

U.S. Department of Labor

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



BRB No. 22-0354 BLA

BOBBY G. GRIM)	
)	
Claimant-Respondent)	
)	
v.)	
)	
ABRAXAS, INCORPORATED)	
)	
and)	
)	
AMERICAN BUSINESS & MERCANTILE)	DATE ISSUED: 10/05/2023
INSURANCE)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits on Remand of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

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

Before: GRESH, Chief Administrative Appeals Judge, BOGGS and ROLFE, Administrative Appeals Judges.

GRESH, Chief Administrative Appeals Judge, and ROLFE, Administrative Appeals Judge:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) John P. Sellers, III's Decision and Order Awarding Benefits on Remand (2018-BLA-05036) rendered on a subsequent claim filed on June 21, 2016,¹ pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Benefits Review Board for the second time.²

In his initial Decision and Order Denying Benefits, the ALJ found Claimant established 14.19 years of coal mine employment and a totally disabling respiratory or pulmonary impairment. Although Claimant demonstrated a change in an applicable condition of entitlement at 20 C.F.R. §725.309,³ he 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), because he proved less than fifteen years of coal mine employment.⁴ Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a) and denied benefits.

¹ This is Claimant's seventh claim for benefits. The district director denied Claimant's prior claim because he did not establish a totally disabling respiratory or pulmonary impairment. Director's Exhibit 6 at 4.

² We incorporate the procedural history of this case as set forth in *Grim v. Abraxas, Inc.*, BRB No. 19-0534 BLA (Feb. 17, 2021) (unpub.).

³ When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the district director denied the prior claim for failure to establish total disability, Claimant was required to submit new evidence establishing total disability to warrant a review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3; Director's Exhibit 6.

⁴ 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) (2018); *see* 20 C.F.R. §718.305.

In consideration of Claimant's appeal, the Board affirmed the ALJ's findings that Claimant established total disability and a change in an applicable condition of entitlement. *Grim v. Abraxas, Inc.*, BRB No. 19-0534 BLA, slip op. at 9 (Feb. 17, 2021) (unpub.). However, the Board vacated the ALJ's finding that Claimant did not establish pneumoconiosis. *Id.* at 11-16. Specifically, the Board held the ALJ erred in weighing the x-ray evidence on clinical pneumoconiosis and failed to adequately resolve the conflict in the evidence regarding whether Claimant has legal pneumoconiosis. *Id.* at 11-16. Having vacated the ALJ's finding on pneumoconiosis, the Board also vacated the ALJ's determination that Claimant failed to establish disability causation at 20 C.F.R. §718.204(c). *Id.* at 16-17. Thus, the Board vacated the denial of benefits and remanded the case, instructing the ALJ to weigh all of the evidence from the prior and current claims together to determine whether Claimant established total disability due to either clinical or legal pneumoconiosis.

On remand, the ALJ again found the evidence failed to establish the existence of clinical pneumoconiosis,⁵ but he concluded Claimant is totally disabled due to legal pneumoconiosis and awarded benefits. 20 C.F.R. §§718.202(a)(4), 718.204(c).

On appeal, Employer argues the Board erred in directing the ALJ to consider the prior claim evidence on remand in deciding Claimant's entitlement to benefits. It also challenges the ALJ's findings on legal pneumoconiosis and disability causation. Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs, declined to file a 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.⁶ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

⁵ "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).

⁶ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 9.

Board's Remand Instruction

Employer contends the Board previously erred in remanding the case for the ALJ to weigh evidence from Claimant's prior claims relevant to pneumoconiosis because consideration of such evidence is contrary to the evidentiary limitations and principles of res judicata.⁷ Employer's Brief at 25-31. We disagree. Issue preclusion, res judicata, and collateral estoppel cannot have any bearing here, as the prior claim evidence regarding the existence of pneumoconiosis was not necessary to the prior determinations that Claimant had not established entitlement to benefits. See *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-137 (1999) (en banc) (quoting *Ramsey v. INS*, 14 F.3d 206 (4th Cir. 1994)) (The doctrine of collateral estoppel forecloses "the relitigation of issues of fact or law that are identical to issues which have been actually *determined and necessarily decided* in prior litigation in which the party against whom [issue preclusion] is asserted had a full and fair opportunity to litigate.") (emphasis added); Director's Exhibit 6 at 4. Further, contrary to Employer's assertion, evidentiary limitations do not preclude consideration of the prior claim evidence as the regulation applying to subsequent claims specifically states that "[a]ny evidence submitted in connection with any prior claim must be made a part of the record in the subsequent claim, provided that it was not excluded in the adjudication of the prior claim." 20 C.F.R. §725.309(c)(2); see *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004).

Additionally, the principles of res judicata and finality do not preclude consideration of the prior claim evidence as Employer alleges.⁸ Employer's Brief at 28-31; see *Buck*

⁷ Employer also resurrects its arguments that the ALJ's credibility findings in his prior decision denying benefits were rational and supported by substantial evidence. Employer's Brief at 19-25; see *Grim*, BRB No. 19-0534 BLA. Because Employer has not shown the Board's decision vacating the ALJ's findings on pneumoconiosis and disability causation were clearly erroneous or set forth any other valid exception to the law of the case doctrine, we decline to disturb the Board's prior disposition. See *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-150-51 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988 (1984).

⁸ Employer's reliance upon the Supreme Court's decision in *Pittston Coal Group v. Sebben*, 488 U.S. 105, 122 (1988) is inapposite, as the Court did not address the amended version of 20 C.F.R. §725.309. Employer's Brief at 28-29. Rather, the Court invalidated the interim regulations that the Department of Labor (DOL) developed to implement the Black Lung Benefits Reform Act of 1977 and determined that the principles of res judicata barred it from requiring the DOL to readjudicate claims that had been finally denied under the invalid regulations. *Sebben*, 488 U.S. at 121.

Creek Coal Co. v. Sexton, 706 F.3d 756, 759 (6th Cir. 2013) (“res judicata is not violated by the filing of a subsequent claim”); *Lisa Lee Mines v. Director, OWCP [Rutter]*, 86 F.3d 1358, 1360-62 (4th Cir. 1996) (en banc) (“A new black lung claim is not barred, as a matter of ordinary *res judicata*, by an earlier denial, *because the claims are not the same.*”) (emphasis added). While the denial of a miner’s prior claim must be accepted as both final and correct in a subsequent claim, ALJs are not bound by “findings made in connection with [] prior claim[s]” when considering subsequent claims after a claimant demonstrates a change in an applicable condition of entitlement. *See* 20 C.F.R. §725.309(c)(5); *see also Arch of Ky., Inc. v. Director, OWCP [Hatfield]*, 556 F.3d 472, 483 (6th Cir. 2009); *Rutter*, 86 F.3d at 1360-62. However, a “claimant is required to submit newly developed evidence to ensure that he is not merely relitigating the prior claim.” *Sexton*, 706 F.3d at 759-60. Thus, consideration of the prior claim evidence as to pneumoconiosis is not a “relitigation” of issues that have already been decided or a “collateral attack” on a prior judgement, as Employer asserts. Employer’s Brief at 28-29; *see* 20 C.F.R. §725.309; *see also Sexton*, 706 F.3d at 759-60.

Because the district director denied Claimant’s prior claim for failure to establish total disability, Claimant was required to submit new evidence establishing total disability to warrant a review of his subsequent claim on the merits.⁹ *See White*, 23 BLR at 1-3; Director’s Exhibit 6 at 4. As Claimant submitted new evidence establishing his total respiratory disability, the ALJ properly found he established a change in an applicable condition of entitlement and was thereby required to consider all relevant evidence,

⁹ There is no merit to Employer’s contention that Claimant must establish a material change in his physical condition to satisfy the requirements of 20 C.F.R. §725.309. Employer’s Brief at 24-25. Employer’s reliance on *Sahara Coal Co. v. Director, OWCP [McNew]*, 946 F.2d 554 (7th Cir. 1991), is also misplaced because that case involved a prior version of 20 C.F.R. §725.309. In *Buck Creek Coal Co. v. Sexton*, 706 F.3d 756, 758-60 (6th Cir. 2013), the Sixth Circuit addressed the revised regulation and explained that in order to obtain review of the merits of a subsequent claim, a claimant bears the burden of first establishing through new evidence that one of the applicable elements of entitlement that defeated entitlement in the prior claim has changed since that denial. *See* 20 C.F.R. §725.309(c); *see also White*, 23 BLR at 1-3. Here, the Board previously affirmed the ALJ’s determination that Claimant established total disability based on the new evidence and thus a change in an applicable condition of entitlement. *See Grim*, BRB No. 19-0534 BLA, slip op. at 9.

including evidence pertaining to pneumoconiosis from the prior claims. See 20 C.F.R. §725.309(c)(2). We therefore reject Employer's arguments.¹⁰

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).

Legal Pneumoconiosis

To establish legal pneumoconiosis,¹¹ 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(b). The United States Court of Appeals for the Sixth Circuit has held that 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.” *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014); see also *Island Creek Coal Co. v. Young*, 947 F.3d 399, 407 (6th

¹⁰ Employer asserts the ALJ failed to adequately explain why he reached a different conclusion on remand on the issue of legal pneumoconiosis. Employer's Brief at 23-24, 30-31, 35-36. However, the effect of the Board's vacating the ALJ's prior decision was to return the parties to the status quo ante, with all of the rights, benefits, or obligations they had prior to the issuance of that decision. See *Dale v. Wilder Coal Co.*, 8 BLR 1-119, 1-120 (1985); *Grim*, BRB No. 19-0534 BLA, slip op. at 15-17. For the reasons set forth in this decision, we conclude the ALJ's credibility findings on the issue of legal pneumoconiosis are adequately explained.

¹¹ “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).

Cir. 2020) (“[I]n [*Groves*] we defined ‘in part’ to mean ‘more than a *de minimis* contribution’ and instead ‘a contributing cause of some discernible consequence.’”).

The ALJ credited Dr. Ajarapu’s opinion¹² that Claimant has legal pneumoconiosis over the contrary opinions of Drs. Fino¹³ and Rosenberg.¹⁴ Thus, he found Claimant established legal pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Initially, we reject Employer’s argument that the ALJ improperly shifted the burden of proof. Employer’s Brief at 31-33. The ALJ properly noted Claimant must demonstrate he has a chronic lung disease or impairment “significantly related to, or substantially aggravated by, exposure to coal dust.” Decision and Order on Remand at 6 (citing 20 C.F.R. §718.201(b)). Moreover, in rejecting the opinions of Employer’s experts that smoking was the sole cause of Claimant’s respiratory impairment, the ALJ did not require Employer to establish that “cigarette smoke continues to cause chronic bronchitis after exposure ceases, whereas coal dust does not.” Employer’s Brief at 32-33. Rather the ALJ explained Claimant was both heavily smoking and exposed to coal mine dust at the time that his respiratory symptoms arose and, therefore, he had no reason to believe either smoking or coal dust exposure was the sole cause of Claimant’s chronic bronchitis. Decision and Order on Remand at 28. As discussed below, the ALJ provided adequate reasons for the weight he accorded to the conflicting evidence and in finding Claimant established legal pneumoconiosis. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order on Remand at 19-38.

¹² Dr. Ajarapu conducted the DOL’s complete pulmonary evaluation of Claimant on September 12, 2016, and diagnosed chronic bronchitis due to smoking and coal mine dust exposure. Director’s Exhibit 18 at 2. She further opined the pulmonary function study results she obtained showed a severe pulmonary impairment with a “multifactorial” cause, including coronary artery disease, smoking, and coal mine dust exposure. *Id.* at 2, 14-17.

¹³ Dr. Fino opined there is “absolutely no objective evidence” of any respiratory or pulmonary disability and insufficient evidence to justify a diagnosis of legal pneumoconiosis. Director’s Exhibit 27 at 9-10; Employer’s Exhibits 6, 13, 17.

¹⁴ Dr. Rosenberg opined Claimant’s moderate restrictive impairment was due to obesity and his sternotomy but not coal mine dust exposure. Employer’s Exhibits 5 at 3-5, 7 at 2, 14 at 10-11.

Dr. Ajjarapu

Dr. Ajjarapu diagnosed chronic bronchitis based on Claimant's cough with sputum production. Director's Exhibit 18 at 2. In attributing the chronic bronchitis to Claimant's histories of coal mine dust exposure and smoking, she explained both "cause airway inflammation leading to bronchospasm and cause excessive airway secretions and bronchitis symptoms." *Id.* Contrary to Employer's argument, the ALJ did not substitute his opinion for Dr. Ajjarapu's opinion or improperly fill gaps in Dr. Ajjarapu's reasoning as to the etiology of Claimant's chronic bronchitis. Employer's Brief at 26, 32. Rather, the ALJ found Dr. Ajjarapu's opinion supported by objective testing and sufficiently explained. *Moseley v. Peabody Coal Co.*, 769 F.2d 357, 360 (6th Cir. 1985) ("Determinations of whether a physician's report is sufficiently documented and reasoned is a credibility matter left to the trier of fact."); Decision and Order on Remand at 30. He also observed Dr. Ajjarapu's conclusion that both coal mine dust exposure and smoking contributed to Claimant's chronic bronchitis is consistent with the DOL's reliance, in the preamble to the revised 2001 regulations, on credible studies showing the risks of smoking and coal mine dust exposure are additive. *See* 65 Fed. Reg. 79,920, 79,939-41 (Dec. 20, 2000); *see Groves*, 761 F.3d at 601; *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); Decision and Order on Remand at 20-21, 28-29.

Additionally, Dr. Ajjarapu opined Claimant's "[s]pirometry testing . . . show[ed] [a] severe pulmonary impairment."¹⁵ Director's Exhibit 18 at 2, 14-17. She explained the etiology of Claimant's disabling impairment is "multifactorial, which includes coronary artery disease, tobacco smoke and his work in the mines" and that "[h]is work in the mines ha[d] [a] material adverse effect on his lung function." *Id.* at 2.

We see no error in the ALJ's findings that Dr. Ajjarapu's opinion was well-documented because it was based on Claimant's mining and smoking histories, symptoms, and diagnostic testing; that it was adequately reasoned; and that Dr. Ajjarapu's attribution of Claimant's severe pulmonary impairment, at least in part, to the inhalation of coal mine dust exposure was sufficient to establish an independent form of legal pneumoconiosis. *See Groves*, 761 F.3d at 598-99; *see also Tenn. Consol. Coal Co. v.*

¹⁵ Employer resurrects its argument that the September 12, 2016 pulmonary function study is invalid, which we rejected in the prior appeal. *See Grim*, BRB No. 19-0534 BLA, slip op. at 7-9, 16 n.42; Employer's Brief at 27, 34, 36. Because Employer has not shown the Board's decision was clearly erroneous or set forth any other valid exception to the law of the case doctrine, we decline to reconsider our prior holding on this issue. *See Brinkley*, 14 BLR at 1-150-51; *Bridges*, 6 BLR 1-988.

Crisp, 866 F.2d 179, 185 (6th Cir. 1989); *Moseley*, 769 F.2d at 360; *Rowe*, 710 F.2d at 255; Decision and Order on Remand at 20, 29-30, 37-38.

Drs. Fino and Rosenberg

We also reject Employer's contention that the ALJ failed to adequately explain why he rejected the opinions of Drs. Fino and Rosenberg that Claimant does not have legal pneumoconiosis. Employer's Brief at 32-34.

The ALJ accurately noted Drs. Fino and Rosenberg¹⁶ recorded Claimant's symptoms of shortness of breath, cough, and sputum production but failed to explain the cause of Claimant's cough and sputum production. Decision and Order on Remand at 21; Director's Exhibit 27 at 4, 9-10; Employer's Exhibits 5 at 3-5. Further, the ALJ noted both Drs. Fino and Rosenberg reviewed Dr. Ajjarapu's opinion but neither addressed her diagnosis of chronic bronchitis. Decision and Order on Remand at 21. The ALJ acted within his discretion in finding both opinions were unpersuasive to the extent neither explained the cause of Claimant's symptoms nor refuted Dr. Ajjarapu's diagnosis of chronic bronchitis due in part to coal dust exposure. *See Rowe*, 710 F.2d at 255; *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Id.*

Additionally, the ALJ correctly noted Dr. Fino opined Claimant did not have a respiratory impairment based in part on his belief that the qualifying September 12, 2016 and January 17, 2018 pulmonary function studies were invalid.¹⁷ Decision and Order on Remand at 30; Director's Exhibit 27 at 8; Employer's Exhibit 17 at 2. Thus, the ALJ permissibly rejected Dr. Fino's opinion as inconsistent with the finding from his initial Decision and Order, which the Board affirmed, that both pulmonary function studies were

¹⁶ The ALJ specifically noted that while Dr. Rosenberg attributed Claimant's shortness of breath to a restriction caused by his sternotomy and obesity, he "did not suggest that these two conditions would also account for the Claimant's cough and sputum production." Decision and Order on Remand at 21.

¹⁷ Employer contends the ALJ failed to explain why he discredited Dr. Fino's statement that assuming the April 20, 2017 and January 17, 2018 pulmonary function studies were valid, the "abnormalities were not consistent with a condition related to coal dust." Employer's Brief at 34 n.8; Employer's Exhibit 17 at 2. Employer, however, does not explain the relevance of Dr. Fino's statement to the ALJ's bases for finding that Claimant established two independent forms of legal pneumoconiosis - Claimant's chronic bronchitis and his severe pulmonary impairment, as evidenced by the results of the September 12, 2016 pulmonary function study. Decision and Order on Remand at 37.

valid and showed Claimant has a disabling respiratory impairment. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); *Rowe*, 710 F.2d at 255; *Grim*, BRB No. 19-0534 BLA, slip op. at 7-9; Decision and Order on Remand at 30, 37; August 29, 2019 Decision and Order Denying Benefits at 24-28.

Dr. Rosenberg opined Claimant has a restrictive impairment but excluded a diagnosis of legal pneumoconiosis because Claimant lacked micronodularity or any parenchymal changes consistent with coal mine dust exposure or coal workers' pneumoconiosis. Employer's Exhibit 5 at 4-5. The ALJ permissibly discredited Dr. Rosenberg's opinion as inconsistent with the regulations that provide a miner may have legal pneumoconiosis in the absence of radiographic evidence of clinical pneumoconiosis. *See* 20 C.F.R. §718.202(a)(4), (b); 65 Fed. Reg. at 79,945; *Adams*, 694 F.3d at 801-02; Decision and Order on Remand at 30-31, 37.

Prior Claim Evidence

The ALJ also considered the opinions of Drs. Sutherland, Anderson, Myers, Penman, Musgrave, Broudy, Fritzhand, Dahhan, Wayne, Branscomb, Lane, Guzman, Ammisetty, Rasmussen, and Alam from Claimant's prior claims.¹⁸ Decision and Order on Remand at 19-38. He found they provided evidence to support a diagnosis of chronic bronchitis based on Claimant's daily cough and sputum production. *Id.* at 21-29. Further, he determined that Claimant's chronic bronchitis was due to smoking and coal dust exposure based on the medical reports he found to be the most credible. *Id.* at 28-29.

Contrary to Employer's contention, the ALJ did not "diagnose" legal pneumoconiosis based on subjective symptoms reported in the prior claims. Employer's Brief at 31. Rather, in accordance with the Board's remand instructions, the ALJ resolved the conflict in the evidence and found a preponderance of the credible evidence showed that Claimant suffered from chronic bronchitis due to smoking and coal mine dust exposure, taking into consideration Claimant's work and smoking histories and the DOL's position that the risks of smoking and coal mine dust exposure are additive. *See Grim*, BRB No. 19-0534 BLA, slip op. at 15-16; Decision and Order on Remand at 21-29; *see also Banks*, 690 F.3d at 489 (it is the job of the ALJ to weigh the evidence, draw inferences, and determine credibility); *Napier*, 301 F.3d at 713-14. While Employer generally asserts the ALJ failed to resolve the conflicting evidence, it provides no specific examples of error

¹⁸ We incorporate the summary of the medical opinion evidence from the prior claims as set forth in our previous decision and the ALJ's Decision and Order on Remand. *Grim*, BRB No. 19-0534 BLA, slip op. at 12-14; Decision and Order on Remand at 21-28, 32-37.

or explanations to support its argument. Employer's Brief at 22, 27, 31. As Employer does not provide any other challenges to the ALJ's credibility findings, we affirm the ALJ's determination that the prior claim evidence supports a finding that Claimant has legal pneumoconiosis. See 20 C.F.R. §802.211(b); *Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); Decision and Order on Remand at 28-29.

Weighing the Medical Opinion Evidence as a Whole

Considering the conflicting medical opinions, the ALJ permissibly determined Dr. Ajjarapu's opinion was sufficient to establish two independent forms of legal pneumoconiosis, it was better reasoned than Drs. Fino's and Rosenberg's contrary opinions, and that the prior claim evidence supported Dr. Ajjarapu's diagnosis of chronic bronchitis due in part to coal dust exposure.¹⁹ See *Banks*, 690 F.3d at 489; *Crisp*, 866 F.2d at 185; Decision and Order on Remand at 20-21, 28-31, 37-38. Employer's arguments on legal pneumoconiosis amount to a request to reweigh the evidence, which we are not empowered to do. See *Anderson*, 12 BLR at 1-113. Because the ALJ sufficiently explained his credibility determinations and his findings are supported by substantial evidence, we affirm his conclusion that Claimant established he has legal pneumoconiosis. See 20 C.F.R. §§718.201(a)(2), 718.202(a)(4); see also *Martin*, 400 F.3d at 305.

Disability Causation

To establish disability causation, Claimant must prove that 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 if it "[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); *Gross v. Dominion Coal Co.*, 23 BLR 1-8, 1-17 (2003).

We reject Employer's argument that Dr. Ajjarapu's opinion cannot establish disability causation. Employer's Brief at 35-36. Dr. Ajjarapu opined Claimant's totally disabling impairment is due, in part, to "his work in the mines" and indicated coal mine

¹⁹ Because the ALJ gave permissible reasons for rejecting Drs. Fino's and Rosenberg's opinions that Claimant does not have legal pneumoconiosis, we need not address Employer's additional challenges to the ALJ's evaluation of their opinions. See *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Decision and Order on Remand at 20-21, 28-31, 37-38; Employer's Brief at 32-34.

dust exposure had a “material adverse effect on his lung function.” Director’s Exhibit 18 at 2. As discussed above, the ALJ permissibly relied on Dr. Ajarapu’s opinion that Claimant’s “multifactorial” disability constituted legal pneumoconiosis. Decision and Order on Remand at 37-38. We therefore affirm the ALJ’s determination that her opinion is also sufficient to establish that Claimant’s legal pneumoconiosis is a substantially contributing cause of his total disability. See *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, 1-255-56 (2019); Decision and Order on Remand at 38.

Additionally, the ALJ permissibly discounted the opinions of Drs. Rosenberg and Fino on the cause of Claimant’s pulmonary disability because they did not diagnose legal pneumoconiosis, contrary to the ALJ’s finding that legal pneumoconiosis was established. See *Skukan v. Consolidated Coal Co.*, 993 F.2d 1228 (6th Cir. 1993), *vacated sub nom., Consolidation Coal Co. v. Skukan*, 512 U.S. 1231 (1994), *rev’d on other grounds, Skukan v. Consolidated Coal Co.*, 46 F.3d 15 (6th Cir. 1995); Decision and Order on Remand at 38-40. As substantial evidence supports the ALJ’s finding that Claimant is totally disabled due to legal pneumoconiosis, we affirm it.²⁰ 20 C.F.R. §718.204(c).

²⁰ The ALJ gave diminished weight to the evidence from the prior claims on disability causation because it predated the evidence of Claimant’s totally disabling impairment. Decision and Order on Remand at 40.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

I concur in result only.

JUDITH S. BOGGS
Administrative Appeals Judge