U.S. Department of Labor

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

BRB No. 21-0606 BLA

EVERETT L. SILCOX	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
T.M. COAL COMPANY	)	
	)	
and	)	
	)	
OLD REPUBLIC INSURANCE COMPANY	)	DATE ISSUED: 01/25/2023
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits on Remand of Steven D. Bell, Administrative Law Judge, United States Department of Labor.

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

Michael A. Pusateri (Greenberg Traurig LLP), Washington D.C., for Employer and its Carrier.

Ann Marie Scarpino (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor), 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) Steven D. Bell's Decision and Order Awarding Benefits on Remand (2015-BLA-05565) rendered on a subsequent claim[1] filed on April 17, 2014, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Benefits Review Board for the second time.[2]

After noting the parties waived their right to a formal hearing and agreed to a decision on the record, the ALJ found Claimant established eighteen years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore concluded 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),[3] and established a change in an applicable condition of entitlement. 20 C.F.R. §§718.305, 725.309(c).[4] The ALJ further found Employer failed to rebut the presumption and awarded benefits.

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[1] Claimant filed four prior claims, the most recent on February 23, 1999, which ALJ Daniel J. Roketenetz denied on January 29, 2001, because Claimant failed to establish pneumoconiosis or total disability due to pneumoconiosis. Director's Exhibit 1.

[2] ALJ Joseph E. Kane initially issued a Decision and Order Awarding Benefits dated June 18, 2018 in this claim. In consideration of Employer's appeal, the Board vacated ALJ Kane's decision and remanded the case for reassignment to a new ALJ in light of *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044, 2055 (2018).[2] *Silcox v. T.M. Coal Co.*, BRB Nos. 18-0497 BLA and 18-0588 BLA (May 30, 2019). The case was reassigned to ALJ Bell (the ALJ) on September 26, 2019, whose August 4, 2021 Decision and Order Awarding Benefits on Remand is the subject of this appeal.

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he establishes 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.

[4] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must deny the subsequent claim unless he finds "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); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are

On appeal, Employer generally argues the removal provisions applicable to ALJs render their appointments unconstitutional. On the merits, Employer argues the ALJ erred by relying on a stipulation regarding Claimant's length of coal mine employment made during the hearing before a prior ALJ, Joseph E. Kane. Employer also argues the ALJ erred in finding Claimant invoked the Section 411(c)(4) presumption and, alternatively, in finding it did not rebut the presumption.

Claimant filed a response, urging affirmance of the award. The Director, Office of Workers' Compensation Programs (the Director), also filed a response urging rejection of Employer's challenges to the ALJ's removal protections and length of coal mine employment finding. Employer filed separate reply briefs responding to the arguments of Claimant and the Director, reiterating its initial arguments.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[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).

Removal Provisions

Employer challenges the constitutionality of the removal protections afforded ALJs. Employer's Brief at 14-16; Employer's Reply to Director at 4-7. It generally argues the removal provisions for ALJs in the Administrative Procedure Act (APA), 5 U.S.C. §7521, are unconstitutional, citing Justice Breyer's separate opinion in *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044 (2018). *Id*. In addition, it relies on the United States Supreme Court's holdings in *Free Enter. Fund v. Public Co. Accounting Oversight Bd*., 561 U.S. 477 (2010), and *Seila Law v. CFPB*, 591 U.S. , 140 S. Ct. 2183 (2020), and on Justice Gorsuch's concurring opinion in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 594 U.S. , 141

"those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant's prior claim was denied for failure to establish pneumoconiosis or total disability due to pneumoconiosis, Claimant had to establish one of these two elements to obtain review of the merits of his claim. *See White*, 23 BLR at 1-3; Director's Exhibit 4.

[5] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order on Remand at 6; Director's Exhibit 6.

S. Ct. 1970 (2021). *Id.* For the reasons set forth in *Howard v. Apogee Coal Co.*, BLR , BRB No. 20-0229 BLA, slip op. at 3-5 (Oct. 18, 2022), we reject Employer's arguments.[6]

Employer's Request for Discovery

While the case was pending before the ALJ, Employer sought discovery from the Department of Labor (DOL) related to the deliberative process underlying the development of the preamble to the 2001 revised regulations. *See* Employer's Interrogatories and Requests for Admissions and Documents Regarding the Preamble dated November 7, 2019. In response, the Director moved for a Protective Order barring the requested discovery. *See* Director's Motion for Protective Order dated December 11, 2019. Employer opposed the Director's request. *See* Employer's Opposition to Motion for a Protective Order dated December 17, 2019. The ALJ granted the Director's motion, finding Employer's discovery request would not lead to relevant information regarding the DOL's deliberative process or the science underlying the revised regulations that was not already set forth in the preamble. Order Granting Director's Motion for Protective Order dated June 30, 2021 at 1-2.

Employer argues the ALJ violated its due process rights by preventing it from conducting discovery regarding the preamble and then discrediting the opinions of its physicians as being inconsistent with the science the DOL relied on in the preamble. Employer's Brief at 30. We disagree.

Due process requires Employer be given notice and an opportunity to mount a meaningful defense. *See Arch of Kentucky, Inc. v. Director, OWCP* [*Hatfield*], 556 F.3d 472, 478 (6th Cir. 2009) ("The basic elements of procedural due process are notice and opportunity to be heard."); *Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 883-84 (6th Cir. 2000). Employer had the opportunity to submit evidence challenging the science that the DOL relied on in the preamble when promulgating its revised regulations. *See Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 490-91 (6th Cir. 2014); *Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013) (parties may submit evidence of scientific innovations that archaize or invalidate the science underlying the preamble). It submitted such evidence in the form of Drs. Rosenberg's and Jarboe's opinions. Director's Exhibit 12; Employer's Exhibits 3, 4. The ALJ considered their

[6] To the extent Employer argues the ALJ's appointment was "constitutionally infirm," we decline to address this argument as it is inadequately briefed. *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); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); 20 C.F.R. §802.211(b); Decision and Order on Remand at 4; Employer's Brief at 14; Director's Brief at 6 n.8.

opinions and permissibly found them unpersuasive, as discussed more fully below. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order on Remand at 18-22.

Because Employer was afforded and took advantage of the opportunity to submit evidence challenging the scientific findings contained in the preamble, it has failed to demonstrate how it was deprived of due process. *See Hatfield*, 556 F.3d at 478; *Holdman*, 202 F.3d at 883-84. Further, Employer has not shown how the discovery it sought would make a difference, given its opportunity to present other scientific evidence and to review the published medical studies themselves. *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"). As Employer does not otherwise argue the ALJ erred in granting the Director's motion for a protective order, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

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

Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must first establish he worked at least fifteen years in underground coal mines, or "substantially similar" surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden to establish the number of years he worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold an ALJ's determination if it is based on a reasonable method of calculation that is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

The ALJ noted accurately that Employer stipulated, at the 2016 hearing before ALJ Kane, Claimant had at least eighteen years of coal mine employment, but contested the issue in its brief before him. Decision and Order on Remand at 6 n.39; Employer's 2020 Closing Brief [on Remand] at 10-14. He further found the record supported over eighteen years of underground coal mine employment between 1963 and 1990. Decision and Order on Remand at 6 n.39, citing Director's Exhibits 4, 6.

Employer argues the ALJ erred in crediting Claimant with at least eighteen years of coal mine employment based on its prior stipulation.[7] Employer's Brief at 12-13. We disagree.

In this case, the parties agreed to submit the case to the ALJ on the record as developed before ALJ Kane, with the opportunity to submit new evidence forms (with consequent evidence) and briefs. Decision and Order on Remand at 6 n.39. In its brief before the ALJ, Employer argued, contrary to the stipulation it made at the hearing before ALJ Kane, that Claimant had not established the fifteen years of qualifying coal mine employment required for invocation of the Section 411 (c)(4) presumption. Employer's August 7, 2020 Closing Brief at 10-14. The ALJ refused "at this point" to allow Employer to withdraw its stipulation because: it would be prejudicial to Claimant since Employer, during the hearing before Judge Kane, "objected to Claimant being question [sic] in detail about his employment" given its stipulation; and Employer had never filed for leave to withdraw its stipulation nor established good cause for doing so. Decision and Order on Remand at 6 n.39. We find no abuse of discretion in the ALJ's action.[8] *See McClanahan v. Brem Coal Co.*, 25 BLR 1-171, 1-175 (2016); *V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009) (a party seeking to overturn an ALJ's disposition of a procedural or evidentiary issue must establish the ALJ's action represented an abuse of discretion).

Moreover, Claimant's Social Security Earnings Record (SSER) evidence cited by Employer in support of its calculation that Claimant had no more than 14.07 years of coal mine employment belies its contention. Employer alleges Claimant has only 14.07 years of coal mine employment, taking into account the income reported on his SSER and applying *Shepherd v. Incoal, Inc.*, 915 F.3d 392, 402 (6th Cir. 2019) (125 days of coal mine

[7] Employer does not challenge the ALJ's finding that all of Claimant's coal mine employment was underground; thus, this finding is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Remand at 6 n.39.

[8] Given the parties' agreement to have the case decided on the record developed before ALJ Kane, the transcript of the hearing before ALJ Kane, where Employer made its stipulation and objected to Claimant's testimony about his coal mine employment, necessarily became part of the record for ALJ Bell to consider. *See* 20 C.F.R. §725.477(b) ("A decision and order shall be based upon the record made before the administrative law judge."); *see also* 20 C.F.R. §§725.455(b) ("The administrative law judge shall at the hearing inquire fully into all matters at issue[.]"), 725.462 ("A party may, on the record, withdraw his or her controversion of any or all issues set for hearing."), 725.464 ("All evidence upon which the administrative law judge relies for decision shall be contained in the transcript" either directly or by reference.)

employment equates to one year of coal mine employment for all purposes under the Act.).[9] Employer's Brief (Exhibit A).

However, as Claimant points out, Employer's calculation does not include Claimant's earnings with Art Coal Company (Art) from 1969-74, an employer included in his SSER listing used by Employer to calculate 14.07 years of employment, as well as in his employment history form. Claimant's Brief at 4; *see* Director's Exhibits, 4, 6; Employer's Brief, Appendix A; Employer's Reply to Claimant at 3 n.1 (omitting any challenge to Claimant's alleged coal mine employment with Art). Applying Exhibit 610 of the *Coal Mine (Black Lung Benefits Act) Procedure Manual*'s daily wage chart upon which Employer relies, and adding only Claimant's earnings with Art for the years 1970 and 1971[10] to Employer's calculations, Claimant clearly has two more years of coal mine employment than Employer alleges, or 16.07 years. Director's Exhibit 6 at 4. As the ALJ did not abuse his discretion in accepting and utilizing Employer's stipulation and substantial evidence also supports his finding of at least fifteen years of qualifying coal mine employment, we affirm that finding. *Shepherd*, 915 F.3d at 401-02; *Muncy*, 25 BLR at 1-27; Decision and Order on Remand at 6; Director's Exhibit 6.

Total Disability

To invoke the Section 411(c)(4) presumption, Claimant also must prove he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(i). 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

[9] We reject Employer's argument that the holding in *Shepherd* constituted dicta and was "inconsistent with law," "arbitrary," and "capricious." Employer's Brief at 13 n.3. The court in *Shepherd* expressly instructed the ALJ to "give effect to all provisions and options set forth in 20 C.F.R. §725.101(a)(32)," including Section 725.101(a)(32)(i), which states 125 working days comprises a year of coal mine employment for all purposes under the Act. *Shepherd*, 915 F.3d at 407. The Board has no power or authority to deviate from an appellate court's mandate. *See Briggs v. Pennsylvania R.R.*, 334 U.S. 304 (1948); *Muscar v. Director, OWCP*, 18 BLR 1-7 (1993). Thus, in this case, the ALJ, and indeed the Board, are bound by the Sixth Circuit's decision in *Shepherd*.

[10] In 1970, Claimant earned $5,900.03 with Art Coal Company (Art). Dividing $5,900.03 by $38.32 (the daily wage reported in Exhibit 610 for 1970), Claimant worked 154.37 days or one year in coal mine employment. Similarly, in 1971 he earned $5,371.58 in wages with Art. Dividing $5,371.58 by $40.07 (the daily wage reported in Exhibit 610 for 1971), Claimant worked 134.05 days or one year of coal mine employment.

work.[11] *See* 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,[12] 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 two pulmonary function studies of record, which are both qualifying,[13] and the medical opinions, which unanimously concluded he is totally disabled by a respiratory or pulmonary impairment from returning to his usual coal mine work. Decision and Order on Remand at 9-13.

Employer argues the ALJ erred in finding Claimant totally disabled because he has disabling lung cancer unrelated to coal mine dust exposure and lung cancer is not a compensable injury. Employer's Brief at 16-17. We are not persuaded by Employer's argument because it erroneously conflates the issues of total disability and disability causation. Director's Brief at 5 n.7.

Once a living miner has established the requisite qualifying employment, the relevant inquiry in determining entitlement to the Section 411(c)(4) presumption is whether the miner has a totally disabling respiratory or pulmonary impairment. 30 U.S.C. 921(c)(4); 20 C.F.R. §718.305(b)(iii). The cause of the impairment is not at issue at that

[11] The ALJ found Claimant's last coal mine employment was working as a roof bolter, which required lifting and carrying up to fifty pounds. Decision and Order on Remand at 13.

[12] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendices B and C, respectively. A "non-qualifying" study yields values that exceed those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[13] We affirm, as unchallenged on appeal, the ALJ's finding that the pulmonary function study evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(i); *see Skrack*, 6 BLR at 1-711; Decision and Order on Remand at 10; Director's Exhibits 11, 12.

point. Rather, if the presumption is invoked, causation is addressed later at rebuttal.[14] 20 C.F.R. §718. 305(d).

As Employer raises no other arguments, we affirm the ALJ's finding that Claimant established total disability at 20 C.F.R. §718.204(b)(2). Thus, we affirm the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement at 20 C.F.R. §725.309(c). Decision and Order on Remand at 23.

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 "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] Decision and Order on Remand at 21.

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 United States Court of Appeals for the Sixth Circuit requires Employer to show that [the miner's] "coal mine employment did not contribute, in part, to his alleged

[14] If a living miner is unable to establish a totally disabling respiratory or pulmonary impairment, however, the miner cannot invoke the Section 411(c)(4) presumption and has failed to establish one of the required elements of entitlement under 20 C.F.R. Part 718.

[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 found Employer disproved clinical pneumoconiosis. Decision and Order on Remand at 21.

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 the opinions of Drs. Jarboe and Rosenberg to disprove legal pneumoconiosis.[17] They each opined Claimant has chronic obstructive pulmonary disease (COPD) in the form of asthma and chronic bronchitis due entirely to cigarette smoking.[18] Director's Exhibit 12 at 6-11; Employer's Exhibit 4 at 7-14. The ALJ found their opinions not well-reasoned. Decision and Order on Remand at 21.

Initially, we reject Employer's contention that the ALJ erred in considering the preamble to the 2001 revised regulations in evaluating its medical experts' credibility. Employer's Brief at 26-30. An ALJ may permissibly evaluate expert opinions in conjunction with the preamble, as it sets forth the DOL's resolution of questions of scientific fact relevant to the elements of entitlement, as the ALJ correctly observed. *See Sterling*, 762 F.3d at 491.

Drs. Jarboe and Rosenberg opined Claimant does not have legal pneumoconiosis relying, in part, on the fact that Claimant's respiratory symptoms developed after he stopped working in the mines. Director's Exhibit 12 at 10; Employer's Exhibits 3 at 14; 4 at 12-13. The ALJ permissibly discredited their rationale because their reliance on the latency of Claimant's disease is inconsistent with the DOL'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); *Young*, 947 F.3d at 408; *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 737-40 (6th Cir. 2014); Decision and Order on Remand at 21.

Drs. Jarboe and Rosenberg also excluded a diagnosis of legal pneumoconiosis because Claimant's pulmonary function studies showed reversibility of his respiratory

[17] Employer notes its continuing objection to Dr. Alam's supplemental report, prepared as part of the DOL's Pilot Program. Employer's Brief at 10 n.2. Because Employer has the burden of proof on rebuttal and we conclude the ALJ permissibly found its medical experts not credible, we decline to address its arguments regarding the pilot program and the weight accorded the physicians who diagnosed legal pneumoconiosis. *See Shinseki*, 556 U.S. at 413; *Cox*, 791 F.2d at 445-47; *Larioni*, 6 BLR at 1-1278.

[18] The ALJ found "a reasonable minimum estimate of [Claimant's] smoking history is [twenty] pack-years, although it may have been as much as [thirty] pack-years." Decision and Order on Remand at 8.

impairment with bronchodilators, which they opined is inconsistent with a fixed and irreversible impairment caused by coal mine dust exposure. Employer's Exhibits 3 at 13-15; 4 at 11. However, as the ALJ correctly observed, "even after the administration of bronchodilators, Claimant's impairment was still severe, compatible with [there] being a fixed component to the impairment," thus undermining their rationales. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); Decision and Order on Remand at 21; Employer's Exhibits 3 at 13-15; 4 at 11.[19]

Additionally, we see no error in the ALJ's overall conclusion that neither Dr. Jarboe nor Dr. Rosenberg adequately explained why Claimant's eighteen years of coal mine dust exposure did not substantially aggravate or exacerbate Claimant's respiratory condition. Decision and Order on Remand at 21. The ALJ accurately noted the DOL's position in the preamble that the effects of smoking and coal mine dust exposure may be additive and permissibly found their opinions insufficiently reasoned for all of the reasons cited above. *See* 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000); *Barrett*, 478 F.3d at 356; *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); Decision and Order on Remand at 21.

Employer's arguments on appeal are a request to request to reweigh the evidence, which the Board may not do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because it is supported by substantial evidence, we affirm the ALJ's determination that Employer did not disprove legal pneumoconiosis.[20] *See* 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order on Remand at 21-22. 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 that no part of Claimant's respiratory or pulmonary disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order on Remand at 22-23. The ALJ permissibly

[19] The doctors explained that non-coal-dust reasons existed to explain the cause of the remaining fixed impairment; however, they did not explain why coal dust was not a substantially aggravating factor in Claimant's fixed impairment, in conjunction with the other possible causes they cited.

[20] Because the ALJ gave valid reasons for discrediting Employer's experts, we need not address its other contentions of error regarding the ALJ's additional reasons for finding Employer did not disprove legal pneumoconiosis. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

discounted Drs. Jarboe's and Rosenberg's opinions regarding the cause of Claimant's respiratory disability because they did not diagnose legal pneumoconiosis, contrary to his finding that Employer failed to disprove the existence of the disease. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order on Remand at 22-23. We therefore affirm the ALJ's finding that Employer failed to rebut the presumption that Claimant's total respiratory disability was cause by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge