



BRB No. 24-0334 BLA

MARTIN D. HOLSTEIN )  
 )  
 Claimant-Respondent )  
 )  
 v. )  
 )  
 SOUTHERN APPALACHIAN COAL )  
 COMPANY )  
 )  
 and )  
 )  
 AMERICAN ELECTRIC POWER )  
 CORPORATION c/o EAST COAST RISK )  
 MANAGEMENT )  
 )  
 Employer/Carrier- )  
 Petitioners )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest )

**NOT-PUBLISHED**

DATE ISSUED: 04/23/2026

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

Samuel B. Petsonk (Petsonk PLLC), Oak Hill, West Virginia, for Claimant.

Mark J. Grigoraci (Robinson & McElwee PLLC), Charleston, West Virginia, for Employer.

Simon D. Jacobs (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for

Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Awarding Benefits (2023-BLA-05405) rendered on a claim filed on November 15, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ found the claim was timely filed and Employer is the properly designated responsible operator. She credited Claimant with 8.57 years of coal mine employment and therefore found he could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.<sup>1</sup> 30 U.S.C. §921(c)(4). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant did not establish clinical pneumoconiosis,<sup>2</sup> but established legal pneumoconiosis arising out of his coal mine employment and total disability due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.203(b), 718.204. Thus, she awarded benefits.

On appeal, Employer argues the ALJ erred in finding this claim was timely and that Employer is the responsible operator. On the merits, it argues the ALJ erred in finding Claimant established legal pneumoconiosis, disease causation, and disability causation.

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<sup>1</sup> Section 411(c)(4) 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); *see* 20 C.F.R. §718.305.

<sup>2</sup> "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).

Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), also responds in support of the award of benefits and urges the Benefits Review Board to affirm the ALJ's finding that Employer is the responsible operator. Employer replied to both Claimant's and the Director's briefs, responding to their assertions and reiterating its contentions.<sup>3</sup>

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.<sup>4</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

### **Timeliness**

Section 422(f) of the Act provides that “[a]ny claim for benefits by a miner . . . shall be filed within three years after . . . a medical determination of total disability due to pneumoconiosis . . . .” 30 U.S.C. §932(f). The medical determination must have “been communicated to the miner or a person responsible for the care of the miner.” 20 C.F.R. §725.308(a). A miner's claim is presumed to be timely. 20 C.F.R. §725.308(b). To rebut this presumption, 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. 30 U.S.C. §932(f); 20 C.F.R. §725.308(a); *see Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 668 (4th Cir. 2017).

Employer argues this claim, filed on November 15, 2019, was time barred because Claimant's treatment records and hearing testimony evidence establish Claimant was informed before 2010, and “certainly no later” than 2016, that pneumoconiosis totally disabled him. Employer's Brief at 18-20. We disagree.

In a March 3, 2010 treatment note, Dr. Johnston stated Claimant was previously diagnosed with black lung and Dr. Johnston observed an abnormality on a computed tomography (CT) scan that he concluded was “likely” black lung. Employer's Exhibit 7 at 1-2. Dr. Elwood diagnosed Claimant with probable chronic obstructive pulmonary

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<sup>3</sup> We affirm, as unchallenged on appeal, the ALJ's finding that Claimant has a totally disabling pulmonary or respiratory impairment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.204(b)(2); Decision and Order at 2.

<sup>4</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

disease (COPD) with coal workers' pneumoconiosis on February 22, 2011. Employer's Exhibit 8 at 1. Dr. Doyle's treatment notes dated March 7, 2016, state Claimant has moderate to severe obstruction based on the pulmonary function testing he conducted, and indicated he discussed the results of the testing with Claimant. Employer's Exhibit 9 at 2-4.

At the hearing, Claimant initially testified he was told he had a "totally disabling breathing impairment due to black lung disease" for the first time when he filed this claim. Hearing Transcript at 49. On cross-examination, Claimant was asked if he was told before 2010 whether he had total disability due to black lung and he responded "[y]es." *Id.* at 54. On redirect, Claimant testified he did not remember Dr. Allen, who conducted his Department of Labor (DOL)-sponsored complete pulmonary evaluation, but again testified he learned he was totally disabled due to black lung disease for the first time when he "had the x-rays taken in this federal black lung claim." *Id.* at 63. Claimant further testified he did not remember seeing Dr. Elwood in 2011 or receiving her diagnoses of COPD with pneumoconiosis. *Id.* at 55, 59. He testified he remembered taking a breathing test at Cabin Creek Health in 2016 but was not told he was totally disabled due to black lung at that time and "kn[e]w nothing else" besides just showing up for the test. *Id.* at 57-58.

The ALJ correctly recognized the rebuttable presumption that this claim was timely filed. Decision and Order at 8. She then considered Claimant's testimony and permissibly found it contradictory because he testified he received a communication about his total disability due to black lung for the first time in both 2020, during his DOL-sponsored complete pulmonary evaluation, and before 2010. *See Stallard*, 876 F.3d at 668 (ALJ is granted broad discretion in evaluating the credibility of the evidence, including witness testimony); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-152 (1989) (en banc); Decision and Order at 9; Hearing Transcript at 49, 54, 63. Further, she permissibly found that while Claimant's treatment records from Drs. Johnston, Elwood, and Doyle "reflect assessments of COPD and coal workers' pneumoconiosis," they do not show the physicians "determined that he was totally disabled due to pneumoconiosis, much less that they communicated this assessment to [Claimant]." *See Stallard*, 876 F.3d at 668; Decision and Order at 10-11; Employer's Exhibits 7-9.

Because the ALJ fully considered Claimant's testimony along with his treatment records and adequately explained her findings, we affirm her conclusion that the evidence does not rebut the presumption that this claim is timely. *See Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 310 (4th Cir. 2012); Decision and Order at 11.

## Responsible Operator

The responsible operator is the potentially liable operator that most recently employed the miner for at least one year.<sup>5</sup> 20 C.F.R. §§725.494(c), 725.495(a)(1). The district director is initially charged with identifying and notifying operators that may be liable for benefits and then identifying the “potentially liable operator” that is the responsible operator. 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b). Once the district director properly identifies a potentially liable operator, that operator may be relieved of liability only if it proves either that it is financially incapable of assuming liability for benefits or that another operator financially capable of assuming liability more recently employed the miner for at least one year. *See* 20 C.F.R. §725.495(c).

The ALJ found Claimant’s last coal mine employment for one year was with Employer. Decision and Order at 5-8. Although Claimant worked for later employers, she found his testimony too vague and inconsistent to establish that his subsequent work for Route 94 Truck Parts Unlimited, Incorporated (Route 94) and WV & Lee Service (WV & Lee) constituted coal mine employment and therefore found neither company meets the regulatory criteria to be potentially liable operators.<sup>6</sup> Decision and Order at 7-8; *see* 20 C.F.R. §725.495(c). Thus, she concluded Employer is the responsible operator. Decision and Order at 8.

Employer disputes the designation, contending Claimant’s testimony establishes Route 94 and WV & Lee last employed Claimant as a coal miner for a year or more.

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<sup>5</sup> For a coal mine operator to meet the regulatory definition of a “potentially liable operator,” each of the following conditions must be met: a) the miner’s disability or death must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

<sup>6</sup> Claimant’s Social Security Administration (SSA) earnings records reflect earnings from WV & Lee in 1987 and Route 94 in 1988. Director’s Exhibit 8 at 3-4. Claimant testified he worked at Route 94 from 1984 through 1988 and it was owned by the same person who owned WV & Lee. Hearing Transcript at 42, 53. Thus, the ALJ found the earnings from Route 94 and WV & Lee could have been combined to establish one year of employment for the purpose of assessing the responsible operator issue if the work constituted coal mine employment. Decision and Order at 8 n.2.

Employer's Brief at 15-17. As the Director asserts, however, Employer's failure to timely designate Claimant as a liability witness at any point before the district director precluded it from relying on Claimant's testimony on the responsible operator issue.<sup>7</sup> See Director's Response Brief at 6-7.

The regulation set forth at 20 C.F.R. §725.414(c) provides:

[A]ll parties must notify the district director of the name and current address of any potential witness whose testimony pertains to the liability of a potentially liable operator or the designated responsible operator. Absent such notice, the testimony of a witness relevant to the liability of a potentially liable operator or the designated responsible operator will not be admitted in any hearing conducted with respect to the claim unless the [ALJ] finds that the lack of notice should be excused due to extraordinary circumstances.

The record does not reflect Employer identified Claimant as a liability witness before the district director; nor does Employer allege it did so. Further, Employer did not argue extraordinary circumstances exist to excuse its failure to satisfy the regulatory requirement before the district director, the ALJ, or the Board.<sup>8</sup> See *Edd Potter Coal Co. v. Dir., OWCP*

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<sup>7</sup> Employer argues the Director forfeited its challenge to the consideration of Claimant's testimony by not raising it before the ALJ and by attending the hearing with full opportunity to question Claimant. Employer's Reply to Director at 11. Contrary to Employer's assertion, the Director argued before the ALJ that Employer is precluded from relying on Claimant as a liability witness. Director's Post Hearing Brief at 6 (unpaginated). Moreover, the ALJ and the Board are obligated to enforce the regulation's limitation on liability evidence even if no party objects to the evidence or testimony. See *Smith v. Martin Cnty. Coal Corp.*, 23 BLR 1-69, 1-74 (2004) (evidentiary limitations set forth in the regulations are mandatory and therefore are not subject to waiver).

<sup>8</sup> Employer further argues the ALJ's consideration of Claimant's testimony is a de facto excuse for the lack of notice and, even if it is not, the Board may not affirm the ALJ's finding that it is the responsible operator on alternative grounds but must instead consider only the ALJ's findings. Employer's Reply Brief to the Director at 11. As discussed above, the Board is required to enforce the evidentiary limitations whether they are raised on appeal or not. See *Smith*, 23 BLR at 1-74. Nor does Employer dispute that it did not give proper notice of Claimant's testimony as a liability witness or argue extraordinary circumstances exist for its failure to do so. *Edd Potter Coal Co. v. Dir., OWCP* [*Salmons*], 39 F.4th 202, 208 (4th Cir. 2022) (parties forfeit arguments before the Board not first raised to the ALJ). Consequently, we reject Employer's argument. See *Collins v. Pond Creek*

[*Salmons*], 39 F.4th 202, 208 (4th Cir. 2022) (parties forfeit arguments before the Board not first raised to the ALJ). Thus, Employer cannot rely on Claimant’s testimony on the responsible operator issue, rendering any error by the ALJ in weighing the testimony harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

We therefore affirm the ALJ’s finding that Employer is the properly designated responsible operator liable for payment of benefits in this claim. Decision and Order at 8.

### **Entitlement – 20 C.F.R. Part 718**

To be entitled to benefits under the Act without the benefit of a statutory presumption, Claimant must establish disease (pneumoconiosis); disease causation (pneumoconiosis 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 element 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 (1986) (en banc).

### **Legal Pneumoconiosis**

To establish legal pneumoconiosis, Claimant must establish 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. §718.201(a)(2), (b). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held a miner can establish legal pneumoconiosis by showing coal dust exposure contributed “in part” to his respiratory or pulmonary impairment. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d, 319, 322-23 (4th Cir. 2013); *Looney*, 678 F.3d at 311; *see also Arch on the Green v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014) (miner can establish a lung impairment is significantly related to coal mine dust exposure “by showing that his disease was caused ‘in part’ by coal mine employment”).

The ALJ considered the medical opinions of Drs. Harris, Allen, Zaldivar, and Rosenberg. Decision and Order at 14-26, 31-38. Dr. Harris stated that coal mine dust exposure led to Claimant’s emphysema, severe obstruction with diffusion impairment, and chronic bronchitis, qualifying as legal pneumoconiosis. Claimant’s Exhibit 3 at 4-5. Dr. Allen opined Claimant’s sixty-eight pack-years of tobacco smoke exposure and nine years of coal mine dust exposure caused a mixed restrictive and obstructive lung disease and

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*Mining Co.*, 751 F.3d 180, 187 (4th Cir. 2014) (remand not required when the facts and law permit only one conclusion); Employer’s Reply Brief to the Director at 11.

chronic bronchitis. Director’s Exhibit 18 at 4-5. In contrast, Drs. Rosenberg and Zaldivar opined Claimant has obstructive lung disease due solely to smoking and unrelated to coal mine dust exposure. Employer’s Exhibits 1 at 4-5; 10 at 6; 12 at 5-11. The ALJ found Drs. Harris’s and Allen’s opinions well-reasoned and accorded significant weight to Dr. Harris’s opinion. Decision and Order at 32-33. She found Drs. Zaldivar’s and Rosenberg’s opinions not well-reasoned and entitled to little weight. *Id.* at 38. Thus, she concluded Claimant established the existence of legal pneumoconiosis based on Dr. Harris’s opinion as well as Dr. Allen’s opinion. *Id.*

Employer contends the ALJ erred in her weighing of the medical opinion evidence. Employer’s Brief at 20-39. We disagree.

Initially, we reject Employer’s argument that the ALJ erroneously and “blindly” deferred to the Department of Labor’s position in the preamble to the 2001 revised regulations. Employer’s Brief at 25-27, 31-33. It contends the ALJ’s use of the preamble in assessing the medical opinion evidence violated the Supreme Court’s holding in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which invalidated the framework set forth in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). Employer’s Brief at 26-32; Employer’s Reply to the Director at 9-11. The Director responds that Employer’s argument is without merit as the holding in *Loper Bright*—that under the Administrative Procedure Act, 5 U.S.C. §551-559 as incorporated into the Act by 30 U.S.C. §932(a), courts may not defer to an agency interpretation of law simply because a statute is ambiguous—is inapplicable here because referencing the preamble does not involve statutory interpretation and the ALJ did not treat the preamble as a statute. Director’s Brief at 19. Further, the Director asserts an ALJ’s reference to and reliance on the recitation of scientific fact in the preamble does not implicate the *Chevron* framework. *Id.* We agree.

Contrary to Employer’s argument, the preamble is not a rule nor did the ALJ apply it as a rule; rather, she permissibly referenced it in determining whether Drs. Harris’s, Allen’s, Rosenberg’s, and Zaldivar’s opinions were credible on the issue of legal pneumoconiosis. See *Extra Energy, Inc. v. Lawson*, 140 F.4th 138, 152-54 (4th Cir. 2025); *Looney*, 678 F.3d at 313; *Spring Creek Coal Co. v. McLean*, 881 F.3d 1211, 1223-24 (10th Cir. 2018); *Cent. Ohio Coal Co. v. Director, OWCP [Sterling]*, 762 F.3d 483, 491 (6th Cir. 2014); *Helen Mining Co. v. Director, OWCP [Obush]*, 650 F.3d 248, 257 (3d Cir. 2011), *aff’g J.O. [Obush] v. Helen Mining Co.*, 24 BLR 1-117, 1-125-26 (2009); *Consolidation Coal Co. v. Director, OWCP [Beeler]*, 521 F.3d 723, 726 (7th Cir. 2008). Contrary to Employer’s argument, the ALJ referenced the preamble in assessing the medical opinion evidence, as Fourth Circuit law permits. *Lawson*, 140 F.4th at 152-54; *Looney*, 678 F.3d at 313.

Employer also argues the ALJ should have discounted Dr. Harris's opinion based on his employment as the Medical Director and pulmonologist with Stone Mountain Health Services (Stone Mountain). Employer's Brief at 20-23. It contends that, because Stone Mountain advertises that it assists coal miners in filing black lung claims, the medical opinions of physicians associated with Stone Mountain are biased in favor of claimants. *Id.* This argument is unpersuasive.

An ALJ should consider the degree to which any opinion is the product of bias, and “[t]o the extent that ALJ’s determine that a particular expert’s opinion is not, in fact, independent based on the facts of a particular claim,” the ALJ has discretion to find that opinion entitled to little weight. *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 951 (4th Cir. 1997); *see also Urgolites v. BethEnergy Mines, Inc.*, 17 BLR 1-20, 1-23 n.4 (1992); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-35-36 (1991) (en banc) (it is error to discredit, as biased, a medical report prepared for litigation absent a specific basis for finding the report unreliable). To support its argument that bias improperly influenced Dr. Harris's opinion, Employer submitted printouts from Stone Mountain's website explaining the services it provides to miners, including, among other things, providing medical testing and treatment, patient education, benefits counseling, and layperson legal representation. Employer's Exhibit 18. Employer also submitted an article from CHEST daily news<sup>9</sup> discussing Dr. Harris's work. Employer's Exhibit 19. Finally, Employer submitted Dr. Harris's deposition, in which Employer's counsel questioned him about his work for Stone Mountain.<sup>10</sup> Employer's Exhibit 17.

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<sup>9</sup> Dr. Harris testified CHEST Advocates is a quarterly national publication produced by the American College of Chest Physicians that encourages its readers to learn from health providers and professionals “how to improve the health and well-being of individuals and communities in various ways.” Employer's Exhibit 17 at 23.

<sup>10</sup> Dr. Harris testified that he is employed by the University of Virginia and contracted to work with Stone Mountain, which is partially funded by federal grants. Employer's Exhibit 17 at 15. As the medical director, if there is a question as to whether Stone Mountain should provide miners with legal services, he will weigh in on the issue. *Id.* at 9. He also writes medical opinions in anticipation of litigation on behalf of coal miners but stated, “I only write in support of miners if I truly believe that the miner has a claim that should be moved forward in the legal system” and that he does not “blanketedly support everyone that is seen at the Stone Mountain Clinic.” *Id.* at 10. Further, he stated that, in his opinion, “more often than not” the miners he sees do not qualify for benefits. *Id.* He provides written statements to miners who he believes are totally disabled due to black lung when “the evidence lines up with their case.” *Id.* at 11. Specifically, he stated that he advocates for miners to get affordable medications, diagnostic studies, pulmonary

The ALJ correctly found that “Dr. Harris’s ‘advocacy’ on behalf of miners does not automatically disqualify him from preparing an opinion in a particular claim.” Decision and Order at 33; *see Underwood*, 105 F.3d at 951. She further determined that Dr. Harris based his opinion on the objective findings in the record, he provided a detailed explanation of his reasoning, and his opinion aligns with the premises underlying the Act. Decision and Order at 33. Finally, noting Dr. Harris’s repeated explanation that he does not provide favorable medical opinions unless he believes black lung disease disables the miner and he qualifies for benefits, the ALJ reasonably found no reason to believe that Dr. Harris’s work “has affected his objectivity in this particular claim.” *Id.*; *see Underwood*, 105 F.3d at 951; *Urgolites*, 17 BLR at 1-23 n.4; *Melnick*, 16 BLR at 1-35-36; Employer’s Exhibit 19 at 10-11, 20. Moreover, Employer points to no specific evidence that Dr. Harris’s work colored his opinion in this case. Employer’s Brief at 20-23. Consequently, we affirm the ALJ’s determination that Dr. Harris’s work for Stone Mountain does not reduce the weight of his opinion. *See Looney*, 678 F.3d at 310; *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993) (ALJ has exclusive power to make credibility determinations and resolve inconsistencies in the evidence); Decision and Order at 33.

Employer further contends the ALJ erred in finding Dr. Harris’s opinion well-reasoned, asserting it is based on generalities and is “[c]ompletely lacking” a “reasonable explanation” for why Claimant’s coal mine dust exposure caused his COPD. Employer’s Brief at 37-38. We disagree.

Dr. Harris reviewed Claimant’s treatment records and medical testing. Claimant’s Exhibit 3. He found “clear evidence” of legal pneumoconiosis in the form of COPD based on radiographic evidence of emphysema, pulmonary function testing showing severe obstruction with a diffusion impairment, and chronic bronchitis. Claimant’s Exhibit 3 at 4-5. He considered Claimant’s employment history “notable” because he worked underground as a jack-setter, “which required heavy exertion in the return dust (heavy coal mine dust exposure).” *Id.* at 4-5. Thus, he concluded smoking alone could not account for Claimant’s impairment and opined that his “intense” exposure to coal mine dust at the face of the mine for nine years “undoubtedly” significantly contributed to his lung disease and

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rehabilitation, and mental health care. *Id.* at 12. He explained that he encourages miners to apply for benefits if he “feel[s] like they are severely impaired enough that warrants an application, and on occasion writ[es] legal opinions in support of their applications if their objective data suggests that they should qualify.” *Id.* at 20-22. In addition, he explained that he meets with members of Congress to advocate for patients, most recently meeting to discuss the number of individuals appearing at the clinic so members of Congress “are aware that Black Lung still remains an important problem for Southwest Virginia.” *Id.* at 33.

impairment. *Id.* He further cited to studies he opined show that miners who work in central Appalachia, where Claimant worked, “can develop rapidly progressive and severe pneumoconiosis with short mining tenures.” *Id.* at 5. The ALJ permissibly found Dr. Harris’s opinion reasoned and documented, as it was detailed, supported by the objective evidence, supported by scientific studies, and consistent with the premises underlying the Act.<sup>11</sup> *See Looney*, 678 F.3d at 311-12; Decision and Order at 32.

Employer additionally argues the ALJ erred in crediting Dr. Allen’s opinion. Employer’s Brief at 37. Employer’s arguments do not persuade us.

Dr. Allen examined Claimant as part of his Department of Labor-sponsored complete pulmonary evaluation on January 14, 2020. Director’s Exhibit 18. He noted Claimant’s occupational, smoking, and medical histories and conducted a physical examination, chest x-ray, pre- and post-bronchodilator pulmonary function testing, resting and exercise arterial blood gas studies, and an EKG. *Id.* Dr. Allen opined Claimant’s sixty-eight pack-years of cigarette smoking and nine years of coal mine dust exposure both contributed to his mixed restrictive and obstructive disease. *Id.* at 4. The ALJ permissibly found his opinion detailed, well-reasoned, and supported by the objective testing and based upon premises consistent with the Act.<sup>12</sup> *See Looney*, 678 F.3d at 310; *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); Decision and Order at 32.

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<sup>11</sup> Employer contends the ALJ should have discredited Dr. Harris’s opinion because he diagnosed a mixed restrictive obstructive impairment when the pulmonary function studies demonstrate an obstructive impairment and he diagnosed clinical pneumoconiosis when Claimant has not established the disease. Employer’s Brief at 38. However, while Dr. Harris diagnosed clinical pneumoconiosis associated with a restrictive impairment, he separately diagnosed legal pneumoconiosis in the form of an obstructive impairment, emphysema, and chronic bronchitis due in part to coal mine dust exposure. Decision and Order at 32; Claimant’s Exhibit 3 at 4. Consequently, Employer has not explained why Dr. Harris’s diagnosis of clinical pneumoconiosis causing a restrictive impairment would make his additional diagnosis of legal pneumoconiosis less reliable. *See* 20 C.F.R. §802.211(b); *see also Barnes v. Director, OWCP*, 18 BLR 1-55, 1-57 (1994).

<sup>12</sup> Employer argues the ALJ erred in crediting Dr. Allen because he opined the January 14, 2020 pulmonary function study demonstrated restriction, contrary to the opinions of Drs. Harris and Zaldivar. Employer’s Brief at 38 (citing Employer’s Exhibit 1 at 4; Claimant’s Exhibit 3 at 3). However, the ALJ accorded “significant weight” to Dr. Harris’s opinion. Decision and Order at 33. Therefore, even if we did not consider Dr. Allen’s opinion, Dr. Harris’s opinion is sufficient to support a finding of legal pneumoconiosis as long as the ALJ gave valid reasons for discrediting Employer’s experts.

Employer similarly argues the ALJ erred in discrediting the contrary opinions of Drs. Rosenberg and Zaldivar. Employer's Brief at 24-36. We again disagree.

Both Drs. Rosenberg and Zaldivar completely eliminated coal mine dust exposure as a contributing cause of Claimant's COPD, attributing it entirely to smoking. Employer's Exhibits 1, 10, 12. To support their conclusions that Claimant's smoking history was the sole cause of his severe lung impairment, they cited studies showing large losses in FEV1 on pulmonary function testing are associated with smoking rather than coal dust exposure. Employer's Exhibits 1 at 2-3, 12 at 6-9. The ALJ permissibly found their opinions are not well-reasoned because they relied on statistical generalities rather than the specifics of Claimant's exposure history. *See Cochran*, 718 F.3d at 324; Decision and Order at 34, 37; Employer's Brief at 24, 30.

In addition, Dr. Rosenberg excluded coal mine dust exposure as a cause of Claimant's impairment based on the markedly reduced FEV1/FVC ratio on pulmonary function testing, a finding he opined is inconsistent with coal dust-induced obstruction, which causes an equal reduction in the FEV1 and FVC. Decision and Order at 35; Employer's Exhibit 12 at 6-9. The ALJ permissibly discredited his opinion as inconsistent with the medical studies the DOL cited in the preamble to the 2001 revised regulations, which establish coal mine dust exposure may cause COPD with associated decrements in the FEV1 and FEV1/FVC ratio. *See Stallard*, 876 F.3d at 671-72; 65 Fed. Reg. 79,920, 79,940-43 (Dec. 20, 2000); Decision and Order at 35. Dr. Rosenberg also attributed Claimant's "widespread" emphysema solely to cigarette smoking because "coal dust exposure does not cause diffuse emphysema." Employer's Exhibit 12 at 10. The ALJ acted within her discretion in finding Dr. Rosenberg's opinion inadequately explained given the DOL's recognition in the preamble that coal mine dust can cause centrilobular emphysema - which is a diffuse-type emphysema - and that coal dust-induced emphysema and smoke-induced emphysema occur through similar mechanisms. *See Stallard*, 876 F.3d at 672; 65 Fed. Reg. at 79,943; Decision and Order at 37.

Additionally, Dr. Rosenberg opined that if coal mine dust were responsible for Claimant's impairment, that impairment would have been exhibited in the first few years of Claimant's coal mine employment. Employer's Exhibit 12 at 11-12. The ALJ permissibly discredited this reasoning as inconsistent with the regulations' recognition of pneumoconiosis as "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 Hobet*

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*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); Decision and Order at 38.

*Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be latent and progressive may be discredited); Decision and Order at 36. Further, the ALJ permissibly discredited his opinion that latent and progressive pneumoconiosis is “rare” because he did not adequately explain “why the Claimant could not be one of the ‘rare’ cases, or why, in his specific case, his history of coal mine dust exposure did not contribute to his respiratory impairment.” Decision and Order at 36; see *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Employer’s Exhibit 12 at 11.

Dr. Zaldivar diagnosed Claimant with severe emphysema unrelated to coal mine dust exposure based on the absence of clinical pneumoconiosis. Employer’s Exhibit 10 at 5-6. He explained if Claimant had centriacinar emphysema due to coal mine dust inhalation, the CT scan or x-ray evidence would show “radiographic dots or shadows that may appear to be linear” in his lungs. *Id.* Contrary to Employer’s argument, the ALJ permissibly found Dr. Zaldivar’s opinion unpersuasive because the regulations provide legal pneumoconiosis may be present even in the absence of a positive x-ray for clinical pneumoconiosis. See 20 C.F.R. §§718.201(a)(1),(2), 718.202(b); *Looney*, 678 F.3d at 313 (the regulations “separate clinical and legal pneumoconiosis into two different diagnoses” and “provide that no claim for benefits shall be denied solely on the basis of a negative chest x-ray”) (internal quotations omitted); Decision and Order at 37; Employer’s Brief at 31.

The ALJ also permissibly discredited the opinions of Drs. Rosenberg and Zaldivar because they failed to adequately explain why Claimant’s nine years of coal mine employment did not substantially aggravate his disabling COPD, in addition to the contribution from his history of cigarette smoking. See *Looney*, 678 F.3d at 313-14 (ALJ may accord less weight to a physician who fails to adequately explain why a miner’s chronic lung disease “was not due at least in part to his coal dust exposure”); *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order at 36-38.

Finally, we reject Employer’s assertion that the ALJ applied an erroneous legal standard and shifted the burden of proof onto Employer. Employer’s Brief at 33; Employer’s Reply Brief to the Director at 4. Contrary to Employer’s assertion, the ALJ permissibly found Drs. Harris’s and Allen’s opinions sufficient to establish legal pneumoconiosis, and more persuasive than Drs. Rosenberg’s and Zaldivar’s. *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order at 38.

Employer’s remaining arguments amount to a request to reweigh the evidence, which the Board is not empowered to do. *Anderson*, 12 BLR at 1-113; Employer’s Brief

at 35-36. Therefore, we affirm the ALJ's finding that Claimant established legal pneumoconiosis.<sup>13</sup> See Decision and Order at 38; 20 C.F.R. §718.201(a)(2), (b).

### **Disability Causation**

To establish disability causation, Claimant must prove pneumoconiosis is a “substantially contributing cause” of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause if it has “a material adverse effect on the miner’s respiratory or pulmonary condition,” or “[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment.” 20 C.F.R. §718.204(c)(1)(i), (ii). The ALJ found that because Claimant established his disabling respiratory impairment is due to coal mine dust exposure and smoking, he established both “that he has legal pneumoconiosis and that he is totally disabled due to legal pneumoconiosis.” Decision and Order at 38.

Employer argues Claimant failed to establish disability causation because he failed to establish legal pneumoconiosis. Employer’s Brief at 40-41. But because the physicians agree Claimant has disabling COPD and we affirmed the ALJ’s determination that Claimant’s disabling COPD constitutes legal pneumoconiosis, we reject Employer’s argument. See *Am. Energy, LLC v. Director, OWCP [Goode]*, 106 F.4th 319, 326 (4th Cir. 2024) (“[I]f a miner’s legal pneumoconiosis is his total disability, separately analyzing disability causation is unnecessary.”); Decision and Order at 38.

As Employer raises no additional arguments, we affirm the ALJ’s finding that Claimant established he is totally disabled due to legal pneumoconiosis based on Drs. Harris’s and Allen’s opinions. 20 C.F.R. §718.204(c); Decision and Order at 38. Consequently, we affirm the ALJ’s finding that Claimant established entitlement to benefits under 20 C.F.R. Part 718. Decision and Order at 39.

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<sup>13</sup> Because we affirm the ALJ’s finding that Claimant has a chronic lung disease or impairment “significantly related to, or substantially aggravated by, dust exposure in coal mine employment,” we reject Employer’s argument that a causal relationship between pneumoconiosis and coal mine employment has not been established under 20 C.F.R. §718.203. See 20 C.F.R. §718.201(b); *Kiser v. L & J Equip. Co.*, 23 BLR 1-246, 1-257 n.18 (2006) (ALJ’s finding that legal pneumoconiosis was established encompasses a finding that the pneumoconiosis arose out of coal mine employment); Employer’s Brief at 39-40.

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

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

GLENN E. ULMER  
Administrative Appeals Judge