U.S. Department of Labor

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

BRB No. 24-0132 BLA

CLARK SLONE Claimant-Respondent v. GAP FORK FUELS, INCORPORATED and OLD REPUBLIC INSURANCE COMPANY, INCORPORATED Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 06/16/2025 DECISION and ORDER

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

Wes Addington (Appalachian Citizens' Law Center, Inc.), Whitesburg, Kentucky, for Claimant.

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

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Willow Eden Fort's Decision and Order Awarding Benefits (2022-BLA-05617) rendered on a subsequent claim filed on November 12, 2020,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant has 15.16 years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she determined Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[2] and established a change in an applicable condition of entitlement.[3] 20 C.F.R. §725.309(c). She further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer contends the ALJ erred in finding Claimant established at least fifteen years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment and thus erred in finding Claimant invoked the Section 411(c)(4)

[1] Claimant filed three prior claims for benefits but withdrew the first and third claims. Director's Exhibits 48-50. A withdrawn claim is "considered not to have been filed." 20 C.F.R. §725.306(b). The district director denied Claimant's second claim, filed on August 28, 2017, because Claimant failed to establish a totally disabling pulmonary impairment. Director's Exhibit 49.

[2] 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) (2018); 20 C.F.R. §718.305.

[3] 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); *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 prior claim for failing to establish total disability, Claimant had to submit new evidence establishing total disability to obtain review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3; Decision and Order at 8; Director's Exhibits 41, 49.

presumption. Employer further contends the ALJ erred in determining it failed to rebut the presumption. Claimant responds in support of the award of benefits. Employer replied, reiterating its arguments. The Acting Director, Office of Workers' Compensation Programs, declined to file a substantive response.

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 & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

Invocation of the 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 mines or in "substantially similar" surface coal mine employment. 30 U.S.C. §921(c)(4); 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. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (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. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

The ALJ considered Claimant's CM-911 application for benefits form, CM-911a employment history form, and Social Security Administration (SSA) earnings records. Decision and Order at 3-4; Director's Exhibits 52-53, 56-57. She also considered Claimant's hearing testimony but determined that it was not probative because Claimant did not testify as to the start and end dates of his coal mine employment and stated there was "a lot [he] can't remember" regarding his employment history. Decision and Order at 5 (quoting Hearing Transcript at 38).

The ALJ found the record insufficient to identify the specific beginning and ending dates of Claimant's periods of coal mine employment and applied the "fourth method" the United States Court of Appeals for the Sixth Circuit articulated in *Shepherd v. Incoal, Inc.*, 915 F.3d 392, 406 (6th Cir. 2019), to calculate the length of Claimant's coal mine

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 20, 39; Director's Exhibit 53.

employment.[5] Decision and Order at 5-6; *see* 20 C.F.R. §725.101(a)(32)(iii). For each year in which Claimant's earnings met or exceeded the average yearly earnings of coal miners as reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual*, the ALJ credited him with a full year of coal mine employment. Decision and Order at 5-6. For the years in which Claimant's earnings fell short of 125 days (1974, 1978, 1980, 1984, 1985, 1986, 1989, 1990, 1994), the ALJ credited him with a fractional year, calculated by dividing his annual earnings by Exhibit 610's average yearly earnings. *Id*. Applying this formula, the ALJ found Claimant established 15.16 years of coal mine employment from 1974 to 1994. *Id.* The ALJ further determined that all of Claimant's coal mine employment was qualifying, as Claimant testified that all his coal mine work was underground. *Id.* at 6-7.

Employer argues the ALJ failed to consider evidence of specific beginning and ending dates in calculating the length of Claimant's coal mine employment in 1974 and 1994. It contends the ALJ overlooked evidence that Claimant's tenure with Newman Coal Company did not begin until the third quarter of 1974, before which he worked in a job unrelated to mining. Employer's Brief at 7-9 (citing Director's Exhibits 38 (Claimant's Deposition) at 9; 57 (Claimant's SSA earnings records from 1964 to 1977)). Employer also argues the ALJ overlooked evidence that Claimant's last day of coal mine work was on July 7, 1994. Employer's Brief at 10 (citing Hearing Transcript at 36-37; Director's Exhibits 2 (2017 CM-911 claim for benefits form), 3 (2017 CM-911a Employment History Form), 5 (Claimant's final paystub showing one week's wages from July 3, 1994 to July 16, 1994), 6 (Claimant's SSA earnings records showing he earned about half of the wages he earned working full time in 1991)); *see also* Director's Exhibits 52, 53, 55, 56. Thus, Employer contends the ALJ erred in crediting Claimant with 0.69 years of coal mine employment in 1974 and 0.67 years in 1994. Employer's Brief at 7-10.

[5] Section 725.101(a)(32)(iii) provides that, if the beginning and ending dates of a miner's coal mine employment cannot be ascertained or the miner's coal mine employment lasted less than a calendar year, the ALJ may determine the length of the miner's work history by dividing the miner's yearly income from work as a miner by the average daily earnings of employees in the coal mining industry for that year, as reported by the Bureau of Labor Statistics (BLS). 20 C.F.R. §725.101(a)(32)(iii). Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual* (titled *Average Earnings of Employees in Coal Mining*) sets forth the average "daily earnings" of miners and the "yearly earnings (125 days)" by year for employees in coal mining, as reported by the BLS.

Employer's arguments are not persuasive as this case arises with the jurisdiction of the Sixth Circuit, which made clear in *Shepherd* that, under the definition of a "year" at 20 C.F.R. §725.101(a)(32):

> [I]f the beginning and ending dates of the miner's employment cannot be determined *or* – even if such dates are ascertainable – if the miner was employed by the mining company for "less than a calendar year," the adjudicator may determine the length of coal mine employment by the average daily earnings of an employee in the coal mining industry. If the quotient from that calculation yields at least 125 working days, the miner can be credited with a year of coal mine employment, regardless of the actual duration of employment for the year. If the calculation shows that the miner worked fewer than 125 days in the calendar year, the miner still can be credited with a fractional portion of a year based on the ratio of the days worked to 125.

915 F.3d at 402 (emphasis in original). Therefore, we reject Employer's argument that the ALJ failed to consider all relevant evidence pertaining to the specific starting dates and ending dates of Claimant's coal mine employment in 1974 and 1994, as it is not required under the *Shepherd* analysis.[6]

We need not address Employer's contention that the employment the ALJ credited Claimant with in 1989 was not coal mine related. Any error would be harmless, given that even without the 0.1194 years of coal mine employment the ALJ credited Claimant with in 1989, he would still have established at least fifteen years of underground coal mine employment. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain

[6] As the ALJ's analysis was permissible under *Shepherd*, we need not address Employer's assertion that had the ALJ used the $50.00 per quarter method to calculate Claimant's pre-1978 employment, she would have found fewer than fifteen years established. Employer's Brief at 9. In addition, we reject Employer's argument that crediting Claimant with 0.69 years in 1974 and 0.67 years in 1994, when he only worked for approximately six months each year, "risks double-counting." *Id.* at 10. In the current case, Claimant's other work in 1974 was not coal mine employment and the ALJ did not credit Claimant with any additional coal mine work in 1994. Therefore, under the facts of this case, Employer's concerns are unfounded. We further reject Employer's contention that the Board's decision in *Stiltner v. Misty Bec Coal Co.*, BRB No. 23-0280 BLA (Aug. 22, 2024) (unpub.) is "instructive" and supports remand, as it, unlike the current case, arises within the United States Court of Appeals for the Fourth Circuit, and *Shepherd* did not constitute controlling authority in that case. Employer's Reply Brief at 2-3.

how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). As Employer raises no further challenge to the ALJ's length of coal mine employment calculation, we affirm her finding that Claimant established at least fifteen years of qualifying coal mine employment. *See* 20 C.F.R. §725.101(a)(32); *see also Shepherd*, 915 F.3d at 402.

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. *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,[7] 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 evidence supporting total disability against all relevant contrary evidence. *See 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). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

The ALJ found total disability based on the medical opinion evidence and when weighing the evidence as a whole.[8]

Medical Opinions

Before weighing the medical opinions, the ALJ found Claimant's usual coal mine employment was working as a roof bolter, which required heavy manual labor.[9] Decision

[7] A "qualifying" pulmonary function study or arterial blood gas study yields results equal to or less than the applicable table values listed 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).

[8] The ALJ found that the pulmonary function and arterial blood gas studies do not support total disability 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 8-11.

[9] The ALJ found Claimant credibly testified that as a roof bolter, he had to lift bundles of bolts weighing approximately fifty pounds ten to eleven times per day, rock dust and hang curtains or cables, and lift and drag bags of rock dust weighing fifty pounds, and that his work was very hard on his body. Decision and Order at 8 (citing Hearing

and Order at 8-9. We affirm these findings as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ next considered the medical opinions of Drs. Shah, Dahhan, and Fino. Decision and Order at 11-14; Director's Exhibit 64; Employer's Exhibits 1, 2. Dr. Shah found Claimant to be totally disabled, while Drs. Dahhan and Fino found that he is not disabled from a respiratory standpoint. Director's Exhibit 64; Employer's Exhibits 1, 2. The ALJ found Dr. Shah's opinion to be well-reasoned and well-documented and thus accorded her opinion substantial weight, while she accorded the contrary opinions little to no weight. Decision and Order at 11-14. Consequently, she found the medical opinion evidence supports a finding of total disability. *Id.* at 14.

Employer asserts the ALJ erred in crediting Dr. Shah's opinion for relying on post-exercise blood gas testing that was non-qualifying. Employer's Brief at 12. We disagree.

In weighing the blood gas study evidence at 20 C.F.R. §718.204(b)(2)(ii), the ALJ permissibly gave more weight to the exercise portion of the March 18, 2021 study – the sole exercise study – finding "it provides a better picture of Claimant's ability to return to [his] usual coal mine employment." Decision and Order at 10-11; *see Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Coen v. Director, OWCP*, 7 BLR 1-30, 1-31-32 (1984). However, because the study is non-qualifying the ALJ found it does not independently support a finding of total disability. Decision and Order at 11. She also

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Transcript at 24, 26-28). The ALJ found this testimony corroborated by Claimant's CM-913 form (Description of Coal Mine Work and Other Employment), in which he wrote that he last worked as a roof bolter in a mine where the coal was between twenty-eight and thirty-eight inches high. Decision and Order at 8; Director's Exhibit 54. He further indicated that he sat for less than one hour, crawled various distances for eight to nine hours per day, and was required to lift and carry fifty to seventy-five pounds various distances various times per day. Decision and Order at 8-9; Director's Exhibit 54. The ALJ found Claimant's reporting of the exertional requirements of his usual coal mine work to Drs. Shah and Dahhan corroborated his testimony. Decision and Order at 9. The ALJ concluded that, because Claimant's job required him to crawl for most of his shift and lift and carry fifty to seventy-five pounds various times per day, Claimant's usual coal mine work involved heavy manual labor. *Id.*

determined the blood gas study evidence as a whole does not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(ii).[10] *Id*.

In her medical opinion, Dr. Shah stated that "[e]xercise arterial blood gas studies are more probative than resting arterial blood gas studies in determining total disability." Director's Exhibit 64 at 7. She explained that although the March 18, 2021 exercise study[11] she conducted was one point above qualifying, "it is still low enough to show that [Claimant] does have an oxygen transfer impairment that is low enough that he could not perform his past relevant coal mine employment" requiring "mostly heavy to heavy labor." *Id.* at 8. Contrary to Employer's contentions, the ALJ permissibly gave "probative weight" to Dr. Shah's opinion, as a physician may conclude a miner is totally disabled based on non-qualifying objective studies if the studies nonetheless demonstrate sufficient impairment to preclude the miner's usual coal mine work.[12] *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); Decision and Order at 11-12, 14.

[10] The March 18, 2021 blood gas study Dr. Shah conducted produced qualifying values at rest and non-qualifying values with exercise. Director's Exhibit 64 at 18. The April 28, 2023 study Dr. Dahhan conducted produced non-qualifying values at rest, and an exercise study was not conducted. Employer's Exhibit 1 at 4.

[11] Dr. Shah stated Claimant performed a walk test "at his own pace with cane for ambulation" but did not perform the exercise study with speed and incline. Director's Exhibit 64 at 8. She indicated Claimant walked a total distance of one hundred and five feet for two minutes. *Id.* Claimant felt progressively short of breath and "his BORG dyspnea scale was rated 8/10, on a severity scale from 0-10, 10 being the worst dyspnea." *Id.* The test was stopped due to Claimant's hip pain and shortness of breath "that was 0/10 at the beginning when standing and was 8/10 at the end of exercise." *Id.*

[12] We decline to address Employer's additional argument that the ALJ erred in not addressing "how, or whether, Dr. Shah's failure to consider later-in-time arterial blood gas testing affected her credibility." Employer's Brief at 13. The latter blood gas study was not performed with exercise. Employer's Exhibit 1 at 4. Given Dr. Shah's opinion that exercise studies are more probative of a miner's ability to perform his usual coal mine work, Employer does not explain how Dr. Shah's failure to consider the non-qualifying April 28, 2023 resting study affected her credibility. *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").

Employer contends the ALJ irrationally discredited Drs. Dahhan's and Fino's opinions based on the non-qualifying March 18, 2021 exercise blood gas study, when she found this evidence did not support total disability, consistent with their opinions. Employer's Brief at 12. Further, Employer argues the ALJ erred in discrediting Dr. Fino's opinion for not considering the exertional requirements of Claimant's usual coal mine work when Dr. Fino concluded that Claimant has no respiratory impairment. *Id*. at 13. We affirm the ALJ's discrediting of Drs. Dahhan's and Fino's opinions.

Dr. Dahhan examined Claimant on April 28, 2023, and noted Claimant worked in underground mines that were twenty-eight to thirty-six inches high and had to lift fifty pounds eight to ten times a day. Employer's Exhibit 1 at 1. He stated Claimant has a history of dyspnea on exertion but that his "exercise tolerance cannot be assessed due to his immobility from his back pain." *Id.* Dr. Dahhan concluded that Claimant did not have any evidence of a pulmonary or respiratory impairment based on the normal spirometry and blood gas values on the studies he performed and clear lungs during the examination. *Id.* at 3. Dr. Fino reviewed Claimant's medical records, indicating "[t]here have been significant differences in the arterial blood gases over the last several years." Employer's Exhibit 2 at 7. Specifically, Dr. Fino noted Claimant's qualifying March 18, 2021 blood gas study and non-qualifying October 25, 2017, February 2008, and April 28, 2023 blood gas studies, acknowledging that even though the October 2017 study is non-qualifying, it showed hypoxemia. *Id.* at 1, 7. Dr. Fino concluded that Claimant's diastolic function of his heart caused the blood gas abnormalities, that Claimant has no ventilatory impairment, and that Claimant is not disabled from a respiratory standpoint. *Id.* at 7.

Contrary to Employer's characterization of the ALJ's findings, she did not discredit Drs. Dahhan's and Fino's opinions because Dr. Dahhan did not review and Dr. Fino did not adequately address the results of the non-qualifying March 18, 2021 exercise blood gas study. Employer's Brief at 12. Rather, she permissibly discredited them because they did not address whether this exercise study, which was close to qualifying, was evidence of an impairment that would prevent Claimant from performing the heavy manual labor required by his usual coal mine work. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); *Rowe*, 710 F.2d at 255; Decision and Order at 12-14. Further, she permissibly found that neither physician adequately explained how Claimant would be able to perform the exertional requirements of his usual coal mine work given Claimant's dyspnea on exertion. *See Banks*, 690 F.3d at 489; *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); Decision and Order at 12-14. Consequently, we affirm the ALJ's finding that their opinions are entitled to little probative weight.[13] Decision and

[13] Because the ALJ provided a permissible reason for discrediting Drs. Dahhan's and Fino's opinions, we need not address Employer's additional challenges to the ALJ's

Order at 13-14. We therefore affirm the ALJ's determination that the medical opinions support a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.* at 14.

Evidence as a Whole

Employer argues the ALJ erred in "credit[ing] Dr. Shah's stand-alone opinion over all the remaining proof" because she relied on the non-qualifying exercise study "to measure the credibility of all the remaining" evidence. Employer's Brief at 13. However, as we held above, the ALJ permissibly credited Dr. Shah's opinion because she explained how the exercise blood gas study, even though non-qualifying, showed evidence of a respiratory impairment that would prevent Claimant from performing the heavy manual labor required by his usual coal mine work. *See Cornett*, 227 F.3d at 577; *Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 744 (6th Cir. 1997) (where total disability cannot be shown based on the pulmonary function study and arterial blood gas study evidence, total disability may nevertheless be found based on a physician's reasoned medical judgment). Employer's arguments are a request to reweigh the evidence, which we are not impowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). As the ALJ considered all relevant evidence and her findings are supported by substantial evidence, we affirm the ALJ's finding Claimant established total disability when considering the evidence as a whole at 20 C.F.R. §718.204(b)(2). *Martin v. Ligon Preparation Co*., 400 F.3d 302, 305 (6th Cir. 2005); Decision and Order at 14-15. We thus further affirm the ALJ's findings that Claimant established a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c), and invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305; Decision and Order at 14-15.

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,[14] or "no part of

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evaluation of their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Decision and Order at 12-14; Employer's Brief at 13.

[14] "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

[his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer failed to establish rebuttal by either method.[15] Decision and Order at 15-22.

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), 718.305(d)(1)(i)(A). The Sixth Circuit holds this standard requires Employer to show Claimant's coal mine dust exposure "did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). "An employer may prevail under the not 'in part' standard by showing that coal dust exposure had no more than a *de minimis* impact on the miner's lung impairment." *Id.* at 407 (citing *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014)).

Employer relies on Drs. Dahhan's and Fino's opinions that Claimant does not have legal pneumoconiosis. Employer's Exhibits 1-2. The ALJ found both physicians' opinions poorly reasoned and insufficient to rebut the presumption of legal pneumoconiosis. Decision and Order at 11-14.

Employer argues the ALJ erred in crediting Dr. Shah's opinion that Claimant has legal pneumoconiosis and in discrediting the contrary opinions.[16] Employer's Brief at 14-16. We disagree.

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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).

[15] Employer does not challenge the ALJ's finding that it failed to rebut the presumption of clinical pneumoconiosis. Decision and Order at 16-19. We therefore affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Employer's failure to disprove clinical pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i). Nonetheless, we address Employer's arguments regarding legal pneumoconiosis, as they are relevant to disability causation.

[16] The ALJ also considered Claimant's treatment records in evaluating whether Employer rebutted the presumed existence of legal pneumoconiosis. Decision and Order at 21. As Employer does not challenge her finding that the treatment records do not aid Employer in establishing rebuttal, we affirm it. *See Skrack*, 6 BLR at 1-711.

As the ALJ recognized, Dr. Shah's opinion does not support Employer's burden on rebuttal; therefore, we need not address Employer's arguments regarding her opinion. *See Shinseki*, 556 U.S. at 413; *Larioni*, 6 BLR at 1-1278; Decision and Order at 21; Employer's Brief at 14-16. In addition, contrary to Employer's assertion, the ALJ adequately explained her discrediting of Drs. Dahhan's and Fino's opinions concerning the existence of legal pneumoconiosis. Decision and Order at 20-21; Employer's Brief at 14-16. The ALJ permissibly gave less weight to Dr. Dahhan's opinion because she determined that his finding of "no evidence" of a pulmonary or respiratory impairment is contrary to her determination that Claimant established a totally disabling respiratory impairment. *Rowe*, 710 F.2d at 255; Decision and Order at 20. We have affirmed that determination. In addition, the ALJ permissibly gave little weight to Dr. Fino's opinion because he did not sufficiently explain why coal mine dust exposure could not have also significantly contributed to Claimant's abnormal blood gas values even if diastolic dysfunction was a cause. *Banks*, 690 F.3d at 489; Decision and Order at 20-21. We therefore affirm, as supported by substantial evidence, the ALJ's discrediting of Drs. Dahhan's and Fino's opinions. *Martin*, 400 F.3d at 305; Decision and Order at 20-21; *see Kozele*, 6 BLR at 1-382 n.4. Consequently, we affirm the ALJ's determination that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 19-21.

Disability Causation

The ALJ next considered whether Employer established "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). Contrary to Employer's contentions, the ALJ permissibly discounted Drs. Dahhan's and Fino's disability causation opinions because neither doctor diagnosed legal pneumoconiosis, contrary to his finding that Employer failed to disprove Claimant has the disease. *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order at 21-22; Employer's Brief at 14-15. We therefore affirm the ALJ's finding that Employer failed to establish no part of Claimant's total disability was due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge