U.S. Department of Labor

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

BRB No. 23-0363 BLA

EDDIE L. STEWART Claimant-Respondent v. ISLAND CREEK KENTUCKY MINING, c/o CONSOL ENERGY, INCORPORATED Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 01/29/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

M. Alexander Russell and Austin P. Vowels (Vowels Law PLLC), Henderson, Kentucky, for Claimant.

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

Kathleen H. Kim (Emily Su, Deputy Solicitor for the National Office; Jennifer Feldman Jones, Acting 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, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals[1] Administrative Law Judge (ALJ) John P. Sellers, III's Decision and Order Awarding Benefits (2021-BLA-05118) rendered on a subsequent claim filed on August 2, 2019,[2] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ determined Claimant established 14.70 years of coal mine employment and therefore found he could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[3] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established clinical and legal pneumoconiosis,[4] as well as a totally disabling respiratory or pulmonary

[1] On November 29, 2023, Employer filed a motion requesting oral argument. Based on the issues raised in Employer's petition for review, oral argument is not necessary. *See* 20 C.F.R. §802.304. Employer's request for oral argument is therefore denied. 20 C.F.R. §802.306.

[2] Claimant filed seven prior claims. Director's Exhibits 1; 2 at 3-4; 3 at 6; 5 at 5; 6; 7. He withdrew his most recent two claims, filed in 2015 and 2018. Director's Exhibits 6, 7. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b). The district director denied his third most recent prior claim, filed on July 7, 2011, because he failed to establish total disability. Director's Exhibit 5 at 6.

[3] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is 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] "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 due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204(b)(2). Consequently, he found Claimant established a change in an applicable condition of entitlement,[5] 20 C.F.R. §725.309(c), and awarded benefits.

On appeal, Employer asserts the ALJ did not give it adequate notice that he would be excluding portions of Dr. Chavda's deposition from the record, did not identify the portions he was including or excluding, and erred in finding Claimant established pneumoconiosis. Claimant responds, urging affirmance of the award of benefits. In a limited response, the Director, Office of Workers' Compensations Programs (the Director), agrees with Employer that the ALJ erred in excluding portions of Dr. Chavda's deposition without giving Employer adequate notice and urges the Benefits Review Board to vacate the ALJ's decision and remand the case for further consideration. Employer replied to Claimant's and the Director's briefs, reiterating its arguments.[6]

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.[7] 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, 361-62 (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).

[5] When a claimant 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 "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 district director denied Claimant's prior claim for failing to establish total disability, he had to submit evidence establishing this element to obtain review of the merits of his claim. *See White*, 23 BLR at 1-3; Director's Exhibit 5 at 5-6.

[6] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 14.70 years of coal mine employment, a totally disabling respiratory and pulmonary impairment, and a change in an applicable condition of entitlement. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 11, 41.

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See*

Evidentiary Issue: Dr. Chavda's Deposition

Employer and the Director assert the ALJ erred by failing to notify Employer, prior to issuing his Decision and Order, that he would be excluding portions of Dr. Chavda's deposition testimony. Employer's Brief at 15-17, 28-29; Employer's Reply Brief at 1-4; Director's Brief at 2 (discussing *L.P.* [*Preston*] *v. Amherst Coal Co.*, 24 BLR 1-55 (2008)). Employer also contends the ALJ erred by failing to identify the specific portions of the deposition he was including or excluding. Employer's Brief at 15. Both Employer and the Director contend the errors they identify are not harmless because the ALJ accorded substantial weight to Dr. Chavda's opinion. Employer's Reply Brief at 1-2; Director's Brief at 2. We are not persuaded.

ALJs exercise broad discretion in resolving procedural and evidentiary matters. *Dempsey v. Sewell Coal Corp*., 23 BLR 1-47, 1-63 (2004) (en banc); *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149, 1-153 (1989) (en banc). A party seeking to overturn the disposition of an evidentiary issue must establish the ALJ's action was an abuse of discretion. *V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009).

The regulations set numerical limits on the specific types of medical evidence the parties can submit into the record. *See* 20 C.F.R. §§725.414, 725.456(b)(1). Each party may submit, in support of its affirmative case, no more than two medical reports. 20 C.F.R. §725.414(a)(2)(i), (a)(3)(i). A physician who prepared a medical report submitted by the parties and admitted into the record may testify with respect to the claim as a supplement to the physician's initial opinion. 20 C.F.R. §725.414(c). If a party has not submitted a physician's written medical report, a party may nonetheless submit that physician's testimony as a medical report subject to the evidentiary limitations. *Id.* Medical reports exceeding the evidentiary limitations "shall not be admitted into the hearing record in the absence of good cause." 20 C.F.R. §725.456(b)(1). Hospitalization and treatment records relating to a respiratory or pulmonary related disease may, however, be admitted notwithstanding the numerical evidentiary limitations. 20 C.F.R. §725.414(a)(4).

Both parties designated their full complement of medical reports. Claimant designated the medical reports of Drs. Sood and Sheikh, and Employer designated the reports of Drs. Selby and Goodman. Claimant's Evidence Summary Form at 5; Employer's Evidence Summary Form at 5-6; Director's Exhibit 46; Claimant's Exhibits 2, 3; Employer's Exhibits 4, 6. Neither party designated a medical report from Dr. Chavda as evidence. Claimant's Evidence Summary Form; Employer's Evidence Summary Form;

Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 15; Director's Exhibits 25, 27.

see 20 C.F.R. §725.414(a)(2), (3). Claimant did, however, submit Dr. Chavda's records relating to his treatment of Claimant's respiratory and pulmonary conditions. Claimant's Evidence Summary Form; Claimant's Exhibits 4, 10, 12. Employer deposed Dr. Chavda on November 19, 2021, and submitted his testimony to the ALJ. On its Evidence Summary Form, which asks the parties to identify whether a testifying physician had also prepared an "Earlier Report" in the claim,[8] Employer identified Director's Exhibit 41 and Claimant's Exhibit 4, which contain some of Dr. Chavda's treatment records.[9] Employer's Evidence Summary Form at 8.

At the hearing, the ALJ admitted Dr. Chavda's deposition into the record without objection or qualification. Hearing Transcript at 11; *see* Employer's Exhibit 8. In his decision, he noted that parties have the right to cross-examine treating physicians to evaluate their credibility and thus indicated he admitted Dr. Chavda's deposition into the record "for purposes of cross-examination." Decision and Order at 20 n.25; *see Preston*, 24 BLR at 1-63. However, he further noted that the parties also "questioned Dr. Chavda about other medical evidence outside of the four corners of his treatment notes" during his deposition. Decision and Order at 20 n.25. The ALJ found that asking Dr. Chavda to provide a medical opinion based on this additional medical evidence exceeded the scope of cross-examination, and his answers to those questions, if admitted, would therefore constitute an additional medical report in excess of the evidentiary limits at 20 C.F.R. §725.414. Decision and Order at 20 n.25; *see Smith v. Martin Cnty. Coal Corp.*, 23 BLR 1-69, 1-74 (2004) (ALJ is obligated to enforce the evidentiary limitations even if no party objects). Thus, the ALJ limited his review of Dr. Chavda's deposition to his testimony

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[8] Employer's Evidence Summary Form contains the following instructions:

> IX. Testimony. 20 C.F.R. § 725.414(c).
>
> A physician who prepared a medical report, admitted under § 725.414, above, may testify with respect to the claim. If a party submitted fewer than two medical reports, a physician who did not prepare a prior medical report may testify in lieu of such a medical report, but the testimony is considered a medical report of the party.

Employer's Evidence Summary Form at 8. The form then asks the parties to identify, among other things, the "Exhibit No. of Earlier Report" prepared by the testifying physician. *Id.*

[9] The record contains additional treatment records from Dr. Chavda in Director's Exhibits 42 and 44 as well as Claimant's Exhibits 10 and 12.

regarding the information contained within his treatment notes. Decision and Order at 20 n.25.

As an initial matter, neither Employer nor the Director challenges the ALJ's finding that Dr. Chavda's testimony about evidence unrelated to his treatment of Claimant is not admissible because it constitutes a medical report in excess of the numerical evidentiary limitations. 20 C.F.R. §725.414(a)(2)(1), (a)(3)(1), (c); Decision and Order at 20 n.25. Nor do they allege "good cause" exists for its admission. 20 C.F.R. §725.456(b)(1). We thus affirm the ALJ's decision to exclude portions of Dr. Chavda's deposition testimony. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); *see also Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-242 n.15 (2007) (en banc) (if a medical report is based, in whole or in part, on inadmissible evidence, the ALJ has several available options within his discretion, including redaction of the objectionable content).

We also reject Employer's argument that the ALJ violated the Administrative Procedure Act (APA),[10] 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by failing to identify the portions of the deposition that were admissible versus non-admissible. The ALJ explained that he was excluding Dr. Chavda's testimony "about other medical evidence outside of the four corners of his treatment notes" while limiting his review solely to "Dr. Chavda's testimony to information regarding his treatment notes." Decision and Order at 20 n.25. The ALJ also specifically cited portions of Dr. Chavda's testimony he found to be within the scope of cross-examination relating to the physician's treatment. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012) (if a reviewing court can discern what the ALJ did and why he did it, the duty of explanation under the APA is satisfied); Decision and Order at 20, 27-28, 34, 38, 42 (citing Employer's Exhibit 8 at 8-9, 13, 15-16, 18-21, 31-32, 34-35).

With respect to the *timing* of the ALJ's evidentiary ruling—making it as part of his Decision and Order rather than by interlocutory order—we hold the alleged procedural error is, at most, harmless.[11] Employer's only arguments concerning the merits of Dr.

[10] The Administrative Procedure Act provides that every adjudicatory decision must include "all 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).

[11] In support of their argument that Employer was not provided adequate notice, Employer and the Director rely on a statement in *L.P.* [*Preston] v. Amherst Coal Co.*, 24 BLR 1-57, 1-63 (2008) (en banc), that an ALJ "should render his or her evidentiary rulings before issuing the Decision and Order." However, *Preston's* guidance must be read in context. The Board did not state that all evidentiary rulings must be done by

Chavda's opinion, including his deposition testimony, are that the ALJ should have discredited it. Employer's Brief at 22-24. However, in addition to Dr. Chavda's deposition, the ALJ gave "substantial weight" to three other medical opinions from Board-certified pulmonologists in finding Claimant established legal pneumoconiosis. Decision and Order at 37-40. Neither Employer nor the Director explain how the alleged error in not providing adequate notice before excluding portions of Dr. Chavda's deposition would make any difference in this case. As discussed below, the three other medical opinions the ALJ permissibly credited constitute substantial evidence in support of Claimant's entitlement to benefits. *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"); *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); *Wiley v. Consolidation Coal*

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interlocutory order in every case. Nor did the Board's statement undermine an ALJ's "broad discretion in dealing with procedural matters." *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-200 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). The primary holding in *Preston* was that the ALJ improperly excluded evidence from the record, thus requiring remand. Then, guided by a "concern for fairness and the need for administrative efficiency," the Board addressed "another important matter" by stating, "[I]f the administrative law judge determines that the evidentiary limitations preclude the consideration of proffered evidence, the administrative law judge should render his or her evidentiary rulings before issuing the Decision and Order." *Preston*, 24 BLR at 1-63. The stated purpose of that guidance was to give the aggrieved party an opportunity to make a "good cause" argument for why the excess evidence should nevertheless be admitted into the record, or to "otherwise resolve issues regarding the application of the evidentiary limitations[.]" *Id.*

In the present claim, Employer submitted its full complement of medical reports. It was or should have been aware of the evidentiary limitations on the admission of additional reports, including in the form of Dr. Chavda's deposition testimony. There is no dispute that the ALJ correctly found portions of Dr. Chavda's testimony inadmissible because they exceed those limitations, and no argument was made to the ALJ (or the Board) that the excluded testimony should be admitted for good cause. Under these circumstances, the fairness and administrative efficiency considerations identified in *Preston* are not served by remanding this claim for further procedural rulings on evidence that was properly excluded from the record. *See Brasher v. Pleasant View Mining Co.*, 23 BLR 1-141 (2006) (ALJ not obligated to conduct a good cause inquiry on his own accord and may consider the issue forfeited where the party submitting excess evidence does not attempt to make such a showing).

Co., 892 F.2d 498, 500 (6th Cir. 1989); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Claimant's Brief at 13-15.

Entitlement to Benefits

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).

Smoking History

Employer argues the ALJ violated the APA by failing to resolve the conflict in the evidence and adequately explain his conclusions regarding Claimant's smoking history. Employer's Brief at 8-14, 23, 30; Employer's Reply Brief at 4-5. It contends the evidence supports a greater smoking history than what the ALJ found and the ALJ's inadequate finding affected his weighing of the medical opinion evidence. Employer's Brief at 14, 22-25; Employer's Reply Brief at 5-7. We disagree.

As the trier of fact, it is the ALJ's function to determine the length and extent of a miner's smoking history. *See 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). Moreover, the ALJ has broad discretion in evaluating the credibility of the evidence, including witness testimony. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989); *Clark*, 12 BLR at 1-151; *see also Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017) (declining to reweigh witness testimony on smoking history despite alleged inconsistencies that the employer identified).

As the ALJ observed, Claimant testified in the present claim that he was "not a smoker," and his wife testified that he never had a smoking habit. Decision and Order at 4; Hearing Transcript at 28, 52. Claimant also reported having never smoked at his 2002 and 2011 Department of Labor-sponsored complete pulmonary evaluations, as well as at the examinations and in the treatment notes submitted in the present claim.[12] Decision and Order at 4; Director's Exhibits 3 at 44 (unpaginated); 5 at 43 (unpaginated); 36 at 2; 39 at

[12] Claimant likewise reported having never smoked at the 2005 complete pulmonary evaluation performed by Dr. Majmudar. Director's Exhibit 4 at 75 (unpaginated).

3; 40 at 6; 42 at 4-5; 44 at 2; 46 at 4; Claimant's Exhibits 2 at 3; 3 at 1; 4 at 2; 10 at 1; 12 at 2, 6, 11; Employer's Exhibit 4 at 8. The ALJ further recognized, however, that Claimant reported during his 1992 and 1995 complete pulmonary evaluations that he had smoked four to five cigarettes per day since the mid-1980s; he reported smoking five or six cigarettes per day for the past five years during a 1992 examination for a state workers' compensation claim; he testified at his 1995 hearing that he was then currently smoking two-to-five cigarettes per day; and treatment records from the early 1980s indicate he had a "heavy" and "compulsive" smoking habit. Decision and Order at 5; Director's Exhibits 1 at 53-54, 342, 388, 489, 493; 2 at 70, 168. In addition, the ALJ noted that at the 2022 hearing Claimant vigorously denied having reported smoking in the past. Decision and Order at 4; Hearing Transcript at 33-35.

Considering the evidence as a whole, the ALJ permissibly concluded Claimant was not smoking at the time of the 2022 hearing and, crediting Dr. Selby's statement that Claimant's carboxyhemoglobin levels from his 2020 examination were consistent with being a nonsmoker, concluded Claimant likely "had not smoked for some time." *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); Decision and Order at 5; Employer's Exhibit 10 at 13. Noting the discrepancies in the record regarding Claimant's past smoking history, he determined the record provided insufficient evidence to reach a specific numerical finding of how long Claimant smoked. Decision and Order at 5; *see Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (duty of explanation under the APA is satisfied so long as a reviewing court can discern what the ALJ did and why he did it). However, the ALJ found Claimant has a smoking history of "four or five cigarettes per day for five to ten years, but likely no more than fifteen years" and that this smoking history is "not substantial." Decision and Order at 5.

Thus, contrary to Employer's contention, the ALJ's determination that the evidence established a range of possible smoking histories rather than a specific amount with definitive starting and ending dates was within his discretion as fact-finder.[13] *See Napier*, 301 F.3d at 713-14; *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836 (6th Cir. 2002), *cert.*

[13] We further reject Employer's contention that the ALJ erred by not reconvening the hearing in person, rather than by telephone, to observe Claimant's testimony after the earlier inconsistencies found in the record regarding his smoking history. Employer's Brief at 10, 28-30. As Claimant correctly contends, Employer forfeited this argument by failing to raise it to the ALJ. 20 C.F.R. §802.301(a) (Board's review authority limited to "findings of fact and conclusions of law on which the decision or order appealed from was based"); *see Joseph Forrester Trucking v. Director, OWCP* [*Mabe*], 987 F.3d 581, 588 (6th Cir. 2021) (black lung regulations require that an issue be "raised before the ALJ to preserve issue for the Board's review"); Claimant's Response Brief at 7-8.

denied, 537 U.S. 1147 (2003). Further, as the length and extent of Claimant's smoking history is a factual determination for the ALJ, we see no error in his finding that Claimant's smoking history of no more than a few pack years overall is "not substantial." Decision and Order at 5; *see Bobick*, 13 BLR at 1-54; *Maypray*, 7 BLR at 1-686.

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must prove he has a "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). The United States Court of Appeals for the Sixth Circuit has held a claimant can satisfy this burden "by showing that his disease 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. Majmudar, Sood, Sheikh, Selby, and Goodman, as well as the treatment notes of Dr. Chavda. Decision and Order at 22-31. Drs. Majmudar, Sood, Sheikh, and Chavda diagnosed Claimant with legal pneumoconiosis while Drs. Selby and Goodman opined he does not have the disease.[14] Director's Exhibits 36 at 5; 42 at 4; 46 at 6; 47 at 1-2; Claimant's Exhibits 2 at 10-11, 16; 3 at 2; 4 at 1-2; 10 at 2; 12 at 1; Employer's Exhibits 4 at 11; 9 at 42-43; 10 at 23, 32; 11 at 30. The ALJ found Drs. Majmudar's, Sood's, Sheikh's, and Chavda's opinions are well-documented, reasoned, and entitled to probative weight, whereas he found Drs. Selby's and Goodman's

[14] Dr. Majmudar diagnosed legal pneumoconiosis in the form of an obstructive and restrictive impairment due to coal mine dust exposure. Director's Exhibit 63 at 10, 14-15. Dr. Sood diagnosed legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) of the "mixed chronic bronchitis and emphysema phenotype" due to coal mine dust exposure. Claimant's Exhibit 2 at 10-11. Dr. Sheikh diagnosed legal pneumoconiosis in the form of chronic bronchitis due to coal mine dust exposure. Claimant's Exhibit 3 at 2; Employer's Exhibit 9 at 44. Dr. Selby diagnosed "garden variety" asthma unrelated to coal mine dust exposure as well as a restrictive impairment caused by obesity. Director's Exhibit 46 at 6; Employer's Exhibit 10 at 8, 11, 22-23. Dr. Goodman diagnosed a significant obstructive impairment and chronic asthmatic bronchitis unrelated to coal mine dust exposure, as well as a restrictive impairment due to obesity. Employer's Exhibits 4 at 10-12; 6 at 6-7; 11 at 19, 29-30. Dr. Chavda diagnosed legal pneumoconiosis in the form of COPD due to coal mine dust exposure. Claimant's Exhibits 4 at 1-2; 10 at 1; 12 at 1, 10; Employer's Exhibit 12 at 34-35.

opinions unpersuasive and entitled to no probative weight. Decision and Order at 21, 24-25, 28, 30. Thus, crediting the opinions of Drs. Majmudar, Sood, Sheikh, and Chavda over the contrary opinions of Drs. Selby and Goodman, the ALJ found Claimant established legal pneumoconiosis. Decision and Order at 30-31; *see* 20 C.F.R. §718.201(b).

Employer argues the ALJ erred in crediting Drs. Majmudar's, Sood's, and Sheikh's opinions because they are based on the incorrect belief that Claimant never smoked.[15] Employer's Brief at 14, 22-23, 30; Employer's Reply Brief at 2, 4-7. We disagree.

Contrary to Employer's contention, the ALJ is not required to discredit a medical opinion that relies on an inaccurate smoking history. *See Huscoal, Inc. v. Director, OWCP* [*Clemons*], 48 F.4th 480, 491 (6th Cir. 2022) (effect of a physician's inaccurate understanding of exposure history on the credibility of a medical opinion is a determination for the ALJ to make); *Bobick*, 13 BLR at 1-54 (ALJ has discretion in determining the effect of an inaccurate smoking history on the credibility of a medical opinion); *Maypray*, 7 BLR at 1-686. Here, the ALJ acknowledged Drs. Majmudar, Sood, and Sheikh erroneously believed that Claimant was not a smoker. He noted, however, the multiple factors unrelated to smoking that each physician discussed in explaining their diagnoses of legal pneumoconiosis and in unequivocally asserting that coal mine dust was a contributing and aggravating factor in Claimant's conditions.[16] Decision and Order at 23, 25; Director's Exhibit 36 at 2; Claimant's Exhibits 2 at 3; 3 at 1; 12 at 2. He thus permissibly found their opinions entitled to probative weight despite not being aware of Claimant's limited past

[15] Employer further contends the ALJ erred in crediting Dr. Chavda's treatment notes in finding Claimant established legal pneumoconiosis. Employer's Brief at 22-24, 30; Employer's Reply Brief at 6-7. As noted above, however, Drs. Majmudar's, Sood's, and Sheikh's opinions, if properly credited, constitute substantial evidence to support a finding of legal pneumoconiosis. We thus decline to address Employer's contentions concerning whether the ALJ erred in also crediting Dr. Chavda's treatment notes insofar as they support a finding of legal pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[16] Employer further contends the ALJ erroneously speculated what Drs. Majmudar, Sood, and Sheikh "might conclude had [they] been given the correct history of cigarette smoking." Employer's Brief at 22-23. Contrary to Employer's contention, the ALJ permissibly inferred their opinions would not meaningfully change if they had been informed of Claimant's "minimal smoking history in the 1980s and 1990s." Decision and Order at 23; *see Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012) (it is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility).

smoking history. *See Clemons*, 48 F.4th at 491; *Rowe*, 710 F.2d at 255; *Bobick*, 13 BLR at 1-54; *Maypray*, 7 BLR at 1-686. Employer's argument is a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. We therefore affirm the ALJ's finding that Drs. Majmudar's, Sood's, and Sheikh's opinions are entitled to the "greatest probative weight." Decision and Order at 30-31.

We further reject Employer's assertion that the ALJ erred in his consideration of Drs. Majmudar's, Sood's, and Sheikh's opinions by misapplying the preamble to the 2001 regulatory revisions as a "binding presumption." Employer's Brief at 24-28; Employer's Reply Brief at 2, 11. The ALJ permissibly credited Drs. Majmudar's, Sood's, and Sheikh's opinions because they had an accurate understanding of Claimant's work and medical histories, and formed opinions based on their physical examinations, the objective test results, and Claimant's symptoms. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); *Napier*, 301 F.3d at 713-14; *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 23. Contrary to Employer's assertion, the ALJ did not apply the preamble as a binding presumption that all COPD constitutes legal pneumoconiosis. Employer's Brief at 24-28; Employer's Reply Brief at 2, 11. Rather, the ALJ accurately acknowledged the Department's conclusion, set forth in the preamble and regulations, that coal dust exposure *may* cause obstructive lung disease, and permissibly found Drs. Majmudar, Sood, and Sheikh credibly and unequivocally explained that coal mine dust was a substantial contributor to Claimant's impairment in this case. *See Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 820 F.3d 833, 847 (6th Cir. 2016); *Groves*, 761 F.3d at 597-98; *Rowe*, 710 F.2d at 255; Decision and Order at 23-24.

Employer next contends the ALJ erroneously credited Drs. Majmudar's, Sood's, and Sheikh's opinions over those of Drs. Selby and Goodman because, it asserts, Drs. Selby and Goodman considered a more complete range of evidence than Drs. Majmudar, Sood, and Sheikh. Employer's Brief at 22-23, 25. We disagree. That Drs. Selby and Goodman may have considered more information does not automatically render their opinions more credible than Drs. Majmudar's, Sood's, and Sheikh's opinions. *See Church v. E. Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *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). The ALJ permissibly found Drs. Selby's and Goodman's opinions unreasoned because, even accepting their assertion that Claimant has asthma, they did not credibly explain how they concluded Claimant's asthma and obesity are the sole causes of his impairments while his coal mine dust exposure is not an additive or contributing factor. *See Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491 (6th Cir. 2014); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); *Crockett Colleries, Inc. v. Director, OWCP* [*Barrett*], 478 F.3d 350, 356 (6th Cir. 2007); 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000); Decision and Order at 28, 30-31.

The ALJ sufficiently explained his credibility determinations in accordance with the APA, he acted within his discretion in rendering his credibility findings, and his findings are supported by substantial evidence. Consequently, we affirm his determination that Claimant established legal pneumoconiosis.[17] *See* 20 C.F.R. §718.201(b)(2); *see also Wojtowicz v. Duquesne Light Co*., 12 BLR 1-162, 1-165 (1989).

As Employer raises no specific allegations of error regarding disability causation, we further affirm the ALJ's finding that Claimant established his total respiratory disability is due to legal pneumoconiosis. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.204(c); Decision and Order at 43.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[17] Because we affirm the ALJ's finding that Employer failed to rebut legal pneumoconiosis, we need not address its arguments that the ALJ erred in also finding it did not rebut clinical pneumoconiosis. *Larioni*, 6 BLR at 1-1278; Employer's Brief at 17-22.