



BRB No. 21-0342 BLA

RODNEY D. LOVERN )

Claimant-Respondent )

v. )

SCOTTS BRANCH COMPANY c/o )

ALLIANCE COAL COMPANY )

and )

Self-Insured Through ALLIANCE COAL, )

LLC )

Employer/Carrier- )

Petitioners )

DIRECTOR, OFFICE OF WORKERS' )

COMPENSATION PROGRAMS, UNITED )

STATES DEPARTMENT OF LABOR )

Party-in-Interest )

DATE ISSUED: 6/23/2022

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Larry A. Temin,  
Administrative Law Judge, United States Department of Labor.

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

Paul E. Jones and Denise Hall Scarberry (Jones & Jones Law Office, PLLC),  
Pikeville, Kentucky, for Employer.

Before: BOGGS, Chief Administrative Appeals Judge, BUZZARD and  
GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Larry A. Temin's Decision and Order Awarding Benefits (2019-BLA-06169) 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 a miner's claim filed on March 9, 2018.

The ALJ credited Claimant with 10.6 years of coal mine employment and therefore found he could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).<sup>1</sup> Considering entitlement under 20 C.F.R. Part 718, he found Claimant established legal pneumoconiosis<sup>2</sup> and a totally disabling respiratory or pulmonary impairment due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204(b)(2), (c). Thus he awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established legal pneumoconiosis and disability due to legal pneumoconiosis.<sup>3</sup> Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

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

---

<sup>1</sup> 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); *see* 20 C.F.R. §718.305.

<sup>2</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 includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

<sup>3</sup> We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established 10.6 years of coal mine employment and total disability. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.204(b)(2); Decision and Order at 6, 25.

accordance with applicable law.<sup>4</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O’Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

### **Entitlement Under 20 C.F.R. Part 718**

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. Statutory presumptions may assist claimants in establishing the elements of entitlement if certain conditions are met, but failure to establish any element precludes an award of benefits. *See 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**

Employer argues the ALJ erred in finding Claimant established legal pneumoconiosis.<sup>5</sup> Employer’s Brief at 4-7. We disagree.

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 has held that a miner can establish a lung impairment is significantly related to coal mine dust exposure “by showing that his disease was caused ‘in part’ by coal mine employment.” *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.’”).

---

<sup>4</sup> The Board will apply the law of 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 3; Hearing Tr. at 20, 37.

<sup>5</sup> The ALJ found Claimant failed to prove the existence of clinical pneumoconiosis. *See* 20 C.F.R. §§718.201(a)(1), 718.202(a); Decision and Order at 17-19.

The ALJ considered the medical opinions of Drs. Cordasco, Raj, Green, Dahhan, and Rosenberg. Decision and Order at 9-16, 18-24; Director's Exhibits 12, 42; Claimant's Exhibits 2, 4; Employer's Exhibits 1, 2, 4, 6, 9, 10. He found Drs. Cordasco, Green, and Raj diagnosed legal pneumoconiosis, and he determined their opinions are reasoned and documented. Decision and Order at 21. Drs. Dahhan and Rosenberg excluded legal pneumoconiosis,<sup>6</sup> but the ALJ concluded their medical opinions are unpersuasive. *Id.*

Employer initially argues the ALJ misapplied the definition of legal pneumoconiosis when finding Drs. Cordasco, Green, and Raj diagnosed the disease. Employer's Brief at 5-7. We disagree. As the ALJ correctly noted, a Claimant can establish a lung impairment is significantly related to coal mine dust exposure and thus establish legal pneumoconiosis "by showing that his disease was caused 'in part' by coal mine employment." *Groves*, 761 F.3d at 598-99; *see Young*, 947 F.3d at 407; Decision and Order at 19.

Dr. Cordasco opined Claimant has chronic obstructive pulmonary disease (COPD) due to both coal mine dust exposure and cigarette smoking.<sup>7</sup> Director's Exhibits 12, 42. Director's Exhibit 12 at 4; Director's Exhibit 42 at 47-49. Dr. Green opined Claimant's coal mine dust exposure is an "additional significant contributing and aggravating factor" alongside cigarette smoking for the development of his chronic airflow obstruction. Claimant's Exhibit 4 at 3-4. Dr. Raj opined Claimant has a combined restrictive and obstructive impairment that is due to a "combination of coal/rock dust and cigarette smoking," and coal dust exposure has a "substantial and significant role in [Claimant's] pulmonary impairment." Claimant's Exhibit 2 at 4. Thus the ALJ permissibly found Drs. Cordasco's, Green's, and Raj's opinions sufficient to establish legal pneumoconiosis. *See Groves*, 761 F.3d at 598-99; *see also Young*, 947 F.3d at 407; 20 C.F.R. §718.201(a)(2), (b); Decision and Order at 19.

---

<sup>6</sup> Dr. Dahhan opined Claimant has an obstructive lung condition due to bronchial asthma, obesity, and narcotics. Employer's Exhibits 2, 6, 9. Dr. Rosenberg attributed Claimant's obstruction to asthma, hyperreactive airway disease, and smoking. Employer's Exhibits 1, 4, 10.

<sup>7</sup> While Dr. Cordasco stated the effects of both coal dust and cigarette smoke exposure are additive and he could not determine how much of each contributed to Claimant's COPD, he was not required to apportion the relative contributions of smoking and coal dust exposure. *See Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); Director's Exhibit 12; Director's Exhibit 42 at 49-53.

Employer next argues the ALJ erred in finding Drs. Cordasco's, Green's, and Raj's opinions adequately reasoned. Employer's Brief at 5-7. We also disagree with this argument.

In diagnosing legal pneumoconiosis, Dr. Cordasco cited Claimant's "low intensity cigarette smoke exposure" compared to his "high intensity, heavy exposure to coal mine rock dust," indicating the "main culprit for the development of severe obstructive pulmonary impairment is . . . coal mineral rock dust exposure and less contributed to by cigarette smoke exposure." Director's Exhibit 12 at 24-25. He further opined legal pneumoconiosis is "suggested by the presence of very severe obstructive pulmonary impairment (and concurrent respiratory symptoms including severe activity tolerance) with some degree of broncho reversibility which is not solely attributable to [Claimant's] exposure to tobacco products in light of the historical low intensity tobacco exposure." *Id.* He explained that because the "adverse" exposure to coal mine dust exposure and cigarette smoking are additive, Claimant's "severe pulmonary impairment is likely to progress with time in spite of a lack of ongoing environmental exposure to these inhaled agents." *Id.*

Dr. Raj noted Claimant's twelve-year history of exposure to coal and rock dust and his five to six pack-year smoking history when diagnosing legal pneumoconiosis. Claimant's Exhibit 2. He concluded Claimant's obstructive and restrictive lung disease is a result of "combined exposure of coal/rock dust and smoking." Employer's Exhibit 2. Furthermore, he opined that given the combined history, an individual contribution from either exposure cannot be stated with precision, but Claimant's twelve-year history of coal and rock dust exposure has a substantial and significant role in his obstructive and restrictive lung impairments. *Id.*

In diagnosing legal pneumoconiosis, Dr. Green cited Claimant's twelve-year occupational history of exposure to coal and rock dust as a significant contributing and aggravating factor for Claimant's COPD. Claimant's Exhibit 4. He explained the partially reversible component of Claimant's obstructive airflow does not exclude an injury associated with smoking and exposure to respirable coal and rock dust. *Id.* Finally, he noted that while Claimant's "cigarette smoking history is an additional influence that affects the findings of chronic airflow obstruction," the findings "must be attributed at least in part to his [twelve]-year occupational history." *Id.*

In crediting the opinions of Drs. Cordasco, Green, and Raj, the ALJ recognized that all three physicians "obtained an accurate understanding of [Claimant's] personal, work, and medical histories" and their "opinions on the Claimant's pulmonary conditions are based on their physical exams, the objective test results they obtained, and the Claimant's reported symptoms." Decision and Order at 20. Contrary to Employer's argument, the ALJ permissibly found their opinions well-reasoned and documented. *Jericol Mining, Inc.*

*v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 20-21.

Employer generally argues the ALJ should have discredited the opinions of Drs. Cordasco, Green, and Raj because they failed to adequately explain their basis for diagnosing legal pneumoconiosis or consider other possible causes of Claimant's obstructive impairment. Employer's Brief at 5-7. Employer's argument is a request to reweigh the evidence, which we are not empowered to do.<sup>8</sup> *Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Employer finally argues the ALJ improperly "disregard[ed]" the opinions of Drs. Dahhan and Rosenberg. Employer's Brief at 5-7. We disagree.

The ALJ found both doctors excluded a diagnosis of legal pneumoconiosis because Claimant's obstructive impairment was partially reversible after the administration of bronchodilators on pulmonary function testing. Decision and Order at 21-22; *see* Employer's Exhibits 1, 2. But the ALJ found Claimant's impairment did not "return to normal" after bronchodilators and concluded the doctors did not adequately explain why the irreversible portion of Claimant's impairment was not significantly related to, or substantially aggravated by, coal mine dust exposure. *See Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); *Napier*, 301 F.3d at 713-14; Decision and Order at 21-22. The ALJ also found their opinions unpersuasive because they did not "point to any objective evidence" in Claimant's specific case and instead relied on general statistics to exclude legal pneumoconiosis. *Young*, 947 F.3d at 408; *Napier*, 301 F.3d at 713-14; Decision and Order at 21-22.

Further, the ALJ found Dr. Rosenberg's rationale for excluding legal pneumoconiosis is inconsistent with the regulations and the scientific evidence that the Department of Labor cites in the preamble to the 2001 revised regulations. *See Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 738-39 (6th Cir. 2014); *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); Decision and Order at 22-23. Specifically, he found

---

<sup>8</sup> Employer asserts the ALJ erred in crediting the opinions of Drs. Cordasco, Green, and Raj because they did not review the entire medical record when diagnosing legal pneumoconiosis. Employer's Brief at 6-7. Contrary to Employer's argument, an ALJ is not required to discredit a physician who did not review all of a miner's medical records when the opinion is otherwise well-reasoned, documented, and based on his or her own examination of the miner, objective test results, and recorded exposure histories. *See Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996).

Dr. Rosenberg's opinion that Claimant's impairment was caused by smoking did not address the scientific evidence which the DOL credits that the two factors, coal dust and smoking, are not mutually exclusive but additive. 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000); Decision and Order at 22. He further found Dr. Rosenberg's opinion that Claimant's impairment was not related to coal dust because it developed many years after he left the mines was not supported by the evidence which showed Claimant's respiratory symptoms had gradually gotten worse since leaving coal mine employment.<sup>9</sup> Decision and Order at 23; Hearing Transcript at 35; Claimant's Exhibits 2, 4; Employer's Exhibit 1. The ALJ also found Dr. Dahhan's opinion that Claimant's obesity and narcotics use caused his obstructive impairment not supported by the record. *Napier*, 301 F.3d at 713-14; Decision and Order at 24.

As Employer does not challenge any of these credibility findings with respect to Drs. Rosenberg and Dahhan, we affirm them. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Because the ALJ acted within his discretion in rendering his credibility findings, and they are supported by substantial evidence, we affirm his determination that Claimant established legal pneumoconiosis. 20 C.F.R. §718.202(a)(4).

As Employer raises no specific allegations of error regarding disability causation, we affirm the ALJ's finding that Claimant established his total respiratory disability is due to legal pneumoconiosis. *Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.204(c); Decision and Order at 25-26.

---

<sup>9</sup> The ALJ also noted that even if Claimant's respiratory impairment had appeared after he left his work in the coal mines, Dr. Rosenberg's rationale would be inconsistent with the regulations which recognize pneumoconiosis is "a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); 65 Fed. Reg. at 79,971; Decision and Order at 23.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief  
Administrative Appeals Judge

GREG J. BUZZARD  
Administrative Appeals Judge

DANIEL T. GRESH  
Administrative Appeals Judge