U.S. Department of Labor

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

BRB No. 24-0401 BLA

JOHN CAMBRON)
)
Claimant-Respondent)
)
v.)
)
ISLAND CREEK COAL COMPANY)
)
and)
)
CONSOL ENERGY, INCORPORATED)
)
Employer/Carrier-)
Respondents)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 06/20/2025

DECISION and ORDER

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

Joseph D. Halbert and Jason H. Halbert (Halbert Legal, PLLC), Lexington, Kentucky, for Employer and its Carrier.[1]

[1] Attorneys Joseph D. Halbert and Jason H. Halbert, of the firm of Shelton, Branham & Halbert, PLLC in Lexington, Kentucky, filed Employer's Notice of Appeal and Petition for Review and Brief. Subsequently, Joseph D. Halbert notified the Benefits Review Board that he was leaving that firm and that effective January 1, 2025, he was joining with

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Jason A. Golden's Decision and Order Awarding Benefits (2021-BLA-05794) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a request for modification of a claim filed on January 24, 2014.

In a Decision and Order Denying Benefits dated January 13, 2017, ALJ Colleen A. Geraghty credited Claimant with twenty-nine years of underground coal mine employment, but she found he does not have a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2); Director's Exhibit 71 at 16, 21. Thus, she found Claimant could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305; Director's Exhibit 71 at 21. She further found Claimant did not establish clinical or legal pneumoconiosis, 20 C.F.R. §718.202(a); Director's Exhibit 71 at 22, and therefore denied benefits. Director's Exhibit 71 at 23.

In response to Claimant's appeal, the Board affirmed ALJ Geraghty's denial of benefits. *Cambron v. Island Creek Coal Co.*, BRB No. 17-0220 BLA (Jan. 31, 2018) (unpub.). Claimant filed a timely request for modification of that denial on April 5, 2018. Director's Exhibit 78 at 1-2.

In his Decision and Order Awarding Benefits dated July 17, 2024, the subject of the current appeal, ALJ Golden (the ALJ) credited Claimant with twenty-nine years of underground coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R §718.204(b)(2). Thus, he found Claimant invoked the Section 411(c)(4) presumption. He further found Employer did not rebut the presumption, Claimant established modification based on a mistake in a determination of fact, 20 C.F.R. §725.310, and granting modification would render justice under the Act.

attorney Jason H. Halbert at the firm of Halbert Legal, PLLC in Lexington, Kentucky. He stated they would continue to represent Employer and its Carrier (Employer).

[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); *see* 20 C.F.R. §718.305.

Thus, he awarded benefits commencing in February 2014, the first month after Claimant filed his claim.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption. It also argues the ALJ erred in finding it failed to rebut the presumption. Finally, it challenges the commencement date for benefits.[3] Neither Claimant nor the Acting Director, Office of Workers' Compensation Programs, has filed a response brief.

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'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

The ALJ may grant modification based on either a change in conditions or a mistake in a determination of fact. 20 C.F.R. §725.310(a). In considering whether a change in conditions has been established, the ALJ is obligated to perform an independent assessment of the newly submitted evidence, in conjunction with the previously submitted evidence, to determine if the weight of the new evidence is sufficient to establish at least one element of entitlement that defeated an award in the prior decision. *See Kingery v. Hunt Branch Coal Co.*, 19 BLR 1-6, 1-11 (1994); *Nataloni v. Director, OWCP*, 17 BLR 1-82 (1993); *Kovac v. BCNR Mining Corp.*, 14 BLR 1-156 (1990), *modified on recon.*, 16 BLR 1-71 (1992). With respect to mistakes of fact, an ALJ may correct any mistake "including the ultimate issue of benefits eligibility." *Youghiogheny & Ohio Coal Co. v. Milliken*, 200 F.3d 942, 954 (6th Cir. 1999); *Consol. Coal Co. v. Worrell*, 27 F.3d 227, 230 (6th Cir. 1994); *Jessee v. Director, OWCP*, 5 F.3d 723, 724-25 (4th Cir. 1993). Moreover, a party need not submit new evidence on modification because an ALJ has broad discretion "to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971).

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established twenty-nine years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

[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); Hearing Tr. at 20-21.

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. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful employment. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,[5] evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

The ALJ found Claimant established total disability based on the pulmonary function studies, medical opinions, and evidence as a whole.[6] 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order at 13, 20-22.

Pulmonary Function Studies

The ALJ considered nine pulmonary function studies dated August 3, 1995, March 26, 2013, February 10, 2014, July 10, 2014, February 23, 2015, March 25, 2016, April 11, 2016, March 3, 2017, and April 8, 2021, and two studies dated March 1, 2018.[7] Decision and Order at 6-13. The August 3, 1995, July 10, 2014, April 11, 2016, and the first of the two March 1, 2018 studies produced non-qualifying results before and after the administration of bronchodilators. Claimant's Exhibits 1 at 10; 8 at 1; 10 at 10; Employer's Exhibit 5 at 21. The second of the two March 1, 2018 studies produced non-qualifying

[5] A "qualifying" pulmonary function study or arterial 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. A "non-qualifying" study yields results exceeding those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[6] The ALJ found Claimant did not establish total disability based on the arterial blood gas studies and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 5, 14.

[7] Claimant performed two pulmonary function studies on March 1, 2018. *See* Claimant's Exhibit 10 at 10, 14. He performed the first study at 10:17 A.M. *Id.* at 10. He performed the second at 2:34 P.M. *Id.* at 14.

results without the administration of bronchodilators and included no post-bronchodilator testing. Claimant's Exhibit 10 at 14. The March 26, 2013, February 23, 2015, March 3, 2018, and April 8, 2021 studies produced qualifying results before the administration of bronchodilators and non-qualifying results after the administration of bronchodilators. Claimant's Exhibits 5 at 69; 6 at 33; 10 at 1, 27. The February 10, 2014, and March 25, 2016 studies produced qualifying results without the administration of bronchodilators and included no post-bronchodilator testing. Director's Exhibit 12 at 1; Claimant's Exhibit 7 at 3.

The ALJ found all of the pulmonary function studies valid and reliable, with the exception of the March 26, 2013 treatment record study, which he found "only slightly reliable" because Claimant performed the study while he was hospitalized for pneumonia. Decision and Order at 9-13. He found the pre-bronchodilator pulmonary function study results entitled to more weight than the post-bronchodilator results, as the relevant inquiry when making disability determinations is "whether the miner is able to perform his job, not whether the miner is able to perform the job after he takes medication." *Id*. at 12-13. Further, he found the qualifying pre-bronchodilator results of the April 8, 2021 study entitled to greater weight than the earlier non-qualifying pre-bronchodilator pulmonary function study results because it "is the most recent representation [of] the Claimant's pulmonary condition . . . ." *Id*. at 13.

Employer argues the ALJ erred in finding the April 8, 2021 study valid. Employer's Brief at 6 (unpaginated). Specifically, it argues the ALJ erred in considering Dr. Vuskovich's opinion. *Id*. We are not persuaded by Employer's argument.

When weighing pulmonary function studies, an ALJ must determine whether they are in substantial compliance with the regulatory quality standards. 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, Appendix B; *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc). In the absence of evidence to the contrary, compliance with the quality standards is presumed. 20 C.F.R. §718.103(c); *see Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984) (party challenging the validity of a study has the burden to establish the results are unreliable); 20 C.F.R. Part 718, Appendix B.

The quality standards, however, do not apply to pulmonary function studies 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.*, 24 BLR 1-78, 1-92 (2010) (quality standards "apply only to evidence developed in connection with a claim for benefits" and not to testing conducted as part of a miner's treatment). An ALJ must nevertheless determine if a miner's treatment record pulmonary function study is

sufficiently reliable to support a finding of total disability, despite the inapplicability of the specific quality standards. 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000).

The ALJ acknowledged Dr. Vuskovich's opinion that the April 8, 2021 pulmonary function study is not reliable. Decision and Order at 11-12. Dr. Vuskovich opined Claimant did not put forth adequate effort to generate valid FEV1/FVC values based on the flow-volume loops and volume-time tracings associated with this study. Employer's Exhibit 10 at 10. Specifically, he stated:

> Variable non-diagnostic configurations of his flow-volume loops with variable flow rates and volumes showed that his initial efforts, including his initial deepest-breath-possible efforts were not maximum efforts which artificially lowered his FVC and FEV1 results. His volume time tracing configurations showed that his initial deep breath efforts were variable; characterized by widely different volumes (read volume on vertical volume axis). Not taking an initial deepest breath possible artificially lowered his FVC and FEV1 results. After about two to three seconds his volume time tracings abruptly plateaued. This showed that he closed his glottis, interrupting air flow, which artificially lowered his FVC results.

Id. at 10-11. Further, he noted that to generate valid pulmonary function study results, three acceptable tracings are necessary; because this study did not include three acceptable tracings, he opined it is not reliable. *Id*.

The ALJ found Dr. Vuskovich applied the regulatory quality standards to the April 8, 2021 study to conclude that Claimant did not set forth maximum effort. Decision and Order at 11-12. However, because this study was conducted as part of Claimant's treatment and not in anticipation of litigation, and thus the quality standards do not apply, the ALJ permissibly found Dr. Vuskovich's opinion inadequately explained and thus insufficient to invalidate the study. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 712-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Stowers*, 24 BLR at 1-92. Although Employer argues Dr. Vuskovich's opinion is adequately reasoned, its argument constitutes a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Thus, we affirm the ALJ's finding the April 8, 2021 pulmonary function study reliable. Decision and Order at 10-11.

Employer does not challenge the ALJ's findings that the pre-bronchodilator pulmonary function testing is more probative than the post-bronchodilator testing, and the April 8, 2021 study is entitled to controlling weight based on its recency; thus, we affirm them. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); *see also*

Woodward v. Director, OWCP, 991 F.2d 314, 319-20 (6th Cir. 1993); 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980) ("the use of a bronchodilator [during pulmonary function testing] does not provide an adequate assessment of disability"); Decision and Order at 12-13.

Employer also challenges the ALJ's weighing of the March 26, 2013 pulmonary function study, asserting he improperly found the study entitled to "little" weight as opposed to finding it "worthless for assessing pulmonary capacity." Employer's Brief at 6-7 (unpaginated). The ALJ noted Claimant performed the March 26, 2013 pulmonary function study while he was "hospitalized" for the diagnosis and treatment of "pneumonia." Decision and Order at 10. In addition, he stated "[n]o doctor sufficiently opined on the reliability" of the study. *Id.* at 13. He found the study "slightly reliable" and entitled to "little" weight." *Id*. Because Claimant established total disability based on the April 8, 2021 pulmonary function study, Employer has not set forth how the error it alleges would make a difference. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Therefore, we affirm the ALJ's finding that the pulmonary function study evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(i). *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); Decision and Order at 13.

Medical Opinions

The ALJ next considered the medical opinions of Drs. Chavda, Pearle, Bebout, Vuskovich, Selby, and Fino. Decision and Order at 15-20. Drs. Chavda, Pearle, and Bebout opined Claimant is totally disabled, while Drs. Vuskovich, Selby, and Fino opined he is not.[8] Director's Exhibits 12, 18, 56-58; Claimant's Exhibits 6, 7, 9, 11; Employer's Exhibits 5, 10, 13. The ALJ found Dr. Pearle's opinion reasoned and documented. Decision and Order at 19. In contrast, he found Drs. Chavda's, Bebout's, Vuskovich's, Selby's, and Fino's opinions inadequately explained. *Id*. at 16-20. He thus found the medical opinion evidence supports a finding of total disability based on Dr. Pearle's opinion. *Id.* at 20.

As Employer does not challenge the ALJ's finding that Dr. Pearle's opinion is reasoned and documented, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order at 20. We further affirm, as unchallenged, the ALJ's discrediting of the opinions of Drs. Chavda, Bebout, Selby, and Fino. *Id*.

[8] The ALJ also considered Claimant's treatment records and found they neither support nor undermine a finding of total disability. Decision and Order at 21.

Employer argues the ALJ erred in discrediting Dr. Vuskovich's opinion.[9] Employer's Brief at 4-6 (unpaginated). We disagree.

Dr. Vuskovich diagnosed Claimant with chronic obstructive pulmonary disease (COPD) and opined he has a mild obstructive impairment based on the February 10, 2014 pulmonary function study. Director's Exhibit 18 at 6, 8. He concluded Claimant retains the pulmonary capacity to return to his usual coal mine work as an underground miner. *Id.* at 8.

The ALJ found Dr. Vuskovich based his conclusion on the fact that the valid pulmonary function testing is non-qualifying. Decision and Order at 17-18. However, the ALJ noted the regulations specifically provide that total disability may be established based on a physician's reasoned opinion that a miner could not perform his usual coal mine employment even when the pulmonary function studies are non-qualifying. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000); *Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 744 (6th Cir. 1997). The ALJ permissibly found Dr. Vuskovich did not adequately explain his conclusion that Claimant's mild impairment would not preclude him from performing his usual coal mine employment, other than his reference to the non-qualifying pulmonary function testing, and thus his opinion is not credible. *Cornett*, 227 F.3d at 578 (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); *Carpenter v. GMS Mine & Repair Maint. Inc*., 26 BLR 1-33, 1-40 (2023); 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 17.

Dr. Vuskovich also excluded total disability based in part on his assumption that the April 8, 2021 pulmonary function study is not reliable. Employer's Exhibit 10 at 15; *see* Director's Exhibit 58 at 5-6. The ALJ permissibly discredited the doctor's opinion because it is contrary to the ALJ's finding that the April 8, 2021 study is reliable.[10] *See Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185; Decision and Order at 17.

Because it is supported by substantial evidence, we affirm the ALJ's finding that the medical opinion evidence supports a finding of total disability. 20 C.F.R.

[9] The ALJ found Claimant's usual coal mine work as a shift foreman required "medium to heavy" labor. Decision and Order at 4-5. As this finding is not challenged, we affirm it. *See Skrack*, 6 BLR at 1-711.

[10] Because the ALJ provided a valid reason for discrediting Dr. Vuskovich's opinion, we decline to address Employer's argument that the ALJ erred in discrediting the doctor's opinion on other grounds. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 6 (unpaginated).

§718.204(b)(2)(iv); *see Martin*, 400 F.3d at 305; Decision and Order at 22. We further affirm his determination that Claimant established total disability based on the evidence as a whole. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 22. Thus, we affirm his finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305; Decision and Order at 22.

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,[11] or that "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 found Employer failed to establish rebuttal by either method.

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 Corp.*, 25 BLR 1-149, 1-155 n.8 (2015). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, requires Employer to establish 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). "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).

The ALJ considered the medical opinions of Drs. Vuskovich, Selby, and Fino. Decision and Order at 28. Each doctor opined Claimant does not have legal pneumoconiosis but has asthma unrelated to coal mine dust exposure. Employer's Exhibits

[11] "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).

5 at 4; 10 at 14-16; 13 at 13-14; Director's Exhibit 57 at 8. The ALJ found their opinions not reasoned or documented and thus insufficient to disprove legal pneumoconiosis. Decision and Order at 28-29.

We reject Employer's argument that the ALJ applied an incorrect legal standard by requiring Drs. Vuskovich, Selby, and Fino to "rule out" legal pneumoconiosis. Employer's Brief at 7-8 (unpaginated). The ALJ correctly stated that to rebut the presumption of 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. Decision and Order at 27, *citing* 20 C.F.R. §718.201(a)(2), (b). Moreover, the ALJ did not discredit the opinions of Drs. Vuskovich, Selby, and Fino because they failed to satisfy an erroneous heightened legal standard. Rather, he noted each physician excluded coal mine dust exposure as a cause or contributor to Claimant's impairment, but he found their opinions unpersuasive. *Id.* at 28-29.

Drs. Vuskovich, Selby, and Fino each excluded a diagnosis of legal pneumoconiosis because they stated coal mine dust exposure does not cause asthma. Employer's Exhibits 4 at 4-5; 10 at 16; 13 at 13-14; Director's Exhibit 57 at 5, 7-8. However, the ALJ noted the Department of Labor (DOL) recognized in the preamble to the 2001 revised regulations that COPD includes three disease processes characterized by airway dysfunction: chronic bronchitis, emphysema, and asthma. Decision and Order at 28-29, *citing* 65 Fed. Reg. at 79,939. Further, the DOL concluded the prevailing view of the medical community is that COPD may be caused by coal mine dust exposure. 65 Fed. Reg. at 79,939. The ALJ thus permissibly found that Drs. Vuskovich, Selby, and Fino did not adequately explain why Claimant's coal mine dust exposure did not substantially contribute to, or aggravate, his asthma. *See Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491 (6th Cir. 2014); *Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; Decision and Order at 29.

Because the ALJ permissibly discredited the opinions of Drs. Vuskovich, Selby, and Fino, the only medical opinions supportive of Employer's burden on rebuttal, we affirm his finding that Employer did not disprove legal pneumoconiosis. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis.[12] Therefore, we affirm the ALJ's finding that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(1)(i).

[12] Because we affirm the ALJ's findings on the issue of legal pneumoconiosis, we need not address Employer's arguments on the issue of clinical pneumoconiosis. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 9 (unpaginated).

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); Decision and Order at 30-31. He permissibly discredited the opinions of Drs. Vuskovich, Selby, and Fino on the issue of disability causation because they did not diagnose legal pneumoconiosis, contrary his finding that Employer failed to disprove the disease. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (where a physician erroneously fails to diagnose pneumoconiosis, his opinion as to disability causation "is not worthy of much, if any, weight"); Decision and Order at 30. Because Employer raises no specific arguments on disability causation apart from its assertion that the ALJ erred in finding it failed to disprove the existence of legal pneumoconiosis, we affirm the ALJ's finding that Employer failed to establish no part of Claimant's total disability was caused by legal pneumoconiosis. *See Ogle*, 737 F.3d at 1074; *Skrack*, 6 BLR at 1-711; Decision and Order at 30.

We therefore affirm the ALJ's finding that Employer failed to establish rebuttal at 20 C.F.R. §718.305(d)(1)(ii). Thus, we affirm his finding that Claimant established a mistake in a determination of fact. 20 C.F.R. §718.310; Decision and Order at 31. We further affirm, as unchallenged, the ALJ's finding that granting modification would render justice under the Act. *See Skrack*, 6 BLR at 1-711; Decision and Order at 31. Therefore, we affirm the award of benefits.

Commencement Date for Benefits

If modification is based on a change in conditions, Claimant is entitled to benefits as of the month of onset of total disability due to pneumoconiosis, "provided that no benefits shall be payable for any month prior to the effective date of the most recent denial of the claim by a district director or [ALJ]." 20 C.F.R. §725.503(d)(2). If the date of onset of total disability due to pneumoconiosis is not ascertainable, benefits are payable "from the month in which the claimant requested modification." *Id*. If modification is based on the correction of a mistake in a determination of fact, including the ultimate fact of entitlement, Claimant is entitled to benefits from the month he first became totally disabled due to pneumoconiosis or, if that date is not ascertainable, from the month he filed his claim, unless credited evidence establishes that he was not disabled at any subsequent time. 20 C.F.R. §725.503(b), (d)(1); *see Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47, 1-50 (1990).

Employer challenges the ALJ's determination that Claimant's benefits commence in February 2014, the month of the earliest valid and qualifying pulmonary function study.

Employer's Brief at 8-9 (unpaginated). It argues the ALJ should have credited Dr. Vuskovich's opinion that the April 8, 2021 study was invalid, thus establishing Claimant was not totally disabled due to pneumoconiosis subsequent to the February 10, 2014 pulmonary function study. Employer's Brief at 6, 8 (unpaginated). As discussed above, we have rejected this argument.

We also reject Employer's argument that the ALJ should have found a change in conditions rather than a mistake in a determination of fact because the claim was previously denied on "much of the same evidence." Employer's Brief at 8 (unpaginated). An ALJ has broad discretion to grant modification based on a mistake of fact, including the ultimate fact of entitlement to benefits. *See Worrell*, 27 F.3d at 230; *Nataloni*, 17 BLR at 1-84. In this case, the ALJ acted within his discretion in granting modification based on a mistake of fact.

As no party raises any additional argument, we affirm the ALJ's determination that benefits commence in February 2014. 20 C.F.R. §725.503(b); *see Williams v. Director, OWCP*, 13 BLR 1-28, 1-29-30 (1989); *Lykins*, 12 BLR at 182-83.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge