



BRB No. 25-0101 BLA

STEVEN V. BIAS)
)
 Claimant-Respondent)
)
 v.)
)
 MINGO LOGAN COAL COMPANY)
)
 and)
)
 ARCH RESOURCES, INCORPORATED)
)
 Employer/Carrier-)
 Petitioner)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 03/30/2026

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Patricia J. Daum, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

Scott A. White (White & Risse, LLC), Arnold, Missouri, for Employer.

Eirik Cheverud (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the 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 appeals Administrative Law Judge (ALJ) Patricia J. Daum's Decision and Order Awarding Benefits (2021-BLA-05611) rendered on a claim filed on December 24, 2019,¹ pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ credited Claimant with forty-two years and eight months of underground coal mine employment and found he has a totally disabling respiratory impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.² 30 U.S.C. §921(c)(4). She further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer asserts the ALJ lacked authority to hear and decide the case because she was not appointed in a manner consistent with the Appointments Clause of the United States Constitution, Art. II § 2, cl. 2.³ It also argues the removal protections applicable to Department of Labor (DOL) ALJs rendered her appointment unconstitutional. Further, it asserts the ALJ erred in using the preamble to the 2001

¹ Claimant filed a prior claim for benefits but withdrew it. Director's Exhibit 1. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

² Section 411(c)(4) 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); *see* 20 C.F.R. §718.305.

³ Article II, Section 2, Clause 2, sets forth the appointing powers:

[The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

regulatory revisions in evaluating evidence. On the merits of entitlement, it argues that the ALJ erred in finding Claimant established total disability and, in the alternative, that it did not rebut the Section 411(c)(4) presumption.⁴

Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (Director), filed a limited response, urging the Benefits Review Board to reject Employer's constitutional arguments as well as its arguments regarding the ALJ's use of the preamble. Employer replied to both Claimant and the Director, reiterating its arguments on appeal and further asserting the ALJ erred in admitting Dr. Gaziano's supplemental opinion under the DOL's pilot program.

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.⁵ 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, 361-62 (1965).

Appointments Clause and Removal Protections

Employer urges the Board to vacate the ALJ's Decision and Order and remand the case to be heard by a different, constitutionally appointed ALJ pursuant to *Lucia v. SEC*, 585 U.S. 237 (2018).⁶ Employer's Brief at 31-37; Employer's Reply Brief at 4-6. It acknowledges the Secretary of Labor ratified the prior appointments of all sitting DOL

⁴ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established forty-two years and eight months of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7.

⁵ The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 24.

⁶ *Lucia* involved a challenge to the appointment of a Securities and Exchange Commission (SEC) ALJ. The United States Supreme Court held that, similar to Special Trial Judges at the United States Tax Court, SEC ALJs are "inferior officers" subject to the Appointments Clause. *Lucia v. SEC*, 585 U.S. 237, 251 (2018) (citing *Freytag v. Comm'r*, 501 U.S. 868 (1991)). The Department of Labor (DOL) has conceded that the Supreme Court's holding applies to its ALJs. *Big Horn Coal Co. v. Sadler*, 10th Cir. No. 17-9558, Brief for the Fed. Resp. at 14 n.6.

ALJs on December 21, 2017,⁷ but maintains the ratification was insufficient to cure the constitutional defect in the ALJ's prior appointment. *Id.* For the reasons set forth in *Johnson v. Apogee Coal Co.*, 26 BLR 1-1, 1-5-7 (2023), *appeal docketed*, No. 23-3612 (6th Cir. July 25, 2023), we reject Employer's Appointments Clause arguments.

Employer also challenges the constitutionality of the removal protections afforded DOL ALJs. Employer's Brief at 31-37; Employer's Reply Brief at 4-6. It generally argues the removal provisions for ALJs contained in the Administrative Procedure Act (APA), 5 U.S.C. §7521, are unconstitutional, citing Justice Breyer's separate opinion and the Solicitor General's argument in *Lucia* and the United States Supreme Court's holding in *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010). *Id.* In *Howard v. Apogee Coal Co.*, 25 BLR 1-301 (2022), the Board rejected similar arguments, in part, because the employer did not sufficiently allege "it suffered any harm due to the ALJ's removal protections." 25 BLR at 1-307 (applying *Calcutt v. FDIC*, 37 F.4th 293, 319 (6th Cir. 2022)). Subsequently, in *K&R Contractors, LLC v. Keene*, 86 F.4th 135, 145 (4th Cir. 2023), the Fourth Circuit, within whose jurisdiction this claim arises, held that "the Board has no authority to remedy the alleged separation-of-powers violation." The court nevertheless denied the employer's request for a new hearing because it did not show that the alleged "constitutional violation caused [it] harm." *Keene*, 86 F.4th at 149. So too here. Thus, even if the Board had authority to remedy the violation presented by Employer's removal protections arguments, we would decline to do so because Employer has failed to identify a harm caused by the allegedly unconstitutional removal provisions.

Evidentiary Issue: DOL's Pilot Program

Employer argues the ALJ erred in admitting and considering Dr. Gaziano's supplemental medical report, obtained as part of the DOL pilot program.⁸ Employer's

⁷ The Secretary of Labor (Secretary) issued a letter to the ALJ on December 21, 2017, stating:

In my capacity as head of the [DOL], and after due consideration, I hereby ratify the Department's prior appointment of you as an Administrative Law Judge. This letter is intended to address any claim that administrative proceedings pending before, or presided over by, administrative law judges of the [DOL] violate the Appointments Clause of the U.S. Constitution. This action is effective immediately.

Secretary's December 21, 2017 Letter to ALJ Daum.

⁸ In 2014, the DOL established a pilot program allowing the district director, in certain claims, to request a supplemental opinion from the physician who performed the DOL-sponsored complete pulmonary evaluation of the miner. *See* BLBA Bulletin No. 14-

Reply Brief at 6-7. Employer asserts the DOL has no legal authority to request supplemental opinions under the pilot program, the pilot program deprives it of due process, the implementation of the pilot program without notice and comment violates the APA, and the pilot program transforms the DOL into an advocate for claimants. *Id.* Employer’s initial brief to the Board in this appeal does not raise any objections to the ALJ’s consideration of Dr. Gaziano’s supplemental opinion. Thus, the objections it raises in its reply brief are forfeited. *See Williams v. Humphreys Enters., Inc.*, 19 BLR 1-111, 1-114 (1995) (Board generally will not consider new issues raised by the petitioner after it has filed its opening brief); Employer’s Reply Brief at 6-7. In addition, the Board has already considered and addressed Employer’s arguments in *Smith v. Kelly’s Creek Res.*, 26 BLR 1-15, 1-20-24 (2023), and we would thus reject Employer’s arguments, had they been properly raised, for the reasons set forth in *Smith*.

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 work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,⁹ 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, 1-198 (1986), *aff’d on recon.*, 9 BLR 1-236 (1987) (en banc). The ALJ found Claimant established total disability based on the arterial blood gas studies, the medical opinion evidence, and the evidence as a whole.¹⁰ Decision and Order at 24-26.

05 (Feb. 24, 2014). The program became standard procedure in 2019. *See* BLBA Bulletin No. 20-01 (Oct. 24, 2019).

⁹ 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).

¹⁰ The ALJ found Claimant failed to establish total disability based on the pulmonary function study evidence, and there is no evidence of cor pulmonale with right-

Arterial Blood Gas Studies

The ALJ considered five arterial blood gas studies taken on January 28, 2020, July 1, 2020, October 21, 2020, October 26, 2021, and April 4, 2022. Decision and Order at 10-11, 24. The January 28, 2020 study produced nonqualifying values at rest and qualifying results during exercise. Director's Exhibit 18 at 23. The July 1, 2020 study produced nonqualifying values at rest and during exercise. Director's Exhibit 24 at 6. The October 21, 2020 study produced qualifying results at rest and nonqualifying values during exercise. Director's Exhibit 26 at 33. The October 26, 2021 study produced qualifying results at rest, and no exercise study was performed. Claimant's Exhibit 2 at 7 (unpaginated). The April 4, 2022 study produced qualifying results both at rest and during exercise. Claimant's Exhibit 8 at 26 (unpaginated). Weighing the studies together, the ALJ found the arterial blood gas study evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 24.

Employer contends the blood gas studies were normal when “adjusted for [the] A-a [gradient]” and abnormal when Claimant “was in heart failure,” and that “blood gases affected by his [a]pnea-[h]ypopnea index do not point to that disability.” Employer's Brief at 47, 49. But Employer does not explain how the evidence supports its contention, and thus has failed to meet its burden to demonstrate error in the ALJ's findings. Furthermore, to the extent Employer's arguments can be construed as asserting Claimant's qualifying blood gas study results were due to nonpulmonary conditions, it conflates the question of whether a disabling impairment exists with the cause of that impairment, but those are separate inquiries. 20 C.F.R. §718.204(b), (c). The regulations specifically state that, “[i]f . . . a nonpulmonary or nonrespiratory condition or disease causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered in determining whether the miner is or was totally disabled due to pneumoconiosis.” 20 C.F.R. §718.204(a). We therefore reject Employer's argument and affirm the ALJ's determination that the arterial blood gas study evidence supports a finding of disability at 20 C.F.R. §718.202(b)(2)(ii).

Medical Opinion Evidence and Evidence as a Whole

The ALJ considered the medical opinions of Drs. Gaziano, Green, and Werchowski, who opined Claimant has a totally disabling respiratory or pulmonary impairment; Dr. Zaldivar, who opined Claimant is totally disabled but not due to a pulmonary impairment; and Dr. Rosenberg, who opined Claimant is not totally disabled. Decision and Order at

sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii); Decision and Order at 23-24.

11-20, 24-26; Director's Exhibit 18 at 5; 24 at 5; 26 at 7; 30 at 19. The ALJ credited the opinions of Drs. Gaziano, Green, and Werchowski as well-reasoned and documented because their opinions are consistent with the objective evidence and the physicians explained their reasoning. Decision and Order at 25-26. While she noted Dr. Zaldivar's opinion conflates the issues of total disability and disability causation, she nevertheless gave his opinion that Claimant is totally disabled significant weight. *Id.* at 25. Noting Dr. Rosenberg's report does not indicate he reviewed any evidence outside of his own examination and testing, she gave his opinion some, but not significant, weight. *Id.* Thus, weighing the opinions together, the ALJ found the medical opinion evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.* at 26.

Employer argues remand is required because, in finding the medical opinion evidence supports a finding of total disability, the ALJ did not determine the level of exertion required by Claimant's usual coal mine work. Employer's Brief at 39-41. We are not persuaded. While the ALJ did not make a specific determination regarding the exertional requirements of Claimant's usual coal mine work, she did not credit or discredit the medical opinions based on the physicians' understanding of the exertional requirements of that work. Decision and Order at 25-26. Employer has not explained how the alleged error made a difference in the outcome, and any such error is harmless. *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). We likewise reject Employer's assertion that the ALJ should have considered factors such as Claimant's age in determining whether he is totally disabled. As noted above, the existence of a totally disabling impairment and the cause of that impairment are separate inquiries. 20 C.F.R. §718.204(b), (c). Thus, we affirm the ALJ's finding that the medical opinion evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv).

Weighing the evidence as a whole, the ALJ found Claimant established the existence of a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2); Decision and Order at 26. In its reply brief, Employer argues for the first time that the ALJ erred in finding the evidence as a whole establishes total disability because she failed to explain why she credited the arterial blood gas studies, which she found supported a finding of total disability, over the pulmonary function studies, which she found did not, as well as the lack of cor pulmonale with right-sided congestive heart failure. Employer's Reply Brief at 7.

Employer forfeited its arguments by failing to raise them in its opening brief to the Board. *See Williams*, 19 BLR at 1-114. But even had Employer properly raised these arguments, we would reject them as pulmonary function studies, arterial blood gas studies, and diagnoses of cor pulmonale with right-sided congestive heart failure all evaluate

different kinds of impairment; a determination that one does not support a finding of total disability thus does not call into question a determination that another supports such a finding. *See Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984). As Employer raises no additional arguments, we affirm the ALJ's finding that Claimant established a totally disabling respiratory or pulmonary impairment and invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.204(b)(2); Decision and Order at 26.

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 “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); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015). The ALJ found Employer failed to establish rebuttal by either method.¹² Decision and Order at 31-46.

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*, 25 BLR at 1-155 n.8 (2015).

Employer relies on Dr. Zaldivar's medical opinion to disprove legal pneumoconiosis.¹³ Dr. Zaldivar diagnosed mild airway obstruction, obesity

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).

¹² The ALJ found Employer disproved clinical pneumoconiosis. Decision and Order at 28.

¹³ Employer also contends the ALJ erred in evaluating Dr. Rosenberg's opinion. Employer's Brief at 39, 41-45. Dr. Rosenberg opined Claimant “probably does have a

hypoventilation syndrome, sleep apnea, and tracheobronchomalacia, as well as potential asthma and opined all of Claimant's impairments are unrelated to coal mine dust exposure. Director's Exhibit 26 at 6; Employer's Exhibit 16 at 33-37, 60. He opined that for "legal pneumoconiosis to cause obstruction or restriction, there must be a history of an inhalation injury at the time the person was working." Employer's Exhibit 16 at 58. Likewise, he explained that for asthma to be caused by legal pneumoconiosis, there would need to be evidence of exposure to some inhalation injury at the time Claimant was working in the mines, and that this is not documented in the records. *Id.* at 58-59.

The ALJ permissibly discredited this rationale as inconsistent with the regulations, which recognize pneumoconiosis as "a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure."¹⁴ 20 C.F.R. §718.201(c); *see* 65 Fed. Reg. 79,920, 79,971 (Dec. 20, 2000) ("[I]t is clear that a miner who may be asymptomatic and without significant impairment at retirement can develop a significant pulmonary impairment after a latent period."); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be both latent and progressive may be discredited); *see also Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 739 (6th Cir. 2014) (Act recognizes that pneumoconioses, whether clinical or legal, can first become detectable after a miner ceases coal mine employment); Decision and Order at 33. Further, the ALJ permissibly discredited Dr. Zaldivar's opinion because he did not explain why Claimant's "very significant history of underground coal mine dust exposure" could not have contributed to or aggravated Claimant's obstructive impairment and blood gas abnormalities.¹⁵ *See*

degree of legal [pneumoconiosis]." Director's Exhibit 24 at 5. Thus, as the ALJ correctly observed, his opinion does not assist Employer in disproving legal pneumoconiosis. Decision and Order at 32. As Employer does not challenge this determination on appeal, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order at 32.

¹⁴ Employer generally asserts the ALJ erred in referencing the preamble to the 2001 revised regulations in evaluating the medical opinion evidence. Employer's Brief at 38-39. Contrary to Employer's contention, the ALJ discredited Dr. Zaldivar's opinion because it is inconsistent with the regulation itself and permissibly referenced the preamble only to explain the science underlying the regulation. *See Extra Energy, Inc. v. Lawson*, 140 F.4th 138, 152-54 (4th Cir. 2025); *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 314-16 (4th Cir. 2012); Decision and Order at 33 (quoting 65 Fed. Reg. 79,920, 79,971 (Dec. 20, 2000)).

¹⁵ Employer contends the ALJ erred in evaluating Dr. Zaldivar's opinion in part because Claimant reported inconsistent smoking histories. *See* Employer's Brief at 44; Employer's Reply Brief at 13-15. But Dr. Zaldivar determined Claimant smoked for ten

Mingo Logan Coal Co. v. Owens, 724 F.3d 550, 558 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 309, 316-17 (4th Cir. 2012); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000); Decision and Order at 33.

As the trier-of-fact, the ALJ has the discretion to assess the credibility of the medical opinions and to assign them weight; the Board may not reweigh the evidence or substitute its own inferences on appeal.¹⁶ *Compton*, 211 F.3d at 207-08; *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because the ALJ permissibly discredited Dr. Zaldivar's opinion, the only opinion supportive of Employer's burden on rebuttal, we affirm her finding that Employer did not disprove legal pneumoconiosis. See *Minich*, 25 BLR at 1-155 n.8; Decision and Order at 34. Therefore, we affirm her finding that Employer failed to rebut the Section 411(c)(4) presumption by establishing Claimant does not have pneumoconiosis. See 20 C.F.R. §718.305(d)(1)(i).

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 34-35. She permissibly discredited Dr. Zaldivar's opinion because he did not diagnose legal pneumoconiosis, contrary to her finding that Employer failed to disprove the disease.¹⁷ See *Epling*, 783 F.3d at 504-05; Decision and Order at 35. Employer does not specifically contest this finding on appeal and we thus affirm it.¹⁸ See *Skrack v. Island Creek Coal Co.*,

years, far more than the eighty to one hundred packs of cigarettes Employer asserts Claimant smoked in his life, and still opined Claimant's smoking history did not affect or cause his respiratory impairments. Employer's Exhibit 16 at 30 ("there is no evidence whatever that smoking has really caused any problem here."); Employer's Reply Brief at 14.

¹⁶ Because the ALJ provided valid reasons to discredit Dr. Zaldivar's opinion, we need not address Employer's remaining arguments regarding the additional reasons she gave for rejecting his opinion. See *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 39-45; Employer's Reply Brief at 7-15.

¹⁷ Dr. Rosenberg diagnosed legal pneumoconiosis but did not diagnose a totally disabling respiratory or pulmonary impairment. Director's Exhibit 24 at 4. His opinion thus does not address whether Claimant's legal pneumoconiosis caused his totally disabling impairment.

¹⁸ Employer contends the ALJ erred in evaluating Drs. Gaziano's, Green's, and Werchowski's opinions on disability causation. Employer's Brief at 46-49. We need not

6 BLR 1-710, 1-711 (1983); Decision and Order at 34-35. Therefore, as it is supported by substantial evidence, we affirm the ALJ's finding that Employer failed to establish no part of Claimant's total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 35.

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

address these arguments as these opinions do not assist Employer in its burden to disprove disability causation. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).