



BRB No. 25-0141 BLA

RANDALL MORGAN (o/b/o
the Estate of CLEATIS E. MORGAN))

Claimant-Petitioner)

v.)

U.S. STEEL MINING COMPANY)

Employer-Respondent)

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 03/05/2026

DECISION and ORDER

Appeal of the Decision and Order on Remand Denying Benefits of Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

Randall Morgan, Summerton, South Carolina.

Aimee M. Stern (Dinsmore & Shohl, LLP), Wheeling, West Virginia, for Employer.

David Casserly (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, ROLFE and ULMER, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals, without representation,² Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order on Remand Denying Benefits (2021-BLA-05192) rendered on a claim filed on July 22, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Board for the second time.

In her initial Decision and Order Denying Benefits, 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); *see* 20 C.F.R. §718.304. Further, she accepted the parties' stipulation that the Miner had twenty-five years of qualifying coal mine employment and found he had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus she determined Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.³ 30 U.S.C. §921(c)(4) (2018). She concluded, however, that Employer rebutted the presumption and denied benefits.

Pursuant to Claimant's appeal, the Board⁴ affirmed, as unchallenged, the ALJ's finding that Claimant established twenty-five years of qualifying coal mine employment. *Morgan v. U.S. Steel Mining Co.*, BRB No. 22-0473 BLA, slip op. at 3 n.6 (Mar. 14, 2024)

¹ Claimant Randall Morgan is the Miner's surviving son. The Miner, Cleatis E. Morgan, died on May 2, 2022. Claimant's June 2, 2022 Letter to the ALJ. Claimant is pursuing this claim on behalf of the Miner's estate.

² On Claimant's behalf, Bradley Johnson, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested the Benefits Review Board review the ALJ's decision, but Mr. Johnson is not representing Claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co.*, 19 BLR 1-88 (1995) (Order).

³ Section 411(c)(4) provides a rebuttable presumption that a miner's total disability 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) (2018); 20 C.F.R. §718.305.

⁴ Administrative Appeals Judge Glenn E. Ulmer is substituted on the panel for Administrative Appeals Judge Greg J. Buzzard, who is no longer a member of the Board.

(unpub.). The Board also affirmed her finding that Claimant established total disability and invoked the Section 411(c)(4) presumption. 20 C.F.R. §§718.204, 718.305; *Morgan*, BRB No. 22-0473 BLA, slip op. at 4-6. However, the Board held the ALJ erred in finding Employer rebutted the Section 411(c)(4) presumption by disproving clinical and legal pneumoconiosis. *Morgan*, BRB No. 22-0473 BLA, slip op. at 9-10. Thus, the Board vacated the ALJ's finding that Employer rebutted the Section 411(c)(4) presumption and remanded the case for further consideration. *Id.*

On remand, the ALJ again found Employer disproved the existence of clinical and legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i); Decision and Order on Remand at 4-7 (unpaginated). Thus she again determined Employer rebutted the Section 411(c)(4) presumption and denied benefits.

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), filed a response, arguing the ALJ again erred in weighing the evidence on rebuttal.

In an appeal a claimant files without representation, the Board addresses whether substantial evidence supports the Decision and Order below. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's Decision and Order if it is 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).

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,⁶ or that “no

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the Miner performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 15; Director's Exhibit 3.

⁶ “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 diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the

part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201.” 20 C.F.R. §718.305(d)(1)(i), (ii); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-150 (2015). The ALJ found Employer rebutted the existence of clinical and legal pneumoconiosis and did not reach disability causation. Decision and Order on Remand at 4-7 (unpaginated).

Clinical Pneumoconiosis

To disprove clinical pneumoconiosis, Employer must establish the Miner did not have any of the 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. §§718.305(d)(1)(i)(B), 718.201(a)(1).

The ALJ weighed eleven readings of five x-rays dated May 23, 2019, September 12, 2019, February 21, 2020, January 6, 2021, and June 11, 2021.⁷ Decision and Order on Remand at 4-5 (unpaginated). She noted all interpreting physicians are dually-qualified as Board-certified radiologists and B readers. *Id.* at 5. Specifically, she found the interpretations of the May 23, 2019, February 21, 2020, January 6, 2021, and June 11, 2021 x-rays are in equipoise on the issue of clinical pneumoconiosis because an equal number of dually-qualified radiologists read each x-ray as positive and negative for the disease. *Id.* Thus she found these x-rays “neither [establish] nor [do] not establish pneumoconiosis.” *Id.* She found the September 12, 2019 x-ray negative for clinical pneumoconiosis because

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).

⁷ Dr. Crum interpreted the May 23, 2019 x-ray as positive for clinical pneumoconiosis, while Dr. Willis interpreted it as negative for the disease. Director’s Exhibit 42; Employer’s Exhibit 3. Dr. Miller read the September 12, 2019 x-ray as positive for clinical pneumoconiosis, while Drs. DePonte and Willis read it as negative for pneumoconiosis. Director’s Exhibits 15 at 9; 30; Claimant’s Exhibit 4. Dr. Miller interpreted the February 21, 2020 x-ray as positive for pneumoconiosis, while Dr. Willis read it as negative for the disease. Director’s Exhibit 39 at 21; Claimant’s Exhibit 2. Dr. Miller read the January 6, 2021 x-ray as positive for pneumoconiosis, whereas Dr. Willis interpreted it as negative for the disease. Claimant’s Exhibit 3; Employer’s Exhibit 2. Dr. Ramakrishnan interpreted the June 11, 2021 x-ray as positive for clinical pneumoconiosis, while Dr. Willis interpreted it as negative for the disease. Claimant’s Exhibit 1; Employer’s Exhibit 5.

a greater number of dually-qualified radiologists read it as negative for the disease and therefore determined this x-ray “does not establish pneumoconiosis.” *Id.* Ultimately, she summarily concluded “the overall chest x-ray evidence does not establish pneumoconiosis.” *Id.*

The ALJ erred in weighing the x-ray evidence. She again erroneously placed the burden of proof on Claimant to establish the Miner had clinical pneumoconiosis.⁸ Clinical pneumoconiosis is presumed to exist in this case because Claimant invoked the Section 411(c)(4) presumption. The ALJ was tasked with evaluating whether Employer disproved its existence by establishing, by a preponderance of the evidence, the Miner did not have clinical pneumoconiosis. *W. Va. CWP Fund v. Director, OWCP [Smith]*, 880 F.3d 691, 699 (4th Cir. 2018); *W. Va. CWP Fund v. Bender*, 782 F.3d 129, 134-35 (4th Cir. 2015); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 554-59 (4th Cir. 2013).

The ALJ also erred in weighing the computed tomography (CT) scan evidence.⁹ She considered two readings by dually-qualified radiologists of an April 26, 2019 CT scan.

⁸ We affirm the ALJ’s finding that the x-ray evidence is insufficient to support Claimant’s burden of establishing complicated pneumoconiosis. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304(a). Dr. Miller, a dually-qualified radiologist, read the September 12, 2019 x-ray as positive for complicated pneumoconiosis, Category A. Claimant’s Exhibit 4. Drs. DePonte and Willis, also dually-qualified radiologists, read this x-ray as negative for the disease. Director’s Exhibits 15, 30. Because a greater number of dually-qualified radiologists read this x-ray as negative for complicated pneumoconiosis, the ALJ found it negative for the disease. Decision and Order on Remand at 5 (unpaginated). Dr. Ramakrishnan, a dually-qualified radiologist, read the June 11, 2021 x-ray as positive for complicated pneumoconiosis, but Dr. Willis read it as negative. The ALJ found the readings of this x-ray are in equipoise because an equal number of physicians read each x-ray as positive and negative for complicated pneumoconiosis. *Id.* Because there is one negative x-ray and the readings of another x-ray are in equipoise, the ALJ found Claimant did not establish complicated pneumoconiosis. August 5, 2022 Decision and Order at 10. The ALJ properly conducted both a qualitative and quantitative assessment of the x-ray evidence on the issue of complicated pneumoconiosis. *See Sea “B” Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016). Thus we affirm her finding that this evidence does not establish complicated pneumoconiosis. August 5, 2022 Decision and Order at 10; Decision and Order on Remand at 5 (unpaginated). As the record contains no other evidence of complicated pneumoconiosis, we affirm her finding that Claimant did not establish this disease. *Id.*

⁹ The ALJ correctly considered the CT scan evidence as “other relevant evidence” under 20 C.F.R. §718.107 but erroneously stated her conclusion on the issue as relevant to

Decision and Order on Remand at 7 (unpaginated). Dr. Crum interpreted the CT scan as positive for clinical pneumoconiosis, while Dr. Willis interpreted it as negative for the disease. Claimant’s Exhibit 6; Employer’s Exhibit 4. The ALJ found the doctors are equally qualified. Decision and Order on Remand at 7 (unpaginated). She found each CT scan reading is reasoned and documented and entitled to “some weight.” *Id.* Thus, she found the CT scan readings are in equipoise and aid Employer in rebutting the presumption of clinical pneumoconiosis. *Id.* This was error. A finding that evidence is in equipoise on the issue of clinical pneumoconiosis must be deemed insufficient to carry Employer’s burden of disproving the disease. *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 281 (1994), *aff’g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730 (3d Cir. 1993) (invalidating true doubt rule; holding burden of persuasion rests with moving party).

Finally, the ALJ erred in weighing the medical opinions. She considered the opinions of Drs. Ajarapu, McSharry, and Zaldivar. Director’s Exhibits 15, 39; Employer’s Exhibit 1. All three doctors opined the Miner did not have clinical pneumoconiosis. *Id.* The ALJ summarily found each doctor rendered a reasoned opinion and each doctor is qualified. Decision and Order on Remand at 5. But she did not adequately explain her credibility finding as 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), requires and thus we vacate it. *See Sea “B” Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Because the ALJ failed to properly weigh the evidence using the correct burden of proof, we again vacate her determination that Employer rebutted the presumption of clinical pneumoconiosis. 20 C.F.R. §§718.201(a), 718.202(a)(1), 718.305(d)(1)(i)(B).

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish the Miner did not have a chronic lung disease or impairment “significantly related to, or substantially aggravated

legal pneumoconiosis, rather than clinical pneumoconiosis. Decision and Order on Remand at 7 (unpaginated).

¹⁰ 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).

by, dust exposure in coal mine employment.” 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *Smith*, 880 F.3d at 695; *Minich*, 25 BLR at 1-155 n.8.

The ALJ considered Dr. Ajarapu’s opinion that the Miner had legal pneumoconiosis based on his diagnosis of chronic bronchitis due to the Miner’s “work in the mines and tobacco use,” and the opinions of Drs. McSharry and Zaldivar that he did not have the disease as they found the Miner’s lung disease was not caused by or significantly aggravated by coal dust exposure or related to coal mine employment. Director’s Exhibits 15, 18, 39; Employer’s Exhibit 1. She summarized their opinions, found each reasoned and documented, and gave them each “some weight.” Decision and Order on Remand at 7 (unpaginated). Ultimately, she summarily found Employer rebutted the presumption of legal pneumoconiosis. *Id.*

The Board instructed the ALJ that in evaluating the medical opinions on the issue of legal pneumoconiosis, she must consider the physicians’ qualifications, explanations for their conclusions, the documentation underlying their medical judgements, and the sophistication of, and bases for, their diagnoses and medical conclusions. *Morgan*, BRB No. 22-0473 BLA, slip op. at 10. In doing so, the Board instructed her that she should set forth her findings in detail, including the underlying rationale. *Id.* The ALJ did not follow these instructions; she did not adequately set forth her basis for finding each opinion is reasoned and documented. Thus her credibility findings do not comport with the APA. *See Addison*, 831 F.3d at 256-57; *Wojtowicz*, 12 BLR at 1-165. Further, although she found the opinions of Drs. Ajarapu, McSharry, and Zaldivar are each reasoned and documented and entitled to “some weight,” Decision and Order on Remand at 7 (unpaginated), she did not explain why she found the opinions of Drs. McSharry and Zaldivar outweigh Dr. Ajarapu’s opinion and disprove legal pneumoconiosis, as the APA requires. *Addison*, 831 F.3d at 256-57; *Wojtowicz*, 12 BLR at 1-165.

The ALJ’s unexplained finding that all the medical opinions are entitled to “some weight” and her apparent reliance on a head count of contrary opinions is an insufficient basis to find Employer satisfied its burden to disprove legal pneumoconiosis. *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *Smith*, 880 F.3d at 699 (rebuttal inquiry is “whether the employer has come forward with affirmative proof that the [miner] does not have legal pneumoconiosis, because his impairment is not in fact significantly related to his years of coal mine employment”); *Minich*, 25 BLR at 1-155 n.8; Decision and Order on Remand at 7 (unpaginated). The ALJ has a duty to resolve any conflicts in the evidence and explain the basis for doing so. *Addison*, 831 F.3d at 256-57; *Lane Hollow Coal Co. v. Director, OWCP [Lockhart]*, 137 F.3d 799, 803 (4th Cir. 1998); *Gunderson v. U.S. Dep’t of Lab.*, 601 F.3d 1013, 1024 (10th Cir. 2010); *Wojtowicz*, 12 BLR at 1-165.

Thus, we vacate the ALJ's finding that Employer disproved legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order on Remand 7 (unpaginated). Consequently, we vacate the ALJ's finding that Employer established rebuttal at 20 C.F.R. §718.305(d)(1)(i) and the denial of benefits.

Remand Instructions

On remand, the ALJ must reconsider whether Employer rebutted the Section 411(c)(4) presumption. *See Owens*, 724 F.3d at 555; *Minich*, 25 BLR at 1-159 n.14. In assessing whether Employer disproved the existence of pneumoconiosis, the ALJ must consider and weigh all relevant evidence as to both clinical and legal pneumoconiosis. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441-42 (4th Cir. 1997). Regarding clinical pneumoconiosis, the ALJ must reconsider whether the x-ray, CT scan, and medical opinion evidence, individually and taken as a whole, rebut the presumed existence of pneumoconiosis. *See Owens*, 724 F.3d at 555; *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 208-09 (4th Cir. 2000). In doing so, if the ALJ finds the x-ray or CT scan evidence is in equipoise, the ALJ must find it does not support Employer's burden of proof at rebuttal. *See Ondecko*, 512 U.S. at 281. In reconsidering the medical opinions, the ALJ must assess the credibility of each opinion as to an absence of clinical pneumoconiosis based on its ability to persuade. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441-42; *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992). The ALJ may not count heads to assign value to this evidence. *See Addison*, 831 F.3d at 256.

The ALJ must also reweigh the medical opinion evidence in assessing whether Employer has rebutted the presumed existence of legal pneumoconiosis. *See Owens*, 724 F.3d at 555; *Compton*, 211 F.3d at 208-09. Similarly, the ALJ must assess the credibility of each opinion as to the absence of legal pneumoconiosis based on its ability to persuade. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441-42; *Adkins*, 958 F.2d at 52. The ALJ may not count heads to assign value to this evidence. *See Addison*, 831 F.3d at 256.

If Employer establishes the Miner had neither clinical nor legal pneumoconiosis, it will have rebutted the presumption and the ALJ may reinstate the denial of benefits. However, if Employer does not disprove both forms of the disease, a rebuttal finding that the Miner did not have pneumoconiosis is precluded. 20 C.F.R. §718.305(d)(1)(i). The ALJ must then specifically address the second rebuttal method and determine whether Employer established that no part of the Miner's respiratory disability is due to pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). Furthermore, the ALJ must adequately explain all findings on remand. *See Wojtowicz*, 12 BLR at 1-165.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge