



BRB No. 24-0389 BLA

ESTHER F. YANKUSKIE)
(Widow of JOSEPH JOHN YANKUSKIE))

Claimant-Respondent)

v.)

CONSOL OF PA COAL COMPANY, c/o)
CONSOL ENERGY, INCORPORATED)

and)

CONSOL ENERGY, INCORPORATED, c/o)
SMART CASUALTY CLAIMS SERVICES)

Employer/Carrier-)
Petitioners)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 06/17/2025

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Drew A. Swank,
Administrative Law Judge, United States Department of Labor.

Heath M. Long & Matthew A. Gribler (Pawlowski, Bilonick, & Long),
Ebensburg, Pennsylvania, for Claimant.

Christopher L. Wildfire (SutterWilliams LLC), Pittsburgh, Pennsylvania, for
Employer and its Carrier.

Kathleen K. Kim (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: BOGGS, ROLFE, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits (2023-BLA-05966) on a survivor's claim¹ filed on August 12, 2022, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established the Miner had 23.5 years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he found Claimant invoked the presumption of death 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. Employer also argues the

¹ Claimant is the widow of the Miner, who died on March 8, 2022. Director's Exhibits 1, 4. Claimant does not allege, nor does the record reflect, that the Miner successfully established entitlement to benefits during his lifetime. Thus, Claimant is not entitled to benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), which provides that a survivor of a miner determined to be eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

² Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's death was due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment at the time of his death. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

ALJ erred in finding it did not rebut the presumption.³ Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs (the Director), also responds, urging the Benefits Review Board to reject Employer's challenges to the constitutionality of 20 C.F.R. §718.103(c) and the ALJ's reliance on the preamble.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.⁴ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls, Assocs., Inc.*, 380 U.S. 359 (1965).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner had a totally disabling respiratory or pulmonary impairment at the time of his death. 20 C.F.R. §718.305(b)(1)(iii). A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented 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), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

The ALJ found the qualifying⁵ pulmonary function study supports a finding of total disability, there is no blood gas study evidence or evidence of cor pulmonale with right-sided congestive heart failure, the medical opinions support a finding of total disability,

³ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established the Miner had 23.5 years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5.

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because the Miner performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 2.

⁵ A "qualifying" pulmonary function study yields results equal to or less than the applicable table values contained in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i).

and the treatment records do not independently support a finding of total disability. 20 C.F.R. §718.204(b)(2)(i)-(iv); Decision and Order at 10-19. Weighing the evidence as a whole, he determined it establishes total disability.

Employer contends the ALJ erred in finding Claimant established total disability based on the pulmonary function study evidence, the medical opinion evidence, and the evidence as a whole. 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order at 10-18. We disagree.

Pulmonary Function Study

The ALJ noted there is only one pulmonary function study in the record, dated October 13, 2001, which was obtained in conjunction with the Miner's treatment at Indiana Regional Hospital and had qualifying pre-bronchodilator and post-bronchodilator values. Decision and Order at 10-11; Director's Exhibit 6; Claimant's Exhibit 3. The technician who conducted the study noted "Good Patient Cooperation and Efforts." Director's Exhibit 6 at 13. The study has one flow volume loop and one set of tracings. *Id.* at 13-14. Dr. Mehta reviewed the study and indicated the Miner had a normal FVC with a moderately severe reduced FEV1 and reduced FEV1/FVC ratio as well as no significant bronchodilator response. *Id.* at 12. He also noted a moderately reduced diffusion capacity and that the "[f]low volume loop is classic for next [sic] obstructive defect." *Id.* Dr. Mehta concluded from the study that the Miner had a moderately severe obstructive ventilatory defect. *Id.*

Dr. Go reviewed the study and concluded it showed a moderately severe obstructive ventilatory defect, with no significant response to bronchodilator administration. Claimant's Exhibit 1 at 2. He stated that he reviewed tracings and found them to be consistent with good efforts although the individual trials were not available. *Id.* He further noted that the lung volumes were normal as measured by helium dilution and there was a severe diffusion impairment. *Id.*

Dr. Basheda evaluated the same study and opined it was invalid due to the lack of three sets of tracings to compare to evaluate acceptability and reproducibility. Employer's Exhibit 5 at 2. He reviewed Dr. Go's report and stated that Dr. Go also noted that the individual trials were not available and "fail[ed] to note the diffusion measurement was not validated by the inspired vital capacity (IVC) measurement." *Id.* Dr. Basheda further opined that the Miner was not using his Breztri inhaler properly, which "can result in worsening pulmonary function, reducing his FEV1 and FEVC measurements on spirometry." *Id.*

The ALJ observed that, as the physicians noted, the October 13, 2001 study does not include sufficient tracings or values for the individual trials and therefore the test is not in compliance with the quality standards set forth in 20 C.F.R. §718.103(b). Decision and

Order at 10-11. But the quality standards do not apply to pulmonary function studies, like the one in this case, conducted as part of a miner's treatment and not in anticipation of litigation. 20 C.F.R. §§718.101, 718.103; *see J.V.S. [Stowers] v. Arch of W. Va./Apogee Coal Co.*, 24 BLR 1-78, 1-92 (2008) (quality standards "apply only to evidence developed in connection with a claim for benefits" and not to testing included as part of a miner's treatment). The ALJ must still address, however, whether the tests are sufficiently reliable. *See* 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000); Director's Exhibit 6; Claimant's Exhibit 3.

Consistent with that requirement, the ALJ stated that the October 13, 2021 study substantially complies with the other quality standards, includes a representation by the signing physician that there was "good patient cooperation and efforts," and is supported by Dr. Go's opinion that the flow volume loop and tracings are consistent with good effort. Decision and Order at 11 (quoting Director's Exhibit 6 at 12-13). In addition, noting that the case involves a deceased miner, and this is the only pulmonary function study in evidence, the ALJ used 20 C.F.R. §718.103(c)⁶ as a guide in determining the October 13, 2021 study "demonstrates technically valid results and is sufficiently reliable to establish total disability. Decision and Order at 11.

Employer argues the October 13, 2021 study is non-conforming and non-compliant and the ALJ's characterization is irrational. Employer's Brief at 28. Specifically, Employer argues there are more issues regarding compliance than the ALJ detailed, including that only one attempt at each pulmonary function maneuver was performed and the test readout does not contain information required by 20 C.F.R. §718.103(b)(5)-(7).⁷

⁶ In relevant part, Section 718.103(c) states:

In the case of a deceased miner, where no pulmonary function tests are in substantial compliance with paragraphs (a) and (b) and Appendix B, noncomplying tests may form the basis for a finding if, in the opinion of the adjudication officer, the tests demonstrate technically valid results obtained with good cooperation of the miner.

20 C.F.R. §718.103(c).

⁷ The regulation at 20 C.F.R. §718.103(b)(5)-(7) requires that pulmonary function studies must contain a statement setting forth, among other things, the individual's "ability to understand the instructions, ability to follow directions and degree of cooperation in performing the tests;" "[p]aper speed of the instrument used;" and "[n]ame of the instrument used." Before the ALJ, Employer contended the test could not be considered because it did not comply with the quality standards and specifically raised the failure of

Id. at 28-30. Further, it contends the study was performed during or soon after an acute respiratory illness, as the Miner was recently diagnosed with Class II chronic congestive heart failure, progressive degenerative mitral valve disease with severe mitral regurgitation, and chronic obstructive pulmonary disease (COPD). *Id.* at 30. It also asserts the ALJ failed to consider that the Miner’s lung volume test results as a whole do not show any significant increases and therefore do not support a diagnosis of obstructive lung disease or confirm the decrements in the Miner’s pre- and post-bronchodilator FEV1, FEV1/FVC ratio, and MVV values. *Id.* at 31-32. Employer states, based on *Director, OWCP v. Siwiec*, 894 F.2d 635, 638 (3d Cir. 1990), the October 13, 2021 study is “non-conforming, non-compliant, unreliable, and technically invalid for any purpose under the Act.” *Id.* at 30-31. Finally, it argues its constitutional rights are violated because 20 C.F.R. §718.103(c) allows for the unequal treatment of deceased and living miners by permitting non-complying tests to form the basis of a total disability determination in a survivor’s claim if the miner’s cooperation is “good” during testing. *Id.* at 32. We disagree.

Although 20 C.F.R. §718.103(c) is not directly applicable because the October 13, 2021 study is contained in a treatment record, we initially consider Employer’s contention concerning the constitutionality of 20 C.F.R. §718.103(c). We agree with the position expressed by the Director that Employer does not sufficiently identify or address what constitutional right is violated or why the ALJ’s decision is contrary to law. Director’s Brief at 2-3 n.3; *see, e.g., Koch v. Director, OWCP*, 6 BLR 1-909, 1-910 (1983); *Slinker v. Peabody Coal Co.*, 6 BLR 1-465, 1-466, (1983). Instead, Employer cites “unequal treatment” in survivors’ claims because living miners’ cases do not include this exception under the Act. *See* Director’s Brief at 2 n.3; Employer’s Brief at 32. Employer’s argument is unpersuasive and inadequately briefed. *See* 20 C.F.R. §802.211(b); *see also Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986). Therefore, we decline to address it.

In addition, we reject Employer’s arguments concerning the study’s compliance with the regulatory quality standards because, as explained *supra*, the quality standards do not apply to the October 13, 2021 study because it is included in treatment records. *See Stowers*, 24 BLR at 1-92; Employer’s Brief at 28-30. Consequently, we reject Employer’s

the test to meet the quality standard requirement for three tracings that differ by no more than five percent. Employer’s Brief before the ALJ at 6-11. Employer also argued the test should be disregarded based on the regulatory injunction that a test should not be conducted during or shortly after hospitalization for an acute respiratory illness. *Id.* at 7. It did not raise any other specific failures to meet the quality standards. *See Edd Potter Coal Co. v. Dir., OWCP [Salmons]*, 39 F.4th 202, 208 (4th Cir. 2022) (parties forfeit arguments before the Board not first raised to the ALJ).

assertion that, based on *Siwiec*,⁸ the October 13, 2021 pulmonary function study may not be used for any purpose under the Act.⁹

Further, to the extent the ALJ did not specifically consider Employer's argument that the October 13, 2021 study was conducted during or after an acute respiratory illness, error, if any, is harmless. See *Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53, 1-55 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). Employer has not explained how the Miner's diagnosis of chronic congestive heart failure with progressive degenerative mitral valve disease and COPD constitutes an "acute" illness nor does Employer point to any medical evidence to support that assertion. Employer's Brief at 30. We also decline to address Employer's argument concerning the lung volume studies as it failed to raise this issue before the ALJ.¹⁰ 20 C.F.R. §802.301(a); see *Joseph Forrester Trucking v. Director, OWCP [Davis]*, 937 F.3d 581, 591 (6th Cir. 2021) (parties forfeit arguments before the Board not first raised to the ALJ); *Dankle v. Duquesne Light Co.*, 20 BLR 1-1, 1-4-7 (1995). Moreover, Employer does not cite any medical opinion that the October 13, 2021 study is unreliable based on the lung volume results. See *Marcum v. Director, OWCP*, 11 BLR 1-23, 1-24 (1987); Employer's Brief at 6, 31-32.

The ALJ credited Dr. Mehta's notation of good patient cooperation and effort as well as Dr. Go's review of the report and tracings noting they were consistent with good efforts. Decision and Order at 11. The ALJ therefore permissibly found the October 13, 2021 pulmonary function study's results are sufficiently reliable to support a finding of total disability. See *Sun Shipbuilding & Dry Dock Co. v. McCabe*, 593 F.2d 234, 237 (3d Cir. 1979); Decision and Order at 11. Consequently, we affirm the ALJ's determination that the weight of the pulmonary function study evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 11.

⁸ We note that *Director, OWCP v. Siwiec*, 894 F.2d 635, 635 (3d Cir. 1990), is distinguishable from the current case as it involved a living miner's claim.

⁹ Based on our rejection of Employer's argument, the ALJ's error, if any, in not specifically considering Employer's contentions concerning *Siwiec* is harmless. See *Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53, 1-55 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 30-31.

¹⁰ In its Closing Position Statement before the ALJ, Employer simply noted "[l]ung volume studies were interpreted as showing a normal total lung capacity, with normal residual volume and residual volume to total lung capacity ratio." Employer's Closing Position Statement before the ALJ at 6 (citing Director's Exhibit 6).

Medical Opinions

The ALJ considered the opinions of Drs. Go and Swedarsky. Decision and Order at 13-18. Dr. Go opined the Miner was totally disabled based on the qualifying October 13, 2021 pulmonary function study values. Claimant's Exhibit 1 at 5. Dr. Swedarsky indicated the October 13, 2021 study findings show "a moderately severe obstructive ventilatory defect with no significant bronchodilator response" and a moderately reduced diffusion capacity. Employer's Exhibit 4 at 5. He noted the Miner's history of COPD, observed mild to moderate centriacinar emphysema on the autopsy slides, and stated the Miner's "mitral valve disease with severe regurgitation was a major contributing factor to [his] shortness of breath and respiratory disability." Employer's Exhibit 4 at 3-5, 9, 13, 22, 32, 35.

Because the ALJ determined Dr. Swedarsky did not offer a definitive conclusion concerning the extent of the Miner's respiratory or pulmonary impairment, he found Dr. Swedarsky's opinion "not directly probative" on the issue. Decision and Order at 16. The ALJ determined Dr. Go's opinion was well-reasoned and documented because he thoroughly discussed the treatment records he considered and reasonably relied on the October 13, 2021 pulmonary function study, which the ALJ found supported a finding of total disability. *Id.*

As we have affirmed the ALJ's findings concerning the October 13, 2021 study and Employer raises no additional arguments concerning the ALJ's finding that the medical opinion evidence supports a finding of total disability, 20 C.F.R. §718.204(b)(2)(iv), we affirm it.¹¹ See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 19. Consequently, we further affirm his finding that Claimant established total disability based on the evidence as a whole, 20 C.F.R. §718.204(b); *Rafferty*, 9 BLR at 1-232, and invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1), (c).

Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,¹² or that

¹¹ The ALJ found that the treatment records "do not contain a reasoned and documented medical opinion addressing whether the Miner suffered from a totally disabling pulmonary or respiratory condition during his lifetime." Decision and Order at 19.

¹² "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

“no part of [his] death was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201.” 20 C.F.R. §718.305(d)(2)(i), (ii). The ALJ found Employer failed to establish rebuttal by either method.¹³

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish the Miner did not have a chronic lung disease or impairment “significantly related to, or substantially aggravated by, dust exposure in coal mine employment.”¹⁴ 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); see *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on Dr. Swedarsky’s opinion, as supported by that of Dr. Gregg (the Miner’s treating cardiologist),¹⁵ that the Miner’s emphysema and COPD were related

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).

¹³ The ALJ found Employer rebutted the presence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(2)(i)(B); Decision and Order at 30.

¹⁴ The ALJ found the autopsy reports by the prosector and Dr. Bartholow insufficient to rebut the presence of legal pneumoconiosis. Decision and Order at 23; Director’s Exhibit 5. As Employer does not challenge these findings, we affirm them. See *Skrack*, 6 BLR at 1-711. The ALJ discredited Dr. Swedarsky’s autopsy findings concerning the cause of the emphysema/COPD he observed for the same reasons he discredited his medical report concerning the existence of legal pneumoconiosis. See Decision and Order at 24-25, 28-29.

¹⁵ Employer states Dr. Gregg’s opinions “corroborate Dr. Swedarsky’s etiologic determinations, to the extent that [the Miner’s] COPD was attributed to a non-pneumoconiotic source.” Employer’s Brief at 38. Dr. Gregg indicated on July 1, 2020 that the Miner had nonprogressive COPD and that he had a “feeling” that the “mitral regurgitation is contributing somewhat” to the Miner’s symptom of shortness of breath. Employer’s Exhibit 1 at 4. On August 25, 2021, Dr. Gregg stated the Miner had “progressively dyspneic pressure when he does not take his diuretics.” *Id.* at 7. On

entirely to smoking.¹⁶ Decision and Order at 25-30; Employer’s Brief at 33-41; Employer’s Exhibits 1, 4. The ALJ found Dr. Swedarsky’s opinion not well reasoned based on medical literature the Department of Labor cited in the preamble to the 2001 revised regulations, and therefore found it insufficient to satisfy Employer’s burden of proof. Decision and Order at 28-29.

Employer argues the ALJ erred in finding that Dr. Swedarsky’s opinion, as supported by Dr. Gregg’s treatment records, is insufficient to establish rebuttal. Employer’s Brief at 33-38. We disagree.

In preparing his report, Dr. Swedarsky reviewed the Miner’s medical records from November 20, 2017 through March 8, 2022, the Miner’s death certificate, the March 9, 2022 autopsy report, the microscopic slides created from lung tissue sampled during the autopsy, and Dr. Go’s report. Employer’s Exhibit 4 at 1. He diagnosed the Miner with mild to moderate centriacinar emphysema, which he indicated “is associated with cigarette smoking.” *Id.* at 32. Dr. Swedarsky further stated:

[T]he relevant literature suggests that pneumoconiosis and emphysema are distinct disease processes and that the severity of the emphysema is related to dust content of the lungs and cumulative lifetime exposure to coal mine dust. The majority of the miners with coal dust related emphysema will have some degree of pneumoconiosis at autopsy; 95% will demonstrate at least mild simple macular [coal workers’ pneumoconiosis].

Id. As he found the medical evidence did not support a diagnosis of simple clinical coal workers’ pneumoconiosis, he concluded “the tissue pathology suggests that exposure to cigarette smoke was the major contributor to [the Miner’s] COPD.” *Id.*

Contrary to Employer’s contention, the ALJ permissibly discredited Dr. Swedarsky’s opinion because in attributing the Miner’s emphysema solely to smoking, he did not adequately explain why the Miner’s coal dust exposure did not also significantly

September 27, 2021, Dr. Gregg noted the Miner continued to have dyspnea on exertion after his transesophageal echocardiogram and recommended mitral valve surgery. *Id.* at 9.

¹⁶ The ALJ also considered Dr. Go’s opinion that the Miner had legal pneumoconiosis and correctly found it does not aid Employer in rebutting the presumption. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 28. We therefore need not address Employer’s arguments regarding his opinion. *See Larioni*, 6 BLR at 1-1278; Employer’s Brief at 38-39.

contribute to his emphysema/COPD.¹⁷ See 65 Fed. Reg. at 79,941-43 (identifying centriacinar emphysema as a type of emphysema that may be caused by coal mine dust exposure and recognizing that coal dust- and smoke-induced emphysema occur through similar mechanisms); *Helen Mining Co. v. Director, OWCP [Obush]*, 650 F.3d 248, 257 (3d Cir. 2011); *Balsavage v. Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *Lango v. Director, OWCP*, 104 F.3d 573, 577-78 (3d Cir. 1997); Decision and Order at 28-29; Employer’s Brief at 34, 36-38. Consequently, we affirm the ALJ’s finding that Dr. Swedarsky’s opinion is insufficient to rebut the presumed existence of legal pneumoconiosis.¹⁸ Decision and Order at 29.

Finally, to the extent it is adequately briefed, we reject Employer’s argument that the ALJ’s “deference to federal agency guidelines (like the DOL’s Preamble), and interpretations of statutes as controlling authority” for purposes of weighing medical opinions under the Act may be improper under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). Employer’s Brief at 41. We agree with the Director’s position that *Loper Bright*, a case involving courts’ deference to agency interpretations of ambiguous statutes, is not relevant to the ALJ’s weighing of medical evidence. See Director’s Brief at 3. In

¹⁷ Contrary to Employer’s contention, courts have consistently held that an ALJ may evaluate expert opinions in conjunction with the preamble to the 2001 revised regulations, as it sets forth studies the Department of Labor (DOL) found credible and the DOL’s resolution of scientific questions relevant to the regulations. See *Helen Mining Co. v. Director, OWCP [Obush]*, 650 F.3d 248, 257 (3d Cir. 2011); see also *Extra Energy, Inc. v. Lawson*, No. 23-1544, F.4th, slip op. at 23-34 (4th Cir. June 3, 2025); *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 313 (4th Cir. 2012); *Cent. Ohio Coal Co. v. Director, OWCP [Sterling]*, 762 F.3d 483, 491 (6th Cir. 2014); *S. Ohio Coal Co. v. Director, OWCP [Hunter]*, 128 F.4th 809, 819–20 (6th Cir. 2025); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); *Consolidation Coal Co. v. Director, OWCP [Beeler]*, 521 F.3d 723, 726 (7th Cir. 2008); *Energy W. Mining Co. v. Estate of Blackburn*, 857 F.3d 817, 830-31 (10th Cir. 2017); Employer’s Brief at 39-40; but see *American Energy, LLC v. Director, OWCP [Goode]*, 106 F.4th 319, 332-34 (4th Cir. 2024). We further reject Employer’s assertion that the ALJ erred in discrediting Dr. Swedarsky’s opinion because it was based on medical literature that is more recent than that cited in the preamble, as Employer fails to explain how such literature invalidates the DOL’s position set forth in the preamble. Employer’s Brief at 39-40.

¹⁸ Because the ALJ provided a valid reason for discrediting Dr. Swedarsky’s opinion, we need not address Employer’s remaining arguments concerning the ALJ’s discrediting of his opinion. See *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer’s Brief at 33-38.

the current case, the ALJ permissibly consulted the preamble to consider studies DOL had found credible in evaluating the credibility of Dr. Swedarsky's opinion. *See* Decision and Order at 28-29. Thus, as the Director asserts, "this [case] did not involve statutory interpretation, and the ALJ mentioned neither *Chevron [U.S.A., Inc. v. Natural Res. Def. Council, Inc.]*, 467 U.S. 837 (1984),] nor deference in his decision."¹⁹ Director's Brief at 3.

Because the ALJ permissibly discredited the only evidence supportive of Employer's burden on rebuttal,²⁰ we affirm his finding that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §718.305(d)(2)(i)(A); Decision and Order at 32-34. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis. 20 C.F.R. §718.305(d)(2)(i).

Death Causation

The ALJ next considered whether Employer established "no part of [the Miner's] death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(2)(ii). Contrary to Employer's contention, the ALJ rationally discredited Dr. Swedarsky's opinion on death causation because the doctor did not diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer failed to disprove the existence of the disease. *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); *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 31-32; Employer's Brief at 41-42. As it is supported by substantial evidence, we affirm the ALJ's finding that Employer failed to establish no part of the Miner's death was due to pneumoconiosis. 20 C.F.R. §718.305(d)(2)(ii).

¹⁹ In *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 413 (2024), which overruled *Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984), the Court held that "courts need not and under the [Administrative Procedure Act (APA)] may not defer to an agency interpretation of the law simply because a statute is ambiguous."

²⁰ The ALJ indicated he considered the treatment records and determined none of them "include a documented and reasoned opinion which determines that the Miner's COPD and emphysema were not related in significant part to the Miner's 20 plus years of underground coal mine employment Thus, these records neither prove nor disprove . . . legal pneumoconiosis." Decision and Order at 29. Additionally, the ALJ considered the Miner's death certificate but found it did not contain a "conclusion on the cause of the Miner's COPD." *Id.* at 30. As Employer does not specifically challenge these findings, we affirm them. *See Skrack*, 6 BLR at 1-711.

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

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge