



BRB No. 21-0360 BLA

WILBERT HOUESHELL)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
MANOR MINING & CONTRACTING,)	
INCORPORATED)	DATE ISSUED: 7/29/2022
)	
and)	
)	
OLD REPUBLIC GENERAL INSURANCE)	
CORPORATION)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

Matthew A. Gribler (Pawlowski, Bilonick, & Long), Ebensburg, Pennsylvania, for Claimant.

Deanna Lyn Istik (SutterWilliams, LLC), Pittsburgh, Pennsylvania, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Denying Benefits (2020-BLA-05351) rendered on a claim filed on March 8, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).¹

The ALJ found Claimant did not establish complicated pneumoconiosis and thus could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3) (2018). She credited Claimant with less than fifteen years of qualifying coal mine employment, and thus found he could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).² Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established a totally disabling respiratory or pulmonary impairment but did not establish either clinical or legal pneumoconiosis. 20 C.F.R. §§718.202, 718.204(b)(2). Accordingly, she denied benefits.

On appeal, Claimant argues the ALJ erred in finding he did not establish legal pneumoconiosis. Employer and its Carrier (Employer) respond in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, declined to file a substantive response brief.³

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

¹ Claimant filed a prior claim on February 6, 1985, which the district director denied on May 31, 1985. The file was administratively closed and subsequently destroyed on December 31, 2007, in accordance with the Department of Labor's records retention policy. Decision and Order at 2 n.3; Director's Exhibits 1; 41 at 5.

² Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

³ We affirm, as unchallenged on appeal, the ALJ's findings that Claimant did not establish complicated pneumoconiosis, invoke the Section 411(c)(4) presumption, or establish clinical pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5-8, 12, 23 n.16, 25, 28, 30.

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).

Entitlement under 20 C.F.R. Part 718

Without the benefit of the Section 411(c)(3) and (c)(4) presumptions, 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 demonstrate 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(b). The ALJ considered three medical opinions. Dr. Pickerill diagnosed legal pneumoconiosis, while Drs. Basheda and Rosenberg did not. Decision and Order at 26-28; Director’s Exhibit 20; Employer’s Exhibits 3, 5-7.

Dr. Pickerill conducted the Department of Labor’s (DOL’s) complete pulmonary evaluation and diagnosed moderate to severe chronic obstructive pulmonary disease (COPD)/asthma and “legal coal worker pneumoconiosis.” Director’s Exhibit 20 at 4. He stated he reached these diagnoses based on the Claimant’s pulmonary function studies which revealed obstruction with significant bronchodilator response, wheezing heard on physical examination, and treatment with bronchodilators. *Id.* In addressing the cause of Claimant’s COPD, Dr. Pickerill wrote: “smoking tobacco [greater than] 50% contribution, with substantial contribution from coal dust & Agent orange exposures & probable asthmatic genetic predisposition.” *Id.* at 5. The ALJ found Dr. Pickerill’s opinion adequately documented but poorly reasoned because he did not explain “why he considered all of these factors to be causes.” Decision and Order at 26, 28. She also found Dr. Basheda’s opinion that Claimant’s COPD is unrelated to coal mine dust exposure “poor[ly]

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit, as Claimant performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 2, 3 n.4; Director’s Exhibit 5; Hearing Transcript at 7-8.

reasoned” and Dr. Rosenberg’s opinion that Claimant does not have legal pneumoconiosis inconsistent with the preamble to the revised 2001 regulations. *Id.* at 26-28. The ALJ concluded that because “[a]ll the opining physicians have been given little weight,” Claimant did not establish he has legal pneumoconiosis. *Id.* at 28.

Claimant contends the ALJ improperly required Dr. Pickerill to apportion “certain percentage[s]” from each potential causative factor to his COPD, improperly acted as a medical expert, and did not adequately explain her rejection of Dr. Pickerill’s opinion. Claimant’s Brief at 6-7 (unpaginated). We agree, in part.

The ALJ provided only a one sentence explanation as to why she found Dr. Pickerill’s opinion poorly reasoned. Although she found Dr. Pickerill “failed to provide an adequate explanation why he considered [smoking, coal mine dust exposure, Agent Orange exposure, and asthma] to be causes” for Claimant’s COPD, Claimant satisfies his burden of proof by providing a reasoned and documented medical opinion establishing that coal mine dust exposure significantly contributed to, or substantially aggravated, his COPD. Decision and Order at 28; *see* 20 C.F.R. §§718.201(b), 718.202(a)(4); *Kertesz v. Crescent Hills Coals Co.*, 158 F.2d 158, 163 (3d Cir. 1986). Claimant is not required to establish why other factors also contributed to his disease as the ALJ suggested, and the ALJ provided no other reason for discounting Dr. Pickerill’s opinion.

On its face, Dr. Pickerill’s opinion, if credited, is legally sufficient to support a finding of legal pneumoconiosis because he specifically diagnosed the disease and identified coal mine dust exposure as a significant contributing factor to Claimant’s COPD. 20 C.F.R. §§718.201(b), 718.202(a)(4); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-18-19 (2003). The ALJ found his opinion documented but failed to properly explain why it is not reasoned and credible. Because the ALJ’s cursory finding neither satisfies the Administrative Procedure Act,⁵ 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), nor applies the correct burden of proof, we vacate her conclusion that Claimant did not establish legal pneumoconiosis. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

⁵ The Administrative Procedure Act provides every adjudicatory decision must 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).

Remand Instructions

The ALJ must reconsider whether Dr. Pickerill provided a reasoned opinion that coal mine dust exposure significantly contributed to, or substantially aggravated, Claimant's COPD. 20 C.F.R. §§718.201(b), 718.202(a)(4). If so, the ALJ must determine whether it outweighs the opinions of Drs. Basheda and Rosenberg such that Claimant has established legal pneumoconiosis by a preponderance of the evidence. If the ALJ finds on remand that Claimant established legal pneumoconiosis, she must consider the remaining issues of entitlement pursuant to 20 C.F.R. Part 718. 20 C.F.R. §718.204(b)(2), (c). However, if the ALJ finds Claimant did not establish legal pneumoconiosis, she may reinstate the denial of benefits. *See Anderson*, 12 BLR 1-112; *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2. In rendering her conclusions, the ALJ must explain the bases for her credibility findings as the APA requires. *See Wojtowicz v.*, 12 BLR at 1-165.

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge