UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

Washington, DC

RECENT SIGNIFICANT DECISIONS -- MONTHLY DIGEST # 323

April-June 2025

Stephen R. Henley, Chief Judge

Longshore:

Paul R. Almanza, Associate Chief Judge for Longshore

Yelena Zaslavskaya, Senior Counsel for Longshore

Black Lung:

Deirdra Howard, Acting Associate Chief Judge for Black Lung

Francesca Ford, Senior Counsel for Black Lung

Suzanne Smith, Senior Staff Attorney

I. Longshore and Harbor Workers' Compensation Act

A. U.S. Circuit Courts of Appeals

No decisions to report.

B. U.S. District Courts[1]

No decisions to report.

C. Benefits Review Board

***Kkunsa v. Constellis Group/Triple Canopy, Inc.*, __ BRBS __ (2025).**

The Board held that when there are conflicting medical opinions regarding disability or causation, the ALJ is not required to give special weight to a treating physician's opinion. The Board affirmed the ALJ's finding, based on the record as a whole, that claimant did not establish a work-related psychological injury by a preponderance of the evidence.

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[1] Only decisions relevant to the adjudication of claims by OALJ are included in this newsletter.

Claimant filed a claim under the Defense Base Act ("DBA") alleging that he sustained a psychological injury as a result of his employment with employer as an armed security guard in Iraq for approximately two years in 2008-2010. Claimant testified he experienced two traumatic events. First, a mortar attack in 2008 caused claimant to fear that the tower he was working on could catch fire. A second event occurred in 2009 when an underground explosion occurred about twenty meters away. Claimant testified he began having nightmares near the end of his second tour in Iraq. When he returned to Uganda, he claimed he continued experiencing sleep disturbances, including more frequent nightmares, sleep-talking, and sleepwalking. Claimant testified he also became violent with his partner and their child.

Claimant began treating with Psychiatric Clinical Officer Mwiiwa Ivan Leacky ("PCO Leacky") in September of 2019. He reported experiencing threatening dreams, severe headaches, low mood, fear, irritability, aggressiveness, poor memory, suicidal ideas, lack of sleep, poor vision, hearing problems, and sexual performance issues. Claimant testified he has no memory of anything from shortly after he returned to Uganda in 2010 until three months into treatment with PCO Leacky in January of 2020. Claimant testified he had no memory of becoming violent with his partner or of her leaving with their child, and that he discovered these events had occurred when PCO Leacky told him. PCO Leacky diagnosed claimant with post-traumatic stress disorder ("PTSD") and depression, recommended psychotherapy, and prescribed medication. A questionnaire completed the same day noted that claimant's "mental illness was caused by the hard life in the war zone." Claimant filed his DBA claim on March 6, 2020.

PCO Leacky continued to see claimant approximately every two months through May 2022. The reports from each of these visits were similar, noting the same symptoms, some improvement, and recommending continued treatment and medications. PCO Leacky then completed a Mental Health Report. He stated that claimant's symptoms "preceded" working in Iraq, where claimant reported seeing vehicles with blood on them and experiencing gunshots, bomb blasts, and mortar attacks. He administered four tests: the Patient Health Questionnaire-9 ("PHQ-9"), which indicated severe depression; the World Health Organization Disability Assessment Schedule 2.0 ("WHODAS 2.0"), which indicated severe disability; the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition ("DSM-5"), which indicated PTSD and depression; and the PTSD Checklist for DSM-5 ("PCL-5"), which also indicated PTSD.

In 2021, at employer's request, neuropsychologist Rose Dunn, Ph.D., evaluated claimant in Uganda in person with the assistance of an interpreter. She reviewed claimant's

medical records, conducted an interview, and administered nine psychological tests, including validity testing. She considered claimant's reported nine years of complete memory loss to be extremely atypical. Further, testing results consistently suggested over-reporting of symptoms. Dr. Dunn concluded there was no reliable or valid evidence to indicate claimant has a psychological condition related to his employment with employer or otherwise.

Thereafter, claimant was evaluated by Consulting Psychiatrist Nshemerirwe Sylvia ("CP Sylvia"). She summarized claimant's experiences in Iraq and his psychiatric treatment. She also administered testing – the PHQ-9, the PCL-5, and the WHODAS – and noted the results indicated mild depressive symptoms, PTSD requiring clinical management, and mild disability, respectively. CP Sylvia diagnosed claimant with "PTSD and other psychiatric symptoms . . . that followed working in Iraq."

The parties agreed to have the claim decided on the record, and the ALJ issued a decision denying benefits. Claimant appealed, arguing that the ALJ improperly weighed the evidence at the final stage of the Section 20(a) causation analysis by failing to give proper weight to the opinions of his treating physicians, improperly assessing his credibility, and failing to adequately explain his findings in violation of the Administrative Procedure Act ("APA"), 5 U.S.C. § 557(c)(3)(A).

Weight Due a Treating Physician's Opinion

Claimant argued that the ALJ improperly failed to give his treating providers' opinions "presumptively stronger weight," due to their status as his treating providers and because of their "expertise, experience, and familiarity with Ugandan culture." He asserted the ALJ should give the treating physician's reports greater weight at the outset because the doctor's role is to treat or cure, not to prepare for litigation. Claimant further asserted Dr. Dunn's report was based on tests not normed for his population following a single "remote" evaluation, and the ALJ should not have accorded her opinion greater weight than his own providers' reports. Employer disputed claimant's assertion that "presumptive deference" is due a treating physician.

The Board stated that questions of witness credibility are for the ALJ as the trier-of-fact, and he may draw his own inferences and conclusions from the evidence. The ALJ is entitled to weigh medical evidence and draw his own inferences from it, and he is not bound to accept the opinion or theory of any particular health care provider.

The Board rejected claimant's contention that his medical experts are automatically entitled to "stronger" weight by virtue of their status as his treating physicians.

Notwithstanding the ALJ's express authority to weigh medical evidence, courts have held a treating physician's medical opinion may be given special and deferential weight in certain instances: when there exists no substantial evidence in the record to controvert the treating physician's opinion or when there are multiple reasonable treatment options and the claimant elects to proceed according to his treating physician's advice regarding that treatment. Slip op. at 6 (*citing Amos v. Director, OWCP, 153 F.3d 1051, 1054 (9th Cir. 1998); Pietrunti v. Director, OWCP*, 119 F.3d 1035, 1042-1044 (2d Cir. 1997)).

In this case, claimant's reliance on *Amos*, *Pietrunti*, and *Rivera v. Harris*, 623 F.2d 212, 216 (2d Cir. 1980) (a Social Security disability benefits case) was misplaced. When there are conflicting medical opinions regarding disability or causation, as here, the ALJ is not required to give special weight to a treating physician's opinion. Rather, the ALJ must consider all relevant evidence including opinions from non-treating physicians, assess the weight and credibility of each opinion, and explain his rationale before reaching a decision on the evidence as a whole. The Board cited its prior decisions upholding ALJ decisions where a doctor's treating physician status was one factor to be considered and all medical evidence was addressed. This case, unlike *Pietrunti*, did not contain "uncontroverted and unanimous" evidence on causation, and the ALJ did not substitute his own judgment for that of claimant's treating physicians. The record here contained conflicting reports from three providers addressing whether claimant has a work-related psychological injury, and therefore the ALJ was obligated to review and weigh the evidence. Thus, the ALJ permissibly refrained from deferring to the opinions of claimant's treating physicians.

Weighing the Evidence

If claimant invokes the Section 20(a) presumption that his injury is work-related, as is the case here, the burden shifts to employer to produce substantial evidence that the claimant's condition is not work-related. Because the ALJ found employer rebutted the presumption, and claimant did not dispute that finding, he was no longer entitled to the presumption. Therefore, the ALJ was required to resolve the issue of causation based on the evidence in the record as a whole with claimant bearing the burden of persuasion by a preponderance of the evidence.

Questions of witness credibility are for the ALJ as the trier-of-fact. He may accept parts of a witness's testimony and reject others, and he may draw his own inferences and conclusions from the evidence. The Board is not free to re-weigh the evidence or to make credibility determinations and will not interfere with the ALJ's credibility determinations unless they are inherently incredible or patently unreasonable.

Here, claimant asserted that the ALJ inappropriately found he lacked credibility based on "minor inconsistencies" in his testimony and in his reports to medical providers regarding

the number of bombs that struck the base and whether or not he was hospitalized for three months. The Board rejected this contention. The ALJ provided many more examples to support his finding that claimant lacked credibility. The ALJ discussed several inconsistencies in the record related to claimant's description of his symptoms and experiences, including reports of domestic violence and suicide attempts. The ALJ also considered the results of Dr. Dunn's psychological testing indicating invalid presentation and "over-endorsement" of symptoms, which he found further reduced claimant's credibility. The ALJ further found that claimant was unclear on what he does and does not remember, and that his alleged amnesia was undermined by his own self-reporting and his providers' records.

The ALJ also adequately explained his weighing of the evidence in compliance with the APA. He declined to give significant weight to PCO Leacky's and CP Sylvia's reports. He found PCO Leacky's clinical records were frequently illegible and/or unsigned, contained little to no background information, and lacked specifics regarding claimant's treatment or progress. He also found the clinical notes followed a basic formula, with a rote list of essentially the same symptoms, offering little insight into the source, extent, or nature of the symptoms, or how they define claimant's condition. The ALJ further found that the clinical notes frequently contradicted other record evidence (e.g., as to whether claimant underwent psychotherapy) and offered no real insight into claimant's alleged psychological injury, its potential causes, and his alleged ongoing treatment. Accordingly, he afforded them minimal weight.

The ALJ afforded no weight to PCO Leacky's medical questionnaire. He found the questionnaire was completed by two different individuals with different handwriting, yet it contained only PCO Leacky's signature block, a defect he determined severely called into question its authenticity as well as its credibility. The Board affirmed this finding, noting that claimant did not challenge this ground for discrediting the medical questionnaire. The ALJ also found the questionnaire lacked critical information. It failed to identify any specific traumatic or triggering events, gave no details or insight into claimant's mental condition or experiences, and only generally suggested that claimant undergo treatment to "clear the symptoms of mental illness and promote mental health."

The ALJ afforded minimal weight to PCO Leacky's Mental Health Report. The ALJ found the report also failed to offer insight into claimant's specific symptoms or how he exhibited them and identified a different potentially triggering event than those claimant described during his testimony. The report also stated claimant presented with no short-term or long-term memory issues, which contradicted claimant's testimony that he suffered complete memory loss for a period of nine years. Lastly, the ALJ found the psychological testing PCO Leacky administered was based solely on claimant's self-reporting of symptoms.

The ALJ likewise afforded minimal weight to CP Sylvia's report because it lacked context, support, and insight into claimant's condition and its causes. Further, she noted claimant denied being aggressive or violent, contradicting his testimony; and made no mention of claimant's alleged significant memory loss.

Most importantly, the ALJ noted neither PCO Leacky nor CP Sylvia provided clear statements as to causation. PCO Leacky's report indicated claimant's symptoms "preceded" his time in Iraq, and the questionnaire's statement that claimant's "mental illness" was related to his employment in Iraq was both unsupported and within a document suffering from authenticity issues as it was clearly completed by two different hands. The ALJ further noted CP Sylvia's causation opinion – that claimant's PTSD and psychological symptoms "followed working in Iraq" – was temporal in nature and insufficient, without further explanation, to establish a definitive causal connection.

Conversely, the ALJ found Dr. Dunn provided a clear, well-reasoned, and supported causation opinion. Her report and testimony made it clear that she spent considerable time interviewing claimant, reviewed all available records, and conducted significant testing. Moreover, the ALJ found Dr. Dunn provided more than merely conclusory results of the testing administered, instead explaining both the results and each test's significance relevant to symptomatology, validity, and their strengths and weaknesses. The ALJ concluded the limited and lacking reports of PCO Leacky and CP Sylvia could not withstand comparison to Dr. Dunn's better-reasoned and documented opinion, to which he gave great weight.

The Board concluded that the ALJ rationally weighed all evidence of record and adequately explained his findings in compliance with the APA. His credibility assessments were neither inherently incredible nor patently unreasonable but were supported by substantial evidence. Accordingly, the Board affirmed the denial of benefits.

[Section 2(2) Injury -- Causation: Arising Out of Employment; Section 20(a) Presumption -- Evaluating the Evidence; Procedure Before the Administrative Law Judge -- Authority of the Administrative Law Judge in General, Decisions under the APA (Sufficient Rationale)]

II. Black Lung Benefits Act

A. U.S. Court of Appeals

1. Published:

a. Sixth Circuit

Ken Lick Coal Co. v. Dir., OWCP, No. 23-3738, 2025 U.S. App. LEXIS 4024 (6th Cir. Feb. 21, 2025)

On February 21, 2025, the Sixth Circuit Court of Appeals ("Sixth Circuit" or "Court") issued a published opinion granting Ken Lick Coal Company's ("Employer") petition for review and transferring liability of Bob Reed's ("Miner") claim to the Black Lung Disability Trust Fund ("Trust Fund").

The Miner filed three claims for benefits during his lifetime. In his second claim, the Employer did not contest its designation as the responsible operator. The Administrative Law Judge in the second claim denied benefits. The Benefits Review Board ("Board") vacated the denial due to the passage of the Patient Protection and Affordable Care Act, which reinstated the fifteen-year presumption. On remand, the Administrative Law Judge in the second claim denied benefits again. The Board affirmed the denial.

The Miner then filed a third claim, which is the one at issue in this case. The Administrative Law Judge in the third claim ("ALJ") found that the Miner was entitled to invoke the fifteen-year presumption. In doing so, the ALJ found that the Miner worked for two coal mine operators after he worked for the Employer, including one for whom the Miner worked for over a year. Because the Employer did not contest its designation as the responsible operator in the Miner's second claim, the ALJ bound the Employer to its stipulation based on 20 C.F.R. § 725.309(c)(5), which provides that in a subsequent claim where the claimant demonstrates a change in one of the applicable conditions of entitlement, "no findings made in connection with the prior claim, except those based on a party's failure to contest an issue (see § 725.463), will be binding on any party in the adjudication of the subsequent claim. However, any stipulation made by any party in connection with the prior claim will be binding on that party in the adjudication of the subsequent claim." Consequently, the ALJ concluded that the Employer could not challenge its designation as the responsible operator. The Board affirmed the ALJ's decision.

Before the Sixth Circuit, the Employer argued that the ALJ should not have prohibited it from challenging its designation as the responsible operator despite its prior stipulation. The Court agreed with the Employer. After discussing the omission-based and act-based exceptions to the general rule that parties may relitigate all issues in proceedings on later

claims, the Sixth Circuit noted that both sides assumed that the Employer entered a stipulation when it chose not to contest its status as the responsible operator in the Miner's second claim. Therefore, it assumed that the Employer's choice rose to a stipulation.

The Court then considered the Employer's arguments that the ALJ should have overlooked the stipulation. First, the Employer argued that the ALJ committed manifest injustice by holding it to the stipulation. Second, it argued that parties cannot enter binding stipulations about the law, and the responsible operator stipulation in this case extended beyond the facts. Th e Court agreed with the Employer's second argument and concluded that an ALJ cannot bind a party to a stipulation of law. It emphasized that the Employer said only that it would not contest the conclusion that it qualified as the responsible operator, but it did not stipulate to facts relevant to that conclusion. The Court further noted that the ALJ found that the Miner performed coal mine work for another coal mine operator for over a year after he worked for the Employer, which led the ALJ to conclude that the Employer would not have qualified as the responsible operator but for its stipulation. Therefore, the Sixth Circuit granted the Employer's petition for review and ordered the Black Lung Disability Trust Fund to pay benefits.

[Stipulation of law]

S. Ohio Coal Co. v. Dir., OWCP, No. 24-3523, 2025 U.S. App. LEXIS 3114 (6th Cir. Feb. 11, 2025)

On February 11, 2025, the Sixth Circuit Court of Appeals ("Sixth Circuit" or "Court") issued a published opinion affirming an Administrative Law Judge's ("ALJ") award of benefits to Donald Hunter ("Claimant"). The ALJ found that the Claimant worked as a coal miner for eleven to twelve years, had totally disabling legal pneumoconiosis, and was entitled to benefits. The Benefits Review Board affirmed the ALJ's decision.

Before the Sixth Circuit, the Employer argued that the ALJ: (1) erred in considering the PFT sponsored by the Department of Labor ("Department"); (2) improperly relied on the preamble in determining that the Claimant had and was totally disabled by legal pneumoconiosis; and (3) erred in crediting Dr. Feicht's opinion that the Claimant's COPD arose from both coal dust and cigarette smoke. The Sixth Circuit rejected all the Employer's arguments and concluded that substantial evidence supported the ALJ's decision.

The Employer first argued that the ALJ erred in considering the Department-sponsored PFT administered by Dr. Feicht on April 11, 2019. Dr. Manaker, who authored an opinion on behalf of the Employer, argued that the Claimant was acutely ill on April 11, 2019, so the

ALJ should not have considered the PFT taken that day. Dr. Manaker based his opinion on a treatment note from April 16, 2019, which showed that the Claimant had been experiencing a cough for two weeks. The Court noted that the ALJ considered Dr. Manaker's opinion that the PFT was noncompliant but found that the treatment records post-dated the Department-sponsored PFT. Moreover, he noted that Dr. Feicht did not diagnose the Claimant with an acute illness on April 11, 2019; rather, he diagnosed the Claimant with chronic pulmonary disease. Citing 20 C.F.R. § 718.103(c), the Court emphasized that an ALJ must presume that the results of a PFT are compliant, and it found that substantial evidence supported the ALJ's conclusion that the PFT was compliant, especially given that a PFT is noncompliant with the regulation only if "performed during or soon after" (but not before) "an acute respiratory illness."

The Employer next argued that the ALJ improperly relied on the regulatory preamble in discrediting the Employer's doctors and crediting Dr. Feicht's opinion on legal pneumoconiosis. The ALJ relied on the preamble to credit Dr. Feicht's opinion that the Claimant had legal pneumoconiosis because his opinion was consistent with the Department's position, as articulated in the preamble, that "smoking and coal mine dust exposure have additive effects" and that the presence of smoking-induced disease does not preclude the presence of legal pneumoconiosis. The Court noted that the ALJ did not explicitly rely on the preamble to discredit the Employer's doctors. Even if he had, the Court stated that the ALJ would not have flipped the burden of proof to the Employer. Rather, it reaffirmed its holding in Wilgar Land Co. v. Dir., OWCP, 85 F.4th 828, 838–39 (6th Cir. 2023), and stated that it is not error for an ALJ to credit an opinion consistent with the preamble over one that fails to account for the preamble's scientific principles, for example, as relevant in this case, the principle that the risk of coal-dust exposure and smoking are additive.

Finally, the Court disagreed with the Employer that Dr. Feicht's opinion was insufficient to carry the Claimant's burden of proving legal pneumoconiosis and disability causation. The Court explained that the regulations do not require a miner to show that coal dust exposure is the only, or even the primary, cause of their condition. It saw no reason why the ALJ could not rely on Dr. Feicht's opinion that "occupational coal dust exposure… contributed to fifty percent of Claimant's COPD" in finding that the Claimant had legal pneumoconiosis. Further, it held that the ALJ did not err in finding that the Claimant's pneumoconiosis had a materially adverse effect on his respiratory or pulmonary condition, or that it materially worsened a respiratory or pulmonary impairment unrelated to coal mine employment. The Court emphasized that because the ALJ: (1) already determined, based on substantial evidence, that the Claimant's COPD was legal pneumoconiosis; and (2) relied on the Claimant's testimony, qualifying PFT, and medical opinions to find that the Claimant's COPD was totally disabling, substantial evidence existed for the ALJ to find that pneumoconiosis was a substantially contributing cause of the Claimant's total disability.

For all these reasons, the Sixth Circuit denied the Employer's petition for review.

[PFTs and acute illness; legal pneumoconiosis; substantially contributing cause]

b. Seventh Circuit Court of Appeals

Consolidation Coal Co. v. Dir., OWCP, No. 24-1329, 2025 U.S. App. LEXIS 3685 (7th Cir. Feb. 18, 2025)

On February 18, 2025, the Seventh Circuit Court of Appeals ("Seventh Circuit" or "Court") issued a published black lung opinion affirming an award of benefits in a survivor's claim. Dale Staten ("Miner") worked as a coal miner almost thirty years. Approximately two weeks before his death, he was admitted to the hospital and diagnosed with respiratory failure, shortness of breath, pneumonia, pulmonary emboli, and pulmonary fibrosis. He entered a long-term care facility, was intubated, placed on a ventilator, and passed away a few days later. Bernadette Staten ("Claimant"), his surviving spouse, filed a claim for survivor benefits. The Administrative Law Judge ("ALJ") found that the Miner worked as a coal miner for more than fifteen years, was totally disabled at the time of his death, and was entitled to benefits. A divided Benefits Review Board ("BRB") affirmed the ALJ's decision.

On appeal to the Seventh Circuit, Consolidation Coal Company ("Employer") argued that because the Miner suffered from acute respiratory failure rather than a chronic respiratory disease, the Claimant was not entitled to invoke the fifteen-year presumption. It also argued that the ALJ erred in finding that the Employer did not rebut the presumption.

In rejecting the Employer's first argument, the Court held that the Act did not require the Claimant to prove the Miner was suffering from a chronic pulmonary condition to invoke the fifteen-year presumption. The Court reviewed the text of the Act and regulations, and it concluded that neither say that a "disabling impairment must be 'chronic' or, for that matter, draw any distinction between acute and chronic medical conditions." It noted that the word "chronic" appears in other sections of the Act, but it does not appear in 30 U.S.C. § 921(c)(4), which requires only that a miner have a totally disabling pulmonary or respiratory impairment to benefit from the fifteen-year presumption. Furthermore, the Court emphasized that 30 U.S.C. § 921(c)(4) does not reference pneumoconiosis, which is chronic in nature, whereas 30 U.S.C. § 921(c)(1), which outlines the ten-year presumption, does. Therefore, it interpreted 30 U.S.C. § 921(c)(4) as exempting a miner from the evidentiary burden of showing they have pneumonoconiosis and instead presuming it upon a showing of a totally disabling respiratory or pulmonary impairment. Moreover, it emphasized that requiring a miner to prove a chronic illness before invoking the presumption would invert the fifteen-year presumption's burden-shifting framework.

The Court next addressed the Employer's argument that because Appendix B and C provide that PFTs and ABGs, respectively, cannot be performed during or soon after an acute respiratory illness, ALJs may only consider chronic impairments when assessing total disability. In giving no weight to the Employer's argument, the Court said that because 20 C.F.R. § 718.204(b)(2)(iv) permits an ALJ to find a miner totally disabled based on a physician's "reasoned medical judgment" that a "miner's respiratory or pulmonary condition… prevented the miner from engaging in employment," even in the absence of qualifying ABGs and PFTs, the regulation does not require a physician to consider only the impact of a chronic condition on a miner's ability to return to work.

Finally, the Court concluded that the ALJ did not err in crediting Dr. Chavda's opinion over the opinions of Drs. Castle and Farney. The ALJ relied on Dr. Chavda's medical report to find that the Miner was totally disabled from a respiratory standpoint at the time of his death. The ALJ declined to credit the opinions of the Employer's experts, who opined that his hospitalization showed an acute illness rather than a chronic disabling condition and who failed to address whether the Miner was disabled at the time of his death rather than at some prior point. In concluding that substantial evidence supported the ALJ's decision, the Court explained that the ALJ found Dr. Chavda's opinion more credible because Dr. Chavda accounted for the entirety of the medical evidence, including the Miner's hospitalization and condition prior to his death, which Drs. Castle and Farney did not do.

For all these reasons, the Seventh Circuit denied the Employer's petition for review.

[Survivor's claim; acute v. chronic pulmonary condition]

2. Unpublished:

a. Third Circuit Court of Appeals

Consol. Pa. Coal Co. v. McMillin, No. 23-3069, 2025 U.S. App. LEXIS 180 (3d Cir. Jan. 6, 2025)

On January 6, 2025, the Third Circuit Court of Appeals ("Third Circuit" or "Court") issued an unpublished opinion affirming an Administrative Law Judge's ("ALJ") decision and order awarding benefits to Randall McMillin ("Claimant").

The Claimant was first diagnosed with legal pneumoconiosis by his treating physician, Dr. Attila Lenkey, in December 2012. Dr. Lenkey concluded that the Claimant had chronic obstructive pulmonary disease ("COPD"), due in part to exposure to coal mine dust, and recommended that the Claimant stop coal mining. The Claimant stopped coal mining that

month. In February 2013, the Claimant filed a claim for benefits, which the district director denied in October 2013. Following the district director's proposed decision and order denying benefits, but before the proposed decision and order became final, the Claimant withdrew his claim. Dr. Lenkey treated the Claimant again in September 2014 and concluded that black lung disease had "100% impaired and disabled" him. In May 2017, the Claimant filed another claim for benefits. Dr. Feicht, who examined the Claimant on behalf of the Department of Labor ("Department"), concluded that the Claimant had severe COPD and was totally disabled from a pulmonary standpoint. The district director issued a proposed decision and order awarding benefits. The Employer appealed. The ALJ awarded benefits after concluding that because Dr. Lenkey's 2012 diagnosis was a misdiagnosis by virtue of the district director's 2013 proposed decision and order denying benefits, the Claimant timely filed his May 2017 claim and awarded benefits. The Benefits Review Board ("Board") affirmed the ALJ's decision.

Before the Third Circuit, Consol Pennsylvania Coal Company ("Employer") argued that the Claimant's claim was untimely and that it rebutted the fifteen-year presumption. As to timeliness, the Employer argued that Dr. Lenkey's 2012 diagnosis triggered the three-year statute of limitations. The majority found that the district director's 2013 proposed decision and order denying benefits made Dr. Lenkey's 2012 diagnosis a misdiagnosis. It added that the Claimant's withdrawal did not disturb his conclusion on timeliness. Therefore, it concluded that the statute of limitations did not bar the Claimant's claim.

The Court also considered and rejected the Employer's argument that it rebutted the fifteen-year presumption. It found that the Board properly concluded that the Employer did not rebut the presumption that the Claimant was totally disabled due to pneumoconiosis. Consequently, the Third Circuit denied the Employer's petition for review.

Judge Matey authored a dissenting opinion stating that he would have found the Claimant's claim untimely. He opined that the misdiagnosis rule only applies to final adjudications, and the district director's proposed decision and order denying benefits was not final. He emphasized that the distinction between preliminary and final decisions matters since a claim withdrawn before a final decision and order has been issued is considered not to have been filed. Therefore, Judge Matey would have reversed the Board's decision.

[Timeliness; effect of prior decision rejecting the evidence: misdiagnosis]

b. Fourth Circuit Court of Appeals

S. Appalachian Coal Co. v. Hendricks, No. 22-1879, 2025 U.S. App. LEXIS 4343 (4th Cir. Feb. 25, 2025)

On February 25, 2025, the Fourth Circuit Court of Appeals ("Fourth Circuit" or "Court") issued an unpublished opinion affirming an Administrative Law Judge's ("ALJ") award of benefits to Arvil F. Hendricks ("Claimant"), who worked as a coal miner for eight years. The ALJ found the Claimant was totally disabled due to legal pneumoconiosis. The Benefits Review Board ("Board") affirmed the ALJ's decision.

Before the Fourth Circuit, Southern Appalachian Coal Company ("Employer") argued the ALJ erred in: (1) finding that the Claimant had and was disabled due to legal pneumoconiosis; (2) not considering Dr. Rosenberg's supplemental report; and (3) implicitly applying the fifteen-year presumption.

The Fourth Circuit rejected all three arguments. As to legal pneumoconiosis, it found that the ALJ reviewed the evidence and sufficiently explained why he credited the opinions of the physicians who concluded that the Claimant had legal pneumoconiosis and was totally disabled due to legal pneumoconiosis. Regarding the Employer's second argument, the Court acknowledged that the ALJ did not discuss Dr. Rosenberg's supplemental report, but it noted that he listed it, in a footnote, as a piece of evidence he considered. It added that even if the ALJ erred in failing to consider the supplemental report, the error was harmless given that Dr. Rosenberg's supplemental report largely repeated the findings he made in his initial report. Finally, the Court disagreed that the ALJ implicitly applied the fifteen-year presumption. It noted that the parties agreed that the fifteen-year presumption was inapplicable in the case given that the Claimant worked as a coal miner for fewer than fifteen years. It further found that the ALJ applied the correct legal standard and placed the burden of proof on the Claimant to prove he was entitled to benefits. Therefore, it affirmed the Board's decision.

[Legal pneumoconiosis; supplemental medical report; implicit application of 15-year presumption]

Three H Coal Co., Inc. v. Dir., OWCP, No. 23-1486, 2025 U.S. App. LEXIS 1262 (4th Cir. Jan. 21, 2025)

On January 21, 2025, the Fourth Circuit Court of Appeals ("Fourth Circuit" or "Court") issued an unpublished opinion affirming an Administrative Law Judge's ("ALJ") award of benefits to Ray Hale ("Claimant"). The Benefits Review Board ("Board") affirmed the ALJ's decision. The sole issue before the Fourth Circuit was whether Three H Coal Company, Inc. ("Three H" or "Employer") was properly named as the responsible operator.

The Claimant's most recent coal mine employer, Chestnut Ridge, was self-insured through the Virginia Coal Producers Self-Insurance Association ("VCP"). Because Chestnut Ridge and VCP were insolvent and incapable of paying benefits, the district director named the Claimant's next most recent employer, Three H, as a potentially liable operator. The district director rejected the Employer's argument that Chestnut Ridge should have been designated as the responsible operator because Chestnut Ridge's and VCP's liability was guaranteed by two state-created guaranty funds – the Virginia Property and Casualty Insurance Guaranty Association ("VPCIGA") and the Virginia Uninsured Employer's Fund ("VUEF"). The Employer reiterated the same argument before the ALJ. Because: (1) the VPCIGA only covers claims that result from the insolvency of an insurer, not a self-insured association; and (2) the VUEF only guarantees the payment of state workers' compensation benefits awarded under the Virginia Workers' Compensation Act, not federal black lung benefits awarded under the BLBA, the ALJ rejected the Employer's argument that the district director erred by not naming Chestnut Ridge as the responsible operator and not notifying VPCIGA and VCP of the claim. The ALJ concluded that Three H Coal was the responsible operator and awarded benefits.

On appeal, the Fourth Circuit rejected the Employer's argument that the district director erred in designating it as the responsible operator because Chestnut Ridge's and the VCP's liability was guaranteed by the VPCIGA and VUEF. The Court found that the VCP was not an "insurer," "member insurer," or "insolvent insurer" under the VPCIGA, and the Claimant's claim for black lung benefits against Chestnut Ridge and the VCP was not a "covered claim" under the VPCIGA. It also rejected the Employer's argument that the VCP's license to provide group self-insurance under the Virginia Workers' Compensation Act should nonetheless suffice to establish the VCP as an "insurer" for purposes of the VPCIGA. Therefore, it held that the VCP was not an "insurer" whose liability was guaranteed under the VPCIGA. The Court further found that because the VUEF only guarantees the payment of state workers' compensation benefits awarded by the Virginia Workers' Compensation Commission, it does not guarantee payment of the Claimant's federal black lung benefits. Additionally, the Court rejected the Employer's argument that the district director erred in not designating Chestnut Ridge as a potentially liable operator, notifying the VPCIGA and VUEF, and placing the burden on the state to appear and dispute the funds' liability. Finally, it rejected the Employer's argument that the statutory limitations of the Virginia guaranty funds violate the Supremacy Clause and the Takings Clause of the U.S. Constitution. For all these reasons, the Fourth Circuit denied the Employer's petition for review.

[Responsible operator; uninsured subsequent employer; state-created guaranty funds]

c. Sixth Circuit Court of Appeals

Island Creek Coal Co. v. Dir., OWCP ex rel. Hughes, No. 24-3244, 2025 U.S. App. LEXIS 5430 (6th Cir. Mar. 6, 2025)

On March 6, 2025, the Sixth Circuit Court of Appeals ("Sixth Circuit" or "Court") affirmed an Administrative Law Judge's ("ALJ") finding that Billy Ray Hughes ("Miner") had complicated pneumoconiosis and was entitled to benefits on modification. The ALJ credited Dr. Crum's opinion that the Miner's CT scans showed a stable 1.1-centimeter nodule representing complicated pneumoconiosis. The ALJ credited Dr. Crum over Dr. Seaman because Dr. Crum had specialized experience with black lung disease, provided more detailed CT scan interpretations, and provided CT scan interpretations that were consistent with the treatment records. The Benefits Review Board affirmed the ALJ's decision.

Before the Sixth Circuit, Island Creek Coal Company ("Employer") argued that substantial evidence did not support the ALJ's three reasons for finding complicated pneumoconiosis. In disagreeing with the Employer, the Court first found that substantial evidence supported the ALJ's finding that Dr. Crum's research and experience with coal workers' pneumoconiosis gave him superior qualifications for identifying complicated pneumoconiosis, particularly given his documented research and work with the National Institute for Occupational Safety and Health studying black lung disease. Second, the Court affirmed the ALJ's finding that Dr. Crum explained why the nodule in the Miner's lungs represented complicated pneumoconiosis rather than other conditions and discussed its stability over time, while Dr. Seaman did not explain how she concluded that the nodules were not pneumoconiosis. Third, the Court agreed with the ALJ that Dr. Crum's CT scan interpretations were more aligned with the treatment records. It rejected the Employer's argument that the ALJ did not consider all the treatment records showing nodules that were less than one centimeter in diameter. The Court explained that the ALJ thoroughly reviewed the evidence, noted that the CT scans in the treatment records were primarily taken to screen for malignancy (so they did not conclusively address pneumoconiosis), and accepted Dr. Crum's rationale that suboptimal imaging factors or variations in measurement technique could have yielded smaller interpretations. After concluding that substantial evidence supported the ALJ's decision, the Sixth Circuit denied the Employer's petition for review.

[Complicated pneumoconiosis; interpreting and weighing CT scan evidence]

Toler's Creek Energy, Inc. v. Dir., OWCP, No. 24-3245, 2025 U.S. App. LEXIS 2146 (6th Cir. Jan. 28, 2025)

On January 28, 2025, the Sixth Circuit Court of Appeals ("Sixth Circuit" or "Court") issued an unpublished opinion affirming an award of benefits to Harold G. Howell ("Claimant").

The Administrative Law Judge ("ALJ") found that the Claimant worked as a coal miner for 10.22 years, had legal pneumoconiosis, and was totally disabled due to legal pneumoconiosis. The Benefits Review Board affirmed the ALJ's decision. At the Sixth Circuit, Toler's Creek Energy, Inc. ("Employer") argued the ALJ erred in finding that the Claimant had legal pneumoconiosis and in calculating the Claimant's smoking history.

In rejecting the Employer's first argument, the Court concluded that the ALJ did not err in relying on the preamble to the regulations ("Preamble"). It said that the ALJ neither treated the Preamble as a binding regulation nor used it to create a new agency regulation. Furthermore, it found no merit in the Employer's argument that Dr. Green, who diagnosed legal pneumoconiosis, offered an inadequate opinion on the cause of the Claimant's illness. The Court emphasized that Dr. Green explained that he based his opinion on the severity of the Claimant's chronic airways disease and noted that "even the lesser contribution from" the Claimant's occupational history "would be a significant consideration given the severe degree of" the Claimant's airflow obstruction. Because the severity of the Claimant's illness supported finding that his dust exposure contributed to it, the Sixth Circuit held that substantial evidence supported the ALJ's finding of legal pneumoconiosis.

The Employer next argued that the ALJ relied on an excessively broad smoking history of between 22.5 and 120 pack-years. The Court found that the ALJ's conclusions about whether coal mine dust exposure partially caused the Claimant's illness would not have differed based on where the Claimant's smoking history fell within that range. Additionally, because the ALJ described the Claimant's smoking history as "significant to very significant," the Court said that finding a smoking history of 22.5 pack-years or 120 pack-years would have yielded similar conclusions as to the cause of the Claimant's illness. It further concluded that the ALJ was allowed to draw a general conclusion on the substantial nature of the Claimant's smoking history, and his conclusion was not an improper medical finding. Therefore, it found that substantial evidence supported the ALJ's smoking history calculation.

For all these reasons, the Sixth Circuit denied the Employer's petition for review.

[ALJ reliance on Preamble; calculation of smoking history]

B. Benefits Review Board

1. Published Decisions

Rosemary M. Stephen (obo and survivor of David E. Stephen) v. Consolidation Coal Co., BRB Nos. 23-0091 BLA and 23-0259 BLA (March 20, 2025)

On March 20, 2025, the Benefits Review Board ("Board") issued a to-be-published decision remanding an Administrative Law Judge's ("ALJ") decision finding that David E. Stephen ("Miner") was not a coal miner. These consolidated claims were before the Board for a second time.

The ALJ initially found that the Miner's work as a watchman, weighmaster, and shipping clerk did not constitute coal mine work. Under 20 C.F.R. § 725.101(a)(19) a miner is defined as "any individual who works or has worked in or around a coal mine or coal preparation facility" (the situs requirement) "in the extraction or preparation of coal" (the function requirement). When these claims were before the Board for the first time, the Board affirmed the ALJ's finding that the Miner's work as a watchman did not constitute coal mine work, but it remanded the claims for the ALJ to reconsider whether the Miner's work as a weighmaster and shipping clerk was integral to coal preparation (whether it met the function requirement). In his decision on remand, the ALJ again found that the Miner's duties as a weighmaster and shipping clerk did not constitute the work of a miner. Specifically, he concluded that the Miner's work weighing rail cars occurred after the cars had already been loaded with processed coal and were some unknown distance from the tipple. He found that the coal had already entered the stream of commerce before it became part of the Miner's duties and concluded that the Miner's work was not necessary for coal preparation. Therefore, he again denied benefits.

On appeal to the Board the second time, Rosemary M. Stephen ("Claimant") argued that the ALJ erred in finding that the Miner's work as a weighmaster and shipping clerk did not satisfy the function requirement and, thus, erred in determining that he did not work as a coal miner. The Board agreed. The ALJ found that the Miner's work satisfied the situs requirement because the Miner performed it in the vicinity of an operating strip mine. The Board explained that under 20 C.F.R. § 725.202(a) and 20 C.F.R. § 725.101(a)(19), when an individual works "in or around a coal mine or coal preparation facility," he is entitled to a rebuttable presumption that he is, in fact, a coal miner. Because the Miner satisfied the situs requirement, the burden shifted to Consolidation Coal Co. ("Employer") to show that the Miner "was not engaged in the extraction, preparation[,] or transportation of coal while working at the mine site" or "was not regularly employed in or around a coal mine or coal preparation facility." 20 C.F.R. §725.202(a)(1)-(2). The Board stated that after finding that the Miner's work was performed in the vicinity of an operating strip mine, the ALJ failed to shift the burden to the Employer. Instead, he placed the burden on the Claimant to show that the Miner's work was necessary to coal preparation. Thus, the Board held that the ALJ improperly shifted the burden of proof to the Claimant to establish that the Miner's work met the function requirement. Furthermore, the Board said it could not affirm the ALJ's finding that the evidence showed "that the coal was processed and loaded into coal cars before [the Miner] weighed" it. In the Board's view, the ALJ's finding repeated the same error it identified in the ALJ's initial decision, as the ALJ focused "on whether the coal was

processed," which is a factor the Board said was not controlling, rather than on "whether the Miner's work was integral to coal preparation before it entered the stream of commerce or the coal was already in the stream of commerce by the time the Miner weighed it."

Consequently, because the ALJ did not properly consider whether the Employer rebutted the presumption that the Miner's work as a weighmaster and shipping clerk constituted the work of a coal miner, the Board vacated the ALJ's finding that the Miner's duties failed to meet the function requirement, vacated the denials of benefits, and remanded the claims for the ALJ to determine whether the Employer put forth affirmative proof sufficient to rebut the presumption.

[Definition of a coal miner; situs and function tests]

2. Unpublished Decisions

a. Arterial Blood Gas Studies

In Ronnie L. Wolford v. Pocahontas Coal Co., LLC, BRB No. 24-0266 BLA (Feb. 28, 2025), the ALJ considered two exercise ABGs and gave more probative weight to one during which the Claimant exercised longer. The Claimant exercised for three minutes and twenty-three seconds during one ABG and for five minutes during the other. The majority affirmed the ALJ's decision to give more probative weight to the ABG involving five minutes of exercise because it was more indicative of the Claimant's ability to perform his usual coal mine job.

Judge Boggs dissented, arguing that the ALJ did not have a proper basis for finding that the longer exercise ABG was more strenuous than the shorter one. She explained that variations beyond duration existed between the two ABGs, such as type of equipment, the Claimant's peak pulse rate, and the speed and resistance of exercise, which could have been relevant to deciding how strenuous the tests were and whether one better reflected the Claimant's usual coal mine work. Furthermore, she emphasized that no physician opined that the shorter exercise ABG was less probative than the longer one. Finally, she said that the regulations did not support giving less weight to an exercise ABG based solely on the duration of exercise. Therefore, she would have vacated the ALJ's findings and remanded the case for further consideration.

[Weighing evidence: considering the length of ABG test]

b. Attorney's Fees

Carlos D. Matherly v. Mingo Logan Coal Co., BRB Nos. 23-0297 BLA and 23-0418 BLA (Jan. 29, 2025): The Board held that the ALJ did not err in reimbursing the Claimant $313.26 in travel expenses he incurred to attend independent medical examinations at Norton

Community Hospital. The Board found that the ALJ rationally applied 20 C.F.R. § 725.366(c) in concluding that the Claimant's travel costs were compensable as reasonable, unreimbursed expenses incurred in establishing his case.

[Travel expenses for medical testing]

c. Clinical Pneumoconiosis

In Jerry Clevinger v. Lodestar Energy, Inc., BRB No. 24-0023 BLA (Jan. 30, 2025), the Board affirmed the ALJ's decision to give more probative weight to Dr. DePonte than to the other physicians who interpreted x-rays. In doing so, the ALJ noted that Dr. DePonte's professional appointments included being a member of the American College of Radiology Pneumoconiosis Certification Program Task Force, being a reader for the National Institute for Occupational Safety and Health Coal Workers' Health Surveillance Program and being a consultant for the Washington and Lee University Black Lung Clinic. Additionally, the ALJ noted that Dr. DePonte delivered four presentations on coal workers' pneumoconiosis and chest x-ray imaging at the 2013 and 2015 National Conferences for the National Coalition of Black Lung and Respiratory Disease Clinics. Finally, ALJ noted that Dr. DePonte worked at Norton Community Hospital, which has a "very active black lung clinic," and interpreted x-rays nearly every day. In contrast, the Board said the ALJ accurately noted that while Dr. Adcock's and Dr. Simone's CVs referenced publications, they did not mention coal workers' pneumoconiosis, and Dr. Kendall's CV did not include any publications. The Board added that although the Employer noted that Drs. Kendall, Adcock, and Simone served as heads of radiology in either a hospital or medical group in states with active coal mining, the ALJ permissibly found their CVs did not reflect their specific radiological experience in diagnosing coal workers' pneumoconiosis, while Dr. DePonte's CV did. Therefore, the Board affirmed the ALJ's decision to give more probative weight to Dr. DePonte because of her qualifications.

[Weighing evidence: expert's qualifications]

d. Due Process Challenges

In Leroy A. Nearhood v. James M. Stott Coal Co., Inc., BRB No. 23-0496 BLA (Jan. 30, 2025), the Board found that the district director acted within his discretion in determining that the evidence did not demonstrate that the Claimant was unreasonable in refusing to attend the Employer's examination. The Employer initially scheduled an examination for the Claimant 137 miles from his home, and it and later offered to schedule an examination approximately seventy-six miles from his home. The Claimant responded with records from his primary care doctor and his treating pulmonologist showing he was dependent on supplemental oxygen, his medical condition was "end stage," and he was transitioning to

palliative care and hospice. Both doctors opined such lengthy travel was inappropriate considering the Claimant's severe lung disease. The district director effectively found good cause for the Claimant's failure to attend the Employer's examination and denied the Employer's motion to dismiss the claim for abandonment. The Employer did not file a new motion to dismiss or motion to compel before the ALJ, but it preserved the issue for appeal. On appeal, the Employer argued the Claimant's refusal to attend the examination violated its due process rights. The Board concluded that the Claimant's refusal to attend the Employer's examination was reasonable given his condition, and the district director acted within his discretion in declining to compel the Claimant's attendance or dismiss his claim for abandonment. Moreover, it found that the Employer forfeited any further due process challenge by failing to seek to compel a medical examination while the case was before the ALJ.

[Refusal to submit to medical testing due to poor health]

e. Onset Date for Paying Benefits

In Michael D. Ireland, Sr. v. Manor Mining & Contracting, Inc., BRB No. 24-0179 BLA (Mar. 26, 2025), the sole issue on appeal was the commencement date for benefits in a claim on modification. The majority affirmed the ALJ's decision to commence benefits beginning in August 2008. The ALJ found that Dr. Costa's August 5, 2008 biopsy report, DePonte's August 7, 2018 CT scan interpretation, and the evidence as a whole was sufficient to establish the onset of the Claimant's complicated pneumoconiosis. Although Dr. Costa saw a 1.7-centimeter nodule on the August biopsy, neither he nor any other physician described it as a massive lesion, complicated pneumoconiosis, or progressive massive fibrosis or provided an equivalency determination. However, the majority found that the ALJ identified an evidentiary basis for her equivalency determination. Specifically, it noted that the ALJ reconsidered all the evidence of record and credited Dr. DePonte's statement that the two-centimeter opacity she identified on the 2018 CT scan would appear similar in size on an x-ray, and the ALJ further found that Dr. DePonte's statement supported a similar equivalency determination for the 1.7-centimeter nodule of pneumoconiosis on the 2008 biopsy. Therefore, the majority concluded that, when considered with the other evidence of record, the ALJ rationally found that Dr. Costa's biopsy report supported a finding of complicated pneumoconiosis commencing in 2008. Judge Buzzard dissented and argued that the evidence did not support the ALJ's equivalency determination and, thus, the onset date for benefits.

[Complicated pneumoconiosis]

f. Length of Coal Mine Employment

In Vernon E. Cottrell v. Director, BRB No. 24-0013 BLA (Feb. 14, 2025), the Board agreed with the Director that calculations rendering partial days should be rounded up to full days when considering the length of a miner's coal mine employment, as when calculating a "day" of coal mine employment, partial days are included under 20 C.F.R. § 725.101(a)(32).

[Partial days]

g. Procedural Issues

In Pamela Kite v. Big Horn Coal Co., BRB Nos. 24-0209 BLA and 24-0210 BLA (Jan. 31, 2025), the Board denied the Employer's request for a de novo hearing based on the Supreme Court's holding in Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). The Board agreed with Director that nothing in the Supreme Court's decision in Loper Bright supported the Employer's argument that the ALJ's award of benefits needed to be voided because he referenced the preamble when weighing medical opinions. It added that the preamble is not a rule, and the ALJ did not treat it as such. Moreover, the Board emphasized that ALJ did not defer to the preamble; rather, he permissibly referenced it in determining whether the medical opinions were credible on the issue of legal pneumoconiosis.

[Use of Preamble when weighing evidence]

h. Responsible Operator

In Rex A. Hatfield v. Rockhouse Creek Development Corp., BRB No. 23-0217 BLA (Jan. 30, 2025), the Board vacated the ALJ's determination that the Employer was the properly designated responsible operator and remanded the case for further consideration. The Employer timely submitted evidence and argued to the district director that it was not the responsible operator because Blackhawk, which employed the Claimant after the Employer did, was the Employer's successor operator. However, the district director did not address the Employer's arguments. It found that the Employer's evidence and arguments were untimely despite their submission prior to the applicable deadline. Because Blackhawk did not employ the Claimant for a full year, the district director found the Employer was the responsible operator. The ALJ agreed and found that the Employer was the properly designated responsible operator and did not show that Blackhawk was financially capable of paying benefits. The Board held that the ALJ improperly concluded that the Employer had the burden to prove that Blackhawk was financially capable of paying benefits. It explained that although the district director's obligation to include a statement under 20 C.F.R. § 725.495(d) regarding the most recent operator's lack of insurance is triggered only when the district director relies on financial incapability as a

reason to not designate that operator, inclusion of such a statement in the record constitutes prima facie evidence that the most recent employer is not financially capable of assuming its liability for a claim. However, the absence of such a statement presumes that the most recent employer is financially capable of assuming its liability for a claim. The Board explained that the district director was timely put on notice that Blackhawk may have qualified as a successor operator such that its financial capability was at issue, but it did not address the Employer's arguments or evidence or include statement in the record regarding Blackhawk's insurance coverage pursuant to 20 C.F.R. § 725.495(d). Therefore, the Board vacated the ALJ's determination that the Employer was the properly designated responsible operator and instructed the ALJ on remand to consider whether the Employer established that a successor operator relationship existed between it and Blackhawk. If it did, then the ALJ must presume that Blackhawk is financially capable of paying benefits.

[District director's failure to address responsible operator issue]

i. Total Disability

Diffusing Capacity of the Lungs for Carbon Monoxide ("DLCO")

In James P. Polly v. Black Energy, Inc., BRB No. 24-0034 BLA (Jan. 30, 2025), the Board disagreed with the Employer that the ALJ erred in crediting Drs. Chavda and Sikder, who opined that the Claimant was totally disabled, in part, because of his diffusing capacity measurements ("DLCO"). The ALJ considered Dr. Chavda's explanation that the DLCO is a metric to assess disability under the American Medical Association Guides to the Evaluation of Permanent Impairment and the Social Security Administration's standards for proving total disability. Dr. Chavda also outlined impairment classifications that compared measured and predicted DLCO results. The ALJ concluded that Dr. Chavda's report strongly supported finding that the DLCO was a medically acceptable diagnostic test. Moreover, the ALJ noted that the U.S. Court of Appeals for the Fourth Circuit has said the DLCO may be a valid basis for finding total disability. Finally, the ALJ noted that the record did not have contrary evidence to weigh against using the DLCO to measure total disability. For all these reasons, the Board concluded that substantial evidence supported the ALJ's decision to find that the Claimant established the DLCO was medically acceptable and relevant to proving total disability.

[Use of DLCO values]

Metabolic Equivalents ("METS")

In Jerry W. Meadows v. Meadow River Coal Co., BRB No. 23-0495 BLA (Jan. 31, 2025), the ALJ credited Dr. Sood, who relied, in part, on the Claimant's metabolic equivalents

("METs") to find the Claimant totally disabled. The Employer argued that the ALJ did not adequately explain her basis for finding that METs were a medically acceptable clinical and laboratory diagnostic technique under 20 C.F.R. § 718.204(b)(2)(iv). The Board disagreed with the Employer. It noted that the ALJ specifically found that Dr. Sood explained his basis for estimating the METs level for the Claimant's usual coal mine work and compared it to the METs level the Claimant could perform based on the exercise ABG. Furthermore, Dr. Sood explained that the American Thoracic Society and American Medical Association have accepted the use of METs and have guidelines to allow doctors to interpret METs and to convert them into an individual's ability to do activity. The ALJ specified that Dr. Sood also explained that the Claimant exercised until he could not exercise further, and the test was terminated due to symptom limitation. Dr. Sood further explained that the Claimant had shortness of breath and fatigue, and, therefore, the test provided "a good understanding of how much exercise capacity" the Claimant could perform. Based on that degree of exercise capacity, Dr. Sood estimated the Claimant's peak METs level and concluded it was totally disabling. The Board held that the ALJ adequately explained her rationale under the APA and permissibly found that Dr. Sood's reliance on METs was an accepted measurement of exercise capacity.

[Use of METs values]