U.S. Department of Labor

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

BRB No. 25-0210 BLA

LARRY A. SARVEY Claimant-Respondent v. DOVERSPIKE BROTHERS COAL COMPANY and OLD REPUBLIC GENERAL INSURANCE Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 05/28/2026 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

Deanna Lyn Istik (Sinatra & Istik Law Office, PLLC), Cranberry Township, Pennsylvania, for Claimant.

Christopher L. Wildfire (SutterWilliams, LLC), Pittsburgh, Pennsylvania, for Employer and its Carrier.

David Casserly (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: GRESH, Chief Administrative Appeals Judge, ROLFE and ULMER, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Awarding Benefits (2024-BLA-05026) rendered on a claim[1] filed on April 11, 2022, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ accepted the parties' stipulation that Claimant worked eleven years in coal mine employment. Thus, she found Claimant was unable to invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[2] 30 U.S.C. §921(c)(4). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established clinical and legal pneumoconiosis[3] and a totally disabling respiratory or pulmonary impairment due to legal pneumoconiosis. 20 C.F.R. §§718.201(a)(1), (2), 718.202(a), 718.204(b)(2), (c). Thus, she awarded benefits.

[1] Claimant previously filed a claim, which he subsequently withdrew. Director's Exhibit 1. Thus, this prior claim is considered not to have been filed. *See* 20 C.F.R. §725.306(b).

[2] Section 411(c)(4) provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305.

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

On appeal, Employer argues the ALJ erred in finding Claimant established that legal pneumoconiosis caused his totally disabling respiratory impairment. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a response brief, urging the Benefits Review Board to reject Employer's arguments.[4]

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.[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 (1965).

Entitlement Under 20 C.F.R. Part 718

Without the benefit of a presumption,[6] Claimant must establish disease (pneumoconiosis);[7] 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.

[4] We affirm as unchallenged on appeal the ALJ's finding that Claimant established a totally disabling respiratory or pulmonary impairment and eleven years of coal mine employment and thus cannot invoke the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5, 7, 19; Employer's Brief; Claimant's Response at 12.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit as Claimant performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4; Hearing Transcript at 45.

[6] We affirm the ALJ's findings that the x-ray, computed tomography (CT) scan, and Claimant's treatment record evidence do not support a finding of complicated pneumoconiosis as supported by substantial evidence. *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); Decision and Order at 23, 31, 32. While she did not provide a conclusion regarding the medical opinion evidence on the issue, none of the experts diagnosed the disease. *See* Director's Exhibit 17; Claimant's Exhibits 1, 3; Employer's Exhibits 8, 8A, 9, 9A. Thus, we affirm the ALJ's determination that the irrebuttable presumption at Section 411(c)(3) does not apply to this case. Decision and Order at 20 n.15.

[7] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established clinical pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order at 29.

§§718.3, 718.202, 718.203, 718.204. Failure to establish any 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 demonstrate 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). Employer phrases its argument in terms of "causal opinions," however, the primary issue is whether Claimant's chronic obstructive pulmonary disease (COPD) is caused by coal mine dust exposure, smoking, or both, which necessarily subsumes legal pneumoconiosis. Thus, we first address its arguments as they relate to the presence of legal pneumoconiosis.

The ALJ considered the medical opinions of Drs. Celko, Hua, Krefft, Basheda, and Rosenberg. Decision and Order at 26-29. All the experts agreed that Claimant has COPD but disagree as to its etiology. Drs. Celko, Hua, and Krefft opined that Claimant has legal pneumoconiosis, opining his COPD is caused by his coal mine dust exposure and cigarette smoking. Director's Exhibit 17; Claimant's Exhibits 1, 3. Dr. Basheda diagnosed Claimant with COPD due to cigarette smoking and asthma unrelated to his coal mine dust exposure. Employer's Exhibit 8. Dr. Rosenberg opined that Claimant's COPD is caused solely by Claimant's cigarette smoking history. Employer's Exhibits 9, 9A.

The ALJ credited Drs. Celko's, Hua's and Krefft's opinions as reasoned and documented, specifically according Dr. Hua's opinion "significant" weight because he found Dr. Hua clearly and persuasively explained the medical and scientific bases for his conclusion that Claimant's high-intensity exposure to coal mine dust contributed to his COPD. Decision and Order at 26-27; Claimant's Exhibit 1 at 3-8. The ALJ found Drs. Basheda's and Rosenberg's opinions undermined as inconsistent with the regulations and accorded their opinions little weight. *Id.* at 27-28. Thus, weighing the evidence together, the ALJ found the evidence supports a finding of legal pneumoconiosis. *Id.* at 28-29.

Employer argues the medical opinions that diagnose legal pneumoconiosis cannot support an award under the United States Court of Appeals for the Fourth Circuit's holding in *American Energy, LLC v. Director, Office of Workers' Compensation Programs* [*Goode*], 106 F.4th 319, 333 (4th Cir. 2024). Employer's Brief at 24-26. Citing to the medical opinions that Claimant's COPD is due to both cigarette smoking and coal mine dust exposure, it contends that, like the physicians in *Goode*, the physicians here "could not determine from the evidence the respective contributions of coal dust and smoking to [Claimant's] COPD" and the court in *Goode* held an ALJ "must not credit a physician's

opinion merely because it identifies coal dust exposure and smoking as dual causes of the miner's respiratory impairment." *Id.* at 24-25. The Director contends that, even if *Goode* controlled here,[8] Employer misinterprets its holding. Director's Response at 1-2. We agree with the Director's position.

In *Goode*, 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. 106 F.4th at 328. The ALJ credited the claimant's physicians and discredited the employer's physicians solely because the preamble to the revised 2001 regulations, 65 Fed. Reg. 79,940, 79,941, 79,943 (Dec. 20, 2000), states that coal mine dust inhalation and smoking may have additive effects. *Id.* 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 miner's respiratory impairment without additional reasons for preferring the claimant's expert. *Id.* at 332-33.

Unlike in *Goode*, as discussed below, the ALJ here did not rely solely on the preamble's recognition that the effects of smoking and coal dust exposure may be additive to credit Drs. Celko's, Hua's, and Krefft's opinions that both exposures are contributors to Claimant's COPD. Rather, she assessed the credibility of each medical opinion and found Dr. Hua's opinion most persuasive, as supported by Drs. Celko's and Krefft's opinions.[9] Decision and Order at 26-29.

[8] As Employer concedes, this case falls under the jurisdiction of the Third Circuit. Employer's Brief at 25. Nonetheless, it requests that the Board apply *Goode* to this case. *Id.*

[9] Moreover, we reject Employer's arguments insofar as it contends the opinions of Drs. Celko, Hua, and Krefft are insufficient as a matter of law to meet Claimant's burden of proof because they did not specify or "prorate" the contribution of each exposure in reaching their conclusions. Employer's Brief at 25-26. Medical experts are not required to apportion the relative contribution of each contributing cause of disability to constitute a diagnosis of legal pneumoconiosis. *See Cornett v. Benham Coal, Inc*., 227 F.3d 569, 569 (6th Cir. 1998); *Gross v. Dominion Coal Co.*, 23 BLR 1-8, 1-17 (2003). As the ALJ found, each physician specified that coal mine dust exposure is a substantially contributing cause of Claimant's COPD. 20 C.F.R. §718.201(a)(2) (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"); Decision and Order at 11-14; Director's Exhibit 17; Claimant's Exhibits 1, 3.

The ALJ found Dr. Hua's opinion well-reasoned and documented given that he understood Claimant's work and smoking histories and based his diagnosis on the objective testing, CT scans demonstrating emphysema, and symptoms including chronic cough with sputum. Decision and Order at 27. He also considered medical literature and provided "detailed explanations" as to how the literature and evidence supports his opinion. Decision and Order at 27; Claimant's Exhibit 1. Similarly, the ALJ found Dr. Krefft's opinion adequately reasoned and documented as she discussed the abnormalities indicated on Claimant's objective testing and symptoms consistent with COPD, addressed Claimant's smoking and employment history, and addressed supporting medical literature. Decision and Order at 27; Claimant's Exhibit 3. Finally, while the ALJ noted Dr. Celko's opinion is consistent with the preamble, she also found it well-reasoned because he understood Claimant's history of exposure to cigarette smoke and coal mine dust and considered his symptoms. Decision and Order at 26-27; Director's Exhibit 17. She also indicated that he relied upon the objective testing conducted during his examination and adequately explained his opinion that while cigarette smoking is the more significant contributor to Claimant's COPD, his coal mine dust exposure is also a significant contributor. Decision and Order at 26-27; Director's Exhibit 17. We affirm these findings as supported by substantial evidence. *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); *Mancia v. Director, OWCP*, 130 F.3d 579, 584 (3d Cir. 1997); *see also Extra Energy, Inc., v. Lawson*, 140 F.4th 138, 151-52 (4th Cir. 2025).

We further see no error in the ALJ's discrediting of Drs. Basheda's and Rosenberg's opinions on the issue of legal pneumoconiosis. *See* Employer's Brief at 26-31. Unlike the ALJ in *Goode*, the ALJ here did not find their opinions undermined solely because their opinions that Claimant's COPD is due to smoking are "inconsistent" with the preamble. While noting the preamble's recognition of the additive nature of cigarette smoke and coal mine dust exposure when assessing their opinions, the ALJ also accurately observed that Drs. Basheda and Rosenberg both excluded coal mine dust exposure as contributing to Claimant's COPD because Claimant's symptoms were of recent onset and such a latent onset, approximately forty years after leaving the mines, is inconsistent with coal dust-induced disease. Decision and Order at 27-28; Employer's Exhibits 8 at 17-18, 9 at 9-10. She therefore permissibly found their opinions undermined as not only inconsistent with evidence that Claimant had symptoms in the 1980s, but also as inconsistent with the regulation's recognition that pneumoconiosis is a latent and progressive disease. 20 C.F.R. §718.201(c); *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987) ("pneumoconiosis is recognized as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure"); Decision and Order at 27-28.

Thus, even assuming *Goode* applies to this case, the ALJ did not rely solely on the preamble to resolve the conflict in the medical opinions and provided permissible reasons

for finding Drs. Celko's, Hua's, and Krefft's opinions more persuasive than Employer's experts' opinions. *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 211 (3d Cir. 2002); *Goode*, F.4th at 332-33; *Lawson*, 140 F.4th at 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 merely attributing 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"); Decision and Order at 27-28. As the trier-of-fact, the ALJ has the discretion to assess the credibility of the medical opinions and assign them weight; the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Kertesz v. Director, OWCP*, 788 F.2d 158, 163 (3d Cir. 1986); *Anderson*, 12 BLR at 1-113. As the ALJ provided permissible bases for finding Drs. Basheda's and Rosenberg's opinions less persuasive, we affirm the ALJ's findings that their opinions are worthy of less weight. Decision and Order at 27-28. Thus, we also affirm her weighing of the medical opinion evidence together to find it supports a finding of legal pneumoconiosis and that, when considering the evidence as a whole,[10] Claimant has established the presence of legal pneumoconiosis. *Id*. at 29, 32; 20 C.F.R. §§718.201(a)(2), 718.202(a)(4); *see Penn Allegheny Coal Co. v. Williams*, 114 F.3d 22, 25 (3d Cir. 1997).

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). 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's arguments regarding disability causation largely rely on its contentions regarding the ALJ's analysis of legal pneumoconiosis and the application of *Goode,* which we have rejected. Employer's Brief at 23-28. Because the ALJ found the evidence establishes that Claimant has disabling COPD, her determination that his disabling COPD constitutes legal pneumoconiosis necessarily encompasses a finding that Claimant is totally disabled due to legal pneumoconiosis. *See Goode*, 106 F.4th at 326 ("[I]f a miner's legal pneumoconiosis *is* his total disability, separately analyzing disability causation is

[10] The ALJ found that while Claimant's treatment records and CT scans do not specifically diagnose legal pneumoconiosis, they note the presence of emphysema, which is supportive of the medical opinions that diagnose legal pneumoconiosis. Decision and Order at 31-32.

unnecessary."); *Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668-69 (6th Cir. 2015); *Hawkinberry v. Monongalia Cnty. Coal Co.*, 25 BLR 1-249, 255-56 (2019); Decision and Order at 33-34.

Further, the ALJ permissibly discredited Dr. Basheda's opinion because he did not diagnose legal pneumoconiosis, contrary to the ALJ's finding that Claimant has the disease. *Soubik*, 366 F.3d at 234; *Toler v. E. Assoc. Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995); Decision and Order at 34.

Employer also contends the ALJ erred in discrediting Dr. Rosenberg's disability causation opinion because he did not find Claimant totally disabled, contrary to her finding. Employer's Brief at 27. Specifically, it contends because total disability is an independent issue from disability causation, his opinion regarding total disability does not necessarily undermine his opinion regarding disability causation, particularly given that he explained the etiology of any impairment. *Id.* While Employer is correct that an expert's opinion regarding the extent of impairment does not necessarily undermine his opinion as to its etiology, Dr. Rosenberg also failed to diagnose legal pneumoconiosis given his belief that Claimant's COPD was due solely to cigarette smoking. Employer's Exhibits 9, 9A. Dr. Rosenberg offered no explanation for his opinion that Claimant's total disability was not caused by legal pneumoconiosis other than his belief that Claimant does not suffer from the disease. Employer's Exhibits 9, 9A. Thus, his opinion may only be entitled to little, if any, weight. *See Soubik*, 366 F.3d at 234; *Toler*, 43 F.3d at 116 (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).

Therefore, we affirm, as supported by substantial evidence, the ALJ's finding that Claimant established he is totally disabled due to legal pneumoconiosis based on Drs. Celko's, Hua's, and Krefft's opinions. 20 C.F.R. §718.204(c); Decision and Order at 33-34. Consequently, we affirm the ALJ's finding that Claimant established entitlement to benefits. Decision and Order at 35.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge