**U.S. Department of Labor**

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

BRB No. 25-0052 BLA

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| JACK W. MEADE<br><br>Claimant-Petitioner<br><br>v.<br><br>MACK COAL COMPANY, INCORPORATED/MACKWOOD COAL COMPANY, INCORPORATED<br><br>Employer-Respondent<br><br>DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR<br><br>Party-in-Interest | ) | **NOT-PUBLISHED**<br><br>DATE ISSUED: 12/17/2025<br><br>DECISION and ORDER |

Appeal of the Decision and Order on Remand Denying Benefits of Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

Jack W. Meade, Coeburn, Virginia.

Michael A. Pusateri (Greenberg Traurig LLP), Washington, D.C., for Employer.

Before: GRESH, Chief Administrative Appeals Judge, JONES, Administrative Appeals Judge, and ULMER, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals, without the assistance of counsel,[1] the Decision and Order on Remand Denying Benefits (2020-BLA-05597) of Administrative Law Judge (ALJ) Francine L. Applewhite, rendered on a claim filed on December 17, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Benefits Review Board for the second time.[2]

In her initial Decision and Order Denying Benefits, the ALJ found Claimant established 13.48 years of coal mine employment and thus was unable to invoke the rebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[3] Considering entitlement under 20 C.F.R. Part 718, the ALJ determined Claimant established a totally disabling respiratory or pulmonary impairment but did not establish the existence of clinical or legal pneumoconiosis.[4] 20 C.F.R. §§718.202(a), 718.204(b). She therefore denied benefits.

In consideration of Claimant's appeal, the Board affirmed the ALJ's findings that, while Claimant established a totally disabling respiratory or pulmonary impairment, he did not establish complicated pneumoconiosis or invoke the Section 411(c)(4) presumption. *Meade v. Mack Coal Co.*, BRB No. 22-0271 BLA, slip op. at 2 nn.3-4, 5 (Aug. 4, 2023)

[1] On Claimant's behalf, Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested that the Benefits Review Board review the ALJ's decision, but Ms. Napier is not representing Claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co*., 19 BLR 1-88 (1995) (Order).

[2] We incorporate the procedural history of this case as set forth in *Meade v. Mack Coal Co*., BRB No. 22-0271 BLA (Aug. 4, 2023) (unpub.).

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[4] 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 encompasses "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).

(unpub.). However, the Board held the ALJ failed to adequately explain her evaluation of the medical opinion evidence in finding Claimant did not establish clinical or legal pneumoconiosis. *Id.* at 8-9. Consequently, the Board remanded the case for reconsideration of whether Claimant established clinical and legal pneumoconiosis. *Id.* at 9; *see* 20 C.F.R. §718.202(a).

On remand, the ALJ again found Claimant did not establish clinical or legal pneumoconiosis. Thus, she denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Employer responds in support of the denial of benefits. The Acting Director, Office of Workers' Compensation Programs, did not file a response.

In an appeal a claimant files without representation, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994). We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law.[5] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361 (1965).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Statutory presumptions may assist a claimant in establishing these elements when certain conditions are met, but 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). The ALJ found Claimant failed to establish clinical or legal pneumoconiosis. Decision and Order on Remand at 6 (unpaginated).

**Clinical Pneumoconiosis**

Claimant may establish the existence of clinical pneumoconiosis by x-rays, autopsies or biopsies, operation of one of the presumptions described in 20 C.F.R.

[5] 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 Virginia. *Shupe v. Director,* OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 4, 39 at 22.

§§718.304 or 718.305, or a physician's opinion.[6] 20 C.F.R. §718.202(a)(1)-(4). The ALJ must consider all relevant evidence and weigh the evidence as a whole to determine if it establishes the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 212 (4th Cir. 2000).

The ALJ considered the medical opinions of Dr. Forehand, who diagnosed clinical pneumoconiosis, and Drs. Fino and McSharry, who opined Claimant does not have the disease. Decision and Order on Remand at 3-5 (unpaginated); Director's Exhibit 17; Claimant's Exhibit 5 at 2; Employer's Exhibits 2 at 2; 3 at 8; 4 at 5; 6 at 3. The ALJ determined that the physicians were equally qualified and that their opinions were reasoned and documented. Decision and Order on Remand at 5 (unpaginated). Giving greater weight to the opinions of Drs. Fino and McSharry, however, she found the medical opinion evidence does not support a finding of clinical pneumoconiosis at 20 C.F.R. §718.202(a). *Id.*

Dr. Forehand conducted the Department of Labor complete pulmonary evaluation of Claimant on March 25, 2019, and diagnosed clinical pneumoconiosis based on Claimant's history of coal mine dust exposure and Dr. DePonte's reading of an x-ray taken the same day, which the ALJ determined was positive. Director's Exhibit 17 at 1, 19; 2022 Decision and Order at 10. The ALJ permissibly discredited this opinion as inconsistent with her finding, as subsequently affirmed by the Board, that the x-ray evidence does not support a finding of clinical pneumoconiosis. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997) (ALJ may discount medical opinions she finds contradict her findings); *Meade*, BRB No. 22-0271 BLA, slip op. at 7; Decision and Order on Remand at 5 (unpaginated). Because the ALJ permissibly discredited Dr. Forehand's opinion on clinical pneumoconiosis, the only opinion supportive of Claimant's burden to establish clinical pneumoconiosis, we affirm her determination that the medical opinion evidence does not support a finding of clinical pneumoconiosis. 20 C.F.R. §718.202(a)(4); Decision and Order on Remand at 5 (unpaginated). We further affirm her finding that the evidence as a whole does not establish clinical pneumoconiosis. 20 C.F.R. §718.202(a); *see Compton*, 211 F.3d at 212; Decision and Order on Remand at 5 (unpaginated).

[6] The Board previously affirmed the ALJ's finding that the x-ray evidence did not establish clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1). *Meade*, BRB No. 22-0271 BLA, slip op. at 7. In addition, the Board noted that there is no biopsy evidence in the record and Claimant thus cannot establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2). *Id.* at 7 n.12.

**Legal Pneumoconiosis**

To establish legal pneumoconiosis, Claimant must prove he suffers 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 United States Court of Appeals for the Fourth Circuit, whose law applies in this case, 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); *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 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 opinions of Dr. Forehand, who diagnosed legal pneumoconiosis, and Drs. Fino and McSharry, who did not diagnose the disease. Decision and Order on Remand at 6 (unpaginated); Director's Exhibit 17 at 4-5; Claimant's Exhibit 5 at 3 (unpaginated); Employer's Exhibits 2 at 3 (unpaginated); 3 at 8; 4 at 5; 6 at 3. Initially, the ALJ found the physicians were equally qualified and offered reasoned opinions. Decision and Order at 6 (unpaginated). But she further found Drs. Fino's and McSharry's opinions entitled to greater weight because, "[a]lthough both opinions recorded a greater coal mine employment history than that established by the ALJ, they account for the diagnostic findings, symptomology, impairment and factors thereto," and are thus "well[-]reasoned, well[-] documented, and well[-]supported." *Id.* In contrast, she found Dr. Forehand's opinion entitled to only "some weight" because it is neither well-supported nor reasoned.[7] *Id.* Further the ALJ stated that "[w]hile Dr. Forehand did diagnose the Claimant with legal pneumoconiosis and a chronic lung disease arising out of coal dust exposure, Drs. Fino and McSharry definitively determined that the Claimant did not have legal pneumoconiosis or chronic lung disease," and therefore found the medical opinion evidence does not support a finding of legal pneumoconiosis. *Id*.

The ALJ failed to adequately explain her conclusion that Drs. Fino's and McSharry's opinions are well-documented and reasoned or her conclusion that Dr. Forehand's opinion is neither well-supported nor reasoned, as the Administrative

[7] The Decision and Order on Remand references Dr. Fino's opinion rather than Dr. Forehand's. Decision and Order on Remand at 6 (unpaginated). This appears to be a scrivener's error.

Procedure Act (APA)[8] and Fourth Circuit precedent require. 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, 252-53; *Milburn Colliery Co. v. Hicks,* 138 F.3d 524, 533 (4th Cir. 1997); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); Decision and Order on Remand at 6 (unpaginated). Consequently, we vacate her finding that the medical opinion evidence does not support a finding of legal pneumoconiosis. We thus vacate the ALJ's finding that Claimant did not establish legal pneumoconiosis and the denial of benefits, and therefore remand the case for reconsideration.

**Remand Instructions**

On remand, the ALJ must reconsider whether the medical opinion evidence establishes legal pneumoconiosis. 20 C.F.R. §718.202(a)(4). In rendering credibility findings, the ALJ must first consider the comparative credentials of the physicians, the explanations for their conclusions, and the documentation underlying their medical judgements. *Hicks*, 138 F.3d at 530; *Akers*, 131 F.3d at 439. The ALJ must critically analyze the medical opinions, explain any credibility determinations, set forth all findings, and detail the underlying rationale in accordance with the APA. 5 U.S.C. §557(c)(3)(A); *see Wojtowicz*, 12 BLR at 1-165. If the ALJ finds the medical opinions establish legal pneumoconiosis, the ALJ must then weigh all the relevant evidence together to determine whether Claimant suffers from legal pneumoconiosis. 20 C.F.R. §718.202(a); *see Compton*, 211 F.3d at 212.

If Claimant establishes legal pneumoconiosis, the ALJ must then consider whether it is a substantially contributing cause of Claimant's totally disabling respiratory or pulmonary impairment.[9] 20 C.F.R. §718.204(c). Conversely, if the ALJ finds Claimant did not establish pneumoconiosis, Claimant will have failed to establish a requisite element of entitlement, and the ALJ may reinstate the denial of benefits. *Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27.

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[8] The Administrative Procedure Act, 5 U.S.C. §§500-591, requires that every adjudicatory decision include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co*., 12 BLR 1-162, 1-165 (1989).

[9] If Claimant establishes legal pneumoconiosis on remand, then he will have established that his legal pneumoconiosis arose out of his coal mine employment. *See Kiser v. L & J Equip. Co.*, 23 BLR 1-246, 1-259 n.18 (2006); *Henley v. Cowan & Co.*, 21 BLR 1-147, 1-151 (1999); 20 C.F.R. §718.203.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge