U.S. Department of Labor

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

BRB No. 24-0170 BLA

JIMMY JONES Claimant-Respondent v. MAVERICK CONSTRUCTION, INCORPORATED and KENTUCKY EMPLOYERS' MUTUAL INSURANCE Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 06/25/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Frank K. Newman (Cole Cole Anderson & Newman PSC), Barbourville, Kentucky, for Claimant.

William A. Lyons (Lewis and Lewis Law Offices), Hazard, Kentucky, for Employer and its Carrier.

Victoria Yee (Jonathan Snare, Deputy 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.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Joseph E. Kane's Decision and Order Awarding Benefits (2021-BLA-05139) rendered on a claim filed on April 22, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Maverick Construction, Inc. (Maverick) is the responsible operator. He credited Claimant with thirty years of coal mine employment and determined Claimant established that all his coal mine employment was qualifying for purposes of invoking 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).[1] The ALJ further found the evidence established Claimant has a totally disabling pulmonary or respiratory impairment, 20 C.F.R. §718.204(b)(2), and therefore found Claimant invoked the Section 411(c)(4) presumption. Finally, the ALJ determined Employer did not rebut the presumption and awarded benefits.

On appeal, Employer challenges Maverick's designation as the responsible operator. On the merits, it argues the ALJ erred in finding total disability established, thereby invoking the Section 411(c)(4) presumption.[2] It also argues the ALJ erred in finding it did not rebut the presumption.[3] Claimant responds in support of the award of

[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 finding that Claimant established thirty years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3-5; Hearing Transcript at 7-8, 14-15.

[3] Employer generally asserts the ALJ "did not consider any arguments" made in its post-hearing brief based on the ALJ's statement only acknowledging "[t]he Director and Claimant filed post hearing briefs" but not acknowledging Employer's post-hearing brief.

benefits. The Acting Director, Office of Workers' Compensation Programs (the Director), responds urging affirmance of the ALJ's finding that Maverick is the responsible operator.

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 (1965).

Responsible Operator and Work as a Coal Miner

The responsible operator is the potentially liable operator that most recently employed the miner for a cumulative period of not less than one year.[5] 20 C.F.R. §725.495(a)(1). The district director is initially charged with identifying and notifying operators that may be liable for benefits and then identifying the "potentially liable operator" that is the responsible operator. 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b). Once the district director designates a potentially liable operator, that operator may be relieved of liability only if it proves either that it is financially incapable of assuming liability for benefits or that another "potentially liable operator" that is financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R.

Employer's Brief at 12-13. As Employer has not identified which specific arguments it made in its post-hearing brief that the ALJ failed to consider, we decline to address its argument that it has "been deprived of its rights." *See* 20 C.F.R. §802.211(b); *see also Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (ALJ has broad discretion in resolving procedural and evidentiary issues); *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

[4] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 2, 6.

[5] For a coal mine operator to meet the regulatory definition of a "potentially liable operator," each of the following conditions must be met: a) the miner's disability or death must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

§725.495(c). The ALJ found the district director correctly designated Maverick as the responsible operator because it was the last operator to employ Claimant as a coal miner for at least a year. Decision and Order at 4.

Employer contends Maverick is not the responsible operator because the ALJ erred in finding Claimant's subsequent work with Alden Resources did not constitute the work of a coal miner. Employer's Brief at 23. We disagree.

A "miner" is "any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal." 30 U.S.C. §902(d). The implementing regulation provides "a rebuttable presumption that any person working in or around a coal mine or coal preparation facility is a miner." 20 C.F.R. §725.202(a); *see also* 20 C.F.R. §725.101(a)(19); *Stephen v. Consolidation Coal Co.*, BLR , BRB Nos. 23-0091 BLA and 23-0259 BLA, slip op. at 3-4 (Mar. 20, 2025). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that duties which meet situs and function requirements constitute the work of a miner as defined in the Act. *Navistar, Inc. v. Forester*, 767 F.3d 638, 641 (6th Cir. 2014); *Falcon Coal Co. v. Clemons*, 873 F.2d 916, 922 (6th Cir. 1989). Under the situs requirement, the work must take place in or around a coal mine or coal preparation facility; under the function requirement, the work must be integral or necessary to the extraction or preparation of coal. *Forester*, 767 F.3d at 641.

In evaluating whether Claimant's work for Alden Resources satisfies the function requirement, the ALJ considered Claimant's hearing and deposition testimony, Alden Resources' response to the district director's letter requesting information on Claimant's employment at its Harps Creek Mine location, and a Mine Data Retrieval System report concerning Harps Creek Mine. Decision and Order at 4. At the November 8, 2021 hearing, Claimant testified Alden Resources was not producing coal when he worked there for "about six [or] seven months" as a watchman "who kept people from stealing anything" while the mine was shutting down. Hearing Transcript at 11, 23. During his October 15, 2019 deposition, Claimant stated that he worked for Alden Resources for about eight months from August 2018 to February 2019 "pulling all of the equipment and stuff out" after it "stopped mining operations." Director's Exhibit 35 at 8, 12.

In a June 4, 2019 letter responding to the district director's request for additional information, an Alden Resources Human Resource manager stated Harps Creek Mine, where Claimant worked while he was employed with it, was "in idle status" and not producing coal when Claimant worked there. Director's Exhibit 6 at 1. The manager additionally indicated Claimant was employed as a "[c]ommunity [t]racker" and was not exposed to coal or rock dust during his employment. *Id.* at 2. Further, a Mine Data Retrieval System report showed that Harps Creek Mine was non-producing on August 1,

2018.[6] Director's Exhibit 7. The ALJ concluded that this evidence supported that Claimant's work for Alden Resources at Harps Creek Mine did not involve the extraction or preparation of coal and therefore Alden Resources does not meet the criteria to be a potentially liable responsible operator. Decision and Order at 4.

Employer argues Claimant's work with Alden Resources satisfied the function requirement because it was an "integral part of the mining process" as it involved the "removal of underground mining equipment so that it can be evaluated for further use or transferred to another location." Employer's Brief at 29 (citing *Zimmerman v. J. Robert Bazley, Inc.*, 10 BLR 1-75 (1987)). It also contends Claimant's general work as a "security and safety supervisor" and underground work greasing fans, changing batteries in mining equipment, and maintaining ventilation for the underground miners removing the pillars and equipment was "essential" to coal mine operations. *Id.* at 28-29.

Contrary to Employer's contention, this case is distinguishable from *Zimmerman*, where the Board held the ALJ reasonably found the removal of underground mining equipment integral to the mining process because the claimant's work involved, in part, "transportation of that equipment to new mining sites, and erection of the equipment at the new sites." 10 BLR at 1-76-77. In this case, by contrast, Employer has not provided any support for its assertion that Claimant was removing equipment from the Harps Creek Mine to transfer it to another location or that the equipment was being evaluated for further use. Employer's Brief at 29. Rather, Claimant worked for Alden Resources at an idle mine that was not producing coal and where the majority of the equipment was being scrapped and not being moved to another mine location.[7] Director's Exhibits 6; 7; 51 at 11. Further, the

[6] Claimant stated he worked at Alden Resources from August 2018 to February 2019. Director's Exhibit 4.

[7] Employer also alleges the claims examiner who issued the district director's Proposed Decision and Order made an ex parte telephone call with Claimant and the "parties merely have to accept that there was a private conversation wherein the Claimant expressed that he was essentially a security guard." Employer's Brief at 26; *see* Director's Exhibit 51. However, the ALJ did not rely on the district director's findings in determining whether Claimant worked as a coal miner at Alden Resources. *See* Decision and Order at 4. Rather, it is Employer who relies on the district director's findings in its brief to the Board. *See* Employer's Brief at 20. Further, Employer had ample opportunity to refute the district director's findings through Claimant's deposition, at the hearing, and through discovery. *See* Hearing Transcript at 19-22; Director's Exhibit 35. We therefore agree with the Director's position that "Employer had a fair opportunity to gather and present

ALJ reasonably found that Claimant's security guard theft-prevention duties were not integral to the extraction, preparation, or transportation of coal. *Clemons*, 873 F.2d at 923. Accordingly, we affirm, as supported by substantial evidence, the ALJ's determination that Claimant's work at Alden Resources did not satisfy the function requirement and therefore did not constitute the work of a miner.[8] *See Forester*, 767 F.3d at 641; *Martin v. Ligon Preparation Co*., 400 F.3d 302, 305 (6th Cir. 2005); Decision and Order at 4. Thus, the ALJ's finding that Maverick was correctly designated as the responsible operator is affirmed.

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

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §§718.204(b)(2), 718.305(b)(1)(i). 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.[9] 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,[10] 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 Rafferty v. Jones & Laughlin Steel Corp*., 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp*., 9 BLR 1-195, 1-

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evidence" regarding the nature of Claimant's employment at Alden Resources. *See* Director's Brief at 4.

[8] Because we affirm the ALJ's finding that Claimant's work at Alden Resources was not the work of a miner, we need not address Employer's argument that Claimant worked at Alden Resources for a year in accordance with the holding in *Shepherd v. Incoal, Inc.*, 915 F.3d 392 (6th Cir. 2019). *See Larioni v. Director, OWCP,* 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 27.

[9] The ALJ found Claimant's usual coal mine work as a laborer required standing most of the day and occasionally shoveling up to seventy-five to a hundred pounds of coal and thus required moderate or medium manual labor. Decision and Order at 6-7. We affirm this finding as unchallenged on appeal. *See Skrack*, 6 BLR at 1-711; Decision and Order at 6-7.

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

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.[11] Decision and Order at 13-14.

Employer contends the ALJ erred in finding the blood gas evidence inconclusive and in weighing the medical opinions and the evidence as a whole. Employer's Brief at 13-19. We disagree.

Arterial Blood Gas Studies

The ALJ considered three arterial blood gas studies performed on May 22, 2019, August 3, 2020, and August 12, 2020. Decision and Order at 8; Director's Exhibit at 8; Employer's Exhibit 1 at 9; Employer's Exhibit 2 at 12. Claimant performed all the studies at rest and with exercise. Director's Exhibit 15 at 8; Employer's Exhibit 1 at 9; Employer's Exhibit 2 at 12. Only the at-rest May 22, 2019 study produced qualifying values. Director's Exhibit 15 at 8.

The ALJ found the more recent August 3, 2020 and August 12, 2020 blood gas studies "essentially contemporaneous" because Claimant performed them within nine days of each other. Decision and Order at 10. He noted that although he may give more weight to more recent evidence, when the evidence shows that the miner's condition improved, the later evidence rule should not be applied because "[*i*]*t is impossible to reconcile the evidence.* Either the earlier or the later result *must* be wrong, and it is just as likely that the later evidence is faulty as the earlier. The reliability of irreconcilable items of evidence must therefore be evaluated without reference to their chronological relationship." Decision and Order at 9-10 (quoting *Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993)).

The ALJ indicated that the three exercise blood gas values had similar, non-qualifying results,[12] the August 2020 resting values were non-qualifying, and the May 2019 resting values were qualifying. Decision and Order at 10. He determined that the arterial blood gas studies "may indicate that the Claimant suffered from transient impairment" but

[11] The ALJ found the pulmonary function studies do not support a finding of 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 6, 8.

[12] In his May 22, 2019 exercise study, Claimant walked on a treadmill for four minutes before stopping due to shortness of breath. Director's Exhibit 15 at 8. In his August 3, 2020 and August 12, 2020 studies, Claimant exercised on a bike for 1.5 minutes before stopping due to fatigue. Employer's Exhibit 1 at 9; Employer's Exhibit 2 at 12.

he could not find that they "conclusively refute or support a finding that the Claimant is totally disabled." *Id.* Thus, he concluded that the blood gas study evidence is "inconclusive." *Id.*

Employer argues the ALJ should have found the preponderance of the blood gas study evidence non-qualifying because only the May 2019 resting values were qualifying and the two more recent studies were non-qualifying at rest and with exercise. Employer's Brief at 13-14. It also contends the ALJ erred in considering the August 2020 studies "as one." *Id.* at 14.

Contrary to Employer's argument, the ALJ permissibly declined to afford greater weight to the August 2020 studies based on their recency as they showed Claimant's respiratory condition improved. *Woodward*, 991 F.2d at 319-20; *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 740 (6th Cir. 2014) (ALJs must perform a qualitative and quantitative analysis of conflicting evidence and not mechanically credit tests when they indicate a miner's condition has improved); Decision and Order at 9-10. Further, although the ALJ stated the August 2020 studies are "essentially contemporaneous," in making his findings he noted and discussed their values separately. Decision and Order at 9-10. Thus, the ALJ performed the requisite "quantitative and qualitative" analysis of the blood gas studies and permissibly determined the conflicting results rendered the evidence overall inconclusive for the presence or absence of total disability. *See Woodward,* 991 F.2d at 319-20; *Keathley*, 773 F.3d at 740; Decision and Order at 10; *see also* 20 C.F.R. §718.204(b)(2)(ii).

Medical Opinions

The ALJ considered the medical opinions of Drs. Ajjarapu, Dahhan, and Tuteur. Decision and Order at 10-14. Dr. Ajjarpau opined Claimant is incapable of performing his usual coal mine employment while Drs. Dahhan and Tuteur opined he is not totally disabled. Director's Exhibit 15; Employer's Exhibits 1, 2, 4, 5. The ALJ found Dr. Ajjarapu has an accurate understanding of Claimant's usual coal mine work and determined her opinion is well-reasoned and documented and entitled to "full probative weight." Decision and Order at 11. He gave less weight to Drs. Dahhan's and Tuteur's opinions, finding them unsupported and poorly reasoned because they failed to adequately explain how Claimant could perform his usual coal mine employment.[13] *Id.* at 12-13. Weighing the medical opinions together, he found they weigh in favor of a finding of total disability. *Id.* at 13.

[13] We affirm, as unchallenged on appeal, the ALJ's discrediting of Dr. Tuteur's opinion. *Skrack*, 6 BLR at 1-711; Decision and Order at 13.

Employer argues the ALJ erred in weighing the medical opinions. Employer's Brief at 14-19. We disagree.

Contrary to Employer's argument, the ALJ need not discredit Dr. Ajjarapu's opinion because she considered less evidence than the other physicians. Employer's Brief at 15. Rather, an ALJ may credit a physician who did not review all of the medical evidence when the opinion is otherwise well-reasoned, documented, and based on the physicians' own examination of the miner and objective testing results. 20 C.F.R. §718.202(a)(4); *see Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Smith v. Kelly's Creek Res.*, 26 BLR 1-15, 1-28 (2023); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21-22 (1987) (reasoned opinion is one in which the ALJ finds the underlying documentation adequate to support the physician's conclusion). Dr. Ajjarapu noted Claimant performed moderate manual labor, consistent with the ALJ's own finding, and considered Claimant's physical symptoms and the May 22, 2019 blood gas study values showing severe resting and mild exercise-induced hypoxemia in determining that Claimant "[does not] have the pulmonary capacity to do his previous coal mine employment." Director's Exhibit 15 at 7. The ALJ therefore permissibly found Dr. Ajjarapu's opinion well-reasoned and sufficient to establish total disability despite finding the blood gas study evidence as a whole to be inconclusive.[14] 20 C.F.R. §718.204(b)(2)(iv); *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); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 478 (6th Cir. 2011); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 10-11; Director's Exhibit 15 at 1, 7.

We also reject Employer's assertion that the ALJ erred in giving less weight to Dr. Dahhan's contrary opinion. Employer's Brief at 16-18. Dr. Dahhan examined Claimant on August 3, 2020, and prepared an initial report and a supplemental report based on a review of additional records, including Drs. Ajjarapu's and Tuteur's reports. Employer's Exhibits 1, 4. Dr. Dahhan indicated Claimant did not have a pulmonary or respiratory impairment because all the pulmonary function studies are normal and all the blood gas studies are normal except for the resting study from Dr. Ajjarapu. Employer's Exhibit 4 at

[14] For the first time on appeal, Employer contends Dr. Ajjarapu's opinion should be accorded less weight because she does not specialize in pulmonary medicine. Employer's Brief at 14-15. Even assuming Employer did not forfeit this argument, it does not explain how a difference in the physician's qualifications would affect the result when, as we hold above, the ALJ permissibly discredited Dr. Dahhan's contrary opinion because of his flawed reasoning and lack of explanation. We therefore decline to address this argument. *See Shinseki*, 556 U.S. at 413.

3. To support his conclusion, Dr. Dahhan stated "it is hard to imagine a patient with resting pO2 of 60 [on Dr. Ajjarapu's blood gas study] in the face of normal pulmonary function studies including spirometry, lung volume and diffusion capacity on three occasions[,] and clear lungs on chest x-ray." *Id.* Thus, contrary to Employer's contention, the ALJ permissibly found Dr. Dahhan's opinion not well-reasoned to the extent he excluded the presence of a blood gas impairment based on the pulmonary function studies and x-ray evidence. *See* 20 C.F.R. §718.204(b)(2)(ii); *see also Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 487-88 (6th Cir. 2012); *Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41 (6th Cir. 1993); *Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984); Decision and Order at 12; Employer's Brief at 16-18; Employer's Exhibit 4 at 3.

Further, the ALJ permissibly discredited Dr. Dahhan's opinion because he did not sufficiently explain how Claimant's inability to exercise more than 1.5 minutes during the August 2020 exercise blood gas study that Dr. Dahhan conducted would not affect Claimant's ability to perform his usual coal mine work. *See Budash v. Bethlehem Mines Corp*., 9 BLR 1-48, 1-51-52 (1986) (en banc) (description of physical limitations in performing routine tasks may be sufficient to allow the ALJ to infer total disability); *Cornett*, 227 F.3d at 578; *Morrison*, 644 F.3d at 478; *Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; Decision and Order at 12. Thus, we affirm, as supported by substantial evidence, the ALJ's discrediting of Dr. Dahhan's opinion.[15] *Martin v. Ligon Preparation Co*., 400 F.3d 302, 305 (6th Cir. 2005).

It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1072-77 (6th Cir. 2013); *Banks*, 690 F.3d at 482-83; *Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255. The Board is not empowered to reweigh the evidence or substitute its inferences for those of the ALJ. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). We thus affirm the ALJ's determination that the medical opinion evidence and evidence as a whole support a finding of total disability, and further affirm his determination that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.204(b)(2)(ii), (iv); Decision and Order at 14.

[15] Because the ALJ provided valid reasons for discrediting Dr. Dahhan's opinion, we need not address Employer's other arguments regarding the weight he accorded his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 16-18.

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,[16] 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 determined Employer failed to rebut the presumption by either method.[17] Decision and Order at 19-20.

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); *see Minich v. Keystone Coal Mining Co*., 25 BLR 1-149, 1-155 n.8 (2015). The Sixth Circuit holds that this standard requires Employer to show Claimant's "coal mine employment did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). The "in part" standard is met if Employer establishes coal mine dust exposure "had at most only a *de minimis* effect on [Claimant's] lung impairment." *Id.* at 407. The ALJ found that Drs. Dahhan's and Tuteur's opinions that Claimant does not have legal pneumoconiosis because he does not have a pulmonary or respiratory impairment were not well-reasoned or well-documented and therefore are insufficient to rebut the presumption that Claimant has legal pneumoconiosis. Decision and Order at 17-19.

Employer contends the ALJ erred in discrediting Drs. Dahhan's and Tuteur's opinions based on his erroneous total disability finding at 20 C.F.R. §718.204(b)(2).[18]

[16] "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).

[17] The ALJ found Employer disproved clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 17.

[18] The ALJ also considered Dr. Ajjarapu's opinion that Claimant has legal pneumoconiosis and correctly found it does not aid Employer in rebutting the

Employer's Brief at 19-23; Employer's Exhibits 1, 2, 4, 5. It asserts the ALJ should have "weigh[ed] the evidence under the preponderance of the evidence standard" instead of placing the burden on Employer to rebut the presumption. Employer's Brief at 19-23.

Because we have affirmed the ALJ's determination that Claimant established total disability and therefore invoked the Section 411(c)(4) presumption, we reject Employer's contention that the ALJ applied an incorrect burden of proof by requiring Employer to disprove the existence of legal pneumoconioses. 20 C.F.R. §718.305(d)(1)(i); *see Minich*, 25 BLR at 1-159. Employer does not raise any arguments at rebuttal regarding legal pneumoconiosis aside from its contentions concerning the ALJ's finding that Claimant has a totally disabling respiratory impairment, which we have rejected. Consequently, we affirm the ALJ's finding that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A). 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 addressed 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). The ALJ rationally discredited Drs. Dahhan's and Tuteur's opinions regarding the cause of Claimant's total disability because they failed to diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer failed to disprove Claimant has the disease. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 19-20. We therefore affirm the ALJ's determination that Employer failed to establish that no part of Claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

presumption. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 17. We therefore need not address Employer's arguments regarding her opinion. *See Larioni*, 6 BLR at 1-1278; Employer's Brief at 19-20.

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