although Employer correctly notes the ALJ found the preponderance of blood gas evidence non-qualifying, the ALJ permissibly concluded Dr. Raj's opinion is still supportive of a finding to total disability since he indicated Claimant could not perform heavy manual labor and further noted Claimant experienced shortness of breath walking about 25 feet and uphill. *Id*. at 4. As the ALJ determined Claimant's job as an electrician required walking up to a mile and a half a day, we see no error in the ALJ's inference that Dr. Raj's opinion supports finding Claimant could not perform his usual coal mine job. *See Looney*, 678 F.3d at 310; Decision and Order at 22, 28.

Dr. Tuteur conducted a medical records review that included Dr. Werntz's qualifying April 4, 2017 resting blood gas study and Dr. Agarawal's March 16, 2019 non-qualifying resting and exercise studies. Employer's Exhibits 4, 17 at 6. Dr. Tuteur stated that there is "no convincing evidence whatsoever for the presence of any primary pulmonary process" since the pulmonary function studies showed no obstruction or restriction and Claimant's blood gas studies demonstrating resting hypoxemia reversed when Claimant stood erect with exercise, suggesting the oxygen impairment is due to obesity and not an irreversible process such as coal workers' pneumoconiosis. Employer's Exhibits 4 at 5, 17 at 11-12. He opined Claimant retained the exertional capacity to perform "moderate" labor and that there is no indication that a pulmonary impairment limits his performing heavy labor – while conceding none of the physicians exercised Claimant during their testing to a degree that would constitute heavy labor. *Id.* at 22.

Dr. Zaldivar examined Claimant and conducted a medical records review that included all the blood gas studies of record.[17] Director's Exhibit 20; Employer's Exhibit

[17] Although Dr. Zaldivar conducted blood gas studies as part of his March 22, 2018 evaluation, Employer did not designate Dr. Zaldivar's blood gas study as evidence in this case. Decision and Order at 16; Employer's Evidence Summary.

16 at 6-7. He stated it is "normal" for an obese person to have abnormal resting blood gas studies that improve with exercise. Employer's Exhibit 16 at 17. He opined there is no "convincing" evidence of a "primary pulmonary process" and, although Claimant's obesity "might be disabl[ing]," he retains the capacity to perform "heavy labor" from a "pulmonary standpoint." Employer's Exhibits 4 at 5, 16 at 22-23, 29.

Contrary to Employer's contention, the ALJ acted within his discretion in finding that the opinions of Drs. Tuteur and Zaldivar are unpersuasive because they failed to adequately address whether Claimant has a blood gas impairment that would render him unable to perform his last coal mine job which required heavy labor irrespective of whether that impairment is caused by obesity or pneumoconiosis. The ALJ permissibly concluded their opinions fail to account for the applicable regulation requiring that nonpulmonary or nonrespiratory conditions "shall be considered in determining whether the miner is or was totally disabled." Decision and Order. at 30-31 (citing 20 C.F.R. §718.204(a)). Further, although Employer asserts the opinions of Drs. Tuteur and Zalidvar are credible that Claimant's resting blood gas abnormality is not due to pneumoconiosis, Employer's Brief at 17, 18 n.6, Employer's assertion conflates the issues of total disability and disability causation, which are distinct inquiries. 20 C.F.R. §718.204(b) (governing the existence of a totally disabling respiratory or pulmonary impairment), 20 C.F.R. §718.204(c) (governing the cause of the totally disabling impairment). The ALJ additionally discounted Dr. Tuteur's opinion because he relied on extra-record evidence and "conflates separate definitions of reversibility." Decision and Order at 29-30.

Therefore, as it is supported by substantial evidence , we affirm the ALJ's finding that Claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv).[18] *See Hicks*, 138 F.3d at 528; Decision and Order at 30-31.

Record as a Whole

We reject Employer's assertion that the ALJ erred in finding Claimant established total disability on the record as a whole because "there was a host of contrary probative evidence in this case that [Drs. Green and Raj] were unaware of." Employer's Brief at 21. Contrary to Employer's assertion, Claimant's non-qualifying pulmonary function and non-qualifying blood gas studies are not necessarily contrary to Dr. Green's opinion that Claimant's significant resting hypoxemia precludes his performing the heavy exertional demands of his last coal mine employment, which the ALJ permissibly found credible. *See*

[18] As the ALJ provided a valid reason for discrediting the opinions of Employer's experts, we need not reach its assertions of error regarding the ALJ's alternative bases for discrediting Dr. Tuteur's opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 14-18.

20 C.F.R. §718.204(b)(2)(iv); *Walker v. Director, OWCP*, 927 F.2d 181, 184 (4th Cir. 1991); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997). As Dr. Raj diagnosed disabling resting hypoxemia and the ALJ permissibly discredited the contrary opinions of Drs. Tuteur and Zaldivar, we affirm the ALJ's finding that Claimant established total disability on the record as a whole. 20 C.F.R. §718.204(b)(2); *see Defore*, 12 BLR at 1-28-29; *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198. We therefore affirm that Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis. Decision and Order at 32.

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[19] or that "no part of [his] respiratory or pulmonary total disability is 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.[20] Decision and Order at 43-44.

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); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ found that the opinions of Drs. Tuteur and Zaldivar unpersuasive to disprove legal pneumoconiosis because they did not adequately explain how they eliminated Claimant's significant history of coal mine dust exposure as a contributing

[19] 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). This 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).

[20] The ALJ found Employer rebutted the presumption that Claimant has clinical pneumoconiosis but did not rebut the presumption that he has legal pneumoconiosis. Decision and Order at 43.

cause of his disabling blood gas impairment. We affirm the ALJ's findings as unchallenged. *See Skrack*, 6 BLR at 711; Decision and Order at 38-39. We therefore affirm her finding that Employer failed to disprove the existence of legal pneumoconiosis.[21] *See* 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 43. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established that no part of Claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 43-44. The ALJ permissibly discounted the opinions of Drs. Tuteur and Zaldivar regarding the cause of Claimant's pulmonary disability because they did not diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer failed to disprove the existence of the disease.[22] *See 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 44. We therefore affirm the ALJ's finding that Employer failed to establish no part of Claimant's pulmonary disability was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 44.

[21] As Drs. Green and Raj diagnosed legal pneumoconiosis, their opinions do not support Employer's burden to disprove the disease; we therefore need not address Employer's contentions regarding the ALJ's consideration of their opinions. *See Larioni*, 6 BLR at 1-1278; Employer's Brief at 10-14.

[22] Drs. Zaldivar and McSharry did not address whether pneumoconiosis caused Claimant's total respiratory disability independent of their conclusions that he did not have the disease.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge