



BRB Nos. 25-0084 BLA and 25-0084 BLA-A

PATRICIA MUZYDLA )  
(o/b/o JOSEPH F. MUZYDLA, JR., )  
deceased) )

Claimant-Respondent )  
Cross-Petitioner )

v. )

CONSOL MINING COMPANY, LLC. )

and )

CONSOL ENERGY INCORPORATED )

Employer/Carrier- )  
Petitioners )  
Cross-Respondents )

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

Party-in-Interest )

**NOT-PUBLISHED**

DATE ISSUED: 02/10/2026

DECISION and ORDER

Appeal and Cross-Appeal of the Decision and Order Awarding Benefits on  
Remand of Drew A. Swank, Administrative Law Judge, United States  
Department of Labor.

Leonard Stayton, Inez, Kentucky, for Claimant.

Christopher L. Wildfire (SutterWilliams, LLC), Pittsburgh, Pennsylvania,  
for Employer.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE and JONES,  
Administrative Appeals Judges.

PER CURIAM:

Employer appeals, and Claimant<sup>1</sup> cross-appeals, Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits on Remand (2020-BLA-05539) rendered on a claim filed on May 9, 2019, 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 a second time.<sup>2</sup>

In his original Decision and Order Denying Benefits dated December 14, 2021, the ALJ credited the Miner with 20.58 years of qualifying coal mine employment and found he had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore determined Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.<sup>3</sup> 30 U.S.C. §921(c)(4) (2018). He found Employer rebutted the presumption, however, by establishing the Miner had neither clinical nor legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i). Thus, he denied benefits.

In response to Claimant's appeal, the Board affirmed, as unchallenged, the ALJ's findings that Claimant established at least fifteen years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment and thus invoked the Section 411(c)(4) presumption. *Muzydla v. Consol Mining Co.*, BRB No. 22-0127 BLA, slip op. at 2 n.5 (Jan. 5, 2023) (unpub.). We also affirmed, as unchallenged, the ALJ's finding "that Dr. Manaker's medical opinion is not well-reasoned, not entitled to any weight, and therefore does not aid Employer in rebutting the presumption of legal

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<sup>1</sup> Claimant is the widow of the Miner, who died on August 30, 2023, and she was appointed administratrix of his estate. ALJ's November 12, 2024 Order Granting Claimant's Motion to Substitute Party.

<sup>2</sup> We incorporate the procedural history of this case as set forth in *Muzydla v. Consol Mining Co.*, BRB No. 22-0127 BLA (Jan. 5, 2023) (unpub.).

<sup>3</sup> 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.

pneumoconiosis.” *Id.* at 3 n.8. But we vacated the ALJ’s determination that Employer disproved legal pneumoconiosis and rebutted the presumption, holding the ALJ erred in failing to adequately explain his conclusion that Dr. Basheda’s medical opinion was the only opinion entitled to any weight. Thus, the Board also vacated the award of benefits.<sup>4</sup>

On remand, the ALJ found Employer did not rebut the Section 411(c)(4) presumption and, therefore, awarded benefits.

On appeal, Employer argues the ALJ erred in finding it did not rebut the presumption by not considering Dr. Manaker’s deposition testimony. Claimant responds in support of the award. On cross-appeal, Claimant argues that in the event the case is remanded, the ALJ should not reconsider Dr. Manaker’s opinion on rebuttal. Employer responds in support of the ALJ’s reconsideration of Dr. Manaker’s complete opinion, including his deposition. The Director, Office of Workers’ Compensation Programs, declined to file a response to Employer’s appeal or Claimant’s cross-appeal.

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.<sup>5</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 (1965).

### **Rebuttal of the Section 411(c)(4) Presumption**

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,<sup>6</sup> or that “no

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<sup>4</sup> The Board provided specific instructions on remand concerning the ALJ’s consideration of Dr. Basheda’s opinion on rebuttal. *See Muzydla*, BRB No. 22-0127 BLA, slip op. at 5-6. The Board directed the ALJ to explain any decision to credit Dr. Basheda’s opinion regarding legal pneumoconiosis given his crediting of Dr. Sood’s contrary opinion and instructed the ALJ to consider whether Dr. Basheda’s opinion “sufficiently addresses Claimant’s more than twenty years of coal mine dust exposure and explains how he eliminated it as a contributing or aggravating factor to Claimant’s totally disabling lung impairment.” *Id.* at 6.

<sup>5</sup> The Board will apply the law of the United States Court of Appeals for the Third Circuit because the Miner performed his last coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director’s Exhibit 3; Hearing Tr. at 5.

<sup>6</sup> “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

part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201.” 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer failed to establish rebuttal by either method.<sup>7</sup>

### **Legal Pneumoconiosis**

To disprove legal pneumoconiosis, Employer must establish the Miner did not have 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), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer initially argues the ALJ erred by failing to consider Dr. Manaker’s deposition testimony in conjunction with his initial Decision and Order and again in his Decision and Order on remand. Employer’s Brief at 25. It contends that if the ALJ had considered Dr. Manaker’s testimony, then his opinion as a whole is sufficient to establish rebuttal. *Id.* at 25-27.

Claimant responds, asserting that because Employer failed to raise any issue with the ALJ’s consideration of Dr. Manaker’s opinion when the case was previously before the Board, it has forfeited its right to do so now. Claimant’s Response Brief at 12-13, 18-19. We agree with Claimant’s assertion that Employer forfeited the argument regarding Dr. Manaker’s deposition testimony not because it failed to file a cross-appeal, but because it failed to argue the ALJ erred in finding Dr. Manaker’s opinion was not well-reasoned in the first appeal to the Board.

When the case was previously before the Board, Employer did not, in its response brief or elsewhere, contend that the ALJ erred in not considering Dr. Manaker’s deposition

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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). “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).

<sup>7</sup> The ALJ noted the Board affirmed, as unchallenged on appeal, that Employer disproved the existence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order on Remand at 9; *see Muzydla*, BRB No. 22-0127 BLA, slip op. at 2 n.4.

testimony or in finding his opinion to be “not well-reasoned” and “entitled to no weight.” Decision and Order at 15. Indeed, Dr. Manaker’s name did not even appear in Employer’s opposition brief when the case previously was before the Board.

Instead, as Employer acknowledges, it waited until “its October 28, 2024 Closing Position Statement on Remand” to “remind[]” the ALJ that “he had not mentioned or referenced Dr. Manaker’s testimony in his first Decision” and asserted that Dr. Manaker’s testimony “explained, clarified, expanded upon, and elaborated on his written opinions, including those opinions which the ALJ had specifically criticized in [his initial decision and order].” Employer’s Brief at 25-26; *see* Employer’s October 28, 2024 Closing Position on Remand at 18, 20. Further, Employer waited until this second appeal to the Board to assert that the ALJ’s failure to consider Dr. Manaker’s deposition testimony “was in error, was irrational, was contrary to law, violated Employer’s Due Process rights, unfairly prejudiced Employer’s defense of this case, and caused [the ALJ’s Decision and Order on Remand] to not be based upon substantial evidence, and certainly not upon all of the medical opinion evidence of record.” Employer’s Brief at 27 (emphasis in original).

That is too late. Employer forfeited its argument concerning Dr. Manaker’s deposition testimony by failing to raise it to the Board during the initial appeal. *See Bernardo v. Director, OWCP*, 790 F. 2d 351, 353-54 (3d Cir. 1986); *Edd Potter Coal Co. v. Director, OWCP [Salmons]*, 39 F.4th 202, 210 (4th Cir. 2022) (forfeiture results when a party fails to raise an issue at the appropriate time; party forfeited an issue by waiting until after the Board remanded case to the ALJ to raise it); *Joseph Forrester Trucking v. Director, OWCP [Davis]*, 987 F.3d 581, 587 (6th Cir. 2021); *Doe v. Chao*, 511 F.3d 461, 465 (4th Cir. 2007) (“any issue that could have been but was not raised on appeal is forfeited and thus not remanded”); *S. Atl. Ltd. P’ship of Tenn. v. Riese*, 356 F.3d 576, 584 (4th Cir. 2004) (ALJ “cannot reconsider issues the parties failed to raise on appeal”); *United States v. Pileggi*, 703 F.3d 675, 680 (4th Cir. 2013) (when a party fails to present an issue, it is not allowed to “use the accident of a remand to raise . . . an issue that [it] could just as well have raised in the first appeal”); *Bailey v. E. Assoc. Coal Co.*, 25 BLR 1-323, 1-327 (2022) (en banc); *Gollie v. Elkay Mining Co.*, 22 BLR 1-306, 1-312 (2003).

Because Employer has not set forth any basis for excusing its forfeiture, we see no reason to consider its forfeited argument. *See Glidden Co. v. Zdanok*, 370 U.S. 530, 535 (1962) (cautioning against excusing forfeited arguments); *Salmons*, 39 F.4th at 206-07 (“forfeiture is essential to the orderly administration of justice” and not “a mere technicality”); *Davis*, 987 F.3d at 588; *Powell v. Serv. Emps. Int’l, Inc.*, 53 BRBS 13, 15 (2019). Consequently, we reject Employer’s argument concerning the ALJ’s weighing of Dr. Manaker’s opinion.

Employer next argues the ALJ's discrediting of Dr. Basheda's opinion for rebuttal purposes was erroneous. Employer's Brief at 28-30. We disagree.

Dr. Basheda opined that the results of the Miner's November 11, 2020 pulmonary function study "would classify [him] as a Class III impairment of the whole person" based on American Medical Association guidelines. Employer's Exhibit 4 at 19; *see also* Employer's Exhibit 6 at 27. He then concluded that because "[t]here is no obstructive lung disease, or restrictive lung disease, or radiographic abnormalities to define pulmonary impairment,"<sup>8</sup> the Miner's impairment is unrelated to pulmonary disease and rather is due to obesity and the elevation of his right hemidiaphragm. Employer's Exhibit 4 at 19-20. However, as the ALJ permissibly found, Dr. Basheda did not adequately explain why the Miner's coal dust exposure could not have also contributed to the impairment he diagnosed. *See Lango v. Director, OWCP*, 104 F.3d 573, 578 (3d Cir. 1997); Decision and Order on Remand at 13.

Because the ALJ provided a valid reason for discrediting Dr. Basheda's opinion, we affirm his finding that Employer failed to disprove legal pneumoconiosis. *See Minich*, 25 BLR at 1-155 n.8; Decision and Order on Remand at 13. Therefore, we also affirm his determination that Employer failed to rebut the Section 411(c)(4) presumption by establishing the Miner did not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i); Decision and Order on Remand at 13. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

### **Disability Causation**

Next, the ALJ considered whether Employer established "no part of the [M]iner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20

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<sup>8</sup> The Board previously affirmed the ALJ's finding that Claimant established total disability based on the pulmonary function study evidence at 20 C.F.R. §718.204(b)(2)(i) and the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv). *See Muzydla*, BRB No. 22-0127 BLA, slip op. at 2 n.5. Further, the Board specifically noted in the remand instructions that, contrary to Dr. Basheda's opinion, "the ALJ found Dr. Sood's opinion, that [the Miner] has 'occult airway obstruction' consistent with chronic obstructive pulmonary disease (COPD) severe enough to prevent him from performing his usual coal mine work, well-reasoned, and assigned it great weight" and instructed the ALJ to "fully explain any decision to credit the opinion of Dr. Basheda who excluded a diagnosis of legal pneumoconiosis in part because he believed there is no evidence [the Miner] ha[d] either obstructive or restrictive lung disease." *Id.* at 5-6.

C.F.R.] § 718.201.” 20 C.F.R. §718.305(d)(1)(ii); Decision and Order on Remand at 15-17. The ALJ permissibly discredited Dr. Basheda’s opinion on the cause of the Miner’s respiratory disability because he did not diagnose legal pneumoconiosis, contrary to the ALJ’s finding that Employer did not disprove the disease. *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); Decision and Order on Remand at 16. Because Employer raises no specific allegations of error<sup>9</sup> regarding the ALJ’s findings on disability causation beyond those already rejected, we affirm his determination that Employer failed to establish no part of the Miner’s respiratory or pulmonary disability was due to legal pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.305(d)(1)(ii); Decision and Order on Remand at 15-17; Employer’s Brief at 28-30. We therefore affirm his finding that Employer did not rebut the Section 411(c)(4) presumption.<sup>10</sup>

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<sup>9</sup> The ALJ noted that because “Dr. Manaker’s opinion on the issue of total disability was vague and equivocal, . . . it does not aid or hinder Employer with respect to rebutting the presumption [of total disability causation].” Decision and Order on Remand at 16; *see* Decision and Order at 22 (finding Dr. Manaker’s total disability opinion “unclear” and therefore “not well-reasoned” and entitled to “no weight”); *see also Muzydla*, BRB No. 22-0127 BLA, slip op. at 2 n.5 (affirming as unchallenged the ALJ’s total disability findings). Employer asserts that the ALJ’s credibility findings on remand concerning Dr. Manaker’s opinion are “difficult to understand” because they do not adequately reflect the ALJ’s prior or current determinations. Employer’s Brief at 26. However, to the extent Employer’s assertions challenge the ALJ’s weighing of Dr. Manaker’s opinion at rebuttal of total disability causation, remand is not required. Dr. Manaker’s opinion at total disability causation would be entitled to little, if any, weight as he did not diagnose legal pneumoconiosis, contrary to the ALJ’s finding. *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); *see also Collins v. Pond Creek Mining Co.*, 468 F.3d 213, 224 (4th Cir. 2006) (The ALJ may “only give weight to the causation opinions of the physicians who [did] not diagnose[] pneumoconiosis ‘if he provide[s] specific and persuasive reasons for doing so, and those opinions could carry little weight, at the most.’” (quoting *Scott v. Mason Coal Co.*, 289 F.3d 263 (4th Cir. 2002))).

<sup>10</sup> Because we affirm the ALJ’s finding that Employer failed to rebut the Section 411(c)(4) presumption, we need not address Claimant’s arguments on cross-appeal that if the case is remanded, the ALJ should be directed to not consider Dr. Manaker’s opinion. Claimant’s Cross Petition Brief at 10-12.

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

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge