U.S. Department of Labor

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

BRB No. 20-0177 BLA

ROBERT LEN SMITHSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HERITAGE COAL COMPANY LLC	)	
	)	
and	)	DATE ISSUED: 5/31/2022
	)	
PEABODY ENERGY CORPORATION	)	
	)	
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 Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

John Cline, Piney View, West Virginia, for Claimant.

Tighe A. Estes (Reminger Co., L.P.A.), Lexington, Kentucky, for Employer and its Carrier.

Kathleen H. Kim (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Christian P. Barber, Acting Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Theresa C. Timlin's Decision and Order Awarding Benefits (2017-BLA-05710) rendered on a subsequent claim filed on April 24, 2014,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ initially found Heritage Coal Company LLC (Heritage), a subsidiary of and self-insured for black lung liability through Peabody Energy Corporation (Peabody Energy), is the responsible operator liable for payment of benefits. She accepted the parties' stipulations that Claimant has twenty-three years of underground coal mine employment and is totally disabled. She therefore found Claimant 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), and therefore established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c). The ALJ further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the district director, the Department of Labor (DOL) official who initially processes claims, is an inferior officer who was not appointed in a manner consistent with the Appointments Clause of the U.S. Constitution, Art. II § 2, cl. 2.[3] It also asserts the duties that the district director performs create an inherent conflict of

[1] Claimant filed a prior claim on March 23, 2010, which the district director denied on November 2, 2011, for failure to establish total disability. Director's Exhibit 1.

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

[3] 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

interest that violates its due process rights. Furthermore, it contends the ALJ erred in finding it liable for the payment of benefits. Additionally, Employer contends she erred in finding it did not rebut the Section 411(c)(4) presumption.[4] Claimant responds, urging affirmance of the award. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response, contending the ALJ properly determined Employer is responsible for the payment of benefits.[5]

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.[6] 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, 361-62 (1965).

Appointments Clause – District Director

Employer argues for the first time[7] on appeal that the district director lacked the authority to identify the responsible operator and process this case because he is an

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> of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

[4] We affirm, as unchallenged on appeal, the ALJ's determination that Claimant invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 15.

[5] By Order dated August 18, 2021, the Benefits Review Board accepted the Director's late response brief and granted Employer twenty days to file a reply brief. *Smithson v. Heritage Coal Co., LLC*, BRB No. 20-0177 BLA (Aug. 18, 2021) (Order) (unpub.). No reply brief has been received.

[6] 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 5.

[7] Employer argues the ALJ erred in rejecting its argument that the district director lacked authority to identify the responsible operator and process this case because the district director is an "inferior officer" not properly appointed under the Appointments Clause. Employer's Brief at 14. However, the ALJ made no such finding and the record does not show Employer ever raised this argument prior to this appeal.

"Inferior Officer" of the United States not properly appointed under the Appointments Clause. Employer's Brief at 2-8. Employer relies on *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044 (2018), in which the United States Supreme Court held ALJs that the Securities and Exchange Commission employs are officers who must be appointed in conformance with the Appointments Clause. *Id*.

The Appointments Clause issue is "non-jurisdictional" and is subject to the doctrines of waiver and forfeiture. *See Lucia*, 138 S. Ct. at 2055 (requiring "a timely challenge to the constitutional validity of the appointment of an officer who adjudicates [a party's] case"); *Island Creek Coal Co. v. Wilkerson*, 910 F.3d 254, 256 (6th Cir. 2018) ("Appointments Clause challenges are not jurisdictional and thus are subject to ordinary principles of waiver and forfeiture."). *Lucia* was decided nineteen months prior to the ALJ's Decision and Order Awarding Benefits, but Employer failed to raise its challenge to the district director's appointment while the case was before the ALJ. Instead, Employer waited to raise the issue until after the ALJ issued an adverse decision. Based on these facts, we conclude Employer forfeited its right to challenge the district director's appointment. *See Joseph Forrester Trucking v. Director, OWCP* [*Davis*], 987 F.3d 581, 587-88, 591 (6th Cir. 2021) ("Black lung benefits adjudication regulations require that litigants raise issues before the ALJ as a prerequisite to review by the Benefits Review Board."); *Kiyuna v. Matson Terminals, Inc.*, 53 BRBS 9, 10 (2019); 20 C.F.R. §802.301 (Board cannot engage in *de novo* proceeding; it may only "review the findings of fact and conclusions of law on which the decision or order appealed from was based"). Further, because Employer has not raised any basis for excusing its forfeiture, we see no reason to entertain its arguments. *See Davis*, 987 F.3d at 591-92; *Powell v. Serv. Emps. Int'l, Inc.*, 53 BRBS 13, 15 (2019); *Kiyuna*, 53 BRBS at 11; *Glidden Co. v. Zdanok*, 370 U.S. 530, 535 (1962) (cautioning against resurrecting lapsed arguments because of the risk of sandbagging).

Due Process Challenge

Employer next generally asserts that the regulatory scheme, whereby the district director must determine the liability of a responsible operator and its carrier when the DOL also administers the Black Lung Disability Trust Fund (Trust Fund), creates a conflict of interest that violates its due process right to a fair hearing. Employer's Brief at 16-20.

Employer does not explain why a DOL representative inherently lacks authority to render an initial determination on the responsible operator given that the Act itself imposes liability on a miner's employer(s) and contemplates Trust Fund liability only when a responsible operator cannot be assigned. 30 U.S.C. §§932, 933, 934; *see also Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849 (D.C. Cir. 2002) (upholding regulations establishing deadlines for an operator's submission of evidence "if they disagree with their designation

[by the district director] as parties potentially liable for a miner's claim" and shifting the burden of disproving liability "once an operator has been determined to be responsible for a claim").

Nor are we persuaded that the district director's ability to make an initial determination regarding the responsible operator violates Employer's due process rights. Due process requires only that a party be given notice and the opportunity to respond. *See Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 807 (4th Cir. 1998). The regulations provide an employer who receives a Notice of Claim ninety days to present evidence regarding its status as a potentially liable operator. 20 C.F.R. §725.408. After issuance of the Schedule for the Submission of Additional Evidence (SSAE), an employer has another sixty days to submit such evidence. 20 C.F.R. §725.410. An employer may also request extensions of these time limits and challenge the denial of any extension request before an ALJ, the Board, or a circuit court. 20 C.F.R. §725.423; *see, e.g.*, *Arch Coal, Inc. v. Acosta*, 888 F.3d 493, 497 (D.C. Cir. 2018). Moreover, an identified responsible operator may challenge its liability before an ALJ. *Arch of Ky., Inc. v. Director, OWCP*, 556 F.3d 472, 478 (6th Cir. 2009) ("The basic elements of procedural due process are notice and opportunity to be heard."); *see* 20 C.F.R. §725.455 ("any findings or determinations made with respect to a claim by a district director shall not be considered by the [ALJ]").

Employer fails to identify any instance in which the district director did not give it notice or allow it to respond. As it was timely put on notice of its liability, had the opportunity to submit relevant evidence to the district director, and challenge its designation as the responsible operator before the ALJ, Employer has not demonstrated a due process violation.[8]

Responsible Operator

The responsible operator is the "potentially liable operator, as determined in accordance with [20 C.F.R.] §725.494, that most recently employed the miner." 20 C.F.R.

[8] Employer also states it wants to "preserve" its argument that its due process rights were violated because the ALJ "cut off" discovery "prematurely." Employer's Brief at 40-42. Similarly, Employer states it wants to preserve its challenges to the issuance of the November 12, 2015, BLBA Bulletin No. 16-01, directing the DOL to name Peabody Energy as the responsible operator for purposes of paying Patriot's obligations. *Id*. at 42. Employer neither asks the Board to address these issues nor sets forth any argument that would permit our review. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); 20 C.F.R. §802.211(b).

§725.495(a)(1). To meet the regulatory definition of a "potentially liable operator," the coal mine operator must have employed the miner for a cumulative period of not less than one year.[9] 20 C.F.R. §725.494(c). The district director is initially charged with identifying and notifying operators that may be liable for benefits, and then identifying the "potentially liable operator" that is the responsible operator. 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b). Once the district director identifies a potentially liable operator, that operator may be relieved of liability only if it proves either it is financially incapable of assuming liability for benefits or another operator financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R. §725.495(c).

Claimant stated he worked in coal mine employment for Heritage from January 1976 to 1994, for Performance Coal Company from June 1995 to January 1996,[10] for Tug Valley from October 2004 to October 2005, and for Hanover Resources from October 2005 to March 2006. Director's Exhibit 5. His Social Security Administration Earnings Record reflects income from Heritage from 1984 to 1994, for Performance Coal Company from 1995 to 1997, for Tug Valley in 2005, and for Hanover Resources from 2005 to 2006. Director's Exhibit 8. The district director determined Claimant did not work for Performance Coal Company, Tug Valley, or Hanover Resources for a period of one year. Director's Exhibit 65. Consequently, he designated Heritage as the responsible operator that most recently employed Claimant for a year. *Id*.

The ALJ found that, although Employer contested Heritage's status as the responsible operator, it offered no evidence or argument in support of this position. Decision and Order at 15. She therefore found Employer failed to establish Heritage, self-insured through Peabody Energy, is financially incapable of assuming liability for benefits or another operator financially capable of assuming liability more recently employed Claimant for at least one year. Decision and Order at 15; *see* 20 C.F.R. §725.495(c).

[9] For a coal mine operator to meet the regulatory definition of a "potentially liable operator," each of the following conditions must be met: a) the miner's disability or death must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

[10] Performance Coal Company reported it employed Claimant from May 31, 1995, to January 31, 1996. Director's Exhibit 8.

On appeal, Employer argues that, because Claimant worked for at least 125 days each for Performance Coal Company, Tug Valley, and Hanover Resources, the ALJ should have found one of these three employers is the responsible operator. Employer's Brief at 2-3, *citing Shepherd v. Incoal, Inc.*, 915 F.3d 392, 402 (6th Cir. 2019). The Director responds that *Shepherd* is not controlling law in this case and, under the law of the United States Court of Appeals for the Fourth Circuit, "one year of employment means 'one calendar year during which the miner regularly worked for . . . a minimum of 125 work days.'" Director's Response Brief at 1, *citing Armco, Inc. v. Martin*, 277 F.3d 468, 474-75 (4th Cir. 2002). The Director asserts there is no evidence that Claimant's work after Heritage meets that definition. *Id.*

However, we need not address either argument. Although Employer indicated to the ALJ that it was contesting its designation as the responsible operator, it made no argument and pointed to no evidence in support of its position.[11] Decision and Order at 15. Because Employer failed to argue to the ALJ that Claimant worked for any subsequent employers after it for at least one year in coal mine employment, we hold this argument is forfeited and decline to address it for the first time on appeal. *See Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-298-99 (2003); *Dankle v. Duquesne Light Co.*, 20 BLR 1-1, 1-6 (1995); *see also* 29 C.F.R. §18.91 (post-hearing brief contains "proposed findings of fact, conclusions of law, and the specific relief sought," as well as "all portions of the record and authorities relied upon in support of each assertion").

Responsible Insurance Carrier

As discussed above, Claimant was last employed in coal mine employment for a cumulative period of one year by Heritage from 1984 to 1994. Director's Exhibits 5, 65. Heritage was a subsidiary of and self-insured for black lung benefits liability through Peabody Energy. Director's Exhibit 30.

In 2007, thirteen years after Claimant was last employed by Heritage, Peabody Energy sold Heritage to Patriot Coal Corporation (Patriot). Director's Exhibit 41. On March 4, 2011, the DOL authorized Patriot to self-insure "retro-active to July 1, 1973," for

[11] On September 4, 2018, while this case was before another ALJ, Employer submitted a brief on the merits of this claim in which it stated it would later file a separate brief on the issue of its liability. Employer's Closing Arguments at 2. However, there is no record of this brief being submitted and the ALJ stated she did not receive a brief on the liability issue. Decision and Order at 15. While Employer states the ALJ is incorrect, it does not indicate on what date it submitted a brief or offer any proof that such a brief was submitted. Employer's Brief at 6.

black lung benefits liabilities, including for claims filed before Patriot purchased the Peabody Energy subsidiaries. Director's Exhibit 42. This authorization required Patriot to make an "initial deposit of negotiable securities" in the amount of $15 million. *Id*. In 2015, Patriot went bankrupt. Director's Exhibit 40.

Employer does not directly challenge Heritage's designation as the responsible operator.[12] Rather, it asserts the Trust Fund, not Peabody Energy, is responsible for the payment of benefits following Patriot's bankruptcy. Employer's Brief at 23-54.

To support its assertion that Patriot is the liable insurance carrier, Employer submitted a 2007 Separation Agreement between Peabody Energy and Patriot, a March 4, 2011 letter from the former Director of the Division of Coal Mine Workers' Compensation (DCMWC) Steven Breeskin to Patriot, and the decision of the DCMWC authorizing Patriot to self-insure. Director's Exhibits 41, 42. Employer additionally submitted documentary evidence to the ALJ marked Employer's Exhibits 3 through 7[13] and deposition testimony from Mr. Breeskin and David Benedict, another former employee of DCMWC, along with exhibits attached to their deposition transcripts.

The ALJ admitted the depositions of Mr. Benedict and Mr. Breeskin in a May 6, 2019 Order, but later excluded the exhibits attached to their depositions, as well as Employer's Exhibits 3 through 7. May 6, 2019 Order Granting Employer's Motion to Admit Depositions; Dec. 16, 2019 Evidentiary Order. The ALJ excluded the exhibits because Employer did not submit them to the district director and did not establish extraordinary circumstances for failing to do so. *See* 20 C.F.R. §725.456(b)(1); Dec. 16, 2019 Evidentiary Order. As Employer failed to file a brief presenting its arguments

[12] Heritage Coal Co. LLC (Heritage) qualifies as a potentially liable operator because it is undisputed that: (1) Claimant's disability arose at least in part out of employment with Heritage; (2) Heritage operated a mine after June 30, 1973; (3) Heritage employed Claimant as a miner for a cumulative period of at least one year; (4) Claimant's employment included at least one working day after December 31, 1969; and (5) Heritage is capable of assuming liability for the payment of benefits through Peabody Energy's self-insurance coverage. 20 C.F.R. §725.494(a)-(e).

[13] Employer submitted a November 23, 2010 letter from Mr. Breeskin providing two unsigned copies of an indemnity bond (Employer's Exhibit 3); a letter from Michael Chance, the current DCMWC Director, regarding Patriot Coal Corporation's (Patriot's) self-insurance reauthorization audit (Employer's Exhibit 4); a signed indemnity agreement (Employer's Exhibit 5); documentation transferring money from Patriot to the Trust Fund (Employer's Exhibit 6); and Peabody Energy's Indemnity Bond (Employer's Exhibit 7).

challenging its designation as the responsible carrier, the ALJ concluded Heritage and Peabody Energy were correctly designated the responsible operator and carrier, respectively. Decision and Order at 14-15.

Employer argues the ALJ erred in excluding Employer's Exhibits 3 through 7.[14] Employer's Brief at 5-9. Therefore, it requests the Board remand the case for the ALJ to admit the evidence and reconsider the responsible carrier issue. *Id*. Employer also argues the ALJ erred in finding it liable for benefits because: (1) the DOL released Peabody Energy from liability; (2) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; and (3) the Director is equitably estopped from imposing liability on Peabody Energy. Employer's Brief at 9-40. The Director responds, urging that the ALJ's findings should be affirmed as Employer failed to make its liability arguments before the ALJ. Director's Response Brief at 1-2. Alternatively, he urges the Board to reject Employer's arguments. *Id*.

We conclude that, because Employer forfeited its arguments against Peabody Energy's designation as the responsible carrier by failing to make its arguments before the ALJ, we need not address its challenges to the ALJ's exclusion of a portion of its liability evidence. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 5-9. For the same reason, we reject Employer's argument that the ALJ erred in finding Peabody Energy is the responsible carrier. Employer's Brief at 9-40. Although Employer asserted before the ALJ that Peabody Energy is not the responsible carrier, it provided no arguments or any explanation of how the liability evidence that the ALJ admitted would establish this fact. Employer submitted its closing brief on September 7, 2018, arguing Claimant is not entitled to benefits and stating it would file a separate brief on the liability issues. Employer's Closing Arguments at 2. However, the ALJ determined she received no separate brief, the record is devoid of any evidence that this brief was filed or exchanged with the other parties, and Employer failed to provide any evidence of or even a date for the brief's alleged submission. Employer's Brief at 6.

We therefore conclude Employer failed to present its arguments to the ALJ. Had it done so, the ALJ could have addressed its contentions and, if appropriate, determined Peabody Energy is not the responsible carrier. Based on its inaction, Employer forfeited its challenge to whether Peabody Energy is the responsible carrier. *Dankle*, 20 BLR at1-

[14] We affirm, as unchallenged on appeal, the ALJ's exclusion of the exhibits attached to the depositions of Mr. Breeskin and Mr. Benedict. *See Skrack*, 6 BLR at 1-711; Dec. 16, 2019 Evidentiary Order.

4-7; *Prater v. Director, OWCP*, 8 BLR 1-461, 1-462 (1986). Consequently, we affirm the ALJ's determination that it is the responsible carrier.

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,[15] 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.[16]

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 Dr. Zaldivar's opinion that Claimant does not have legal pneumoconiosis but instead has chronic obstructive pulmonary disease (COPD) due to cigarette smoking and asthma unrelated to coal mine dust exposure.[17] Director's Exhibit 26; Employer's Exhibit 8. The ALJ found Dr. Zaldivar's opinion not well-reasoned and

[15] "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).

[16] The ALJ accepted Claimant's stipulation that he does not have clinical pneumoconiosis. Decision and Order at 4; Hearing Transcript at 41.

[17] The ALJ also considered the opinions of Drs. Rasmussen, Forehand, and Cohen that Claimant has legal pneumoconiosis, but accurately found they do not assist Employer in rebutting the presumption. Decision and Order 21; Director's Exhibits 17, 29; Claimant's Exhibit 1.

determined it was insufficient to rebut the presumption of legal pneumoconiosis. Decision and Order at 21.

Initially we reject Employer's argument that the ALJ applied an improper rebuttal standard by requiring its physician to rule out the possibility that coal mine dust contributed to Claimant's COPD to disprove legal pneumoconiosis.[18] Employer's Brief at 4-5. Employer incorrectly cites to the ALJ's finding that Dr. Zaldivar's opinion did not establish Claimant's legal pneumoconiosis "played 'no part' in his total disability" when determining whether Employer rebutted disability causation at 20 C.F.R. §718.305(d)(ii). Decision and Order at 24-25. Moreover, the ALJ found Dr. Zaldivar's opinion failed to do so because it lacked credibility.

The ALJ accurately noted Dr. Zaldivar attributed Claimant's COPD to cigarette smoking and asthma because Claimant's impairment "is best explained" by smoking and asthma and thus "there was no need" for any other diagnosis. Decision and Order at 20, *citing* Employer's Exhibit 8. The ALJ permissibly found Dr. Zaldivar's rationale unpersuasive because he did not address the possible additive effects from Claimant's twenty-three years of coal mine dust exposure, or explain why Claimant's history of coal mine dust exposure did not significantly contribute to his COPD and asthma. *See* 20 C.F.R. §718.201(a)(2); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000); Decision and Order at 21. We therefore affirm the ALJ's determination that the medical opinion evidence does not rebut the existence of legal pneumoconiosis.[19] Decision and Order at 22.

[18] The ALJ correctly required Employer to rebut the existence of legal pneumoconiosis by showing Claimant does not have a "chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 16, *quoting* 20 C.F.R. §718.201(b).

[19] We further affirm, as unchallenged on appeal, the ALJ's findings that the computed tomography scan evidence and Claimant's treatment records do not assist Employer in rebutting legal pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order at 22-24.

Therefore, we affirm her determination that Employer did not rebut the presumption at 20 C.F.R. §718.305(d)(1)(i)(A).[20] Decision and Order at 24.

Disability Causation

The ALJ next considered whether Employer rebutted the presumption by establishing that "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). She discredited Dr. Zaldivar's disability causation opinion because he did not diagnose legal pneumoconiosis, contrary to her finding that Employer failed to disprove the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015) (such an opinion "may not be credited at all" on disability causation absent "specific and persuasive reasons" for concluding the physician's view on disability causation is independent of his or her erroneous opinion on pneumoconiosis); Decision and Order at 25. Employer has not raised any specific challenge to this finding. *See* 20 C.F.R. §§802.211(b), 802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983). Therefore, we affirm the ALJ's finding that Employer failed to rebut the presumption under 20 C.F.R. §718.305(d)(1)(ii).

[20] 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).

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge