U.S. Department of Labor

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

BRB No. 23-0251 BLA

JAMES D. PRICE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
RIVERWAY, INCORPORATED	)	
	)	
and	)	
	)	
KENTUCKY EMPLOYER'S MUTUAL INSURANCE COMPANY	)	DATE ISSUED: 06/28/2024
	)	
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 John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

W. Barry Lewis (Lewis and Lewis Law Offices), Hazard, Kentucky, for Employer and its Carrier.

Olgamaris Fernandez (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 BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) John P. Sellers, III's Decision and Order Awarding Benefits (2018-BLA-06223) rendered on a subsequent claim filed on December 8, 2016,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established 30.8 years of surface coal mine employment, all of which regularly exposed him to coal mine dust. He also found Claimant has a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b)(2), and therefore invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018). The ALJ further found Employer failed to rebut the presumption. He therefore found Claimant established a change in an applicable condition of entitlement,[3] 20 C.F.R. §725.309(c), and awarded benefits.

[1] Claimant filed a prior claim for benefits. Director's Exhibits 1, 2. A memo contained in the record indicates that his previous claim was filed on or about April 20, 1998, and was apparently closed and moved to the Federal Records Center, where the claim record was destroyed. Director's Exhibit 2. Because the basis for the previous denial was unavailable to the ALJ, he proceeded as if Claimant failed to establish any element of entitlement. Decision and Order at 15. Before addressing the current claim, the ALJ remanded it to the district director on January 10, 2019, because he found that the pulmonary function study provided to Claimant as part of his Department of Labor (DOL)-sponsored complete pulmonary evaluation was invalid. As the physician who initially performed the DOL examination had retired, Claimant was provided a second DOL-sponsored examination. Director's Exhibits on Remand 4, 10. Thereafter, the claim was returned to the ALJ on April 6, 2020. Director's Exhibit on Remand 14.

[2] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is 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.

[3] When a claimant files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon

On appeal, Employer contends the ALJ erred in crediting Claimant with at least fifteen years of qualifying coal mine employment, alleging Claimant's work was not that of a "miner" under the Act. It also asserts the ALJ erred in finding Claimant totally disabled and thus erred in finding that he invoked the Section 411(c)(4) presumption. Employer further contends the ALJ erred in finding it did not rebut the presumption. Claimant did not file a response brief. The Director, Office of Workers' Compensation Programs (the Director), responds that the ALJ properly credited Claimant with sufficient qualifying coal mine employment to invoke the Section 411(c)(4) presumption.

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.[4] 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).

Section 411(c)(4) Presumption

Length of Qualifying Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mines or surface coal mines in conditions "substantially similar" to underground mines. 20 C.F.R. §718.305(b)(1)(i). The ALJ credited Claimant with 30.8 years of coal mine employment, working for Employer and its predecessor at their coal loading dock on a river. Decision and Order at 7-9, 12; Hearing Transcript (Tr.) at 19-20. Relying on Claimant's testimony that his duties involved crushing, blending, and mixing coal before loading it onto barges for shipment, as well as

which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the ALJ treated Claimant's prior claim as having been denied for failing to establish any element of entitlement, Claimant had to establish at least one element of entitlement to obtain review of the merits of this claim. *See White*, 23 BLR at 1-3; Director's Exhibits 1, 2.

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5; Hearing Transcript at 45.

maintaining the equipment used in those processes,[5] the ALJ determined Claimant's work constituted coal preparation and, thus, was that of a "miner" under the Act. Decision and Order at 7-9.

Employer challenges the ALJ's finding that Claimant's work constituted coal mine employment under the Act. Employer's Brief at 16-23. Specifically, it asserts Claimant did not work in or around a coal mine and was not involved in the extraction or preparation of coal. *Id.* at 16, 18. It contends Claimant was merely involved in loading fully processed coal onto coal barges for delivery to the ultimate consumer. *Id.* at 19-23. We disagree.

Under the Act, a "miner" is "any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal."[6] 30 U.S.C. §902(d). There is "a rebuttable presumption that any person working in or around a coal mine or coal preparation facility is a miner." 20 C.F.R. §725.202(a); *see also* 20 C.F.R. §725.101(a)(19). The definition of "miner" comprises a "situs" requirement (i.e., the work was performed in or around a coal mine or coal preparation facility) and a "function" requirement (i.e., the work involved the extraction or preparation of coal). *Navistar, Inc. v. Forester*, 767 F.3d 638, 641 (6th Cir. 2014); *Director, OWCP v. Consolidation Coal Co.* [*Petracca*], 884 F.2d 926, 929-30 (6th Cir. 1989). To satisfy the function requirement, the miner's work must be integral or necessary to the extraction or preparation of coal and not merely incidental or ancillary. *See Falcon Coal Co. v. Clemons*, 873 F.2d 916, 922 (6th Cir. 1989).

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[5] The ALJ also relied, in part, on the testimony of a former coworker, the current dock manager at the facility, who described Employer's facility as one that has a crusher house and blends coal. Decision and Order at 7; Employer's Exhibit 1 at 5, 12, 16.

[6] A coal mine is defined as:

> an area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations, and other property, real or personal, placed upon, under, or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite, or anthracite from its natural deposits in the earth by any means or method, and [in] the work of preparing the coal so extracted, and includes custom coal preparation facilities.

30 U.S.C. §802(h)(2), as implemented by 20 C.F.R. § 725.101(a)(12).

The ALJ found Claimant's work with Employer satisfied both the situs and function requirements. We affirm that finding.

A worker handling fully processed coal that has entered the stream of commerce is not engaged in coal mine employment. *See Southard v. Director, OWCP*, 732 F.2d 66, 69-70 (6th Cir. 1984). But a worker handling coal that is not yet fully prepared and in the stream of commerce is engaged in coal mine employment. *See Hanna v. Director, OWCP*, 860 F.2d 88, 93 (3rd Cir. 1988). Contrary to Employer's contention, the ALJ rationally concluded that the coal Claimant worked with was still in the preparation stage of coal production. Decision and Order at 7-8. As the ALJ summarized, Claimant testified that coal was trucked to Employer's facility on the river to be crushed, blended, and loaded onto barges. Decision and Order at 4-6, 7-8; Tr. at 19-20; Director's Exhibit 49 at 5-6. Once the coal arrived, Claimant crushed and sized it, processed it through a feeder, mixed it to make different blends, and then loaded it onto barges for shipment. Decision and Order at 6; Tr. at 19, 26-29; *see also* Director's Exhibits 6, 8 (Claimant's written descriptions of his work). Additionally, Claimant worked as a welder and a mechanic at the loading facility, maintaining the equipment. Tr. at 20-21; Director's Exhibit 49 at 5-6.

The ALJ found Claimant's description of his duties for Employer met the regulatory definition of "coal preparation," which includes the "breaking, crushing, sizing . . . mixing . . . and loading" of coal. 20 C.F.R. §725.101(a)(13); Decision and Order at 7. Further, he found Claimant's additional duties as a mechanic and welder were necessary and integral to this work because Claimant maintained "all the equipment used to process, mix, and blend the coal . . . ." Decision and Order at 7. In light of these determinations, which are supported by substantial evidence, we agree with the Director that the ALJ rationally concluded Claimant's work was integral or necessary to the preparation of coal.[7] *See*

[7] Despite its assertion that Claimant was merely involved with loading fully processed coal for delivery to consumers, Employer concedes that Claimant's duties included crushing the coal, Employer's Brief at 20, and "working as a mechanic on the equipment that did crushing, sizing, and mixing coal that was then loaded onto barges." *Id.* at 19 (also stating that "[t]he coal was *blended and prepared for market* before being placed on the conveyor belt to barges") (emphasis added). Moreover, Employer's reliance on *Southard v. Director, OWCP*, 732 F.2d 66 (6th Cir. 1984), *Director, OWCP v. Consolidation Coal Co.* [*Krushansky*], 923 F.2d 38 (4th Cir. 1991), and *Eplion v. Director, OWCP*, 794 F.2d 935 (4th Cir. 1986) to argue that loading coal onto barges at a terminal or coal loading facility is not coal mine employment is misplaced. Employer's Brief at 18, 23. In contrast to the instant case, in *Southard*, *Krushansky*, and *Eplion* the coal was already processed and prepared for market when it arrived at the terminal to be loaded onto delivery trucks or barges or deposited in storage piles. *See Southard*, 732 F.2d at 69 (work was not that of a miner because coal was already prepared and in the stream of commerce

Southard, 732 F.2d at 69 (describing the work of preparing coal); *see also Hanna*, 860 F.2d at 93 (loading coal from processing plant onto a barge for delivery to consumers is the last act of coal preparation); Decision and Order at 7-9; Director's Brief at 5-6.

We further reject Employer's contention that Claimant's work did not constitute coal mine employment under the Act because he did not work in or around a coal mine. Employer's Brief at 16. As the Director correctly contends, the definition of a miner also includes a person who works in or around a coal preparation facility. 30 U.S.C. §902(d); *see* 20 C.F.R. §§725.101(a)(19), 725.202(a); *see Petracca*, 884 F.2d at 931; Director's Brief at 6. Having determined that Claimant's duties involved the preparation and processing of coal, the ALJ reasonably concluded that the coal loading terminal where Claimant performed those duties constituted a coal preparation facility. 20 C.F.R. §§725.101(a)(12), (19), 725.202(a); *see Southard*, 732 F.2d at 69 (acknowledging that "a 'coal mine' is basically defined by the work that is performed"); Decision and Order at 9; Director's Brief at 6 (citing *Kinder Morgan Operating L.P. "C." v. Chao*, 78 F. App'x 462 (6th Cir 2003)) (river terminal that mixes, stores, and loads coal engages in coal preparation).

We therefore affirm the ALJ's finding that Claimant's work for Employer and its predecessor constituted covered coal mine employment under the Act. We further affirm, as unchallenged, the ALJ's findings that Claimant worked for a total of 30.8 years in such employment, and that because he was regularly exposed to coal mine dust, all his employment qualifies for invoking the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.305(b)(2); Decision and Order at 9-14. Consequently, we affirm the ALJ's finding that Claimant has 30.8 years of qualifying coal mine employment.

Total Disability

To invoke the Section 411(c)(4) presumption, Claimant must also 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

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upon its arrival at the retailers' facilities); *Krushansky*, 923 F.2d at 42 (work was not that of a miner because coal that reached dock house for loading was no longer in preparation and had entered the stream of commerce); *Eplion*, 794 F.2d at 937 (work was not that of a miner because coal had already been processed and prepared for market before workers had any contact with it).

pulmonary function studies or arterial blood gas studies,[8] 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 pulmonary function studies and medical opinions.[9]

Pulmonary Function Studies

The ALJ considered three pulmonary function studies dated June 1, 2017, October 29, 2019, and December 23, 2019. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 23-25; Director's Exhibit 24; Director's Exhibits on Remand 4-7, 10. All three studies produced qualifying values both before and after the administration of a bronchodilator. *Id*. The ALJ determined the June 1, 2017 and October 29, 2019 studies are invalid but found the December 23, 2019 study to be valid. Decision and Order at 24-25. Because the valid pulmonary function study was qualifying, the ALJ determined the weight of the pulmonary function testing supports a finding of total disability. Decision and Order at 25.

Employer argues the ALJ erred in finding the December 23, 2019 pulmonary function study qualifying. It notes that the FVC values on the study are non-qualifying and alleges the ALJ failed to determine whether the study's qualifying FEV_1 value was accompanied by a qualifying MVV or FEV_1/FVC ratio. Employer's Brief at 24-25. We disagree.

To demonstrate total disability based on a pulmonary function test, the study must, after accounting for gender, age, and height, produce a qualifying value for the forced expiratory volume (FEV_1). In addition, it must produce one of the following: a qualifying forced vital capacity (FVC) value; a qualifying maximum voluntary ventilation (MVV) value; or a ratio of fifty-five percent or less when dividing the FEV_1 value by the FVC value. 20 C.F.R. §718.204(b)(2)(i). "Qualifying values" for the FEV_1, FVC, and the MVV

[8] A "qualifying" pulmonary function study or arterial 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).

[9] The ALJ found the arterial blood gas study evidence failed to establish total disability and there was no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii),(iii); Decision and Order at 23, 26.

tests are results measured at *less than or equal to* the values listed in the appropriate tables at Appendix B of 20 C.F.R. Part 718.

Because the pulmonary function studies reported Claimant's height to be 73 inches, the ALJ properly used the closest greater table height at Appendix B of 20 C.F.R. Part 718 for determining the qualifying or non-qualifying results of the studies. *See Toler v. E. Associated Coal Corp.*, 43 F.3d 109, 114, 116 n.6 (4th Cir. 1995); *Carpenter v. GMS Mine & Repair Maint. Inc.*, 26 BLR 1-33, 1-38-39 (2023); *Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 24 n.26. For a 72-year-old miner[10] with a height of 73.2 inches, the qualifying FEV_1 value is 2.13, the qualifying FVC value is 2.74, the qualifying MVV value is 85, and the qualifying FEV_1/FVC ratio is 55%. *See* Appendix B of 20 C.F.R. Part 718.

As the ALJ found, Claimant's FEV_1 value pre-bronchodilator is 1.70 and 1.76 post-bronchodilator, and his FEV_1/FVC ratio pre-bronchodilator is 45% and 47% post-bronchodilator, all below the qualifying values. Decision and Order at 24; Director's Exhibit on Remand 10. Because the FEV_1 value and FEV_1/FVC ratio are qualifying, the ALJ rationally found the December 23, 2019 pulmonary function study, both pre- and post-bronchodilator, is qualifying. 20 C.F.R. §718.204(b)(2)(i); Appendix B to Part 718. We thus affirm the ALJ's finding that the pulmonary function study evidence supports a finding of total disability.

Medical Opinions

Before weighing the medical opinions, the ALJ determined that Claimant's job as a laborer and mechanic involved heavy manual labor. Decision and Order at 23. Employer does not challenge this finding; therefore, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order at 23.

The ALJ then considered the medical opinions of Drs. Majmudar, Jarboe, and Gaziano. Decision and Order at 26-29; Director's Exhibits 24, 26; Director's Exhibits on Remand 4, 10; Claimant's Exhibit 3. The ALJ determined that all the physicians found Claimant to be totally disabled based on the pulmonary function studies of record, and thus found the medical opinion evidence supports total disability. Decision and Order at 29.

[10] The Board has held that for miners over 71 years of age, the table values at Appendix B of 20 C.F.R. Part 718 for a 71-year-old miner should be used to determine whether the study is qualifying unless the opposing party presents credible evidence that those values should not be used. *Styka v. Jeddo-Highland Coal Co.*, 25 BLR 1-61, 1-65-66 (2012); *K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-47 (2008).

Employer argues the ALJ erred in discrediting Dr. Jarboe's opinion and crediting Drs. Majmudar's and Gaziano's opinions without explaining "how any factors actually distinguished" the three physicians' opinions. Employer's Brief at 26. The ALJ, however, did not reject Dr. Jarboe's opinion. He instead found it does not contradict a finding that Claimant is totally disabled based on the pulmonary function study evidence. Decision and Order at 28.

Substantial evidence supports the ALJ's determination regarding Dr. Jarboe's opinion. In his June 30, 2017 report, Dr. Jarboe stated that Claimant had a disabling pulmonary impairment, although it was not caused by coal mine dust. Director's Exhibit 24 at 8. In his deposition testimony, Dr. Jarboe agreed that if the June 1, 2017 pulmonary function study he conducted is valid, then Claimant has an impairment that qualifies as totally disabling. Director's Exhibit 26 at 13-14. The ALJ permissibly inferred from that statement that since the valid subsequent pulmonary function study conducted on December 23, 2019, produced qualifying values, Dr. Jarboe would similarly consider it indicates Claimant has an impairment that qualifies as totally disabling.[11] *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 28-29. We therefore reject Employer's allegation of error in the ALJ's weighing of the medical opinions and affirm the ALJ's finding that they support total disability. 20 C.F.R §718.204(b)(2)(iv). We also affirm his finding Claimant established total disability based on the evidence as a whole. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 29.

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,[12] or "no part of

[11] It is the ALJ's function to weigh the evidence and draw appropriate inferences from it. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012).

[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).

[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.[13] Decision and Order at 30-36.

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). The Sixth Circuit holds this standard requires Employer to show Claimant's coal mine dust exposure "did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). "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 relies on Dr. Jarboe's opinion that Claimant does not suffer from legal pneumoconiosis but instead has severe obstruction caused by smoking. Director's Exhibits 24 at 8, 26 at 17-18. The ALJ found Dr. Jarboe's opinion unpersuasive for several reasons: 1) Dr. Jarboe's reliance on Claimant's FEV_1/FVC ratio on pulmonary function testing to exclude coal mine dust exposure as a cause is contrary to the medical science accepted by the DOL in the preamble to the 2000 regulatory revisions; 2) he based his opinion on generalities rather than on the specifics of Claimant's case; 3) he did not point to objective evidence to support his conclusion that Claimant's three decades of coal mine dust exposure did not contribute along with smoking to his airflow obstruction; 4) he did not adequately explain why Claimant's pulmonary function test values after the administration of bronchodilators necessarily eliminated a finding of legal pneumoconiosis or why he believed that coal mine dust exposure did not exacerbate Claimant's condition; 5) he did not give a persuasive reason for why Claimant was not among the minority of miners who have significant decrements in pulmonary function due to coal dust, but rather, simply relied on the premise that Claimant's loss of pulmonary function was more likely to be the result of smoking; and 6) he pointed to no evidence to support his assertion that Claimant's surface mine work exposed him to lower levels of coal mine dust, especially considering the ALJ's finding that Claimant was regularly exposed to coal mine dust in his work. Decision and Order at 34-36.

[13] The ALJ found Employer disproved clinical pneumoconiosis. Decision and Order at 30-33.

Although Employer contends the ALJ erred in discrediting Dr. Jarboe's opinion on legal pneumoconiosis, it does not identify any specific error by the ALJ. Employer's Brief at 25-27, 29-30. Employer's arguments at best amount to a request for the Board to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Therefore, we affirm the ALJ's discrediting of Dr. Jarboe's medical opinion[14] and his finding that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 36-37. 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 found Employer did not rebut the presumption by establishing "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 37-38. Employer does not challenge the ALJ's finding; therefore, we affirm it. *See Skrack*, 6 BLR at 1-711. We also affirm the ALJ's finding that Claimant established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c); Decision and Order at 38.

[14] Because Employer bears the burden of proof on rebuttal, we need not address its arguments concerning the ALJ's weighing of Drs. Majmudar's and Gaziano's opinions that Claimant has legal pneumoconiosis. Decision and Order at 36-37; Employer's Brief at 29-30; Director's Exhibits on Remand 4, 10; Claimant's Exhibit 3.

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

GREG J. BUZZARD
Administrative Appeals Judge