



BRB No. 19-0107 BLA

JEROME H. DeMOSS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
ISLAND CREEK COAL COMPANY)	
)	DATE ISSUED: 09/29/202
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	ORDER ON MOTION FOR
Party-in-Interest)	RECONSIDERATION

Employer filed a timely motion for reconsideration en banc of the Benefits Review Board's decision in *DeMoss v. Island Creek Coal Co.*, BRB No. 19-0107 BLA (Apr. 8, 2020) (unpub.), affirming the award of benefits. 33 U.S.C. §921(b)(5); 20 C.F.R. §802.407. Employer challenges the Board's affirmance of the administrative law judge's findings that Claimant has legal pneumoconiosis and that this condition is the cause of his total respiratory disability. Claimant responds, urging the Board to deny Employer's motion for reconsideration. The Director, Office of Workers' Compensation Programs (the Director), responds that if the Board again rejects Employer's legal pneumoconiosis arguments, it should hold disability causation has been established and deny the motion for reconsideration. Employer filed a reply to Claimant's and the Director's responses, reiterating its contentions. We deny Employer's motion for reconsideration and affirm the Board's decision.

In its Decision and Order, the Board initially noted the parties stipulated Claimant is totally disabled by chronic obstructive pulmonary disease (COPD). *DeMoss*, slip op. at 2 n.2. In its motion for reconsideration, Employer asks the Board, among other things, to

reconsider its determination that substantial evidence supports the administrative law judge's finding that the medical opinion evidence credibly establishes Claimant's COPD constitutes legal pneumoconiosis. For the reasons stated in the original decision, we decline to do so. *Id.* at 3-8.

Moreover, because no respiratory condition other than COPD contributes to Claimant's respiratory disability, and that COPD constitutes legal pneumoconiosis, it is the sole source of his total disability. Thus, on this record, Claimant has satisfied his burden of establishing that his legal pneumoconiosis is a substantial contributing cause of his total disability. See 20 C.F.R. §718.204(c)(1) (pneumoconiosis must be a "substantially contributing cause" of the totally disabling respiratory impairment); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013) (where COPD caused the miner's total disability, the legal pneumoconiosis inquiry "completed the causation chain from coal mine employment to legal pneumoconiosis which caused [the miner's] pulmonary impairment that led to his disability"); *Brandywine Explosives & Supply v. Director, OWCP [Kennard]*, 790 F.3d 657, 668-69 (6th Cir. 2015) ("no need for the [administrative law judge] to analyze the opinions a second time" at disability causation where the employer failed to establish that the totally disabling impairment was not legal pneumoconiosis); *Hawkinberry v. Monongalia County Coal Co.*, 25 BLR 1-249 (2019).

As the Board concluded, having affirmed the administrative law judge's finding Claimant established legal pneumoconiosis caused his total disability, she properly found Claimant entitled to benefits. *DeMoss*, slip op. at 9-10. Accordingly, after consideration

of Employer's contentions and review of the Board's disposition of this case, Employer's motion for reconsideration en banc is denied. 20 C.F.R. §§801.301(b), 802.409.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge