Case No. 19-3483

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ABERRY COAL, INCORPORATED, *et al.*

Petitioners,

v.

VADIS FIELDS and DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,

Respondents.

On Petition for Review of a Decision and Order of the Benefits Review Board

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BRIEF FOR THE FEDERAL RESPONDENT

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FOR THE SIXTH CIRCUIT

No. 19-3483

ABERRY COAL, INCORPORATED, and SECURITY INSURANCE COMPANY OF HARTFORD,

Petitioners

v.

VADIS FIELDS and DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,

Respondents

BRIEF FOR THE FEDERAL RESPONDENT

STATEMENT OF JURISDICTION

This appeal involves a claim for benefits under the Black Lung Benefits Act (BLBA or the Act), 30 U.S.C. § 901-944, filed by Vadis Fields (Mr. Fields) on July 13, 2011. Joint Appendix (JA) 212.

On March 8, 2016, Administrative Law Judge Richard M. Clark (the ALJ) issued a Decision and Order Awarding Benefits on Mr. Fields' claim. JA 70. Aberry Coal, Inc. (Aberry) timely appealed this decision to the Benefits Review Board (the Board) on April 5, 2016, within the thirty-day period prescribed by 33 U.S.C. § 921(a), as incorporated into the BLBA by 30 U.S.C. § 932(a). JA 100.

The Board issued a Decision and Order on April 27, 2017, remanding the claim to the ALJ. JA 140. The Board had jurisdiction to review the ALJ's decision pursuant to 33 U.S.C. § 921(b) (3), as incorporated by 30 U.S.C. § 932(a). On November 14, 2017, the ALJ issued a Decision and Order on Remand Awarding Benefits. JA 177. Aberry timely appealed the Remand Decision to the Board on November 29, 2017. JA 188, 192. The Board affirmed the Remand Decision on March 26, 2019. JA 1.

This Court has jurisdiction over Aberry's petition for review because 33 U.S.C. § 921(c), as incorporated by 30 U.S.C. § 932(a), allows an aggrieved party sixty days to seek review of a final Board decision in the court of appeals in which the injury occurred. Aberry timely petitioned this Court for review of the Board's decision on May 28, 2019. (The sixtieth day, May 25, 2019, was a Saturday; Monday May 27, 2019, was a legal holiday.) The injury – Mr. Fields' occupational exposure to coal mine dust – occurred in Kentucky, within this Court's territorial jurisdiction.

STATEMENT OF THE ISSUES

1. Under the BLBA, a miner is required to file a claim for benefits within three years of: "(1) a medical determination of (2) total disability (3) due to pneumoconiosis (4) which has been communicated to the miner." *Peabody Coal Co. v. Director, OWCP* [*Brigance*], 718 F.3d 590 593 (6th Cir. 2013). In Mr.

Fields' 2003 black lung claim, Dr. D.L. Rasmussen issued a medical report in 2003 that diagnosed clinical pneumoconiosis arising from coal mine work, but did not clearly determine that Mr. Fields was totally disabled due to pneumoconiosis. Did Dr. Rasmussen's 2003 medical report trigger the running of the three-year limitations period?

2. During the 2003 claims process, the district director, Office of Workers Compensation Programs, issued a preliminary determination in the Schedule for Submission of Evidence (SSAE) that Mr. Fields would not be entitled to benefits based on the evidence submitted to date, which included Dr. Rasmussen's 2003 medical opinion. Mr. Fields responded to the district director's finding by requesting that his claim be withdrawn. The district director granted withdrawal as "in [Mr. Fields'] best interest." This Court has held that the limitations period resets when a miner's claim is denied. *Arch of Ky., Inc. v. Director, OWCP*, 556 F.3d 472, 483 (6th Cir. 2009).

If this Court determines that Dr. Rasmussen's 2003 report constitutes a clear medical determination of total disability due to pneumoconiosis that was communicated to Mr. Fields, do extraordinary circumstances warrant tolling the statute of limitations where the district director issued a preliminary finding

rejecting Dr. Rasmussen's 2003 report and Mr. Fields withdrew his claim as a result?[1]

STATEMENT OF THE CASE

A. Statutory and Regulatory Background

1. The BLBA's statute of limitations and implementing regulation

The BLBA provides in relevant part that "[a]ny claim for benefits by a miner under this section shall be filed within three years … [of] a medical determination of total disability due to pneumoconiosis." 30 U.S.C. § 932(f). The regulation implementing this statutory provision is 20 C.F.R. § 725.308, which was originally promulgated in 1978 after notice and comment rulemaking. 43 Fed. Reg. 36785 (Aug. 18, 1978). The regulation requires that the medical determination of total disability due to pneumoconiosis be "communicated to the miner or a person responsible for the care of the miner." 20 C.F.R. § 725.308(a). This language was incorporated to ensure that the miner had knowledge of the medical determination before the three year period began to run. 43 Fed. Reg. 36785.

The regulation further provides a rebuttable presumption that every claim for benefits is timely filed. 20 C.F.R. § 725.308(b). To rebut the presumption of

[1] Aberry no longer contests Mr. Fields' medical entitlement to benefits. Its sole contention on appeal is that his claim for benefits was untimely filed. This brief accordingly is limited to the facts and findings related to the statute of limitations issue.

timeliness, an employer must show by a preponderance of the evidence that the claim was filed more than three years after a medical determination of total disability due to pneumoconiosis was communicated to the miner. *Arch of Ky., Inc. v. Director, OWCP*, 556 F.3d 472, 479 (6th Cir. 2009). Finally, the regulation states that "the time limits in this section are mandatory and may not be waived or tolled except upon a showing of extraordinary circumstances." 20 C.F.R. § 725.308(b).

2. **The claim withdrawal regulation**

20 C.F.R. § 725.306 provides, in relevant part, that a previously-filed claim may be withdrawn when: (1) the claimant makes the request in writing and includes the reasons therefore; and (2) the adjudicator determines that withdrawal is in the claimant's best interest. 20 C.F.R. § 725.306(a). The regulation further provides that once withdrawn, "the claim will be considered not to have been filed." 20 C.F.R. § 725.306(b).

B. Procedural History

Mr. Fields filed his first claim for federal black lung benefits in 1996. JA 178. The district director denied it on March 11, 1996, because Mr. Fields failed to establish any element of medical entitlement. JA 71, 141 n.1.

Mr. Fields' second application was filed on May 9, 2003. JA 421. Dr. D.L. Rasmussen conducted the Labor Department's Section 923(b) evaluation.[2] He diagnosed clinical pneumoconiosis arising from coal mine employment and "COPD" (chronic obstructive pulmonary disease) from coal mine dust exposure and cigarette smoking. JA 296. He interpreted Mr. Fields' pulmonary disability tests (pulmonary function study and arterial blood gas test) as demonstrating a "minimal impairment" only. JA 290. He opined that "[t]his patient has at least minimal loss of lung function [and] . . . does not retain the pulmonary capacity to perform his last regular coal mine job with its attendant requirement for heavy and some very heavy manual labor." JA 296. The doctor opined that cigarette smoking and coal mine dust exposure were the "two risk factors" in his pulmonary impairment, and that "coal mine dust exposure" was a "significant cause." JA 290. Nowhere in his report does Dr. Rasmussen explicitly state that Mr. Fields was totally disabled due to pneumoconiosis.

Aberry submitted an opinion from Dr. Bruce Broudy to contest Mr. Fields' claim for benefits. Dr. Broudy diagnosed "(1) Chronic asthmatic bronchitis with chronic airways obstruction, partially reversible; (2) Evidence of early simple coal workers' pneumoconiosis by chest x-ray, and (3) Low back pain." Separate Joint

[2] 30 U.S.C. § 923(b) requires the Department to provide each claimant-miner with "an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation." *See* 20 C.F.R. § 725.406.

Appendix for the Federal Respondent at 438. He further stated that Mr. Fields had sufficient "respiratory capacity to perform his previous work." *Id*.

Based upon Dr. Rasmussen's and Dr. Broudy's reports, the district director issued a SSAE on October 30, 2009. JA 421. He advised that the evidence produced to date was insufficient to establish Mr. Fields' entitlement to benefits and invited Mr. Fields and Aberry to submit additional medical evidence supporting or disputing the claim. JA 421. After receiving the SSAE, Mr. Fields, through his attorney, submitted a letter to the district director requesting that his claim for benefits be withdrawn. JA 430. The letter indicated that it would be futile to proceed and burdensome for Mr. Fields (and the other parties) to do so. *Id*. The district director granted this request, finding "that withdrawal of the claim is in the best interest of the claimant." JA 432.

Mr. Fields filed his current claim on July 13, 2011. The district director issued a Proposed Decision and Order awarding benefits on January 19, 2012. JA 70. Aberry requested a hearing and de novo decision by an ALJ, who issued a Decision and Order Awarding Benefits on March 8, 2016. JA 70. The ALJ rejected Aberry's contention that Mr. Fields' 2011 claim was untimely, ruling that Dr. Rasmussen's 2003 medical opinion was not a "reasoned" medical determination, and regardless, there was no evidence that the report was communicated to Mr. Fields. JA 70.

Aberry appealed the ALJ's decision to the Board. Citing this Court's decision in *Brigance*, the Board held that the ALJ erred when he determined that Dr. Rasmussen's medical opinion failed to trigger the statute of limitations because it was insufficiently "reasoned." JA 144. It also ruled that the ALJ erred in finding that there was no evidence that Dr. Rasmussen's report had been communicated to Mr. Fields. It observed that Mr. Fields had signed a certified mail return receipt card for the SSAE, and the SSAE not only contained a summary of Dr. Rasmussen's report but also indicated that a copy of all the evidence had been served on the parties. *Id*. The Board accordingly remanded the claim to the ALJ for further findings regarding timeliness. JA 140.

On November 14, 2017, the ALJ issued a Decision and Order on Remand Awarding Benefits. The ALJ made three separate findings in rejecting Aberry's statute of limitations defense. First, he found that Dr. Rasmussen's medical opinion "lacked a clear statement that [Mr. Fields] was totally disabled due to pneumoconiosis, and because Dr. Rasmussen failed to clearly link [Mr. Fields'] impairment to pneumoconiosis, as opposed to COPD, I find that his report did not constitute a medical determination of total disability due to pneumoconiosis pursuant to 20 C.F.R. § 725.308(a)." JA 181. Second, the ALJ determined that Aberry failed to establish that Dr. Rasmussen's report had been communicated to Mr. Fields. JA 181-82. Third, the ALJ held that, even if Dr. Rasmussen's report

constituted a medical determination of total disability that was communicated to Mr. Fields, the 2003 proceedings qualified as "extraordinary circumstances" warranting tolling of the statute of limitations. JA 182-183. The ALJ explained that Dr. Rasmussen's 2003 report amounted to a misdiagnosis (that tolled the running of the limitations clock), based on the district director's prior rejection of the report in the 2003 SSAE. *Id*.

The Board affirmed the ALJ's Remand Decision on appeal. Specifically, it held that "[t]he administrative law judge rationally found that Dr. Rasmussen's opinion is insufficient to trigger the statute of limitations because Dr. Rasmussen did not specifically state that claimant is totally disabled due to pneumoconiosis and he did not clearly link claimant's respiratory disability to pneumoconiosis." JA 5-6.

Aberry timely petitioned this Court for review of the Board's decision on May 28, 2019.

SUMMARY OF THE ARGUMENT

A miner must file a federal black lung claim for benefits within three years of being informed of a medical determination of total disability due to pneumoconiosis. Dr. Rasmussen conducted a complete pulmonary evaluation of Mr. Fields in 2003, but the doctor's report did not clearly communicate a diagnosis of total disability due to pneumoconiosis. Although Aberry asserts that the 2003

report was "explicit and unambiguous," nowhere in its text does the report state that Mr. Fields was totally disabled due to pneumoconiosis. Nor was the report – which is replete with medical and legal jargon – otherwise clear in making this assessment. Finally, there is no evidence that the significance of the report was explained to Mr. Fields. Under these circumstances, the ALJ and Board correctly ruled that Dr. Rasmussen's 2003 medical report did not trigger the running of the three-year limitations period.

Alternatively, if this Court determines that Dr. Rasmussen's 2003 report was sufficient to communicate a diagnosis of total disability due to pneumoconiosis, then extraordinary circumstances warrant the tolling of the statute of limitations. The district director's 2003 SSAE informed Mr. Fields that he had failed to establish his entitlement to benefits based on the evidence developed to date (including Dr. Rasmussen's report). The district director thus found, in essence, that Dr. Rasmussen's report constituted a misdiagnosis. Mr. Fields relied on the district director's conclusion in requesting to withdraw his claim, which the district director granted because it was in Mr. Fields' "best interest." Given Mr. Fields' reliance on the district director's findings, the ALJ properly found the statute tolled.

ARGUMENT

MR. FIELDS' 2011 CLAIM WAS TIMELY FILED.

A. Standard of Review

In reviewing decisions of the Benefits Review Board, the Court's "task is limited to correcting errors of law and ensuring the [Board] adhered to the substantial evidence standard in its review of the ALJ's factual findings." *Arch of Ky.*, 556 F.3d at 477 (internal quotations omitted). Substantial evidence means "[s]uch relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1068-69 (6th Cir. 2013). The Court reviews the Board's legal conclusions de novo. *Id.* at 1068.

B. Dr. Rasmussen's 2003 Report did not Clearly Communicate a Medical Determination of Total Disability Due to Pneumoconiosis, and There is No Evidence that the Report was Explained to Mr. Fields.

The ALJ determined that Dr. Rasmussen's 2003 report "lacked a clear statement that [Mr. Fields] was totally disabled due to pneumoconiosis," and therefore, it "did not constitute a medical determination of total disability due to pneumoconiosis pursuant to 20 C.F.R. § 725.308(a)." JA 181. The Board affirmed this finding. JA 5-6. The Court should do so as well.

Under the language of the BLBA and its implementing regulation, "the statute of limitations begins to run upon: (1) a medical determination of (2) total disability (3) due to pneumoconiosis (4) which has been communicated to the

miner." *Brigance*, 718 F.3d at 593. The communication element, which derives from the implementing regulation, 20 C.F.R. § 725.308, was adopted to ensure that the miner actually knew that he was totally disabled by pneumoconiosis before the limitations clock began to run. 43 Fed. Reg. 36785. Consequently, "only those medical opinions using the phrase, 'total disability due to pneumoconiosis,' or otherwise clearly indicating a medical determination of total disability due to pneumoconiosis should be found sufficient to trigger the statutory time limit for filing a claim." *Adkins v. Donaldson Mine Co.*, 19 Black Lung Rep. (MB) 1-36, 1-43 (Ben. Rev. Bd. 1993).

This Court has likewise observed that the mandate in 30 U.S.C. § 932(f) for a medical determination of total disability due to pneumoconiosis is unambiguous, and therefore, the Court's task is to enforce it as written. *Brigance*, 718 F.3d at 594. *Brigance* accordingly declined to overlay a "well-reasoned and documented" gloss onto the medical determination, reasoning, "[n]o more is required" by Section 932(f) than the medical determination itself. *Id*.

By the same token, Section 932(f) demands *no less* than a clear medical determination of total disability due to pneumoconiosis. *See Arch of Ky.*, 556 F.3d at 482 ("[The statute of limitations] does not exist as a trap for the unwary or unsophisticated miner."). Medical opinions of an "imprecise nature" therefore will not trigger the running of the limitations period. *Westmoreland Coal Co.v.*

Stallard, 876 F.3d 663, 688 (4th Cir. 2017); *see also Tenn. Consol. Coal Co. v. Kirk*, 264 F.3d 602, 607 (6th Cir. 2001) (Physician's diagnosis of pneumoconiosis was insufficient to trigger running of the statute of limitations because "[a]lthough [physician] did diagnose Kirk with the initial stages of pneumoconiosis, he did not label him as 'totally disabled' on that basis or any other."); *Clark v. Karst-Robbins Coal Co.*, 45 F.3d 430 (table), 1994 WL 709288, at *1 (6th Cir. 1994) (unpublished) (state workers' compensation award for black lung not a "medical determination of total disability" because of differences in state and federal criteria). Indeed, to expand the scope of triggering medical determinations beyond the text of Section 932(f) would conflict with the remedial nature of the BLBA and congressional intent "to include as many miners under the Act as possible." *Arch of Ky.*, 556 F.3d at 482.

Contrary to Aberry's assertion (Pet. Br. 13), Dr. Rasmussen's 2003 report opinion did not "explicit[ly] and unambiguous[ly]" state that Mr. Fields was totally disabled by pneumoconiosis. (Aberry concedes as much when it posits the need to "construe[]" his report. *Id.*) Dr. Rasmussen's report was so infused with medical and legal jargon that it did not clearly communicate to Mr. Fields that he was "totally disabled due to pneumoconiosis." JA 288-325. Without further explication of the report, Mr. Fields did not know that: (1) he was totally disabled (the doctor indicated only that he could not perform his last coal mine employment

from a respiratory standpoint); (2) his "COPD," caused by both coal mine dust exposure and smoking, was legal pneumoconiosis (and possibly compensable); and (3) his total disability was *due to* pneumoconiosis (the doctor opined coal mine dust was a "significant cause" of his disability). JA 296. As the ALJ correctly surmised, an attorney might recognize that the totality of Dr. Rasmussen's report established total disability due to pneumoconiosis, but Mr. Fields would not.[3] JA 181. Again, the statute of limitations is not a trap for an unsophisticated miner.

At most, the evidence shows that Mr. Fields received the report and was told to drop his BLBA claim.[4] Pet. Br. 16-18. From that, Aberry simply "assumes" Mr. Fields was informed that Dr. Rasmussen diagnosed total disability due to pneumoconiosis. Pet. Br. 18-19. But jumping to that conclusion is improper:

[3] The doctor's finding that Mr. Felds lacked the pulmonary capacity to perform his last coal mine employment meets the definition of total disability set forth in 20 C.F.R. § 718.204(b)(1)(i). Moreover, his determination that coal mine dust was a "significant cause" of his pulmonary disability satisfies the "contributing cause" disability causation standard ("due to") under the facts here. *Big Branch Res.*, 737 F.3d at 1071. The point the ALJ was making, however, is that Mr. Fields would not understand this arcana. For example, it took years of litigation to sort out the appropriate disability causation standard. *See* 62 Fed. Reg. 3345 (Jan. 22, 1997).

[4] The ALJ found insufficient evidence to establish that Mr. Fields even received Dr. Rasmussen's 2003 medical opinion. JA 181-82. The Board declined to address this finding because it affirmed the ALJ's decision that Dr. Rasmussen's 2003 report did not constitute a medical determination of total disability due to pneumoconiosis. JA 6. Aberry has challenged the ALJ's "no receipt" finding before this Court. Pet. Br. 16-17. Like the Board, the Director takes no position on this issue because the ALJ's decision is affirmable on other grounds.

first, there is the requirement that a miner actually know of the determination; and second, there is the presumption in favor of a claim's timely filing. 20 C.F.R. § 725.308(b); *Arch of Ky.*, 556 F.3d at 479 (burden of proof rests on employer to prove by a preponderance of the evidence that claim was untimely). And Aberry's failure of proof rests at its feet. On two occasions – on deposition and at the ALJ hearing – Aberry had to the opportunity to cross-examine Mr. Fields regarding his understanding of Dr. Rasmussen's report. On neither occasion did it question him about it. *Cf.* JA 378 (Mr. Fields' testimony that no doctor told him he was totally disabled by pneumoconiosis).

Aberry has failed to demonstrate that Dr. Rasmussen's 2003 report comprised a medical diagnosis of total disability due to pneumoconiosis, or that the report was effectively communicated to Mr. Fields. Aberry accordingly failed to rebut the presumption of timely filing. The Court should deny the petition for review.

C. If the Court Determines that Dr. Rasmussen's 2003 Report Constitutes a Clear Medical Determination of Total Disability Due to Pneumoconiosis that was Communicated to Mr. Fields, then Extraordinary Circumstances Exist for Tolling the Statute of Limitations.

Aberry also argues that the ALJ's finding that extraordinary circumstances justify tolling the statute of limitations is "illogical and not supported by substantial evidence," and that the ALJ's reasoning renders the BLBA's statute of

limitations "insignificant and futile" because claimants should be held accountable for pursuing claims despite perceived futility. Pet. Br. 20. Aberry, however, misunderstands the doctrine of equitable tolling.[5]

Equitable tolling necessarily encompasses circumstances under which a miner, while pursuing his rights, misses the claim filing deadline through no fault of his own. *See U.S. v. Kwai Fun Wong*, 575 U.S. 402, 407-08 (2015) (Equitable tolling "means a court usually may pause the running of a limitations statute in private litigation when a party has pursued his rights diligently but some extraordinary circumstance prevents him from meeting a deadline.") (internal citations omitted). In such cases, a statute of limitations with no regard for the underlying circumstances can lead to unduly harsh results – lost opportunity for an otherwise deserving miner to receive compensation to which he is entitled under the Act (like Mr. Fields here). By allowing a black lung claim to go forward in appropriate circumstances, equitable tolling promotes the Act's remedial policy of compensating miners for pulmonary disease arising from their occupation. *See Arch of Ky.*, 556 F.3d at 482; *Navistar v. Forester*, 767 F.3d 638, 645 (6th Cir. 2014) (confirming that, as a remedial statute, the "BLBA 'must be liberally

[5] The Court may address this issue even though the Board did not. *Arch of Ky.*, 556 F.3d at 480.

construed to include the largest number of miners as benefit recipients.");

Shepherd v. Incoal, Inc., 915 F.3d 392, 402 (6th Cir. 2019) (same).

Such a reading of the law is consistent with *Arch of Kentucky*. In that case, the mine operator argued that the statute of limitations begins to accrue whenever a miner receives a medical diagnosis of total disability due to pneumoconiosis, even if it that medical determination is ultimately deemed incorrect. The court properly rejected this reasoning, holding that the limitations period will reset

> where a miner has filed a claim and included with it what is purported to be a positive diagnosis, but the diagnosis is outweighed by countervailing evidence and denied on that basis. In this situation, the misdiagnosis is not legally distinguishable from a nondiagnosis or self-diagnosis.

556 F.3d at 483. *Accord Consolidation Coal Co. v. Williams*, 453 F.3d 609, 616-18 (4th Cir. 2006); *Wyo. Fuel Co. v. Director, OWCP*, 90 F.3d 1502, 1507 (10th Cir. 1996). In reaching that conclusion, the Court explained that any other result would place the miner in an untenable bind: it would either penalize him for consulting too soon with a physician (who makes an aggressive but incorrect diagnosis) or force him to wait (and miss out on needed medical benefits and compensation) until his totally disabling condition became "obvious to *any* trained physician so as to ensure his claim will be granted." *Arch of Ky.*, 556 F.3d at 482.

In the instant case, Mr. Fields likewise should not be penalized for diligently pursuing his rights under the BLBA. In his 1996 claim, he failed to establish any

element of medical entitlement. JA 141 n.1. In 2003, he again sought benefits under the BLBA, and the district director considered the medical evidence of record, including the opinions of Dr. Rasmussen and Dr. Broudy. The district director again determined, albeit preliminarily, that this evidence was insufficient to award Mr. Fields' claim. With the preliminary denial in hand, Mr. Fields and his attorney determined that a new evaluation would be necessary, but only after sufficient time had passed for a doctor to assess whether his pneumoconiosis had progressed to the point of total disability.[6] JA 430. In response to Mr. Fields' request to withdraw his 2003 claim, the district director agreed that it was in his "best interest" to do so. JA 432. It therefore cannot be argued that Mr. Fields failed to diligently pursue his rights under the BLBA.

Nor should Mr. Fields be penalized for withdrawing his claim when he had limited resources and expected his pneumoconiosis would worsen, especially after the district director declares an intention to issue an adverse ruling.[7] It is

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[6] "[P]neumoconiosis is recognized as a latent and progressive disease." 20 C.F.R. § 718.201(c) (internal quotation omitted).

[7] If Mr. Fields had taken no action in response to the SSAE, the district director would have issued a proposed decision and order denying benefits, which would have become a final decision after thirty days. 20 C.F.R. §§ 718.418, 725.419(d). *Arch of Ky.* would have then controlled and decided the statute of limitations question in Mr. Fields' favor. It is only because Mr. Fields did not allow the preliminary decision to become final that Aberry has any basis for arguing untimeliness.

inapposite to argue that Mr. Fields should have pressed further with his claim in light of the adjudicating authority informing him that the medical evidence was deficient. Such a decision would further turn *Brigance* on its ear because it would require miners to pursue knowingly meritless claims based on insufficient medical evidence in order to preserve future claims.

Extraordinary circumstances thus warrant the tolling of the statute of limitations. Mr. Fields diligently pursued his rights under the Act. Only on the third try did he submit evidence sufficient for the district director and an ALJ to award benefits. Holding him accountable for knowledge of total disability due to pneumoconiosis in 2003 – when he diligently sought that assessment but was informed otherwise – moreover disregards the remedial purpose of the Act: to ensure that the largest number of miners have access to benefits. *Navistar*, 767 F.3d at 645.

CONCLUSION

For the foregoing reasons, the Benefit Review Board's order affirming the ALJ's award of benefits should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), I certify that this brief is proportionally spaced, using Times New Roman 14-point typeface, and contains 4,294 words, as counted by Microsoft Office Word 2010.

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CERTIFICATE OF SERVICE

I hereby certify that on December 20, 2019, the Director's brief was served electronically using the Court's CM/ECF system on the Court on the counsel of record.

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