

U.S. Department of Labor

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



BRB Nos. 25-0252 BLA
and 25-0253 BLA

TERESA LEFTWICH)
(o/b/o and Widow of BILLY C. LEFTWICH))

Claimant-Respondent)

v.)

LAMBERT COAL COMPANY,)
INCORPORATED)

and)

ARROWWOOD INDEMNITY)

Employer/Carrier-)
Petitioners)

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

Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 08/26/2026

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Dierdra M. Howard,
Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Austin), Norton,
Virginia, for Claimant.

James M. Poerio (Poerio & Walter, Inc.), Pittsburgh, Pennsylvania, for
Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Dierdra M. Howard's Decision and Order Awarding Benefits (2022-BLA-05912 and 2023-BLA-05112) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act). This case involves a miner's subsequent claim filed on May 4, 2020,¹ and a survivor's claim filed on July 5, 2022.²

The ALJ credited the Miner with 10.62 years of coal mine employment and thus found Claimant 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, she accepted the parties' stipulation that the Miner had a totally disabling respiratory impairment. She further found the evidence establishes clinical and legal pneumoconiosis arising out of coal mine employment⁴ and that the Miner's total disability

¹ The Miner filed three prior claims for benefits. Miner's Claim (MC) Director's Exhibit 1. In a Decision and Order dated September 20, 2018, ALJ Tracy A. Daly found the Miner was totally disabled but denied the Miner's most recent prior claim, filed on April 22, 2013, for failure to establish pneumoconiosis. MC Director's Exhibit 1 at 30, 39, 885 (unpaginated).

² Claimant is the widow of the Miner, who died on May 6, 2022. Survivor's Claim (SC) Director's Exhibit 5. She is pursuing the miner's claim on behalf of her husband's estate and her own survivor's claim. SC Director's Exhibit 18.

³ Section 411(c)(4) provides a rebuttable presumption that a miner's total disability or death was 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 at the time of his death. 30 U.S.C. §921(c)(4); *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). This definition includes "any chronic pulmonary disease or respiratory or

was due to legal pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204(b)(2), (c). Thus, she found Claimant established a change in an applicable condition of entitlement⁵ and awarded benefits in the miner's claim. 20 C.F.R. §725.309. Based on the award of benefits in the miner's claim, the ALJ found Claimant derivatively entitled to survivor's benefits pursuant to Section 422(l) of the Act, 30 U.S.C. §932(l).⁶

On appeal, Employer argues the ALJ erred in determining the length of the Miner's coal mine employment and in finding Claimant established clinical and legal pneumoconiosis.⁷ Claimant responds in support of the award of benefits in both claims. The Director, Office of Workers' Compensation Programs, declined to file a substantive response.

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.⁸ 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).

pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

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 "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). Because the Miner's prior claim was denied for failure to establish pneumoconiosis, Claimant had to submit new evidence establishing that element to obtain review of the merits of the current claim. *See White*, 23 BLR at 1-3; Director's Exhibit 1 at 39.

⁶ Under Section 422(l) of the Act, a survivor of a miner who was determined to be 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).

⁷ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established total disability. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 27.

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.

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 (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 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

To establish legal pneumoconiosis, Claimant must establish the Miner suffered from 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. Nader, McSharry, and Sargent. Decision and Order at 20-23. Dr. Nader diagnosed legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) and emphysema related to coal mine dust exposure and smoking. MC Director’s Exhibits 18, 23; MC Claimant’s Exhibit 7 at 16-18. Drs. McSharry and Sargent opined the Miner had emphysema due to smoking but unrelated to coal mine dust exposure. MC Director’s Exhibit 20; MC Employer’s Exhibits 1, 14. The ALJ found Dr. Nader’s opinion well-reasoned, documented, and entitled to significant weight. Decision and Order at 20-21. Conversely, she discredited the opinions of Drs. McSharry and Sargent as inadequately explained and inconsistent with the regulations. *Id.* at 21-23. Thus she determined the medical opinion evidence establishes legal pneumoconiosis. *Id.* at 24-25.

Employer argues the ALJ erred in crediting Dr. Nader’s opinion because he relied on an erroneous length of coal mine employment. Employer’s Brief at 5-6. Specifically, Employer argues the ALJ should have found the Miner had nine years of coal mine employment rather than 10.62 years. *Id.* at 3-9. It further contends Dr. Nader relied on a length of coal mine employment of more than ten years and the rebuttable presumption of disease causation to diagnose legal pneumoconiosis, and “it is unclear what Dr. Nader’s opinion may well have been” absent that presumption.” *Id.* at 6.

See Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director’s Exhibit 4; Hearing Tr. at 28.

In his initial report, Dr. Nader opined coal mine dust was a significant contributing and aggravating factor in the Miner's COPD and emphysema based on his symptoms of chronic cough, wheezing, shortness of breath, and mucous expectoration; his twelve years of exposure to respirable coal and rock dust; and his x-rays, pulmonary function studies, and blood gas studies. MC Director's Exhibit 18 at 4. Later, he considered a coal mine employment history of 10.62 years and continued to opine coal mine dust exposure was a significant contributing and aggravating factor to the Miner's disabling COPD and emphysema, and it "worsen[ed] his underlying pulmonary impairment." MC Claimant's Exhibit 7 at 17-18.

Importantly, Dr. Nader also gave a supplemental opinion in which he considered a coal mine employment history of 9.63 years and reiterated his original diagnosis of legal pneumoconiosis, stating "this will not change my mind regarding his evaluation" and his opinion would remain the same. MC Director's Exhibit 23 at 1-2. Thus, contrary to Employer's contention, Dr. Nader explicitly diagnosed legal pneumoconiosis based on a coal mine employment history of 9.63 years. Employer's Brief at 5-6. Further, Employer has not submitted any evidence that considering nine years of coal mine employment, instead of 9.63 years, may have altered Dr. Nader's opinion.⁹

The ALJ properly examined the validity of Dr. Nader's reasoning on the issue of legal pneumoconiosis based on the objective studies he conducted and the underlying bases for his conclusions, as required, and substantial evidence supports her credibility determination. *See 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 20-21. We therefore reject Employer's argument that the ALJ erred in finding Dr. Nader's opinion documented and well-reasoned.

Employer next argues the ALJ erred in discrediting the opinions of Drs. Sargent and McSharry. Employer's Brief at 6-8. We disagree.

Dr. McSharry opined the Miner's pulmonary function tests demonstrating emphysematous changes with hyperinflated lungs and severely reduced diffusion capacity are strong evidence his emphysema and hypoxemia are "likely [due to] his long smoking history." MC Director's Exhibit 20 at 3. He also opined the Miner did not have legal pneumoconiosis because he did not have pneumoconiosis on x-ray, and it is "much, much rarer" for an individual to develop obstructive lung disease related to coal mine dust

⁹ We note Dr. McSharry stated that if the Miner worked somewhere between nine and ten and a half years, it would not have a significant impact on his opinion. MC Employer's Exhibit 14 at 17-18.

exposure than smoking. MC Employer's Exhibit 14 at 10-11, 29-30, 35-36. Dr. Sargent excluded coal mine dust exposure as a causative or contributing factor of the Miner's emphysema based on his having only ten years of coal mine dust exposure and a negative x-ray reading. MC Employer's Exhibit 1 at 2. He further opined the Miner's "abnormalities" are more consistent with emphysema due to smoking. *Id.*

The ALJ found Drs. McSharry and Sargent focused on explaining why smoking is the more likely cause of the Miner's impairment, rather than explaining whether the Miner's emphysema and hypoxemia were significantly related to, or substantially aggravated by, coal mine dust exposure. 20 C.F.R. §718.201(b); Decision and Order at 22-23. Thus, the ALJ permissibly found their opinions unpersuasive as they did not adequately address how they determined that coal mine dust exposure did not contribute to or aggravate the Miner's impairment, even if smoking was the primary cause. *See Extra Energy, Inc. v. Lawson*, 140 F.4th 138, 153 (4th Cir. 2025); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 21-23.

Moreover, the ALJ rationally found Dr. McSharry's and Dr. Sargent's opinions that the Miner did not have legal pneumoconiosis because he did not have fibrosis on x-ray are inconsistent with the Department of Labor's recognition that a physician can credibly diagnose pneumoconiosis "notwithstanding a negative x-ray" and legal pneumoconiosis can exist in the absence of clinical pneumoconiosis. 20 C.F.R. §718.202(a)(4), (b); *see Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 313 (4th Cir. 2012) (the regulations "separate clinical and legal pneumoconiosis into two different diagnoses" and "provide that '[n]o claim for benefits shall be denied solely on the basis of a negative chest x-ray'"); Decision and Order at 22-23.

Further, the ALJ permissibly found the opinions of Drs. McSharry and Sargent that the Miner did not have legal pneumoconiosis because smoking is far more likely to cause emphysema than coal mine dust exposure to be based on a "flawed" concept contrary to the medical science set forth in the preamble to the 2001 regulations, which states that nonsmoking coal miners develop moderate obstruction at roughly the same rate as smokers with no mining exposure. Decision and Order at 22-23; *see Lawson*, 140 F.4th at 152-53; *Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013); *Looney*, 678 F.3d at 314-15; 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000) ("Even in the absence of smoking, coal mine dust exposure is clearly associated with clinically significant airways obstruction and chronic bronchitis.").

As Employer raises no additional arguments regarding Dr. Nader's opinion, we affirm the ALJ's finding his opinion is better reasoned and documented than the contrary opinions of Drs. McSharry and Sargent. Decision and Order at 20-23. Consequently, we

affirm the ALJ's determination that Claimant established the existence of legal pneumoconiosis¹⁰ and therefore established a change in an applicable condition of entitlement. 20 C.F.R. §§718.201(a)(2), 718.202(a), 725.309; Decision and Order at 24-25. We further affirm, as unchallenged on appeal, the ALJ's finding that Claimant established total disability due to legal pneumoconiosis.¹¹ See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.204(c); Decision and Order at 27-28. As the ALJ rationally found Claimant established all requisite elements in the miner's claim, we affirm the award of benefits.

Survivor's Claim

Because we have affirmed the award of benefits in the miner's claim and Employer raises no specific challenge to 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); see *Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

¹⁰ To the extent Employer argues the ALJ erred in finding Claimant established disease causation based on the rebuttable presumption at 20 C.F.R. §718.203(b), we reject its argument. Employer Brief at 3-9. The ALJ correctly noted that the 20 C.F.R. §718.203(b) presumption applies only to clinical pneumoconiosis, and that it was unnecessary to separately determine the etiology of the Miner's established legal pneumoconiosis. *Extra Energy, Inc. v. Lawson*, 140 F.4th 138, 145 (4th Cir. 2025) ("Because by definition, legal pneumoconiosis arises out of coal mine employment, a diagnosis of legal pneumoconiosis automatically satisfies the causal requirement between coal mine employment and the impairment.") (citation modified); 20 C.F.R. §§718.201(a)(2), (b), 718.203; Decision and Order at 25.

¹¹ Consequently, we need not address Employer's arguments regarding length of coal mine employment and clinical pneumoconiosis. 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"); Employer's Brief at 3-9.

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

SO ORDERED.

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge