U.S. Department of Labor

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

BRB No. 21-0309 BLA

HALLIE MARIE LEWIS (Widow of GEORGE LEWIS)	)	
Claimant-Respondent	)	
v.	)	
E & L CONSTRUCTION	)	
and	)	
KENTUCKY EMPLOYERS' MUTUAL INSURANCE	)	DATE ISSUED: 02/16/2023
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 Awarding Benefits of Jason A. Golden, Administrative Law Judge, United States Department of Labor.

Wes Addington (Appalachian Citizens' Law Center, Inc.), Whitesburg, Kentucky, for Claimant.

Paul E. Jones and Denise Hall Scarberry (Jones & Jones Law Office, PLLC), Pikeville, Kentucky, for Employer and its Carrier.

Ann Marie Scarpino (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, 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, BOGGS and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Jason A. Golden's Decision and Order Awarding Benefits (2013-BLA-05775) rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (the Act). This case involves a survivor's claim[1] filed on June 15, 2012, and is before the Benefits Review Board for the second time.

In a Decision and Order Awarding Benefits issued on July 27, 2017, ALJ Peter B. Silvain, Jr., credited the Miner with nineteen years of qualifying coal mine employment and found he suffered from a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant invoked the Section 411(c)(4) rebuttable presumption that the Miner's death was due to pneumoconiosis.[2] 30 U.S.C. §921(c)(4) (2018). ALJ Silvain further found Employer did not rebut the presumption and awarded benefits. 20 C.F.R. §718.305.

Upon review of Employer's appeal, the Board affirmed ALJ Silvain's unchallenged finding that the Miner had nineteen years of surface coal mine employment, and affirmed his finding that the evidence established it was performed in conditions substantially similar to those in underground mines. *Lewis v. E & L Constr.*, BRB No. 17-0610 BLA,

[1] Claimant is the surviving spouse of the Miner, who died on August 7, 2011. Director's Exhibit 9. Section 422(*l*) of the Act provides that a survivor of a miner who was determined to be eligible to receive benefits at the time of his death is automatically entitled to receive survivor's benefits. 30 U.S.C. §932(*l*) (2018). Claimant cannot benefit from this provision, however, as the Miner did not file any claims during his lifetime. Decision and Order at 2.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's death was due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment at the time of his death. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

slip op. at 4 (Sept. 14, 2018) (unpub.). The Board, however, vacated ALJ Silvain's finding that the evidence established total disability. *Id.* at 6. Specifically, the Board held that ALJ Silvain failed to determine whether the pulmonary function studies contained in the Miner's treatment records were sufficiently reliable before he found they established total disability. *Id.* 5-6. Therefore, the Board vacated ALJ Silvain's findings of total disability and that Claimant invoked the Section 411(c) presumption. *Id.* at 6. Accordingly, the Board vacated the award of benefits and remanded the case for further consideration. *Id.* at 6.

On remand, ALJ Silvain issued a Notice and Order regarding the impact of the United States Supreme Court's decision in *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044, 2055 (2018)[3] on this case because he had issued his decision before December 21, 2017, when the Secretary of Labor ratified his appointment. Aug. 19, 2019 Notice and Order. He determined that, before then, he lacked the authority to hear and decide the case because he had not been properly appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2.[4] *Id.* The Notice and Order advised the parties they had fourteen days to file a statement indicating whether they were waiving the opportunity to have the case reassigned and heard by a different ALJ. *Id.*

No party responded to ALJ Silvain's Notice and Order, so on September 5, 2019, he returned the case to the Office of Administrative Law Judges' (OALJ) docket for reassignment and a new hearing. Thereafter, the case was assigned to the ALJ.

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[3] *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. , 138 S. Ct. 2044, 2055 (2018) (citing *Freytag v. Comm'r*, 501 U.S. 868 (1991)).

[4] 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.

Art. II, § 2, cl. 2.

Prior to a hearing, the ALJ granted the parties' request for a decision on the record, and indicated that, pursuant to *Lucia* and the Board's remand order, all rulings ALJ Silvain made were vacated. Order on Joint Motion for Decision on the Record.

However, after a teleconference with the parties, the ALJ requested the parties file briefs on the procedural posture of the case, including the *Lucia* issue. Order on Telephone Conference. Thereafter, the ALJ determined the parties waived any challenge to ALJ Silvain's appointment based on the Appointments Clause. Order Clarifying the Evidentiary Record at 5-6. However, he found ALJ Silvain did not err in recusing himself from the case, as he was permitted to do so under 29 C.F.R. §18.16(a).[5] *Id.* at 6. The ALJ also indicated he would limit his decision to the issues as instructed by the Board in its remand order, as he did not have the authority to revisit issues already affirmed without a clear mandate from the Board.[6] *Id*. at 7.

In a February 11, 2021 Decision and Order Awarding Benefits, which is the subject of this appeal, the ALJ credited the Miner with nineteen years of qualifying coal mine employment, as affirmed by the Board. He further found the pulmonary function study evidence was sufficiently reliable to support a finding of total disability and that the weight of the evidence established the Miner had 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) rebuttable presumption that the Miner's death was due to pneumoconiosis. 30 U.S.C. §921(c)(4) (2018). He further found Employer failed to rebut the presumption and awarded benefits.

In the current appeal, Employer argues the ALJ erred procedurally, contending the case either should have been heard by ALJ Silvain on remand or that the ALJ should have considered the claim de novo. On the merits, Employer argues the ALJ erred in crediting the Miner with at least fifteen years of qualifying coal mine employment and in finding the evidence established total disability and therefore in finding Claimant invoked the Section 411(c)(4) presumption. Employer further argues the ALJ erred in finding it did not rebut the presumption. Claimant responds in support of the award of benefits. The Director,

[5] 29 C.F.R. §18.16(a) states: "A judge must withdraw from a proceeding whenever he or she considers himself or herself disqualified."

[6] The ALJ also stated he would rely on the "new evidentiary record" created before him to render his rulings, but indicated this determination made no practical difference as the evidence was the same as it was before ALJ Silvain. Order Clarifying the Evidentiary Record at 7.

Office of Workers' Compensation Programs (the Director), responds, urging the Board to reject Employer's procedural arguments.

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.[7] 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 (1965).

Employer contends that ALJ Silvain erred in returning the case to the OALJ's docket when no party requested him to do so; however, given his order doing so, it argues the ALJ erred in not holding a de novo hearing as ALJ Silvain's order directed, thereby resulting in a "piecemeal" decision.[8] Employer's Brief at 8-9. The Director responds, arguing the ALJ correctly found Employer forfeited any Appointments Clause challenge that would have allowed a de novo hearing to be held and Employer does not challenge the ALJ's finding that ALJ Silvain's sua sponte recusal was proper. Director's Response at 4-5; *see also* Claimant's Response at 5. In addition, the Director contends the ALJ properly found he was not authorized to revisit findings that the Board previously affirmed. Director's Response at 5. We agree with the Director's contentions.

A lower tribunal must act in strict compliance with remand instructions from a higher tribunal without altering, amending, or examining them. *See Sullivan v. Hudson*, 490 U.S. 877, 886 (1989); *Invention Submission Corp. v. Dudas*, 413 F.3d 411, 414-15 (4th Cir. 2005); *Piambino v. Bailey*, 757 F.2d 1112, 1119-20 (11th Cir. 1985), *cert. denied*, 476 U.S. 1169 (1986). Further, the Board will not alter its previous holdings unless they were clearly erroneous or there are other valid exceptions to the law of the case doctrine. *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-151 (1990); *Williams v. Healy-Ball-Greenfield*, 22 BRBS 234, 237 (1989). Employer has not alleged that any such situation is relevant here.

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the Miner performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 4; Director's Exhibit 3.

[8] While Employer contends it was "under the impression" that the ALJ would adjudicate the case de novo, and states it would have "vehemently objected to the transfer of the case" had it known he would not, Employer's Brief at 9, it also indicates it does not have a position "one way or the other" whether the case should have remained with ALJ Silvain or been transferred for a new hearing. Employer's Brief at 8.

Further, Employer has not alleged the ALJ erred in finding it waived any Appointments Clause objection to ALJ Silvain's assignment to this case, which would give rise to the remedy of a de novo review pursuant *Lucia*. Order Clarifying the Evidentiary Record at 5-6; *see Island Creek Coal Co. v. Young*, 947 F.3d 399, 402-03 (6th Cir. 2020). At no point did it or any other party raise an Appointments Clause objection. Neither has Employer cited any authority that would have allowed the ALJ to hear the case de novo absent such an objection. Moreover, as the Director argues, Employer has not challenged the ALJ's finding that ALJ Silvain's sua sponte recusal was permissible. Director's Brief at 4; Order Clarifying the Evidentiary Record at 6. Consequently, we reject Employer's arguments.[9]

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

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner was totally disabled at the time of his death. 20 C.F.R. §718.305(b)(iii). A Miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). Claimant may establish total disability based on qualifying[10] pulmonary function studies or arterial blood gas studies, evidence of 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 pulmonary function studies and the evidence as a whole.[11] Decision and Order at 8, 11.

[9] Employer also argues the ALJ erred in finding the Miner's nineteen years of coal mine employment were qualifying for purposes of invoking the Section 411(c)(4) presumption. Employer's Brief at 9. However, its argument is based solely on its contention that the ALJ should have considered the evidence de novo, an argument we have rejected. The ALJ properly declined to reconsider this issue, as the Board previously affirmed. Decision and Order at 3.

[10] A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i)-(ii).

[11] The ALJ found Claimant did not establish total disability based on the blood gas studies and there is no evidence of cor pulmonale with right-sided congestive heart failure.

Employer argues the ALJ erred in finding the pulmonary function study evidence established total disability when the studies did not meet the quality standards at 20 C.F.R. §718.103(b). Employer's Brief at 10-11. However, as the ALJ indicated and the Board previously explained, the quality standards do not apply to pulmonary function studies conducted as part of a miner's treatment. 20 C.F.R. §718.101(b); *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 included as part of a miner's treatment); Decision and Order at 6. Even so, an ALJ must still determine if the results are sufficiently reliable to support a finding of total disability, despite the inapplicability of the quality standards. 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000). The party challenging a study has the burden to establish the results are suspect or unreliable. *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984).

The ALJ considered two pulmonary function studies conducted on January 4, 2011, and July 29, 2011. Director's Exhibits 17, 19. Both of these studies are contained in the Miner's medical treatment records and provided qualifying values obtained before the administration of a bronchodilator. Decision and Order at 5-6; Director's Exhibits 17, 19.

Regarding the January 4, 2011 study, the ALJ noted Dr. Jarboe's opinion that the study could not be validated as there was only one flow loop and it did not show "maximum effort." Decision and Order at 6-7. The ALJ found Dr. Jarboe did not adequately explain how he could determine the Miner's effort with only one flow loop and that, even if there was not maximum effort, the Board has held that "fair" cooperation is sufficient. *Id.* at 7. Thus, the ALJ concluded that Dr. Jarboe's statement did not amount to an opinion that this study was not sufficiently reliable to support a finding of total disability. *Id.* The ALJ further indicated that Dr. Ulrich relied on the study to diagnose obstructive disease in his treatment of the Miner, a disease Dr. Jarboe agreed the Miner had. *Id.* Thus, the ALJ found the January 4, 2011 study sufficiently reliable to support a finding of total disability. *Id.*

Assessing the July 29, 2011 study, the ALJ found no indication that the Miner was suffering from an acute respiratory condition at the time it was conducted which would

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20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 8-10. He further found that while the medical opinion evidence does not specially address total disability, it does not weigh against such a finding. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 11. Similarly, he found the Miner's treatment records do not specifically address total disability, but do not preclude such a finding. Decision and Order at 10. The parties do not challenge these findings; thus, we affirm them. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

render the study unreliable. Decision and Order at 7; Director's Exhibit 19. He also noted the administering technician reported the Miner had good effort and cooperation, and that no leaks around the mouthpiece were detected even though the Miner had no teeth. Director's Exhibit 19 at 10. In addition, the ALJ observed that Dr. McIntosh relied on the study for diagnosis and treatment, and Dr. Jarboe also relied on the study to diagnose severe obstruction. Decision and Order at 8; Employer's Exhibit 4. Based on the technician's information, along with the fact that Drs. McIntosh and Jarboe relied on the study's results in forming their opinions, the ALJ found the July 29, 2011 study sufficiently reliable to support a finding of total disability. Decision and Order at 8.

Employer argues the ALJ was incorrect in finding that it submitted no evidence that the January 4, 2011 study showed poor effort, citing Dr. Jarboe's opinion that the flow loop did not show maximum effort. Employer's Brief at 11. It also argues the ALJ's finding that the July 29, 2011 study was not conducted during an acute condition or illness is belied by the fact that it was conducted at the Miner's bedside. *Id*. Finally, it argues that the Miner's lack of teeth could have affected the study. *Id.* Contrary to Employer's argument, the ALJ addressed these issues.

The ALJ addressed Dr. Jarboe's opinion regarding the Miner's effort on the January 4, 2011 study and found it inadequately explained, and insufficient to address sufficient reliability, given that he addressed only maximum effort and not fair or poor effort. Decision and Order at 6-7. While the ALJ noted the concerns regarding an acute condition during the July 29, 2011 study, he found the evidence did not support such a finding given that no evidence of an acute exacerbation was provided at that time. *Id.* at 7. Further, while Dr. Ulrich noted "acute bronchitis" a few months earlier on April 4, 2011, the ALJ pointed out that no such acute condition was noted after that date. *Id.* Moreover, as the ALJ also noted, the technician indicated there was good effort and cooperation on the July 29, 2011 pulmonary function study despite the Miner's lack of teeth, and Employer's expert, Dr. Jarboe, relied on the study to diagnose severe obstruction. *Id.* at 7-8.

Employer's arguments are a request to reweigh the evidence, which we are not permitted to do. *Anderson v. Valley Camp Coal of Utah, Inc*., 12 BLR 1-111, 1-113 (1989). Because substantial evidence supports the ALJ's findings that the pulmonary function studies are sufficiently reliable, they are affirmed. *See Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 8. We therefore also affirm the ALJ's finding that the preponderance of the pulmonary function study evidence establishes total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 8.

Employer does not further contest the ALJ's weighing of the evidence to find total disability established; thus, we affirm the ALJ's finding that Claimant established total disability. 20 C.F.R. §718.204(b)(2); *Shedlock*, 9 BLR at 1-198; Decision and Order at 8-

11. Thus, we also affirm the ALJ's determination that Claimant invoked the Section 411(c)(4) presumption that the Miner's death was due to pneumoconiosis. 30 U.S.C. §921(c)(4) (2018).; 20 C.F.R. §718.305; Decision and Order at 11.

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

Because Claimant invoked the Section 411(c)(4) presumption of death due to pneumoconiosis, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[12] or that "no part of [his] death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(2)(i), (ii). The ALJ found Employer did not establish rebuttal by either method.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish the Miner did 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)(2)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015). The Sixth Circuit holds this standard requires the employer to show the Miner's coal mine dust exposure "did not contribute, in part, to his alleged pneumoconiosis." *Young*, 947 F.3d at 405. "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 relied on the opinions of Drs. Caffrey and Jarboe to rebut legal pneumoconiosis.[13] Director's Exhibit 20; Employer's Exhibits 2, 4. Dr. Caffrey diagnosed

[12] "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).

[13] The ALJ noted that Dr. Dennis, who provided an autopsy report, diagnosed emphysema, among other diseases. Decision and Order at 14-15; Claimant's Exhibit 2. However, he did not check the box indicating on the medical opinion form he completed that he diagnosed legal pneumoconiosis and provided no rationale for his opinion, "to the

moderate to severe emphysema with associated focal interstitial fibrosis. Director's Exhibit 20; Employer's Exhibit 2. He indicated that while there was anthracotic pigment on the Miner's autopsy slides, this pigment alone is "not synonymous with coal workers' pneumoconiosis." Director's Exhibit 20 at 6. Dr. Jarboe diagnosed severe airflow obstruction due to cigarette smoking and unrelated to coal mine dust exposure. Decision and Order 19; Employer's Exhibit 4. The ALJ found that while Dr. Caffrey diagnosed emphysema, he did not specifically address the issue of legal pneumoconiosis. Decision and Order at 19. He further indicated that insofar as Dr. Caffrey's opinion could be inferred as finding the absence of legal pneumoconiosis, Dr. Caffrey provided no rationale as to why the Miner's emphysema was not related to his coal mine employment. *Id.* Thus, he gave Dr. Caffrey's opinion "no weight" on the issue. Decision and Order at 19. The ALJ found Dr. Jarboe's opinion to be undermined as not well-reasoned or documented, and gave it no weight. Decision and Order at 20.

Employer argues the ALJ applied an incorrect burden of proof and further erred in discrediting the opinions of Drs. Caffrey and Jarboe, arguing they "adequately explain" why coal mine dust exposure did not significantly contribute to or substantially aggravate the Miner's pulmonary condition. Employer's Brief at 13. We disagree.

Contrary to Employer's argument, the ALJ correctly indicated that legal pneumoconiosis is present when coal mine dust "significantly contributes to or substantially aggravates" a respiratory condition. Decision and Order at 18; 20 C.F.R. §718.201(a)(2), (b). The ALJ further permissibly discredited Drs. Caffrey's and Jarboe's opinions based on their inadequate rationales.

The ALJ permissibly found Dr. Caffrey's opinion not credible because he failed to discuss or explain if the emphysema he diagnosed was significantly related to, or substantially aggravated by, coal mine dust exposure. Decision and Order at 19. Furthermore, the ALJ found Dr. Jarboe's opinion undermined as heavily reliant on statistics and generalities rather than the specifics of the Miner's coal mine employment history, unreasoned because he did not explain how he was able to exclude coal mine dust as a contributor to the Miner's obstructive lung disease, and inconsistent with the premises underlying the regulations that coal dust exposure and cigarette smoking have additive

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extent he has one," on legal pneumoconiosis; thus, the ALJ found any opinion he had on the issue insufficiently documented and not well-reasoned, and provided it no weight. Decision and Order at 19; Claimant's Exhibit 2.

effects.[14] Decision and Order 20. Employer does not specifically challenge any of these credibility findings. Employer's Brief at 13. Thus, we affirm them. *A&E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); *Crisp*, 866 F.2d at 185; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 19-20. Because the ALJ permissibly discredited the only opinions potentially supportive of Employer's burden on rebuttal, we affirm his finding that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §718.305; Decision and Order at 20. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis.[15] 20 C.F.R. §718.305(d)(2)(i).

Death Causation

The ALJ next addressed whether Employer established "no part of the [M]iner's death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(2)(ii). Employer argues the ALJ erred in discrediting the opinions of Drs. Caffrey and Jarboe that the Miner's death was caused by a cardiac condition. Employer's Brief at 14. Contrary to Employer's assertion, the ALJ permissibly discredited their death causation opinions because neither doctor diagnosed legal pneumoconiosis, contrary to his determination that Employer failed to disprove the Miner had the disease.[16] *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order 21. We therefore affirm the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption that the Miner's death was caused by pneumoconiosis at 20 C.F.R. §718.305(d)(2)(ii).

[14] We note that in the preamble to the 2001 revised regulations, the Department of Labor observed that the risks posed by coal dust exposure and cigarette smoking are additive. *See* 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000).

[15] Thus, we need not address Employer's arguments that the ALJ erred in his weighing of the evidence regarding clinical pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1985); Employer's Brief at 12-13.

[16] Employer also argues Dr. Dennis's opinion that the Miner's death was due to pneumoconiosis is "clearly unreasoned." Employer's Brief at 14. However, as Dr. Dennis's opinion does not aid Employer in rebutting the presumption of death causation, we need not address Employer's arguments. *Larioni*, 6 BLR at 1-1278.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge