



BRB No. 25-0145 BLA

BENNIE O. COLEMAN)
)
 Claimant-Petitioner)
)
 v.)
)
 ENTERPRISE COAL COMPANY)
)
 Employer-Respondent)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 03/30/2026

DECISION and ORDER

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

Wes Addington (Appalachian Citizens' Law Center), Whitesburg, Kentucky, for Claimant.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Denying Benefits¹ (2023-BLA-05081) rendered on a subsequent

¹ The ALJ subsequently issued a January 14, 2025 Errata Correcting Date of Claimant Birth and Admitted Chest X-Ray Exhibits in Decision and Order Denying Benefits (Errata Order). She corrected Claimant's birthdate, included Claimant's Exhibit

claim² filed on May 14, 2021, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ found Claimant worked for 22.8 years in underground or substantially similar surface coal mine employment. She further found Claimant established a totally disabling respiratory or pulmonary impairment and therefore invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).³ But the ALJ found Employer rebutted the presumption of pneumoconiosis and thus denied benefits.

3 in her summary of the x-ray evidence, and noted a typographical error in her discussion regarding legal pneumoconiosis. Errata Order. But she indicated none of these corrections changed her conclusions. *Id.* at 2. While not explicit, the Errata Order appears to be in response to Claimant's Request for Reconsideration which identified these mistakes in addition to making other arguments.

² Claimant filed his first claim on March 8, 2016. Director's Exhibit 1. The district director denied the claim by reason of abandonment. *Id.* A denial by reason of abandonment is "deemed a finding that the claimant has not established any applicable condition of entitlement." 20 C.F.R. §725.409(c).

When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); see *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant's prior claim was denied as abandoned, he had to submit new evidence establishing at least one element of entitlement to obtain review of the merits of his current claim. *White*, 23 BLR at 1-3; Director's Exhibit 1.

³ 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); 20 C.F.R. §718.305.

On appeal, Claimant argues the ALJ erred in finding Employer rebutted the Section 411(c)(4) presumption and thus in denying benefits. Neither Employer nor the Director, Office of Workers' Compensation, has filed a response brief.⁴

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 accordance with law.⁵ 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, 361-62 (1965).

Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis, or "no 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); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015). The ALJ found Employer rebutted the presumption because it established Claimant does not suffer from either clinical or legal pneumoconiosis. Decision and Order at 14.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish Claimant does not have 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), 718.305(d)(1)(i)(A); *see Minich*, 25 BLR at 1-155 n.8.

The ALJ considered the opinions of Drs. Forehand, Shahoub, Dahhan, and Jarboe. Decision and Order at 14. Dr. Forehand diagnosed legal pneumoconiosis, finding Claimant has obstructive lung disease due to his coal mine dust exposure and smoking history. Director's Exhibit 10. Dr. Shahoub, Claimant's treating physician, diagnosed coal

⁴ We affirm, as unchallenged, the ALJ's findings that Claimant established 22.8 years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment and thus invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§718.204(b)(2), 718.305; Decision and Order at 7-8, 11.

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 24-25; Director's Exhibit 22 at 16-17.

workers' pneumoconiosis and chronic obstructive pulmonary disease, but did not specify whether he diagnosed either clinical or legal pneumoconiosis arising out of coal mine dust exposure. Claimant's Exhibit 1. Dr. Dahhan opined Claimant does not have legal pneumoconiosis but rather has an obstructive impairment due to smoking and a restrictive impairment with hypoxemia due to morbid obesity. Director's Exhibit 17. Dr. Jarboe also opined that Claimant does not have legal pneumoconiosis, concluding Claimant's severe obstructive disease and blood gas impairment are due to asthma combined with cigarette smoking. Employer's Exhibit 1.

The ALJ found Dr. Shahoub's opinion inadequately documented and reasoned, as she found it unclear whether he diagnosed clinical pneumoconiosis, legal pneumoconiosis or both; he did not explain his diagnoses; he did not address Claimant's occupational history; and his credentials are not of record. Decision and Order at 14. She thus accorded his opinion lesser weight. *Id.* She concluded each of the remaining physicians were qualified to opine on the issue and afforded their opinions "some weight." *Id.* Finding the overall medical opinion evidence "preponderantly weighs against establishing legal pneumoconiosis," she determined Employer rebutted the presence of legal pneumoconiosis. *Id.*

Claimant argues the ALJ improperly shifted the burden to him to establish the presence of legal pneumoconiosis rather than determining if Employer affirmatively demonstrated it was not present. Claimant's Brief at 6. He further contends that, even if the ALJ applied the appropriate burden of proof, the ALJ failed to explain her crediting of the medical opinion evidence or resolve conflicts in the evidence in violation of the Administrative Procedure Act (APA). *Id.* at 6-7.

We agree it is unclear if the ALJ was assessing the evidence to determine whether Employer disproved the presence of legal pneumoconiosis or instead was determining whether Claimant preponderantly established the disease. Decision and Order at 14 (ALJ found the "medical opinion evidence preponderantly weighs against establishing legal pneumoconiosis" but also found Employer "established Claimant does not suffer from" the disease). As the Section 411(c)(4) presumption was invoked, the ALJ must determine if Employer established the Miner did not have 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), 718.305(d)(2)(i)(A); *see Minich*, 25 BLR at 1-155 n.8. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, holds this standard requires an employer to show the miner's "coal mine employment did not contribute, in part, to his alleged pneumoconiosis." §§718.201(a)(2),(b), 718.305(d)(1)(i)(A); *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). "An employer may prevail under the not 'in part' standard by showing that coal dust exposure had no more than a de minimis impact on the miner's lung

impairment.” *Id.* at 407 (citing *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014)). Thus, the ALJ apparently did not apply the correct burden of proof when analyzing the medical opinion evidence.

Moreover, as Claimant argues, even assuming the ALJ appropriately applied the burden of proof, the ALJ did not explain her analysis of the medical opinions. The APA requires the ALJ to set forth her “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); see *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). While the ALJ summarized the opinions of Drs. Forehand, Dahhan, and Jarboe,⁶ she did not make any findings regarding the credibility of each physician’s opinion as to the role coal mine dust played in Claimant’s respiratory impairments; she only summarily gave each opinion “some weight.” Decision and Order at 14. Because the ALJ provided no analysis of the physicians’ opinions and failed to resolve the conflict in the medical opinion evidence, her findings are not in compliance with the APA. See *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002) (it is the duty of the ALJ to weigh the evidence, draw inferences, and determine credibility); *Wojtowicz*, 12 BLR at 1-165.

We therefore vacate the ALJ’s finding that the medical opinion evidence, and thus the evidence overall, established rebuttal of legal pneumoconiosis, as well as the denial of benefits, and remand the case for the ALJ to apply the correct burden of proof when analyzing the evidence. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 14.

Clinical Pneumoconiosis

To disprove clinical pneumoconiosis, Employer must establish Claimant does 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).

⁶ As noted, the ALJ also addressed Dr. Shahoub’s opinion on the issue of legal pneumoconiosis but found his opinion undermined as his diagnoses were unclear and unexplained and there is no indication he was aware of the extent of Claimant’s occupational history. Decision and Order at 14. We affirm these determinations as supported by substantial evidence. See *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005).

The ALJ initially considered four x-ray readings of three x-rays dated September 28, 2021, June 22, 2022, and July 21, 2022. Decision and Order at 13. Dr. Forehand read the September 28, 2021 x-ray as positive for pneumoconiosis, while Dr. Seaman read the x-ray as negative. Director's Exhibits 10, 16. Dr. Meyer read the June 22, 2022 x-ray as negative for pneumoconiosis. Employer's Exhibit 3. Finally, Dr. Chopra read the July 21, 2022 x-ray, finding "no significant abnormality."⁷ Employer's Exhibit 2. The ALJ found all the interpreting physicians except Dr. Forehand are dually-qualified B readers and Board-certified radiologists, but she still found Dr. Forehand "qualified" even though he is not also a Board-certified radiologist. Decision and Order at 13. Giving all the interpretations equal weight, she found the x-ray evidence negative for pneumoconiosis. *Id.* Subsequently, the ALJ acknowledged that she had erroneously excluded Dr. Crum's positive reading of the July 21, 2022 x-ray from her decision. Errata Order. She added the x-ray reading to her summary of x-ray evidence but indicated it did not change her conclusions. *Id.* at 2.

Claimant argues the ALJ failed to adequately discuss her weighing of the x-ray evidence to find it negative for clinical pneumoconiosis. Claimant's Brief at 4-5. Specifically, he contends the ALJ's summary of Dr. Crum's reading of the July 21, 2022 x-ray in her Errata Order did not cure her error in failing to weigh his report in her initial discussion. *Id.* Further, he contends the ALJ did not adequately consider Dr. Chopra's reading of the same x-ray and whether it should have been found to be silent on the issue rather than a negative reading. *Id.* at 5. We agree the ALJ erred.

The ALJ did not explain her weighing of the readings of the various x-ray readings or her weighing of the x-rays together, appearing to simply be "counting heads" to find there were more negative x-rays readings than positive rather than resolving the conflicts in the x-ray evidence. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59 (6th Cir. 1995) (ALJ must weigh all the x-ray evidence together and consider the quantity of the readings and the qualifications of the readers); *see also Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992) ("counting heads" is a "hollow" way to resolve conflicts in the evidence); Decision and Order at 13. Further, while the ALJ acknowledged that she initially failed to consider Dr. Crum's positive x-ray reading, she found the addition of this evidence did not change her conclusions without providing any further explanation. Errata Order at 2. The ALJ's failure to explain her weighing of the evidence violates the APA and requires remand. *See Staton*, 65 F.3d at 59; *Wojtowicz*, 12 BLR at 1-165.

⁷ The ALJ interpreted this x-ray as negative for pneumoconiosis. Decision and Order at 13.

We disagree, however, that the ALJ erred in finding Dr. Chopra's reading of the July 21, 2022 x-ray was negative for pneumoconiosis and rather should have found her x-ray reading "neutral." Claimant's Brief at 5. Dr. Chopra specifically read the x-ray for the purposes of diagnosing pneumoconiosis, noted Claimant's coal mining history, and indicated she found no significant abnormality; thus, it was within the ALJ's discretion to find it constituted a negative reading. *See Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-218-19 (1984) (ALJ has discretion to determine whether an x-ray that does not specifically identify pneumoconiosis supports an inference that the x-ray establishes the absence of pneumoconiosis); Employer's Exhibit 2; Decision and Order at 13.

Because the ALJ failed to explain her weighing of the x-ray evidence, we vacate her determination that the x-ray evidence weighs against a finding of clinical pneumoconiosis and thus her finding that Employer rebutted the presumption of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 13. Thus, we further vacate the ALJ's determination that Employer successfully established rebuttal of clinical pneumoconiosis. Decision and Order at 14-15.

Remand Instructions

On remand, the ALJ must reconsider whether Employer has rebutted the Section 411(c)(4) presumption. She must consider whether Employer disproved the existence of legal pneumoconiosis by establishing Claimant does not have 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), 718.305(d)(1)(i)(A); *see Minich*, 25 BLR at 1-155 n.8. The ALJ also must reconsider the x-ray evidence and all relevant evidence to determine whether Employer has established Claimant does not have clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); *see Minich*, 25 BLR at 1-159.

When weighing the medical opinion evidence, the ALJ must consider the physicians' qualifications, explanations for their conclusions, the documentation underlying their medical judgments and the sophistication of, and bases for, their diagnoses and medical conclusions. *See Napier*, 301 F.3d at 713-14; *Director, OWCP v. Rowe*, 710 F. 2d 251, 255 (6th Cir. 1983). In so doing, she must set forth her findings in detail, including the underlying rationale. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165.

If the ALJ finds Employer has disproved the existence of both legal and clinical pneumoconiosis, Employer will have rebutted the Section 411(c)(4) presumption by establishing the absence of pneumoconiosis. But if the ALJ finds Employer has not rebutted the presumed fact of either legal or clinical pneumoconiosis, she must then determine whether Employer has rebutted the presumed fact of disability causation by

establishing that “no part of [Claimant’s] total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201.” 20 C.F.R. §718.305(d)(1)(ii); *see Minich*, 25 BLR at 1-159. If Employer is unable to rebut the Section 411(c)(4) presumption pursuant to either 20 C.F.R. §718.305(d)(1)(i) or (ii), Claimant is entitled to benefits.

Accordingly, we affirm in part and vacate in part the ALJ’s Decision and Order Denying Benefits and remand the case 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