U.S. Department of Labor

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

BRB No. 25-0177 BLA

DOLLY G. ELSWICK o/b/o HAROLD R. ELSWICK, deceased Claimant-Respondent v. C C & P COAL COMPANY and OLD REPUBLIC INSURANCE COMPANY, INCORPORATED Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 05/20/2026 DECISION and ORDER

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

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

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

Jeffrey S. Goldberg (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: ROLFE, JONES, and ULMER, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Heather C. Leslie's Decision and Order Awarding Benefits (2023-BLA-05169) rendered on a claim filed on February 22, 2021,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ found Employer is the properly designated responsible operator. She credited the Miner with 12.02 years of coal mine employment and thus found Claimant[2] could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established the Miner had clinical pneumoconiosis arising out of coal mine employment as well as legal pneumoconiosis[4] and a totally disabling

[1] The ALJ incorrectly indicated the claim was filed on January 24, 2019. Decision and Order at 2; Director's Exhibit 2. The Miner filed a prior claim but withdrew it. Director's Exhibit 41. Thus, the prior claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

[2] Claimant is the widow of the Miner, who died on August 31, 2021, while his claim was pending. Director's Exhibit 16. Claimant is pursuing this claim on behalf of the Miner's estate.

[3] Section 411(c)(4) provides a rebuttable presumption that a miner was totally disabled 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] 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" 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

respiratory or pulmonary impairment due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.203, 718.204(b)(2), (c). Thus, she awarded benefits.

On appeal, Employer argues the ALJ erred in determining it is the responsible operator. On the merits, it argues the ALJ erred in finding the Miner had both clinical and legal pneumoconiosis and that pneumoconiosis was a substantially contributing cause of his totally disabling respiratory or pulmonary impairment. Claimant responds in support of the award. The Director, Office of Workers' Compensation Benefits (the Director), filed a response brief, urging affirmance of the ALJ's responsible operator determination. Employer replies to both Claimant and the Director and reiterates its arguments.[5]

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 applicable law.[6] 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 (1965).

Entitlement Under 20 C.F.R. Part 718

Without the benefit of any presumptions, 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 one of these elements 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).

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impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[5] We affirm, as unchallenged by the parties, the ALJ's findings that the Miner had a totally disabling respiratory or pulmonary impairment and 12.02 years of coal mine employment. 20 C.F.R. §718.204(b)(2); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 8, 21, 42.

[6] 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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Transcript at 6.

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must prove the Miner had 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, within whose jurisdiction this case arises, has held a Claimant can establish legal pneumoconiosis by showing coal mine dust exposure contributed "in part" to the Miner's 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, 309 (4th Cir. 2012).

The ALJ considered the medical opinions of Drs. Shah, Tuteur, and Rosenberg. Decision and Order at 28-35. The ALJ initially noted each doctor is "highly qualified" as a board-certified pulmonologist.[7] *Id.* at 33. Dr. Shah diagnosed the Miner with legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) and emphysema due to both cigarette smoking and coal mine dust exposure. Director's Exhibit 10. Drs. Tuteur and Rosenberg agreed the Miner had emphysema, which they classified as "severe" and "advanced," but opined it was solely due to his cigarette smoking; thus, they did not diagnose legal pneumoconiosis. Director's Exhibit 16; Employer's Exhibits 2, 3. The ALJ credited Dr. Shah's opinion as well-reasoned and documented and found Drs. Tuteur's and Rosenberg's opinions were not reasoned or documented, undermining their persuasiveness. Decision and Order at 34-35. Thus, she found the weight of the medical opinion evidence supports a finding of legal pneumoconiosis. *Id.* at 35.

Employer contends the ALJ erred in crediting Dr. Shah's opinion and applied uneven scrutiny when weighing the medical opinion evidence, in violation of the Administrative Procedure Act (APA).[8] Employer's Brief at 23-27. It also contends the

[7] Employer argues Drs. Tuteur's and Rosenberg's opinions should have been given greater weight because of their "superior credentials." Employer's Brief at 26. We disagree. Credibility determinations are within the ALJ's discretion. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 323-24 (4th Cir. 2013); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-36-37 (1991) (en banc) (ALJ not required to give greater weight based on "superior" credentials).

[8] The Administrative Procedure Act, 5 U.S.C. §§500-591, 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 . . . ." 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).

ALJ improperly shifted the burden to Employer to exclude coal mine dust as a factor in the Miner's impairment. *Id.* at 27. We disagree.

Initially, Employer contends Dr. Shah's opinion provides only the "possibility" of a causal link and is thus insufficient to establish legal pneumoconiosis as a matter of law. Employer's Brief at 25 (citing *Am. Energy, LLC v. Director, OWCP* [*Goode*], 106 F.4th 319, 333 (4th Cir. 2024)). We disagree. When addressing Dr. Shah's opinion, the ALJ accurately noted that the doctor considered the Miner's symptoms,[9] which she explained were indicative of chronic obstructive lung disease in the form of emphysema and chronic bronchitis, and she had an accurate understanding of the Miner's smoking and coal mining histories. Decision and Order at 34. The ALJ also found Dr. Shah explained how she evaluated the Miner's risk factors to conclude his mild to moderate obstruction, severe reduction in diffusing capacity, and abnormal gas exchange during exercise were substantially contributed to by his coal mine dust exposure. Decision and Order at 28, 34; Director's Exhibit 10. Thus, unlike the ALJ in *Goode*, who relied solely on the 2001 regulatory preamble's recognition that smoking and coal dust exposure may be additive in crediting and discrediting opposing opinions, the ALJ here did not credit Dr. Shah's opinion based solely on the fact that she attributed the Miner's impairment to both smoking and coal dust. *See Goode*, 106 F.4th at 332-33; *Extra Energy, Inc. v. Lawson*, 140 F.4th 138, 148 (4th Cir. 2025). Rather, as we discuss below, she assessed the credibility of each medical opinion and found Dr. Shah's opinion most persuasive. Decision and Order at 34-35.

Nor did Dr. Shah state she could not discern whether coal dust was a cause of the Miner's impairment, or state that causation was only a "possibility." *Goode*, 106 F.4th at 326-27, 332-33; *Lawson*, 140 F.4th at 150; Employer's Brief at 25 (citing a portion of Dr. Shah's opinion which notes "risk factors."). Rather, the doctor specifically opined that the Miner's "coal mine dust exposure is responsible and substantially contributed to measurable loss of lung function," thus establishing a diagnosis of legal pneumoconiosis. Director's Exhibit 10 at 8-9; Decision and Order at 28-29. Therefore, contrary to Employer's argument, the ALJ permissibly found Dr. Shah's opinion well-reasoned and documented and that it supports a finding of legal pneumoconiosis. Decision and Order at 34-35; *Lawson*, 140 F.4th at 150; *Looney*, 678 F.3d at 316-17.

Employer also argues the ALJ applied unequal scrutiny as, like Dr. Shah, Drs. Rosenberg and Tuteur also explained the Miner's pulmonary conditions and identified and distinguished the two toxic etiologies. Employer's Brief at 24. It further contends their

[9] Dr. Shah noted the Miner had progressively worsening shortness of breath, wheezing, and daily productive cough with sputum. Director's Exhibit 10.

opinions should have been afforded more weight as they cited to medical literature and provided more "sophisticated" opinions. *Id.* at 26-27. But the ALJ has the discretion to weigh the credibility of the medical opinion evidence and is not required to accept theories submitted by the medical experts. *Compton*, 211 F.3d at 211. Employer's arguments regarding the ALJ's evaluation of the medical opinion evidence amount to a question of whether the ALJ erred in resolving a "battle of the experts;" appellate review in such a situation is only to ensure the ALJ has considered all the relevant evidence and sufficiently explained her rationale. *Cedar Coal Co. v. Director, OWCP* [*Mullins*], 168 F.4th 685, 691 (4th Cir. 2026). As the ALJ provided permissible bases to find Drs. Tuteur's and Rosenberg's opinions undermined, she was not required to give their opinions weight notwithstanding their consideration of the entirety of the evidence of record.

Specifically, the ALJ found Dr. Tuteur relied on an "inflated" smoking history,[10] undermining his opinion that the Miner's cigarette smoking was the sole cause of Claimant's emphysema and obstruction, a finding Employer does not challenge. Decision and Order at 34; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); *see also Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988) (within ALJ's discretion to discredit opinion based on inaccurate smoking history).

Further, both Drs. Tuteur and Rosenberg relied in part on the delayed onset of reported symptoms to find the Miner's lung disease was not significantly related to coal mine dust exposure. Director's Exhibit 16 at 5-6; Employer's Exhibit 2 at 6. The ALJ found this factor undermined their opinions because 1) it is not supported by the facts of record, including Claimant's testimony that the Miner had shortness of breath when he left the mines; and 2) it is contrary to the regulation that recognizes pneumoconiosis as a latent and progressive disease. Decision and Order at 35 (citing 20 C.F.R. §718.201). Again, Employer has not specifically challenged these credibility determinations; thus, they are affirmed. *See Skrack*, 6 BLR at 1-711; *Kozele*, 6 BLR at 1-382 n.4; *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be latent and progressive may be discredited).

Employer also contends the ALJ impermissibly shifted the burden to it to exclude coal mine dust as a contributing or aggravating factor in the Miner's lung disease. Employer's Brief at 27 (citing *Goode*, 106 F.4th at 332). While Employer is correct that Claimant has the burden of proof in this case, the ALJ did not shift the burden to require

[10] The ALJ found forty-four pack years to be a "reasonable estimate" of the Miner's smoking history. Decision and Order at 5. Dr. Tuteur estimated his smoking history to be sixty pack years. Employer's Exhibit 2 at 13.

Employer to exclude coal mine dust exposure as a cause of the Miner's lung disease. Rather, she simply found Drs. Tuteur and Rosenberg opined that coal mine dust did not contribute to or aggravate the Miner's obstructive lung disease but without adequately explaining why that was the case. Decision and Order at 35 ("Neither Dr. Rosenberg nor Dr. Tuteur has articulated a basis *for their conclusion* that there was no contribution from coal mine dust, and the Miner's impairment was totally due to cigarette smoking.") (emphasis added); *see Lawson*, 140 F.4th at 148-152 (distinguishing the facts in *Goode* and explaining that while an ALJ cannot discredit an expert as inconsistent with the preamble for the mere fact he attributed a miner's disability solely to smoking, the ALJ could have permissibly found the opinions to be more or less persuasive "for any number of reasons").

As the ALJ provided permissible bases for finding Drs. Tuteur's and Rosenberg's opinions to be less persuasive, we affirm the ALJ's findings that their opinions are worthy of less weight. Decision and Order at 34-35. Thus, we also affirm her weighing of the medical opinion evidence together supports a finding of legal pneumoconiosis and that, when considering the evidence as a whole,[11] Claimant has established the Miner had legal pneumoconiosis.[12] *Id.* at 35, 38; 20 C.F.R. §§718.201(a)(2), 718.202(a)(4).

Disability Causation

To establish disability causation, Claimant must prove pneumoconiosis was a "substantially contributing cause" of the Miner's totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1); *Mullins*, 168 F.4th at 689. Pneumoconiosis was a substantially contributing cause if it had "a material adverse effect on the miner's respiratory or pulmonary condition," or "[m]aterially worsen[ed] a totally disabling

[11] The ALJ found that while the Miner's treatment records support a finding of chronic obstructive pulmonary disease and emphysema, they do not address the etiology of the disease; thus, she found this evidence neither proves nor disproves legal pneumoconiosis. Decision and Order at 38. Employer contends the ALJ substituted her opinion for those of the experts given her finding that there was "nothing specific" in the treatment records that provided support for Drs. Tuteur's and Rosenberg's opinions. Employer's Brief at 28-29. We disagree, as it is within the ALJ's discretion to determine the weight to accord diagnostic testing that is silent as to the presence of pneumoconiosis. *See Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-218-19 (1984).

[12] As we have affirmed the ALJ's finding that Claimant established the Miner had legal pneumoconiosis, we need not address Employer's contentions of error regarding the ALJ's analysis of the evidence regarding clinical pneumoconiosis. Employer's Brief at 19-23.

respiratory or pulmonary impairment which [was] 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). The ALJ found Claimant established disability causation through Dr. Shah's reasoned and documented opinion, which she found outweighed the contrary opinions of Drs. Tuteur and Rosenberg. Decision and Order at 43-44.

Employer first argues it is "unclear" whether Dr. Shah "ruled in" pneumoconiosis as a substantially contributing cause of the Miner's impairment as she only generally stated that coal dust "reduced the miner's capacity" when diagnosing legal pneumoconiosis. Employer's Brief at 30. Thus, it contends her opinion is insufficient to establish total disability causation. *Id.*

Contrary to Employer's argument, Dr. Shah specifically opined that the Miner had mild to moderate obstruction, severe reduction in diffusing capacity, and abnormal oxygen transfer during exercise, which she stated indicate a disabling loss of lung function. Director's Exhibit 10 at 8-9. She further opined his coal mine dust exposure "is responsible and has substantially contributed to" this measurable loss of lung function. *Id.* As we have affirmed the ALJ's permissible determination that Dr. Shah's reasoned opinion is sufficient to prove the Miner's totally disabling obstructive lung disease is legal pneumoconiosis, her opinion also establishes the Miner was totally disabled due to the disease; that conclusion necessarily flows from those facts. *Goode*, 106 F.4th at 326 ("[I]f a miner's legal pneumoconiosis *is* his total disability, separately analyzing disability causation is unnecessary."); *Hawkinberry v. Monongalia Cnty. Coal Co.*, 25 BLR 1-249, 1-255-57 (2019); Decision and Order at 34, 38, 43.

Employer also contends the ALJ erred in faulting Drs. Tuteur's and Rosenberg's opinions on disability causation. Employer's Brief at 30-31. The ALJ found their opinions undermined for failing to diagnose pneumoconiosis, contrary to her findings. Decision and Order at 44 (citing *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504 (4th Cir. 2015)). The Fourth Circuit has long held that where a physician erroneously fails to diagnose pneumoconiosis, his opinion as to disability causation "is not worthy of much, if any, weight." *Mullins*, 168 F.4th at 693 (quoting *Epling*, 783 F.3d at 504); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995) (where physician erroneously fails to diagnose pneumoconiosis, an ALJ "may not credit" their opinion absent "specific and persuasive reasons" independent of the mistaken belief the miner does not have the

disease). Thus, we affirm the ALJ's findings that Drs. Tuteur's and Rosenberg's disability causation opinions are not credible.[13] Decision and Order at 44.

As such, we affirm the ALJ's finding that Claimant established that the Miner's legal pneumoconiosis substantially contributed to his totally disabling respiratory impairment. *Id.* Thus, we affirm the award of benefits. *Id.*

Date for the Commencement of Benefits

Benefits commence as of the month in which the Miner became totally disabled due to pneumoconiosis. 20 C.F.R. §725.503; *see Lykins v. Director, OWCP*, 12 BLR 1-181 (1989). If that date is not ascertainable, benefits commence the month the claim was filed, unless evidence the ALJ credits establishes the Miner was not totally disabled due to pneumoconiosis at any subsequent time. 20 C.F.R. §725.503(b); *Edmiston v. F&R Coal Co.*, 14 BLR 1-65 (1990); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47, 1-51 (1990).

Employer argues the ALJ erred in awarding benefits as of January 2019, because the claim was filed on February 22, 2021. Employer's Brief at 31. Claimant responds the ALJ may find an earlier onset date if the Miner was totally disabled prior to that time. Claimant's Response at 8-9.

We agree the ALJ erred in setting the date for commencement for benefits. As Employer argues, the ALJ determined the date the Miner became totally disabled due to pneumoconiosis could not be ascertained; thus, she indicated benefits should commence as of the claim filing date. Decision and Order at 44. The ALJ stated the filing date was January 24, 2019; however, this claim was filed on February 22, 2021. *Id.* at 2, 44; Director's Exhibit 2. While the ALJ erred, she rendered the necessary findings and the pertinent facts are established in the record. *See Collins v. Pond Creek Mining Co.*, 751 F.3d 180, 187 (4th Cir. 2014); *Youghiogheny & Ohio Coal Co. v. Webb*, 49 F.3d 244, 249 (6th Cir. 1995) ("If the outcome of a remand is foreordained, we need not order one."). Thus, we hold that benefits commence as of February 2021 and modify the ALJ's benefits commencement date finding accordingly. 20 C.F.R. §725.503(b); *Owens*, 14 BLR at 1-51.

[13] As the ALJ provided a permissible reason for discrediting Drs. Tuteur's and Rosenberg's opinions regarding disability causation, we need not address Employer's additional contentions of error. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-83 n.4 (1983); Employer's Brief at 29-31.

Responsible Operator

The responsible operator is "the potentially liable operator, as determined in accordance with [20 C.F.R.] §725.494, that most recently employed the miner."[14] 20 C.F.R. §725.495(a)(1). The district director is initially charged with identifying and notifying operators that may be liable for benefits and then identifying the "potentially liable operator" that is the responsible operator. 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b). Once the district director identifies a potentially liable operator, that operator may be relieved of liability only if it shows it is financially incapable of assuming liability for benefits or another operator more recently employed the miner for a cumulative period of at least one year and is financially capable of assuming liability for benefits. 20 C.F.R. §725.495(c); *RB & F Coal, Inc. v. Mullins*, 842 F.3d 279, 282 (4th Cir. 2016).

Employer contends it did not employ the Miner for at least one year; thus, it was incorrectly named as a potentially liable operator. Employer's Brief at 13-16. It further contends that the ALJ erred in not finding at least one year of employment with a subsequent employer, Garden Creek Pocahontas (Garden Creek).[15] *Id.* at 17-19. While we disagree that the evidence demonstrates Employer employed the Miner for less than one year, we agree remand is required for the ALJ to reconsider whether Claimant's subsequent employment with Garden Creek constitutes one year of coal mine employment.

At Least One Year of Employment with Employer

The Board will uphold an ALJ's length of employment determination that is based on a reasonable method of calculation, supported by substantial evidence, and in accordance with applicable 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 Fourth Circuit recently held that a miner need only show he or she "worked 125 working days within a

[14] For a coal mine operator to meet the regulatory definition of a "potentially liable operator," each of the following conditions must be met: a) the miner's disability or death must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

[15] Garden Creek is also identified in the record as VP 6. *See* Director's Exhibits 6, 7; Decision and Order at 13 n.70.

calendar year (or partial periods totaling one year) to establish a year of employment." *Baldwin v. Director, OWCP*, 170 F.4th 273, 282 (4th Cir. 2026); *see also Rhino Energy, LLC v. Director, OWCP* [*Rule*], F.4th , No. 24-2212, 2026 WL 1097743, at *6 (4th Cir. 2026) (*Baldwin* applies to determining whether a coal mine operator employed a miner for at least one year for purposes of identifying the responsible operator).

In determining whether the Miner worked at least one year for Employer, the ALJ considered the Miner's application for benefits, an employment affidavit he submitted, the Miner's Social Security Administration earnings record, and Claimant's testimony. Decision and Order at 12-13, 17-18. She noted that none of the evidence provided beginning or ending dates of employment. *Id.* Nonetheless, she found the Miner had a 365-day employment relationship with Employer insofar as it was the Miner's only employer in 1983. *Id*. She also noted Employer conceded the Miner worked for it for 147 days and the evidence supports this concession. *Id*. at 16, 18. Thus, she found the Miner worked for Employer for one year. *Id*. at 18.

Employer contends the ALJ erred in finding a calendar year relationship between it and the Miner based solely on the fact that the Miner had no other Employer in 1983. Employer's Brief at 13-16. Thus, it argues the ALJ's analysis shifted the burden of persuasion by failing to require Claimant to establish the calendar-year relationship. *Id*.

As set forth above, however, the Fourth Circuit recently held that 20 C.F.R. §725.101(a)(32) does not impose a 365-day employment-relationship threshold requirement; rather, 125 working days in or around a coal mine equates to a full year of coal mine employment for all purposes under the Act. *Baldwin*, 170 F.4th at 282. As Employer concedes, the record demonstrates the Miner worked 147 days for it; thus, we affirm the ALJ's finding that the Miner worked for Employer for one year. *Baldwin*, 170 F.4th at 282; *Rule*, 2026 WL 1097743, at *6; Decision and Order at 18; Employer's Brief at 15. As Employer does not dispute that it meets the other criteria at 20 C.F.R. §725.494(a)-(e), we affirm the determination that it is a potentially liable operator.

Alleged Subsequent Employment of at Least One Year

Employer next argues the ALJ erred in failing to find Garden Creek is not a potentially liable operator that more recently employed the Miner. Employer's Brief at 13, 17-19. Employer points to evidence that the Miner earned more income with Garden Creek than with Employer and contends the ALJ did not determine whether the Miner worked at least 125 days with this subsequent employer. *Id.* at 14, 16. We agree remand is required.

Because the ALJ's analysis regarding the Miner's length of coal mine employment with Garden Creek required Employer to establish the Miner had a calendar-year employment relationship, without addressing whether the evidence could nonetheless

establish 125 days of employment with Garden Creek, we must vacate the ALJ's determination that Employer is the properly named responsible operator and remand the case for further consideration of the responsible operator issue.[16] *Baldwin*, 170 F.4th at 282; *Rule*, 2026 WL 1097743, at *6; Decision and Order at 17-18.

[16] While Employer also argues Garden Creek is a successor operator to Beatrice Pocahontas Company and Island Creek Coal Company, Employer's Brief at 17-19, we decline to address this argument as premature.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Awarding Benefits, modify the award to reflect a benefits commencement date of February 2021, and remand the case for further consideration consistent with this opinion.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge