



BRB No. 25-0168 BLA

JAMES REESE)
)
 Claimant-Respondent)
)
 v.)
)
 CONSOLIDATION COAL COMPANY)
)
 Employer-Petitioner)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 05/29/2026

DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Heather C. Leslie, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for Claimant.

Joseph D. Halbert and Adam O. Stanley (Halbert Legal, PLLC), Lexington, Kentucky, for Employer.

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

GRESH, Chief Administrative Appeals Judge, and ROLFE, Administrative Appeals Judge:

Employer appeals Administrative Law Judge (ALJ) Heather C. Leslie's Decision and Order Granting Benefits (2020-BLA-05333) rendered on a claim filed on March 12, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ accepted the parties' stipulation of eighteen years of qualifying coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). She therefore concluded Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,¹ 30 U.S.C. §921(c)(4). The ALJ further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer challenges the ALJ's finding of total disability and that it failed to rebut the Section 411(c)(4) presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, did not file a substantive response.

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.² 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).

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,³ evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R.

¹ Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he establishes 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); 20 C.F.R. §718.305.

² This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Tr. at 6.

³ 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).

§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 total disability based on the medical opinion evidence and the evidence as a whole.⁴ Decision and Order at 13-19.

Pulmonary Function Studies

The ALJ considered the results of two pulmonary function studies dated June 6, 2018, and August 29, 2022. Director's Exhibit 13; Claimant's Exhibit 5. The June 6, 2018 pulmonary function study produced qualifying values without the administration of a bronchodilator. The August 29, 2022 pulmonary function study did not produce qualifying values before or after the administration of a bronchodilator. The ALJ found both pulmonary function studies to be reliable. Decision and Order at 10-11. As only one of the two pulmonary function studies yielded qualifying results, the ALJ determined the pulmonary function studies to be in equipoise and thus do not support a finding of total disability. *Id.* at 11, 19.

Employer argues the ALJ erred in failing to consider several non-qualifying pulmonary function studies contained in Claimant's treatment records.⁵ Employer's Brief at 2-3 (unpaginated); Employer's Exhibit 1. But Employer has not explained the significance of this alleged error where the ALJ still found the preponderance of pulmonary function study evidence does not establish total disability.⁶ *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have

⁴ The ALJ found the pulmonary function evidence and arterial blood gas study evidence does not support a finding of total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 9-13.

⁵ Specifically, Employer asserts the ALJ failed to consider the pulmonary function studies that Dr. Fulton administered on September 9, 2014, January 6, 2016, April 12, 2016, August 23, 2016, and October 6, 2017. Employer's Brief at 2-3 (unpaginated); Employer's Exhibit 1.

⁶ Employer asserts only that the ALJ failed to consider relevant evidence and "[i]f the ALJ finds that the PFT evidence does not support a finding that the miner was totally disabled, this may also undercut the medical opinion evidence that purportedly establishes such an impairment." Employer's Brief at 3-4 (unpaginated). It does not explain how the alleged error affected the ALJ's weighing of the medical opinion evidence in this case.

made any difference”); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer’s Brief at 3-5 (unpaginated).

Besides challenging the weighing of the pulmonary function studies, Employer does not otherwise challenge the ALJ’s finding that the medical opinion evidence, and the evidence as a whole, establishes disability. We therefore affirm those findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,⁷ or “no part of [his] respiratory or pulmonary 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.⁸ Decision and Order at 20-23.

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 ALJ considered five medical opinions. Decision and Order at 22-23. Drs. Prakash, Go, and Cohen diagnosed Claimant with legal pneumoconiosis in the form of totally disabling chronic obstructive pulmonary disease (COPD) due, in part, to his eighteen-year history of coal mine dust exposure, while Drs. Vuskovich and Rosenberg attributed Claimant’s COPD entirely to obesity, asthma, and smoking, and they both ruled

⁷ “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). “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).

⁸ The ALJ found the x-ray evidence is negative for pneumoconiosis. Decision and Order at 21-22.

out coal dust exposure as playing any role in Claimant's totally disabling COPD. Director's Exhibit 13; Claimant's Exhibits 2, 3; Employer's Exhibits 6, 8, 10.

The ALJ found the opinions of Drs. Prakash, Go, and Cohen -- that Claimant's eighteen years of underground coal mine employment substantially contributed to his disabling COPD -- documented, well-reasoned, and persuasive, as supported by the data on which the physicians relied. Decision and Order at 13-16. Significantly, Employer does not challenge those findings on appeal, and we therefore affirm them. *Skrack*, 6 BLR at 1-711.

And that is enough to end the inquiry. Given that we have already affirmed that Claimant's COPD is totally disabling, the ALJ's unchallenged findings that the most persuasive medical opinions in the record affirmatively establish the COPD constitutes legal pneumoconiosis are enough to affirm the ALJ's conclusion -- and they would be regardless of which party bore the burden of persuasion here. *See, e.g., American Energy, LLC, v. Director, OWCP*, 106 F.4 319, 326 (4th Cir. 2024) (“[I]f a miner's legal pneumoconiosis is his total disability, separately analyzing disability causation is unnecessary.”); *Energy W. Min. Co. v. Dir., OWCP*, 49 F.4th 1362, 1369 (10th Cir. 2022) (“Because [the miner]’s COPD was totally disabling and constituted legal pneumoconiosis, the Board correctly found that [the miner] had established disability causation.”); *Island Creek Ky. Min. v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013) (“Because [the miner] was found to be totally disabled and because all medical experts agreed that [the miner]’s pulmonary problems were a significant cause of his total disability, the only question remaining was whether” he had legal pneumoconiosis.); *Hawkinberry v. Monongalia Cnty. Coal Co.*, 25 BLR 1-249, 1-255-56 (2019) (same).

Regardless, this is a rebuttal case -- which places the burden on Employer -- and the ALJ also gave an entirely permissible reason to discredit the only experts who ruled out coal dust as playing any part in the Claimant's disability. She unambiguously stated that they failed to explain how they ruled out Claimant's eighteen years of coal dust exposure in underground mining from contributing to or aggravating his disabling COPD:

Dr. Rosenberg's opinion is not well reasoned. Dr. Rosenberg opines that the presence of miner's disabling respiratory impairments are not due to coal mine dust or coal mine related employment, but rather due to obesity and asthma. The court has found experts to be insufficiently reasoned where the impact of coal mine dust is dismissed in a cursory fashion in the presence of a condition of the general population. Dr. Rosenberg did not sufficiently reason why coal dust is definitely not a factor at present, and due to Miner's history of coal dust exposure, this is insufficient.

Decision and Order at 18. The ALJ gave virtually the same reason for discrediting Dr. Vuskovich. *Id.* at 17.

The Fourth Circuit has affirmed this rationale for discrediting medical opinions on rebuttal, *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013), as has the Board – countless times. *See, e.g., Johnson v. Apogee Coal Co.*, 26 BLR 1-1, 1-13 (2023) (ALJ permissibly found physician’s opinion unpersuasive for failing to explain why coal mine dust did not contribute, even in part, to the miner’s cancer-related impairment), *aff’d sub nom. Apogee Coal Co. v. Dir.*, OWCP, Nos. 23-3297, 23-3437, 23-3536, 23-3537, 23-3541, 23-3612, 23-3644, 23-3645, and 23-3662 (6th Cir. Apr. 28, 2026); *Howard v. Apogee Coal Co.*, 25 BLR 1-301, 1-320 (2022) (“ALJ acted within her discretion in finding [physician’s] opinion unpersuasive because he did not sufficiently explain why [the miner] was not suffering ‘from both tobacco-related and coal mine dust-related lung disease, or why [the miner]’s coal dust exposure did not substantially exacerbate any tobacco related lung disease.”); *Jones v. Cent. Appalachian Coal Co.*, BRB No. 25-0020 BLA, slip op. at 8 (Mar. 24, 202) (unpub.) (ALJ permissibly found physicians did not address the additive nature of coal dust exposure on smoking-related impairment); *Baisden v. Wolf Run Mining Co.*, BRB No. 23-0250 BLA, slip op. at 5 (Oct. 30, 2024) (unpub.) (same); *Vance v. Elkay Mining Co.*, BRB Nos. 21-0085 BLA and 21-0086 BLA, slip op. at 6 (Mar 24, 2022) (unpub.) (ALJ permissibly found physician did not adequately explain why a diagnosis of systemic sclerosis precludes a diagnosis of legal pneumoconiosis); *Meade v. Clinchfield Coal Co.*, BRB No. 19-0298, slip op. at 8 (Jun 25, 2020) (unpub.) (ALJ permissibly found physician “did not address whether [legal] pneumoconiosis, in conjunction with the thoracotomy surgery, could have been a factor in the [the miner’s] pulmonary condition”); *Wimmer v. Clinchfield Coal Co.*, BRB No. 19-0126 BLA, slip op. at 4 (Feb. 6, 2020) (ALJ permissibly found physician did not adequately explain why coal mine dust exposure did not also contribute to asthma-related impairment).

The ALJ’s permissible discrediting of the only opinions supporting Employer’s burden on rebuttal provides a completely independent reason to affirm her decision, *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983), and we need not consider the ALJ’s other reasons for discounting the opinions of Drs. Rosenberg and Vuskovich. *See Larioni*, 6 BLR at 1-1278.

Employer does little to challenge these findings on appeal. Instead, it provides two bare conclusions in response: first, it argues “there is little, if any, legal analysis regarding the medical opinions and whether any potential legal [pneumoconiosis] exists,” Employer’s Brief at 4 (unpaginated); second, it contends “[a]nalysis regarding impairment, or lack thereof, and causation of such impairment should be wholly separate.” *Id.* Even considering either unsupported statement as adequately briefed arguments, Employer

plainly does not meet its burden to establish error. First, by virtue of the presumption, Claimant's COPD is considered legal pneumoconiosis, 20 C.F.R. §718.201(a)(2), and Employer has provided no argument explaining how the ALJ erred in finding Drs. Vuskovich and Rosenberg did not explain how they eliminated Claimant's eighteen years of coal mine dust exposure as a contributing factor or aggravating cause of it. *Mingo*, 724 F.3d at 558; Decision and Order at 17-18. Second, as explained above, the different elements often collapse into the same inquiry in black lung claims. Given the interplay, Employer has provided no authority for why the examination of those elements "should be wholly separate" -- nor can we think of any logical reasons why they must be. Since Employer does not even attempt to provide that answer, it thus has failed to demonstrate any error in the ALJ's analysis.⁹

Our dissenting colleague's reasons for remand are equally puzzling. Our colleague reasons she "cannot discern . . . whether the ALJ found Drs. Vuskovich's and Rosenberg's opinions insufficient because they failed to satisfy the rebuttal standard at Section 718.305(d)(1) or because [the ALJ] believed physicians may not distinguish between conditions of the general population and coal-dust related impairment" and that "the Board cannot supply the missing analysis on appeal." *See infra* p.9. In plain language, the ALJ stated (twice) that those physicians did not adequately explain how they ruled out Claimant's eighteen years of coal dust exposure in finding his obesity and asthma completely unrelated to his coal dust exposure -- both diseases of the common population and not unique to coal miners -- solely caused Claimant's disabling COPD. As noted, that rationale has been found to satisfy the Section 718.305(d)(1) rebuttal standard in countless cases. So too here.

⁹ Employer correctly notes complicated pneumoconiosis and the irrebuttable presumption at 20 C.F.R. §718.304 are not at issue in this case. Employer's Brief at 5 (unpaginated). We regard the ALJ's citing to 20 C.F.R. §718.304 as harmless error, as her decision otherwise reflects that she applied the rebuttable presumption at 20 C.F.R. §718.305.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

JONES, Administrative Appeals Judge, dissenting and concurring:

I respectfully dissent from the majority's decision to affirm the ALJ's finding that Employer failed to rebut the Section 411(c)(4) presumption. Although I agree with the majority that Claimant established total disability and invoked the presumption, I would vacate the ALJ's rebuttal findings and remand for further consideration.

I agree with the majority that an ALJ may discuss medical opinions in separate sections and still adequately address the distinct issues of legal pneumoconiosis and disability causation because credibility findings made in one section of a decision may sufficiently inform another; however, here, the ALJ's stated reasons for discrediting Employer's physicians (in particular Dr. Rosenberg) are too unclear and legally problematic to permit meaningful review of whether Employer disproved legal pneumoconiosis or causation.

The question is not whether the ALJ used separate headings for total disability and rebuttal. Rather, the issue is whether she adequately explained why Employer's medical opinions failed under the rebuttal standards set forth at 20 C.F.R. §718.305(d)(1)(i), (ii). In my view, she did not. The ALJ was required to evaluate the explanations Employer's physicians gave for excluding coal mine dust exposure and explain why those explanations were unpersuasive under the applicable rebuttal standards. *See W. Va. CWP Fund v. Bender*, 782 F.3d 129, 143 (4th Cir. 2015); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 555 (4th Cir. 2013); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441-42 (4th Cir. 1997).

The majority reads the ALJ's decision as finding Employer's physicians failed to satisfy the rebuttal burden because they did not adequately explain how they eliminated coal mine dust exposure as a contributing or aggravating cause of Claimant's COPD. I

cannot discern from the decision whether the ALJ found Drs. Vuskovich's and Rosenberg's opinions insufficient because they failed to satisfy the rebuttal standard at Section 718.305(d)(1) or because she believed physicians may not distinguish between conditions of the general population and coal-dust related impairment. Decision and Order at 17-18. In particular, the ALJ discredited Dr. Rosenberg's opinion as "contrary to the regulations, which recognize pneumoconiosis is a 'latent and progressive disease'" without explaining how that principle undermines his rationale for excluding coal dust exposure as an additional cause of Claimant's smoking-, asthma-, and obesity-related COPD. *Id.* at 18-19.

Moreover, the Board cannot supply the missing analysis on appeal. Although Claimant's response brief offers reasons why the ALJ could have discredited Employer's physicians' opinions, those reasons are not clearly set forth in the decision itself. Claimant's Brief at 17-18. The Board's role is to review the rationale the ALJ actually provided, not to piece together a legally sufficient explanation from the parties' briefing or supply reasoning the decision does not contain. *See O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965). Because I cannot discern the basis for the ALJ's rejection of Employer's rebuttal evidence with sufficient clarity to permit appellate review, I would not affirm her rebuttal findings. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); *Lane Hollow Coal Co. v. Director, OWCP [Lockhart]*, 137 F.3d 799, 802-03 (4th Cir. 1998).

I would therefore vacate the ALJ's findings that Employer failed to rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(i), (ii), and remand the case for the ALJ

to reconsider whether Employer has disproved legal pneumoconiosis or established that no part of Claimant's total disability was caused by pneumoconiosis.

MELISSA LIN JONES
Administrative Appeals Judge