U.S. Department of Labor

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

BRB No. 21-0612 BLA

LARRY L. COLLINS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ARCELORMITTAL/XMV, INCORPORATED	)	
	)	
	)	
Employer-Petitioner	)	DATE ISSUED: 5/26/2023
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Granting Request for Modification and Awarding Benefits of Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton Virginia, for Claimant.

Mark J. Grigoraci (Robinson & McElwee PLLC), Charleston, West Virginia, for Employer.

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

GRESH, Chief Administrative Appeals Judge, and ROLFE, Administrative Appeals Judge:

Employer appeals Administrative Law Judge (ALJ) Jonathan C. Calianos's Decision and Order Granting Request for Modification and Awarding Benefits (2020-BLA-05271), rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a request for modification of a subsequent claim filed on August 28, 2015.[1] Director's Exhibit 2.

In an August 1, 2018 Decision and Order Denying Benefits, ALJ Carrie Bland found Claimant failed to establish total disability, and thus failed to prove a required element of entitlement and denied benefits. Claimant timely requested modification and the case was assigned to ALJ Calianos (the ALJ).

The ALJ accepted the parties' stipulation that Claimant had twenty-nine years of underground coal mine employment and found the newly submitted evidence established total disability. Thus, he found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[2] and established a change in an applicable condition of entitlement. 20 C.F.R. §§718.305, 725.309, 725.310. The ALJ further found Employer did not rebut the presumption and awarded benefits.

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[1] Claimant filed his first claim for benefits on June 24, 2009. Director's Exhibit 1. The district director denied benefits for failing to establish any element of entitlement. *Id.* Claimant took no further action in the prior claim.

Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the ALJ must also deny the subsequent claim unless he 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); *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 did not establish any element of entitlement in his prior claim, he had to submit new evidence establishing at least one element of entitlement to obtain review of the merits of the current claim. *White*, 23 BLR at 1-3; Director's Exhibit 1.

[2] 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 impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

On appeal, Employer argues the ALJ erred in finding it failed to rebut the Section 411(c)(4) presumption.[3] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response.

The Benefits Review Board's scope of review is defined by statute. We must affirm the Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[4] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe 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 Claimant has neither legal nor clinical pneumoconiosis,[5] or that "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). The ALJ found Employer failed to rebut the presumption by either method. Decision and Order at 36-37, 40.

[3] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established twenty-nine years of underground coal mine employment and a totally disabling respiratory impairment, and thus invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4, 26-27; Employer's Brief at 9.

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

[5] "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).

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." *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relied on the medical opinions of Drs. Zaldivar, Rosenberg, and McSharry to rebut legal pneumoconiosis.[6] Director's Exhibit 60; Employer's Exhibits 1, 4, 5, 15-17. Dr. Zaldivar noted mild obstruction, disabling hypoxemia, and no diffusion impairment, which he indicated was a pattern inconsistent with a coal dust-induced disease. Director's Exhibit 60; Employer's Exhibits 5, 17. Dr. Rosenberg also found Claimant's pattern of impairment to be inconsistent with legal pneumoconiosis, indicating he likely has a ventilation perfusion mismatch related to airways disease or underlying atelectasis. Director's Exhibit 60 at 53; Employer's Exhibit 4. Finally, Dr. McSharry determined legal pneumoconiosis is absent, acknowledging "modest" obstruction and significant hypoxemia, but finding the pattern inconsistent with legal pneumoconiosis. Employer's Exhibits 1, 15. He opined that Claimant's obstruction is likely due to asthma or smoking, but the cause of his hypoxemia is "obscure" and indicated that an underlying right-to-left shunt in the lungs or heart or pulmonary emboli should be considered; however, he indicated neither abnormality is due to coal mine dust exposure. Employer's Exhibits 1, 15. The ALJ found Drs. Zaldivar's and Rosenberg's opinions undermined and inadequate to rebut the presumption. Decision and Order at 37-38.

Employer argues the ALJ erred. Employer's Brief at 12-16. It contends the ALJ failed to consider Drs. McSharry's and Nader's opinions, that it alleges support rebuttal of legal pneumoconiosis. *Id.* at 13-14. We agree, in part.

Initially, Employer is correct that the ALJ failed to consider Dr. McSharry's opinion on the issue of legal pneumoconiosis. Employer's Brief at 13; Decision and Order at 36-38. Dr. McSharry specifically opined that legal pneumoconiosis is absent. Employer's Exhibits 1, 15. Because the ALJ failed to consider all relevant evidence regarding rebuttal of legal pneumoconiosis, we must vacate the ALJ's finding that Employer failed to rebut

[6] Also of record were opinions from Drs. Habre, Raj, and Nader. Director's Exhibits 19, 59; Claimant's Exhibits 1, 2. As the ALJ noted, Drs. Habre's and Raj's opinions do not support rebuttal of legal pneumoconiosis. Decision and Order at 37. Employer challenges the ALJ's finding that Dr. Nader's opinion does not support rebuttal, which we address below.

the presumption of legal pneumoconiosis, 20 C.F.R. §718.305(d)(1)(i)(A), and remand the claim for further consideration. *See* 30 U.S.C. §923(b); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984). However, we disagree the ALJ erred in discrediting the remaining opinions Employer relies upon to establish rebuttal.

The ALJ found Dr. Zaldivar's opinion vague and equivocal given his reference to "other causes" of Claimant's obstruction while acknowledging that Claimant had disabling hypoxemia that was unexplained. Decision and Order at 37. Employer does not challenge this credibility determination; thus, we affirm it.[7] *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Employer's Brief at 12-14.

The ALJ accorded little weight to Dr. Rosenberg's opinion for inadequately explaining why, even if Claimant's hypoxemia "likely" relates to his underlying atelectasis, this would preclude a finding of legal pneumoconiosis or why an improvement in function after bronchodilators precludes a finding of legal pneumoconiosis. Decision and Order at 37-38. The ALJ has broad discretion to assess the credibility of the physicians' opinions and assign them appropriate weight; thus, the ALJ permissibly found Dr. Rosenberg did not adequately explain why Claimant's obstruction and hypoxemia, that he alleges are due to a ventilation perfusion mismatch, necessarily preclude legal pneumoconiosis. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000); *Underwood* v. *Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Clark* v. *Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). Employer's arguments are a request to reweigh the evidence, which the Board is not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); Employer's Brief at 14-16.

Finally, Employer cites to portions of Dr. Nader's deposition testimony, arguing the ALJ failed to consider that it supported rebuttal of legal pneumoconiosis. Employer's Brief at 13-14, 16-17; Employer's Reply. Specifically, it argues that Dr. Nader acknowledged that Claimant's pattern of minimal obstruction and normal diffusion capacity is "unusual" for pneumoconiosis and that Claimant's impairment could be due to causes unrelated to coal mine dust exposure. Employer's Brief at 13-14; Employer's Reply.

Contrary to Employer's argument, the ALJ specifically addressed Dr. Nader's testimony. Decision and Order at 12-14. He noted that, after Employer's counsel's questioning, Dr. Nader continued to hold the same opinions from his examination report:

[7] Because the ALJ provided an unchallenged reason to find Dr. Zaldivar's opinion undermined, we need not address Employer's contentions of error regarding the weight the ALJ afforded his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

that Claimant is totally disabled due to clinical and legal pneumoconiosis. Decision and Order at 14; Claimant's Exhibit 1; Employer's Exhibit 13 at 27-28. Thus, we affirm the ALJ's finding that Dr. Nader's opinion does not support Employer's burden to rebut legal pneumoconiosis. Decision and Order at 37; *Compton*, 211 F.3d at 207-08.

Based on the foregoing, we vacate the ALJ's finding that Employer failed to rebut the presumption of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 38.

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. §718.201(a)(1).

X-ray Evidence

The ALJ considered ten interpretations of six x-rays, dated September 29, 2015, September 9, 2016, March 10, 2017, May 18, 2020, July 16, 2020, and September 25, 2020. Decision and Order at 31-32; Director's Exhibits 33, 59, 62; Claimant's Exhibits 1, 2, 4; Employer's Exhibits 2, 6, 12, 14. He noted that all the interpreting physicians were dually qualified as B readers and board-certified radiologists. Decision and Order at 30-31. Specifically, he noted only two of these interpretations were negative for pneumoconiosis, while the remaining were positive. *Id.* at 31-32. Weighing the x-ray evidence together and according greater weight to the most recent, positive x-rays, the ALJ found the x-ray evidence positive for clinical pneumoconiosis and thus found it does not support rebuttal. *Id.* at 32.

Employer asserts the ALJ erred in concluding that the July 16, 2020 and September 25, 2020 x-rays were positive for pneumoconiosis. Employer's Brief at 10. Specifically, Employer contends that while Dr. DePonte rendered positive interpretations of these x-rays, the ALJ erred in finding Dr. Meyer's readings were also positive for pneumoconiosis. *Id.* at 10-11. It acknowledges that Dr. Meyer read both x-rays as 1/0 profusion, but notes

he also stated that the opacities were not consistent with coal workers' pneumoconiosis, but with basilar interstitial fibrosis.[8] *Id*. We disagree.

The ALJ specifically addressed Dr. Meyer's comments in his July 16, 2020 and September 25, 2020 x-ray interpretations. Decision and Order at 31-32. He indicated the relevant issue is that Dr. Meyer found a profusion of 1/0 under the International Labour Organization (ILO) classification system, which is consistent with a positive reading for pneumoconiosis. Decision and Order at 32. Regarding Dr. Meyer's additional comments that the opacities are not typical of coal workers' pneumoconiosis and suggesting other non-occupational etiologies, the ALJ explained these comments are to be considered under 20 C.F.R. §718.203. Decision and Order at 32.

As the ALJ explained, the pertinent regulations permit an ALJ to find pneumoconiosis based on a chest x-ray that is classified as Category 1/0 or greater under the ILO system. 20 C.F.R. §§718.102(b), 718.202(a)(1); *see Cranor v. Peabody Coal Co*., 22 BLR 1-1, 1-4 (1999) (en banc on recon.). Evidence relevant to a determination of whether the opacities seen on x-ray are opacities of coal workers' pneumoconiosis, and not some other disease process, cannot be used to negate a properly classified positive reading at 20 C.F.R. §718.202(a)(1). *Kiser v. L&J Equipment Co.*, 23 BLR 1-246, 1-257-59 (2006). Rather, a physician's comment that addresses the source of the diagnosed pneumoconiosis should be considered at Section 718.203, where the issue is whether the pneumoconiosis arose out of coal mine employment. *Cranor*, 22 BLR at 1-5-6.[9] Thus, we

[8] For both 2020 x-rays, Dr. Meyer found "classifiable parenchymal abnormalities, small opacities in two lower lung zones, s/t, 1/0." Employer's Exhibits 12, 14. In the comments for each x-ray, he further noted:

> Basilar pulmonary fibrosis in a pattern characteristic of nonspecific interstitial pneumonia (NSIP) or usual interstitial pneumonia (UIP). While there are many causes of basilar pulmonary fibrosis, this pattern is not typical of coal worker's [sic] pneumoconiosis, which characteristically begins as an upper zone predominant fine nodular process. This is a lower zone predominant linear process. Basilar pulmonary fibrosis is nonspecific and is often idiopathic or seen in association with collagen vascular disease or drug toxicity.

Employer's Exhibits 12, 14.

[9] Our dissenting colleague argues that the ALJ erred in applying *Cranor* and rather should have applied *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-37 (1991) (en banc), when considering the credibility of Dr. Meyer's comments regarding the etiology of

reject Employer's assertion that the ALJ erred in finding the July 16, 2020 and September 25, 2020 x-rays positive for pneumoconiosis at 20 C.F.R. §718.202(a)(1). *Id.* Because Employer raises no other arguments regarding the ALJ's weighing of the x-ray evidence, we affirm the ALJ's findings that it is insufficient to rebut the presence of clinical pneumoconiosis.[10] Decision and Order at 32.

Computed Tomography (CT) scans and Medical Opinions

The ALJ next considered two CT scan reports: Dr. Meyer's interpretation of a March 6, 2019 CT scan and Dr. Yousko's interpretation of a January 26, 2016 CT scan, both of which the ALJ found to be negative for pneumoconiosis.[11] Employer's Exhibits 7,

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the fibrosis at Section 718.202(a). But *Melnick* is distinguishable from this case, as the x-ray reader in *Melnick* provided comments of alternative etiologies that the ALJ failed to consider, so the case was remanded for the ALJ to consider the comments in the first instance. *Melnick*, 16 BLR at 1-37. Here, the ALJ specifically addressed the comments Dr. Meyer provided with his x-ray reading and the ALJ, within his discretion, explained why he accepted Dr. Meyer's ILO diagnosis of 1/0 to find the x-ray positive for pneumoconiosis. Decision and Order at 32. Regardless, unlike *Melnick*, the Section 411(c)(4) presumption applies to this case; Claimant is presumed to suffer from clinical pneumoconiosis arising out of coal mine employment and Employer has the burden of proving Claimant does not suffer from the disease. Dr. Meyer conceded Claimant suffers from clinical pneumoconiosis given his ILO diagnosis, it is uncontested Claimant has twenty-nine years of underground coal mining employment, and the ALJ permissibly decided to give greater weight to the more recent x-rays given their trend and the progressive nature of pneumoconiosis. So even if the ALJ were to find on remand that Dr. Meyer's comments call into question whether he intended to diagnose pneumoconiosis arising from some other cause than dust exposure in Claimant's twenty-nine years of coal mine employment, it is difficult to see how a reasonable fact-finder could conclude that those comments meet Employer's burden to affirmatively disprove the disease.

[10] Employer argues that a finding that Dr. Meyer's 2020 x-ray readings are in fact negative are corroborated by the "negative" May 18, 2020 x-ray. Employer's Brief at 11. While Dr. Adcock read this x-ray as negative, Employer's Exhibit 2, Dr. Crum provided a conflicting positive reading. Claimant's Exhibit 4.

[11] Dr. Yousko provided the following impression in his report of the January 16, 2016 CT scan: "Shallow inspiratory volume with mild probable scattered atelectasis. Otherwise, essentially negative low dose chest CT." Employer's Exhibit 8. In his interpretation of the March 6, 2019 CT scan, Dr. Meyer found "[n]o CT findings of coal workers' pneumoconiosis." Employer's Exhibit 7. Similar to his comments in his 2020

8; Decision and Order at 34-35. Thus, the ALJ found the CT scan evidence supported rebuttal of clinical pneumoconiosis. Decision and Order at 35. Employer relied on the opinions of Drs. Zaldivar, Rosenberg, and McSharry, who opined that clinical pneumoconiosis is not present.[12] Decision and Order at 33-34; Director's Exhibit 60; Employer's Exhibits 1, 4, 5, 12, 15-17. The ALJ found their opinions undermined as they relied only on their own weighing of the radiographic evidence. Decision and Order at 34. Thus, the ALJ found the medical opinion evidence not well reasoned and insufficient to rebut the presence of clinical pneumoconiosis. *Id*. Employer does not challenge the ALJ's findings regarding the CT scan evidence or medical opinion evidence; thus, they are affirmed. *See Skrack*, 6 BLR at 1-711.

Weighing the Evidence Together

When weighing the evidence together, the ALJ found the negative CT scan evidence "directly contradict[s]" the positive x-ray evidence and thus renders "the entire body of relevant evidence inconclusive." Decision and Order at 36. Because he found clinical pneumoconiosis "neither established nor disproven," he found Employer failed to rebut its presumed existence. *Id.*

Employer argues the ALJ's finding that the evidence, when weighed together, was "inconclusive" merely because it was contradictory does not meet the ALJ's obligation to consider all the evidence and make his determination on the issue. Employer's Brief at 11. We disagree.

As noted, the ALJ permissibly found the x-ray evidence positive for pneumoconiosis, the CT scan evidence negative for pneumoconiosis, and the medical opinion evidence unreasoned and insufficient to rebut the presumption of clinical pneumoconiosis. Decision and Order at 32-35. When weighing all the categories of evidence together, the ALJ considered the fact that the Department of Labor recognizes CT scans as relevant evidence, but also that a negative CT scan is insufficient, alone, to effectively rule out pneumoconiosis. *Id.* at 35. He considered evidence from the experts that CT scan evidence is a medically acceptable and reliable diagnostic tool and are

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x-ray readings, he noted "[m]ild basilar interstitial lung abnormalities" which is a pattern "not typical of coal workers' pneumoconiosis." *Id.* He indicated the process is often associated with "smoking, collagen vascular disease, or GERD with silent aspiration." *Id.*

[12] Drs. Habre, Nader, and Raj found the presence of clinical pneumoconiosis based on the x-ray interpretations obtained in their respective examinations. Director's Exhibits 19, 59; Claimant's Exhibits 1, 2. As the ALJ found, their opinions do not support rebuttal. Decision and Order at 32.

generally more sensitive than x-rays. 20 C.F.R. §718.107(b); Decision and Order at 35-36. Finding no evidence or argument that either category of evidence is less reliable than the other, he considered the x-ray and CT scan evidence at least equivalent and therefore directly contradictory. *Id.* at 36.

Because the ALJ adequately explained his weighing of the evidence, his finding that the evidence as to clinical pneumoconiosis is inconclusive and thus insufficient to meet Employer's burden of rebuttal is affirmed. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 279-81 (1994) (burden of proof is not met when the evidence is equally balanced); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998). Thus, we affirm the ALJ's determination that Employer failed to rebut the presumed presence of clinical pneumoconiosis as defined in Section 718.201(a)(1).[13] 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 36.

As we have vacated the ALJ's findings regarding rebuttal of legal pneumoconiosis, we also vacate the ALJ's dependent findings regarding rebuttal of disability causation. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 39-40.

Remand Instructions

While we have affirmed the ALJ's finding that the evidence rebuts clinical pneumoconiosis as defined in 20 C.F.R. §718.201(a)(1), the ALJ failed to make a specific finding regarding whether Employer rebutted the presumption that Claimant's pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203; Decision and Order 41; Employer's Brief at 19. On remand, the ALJ should clarify his findings regarding Employer's ability to rebut this presumption and thus rebut the presence of clinical pneumoconiosis.[14] 20 C.F.R. §718.305(d)(1)(i)(B) (citing 20 C.F.R §718.203).

[13] The ALJ found Claimant, by virtue of having established ten years of coal mine employment, invoked the presumption that his clinical pneumoconiosis arose of out of his coal mine employment. 20 C.F.R. §718.203(b); Decision and Order at 40. However, as addressed below, the ALJ failed to make specific findings regarding whether Employer rebutted the Section 718.203 presumption and must address this issue on remand. Decision and Order at 41; *see* 20 C.F.R. §718.305(d)(1)(i)(B).

[14] As discussed above, the comments made by Dr. Meyer (that while the opacities seen on x-ray were consistent with a 1/0 profusion reading under the ILO-classification system, they were not consistent with coal workers' pneumoconiosis) should be considered under 20 C.F.R. §718.203. *See Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-5-6 (1999) (en banc); *Kiser v. L&J Equipment Co.*, 23 BLR 1-246, 1-257-59 (2006). While the ALJ

On remand, the ALJ must also consider Dr. McSharry's opinion, in conjunction with the other relevant physicians' medical opinions, and determine if they are sufficient to disprove the existence of legal pneumoconiosis by affirmatively 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); *W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018); *Minich*, 25 BLR at 1-155 n.8. The ALJ should address the 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; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

If the ALJ finds Employer has disproved the existence of both clinical and legal pneumoconiosis, it has rebutted the presumption at 20 C.F.R. §718.305(d)(1)(i). However, if the ALJ again finds Employer failed to rebut the presence of pneumoconiosis under 20 C.F.R. §718.305(d)(1)(i), the ALJ should then consider whether Employer established "no part of the miner's 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)(ii).

If the ALJ again finds Employer failed to rebut the Section 411(c)(4) presumption, he may reinstate the award of benefits. However, if the ALJ finds Employer has rebutted the presumption, he must deny benefits.

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agreed that Dr. Meyer had "superior credentials," he made no specific finding as to whether his opinion was sufficient to rebut the presumption of disease causation as to clinical pneumoconiosis. Decision and Order at 41; Employer's Brief at 19.

Accordingly, the ALJ's Decision and Order Granting Request for Modification and Awarding Benefits is affirmed in part and vacated in part, and the case is remanded to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring and dissenting:

I concur with my colleagues' decision to remand this claim for the ALJ to further consider whether legal pneumoconiosis is rebutted at 20 C.F.R. §718.305(d)(1)(i)(A), as he failed to consider relevant evidence. However, I respectfully disagree with the majority's affirmance of the ALJ's findings that the x-ray evidence does not support rebuttal of clinical pneumoconiosis and thus that Employer failed to rebut the presumption under 20 C.F.R. §718.305(d)(1)(i)(B). I would vacate the ALJ's findings that Employer failed to rebut the presumption of clinical pneumoconiosis and would instruct that the ALJ should reconsider the x-ray evidence in light of Dr. Meyer's comments in his x-ray readings, as the comments bring into question whether the disease process seen on x-ray is reflective of pneumoconiosis or of another disease process.[15]

With regard to similar x-ray interpretations, the Board has held that comments which relate to whether the disease being diagnosed is pneumoconiosis or whether the

[15] As the majority explains, Dr. Meyer provided ILO-readings of 1/0 for the x-rays dated July 16, 2020 and September 25, 2020, but in the comments, he provided:

> **Basilar pulmonary fibrosis in a pattern characteristic of nonspecific interstitial pneumonia (NSIP) or usual interstitial pneumonia (UIP).** While there are many causes of basilar pulmonary fibrosis, this pattern is not typical of coal worker's [sic] pneumoconiosis, which characteristically begins as an upper zone predominant fine nodular process. This is a lower zone predominant linear process. **Basilar pulmonary fibrosis is**

diagnosis of pneumoconiosis is equivocal must be considered at 20 C.F.R. §718.202(a)(1). *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-37 (1991) (en banc) (recognizing that a comment as to ruling out cancer must be considered by the ALJ to determine whether the diagnosis of pneumoconiosis was equivocal). Conversely, comments which do not undermine the credibility of the positive ILO classification, but instead relate to the source of the pneumoconiosis, must be considered at 20 C.F.R. §718.203. *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-5-6 (1999) (recon. en banc). The Board, in *Cranor*, distinguished the two kinds of comments as follows:

> [T]he Board in *Melnick* concluded that an [ALJ] should consider internal inconsistencies within an x-ray reading that detract from the credibility of the x-ray interpretation under 20 C.F.R. §718.202(a)(1). The instant case differs from *Melnick* in that Dr. Sargent's comment regarding the source of the diagnosed pneumoconiosis does not undermine the credibility of the positive ILO classification.

Cranor, 22 BLR at 1-5-1-6 (holding that "Dr. Sargent's comment indicating that the diagnosed pneumoconiosis was not coal workers' pneumoconiosis is to be considered by the fact-finder pursuant to Section 718.203").

In this case, citing *Cranor*, the ALJ did not consider the comments on the x-rays at Section 718.202(a)(1). Decision and Order at 32. Then, in addressing whether Employer could rebut the presumption at 20 C.F.R. §718.203, while acknowledging Dr. Meyer's "superior credentials," he failed to make a finding on the issue, instead stating that Dr. Meyer's statements cannot rebut legal pneumoconiosis.[16] *Id*. at 41. The effect of the ALJ's decision was that he did not actually consider the comments substantively at any point.

The ALJ erred in applying *Cranor*. *Cranor*, in conjunction with *Melnick*, requires that comments addressing the credibility of the pneumoconiosis diagnosis be considered

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> **nonspecific and is often idiopathic** or seen in association with collagen vascular disease or drug toxicity.

Employer's Exhibits 12, 14 (emphases added).

[16] Puzzlingly, the majority acknowledges this failure and instructs the ALJ to clarify on remand whether Employer can rebut the presumption that Claimant's clinical pneumoconiosis arose out of his coal mine employment under 20 C.F.R. §718.203(b). As the majority further acknowledges, determining whether clinical pneumoconiosis arose out of coal mine employment is required to rebut the Section 411(c)(4) presumption. 20 C.F.R. §718.305(d)(1)(i)(B) (citing 20 C.F.R. §718.203). As the issue of whether clinical

by the ALJ at Section 718.202(a)(1). Dr. Meyer's comments concerning basilar pulmonary fibrosis, which he specifically explained is unrelated to coal mine dust exposure, are related to the issue of whether the claimant had pneumoconiosis rather than some other disease and undermine the credibility of a positive reading. Under Board precedent, the ALJ should have addressed the comments at Sections 718.202(a)(1) but failed to do so.[17]

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pneumoconiosis arose out of Claimant's coal mine employment is essential to the definition- and thus the rebuttal- of clinical pneumoconiosis, the ALJ's determination that the x-ray evidence did not rebut the presumed existence of clinical pneumoconiosis cannot be affirmed without first making this finding, although the majority does so. The ALJ's treatment of whether pneumoconiosis arose from coal mine employment only *after* he considered disability causation betrays a fundamental misunderstanding of the statute and regulations. To know whether disability has been caused by the disease covered by the Act it must *first* be determined that Claimant has the disease covered by the Act. This requires a judgment that the miner's disease arose out of coal mine employment. The sections of the regulation relating to clinical pneumoconiosis can be understood as setting forth a definition of diseases having certain characteristics and recognized by the medical profession as occurring as a result of dust exposure in coal mine employment (20 C.F.R. §718.201(a)(1)), specifying the acceptable bases for finding one or more of those diseases exist in Claimant (20 C.F.R. §718.202), and then determining that *in Claimant's particular case* the disease(s) identified arose out of Claimant's coal mine employment (20 C.F.R. §718.203). Only after those activities have been carried out can it be determined whether Claimant's disability was caused by clinical pneumoconiosis. In this regard, it should be noted that Section 718.201(a)(1) defines clinical pneumoconiosis as including, but not limited to: "coal workers' pneumoconiosis, anthracosis, anthrosilicosis, massive pulmonary fibrosis, silicosis or silicotuberculosis *arising out of coal mine employment*."

[17] The ALJ's failure to consider Dr. Meyer's report in its entirety was not harmless. The ALJ found Dr. Meyer was the best qualified reader and his opinion entitled to the greatest weight. Consequently, considering his comments could result in a determination that the x-rays did not show pneumoconiosis or that the x-ray evidence was equivocal in that regard. As the ALJ found the CT scan evidence supported rebuttal, finding the x-ray evidence supported rebuttal, or even that it was equivocal, could affect the ALJ's determination as to whether, considering the evidence in totality, Employer rebutted the existence of clinical pneumoconiosis.

Consequently, in addition to vacating the ALJ's finding regarding legal pneumoconiosis, I also would vacate the ALJ's findings that the x-ray evidence fails to support rebuttal and thus that Employer failed to rebut the presumption of clinical pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(B), and instruct the ALJ to consider all of the relevant evidence on remand. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000); *Melnick*, 16 BLR at 1-33-34.

JUDITH S. BOGGS
Administrative Appeals Judge