U.S. Department of Labor

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

BRB No. 19-0266 BLA

DANIEL LOONEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	**NOT-PUBLISHED**
	)	
ISLAND CREEK COAL COMPANY	)	
	)	
Employer-Petitioner	)	DATE ISSUED: 09/16/2025
	)	
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 of Paul R. Almanza, Associate Chief Administrative Law Judge, United States Department of Labor.

Jeffrey R. Soukup (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

Cynthia Liao (Jonathan Snare, Deputy Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Acting Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE, Administrative Appeals Judge, and ULMER, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals Associate Chief Administrative Law Judge (ALJ) Paul R. Almanza's Decision and Order Awarding Benefits (2014-BLA-05109), rendered on a claim filed on February 12, 2013, 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 a second time.

The ALJ found Claimant established 10.66 years of coal mine employment and thus could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[1] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established clinical and legal pneumoconiosis,[2] and a totally disabling respiratory or pulmonary impairment due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.203(b), 718.204(b)(2), (c). Thus, the ALJ awarded benefits.

Employer appealed to the Board, challenging, among other things,[3] the ALJ's finding that Claimant established clinical and legal pneumoconiosis. The Board affirmed the ALJ's finding Claimant established clinical pneumoconiosis and total disability causation, and therefore affirmed the award of benefits. *Looney v. Island Creek Coal Co.*, BRB No. 19-0266 BLA, slip op. at 4-6, 12, 14 (June 25, 2020) (unpub.).

---

[1] 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.

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

[3] Employer also argued the ALJ lacked the authority to preside over the case because he was not appointed consistent with the Appointments Clause of the Constitution, Art. II §2, cl. 2, and erred in calculating the length of Claimant's coal mine employment. The Board rejected both arguments. *Looney v. Island Creek Coal Co.*, BRB No. 19-0266 BLA, slip op. at 3-4, 6-8 (June 25, 2020) (unpub.).

Employer appealed to the United States Court of Appeals for the Fourth Circuit, arguing the Board erred in affirming the ALJ's clinical pneumoconiosis and total disability causation determinations. The Fourth Circuit agreed with Employer's arguments and remanded the case for the Board to reconsider the ALJ's findings on clinical pneumoconiosis and disability causation. *Island Creek Coal Co. v. Looney*, No. 20-1888, 2024 WL 1756168, at *14-19 (4th Cir. Apr. 24, 2024) (unpub).

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[4] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

Entitlement to Benefits – 20 C.F.R. Part 718

To be entitled to benefits under the Act without the benefit of a statutory presumption, 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 element 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).

Clinical Pneumoconiosis

The ALJ considered International Labour Organization (ILO) x-ray readings, narrative x-ray readings, biopsy evidence, computed tomography (CT) scan readings, and medical opinion evidence. Decision and Order at 25-30. He found the narrative x-ray and CT scan readings do not support a finding of pneumoconiosis, but that the ILO-classified x-ray, biopsy, and medical opinion evidence does. *Id*. Ultimately, he determined the evidence overall establishes clinical pneumoconiosis, and stated he was "specifically persuaded" by the biopsy evidence "coupled with the ILO x-ray interpretations." *Id.* at 30.

On appeal to the Board, Employer argued the ALJ erred in finding the x-ray and medical opinion evidence supports a finding of clinical pneumoconiosis. Employer's Brief at 6-15. The Board affirmed, as unchallenged, the ALJ's finding the biopsy evidence supports a finding of clinical pneumoconiosis, and his discrediting of the negative x-ray

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 23-24.

readings. *Looney*, BRB No. 19-0266 BLA, slip op. at 5-6. The Board further affirmed, as permissible, the ALJ's discrediting of Dr. Jarboe's and Dr. Spagnolo's opinions that Claimant does not have pneumoconiosis. *Id.* at 6. Finally, because the Board affirmed the ALJ's finding the biopsy evidence establishes clinical pneumoconiosis, it held any error the ALJ may have made in crediting the positive x-ray readings and opinions of Drs. Habre and Akhrass is harmless. *Id.*

The Fourth Circuit left undisturbed the Board's holding that the ALJ permissibly found the biopsy evidence supports a finding of clinical pneumoconiosis. *Looney*, No. 20-1888, 2024 WL 1756168, at 12-16, 15 n.1. However, the Fourth Circuit agreed with Employer's argument that the ALJ's clinical pneumoconiosis analysis was based on both the x-ray and biopsy evidence, and that an error in weighing the x-ray evidence would thus not be harmless.[5] *Id.* at 12-16. Therefore the Fourth Circuit remanded the case for the Board to address Employer's argument that the ALJ erred in finding the x-ray evidence supports a finding of clinical pneumoconiosis. *Id.*

The ALJ considered eleven interpretations of four x-rays dated November 26, 2012, March 11, 2013, May 9, 2013, and November 21, 2013. Decision and Order at 9-10, 25-26. He noted all the interpreting physicians are dually qualified as Board-certified radiologists and B readers. *Id.* at 9-10. Dr. Miller read the November 26, 2012 x-ray as positive for pneumoconiosis, while Dr. Meyer read the x-ray as negative. Director's Exhibit 17; Employer's Exhibit 6. Drs. DePonte and Miller read the March 11, 2013 x-ray as positive , while Dr. Shipley read it as negative. Director's Exhibit 14; Claimant's Exhibit 3; Employer's Exhibit 3. Drs. Alexander and DePonte read the May 9, 2013 x-ray as positive, while Drs. Tarver and Seaman read it as negative. Director's Exhibit 17; Claimant's Exhibit 1; Employer's Exhibits 7, 8. Dr. Alexander read the November 21, 2013 x-ray as positive,[6] while Dr. Halbert read it as negative. Claimant's Exhibit 2; Employer's Exhibit 2 at 20.

The ALJ found Drs. Miller, DePonte, and Alexander provided "relatively uniform" readings of the November 26, 2012, March 11, 2013, and May 9, 2013 x-rays. Decision

[5] However, the Fourth Circuit affirmed the Board's holding that any error in weighing the medical opinions of Drs. Habre and Akhrass is harmless because the ALJ's conclusion was based on the x-ray and biopsy evidence. *Island Creek Coal Co. v. Looney*, No. 20-1888, 2024 WL 1756168, at *15 n.1 (4th Cir. Apr. 24, 2024) (unpub).

[6] Dr. Alexander read the November 21, 2013 x-ray as positive for both simple clinical pneumoconiosis and Category A large opacities of complicated pneumoconiosis. Claimant's Exhibit 2.

and Order at 25. However, he gave little weight to Dr. Alexander's positive reading of the November 21, 2013 x-ray based on Dr. Spagnolo's opinion that the large opacities Dr. Alexander identified were the result of a flare up of Claimant's mycobacterial avium complex (MAC) infection, not pneumoconiosis. *Id.* at 25-26. He discredited the negative readings of Drs. Meyer, Shipley, Tarver, Seaman, and Halbert because they reached "differing conclusions" in each of their readings of the November 26, 2012, March 11, 2013, May 9, 2013, and November 21, 2013 x-rays. *Id.* at 26. Thus, the ALJ determined the positive x-ray readings of Drs. Miller, DePonte, and Alexander outweigh the negative x-ray readings of Drs. Meyer, Shipley, Tarver, Seaman, and Halbert, and that the weight of the x-ray evidence supports a finding of clinical pneumoconiosis. *Id.*

Employer argues the ALJ's finding that the positive x-ray readings are consistent is not supported by substantial evidence.[7] Employer's Brief at 7-9.

Initially, we affirm, as unchallenged, the ALJ's discrediting of Dr. Alexander's reading of the November 21, 2013 x-ray. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 25-26. Because Dr. Halbert is the only other physician who interpreted the x-ray and he opined it is negative, we will address Employer's argument with respect to the November 26, 2012, March 11, 2013, and May 9, 2013 x-rays.

Dr. Miller noted opacities in all lung zones on the November 26, 2012 and March 11, 2013 x-ray, while Drs. DePonte and Alexander noted opacities in all lung zones except the right upper zone on the March 11, 2013 and May 9, 2013 x-rays. Director's Exhibits 14, 17 at 3, 9; Claimant's Exhibits 1, 3. All five x-ray readings identified 1/1 or 1/0 levels of profusion, primarily "p" or "t" shaped opacities, definite emphysema, and post-surgical changes in the right upper lung. *Id.*

The ALJ observed the interpretations of Drs. Miller, DePonte, and Alexander were "relatively uniform" and "routinely" found emphysema, bullae, and low-level profusion. Decision and Order at 25. He also acknowledged the interpretations have some differences,

[7] Employer asserts there is no consistency related to "cardiac changes, honeycombing, diaphragmatic borders, [and] lymph-node changes." Employer's Brief at 8. But Employer has not explained how the alleged inconsistency in the physicians' notations of abnormalities outside the lungs render their diagnoses of clinical pneumoconiosis unreliable. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference."). Additionally, the only diagnosis of honeycomb lung was on Dr. Alexander's reading of the November 21, 2013 x-ray, which the ALJ discredited. Claimant's Exhibit 2.

including that Dr. DePonte noted heart abnormalities while Drs. Miller and Alexander did not,[8] but found that the readings are overall "uniform." *Id.* at 25. Additionally, he noted the record supports a finding of emphysema, consistent with the physicians' interpretations. *Id.* at 26. Thus, contrary to Employer's arguments, the ALJ acknowledged the positive x-ray readings are not identical but permissibly found they are persuasive regarding the presence of pneumoconiosis because they consistently identified opacities of the same size and shape, as well as emphysema. *See 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 25-26.

Thus, as it is supported by substantial evidence, we affirm the ALJ's finding that the x-ray evidence supports a finding of clinical pneumoconiosis. 20 C.F.R. §718.202(a)(1). Further, we affirm his finding that the evidence, when weighed together, establishes clinical pneumoconiosis based on the biopsy and x-ray evidence. 20 C.F.R. §718.202(a)(1), (2).

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); *Robinson v. Pickands Mather & Co*., 914 F.2d 35, 38 (4th Cir. 1990). Pneumoconiosis is a substantially contributing cause of a miner's total disability 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); *Gross v. Dominion Coal Co.*, 23 BLR 1-8, 1-17 (2003).

The ALJ considered the medical opinions of Drs. Akhrass, Jarboe, and Spagnolo. Decision and Order at 31-35. Dr. Akhrass opined Claimant's clinical pneumoconiosis predisposed him to contracting a MAC infection and the MAC infection is the cause of his total disability. Director's Exhibit 17; Claimant's Exhibit 5. Drs. Jarboe and Spagnolo

[8] Only Dr. DePonte noted cor pulmonale on the March 11, 2013 x-ray, and cor pulmonale, marked distortion of the intrathoracic organs and enlargement of hilar or mediastinal lymph nodes on the May 9, 2013 x-ray. Director's Exhibit 14; Claimant's Exhibit 1. Only Dr. Alexander noted atherosclerotic aorta on the May 9, 2013 x-ray. Director's Exhibit 17 at 9. Drs. DePonte and Alexander marked "ill defined diaphragm" on the May 9, 2013 x-ray. Director's Exhibit 17 at 9; Claimant's Exhibit 1. Additionally, Drs. DePonte and Alexander diagnosed bullae while Dr. Miller did not. Director's Exhibits 14 at 24, 17 at 3, 9; Claimant's Exhibits 1-3.

opined Claimant does not have clinical pneumoconiosis but is totally disabled by his MAC infection, which is unrelated to pneumoconiosis. Employer's Exhibits 2, 4, 13-14, 16. The ALJ noted all the medical opinions agree Claimant is totally disabled due to his MAC infection, and having found the MAC infection constitutes legal pneumoconiosis based on Claimant's increased susceptibility due to coal mine dust exposure, the ALJ found Claimant established disability causation. Decision and Order at 35.

The Board held substantial evidence supports the ALJ's finding that Dr. Akhrass's opinion is better reasoned than those of Drs. Jarboe and Spagnolo on the relationship between Claimant's clinical pneumoconiosis, his MAC infection, and his respiratory disability, but held his opinion "does not require designating [C]laimant's MAC infection as constituting legal pneumoconiosis because it satisfies the regulatory requirements for disability causation based on [C]laimant's clinical pneumoconiosis." *Looney*, BRB No. 19-0266 BLA, slip op. at 9-12. In addition, the Board affirmed the ALJ's discrediting of the contrary opinions of Drs. Jarboe and Spagnolo, and his finding that Claimant established disability causation. *Id.* at 13-14.

The Fourth Circuit affirmed the Board's holding that the ALJ permissibly discredited the opinions of Drs. Jarboe and Spagnolo. *Looney*, No. 20-1888, 2024 WL 1756168, at *16 n.2. It also affirmed the ALJ's finding Dr. Akhrass's opinion is "well-reasoned." *Id.* at 16. However, it found the Board "inappropriately provided reasons in the record supporting Dr. Akhrass' opinion that were not stated in the ALJ's decision" and therefore remanded for further consideration by the Board. *Id.* at 16-19. It further held the ALJ's explanation for crediting Dr. Akhrass's opinion is deficient because it "appears to rely principally on [his] status as [Claimant's] treating physician," and while a treating physician's opinion "may be entitled to special consideration, an ALJ may not give a physician's opinion greater weight solely due to his or her treating status." *Id.* at 18.

Given the Fourth Circuit's holding that the ALJ has not adequately explained his crediting of Dr. Akhrass's opinion regarding the relationship between Claimant's clinical pneumoconiosis and MAC infection, we vacate this finding. We therefore also vacate the ALJ's finding that Claimant established disability causation by demonstrating he is totally disabled by his MAC infection which constitutes legal pneumoconiosis as it relies on Dr. Akhrass's opinion. 20 C.F.R. §718.204(c); Decision and Order at 35.

Remand Instructions

On remand, the ALJ must reweigh Dr. Akhrass's opinion and address whether it establishes Claimant's total disability is caused by pneumoconiosis. 20 C.F.R. §718.204(c). In reconsidering Dr. Akhrass's opinion, the ALJ should address the credentials of the physician, the explanations for his conclusions, the documentation

underlying his medical judgments, and the sophistication of, and bases for, his diagnoses. *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441. Further, the ALJ must consider all the relevant evidence in reaching his determinations. *See* 30 U.S.C. §923(b) (fact-finder must address all relevant evidence); *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252-53 (4th Cir. 2016); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984). The ALJ must set forth his findings in detail, including the underlying rationale for his decision as the Administrative Procedure Act (APA) requires.[9] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). If the ALJ finds Claimant establishes disability causation, he may reinstate the award of benefits. *See Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Awarding Benefits, and remand the case to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge

[9] The Administrative Procedure Act, 5 U.S.C. §§500-591, 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).