U.S. Department of Labor

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

BRB No. 24-0484 BLA

DONALD J. WHETZEL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	**NOT-PUBLISHED**
	)	
CONSOL MINING COMPANY, LLC	)	
	)	
Employer-Petitioner	)	DATE ISSUED: 07/24/2025
	)	
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 Theodore W. Annos, Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Theodore W. Annos's Decision and Order Awarding Benefits (2021-BLA-05958) rendered on a claim filed on January 14,

2020,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulation that Claimant worked for twenty-five years in underground or substantially similar surface coal mine employment. He found that Claimant established a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b)(2), and thus 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). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption. It also argues he erred in finding it did not rebut the presumption.[3] Claimant and the Acting Director, Office of Workers' Compensation Programs, declined to file response briefs.

The Benefits Review 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.[4] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

[1] Claimant filed a prior claim on December 31, 2015, but he later withdrew it. Director's Exhibit 52. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306.

[2] Section 411(c)(4) 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) (2018); 20 C.F.R. §718.305.

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 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 3; Hearing Transcript at 5.

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because Claimant performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 13.

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

To invoke the Section 411(c)(4) presumption, a claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work or comparable gainful work. *See* 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,[5] 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 found Claimant established total disability based on the medical opinions and the evidence as a whole.[6] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 8-20.

Employer challenges the ALJ's finding that the medical opinion evidence establishes total disability. Employer's Brief at 3-8.

Before weighing the medical opinions, the ALJ found Claimant's usual coal mine employment was working as a belt cleaner/belt man, which required "a heavy to very heavy level of exertion." Decision and Order at 7. The ALJ then considered the medical opinions of Drs. Fino, Habre, Sargent, and McSharry in the context of the exertional requirements. *Id.* at 14-20.

Dr. Habre initially diagnosed Claimant with a totally disabling lung disease but, after reviewing subsequent testing, changed his opinion and concluded Claimant is no longer disabled. Director's Exhibits 11, 13. Dr. Fino opined Claimant is totally disabled, while Drs. McSharry and Sargent opined he is not. Director's Exhibits 11, 21; Claimant's Exhibit 2; Employer's Exhibits 5, 6. The ALJ found the opinions of Drs. Habre, McSharry,

[5] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[6] The ALJ found Claimant did not establish total disability based on the pulmonary function studies or arterial blood gas studies, and there is 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 8-14.

and Sargent not credible because they did not have an adequate understanding of the exertional requirements of Claimant's usual coal mine work and because they did not adequately explain their conclusions. Decision and Order at 14-17. Conversely, he found Dr. Fino had an accurate understanding of Claimant's usual coal mine employment and his opinion was well-reasoned and documented; therefore, he gave it controlling weight. *Id.* at 18-20. Thus he found the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 18-20.

Employer argues that the ALJ erred in finding Claimant's usual coal mine work as a belt cleaner constituted very heavy labor and thus erred in weighing the medical opinions based on that finding. Employer's Brief at 5-6. We disagree.

In addressing the exertional requirements of Claimant's usual coal mine job, the ALJ considered Claimant's hearing testimony and the physicians' medical reports.[7] Based on Claimant's hearing testimony, the ALJ found Claimant's usual coal mine job was a belt cleaner, contrary to Employer's classification as a general inside laborer. Decision and Order at 6; Hearing Tr. at 11. He observed Claimant described the position as a "two-man job" because "it was way over on lifting for one man." Decision and Order at 6; Hearing Tr. at 11. Claimant testified his job required him to lift and pull in excess of 100 pounds, shift the belt line by himself, change rollers weighing between 60 to 110 pounds, and shovel the belts. Decision and Order at 6; Hearing Tr. at 12.

Further, the ALJ noted Claimant informed Dr. Fino of his exertional work requirements, while Drs. Habre, Sargent, and McSharry did not identify any duties of his job as a belt cleaner. Decision and Order at 6. Specifically, Dr. Fino reported Claimant worked in a coal height of sixty inches and delineated "the breakdown" of his workload as consisting of 60% very heavy labor, 20% heavy labor, 10% moderate labor, and 10% light labor. Decision and Order at 6; Claimant's Exhibit 2 at 2.

The ALJ noted the *Dictionary of Occupational Titles* (*DOT*)[8] defines heavy work as "[e]xerting 50 to 100 pounds of force occasionally, and/or 25 to 50 pounds of force frequently, and/or 10 to 20 pounds of force constantly to move objects. Physical Demand

[7] Initially, the ALJ found that Claimant's CM-913 Description of Coal Mine Work form and his employment verification letter did not indicate the exertional requirements of his last coal mine job as a belt cleaner. Decision and Order at 6; Director's Exhibits 4, 6.

[8] In his December 28, 2021 Prehearing Order, the ALJ informed the parties that he may take official notice of the *Dictionary of Occupational Titles* in determining the occupational exertion requirements of Claimant's usual coal mine work. Decision and Order at 7 n.41; *see* 29 C.F.R. §18.84.

requirements are in excess of those for Medium Work." Decision and Order at 7 n.41. He also observed the *DOT* defined very heavy work as "[e]xerting in excess of 100 pounds of force occasionally, and/or in excess of 50 pounds of force frequently, and/or in excess of 20 pounds of force constantly to move objects. Physical Demand requirements are in excess of those for Heavy Work." *Id.*

The ALJ then compared Claimant's description of his job, in conjunction with Dr. Fino's characterization of the job, to the definition of very heavy work in the *DOT*. Decision and Order at 6-7 n.7.

The ALJ permissibly relied on Claimant's "unrebutted" hearing testimony, as corroborated by Dr. Fino's assessment, and concluded that Claimant's usual coal mine work "required a heavy to very heavy level of exertion" based on the definition of that work in the *DOT*. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 310 (4th Cir. 2012); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); Decision and Order at 6-7.

Employer specifically argues that the ALJ's determination is not supported by substantial evidence because Claimant never classified his job as entailing "very heavy labor." Employer's Brief at 5-6. We disagree.

The ALJ is granted broad discretion in evaluating the credibility of the evidence, including witness testimony. *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-152 (1989) (en banc). The Board will not disturb an ALJ's credibility findings unless they are inherently unreasonable. *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc). Contrary to Employer's argument, a review of the hearing transcript reveals Claimant's testimony corroborates Dr. Fino's classification of his job as entailing heavy to very heavy labor. Employer's Brief at 5-6. During the hearing, Claimant testified:

> Q: Now to perform that job as you guys did it at your position in the Dillworth Mine, did that involve very heavy labor as you described the position?
>
> A: Yes, it was heavy lifting, a two-man job in many places. And it was way over on lifting for one man, and they always gave us two.
>
> Q: Okay. Would you be lifting things in excess of 100 pounds often?
>
> A: Over. Yes, it was over 100 pounds.
>
> Q: Over?

A: Yes, yes, some of it, the top was over 48 inches and more, and the lifting and pulling and lifting, sometimes by yourself.

Hearing Transcript at 11-12.

In crediting Claimant's unrebutted testimony, the ALJ compared the various exertional levels that constitute "heavy work" and "very heavy work" with certain aspects of the duties Claimant described and permissibly found his work required "heavy" and "very heavy" physical demands. *See Stallard*, 876 F.3d at 670; *Rowe*, 710 F.2d at 255; Decision and Order at 6-7; Hearing Tr. at 11-12. Furthermore, Employer's argument that Claimant was required to perform very heavy labor only on occasions "when help was needed" is 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); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *see also* 20 C.F.R. §718.204(b)(1); *Eagle v. Armco Inc.*, 943 F.2d 409, 512-13 (4th Cir. 1991) (a miner cannot perform his usual coal mine work if he cannot perform the heaviest or hardest parts of that work); Employer's Brief at 5-6. Because the ALJ fully considered Claimant's testimony and adequately explained his finding, and because that finding is supported by substantial evidence, we affirm his conclusion that Claimant's job as a belt cleaner required "a heavy to very heavy" level of exertion. *See Anderson*, 12 BLR at 1-113; Decision and Order at 8.

Addressing the medical opinions on the issue of total disability, the ALJ found Dr. Fino's opinion to be credible because he had a more detailed understanding of the exertional requirements of Claimant's usual coal mining job and explained why Claimant would not be able to perform that job due to his respiratory or pulmonary impairment. Decision and Order at 18, 20; Claimant's Exhibit 2 at 11. Employer has not challenged this determination; thus we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Employer argues the ALJ erred in discrediting the medical opinions of Drs. Habre, Sargent, and McSharry. Employer's Brief at 6-8. We disagree.

At the outset, the ALJ evaluated whether the physicians had an adequate understanding of the exertional requirements of Claimant's usual coal mine job. Decision and Order at 18-19. Dr. Habre reported Claimant worked in coal mine employment from 1973 to 2004, "perform[ing] face work and operat[ing] a continuous miner for [eighteen] years." Director's Exhibit 11 at 3. In his supplemental report, Dr. Habre reported that Claimant worked underground for twenty-six and one-half years. Director's Exhibit 13 at 1. Dr. Sargent reported Claimant's job occurred in "[five-foot] coal," requiring him "to walk bent over but he did not have to do a lot of crawling." Director's Exhibit 21 at 5. Thus, contrary to Employer's argument, the ALJ permissibly found Drs. Habre's and

Sargent's opinions are not credible because they did not accurately identify the exertional requirements of Claimant's usual coal mine employment. *Gonzales v. Director, OWCP*, 869 F.2d 776, 779 (3d Cir. 1989) (ALJ can reasonably discount a physician's opinion if the ALJ finds that the physician relied upon an inadequate understanding of the exertional requirements of a claimant's usual coal mine employment); *see also Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997); *Eagle,* 943 F.2d at 512 n.4; Decision and Order at 18-19.

We likewise find Employer's argument that the ALJ erred in discrediting Dr. McSharry's opinion unpersuasive. Employer's Brief at 6-7. In excluding total disability, Dr. McSharry assumed Claimant's usual coal mine employment required "heavy exertion." Employer's Exhibit 6 at 1. The ALJ permissibly discredited Dr. McSharry's opinion because it is contrary to his finding that the job at times required very heavy exertion. *See Lane*, 105 F.3d at 172; *Eagle*, 943 F.2d at 512 n.4; *Gonzales*, 869 F.2d at 779; Decision and Order at 19. Further, Dr. McSharry's opinion that Claimant can perform any job expected of a man his age is not sufficient to establish whether Claimant is totally disabled. Employer's Exhibit 6 at 3. The relevant inquiry is whether, from a pulmonary standpoint, Claimant is able to perform *his usual job*,[9] not whether he is able to perform "any job reasonably expected of a 72-year-old man." *See Cornett v. Benham Coal, Inc*., 227 F.3d 569, 578 (6th Cir. 2000); *Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995); *Budash v. Bethlehem Mines Corp*., 9 BLR 1-48, 1-51-52 (1986) (en banc).

Further, the ALJ accurately found Dr. Sargent based his opinion that Claimant is not totally disabled on the pulmonary function and arterial blood gas studies he administered that produced non-qualifying values. Decision and Order at 19; Director's Exhibit 21 at 3. Dr. Sargent diagnosed a mild obstructive and restrictive impairment. Director's Exhibit 21 at 3; Employer's Exhibit 5. The ALJ permissibly found Dr. Sargent did not adequately explain why the mild impairment he diagnosed does not preclude Claimant from performing his usual coal mine employment, which required heavy to very heavy exertion. *See* 20 C.F.R. §718.204(b)(2)(iv); *see also Balsavage v. Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 162-63 (3d Cir. 1986); *Cornett v. Benham Coal, Inc*., 227 F.3d 569, 578 (6th Cir. 2000) ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"); Decision and Order at 19.

[9] A miner's usual coal mine employment 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); *Daft v. Badger Coal Co*., 7 BLR 1-124, 1-127 (1984); *Shortridge v. Beatrice Pocahontas Coal Co*., 4 BLR 1-534, 1-539 (1982).

Dr. Habre evaluated Claimant on May 19, 2020, and based on objective studies, a physical examination, and medical histories, opined Claimant has a totally disabling pulmonary disease. Director's Exhibit 11 at 5. He subsequently reviewed Dr. Sargent's December 15, 2020 examination and test results and, in a supplemental report, opined Claimant's lung function had improved and that Claimant is no longer totally disabled. Director's Exhibit 13 at 2. The ALJ found Dr. Habre did not specifically explain how the decline in Claimant's "spirometric measurements" demonstrated "an underlying *completely disabling* lung disease" in his initial report. Director's Exhibit 11 at 5 (emphasis added). Likewise, he found Dr. Habre's opinion that Claimant is no longer disabled lacked an adequate explanation. Given the ALJ's permissible finding that both of Dr. Habre's opinions "lacked sufficient detail," we affirm his determination that the doctor's opinions are entitled to less weight. *See Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 211 (3d Cir. 2002); *Balsavage*, 295 F.3d at 396; *Kertesz*, 788 F.2d at 162-63; Decision and Order at 19. Thus, because it is rational and supported by substantial evidence, we affirm the ALJ's finding the opinions of Drs. Habre, McSharry, and Sargent inadequately explained. *See Balsavage*, 295 F.3d at 396; *Kertesz*, 788 F.2d at 162-63; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 19-20.

Consequently, we affirm the ALJ's determination that Claimant established total disability based on the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv) and based on a weighing of the evidence as a whole. *Sun Shipbuilding & Dry Dock Co. v. McCabe*, 593 F.2d 234, 237 (3d Cir. 1979); Decision and Order at 20. Thus, we also affirm his determination that Claimant invoked the Section 411(c)(4) presumption.

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,[10] or that "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined

[10] "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).

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.[11] Decision and Order at 21-25.

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).

Employer relied on the opinions of Drs. Sargent and McSharry to rebut the presumption.[12] Decision and Order at 21-24. Drs. Sargent and McSharry opined Claimant does not have legal pneumoconiosis but has asthma unrelated to coal mine dust exposure. Director's Exhibit 21 at 3; Employer's Exhibit 6 at 3. The ALJ found their opinions unpersuasive as they did not adequately explain how Claimant's coal mine dust exposure did not cause or contribute to his asthma and as contrary to the preamble to the 2001 revised regulations and the regulations as well. Decision and Order at 22-23. Thus, he found their opinions insufficient to rebut the presumption of legal pneumoconiosis. *Id.* at 23.

Employer initially argues the ALJ applied an improper standard by requiring Drs. Sargent and McSharry to "rule out" coal mine dust exposure as a causative factor for Claimant's restrictive and obstructive impairment. Employer's Brief at 12, 15-16. The ALJ did not, however, apply a "rule out" standard. The ALJ correctly stated "Employer must establish that Claimant's impairment is not 'significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 21; *see* 20 C.F.R. §§718.201(b), 718.305(d)(1)(i); *see also Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020); *W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018). Moreover, he discredited their opinions because he found them inadequately reasoned and therefore insufficient to support their conclusions that coal dust did not at all contribute to or aggravate Claimant's asthma, not because they failed to meet

[11] Because the ALJ found Employer failed to disprove the existence of legal pneumoconiosis, he declined to address the issue of whether Employer disproved the existence of clinical pneumoconiosis on the ground that Employer would still fail to satisfy the rebuttal standard at 20 C.F.R. §718.305(d)(1)(i). Decision and Order at 24.

[12] The ALJ correctly observed Drs. Fino and Habre diagnosed Claimant with legal pneumoconiosis and therefore their opinions do not aid Employer in rebutting the Section 411(c)(4) presumption. Decision and Order at 23; Claimant's Exhibit 2; Director's Exhibits 11, 13.

a particular legal standard. *See Minich*, 25 BLR at 1-155 n.8; Decision and Order at 22-23.

Employer argues the ALJ erred in discrediting the opinions of Drs. Sargent and McSharry. Employer's Brief at 11-16. We disagree.

Dr. Sargent diagnosed asthma unrelated to coal dust exposure based on Claimant's improved pulmonary function test results from May 2020 to December 2020 and Claimant's cessation of coal mine dust exposure occurring fifteen years ago. Director's Exhibit 21 at 3. While he acknowledged Claimant has a mild obstructive and restrictive ventilatory impairment and sufficient coal dust exposure to be at risk for developing legal pneumoconiosis, he attributed Claimant's restriction to mild asthma and obesity. *Id.*

The ALJ permissibly found Dr. Sargent's reliance on Claimant's improved pulmonary testing over the span of seven months undermined his opinion because the improved December 2020 testing, which seemingly served as the basis for Dr. Sargent's diagnosis of a mild obstructive and ventilatory impairment, "still showed pulmonary deficits." *See Balsavage*, 295 F.3d at 396; *Kertesz*, 788 F.2d at 163; Decision and Order at 22. Further, he found Dr. Sargent relied on the premise that coal workers' pneumoconiosis is a progressive and irreversible disease to opine that Claimant's "arterial blood gas and lung function abnormalities that have significantly improved" over a span of seven months "cannot be caused by coal mine dust exposure." Director's Exhibit 21 at 3. The ALJ permissibly found Dr. Sargent's reasoning faulty because "pneumoconiosis is a chronic condition" and it is possible for a miner to perform better and "exert more effort" on objective testing "on any given day." *See Greer v. Director, OWCP*, 940 F.2d 88, 90-91 (4th Cir. 1991); Decision and Order at 22-23.

Dr. McSharry diagnosed mild to moderate asthma, but he opined it was not legal pneumoconiosis because asthma is not caused by coal dust exposure. Employer's Exhibit 6 at 3. He also noted Claimant has "modest restrictive lung disease," based on his "variable spirometric abnormalities," but attributed this pulmonary impairment to obesity and not coal dust exposure. *Id.* In addition, he did not diagnose legal pneumoconiosis because there is "no radiographic evidence of injury to the lungs from coal." *Id*.

The ALJ correctly noted Dr. McSharry opined "[a]sthma is not [coal workers' pneumoconiosis] and is not caused by or significantly exacerbated by coal dust exposure." Decision and Order at 23; Employer's Exhibit 6 at 3. Thus, the ALJ permissibly found Dr. McSharry's opinion inconsistent with the medical science set forth in the preamble to the 2001 revised regulations, which states asthma can be aggravated by coal dust exposure and thus constitute legal pneumoconiosis. *See* 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000); *Helen Mining Co. v. Elliott,* 859 F.3d 226, 240 (3d Cir. 2017) (ALJ may discredit a

physician's opinion if it is inconsistent with the preamble); *see also Am. Energy, LLC v. Director, OWCP* [*Goode*], 106 F.4th 319, 332 (4th Cir. 2024); Decision and Order at 23. In addition, the ALJ found Dr. McSharry opined Claimant's asthma is not due to his coal dust exposure because "this man has not been exposed to any coal dust in the past [fifteen] years." Decision and Order at 23; Employer's Exhibit 6 at 3. Thus, the ALJ permissibly discredited Dr. McSharry's reasoning as contrary to the regulations recognizing pneumoconiosis "as 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); *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *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 latent and progressive may be discredited); Decision and Order at 23.

As the ALJ's findings are rational and supported by substantial evidence, we affirm his discrediting the opinions of Drs. Sargent and McSharry as inadequately explained to rebut the presumption of legal pneumoconiosis.[13] 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 "no part of the [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); Decision and Order at 24-25. He discredited the disability causation opinions of Drs. Sargent and McSharry because they failed to diagnose legal pneumoconiosis, contrary to his finding that Employer failed to disprove Claimant has the disease. *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); *Epling*, 783 F.3d at 504-05; *Big Branch Resources, Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 25. Employer raises no specific allegations of error regarding the ALJ's findings other than its assertion that the ALJ should have credited the opinions of Drs. Sargent and McSharry as they are well reasoned. Employer's Brief at 16-18. We reject Employer's argument as it amounts to a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113.

[13] Because the ALJ provided a valid reason for discrediting Drs. Sargent's and McSharry's opinions on legal pneumoconiosis, we need not address Employer's remaining arguments regarding the weight accorded to their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 8-16.

Consequently, we affirm the ALJ's finding that Employer failed to establish no part of Claimant's total respiratory disability is due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); *see Minich*, 25 BLR at 154-56; Decision and Order at 24-25. Because Employer did not rebut the Section 411(c)(4) presumption, we affirm the award of benefits. Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge