U.S. Department of Labor

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

BRB Nos. 22-0444 BLA
and 22-0445 BLA

DEBRA WIREMAN (Widow of and o/b/o the Estate of OLLIE JAMES WIREMAN, JR.)	)	
Claimant-Respondent	)	
v.	)	
CREST COAL COMPANY, INCORPORATED	)	
and	)	
	)	DATE ISSUED: 11/09/2023
BITUMINOUS CASUALTY CORPORATION	)	
Employer/Carrier-Petitioners	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeals of the Decision and Order Awarding Benefits in a Miner's Initial Claim and Decision and Order Awarding Benefits in a Survivor's Claim of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

John Earl Hunt, Allen, Kentucky, for Claimant.

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

Olgamaris Fernandez (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, 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 JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Larry S. Merck's Decision and Order Awarding Benefits in a Miner's Initial Claim and his Decision and Order Awarding Benefits in a Survivor's Claim (2020-BLA-05119 and 2020-BLA-05516) rendered pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[1] This case involves a miner's claim filed on June 28, 2018, and a survivor's claim filed on October 31, 2019.[2]

Initially, the ALJ found Claimant established 13.52 years of coal mine employment. Next, the ALJ found Claimant did not establish complicated pneumoconiosis, and therefore could not invoke the Section 411(c)(3) presumption that the Miner was totally disabled due to pneumoconiosis at the time of his death or the Miner's death was due to pneumoconiosis. 20 C.F.R. §718.304. Although the ALJ accepted Employer's stipulation that the Miner was totally disabled by a respiratory impairment at the time of his death, the ALJ held Claimant could not invoke the rebuttable presumption that the Miner was totally disabled due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),

[1] Employer's appeal in the miner's claim was assigned BRB No. 22-0444 BLA, and its appeal in the survivor's claim was assigned BRB No. 22-0445 BLA. The Benefits Review Board has consolidated these appeals for purposes of decision only. *Wireman v. Crest Coal Co., Inc.*, BRB Nos. 22-0444 BLA and 22-0445 BLA (Aug. 8, 2022) (Order) (unpub.).

[2] Claimant is the widow of the Miner, who died on September 2, 2019. Director's Exhibit Survivor's Claim (DXS) 12; Hearing Transcript at 19. She is pursuing the miner's claim on behalf of her husband's estate and her own claim for survivor's benefits. DXS 2.

because Claimant established fewer than 15 years of coal mine employment.[3] Considering the Miner's entitlement under 20 C.F.R. Part 718, the ALJ determined Claimant established clinical pneumoconiosis arising out of coal mine employment, legal pneumoconiosis, and the Miner was totally disabled by both forms of the disease. 20 C.F.R. §§718.202(a)(4), 718.203, 718.204(b)(2), (c). Thus, the ALJ awarded benefits in the miner's claim. With respect to the survivor's claim, the ALJ found Claimant is derivatively entitled to benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).[4]

On appeal, Employer challenges the ALJ's findings as to the length of the Miner's coal mine employment, the existence of pneumoconiosis, disease causation, and disability causation. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, urging the Board to affirm the ALJ's finding of 13.52 years of coal mine employment. Employer replied to the Director's brief, reiterating its contentions.

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).

The Miner's Claim

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis at the time of death 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) (2018); 20 C.F.R. §718.305.

[4] Section 422(*l*) of the Act provides the survivor of a miner who was eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits, without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[5] The Board will apply the law of United States Court of Appeals for the Sixth Circuit because the Miner performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 5; Hearing Transcript at 32.

Length of Coal Mine Employment

Claimant bears the burden to establish the number of years the Miner worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold an ALJ's determination based on a reasonable method of calculation that is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

For the years 1970 through 1978, the ALJ found the Miner was "a surface miner working as an equipment operator loading coal at mine sites and/or as a truck driver hauling coal to tipples or preparation plants." Decision and Order at 10. For the years 1979 through 1988, the ALJ found the Miner worked as a self-employed coal truck driver, loading and hauling coal at mine sites. *Id.* at 11-13. Because the beginning and ending dates of Claimant's employment could not be determined for any period, the ALJ applied the method at 20 C.F.R. §725.101(a)(32)(iii) to calculate the number of days the Miner worked and then used a 125-day divisor to determine the number of full and partial years he should be credited with as coal mine employment. *Id.* The ALJ found Claimant established the Miner had 13.52 years of coal mine employment. Decision and Order at 10-13.

Employer argues the ALJ erred in relying on 125 days to establish a year of employment. It argues the Sixth Circuit's holding in *Shepherd v. Incoal, Inc.*, 915 F.3d 392, 402 (6th Cir. 2019), that if a miner has at least 125 working days with an operator then he has worked for a year of coal mine employment with the operator regardless of the actual duration of his employment for the year, has not been endorsed by the Director, and that the Board is required to defer to the Director's position. Employer's Brief (citing *Trent v. Reebok Coal Co.* BRB No. 22-0102 BLA (July 17, 2023) (unpub.)).[6] Employer's Brief at 13-19. Contrary to Employer's contention, *Shepherd* is controlling authority because these claims arise under the jurisdiction of the Sixth Circuit. *See Shupe*, 12 BLR at 1-202; Decision and Order at 11-13; Director's Brief at 2.

Moreover, the Sixth Circuit's interpretation of 20 C.F.R. §725.101(a)(32) in *Shepherd* is not dicta as Employer contends. Employer's Brief at 15. In *Shepherd*, the court expressly instructed the ALJ to "give effect to all provisions and options set forth in

[6] In *Trent v. Reebok Coal Co.*, BRB No. 22-0102 BLA (July 17, 2023) (unpub.), the Board held the ALJ erred in applying *Shepherd v. Incoal, Inc.*, 915 F.3d 392, 406-07 (6th Cir. 2019), to a case arising within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. The Director concedes *Shepherd* is controlling precedent in this appeal, despite the Director's expressed disagreement with the holding. Director's Brief at 2.

20 C.F.R. §725.101(a)(32)" when evaluating a miner's length of coal mine employment. *Shepherd*, 915 F.3d at 407. Thus, regardless of Employer's disagreement with the court's interpretation of the regulation, the ALJ was bound by the Sixth Circuit's holding in *Shepherd*. As the ALJ was bound by *Shepherd*, we also reject Employer's additional arguments about the correct interpretation of what constitutes "a year" of coal mine employment.[7] Employer's Brief at 13-19.

Employer also asserts none of the Miner's self-employment from 1979 to 1988 should be credited as coal mine employment because it is unclear how much time he was working as a coal truck driver versus working for a tire service during that period. We disagree. Employer's Brief at 12-13 (emphasis added). The ALJ permissibly credited Claimant's testimony that the Miner continued to work as a coal truck driver "until we got the tire service" known as Wireman *Tire*. Decision and Order at 7 (citing Employer's Exhibit at 37-38 (emphasis added); *see Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983) (ALJ is granted broad discretion in evaluating the credibility of the evidence, including witness testimony); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). The ALJ observed Employer specifically maintained during Claimant's deposition that the Kentucky Secretary of State's website indicates Wireman Tire was created in March 1989. Decision and Order at 7; Employer's Exhibit 1 at 30. Claimant also testified she thought Employer's information from the website was "right" but could not remember. Decision and Order at 7, 10-11; Employer's Exhibit 1 at 30-31.

Moreover, the ALJ accurately noted Employer did not present evidence to dispute the Miner's and Claimant's assertions that the Miner's self-employment before Wireman Tire was loading coal at mine sites and/or hauling coal to the tipple from 1979 through 1988. *See Rowe*, 710 F.2d at 255; *Clark*, 12 BLR at 1-155; Decision and Order at 11; Director's Exhibits Miner's Claim (DXM) 5 at 1; 38 at 34; Employer's Exhibit 1 at 38. Because it is supported by substantial evidence, we affirm the ALJ's finding that the Miner's work from 1979 through 1988 constituted coal mine employment. We therefore affirm the ALJ's finding that Claimant established 13.52 years of coal mine employment.

[7] Employer asserts that "in order to have one year of coal mine employment, the regulation contemplates an employment relationship totaling 365 days, in which 125 days were spent working and being exposed to coal mine dust . . . ." Employer's Brief at 17.

20 C.F.R. §§718.305(b)(1)(i), §725.101(a)(32); *see Shepherd*, 915 F.3d at 406-07; Decision and Order at 10-13.

Entitlement under 20 C.F.R. Part 718

Without the benefit of the Section 411(c)(3) and (c)(4) 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).

The ALJ concluded the x-rays supported a finding of clinical pneumoconiosis[8] and that the medical opinions established the Miner's fibrosis seen radiographically caused a disabling respiratory impairment that was substantially caused by coal mine dust exposure. Thus, the ALJ concluded that the Miner's disabling fibrosis constituted both clinical and legal pneumoconiosis.[9] He further concluded that the Miner was totally disabled by both clinical and legal pneumoconiosis.

Contrary to Employer's contention, we consider any error by the ALJ in conflating his analyses of clinical and legal pneumoconiosis to be harmless, as he otherwise

[8] Clinical pneumoconiosis consists of "those diseases recognized by the medical community as pneumoconiosis, *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 that is significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[9] The ALJ recognized that "clinical and legal pneumoconiosis are two distinct types of pneumoconiosis" but found in this case "legal pneumoconiosis is closely tied to the finding of clinical pneumoconiosis, specifically because Drs. Chavda, Rosenberg, and Jarboe find that [the] Miner's disability was a result of the advanced diffuse pulmonary fibrosis seen on the radiological studies." Decision and Order at 55. He concluded that "if [the] Miner's pulmonary fibrosis is found to be a form of clinical pneumoconiosis

adequately explained the bases for his credibility determinations and his conclusion that Claimant established legal pneumoconiosis is supported by substantial evidence, as discussed below.

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must prove the Miner had a "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). There is no dispute in this case that the Miner had radiographic findings of pulmonary fibrosis which developed into a pattern of usual interstitial pneumonitis (UIP). Further, as the ALJ accurately observed, "[t]he point of contention [among the physicians] is the etiology of this pattern of UIP, whether it is idiopathic or whether is arose out of [the] Miner's coal mine dust exposure." Decision and Order at 55.

The ALJ considered the medical opinions of Drs. Chavda, Rosenberg, and Jarboe regarding the etiology of the Miner's disabling fibrosis.[10] Dr. Chavda attributed the Miner's UIP and his disabling respiratory impairment to coal mine dust exposure. Claimant's Exhibit 8 at 8-13. Drs. Rosenberg and Jarboe opined that the Miner's disabling respiratory impairment is related solely to idiopathic pulmonary fibrosis (IPF). DXM 35; Employer's Exhibits 9, 10, 13, 14, 18. The ALJ credited Dr. Chavda's opinion as reasoned and documented and found the contrary opinions of Drs. Rosenberg and Jarboe not adequately explained. Decision and Order at 63-65.

Initially, contrary to Employer's contention, the ALJ did consider the physicians' qualifications. Employer's Brief at 27. The ALJ found all the physicians similarly qualified, as each is Board-certified in pulmonary medicine.[11] Decision and Order at 56.

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arising out of coal mine employment, the resulting impairment would constitute a form of legal pneumoconiosis." *Id*.

[10] The ALJ gave less weight to Dr. Alam's opinion that the Miner had legal pneumoconiosis because Dr. Alam did not review the reports of Drs. Chavda, Rosenberg, and Jarboe. Decision and Order at 55. However, the ALJ noted Dr. Alam's opinion was supportive of Dr. Chavda's opinion. *Id*. at 64.

[11] Dr. Chavda is Board-certified in internal, pulmonary and sleep medicine; Dr. Rosenberg is Board-certified in internal, pulmonary, and occupational medicine, a B reader, and a pulmonary specialist for over forty years; and Dr. Jarboe is Board-certified

He acknowledged Drs. Rosenberg and Jarboe each have over forty years of experience as pulmonary specialists; however, he permissibly found their length of practice did not "necessarily mandate" their opinions be given greater weight.[12] Decision and Order at 56; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88 (1993).

Further, contrary to Employer's contentions, we see no error in the ALJ's conclusion that Dr. Chavda's opinion is reasoned and documented, and sufficient to satisfy Claimant's burden of proof. Employer's Brief at 24. As the ALJ noted, Dr. Chavda reviewed Drs. DePonte's and Meyer's CT scan interpretations;[13] most of the x-ray evidence; the initial reports of Drs. Alam, Jarboe, and Rosenberg; the Miner's death certificate; and Dr. Rosenberg's March 13, 2019 pulmonary function and blood gas studies and December 1, 2020 supplemental report.[14] Decision and Order at 40. Dr. Chavda opined the Miner had legal pneumoconiosis based on the Miner's symptoms, his history of chronic bronchitis, the abnormal pulmonary function study results showing a reduced FEV1 and FVC, his diffusion capacity tests (DLCO) and abnormal blood gas study results. Decision and Order at 40; Claimant's Exhibit 8 at 8. Specifically, Dr. Chavda explained that the Miner's radiographic findings and resulting impairment support a diagnosis of dust-

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in internal and pulmonary medicine and a pulmonary specialist for over forty years. Claimant's Exhibit 17; Employer's Exhibits 14 at 26-27; 16.

[12] Moreover, the ALJ was not obliged to rely on qualifications in resolving the conflict in the medical opinion evidence as he ultimately found neither Dr. Rosenberg's opinion nor Dr. Jarboe's opinion adequately reasoned.

[13] We reject Employer's contention that Dr. Chavda's opinion is flawed because he found "significant nodular changes" on the CT scans when the physicians who interpreted the CT scan evidence did make such a finding. Employer's Brief at 23. The ALJ permissibly found Dr. Chavda's characterization of the CT scan evidence was "not fatal" to the credibility of his opinion as Dr. Chavda recognized the scans showed a UIP pattern of fibrosis and attributed it to coal mine dust exposure. *See Rowe*, 710 F.2d at 255; *Clark*, 12 BLR at 1-155; Decision and Order at 57 & n.50; Claimant's Exhibit 8 at 8-12.

[14] We disagree with Employer's contention that the ALJ erred in crediting Dr. Chavda's opinion because Drs. Rosenberg and Jarboe reviewed more evidence than Dr. Chavda. Employer's Brief at 25. A medical opinion can be reasoned and documented based on the expert's examination of the miner and review of the objective testing obtained in the examination. *See Church v. E. Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21-22 (1987) (reasoned opinion is one in which the ALJ finds the underlying documentation adequate to support the physician's conclusion).

related diffuse fibrosis (DDF), citing a 2014 medical article (Laney and Weissman, *Respiratory Diseases Caused by Coal Mine Dust*, *Id.* at 9): "DDF is a form of interstitial disease occurring in coal miners *that has a radiographic appearance of irregular opacities* and can be mistaken for [IPF] if exposure history is not obtained." *Id.* at 10 (emphasis added). Dr. Chavda explained that given the Miner's fourteen years of coal mine dust exposure, which is sufficient to cause pulmonary fibrosis in a susceptible individual, it was reasonable to conclude that coal mine dust exposure was a significant contributing factor in the Miner's disabling respiratory impairment. Claimant's Exhibit 8 at 9.

The ALJ specifically considered Employer's arguments – similar to those raised in this appeal – that Dr. Chavda failed to tie the medical article he relied on to the specifics of the Miner's case. However, the ALJ permissibly found Dr. Chavda's opinion credible because Dr. Chavda sufficiently explained that the clinical features of DDF and IPF are similar – each disease having been described as causing irregular opacities on chest x-ray, diffusion impairment (low DLCO), hypoxemia, and a restrictive impairment on pulmonary function testing (all of which the Miner had). *See Rowe*, 710 F.2d at 255; Decision and Order at 41-42, 61; Claimant's Exhibit 8 at 8-12. Additionally, the ALJ explained in regard to a diagnosis of IPF, which is made when the etiology of the disease process in unknown, Dr. Chavda's process of elimination in reaching a diagnosis of coal mine dust-related DDF was reasonable. *See Rowe*, 710 F.2d at 255; Decision and Order at 61.

Because it is supported by substantial evidence, we affirm the ALJ's finding that Dr. Chavda's opinion is reasoned and documented, and sufficient to establish that the Miner had legal pneumoconiosis.[15] *See Rowe*, 710 F.2d at 255; *Clark*, 12 BLR at 1-155; Decision and Order at 61-63; Claimant's Exhibit 8 at 9, 11-12.[16]

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[15] Employer contends the ALJ did not properly consider that the Miner's treatment records do not specifically attribute his fibrosis to his coal mine employment. Employer's Brief at 22. However, the weight to accord evidence that is silent on the presence or absence of legal pneumoconiosis is within the ALJ's discretion. *See Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-218-19 (1984); Decision and Order at 38-40, 64.

[16] Because the ALJ gave valid reasons for discrediting the opinions of Drs. Rosenberg and Jarboe, we need not address Employer's remaining argument that the ALJ improperly discredited them based on their views on the latency and progressivity of pneumoconiosis. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 25-26.

Regarding Employer's experts, we see no error in the ALJ's rejecting Drs. Rosenberg's and Jarboe's opinions that the Miner had IPF and not legal pneumoconiosis. The ALJ accurately noted both physicians referenced the absence of rounded nodular opacities in the upper lung zones consistent with clinical pneumoconiosis on x-ray when excluding coal mine dust exposure as a cause for the Miner's fibrosis. Employer's Exhibits 13 at 21-24; 14 at 9-10. However, the regulations do not require radiographic evidence of clinical pneumoconiosis to support a finding of legal pneumoconiosis, nor do the regulations impose restrictions on the type or location of nodules seen on x-rays or CT scans to support a finding of pneumoconiosis. *See* 20 C.F.R. §718.202(a)(1); Decision and Order at 63; *see also Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012) (the regulations "separate clinical and legal pneumoconiosis into two different diagnoses" and "provide that no claim for benefits shall be denied solely on the basis of a negative chest x-ray") (internal quotations omitted); 20 C.F.R. §§718.202(a)(4), 718.202(b).

The ALJ also permissibly discredited the opinions of Drs. Rosenberg and Jarboe because they relied on an inaccurate coal mine employment history of 7.3 years, contrary to the ALJ 's finding that Claimant established the Miner had 13.52 years.[17] *See Huscoal, Inc. v. Director, OWCP* [*Clemons*], 48 F.4th 480, 491 (6th Cir. 2022) (effect of an inaccurate coal mine dust exposure history on the credibility of a medical opinion is a determination for the ALJ to make); Decision and Order at 56, 63; Employer's Exhibits 13 at 7; 14 at 6. He also observed Drs. Rosenberg and Jarboe rely on "non-radiological features of [the] Miner's case - the presence of rales, the prescription of Ofev, and the severity of [the] Miner's impairment" to exclude a diagnosis of legal pneumoconiosis but these features "arguably related to the existence of the pulmonary fibrosis disease process itself, regardless of its cause." Decision and Order at 64. The ALJ permissibly found neither physician persuasively explained that if the Miner had fibrosis significantly related to or substantially aggravated by coal dust exposure, why he "would not have rales on physical examination, would not have been prescribed or benefited from the anti-fibrotic medication Ofev, or had the severity of impairment that [he] did." *Id.*; s*ee Jericol Mining*,

[17] The ALJ noted "Dr. Rosenberg later acknowledged in his deposition, that generally a history of 14 years versus 7 is significant, that a history of 14 years would result in an additional 7 years of "dose response." Decision and Order at 56 (quoting Employer's Exhibit 14 at 39). However, the ALJ also correctly observed "Dr. Rosenberg did not relate the history of 14 years of coal mine employment to [the] Miner in this case; he did not discuss whether his knowledge of an additional 7 years of coal mine employment would have made a difference in his opinion." Decision and Order at 56.

Inc. v. Napier, 301 F.3d 703, 712-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Rowe*, 710 F.2d at 255.

Additionally, the ALJ permissibly rejected Dr. Rosenberg's rationale that there is no evidence-based science establishing that the Miner had a coal mine dust-related form of interstitial fibrosis because he did not address the medical articles Dr. Chavda referenced, which are part of the record and describe DDF as a form of interstitial disease occurring in coal miners. *See Rowe*, 710 F.2d at 255; Decision and Order at 63; Employer's Exhibit 14. Similarly, the ALJ noted that while Dr. Jarboe did discuss Dr. Chavda's opinion and the medical articles of record, he failed to persuasively explain why they do not support Dr. Chavda's diagnosis of DDF or his opinion that the Miner had legal pneumoconiosis. *See Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; Decision and Order at 63.

Employer's arguments on legal pneumoconiosis amount to a request to reweigh the evidence, which the Board may not do. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because the ALJ acted within his discretion in rendering his credibility findings, we affirm the ALJ's conclusion that Claimant established legal pneumoconiosis.[18] 20 C.F.R. §718.202(a)(4); *see Rowe*, 710 F.2d at 255; Decision and Order at 64.

Disability Causation

To establish disability causation, Claimant must prove that pneumoconiosis was a "substantially contributing cause" of the Miner's totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is considered to have been a substantially contributing cause of a miner's totally disabling impairment if it had "a material adverse effect on the miner's respiratory or pulmonary condition" or "[m]aterially

[18] Employer contends the ALJ failed to explain his findings on disease causation. However, the ALJ's determination that Claimant established the Miner had legal pneumoconiosis necessarily subsumed the inquiry of whether the Miner's legal pneumoconiosis arose out of his coal mine employment. *See* 20 C.F.R. §718.102(a)(2), (b); *see also Kiser v. L & J Equip. Co.*, 23 BLR 1-246, 1-259 n.18 (2006); *Henley v. Cowan & Co., Inc.*, 21 BLR 1-147, 1-151 (1999).

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).

Because all the physicians agreed the Miner's pulmonary fibrosis was totally disabling[19] and we have affirmed the ALJ's finding that it constitutes legal pneumoconiosis, Claimant has necessarily established the Miner was totally disabled due to legal pneumoconiosis. 20 C.F.R. §718.204(c); *see Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668-69 (6th Cir. 2015) ("no need for the ALJ to analyze the opinions a second time" at disability causation when Employer failed to establish that the totally disabling impairment was not legal pneumoconiosis); *Hawkinberry v. Monongalia Cnty. Coal Co.*, 25 BLR 1-249, 1-255-56 (2019); Decision and Order at 65-67. Consequently, we affirm the ALJ's finding that Claimant established disability causation at 20 C.F.R. §718.204(c), and the award of benefits in the miner's claim. Decision and Order at 67.

The Survivor's Claim

Because we have affirmed the award of benefits in the miner's claim and Employer raises no specific challenge to the award in the survivor's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to benefits pursuant to Section 422(*l*).

[19] Employer asserts Dr. Chavda's opinion on disability causation is not credible because it is based on his mistaken belief that the Miner had complicated pneumoconiosis. But Dr. Chavda specifically cited to the Miner's "very low FEV1 and FVC and DLCO" seen on pulmonary function testing and on the "high PCO2" seen on blood gas testing as indicating the Miner had a disabling respiratory impairment. *See Rowe*, 710 F.2d at 255; *Clark*, 12 BLR at 1-155; Decision and Order at 40 n.37, 43, 56-57; Claimant's Exhibit 8 at 8-12. Employer's experts also agree with Dr. Chavda that the Miner was totally disabled. We have also affirmed the ALJ's reliance on Dr. Chavda's opinion to establish legal pneumoconiosis. Thus, we are unpersuaded by Employer's contention that Dr. Chavda's opinion is insufficient to support a finding that the Miner was totally disabled due to legal pneumoconiosis.

30 U.S.C. §932(*l*) (2018); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013); Decision and Order at 67.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits in a Miner's Initial Claim and Decision and Order Awarding Benefits in a Survivor's Claim.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge