U.S. Department of Labor

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

BRB No. 20-0510 BLA

RUTH BLANKENSHIP (o/b/o HARLON D. BLANKENSHIP)	)	
v.	)	
CLINCH VALLEY COAL COMPANY	)	
and	)	
PITTSTON COMPANY	)	DATE ISSUED: 10/29/2021
Employer/Carrier-Respondents	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of Decision and Order Denying Request for Modification of Jonathan C. Calianos, District Chief Administrative Law Judge, United States Department of Labor.

Ruth Blankenship, Rowe, Virginia.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for Employer and its Carrier.

Before: BUZZARD, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel,[1] appeals District Chief Administrative Law Judge (ALJ) Jonathan C. Calianos's Decision and Order Denying Request for Modification[2] (2014-BLA-05034) rendered on a subsequent claim filed on September 13, 2011,[3] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited the Miner with 8.32 years of coal mine employment and thus found Claimant could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[4] Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established the Miner had clinical pneumoconiosis and was totally disabled by a respiratory or pulmonary impairment. 20 C.F.R. §§718.202(a), 718.204(b)(2). He further found, however, that she failed to establish the Miner had legal pneumoconiosis or that his total disability was due to pneumoconiosis. 20 C.F.R. §§718.202(a)(4), 718.204(c). Thus, he denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Employer responds in support of the denial, but asserts the ALJ erred in finding the Miner had clinical

[1] The Miner died on June 21, 2016. Hearing Transcript at 11. Claimant, the Miner's widow, is pursuing the claim. On Claimant's behalf, Vickie Combs, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested the Benefits Review Board review the ALJ's decision, but Ms. Combs is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] This case involves a request for modification of a district director's denial of benefits. Director's Exhibit 28. In cases involving a request for modification of a district director's decision, the ALJ proceeds de novo and "the modification finding is subsumed in the [ALJ's] findings on the issues of entitlement." *Kott v. Director, OWCP*, 17 BLR 1-9, 1-13 (1992); *Motichak v. BethEnergy Mines, Inc.*, 17 BLR 1-14, 1-19 (1992).

[3] The Miner filed one previous claim. Director's Exhibit 1. ALJ Sheldon R. Lipson denied it on September 24, 1996 because Employer rebutted the interim presumption at 20 C.F.R. §727.203(b)(3) by establishing the Miner's total disability did not arise, in whole or in part, out of coal mine employment. *Id.*

[4] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

pneumoconiosis and in weighing Dr. Fino's opinion on the issue of legal pneumoconiosis.[5] The Director, Office of Workers' Compensation Programs (the Director), declined to file a response brief to Claimant's appeal.

In an appeal a claimant files without the assistance of counsel, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994). We must affirm the ALJ's findings of fact and conclusions of law if they are 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 Associates, Inc.*, 380 U.S. 359 (1965).

Section 411(c)(4) Presumption – Length of Coal Mine Employment

Because the ALJ's length of coal mine employment finding is relevant to the Section 411(c)(4) presumption, we will review his finding that the Miner worked 8.32 years in coal mine employment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

Claimant bears the burden to establish the number of years the Miner worked in coal mine employment. *See 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 on length of coal mine employment if it is based on a reasonable method of calculation and is supported by substantial evidence. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

The ALJ considered employment history forms, Social Security Administration (SSA) earnings records, and testimony from the Miner and Claimant. Decision and Order at 7-9; Director's Exhibits 4, 7; Hearing Transcript at 12-17, 19, 27, 32-38. He permissibly found the SSA earnings records are "the most probative" of all the evidence. Decision and Order at 9; *see Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984) (ALJ may credit SSA records over testimony and other sworn statements).

[5] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established a totally disabling respiratory or pulmonary impairment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.204(b).

[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 Exhibits 5, 6.

For pre-1978 employment, the ALJ permissibly credited the Miner with a full quarter of coal mine employment for each quarter in which the SSA records indicate he earned at least $50.00 from coal mine operators. *See Shrader v. Califano*, 608 F.2d 114, 117 n.3 (4th Cir. 1979) (crediting a miner with a full quarter of coal mine employment when the miner earned $50.00 or more during that time period is "an appropriate yardstick for determining quarters which will be fully credited to a black lung claimant"); *Tackett,* 6 BLR at 1-841; Decision and Order at 8. Using this method, the ALJ rationally credited the Miner with thirty-three quarters equaling 8.25 years of pre-1978 coal mine employment. *Id*.

For post-1978 coal mine employment, the ALJ found he was unable to determine the beginning and ending dates of coal mine employment. Decision and Order at 9. Thus he permissibly applied the formula at 20 C.F.R. §725.101(a)(32)(iii).[7] *Daniels Co. v. Mitchell,* 479 F.3d 321, 334-36 (4th Cir. 2007); *Clark v. Barnwell Coal Co.*, 22 BLR 1-277, 1-280 (2003); Decision and Order at 9. He divided the Miner's yearly earnings from coal mine employers as set forth in the SSA records by the coal mine industry's average daily earnings as reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (BLBA) Procedure Manual*[8] to determine the number of days Miner worked. Decision and Order at 9. He found the Miner worked for 16.2 days in 1978, which he

[7] 20 C.F.R. §725.101(a)(32)(iii) provides that, if the beginning and ending dates of a miner's coal mine employment cannot be ascertained, or the miner's coal mine employment lasted less than a calendar year, the ALJ may determine the length of the miner's work history by dividing the miner's yearly income from work as a miner by the average daily earnings of employees in the coal mining industry for that year, as reported by the Bureau of Labor Statistics.

[8] Exhibit 610 to the *Office of Workers' Compensation Programs Coal Mine (BLBA) Procedure Manual*, entitled "Average Wage Base," contains the average daily earnings of employees in coal mining and the earnings for those who worked 125 days during a year, and is referenced in 20 C.F.R. §725.101(a)(32)(iii).

determined equated to 0.065 of a year.[9] *Id*. He ultimately credited Miner with 8.32 years of coal mine employment.[10] *Id.*

As the ALJ's length of coal mine employment calculation is based on a reasonable method and is supported by substantial evidence, we affirm the ALJ's finding that Claimant established 8.32 years of coal mine employment. We also affirm his finding Claimant did not invoke the Section 411(c)(4) presumption. *See* 30 U.S.C. §921(c)(4) (2018); *Muncy*, 25 BLR at 1-27; 20 C.F.R. §718.305(b)(1)(i).

Part 718

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (pneumoconiosis 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, 1-2 (1986) (en banc).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must demonstrate 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 ALJ weighed the opinions of Drs. Fino and Habre.[11] Decision and Order at 15-35. He found

[9] Although the ALJ did not specify his basis for finding 16.2 working days equates to 0.065 of a year, he appears to have credited the Miner with years or fractional years of employment by dividing the number of days worked by an estimated 250-day work year as a divisor, as 16.2 divided by 250 equates to 0.065. Decision and Order at 9.

[10] The ALJ erred by not addressing that the Miner earned $715.00 in 1978 with Dorothy Mae Coal Company. Director's Exhibit 7. Because including this work would not enable Claimant to establish fifteen years, this is a harmless error. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[11] The ALJ also considered Dr. Johnson's opinion and the treatment records. Dr. Johnson opined the Miner "carried a pulmonary diagnosis of coal workers' pneumoconiosis" and chronic obstructive pulmonary disease (COPD) that "should avail [Claimant] of any benefits due to [the Miner's] association with that diagnosis." Claimant's Exhibit 5. The ALJ permissibly found this statement conclusory. *Milburn*

Dr. Fino's opinion that the Miner did not have legal pneumoconiosis unpersuasive. *Id*. Moreover, he found Dr. Habre initially diagnosed legal pneumoconiosis, but then withdrew his opinion when asked to assume a shorter coal mine employment history. *Id*. Thus he found Claimant did not establish legal pneumoconiosis. *Id*.

Dr. Fino

We reject Employer's argument that the ALJ erred in weighing Dr. Fino's opinion.[12] Employer's Response Brief at 13-14 n.1. Dr. Fino diagnosed the Miner with a disabling respiratory impairment caused by chronic obstructive pulmonary disease (COPD) and emphysema. Director's Exhibit 12 at 13. He opined the impairment was due to cigarette smoking and unrelated to coal mine dust exposure. *Id*. at 17.

To support his opinion, Dr. Fino cited medical studies setting forth the percentage of coal miners who experience an average loss of lung function. Director's Exhibit 12 at 22-26. He noted eighty to ninety percent of miners suffer an average of "[two to three] cc loss of FEV1 per year" due to exposure to coal mine dust. *Id*. at 22-23. He opined this average loss of lung function is not clinically significant and thus would not manifest as an impairment. *Id*. Although the Miner's pulmonary function studies demonstrated "about [fifty-eight] cc of FEV1 [loss] per year," Dr. Fino explained this higher degree of lost FEV1 is associated with cigarette smoking and "medical literature shows that individuals who continue to smoke have FEV1 losses similar to [the Miner]." *Id*. Citing additional studies, Dr. Fino opined that, absent a positive chest x-ray, coal mine dust exposure is only associated with seven to ten percent "additional emphysema and no more than a [seven

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Colliery Co. v. Hicks, 138 F.3d 524, 533 (4th Cir. 1998); Decision and Order at 33-34. The ALJ also noted the Miner's treatment records include various diagnoses of COPD and other lung impairments, but he rationally found these records insufficient to establish legal pneumoconiosis because no doctor opined the diseases or impairments were significantly related to, or substantially aggravated by, coal mine dust exposure. *Hicks*, 138 F.3d at 533; 20 C.F.R. §718.201(a)(2), (b); Decision and Order at 31-32.

[12] Employer's argument in its response brief is in support of another method by which the ALJ may reach the same result and deny benefits. Employer's Response Brief at 13-14 n.1. Therefore, this argument is properly before the Board, and no cross-appeal is required. *See Malcomb v. Island Creek Coal Co.*, 15 F.3d 364, 370 (4th Cir. 1994); *Dalle Tezze v. Director, OWCP*, 814 F.2d 129, 133 (3d Cir. 1987); *Whiteman v. Boyle Land & Fuel Co.*, 15 BLR 1-11, 1-18 (1991) (en banc); *King v. Tenn. Consolidated Coal Co.*, 6 BLR 1-87, 1-92 (1983).

percent] additional reduction in FEV1." *Id*. at 24-26. He reiterated that a ten percent loss of FEV1 is not clinically significant. *Id*.

Contrary to Employer's argument, the ALJ permissibly found Dr. Fino's opinion unpersuasive because he relied on "statistical averaging, rather than on the Miner's specific condition, to discount the effects of the Miner's coal mine dust exposure." Decision and Order at 32; *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 312-13 (4th Cir. 2012) (substantial evidence supported ALJ's discrediting of medical opinion where doctor relied "heavily on general statistics rather than particularized facts about" the miner); *Island Creek Coal Co. v. Young*, 947 F.3d 399, 408-08 (6th Cir. 2020); *Antelope Coal Co./Rio Tinto Energy Am. v. Goodin*, 743 F.3d 1331, 1345-46 (10th Cir. 2014); *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726 (7th Cir. 2008); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985).

Dr. Habre

We next address the ALJ's consideration of Dr. Habre's opinion. In his initial report, Dr. Habre assumed a coal mine employment history of seventeen years and a cigarette smoking history of sixty pack-years. Director's Exhibit 11 at 5. He diagnosed the Miner with a disabling lung disease evidenced by severe resting hypoxemia on arterial blood gas testing and severe obstruction on pulmonary function testing.[13] *Id*. at 6-8. He concluded that both "coal mining as well as smoking [led] to [the Miner's] decline in spirometric parameter and caused his pulmonary impairment. Coal mine dust [played] a substantial and a contributing role in his clinical symptoms and all his clinical findings, including the presence of disabling lung disease." *Id*.

In a supplemental report, Dr. Habre noted that the district director asked him to clarify his legal pneumoconiosis opinion based on an assumed coal mine employment history of 6.87 years. Director's Exhibit 11 at 21-22. He reiterated that the Miner's pulmonary function and arterial blood gas testing indicate he had a "pulmonary impairment and [a] disabling lung disease." *Id*. He further concluded that, "based on the occupational history of 6.87 years of underground mining, the major determinant and etiology [of the] disabling lung disease remains smoking. The coal mine dust does have a material effect, but it is not the primary cause." *Id*. Although he excluded complicated pneumoconiosis, Dr. Habre opined the Miner's diagnosis is "the same as clinical and legal pneumoconiosis; however, coal mine dust [played] a small contributing factor in causing his symptoms as well as his severe decline in spirometric parameter, or the presence of abnormality in gas

[13] Dr. Habre also diagnosed the Miner with COPD and emphysema due to cigarette smoking. Director's Exhibit 11 at 6-8.

transfer." He finally concluded that, "based on this new information, coal mine dust did not have a strong substantial role in clinical disabling lung disease." *Id.*

In weighing Dr. Habre's opinion, the ALJ found the doctor initially diagnosed legal pneumoconiosis by attributing the Miner's disabling lung disease to both cigarette smoking and coal mine dust exposure. Decision and Order at 15-18, 31-35. The ALJ found, however, that Dr. Habre "change[d] his opinion" on the cause of the disabling lung disease after being asked to assume a shorter coal mine employment history. *Id.* at 34. The ALJ found the doctor now opined that cigarette smoking, and not coal mine dust exposure, was the primary cause of the disease. *Id.* Thus the ALJ found Dr. Habre no longer diagnosed legal pneumoconiosis and his opinion does not support Claimant's burden. *Id.*

The ALJ's analysis erroneously mischaracterizes Dr. Habre's opinion by finding he retracted his legal pneumoconiosis diagnosis. *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252-53 (4th Cir. 2016); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). The Act does not require that coal mine dust exposure be the sole cause of a miner's respiratory impairment. *Westmoreland Coal Co., Inc. v. Cochran*, 718 F.3d 319, 322-23 (4th Cir. 2013). A medical opinion that coal mine dust exposure substantially aggravated a lung impairment primarily caused by cigarette smoking constitutes a diagnosis of legal pneumoconiosis. *Cochran*, 718 F.3d at 322-23; *Looney*, 678 F.3d at 316-17; *Consolidation Coal Co. v. Williams*, 453 F.3d 609, 622 (4th Cir. 2006); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576-77 (6th Cir. 2000). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that a claimant can establish legal pneumoconiosis by showing coal dust exposure contributed "in part" to a miner's respiratory or pulmonary impairment. *See Cochran*, 718 F.3d at 322-23; *Looney*, 678 F.3d at 309, 314; *see also Arch on the Green v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014) (A miner can establish a lung impairment is significantly related to coal mine dust exposure "by showing that his disease was caused 'in part' by coal mine employment.").

Dr. Habre did not retract his legal pneumoconiosis diagnosis in his supplemental report. Rather, he opined that cigarette smoking was the primary cause of the disabling lung disease, but coal mine dust exposure still had a material effect and contributed in part to the disease. Director's Exhibit 11 at 21-22. Further, he reiterated that he still diagnosed legal pneumoconiosis. *Id.* Thus Dr. Habre's opinion constitutes a diagnosis of legal pneumoconiosis and the ALJ erred by finding it could not support Claimant's burden. *Addison*, 831 F.3d at 252-53; *Cochran*, 718 F.3d at 322-23; *Looney*, 678 F.3d at 309, 314; *Groves*, 761 F.3d at 598-99; 20 C.F.R. §718.201(a)(2), (b). Thus we vacate the ALJ's finding that Claimant failed to establish legal pneumoconiosis and the denial of benefits, and remand for further consideration of this issue. 20 C.F.R. §718.202(a); *see* Decision and Order at 31-32.

The ALJ must still address whether Dr. Habre's diagnosis of legal pneumoconiosis is reasoned, documented and persuasive. He should address the physician's explanations for his diagnoses, the documentation underlying his medical judgment, and the sophistication of, and bases for, his conclusion.[14] *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441. He must also explain his findings in accordance with the Administrative Procedure Act (APA)[15]. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

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 was 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 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); *see Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 37-38 (4th Cir. 1990).

Because we vacate the ALJ's finding that Claimant failed to establish legal pneumoconiosis, we also vacate his finding that Claimant failed to establish disability causation. 20 C.F.R. §718.204(c); Decision and Order at 32-34.

We hold, however, that if ALJ finds that Dr. Habre's opinion is reasoned and documented on the issue of legal pneumoconiosis, then the ALJ must award benefits.[16] Dr.

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[14] Dr. Habre diagnosed legal pneumoconiosis based on an assumed coal employment history of 6.87 years, which is shorter than the 8.32 years the ALJ credited the Miner. Director's Exhibit 11. Thus the ALJ cannot discredit Dr. Habre's opinion based on an inaccurate coal mine employment history as there would be no basis to conclude the doctor inflated the exposure history. *Creech v. Benefits Review Board*, 841 F.2d 706, 709 (6th Cir. 1988).

[15] The Administrative Procedure Act, 5 U.S.C. §500 et seq., provides that every adjudicatory decision must 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).

[16] The ALJ permissibly discredited Dr. Fino's opinion on whether the Miner's disability was due to legal pneumoconiosis because the doctor opined the Miner did not have the disease, rendering his opinion not credible on causation. *Hobet Mining, LLC v.*

Habre opined the Miner was totally disabled by a lung disease evidenced by severe resting hypoxemia on arterial blood gas testing and severe obstruction on pulmonary function testing. Director's Exhibit 11. As discussed above, he opined that the disabling lung disease is legal pneumoconiosis. *Id*. If credited, Dr. Habre's opinion establishes the Miner's disabling lung disease is legal pneumoconiosis, and therefore establishes legal pneumoconiosis was a substantially contributing cause of the Miner's total disability. *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668-69 (6th Cir. 2015); *Hawkinberry v. Monongalia County Coal Co.*, 25 BLR 1-249, 1-255-57 (2019); 20 C.F.R. §718.204(c). If the ALJ finds, however, that Dr. Habre's opinion is not reasoned and documented on the issue of legal pneumoconiosis, then he may reinstate the denial of benefits.[17] *Trent*, 11 BLR at 1-27l

Epling, 783 F.3d 498, 504-05 (4th Cir. 2015), *citing Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995); Decision and Order at 34.

[17] Although Dr. Johnson opined Claimant should be awarded benefits because the Miner had clinical pneumoconiosis, Claimant's Exhibit 5, the ALJ rationally found this opinion conclusory and insufficient to establish disability causation. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 33-34. The ALJ permissibly rejected Dr. Habre's opinion as insufficient to establish total disability due to clinical pneumoconiosis because he did not specifically say clinical pneumoconiosis was a cause of the total disability. *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 37-38 (4th Cir. 1990); *Arch on the Green v. Groves*, 761 F.3d 594, 599-601 (6th Cir. 2014); Decision and Order at 32-34; Director's Exhibit 11. Further, the issue of disability causation in this case is subsumed within any finding by the ALJ that Claimant's disabling lung disease was legal pneumoconiosis. *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668-69 (6th Cir. 2015); *Hawkinberry v. Monongalia County Coal Co.*, 25 BLR 1-249, 1-255-57 (2019); 20 C.F.R. §718.204(c). Thus we need not address Employer's contentions of error regarding the ALJ's finding that the Miner had clinical pneumoconiosis. *See* 20 C.F.R. §§718.201(a), 718.204(c); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 34.

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge