U.S. Department of Labor

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

BRB Nos. 25-0068 BLA and 25-0068 BLA-A

PATRICIA STAPLETON (Widow of JERRY L. STAPLETON) Claimant-Petitioner v. MCMURPHY MINING INCORPORATED Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 03/25/2026 DECISION and ORDER

Appeal and Cross-Appeal of the Decision and Order Denying Benefits of Heather C. Leslie, Administrative Law Judge, United States Department of Labor.

Patricia Stapleton, Dryden, Virginia.

Michael A. Pusateri (Greenberg Traurig LLP), Washington D.C., for Employer.

Kevin A. Shanahan (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting 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, JONES and ULMER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without representation,[1] and Employer cross-appeals Administrative Law Judge (ALJ) Heather C. Leslie's Decision and Order Denying Benefits (2021-BLA-06074) rendered on a survivor's claim filed on October 28, 2019,[2] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ credited the Miner with eleven years and one month of underground coal mine employment and thus found Claimant could not invoke the presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4). She further found Claimant did not establish the existence of complicated pneumoconiosis and thus could not invoke the irrebuttable presumption of death due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant did not establish the existence of clinical or legal pneumoconiosis or that the Miner's death was due to pneumoconiosis.[4] 20 C.F.R. §§718.202(a), 718.205(c). Thus, she denied benefits.

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[1] On Claimant's behalf, Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested that the Benefits Review Board review the ALJ's decision, but she is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co*., 19 BLR 1-88 (1995) (Order).

[2] Claimant is the widow of the Miner, who died on August 19, 2018. Director's Exhibit 7. Because the Miner never successfully established entitlement to benefits during his lifetime, Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), which provides that the survivor of a miner who was determined to be eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits, is not applicable in this case.

[3] Section 411(c)(4) provides a rebuttable presumption that a miner's death was due to pneumoconiosis if he had 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); *see* 20 C.F.R. §718.305.

[4] "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). "Clinical pneumoconiosis" consists of "those

On appeal, Claimant generally challenges the denial of benefits. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), declined to file a substantive response to Claimant's appeal.

On cross-appeal, Employer argues the ALJ erred in determining it is the responsible operator. The Director responds to Employer's cross-appeal conceding the ALJ did not sufficiently explain her determination that Employer is the responsible operator and requests that if the Board remands the case, the Board also instruct the ALJ to reconsider her responsible operator determination.

In an appeal that a claimant files without representation, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law.[5] 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).

Section 411(c)(4) Presumption: Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner worked at least fifteen years in underground coal mines or surface coal mines in conditions "substantially similar" to underground mines. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden to establish the number of years the Miner worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The dates and length of employment may be established by any credible evidence, and the Board will uphold an ALJ's determination if it is based on a reasonable method of calculation that is supported by substantial evidence and in accordance with law. 20 C.F.R. §725.101(a)(32)(ii); *see Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011) (ALJ "may apply any reasonable method of calculation"); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986) (same). The United States Court of Appeals for the Fourth Circuit, whose law applies in this case, recently held that a miner need only show he or she "worked 125 working days within a calendar year (or partial

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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).

[5] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit as the Miner performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Employer's Exhibit 6 at 1-2.

periods totaling one year) to establish a year of employment." *Baldwin v. Director, OWCP*, F.4th , No. 23-1947, 2026 WL 772356, at *12 (4th Cir. Mar. 19, 2026).

Noting "the lack of evidence submitted and testimony, as well as no argument put forth by Claimant," the ALJ stated she would rely on the findings of Associate Chief ALJ Paul R. Almanza in his November 30, 2017 Decision and Order Denying Benefits (2013-BLA-05936) in the Miner's most recent claim (Miner's Decision and Order). Decision and Order at 7. ALJ Almanza found the Miner's Social Security Administration (SSA) earnings records more probative than the Miner's testimony due to the Miner's poor recollection of events. Miner's Decision and Order at 6. ALJ Almanza observed the Miner's SSA earnings records document earnings in coal mine employment from 1978 to 1985, from 1990 to 1992, as well as one day in 1993. *Id.* Although he noted the record did not clearly establish the beginning and ending dates of the Miner's coal mine employment, ALJ Almanza nevertheless credited the Miner with a full year of coal mine employment in each year he worked except 1993, for which he credited the Miner with one month of coal mine employment. *Id.* The ALJ adopted ALJ Almanza's findings. Decision and Order at 7-8.

In adopting ALJ Almanza's findings, the ALJ failed to satisfy the requirements of the Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), which requires that an ALJ independently evaluate the evidence and provide an explanation for her findings of fact and conclusions of law. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989); *see also Oggero v. Director, OWCP*, 7 BLR 1-860, 1-863 (1985) (hearing before the ALJ is de novo). However, ALJ Almanza awarded a full year of coal mine employment for each year as indicated on the Miner's SSA earnings records, except 1993, in which the Miner worked any amount of time in coal mine employment. Miner's Decision and Order at 6. Thus, even if the Miner were credited with an additional full year of coal mine employment in 1993—that is, even if the Miner were credited with a full year of coal mine employment for every calendar year in which he worked a single day in coal mine employment—Claimant would still have established only twelve years of coal mine employment, which is insufficient to invoke the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1)(i). So any error by the ALJ in adopting ALJ Almanza's findings rather than evaluating the length of the Miner's coal mine employment herself was harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 7-8. Consequently, we affirm her finding that Claimant established fewer than fifteen years of coal mine employment and therefore did not invoke the Section 411(c)(4) presumption. 20 C.F.R. §718.305; Decision and Order at 8.

Invocation of the Section 411(c)(3) Presumption: Complicated Pneumoconiosis

Section 411(c)(3) of the Act provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more large opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, is a condition that would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. In determining whether Claimant has invoked the irrebuttable presumption, the ALJ must weigh all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56 (4th Cir. 2000); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ considered four interpretations of two x-rays dated July 19, 2012, and September 8, 2014. Decision and Order at 13, 28-29. She found all the physicians who interpreted the x-rays are dually qualified as Board-certified radiologists and B readers. *Id.* at 28. Dr. Crum read the July 19, 2012 x-ray as negative for complicated pneumoconiosis. Claimant's Exhibit 1. Dr. DePonte read the September 8, 2014 x-ray as positive for complicated pneumoconiosis, Category A, while Drs. Meyer and Seaman read this x-ray as negative for the disease. Claimant's Exhibit 2; Employer's Exhibit 1 at 1-4. Because only one physician read either of the x-rays as positive for complicated pneumoconiosis, the ALJ found the x-ray evidence is "in equipoise" and thus does not support a finding of complicated pneumoconiosis. Decision and Order at 13. Because no physician read the July 19, 2012 x-ray as positive for complicated pneumoconiosis, and as only Dr. DePonte read the September 8, 2014 x-ray as positive for complicated pneumoconiosis, while Drs. Meyer and Seaman read it as negative for the disease,[6] we affirm the ALJ's finding that the x-ray evidence is, at best, in equipoise and thus does not support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a); Decision and Order at 13.

[6] We note the record also contains Dr. Wheeler's January 7, 2013 reading of the July 19, 2012 x-ray, which Employer designated as a rebuttal reading on its Evidence Summary Form and which the ALJ admitted into the record without objection. Decision and Order at 2; Employer's Evidence Summary Form at 2; Employer's Exhibit 1 at 9-10. However, as Dr. Wheeler, also a dually qualified physician, did not diagnose complicated pneumoconiosis, any error in not considering his reading of the July 19, 2012 x-ray is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Exhibit 1 at 9-10.

The record contains no biopsy or autopsy evidence and, therefore, Claimant cannot establish complicated pneumoconiosis at 20 C.F.R. §718.304(b). The computed tomography (CT) scan evidence does not support a finding of complicated pneumoconiosis, as Drs. DePonte and Meyer did not diagnose complicated pneumoconiosis based on the November 6, 2012 CT scan, the only CT scan in the record. Employer's Exhibit 1 at 5-8. Likewise, no physician submitting a medical opinion found the Miner had the disease. *See* Claimant's Exhibits 7, 8; Employer's Exhibits 2, 3, 7. We thus affirm, as supported by substantial evidence, the ALJ's finding that Claimant did not establish complicated pneumoconiosis at 20 C.F.R. §718.304(b) or (c), as well as her finding that the preponderance of the evidence as a whole does not establish the existence of complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 13.

Entitlement Under 20 C.F.R. Part 718

In a survivor's claim, Claimant must establish the Miner had pneumoconiosis arising out of coal mine employment and his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). Because Claimant did not invoke the Section 411(c)(3) or 411(c)(4) presumptions, she bears the burden of establishing the Miner had pneumoconiosis and pneumoconiosis caused or was a substantially contributing cause leading to the Miner's death. 20 C.F.R. §718.205(b)(1), (2). Pneumoconiosis is a substantially contributing cause if it hastened the Miner's death. 20 C.F.R. §718.205(b)(6). Failure to establish either requisite element of entitlement (pneumoconiosis or death causation) precludes an award of benefits. *See Trumbo*, 17 BLR at 1-87-88. The ALJ found Claimant failed to establish either element. Decision and Order at 32-33.

Clinical Pneumoconiosis

Claimant may establish the existence of clinical pneumoconiosis by x-rays, autopsies or biopsies, operation of one of the presumptions described in 20 C.F.R. §§718.304 or 718.305, or a physician's opinion. 20 C.F.R. §718.202(a)(1)-(4). The ALJ must consider all relevant evidence and weigh the evidence as a whole to determine if it establishes the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 212 (4th Cir. 2000).

The ALJ considered four readings of two x-rays dated July 19, 2012, and September 8, 2014. Decision and Order at 28-29. Dr. Crum read the July 19, 2012 x-ray as positive for simple pneumoconiosis with opacities in all lung zones and a profusion of 2/3. Claimant's Exhibit 1. Because no physician read the July 19, 2012 x-ray as negative for

simple pneumoconiosis, the ALJ found it positive for the disease.[7] *See* Decision and Order at 29. Dr. DePonte read the September 8, 2014 x-ray as positive for simple pneumoconiosis with opacities in all lung zones and a profusion of 3/3. Claimant's Exhibit 2. Drs. Seaman and Meyer read September 8, 2014 x-ray as showing opacities in all lung zones and a profusion of 3/2 but opined the x-ray is negative for clinical pneumoconiosis and instead shows basilar pulmonary fibrosis. Employer's Exhibit 1 at 1-4. Because one dually-qualified physician read the September 8, 2014 x-ray as positive for simple pneumoconiosis while two dually-qualified physicians read it as negative for the disease, the ALJ found the preponderance of the readings of this x-ray is negative for simple pneumoconiosis. Decision and Order at 29. Weighing the x-ray evidence together, the ALJ found that, because one x-ray is positive and the preponderance of readings of the other one is negative for clinical pneumoconiosis, the x-ray evidence is in equipoise and thus does not support Claimant's burden to establish clinical pneumoconiosis. *Id.*

The ALJ properly performed both a qualitative and quantitative analysis of the conflicting x-ray readings, taking into consideration the physicians' qualifications, their specific interpretations, and the number of readings of each film. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992); Decision and Order 28-29. As she observed, Drs. Seaman and Meyer explained the basis for their conclusions that the opacities are inconsistent with clinical pneumoconiosis and instead reflect another type of lung disease, basilar pulmonary fibrosis. *See Melnick*, 16 BLR at 1-37 (physician's comment on x-ray form suggesting opacities reflect cancer rather than pneumoconiosis must be considered at 20 C.F.R. §718.202(a)(1)); Decision and Order at 28-29. Consequently, we affirm the ALJ's finding that the September 8, 2014 x-ray is negative for clinical pneumoconiosis. Decision and Order at 29. Although the ALJ failed to consider Dr. Wheeler's negative reading of the July 19, 2012 x-ray, any error in this regard is harmless, as consideration of this x-ray would not aid Claimant in her burden to establish the existence of pneumoconiosis. *See Larioni*, 6 BLR at 1-1278. We therefore further affirm the ALJ's finding that the x-ray evidence does not support a finding of clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1). Decision and Order at 29.

The ALJ next considered two readings of a CT scan dated November 6, 2012. Dr. DePonte read this CT scan and did not diagnose pneumoconiosis but rather "honeycomb

[7] However, we note the ALJ again failed to consider Dr. Wheeler's reading of the July 19, 2012 x-ray, which was negative for pneumoconiosis. Employer's Exhibit 1 at 9-10.

lung" consistent with idiopathic pulmonary fibrosis as well as borderline bilateral hilar and mediastinal adenopathy. Employer's Exhibit 1 at 6. Likewise, Dr. Meyer read this CT scan as negative for pneumoconiosis and instead diagnosed basilar pulmonary fibrosis. *Id.* at 7-8. Weighing Drs. DePonte's and Meyer's readings together, the ALJ found the CT scan evidence does not support a finding of clinical pneumoconiosis. 20 C.F.R. §718.202(a)(4); *see* Decision and Order at 31. We affirm this finding as supported by substantial evidence.

The ALJ next considered the medical opinions of Drs. Smiddy and Habre, who diagnosed clinical pneumoconiosis, and the opinions of Drs. Tuteur and Rosenberg, who opined the Miner did not have the disease. Decision and Order at 30-31; Claimant's Exhibits 7, 8; Employer's Exhibits 2 at 2-4; 3 at 11-12; 7 at 38-39. The ALJ permissibly found Drs. Tuteur's and Rosenberg's opinions the most persuasive, detailed, and reasoned, noting they are consistent with the objective evidence, and she further found Dr. Tuteur's opinion the best reasoned as he had the best understanding of the Miner's full medical history. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 21, 23, 30-31.

In contrast, she permissibly discredited Dr. Smiddy's opinion as his report is missing one of its two pages and it is thus unclear on what basis Dr. Smiddy opined the Miner had clinical pneumoconiosis. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 17, 30. She likewise permissibly found Dr. Habre's opinion less persuasive than those of Drs. Tuteur and Rosenberg because he did not review all the medical evidence and as his opinion predates the Miner's death. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 31.

We therefore affirm the ALJ's conclusion that Claimant did not establish simple clinical pneumoconiosis as supported by substantial evidence. 20 C.F.R. §718.202(a); *see Compton*, 211 F.3d at 207-08; *Hicks*, 138 F.3d at 528; Decision and Order at 32.

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must prove the Miner had 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 Fourth Circuit, whose law applies in this case, has held a claimant can establish legal pneumoconiosis by showing coal dust exposure contributed "in part" to his respiratory or pulmonary impairment. *See*

Westmoreland Coal Co. v. Cochran, 718 F.3d 319, 322-23 (4th Cir. 2013); *Looney*, 678 F.3d at 311; *see also Arch on the Green v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014) (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.").

The ALJ considered the opinions of Drs. Tuteur and Rosenberg, who opined the Miner did not have legal pneumoconiosis, and those of Dr. Habre, who diagnosed the disease, and of Dr. Smiddy, who diagnosed coal workers' pneumoconiosis "with element of" chronic obstructive pulmonary disease. Decision and Order at 17-23, 30-32; Claimant's Exhibits 7, 8; Employer's Exhibits 2, 3.

Specifically, Dr. Tuteur diagnosed usual interstitial pneumonitis unrelated to coal mine dust exposure. Employer's Exhibit 3 at 11. He noted Drs. DePonte's and Meyer's CT scan readings documenting honeycombing and explained this finding is inconsistent with dust-related lung disease. *Id.* at 12. Further, he noted Drs. DePonte's and Meyer's diagnoses of idiopathic pulmonary fibrosis and explained usual interstitial fibrosis is a form of idiopathic pulmonary fibrosis. *Id.* at 11. The ALJ permissibly found Dr. Tuteur's opinion well-documented and reasoned, noting he had an accurate understanding of the Miner's employment history, he had the most evidence to review at his disposal, and his opinions were consistent with the objective evidence. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 21, 30-31.

Dr. Rosenberg diagnosed advanced linear interstitial lung disease unrelated to coal mine dust exposure. Employer's Exhibit 2 at 2-4. He explained that, as demonstrated by the CT scan evidence, the Miner developed linear fibrotic disease with a honeycombing pattern, which is inconsistent with coal mine dust exposure but is consistent with usual interstitial pneumonitis. Employer's Exhibit 7 at 31. Finding that Dr. Rosenberg accurately understood the Miner's employment and medical history and that his opinion was consistent with the objective evidence, the ALJ permissibly found Dr. Rosenberg's opinion well-reasoned and documented and gave it full probative weight. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 22-23.

The ALJ permissibly discredited Dr. Smiddy's opinion because his report is missing one of its two pages and she could not determine what understanding Dr. Smiddy had of the Miner's employment, medical, or smoking histories. *See Compton*, 211 F.3d at 211 (it is the province of the ALJ to evaluate the physicians' opinions); *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); Decision and Order at 17, 30.

Dr. Habre diagnosed legal pneumoconiosis in the form of chronic bronchitis and hypoxemia and opined the Miner's smoking history and history of dust exposure in coal mine employment both contributed to his impairment. Claimant's Exhibit 8. The ALJ thus permissibly discredited Dr. Habre's opinion because he did not review all the medical evidence and his opinion predates the Miner's death. *See Mays*, 176 F.3d at 756; *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 31.

The ALJ also considered the Miner's treatment records, including a diagnosis of clinical pneumoconiosis contained in the records of Dr. Litton. Director's Exhibits 8, 9, 11; Claimant's Exhibits 10, 11. She permissibly discredited Dr. Litton's diagnosis because, while the physician did have a treatment relationship with the Miner, he did not treat the Miner for pneumoconiosis or provide a basis to support his diagnosis such as discussing the Miner's employment history or dust exposure. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; 20 C.F.R. §718.104(d)(5); Decision and Order at 25, 31. Likewise, she permissibly found the remaining treatment records to be less detailed and reasoned than the opinions of Drs. Tuteur and Rosenberg. *See Looney*, 678 F.3d at 310; *Akers*, 131 F.3d at 441; *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993) (ALJ has exclusive power to make credibility determinations and resolve discrepancies in the evidence); Decision and Order at 31.

Claimant has the burden of establishing entitlement and bears the risk of non-persuasion if the evidence is found insufficient to establish a required element of entitlement. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994); *Young v. Barnes & Tucker Co.*, 11 BLR 1-147, 1-150 (1988); *Oggero*, 7 BLR at 1-865. Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant did not establish legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). Decision and Order at 30-32. Further, because Claimant did not establish pneumoconiosis, an essential element of entitlement, we affirm the ALJ's denial of benefits.[8] *Trumbo*, 17 BLR at 1-87-88; *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

[8] Because we affirm the ALJ's conclusion that Claimant failed to establish entitlement to benefits, we need not address Employer's arguments on cross-appeal that the ALJ erred in her responsible operator designation. Employer's Cross-Appeal Brief at 5-9.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge