

U.S. Department of Labor

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



BRB No. 23-0004 BLA

CAROL FACEMIRE )

Claimant-Respondent )

v. )

JULIANA MINING COMPANY, )  
INCORPORATED )

and )

DATE ISSUED: 02/27/2024

WEST VIRGINIA COAL WORKERS' )  
PNEUMOCONIOSIS FUND )

Employer/Carrier- )  
Petitioners )

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

Party-in-Interest )

DECISION and ORDER

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

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton,  
Virginia, for Claimant.

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for  
Employer and its Carrier.

Before: BOGGS, BUZZARD, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Awarding Benefits (2020-BLA-05134) rendered on a claim filed on April 2, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 14.40 years of coal mine employment and therefore found she 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) (2018). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established she is totally disabled due to clinical and legal pneumoconiosis,<sup>2</sup> and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established pneumoconiosis and that pneumoconiosis caused her disabling impairment.<sup>3</sup> Claimant responds, urging affirmance of the award. The Director, Office of Workers' Compensation Programs, has not filed a 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

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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 she 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); 20 C.F.R. §718.305.

<sup>2</sup> "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). 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).

<sup>3</sup> We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 14.40 years of coal mine employment and total disability. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 19, 33.

accordance with applicable law.<sup>4</sup> 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, 362 (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. Failure to establish any one of these elements 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 prove she 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, whose law applies to this claim, has held a miner can establish legal pneumoconiosis by showing coal dust exposure contributed “in part” to her 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, 309, 314 (4th Cir. 2012); *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, Nader, Rajbhandari, Basheda, and Zaldivar. Decision and Order at 28-30. Drs. Harris, Nader, and Rajbhandari diagnosed Claimant with legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) due to cigarette smoking and coal mine dust exposure. Director’s Exhibits 12 at 3; 21 at 4; Claimant’s Exhibit 2 at 3. Conversely, Dr. Basheda opined Claimant does not have legal pneumoconiosis, but has a severe airway obstruction secondary to untreated asthma and laryngopharyngeal reflux disease. Director’s Exhibit 20 at 12; Employer’s Exhibits 8 at 19-21; 11 at 10, 30. Similarly, Dr. Zaldivar opined that Claimant does not have legal pneumoconiosis, but has emphysema and asthma due to

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<sup>4</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed her coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director’s Exhibit 4; Hearing Transcript at 24.

cigarette smoking, worsened by her gastroesophageal reflux. Employer's Exhibits 6 at 8; 12 at 33. The ALJ accorded more weight to the well-reasoned and well-documented opinions of Drs. Nader and Rajbhandari than those of Drs. Harris, Basheda, and Zaldivar, and therefore found Claimant established she has legal pneumoconiosis. Decision and Order at 28-39.

Employer contends the ALJ erred in his weighing of the medical opinions of Drs. Nader and Rajbhandari diagnosing Claimant with legal pneumoconiosis.<sup>5</sup> Employer's Brief at 9-14. We disagree.

Contrary to Employer's arguments, the ALJ was not required to discredit their opinions because they opined it was impossible to determine the relative contributions of Claimant's coal mine dust and smoking exposures to her respiratory or pulmonary impairment. See Claimant's Exhibits 2, 3. A physician need not apportion a specific percentage of a miner's lung disease or impairment to cigarette smoke as opposed to coal mine dust exposure to establish the existence of legal pneumoconiosis. See *Consolidation Coal Co. v. Williams*, 453 F.3d 609, 622 (4th Cir. 2006); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576-77 (6th Cir. 2000) (because coal dust need not be the sole cause of the miner's respiratory or pulmonary impairment, legal pneumoconiosis can be proven based on a physician's opinion that coal dust and smoking were both causal factors and that it was impossible to allocate between them); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-17 (2003). Rather, a physician need only credibly diagnose a chronic respiratory or pulmonary impairment that is "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

Nor are their opinions inherently less credible because they considered less evidence than Drs. Basheda and Zaldivar. Employer's Brief at 13. An ALJ may credit a physician who did not review all of the medical evidence when the opinion is otherwise well-reasoned, documented, and based on the physician's own examination of the miner and objective testing results. 20 C.F.R. §718.202(a)(4); see *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 212 (4th Cir. 2000); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21-22 (1987) (reasoned opinion is one in which the ALJ finds the underlying documentation adequate to support the physician's conclusion). Drs. Nader and Rajbhandari each examined Claimant and based their opinions on her medical, social, and work histories, along with her symptoms, a physical examination, chest x-ray, pulmonary function testing,

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<sup>5</sup> The ALJ accorded less weight to Dr. Harris's opinion that Claimant has legal pneumoconiosis because the treatment records show Claimant has been treated for asthma contrary to the physician's assertion that she did not have a history suggestive of asthma. Decision and Order at 28.

and arterial blood gas testing. Claimant's Exhibits 2, 3. The ALJ permissibly found their opinions reasoned and documented and accorded them probative weight. *Compton*, 211 F.3d at 212; *Fields*, 10 BLR at 1-21-22; Decision and Order at 28-29.

As Employer raises no other challenges to the ALJ's weighing of the opinions of Drs. Nader and Rajbhandari, and because it is supported by substantial evidence, we affirm his finding that the opinions of Drs. Nader and Rajbhandari are well-reasoned and well-documented. 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 28-29.

Employer further contends the ALJ erred in discrediting the opinions of Drs. Basheda and Zaldivar who, Employer argues, offered well-reasoned and well-documented opinions and were the only physicians to review all of the evidence. Employer's Brief at 11-13. We disagree.

Dr. Basheda examined Claimant on April 26, 2019, and diagnosed her with a reversible obstruction due to asthma, unrelated to coal mine dust exposure. Director's Exhibit 20 at 10; Employer's Exhibit 8. He opined that Claimant has uncontrolled asthma that would improve with aggressive treatment, noting that the impairment was intermittent and the decline in function occurred over the course of one year, more than twenty years after she left coal mining. Director's Exhibit 20 at 10; Employer's Exhibit 8. The ALJ permissibly found Dr. Basheda's opinion was called into question by Claimant's treatment records and Dr. Zaldivar's testimony that these records show she was treated "intensively" for her asthma in 2012 but did not get better even when "maxing out the treatment." See *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993); Decision and Order at 29; Employer's Exhibit 12 at 22.

Dr. Zaldivar reviewed Claimant's medical records and opined she has emphysema and asthma due to cigarette smoking because she had significantly more exposure to cigarette smoke beginning at a young age and did not have significant findings of clinical pneumoconiosis. Employer's Exhibit 5 at 7; 12. The ALJ permissibly found Dr. Zaldivar's opinion entitled to less weight as he relied on a smoking history of up to 2.5 packs of cigarettes per day for 29 years, contrary to the ALJ's finding that Claimant smoked only 1.5 packs per day for 29 years.<sup>6</sup> See *Sellards v. Director, OWCP*, 17 BLR 1-77, 1-80-81

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<sup>6</sup> We affirm, as unchallenged on appeal, the ALJ's finding that Claimant smoked 1.5 packs of cigarettes per day for 29 years from 1974 until 2003, resulting in a smoking history of 43.5 pack years. See *Skrack*, 6 BLR at 1-711; Decision and Order at 4 n.2.

(1993); *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683, 1-686 (1985) (ALJ is responsible for making a factual determination as to the length and extent of a miner's smoking history and the effect of an inaccurate smoking history on the credibility of a medical opinion).

Ultimately, the ALJ permissibly found the opinions of Drs. Basheda and Zaldivar were not well-reasoned or well-documented because they eliminated any contribution or aggravation from coal dust exposure but did not adequately explain why Claimant's 14.40 years of coal mine dust exposure did not contribute to or aggravate her asthma and obstructive impairment. *See Looney*, 678 F.3d at 310; *Compton*, 211 F.3d at 211; *Mays*, 176 F.3d at 756; Decision and Order at 29-30. Employer's arguments amount to a request to reweigh the evidence, which we are not empowered to do. *See Anderson*, 12 BLR at 1-113. Because the ALJ permissibly credited the well-reasoned and well-documented opinions of Drs. Nader and Rajbhandari and discredited the opinions of Drs. Basheda and Zaldivar, we affirm his determination that Claimant established legal pneumoconiosis. 20 C.F.R. §§718.201(a)(2), 718.202(a)(4).

### **Disability Causation**

To establish total disability due to pneumoconiosis, Claimant must prove pneumoconiosis is a "substantially contributing cause" of her 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 worsen[ed] a totally disabling respiratory or pulmonary impairment which [was] caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii).

Because the ALJ permissibly found the opinions of Drs. Nader and Rajbhandari reasoned and documented and therefore sufficient to prove Claimant's totally disabling obstructive lung disease constitutes legal pneumoconiosis, the ALJ rationally found their opinions also establish Claimant is totally disabled due to the disease. *See Collins v. Pond Creek Mining Co.*, 751 F.3d 180, 186-87 (4th Cir. 2014); *Brandywine Explosives & Supply v. Director, OWCP [Kennard]*, 790 F.3d 657, 668-69 (6th Cir. 2015); *see also Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013) (where COPD caused the miner's total disability, the legal pneumoconiosis inquiry "completed the causation chain from coal mine employment to legal pneumoconiosis which caused [the miner's] pulmonary impairment that led to his disability"); *Hawkinberry v. Monongalia County Coal Co.*, 25 BLR 1-249 (2019); Decision and Order at 34-35. Consequently, we affirm

the ALJ's determination that Claimant is totally disabled due to pneumoconiosis, 20 C.F.R. §718.204(c), and the award of benefits.<sup>7</sup> Decision and Order at 35.

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

SO ORDERED.

JUDITH S. BOGGS  
Administrative Appeals Judge

GREG J. BUZZARD  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge

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<sup>7</sup> Because the ALJ permissibly found the opinions of Drs. Nader and Rajbhandari establish that Claimant is totally disabled due to legal pneumoconiosis, Claimant is entitled to benefits and we need not address Employer's argument that the ALJ also erred in finding Claimant established clinical pneumoconiosis. *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 30; Employer's Brief at 3-9.