



BRB No. 24-0186 BLA-A

JAMES R. GUTHRIE

Claimant-Petitioner

v.

ITEC

and

STATE WORKERS' INSURANCE FUND
(PA)

Employer/Carrier-
Respondents

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 04/28/2025

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits on Modification, Order Granting Claimant's Motion for Reconsideration, Order Amending Decision and Order Denying Benefits on Modification, and Errata Order Regarding Employer's Motion for Reconsideration of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick & Long),
Ebensburg, Pennsylvania, for Claimant.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Denying Benefits on Modification, Order Granting Claimant's Motion for Reconsideration, Order Amending Decision and Order Denying Benefits on Modification, and Errata Order Regarding Employer's Motion for Reconsideration (2023-BLA-05644) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).¹ This case involves Claimant's request for modification of the denial of his claim filed on June 10, 2019.²

In his initial August 31, 2021 Decision and Order Denying Benefits, the ALJ accepted the parties' stipulation that Claimant has 13.77 years of coal mine employment and thus found he could not invoke the presumption of total disability due to

¹ Initially, Employer filed an appeal of the ALJ's denial of benefits on February 26, 2024. On February 28, 2024, Claimant filed his appeal of the ALJ's denial of benefits. Following the ALJ's issuance of an Errata Order on February 28, 2024, Employer requested that it be allowed to withdraw its appeal on February 29, 2024. Subsequently, on March 28, 2024, the Benefits Review Board issued an Order granting Employer's motion. *Guthrie v. ITEC*, BRB No. 24-0186 BLA (Mar. 28, 2024) (Order) (unpub.). Consequently, the only appeal now pending before the Board is Claimant's appeal of the ALJ's denial of benefits. *Guthrie v. ITEC*, BRB No. 24-0186 BLA-A (May 20, 2024) (Order) (unpub.).

² Claimant filed a prior claim on August 21, 2007. Director's Exhibit 1 at 189. On December 28, 2009, ALJ Thomas M. Burke denied that claim because Claimant failed to establish total disability. *Id.* at 201. 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); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because ALJ Burke denied the prior claim for failure to establish total disability, Claimant was required to submit new evidence establishing total disability to warrant a review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3. The record also indicates that Claimant filed a claim on June 5, 2012, but withdrew it. Director's Exhibit 1 at 9. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).³ Considering entitlement under 20 C.F.R. Part 718, the ALJ found that while Claimant established he has legal pneumoconiosis, he failed to establish he has clinical pneumoconiosis or a totally disabling respiratory or pulmonary impairment.⁴ 20 C.F.R. §§718.202(a), 718.204(b)(2). Thus, he denied benefits.

On August 18, 2022, Claimant timely requested modification of the denial and submitted new evidence. Director's Exhibit 84. The district director referred the case to the Office of Administrative Law Judges for a hearing which was held on October 31, 2023.

In a December 21, 2023 Decision and Order Denying Benefits on Modification,⁵ which is the subject of the current appeal, the ALJ considered the claim without the benefit of the Section 411(c)(4) presumption and determined that Claimant has a totally disabling respiratory or pulmonary impairment but failed to establish he has clinical pneumoconiosis or, contrary to the ALJ's finding in his initial August 31, 2021 Decision and Order Denying Benefits, legal pneumoconiosis. Consequently, he again denied benefits.

Upon Claimant's request for reconsideration, the ALJ reconsidered the medical opinion evidence to take into account that, contrary to the ALJ's characterization in his Decision and Order Denying Benefits on Modification of Dr. Aulick's opinion submitted

³ 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); *see* 20 C.F.R. §718.305.

⁴ "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). "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).

⁵ When evaluating a request for modification, the ALJ "must consider whether any additional evidence submitted by the parties demonstrates a change in condition and, regardless of whether the parties have submitted new evidence, whether the evidence of record demonstrates a mistake in a determination of fact." 20 C.F.R. §725.310(c).

on modification, Dr. Aulick actually found that Claimant has legal pneumoconiosis and not clinical pneumoconiosis. Nevertheless, the ALJ again found that Claimant did not establish he has legal pneumoconiosis. January 30, 2024 Order Granting Claimant's Motion for Reconsideration. Thus, on the same day, the ALJ also issued an Order Amending Decision and Order Denying Benefits on Modification (Amended Decision and Order), incorporating his findings from his Order Granting Reconsideration, finding that Claimant established he has a totally disabling respiratory or pulmonary impairment but failed to establish he has clinical or legal pneumoconiosis. The ALJ therefore denied benefits.⁶

On appeal, Claimant argues the ALJ erred in finding he did not establish he has legal pneumoconiosis.⁷ Both Employer and the Acting Director, Office of Workers' Compensation Programs, declined to file response briefs.

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.⁸ 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).

⁶ Despite finding in his Amended Decision and Order that Claimant established he has a totally disabling respiratory or pulmonary impairment but did not establish he has clinical or legal pneumoconiosis, the ALJ erroneously concluded his Order stating that Claimant "demonstrated the existence of a totally disabling respiratory or pulmonary impairment due to coal workers' pneumoconiosis." Thus, the ALJ issued a subsequent Errata Order on February 28, 2024, clarifying that, while Claimant established he has a totally disabling respiratory or pulmonary impairment, he did not establish he has clinical or legal pneumoconiosis or that pneumoconiosis was a substantially contributing cause of his totally disabling respiratory or pulmonary impairment.

⁷ We affirm, as unchallenged on appeal, the ALJ's findings that Claimant failed to establish clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1) but did establish a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Amended Decision and Order at 21.

⁸ This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because Claimant performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 5-7.

Entitlement Under 20 C.F.R. Part 718

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must demonstrate he has a chronic lung disease or impairment “significantly related to, or substantially aggravated by, dust exposure in coal mine employment.” 20 C.F.R. §718.202(a) (2), (b).

Medical Opinions

On modification, the ALJ reconsidered the previously submitted medical opinions of Drs. Holt and Fino, along with the newly submitted opinions of Drs. Fino and Aulick. Amended Decision and Order at 19-21. Dr. Holt did not address the issue of whether Claimant has legal pneumoconiosis, and thus the ALJ gave his opinion no weight. *Id.* at 19; Director’s Exhibits 15, 19; Modification Director’s Exhibits 13, 16. In his earlier reports prepared in 2008, 2012, 2020, and 2021, prior to Claimant’s modification request, Dr. Fino opined that Claimant does not have legal pneumoconiosis but has a restrictive pulmonary impairment due to weight gain and not coal mine dust exposure. *See* Director’s Exhibit 1; Employer’s Exhibits 2, 3, 5. In his 2023 report submitted on modification, Dr. Fino reiterated that Claimant does not have legal pneumoconiosis, attributing Claimant’s restrictive impairment to weight gain, lack of effort during the pulmonary function testing, or both. Modification Employer’s Exhibit 1 at 19-20. He explained that the variability seen on the pulmonary function tests would not be seen in a coal dust-related impairment because pneumoconiosis causes a fixed impairment. *Id.* at 20-21. Dr. Aulick attributed Claimant’s severe restrictive lung disease to coal mine dust exposure. Modification Director’s Exhibit 83 at 5.

The ALJ found Drs. Fino’s and Aulick’s opinions to be well-reasoned and entitled to great weight as they were based on objective data, but he ultimately accorded greater

weight to Dr. Fino's opinion based on his superior qualifications as a pulmonary specialist.⁹ Amended Decision and Order at 21. Consequently, the ALJ found that Claimant failed to establish he has legal pneumoconiosis. *Id.*

Claimant argues the ALJ's explanation for why he credited Dr. Fino's opinion on legal pneumoconiosis, while rejecting it on clinical pneumoconiosis, does not satisfy the Administrative Procedure Act (APA).¹⁰ Claimant's Brief at 8-9 (unpaginated). Claimant also asserts the ALJ erred by failing to consider whether both coal mine dust exposure and obesity could be the causes of Claimant's restriction. *Id.* We agree.

When considering Dr. Fino's opinion as to whether Claimant has clinical pneumoconiosis, the ALJ found it "confusing," "internally inconsistent," and "inadequately reasoned." Amended Decision and Order at 19. The ALJ noted Dr. Fino pointed to negative x-ray evidence but then "assumed" Claimant has clinical pneumoconiosis based on the restriction seen on his pulmonary function studies, while also attributing Claimant's restrictive impairment to obesity or lack of effort on pulmonary function testing. *Id.*, *referencing* Modification Employer's Exhibit 1 at 19-20. The ALJ summarized Dr. Fino's opinion as "simultaneously 'assum[ing]' that clinical coal workers' pneumoconiosis is present but also reason[ing] against its existence" Amended Decision and Order at 19.

In contrast to the ALJ's discussion of Dr. Fino's opinion as to whether Claimant has clinical pneumoconiosis, the ALJ found Dr. Fino's opinion as to whether Claimant has legal pneumoconiosis well-reasoned and entitled to "great weight" because it was based on "objective medical data," consisting of the pulmonary function testing Dr. Fino conducted or reviewed. Amended Decision and Order at 20-21, *referencing* Modification Employer's Exhibit 1 at 21. In resolving the conflict in the opinions of Drs. Fino and Aulick as to the cause of Claimant's restrictive impairment, the ALJ noted Dr. Fino is Board certified in internal medicine and pulmonary disease whereas Dr. Aulick is Board certified in emergency medicine. Thus, the ALJ credited Dr. Fino's opinion based on his superior

⁹ The ALJ observed Dr. Fino is Board-certified in Internal Medicine and Pulmonary Disease while Dr. Aulick is Board-certified in Emergency Medicine. Amended Decision and Order at 21.

¹⁰ The Administrative Procedure Act provides that every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented" 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

qualifications. Amended Decision and Order at 21; Modification Director's Exhibits 79, 83; Modification Employer's Exhibit 1; Employer's Exhibit 4.

The issues of clinical pneumoconiosis and legal pneumoconiosis must be considered separately, and a finding that a physician's opinion is not well-reasoned regarding clinical pneumoconiosis does not necessarily indicate that the opinion cannot be credited regarding legal pneumoconiosis. *See Luketich v. Director, OWCP*, 8 BLR 1-477, 1-480 n.3 (1986). Rather, the ALJ is required to examine the validity of a physician's reasoning on each element of entitlement given the objective studies conducted and the underlying bases for the physician's conclusions. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 171-74 (4th Cir. 1997). In this case, however, the ALJ failed to adequately explain his inconsistent treatment for why he gave "great weight" to Dr. Fino's opinion regarding legal pneumoconiosis and "no weight" to his opinion regarding clinical pneumoconiosis when the physician and the ALJ essentially addressed the same inquiry as to both clinical and legal pneumoconiosis – the cause of Claimant's restrictive impairment and whether it is due to coal dust exposure. *See Barren Creek Coal Co. v. Wilmer*, 111 F.3d 352, 354 (3d Cir. 1997) (ALJ must adequately explain his credibility determinations); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989) (same). We therefore vacate the ALJ's determination that the medical opinion evidence does not support a finding of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), and the denial of benefits.¹¹

Remand Instructions

On remand, the ALJ must first reconsider whether Claimant has established legal pneumoconiosis. 20 C.F.R. §718.202(a). In reconsidering the medical opinions, the ALJ should consider the physicians' qualifications, the explanations of their medical opinions, the documentation underlying their judgments, and the sophistication and bases of their diagnoses, and he must explain his findings. *See Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163 (3d Cir. 1986). If the ALJ finds Claimant has legal pneumoconiosis on remand, he must consider whether it is a substantially contributing cause of Claimant's totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c). In reaching his credibility determinations, the ALJ must set forth his findings in detail and explain his rationale in accordance with the APA. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165. If the ALJ finds that Claimant does not have legal pneumoconiosis on remand, he may reinstate his denial of benefits.

¹¹ Although Claimant argues the ALJ rendered inconsistent findings among his initial and amended decisions regarding whether Claimant established disability causation, the ALJ subsequently clarified his finding in his Errata Order, *see* note 6 above.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Denying Benefits on Modification, Order Granting Claimant's Motion for Reconsideration, Order Amending Decision and Order Denying Benefits on Modification, and Errata Order Regarding Employer's Motion for Reconsideration, and we remand this case to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge