U.S. Department of Labor Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 23-0242 BLA

ROGER D. YATES	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	DATE ISSUED: 06/05/2024
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order After Remand Awarding Benefits of Christopher Larsen, Administrative Law Judge, United States Department of Labor.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

Before: GRESH, Chief Administrative Appeals Judge, BOGGS and BUZZARD, Administrative Appeals Judges.

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

Employer appeals Administrative Law Judge (ALJ) Christopher Larsen's Decision and Order After Remand Awarding Benefits (2019-BLA-06282) 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 claim filed on August 10, 2018, and is before the Benefits Review Board for the second time.

In his initial Decision and Order Awarding Benefits, the ALJ found Claimant established at least fifteen years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. Thus, he found 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) (2018). He further found Employer did not rebut the presumption and awarded benefits.

In response to Employer's appeal, the Board affirmed the ALJ's finding that Claimant established at least fifteen years of underground coal mine employment. *Yates v. Island Creek Coal Co.*, BRB No. 21-0204 BLA, slip op. at 2 n.2 (Jan. 25, 2023) (unpub.) (Buzzard, J., concurring and dissenting). However, the Board vacated the ALJ's findings that Claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv) and invoked the Section 411(c)(4) presumption. *Id.* at 3-8. The Board therefore vacated the award of benefits and remanded the case for further consideration. *Id.* at 8.

On remand, the ALJ again found Claimant established total disability and therefore invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption. Employer also argues the ALJ erred in finding it failed to rebut the presumption. Neither Claimant nor the Director, Office of Workers' Compensation Programs, has 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 with applicable law.[2] 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).

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[1] 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.

[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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 29; Director's Exhibits 5, 7, 8.

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 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. §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 medical opinions and evidence as a whole.[4] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order on Remand at 20-21.

Medical Opinions

In his initial decision, the ALJ considered the medical opinions of Dr. Raj that Claimant has a totally disabling pulmonary impairment, Dr. Ibrahim who diagnosed chronic shortness of breath with exertion, and Drs. Sargent and McSharry who opined Claimant is not disabled. Decision and Order at 4, 6-13; Director's Exhibit 13 at 3-4; Claimant's Exhibit 4 at 1; Employer's Exhibits 1 at 2-4; 2 at 2-3, 5; 10 at 13-16, 20-22. He credited Drs. Raj's and Ibrahim's opinions over Drs. Sargent's and McSharry's contrary opinions. Decision and Order at 13. He thus found the medical opinion evidence establishes total disability. *Id.*

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

[4] The ALJ found Claimant did not establish total disability based on the pulmonary function studies or arterial blood gas studies, or evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order on Remand at 16.

The Board held the ALJ "did not provide any rationale at all" to support his finding that Dr. Raj's opinion is "the most credible of all." *Yates*, BRB No. 21-0204 BLA, slip op. at 5. In addition, the Board held the ALJ neither explained "how Dr. Ibrahim's opinion demonstrates Claimant is disabled, nor how his opinion is supported by Claimant's treatment records." *Id.* Further, the Board held the ALJ did not provide a "sufficient rationale for discrediting the opinions of Drs. Sargent and McSharry with regard to whether Claimant is disabled." *Id.* The Board thus vacated the ALJ's finding that Claimant established a totally disabling impairment and remanded the case for further consideration in accordance with the Administrative Procedure Act.[5] *Id.* at 6.

On remand, the ALJ again considered the medical opinions of Drs. Raj, Ibrahim, Sargent, and McSharry. Decision and Order on Remand at 12-21. He found Dr. Raj's opinion well-reasoned and documented. Decision and Order on Remand at 17-18. Conversely, he found Drs. Ibrahim's, Sargent's, and McSharry's opinions inadequately reasoned and unsupported by the evidence of record.[6] He thus found the medical opinion evidence establishes total disability based on Dr. Raj's opinion.

Employer argues the ALJ erred in crediting Dr. Raj's opinion because he mischaracterized it. Employer's Brief at 5-8. It specifically asserts Dr. Raj's opinion is solely based on Claimant's exercise arterial blood gas study results. *Id.* We disagree.

Dr. Raj diagnosed Claimant with chronic obstructive pulmonary disease (COPD) resulting in a mild obstructive defect based on his pulmonary function testing and pulmonary symptoms, and opined he has hypoxemia based on the results of his September 24, 2018 exercise arterial blood gas study. Director's Exhibit 13 at 3-4. While acknowledging Claimant's objective testing is non-qualifying, Dr. Raj opined Claimant's exercise arterial blood gas study results showed significant hypoxemia. *Id.* at 4. He concluded Claimant is totally disabled and would be unable to perform the physical requirements of his usual coal mine employment based on his level of impairment, noting

[5] The Administrative Procedure Act, 5 U.S.C. §§500-591, requires that every adjudicatory decision include a statement of "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); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[6] The ALJ found Dr. Ibrahim's opinion inadequately reasoned because the doctor did not directly render an opinion on the issue of total disability. Decision and Order on Remand at 18. As the ALJ's discrediting of Dr. Ibrahim's opinion is unchallenged on appeal, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Claimant's coal mine work involved lifting fifty to one-hundred pounds at a time. *Id.* Thus, contrary to Employer's contention, Dr. Raj did not base his disability opinion solely on Claimant's exercise arterial blood gas study or hypoxemia, but rather on the effects of both hypoxemia and a mild obstructive defect. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

We also reject Employer's assertion that the ALJ erred in crediting Dr. Raj's opinion without explaining how the doctor's inability to consider later objective test results affected the weight afforded his opinion. Employer's Brief at 7.

Dr. Raj stated Claimant has a pulmonary impairment based on both a mild obstructive defect evidenced by his pulmonary function testing and hypoxemia evidenced by his exercise arterial blood gas study, and further stated that Claimant's impairment "is resulting from his diagnosis of COPD," a disease which he diagnosed in part based on Claimant's symptoms of shortness of breath, cough, and wheezing. Director's Exhibit 13 at 3-4. He opined Claimant "cannot meet the physical requirement of his last job at his current existing level of impairment." *Id.* at 4.

The ALJ acknowledged Dr. Raj did not review the pulmonary function and arterial blood gas testing conducted by Drs. Sargent and McSharry. Decision and Order on Remand at 17-18. He nonetheless found Dr. Raj's opinion well-reasoned as the doctor acknowledged Claimant's non-qualifying testing results and "explained that the presence of a mild obstruction (shown by [pulmonary function testing]), in addition to abnormal [blood gas study] results, and a history of shortness of breath and other symptoms renders [him] unable to return to his previous or similar employment as a coal miner."[7] *Id.* at 18.

It is well established total disability can be demonstrated with a reasoned medical opinion even in the absence of qualifying pulmonary function or arterial blood gas studies. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000) ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"); *Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005) (claimant can establish total disability despite non-qualifying objective tests). Further, a medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably infer that a miner is unable to do his last coal mine job. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1142 (4th Cir. 1995); *see also*

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[7] The ALJ found Dr. Raj accurately described the exertional requirements of Claimant's last coal mine job in rendering his opinion. Decision and Order on Remand at 18.

Poole v. Freeman United Coal Mining Co., 897 F.2d 888, 894 (7th Cir. 1990); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988).

Thus, the ALJ permissibly found Dr. Raj's opinion well-reasoned because the doctor adequately explained why Claimant is totally disabled despite non-qualifying objective test results. *See Church v. E. Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996) (an ALJ is not required to discredit a physician who did not review all of a miner's medical records when the opinion is otherwise well-reasoned, documented, and based on his own examination of the miner and objective test results); *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order on Remand at 17.

As substantial evidence supports it, we affirm the ALJ's crediting of Dr. Raj's opinion on total disability. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000).

We further reject Employer's argument that the ALJ erred in discrediting the opinions of Drs. Sargent and McSharry. Employer's Brief at 11-13.

In his initial report, Dr. Sargent opined Claimant has totally disabling hypoxemia caused by asthma. Employer's Exhibit 1 at 2. At his deposition, however, Dr. Sargent opined that any impairment caused by Claimant's asthma was reversible and had completely resolved based on the results of his later pulmonary function and arterial blood gas studies. Employer's Exhibit 10 at 14-16, 21-22. Dr. McSharry also diagnosed Claimant with asthma, but opined there was no evidence of impairment based on his pulmonary function and arterial blood gas studies. Employer's Exhibit 2 at 2-3.

The ALJ noted Drs. Sargent and McSharry based their diagnoses of asthma in part on Claimant's chronic respiratory symptoms of cough, wheezing, and shortness of breath.[8] Decision and Order on Remand at 19-20; Employer's Exhibits 2 at 2-3; 10 at 13, 20. He also noted they acknowledged Claimant's use of supplemental oxygen, bronchodilators and other medications to manage his respiratory condition, and found his positive response

[8] In his report, Dr. Sargent noted Claimant's symptoms of wheezing, exertional dyspnea, hypoxia, and sputum production to support his diagnosis of bronchiectasis and asthma. Employer's Exhibit 1 at 2. He also noted a "congested-sounding cough" and "coarse expiratory wheezing in all lung fields" during his physical examination of Claimant. *Id*. at 4. Dr. McSharry noted symptoms of asthma, including "cough, wheezing, and variable shortness of breath as well as variable spirometric values," and opined Claimant has asthma in part because "[a]ll of these [symptoms] are seen in [him]." Employer's Exhibit 2 at 2. He also noted "severe shortness of breath" under the impression section from his direct examination of Claimant. *Id*. at 5.

to bronchodilators supports their diagnoses.[9] Decision and Order on Remand at 19-20; Employer's Exhibits 1 at 2-4; 2 at 3, 5; 10 at 9, 13-16, 21. However, the ALJ found that neither physician reconciled Claimant's ongoing symptoms and need for aggressive treatment with their opinions that he has no impairment. Decision and Order on Remand at 19-20. He thus permissibly found their opinions inadequately explained and unsupported by the evidence of record. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; *see also* 45 Fed. Reg. 13,678, 13682 (Feb. 29, 1980) (the use of a bronchodilator does not provide an adequate assessment of a miner's disability, [although] it may aid in determining the presence or absence of pneumoconiosis); Decision and Order on Remand at 19-21.

Because Employer makes no further assertions of error, we affirm the ALJ's finding that the weight of the medical opinion evidence supports a finding of total disability. *See Compton*, 211 F.3d at 207-08; 20 C.F.R. §718.204(b)(2)(iv); Decision and Order on Remand at 21.

We also reject employer's argument that the ALJ erred in failing to "follow the Board's instruction on remand" to consider "whether the evidence as a whole supported" his total disability finding. Employer's Brief at 13-14. As discussed, the ALJ found the pulmonary function and arterial blood gas study evidence did not establish total disability, but permissibly credited Dr. Raj's opinion that Claimant is totally disabled despite the non-qualifying objective tests, *see Cornett*, 227 F.3d at 577; *Killman*, 415 F.3d at 721-22, and therefore found Claimant established total disability based on the doctor's opinion. *See Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order on Remand at 16-18, 21.

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[9] Dr. Sargent noted Claimant's medications include an albulterol nebulizer, doxycycline p.r.n., a Breo inhaler, Singulair, and a prednisone taper at the time of his examination. Employer's Exhibits 1 at 2-4; 10 at 9. He stated the medications "are all bronchodilators or controller medicines for either asthma or COPD," and opined that it was "a very aggressive bronchodilator regimen." Employer's Exhibit 10 at 9; *see also* Employer's Exhibit 1 at 2. When asked at his deposition whether there was "any residual impairment after bronchodilator," Dr. Sargent responded that there was not. Employer's Exhibit 10 at 21. Dr. McSharry noted Claimant's medications include albulterol, both nebulized and via inhaler, as well as Trelergy, Spiriva, and Singulair. Employer's Exhibit 2 at 5. He opined Claimant's diagnosis of asthma was "confirmed by immediate improvement in spirometric values by >12-15% following treatment with bronchodilators." *Id.* at 3.

Based on the foregoing, we affirm the ALJ's findings that Claimant established total disability, 20 C.F.R. §718.204(b)(2), and thus invoked the Section 411(c)(4) presumption.

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,[10] or that "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). The ALJ found Employer failed to establish rebuttal by either method.[11]

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 the medical opinions of Drs. Sargent and McSharry. Decision and Order on Remand at 26-28. They opined Claimant does not have legal pneumoconiosis but has asthma unrelated to coal mine dust exposure. Employer's Exhibits 1 at 2; 2 at 2-3; 10 at 17-18. The ALJ found their opinions unpersuasive, and thus insufficient to rebut the presumption of legal pneumoconiosis. Decision and Order on Remand at 26-28.

We reject Employer's argument that the ALJ provided invalid reasons for finding the opinions of Drs. Sargent and McSharry not credible. Employer's Brief at 14-17.

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[10] "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).

[11] The ALJ found Employer disproved the existence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order on Remand at 24.

Dr. McSharry opined there was no evidence of legal pneumoconiosis as Claimant's asthma "is not caused or significantly exacerbated by coal dust exposure." Employer's Exhibit 2 at 2-3. He noted Claimant's "last exposure to coal [mine] dust was [twenty-two] years ago," and opined that "it is highly unlikely that any non-specific irritant effects of coal dust on the lungs would be worsening pulmonary symptoms after such a long absence from exposure." *Id.* Dr. Sargent similarly opined Claimant's asthma is not caused by coal mine dust exposure but acknowledged "[c]oal dust can serve as a non[-]specific environmental irritant and can worsen asthma during the time exposure ceases." Employer's Exhibit 1 at 2. He concluded coal mine dust exposure has not contributed to Claimant's impairment, however, "given the fact that [he] stopped mining coal in 1999 and has had normal ventilatory studies up until August 2017." *Id.* At his subsequent deposition, he reiterated his opinion. Employer's Exhibit 10 at 17-18.

The ALJ noted Drs. Sargent and McSharry excluded coal mine dust exposure as a contributing or aggravating factor of Claimant's asthma because of the amount of time that elapsed between his last coal mine employment and his respiratory condition.[12] Decision and Order on Remand at 26-28. He permissibly discredited their opinions as inconsistent with the Department of Labor's recognition that pneumoconiosis is "a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *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); 65 Fed. Reg. 79,920, 79,971 (Dec. 20, 2000); *see also, e.g., Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 488 (6th Cir. 2012) (ALJ permissibly discredited physician's opinion that miner's disease was not legal pneumoconiosis because physician relied in part on the "impermissible factor" of amount of time elapsed between cessation of coal mine employment and miner's current condition); Decision and Order on Remand at 26-28. Further, he permissibly found their

[12] In addition, the ALJ accurately noted that, contrary to Drs. Sargent's and McSharry's findings, Claimant had testified to experiencing respiratory symptoms prior to the end of his coal mine employment and had first sought treatment for breathing issues in 2001. Decision and Order on Remand at 28. Claimant testified he had experienced periodic shortness of breath and chest pain as early as 1995 or 1996, for which he eventually sought treatment from Dr. Smitty. Hearing Tr. at 15-16. In a treatment record dated December 14, 2001, Dr. Smitty summarized the findings of a prior chest x-ray, including "micronodular change consistent with the possibility of pneumoconiosis," and noted "[m]ultiple lung nodules. Broad differential diagnosis discussed. Aggressive approach offered, which the patient declines at this time." Director's Exhibit 15 at 61.

opinions not well-reasoned because they are "conclusory" and "generalized."[13] Decision and Order on Remand at 26-27; *see Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441.

Because the ALJ permissibly discredited the only medical opinions supportive of Employer's burden on rebuttal, we affirm his finding that Employer failed to disprove legal pneumoconiosis. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 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 on Remand at 28-29. He discredited Drs. Sargent's and McSharry's opinions on disability causation for the same reasons he discredited their opinions on legal pneumoconiosis. Decision and Order on Remand at 29. As Employer does not specifically identify any error in the ALJ's credibility finding, we affirm it. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); 20 C.F.R. §718.305(d)(1)(ii); Decision and Order on Remand at 29. Consequently, we affirm the ALJ's finding that Employer failed to establish no part of Claimant's total respiratory disability is due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); *see Minich*, 25 BLR at 154-56; Decision and Order on Remand at 29.

We therefore affirm the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption and the award of benefits.

[13] Because the ALJ provided valid reasons for discrediting the opinions of Drs. Sargent and McSharry, we need not address Employer's additional arguments regarding his weighing of their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 14-17.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

I concur in the result only.

JUDITH S. BOGGS
Administrative Appeals Judge