U.S. Department of Labor

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

BRB No. 23-0388 BLA

GEORGE KRULYAC, JR.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	**NOT-PUBLISHED**
	)	
CHEVRON MINING, INCORPORATED	)	
	)	
Employer-Petitioner	)	DATE ISSUED: 11/15/2024
	)	
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.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

John C. Morton and Austin P. Vowels (Morton Law LLC), Henderson, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) John P. Sellers, III's Decision and Order Awarding Benefits (2021-BLA-05297) rendered on a subsequent claim filed on

December 18, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[1]

The ALJ credited Claimant with twenty-six years of qualifying coal mine employment and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he found Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[2] and established a change in an applicable condition of entitlement.[3] 20 C.F.R. §725.309(c). He further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer challenges the ALJ's findings that Claimant established total disability and thus invoked the Section 411(c)(4) presumption. It further argues the ALJ erred in finding Employer failed to rebut the presumption.[4] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file a response.

[1] Claimant previously filed a claim in 2004 which the district director denied for failure to establish any element of entitlement. Director's Exhibit 1. Claimant took no further action on that claim.

[2] 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); 20 C.F.R. §718.305.

[3] When a miner 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 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). As the district director denied Claimant's prior claim for failure to establish any element of entitlement, Claimant was required to submit new evidence establishing at least one element to obtain review of his subsequent claim on the merits. *See White,* 23 BLR at 1-3; Director's Exhibit 1.

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established twenty-six years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3-6.

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.[5] 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).

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

To invoke the Section 411(c)(4) presumption, 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 pulmonary function studies, arterial blood gas studies, 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 medical opinion evidence and when weighing the evidence as a whole.[6] Decision and Order at 7-20.

Arterial Blood Gas Studies

The ALJ considered four arterial blood gas studies dated March 27, 2018, March 9, 2020, August 6, 2021, and August 9, 2021.[7] Decision and Order at 8-10. The March 27,

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Tenth Circuit because Claimant performed his coal mine employment in New Mexico. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4; Hearing Transcript at 42.

[6] We affirm, as unchallenged, the ALJ's findings that the pulmonary function and arterial blood gas studies do not support a finding of total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); *see Skrack*, 6 BLR at 1-711; Decision and Order at 7-8, 10.

[7] The ALJ incorrectly listed results from the August 9, 2021 blood gas study as having been obtained as part of the August 6, 2021 blood gas study. *See* Claimant's Exhibit 1 at 54-57; Decision and Order at 9. As Employer notes, Dr. Sood administered a resting blood gas study on August 6, 2021, and then administered another blood gas study on August 9, 2021. Employer's Brief at 7; Claimant's Exhibit 1 at 3, 19, 54-57. Only the resting blood gas result listed in the ALJ's chart summarizing the August 6, 2021 blood

2018 blood gas study was non-qualifying[8] at rest but was qualifying with exercise. Director's Exhibit 15. The March 9, 2020 and August 6, 2021 resting blood gas studies were non-qualifying. Director's Exhibit 19; Claimant's Exhibit 1 at 3, 19. Finally, the August 9, 2021 blood gas study included results obtained at rest, standing, at two-minute intervals during exercise, and post-exertion; none of those results qualified under the regulations. Claimant's Exhibit 1 at 3, 54-57. The ALJ determined that, given the conflicting exercise results, the arterial blood gas study evidence taken as a whole was insufficient to establish that Claimant is totally disabled. Decision and Order at 10.

Employer acknowledges the ALJ found the blood gas study evidence does not establish total disability yet contends the ALJ erred in failing to consider all the results obtained from the August 9, 2021 blood gas study as well as the February 10, 2005 blood gas study. Employer's Brief at 7-8. While Employer is correct that the ALJ did not address all the results from the August 9, 2021 blood gas study or the 2005 study obtained in a prior claim, all those results are non-qualifying. *See* Decision and Order at 9; Claimant's Exhibit 1; Employer's Exhibit 7. As the ALJ already determined the blood gas study evidence does not establish total disability, Employer has not explained how the alleged errors made a difference in the outcome; thus, any such error is harmless. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Medical Opinions

Before weighing the medical opinions, the ALJ addressed the exertional requirements of Claimant's usual coal mine employment. He found that Claimant's usual coal mine employment was working as a bulldozer operator. Decision and Order at 7. He found Claimant credibly testified that in this position, he sat for eight hours a day, climbed an eight-foot ladder in and out of the bulldozer two or three times during his shift, operated the dozer using hydraulic levers, and sometimes helped the mechanic with "physical work" including replacing bolts, attaching chains to the equipment, or making other repairs. *Id.*

---

gas study results was obtained on that date; the remaining results, that the ALJ incorrectly indicates were obtained as part of the August 6, 2021 blood gas study, were actually obtained on August 9, 2021. Decision and Order at 9; Claimant's Exhibit 1 at 19, 54-57. Additional results obtained at rest and at standing as part of the August 9, 2021 blood gas study are not listed in the ALJ's decision. *See* Claimant's Exhibit 1 at 54.

[8] A "qualifying" blood gas study yields values that are equal to or less than the appropriate values set out in the table at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study yields values that exceed those in the table. 20 C.F.R. §718.204(b)(2)(ii).

The ALJ also noted the employment history Claimant provided to Dr. Sood, indicating he sometimes had to help extract other workers and machines from the mud as many as two times a week, which Claimant indicated was the hardest part of his job. *Id.* at 10. The ALJ found this description was not inconsistent with Claimant's testimony; thus, the ALJ determined Claimant's usual coal mine work as a bulldozer operator was mainly sedentary but involved "some light to heavy manual labor." *Id.* at 7, 12-13.

Employer argues the ALJ's finding that Claimant's usual coal mine employment involved some heavy labor is erroneous. Specifically, Employer argues the ALJ failed to resolve the conflicting evidence on this issue, particularly in crediting Dr. Sood's "hearsay" description of Claimant's coal mining work when Claimant's testimony and benefits application did not provide a similar description. Employer's Brief at 9-10, 12-13. It further contends that Claimant's testimony that he occasionally had to replace a bolt, attach chains, and assist in repairs is insufficient to demonstrate he was required to perform heavy labor and, even if it were sufficient, it did not demonstrate Claimant did so on a regular basis. *Id.* at 10, 13. We disagree.

The ALJ acknowledged that Claimant indicated on his benefits application that he was not required to lift or carry anything as a part of his job duties as a bulldozer operator. Decision and Order at 7. However, the ALJ also noted Claimant's testimony that he would sometimes lift chains when assisting the mechanic, which the ALJ found could be referring to Claimant helping tow machines and consistent with tasks Dr. Sood described in his report: lifting ten to twenty-pound chains and extracting machines from the mud. *Id.* at 12-13. The ALJ, as the trier-of-fact, has discretion to weigh the medical evidence and draw his own inferences therefrom. *See N. Coal Co. v. Director, OWCP* [*Pickup*], 100 F.3d 871, 873 (10th Cir. 1996); *Hansen v. Director, OWCP*, 984 F.2d 364, 370 (10th Cir. 1993). In this case, the ALJ considered the relevant evidence, addressed the potential conflicts, and permissibly found, within his discretion, that while most of Claimant's work was sedentary, at times he was required to exert himself, including climbing stairs to get to the bulldozer's cab, carrying chains, replacing bolts, and assisting the mechanic with other physical tasks. Decision and Order at 7, 12-13.

Employer further contends there is insufficient evidence that Claimant's work assisting the mechanic required heavy exertion, suggesting that assisting the mechanic could simply mean "holding a flashlight." Employer's Brief at 12-13. However, as the ALJ found, there is no indication that Claimant's tasks when assisting the mechanic were so limited, with Claimant describing them as "physical" tasks. Decision and Order at 7; Hearing Transcript at 36; *Pickup*, 100 F.3d at 873. Moreover, contrary to Employer's implication, a task need not be performed every day for it to be considered part of the Claimant's duties for purposes of determining whether he can perform his usual coal mine employment. *See Eagle v. Armco Inc.*, 943 F.2d 509, 511-12 & n.4 (4th Cir. 1991)

(whether a miner can perform his usual coal mine work depends on whether he can perform the "most arduous" part of that work); *Heavilin v. Consolidation Coal Co.*, 6 BLR 1-1209, 1-1213 (1984) (determination of nature of usual coal mine work and its physical requirements is for the fact-finder); *Shortridge v. Beatrice Coal Co.*, 4 BLR 1-535, 1-538-39 (1982) (usual coal mine work is the most recent job the miner performed "regularly and over a substantial period of time"); Decision and Order at 10, 12-13 (noting Claimant reported he performed his most physical work "as much as twice a week").

Employer's arguments are a request to reweigh the evidence, which the Board is not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Even if the Board would weigh the evidence differently if considered de novo, it must affirm the ALJ's finding if it is supported by substantial evidence. *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 310 (4th Cir. 2012); *see also Director, OWCP v. Rowe*, 710 F.2d 251, 254-55 (6th Cir. 1983) (Board is not empowered to engage in a de novo review but rather is limited to reviewing the ALJ's decision for errors of law and to determine whether the factual findings are supported by substantial evidence in the record viewed as a whole). We thus affirm the ALJ's finding that Claimant's usual coal mine employment was primarily sedentary but also involved some light to heavy manual labor. Decision and Order at 7.

The ALJ next considered the medical opinions of Drs. Sood, Rosenberg, and Tuteur. Decision and Order at 10-19; Director's Exhibits 15, 18, 19, 21; Claimant's Exhibit 1; Employer's Exhibit 8. Dr. Sood opined Claimant is totally disabled, while Drs. Rosenberg and Tuteur opined he is not. Director's Exhibits 15, 18, 19, 21; Claimant's Exhibit 1; Employer's Exhibit 8. The ALJ found Dr. Sood's opinion well-reasoned and well-documented and thus accorded his opinion substantial weight, while he accorded the conflicting opinions little to no weight. Decision and Order at 10-19. Consequently, he found the medical opinion evidence supports a finding of total disability. Decision and Order at 19.

Employer contends the ALJ erroneously discredited Drs. Rosenberg's and Tuteur's opinions because they relied on barometric pressure and A-a gradient to find the blood gas studies demonstrated no impairment, including the qualifying 2018 exercise study. Employer's Brief at 15-16, 18-19. We disagree.

The ALJ permissibly found Drs. Rosenberg's and Tuteur's opinions regarding the effect of barometric pressure on the blood gas studies to be unpersuasive because the Department of Labor (DOL) already considers altitude in determining qualifying blood gas

study values in Appendix C to 20 C.F.R. Part 718.[9] *See* 45 Fed. Reg. 13,678, 13,712 (Feb. 29, 1980); *Big Horn Coal Co. v. Director, OWCP* [*Alley*], 897 F.2d 1052, 1056 (10th Cir. 1990) ("We see no reason why the [ALJ] should accept [a doctor's] unsupported assertion that altitude caused a 'false positive' in this case, over the contrary result that is reached by comparing the test results with the altitude–adjusted Appendix C tables.").

Employer next contends the ALJ erred in finding that Dr. Tuteur focused on the cause of Claimant's blood gas abnormality rather than on whether the abnormality was disabling, asserting the ALJ used his "own judgments and lay opinion." Employer's Brief at 16-17. Contrary to Employer's contention, the ALJ did not come to his own medical conclusion but pointed to Dr. Tuteur's explanation that the drop in oxygenation observed when Claimant exercised was due to a cardiac issue rather than a pulmonary issue. Decision and Order at 19; Employer's Exhibit 8 at 38-41. As the ALJ noted, the inquiry at 20 C.F.R. §718.204(b)(2) is whether Claimant has a disabling respiratory or pulmonary impairment, while the cause of any impairment is addressed separately at 20 C.F.R. §718.204(c) or in consideration of rebuttal of the Section 411(c)(4) presumption. *See* 20 C.F.R. §§718.204(c), 718.305(d)(1)(ii); *Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989); *see also* 20 C.F.R. §718.204(a) ("If . . . a nonpulmonary or nonrespiratory condition or disease causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered in determining whether the miner is or was totally disabled due to pneumoconiosis."); Decision and Order at 19.

Moreover, the ALJ permissibly found Dr. Tuteur's opinion undermined as the doctor assumed Claimant's usual coal mine employment was sedentary in nature and did not consider other aspects of his job that required exertion. *See Killman v. Director,*

[9] In revising Appendix C of 20 C.F.R. Part 718, the DOL recognized in the preamble to the revised regulations that while altitude affects blood gas levels, "the relationship between the lowering of arterial oxygen tension and altitude is complex because . . . the human body has compensatory mechanisms." 45 Fed. Reg. 13,678, 13,712 (Feb. 29, 1980). The DOL also recognized that there is no "straight-forward linear lowering of arterial blood oxygen tension as the oxygen pressure in the atmosphere decreases with altitude." *Id.* Thus, the DOL created the three altitude tables, concluding it is "an acceptable and valid compromise, which takes into account the effect of altitude without becoming overly complicated." *Id.* The DOL declined to use the A-a gradient as a measure of disability because it was laborious, difficult to administer, and few laboratories were equipped to perform it. *Id.* at 13,683. Instead, the DOL found that because "the arterial blood oxygen tension measures the overall ability of the lung to properly provide oxygen for body metabolism," it "provides a more useful measurement in order to determine the overall ability of the individual to function." *Id.*

OWCP, 415 F.3d 716, 721-22 (7th Cir. 2005); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000); *Eagle*, 943 F.2d at 513; Decision and Order at 18. Thus, we affirm the ALJ's according little weight to Drs. Rosenberg's and Tuteur's opinions that Claimant is not totally disabled. Decision and Order at 14-19.

Employer also contends the ALJ erred in crediting Dr. Sood's opinion, as he relied on blood gas studies to find total disability when the ALJ found the studies did not support a finding of total disability. Employer's Brief at 8-9, 16. It also argues that although the ALJ indicated that even a mild impairment can be disabling in support of crediting Dr. Sood's opinion notwithstanding the nonqualifying objective studies, Dr. Sood did not render such an opinion; rather, Employer contends Dr. Sood summarily stated Claimant is totally disabled.[10] *Id.* at 8. We find Employer's arguments unpersuasive.

As the ALJ found, Dr. Sood opined that Claimant is totally disabled given the drop in oxygenation demonstrated in both exercise blood gas studies. Decision and Order at 11-14; Director's Exhibits 15, 21; Claimant's Exhibit 1. The doctor further explained the more recent, non-qualifying study was abnormal given the drop in oxygenation with exercise, which would require supplemental oxygen at the elevation of the testing site and would not allow Claimant to perform tasks that required heavy exertion. Claimant's Exhibit 1 at 3. The ALJ also pointed to Dr. Sood's explanations that Claimant was dyspneic and had to pause during his six-minute walk test and that his 2021 diffusion capacity was reduced, reflecting a "class II" impairment precluding heavy labor. Decision and Order at 14, 19-20; Claimant's Exhibit 1 at 3. Thus, contrary to Employer's contentions, the ALJ permissibly credited Dr. Sood's opinion, as he understood the exertional requirements of Claimant's usual coal mine employment and adequately explained why he found Claimant is incapable of performing that work notwithstanding the non-qualifying objective studies. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett*, 227 F.3d at 578; *Killman*, 415 F.3d at 721-22; Decision and Order at 13-14, 19-20.

[10] Employer also contends that Dr. Rosenberg's findings regarding the blood gas studies "directly refute" Dr. Sood's consideration of the studies, as he "failed to consider how the barometric pressure effected [sic] the Claimant." Employer's Brief at 15. We have already held that the ALJ permissibly found Dr. Rosenberg's opinion on this issue unpersuasive. Moreover, contrary to Employer's argument, Dr. Sood addressed Dr. Rosenberg's contention that the blood gas study results would not be disabling at sea level. As the ALJ found, Dr. Sood noted the decrease in oxygenation during exercise would require supplemental oxygenation at the elevation at which the study was obtained, which is the same elevation as the mine where Claimant worked, not at sea level. Decision and Order at 11; Director's Exhibit 21 at 4; Claimant's Exhibit 1 at 3.

Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant established total disability based on the medical opinion evidence. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 19-20. As Employer raises no further arguments regarding the weighing of the evidence together, we affirm the ALJ's finding that Claimant established total disability when considering the evidence as a whole. 20 C.F.R. §718.204(b)(2). We thus further affirm the ALJ's findings that Claimant established a change in an applicable condition of entitlement, 20 C.F.R. §725.309, and invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305; Decision and Order at 20.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,[11] 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.[12]

Legal Pneumoconiosis

The ALJ considered the medical opinions of Drs. Rosenberg and Tuteur that Claimant does not have legal pneumoconiosis.[13] Decision and Order at 24-26. Dr. Rosenberg opined there was no significant obstruction or restriction; thus, he found no basis to diagnose legal pneumoconiosis. Director's Exhibit 18. Dr. Tuteur diagnosed "very mild" restriction and non-obstructive chronic bronchitis, unrelated to Claimant's coal mine

[11] "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).

[12] The ALJ found Employer rebutted the presence of clinical pneumoconiosis. Decision and Order at 21-23.

[13] As the ALJ found, Dr. Sood diagnosed legal pneumoconiosis; thus, his opinion does not assist Employer in meeting its burden. Decision and Order at 26; Director's Exhibits 15, 21; Claimant's Exhibit 1.

dust exposure. Director's Exhibit 19 at 3-4; Employer's Exhibit 8 at 14, 25. The ALJ found Drs. Rosenberg's and Tuteur's opinions not well-reasoned or well-documented and thus insufficient to rebut the presumption of legal pneumoconiosis. *Id.* at 26.

Employer contends that in discrediting Dr. Rosenberg's opinion, the ALJ "downplayed" the doctor's explanation that the pulmonary function studies do not demonstrate obstruction and thus legal pneumoconiosis cannot be established. Employer's Brief at 18, 21. However, as the ALJ explained, by operation of the Section 411(c)(4) presumption, Claimant is presumed to have legal pneumoconiosis. 20 C.F.R. §718.305; Decision and Order at 24-25. Thus, the ALJ permissibly found Dr. Rosenberg's opinion not well-reasoned, as he failed to adequately explain why Claimant's blood gas abnormality is not caused or aggravated by coal mine dust exposure. Decision and Order at 25; *Pickup*, 100 F.3d at 873.

Employer has not challenged the ALJ's finding that Dr. Tuteur's opinion is insufficient to rebut the presumption of legal pneumoconiosis, given the doctor acknowledged that Claimant has chronic bronchitis but failed to explain why it could not have been caused or aggravated by his coal mine dust exposure. Decision and Order at 25. Thus, we affirm the ALJ's finding that Dr. Tuteur's opinion is insufficient to rebut the presence of legal pneumoconiosis. *Id.*; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Employer's remaining arguments rely on its contention that Claimant is not entitled to the presumption of legal pneumoconiosis because he failed to establish total disability, which we have already rejected. Employer's Brief at 18-21. We therefore affirm the ALJ's finding that Employer failed to rebut the presence of legal pneumoconiosis. Decision and Order at 26; 20 C.F.R. §718.305(d)(1)(i)(A).

Disability Causation

To disprove disability causation, Employer must establish "no part of [Claimant's] disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii); *see also Antelope Coal Co./Rio Tinto Energy Am. v. Goodin*, 743 F.3d 1331, 1336-37 (10th Cir. 2014). Because Drs. Rosenberg and Tuteur failed to diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer did not disprove the disease, the ALJ permissibly found their opinions on disability causation entitled to little weight. *See Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order at 26-27. Thus, we affirm the ALJ's finding that Employer failed to rebut the presumption under 20 C.F.R. §718.305(d)(1)(ii).

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

MELISSA LIN JONES
Administrative Appeals Judge