UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

Washington, DC

RECENT SIGNIFICANT DECISIONS -- MONTHLY DIGEST # 326

January - May 2026

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

Margaret Scully, Senior Staff Attorney

I. Longshore and Harbor Workers' Compensation Act

A. U.S. Supreme Court

Hencely v. Fuor Corp., 608 U.S. __, 146 S.Ct. 1086 (2026).[1]

In a six-to-three decision, the Supreme Court held that there was no constitutional provision or federal statute that preempted suit brought by service member against military contractor, Fluor, asserting claims under South Carolina law for negligent supervision, negligent entrustment, and negligent retention arising from the injuries he sustained when a Taliban operative working for the contractor carried out a suicide-bomb attack at a military base in Afghanistan.

Fluor hired Ahmad Nayeb to work at a U.S. base in Afghanistan as part of the "Afghan First" initiative, a military program that required contractors to hire Afghans to help stimulate the

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[1] This case is included for informational purposes only, as it did not involve a claim arising under the LHWCA or its extensions.

local economy and stabilize the Afghan Government. Nayeb, a Taliban operative, later carried out a suicide-bomb attack at the base that killed 5 and wounded 17. The Army's investigation found Fluor primarily responsible for the attack because it negligently supervised Nayeb in complying with base procedures. Former Army specialist Winston T. Hencely, who suffered a fractured skull and brain injuries in the course of stopping Nayeb before he could reach a larger crowd, sued Fluor in the U.S. District Court for the District of South Carolina seeking damages under South Carolina law for negligent supervision, negligent entrustment of tools, and negligent retention of Nayeb.

Following Fourth Circuit precedent, the District Court entered summary judgment for Fluor. See *In re KBR, Inc., Burn Pit Litigation*, 744 F.3d 326, 349 (4th Cir. 2014). The Fourth Circuit affirmed under its "battlefield preemption" doctrine, holding that during wartime, state-law claims against military contractors under military command arising out of combatant activities are preempted by federal law. It reasoned that the Federal Tort Claims Act's ("FTCA") combatant-activities exception, which preserves the Federal Government's immunity against claims arising out of the combatant activities of the military during wartime, also reflects a congressional intent to bar tort suits against contractors connected with those combatant activities, even when the contractor is alleged to have violated its instructions from the military. The Supreme Court concluded this was error.

The Court held that Hencely's state tort claims were not preempted by the federal law where the Federal Government neither ordered nor authorized Fluor's challenged conduct. No provision of the Constitution, federal statute, or Court precedent justifies that preemption of the State's ordinary authority over tort suits.

First, the Court found that neither the Constitution nor any federal statute expressly preempts Hencely's suit. The Supremacy Clause of the Constitution requires state law to yield only when it conflicts with rights or restrictions that stem from the Constitution or a valid federal statute or treaty. Here, no constitutional provision or federal statute expressly preempts Hencely's suit. This Court previously held that the FTCA's combatant-activities exception does not itself apply to suits against federal contractors. The Fourth Circuit improperly relied on *Boyle v. United Technologies Corp.*, 487 U.S. 500, 108 S.Ct. 2510, 101 L.Ed.2d 442 (1988), because this case did not involve a procurement contract or the FTCA's combatant-activities exception. More importantly, *Boyle* only recognized preemption when there is a significant conflict between state law and an identifiable federal policy or interest – accordingly *Boyle* protects a contractor only when the Government directed the contractor to do the very thing challenged in the suit. Hencely, by contrast, sued Fluor for conduct that was not authorized by the military and was allegedly contrary to federal instructions. Even assuming a uniquely federal interest in

regulating military bases overseas, no significant conflict exists between that interest and state-law negligence liability based on a contractor's departure from military instructions.

The FTCA's combatant-activities exception protects the Government's own combat-related decisions. Any comparable federal interest would therefore preempt state law only where the challenged conduct can fairly be treated as the military's own conduct or decision. But the Fourth Circuit expressly concluded that resolving Hencely's claims would not require evaluating the reasonableness of military judgments, and it nonetheless found preemption simply because the suit arose in a wartime combat setting. Such blanket preemption is not justified.

The Court stated that none of this should come as a surprise to Fluor under existing statutes and regulations. Congress knows full well how to make its intention to preclude private liability known. The Court listed several examples, including the Defense Base Act, whereby Congress channeled claims by contractors' employees to an administrative process, see 42 U.S.C. §§ 1651(a), (c), but did not do the same for suits by soldiers on military bases. Moreover, the Government advised Fluor that it would not have a blanket defense based on its status as a military contractor.

Nor does the Constitution's structure implicitly bar this suit. Although the Constitution gives Congress and the President broad war powers, that assignment has never been understood to bar all war-related tort suits. And federal contractors do not automatically share the Government's immunity merely because they perform services for it. Absent a statute to the contrary, States can regulate or tax federal contractors on the same terms as any private company. Fluor does not attempt to, and could not, invoke a defense under *Yearsley v. W. A. Ross Constr. Co.*, 309 U.S. 18, 60 S.Ct. 413, 84 L.Ed. 554 (1940). The *Yearsley* doctrine shields a contractor only when it is being sued precisely for accomplishing what the Federal Government requested. Because Fluor is alleged to have acted outside the authority the military granted it, *Yearsley* does not apply.

[Federal Preemption]

B. U.S. Circuit Courts of Appeals

Peña Garcia v. Director, OWCP**, 169 F.4th 111 (2nd Cir. 2026).**

The Second Circuit held that marijuana could not be treated as reimbursable medical treatment for purposes of Section 7 of the LHWCA, because it is presently classified as a Schedule I substance under the Controlled Substances Act ("CSA"), 21 U.S.C. § 812.

Claimant, a resident of Puerto Rico, sustained multiple physical injuries in 1994, resulting in permanent total disability. In 1998, he was awarded medical benefits under the LHWCA,

as extended by the DBA. In 2019, claimant's physician recommended medical cannabis, consistent with Puerto Rican law. Employer denied the request. The ALJ denied claimant's request for reimbursement on the ground that marijuana is classified as a Schedule I substance under the CSA, and thus cannot have any accepted medical use as a matter of federal law. The Board affirmed by a 2-1 vote. The court agreed.

Section 7 requires employers to "furnish" eligible workers injured on the job with "medical, surgical, and other attendance or treatment ... for such period as the nature of the [covered] injury ... may require." This Section and its implementing regulations require reimbursement of "all reasonable and necessary medical expenses" for eligible work-related injuries. However, the CSA makes it unlawful knowingly to manufacture, distribute, or possess with intent to distribute controlled substances. Under the CSA, a drug is classified in Schedule I if (1) it has a high potential for abuse, (2) it has no currently accepted medical use in treatment in the United States, and (3) there is a lack of accepted safety for use of the drug or other substance under medical supervision. Congress currently lists marijuana as a Schedule I drug.

Claimant argued that medical marijuana is a reasonable and necessary treatment for pain management. However, this argument is foreclosed by the plain text of the CSA, which states that Schedule I substances, like marijuana, have "no currently accepted medical use in treatment in the United States." The Supreme Court has held that marijuana's classification as a Schedule I substance amounts to an express Congressional finding that the drug has "no acceptable medical uses." See *Gonzales v. Raich*, 545 U.S. 1, 27, 125 S.Ct. 2195, 162 L.Ed.2d 1 (2005). Federal law thus bars marijuana from being deemed a reasonable and necessary medical expense for purposes of the LHWCA.

Annual appropriations riders prohibiting the DOJ from preventing states from implementing laws authorizing the use, distribution, possession, or cultivation of medical marijuana do not amount to congressional recognition of marijuana's medicinal value. They do not change federal law with respect to controlled substances and cannot be interpreted as having implicitly repealed Congress's statutory classifications of controlled substances in the CSA. Further, the term "medical marijuana" is used in the riders only to describe the nature of state laws, not to alter existing federal law with respect to controlled substances. And finally, they say nothing about marijuana's classification as a reasonable and necessary medical expense for purposes of federal workers compensation programs like the LHWCA.

While claimant cited recent actions taken by both the President and Congress as evidence of a more permissive federal policy, these actions are unrelated to whether marijuana can be reimbursed under the LHWCA. Removing marijuana from Schedule I cannot be done by

executive fiat; it requires either an Act of Congress or a duly completed administrative rulemaking proceeding. Neither, to date, has occurred.

While it may be true that state law has trended toward reimbursement of claims for medical marijuana in state worker's compensation regimes, these state policies bear no relation to whether medical marijuana can be reimbursed under federal law. Where federal regulations of controlled substances are more stringent than state analogs, the restrictions imposed by federal law govern. The Supremacy Clause unambiguously provides that if there is any conflict between federal and state law, federal law shall prevail.

Finally, whether or not the CSA imposes criminal penalties for the reimbursement of medical marijuana is irrelevant. All that matters is that CSA unequivocally provides, for purposes of federal law, that marijuana has no accepted medical use.

While it may be the case that the federal government will remove marijuana from Schedule I of the CSA, the court is obligated to apply the law as it currently stands.

[Section 7 – Medical Benefits - Section 7(a)—Necessary and Reasonable Treatment]

Renteria v. Grieg Star AS**, 168 F.4th 775 (5th Cir. 2026).**

Plaintiff Balvina Renteria, a longshore worker, brought state-court action against Grieg Star, the vessel's technical manager, for negligence under Section 5(b) of the LHWCA, alleging that while unloading cargo from the vessel, she stepped on a plastic sheeting covering a gap between stacked cargo and fell ten feet to the steel deck of the cargo hold. The district court granted Grieg Star's motion for summary judgment. The Fifth Circuit affirmed this ruling.

Section 5(b) of the LHWCA supplies the relevant tort-based duties owed by vessel owners to longshoremen. The primary responsibility for the safety of a longshoreman rests upon the stevedore. A vessel owner's turnover duty under the LHWCA relates to the condition of the ship upon the commencement of stevedoring operations. It places two obligations on the vessel owner: first, the owner owes a duty to exercise ordinary care under the circumstances to turn over the ship and its equipment in such condition that an expert stevedore can carry on stevedoring operations with reasonable safety; second, the owner owes a duty to warn the stevedore of latent or hidden dangers which are known to the vessel owner or should have been known to it. The duty to warn is narrow and does not include dangers which are either: (1) open and obvious or (2) dangers a reasonably competent stevedore should anticipate encountering. It may extend to certain latent hazards in the cargo stow, because an improper stow can cause injuries to longshoremen, and thus is among the hazards on the ship to which the duty to warn attaches.

In this case, defective condition within the vessel's cargo stow, specifically, the gaps between the rolls of kraft liner board underneath the plastic sheeting, was open and obvious, and thus the vessel's technical manager did not breach its turnover duty under the LHWCA to warn when it did not warn Renteria not to step on the plastic sheeting. The worker had been doing the same work for multiple days, knew there were gaps between the cargo underneath the plastic sheeting, stepped on plastic sheeting without knowing whether there was a hole or spacer beneath her, and failed to look through the holes in plastic sheeting to see whether there was a gap in the area where she stepped. If a longshoreman knew of a defect, then it is considered open and obvious, and there is no breach of the vessel owner's turnover duty to warn under the LHWCA.

A shipowner's active control duty under the LHWCA applies once stevedoring operations have begun and imposes liability on the shipowner for injury caused by hazards under the control of the ship. A shipowner may be liable for injuries if it actively involves itself in the cargo operations and negligently injures a longshoreman, or if it fails to exercise due care to protect longshoremen from hazards they may encounter in areas, or from equipment, under the active control of the vessel during the stevedoring operation. Liability based on this duty is not relieved when a hazard is open and obvious; if, however, a vessel has relinquished control over an area to the stevedore, then it is the primary responsibility of the stevedore to remedy a hazard in that area. If active control is not maintained, once stevedoring operations begin the shipowner has no general duty to monitor the stevedoring operation, and it may rely on the stevedore's judgment that equipment is reasonably safe for continued use during the work.

To show the existence of a genuine dispute of material fact regarding the shipowners active control duty, as will preclude summary judgment, a longshoreman must provide evidence that the shipowner exercised active control over the actual methods and operative details of the longshoreman's work. Mere presence of a vessel's crew to monitor the progress of cargo operations or ensure some degree of orderliness does not constitute active control.

In this case, the vessel's technical manager did not actively involve itself in stevedoring operations and thus did not breach its active control duty. Although vessel crew members attended daily safety meetings with stevedore supervisor, oversaw cargo operations, and were instructed to intervene if they saw longshoreman engaging in unsafe practice, where cargo holds had been turned over to stevedore, the foreman or "lead man" of the longshore crew provided all instructions to longshoremen on how to discharge the cargo, Renteria never communicated with any member of the vessel's crew, and no member of the vessel's crew was present at the time of the accident.

Likewise, there was no basis to conclude that Grieg Star failed to protect Renteria from any hazard encountered in areas under the active control of the vessel. The cargo holds were turned over to the stevedore each day before cargo operations began, and Renteria was injured in an area under the active control of the stevedore.

[Section 5(b)]

In re Complaint of Verplanck Fire District**, 175 F.4th 144 (2d Cir. 2026).**

Troy Dyckman, a firefighter employed as a volunteer by the Fire District, was injured aboard a vessel owed by the Fire District while responding to a reported boat fire when he tried to avoid a collision with another vessel. He asserted three distinct bases for compensation: (1) negligence and unseaworthiness pursuant to the Jones Act, 46 U.S.C. § 30104; (2) unseaworthiness under the doctrine of *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 66 S.Ct. 872, 90 L.Ed. 1099 (1946); and (3) negligence under general maritime law. The district court granted the Fire District's motion for summary judgment with respect to all three claims. Dyckman appealed this decision, except for the denial of his Jones Act claim. The Second Circuit vacated the district court's judgment.

Unseaworthiness Under Sieracki

The Second Circuit held that the district court erred in finding that Dyckman was ineligible to pursue a claim against the Fire District as the vessel owner for unseaworthiness as a *Sieracki* seaman. The court rejected the district court's three reasons for rejecting the claim. First, it held that Dyckman was not rendered ineligible to claim status as *Sieracki* seaman by reason of the fact that he was employed by the vessel owner, rather than being an independent contractor or employed by one.

Second, Dyckman's being a land-based worker did not preclude this claim. Dyckman is not covered by the LHWCA because he is a governmental employee. 33 U.S.C. § 903(b). As such, the fact that he is neither an independent contractor nor employed by one is of no significance as to whether he is or is not covered under the LHWCA. As detailed below, the LHWCA's abrogation of the *Sieracki* unseaworthiness remedy did not apply to him.

Third, the district court erred in concluding that *Sieracki* seaman status is reserved to those whose work is primarily to aid in navigation. The Supreme Court has abandoned reliance on whether seaman status was restricted to those who aided in navigation.

Next, the Second Circuit concluded that the 1972 Amendments to the LHWCA abolished the unseaworthiness remedy against vessels only for workers covered by the Amendments. After acknowledging "[a]mbiguous [p]recedents" on this issue, the court examined the purpose and history of the LHWCA and the 1972 Amendments. The LHWCA

has limited the liability of employers whose workers are covered under the Act by providing that its statutory, no-fault compensation payments are the employer's exclusive liability. However, the LHWCA authorizes an employee to sue negligent third parties, including the vessel. *See* 33 U.S.C. § 933(a). After the *Sieracki* decision, a land-based non-seaman working on a vessel could recover from the vessel or its owner for injuries resulting from the vessel's unseaworthiness, if the injury was incurred while the worker was "doing a seaman's work and incurring a seaman's hazards." This ruling indirectly undermined the exclusivity of employers' liability under the LHWCA by extending a vessel's obligation of seaworthiness to *Sieracki* seamen. Thereafter, the Supreme Court held that a shipowner could seek reimbursement from its stevedoring contractor for damages it had paid to the contractor's employee for injuries incurred due to the unseaworthiness of the vessel. These decisions enabled an injured stevedoring employee, indirectly, to get tort damages from his employer. In 1972, Congress altered the *Sieracki* remedy by amending the LHWCA. Section 5(b) was added, which provides that the vessel can be liable to a covered person for negligence, but not for unseaworthiness. The 1972 Amendments represented a bargain: covered workers received increased benefits but gave up their right to recover from the vessel (or its owner) for unseaworthiness. This in turn eliminated the vessel owner's indemnity action against the stevedoring firm. The subsection's scope is limited to "the event of injury to a person covered under this *Act*." Thus, the *Sieracki* seaman's remedy survived the 1972 Amendments for workers who, under Sections 2 and 3(b) of the Act, were excluded from the benefits provided by the Act. This list includes seamen, *see* 33 U.S.C. § 902(3)(G) (who are covered under the Jones Act), and government workers, *see id*. § 903(b). In so holding, the Second Circuit agreed with the Fifth Circuit and D.C. Circuit, and disagreed with the Ninth Circuit. In this case, a remand was warranted for further development of the factual record on the issue of whether Dyckman satisfied requirements for *Sieracki* seaman status.

Negligence Under General Maritime Law

As a matter of first impression, the court held that the exclusive workers' compensation remedy provision of the New York Volunteer Firefighters' Benefit Law ("VFBL") did not bar Dyckman's general maritime negligence claim.

The issue of federalism in admiralty has been described by the Supreme Court as one of the most perplexing in the law. The Constitution grants federal courts the authority over all cases of admiralty and maritime jurisdiction. U.S. Const. art. 3, § 2, cl. 1. The Supremacy Clause of the Constitution provides: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . ." U.S. Const. art. VI, cl. 2. Furthermore, since the Judiciary Act of 1789, the federal courts have had jurisdiction of civil cases seeking maritime remedies. *See* 28 U.S.C. § 1333. A

need for uniformity is one of the principles of maritime law. In *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 37 S.Ct. 524, 61 L.Ed. 1086 (1917), the Court held that the state compensation statute was an unconstitutional trespass on exclusively federal territory. More recently, the Court has adopted two principles: (i) a preference for a balancing test, exemplified in *Kossick v. United Fruit Co.* 365 U.S. 731, 81 S.Ct. 886, 6 L.Ed.2d 56 (1961), in which the court weighs how deeply the underlying state and federal interests engage with the particular facts coupled with (ii) a reluctance (short of a categorical supremacy-based rule of denial) to allow state law rules to defeat a worker's entitlement to a maritime remedy unless the application of state law would not interfere with the essential uniformity as to maritime matters.

Other circuits that have considered whether a state statute's exclusive remedy provision bars a general maritime claim have not been uniform. The Third and Fifth Circuits have adopted a categorical rule that the Supremacy Clause requires that a federal remedy take precedence over a conflicting state law. The Eleventh Circuit adopted a balancing test, according to the dictates of comity. In a matter of first impression, the Second Circuit agreed and held that, under *Kossick*, a balancing of state and federal interests is required, which inevitably depends on the particular facts of the case.

In this case, the court found that both sides had a significant interest in the application of their respective laws. At the same time, federal law generally has stewardship over maritime matters and has evinced a strong interest in providing adequate remedies for the injuries suffered by workers in maritime commerce. Although only a small part of Dyckman's employment took place on the navigable waters, and he therefore was not a seaman under the Jones Act, his firefighting mission aboard the vessel was distinctly maritime. The court contrasted this case with cases involving injuries to land workers, whose presence on a ship was only for transportation to their land-based jobs. In this case, displacement of the federal remedy would impair uniformity of the federal maritime law. On remand, the district court was instructed to determine whether the evidence should be believed and whether Dyckman was doing seaman's work and incurring a seaman's hazards.

[Coverage – 1972 Amendments, Exclusions From Coverage; Section 5(b)]

C. U.S. District Courts[2]

No decision to report.

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

D. Benefits Review Board

Woolum v. Arma Aviation, __ BRBS __ (2026).

Agreeing with the Director, Office of Workers' Compensation Programs ("Director"), the Board affirmed the ALJ's average weekly wage ("AWW") calculation and rejected employer's argument that claimant's disability ended with the withdrawal of the United States from Afghanistan on August 30, 2021. This case arose in the Ninth Circuit.

Claimant worked for Employer in Kabul, Afghanistan as an aircraft mechanic for approximately eight months in 2020. Claimant alleged that he began having breathing, sleeping, and psychological issues as a result of exposure to constant fumes from burn pits. He reported having sleeping problems and panic attacks arising from his beathing difficulties.

Claimant was initially treated at a clinic in Afghanistan by Drs. Eschebi and Akech. Dr. Echebi made a provisional diagnosis of chronic sinusitis with sleep apnea and panic attacks. Dr. Akech diagnosed vasomotor rhinitis triggered by environmental pollutants as well as chronic sinusitis. Claimant left Kabul in October of 2020 on his physicians' recommendation; thereafter, he experienced improvement, but continued to have symptoms. After returning to the United States, Claimant was treated by several doctors, including Drs. Vaughan and Tonkinson. He had several CT scans that showed sinusitis. Both Drs. Tonkinson and Vaughan diagnosed hypertrophy of nasal turbinates and chronic sinusitis. Dr. Vaughan also recommended the use of masks and air filters. In April of 2021, claimant returned to work as an airplane mechanic in the U.S. He also applied for several positions in Iraq, Kuwait, and Africa, but has not worked overseas.

Claimant was also examined by employer's medical expert, Dr. Singer, who opined that claimant's symptoms were due solely to his pre-existing obstructive sleep apnea. Dr. Singer opined that claimant did not have chronic sinusitis or any other medical conditions caused or aggravated by his work for employer. He noted that claimant had pre-existing nasal congestion, which can be aggravated by poor air quality, but stated that it was not the "primary cause" for claimant's reported sleep disturbances and panic attacks. He also disagreed with other medical providers and opined that sinusitis is not caused by poor air quality. At the same time, Dr. Singer conceded that pollution could have aggravated claimant's pre-existing nasal congestion.

The ALJ found that claimant invoked the Section 20(a) presumption linking his work to his alleged nasal and sinus conditions, and that employer rebutted the presumption. After weighing the evidence as a whole, the ALJ found that claimant established he had "mild and intermittent" nasal and sinus conditions that became chronic and resistant to

treatment while working for employer. The ALJ also determined that claimant invoked the Section 20(a) presumption for his alleged psychological injuries, that employer rebutted the presumption, and that claimant failed to establish he suffered a work-related psychological injury. The latter finding was not challenged on appeal.

The ALJ next found that claimant established a *prima facie* case of total disability based on his nasal and sinus conditions by showing that they precluded his return to his former work with employer. Since employer presented no evidence of suitable alternate employment ("SAE"), the ALJ awarded claimant compensation for temporary total disability ("TTD"), followed by temporary partial disability ("TPD") from the date claimant returned to work as an aircraft mechanic in the U.S. The ALJ calculated claimant's AWW under Section 10(a). He declined to adjust claimant's AWW based on the unavailability of claimant's usual work in Kabul after August 30, 2021, when the United States Armed Forces withdrew from Afghanistan. The ALJ calculated claimant's compensation rate and awarded medical expenses related to his nasal and sinus conditions. Employer filed an appeal.

Causation – Weighing the Evidence as a Whole

Employer argued that the ALJ erred in finding that claimant sustained a work-related sinus condition. It asserted that claimant's current condition was solely the result of his pre-existing sleep apnea. Employer also argued that the ALJ's decision violated the Administrative Procedure Act ("APA"), 5 U.S.C. § 557(c)(3)(A), because he failed to discuss relevant evidence, rejected contradictory evidence when assessing claimant's credibility, and failed to adequately explain why he discredited Dr. Singer. The Board rejected these contentions.

The Board reiterated the shifting burdens under Section 20(a). It stated that, as the factfinder, the ALJ is entitled to evaluate the credibility of all witnesses, including physicians, weigh the medical evidence, and draw his own inferences and conclusions from the record. The Board may not reweigh the evidence, draw other inferences from the record, or substitute its views for those of the ALJ.

In this case, the ALJ considered claimant's treatment records, pre-deployment health assessments, and testimony from various witnesses. Although the ALJ found "there are moments where claimant's history disagrees with his medical records," he concluded that claimant's testimony was "generally credible."

The ALJ next weighed the medical opinions. He found that Dr. Akech's and Dr. Vaughan's opinions were supported by the extensive medical records, which demonstrated that claimant's pre-existing "mild and intermittent" sinus and nasal conditions were aggravated by his exposure to burn pits in Kabul. He also found that Dr. Akech's diagnosis of chronic sinusitis was supported by the CT scans and that Dr. Singer's disagreement with this

evidence was poorly explained. Based on these findings, the ALJ properly determined that Dr. Akech's opinion outweighed Dr. Singer's opinion. Accordingly, the ALJ properly concluded that the weight of the medical evidence demonstrated that claimant had "mild and intermittent" nasal and sinus conditions that became chronic and resistant to treatment after his exposure to burn pits with employer.

The Board also rejected employer's argument that the ALJ failed to weigh multiple pieces of evidence. Contrary to employer's contention, the ALJ reviewed the pre-employment evidence. He also based his conclusion on the documented progression of claimant's symptoms and Dr. Singer's own explanation that non-chronic sinusitis resolves within two weeks with medication.

Employer also failed to establish error in the ALJ's assessment of claimant's credibility. The ALJ acknowledged inconsistencies between claimant's denial of prior diagnoses of sleep apnea, chronic sinusitis, and rhinitis and his medical records documenting these diagnoses, and found they were not discrediting because his recollection of his own medical history was otherwise consistent and supported and any discrepancies could have been due to miscommunication between claimant and his providers. The Board noted that the ALJ did not err in determining that claimant experienced sleep disturbances as opposed to making a specific finding about the existence of sleep apnea. The ALJ properly found that clamant was "generally credible."

Lastly, the ALJ did not err in rejecting Dr. Singer's opinion that claimant's current complaints were due solely to pre-existing sleep apnea and unrelated to his exposure to burn pits. The ALJ properly found that Dr. Singer's opinion was not credible or supported by the medical records, which demonstrated a history of "mild and intermittent" nasal and sinus conditions that became chronic after claimant's work for employer. Also, the ALJ properly found that Dr. Singer's disagreement with the treating physicians and CTS scans was poorly explained.

In sum, the ALJ properly weighed the evidence and complied with the APA in finding that claimant sustained a compensable injury.

Extent of Disability

Employer argued that the ALJ erred in finding claimant is incapable of returning to his usual employment with a respirator and failed to discuss critical evidence on the return-to-work issue. The Board rejected these arguments.

The Act defines disability as the "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." 33

U.S.C. § 902(10). To establish a *prima facie* case of total disability, claimant must demonstrate an inability to perform his usual employment due to his work injury. The ALJ must compare claimant's medical restrictions with the specific physical requirements of his usual employment. If claimant succeeds, the burden shifts to employer to establish the availability of SAE.

In this case, both Drs. Akech and Vaughan recommended that claimant leave Kabul due to the aggravation of his nasal and sinus conditions caused by exposure to environmental pollution. The ALJ properly credited their unequivocal opinions on this issue. The ALJ also properly credited claimant's testimony that he had been fitted with a respirator in previous employment, and that he could not return to his usual work with a respirator because it would restrict his breathing.

On the other hand, Dr. Singer opined that claimant could continue his work in Kabul without work restrictions or with a respirator. Employer argued that Dr. Singer's opinion was uncontradicted and that it was supported by Dr. Vaughan's recommendation to use masks and air filters. However, the ALJ correctly stated that although Dr. Vaughan initially considered the use of a respirator or mask, after his second evaluation, he recommended departure from Afghanistan. Also, the ALJ properly found that claimant's experience using a respirator in prior employment supported his testimony on this issue.

Based on these findings, the Board affirmed that ALJ's conclusion that claimant established a *prima facie* case of total disability, because it was rational and supported by substantial evidence.

Disability Compensation

Employer argued that claimant's disability ended with the withdrawal from Afghanistan because the position was no longer available for him (or anyone) to secure; and therefore, there was no loss of wage-earning capacity and claimant was not entitled to no benefits after August 30, 2021. Because Section 2(10) of the Act defines disability as the "incapacity because of injury to earn the wages," employer asserted that claimant cannot be disabled because his inability to return to his usual work was not related to his injury but to the U.S. withdrawal. The Director filed a response urging the Board to reject employer's argument. The Board agreed with the Director.

Employer argued that in this situation, the ALJ should have used the two-tiered method of computing earning capacity that was used in *Kubin v. Pro-Football Inc*., 29 BRBS 117 (1995). In *Kubin*, claimant was a former professional football player, and the ALJ awarded him benefits based on a two-tiered system: the first award was higher and was only for the presumed duration of claimant's football career, which was cut short due to his work injury, and the second award was lower because it was based on his post-football

career. In its reply brief to the Board, employer stated that it was not trying to argue that claimant's AWW suddenly downgraded at the time of the U.S. withdrawal but rather was asserting that claimant's alleged disability ended.

The Board agreed with the Director and held that the dicta in *Kubin* does not apply (in that case, neither party appealed the changes to the compensation rates at the end of the projected football career). The Board held that its decision in *Raymond v. Blackwater Sec. Consulting, L.L.C.*, 45 BRBS 5 (2011), *aff'd sub nom. Blackwater Sec. Consulting, L.L.C. v. Director, OWCP*, 503 F. App'x 498 (9th Cir. 2012), is the controlling precedent on this issue. In *Raymond*, the ALJ converted claimant's disability compensation to a nominal award based on claimant's testimony that he intended to cease overseas work on a specified date. In that case, the Board held that the ALJ erred in changing claimant's compensation rate based on claimant's testimony regarding his planned departure from Afghanistan because there is no legal support in the Act or case law for limiting the duration of claimant's award of permanent partial disability benefits. The Board explained that the Act provides set formulas for awarding disability compensation and contemplates wages at the time of the injury as the baseline for comparison with actual post-injury earning capacity. The Board also explained that it is well-settled that there is only one AWW per injury on which disability benefits will be based, and post-injury events generally are not relevant to determining AWW. Further, in an unpublished decision affirming *Raymond*, the Ninth Circuit similarly stated that ALJs do not have any discretion to modify the formula provided in the Act or re-calibrate AWW at the time of injury based on future events that would have changed that wage regardless of the injury. The Board rejected employer's attempt to distinguish *Raymond*, stating that contrary to employer's assertion, use of the term "future" in this instance is relative to the date of injury, not the current date. Consequently, although the withdrawal from Afghanistan is now an event in the past, it was a future speculation at the time of claimant's injuries.

Accordingly, the Board affirmed the ALJ's AWW calculation and his award of disability benefits.

Attorney's Fee

The Board affirmed the ALJ's award of attorney's fees. The amount of an attorney's fee award is discretionary and will not be set aside unless shown by the challenging party to be arbitrary, capricious, based on an abuse of discretion, or not in accordance with law. In this case, the parties executed a joint stipulation agreeing on the amount of attorney's fees and litigation costs. The ALJ approved the stipulation. Employer appealed the order, asking the Board to set it aside if the award of benefits were to be vacated. Since the Board affirmed the award, it also affirmed the fee award.

[Application of Section 20(a); Evaluating the Evidence; Average Weekly Wage in General; SECTION 8 – DISABILITY]

II. Black Lung Benefits Act

A. U.S. Courts of Appeals

1. Published:

Fourth Circuit Court of Appeals

Rhino Energy, LLC v. Dir., OWCP, 174 F.4th 358 (4th Cir. Apr. 23, 2026)

On April 23, 2026, the Fourth Circuit Court of Appeals ("Fourth Circuit" or "Court") issued a published opinion granting a petition for review filed by Rhino Energy, LLC ("Rhino") and remanding the claim for the Black Lung Disability Trust Fund ("Trust Fund") to pay benefits to Robert Rule ("Claimant").

From 2012 until December 2014, the Claimant worked for Rhino, which was a subcontractor for Wildcat Energy, LLC ("Wildcat"). When Rhino ended its subcontract with Wildcat at the end of 2014, the Claimant continued working for Wildcat until October 2015, when he retired. The sole issue before the Fourth Circuit was whether Wildcat should have been designated as the responsible operator.

The district director named Rhino as the responsible operator despite Rhino's objections. On appeal, the Administrative Law Judge ("ALJ") agreed that Rhino was the responsible operator. She found that because Wildcat employed the Claimant for ten months, it did not employ him for a year. She found no merit to Rhino's argument that Wildcat was a successor operator. The Benefits Review Board affirmed the ALJ's decision.

Before the Fourth Circuit, the parties did not dispute that the Claimant was entitled to benefits. They only disputed who should pay his benefits. Rhino argued that the ALJ erred in designating it as the responsible operator for three reasons: (1) Wildcat employed the Claimant for a year under the plain text of 20 C.F.R. § 725.101(a)(32); (2) the ALJ did not fully consider whether Wildcat was a successor operator; and (3) the ALJ failed to consider whether Rhino was entitled to the presumption, at 20 C.F.R. § 725.495(d), that Wildcat remained financially capable of paying benefits.

In addressing Rhino's first argument on appeal, the Court held the ALJ erred in finding that Wildcat did not employ the Claimant for a year. Citing its decision in Baldwin v. Dir., OWCP., 170 F.4th 273 (4th Cir. 2026), the Court stated that 20 C.F.R. § 725.101(a)(32) allows a miner to establish a year of employment by showing that he worked at least 125 working days in and around a coal mine during a one-year period. Because the ALJ found that the Claimant worked for Wildcat for more than 125 days, the Court held that she erred in concluding that Wildcat did not employ him for a year.

Regarding Rhino's second argument on appeal, the Court explained that because the Claimant established a year of employment with Wildcat, it did not need to resolve whether Wildcat was Rhino's successor.

Finally, regarding Rhino's third argument on appeal, the Court first discussed the applicable regulations. It explained that when the district director designates an employer other than the miner's most recent employer, the district director must: (1) provide reasons for designating that operator; and (2) if the miner's most recent employer fails to qualify as a potentially liable operator because it lacks financial capacity to cover the miner's claim, the district director must certify that it searched OWCP's records and found no record of that operator's insurance coverage or authorization to self-insure ("495(d) Statement"). See 20 C.F.R. §§ 725.410(a)(3); 20 C.F.R. § 725.495(d). The regulations further provide that the 495(d) Statement "shall be prima facie evidence that the most recent employer is not financially capable of assuming liability for a claim." 20 C.F.R. § 725.495(d). However, where the district director does not file a 495(d) Statement concerning the miner's most recent employer, "it shall be presumed that the most recent employer is financially capable of assuming its liability for a claim." Id.

The Court addressed whether: (1) the absence of a 495(d) Statement in the record properly triggered the presumption under 20 C.F.R. § 725.495(d) that Wildcat was financially capable of paying benefits; and (2) whether Rhino properly relied on that presumption to meet its burden of establishing that Wildcat was financially capable of assuming liability. The Court agreed with Rhino that because the district director did not provide a 495(d) Statement, Wildcat was presumed to be financially capable of assuming liability under 20 C.F.R. § 725.495(d).

The Court first looked at the plain language of the regulation and found it "clearly" establishes that where no 495(d) Statement is required and none is filed, "it shall be presumed" that the most recent employer remains financially able to assume liability. It added that its interpretation conformed with the regulatory burdens of proof, as the

amended regulations place the burden on the district director to determine all potentially liable operators and to then choose the one responsible for paying benefits. The Court rejected as absurd the Director's argument that the absence of a 495(d) statement only triggered the presumption in cases that actually require a 495(d) Statement (those cases in which the district director expressly concluded that the operator was financially incapable of covering a miner's claim).

In this case, because the district director relied on its erroneous view that the Claimant did not work for Wildcat for a year, it did not discuss Wildcat's financial capability in explaining why it designated Rhino as the responsible operator. Because its decision did not rest on Wildcat's lack of financial capability, the district director did not issue a 495(d) Statement. Since the record did not include a 495(d) Statement, the Fourth Circuit held that Rhino was entitled to the presumption that Wildcat was financially capable of paying benefits. Moreover, because no evidence existed to rebut the presumption, the Court held that Rhino met its burden to establish that Wildcat was financially capable of assuming liability to pay benefits. Since the parties did not dispute that Wildcat met the remaining requirements of 20 C.F.R. § 725.494 to be a potentially liable operator, and because Wildcat most recently employed the Claimant for a year, the Court concluded that, as a matter of law, Wildcat was the most recent potentially liable operator to employ the Claimant. Thus, it held that Wildcat should have been designated as the responsible operator and remanded the claim for payment by the Trust Fund.

Judge Wilkinson authored a dissenting opinion arguing that Rhino bore the burden to show that Wildcat possessed sufficient assets to secure the payment of benefits. Since the record did not show Wildcat's solvency, Judge Wilkinson argued that Rhino failed to carry its burden of proof. He opined that the Trust Fund should only be liable in limited circumstances not applicable here, and he cautioned that the Trust Fund was already severely indebted.

Wolf Run Mining Co. v. Dir., OWCP, 172 F.4th 304 (4th Cir. Apr. 7, 2026)

On April 7, 2026, the Fourth Circuit Court of Appeals ("Fourth Circuit" or "Court") issued a published opinion affirming an award of benefits to Harold Baisden ("Claimant"), who worked as a coal miner for twenty-seven years. The Administrative Law Judge ("ALJ") concluded that the Claimant was totally disabled due to legal pneumoconiosis and was entitled to invoke the fifteen-year presumption. She further found that Wolf Run Mining Company ("Employer") failed to rebut the presumption. The Benefits Review Board affirmed the ALJ's decision.

Before the Fourth Circuit, the Employer argued the ALJ erred in finding that it did not rebut the presumption. The Court rejected all the Employer's arguments and held that substantial evidence supported the ALJ's decision.

The Court first found that the ALJ properly considered the preamble to the regulations in giving little probative weight to Drs. Jarboe and Ranavaya. The Court stated that the preamble establishes that the risks of smoking and coal mine dust exposure are additive, and it affirmed the ALJ's decision to discredit the Drs. Jarboe and Ranavaya because they did not consider the additive risks of smoking and coal dust or adequately explain why coal dust did not cause the Claimant's lung impairment. Furthermore, the Court disagreed with the Employer's argument that the ALJ misapplied the preamble. It noted that the Employer relied upon a case in which the fifteen-year presumption did not apply, whereas in the Claimant's case, the Employer bore the burden to show why coal dust did not cause the Claimant's pulmonary impairment.

The Court next rejected the Employer's argument that the ALJ did not fully consider the opinions of Drs. Jarboe and Ranavaya. The Court stated that the studies Dr. Jarboe relied upon and Dr. Jarboe's opinion conflicted with the Department's view, as expressed in the preamble, that the FEV_1/FVC ratio is not a reliable method of establishing disease causation. Moreover, it upheld the ALJ's decision to reject Dr. Ranavaya's opinion because he did not address the fact that the Claimant's PFTs did not return to normal after taking bronchodilators. Finally, in a footnote, the Court rejected the Employer's argument that the ALJ erred in crediting the Claimant's experts, Drs. Werchowski and Green. It stated that because their opinions were not relevant to whether the Employer rebutted the fifteen-year presumption, it did not need to address the ALJ's treatment of their opinions.

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

Baldwin v. Dir., OWCP, 170 F.4th 273 (4th Cir. Mar. 19, 2026)

On March 19, 2026, the Fourth Circuit Court of Appeals ("Fourth Circuit" or "Court") issued a published opinion holding that the regulation at 20 C.F.R. § 725.101(a)(32), which defines a "year" for all purposes under the Act, unambiguously allows miners to receive credit for a year of coal mine employment if they show that they have worked at least 125 working days within a calendar year (or partial periods totaling one year) in or around a coal mine.

The Administrative Law Judge ("ALJ") denied benefits after finding that Eddie Baldwin ("Miner") was employed as a coal miner for fewer than fifteen years. In calculating the Miner's employment history, the ALJ only credited the Miner with percentages of full 365-day periods of employment relative to the number of days that the Miner had been employed per partial year of employment, instead of considering the number of working days the Miner worked. Anita Baldwin ("Claimant") appealed, urging the Benefits Review Board ("Board") to adopt the Sixth Circuit's approach to calculating a year of coal mine employment, as articulated in Shepherd v. Incoal, Inc., 915 F.3d 392 (6th Cir. 2019). The majority of the Board affirmed the ALJ's decision.

On appeal, the Fourth Circuit considered how a year of employment should be calculated under 20 C.F.R. § 725.101(a)(32). Island Creek Kentucky Mining and the Director, OWCP ("Respondents") argued that the plain language of the regulation required proof of both: (1) a year-long employment relationship with a coal mine operator; and (2) 125 days working in the mines during that year of employment. In contrast, the Claimant argued that she only needed to show that the Miner worked for 125 days during a one-year period to be credited with a year of coal mine employment.

In considering and rejecting the Respondents' argument, the Fourth Circuit first considered the plain language of the regulation at 20 C.F.R. § 725.101(a)(32). It stated that on its face, the definition of included two elements: (1) a calendar year, or partial periods totaling one year; and (2) a minimum of 125 days spent working in or around coal mines during that one-year period. However, the Court emphasized that the definition and its related subsections did not contain any mention "whatsoever of any required employment relationship, let alone one lasting 365 days." Instead, it found that the regulation tied its "only mention of employment to a showing of 125 days working 'in or around a coal mine.'" Thus, the Court concluded that the plain text lent itself "most naturally to a reading that a miner must show that he worked 125 days in a coal mine within the proscribed period (a calendar year or partial periods adding up to the same) – and nothing more – to establish a year of employment" for purposes under the Act.

The Court next analyzed the subsections of 20 C.F.R. § 725.101(a)(32). It found that 20 C.F.R. § 725.101(a)(32)(i) "unambiguously" provided that a miner who has worked 125 working days within the span of a calendar year or partial periods totaling one year "has worked one year in coal mine employment for all purposes under the Act." Further, it emphasized that subsection (i) did not reference a 365-day employment relationship. Turning to subsection (ii), the Court explained that it established a rebuttable presumption that any miner whose employment "lasted for a calendar year or partial periods totaling a

365-day period amounting to one year… spent at least 125 working days in such employment." The Court explained that subsection (ii) afforded miners an additional path to establishing 125 working days, and thus a year of employment under the Act, even where evidence of actual days spent working in the mines was difficult or impossible to procure. Finally, the Court stated that subsection (iii) proposed a formula for when the evidence did not establish the beginning and ending dates of a miner's coal mine employment or when a miner's employment lasted less than a calendar year, allowing an ALJ to divide the miner's yearly income from work as a miner by the coal mine industry's average daily earnings for that year, as reported by the Bureau of Labor Statistics. The Court emphasized that subsection (iii) expressly predicated the application of its formula on a situation in which a miner had less than a calendar year of employment, which "directly" contravened the Respondents' view that the regulation always required "a full year of employment to establish eligibility and that a miner lacking such a full year of employment remains categorically ineligible."

Next, the Court considered the Respondents' argument that the regulatory preamble should be given controlling weight. The Court explained that when a conflict between the preamble and the regulation exists, the regulation controls. It stated that the plain language of 20 C.F.R. § 725.101(a)(32) required only a showing of 125 working days within a one-year period, and the regulation never stated or implied that a miner must demonstrate a 365-day employment relationship to establish a year of employment. Because the preamble, by contrast, suggested a more onerous barrier to eligibility, it required more than the regulation required. Thus, the Court adhered to the plain language of the regulation.

The Fourth Circuit further found that the Act's remedial intent and common sense supported its holding. It explained that the Act's presumptions favored granting benefits, and its reading of a "year" served to reduce, rather than increase, the evidentiary burden on coal miners seeking benefits, which comported with its longstanding recognition of Congress's intent to help coal miners and grant them the compensation they deserve for years of strenuous and dangerous physical labor. The Court added that common sense dictated that "the focus should be on the time period during which a miner" was "exposed to coal dust," as opposed to the length of time that he collected a paycheck. It emphasized that black lung disease resulted "from the consistent ingestion of coal dust," not from the time period during which an employer listed a miner on its employment records.

Finally, the Court discussed the differences between the 1980 definition of 20 C.F. R. § 725.101(a)(32) and the current definition. It emphasized that the current definition does

not define a "year of employment" or condition eligibility for the Act's presumptions on proof that a miner was "regularly employed" for a full calendar year. The current regulation also does not require an employment relationship, in contrast to its predecessor regulation, which required a miner to demonstrate "regular employment" by a coal mine "operator or other employer." The Court found this shift in language significant, noting that by replacing the initial reference to a "year of employment" with merely a "year," the Department removed any express or implied suggestion that a showing of an employment relationship of any particular duration was required. Instead, the current regulation focuses the inquiry on whether a miner worked for 125 days, with the only caveat being that those days must have fallen within the span of a one-year period.

The Court also addressed and rejected the Respondents' arguments that the Fourth Circuit's prior opinions in Armco Inc. v Martin, 277 F.3d 468 (4th Cir. 2002), and Daniels v. Mitchell, 479 F.3d 321 (4th Cir. 2007), required a year-long employment relationship. The Court stated that because those cases dealt with the old definition of 20 C.F.R. § 725.101(a)(32), rather than the revised definition, they were not binding precedent. Furthermore, it emphasized that neither opinion substantively analyzed the revised regulation's definition of a year for purposes of the Act's fifteen-year presumption.

For all these reasons, the Fourth Circuit joined the Sixth Circuit in holding that the plain language of 20 C.F.R. § 725.101(a)(32) and its subsections require a miner to show only that he worked for 125 working days within a calendar year (or partial periods totaling one year) to establish a year of employment. It stated that the Sixth Circuit's opinion in Shepherd v. Incoal, Inc., 915 F.3d 392 (6th Cir. 2019), comported with its own analysis of the regulation, its context and history, and the Act's purpose. Consequently, the Fourth Circuit found that the ALJ erred in applying 20 C.F.R. § 725.101(a)(32) when calculating the length of Miner's coal mine employment, granted the Claimant's petition for review, vacated the Board's decision, and remanded the case for further consideration.

Cedar Coal Co. v. Dir., OWCP, 168 F.4th 685 (4th Cir. Mar. 6, 2026)

On March 6, 2026, the Fourth Circuit Court of Appeals ("Fourth Circuit" or "Court") issued a published opinion affirming an Administrative Law Judge's ("ALJ's") award of benefits to Roger Mullins ("Claimant"), who she determined worked as a coal miner for approximately twelve years and was totally disabled due to legal pneumoconiosis. The Benefits Review Board affirmed the ALJ's decision.

Before the Fourth Circuit, Cedar Coal Company ("Employer") argued that the ALJ erred in considering Dr. Go's medical report and erred in finding that the Claimant had, and was totally disabled due to, legal pneumoconiosis. The Fourth Circuit rejected both arguments and concluded that substantial evidence supported the ALJ's decision.

Before the ALJ, the Claimant designated Dr. Go's medical report. Dr. Go considered the PFTs the parties designated as well as several PFTs that were submitted into evidence as treatment records. The Employer argued that because Dr. Go interpreted numerous PFTs in his medical report, the PFTs became affirmative evidence in excess of the evidence limitations. In rejecting the Employer's argument, the Court explained that 20 C.F.R. § 725.414(a)(2)(i) anticipates that a medical report might analyze more than the two affirmative PFTs because it specifies that any PFT that appears in a medical report must be admissible under 20 C.F.R. § 725.414(a)(2)(i) (which specifies the limits on affirmative evidence) or 20 C.F.R. § 725.414(a)(4) (which allows for the admission of treatment records notwithstanding the limitations in subsection (a)(2)). Thus, the Court concluded that PFTs in treatment records are admissible, and a physician may consider them in offering a medical report without "transforming" them into affirmative evidence.

The Employer next argued that the ALJ erred in crediting Dr. Go's opinion on legal pneumoconiosis and erred in finding that the Claimant's total disability was due to legal pneumoconiosis. The Court reviewed the ALJ's reasons for crediting Dr. Go's opinion and discrediting the opinions of Dr. Rosenberg and Dr. Zaldivar, and it found that the ALJ adequately considered the evidence and explained her reasoning when weighing the medical reports. Furthermore, in finding that the Claimant's disability arose from legal pneumoconiosis, the ALJ discredited Drs. Ranavaya, Rosenberg, and Zaldivar because they failed to diagnose legal pneumoconiosis. In affirming the ALJ's decision, the Court cited long-standing precedent establishing that a medical opinion premised on an erroneous finding that a claimant did not suffer from pneumoconiosis was not worthy of much, if any, weight, particularly regarding whether a claimant's disability was caused by pneumoconiosis.

For all these reasons, the Fourth Circuit concluded that substantial evidence supported the ALJ's decision. Therefore, it denied the Employer's petition for review.

Clinchfield Coal Co. v. Dir., OWCP, 164 F.4th 342 (4th Cir. Jan. 15, 2026)

On January 15, 2026, the Fourth Circuit Court of Appeals ("Fourth Circuit" or "Court") issued a published opinion affirming an award of benefits to Vernon Vanderpool

("Claimant"). The Administrative Law Judge ("ALJ") found that the Claimant was entitled to invoke the fifteen-year presumption and Clinchfield Coal Company ("Employer") failed to rebut it. The Benefits Review Board affirmed the ALJ's decision.

On appeal to the Fourth Circuit, the Employer argued that the ALJ erred in finding valid pulmonary function tests ("PFTs") from 2014 and 2018 and erred in weighing the medical opinion evidence. Regarding validity of the PFTs, the Employer argued that the 2014 PFT, administered during the Claimant's evaluation sponsored by the Department of Labor ("Department"), did not meet the "maximal effort" requirement in Appendix B to Part 718 ("Appendix B") because the Claimant exhaled for slightly less than seven seconds. Regarding the 2018 PFT, which was administered during Dr. Ajjarapu's treatment of the Claimant, the Employer argued that the ALJ erred in considering whether it was sufficiently reliable rather than whether it was in substantial compliance with Appendix B.

In considering and rejecting the Employer's arguments, the Court first noted that Appendix B specifically provides that if a quality standard is not met, the ALJ "may consider such fact in determining the evidentiary weight to be given to the results." Second, it noted that the ALJ has discretion to credit an expert whose reasoning accords with the medical and scientific premises reflected in the preamble, including the preamble's guidance that the quality standards in Appendix B are not a rigid checklist. In the preamble, the Department emphasized that the "substantial compliance" standard is "a rule of reason," which directs the ALJ to identify the deviation from the Appendix B quality standard and then determine whether the PFT is reliable "despite its failure to comply with every criterion in the standard." 65 Fed. Reg. 79,920, 79,928 (Dec. 20, 2000). The Court further explained that PFTs developed in connection with a claim must be evaluated for substantial compliance with Part 718's quality standards, while PFTs developed during treatment must be evaluated for reliability.

With this framework in mind, the Court first found that substantial evidence supported the ALJ's finding that the 2014 PFT substantially complied with the applicable quality standards. The ALJ considered Dr. Ajjarapu's statement that the PFT was not performed for the "requisite" seven seconds, but she explained that the Claimant came "very close," maintained effort beyond six seconds, and produced reproducible tracings with three valid curves, and Dr. Mohammed Ranavaya, who reviewed the PFT for validity on behalf of the Department, found it acceptable. Dr. Ajjarapu further explained that the Claimant exhaled for as long as he could and the PFT satisfied other key indicators, such as being reproducible and having multiple acceptable curves. Therefore, the Court found that

substantial evidence supported the ALJ's determination that the October 2014 PFT was admissible and probative notwithstanding the marginal deviation in exhalation time.

The Court further held that substantial evidence supported the ALJ's determination that the 2018 PFT was sufficiently reliable to support a finding of total disability. The ALJ considered the Employer's doctors' arguments that the PFT was invalid, yet he found that they used a rigid "maximal effort" approach inconsistent with the reliability inquiry applicable to a treatment record. He also considered Dr. Ajjarapu's assessment that the Claimant's effort was "good" and "adequate," and the results were "sufficiently reliable," and he noted that one of the Employer's physicians acknowledged the Claimant's cooperative effort even though the results fell marginally short of the Appendix B standards. Consequently, the Court found that the ALJ permissibly found the 2018 PFT sufficiently reliable to support a finding of total disability.

The Court next considered and rejected the Employer's argument that the ALJ erred in weighing the medical opinions. It stated that the ALJ identified the relevant evidence, resolved the material conflicts, and adequately explained why he credited some opinions over others. Thus, it found that the ALJ's decision satisfied the Administrative Procedure Act.

Because the ALJ applied the correct legal standards and substantial evidence supported his evaluation of the PFTs and medical opinions, the Fourth Circuit affirmed his award of benefits and denied the Employer's petition for review.

Dominion Coal Corp. v. Dir., OWCP, 164 F.4th 353 (4th Cir. Jan. 15, 2026)

On January 15, 2026, the Fourth Circuit Court of Appeals ("Fourth Circuit" or "Court") issued a published opinion affirming an award of benefits to Darrell Meade ("Claimant"). In a decision and order on remand, the Administrative Law Judge ("ALJ") credited Dr. DePonte's CT scan interpretations over Dr. Adcock's because Dr. DePonte provided an equivalency determination and specific measurements and locations of smaller nodules, and she explained how they coalesced to form a large opacity that met the definition of complicated pneumoconiosis. The Benefits Review Board ("Board") affirmed the ALJ's decision.

On appeal to the Fourth Circuit, Dominion Coal Corporation ("Employer") argued that the ALJ erred in crediting Dr. DePonte's CT scan interpretations over Dr. Adcock's. Specifically, the Employer argued that the ALJ erred when he stated that Dr. Adcock did not adequately

explain why a coalescence of smaller opacities did not constitute a large opacity consistent with complicated pneumoconiosis. The Fourth Circuit stated that neither the regulations nor the ILO Guidelines for the International Classification of Radiographs of Pneumoconioses supported the Employer's position. Dr. Adcock stated that an overall coalescence of opacities measured twenty millimeters in length. Thus, the Court explained, one or more of its parts could have been about ten millimeters, and Dr. Adcock did not show otherwise because he did not measure each opacity's length. Therefore, the Court affirmed the ALJ's decision to give less weight to Dr. Adcock's interpretations and affirmed the ALJ's finding that the CT scan evidence established complicated pneumoconiosis based on Dr. DePonte's interpretations. The Court further affirmed the ALJ's finding that the medical opinion evidence neither established nor refuted the existence of complicated pneumoconiosis.

The Fourth Circuit next addressed the Employer's argument that the ALJ's dual-layer tenure protections violated the separation of powers doctrine. The Court explained that it had already rejected a similar argument in K & R Contractors, LLC v. Keene, 86 F.4th 135 (4th Cir. 2023). In Keene, the Court explained that a litigant could not have an underlying agency action set aside absent reason to believe that the unconstitutional removal provision itself inflicted harm. Examples of such harm included: 1) where a President attempted to remove an ALJ, but the removal protections bared it; or 2) where a President expressed the desire to remove such an ALJ but acknowledged he could not do so due to the protections. Because the Employer did not allege such harm, and no evidence existed to show that the President tried to, or expressed a desire to, remove the ALJ in this case, the Fourth Circuit rejected the Employer's argument.

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

Eleventh Circuit Court of Appeals

Hayes v. Dir., OWCP, 172 F.4th 1263 (11th Cir. Apr. 7, 2026)

On April 7, 2026, the Eleventh Circuit Court of Appeals ("Eleventh Circuit" or "Court") issued a published opinion holding that the plain text of the regulation at 20 C.F.R. § 725.101(a)(32) unambiguously provides that if a miner worked in coal mine employment for 125 days during a calendar year, he worked for one year under the Act.

The Miner's case has a long procedural history. The first Administrative Law Judge ("ALJ") who adjudicated the case twice found that Ermine Hayes ("Miner") worked as a coal miner

for over fifteen years and awarded benefits. Relying on 20 C.F.R. § 725.101(a)(32), the first ALJ credited the Miner with a year of coal mine work when he worked around coal mines for at least 125 working days, and he applied the formula in 20 C.F.R. § 725.101(a)(32)(iii) where the record showed that the Miner's coal mine employment lasted less than a calendar year. The Benefits Review Board ("Board") twice remanded the case after concluding that the first ALJ's method of calculation was not reasonable. The second ALJ who adjudicated the case, after the Board's second remand, denied benefits after following the Board's instructions to conduct a two-step inquiry, which first involved determining whether the Miner engaged in coal mine employment for one calendar year and then determining whether he worked for at least 125 working days within that one-year period. The Board affirmed the second ALJ's decision. The Miner's son, Jeffrey Hayes ("Claimant") appealed.

The Eleventh Circuit rejected the position propounded by the Department and the Employer that the text of the regulation requires a miner's 125 working days to occur during a calendar year or partial periods totaling one year within a 365 or 366-day employment relationship. The Court analyzed the plain text of the regulation at 20 C.F.R. § 725.101(a)(32), which defines a year, and held that it only requires a miner to prove that he worked for 125 days in coal mines during a calendar year to be credited with a year of coal mine employment. Citing 20 C.F.R. § 725.101(a)(32)(i), the Court stated that where the "evidence establishes that the miner worked in or around coal mines at least 125 working days during a calendar year or partial periods totaling one year, then the miner has worked one year in coal mine employment for all purposes under the Act." The Court emphasized that subsection (ii) confirmed its interpretation of subsection (i), as subsection (ii) provides that when a miner proves he was employed in coal mine employment for a calendar year, he is entitled to a rebuttable presumption that he worked 125 days in that year.

The Court also addressed, and rejected, the Director's argument that it should interpret the language in the preamble to the regulations. The Court stated that the plain meaning of the regulation always trumps the language in the preamble. Furthermore, it identified conflicting language in the preamble and concluded that the preamble did not clearly support the Director's argument. The Court also discussed prior versions of 20 C.F.R. § 725.101(a)(32) and found they were materially different from the current version. Finally, because the Court found the plain text of the regulation to be unambiguous, it declined to defer to the Director's interpretation of the regulation.

For all these reasons, the Eleventh Circuit held that the ordinary meaning of 20 C.F.R. § 725.101(a)(32) unambiguously provides that if a coal miner worked in coal mine

employment for 125 days during a one-year period, he worked for one year under the Act. Consequently, it granted the Claimant's petition for review, vacated the Board's decision, and remanded the case for further proceedings.

2. **Unpublished:**

Fourth Circuit Court of Appeals

Island Creek Coal Co. v. Dir., OWCP, No. 24-1056, 2026 LX 145916 (4th Cir. Mar. 26, 2026)

On March 26, 2026, the Fourth Circuit Court of Appeals ("Fourth Circuit" or "Court") issued an unpublished opinion affirming an award of benefits to Robert E. Frazier ("Claimant"), who worked as a coal miner for thirty-six years. On appeal at the Fourth Circuit, Island Creek Coal Company ("Employer") argued that the Claimant's 2017 claim was untimely and that he was not totally disabled by pneumoconiosis. The Fourth Circuit concluded that the Benefits Review Board correctly affirmed the Administrative Law Judge's legally sound and well-supported award of benefits. Therefore, it denied the Employer's petition for review.

Sixth Circuit Court of Appeals

Apogee Coal Co. v. Dir., OWCP, Nos. 23-3297, 23-3437, 23-3536, 23-3537, 23-3541, 23-3612, 23-3644, 23-3645, 23-3662, 2026 LX 264650 (6th Cir. Apr. 28, 2026)

On April 28, 2026, the Sixth Circuit Court of Appeals ("Sixth Circuit" or "Court") issued an unpublished opinion in seven consolidated cases involving miners who were awarded benefits. The miners last worked for Apogee Coal Co., LLC ("Apogee") while it was a subsidiary of Arch Resources, Inc. ("Arch"). Arch self-insured Apogee. In 2005, Arch sold Apogee to Magnum Coal, which was later acquired by Patriot Coal ("Patriot"). After Patriot went bankrupt in 2015, the Department of Labor instructed its district directors to hold Arch liable as the responsible insurer for black lung claims against Apogee that accrued when Arch owned and self-insured Apogee. Arch appealed the awards of benefits and argued that because it sold Apogee in 2005, it was no longer obligated to pay benefits. Because Arch and Apogee conceded that they made the same arguments, based on materially identical facts, that the Court considered and rejected in Apogee Coal Co., LLC

v. Dir., OWCP, 112 F.4th 343 (6th Cir. 2024), the Sixth Circuit denied their petitions for review.

Energy v. Mitchell, No. 25-3451, 2026 LX 227087 (6th Cir. Apr. 28, 2026)

On April 28, 2026, the Sixth Circuit Court of Appeals ("Sixth Circuit" or "Court") issued an unpublished opinion affirming an Administrative Law Judge's award of benefits to Delbert Mitchell ("Miner") and his surviving spouse, Amy Mitchell ("Claimant"). The Benefits Review Board ("Board") affirmed the ALJ's decision.

Before the Sixth Circuit, the Employer argued the ALJ erred in finding that the Sequioa Energy, LLC ("Employer") failed to rebut the fifteen-year presumption. The ALJ considered the opinions of Drs. Abdul Dahhan and Bruce Broudy, who opined that the Miner did not have pneumoconiosis. The doctors further opined that even if he had pneumoconiosis, they would have expected to see substantial abnormalities on a chest x-ray. They concluded that the Miner's pulmonary disability was due to obesity and his use of prescription medication. The ALJ rejected the Employer's argument regarding the x-ray evidence, explaining that legal pneumoconiosis could exist without clinical pneumoconiosis or abnormalities on x-ray. She further rejected, as speculative and unconvincing, their opinions that the Miner's disability was due to obesity and prescription medication use.

In addressing the first issue on appeal, the Sixth Circuit found that the ALJ correctly concluded that the Act recognizes both clinical and legal pneumoconiosis, and that negative x-rays did not preclude the Miner from having legal pneumoconiosis. Regarding the second issue on appeal, the Court stated that because the Employer failed to raise the issue before the Board, it forfeited the argument. As substantial evidence supported the ALJ's conclusion that the Employer did not rebut the fifteen-year presumption, the Court denied the Employer's petition for review.

Star Servs. Corp. v. OWCP, No. 25-3517, 2026 LX 148897 (6th Cir. Apr. 17, 2026)

On April 17, 2026, the Sixth Circuit Court of Appeals ("Sixth Circuit" or "Court") issued an unpublished opinion affirming an award of benefits to Linda Carol Christian ("Claimant"), the surviving spouse of James Marshal Christian ("Miner"). The Administrative Law Judge ("ALJ") found that the Miner was totally disabled from a respiratory impairment for at least two months before and at the time of his death, that the Claimant was entitled to invoke

the fifteen-year presumption, and that Star Services Corporation ("Employer") failed to rebut the presumption. The Benefits Review Board affirmed the ALJ's decision.

Before the Sixth Circuit, the Employer argued the ALJ erred in finding the Miner totally disabled and in finding that the Employer did not rebut the presumption. The Sixth Circuit rejected the Employer's arguments.

The Employer first argued the ALJ erred concluding that Dr. Jarboe's opinion weighed in favor of finding the Miner totally disabled. The Court disagreed. Although Dr. Jarboe did not specifically state whether the Miner was totally disabled, Dr. Jarboe opined that the Miner "had severe hypoxemia and respiratory failure, which led to his final hospitalization" and "was in respiratory failure at the time of his demise." The Court found that the ALJ reasonably inferred that given Dr. Jarboe's statements regarding the Miner's frequent hospitalizations and intubation, the Miner could not perform the heavy labor required by his usual coal mine work and was totally disabled by a respiratory impairment. Additionally, the Court emphasized that a "medical opinion need not be phrased in terms of 'total disability' before total disability can be established." The Court added that the treatment records, autopsy results, and death certificate verified Dr. Jarboe's findings that the Claimant was hospitalized frequently and intubated due to severe respiratory issues before his death. Thus, it concluded that substantial evidence supported the ALJ's conclusion that the Miner was totally disabled from a respiratory or pulmonary impairment.

Next, the Court rejected the Employer's argument that because the Miner's respiratory condition was acute, the ALJ erred in finding him totally disabled. It stated that neither the Act nor the regulations require a totally disabling respiratory condition to be chronic to invoke the fifteen-year presumption.

Finally, the Court affirmed the ALJ's finding that the Employer failed to rebut the presumption. The Court found that the ALJ acted within his discretion in discrediting Dr. Jarboe's opinion on whether coal mine employment caused the Miner's respiratory issues and death. It added that because substantial evidence supported the ALJ's finding that the Employer did not rebut the presumption of legal pneumoconiosis, it did not need to consider whether the Employer rebutted the presumption of clinical pneumoconiosis. Moreover, the Court affirmed the ALJ's finding that the Employer failed to show that no part of the Miner's death was caused by pneumoconiosis.

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

Island Creek Ky. Mining v. Dir., OWCP, No. 25-3200, 2026 LX 30887 (6th Cir. Feb. 4, 2026)

On February 4, 2026, the Sixth Circuit Court of Appeals ("Sixth Circuit" or "Court") issued an unpublished opinion affirming an Administrative Law Judge's ("ALJ") award of benefits to Eddie Stewart ("Claimant"), who worked as a coal miner for just under fifteen years and was totally disabled due to legal and clinical pneumoconiosis. The Benefits Review Board affirmed the ALJ's decision.

Before the Sixth Circuit, Island Creek Kentucky Mining ("Employer") argued the ALJ erred in: (1) excluding portions of Dr. Chavda's deposition testimony; (2) referencing the preamble to the regulations; and (3) finding that the Claimant had clinical pneumoconiosis. The Sixth Circuit rejected all the Employer's arguments.

First, the Court held that the ALJ did not violate the Employer's due process rights in excluding some of Dr. Chavda's testimony. Dr. Chavda was the Claimant's treating physician. The record contained his treatment records and deposition testimony. The ALJ declined to consider the portions of Dr. Chavda's testimony that involved questions about medical evidence that exceeded the four corners of his treatment notes. Thus, the ALJ limited his consideration of Dr. Chavda's testimony to information relating to his treatment notes. The Sixth Circuit found that the Employer received adequate notice and a fair opportunity to raise good cause arguments under 20 C.F.R. § 725.456(b)(1) before the ALJ, but it failed to do so. Furthermore, the Court emphasized that the Employer knowingly submitted three medical opinions, including Dr. Chavda's deposition testimony, on its Evidence Summary Form. Finally, the Court found that the ALJ adequately identified which parts of Dr. Chavda's deposition testimony he considered, so he did not violate the Administrative Procedure Act.

Second, the Court rejected the Employer's argument that the ALJ treated the preamble to the regulations as binding. It stated that the ALJ discussed the preamble in his analysis of legal pneumoconiosis to resolve how much weight to give to the opinions of Drs. Majmudar, Sood, and Sheikh, and he permissibly relied on the preamble in accordance with Sixth Circuit precedent. The Court further found that the ALJ permissibly assigned more weight to medical opinions that were consistent with medical principles accepted by the Department. Finally, the Court noted that the ALJ relied on the preamble when evaluating Dr. Chavda's treatment records, but he did not treat the preamble as a binding presumption.

Next, the Court affirmed the ALJ's finding that the Claimant had clinical pneumoconiosis based on the x-rays, CT scans, and medical opinions. In finding the CT scan evidence positive for clinical pneumoconiosis, the ALJ credited Dr. Clark, the treating radiologist, and Dr. Crum, who interpreted the CT scan on behalf of the Claimant, over Dr. Meyer, who interpreted the CT scan on behalf of the Employer. The ALJ primarily relied on Dr. Clark's findings since the CT scan was part of the Claimant's ongoing medical treatment and the findings were corroborated by Dr. Crum's report. The ALJ gave less weight to Dr. Meyer because he attributed changes in the Claimant's lungs to etiologies that Dr. Clark did not identify and because Dr. Meyer did not explain why coal mine dust could not have caused the changes. The Court affirmed ALJ's decision to credit Drs. Clark and Crum over Dr. Meyer. In rejecting the Employer's argument that the ALJ should have found Dr. Meyer more experienced in interpreting CT scans, the Court compared 20 C.F.R. § 718.102(e)(2) (x-rays) with 20 C.F.R. § 718.107 (other medical evidence) and concluded that unlike with x-ray evidence, ALJs are not required by regulation to consider the certifications or qualifications of physicians who interpret CT scans. Thus, it concluded that "the ALJ did not need to review the credentials or expertise of the interpreting doctors" when he weighed the credibility of their findings.

Finally, the Court affirmed the ALJ's consideration of the Claimant's smoking history. It stated that the Sixth Circuit has never held that an ALJ must completely discredit a doctor's opinion because the doctor partially based it on inaccurate background information. The Court found that the ALJ did not err in crediting Drs. Sood, Chavda, Majmudar, and Sheikh, or the treatment records. Though these doctors did not know about the Claimant's smoking history, the Court found that the ALJ sufficiently explained how other evidence in the record supported their findings of clinical pneumoconiosis. It further affirmed the ALJ's decision to discredit Drs. Selby and Goodman because their opinions conflicted with the x-ray evidence. As the ALJ adequately weighed each medical opinion on clinical pneumoconiosis, the Court concluded that substantial evidence supported his opinion.

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

B. Benefits Review Board

1. Published:

The Board issued a published decision in Patricia Sparks (o/b/o Estate of Ricky Allen Sparks) v. Locust Grove, Inc., BRB No. 24-0472 BLA (May 8, 2026) and Donald Ray Marcum

v. Excel Mining, LLC, BRB No. 25-0076 BLA (May 8, 2026) involving an appeal of an ALJ's Order Denying Attorney Fee Petitions relating to two medical benefits awards in two BTD cases. The Director, OWCP initiated the two actions on behalf of the Black Lung Disability Trust Fund ("Trust Fund") to recover interim medical benefits that the Trust Fund paid for the Miners' medical treatment expenses, while the employers contested whether the medical expenses were payable under the Act. Claimants retained counsel and participated fully in the medical benefits proceedings before OALJ. In Marcum, the Director sought reimbursement of $41,005.16 in Trust Fund-paid interim medical benefits, and in Sparks, the Director sought reimbursement of $50,308.04 in Trust Fund-paid interim medical benefits. In both cases, the Employers contested their liability for the disputed medical expenses on the grounds that the treatments were not reasonable or necessary for treatment of the Miner's pneumoconiosis, and they requested hearings before the OALJ. The ALJ issued Decisions and Orders awarding medical benefits in both cases, finding each Employer liable for its respective payment and reimbursement of medical benefits. Following the award in the two BTD cases, the Claimants' counsel filed petitions for attorney fees, which were denied by the ALJ, finding that no adversarial relationships existed between the claimants and the employers, citing the BRB unpublished decision in B.F. [Fuller] v. S. Hollow Coal Co., BRB No. 09-0710 BLA (July 20, 2010). The Claimants argue that adversarial relationships existed between the claimants and employers in the current cases because the employers contested the compensability of specific medical treatment as not reasonable or necessary, subjecting Claimants to the risk of overpayment proceedings and requiring their participation in the formal hearings before the ALJ. The Board agreed with the Claimants' arguments and reversed the ALJ's denial of attorney fees. The Board notes that the applicable regulation (20 C.F.R. § 725.367(a)) sets forth a non-exclusive list of examples of adversarial relationships warranting the payment of attorney fees including when "[t]he claimant submits a bill for medical treatment, and the party liable for the payment of benefits declines to pay the bill on the grounds that the treatment is unreasonable or is for a condition that is not compensable." 20 C.F.R. § 725.367(a)(3). The Board distinguished the Fuller case cited by the ALJ as support for denying the attorney fees, finding that the unique facts of that case established that no adversarial relationship existed. However, in the current cases the claimants remained exposed to the potential liability for the reimbursement of an overpayment of medical benefits that the Trust Fund paid to the claimants arising from the reimbursement disputes between the employers and the Trust Fund.

[Attorney fees in medical treatment dispute (BTD) cases]

2. **Unpublished:**

Arterial Blood Gas Studies (ABGs)

Exercise ABGs

In Hermis Johnson, Jr. v. Consol of Kentucky, BRB No. 25-0174 BLA (May 26, 2026), the ALJ considered four ABGs dated February 25, 2020, November 12, 2020, February 15, 2022, and April 19, 2022. The February 25, 2020, November 12, 2020, and April 19, 2022 studies produced non-qualifying results at rest and during exercise. The February 15, 2022 study produced non-qualifying results at rest and qualifying results during exercise. The ALJ gave more weight to the exercise studies. He also gave more weight to the February 15, 2022 qualifying exercise study than the more recent April 19, 2022 non-qualifying exercise study because the Claimant exercised for longer on the February 15, 2022 study, achieving a greater level of exertion that better approximated his usual coal mine work. Thus, he gave the February 15, 2022 exercise study controlling weight. The Board affirmed the ALJ's finding that the exercise blood gas studies are more probative than the resting blood gas studies as they are more representative of the Claimant's ability to perform the exertional requirements of his usual coal mine employment. See Skrack v. Island Creek Coal Co., 6 BLR 1-710, 1-711 (1983). The Board also found that the ALJ permissibly concluded, based on the higher heart rate and METS measurement on the February 15, 2022 study that the Claimant reached a higher level of exertion than he did on the April 19, 2022 study. Therefore, contrary to the Employer's argument, the Board concluded that the ALJ permissibly found the February 15, 2022 exercise study is more representative of Claimant's ability to perform his usual coal mine employment requiring medium labor. The Board rejected Employer's argument that the ALJ erred in not explaining "how the contrary results of the pulmonary function studies were used to assess if [Claimant] had proven total pulmonary or respiratory disability." The Board stated, "Because arterial blood gas studies and pulmonary function studies measure different types of impairment, the results of arterial blood gas studies are not called into question by contemporaneous pulmonary function testing." See Sheranko v. Jones & Laughlin Steel Corp., 6 BLR 1-797, 1-798 (1984).

[ABGs; permissible to give more weight to exercise ABG where the Claimant exercised longer]

In Michael L. Lee v. Redhawk Mining, LLC, BRB No. 25-0119 BLA (Mar. 23, 2026), the Board affirmed the ALJ's decision to give more probative weight to the qualifying exercise ABG over the non-qualifying resting ABGs. Additionally, it found the ALJ permissibly determined

that the qualifying exercise ABG from 2019 was entitled to greater weight than the non-qualifying exercise ABG from 2020 because the Claimant exercised for a longer period in 2019, and the exertion it required of him more closely resembled the heavy labor required of his usual coal mine work. Therefore, it affirmed the ALJ's finding that the ABG evidence supported finding the Claimant totally disabled.

[Total disability; exercise arterial blood gas studies]

Attorney Fees

In Charles E. McDaniel v. Mingo Logan Coal Co. BRB No. 25-0321 BLA (April 3, 2026), the Board upheld the District Director's Claim Examiner's award of attorney fees to Attorney Wolfe's office. Although this involves a Claim Examiner's award as opposed to an ALJ, the decision cites some helpful general case law for issues often seen in attorney fee petitions.

- Under fee shifting statues, the lodestar method is the appropriate starting point for calculating fee awards under the Act. The Fourth Circuit has recognized that "the most reliable indicator of prevailing market rates in a black lung case will be evidence of rates allowed in other black lung cases." See E. Assoc. Coal Corp. v. Director, OWCP [Gosnell], 724 F.3d 561, 573 (4th Cir. 2013).
- An adjudicator has discretion to award a fee based on quarter-hour minimum increments. See Gosnell, 724 F.3d at 576; B & G Mining, Inc. v. Director, OWCP [Bentley], 522 F.3d 657, 664 (6th Cir. 2008).
- Regarding whether work could have been delegated to paralegals, the Board stated: "The question in determining a compensable fee is not whether it would have been less costly for Counsel to delegate work to paralegals or legal assistants. See, e.g., Moreno v. City of Sacramento, 534 F.3d 1106, 1115 (9th Cir. 2008) ("The court may permissibly look to the hourly rates charged by comparable attorneys for similar work but may not attempt to impose its own judgment regarding the best way to operate a law firm, nor to determine if different staffing decisions might have led to different fee requests."). Rather, it is whether the work and time that Counsel requested were reasonable and necessary to establish Claimant's entitlement to benefits at the time Counsel performed the work."
- The Board upheld Claims Examiner's award of Claimant's mileage for travel to and from a medical evaluation with his own physician as authorized under 20 C.F.R. § 725.366(c) finding that Claims Examiner rationally applied 20 C.F.R. § 725.366(c) to find Claimant's travel costs supporting his claim for modification were reasonable, unreimbursed expenses incurred in establishing his case.

Complete Department-Sponsored Pulmonary Evaluation

In Raymond D. Bryant v. Cravat Coal Co., BRB No. 25-0125 BLA (Mar. 26, 2026), the Board affirmed the ALJ's decision to remand the case for a second Department-sponsored PFT and a supplemental report from Dr. Forehand. Dr. Forehand oversaw the original PFT and Dr. Gaziano opined the results were acceptable. However, when Dr. Forehand was asked at deposition to review the PFT results, he testified that the volume loops and volume time tracings were not within five percent of each other, as required by 20 C.F.R. App. B(2)(ii)(G). In rejecting the Employer's argument that the ALJ erred in remanding the case, the Board stated that the plain language of the regulation allows the ALJ to raise and address, sua sponte, issues regarding the regulatory compliance of the complete pulmonary evaluation under 20 C.F.R. § 725.456(e).

[Complete Department-sponsored pulmonary evaluation]

Complicated Pneumoconiosis

In Erwin v. Rockhouse Creek Development Corporation BRB No. 25-0110 BLA (April 21, 2026), the Board remanded the case for a reweighing of the evidence regarding complicated pneumoconiosis. The Board found that the ALJ's finding that a preponderance of the x-ray readings were negative for complicated pneumoconiosis was undermined by the ALJ's observation that although the readings of a majority of the radiologists were negative for simple and complicated pneumoconiosis, the readers noted abnormalities which "do not appear to be wholly inconsistent with the broader definition of pneumoconiosis." The Board noted "[w]hile the ALJ stated there is no basis upon which to favor the positive readings over the negative readings, she specifically found the x-rays, which she determined are negative for simple and complicated pneumoconiosis, are entitled to reduced weight because [the] readings may be consistent with pneumoconiosis." Thus, the Board determined the ALJ failed to adequately resolve the conflict in the x-ray evidence or sufficiently explain her findings as the APA requires. The Board also determined that the ALJ failed to adequately consider the treatment records including CT scan readings in those records "documenting opacities both larger and smaller than one centimeter in diameter, with notations in the treatment records bearing on the nature of the opacities." The Board noted that the ALJ summarily referred to the CT scan readings as the "treatment record CT scans" and found that, while they "consistently record the existence of subpleural nodules with some measuring over [one centimeter]," they are not positive for complicated pneumoconiosis because none diagnosed "progressive massive fibrosis or complicated pneumoconiosis." The Board concluded the

ALJ failed to adequately consider the treatment CT scan readings and her determination that the treatment records neither support nor undermine a finding of complicated pneumoconiosis was not supported by substantial evidence and not sufficiently explained in accordance with the APA. In its remand instructions the Board noted "[s]imply acknowledging that certain types of evidence are positive while others are negative does not satisfy the explanatory requirements of the APA."

In John Adkins, Jr. vs. Fools Gold Energy Corporation, BRB No. 25-0161BLA (April 17, 2026), the Board upheld the ALJ's finding of complicated pneumoconiosis and confirmed that the Sixth Circuit does not require an equivalency determination when assessing whether CT scan evidence supports a finding of complicated pneumoconiosis. The Board also upheld the ALJ's finding regarding onset date. In this subsequent claim the ALJ found that the first evidence of complicated pneumoconiosis that he credited was a June 22, 2016 CT scan. However, as he found this "finding of total disability" predated the final decision denying benefits in the prior claim, the ALJ properly found the date of commencement of benefits is April 2017, the month after the denial in the prior claim became final (March 2017). See 20 C.F.R. §725.309 (c)(6).

Evidentiary Issues

In Richard W. Naylor v. Consol Pennsylvania Coal Co., BRB Nos. 25-0156 BLA and 25-0156 BLA-A (Apr. 17, 2026), the Board found the ALJ erred in failing to grant the Claimant an extension of time to submit his post-hearing evidence. In this case the ALJ set the deadline for receipt of post-hearing evidence as December 27, 2024. On January 25, 2025 (approximately one month after the record closed), the Claimant submitted correspondence to the ALJ requesting additional time to submit outstanding evidence. Claimant's counsel indicated that she had submitted an x-ray to Dr. DePonte on October 2, 2024, but her reading had not been received. Counsel also noted that firm staffing issues resulted in the firm's calendar not properly noting the deadline, in addition to counsel's preoccupation with a family emergency. In response the ALJ issued an Order denying the request for an extension because it was submitted after the evidentiary deadline. The Claimant argued that the ALJ erred in denying its request for an extension of time because even though it was submitted after the deadline for post hearing evidence, good cause was shown. Employer responded that the ALJ was within his discretion to exclude the late evidence and further noted it reserved the right to object to Claimant's proposed evidence at the hearing. The Board agreed with the Claimant, noting that the OALJ regs provide that the ALJ may for "good cause extend the time [o]n motion made after the time has expired if the party failed to act because of excusable neglect." 29 C.F.R. §

18.32(b)(2). The Board found that the ALJ erred in not addressing whether Claimant's request for an extension of time should be granted due to excusable neglect. The Board noted that the ALJ's order summarily denied the request as it was submitted after the deadline but provided no analysis on the excusable neglect issue. Accordingly, the Board found that as the ALJ provided no analysis on the excusable neglect issue, he abused his discretion in denying Claimant's request for an extension of time. Accordingly, the Board remanded for the ALJ to address the Claimant's arguments.

Legal Pneumoconiosis

In Larry A. Sarvey v. Doverspike Brothers Coal Co., BRB No 25-0210 BLA (May 28, 2026), the Board upheld the ALJ's finding of entitlement in this case where the Claimant had eleven years of coal mine employment and the fifteen year presumption did not apply. The ALJ credited claimant's offered medical opinions (Drs. Celko, Hua, and Krefft) who determined that Claimant's respiratory impairment was significantly due to both coal mine dust and cigarettes, to establish the presence of legal pneumoconiosis. Employer argued (in this case arising in the Third Circuit) that the recent Fourth Circuit case of Am. Energy, LLC v. Dir., OWCP, United States DOL, 106 F.4th 319 (4th Cir. 2024), should be applied to this case, and therefore based on the Court's reasoning in that case, an ALJ "must not credit a physician's opinion merely because it identifies coal dust exposure and smoking as dual causes of the miner's respiratory impairment." The Director argued, and the Board agreed, that the Employer misinterpreted the Fourth Circuit's holding in Goode. The Board noted that in Goode, where the employer's physicians attributed the claimant's impairment to smoking only, and the claimant's experts attributed it to both smoking and coal mine dust exposure, the ALJ had credited the claimant's physicians and discredited the employer's physicians solely because the preamble to the revised 2001 regulations, 65 Fed. Reg. 79,940, 79,941, 79,943 (Dec. 20, 2000), states that coal mine dust inhalation and smoking may have additive effects. In Goode, the Fourth Circuit court reversed the ALJ's finding on legal pneumoconiosis, holding that citing to the preamble cannot meet a claimant's burden of proving coal mine dust exposure significantly contributes to a miner's respiratory impairment without additional reasons for preferring the claimant's experts.

In the current case the Board determined that in crediting the Claimant's experts on legal pneumoconiosis, the ALJ did not rely solely on the Preamble's statement that the effects of smoking and coal dust exposure may be additive but rather had given sufficient additional reasons for crediting the opinions of the Claimant's physicians. These reasons included the credibility of the physicians, their reliance on Claimant's work and smoking histories and the fact that the physicians' diagnoses were based "on the objective testing, CT scans

demonstrating emphysema, and symptoms including chronic cough with sputum," as well as the physicians' citing of medical literature and explaining how the evidence supported the diagnosis. The Board also found no error in the ALJ's discrediting of the Employer's experts, noting that "[u]nlike the ALJ in Goode, the ALJ here did not find their opinions undermined solely because their opinions that Claimant's COPD is due to smoking are "inconsistent" with the preamble." Among the factors cited by the ALJ were that the opinions of the Employer's experts, who found Claimant's symptoms were of recent onset, were inconsistent with the recognition that pneumoconiosis is a latent and progressive disease.

[Legal pneumoconiosis; factors to consider in non-presumption case]

Length of Coal Mine Employment

Christine Maynard, obo and widow of, Lewis Maynard v. Buffalo Mining Company BRB Nos. 25-0090 BLA, 25-0090 BLA-A, 25-0180 BLA, and 25-0180 BLA-A (April 17, 2026) (arising in the Fourth Circuit) and Donald G. Nelson v. Lowlands Coal Corp. BRB Nos. 25-0155 BLA and 25-0155 BLA-A (April 27, 2026) (arising in the 11th Circuit).

These cases arising in the Fourth and Eleventh circuits were remanded, in part, for reconsideration of length of coal mine employment in light of recent circuit court cases addressing calculation of a "year" of coal mine employment. See Baldwin v. Director, OWCP, 170 F.4th 273,282 (4th Cir. 2026), which held that that a miner need only show he or she "worked 125 working days within a calendar year (or partial periods totaling one year) to establish a year of employment" and Hayes v. Dir. OWCP, No. 24-11260, 2026 LX 159011 (11th Cir. Apr. 7, 2026) which held that "subsection (i) [of 20 C.F.R. § 725.101(a)(32)(i)] by its 'ordinary, everyday meaning[ ],' unambiguously provides that if a coal miner worked in coal mine employment for 125 days during a 365/366-day period, he worked one year under the Act."

Onset Date

In Doris Cunningham v. Island Creek Coal Co., BRB No. 25-0165 BLA (May 20, 2026), the Board affirmed the ALJ's finding of onset date in the award of benefits in this modification claim. In this case the ALJ relied on medical opinion evidence offered with the modification petition to find a mistake of fact in the prior denial of benefits and an onset date of December 2014, that predated the denial of benefits in the initial claim which was in May

of 2017. The Employer argued that since the ALJ relied on newly submitted evidence the award in the modification claim should be considered a change in conditions rather than a mistake of fact and therefore the date of onset should be the date the modification petition was filed which was May 2017. 20 C.F.R. § 725.503(d)(2) provides that if a claim is awarded on modification based on a change in conditions, the Claimant is entitled to benefits as of the month of onset of total disability due to pneumoconiosis, "provided that no benefits shall be payable for any month prior to the effective date of the most recent denial of the claim by a district director or [ALJ]." 20 C.F.R. §725.503(d)(2). If the date of onset of total disability due to pneumoconiosis is not ascertainable, benefits are payable "from the month in which the claimant requested modification." Id.

The Board noted that if modification is based on the correction of a mistake in a determination of fact, including the ultimate fact of entitlement, the Claimant is entitled to benefits from the month he first became totally disabled due to pneumoconiosis or, if that date is not ascertainable, from the month he filed his claim, unless credited evidence establishes that he was not disabled at any subsequent time, citing 20 C.F.R. § 725.503(b), (d)(1). However, in a subsequent claim, benefits may not be paid for any period before the date on which the order denying the prior claim became final. 20 C.F.R. § 725.309(c).

The ALJ noted that all the pulmonary function and arterial blood gas studies performed prior to the May 2017 denial of benefits, were non-qualifying and did not support a finding of total disability. However, the medical opinion of Dr. Istanbouly to which the ALJ gave controlling weight, supported that Claimant's non-qualifying ABG performed on November 20, 2014 showed that the Claimant would have been hypoxic during the exercise portion of that test had he continued to exercise, and therefore the Claimant's exertional hypoxemia would have prevented the Claimant from performing the exertional requirements of his usual coal mine work. Therefore, the ALJ found the Claimant became totally disabled sometime before November 20, 2014, but was not yet totally disabled in March 2014 based on the non-qualifying pulmonary function study and blood gas study values obtained that month. The ALJ determined that because the Claimant was totally disabled before the May 2017 denial of his claim, he concluded the Claimant demonstrated a mistake in a determination of fact rather than a change in conditions. Regarding onset the ALJ stated, "The record does not establish when the Claimant first became totally disabled, but his PFTs do not support a finding of disability prior to November 21, 2014; they show he was not disabled as of November 20, 2014. Hence, I find that the Claimant is entitled to benefits commencing in December 2014, the first month and year after the Claimant filed his claim and after he was not disabled." The Board affirmed this finding.

[Onset date for paying benefits; modification]

Procedural Issues

In Roy Lee Breedlove v. Canada Coal Corp., BRB No. 25-0169 BLA (May 7, 2026), the Board remanded this case for the third time on the issue of whether the medical opinion evidence established total disability. The ALJ had previously determined that two medical opinions which disagreed on the question of total disability were in equipoise, finding that they were both well reasoned and were both equally qualified. The Board had previously instructed the ALJ to resolve the conflicts in the evidence or explain her reasons for finding the medical opinion evidence in equipoise. The Board previously instructed the ALJ to: "determine whether the opinions of Drs. Shah and Rosenberg are well reasoned and documented, explaining the weight she accords each medical opinion based on her consideration of the physicians' comparative credentials, their understanding of the exertional requirements of Claimant's usual coal mine work, the explanations for their medical findings, the documentation underlying their medical judgments, and the sophistication of, and bases for, their conclusions."

The Board noted that the ALJ's only additional discussion of the medical opinion evidence was a single sentence regarding whether the physicians considered the pulmonary function testing. The Board again determined that the ALJ again failed to: "critically analyze the physicians' explanation for why they determined whether or not the Claimant has a totally disabling pulmonary or respiratory impairment that would render him unable to perform the exertional requirements of his usual coal mine employment. Contrary to the Board's instructions, the ALJ specifically failed to analyze the physicians' understanding of the exertional requirements of Claimant's usual coal mine work, the explanations for their medical findings, the documentation underlying their medical opinions, and the sophistication of, and bases for, their conclusions." Thus, the Board remanded the case for a third time, finding that the ALJ did not properly resolve the conflict in the medical opinions or adequately explain her findings.

[Adherence to the Board's remand instructions]

Pulmonary Function Tests (PFTs)

PFT Validity

In Edwin G. Taylor v. Wampler Brothers Coal Co., Inc., BRB No. 25-0138 BLA (Mar. 30, 2026), the Board affirmed the ALJ's decision to find valid a PFT taken around the time the Claimant had COVID-19. The ALJ declined to credit Dr. Fino's opinion that the Claimant did not put forth good effort when performing the PFT. Dr. Fino noted that the Claimant had been diagnosed with COVID-19 around the time of the PFT, and he opined that it affected the Claimant's effort on the test. The ALJ found that the PFT did not include any notation of inadequate effort and the Claimant had been hospitalized with COVID-19 months before the PFT, so it did not occur soon after an acute respiratory illness. The Board found the ALJ's reasoning rational and affirmed his finding that the PFT was valid.

[PFT validity; effect of COVID-19]

In Luke Halbert v. Consol of Kentucky, Inc., BRB No. 25-0120 BLA (April 14, 2026), the Board vacated the ALJ's finding that the pulmonary function study and medical opinion evidence did not support a finding of total disability and remanded the case for further consideration. The ALJ noted the record included a May 9, 2016 qualifying PFT, a January 23, 2017 PFT that was invalid and an October 28, 2020 non-qualifying PFT. He found the May 2016 and October 2020 studies were in equipoise and that even if he gave "less weight or adequate weight" to the January 2017 invalid test, there was an inconsistency in the test results, and he could not "resolve the inconsistency because he is not a physician." Thus, he found the PFT evidence did not support a finding of total disability. The Board found that "[t]he mere presence of a nonqualifying study does not render the pulmonary function study evidence equivocal; rather it is the function of the ALJ to resolve conflicts and inconsistencies in the evidence." The Board determined that when considering PFT evidence, the ALJ must determine whether the studies are in substantial compliance with the quality standards citing 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, App. B; see Keener v. Peerless Eagle Coal Co., 23 BLR 1-229, 1-237 (2007) (en banc). The Board stated:

> A study need not precisely conform to the quality standards; if it is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b). The ALJ, as the factfinder, must determine the probative weight to assign the study. See Orek v. Director, OWCP, 10 BLR 1-51, 1-54-55 (1987). "In the absence of evidence to the contrary, compliance with the [regulatory quality

standards] shall be presumed." 20 C.F.R. §718.103(c). Thus, the party challenging the validity of a study has the burden to establish the results are suspect or unreliable. Vivian v. Director, OWCP, 7 BLR 1-360, 1-361 (1984).

The ALJ, in finding the January 23, 2017 PFT invalid, noted that Dr. Tuteur administered the test and opined it is invalid, and Dr. Dahhan opined the study was invalid due to poor effort. Further the ALJ found that there was no contrary evidence. The Board stated it could not affirm the ALJ's finding that the PFT was invalid, as there was in fact, contrary evidence. The Board noted that the technician had indicated good and "maximal" effort throughout the test and Dr. Ajjarapu did not comment on validity but found the study showed a disabling impairment. Further, the Board noted that Dr. Tuteur did not state why the test was invalid and Dr. Dahhan did not explain why it showed "poor effort." The Board determined the ALJ failed to adequately explain how their opinions invalidate the January 23, 2017 PFT, given that it is employer's burden to establish the study is not in substantial compliance with the regulatory quality standards. Also, as the ALJ failed to consider the contrary evidence his conclusion regarding validity could not be affirmed.

[PFTs; substantial compliance with quality standards; validity presumed in absence of contrary evidence; burden on party opposing validity]

Rebutting the Presumption of Pneumoconiosis

Seventh Circuit

In James E. Vancil v. Peabody Gateway Services, LLC, BRB No. 25-0035 BLA (Feb. 27, 2026), which arose in the Seventh Circuit, the Board affirmed the ALJ's finding that the Employer did not rebut the presumption of legal pneumoconiosis. In a footnote, the Board explained that it did not need to address the Employer's arguments regarding the ALJ's failure to consider whether the Employer rebutted the presumption of clinical pneumoconiosis (citing Consolidation Coal Co. v. Director, OWCP [Ross], 911 F.3d 824, 844 (7th Cir. 2018) ("While the ALJ was required to review all medical evidence before determining if a total disability existed, the [e]mployer does not cite any authority to support the notion that the ALJ may not decide that the employer cannot rebut the presumption because [it] cannot rebut one of the requisite elements.").

[Rebutting the presumption of pneumoconiosis in the Seventh Circuit]

Responsible Operator

Arch's Liability in the Fourth Circuit

In Jerry Deskins v. Hobet Mining, BRB No. 24-0037 (May 20, 2026), the Board denied the Director's motion to hold this appeal in abeyance and granted the motion filed by Arch Coal (Hobet's parent company) to be dismissed as the responsible operator, citing the Fourth Circuit's ruling in Hobet Mining, Inc. v. Director, OWCP [Meredith], 156 F.4th 385 (4th Cir. 2025), reh'g denied (Mar. 16, 2026) (holding that Arch Coal Company, Inc., (Arch), the parent company of Hobet Mining, could not be held liable as a self-insurer for the payment of benefits arising out of a miner's employment with Arch's former subsidiaries, including Hobet Mining, when Patriot Coal, the subsequent owner and self-insurer of Hobet Mining at the time the claim was filed, went bankrupt).

[Responsible Operator; Fourth Circuit; Arch]

Calculating a Year of Coal Mine Employment in the Fourth Circuit

In Elswick v. CC & P Coal Co., BRB No. 25-0177 BLA (May 20, 2026), arising in the Fourth Circuit, the Board remanded the case in part for the ALJ to consider specifically whether a more recent coal mine operator had employed the Claimant for 125 days thus qualifying as a year of coal mine employment, citing the Fourth Circuit's recent decision in Baldwin v. Director, OWCP, 170 F.4th 273, 282 (4th Cir. 2026) (applies to determining whether a coal mine operator employed a miner for at least one year for purposes of identifying the responsible operator); Rhino Energy, LLC v. Dir., OWCP, 174 F.4th 358 (4th Cir. Apr. 23, 2026). The Board upheld the ALJ's finding that the named operator was a potentially liable operator because Employer admitted that it employed the miner for 147 days and was the only employer listed on S.S. records for the relevant year (1983). However, the Board vacated the responsible operator finding and remanded because the ALJ had merely determined that a more recent coal mine employer did not have a "calendar year" of employment and had not considered whether the more recent coal mine employer had employed the miner for at least 125 days.

[Responsible operator; Fourth Circuit]

Admission of Liability Evidence under 20 C.F.R. § 725.414(c)

In Truong v. Nguyen v. Ambush Mining, Inc., BRB No. 25-0086 BLA (Feb. 6, 2026), the Board held that because the Employer failed to timely designate the Claimant as a liability witness before the district director, the Employer was precluded from relying on the Claimant's testimony as liability evidence under 20 C.F.R. § 725.414(c).

Employment Relationship under 20 C.F.R. § 725.493

In Louis Degol v. Cooney Brothers Coal Co., BRB No. 24-0185 BLA (Jan. 20, 2026), the Board vacated the ALJ's finding that the Claimant was not the Employer's employee and remanded the case for further consideration. The Claimant hauled coal for the Employer from 1977 to 2003. The Employer paid him monthly based on the tonnage of coal he hauled and the distance he drove. The Claimant used his own vehicle and was responsible for all costs related to his truck, including gas, tolls, maintenance, and insurance. He had no employees, his business was not incorporated, he did not carry workers' compensation insurance, and he sold his truck when he stopped working for the Employer. The Employer directed when and where he worked. The ALJ found the Claimant was an independent contractor and was not an employee under the Act. Therefore, he found the Employer was not the responsible operator and transferred liability to the Black Lung Disability Trust Fund. The ALJ denied the Director's motion for reconsideration.

On appeal, the Director argued that the ALJ erred in finding the Claimant was not an employee. The Board agreed, finding that the ALJ erred by focusing strictly on a common law classification of the Claimant as an independent contractor. The Board explained that before 2000, the terms "employ" and "employment" were not defined in the Act or regulations, and courts turned to the former 20 C.F.R. §725.491(c)(2)(ii) (1983) to determine whether an employer substantially controlled, supervised, or was "financially responsible for the activities of the self-employed operator." The Board added that ALJs would consider the common law definition and employ a four-factor test to determine the right of control. However, the Department discovered that coal mine companies used a variety of financial arrangements to avoid liability under that framework, so it amended the regulations to include definitions of the terms "employ" and "employment." 64 Fed. Reg. 54,966, 54,999 (1999); 62 Fed. Reg. 3,338, 3,369 (1997). The Board explained that the amended definitions were intended to "foreclose those efforts by recognizing a broad range of employment relationships between coal mine companies and those individuals who actually mine coal." 64 Fed. Reg. at 54,999.

The Board stated that the Act and amended regulations focus on whether an individual's work involves coal mine employment rather than on the common law label "independent contractor." It explained that the revised regulation at 20 C.F.R. § 725.493(a)(1) focuses on the work performed rather than any formal employment classifications. Specifically, the regulation provides that "the terms 'employ' and 'employment' shall be construed as broadly as possible, and shall include any relationship under which an operator retains the right to direct, control, or supervise the work performed by a miner, or any other relationship under which an operator derives a benefit from the work performed by a miner." Because the ALJ focused on the common law classification of the Claimant as an independent contractor rather than applying the current regulation, the Board vacated his findings and remanded the case for reconsideration under 20 C.F.R. § 725.493(a)(1). The Board also considered and vacated the ALJ's findings related to the right to control the Claimant's work, the furnishing of equipment, and the right to fire the Claimant.

Subsequent Miners' Claims

In Walter Griffin v. Consol Mining Co., BRB No. 25-0184 BLA (May 28, 2026), the Board noted that in a subsequent claim "no findings made in connection with the prior claim, except those based on a party's failure to contest an issue [...] will be binding on any party in adjudication of the subsequent claim." 20 C.F.R. § 725.309(c)(5). Thus, in this case where the Claimant established total disability which had not previously been established, any prior length of coal mine employment findings were not binding on the ALJ. The Board rejected Employer's argument regarding total disability that Claimant's expert should not be credited on the issue of total disability because he failed to reconcile the prior testing or the later testing results. The Board noted that an opinion need not incorporate every piece of evidence in the record to be credited, finding that "what matters is whether the physician's underlying documentation and reasoning support the physician's conclusions."

[Subsequent miner's claim; weighing medical opinions]

Subsequent Survivors' Claims

In Gracie Kidd (survivor of Arnold Kidd) v. Ranger Fuel Corp., BRB No. 25-0001 BLA (Feb. 27, 2026), the Board reversed the ALJ's finding that the Claimant failed to establish a change in an applicable condition of entitlement in a subsequent survivor's claim. The district director denied the Claimant's initial survivor's claim because she abandoned it. Under 20

C.F.R. § 725.409(c), a denial by reason of abandonment "shall be deemed a finding that the claimant has not established any applicable condition of entitlement."

The Claimant filed a subsequent survivor's claim, which the district director denied after finding that she failed to establish that the Miner had pneumoconiosis or that his death was due to pneumoconiosis. On appeal, the ALJ dismissed the case after finding that the prior denial was a final judgment on the merits and the Claimant did not establish a change in an applicable condition of entitlement. The Board remanded the case for the ALJ to consider whether the Claimant had established a change in a condition of entitlement unrelated to the Miner's physical condition and, if so, to consider the merits of her claim. On remand, the ALJ again dismissed the case after finding that the Claimant failed to establish a change in an applicable condition of entitlement. On appeal for the second time, the Board agreed with the Claimant and the Director that the ALJ erred in finding that the Claimant did not establish a change in an applicable condition of entitlement by establishing she is unmarried (a condition she failed to establish in her initial claim), and, therefore, erred in dismissing her subsequent claim.

The regulations provide that a subsequent survivor's claim, filed more than one year after the effective date of a final order denying survivor's benefits, must be denied unless new evidence establishes a change in an "applicable condition of entitlement" unrelated to the miner's physical condition at the time of his death. 20 C.F.R. § 725.309(c)(4). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. § 725.309(c)(3). The Board stated that one condition of entitlement the Claimant was required to establish in her prior claim was that she was unmarried, and she failed to do so because the district director denied her prior claim as abandoned. In her subsequent claim, the Claimant submitted her marriage certificate and an affidavit stating that she married the Miner in 1951 and had not remarried since his death. The Board held that because the ALJ found that the Claimant was unmarried, which was a condition of entitlement that was previously adjudicated against her, she established a change in an applicable condition of entitlement unrelated to the Miner's physical condition at the time of his death. Therefore, the Board reversed the ALJ's finding and remanded the case for the ALJ to consider it on the merits.

[Subsequent survivor's claim]

Status as a Miner

In Truong v. Nguyen v. Ambush Mining, Inc., BRB No. 25-0086 BLA (Feb. 6, 2026), the Board affirmed the ALJ's finding that the Claimant last worked in coal mine employment for the Employer and that another subsequent employer, D.D.S. Leasing, Inc. ("DDS"), did not employ the Claimant as a coal miner under 20 C.F.R. § 725.202. The ALJ evaluated a letter from DDS stating that the Claimant was a sales consultant "in charge of selling the coal for the contractors," which consisted of negotiating prices and determining where to sell coal. The ALJ found the letter credible and indicative that the Claimant did not engage in coal mine employment. Based on the Claimant's statements that his memory was diminished, the ALJ credited the letter over the Claimant's testimony that he engaged in coal mining for DDS. Although the Board held that because the Employer failed to timely designate the Claimant as a liability witness before the district director, it was precluded from relying on the Claimant's testimony as liability evidence, it stated that even if the testimony was admissible, the ALJ's finding was supported by substantial evidence based on the Claimant's statement about his memory and difficulty "remembering stuff."

Timeliness

In Martin D. Holstein v. Southern Appalachian Coal Co., BRB No. 24-03334 BLA (April 23, 2026), the Board considered multiple issues raised by the Employer in this case (where the fifteen-year presumption was not invoked) and affirmed the ALJ's decision on all issues. The Board addressed the timeliness issue and Employer's claim that the treatment records contained finding of total disability and references to pneumoconiosis approximately nine years prior to the filing of Claimant's black lung claim. The Board upheld the ALJ's finding that the Claimant's testimony was inconsistent on the issue (of whether he had been told he was totally disabled due to pneumoconiosis) and the treatment records did not establish a clear diagnosis of total disability due to pneumoconiosis that was communicated to the miner. The Board cited the regulation at 20 C.F.R. § 725.308(a) which states that a miner's claim is presumed to be timely and the regulation at 20 C.F.R. § 725.308(b) which states that in order to rebut this presumption of timeliness, employer must show by a preponderance of the evidence that the claim was filed more than three years after a "medical determination of total disability due to pneumoconiosis" that was communicated to the miner.

Regarding the issue of whether the Employer was the properly named responsible operator, the Board found that the Employer failed to name the Claimant as a liability witness while this case was before the District Director and as employer failed to make a

good cause argument before the ALJ regarding why it had not named the Claimant while the case was pending before the District Director, Employer had waived its right to make this argument before the Board.

Regarding whether legal pneumoconiosis was established, the Board rejected the Employer's argument that the ALJ's use of the preamble to the 2001 revised regulations, in assessing the medical opinion evidence, violated the Supreme Court's holding in Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024), which invalidated the framework set forth in Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1984). The Board determined, contrary to the Employer's position, that the preamble is not a rule nor did the ALJ apply it as a rule; rather "[the ALJ] permissibly referenced it in determining whether [the medical opinions] were credible on the issue of legal pneumoconiosis," which the Board found is permitted under Forth Circuit law (the Circuit in which the case arises).

The Board also rejected Employer's argument that the ALJ should have discounted the opinion of Dr. Harris who was a staff physician at Stone Mountain Health Services, who represented the Claimant in this matter, and who at times has advocated for miners' rights. The Board noted that the ALJ has the discretion to consider whether any opinion is biased. However, the Board found the ALJ correctly found that Dr. Harris's advocacy on behalf of miners does not automatically disqualify him from preparing an opinion in a particular claim. The ALJ properly determined that Dr. Harris based his opinion on objective findings, provided a detailed explanation for his reasoning, and that his opinion aligned with the premises underlying the Act. Thus, the ALJ reasonably determined that his work did not affect his objectivity in this particular claim.

[Timeliness; responsible operator; "Loper Bright" inapplicable; legal pneumoconiosis]

Total Disability

Cor Pulmonale with Right-Sided Congestive Heart Failure

In Judy Campbell v. Smith Brothers Excavating, BRB No. 25-0178 (May 27, 2026), the Board remanded this case in part for the ALJ to make more specific findings on the issue of whether total disability had been established based on a diagnosis of cor pulmonale with right sided congestive heart failure. 20 C.F.R. § 718.204(b)(2)(iii). The Board noted that cor pulmonale is "heart disease due to hypertension secondary to disease of the blood vessels of the lungs" and that severe hypertension may cause right sided heart failure, citing

Newell v. Director, OWCP, 13 BLR 1-37, 1-39 (1989). See also 20 C.F.R. § 718.204(b)(2)(iii). The Board noted several references relevant to cor pulmonale and congestive heart failure in the record including that Dr. Forehand diagnosed restrictive lung disease, attributing it to coal dust exposure, obesity, and congestive heart failure. Dr. Tuteur also opined the Miner's abnormalities were due to congestive heart failure but unrelated to coal mine dust exposure and also indicated that the Miner had congestive heart failure "presumably due to hypertension" which led to "right sided failure with pulmonary hypertension." Dr. Rosenberg opined the Miner had pulmonary hypertension secondary to left sided heart failure and Dr. Hays listed "congestive heart failure with right heart failure" as one of the discharge diagnoses in his May 8, 2017 discharge summary included in the Miner's treatment records. The Board also noted "[w]hile not specifying cor pulmonale, Dr. Meyer similarly noted an "enlarged cardiac silhouette" with findings of pulmonary hypertension. Dr. Forehand's x-ray interpretation also noted an "enlarged cardiac silhouette" and the Miner's treatment x-rays also consistently noted cardiomegaly or an enlarged cardiac silhouette. In her analysis of the issue the ALJ indicated that while the record contains "extensive documentation" regarding the Miner's lung and heart conditions, there are only two references to cor pulmonale or a "right sided heart condition," (Dr. Tarver's x-ray interpretation and Dr. Hays' discharge summary report) and she found them insufficient to establish the Miner had cor pulmonale with right-sided congestive heart failure. The Board stated that while the ALJ was correct that only Dr. Tarver referred to cor pulmonale by name the multiple other refences noted above were also relevant to the issue. Accordingly, the Board remanded for the ALJ to consider all the relevant evidence when arriving at her conclusion of whether the evidence is sufficient to establish that the Miner had cor pulmonale with right-sided congestive heart failure and whether total disability was established by this provision.

[Total disability; cor pulmonale with right-sided congestive heart failure]

Exertional Requirements

In Edward C. Tomasik v. Consol Energy, Inc., BRB No. 25-0148 BLA (April 29, 2026), the Board determined the ALJ erred in discrediting a medical opinion because the opinion did not address the exertional requirements of the Claimant's usual coal mine employment. The Board stated a medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably infer a miner is unable to do his usual coal mine employment. A physician is not required to physically list the exertional requirements of the Claimant's usual coal mine work. In this case where the physician identified the Claimant's job as an electrician, the ALJ did not adequately explain why this

was not sufficient to establish that the physician had an adequate understanding of the exertional requirements. See Jericol Mining, Inc. v. Napier, 301 F.3d 703, 713 (6th Cir. 2002) (if a physician lists a miner's job title, ALJ may rationally conclude physician understands the exertional requirements of common mining jobs, even absent explicitly identifying them).

ALJ also erred in discrediting two medical opinions on the basis that more recent pulmonary testing in the record, submitted on modification, was non-qualifying. The Board pointed out that a physician may offer a reasoned medical opinion diagnosing total disability even though the objective tests are non-qualifying. See Killman v. Director, OWCP, 415 F.3d 716, 721-22 (7th Cir. 2005) (claimant can establish total disability despite non-qualifying objective tests); Cornett, 227 F.3d at 587 ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"); see also Adkins v. Director, OWCP, 958 F.2d 49, 51- 52 (4th Cir. 1992) (it is irrational to credit later evidence solely on the basis of recency if that evidence shows a miner's condition has improved); Kincaid v. Island Creek Coal Co., 26 BLR 1-43, 1-50-51 (2023). Further, the Board found, contrary to the ALJ's opinion, an expert need not consider all the evidence of record for an ALJ to find their opinion well-reasoned and documented. See Smith v. Kelly's Creek Res., 26 BLR 1-15, 1-28 (2023). Church v. E. Associated Coal Corp., 20 BLR 1-8, 1-13 (1996); Stark v. Director, OWCP, 9 BLR 1-36, 1-37 (1986) (that a physician reviewed less data in forming his opinion does not render his opinion insufficient to establish total disability). Thus, the Board determined the ALJ failed to adequately explain why a more recent non-qualifying pulmonary function study necessarily rendered a medical opinion which did not consider the more recent testing, entitled to no weight. The Board also vacated the ALJ's rejection of a medical opinion that was based solely on a qualifying FEV_1 and not its accompanying FVC or FEV_1/FVC which rendered the study non-qualifying as a whole.

[Weighing medical opinions; exertional requirements; improper to reject medical opinion on the basis that specific exertional requirements are not stated by physician or solely due to physician's failure to consider more recent non-qualifying PFT]

In Steven V. Bias v. Mingo Logan Coal Co., BRB No. 25-0101 BLA, (Mar. 30, 2026), the Board affirmed the ALJ's finding that the Claimant established a totally disabling pulmonary impairment based on the ABGs, medical opinions, and the weight of the evidence as a whole. The Board rejected the Employer's argument that a remand was required because the ALJ did not determine the level of exertion required by the Claimant's usual coal mine work in finding that the medical opinion evidence supported a finding of total disability. The Board acknowledged that the ALJ did not make a specific determination regarding the

exertional requirements of the Claimant's usual coal mine work, but it emphasized that she did not credit or discredit the medical opinions based on the physicians' understanding of the exertional requirements of that work. Because the Employer did not explain how the alleged error made a difference in the outcome of the case, it found that any such error was harmless.

[Exertional requirements; when a specific finding is required]

Lay Testimony under 20 C.F.R. § 718.204(d)(5)

In Johnny R. Saylor v. Trinity Coal Corp. of Virginia, BRB No. 24-0232 BLA (Jan. 30, 2026), the Board affirmed the ALJ's findings that the evidence did not support finding the Claimant totally disabled from a respiratory or pulmonary impairment. After considering the ABGs, PFTs, and medical opinions, the ALJ considered the Claimant's testimony concerning his use of supplemental oxygen, as prescribed by his family physician, at night and in the morning. He also noted that the Claimant reported using inhalers "every two or three hours" to help with his breathing and only being able to "walk about five or six steps" before he had to stop and catch his breath. Although the ALJ determined that the Claimant's testimony supported finding that he was not able to perform the heavy manual labor required by his usual coal mine work, the Board stated that the ALJ accurately found that in a living miner's claim, "a finding of total disability due to pneumoconiosis shall not be made solely on the miner's statements or testimony." 20 C.F.R. § 718.204(d)(5). Therefore, it affirmed the ALJ's finding on total disability and his denial of benefits.

[Total disability; use of lay testimony under 20 C.F.R. § 718.204(d)(5)]

Total Disability Based on Treatment Records

In Donna F. Hall (survivor of and obo the estate of David S. Hall) v. M & M B Coal Co., BRB Nos. 25-0093 BLA and 25-0094 BLA (Feb. 6, 2026), the Board affirmed the ALJ's finding that the Miner was totally disabled based on the treatment records. The treatment records documented the Miner's pulmonary and respiratory conditions and complaints of shortness of breath, dyspnea on exertion, productive cough, wheezing, and his use of overnight oxygen in 2014 and 2015. From August 2015 until the Miner's death, the Miner continued to complain of shortness of breath, wheezing, and cough, and he had multiple instances of pulmonary edema, acute respiratory failure, and hypoxia. The treatment records further documented the Miner's need for supplemental oxygen and a BiPAP

machine due to decreases in his oxygen saturation. In determining that the Miner's treatment records supported finding the Miner totally disabled, the ALJ found it reasonable to infer the Miner no longer had the respiratory or pulmonary capacity to perform his usual coal mine work because he was on supplemental oxygen and in persistent respiratory failure immediately preceding his death. Therefore, the ALJ concluded that the Miner had a totally disabling respiratory impairment at the time of his death. The Board found the ALJ reasonably inferred that the Miner's need for continuous supplemental oxygen, which no party disputed, would have precluded him from performing his usual coal mine employment. Moreover, it rejected the Employer's argument that the Claimant was required to establish that the Miner's impairment was chronic. The Board explained that neither the Act nor the regulations required the Claimant to show that the Miner's total disability was chronic to invoke the fifteen-year presumption.

[Total disability based on treatment records; total disability need not be chronic]

Total Disability Causation

Disability Causation due to Legal Pneumoconiosis as a Matter of Law

In Thomas L. Jones v. Central Appalachian Coal Co., BRB No. 25-0020 BLA (Mar. 24, 2026), the Board affirmed the ALJ's finding that the Claimant, who worked as a coal miner for fourteen years, established that his pneumoconiosis was a substantially contributing cause of his totally disabling respiratory or pulmonary impairment. The Board stated that because the physicians agreed the Claimant had a disabling obstructive impairment, the ALJ's determination that the Claimant's disabling COPD constituted legal pneumoconiosis necessarily encompassed a finding that he was totally disabled due to legal pneumoconiosis. The Board also found that the ALJ permissibly discredited the opinions of Drs. Basheda and Tuteur because they did not diagnose legal pneumoconiosis, contrary to her finding that the Claimant had the disease. Thus, it affirmed the ALJ's finding that the Claimant was totally disabled due to legal pneumoconiosis and affirmed her award of benefits.

[Total disability due to legal pneumoconiosis]