**U.S. Department of Labor**

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

BRB No. 24-0120 BLA

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| DAVID L. WELLS<br><br>Claimant-Petitioner<br><br>v.<br><br>HERITAGE COAL COMPANY<br><br>and<br><br>PEABODY ENERGY CORPORATION<br><br>Employer/Carrier-Respondents<br><br>DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR<br><br>Party-in-Interest | ) | **NOT-PUBLISHED**<br><br>DATE ISSUED: 06/06/2025<br><br>DECISION and ORDER |

Appeal of the Decision and Order Denying Benefits on Remand of Timothy J. McGrath, Administrative Law Judge, United States Department of Labor.

Austin P. Vowels (Vowels Law PLC), Henderson, Kentucky, for Claimant.

H. Brett Stonecipher and Tighe A. Estes (Reminger Co., L.P.A.), Lexington, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Timothy J. McGrath's Decision and Order Denying Benefits on Remand (2020-BLA-05416) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Benefits Review Board for a second time.

In his February 16, 2022 Decision and Order Denying Benefits, the ALJ credited Claimant with 9.56 years of underground coal mine employment. Thus, he found that Claimant could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018). In assessing the evidence under 20 C.F.R. Part 718, the ALJ found Claimant established legal but not clinical pneumoconiosis. 20 C.F.R. §718.202. However, he found Claimant failed to establish a totally disabling respiratory or pulmonary impairment, an essential element of entitlement, and therefore denied benefits. 20 C.F.R. §718.204(b)(2).

In consideration of Claimant's appeal,[2] the Board affirmed, as unchallenged, the ALJ's finding of 9.56 years of coal mine employment and the presence of legal pneumoconiosis. *Wells v. Heritage Coal Co.*, BRB Nos. 22-0333 BLA and 22-0333 BLA-A, slip op. at 3 n.4 (Apr. 27, 2023) (unpub.). It vacated his finding that clinical pneumoconiosis was not established because he erred in evaluating the medical opinion evidence on the issue. *Id.* at 12. The Board also vacated the ALJ's finding that total disability was not established because he erred in his consideration of the arterial blood gas studies, which also affected his weighing of the medical opinion evidence. *Id*. at 8, 10. Thus, the Board vacated the ALJ's denial and remanded the case for further consideration. *Id.* at 15.

On remand, the ALJ found the evidence established total disability but again found clinical pneumoconiosis was not established. He further found Claimant failed to establish that his legal pneumoconiosis substantially contributed to Claimant's totally disabling respiratory impairment. Thus, he again denied benefits.

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[1] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is due to pneumoconiosis if he establishes at least fifteen years of underground or substantially similar 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] Employer also filed a cross-appeal, arguing it is not the properly designated responsible operator and carrier. *Wells v. Heritage Coal Co.*, BRB Nos. 22-0333 BLA and 22-0333 BLA-A, slip op. at 4-5 (Apr. 27, 2023) (unpub.). This issue is no longer in contention.

In the current appeal, Claimant asserts that the ALJ erred in his weighing of the evidence regarding clinical pneumoconiosis and in finding Claimant failed to establish disability causation. Employer filed a response brief, urging affirmance of the ALJ's denial of benefits. The Acting Director, Office of Workers' Compensation Programs, has not filed a response.

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.[3] 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 any presumption,[4] Claimant must establish disease (pneumoconiosis);[5] disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment);[6] and disability causation

[3] The Board will apply the law of the United States Court of Appeals for the Tenth Circuit because Claimant performed his last coal mine employment in Utah. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 16-17.

[4] As the ALJ previously found, there is no evidence of complicated pneumoconiosis; thus, Claimant is not entitled to the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304; Decision and Order at 15.

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

[6] The Board previously affirmed the ALJ's findings that the pulmonary function studies do not support a finding of total disability. *Wells*, BRB Nos. 22-0333 BLA and 22-0333 BLA-A, slip op. at 6 n.9; 20 C.F.R. §718.204(b)(2)(i). On remand, the ALJ found Claimant is totally disabled from a respiratory or pulmonary impairment based on the arterial blood gas studies and the medical opinion evidence, and when weighing the evidence as a whole. Decision and Order on Remand at 4, 6; 20 C.F.R. §718.204(b)(2).

(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).

**Clinical Pneumoconiosis**

The Board previously affirmed the ALJ's finding that the x-ray evidence does not support a finding of clinical pneumoconiosis[7] and that the computed tomography (CT) scan evidence is positive for clinical pneumoconiosis. *Wells*, BRB Nos. 22-0333 BLA and 22-0333 BLA-A, slip op. at 11 n.12, 12. However, the Board vacated the ALJ's finding that the medical opinion evidence established the absence of clinical pneumoconiosis and instructed him to reconsider the medical opinion evidence and thus the overall weight of the evidence on the issue. *Id.* at 12, 14.

The ALJ considered Drs. Chavda's, Tuteur's, and Selby's medical opinions that Claimant does not have clinical pneumoconiosis as well as Dr. Pearle's opinion that he has the disease. Decision and Order on Remand at 6-8. The ALJ accorded each doctor's opinion diminished weight and thus found the medical opinion evidence insufficient to establish either the existence or absence of clinical pneumoconiosis. *Id.* at 7-8. Weighing the remaining evidence together, he gave greater weight to the x-ray evidence than to the CT scan reading and thus found Claimant did not meet his burden to establish clinical pneumoconiosis. *Id.* at 8.

Claimant argues the ALJ erred in "summarily" according more weight to the negative x-ray evidence over the positive CT scan evidence and in finding Dr. Pearle's opinion undermined.[8] Claimant's Brief at 27-28. We disagree.

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The parties have not challenged these findings; therefore, they are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983)

[7] As Claimant has not argued the Board's decision was clearly erroneous or established any other valid exception to the law of the case doctrine, we reject Claimant's argument that the ALJ should have found the x-ray evidence as positive for clinical pneumoconiosis. *See Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-150-51 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988, 1-989-90 (1984); Claimant's Brief at 28-29.

[8] Claimant concedes that Dr. Chavda did not diagnose clinical pneumoconiosis and the ALJ was "fair" in according his opinion limited weight. Claimant's Brief at 26-27. Thus, we affirm as unchallenged the ALJ's determinations regarding Dr. Chavda's opinion

Initially, the ALJ explained why he accorded more weight to the x-ray evidence. He indicated there were multiple x-rays over a period time, while there was only a single CT scan reading. Decision and Order on Remand at 8. Moreover, while Claimant argues the ALJ should have "at least" given the CT scan evidence and the x-ray evidence equal weight, Claimant's Brief at 29, as the ALJ stated, this would leave the imaging evidence in equipoise, which is insufficient to meet Claimant's burden. Decision and Order on Remand at 8; *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994).

In addition, while Claimant contends the ALJ erred in discrediting Dr. Pearle's opinion, the ALJ explained that while it appeared the doctor completed a comprehensive record review, his opinion relied solely on a single CT scan reading, without reference to the x-ray evidence.[9] Claimant's Brief at 27-28; Decision and Order on Remand at 8. Credibility determinations are within the purview of the ALJ; thus, we decline to disturb this finding. *See N. Coal Co. v. Director, OWCP* [*Pickup*], 100 F.3d 871, 873 (10th Cir. 1996); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988).

Claimant's arguments are a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). As the ALJ's findings regarding clinical pneumoconiosis are supported by substantial evidence, we affirm them. *Martin v. Ligon Preparation Co*., 400 F.3d 302, 305 (6th Cir. 2005); *Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000).

**Disability Causation**

To establish disability causation, Claimant must prove that pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause of a miner's totally disabling impairment if it has "a material adverse effect on the miner's respiratory or pulmonary condition" or "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii); *see Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 37-38 (4th Cir. 1990).

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as to clinical pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order on Remand at 7.

[9] While Claimant argues the ALJ's finding that Dr. Pearle did not consider the x-ray evidence is "disingenuous," we note Dr. Pearle's report does not list or discuss any of the x-ray readings. Claimant's Brief at 27-28; Claimant's Exhibit 4.

The ALJ noted that, given his finding that Claimant failed to establish clinical pneumonoconiosis, the only remaining issue was whether Claimant established his totally disabling impairment is due to his legal pneumoconiosis. Decision and Order on Remand at 8. Because he accorded diminished weight to Drs. Tuteur's, Selby's, and Pearle's opinions on legal pneumoconiosis in his prior decision, he found their opinions could not be credited on whether it substantially contributed to Claimant's totally disabling respiratory impairment. *Id.* at 8-9. Turning to Dr. Chavda's disability causation opinion, the ALJ found it insufficient to establish a causal relationship between Claimant's total disability and legal pneumoconiosis.[10] *Id.* at 9. Thus, the ALJ found Claimant failed to establish disability causation. *Id.*

Claimant contends the ALJ erred in finding Dr. Chavda's opinion insufficient to establish disability causation. He contends the ALJ's previous finding that Dr. Chavda's opinion established legal pneumoconiosis, a finding the Board affirmed, resolved the issue of disability causation and thus warrants reversal of the ALJ's decision. Claimant's Brief at 9-16. Alternatively, Claimant contends that remand is required because the ALJ mischaracterized and failed to consider portions of Dr. Chavda's opinion. *Id.* at 19-23. We agree remand is required.

Initially, while the issues of legal pneumoconiosis and disability causation are closely related, a finding of legal pneumoconiosis, contrary to Claimant's contention, does not necessitate a finding that Claimant also established that pneumoconiosis substantially contributed to his totally disabling impairment. Rather, such a determination depends on the facts of each case. Such a finding might be made, for instance, where the experts agree a miner has totally disabling chronic obstructive pulmonary disease (COPD), which an ALJ finds constitutes legal pneumoconiosis; thus, the disability causation finding was already made in the legal pneumoconiosis inquiry. *See e.g. Energy W. Mining Co. v. Director, OWCP* [*Bristow*], 49 F.4th 1362, 1368-69 (10th Cir. 2022). The facts in this case are not so clear; thus, reversal is inappropriate.

In his initial decision, the ALJ credited Dr. Chavda's opinion to find legal pneumoconiosis established, a finding the Board affirmed as unchallenged. *Wells*, BRB Nos. 22-0333 BLA and 22-0333 BLA-A, slip op. at 3 n.4. Dr. Chavda's legal

[10] Claimant argues the ALJ ignored Dr. Pearle's disability causation opinion, as the ALJ noted only that he previously discredited the doctor's legal pneumoconiosis opinion. Claimant's Brief at 17; Decision and Order on Remand at 9. However, the ALJ referenced his prior decision, where he explained why he found Dr. Pearle's underlying legal pneumoconiosis opinion undermined. Decision and Order on Remand at 9 (citing Decision and Order at 27-28). The Board did not disturb that finding.

pneumoconiosis opinion in his initial report was that Claimant has COPD substantially caused by coal mine dust exposure and cigarette smoking. Decision and Order at 27; Director's Exhibit 24. He further opined that the COPD was the cause of Claimant's disabling desaturation in oxygenation with exercise. Decision and Order at 27; Director's Exhibit 24. Yet, as the ALJ notes, Dr. Chavda's deposition testimony also attributed Claimant's totally disabling impairments to the interstitial fibrosis identified on the CT scan.[11] Decision and Order on Remand at 9; Claimant's Exhibit 7 at 15, 37. Further, the ALJ found, and Claimant has not contested, Dr. Chavda opined that the fibrosis was not caused by coal mine dust exposure. Decision and Order on Remand at 6-7; Claimant's Exhibit 7 at 32-33, 35-36.

However, we agree that the ALJ did not adequately address whether Dr. Chavda's opinion that Claimant's COPD, which he diagnosed as legal pneumoconiosis in his report and again noted in his deposition, was a substantially contributing cause of Claimant's disabling impairment. Claimant's Brief at 21-22; Director's Exhibit 24; Claimant's Exhibit 7 at 14-15, 38-39. Even if, as the ALJ seems to have found, Dr. Chavda determined the interstitial fibrosis was the primary cause of Claimant's totally disabling respiratory impairment, pneumoconiosis can be a substantially contributing cause of a miner's total disability if it "materially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(ii). While noting Dr. Chavda's opinion that COPD is a substantially contributing factor of Claimant's total disability, he did not directly address this aspect of Dr. Chavda's disability causation opinion when finding the doctor's opinion insufficient to establish the "causal relationship" between legal pneumoconiosis and Claimant's totally disabling impairment. Decision and Order on Remand at 9.

[11] Dr. Chavda indicated in his deposition that Claimant's oxygen desaturation with exercise was disabling, as were his DLCO values. Claimant's Exhibit 7 at 15, 19-20, 36. He explained that while Claimant's FEV1 and FVC results on pulmonary function testing were "not much reduced," his DLCO was "quite" reduced and he also has exercise-induced hypoxemia, "so that leads to some kind of interstitial lung disease." Claimant's Exhibit 7 at 15. In addition, he indicated that based on the computed tomography scan findings, as well as the DLCO values and exercise-induced hypoxemia, that "puts a diagnosis of pulmonary fibrosis on [Claimant]" and indicated that Claimant likely had the disease when Dr. Chavda examined him, but it was probably not evident on the x-rays. *Id.* at 35. Finally, as the ALJ indicated, when directly asked what he attributed Claimant's total disability to, the doctor answered, "[t]hen in my opinion his interstitial disease, let's say it may be caused by his smoking. But exposure to coal dust can materially definitely worsen the process." Claimant's Exhibit 7 at 37; Decision and Order on Remand at 9.

Thus, we vacate the ALJ's finding that Claimant failed to establish disability causation, as he did not consider the entirety of Dr. Chavda's opinion to determine if it is sufficient to meet Claimant's burden. *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (failure to consider all relevant evidence requires on remand).

**Remand Instructions**

On remand, the ALJ should consider the entirety of Dr. Chavda's opinion to determine if it is sufficiently well-reasoned and documented to support a finding that legal pneumoconiosis substantially contributed to Claimant's totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c). In doing so, he should address the doctor's credentials, explanations for his conclusions, the documentation underlying his medical judgments, and the sophistication of, and bases for, his diagnoses. *See Gunderson v. U.S. Dep't of Labor*, 601 F.3d 1013, 1024-25 (10th Cir. 2010); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). In making his determinations, he must set forth his findings in detail and explain his rationale in accordance with the Administrative Procedure Act's requirements.[12] *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[12] 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 on the record . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.,* 12 BLR 1-162, 1-165 (1989).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge