U.S. Department of Labor

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

BRB Nos. 22-0224 BLA
and 22-0227 BLA

BARBARA BENTLEY (o/b/o and Widow of PAUL BENTLEY) Claimant-Respondent v. RING ENTERPRISES, INCORPORATED Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 8/10/2023 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits in Living Miner's and Survivor's Claims of Evan H. Nordby, Administrative Law Judge, United States Department of Labor.

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

Jeffrey S. Goldberg (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, 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, BOGGS and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Evan H. Nordby's Decision and Order Awarding Benefits in Living Miner's and Survivor's Claims (2017-BLA-06039 and 2019-BLA-05014) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's subsequent claim filed on September 17, 2014,[1] and a survivor's claim filed on July 6, 2018.[2]

The ALJ found Ring Enterprises, Inc. (Ring Enterprises) is the responsible operator. He also credited the Miner with 9.98 years of coal mine employment, and thus found Claimant[3] could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.[4] Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant did not establish the Miner had clinical pneumoconiosis, but did establish he had legal pneumoconiosis and a totally disabling respiratory or pulmonary impairment due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204(b)(2), (c). Thus he awarded benefits in the miner's claim.[5] Because the Miner was entitled to benefits at the time of his death,

[1] This is the Miner's third claim for benefits. On May 23, 2002, ALJ Richard Stansell-Gamm denied the Miner's prior claim, filed on November 22, 1999, because he failed to establish the existence of pneumoconiosis. Miner's Claim (MC) Director's Exhibit 2. The Miner took no further action until filing his current claim. MC Director's Exhibit 4.

[2] Employer's appeal in the miner's claim was assigned BRB No. 22-0224 BLA, and its appeal in the survivor's claim was assigned BRB No. 22-0227 BLA. The Benefits Review Board has consolidated these appeals for purposes of decision only.

[3] Claimant is the widow of the Miner, who died on June 5, 2018, while his claim was pending before the ALJ. Survivor's Claim (SC) Director's Exhibit 4. She is pursuing the miner's claim on her husband's behalf and her survivor's claim. SC Director's Exhibit 1.

[4] Section 411(c)(4) of the Act 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) (2018); *see* 20 C.F.R. §718.305.

[5] 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

the ALJ also determined Claimant is automatically entitled to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).[6]

On appeal, Employer argues the ALJ lacked the authority to hear and decide the case because he was not appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2.[7] It also argues the removal provisions applicable to ALJs rendered his appointment unconstitutional. Further, it argues the ALJ erred in finding Ring Enterprises is the responsible operator. On the merits of entitlement, Employer asserts the ALJ erred in finding Claimant established legal pneumoconiosis. It also asserts the ALJ erred in relying on the preamble to the 2001 revised regulations to discredit medical opinions.

Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to reject Employer's Appointments Clause challenges and its argument that the ALJ erred in relying on the preamble to assess the evidence in this case. In addition, the Director urges the Board to

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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). Claimant established a change in an applicable condition of entitlement at 20 C.F.R. §725.309 by establishing the existence of legal pneumoconiosis. *See E. Associated Coal Corp. v. Director, OWCP* [*Toler*], 805 F.3d 502, 511-12 (4th Cir. 2015).

[6] Section 422(*l*) of the Act provides that the survivor of a miner who was eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits, without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[7] Article II, Section 2, Clause 2, sets forth the appointing powers:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

affirm the ALJ's responsible operator determination. In a reply brief, Employer reiterates its contentions.

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).

Appointments Clause/Removal Protections

Employer urges the Board to vacate the ALJ's Decision and Order and remand the case to be heard by a different, constitutionally appointed ALJ pursuant to *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044 (2018).[9] Employer's Brief at 34-39. It acknowledges the Secretary of Labor ratified the prior appointments of all sitting Department of Labor (DOL) ALJs on December 21, 2017,[10] but maintains the ratification was insufficient to cure the constitutional defect in the ALJ's prior appointment. *Id.* at 35-37. In addition, it challenges

[8] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the Miner performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director's Exhibit 5.

[9] *Lucia* involved a challenge to the appointment of a Securities and Exchange Commission (SEC) ALJ. The United States Supreme Court held that, similar to Special Trial Judges at the United States Tax Court, SEC ALJs are "inferior officers" subject to the Appointments Clause. *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044, 2055 (2018) (citing *Freytag v. Comm'r*, 501 U.S. 868 (1991)). The Department of Labor (DOL) has conceded that the Supreme Court's holding applies to its ALJs. *Big Horn Coal Co. v. Sadler*, 10th Cir. No. 17-9558, Brief for the Fed. Resp. at 14 n.6.

[10] The Secretary of Labor (Secretary) issued a letter to the ALJ on December 21, 2017, stating:

> In my capacity as head of the [DOL], and after due consideration, I hereby ratify the Department's prior appointment of you as an [ALJ]. This letter is intended to address any claim that administrative proceedings pending before, or presided over by, [ALJs] of the U.S. [DOL] violate the Appointments Clause of the U.S. Constitution. This action is effective immediately.

Secretary's Dec. 21, 2017 Letter to ALJ Nordby.

the constitutionality of the removal protections afforded DOL ALJs. *Id.* at 34-39; Employer's Reply Brief at 1 n.1. It generally argues the removal provisions for ALJs contained in the Administrative Procedure Act (APA), 5 U.S.C. §7521, are unconstitutional, citing Justice Breyer's separate opinion and the Solicitor General's argument in *Lucia*. Employer's Brief at 35-38. Moreover, it relies on the United States Supreme Court's holdings in *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010), and *Seila Law v. CFPB*, 591 U.S. , 140 S. Ct. 2183 (2020), as well as the opinion of the United States Court of Appeals for the Federal Circuit in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019), *vacated*, 594 U.S. , 141 S. Ct. 1970 (2021). *Id.* at 34-39. For the reasons set forth in *Johnson v. Apogee Coal Co.*, BRB No. 22-0022 BLA, slip op. at 3-5 (May 26, 2023), *appeal docketed*, No. 23-3612 (6th Cir. July 25, 2023), and *Howard v. Apogee Coal Co.*, 25 BLR 1-301, 1-307-08 (2022), we reject Employer's arguments.

Responsible Operator

The responsible operator is the "potentially liable operator, as determined in accordance with [20 C.F.R.] §725.494,[11] that most recently employed the miner" for at least one year. 20 C.F.R. §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 identifies a potentially liable operator, that operator may be relieved of liability only if it proves it is financially incapable of assuming liability for benefits, or another operator more recently employed the miner for a cumulative period of at least one year and is financially capable of assuming liability for benefits. *See* 20 C.F.R. §725.495(c).

The ALJ found Ring Enterprises meets the regulatory definition of a potentially liable operator. 20 C.F.R. §725.494(a)-(e); Decision and Order at 6-7. Employer does not challenge this finding; thus, we affirm it. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Nor does it allege it is financially incapable of assuming liability for

[11] 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).

benefits. Thus, it can avoid liability only by establishing that another financially capable operator employed the Miner more recently for at least one year.

Employer argues collateral estoppel bars Ring Enterprises from being identified as the responsible operator because ALJ Frederick D. Neusner and ALJ Richard Stansell-Gamm dismissed it in the prior claims. Employer's Brief at 12-16; Employer's Reply Brief at 1-6. We disagree. Collateral estoppel bars relitigation of an issue that was previously litigated only when, among other requirements, the determination of that issue was necessary to the outcome of the prior proceedings. *See Collins v. Pond Creek Mining Co.*, 468 F.3d 213, 217 (4th Cir. 2006); *Ark. Coals, Inc. v. Lawson*, 739 F.3d 309, 320-21 (6th Cir. 2014); *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-137 (1999) (en banc). As the Director accurately notes, because the Miner's prior claims were denied, identification of the responsible operator was not necessary to the outcome of the prior proceedings. *Lawson*, 739 F.3d at 321 (collateral estoppel does not bar reconsideration of the responsible operator issue in a subsequent claim because the identification of a responsible operator is not a necessary finding where benefits are denied); Director's Brief at 7. Consequently, we hold as a matter of law that collateral estoppel does not bar Ring Enterprises from being named as the responsible operator. *Collins*, 468 F.3d at 217; *Lawson*, 739 F.3d at 320-21; *Hughes*, 21 BLR at 1-137.

We also reject Employer's argument that the ALJ's "wholesale acceptance" of the district director's finding that Ring Enterprises is the responsible operator violated the APA requirements to consider all relevant evidence and explain the basis for his decision. Employer's Brief at 17. Contrary to Employer's argument, the ALJ noted the evidence the district director considered in making his findings, noted the parties' arguments, and made his own independent findings on the issue. Decision and Order at 6-9. Specifically, he noted the district director acknowledged Bullion Hollow Mining, Inc. (Bullion Hollow Mining), Crockett Coal Company (Crockett Coal), and Virginia Coal Processing employed the Miner after Ring Enterprises employed him. *Id.* at 7-9; Miner's Claim (MC) Director's Exhibit 10. He also noted the district director determined the Miner had less than one year of coal mine employment with Virginia Coal Processing in 1980, Crockett Coal in both 1981 and 1982, and Bullion Hollow Mining in 1982. *Id.* Additionally, he noted the district director stated the Miner "was last employed for more than one calendar year with Ring Enterprises, from 1978 to January 22, 1980." *Id.* at 9.

Further, he divided the Miner's yearly earnings from 1978 to 1982 as reported in his Social Security Administration (SSA) earnings records by the coal mine industry's average yearly earnings for 125 days of employment, as reported in Exhibit 610 of the *Coal*

Mine (Black Lung Benefits Act) Procedure Manual.[12] *Id.* at 6-9. For each year in which the Miner's earnings met or exceeded the Exhibit 610 average yearly earnings for 125 days of employment, he credited him with a full year of coal mine employment. *Id.* at 7-9. For the years in which the Miner's earnings fell short, he credited him with a fractional year, calculated by dividing his annual earnings by the Exhibit 610 average yearly earnings. *Id.* In applying this formula, he found the Miner worked one year for Ring Enterprises in 1978, but he worked less than one year for Virginia Coal Processing in 1980, Crockett Coal in both 1981 and 1982, and Bullion Hollow Mining in 1982. *Id.* at 9. Thus, the ALJ reasonably found Employer did not meet "its burden to establish that it was not the potentially liable operator that most recently employed [the Miner] as a miner." *Id.* We therefore reject Employer's assertion that the ALJ's responsible operator determinations failed to comply with the APA. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762, (4th Cir. 1999) (APA duty of explanation is satisfied if reviewing court can discern what the ALJ did and why he did it).

We further reject Employer's argument that the ALJ erred in shifting the burden from the Director to Employer to show a successor relationship[13] between Bullion Hollow Coal, Inc. (Bullion Hollow Coal) and Bullion Hollow Mining. Employer's Brief at 17-20. Contrary to Employer's argument, as previously noted, once the district director identified Ring Enterprises as a potentially liable operator and the designated responsible operator, the burden shifted to Employer to show that an operator employed the Miner for at least one year subsequent to his tenure with Ring Enterprises, or that it was financially incapable of paying benefits. 20 C.F.R. §§725.408(b), 725.414, 725.456(b)(1), 725.495(c)(2). Here, the district director conducted an investigation in accordance with the regulations and identified Ring Enterprises as the designated responsible operator. The ALJ noted the district director determined that despite Bullion Hollow Coal and Bullion Hollow Mining having similar names, "the two companies have different Employer Identification Numbers." Decision and Order at 8; MC Director's Exhibits 39, 52. He rationally found

[12] The "average yearly earnings" figures appear in the center column of Exhibit 610 and reflect multiplication of the "average daily wage" by 125 days.

[13] A "successor operator" is "[a]ny person who, on or after January 1, 1970, acquired a mine or mines, or substantially all of the assets thereof, from a prior operator, or acquired the coal mining business of such prior operator, or substantially all of the assets thereof[.]" 20 C.F.R. §725.492(a). It is created when an operator ceases to exist due to reorganization, liquidation, sale of assets, merger, consolidation, or division. 20 C.F.R. §725.492(b)(1)-(3). Where an operator is considered a successor operator, any employment with a prior operator "is deemed to be employment with the successor." 20 C.F.R. §725.493(b)(1).

Employer "presented no evidence to establish that there was any kind of successor relationship," and thus the Miner's employment with both companies cannot be combined. Decision and Order at 9; 20 C.F.R. §725.495; Employer's Post-Hearing Brief at 6-7.

Finally, Employer argues the ALJ erred in finding the Miner did not work at least one year for either Crockett Coal or Virginia Coal Processing as both operators employed the Miner "for more than 125 days." Employer's Brief at 20-21. The Director responds that the ALJ accurately found that neither operator employed the Miner for one year and Employer has offered no evidence that either operator employed the Miner for a year as 20 C.F.R. §725.494(c) requires. Director's Brief at 10-11.

We agree with the Director's argument that Employer has not offered any evidence that either Crockett Coal or Virginia Coal Processing employed the Miner for a year. As this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, the ALJ must conduct the threshold inquiry of whether Claimant established the Miner had a calendar year of coal mine employment prior to determining if he worked at least 125 days during that year. 20 C.F.R. §725.101(a)(32); *see Clark v. Barnwell Coal Co.*, 22 BLR 1-277, 1-280 (2003). Proof that a miner's earnings exceeded the average 125-day earnings that the Bureau of Labor Statistics reports for a given year does not, in itself, establish the miner worked for one calendar year. *See Muncy*, 25 BLR at 1-27; *Dawson v. Old Ben Coal Co.*, 11 BLR 1-58, 1-60 (1988). Employer does not point to any evidence that Crockett Coal and Virginia Coal Processing each employed the Miner for one calendar year; thus, it failed to establish that these operators more recently employed the Miner for one year. *See* 20 C.F.R. §725.495(c).

Because it is supported by substantial evidence, we affirm the ALJ's determination that Employer failed to establish another potentially liable operator more recently employed the Miner, and that it is the properly designated responsible operator. 20 C.F.R. §§725.407, 725.494(a)-(e), 725.495(a)(1); Decision and Order at 9.

Entitlement Under 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, 1-2 (1986) (en banc).

Legal Pneumoconiosis

Employer argues the ALJ erred in finding Claimant established legal pneumoconiosis.[14] Employer's Brief at 21-30. To establish the disease, Claimant must demonstrate 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 ALJ considered the medical opinions of Drs. Forehand, Fino, and Dahhan. Dr. Forehand diagnosed legal pneumoconiosis in the form of obstructive lung disease with a restrictive component related to coal mine dust exposure and cigarette smoking. MC Director's Exhibits 12, 15. Dr. Fino diagnosed moderately severe emphysema attributable to cigarette smoking, and completely unrelated to coal mine dust exposure. MC Director's Exhibit 16; MC Employer's Exhibit 7. Similarly, Dr. Dahhan diagnosed chronic obstructive pulmonary disease (COPD) solely attributable to smoking, and unrelated to coal mine dust exposure. MC Employer's Exhibits 1, 3.

The ALJ found Dr. Forehand's opinion well-reasoned, documented, and entitled to significant weight. Decision and Order at 22. Conversely, he found Drs. Fino's and Dahhan's opinions inadequately explained and inconsistent with the medical science set forth in the preamble to the 2001 revised regulations. *Id.* at 22-24. He thus concluded the medical opinion evidence established the existence of legal pneumoconiosis based on Dr. Forehand's opinion. *Id.* at 24.

Initially, we reject Employer's contention that the ALJ's use of the preamble impermissibly shifted the burden of proof. Employer's Brief at 30-34. As part of the deliberative process, an ALJ may – as a matter of black-letter law – evaluate expert opinions in conjunction with the DOL's discussion of the prevailing medical science set forth in the preamble.[15] *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d

[14] "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).

[15] Employer asserts the ALJ improperly relied on training materials developed and provided to adjudicators that prejudiced these proceedings and encouraged incorrect analysis. Employer's Brief at 30-34. However, the record does not contain the alleged training materials and, as the Director contends, Employer has not shown the ALJ saw or relied on the training materials. Director's Response Brief at 18 n.8. Consequently, to the

305, 313 (4th Cir. 2012); *see also Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 490 (6th Cir. 2014); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); *Energy West Mining Co. v. Estate of Blackburn*, 857 F.3d 817, 830-31 (10th Cir. 2017); *Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 257 (3d Cir. 2011); *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726 (7th Cir. 2008).

We also reject Employer's argument that the ALJ erred in crediting Dr. Forehand's opinion. Employer's Brief at 27-30. In his initial report, Dr. Forehand diagnosed the Miner with obstructive lung disease with a mixed restrictive and obstructive component due to coal mine dust exposure and cigarette smoking. MC Director's Exhibit 12. He explained the combined effects of the Miner's occupational exposure to coal mine dust and cigarette smoke "are additive because cigarette smoke interferes with the clearance of dust from his lungs." *Id.* In addition, he opined the Miner had a totally disabling respiratory impairment based on an FEV_1 value of 35% on pulmonary function testing. *Id.* In his supplemental report, Dr. Forehand noted his original diagnosis that the Miner had a totally disabling obstructive lung disease "substantially contributed" to by occupational exposure to coal mine dust remained unchanged. MC Director's Exhibit 15.

The ALJ summarized the objective testing Dr. Forehand relied on to diagnose legal pneumoconiosis. Decision and Order at 11-12, 21-22. As Dr. Forehand's opinion was supported by the objective testing he administered and based on his consideration of additional medical evidence, the ALJ permissibly found Dr. Forehand's opinion reasoned and documented. *Looney*, 678 F.3d at 310; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 22, 25. He also permissibly found Dr. Forehand's opinion consistent with the DOL's recognition that the effects of smoking and coal dust exposure can be additive. *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 674 (4th Cir. 2017); 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000); Decision and Order at 25.

Employer's additional argument that Dr. Forehand "speculated" about the Miner's working conditions is unavailing. Employer's Brief at 28-29. The ALJ noted Claimant's testimony that all of the Miner's coal mine employment was underground and at strip mines, and that he worked on the tipple and feeder. Decision and Order at 5; Hearing Tr. at 14. He further noted Claimant testified that when the Miner came home "he was black all over," and she had to wash his clothes separately. Decision and Order at 5; Hearing Tr.

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extent Employer argues the ALJ was biased because of the training materials, it has not laid the necessary foundation for consideration of its allegation. Therefore, Employer's claim of bias is rejected. *See Cochran v. Consolidation Coal Co.*, 16 BLR 1-101, 1-107 (1992).

at 14-15. Thus, contrary to Employer's contentions, the ALJ permissibly relied on Claimant's credible, uncontested testimony and employment history form detailing the Miner's working conditions. *See Mays*, 176 F.3d at 764; *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *see also Zurich American Insurance Group v. Duncan*, 889 F.3d 293, 304 (6th Cir. 2018) (widow's testimony that miner's face and clothes were very dirty when he returned from work, in conjunction with statement that he was exposed to dust, gases, and fumes for his entire coal mine employment, establish regular coal mine dust exposure); *Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 664-65 (6th Cir. 2015); *Sterling*, 762 F.3d at 490 (claimant's testimony that the conditions throughout his employment were "very dusty" met his burden to establish he was regularly exposed to coal mine dust); *Antelope Coal Co./Rio Tinto Energy Am. v. Goodin*, 743 F.3d 1331, 1343-44 & n.17 (10th Cir. 2014) (claimant's testimony that he was exposed to "pretty dusty" conditions "provided substantial evidence of regular exposure to coal mine dust"); 78 Fed. Reg. 59,102, 59,105 (Sept. 25, 2013); Decision and Order at 5.

It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *Underwood*, 105 F.3d at 949; *Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 543 (4th Cir. 1988); *see also Mays*, 176 F.3d at 756 (The Board must uphold decisions that rest within the realm of rationality; a reviewing court has no license "to set aside an inference merely because it finds the opposite conclusion more reasonable or because it questions the factual basis."). Because it is supported by substantial evidence, we affirm the ALJ's determination that Dr. Forehand's opinion is well-reasoned and documented and sufficient to satisfy Claimant's burden to establish the existence of legal pneumoconiosis. *See Consol. Coal Co. v. Williams*, 453 F.3d 609, 622 (4th Cir. 2006) (ALJ needs only to be persuaded, on the basis of all available evidence, that the miner's lung disease was "significantly related to, or substantially aggravated by," coal mine dust exposure); Decision and Order at 22.

Employer's argument that the ALJ erred in finding Dr. Forehand's opinion reasoned and documented while finding Drs. Fino's and Dahhan's opinions not well-reasoned or documented is a request that the Board reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. Because the ALJ acted within his discretion in crediting Dr. Forehand's opinion and rejecting the opinions of Drs. Fino and Dahhan, his decision comports with the APA. 5 U.S.C. §557(c)(3)(A) (requiring a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented"); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

We thus affirm the ALJ's finding that Claimant established the existence of legal pneumoconiosis and thereby established a change in an applicable condition of entitlement. 20 C.F.R. §§718.202(a)(4), 725.309; Decision and Order at 24-25.

Because Employer does not challenge the ALJ's finding that Claimant established the Miner was totally disabled due to pneumoconiosis, we affirm it. *See Skrack*, 6 BLR at 1-711. We therefore affirm the award of benefits in the miner's claim.

Survivor's Claim

Because we have affirmed the award of benefits in the miner's claim and Employer raises no specific challenge to the award in the survivor's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits pursuant to Section 422(*l*). 30 U.S.C. §932(l) (2018); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

Accordingly, the ALJ's Decision and Order Awarding Benefits in Living Miner's and Survivor's Claims is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge