U.S. Department of Labor

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

BRB No. 22-0337 BLA

RAY DOUGLAS BRUMMETT	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
LEFT FORK MINING COMPANY, INCORPORATED	)	
	)	
	)	DATE ISSUED: 01/18/2024
and	)	
	)	
BRICKSTREET MUTUAL INSURANCE	)	
	)	
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 on Request for Modification of Scott R. Morris, Administrative Law Judge, United States Department of Labor.

Evan B. Smith (AppalReD Legal Aid), Prestonsburg, Kentucky, for Claimant.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer and its Carrier.

Jennifer Stocker (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 JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Scott R. Morris's Decision and Order Awarding Benefits on Request for Modification (2019-BLA-05809) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves Claimant's request for modification of the denial of a claim filed on July 9, 2013.

In a December 1, 2016 Decision and Order Denying Benefits, the ALJ credited Claimant with nine years of coal mine employment based on the parties' stipulation, and therefore found he could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018). The ALJ further found the evidence did not establish complicated pneumoconiosis, and therefore Claimant could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3). 30 U.S.C. §921(c)(3). Considering whether Claimant could establish entitlement under 20 C.F.R. Part 718, he determined Claimant established a totally disabling respiratory or pulmonary impairment but did not establish clinical or legal pneumoconiosis.[2] 20 C.F.R. §§718.202(a), 718.204(b)(2). Thus, he denied benefits.

[1] Section 411(c)(4) 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.

[2] "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

Claimant timely requested modification, which the district director denied on February 12, 2019. Pursuant to Claimant's hearing request, the case was returned to the Office of Administrative Law Judges and assigned to the ALJ.

In his April 21, 2022 Decision and Order Awarding Benefits on Request for Modification, the subject of this appeal, the ALJ credited Claimant with 9.94 years of coal mine employment and therefore found he could not invoke the Section 411(c)(4) presumption. Considering new evidence submitted on modification in conjunction with the evidence previously submitted, the ALJ again found the evidence did not establish complicated pneumoconiosis, and therefore Claimant could not invoke the Section 411(c)(3) presumption. Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established both clinical and legal pneumoconiosis. Thus, he found Claimant established a mistake in a determination of fact and further found that granting modification would render justice under the Act. 20 C.F.R. §725.310. Accepting the parties' stipulation that Claimant has a totally disabling respiratory impairment, he found Claimant's total disability is due to pneumoconiosis and awarded benefits.

On appeal, Employer argues the ALJ erred in granting the request for modification. On the merits, it argues the ALJ erred in finding Claimant established clinical and legal pneumoconiosis.[3] The Director, Office of Workers' Compensation Programs (the Director), filed a limited response arguing the ALJ acted within his discretion to grant modification. Claimant responds in support of the award of benefits. In a reply brief, Employer reiterates its contentions.

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.[4] 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).

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

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Left Fork Mining Co., Inc., is the responsible operator. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[4] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 1 at 313.

Modification – Evidentiary Issue

Employer contends the ALJ erred in admitting into evidence Dr. DePonte's reading of a May 30, 2013 chest computed tomography (CT) scan, Dr. Westerfield's October 25, 2014 medical report and deposition, Dr. Combs-Wollum's March 20, 2014 medical status report, and Dr. Green's March 12, 2018 email interpreting 2013 biopsy slides when, it asserts, the evidence was available or could have been obtained at the time of the 2016 hearing. Employer's Brief at 13-16. It contends the ALJ did not "explain why allowing this evidence" into the record "rendered justice under the Act." *Id.* We disagree.

Section 22 grants the ALJ "broad discretion to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971). Section 725.310(c) also instructs the ALJ to consider the record "regardless of whether parties have submitted new evidence." 20 C.F.R. §725.310(c). Further, contrary to Employer's contention, "a modification request cannot be denied out of hand . . . on the basis that the evidence may have been available at an earlier stage in the proceeding." *Old Ben Coal Co. v. Director, OWCP* [*Hilliard*], 292 F.3d 533, 546 (7th Cir. 2002). Rather, the "modification procedure is flexible, potent, [and] easily invoked," and embodies a policy favoring accuracy of determination over finality. *Betty B Coal Co. v. Director, OWCP* [*Stanley*], 194 F.3d 491, 497 (4th Cir. 1999); *Hilliard*, 292 F.3d at 541. Thus, "[o]nce a request for modification is filed, no matter the grounds stated, if any, the [ALJ] has the authority, if not the duty, to reconsider all the evidence for any mistake of fact or change in conditions." *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 230 (6th Cir. 1994).

Moreover, because an ALJ exercises broad discretion in resolving procedural and evidentiary matters, *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc), a party seeking to overturn the disposition of an evidentiary issue must show the ALJ's action represented an abuse of discretion. *V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009). While Employer is correct that the ALJ must consider whether granting modification would render justice under the Act, it points to no authority that the ALJ must

consider this factor in admitting evidence within the evidentiary limitations.[5] 20 C.F.R. §725.414. Therefore, we reject Employer's contentions.[6]

Part 718 Entitlement

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

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must prove he 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 Sixth Circuit, within whose jurisdiction this case arises, has held a claimant satisfies this standard by establishing his lung disease or impairment was caused "in part" by coal mine employment. *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014); *see also Island Creek Coal Co. v. Young*, 947 F.3d 399, 407 (6th Cir. 2020) ("[I]n [*Groves*] we defined 'in part' to mean 'more than a *de minimis* contribution' and instead 'a contributing cause of some discernible consequence.'").

The ALJ considered the medical opinions of Drs. Go, Sexton, Westerfield, Dahhan, Spagnolo, and Meyer. Decision and Order on Modification at 27-31. The physicians of record agree that Claimant suffers from pulmonary alveolar proteinosis (PAP), which they

[5] Contrary to the ALJ's statement, he was not required to make an initial threshold finding that granting modification would render justice under the Act prior to considering the merits of the case. *See Kincaid v. Island Creek Coal Co.*, BLR , BRB Nos. 22-0024 BLA, 22-0024 BLA-A, slip. op. at 4 (Nov. 17, 2023); Decision and Order on Modification at 34.

[6] To the extent Employer suggests the ALJ is bound by his prior findings in this case, we disagree. Modification is a "de novo process" that amounts to a "new adjudication," where the factfinder is "in no way bound by the findings supporting the original [decision]." *Betty B Coal Co. v. Director, OWCP* [*Stanley*], 194 F.3d 491, 499 (4th Cir. 1999).

described as a rare chronic lung disease that causes protein and liquid to fill the airspaces in the lungs. They disagree on whether Claimant's PAP is related to coal mine dust exposure.[7] Drs. Go, Sexton, and Westerfield each attributed Claimant's PAP to his exposure to silica during his coal mine employment. Director's Exhibits 1, 30, 57; Claimant's Exhibit 4. Drs. Dahhan, Spagnolo, and Meyer opined Claimant's PAP is unrelated to his coal mine dust exposure. Director's Exhibits 61, 67, 69; Employer's Exhibits 2, 4, 10.

The ALJ found Dr. Go's opinion well-documented, well-reasoned, supported by medical literature and "consistent with the weight given to the pathological [biopsy] reports." Decision and Order on Modification at 31. He accorded reduced weight to the opinions of Drs. Sexton and Westerfield as equivocal. *Id.* at 28, 30. However, he accorded no weight to the opinions of Drs. Spagnolo and Dahhan, finding them not well-reasoned. *Id*. at 28-30. The ALJ further found that Dr. Meyer's opinion did not address the issue of legal pneumoconiosis. *Id.* at 29-30. Consequently, the ALJ found that Dr. Go's medical opinion established that Claimant has legal pneumoconiosis in the form of PAP due to silica exposure during his coal mine employment. *Id*. at 31.

We agree with Employer that the ALJ erred in not considering Dr. Meyer's new opinion submitted on modification and erred in his summary conclusion that the physician's opinion was silent as to the existence of legal pneumoconiosis. Decision and Order on Modification at 29-30; Employer's Brief at 22. During his 2016 deposition, Dr. Meyer stated that coal mine dust exposure did not contribute to Claimant's PAP. Director's Exhibit 69 at 21. On modification, Dr. Meyer further explained that there are three forms of PAP: hereditary, primary or idiopathic, and secondary, with secondary being the form of PAP that can be related to environmental exposures such as silica. Employer's Exhibit 10 at 1. Dr. Meyer referred to this secondary form as "silicoproteinosis" if it is related to silica exposure. *Id.* He explained that Claimant's PAP is not a form of secondary PAP and thus is not silicoproteinosis for several reasons.[8] *Id.* at 2. As Dr. Meyer explicitly

[7] Most of the physicians of record agree that although PAP is usually of unknown origin, it can be caused by various environmental dust exposures, including exposure to silica. Director's Exhibit 61 at 5; Claimant's Exhibits 1 at 5; 4 at 12; Employer's Exhibit 10 at 2. The record contains evidence that Claimant cut through silica-containing rock during his underground coal mine employment. Claimant's Exhibits 1 at 3; 4 at 12.

[8] Dr. Meyer noted that Dr. Adams reviewed Claimant's lung biopsy and did not mention any silicosis. Employer's Exhibit 10 at 2. He further noted that a report of a bronchoalveolar lavage on January 10, 2014, noted the presence of silica-like crystals but at levels consistent with those seen in a typical urban dweller. *Id.* Additionally, he opined

addressed the cause of Claimant's PAP, which the ALJ found constituted legal pneumoconiosis, we must vacate his determination that Dr. Meyer did not address whether legal pneumoconiosis was present and remand the case for reconsideration of whether the medical opinion evidence establishes Claimant has legal pneumoconiosis. *See* 30 U.S.C. §923(b) (requiring consideration of all relevant evidence).

Employer also argues the ALJ's failure to properly weigh the biopsy evidence the parties submitted affected his crediting of Dr. Go's medical opinion. Employer's Brief at 20, 28. The record contains the biopsy reports of Drs. Adams and Oesterling, as well as the biopsy report and medical opinion of Dr. Green. Director's Exhibits 49, 51; Claimant's Exhibit 1. Upon review of Claimant's May 30, 2013 lung biopsy, each of the pathologists diagnosed PAP and, although Dr. Adams did not address its cause, Dr. Oesterling opined it was not due to coal mine dust exposure while Dr. Green opined it was due to silica exposure in the mines.[9] Director's Exhibits 49, 51; Claimant's Exhibit 1. Specifically, Employer contends Dr. Go relied heavily on Dr. Green's biopsy pathology report, but Dr. Go overlooked evidence that it asserts calls into question his analysis of the biopsy evidence. Employer's Brief at 20, 28.

On this issue, the ALJ failed to specifically consider the biopsy evidence with respect to whether Claimant's PAP constitutes legal pneumoconiosis. We note that Drs. Oesterling and Green reviewed and discussed the May 30, 2013 biopsy in terms of whether it showed the deposition of sufficient amounts of silica in Claimant's lungs to have caused or aggravated his PAP.[10] *See* Director's Exhibit 61 at 2, 4; Claimant's Exhibits 1 at 3-4, 4 at 12-13; Employer's Exhibit 10 at 2.

The ALJ only considered the biopsy reviews of Drs. Oesterling and Green. He found both doctors to be equally qualified and thus found no reason to credit one physician over the other; therefore, he found the biopsy evidence to be in equipoise, i.e., inconclusive for the existence or absence of pneumoconiosis. Decision and Order on Modification at 20. In making this finding, he concluded that the "preponderance of the biopsy evidence

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the disease is rare in coal miners, and noted the pattern of Claimant's radiographic findings is consistent with PAP but inconsistent with silicoproteinosis. *Id.*

[9] In regard to clinical pneumoconiosis, Dr. Oesterling specifically found no coal workers' pneumoconiosis while Dr. Green diagnosed silicosis, and although Dr. Adams diagnosed PAP, he did not mention or address silicosis or clinical pneumoconiosis or state that he failed to observe silicosis. Director's Exhibits 49, 51; Claimant's Exhibit 1.

[10] Again, Dr. Adams did not mention or address silicosis or state that he failed to observe silicosis. Director's Exhibits 49, 51; Claimant's Exhibit 1; *see supra* note 9.

did not affirmatively support a finding of clinical or legal pneumoconiosis." Decision and Order on Modification at 20, 32. Employer contends that the ALJ erred in failing to consider Dr. Adams's opinion, which diagnosed PAP and did not mention silicosis or clinical pneumoconiosis, and therefore erred in finding the biopsy evidence to be in equipoise. *See* 30 U.S.C. §923(b); Employer's Brief at 20.

The ALJ must consider all relevant evidence, 30 U.S.C. §923(b), and must weigh together all relevant evidence to determine whether Claimant has established pneumoconiosis. *Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 700 F.3d 878, 880-81 (6th Cir. 2012). Because the ALJ did not consider all of the biopsy evidence on the issue of legal pneumoconiosis, he must do so on remand.

Further, in regard to the ALJ's consideration of Dr. Go's medical opinions on legal pneumoconiosis, the ALJ credited Dr. Go's opinion that Claimant's PAP constitutes legal pneumoconiosis, in part, because it was "consistent with the weight given to the pathological reports." Decision and Order on Modification at 31. But to the extent that the ALJ's failure to weigh the biopsy evidence affected his weighing of Dr. Go's opinion and because the ALJ's crediting of Dr. Go's opinion on legal pneumoconiosis is inconsistent with his finding that the "preponderance of the biopsy evidence did not affirmatively support a finding of clinical or legal pneumoconiosis," we also vacate his crediting of Dr. Go's diagnosis of legal pneumoconiosis in the form of PAP due to coal mine dust exposure. 20 C.F.R. §§718.201(a)(2), 718.202; *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); Employer's Brief at 28.

However, we disagree with Employer that the ALJ erred in discrediting Drs. Dahhan's and Spagnolo's opinions. Employer's Brief at 21-22.

Dr. Spagnolo opined Claimant does not have legal pneumoconiosis, stating "there is no definitive evidence that PAP is caused by exposure to coal dust or silica." Employer's Exhibit 2 at 15. As even Employer's own experts, Drs. Meyer and Oesterling, opined that silica dust exposure may cause PAP and provided medical scientific literature to support their opinions, substantial evidence supports the ALJ's determination to accord no probative weight to Dr. Spagnolo's opinion as it is "misleading."[11] *See Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251,

[11] Because the ALJ provided a separate, valid reason for discrediting Dr. Spagnolo's opinion on the issue of legal pneumoconiosis, we need not address Employer's argument that the ALJ "conflate[d] the disability assessment with disease diagnosis or disease causation" when weighing Dr. Spagnolo's opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 21.

255 (6th Cir. 1983); Decision and Order on Modification at 28; Director's Exhibit 69; Employer's Exhibit 10. Similarly, Dr. Dahhan stated categorically that PAP is an idiopathic disease of the general public that is not related to coal mine dust exposure and thus, his opinion fails for the same reason.[12] Director's Exhibit 67 (medical report at 4, deposition at 12).

Finally, Dr. DePonte interpreted a CT scan as showing ground glass densities with smooth septal thickening consistent with PAP, which she attributed to Claimant's coal mine dust exposure. Director's Exhibit 12. Dr. Meyer also opined the CT scan showed ground glass opacities consistent with PAP, which he opined was unrelated to coal mine dust exposure. Director's Exhibit 65. While the ALJ found the CT scan evidence (as discussed below) to be in equipoise on the issue of simple clinical pneumoconiosis, *see* Decision and Order on Modification at 22-23, 32, the ALJ did not consider their opinions on the issue of legal pneumoconiosis. *Hensley*, 700 F.3d at 880-81. Because the ALJ did not consider this relevant evidence on the issue of legal pneumoconiosis, he must do so on remand when considering whether the relevant evidence of record establishes legal pneumoconiosis.

Clinical Pneumoconiosis

The ALJ found Claimant established clinical pneumoconiosis based upon the x-ray evidence, medical opinion evidence, and evidence as a whole. Decision and Order on Modification at 32; 20 C.F.R. §718.202(a)(1), (4).

The ALJ considered nine interpretations of five x-rays dated August 14, 2013, March 26, 2014, April 8, 2014, August 7, 2014, and October 15, 2014. Decision and Order on Modification at 15-16. The August 14, 2013 x-ray was read as positive for simple pneumoconiosis by Drs. Ahmed, Meyer, and DePonte, each of whom are dually-qualified Board-certified radiologists and B readers. Director's Exhibits 1, 55; Employer's Exhibit 7. The March 26, 2014 x-ray was read as positive for pneumoconiosis by Dr. Meyer and as negative for the disease by Dr. Dahhan, a B reader. Director's Exhibit 1; Employer's Exhibit 7. The April 8, 2014 x-ray was read as positive for pneumoconiosis by Drs. DePonte and Meyer. Claimant's Exhibit 1; Employer's Exhibit 7. The August 7, 2014 x-ray was read as negative for pneumoconiosis by dually-qualified Dr. Kendall. Employer's Exhibit 5. The October 15, 2014 x-ray was read as positive for pneumoconiosis by Dr. Westerfield, a B reader. Director's Exhibit 30; Claimant's Exhibit 2.

[12] We affirm, as unchallenged on appeal, the ALJ's determination to accord reduced weight to the opinions of Drs. Sexton and Westerfield. *See Skrack*, 6 BLR at 1-711; Decision and Order on Modification at 29-30.

The ALJ found the August 14, 2013, April 8, 2014, and October 15, 2014 x-rays positive for pneumoconiosis based on the uncontradicted interpretations of the radiologists. Decision and Order on Modification at 16-17. Similarly, he found the August 7, 2014 x-ray negative for pneumoconiosis based on Dr. Kendall's uncontradicted reading. *Id*. at 16. Finally, the ALJ found the March 16, 2014 x-ray positive for pneumoconiosis, finding Dr. Meyer better qualified to offer an opinion as he is dually-qualified while Dr. Dahhan is not. *Id*. Based on this analysis, the ALJ found the x-rays to be preponderantly positive and, standing alone, support a finding of clinical pneumoconiosis. *Id*. at 17, 26. As Employer does not challenge these findings, they are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ also considered the two interpretations of the CT scan dated May 30, 2013, as to whether they establish clinical pneumoconiosis. Decision and Order on Modification at 21-23. Specifically, the ALJ noted Dr. DePonte found that the CT scan showed small ground glass opacities but not large opacities, while Dr. Meyer found that the CT scan did not show small or large opacities. *Id.* at 22-23; Director's Exhibits 12, 65. As both physicians are equally qualified and the ALJ could find no reason to credit one interpretation over the other, the ALJ found the CT scan evidence to be in equipoise on the issue of simple clinical pneumoconiosis. Decision and Order on Modification at 22-23, 32.

Employer contends the ALJ should have found Dr. Meyer better qualified to offer an opinion based on his additional credentials. Employer's Brief at 20-21. While an ALJ may consider an expert's qualifications in resolving the conflicting evidence, he is not required to afford the interpretation of a physician with a certain credential greater weight. *Bateman v. E. Associated Coal Corp.*, 22 BLR 1-255, 1-261 (2003); *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149, 1-155 (1989) (en banc); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Here, the ALJ properly took into account the physicians' credentials and opinions and permissibly found no reason to credit one over the other. *See Rowe*, 710 F.2d at 255. Nevertheless, in regard to clinical pneumoconiosis, while Drs. DePonte and Meyer disagreed as to whether the CT scan revealed small opacities, neither doctor found that the opacities revealed simple clinical pneumoconiosis. Director's Exhibits 12, 65. They both found the CT scan only revealed PAP, disagreeing on whether Claimant's PAP is related to coal mine dust exposure, which is relevant to whether it constitutes legal pneumoconiosis. *Id*. Therefore, as we noted above, the ALJ should consider the CT scan evidence on remand in regard to the existence of legal pneumoconiosis, including the comments and rationales provided.

Next, as we discussed above, Drs. Adams, Oesterling, and Green reviewed a lung biopsy dated May 30, 2013. Director's Exhibits 49, 51; Claimant's Exhibit 1. Each of the physicians diagnosed PAP, and Dr. Oesterling specifically found no coal workers'

pneumoconiosis while Dr. Green also diagnosed silicosis. *Id.* Again, the ALJ only considered the biopsy reviews of Drs. Oesterling and Green, found both doctors to be equally qualified, and thus found no reason to credit one physician over the other; the ALJ therefore found the biopsy evidence to be in equipoise for clinical pneumoconiosis, i.e., inconclusive for the existence or absence of pneumoconiosis. Decision and Order on Modification at 20. Again, as the ALJ did not consider Dr. Adams's opinion, which diagnosed PAP and did not mention clinical pneumoconiosis or silicosis, we vacate the ALJ's finding that the biopsy evidence is in equipoise for clinical pneumoconiosis. 20 C.F.R. §718.202(a)(2).

Finally, the ALJ considered the medical opinion evidence. Decision and Order on Modification at 23-25. Citing Dr. Green's pathology report, Dr. Go opined Claimant has clinical pneumoconiosis in the form of silicosis. Claimant's Exhibits 1-4. Drs. Sexton and Westerfield also diagnosed simple pneumoconiosis based on the x-ray evidence. Director's Exhibits 1, 30, 57, 68. Drs. Dahhan, Spagnolo, and Meyer opined Claimant does not have clinical pneumoconiosis but instead has PAP unrelated to coal mine dust exposure. Director's Exhibits 61, 67, 69; Employer's Exhibits 2, 4, 10. The ALJ found Dr. Go's opinion to be the only well-reasoned opinion on the issue of simple clinical pneumoconiosis, noting it was "consistent with the weight given to the pathological [biopsy] reports." Decision and Order on Modification at 31.

Employer contends the ALJ erred in his weighing of the opinions of Drs. Go, Meyer, Dahhan, and Spagnolo. Employer's Brief at 16-34. We agree.

As discussed above, the ALJ credited Dr. Go's opinion as reasoned and documented and "consistent with the weight given to the pathological reports." Decision and Order on Modification at 31. But again, to the extent that the ALJ's errors in weighing the biopsy evidence affected his weighing of Dr. Go's opinion and the ALJ's finding that Dr. Go's opinion is "consistent with the weight given to the pathological reports" is inconsistent with the ALJ's finding that the biopsy evidence is inconclusive, we vacate his crediting of Dr. Go's diagnosis of clinical pneumoconiosis in the form of silicosis. 20 C.F.R. §718.202(a)(4); *Wojtowicz*, 12 BLR at 1-165; Employer's Brief at 28.

Similarly, the ALJ discredited the opinions of Drs. Dahhan and Spagnolo that Claimant does not have clinical pneumoconiosis as contrary to his finding that Claimant suffers from clinical pneumoconiosis in the form of silicosis. Decision and Order on Modification at 28-29. But the ALJ only noted Dr. Green's biopsy opinion as specifically diagnosing silicosis and, again, the ALJ found the biopsy evidence inconclusive for the existence or absence of clinical pneumoconiosis. *Id.* at 20. Thus, as the ALJ's finding that Drs. Dahhan's and Spagnolo's opinions are contrary to his finding that Claimant suffers from silicosis is, again, actually inconsistent with the ALJ's finding that the biopsy

evidence is inconclusive (and moreover because we have vacated his finding as to the biopsy evidence for failing to consider the opinion of Dr. Adams), and the ALJ's errors in weighing the biopsy evidence affected his weighing of their opinions, we vacate his discrediting of their opinions. 20 C.F.R. §718.202(a)(4); *see Wojtowicz*, 12 BLR at 1-165; Employer's Brief at 21-22.

Finally, the ALJ set forth Dr. Meyer's opinion that the pattern of the changes seen on the CT scan evidence establishes that the changes seen on Claimant's conventional x-rays are in fact due to PAP and not silicosis. Decision and Order on Modification 22. However, as Employer notes, the ALJ provided no substantive consideration of his opinion on simple pneumoconiosis.[13] Employer's Brief at 19-20.

As the ALJ failed to discuss relevant evidence, we must vacate his finding that the medical opinion evidence establishes clinical pneumoconiosis.[14] *See* 30 U.S.C. §923(b); 20 C.F.R. §718.202(a)(4); Decision and Order on Modification at 31.

As we vacated the ALJ's finding that Claimant has clinical and legal pneumoconiosis, we vacate his finding that Claimant is totally disabled due to clinical and legal pneumoconiosis. 20 C.F.R. §718.204(c). Therefore, we must vacate his finding that granting modification would render justice under the Act and the award of benefits.

Remand Instructions

On remand, the ALJ must reconsider whether Claimant has established clinical or legal pneumoconiosis, or both. 20 C.F.R. §718.202(a). In addressing legal pneumoconiosis, the ALJ must consider the biopsy evidence[15] and CT scan evidence relevant to legal pneumoconiosis and reconsider the medical opinion evidence, and then weigh all relevant evidence together as a whole to determine if Claimant has established

[13] In finding that Claimant had PAP and not silicosis, Dr. Meyer also relied in part on Dr. Adams's biopsy opinion, stating that Dr. Adams "failed to observe any silicosis." Employer's Exhibit 10 at 2. We note that Dr. Adams did not specifically address or mention silicosis in his biopsy opinion, nor specifically state that he failed to observe silicosis.

[14] We affirm, as unchallenged on appeal, the ALJ's determination that Claimant's treatment records neither support nor refute pneumoconiosis as they do not address the issue. *See Skrack*, 6 BLR at 1-711; Decision and Order on Modification at 32.

[15] On remand, the ALJ should address Employer's specific challenges to Dr. Green's opinion. Employer's Closing Brief to the ALJ at 18-24.

legal pneumoconiosis. *See Hensley*, 700 F.3d at 880-81; 20 C.F.R. §718.202. In addressing clinical pneumoconiosis, the ALJ must reconsider the biopsy evidence and the medical opinion evidence,[16] and then weigh all of the relevant the evidence together as a whole to determine if Claimant has established clinical pneumoconiosis. *Hensley*, 700 F.3d 878, 880-81. In considering this evidence, the ALJ must take into consideration the physicians' credentials, their specific diagnoses, the explanations for their conclusions, their understanding of Claimant's smoking and work histories, the documentation underlying their medical judgment, and the sophistication of, and bases for, their opinions. *See Rowe*, 710 F.2d at 255. In weighing the evidence together, the ALJ must take note of evidence from one category which either detracts from or supports evidence in another category.[17] *See Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89 (6th Cir. 1999).

If Claimant establishes clinical pneumoconiosis, the ALJ must consider whether it arose out of Claimant's coal mine employment. *See* 20 C.F.R. §718.203(c). If Claimant establishes clinical or legal pneumoconiosis, the ALJ must determine whether either disease is a substantially contributing cause of his total respiratory disability. *Groves*, 761 F.3d at 600; 20 C.F.R. §718.204(c). If the ALJ again finds Claimant established a mistake in a determination of fact at 20 C.F.R. §725.310, he should also address whether granting modification would render justice under the Act, addressing the parties' arguments on the matter. In reaching all his determinations on remand, the ALJ must adequately explain

[16] The ALJ did not consider the opinions of Drs. Sexton and Westerfield when determining Claimant established pneumoconiosis but should do so on remand as they are relevant. Director's Exhibits 1, 57; Claimant's Exhibits 2, 3.

[17] In the context of the ALJ's reconsideration of the relevant evidence on remand, we note that 20 C.F.R. §718.106(c) states: "[a] negative biopsy is not conclusive evidence that the miner does not have pneumoconiosis," but "where positive findings are obtained on biopsy, the results will constitute evidence of the presence of pneumoconiosis." The Sixth Circuit, where this case arises, has so held as well. *See Dixie Fuel Co., LLC v. Director, OWCP* [*Hensley*], 820 F.3d 833, 847 (6th Cir. 2016) (ALJ "properly noted that negative biopsy results are not conclusive evidence that a miner does not have pneumoconiosis") (citing 20 C.F.R. §718.106(c)). The Board has held inconclusive evidence does not affirmatively establish the absence of pneumoconiosis. *See Minich v. Keystone Coal Mining Corp*., 25 BLR 1-149, 1-154-56 (2015); *see also Bridger Coal Co, v. Director, OWCP* [*Ashmore*], 669 F.3d 1183, 1195 (10th Cir. 2012) ("By rule, negative biopsy evidence cannot establish the absence of pneumoconiosis.") (citing 20 C.F.R. §718.106(c)); *Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22 (3rd Cir. 1997).

the bases for his findings of fact and conclusions of law in accordance with the Administrative Procedure Act.[18] *See Wojtowicz*, 12 BLR at 1-165.

Accordingly, the ALJ's Decision and Order Awarding Benefits on Request for Modification is affirmed in part and vacated in part, and the case is remanded to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[18] The Administrative Procedure Act 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).