

U.S. Department of Labor

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



BRB No. 25-0134 BLA

VICKI BOWEN)
(o/b/o DANA BOWEN))

Claimant-Petitioner)

v.)

KELLEY COAL COMPANY,)
INCORPORATED)

and)

WEST VIRGINIA COAL WORKERS')
PNEUMOCONIOSIS FUND)

Employer/Carrier-)
Respondents)

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

Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 04/13/2026

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Sean M. Ramaley,
Administrative Law Judge, United States Department of Labor.

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

Charity K. Lawrence and Wesley A. Shumway (Spilman, Thomas & Battle,
PLLC), Charleston, West Virginia, for Employer and its Carrier.

Before: ROLFE, JONES, and ULMER, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Denying Benefits (2023-BLA-05538) rendered on a subsequent claim filed on October 18, 2018,² pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ credited the Miner with 13.99 years of coal mine employment and thus found he could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,³ 30 U.S.C. §921(c)(4). Considering entitlement under 20 C.F.R. Part 718, the ALJ found the Miner had a totally disabling respiratory or pulmonary

¹ Claimant is the widow of the Miner, who died on June 28, 2020, while his claim was pending. Director's Exhibit 13. Claimant is pursuing this claim on behalf of the Miner's estate.

² This is the Miner's second claim for benefits. Director's Exhibit 3. The record from his initial claim had been destroyed pursuant to a document retention schedule. Director's Exhibit 1. The ALJ proceeded as if Claimant failed to establish any element of entitlement in the initial claim. Decision and Order at 25.

When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Given the ALJ proceeded as if Claimant did not previously establish any element of entitlement, she had to submit new evidence establishing at least one element to obtain review of the current claim on the merits. *See* 20 C.F.R. §725.309(c)(3), (4); *White*, 23 BLR at 1-3; Decision and Order at 25.

³ Section 411(c)(4) provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if he had 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.

impairment but did not have clinical pneumoconiosis or legal pneumoconiosis.⁴ 20 C.F.R. §§718.202(a), 718.204(b). Because Claimant failed to establish an essential element of entitlement, the ALJ denied benefits.

On appeal, Claimant argues the ALJ erred in finding the Miner did not have legal pneumoconiosis. Employer and its Carrier respond, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, declined to file a response brief.⁵

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.⁶ 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).

Entitlement Under 20 C.F.R. Part 718

To be entitled to benefits under the Act, 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. Statutory presumptions may assist claimants in establishing the elements of entitlement if certain conditions are met, but failure to establish any one of these elements precludes an award of benefits. *Anderson v.*

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).

⁵ We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established 13.99 years of coal mine employment and total disability but did not establish clinical pneumoconiosis. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 8, 25-30, 32-35. Thus, Claimant also established a change in an applicable condition of entitlement. 20 C.F.R. §725.309.

⁶ The Board will apply the law of the United States Court of Appeals for the Fourth Circuit as the Miner performed his most recent coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5.

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).

To establish legal pneumoconiosis, Claimant must prove the Miner had 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 has held a claimant can establish legal pneumoconiosis by showing coal mine dust exposure contributed “in part” to a miner’s respiratory or pulmonary impairment. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 322-23 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 311 (4th Cir. 2012); *see also Arch on the Green v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014) (A miner can establish legal pneumoconiosis “by showing that his disease was caused ‘in part’ by coal mine employment.”).

The ALJ considered the medical opinions of Drs. Scattaregia and Go that the Miner had legal pneumoconiosis and those of Drs. Zaldivar and Spagnolo that he did not. Decision and Order at 13-19, 33-38. Dr. Scattaregia diagnosed chronic obstructive pulmonary disease (COPD) and asthmatic bronchitis due in part to coal mine dust exposure. Director’s Exhibit 16. Dr. Go opined the Miner had COPD and emphysema due to coal mine dust exposure and cigarette smoking. Claimant’s Exhibit 1. Dr. Zaldivar opined the Miner had emphysema related solely to smoking. Employer’s Exhibit 6. Dr. Spagnolo opined the Miner had chronic bronchitis and asthma solely due to smoking. Employer’s Exhibit 9 at 29.

The ALJ found the opinions of Drs. Scattaregia and Spagnolo are not reasoned or documented and thus he assigned them each diminished weight. Decision and Order at 36, 38. He found Dr. Go’s opinion is reasoned, but not documented. *Id.* at 37. Specifically, the ALJ found Dr. Go mischaracterized Dr. Zaldivar’s rationale for excluding legal pneumoconiosis when Dr. Go reviewed and criticized Dr. Zaldivar’s opinion. *Id.* In contrast, the ALJ found Dr. Zaldivar’s opinion excluding legal pneumoconiosis to be reasoned and documented and entitled to more weight than Dr. Go’s opinion. *Id.* at 37-38. Thus, he concluded Claimant did not establish legal pneumoconiosis. 20 C.F.R. §718.202(a)(4); Decision and Order at 38.

Claimant argues the ALJ’s rationale for discrediting Dr. Go’s opinion is erroneous and inadequately explained.⁷ Claimant’s Brief at 6-9 (unpaginated). We agree.

⁷ As no party has challenged the ALJ’s discrediting Drs. Scattaregia’s and Spagnolo’s opinions on appeal, we affirm the ALJ’s weighing of these medical opinions. *See Skrack*, 6 BLR at 1-711; Decision and Order at 35-36, 38.

Dr. Go determined the Miner had obstructive lung disease based on symptoms of dyspnea and wheezing along with pulmonary function test results. Claimant's Exhibit 1. He also diagnosed centrilobular emphysema based on x-ray and computed tomography scan imaging. *Id.* at 4-7. He opined the Miner's fourteen years of coal mine dust exposure led him to develop obstructive lung disease and emphysema; thus, the doctor diagnosed legal pneumoconiosis. *Id.* at 4-8. Dr. Go also opined the Miner's cigarette smoking was a significant contributing cause of his obstructive impairment and emphysema. *Id.* In support of his opinion, he cited medical literature that explains smoking and coal dust can cause comparable levels of impairment. *Id.*

Dr. Go then addressed Dr. Zaldivar's opinion. Among other aspects of the report, Dr. Go took issue with Dr. Zaldivar's statement that "[f]or legal pneumoconiosis to be diagnosed there must be an identifiable episode where there was an incident while working that exposed the lungs of the individual to noxious agent separate from coal or silica dust that resulted in immediate medical attention." Claimant's Exhibit 1 at 6 (quoting Employer's Exhibit 6 at 8). Dr. Go indicated that this statement conflicts with the regulatory definition of legal pneumoconiosis at 20 C.F.R. §718.201. *Id.*

The ALJ found Dr. Go's opinion is reasoned because "Dr. Go adequately explained how the studies [he cited] supported his conclusion that both smoking and coal dust can cause emphysema." Decision and Order at 37. The ALJ also found Dr. Go's opinion supported by the abnormal pulmonary function testing, radiographic evidence of emphysema, and the Miner's symptoms. *Id.* at 36-37. However, the ALJ found "Dr. Go somewhat misstates Dr. Zaldivar's opinion on legal pneumoconiosis." *Id.* at 36. The ALJ explained:

Upon reviewing Dr. Zaldivar's report, the above-quoted definition of legal pneumoconiosis followed Dr. Zaldivar's opinion that there was no evidence that coal dust caused [the] Miner's emphysema; therefore, Dr. Zaldivar opined that for legal pneumoconiosis to be diagnosed, there must have been another trigger apart from coal or silica dust.

Id. Based on his finding that Dr. Go "somewhat misstates" Dr. Zaldivar's opinion, the ALJ assigned Dr. Go's opinion diminished weight as poorly documented. *Id.* at 37.

But contrary to the ALJ's analysis, Dr. Go's summary of Dr. Zaldivar's rationale for excluding legal pneumoconiosis is accurate. Dr. Zaldivar stated as follows:

[Legal pneumoconiosis] is not present because the emphysema, which [the Miner] had, which was severe, was not the result of his coal mining work. It is not the result of any injuries to his lungs that occurred during the course of

mining that had been documented at any time in the records. For legal pneumoconiosis to be diagnosed there must be an identifiable episode where there was an incident while working that exposed the lungs of the individual to noxious agent separate from coal or silica dust that resulted in immediate medical attention. Such event should be well-documented in the employment record. Such event may result in acute and perhaps chronic lung disease whether obstructive or restrictive. There is no evidence in the records, which I reviewed that such event took place.

Employer's Exhibit 6 at 8. The regulations define legal pneumoconiosis as 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). Under the plain language of this definition, there is no requirement of an "identifiable episode" or "incident while working that exposed the lungs of [a miner] to [a] noxious agent separate from coal or silica dust that resulted in immediate medical attention," as Dr. Zaldivar opined. *Id.*; see also 20 C.F.R. §718.201(c) (recognizing pneumoconiosis as "a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure"); Employer's Exhibit 6 at 8. Thus, substantial evidence does not support the ALJ's sole basis for assigning diminished weight to Dr. Go's opinion: that Dr. Go misstated an aspect of Dr. Zaldivar's opinion. Therefore, we vacate his ruling. *Lane v. Union Carbide Corp.*, 105 F.2d 166, 174 (4th Cir 1997) (substantial evidence is more than a scintilla, but only such evidence that a reasonable mind could accept as adequate to support a conclusion).

Additionally, we find merit in Claimant's argument that, even were Dr. Go mistaken about the portion of Dr. Zaldivar's reasoning that he criticized, the ALJ did not explain why he discredited "the substantive merits" of Dr. Go's own opinion that the Miner's COPD and emphysema constituted legal pneumoconiosis because they were due in part to coal mine dust exposure. Claimant's Brief at 8-9. Despite finding that Dr. Go supported his opinion with medical studies finding that both smoking and coal mine dust exposure can cause centrilobular emphysema, that Dr. Zaldivar's criticisms of those studies did not undercut Dr. Go's opinion, and that Dr. Go's opinion was reasoned, the ALJ did not explain why he discredited the entirety of Dr. Go's opinion that the Miner had legal pneumoconiosis. Decision and Order at 37-38. Therefore, the ALJ's decision does not comply with the explanatory requirements of the Administrative Procedure Act (APA).⁸

⁸ The Administrative Procedure Act requires the ALJ to set forth his "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

See Sea “B” Mining Co. v. Addison, 831 F.3d 244, 256-57 (4th Cir. 2016); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Relatedly, the ALJ did not apply equal scrutiny to the evidence. *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-139-40 (1999) (en banc) (ALJ must apply equal scrutiny to the relevant evidence). The ALJ recognized that Dr. Zaldivar also reviewed and criticized Dr. Go’s opinion. Decision and Order at 37. Dr. Zaldivar addressed the studies cited by Dr. Go and opined the data obtained in such studies was faulty and thus he disagreed with Dr. Go’s statement that coal mine dust and cigarette smoke cause comparable impairment. Employer’s Exhibit 8 at 47-55. As with Dr. Go’s criticisms of Dr. Zaldivar’s opinion, the ALJ was not persuaded by Dr. Zaldivar’s criticisms and found them insufficient to discredit Dr. Go’s report. Decision and Order at 37. Yet, unlike his discrediting of Dr. Go’s opinion, the ALJ did not give Dr. Zaldivar’s opinion any lesser weight for this reason. *Id.* at 38. The ALJ did not adequately explain why he discounted Dr. Go’s opinion insofar as it was based on what the ALJ found were unfounded criticisms, but not Dr. Zaldivar’s opinion. Thus, his findings do not satisfy the APA. *See Wojtowicz*, 12 BLR at 1-165. Therefore, we vacate the ALJ’s finding that Dr. Zaldivar’s opinion is reasoned and documented. *Id.* at 37-38.

Finally, we agree with Claimant’s argument that the ALJ erred in failing to address her argument, raised in her post-hearing brief, that Dr. Zaldivar’s rationale for excluding legal pneumoconiosis is not credible because it is contrary to the regulations and inconsistent with the preamble to the 2001 revised regulations. *Wojtowicz*, 12 BLR at 1-165; *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984); Claimant’s Brief at 8-9; Claimant’s Post-Hearing Brief at 7-8.

As discussed above, Dr. Zaldivar indicated that the Miner’s emphysema “is not the result of any injuries to his lungs that occurred during the course of mining that had been documented at any time in the records.”⁹ Employer’s Exhibit 6 at 8. He testified that the Miner’s x-rays revealed centriacinar emphysema in the upper portion of his lungs, which is consistent with smoking-related emphysema. Employer’s Exhibit 8 at 29-31. He acknowledged coal mine dust can cause centriacinar emphysema but opined it did not in this case because the objective testing is typical for emphysema caused by smoking. *Id.* at 39-40. When specifically asked if he required clinical pneumoconiosis to be present on x-ray to attribute the emphysema to coal mine dust exposure, he stated “yes, one has to have

⁹ Dr. Zaldivar reiterated this rationale on cross-examination in his deposition, stating there is no “evidence that [emphysema was] aggravated by dust exposure because we have no evidence that this man required immediate attention while he was working, that – that aggravated it.” Employer’s Exhibit 8 at 71.

radiographic evidence of pneumoconiosis or emphysema -- or emphysema.”¹⁰ *Id.* at 64-65. He also testified the Miner had asthma. Employer’s Exhibit 8 at 20-21. Addressing whether coal mine dust exposure caused the asthma, he stated the disease “appears to have occurred after he left the mines.” *Id.* at 44-45, 61-63.

In her post-hearing brief, Claimant argued Dr. Zaldivar “relied on the absence of clinical [coal workers’ pneumoconiosis] and the time between cessation of coal mine dust exposure to exclude” legal pneumoconiosis and this rationale is contrary to the preamble and the regulations. Claimant’s Post-Hearing Brief at 7-8. The ALJ erred in failing to address this argument when he assessed the credibility of Dr. Zaldivar’s opinion. 5 U.S.C. §557(c)(3)(A); *Wojtowicz*, 12 BLR at 1-165; *McCune*, 6 BLR at 1-998.

In view of the foregoing errors, we vacate the ALJ’s finding that the medical opinion evidence does not establish legal pneumoconiosis and remand the case for further consideration. 20 C.F.R. §§718.201, 718.202(a)(4); Decision and Order at 38-40.

Remand Instructions

On remand, the ALJ must reweigh the opinions of Drs. Go and Zaldivar on the issue of legal pneumoconiosis. He should address the comparative credentials of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). Moreover, he must weigh all the relevant evidence together to determine whether the Miner suffered from legal pneumoconiosis. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 208-09 (4th Cir. 2000). The ALJ must set forth his findings in detail, including the underlying rationales, in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

¹⁰ Dr. Zaldivar explained when an individual inhales coal mine dust and the dust is “deposited in the respiratory bronchioles” a fibrotic reaction occurs resulting in damage to the adjacent lung tissue and causing centriacinar emphysema. Employer’s Exhibit 8 at 40. When asked if coal mine dust can cause the emphysema seen in the Miner’s lungs, Dr. Zaldivar indicated, “Yes, it can, if it is associated with the nodule, as I said, which is the reaction of the lungs to the dust.” *Id.* at 68.

If Claimant fails to establish legal pneumoconiosis, she has failed to establish pneumoconiosis, an essential element of entitlement, and the ALJ may reinstate the denial of benefits. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2. However, if Claimant establishes legal pneumoconiosis, the ALJ should address if she established pneumoconiosis was a “substantially contributing cause” of the Miner’s totally disabling respiratory or pulmonary impairment.¹¹ 20 C.F.R. §718.204(c)(1).

Accordingly, we affirm in part and vacate in part the ALJ’s Decision and Order Denying Benefits and remand the case for further consideration consistent with this opinion.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge

¹¹ Pneumoconiosis is a substantially contributing cause if it has “a material adverse effect on the miner’s respiratory or pulmonary condition” or if it “[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); *see Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 37-38 (4th Cir. 1990).