U.S. Department of Labor

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

BRB No. 25-0179 BLA

LARRY E. STILTNER Claimant-Respondent v. MISTY BEC COAL COMPANY and OLD REPUBLIC INSURANCE COMPANY Employer/Carrier- Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	**NOT-PUBLISHED** DATE ISSUED: 05/14/2026 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits on Remand of Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe, Donna E. Sonner, and Cameron Blair (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

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

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Awarding Benefits on Remand (2021-BLA-05703) rendered on a subsequent claim filed on August 27, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act). The case is before the Benefits Review Board for a second time.[1]

In her original Decision and Order Awarding Benefits, the ALJ found Claimant established 15.02 years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant established a change in an applicable condition of entitlement, 20 C.F.R. §725.309, and invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[2] The ALJ further found Employer failed to rebut the presumption and awarded benefits.

Pursuant to Employer's appeal, the Board affirmed the ALJ's finding that Claimant established a totally disabling respiratory impairment and thus established a change in applicable condition of entitlement. *Stiltner v. Misty Bec Coal Co.*, BRB No. 23-0280 BLA, slip op. at 2 n.3 (Aug. 22, 2024) (unpub.). However, the Board held the ALJ erred in her consideration of the relevant evidence to determine Claimant established 15.02 years of coal mine employment and therefore vacated the ALJ's finding. *Id.* at 5-8. As a result, the Board also vacated the ALJ's findings that Claimant invoked the Section 411(c)(4) presumption and the award of benefits. *Id.* at 8. The Board declined to address, as premature, Employer's arguments regarding the ALJ's assessment of legal pneumoconiosis. *Id.* at 8 n.13.

On remand, the ALJ found Claimant did not establish at least fifteen years of coal mine employment and thus could not invoke the Section 411(c)(4) presumption. Considering the claim under 20 C.F.R. Part 718, she found Claimant established he suffers

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[1] We incorporate the procedural history of this case as set forth in *Stiltner v. Misty Bec Coal Co.*, BRB No. 23-0280 BLA (Aug. 22, 2024) (unpub.). Administrative Appeals Judge Glenn E. Ulmer is substituted on the panel for Administrative Appeals Judge Judith S. Boggs, who is no longer a member of the Board.

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

from legal pneumoconiosis and that his totally disabling respiratory impairment is due to legal pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204(b)(2), (c). Thus, the ALJ awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established legal pneumoconiosis and disability causation. Claimant responds in support of the award. Employer filed a reply, reiterating its arguments.[3] The Director, Office of Workers' Compensation, 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 with applicable law.[4] 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).

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[3] While Employer generally states that the ALJ's determinations regarding the length of Claimant's coal mine employment are "haphazard and internally consistent," it raises no specific argument that the ALJ erred in finding Claimant established 11.24 years of coal mine employment. Employer's Brief at 2. Subsequent to the ALJ's decision, the United States Court of Appeals for the Fourth Circuit issued *Baldwin v. Director, OWCP*, 170 F.4th 273, 282 (4th Cir. 2026), where it held that a miner need only show he "worked 125 working days within a calendar year (or partial periods totaling one year) to establish a year of employment." The ALJ specified that if she were to apply such an analysis, the length of coal mine employment would increase by 1.51 years. *See* Decision and Order on Remand at 6 & n.4 (indicating the portions of coal mine employment where Claimant did not first establish a calendar year of coal mine employment would total 3.27 years rather than 1.76 years). This addition based on an application of *Baldwin* would thus change her finding to 12.75 years (4.25 + 4.69 + 3.27 + 0.54). *See id.* at 6. Further, while she found Claimant's testimony credible that he had additional coal mine employment not reflected on his Social Security Earnings Statement, she found the evidence insufficient to make a specific determination as to its length. *Id.* at 6. Thus, we affirm the ALJ's finding that Claimant established less than fifteen years of coal mine employment. *Id.* We note, however, that if the ALJ had credited the entirety of Claimant's testimony alleging under-the-table coal mine employment for companies that paid him in cash, Claimant would establish he had over fifteen years of coal mine employment. *See* Hearing Transcript at 19-20; Decision and Order on Remand at 2.

[4] We will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 35.

Entitlement Under 20 C.F.R. Part 718

Without the benefit of any presumptions,[5] 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).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must prove he 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). More specifically, the Fourth Circuit has held a claimant can establish legal pneumoconiosis by showing coal mine dust exposure contributed "in part" to his 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. Alvarez, Nader, Fino, and McSharry. Decision and Order on Remand at 8-18. The ALJ initially found each doctor qualified to render an opinion on the issue of whether Claimant has legal pneumoconiosis. *Id.* at 8, 10, 11, 14. Drs. Alvarez and Nader diagnosed legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) due to coal mine dust exposure and cigarette smoking, citing Claimant's respiratory symptoms, significant blood gas abnormality, and obstructive defect on pulmonary function testing. Director's Exhibit 17; Claimant's Exhibit 1. Dr. Fino did not diagnose legal pneumoconiosis, but rather opined Claimant's restrictive defect and abnormal blood gases are likely due to pleural thickening and decreased motion of the sternum caused by Claimant's prior heart surgery. Director's Exhibit 20; Employer's Exhibit 4. Dr. McSharry opined that it is "possible, but unlikely" that Claimant has legal pneumoconiosis. Employer's Exhibit 2 at 3. He stated Claimant's

[5] While the ALJ did not specifically address the issue of complicated pneumoconiosis, she correctly found the relevant evidence of record is negative for clinical pneumoconiosis. Decision and Order on Remand at 7-8. Such a finding also precludes a finding of complicated pneumoconiosis; thus, Claimant cannot invoke the irrebuttable presumption of a totally disabling respiratory or pulmonary impairment due to pneumoconiosis. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

restrictive defect is likely due to obesity or a decrease in chest wall movement caused by Claimant's previous heart surgery, and that his blood gas abnormality and "possible" obstruction are likely related to his obesity, sleep apnea, and smoking history. Employer's Exhibits 2, 5.

The ALJ found Drs. Alvarez's and Nader's opinions well-documented and well-reasoned. Decision and Order on Remand at 9-10, 17. She accorded little weight to Drs. Fino's and McSharry's opinions as inadequately explained and inconsistent with premises underlying the regulations. *Id.* at 13-14, 16-18. Giving greater weight to Drs. Alvarez's and Nader's opinions, the ALJ found Claimant established legal pneumoconiosis.[6] *Id.* at 18-19.

Employer contends the ALJ erred in crediting Drs. Alvarez's and Nader's opinions and that she applied uneven scrutiny when weighing the medical opinion evidence. Employer's Brief at 11-16. It also contends the ALJ improperly shifted the burden to it to exclude coal mine dust as a factor in Claimant's impairment. *Id.* at 16-17. We disagree.

Initially, Employer argues Drs. Alvarez's and Nader's opinions are insufficient to meet Claimant's burden of proof as a matter of law, as they only provide a "possibility of a causal risk" because they conceded "it is not possible to distinguish the relative contribution" of smoking and coal mine dust exposure to Claimant's pulmonary disease. Employer's Brief at 15-16 (citing *Am. Energy, LLC v. Director, OWCP* [*Goode*], 106 F.4th 319, 333 (4th Cir. 2024)); Director's Exhibit 17 at 3; Claimant's Exhibit 1 at 7.

The definition of legal pneumoconiosis includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment," and a claimant can carry this burden in a Part 718 claim by establishing his chronic pulmonary disease was caused "in part" by coal mine dust exposure. 20 C.F.R. §718.201(a)(2); *Looney*, 678 F.3d at 308-09. Therefore, as Drs. Alvarez and Nader both specifically identified Claimant's coal mine dust exposure as a substantial contributing factor of his COPD, the ALJ accurately characterized their opinions as sufficient to support a finding that Claimant has legal pneumoconiosis. Decision and Order on Remand at 3; Director's Exhibit 17 at 3 (Dr. Alvarez stating "[t]he 13-15 year occupational history of exposure to respirable coal and rock dust is a significant and aggravating factor for the diagnosis of coal workers' pneumoconiosis and [COPD]");

[6] The ALJ found Claimant's treatment records demonstrate that he was being monitored for heart disease, COPD, and "possible black lung." Decision and Order on Remand at 18. She found these records generally support a finding of a pulmonary impairment, consistent with the medical opinions. *Id.* at 18-19.

Claimant's Exhibit 1 at 7 (Dr. Nader stating "[t]he thirteen years' occupational history of exposure to respirable coal and rock dust is considered a significant contributing and aggravating factor for his pulmonary diagnosis").

Additionally, the ALJ permissibly found their opinions reasoned and documented as they relied on the objective evidence, Claimant's symptoms, and an accurate understanding of his smoking and coal mine dust exposure histories to support their conclusions.[7] *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 207-08, 211 (4th Cir. 2000); *Fields v. Island Creek Coal Co*., 10 BLR 1-19, 1-21-22 (1987) (a reasoned opinion is an opinion with conclusions that the ALJ finds are adequately supported by the underlying documentation); Decision and Order on Remand at 9-10, 17.

Employer also argues that the ALJ applied unequal scrutiny to the medical opinion evidence because the same bases she provided for crediting Drs. Alvarez's and Nader's opinions also apply to Drs. Fino's and McSharry's opinions. Employer's Brief at 11-12. It further contends she should have given Drs. Fino's and McSharry's opinions more weight as they considered more evidence, including Claimant's treatment records.[8] *Id.* at

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[7] Employer contends Dr. Alvarez relied on an incorrect coal mining history and both Drs. Alvarez and Nader relied on incorrect smoking histories. Employer's Brief at 13-14. However, the ALJ specifically addressed Dr. Alvarez's consideration of a thirteen to fifteen-year coal mine employment history and found it did not materially affect her assessment, given the ALJ found *at least* 11.24 years of coal mine employment. Decision and Order at 8 n.6. Employer also contends Dr. Nader's finding of 7.5 pack years undermines his opinion and both Drs. Nader and Alvarez incorrectly assumed Claimant quit smoking. Employer's Brief at 13-14. The ALJ found Claimant had a ten pack-year smoking history (based on a twenty-year smoking history through 2021 at a half-pack per day) that was "ongoing." Decision and Order on Remand at 8-9 n.7. As the ALJ noted, Dr. Alvarez assumed at least 10 to 12.5 pack years as of 2019, and Dr. Nader assumed just 1.5 pack years less than what the ALJ found in 2021. *Id.* at 8, 10; Director's Exhibit 17 at 2; Claimant's Exhibit 1 at 5. Employer has not contested the ALJ's finding regarding Claimant's smoking history and has not explained how the smoking histories relied upon by Drs. Alvarez and Nader differ significantly from the ALJ's findings, even considering Claimant was still smoking at the time of his examinations in 2021. *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *see Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988) (ALJ has discretion in determining the effect of an inaccurate smoking history on the credibility of a medical opinion).

[8] Employer contends the ALJ's finding that Drs. Alvarez and Nader understood Claimant's medical history is unsupported, implying they may have been unaware of

12. But the ALJ has the discretion to weigh the credibility of the medical opinion evidence and is not required to accept all 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. Fino's and McSharry's opinions undermined, she was not required to give their opinions weight notwithstanding their consideration of more evidence of record.

As the ALJ noted, Drs. Fino and McSharry both opined that Claimant's restriction on pulmonary function testing was likely due to the aftereffects of his open-heart surgery. Decision and Order on Remand at 11-17; Director's Exhibit 20; Employer's Exhibits 2, 5. Dr. Fino found no evidence of obstruction and thus did not diagnose COPD; however, he acknowledged pulmonary symptoms, including daily productive cough, worsening shortness of breath, dyspnea walking on level ground, and wheezing. Director's Exhibit 20. Dr. McSharry noted the possibility of legal pneumoconiosis but indicated the more likely etiologies of Claimant's blood gas abnormality and obstruction were his obesity, sleep apnea, and smoking. Employer's Exhibits 2, 5.

The ALJ found Dr. Fino did not adequately address whether coal mine dust exposure could also have substantially contributed to or aggravated Claimant's condition even if his prior heart surgery caused the impairments indicated on his pulmonary function study and blood gas study results. Decision and Order on Remand at 13-14. She specifically noted that Dr. Fino provided no explanation as to how Claimant's heart surgery may have affected Claimant's disabling blood gases or address Claimant's assertion that his medication helps his breathing. *Id.* at 13. Similarly, the ALJ found Dr. McSharry did not address whether Claimant's pulmonary condition could have been aggravated by coal mine dust exposure, even if it was primarily due to obesity and chest wall restriction, particularly given his recognition that it is "possible" that Claimant has legal pneumoconiosis. *Id.* at 16-17. Thus, the ALJ permissibly found Drs. Fino and McSharry did not explain why Claimant's coal mine dust exposure did not aggravate his condition, even if it was not the predominant cause. *See* 20 C.F.R. §718.201(b); *Cochran*, 718 F.3d at 322-23. Moreover, the ALJ permissibly found Dr. McSharry's emphasis on the lack of radiographic findings of pneumoconiosis when reaching his conclusions regarding legal

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Claimant's prior open-heart surgery and obstructive sleep apnea. Employer's Brief at 14-15. Employer is incorrect. Both Drs. Alvarez and Nader noted Claimant's cardiac bypass surgery in 2012 and diagnosis of obstructive sleep apnea. Director's Exhibit 17 at 1-2; Claimant's Exhibit 1 at 5.

pneumoconiosis undermined his opinion. Decision and Order on Remand at 17; 20 C.F.R. §718.202(b) (a claim shall not be denied solely on the basis of a negative x-ray); Employer's Exhibits 2 at 3; 5 at 2.

Relatedly, Employer asserts the ALJ's consideration of the medical opinion evidence is inconsistent with the Fourth Circuit's holding in *Goode* because the ALJ improperly required Drs. Fino and McSharry to exclude coal mine dust as a contributing cause of Claimant's respiratory impairment.[9] Employer's Brief at 16-17. Contrary to Employer's argument, the ALJ recognized that Claimant bears the burden of establishing that he has legal pneumoconiosis. Decision and Order on Remand at 6. When considering the contrary opinions of Drs. Fino and McSharry, she did not reject them as failing to meet a particular burden of proof. Rather, as discussed above, she found them inadequately reasoned and therefore insufficient to support their own conclusions that coal mine dust in no way contributed to Claimant's respiratory impairment. Decision and Order on Remand at 13-18; *see Extra Energy, Inc. v. Lawson*, 140 F.4th 138, 148-52 (distinguishing the facts in *Goode* and explaining that while an ALJ cannot discredit an expert's opinions as inconsistent with the preamble to the revised 2001 regulations for the mere fact that 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 trier-of-fact, the ALJ has the discretion to assess the credibility of the medical opinions and to assign them weight; the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Compton*, 211 F.3d at 207-08; *Anderson*, 12 BLR at 1-113. As the ALJ provided permissible bases for finding Drs. Fino's and McSharry's opinions less persuasive, we affirm the ALJ's findings that their opinions are worthy of less weight. Decision and Order on Remand at 14, 17. Thus, we also affirm her weighing

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[9] In *American Energy, LLC v. Director, OWCP* [*Goode*], 106 F.4th 319 (4th Cir. 2024), the employer's physicians attributed the claimant's impairment to smoking only, while the claimant's experts attributed it to both smoking and coal mine dust exposure. The ALJ credited the claimant's physicians and discredited the employer's physicians solely because the preamble to the revised 2001 regulations states that coal mine dust inhalation and smoking may have additive effects, 65 Fed. Reg. 79,940, 79,941, 79,943 (Dec. 20, 2000). The Fourth Circuit reversed, holding that citing to the preamble cannot meet a claimant's burden of proving coal mine dust exposure significantly contributes to a smoking-related impairment without additional reasons for preferring the claimant's expert. *Goode*, 106 F.4th at 332-33. The court explained the burden remains on the claimant to establish the miner's lung disease more likely than not arose from coal mine employment; it is not the employer's burden to explain why coal mine dust exposure is not a contributing cause of the disease. *Id.* at 327, 332-33.

of the medical opinion evidence together as supporting a finding of legal pneumoconiosis and that when considering the evidence as a whole Claimant has established the presence of legal pneumoconiosis. *Id*. at 18-19; 20 C.F.R. §§718.201(a)(2), 718.202(a)(4).

Disability Causation

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

Employer is correct that when addressing disability causation, the ALJ incorrectly cited the rebuttal standard that would apply if Claimant had invoked the Section 411(c)(4) presumption. Decision and Order on Remand at 20 (ALJ indicating she is "required to assess whether Employer established that 'no part, not even an insignificant part' of Claimant's disability is caused by pneumoconiosis"). Even so, remand is not required for the ALJ to reassess the evidence on this issue. *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."). Drs. Alvarez and Nader opined Claimant is totally disabled due to COPD. Director's Exhibit 17; Claimant's Exhibit 1. As discussed above, the ALJ permissibly relied on their opinions to find Claimant's disabling impairment constituted legal pneumoconiosis. Decision and Order on Remand at 18-19. Thus, we see no error in holding Claimant established he is totally disabled due to the disease based on their opinions; it is the only logical conclusion 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 on Remand at 18, 20.

Further, notwithstanding the ALJ's incorrect recital of the rebuttal standard, because Drs. Fino and McSharry did not diagnose legal pneumoconiosis, the ALJ also permissibly found their opinions not credible on the issue of disability causation. *See Mullins*, 168 F.4th at 693; *Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995) (an ALJ who has found the disease and disability elements established may not credit an opinion denying causation without providing "specific and persuasive" reasons for concluding it does not rest upon a disagreement with those elements); Decision and Order on Remand at 19-20. We therefore affirm the ALJ's finding that Claimant established he is totally

disabled due to legal pneumoconiosis. 20 C.F.R. §718.204(c); Decision and Order on Remand at 20.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits on Remand.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge