



BRB No. 25-0146 BLA

SHERRY L. SUTHERLAND)

Claimant-Petitioner)

v.)

J & E COAL COMPANY,)
INCORPORATED)

and)

EMPLOYER'S INSURANCE OF WAUSAU)
c/o LIBERTY MUTUAL INSURANCE)

Employer/Carrier-)
Respondents)

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 on Remand Denying Benefits of Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

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

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order on Remand Denying Benefits (2020-BLA-05648) rendered on a subsequent claim¹ filed May 8, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act). This claim is before the Benefits Review Board for a second time.²

In an April 18, 2022 Decision and Order Denying Benefits, the ALJ found Claimant established 5.2 years of coal mine employment. Thus, she found Claimant 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).³ Considering entitlement under 20 C.F.R. Part 718, the ALJ found

¹ This is Claimant's fifth claim for benefits. Director's Exhibit 6. Claimant withdrew her previous claim. Director's Exhibit 4. A withdrawn claim is considered "not to have been filed." See 20 C.F.R. §725.306(b). The ALJ indicated Claimant's next most recent prior claim is "unavailable." Decision and Order at 6.

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). As the ALJ indicated she could not determine the basis of the prior denial, she would consider all elements of entitlement; thus, Claimant had to submit new evidence establishing an element of entitlement to obtain review of the merits of her current claim. *Id.*; Decision and Order at 6.

² We incorporate the procedural history of this case as set forth in *Sutherland v. J & E Coal Co.*, BRB No. 22-0334 BLA (Mar. 10, 2023) (unpub.). Chief Administrative Appeals Judge Daniel T. Gresh and Administrative Appeals Judge Glenn E. Ulmer are substituted on the panel for Administrative Appeals Judges Judith S. Boggs and Greg J. Buzzard, who are no longer members of the Board.

³ Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if she establishes at least fifteen years of

Claimant established a totally disabling respiratory or pulmonary impairment but did not establish either clinical or legal pneumoconiosis.⁴ 20 C.F.R. §§718.202(a), 718.204(b)(2). Thus, she denied benefits.

Pursuant to Claimant's appeal, the Board affirmed the ALJ's findings that Claimant established 5.2 years of coal mine employment, established a totally disabling respiratory or pulmonary impairment and thus a change in an applicable condition of entitlement, and failed to establish clinical pneumoconiosis. *Sutherland v. J & E Coal Co.*, BRB No. 22-0334 BLA, slip op. at 3 nn.4, 6 (Mar. 10, 2023) (unpub.). But the Board vacated her determination that Claimant failed to establish legal pneumoconiosis, holding the ALJ did not explain her weighing of the medical opinion evidence on the issue. *Id.* at 5. The Board also vacated her finding, therefore, that Claimant failed to establish disability causation. *Id.* at 6. Thus, the Board vacated the denial of benefits and remanded the case for further consideration. *Id.* at 6-7.

On remand, the ALJ again found Claimant failed to establish legal pneumoconiosis and, because she did not establish either form of pneumoconiosis, also found Claimant failed to establish disability causation. Therefore, the ALJ denied benefits.

On appeal, Claimant argues the ALJ again failed to adequately explain her credibility findings and resolve the conflicts in the evidence when weighing the evidence regarding legal pneumoconiosis. Employer responds in support of the denial. The Director, Office of Workers' Compensation Programs, has declined to file a response brief.

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

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 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).

with 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).

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. Failure to establish any element of entitlement 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).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must prove that she 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 Fourth Circuit has held a claimant can establish legal pneumoconiosis by showing coal mine dust exposure contributed “in part” to his or her respiratory or pulmonary impairment. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 322-23 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 311 (4th Cir. 2012); *see also Arch on the Green v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014) (A miner can establish legal pneumoconiosis “by showing that his disease was caused ‘in part’ by coal mine employment.”).

The ALJ considered three medical opinions on the issue. Decision and Order on Remand at 4-6 (unpaginated). Dr. Forehand diagnosed legal pneumoconiosis, while Drs. Fino and Sargent did not. Director’s Exhibits 15, 25; Employer’s Exhibits 1, 2. Dr. Forehand opined Claimant has a mixed restrictive and obstructive lung disease substantially caused by her coal mine dust exposure. Director’s Exhibit 15. Dr. Fino found Claimant has a restrictive pulmonary condition, which he opined is due to interstitial lung

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed her coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director’s Exhibit 9; Hearing Transcript at 11.

disease resulting from her autoimmune diseases.⁶ Director's Exhibit 25; Employer's Exhibit 2. Dr. Sargent also found a mixed impairment that is "primarily" restrictive. Employer's Exhibit 1. He was unable to opine as to the etiology of this disabling impairment,⁷ but stated it is unlikely that coal mine dust exposure substantially contributes to it. *Id.* Finding each of the medical opinions well-reasoned and supported, the ALJ found the overall evidence does not support a finding of legal pneumoconiosis. Decision and Order on Remand 5-6.

Claimant argues the ALJ again failed to evaluate the disagreements between the medical experts' opinions or explain why she chose to credit or reject their conclusions when weighing the evidence regarding legal pneumoconiosis. Claimant's Brief at 5-6. We agree.

While the ALJ provided more discussion of the medical opinions than in her prior decision, she still did not explain why each medical expert's opinion is well-reasoned or resolve the conflicts in the evidence. After summarizing each expert's opinion, she found each doctor qualified, based on "their credentials and extensive experience in black lung matters," and that they each considered Claimant's "medical history and possible etiologies." Decision and Order on Remand at 5. She also acknowledged that in addition to Drs. Fino's and Sargent's disagreement with Dr. Forehand's diagnosis of legal pneumoconiosis, they reached "opposite conclusions" regarding whether Claimant's lupus was the cause of her impairment. *Id.* at 5-6. But she indicated their disagreement did not undermine either of their opinions, as they both explained why they excluded coal mine employment as a cause of Claimant's condition. *Id.* at 5-6. The ALJ found Dr. Forehand's conflicting opinion well-reasoned and supported but insufficient to outweigh the similarly well-reasoned and supported opinions of Drs. Fino and Sargent, according each medical opinion "some weight." *Id.* at 6.

While the ALJ noted that Drs. Fino and Sargent provided reasons for excluding coal mine employment as a cause of Claimant's restrictive impairment – i.e., given the amount of years Claimant worked in coal mines and the timing of when she developed an

⁶ Dr. Fino noted Claimant's treatment records included diagnoses of lupus erythematosus and Sjogren's syndrome, which he indicated can affect the lungs. Employer's Exhibit 2.

⁷ Like Dr. Fino, Dr. Sargent noted Claimant's autoimmune diseases, which he stated can affect the lungs. Employer's Exhibit 1 at 2. However, Dr. Sargent indicated he could not state Claimant's impairment was due to these diseases, as there is no evidence of interstitial fibrosis on x-ray and she exhibits no respiratory muscle weakness. *Id.*

impairment – the ALJ did not explain why she found these explanations to be well-reasoned or supported by the record. Decision and Order on Remand 6. She provided less analysis in support of her conclusion that Dr. Forehand’s opinion is well-reasoned and supported, simply noting that Dr. Forehand stated that Claimant was a nonsmoker and there were no other factors that could contribute to her impairment. *Id.* at 5-6.

Thus, the ALJ erred by failing to critically analyze the physicians’ opinions or otherwise explain why she found their opinions credible as the Administrative Procedure Act (APA)⁸ requires. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Sea “B” Mining Co. v. Addison*, 831 F.3d 244, 252-53 (4th Cir. 2016) (ALJ must conduct an appropriate analysis of the evidence to support his or her conclusion and render necessary credibility findings); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998) (ALJ erred by failing to adequately explain why he credited certain evidence and discredited other evidence); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984). The ALJ has a duty to resolve any conflicts in the evidence and explain his or her basis for doing so. *See 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 Labor*, 601 F.3d 1013, 1024 (10th Cir. 2010); *Wojtowicz*, 12 BLR at 1-165. Thus, we vacate the ALJ’s determination that Claimant failed to establish legal pneumoconiosis. 20 C.F.R. §718.202(a)(4); Decision and Order on Remand at 6.

As the ALJ’s errors in assessing legal pneumoconiosis affected her credibility findings regarding disability causation, we also vacate her finding the Claimant did not establish total disability due to legal pneumoconiosis. 20 C.F.R. §718.204(c)(1); Decision and Order on Remand at 6.

Remand Instructions

On remand, the ALJ must reconsider the medical opinion evidence on the issue of legal pneumoconiosis. The ALJ should address the comparative credentials of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Hicks*, 138 F.3d at 528. Moreover, the ALJ must weigh all the relevant evidence together to determine whether Claimant suffers from legal pneumoconiosis. *Island Creek Coal Co. v.*

⁸ The Administrative Procedure Act requires the ALJ to set forth his “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).

Compton, 211 F.3d 203, 208-09 (4th Cir. 2000). The ALJ must set forth his or her findings in detail, including the underlying rationales, in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

If Claimant fails to establish legal pneumoconiosis, she has failed to establish pneumoconiosis, an essential element of entitlement, and the ALJ may reinstate the denial of benefits. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2. However, if Claimant establishes legal pneumoconiosis, the ALJ should address if she established pneumoconiosis is a “substantially contributing cause” of her totally disabling respiratory or pulmonary impairment.⁹ 20 C.F.R. §718.204(c)(1); *Extra Energy, Inc. v. Lawson*, 140 F.4th 138, 144 (4th Cir. 2025).

Accordingly, we affirm in part and vacate in part the ALJ’s Decision and Order on Remand 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

GLENN E. ULMER
Administrative Appeals Judge

⁹ Pneumoconiosis is a substantially contributing cause if it has “a material adverse effect on the miner’s respiratory or pulmonary condition,” or if it “[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).