U.S. Department of Labor

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

BRB No. 21-0007 BLA

CLYDE FANNIN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WESCAR RESOURCES, INCORPORATED	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	DATE ISSUED: 3/15/2022
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand Awarding Benefits of Monica Markley, Administrative Law Judge, United States Department of Labor.

Dennis James Keenan (Hinkle & Keenan P.S.C.), South Williamson, Kentucky, for Claimant.

Jeffrey R. Soukup (Jackson Kelly PLLC), Lexington, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Monica Markley's Decision and Order on Remand Awarding Benefits (2013-BLA-05202) 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 subsequent claim filed on January 11, 2012,[1] and is before the Benefits Review Board for a second time.

In her initial Decision and Order, the ALJ found Claimant established 22.57 years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus she found Claimant established a change in an applicable condition of entitlement[2] and invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[3] 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §725.309(c). She further found Employer did not rebut the presumption and awarded benefits.

Considering Employer's prior appeal, the Board affirmed the ALJ's finding that Claimant established 22.57 years of qualifying coal mine employment. *Fannin v. Wescar Resources, Inc.*, BRB No. 17-0372 BLA, slip op. at 2 n.4 (Apr. 16, 2018) (unpub.). The Board vacated her finding that the new pulmonary function study evidence established total

[1] On May 30, 1996, the district director denied Claimant's prior claim, filed on August 6, 1993, because he failed to establish any element of entitlement. Director's Exhibit 1.

[2] Where a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c)(1); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant did not establish any element of entitlement in his prior claim, he had to submit new evidence establishing at least one element of entitlement to obtain review of the merits of his current claim. *Id.*

[3] 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.

disability and remanded the case for further consideration.[4] *Fannin*, BRB No. 17-0372 BLA, slip op. at 3-5; 20 C.F.R. §718.204(b)(2)(i). Because the ALJ's analysis of the pulmonary function studies affected her weighing of the medical opinions, the Board also vacated her finding that the new medical opinion evidence established total disability. *Fannin*, BRB No. 17-0372 BLA, slip op. at 6-7; 20 C.F.R. §718.204(b)(2)(iv). Thus, the Board further vacated the ALJ's findings that Claimant established a change in an applicable condition of entitlement and invocation of the Section 411(c)(4) presumption. *Fannin*, BRB No. 17-0372 BLA, slip op. at 7; 20 C.F.R. §725.309(c). The Board instructed the ALJ to reconsider whether the new pulmonary function study and medical opinion evidence established total disability.[5] *Fannin*, BRB No. 17-0372 BLA, slip op. at 7.

On remand, the ALJ found the new pulmonary function study and medical opinion evidence established total disability.[6] Thus she found Claimant established a change in an applicable condition of entitlement and invocation of the Section 411(c)(4) presumption. 20 C.F.R. §§718.204(b)(2), 725.309. She reinstated her previous determination that Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thereby invoked the Section 411(c)(4) presumption. Alternatively, Employer argues the ALJ erred in finding it did not rebut the presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not 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

---

[4] The Board noted the ALJ's previous findings that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(ii), (iii). *Fannin v. Wescar Resources, Inc.*, BRB No. 17-0372 BLA, slip op. at 6 n.10 (Apr. 16, 2018) (unpub.); March 14, 2017 Decision and Order at 14-15.

[5] Because it vacated the ALJ's finding that Claimant established a totally disabling pulmonary impairment, the Board declined to address Employer's argument that the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption. *Fannin*, BRB No. 17-0372 BLA, slip op. at 7.

[6] The ALJ noted the Board did not disturb her prior finding that Claimant failed to establish "total disability with arterial blood gas test results or evidence of cor pulmonale with right-sided congestive heart failure." Decision and Order on Remand at 3 n.4; 20 C.F.R. §718.204(b)(2)(ii), (iii).

with applicable law.[7] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

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

To invoke the Section 411(c)(4) presumption, a claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. 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 Claimant established total disability based on the newly submitted pulmonary function studies and medical opinions and the evidence as a whole. 20 C.F.R. §718.204(b)(2); Decision and Order on Remand at 4-10.

Pulmonary Function Studies

Employer argues the ALJ erred in finding Claimant established total disability based on the new pulmonary function study evidence. 20 C.F.R. §718.204(b)(2)(i); Employer's Brief at 12-17; Decision and Order on Remand at 6. We disagree.

In her prior decision, the ALJ considered the newly submitted March 7, 2012 pulmonary function study. She determined the qualifying[8] study is valid. Thus she found Claimant established total disability based on the study. On appeal, the Board determined

[7] 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 Exhibit 4.

[8] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i).

the ALJ's evaluation of the study did not comply with the Administrative Procedure Act[9] because she failed to provide support for her findings that Dr. Mettu was "present during the administration" of the study and that he "provided a 'thorough explanation' for validating" its results. *Fannin*, BRB No. 17-0372 BLA, slip op. at 4-5. The Board also determined the ALJ erred in failing to address Dr. Fino's opinion that the flow volume loops revealed less than maximal effort.[10] *Id*. at 5. Consequently, the Board vacated the ALJ's finding that the pulmonary function study evidence established total disability and remanded the case for further consideration. *Id*. The Board instructed the ALJ to reconsider all the relevant evidence and provide explanations for her findings. *Id*. The Board also instructed her to address the significance of Dr. Gaziano's validation of the study. *Id*. at 5 n.9.

On remand, the ALJ reconsidered the March 7, 2012 study. 20 C.F.R. §718.204(b)(2)(i); Decision and Order on Remand at 4-6. The study produced qualifying results both before and after the administration of a bronchodilator. Director's Exhibit 11. The ALJ addressed the opinions of Drs. Gaziano, Mettu, and Fino concerning the validity of the study.[11] Decision and Order on Remand at 4-6. She found the study valid, noting the administering technician acknowledged Claimant exhibited "good effort" and finding Drs. Gaziano's and Mettu's opinions outweighed Dr. Fino's contrary opinion. *Id*. 5-6; 20 C.F.R. §718.204(b)(2)(i).

We reject Employer's argument that the ALJ erred in discrediting Dr. Fino's opinion that the March 7, 2012 pulmonary function study is invalid. Employer's Brief at 17-22.

When addressing a pulmonary function study conducted in anticipation of litigation, an ALJ must determine whether it is in substantial compliance with the regulatory quality

[9] The Administrative Procedure Act provides that every adjudicatory decision must include "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented. . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

[10] The Board affirmed, as unchallenged, the ALJ's determination that Dr. Castle's invalidation of the March 7, 2012 pulmonary function study is not well reasoned. *Fannin*, BRB No. 17-0372 BLA, slip op. at 5 n.8.

[11] The ALJ noted Drs. Mettu and Fino are Board-certified in internal medicine and pulmonary disease, and Dr. Gaziano is Board-certified in internal medicine and chest diseases. Decision and Order on Remand at 5.

standards.[12] 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, App. 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 also* 20 C.F.R. Part 718, Appendix B. If a study does not precisely conform to the quality standards, but is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b). The ALJ must then, in her role as fact-finder, determine the probative weight to assign the study. *See Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-55 (1987); *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 suspect or unreliable).

Dr. Fino opined the March 7, 2012 study is invalid because Claimant gave "poor effort." Employer's Exhibit 1 at 8. He stated "[Claimant] has always had reduced lung function and I feel that the studies were always invalid." *Id.* He further stated Claimant had an elevated left diaphragm since the early 1990s, which "may be participating somewhat in his reductions in the FVC and the FEV1." *Id.* Finally, he concluded that "the primary reason the lung functions are reduced is due to poor effort." *Id.*

At his deposition, Dr. Fino based his opinion that Claimant did not give "maximum effort" on the tracing of the March 7, 2012 study. Employer's Exhibit 9 at 19. He stated "the flow volume loops really look at the speed of the air that is coming out," and observed "that it's slower than what it should be." *Id.* He therefore opined the study does not meet the criteria that the Department of Labor (DOL) and the American Thoracic Society require for validation. *Id.* He also stated Claimant's left lung participation is "down about 20 to 25 percent . . . because of the elevated left diaphragm, which has been present since 1991." *Id.* at 20. Moreover, he stated:

> Then you have the issue of the effort given, so do I think this man's lung function is normal in a good effort? No, but because I think the elevation of the diaphragm is causing it not to be normal, because it was abnormal as reflected in all of the lung function studies, even the ones going back into the 1990s? No, those are effort-related reductions.

[12] An ALJ must consider a reviewing physician's opinion regarding a claimant's effort in performing a pulmonary function study and whether the study is valid and reliable. *See Revnack v. Director, OWCP*, 7 BLR 1-771, 1-773 (1985). A physician's opinion regarding the reliability of a pulmonary function study may constitute substantial evidence for an ALJ's decision to credit or reject the results of the study. *Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985).

Id.

The ALJ noted Dr. Fino indicated "both that the effort was not sufficient to demonstrate whether there was an impairment, and that the impairment of lung function was due to the diaphragm abnormality and not coal dust exposure." Decision and Order on Remand at 6. She noted that the March 7, 2012 study "either validly showed a reduction in lung function (whether due to the elevated diaphragm or not), or it did not." *Id*. Thus, she permissibly found Dr. Fino's opinion unpersuasive because it is inconsistent.[13] *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16, 1-19 (1987); *Dolzanie v. Director, OWCP*, 6 BLR 1-865, 1-867 (1984); *see also Oreck* 10 BLR at 1-54-55 (party alleging objective study is invalid has a "two-part obligation at the hearing": "specify in what way the study fails to conform to the quality standards" and "demonstrate how this defect or omission renders the study unreliable"); Decision and Order on Remand at 6.

We also reject Employer's argument that the ALJ erred in crediting the March 7, 2012 study based on Drs. Mettu's and Gaziano's opinions. Employer's Brief at 12-22. Dr. Mettu administered the study. Director's Exhibit 11. He indicated Claimant's degree of cooperation and ability to understand and follow directions were "good." *Id*. The technician who conducted the study reported Claimant "demonstrated good cooperation and understanding during the forced vital capacity test." *Id*. Dr. Gaziano reviewed the study for the DOL and opined the "vents are acceptable." *Id*.

The ALJ stated that while the record does not confirm Dr. Mettu personally observed Claimant's performance, his handwritten notes – located below the technician's typewritten notes – that Claimant suffers from moderate restrictive airway disease indicated he reviewed the report and tracings.[14] Decision and Order on Remand at 5. She also stated the technician's notes confirmed Dr. Mettu's reporting that Claimant's cooperation and understanding of the instructions were good, and Dr. Mettu's reporting of

[13] Because the ALJ provided a valid reason for discrediting Dr. Fino's opinion on the validity of the March 7, 2012 pulmonary function study, we need not address Employer's remaining arguments regarding the weight accorded to his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 17-22.

[14] On the March 7, 2012 pulmonary function study report, Dr. Mettu wrote the following comments: "(1) moderate restrictive airway disease [consistent with a decrease in] MVV [and] (2) no significant improvement in inhaled bronchodilator study." Director's Exhibit 11 at 17.

good cooperation indicates sufficient effort. *Id.* at 5-6. Further, she stated Dr. Gaziano specifically opined the vents are acceptable. *Id.* at 5. The ALJ has discretion to weigh the evidence, draw appropriate inferences, and determine credibility. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 482-83 (6th Cir. 2012); *Napier*, 301 F.3d at 713-14. Contrary to Employer's assertion, the ALJ rationally found Drs. Mettu's and Gaziano's opinions and the technician's notes "considered together" support a finding that the March 7, 2012 study is valid. Decision and Order on Remand at 6; *see Alexander v. Island Creek Coal Co.*, 12 BLR 1-44, 1-47 (1988); *Burich v. Jones and Laughlin Steel Corp.*, 6 BLR 1-1189, 1-1191 (1984); Employer's Brief at 12-17.

Because substantial evidence supports it, we affirm the ALJ's finding that the March 7, 2012 pulmonary function study is valid and established total disability.[15] 20 C.F.R. §718.204(b)(2)(i).

Medical Opinions

With respect to the medical opinion evidence, the ALJ discredited Drs. Fino's and Castle's opinions that Claimant does not have a disabling respiratory or pulmonary impairment as inadequately documented and reasoned. Decision and Order on Remand at 9-10; Employer's Exhibits 1, 7. She found Dr. Mettu's opinion that Claimant is disabled from a pulmonary impairment credible and sufficient to establish total disability. Decision and Order on Remand at 9; Director's Exhibit 11.

Although Dr. Fino stated "[Claimant] has always had reduced lung functions," he felt "the [pulmonary function] studies were always invalid." Employer's Exhibit 1 at 8. Similarly, Dr. Castle stated "[i]t is not possible for [him] to accurately assess the extent of any total respiratory impairment that [Claimant] may have because of the lack of contemporary valid pulmonary function studies." Employer's Exhibit 7 at 19. The ALJ permissibly found Drs. Fino's and Castle's opinions not well-documented and well-reasoned because they believed there is no valid pulmonary function study in the record,

[15] The ALJ also considered the December 18, 2014 pulmonary function study Dr. Fino conducted. Decision and Order on Remand at 4-6. The 2014 study produced qualifying results before the administration of a bronchodilator; a post-bronchodilator study was not performed. Employer's Exhibit 1. The ALJ found the 2014 study invalid based on Dr. Fino's opinion and "the lack of contradictory evidence from Claimant." Decision and Order on Remand at 6. In light of our affirmance of the ALJ's finding that Claimant established total disability based on the March 7, 2012 pulmonary function study, any error the ALJ made in finding the December 18, 2014 pulmonary function study invalid is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

contrary to her finding that the March 7, 2012 pulmonary function study is valid. *See Furgerson v. Jericol Mining Inc.*, 22 BLR 1-216, 1-226 (2002) (en banc) (reliability of a physician's opinion may be "called into question" when the diagnostic tests upon which the physician based his diagnosis have been undermined); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984); Decision and Order on Remand at 9-10; Employer's Brief at 25-29. As Drs. Fino's and Castle's opinions are the only contrary medical opinions of record, substantial evidence supports the ALJ's determination that the medical opinion evidence does not undermine the totally disabling results of the March 7, 2012 pulmonary function study.[16] Decision and Order on Remand at 10.

Consequently, we affirm, as supported by substantial evidence, the ALJ's finding that Claimant established total respiratory disability when considering the record as a whole. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; Decision and Order on Remand at 10. We therefore affirm the ALJ's finding that Claimant established a change in an applicable condition of entitlement and invoked the Section 411(c)(4) presumption. 20 C.F.R. §§718.305, 725.309.

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,[17] or that "no part

[16] We need not address Employer's argument that the ALJ erred in crediting Dr. Mettu's opinion and finding the medical opinion evidence established total disability. 20 C.F.R. §718.204(b)(2)(iv); Employer's Brief at 22-25. As Dr. Mettu diagnosed total disability, his opinion is not contrary to the qualifying pulmonary function study evidence. Even if the ALJ were to accord Dr. Mettu's opinion no weight, the medical opinion evidence would not weigh against a finding of total disability. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987). Thus Employer has not explained how the "error to which [it] points could have made any difference." *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *see Larioni*, 6 BLR at 1-1278.

[17] "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

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 that Employer failed to establish rebuttal by either method.[18]

Clinical Pneumoconiosis

We affirm as unchallenged the ALJ's finding that Employer failed to disprove clinical pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.305(d)(1)(i)(B); March 14, 2017 Decision and Order at 28. Although Employer's failure to disprove clinical pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis, we will address the issue of legal pneumoconiosis because it is relevant to the second method of rebuttal. 20 C.F.R. §718.305(d)(1)(i).

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, whose law applies to this claim, 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).

Employer relies on the medical opinions of Drs. Fino and Castle to disprove legal pneumoconiosis.[19] March 14, 2017 Decision and Order at 29-31. Dr. Fino opined

---

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).

[18] In her Decision and Order, the ALJ reinstated her prior rebuttal findings; we therefore cite to her prior decision when referencing those findings. *See* Decision and Order on Remand at 11; March 14, 2017 Decision and Order at 18-35.

[19] The ALJ also considered Dr. Mettu's opinion that Claimant has legal pneumoconiosis and Claimant's treatment records that diagnose chronic obstructive pulmonary disease but do not address the etiology of this condition. March 14, 2017 Decision and Order at 29, 31; Director's Exhibit 11; Employer's Exhibit 3. She accurately found Dr. Mettu's opinion and the treatment records did not support Employer's burden to

Claimant does not have a pulmonary condition related to coal mine dust exposure. Employer's Exhibit 1 at 11. He stated "[t]he abnormality in [Claimant's] spirometry is due to the fact that he does not give good effort" and "[t]he eventration[20] of the diaphragm compressing [his] left lung tissue may be playing a role." *Id.* Dr. Castle opined Claimant's restrictive defect is "due to something outside the lungs itself, namely the left hemidiaphragm with or without gastroparesis, and is not due to coal mine dust exposure." Employer's Exhibit 7 at 19. The ALJ found their opinions not well-reasoned and thus insufficient to rebut the presumption of legal pneumoconiosis. March 14, 2017 Decision and Order at 30-31.

We reject Employer's argument that the ALJ erred in weighing the opinions of Drs. Fino and Castle. Employer's Brief at 29-33. She permissibly discredited their opinions because neither physician adequately explained why Claimant's 22.57 years of coal mine dust exposure did not significantly contribute, along with the elevation of his left diaphragm, to his restrictive respiratory impairment. *See 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); *Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522 (6th Cir. 2002); *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 673-74, n.4 (4th Cir. 2017) (ALJ permissibly discredited medical opinions that "solely focused on smoking" as a cause of obstruction and "nowhere addressed why coal dust could not have been an additional cause"); 20 C.F.R. §718.201(b); March 14, 2017 Decision and Order at 30-31, 33-34. The ALJ also permissibly found Drs. Fino and Castle did not adequately explain why they concluded the elevation of Claimant's left diaphragm is not related to his coal mine dust exposure. March 14, 2017 Decision and Order at 30-31, 33; *See Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185. Further, as discussed, the ALJ permissibly found Drs. Fino's and Castle's opinions that Claimant does not have legal pneumoconiosis based in part on their conclusion that there is no valid pulmonary function study in the record, contrary to her determination that the March 7, 2012 pulmonary function study is valid. *See Furgerson*, 22 BLR at 1-226; *Winters*, 6 BLR at 1-881 n.4 (1984); March 7, 2014 Decision and Order at 30-31.

---

disprove legal pneumoconiosis. March 14, 2017 Decision and Order at 29, 31; Director's Exhibit 11. Thus we need not address Employer's arguments regarding Dr. Mettu's opinion. Employer's Brief at 36-38.

[20] Diaphragmatic eventration is defined as "a congenital anomaly characterized by failure of muscular development of part or all of one (or occasionally both) hemi-diaphragms, resulting in superior displacement of abdominal viscera and altered lung development." Dorland's Illustrated Medical Dictionary 655 (32d ed. 2012).

As the ALJ permissibly discredited the opinions of Drs. Fino and Castle,[21] we affirm her finding that Employer failed to disprove legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A). Thus, we affirm her finding that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(1)(i). March 14, 2017 Decision and Order at 31.

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); March 14, 2017 Decision and Order at 32-35. Contrary to Employer's argument, the ALJ permissibly discredited the disability causation opinions of Drs. Fino and Castle because they did not diagnose legal pneumoconiosis, contrary to her finding that Employer failed to disprove Claimant has the disease. *See Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *accord Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015); *Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995); March 14, 2017 Decision and Order at 34. We therefore affirm the ALJ's finding that Employer failed to establish no part of Claimant's respiratory disability is caused by legal pneumoconiosis.[22] 20 C.F.R. §718.305(d)(1)(ii).

[21] Because the ALJ provided valid reasons for discrediting Drs. Fino's and Castle's opinions on legal pneumoconiosis, we need not address Employer's other arguments that the ALJ erred in weighing their opinions. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 31-33.

[22] Because the ALJ provided a valid reason for discrediting Drs. Fino's and Castle's disability causation opinions, we need not address Employer's additional arguments regarding the weight assigned to their opinions. *Kozele*, 6 BLR at 1-382 n.4; *see* Employer's Brief at 33-36.

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge