UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

Washington, DC

RECENT SIGNIFICANT DECISIONS -- MONTHLY DIGEST # 323

April-June 2025

Stephen R. Henley, Chief Judge

Longshore:

Paul R. Almanza, Associate Chief Judge for Longshore

Yelena Zaslavskaya, Senior Counsel for Longshore

Black Lung:

Deirdra Howard, Acting Associate Chief Judge for Black Lung

Francesca Ford, Senior Counsel for Black Lung

Suzanne Smith, Senior Staff Attorney

I. Longshore and Harbor Workers' Compensation Act

A. U.S. Circuit Courts of Appeals

No decisions to report.

B. U.S. District Courts[1]

No decisions to report.

C. Benefits Review Board

***Khan v. Alliance Project Services*, __ BRBS __ (2025).**

The Board addressed the prerequisites to reimbursement of medical expenses under Section 7(d), namely the request for authorization of treatment and physician's report of treatment. It further vacated the ALJ's finding that treatment received by claimant was reasonable and necessary.

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

Claimant worked for employer in Afghanistan from 2010 to 2013. On April 8, 2010, he and his brother, Naeem Khan, were walking from their home in Afghanistan to Forward Operating Base ("FOB") Salerno, where they were to begin work for the day when a nearby improvised explosive device ("IED") detonated, knocking them both unconscious. Claimant and his brother were taken to a local hospital.

Claimant sustained significant injuries to his back, head, and legs from shrapnel. His family subsequently transferred him to another hospital in Afghanistan, where he underwent a laminectomy and operations to remove the shrapnel. After he was discharged from treatment, claimant continued to work for employer until March 2013. Since moving to the United States in 2017, claimant has received medical treatment at Yale New Haven Health for residual issues related to the incident.

Claimant's brother Naeem suffered less serious injuries and was discharged from the hospital the same day as the incident. After leaving the hospital, he went to FOB Salerno to report the explosion to his supervisor "Mitch." He also requested help in transferring claimant's treatment from the private hospital to the military hospital within FOB Salerno, but was told there was no room. After being out of work for approximately two to three months, Naeem was transferred to FOB Fenty in Jalalabad. Naeem testified that after he was transferred, he presented a hospital bill to his FOB Fenty supervisor, "Barrens," and requested payment for claimant's medical treatment; Barrens told him he could not help with the payment.

On June 25, 2020, claimant filed a claim. Employer controverted the claim, contesting causation, timeliness under Sections 12 and 13, entitlement to medical treatment, and reimbursement for medical expenses.

The ALJ found employer had been given timely notice of claimant's injury because it acquired knowledge of the injury on April 8, 2010, when Naeem reported the explosion to his supervisor Mitch. Alternatively, he found claimant was excused from providing notice because employer failed to properly post a notice to employees informing them of the designated person to whom notice should be given and of their right to benefits under the Act (Form LS-241), as Section 34 of the Act and its implementing regulation require. 33 U.S.C. § 934; 29 C.F.R. § 702.211(b). He also found the claim was timely filed because employer had knowledge of the injury and the time for filing was tolled due to employer's failure to file a first report of injury pursuant to Section 30(a). Next, the ALJ found claimant invoked the Section 20(a) presumption, and employer failed to rebut it. Therefore, he awarded temporary total disability compensation during the seven-month period claimant was unable to work as well as reasonable and necessary future medical treatment.

As for reimbursement of past medical expenses and travel costs, the ALJ found claimant was immediately taken to the hospital and in a coma for two months; therefore, it was impossible for him to seek preauthorization for such treatment. In any event, he found employer was informed of claimant's medical expenses but declined to pay them when Naeem presented the hospital bill to Barrens and requested payment. Thus, he ordered employer to reimburse claimant $38,838.71 "for his reasonable and necessary medical care in 2010." However, because claimant did not request preauthorization for his treatment at Yale New Haven Health, the ALJ denied claimant's claim for reimbursement of associated mileage costs.

Section 7(d)(1)

Employer asserted claimant did not request authorization for any of his hospital treatment, and it was not aware of claimant's injury and its work-relatedness prior to his treatment. Claimant argued strict compliance with the authorization requirements under the Act was permissibly excused due to his prolonged unconsciousness and emergent need for life-saving care. Alternatively, he asserted substantial evidence established he satisfied the Act's authorization requirements. In reply, employer argued that even if the first day or two was an emergency, the emergency exception did not excuse claimant's failure to get authorization for treatment he received beyond the emergency.

Section 7(d)(1), which sets forth the conditions that must be met for a claimant to be entitled to reimbursement from his employer for medical expenses, states:

> (1) An employee shall not be entitled to recover any amount expended by him for medical or other treatment or services unless-
> (A) the employer shall have refused or neglected a request to furnish such services and the employee has complied with subsections (b) and (c) of this section and the applicable regulations; or
> (B) the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide or authorize same.
> (C)

33 U.S.C. § 907(d)(1); 20 C.F.R. § 702.421. Thus, a claimant is entitled to recover medical expenses if: 1) he requests the employer furnish or authorize medical treatment and the employer refuses or neglects the request; or 2) the nature of the work-injury requires such treatment and the employer, having knowledge of the injury, neglects to provide or authorize that treatment. In addition, Section 7(d)(2) provides: "[n]o claim for medical or surgical treatment shall be valid and enforceable against [the] employer" unless the physician giving such treatment provides the employer and the district director with a report of injury or treatment within ten days following the first treatment.

In this case, the Board vacated the ALJ's award for reimbursement of claimant's medical expenses because he did not comply with the APA. The ALJ left unanswered the following questions: 1) whether claimant complied with the requirements of Section 7(d)(1); 2) whether his medical providers filed timely medical reports in compliance with Section 7(d)(2); and 3) whether the treatment claimant received was necessary for his work injury and the charges for such treatment were reasonable. For purposes of Section 7(d)(1)(A), the ALJ did not determine: 1) whether claimant made a *request* to employer for medical services; 2) whether employer *refused or neglected* the request; and 3) whether claimant *complied* with Sections 7(b) and 7(c). For purposes of Section 7(d)(1)(B), the ALJ did not determine: 1) whether the *nature of the injury* required the treatment and services for which reimbursement is sought; 2) whether employer had the requisite *knowledge* of claimant's *injury*; and 3) whether employer *neglected to provide* or *refused to authorize* the treatment and services for which reimbursement is sought.

The ALJ considered Naeem's initial report on the day of the incident sufficient for imputing knowledge of the injury to employer under Sections 12 and 13, but failed to address Naeem's initial report of the injury, request for employer to help transfer claimant to the military hospital, and the response he received under Section 7(d)(1). With respect to the claim for reimbursement, the ALJ considered only Naeem's presenting a bill and request for payment to Barrens after claimant was transferred to another hospital and had presumably already received medical care. A request for reimbursement for medical treatment already received does not satisfy the preauthorization requirement.

Additionally, the ALJ's findings in this regard were inconsistent. The ALJ's award was based on an invoice dated April 20, 2010, twelve days after the explosion, yet the charges on the invoice were for ninety days of treatment. The ALJ also made inconsistent statements regarding the date Naeem presented the hospital bill to Barrens. Conclusive findings as to where and when claimant was treated, the treatment he received, and when Naeem presented the hospital bill to employer and requested employer pay the bill or reimburse claimant for the amount already expended, were necessary for the Section 7(d)(1) inquiry. In this regard, the ALJ had to determine whether Mitch and Barrens, considered separately, constituted employer for purposes of Section 7(d)(1)(A) or constituted employer or superintendent or foreman for purposes of Section 7(d)(1)(B). This was particularly important since several aspects of the bill raised questions.

The Board instructed the ALJ, on remand, to fully analyze whether the requirements under Section 7(d)(1)(A) or Section 7(d)(1)(B) were met.

Reasonable and Necessary Treatment

Employer also argued the ALJ erred in finding it liable for reimbursing claimant for his hospital medical expenses because he failed to make a finding that the care was reasonable and necessary, there were no medical records to support such a finding, and the medical bill was invalid on its face.

The Board stated that claimant bears the burden of establishing the medical treatment for which reimbursement is sought was both reasonable and necessary. Here, the ALJ did not make the necessary findings and did not provide his rationale or cite the evidence. Accordingly, the Board vacated the ALJ's finding that claimant's medical treatment in 2010 was both reasonable and necessary.

Physician's Report

Finally, employer argued the ALJ did not make any findings regarding claimant's medical providers' failure to provide their first reports of treatment. In response, claimant asserted the ALJ did not need to explicitly state he was excusing the providers' failure to file because the record supported that excusing such a failure was in the interests of justice, and employer did not establish how it was prejudiced by the failure or show the treatment was unreasonable or unnecessary. He further asserted employer's failure to notify him of his rights under the DBA should preclude it from arguing for strict compliance with Section 7. Under Section 7(d)(2) of the Act, the employer is not required to reimburse a claimant for medical expenses he paid unless, within ten days following the first treatment, the physician giving such treatment provides an initial report of treatment to the employer and the district director. The Secretary of Labor may excuse a physician's failure to provide such a report within ten days if she finds it is in the interest of justice to do so. It is in the interest of justice to excuse the failure to properly file medical reports when the claimant substantially complied with the Act's requirements, and the employer was not prejudiced by the delay. However, it is the claimant's burden to show compliance with Section 7(d), and the decision to excuse a physician's failure to file a report is discretionary.
Here, the ALJ did not make any findings relevant to whether claimant's provider filed a first report of treatment in accordance with Section 7(d)(2), nor did he remand the case to the district director for a determination as to whether noncompliance should be excused. If, on remand, the ALJ were to conclude that all the other prerequisites to claimant's entitlement to reimbursement of medical expenses were met, the ALJ was instructed to remand the case to the district director for a discretionary determination as to whether to excuse claimant's noncompliance with Section 7(d)(2) in the interests of justice.
The Board vacated the ALJ's award for reimbursement of claimant's medical expenses and remanded the case for further findings and analysis. In all other respects, the ALJ's decision was affirmed.

[Section 7 Medical Benefits —Necessary Treatment and Reasonable Expenses;

Section 7(d) – Authorization and Refusal to Provide Treatment; Physician's Report of Treatment]

***Gonzales v. Fenix Marine Services, Ltd.*, __ BRBS __ (2025).**

The Board addressed the procedure for the substitution of parties upon an employee's death.

In 2017, decedent, Arthur Gonzalez, filed two claims seeking benefits under the LHWCA for injuries he allegedly sustained with two different employers. The claims were consolidated, and a formal hearing was scheduled for April 23, 2018. Decedent, however, died on September 24, 2017. On February 21, 2018, decedent's counsel informed the OALJ of decedent's passing and requested the matter be remanded because counsel needed to contact the representative of decedent's estate. The case was remanded to the district director.

In April 2020, decedent's siblings retained the same counsel to pursue decedent's *inter vivos* claims. In January 2021, the siblings, through counsel, petitioned the California Workers' Compensation Appeals Board ("WCAB") to have one of the siblings, Irma Wendorf, as trustee for her siblings, appointed decedent's successor-in-interest and heir for purposes of securing benefits under the Act. The petition stated, in part, "[a]t the time of his death, [decedent] was not married and had no issue. The only heirs to [decedent's] estate are his surviving siblings."

The district director referred the claims to OALJ. Employers filed a motion to dismiss the claims because (1) decedent's estate did not timely substitute a representative within ninety days after service of a statement noting his death as required under Rule 25(a)(1) of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 25(a)(1); and (2) even if the late substitution was excused, decedent's estate did not demonstrate that Ms. Wendorf was an appropriate successor-in-interest or representative. Decedent's siblings opposed the motion and submitted Ms. Wendorf's declaration, acknowledging that decedent had two biological children but that he had "relinquished any and all of his rights" while they were infants, and they were later adopted by other adults.

The ALJ initially found Rule 25(a)(1) applicable because neither the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges ("OALJ Rules"), nor any other relevant authority, addresses the substitution of a claimant under the Act following his death. Applying Rule 25(a)(1), the ALJ found it reasonable to waive the ninety-day deadline and therefore denied employers' motion to dismiss the claims on this basis. However, after allowing decedent's siblings to submit additional evidence, the ALJ ultimately concluded that the siblings did not timely establish they were

the proper successor under California state law. He found that, despite having more than four years to investigate, counsel did not obtain and submit information from the California family court about decedent's adopted-out son whom the ALJ determined might constitute "the correct successor." Accordingly, the ALJ dismissed the claims.

Decedents' siblings appealed the ALJ's dismissal of the claims. The Director, OWCP responded, requesting the Board affirm the ALJ's finding that decedent's son is the proper representative of his estate but vacate the dismissal of decedent's claims and remand the case for the ALJ to analyze which of the parties should be tasked with locating decedent's son.

Applicable Law

The Board stated that Sections 8(d)(3) and 19(f) of the Act respectively provide that "an award for disability" and "an award of benefits" may be made "after the death of the injured employee." The Board previously held that an employee has a vested interest in benefits which accrued during his lifetime and after his death, his estate is entitled to the accrued benefits, regardless of when the award is entered. Thus, a substitution of parties upon a decedent's death is necessary.

Neither the Act, its implementing regulations, nor the OALJ Rules explicitly address the substitution of parties upon an employee's death. Thus, the ALJ properly relied on Rule 25(a)(1) to address the substitution issue. Rule 25(a)(1) provides the requirements for substituting an individual for a party who dies when a claim is not yet extinguished:

> If a party dies and the claim is not extinguished, the court may order substitution of the proper party. ***A motion for substitution may be made by any party or by the decedent's successor or representative***. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1) (emphasis added). The Ninth Circuit has held that Rule 25(a) requires two affirmative steps in order to trigger the running of the 90-day period. *Gilmore v. Lockard*, 936 F.3d 857 (9th Cir. 2019). First, a party must formally suggest the death of the party upon the record. Second, the suggesting party must serve other parties *and* nonparty successors or representatives of the deceased with a suggestion of death in the same manner as required for service of the motion to substitute. The court further stated that service is required even in situations where the successors or representatives of the decedent's estate were not easily ascertainable. The court held that the burden of finding and serving the substituted party should be on the party better suited to identify the proper parties.

The ALJ next turned to California state law to determine the veracity of the decedent's siblings' representation that they are, pursuant to the California Probate Code, Decedent's successors-in-interest for purposes of a Rule 25(a)(1) substitution. The relevant provision of the California Probate Code delineates the order of succession when a person dies without a will. In situations where there is no surviving spouse, the entire estate passes first to the decedent's surviving issue, then to the decedent's parents, and if there is no surviving issue or parent, to the issue of the parents. Further, an adoption severs the parent/child relationship unless the natural parent and the adopted person lived together at any time as parent and child, and the adoption was by the spouse of either of the natural parents.

ALJ's Consideration of the Evidence Under Rule 25(a)

The Board stated that counsel's February 21, 2018 letter, and any subsequent filings on behalf of decedent's siblings, did not identify any interested parties or put "all interested parties and nonparties on notice of their claims." The Board affirmed the ALJ's decision to accord "no weight" to the 2021 WCAB order because it was based on incorrect information. The record thus established the "statement noting the death" had not been served by any party on "all interested parties and nonparties." The Board held, as a matter of law, that the 90-day time limit for substitution under Rule 25(a)(1) had not been triggered. Thus, the Board vacate the ALJ's finding that claimant "has not timely established a proper successor party under Federal Rule 25," as well as his resulting dismissal of both claims.

The Board further rejected counsel's contention that providing notice to decedent's children created a conflict of interest for counsel. Accordingly, the Board concluded that the ALJ may require either the siblings, in their individual capacity or through counsel, or employer to make the requisite efforts to provide decedent's children with the appropriate notice.

At the same time, the Board stated that the parties have made matters more complicated than necessary, and it instructed the ALJ, on remand, to identify if there is anyone who can carry on decedent's claims on behalf of his estate without resorting to California's successor-in-interest law. Rule 25(a)(1) does not require the named substitute who will pursue the claim to be "the decedent's successor or representative." Rather, the rule may be applied liberally and flexibly to permit substitution of the party or parties who would adequately represent the prior party's interests. It is possible one of decedent's siblings could be substituted at this juncture in the Longshore claim as someone who "would best represent the decedent's interests" or who has a professed interest in securing the benefits owed to decedent's estate. The ALJ arguably need not identify the "proper" successor-in-interest/heir to decedent's estate to answer that question -- he merely needs to determine

who, in representing decedent's estate and pursuing the claims, will "best represent the decedent's interests." Any award would be payable to his estate. Thereafter, the question of who the heir(s) or successor(s)-in-interest entitled to the estate are would be a matter of state law which may be disputed and resolved later in state court.

The case was remanded for further consideration, including the determination of who may act on behalf of Decedent's estate under Rule 25(a).

[Procedure Before the District Director and Administrative Law Judge – substitution of parties upon an employee's death; Section 8(d)(3); Section 19(f).]

***Fowler v. M.T.C. East*, __ BRBS __ (2025).**

The Board granted employer's motion for reconsideration of its decision in *Fowler v. M.T.C. East*, 58 BRBS 1 (Apr. 5, 2024) (Boggs, J. dissenting), which held that service on the claimant is a required component of filing a notice of controversion under Section 14(d) of the Act. The Board rejected employer's argument that *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), mandates reconsideration of the Board's initial interpretation of Section 14(d). It also denied employer's request for en banc review.

Section 14(d) requires an employer to file its notice of controversion ("N/C") within fourteen days after becoming aware of an employee's injury. Failure to do so can trigger the employer's liability for ten percent additional compensation to the claimant under Section 14(e). In this case, employer timely filed its N/C with the district director but did not serve claimant. Claimant became aware of the N/C outside the fourteen-day window when he was informed by the district director. The ALJ denied claimant's Section 14(e) claim. Claimant appealed, and the Director agreed with claimant. In its original decision, the Board held that 20 C.F.R. § 702.251 and the "form prescribed by the Director" as delineated in Section 14(d), Form LS-207, mandate that employer directly serve its N/C on claimant and his representative. It held that the Act is silent on whether the filing in Section 14(d) includes service; therefore, Section 702.251 permissibly fills a silent statutory gap and, pursuant to its straightforward terms, service on the claimant by the employer or its carrier is a required component of filing a notice under Section 14(d). Accordingly, it reversed the ALJ's denial of claimant's Section 14(e) claim and remanded the case for further consideration.

Employer asked the Board to reconsider its decision deferring to the Director's position that the service requirement under 20 C.F.R. § 702.251 permissibly fills the statutory gap in Section 14(d) because the Supreme Court subsequently held in *Loper Bright* that such deference under *Chevron U.S.A., Inc. v. Natural Res.'s Def. Council, Inc.*, 467 U.S. 837,

842-845 (1984), is obsolete. Employer asserted the Board is prohibited from deferring to the Director's interpretation of any purported "statutory ambiguities." It further argued the Board's decision is "untenable" absent deference to the Director because the statutes and case law provide the N/C must be filed only with the district director to avoid potential liability under Section 14(e). The Director responded, asserting the Board did not give the Department's position *Chevron* deference.

The Board rejected employer's contention. It reasoned that:

> While the majority applied "the familiar *Chevron* framework" because it was the law at the time, it nevertheless concluded: "given that the agency's interpretation of the statute is the more persuasive one, we need not even determine whether it is entitled to deference because where an agency's interpretation is 'clearly right' there 'is no need to choose between *Chevron* and *Skidmore* [*v. Swift & Co.*, 323 U.S. 134, 140 (1944)], or even to defer[.]'" *Fowler*, 58 BRBS at 6 n.7 (citations omitted). We believe the analysis and interpretation of Section 14(d) in the Board's original decision comports with the post-*Chevron* statutory review enunciated in *Loper Bright*.
>
> In overruling *Chevron*, the Supreme Court held that "[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority." The reasoning focused on the Administrative Procedure Act, which instructs "'the reviewing court' to 'decide all relevant questions of law' and 'interpret . . . statutory provisions.'" This requirement, the Supreme Court held, "cannot be squared with" *Chevron*'s directive to accept any "permissible" construction of an ambiguous statutory provision. Even when a "statute [is] ambiguous, there is a best reading all the same," and the reviewing court is required to adopt the one that, "after applying all relevant interpretive tools, [it] concludes is best." Thus, while *Loper Bright* mandates a court to exercise its independent judgment when considering an agency's interpretation of an ambiguous statute, it does not require the court to *disagree* with the agency. In exercising independent judgment, courts may still conclude the agency has offered the best reading of an ambiguous statute. This is precisely what the Board's original decision did in interpreting Section 14(d). In short, the Board's original decision ultimately reflects agreement with, rather than deference to, the Director's "more persuasive" and "clearly right" interpretation. *Fowler*, 58 BRBS at 5-6.

Slip op. at 4 (additional citations omitted).

The Board summarized as follows its reasoning in the initial decision. While Section 14(d) of the Act is ambiguous on the question of service, it explicitly requires the employer controverting the claim to file "a notice, in accordance with a form prescribed by the Secretary." The form prescribed by the Secretary, Form LS-207, in turn, unequivocally states: "a copy of the completed form must be mailed to the claimant and claimant's representative" and requires the employer's signature to verify the form was, indeed, "mailed to the claimant and claimant's representative." Additionally, although Section 14(d) is silent on whether service is a component of filing, the implementing regulation at 20 C.F.R. § 702.251, enacted in accordance with the Secretary's authority as the administrator of the Act, explicitly requires that "[a] copy of the notice must also be given to the claimant." The Board also stated its construction of the statute and regulation comports with prior case law in which it held the purpose of Section 14(d) is to notify both the claimant and the district director that the employer disputes its liability, which is essential to the prompt resolution of claims. Accordingly, the Board determined the Secretary's interpretation of the statute is the correct one, upheld her authority to promulgate 20 C.F.R. § 702.251, and concluded that, pursuant to its straightforward terms, service on the claimant is a required component of filing a notice under Section 14(d). The Board concluded that its initial decision reflects the exercise of independent judgment in deciding whether the agency has acted within its statutory authority, thus comporting with *Loper Bright*. The Board did not rely on *Chevron* but instead conducted a review of the pertinent statutory and regulatory provisions to independently conclude that the best reading of Section 14(d) requires an employer to timely serve its N/C on both the OWCP and the claimant. Accordingly, the Board denied the relief requested by employer and remanded the case to the ALJ for further consideration.

In a lengthy dissenting opinion, Administrative Appeals Judge Boggs concluded that Section 14(d) is clear and unambiguous on its face and only requires employer to file a N/C with the district director. She reasoned that, contrary to the majority's determination that the absence of a statutory definition of "filing" creates an ambiguity, Section 14(d)'s language is clear as to what must be done, when it must be done, *and with whom* to avoid the Section 14(e) assessment. Further, the examination of the Act as a whole confirms the plain meaning of "filing" in that "filing means communicating information solely to an official or court. The operation of the Act also confirms the plain meaning of Sections 14(d) and (e). Comparison with other provisions that provide for Secretary's rulemaking with respect to notice and filing sections confirms that Congress did not intend to do so in Section 14(d). Judge Boggs further reasoned that, even if there were a silent statutory gap in Section 14(d), the interpretation put forward by the Director and adopted by the majority does not pass muster. First, for the reasons set forth above, it is not the best reading of the statute. Second, Congress has limited the discretion of the Secretary to prescribing a form, so the form's substantive and procedural requirements are limited to the best reading of the statutory language. Third, the Director's position is not "reasoned decision-making"

warranting respect. Rather, it is just a litigating position. Indeed, it is contrary to the Department's longstanding interpretation of the statute and regulations set forth in its Longshore and Harbor Workers' Procedure Manual ("Manual"). Further, 20 C.F.R. § 702.251 that addresses N/C does not advise that filing *includes* notice to the claimant. Indeed, the Manual indicates the Department of Labor, via the OWCP, bears that burden. Further, the plain language of 20 C.F.R. § 702.233 states the penalty applies to a failure to *file* and the only *filing* described in Section 702.251 is a communication with the *district director*. Thus, Judge Boggs would have affirmed the ALJ's denial of a Section 14(e) assessment.

[Section 14(d) — Notice of Controversion; Section 14(e) — Failure to Pay or Controvert]
***Lui v. American University of Afghanistan*, __ BRBS __ (2025).**

Claimant, while lecturing at the American University of Afghanistan on August 24, 2016, sustained physical injuries and allegedly sustained psychological injuries from an attack by an insurgent group. He filed a claim under the DBA. ALJ Davis denied claimant's claim finding it does not fall within the DBA's coverage under either Section 1(a)(4) or Section 1(a)(5). Claimant appealed. The Board affirmed ALJ Davis's denial of Section 1(a)(4) coverage, reversed his finding that claimant is not covered under Section 1(a)(5), and remanded the case for the ALJ to address the remaining issues. *Lui v. American Univ. of Afg.*, 57 BRBS 1 (2020) (Boggs, J., concurring in part and dissenting in part), *recon. en banc denied*, (Nov. 13, 2020) (unpub. Order).

On remand, the case was reassigned to ALJ Farley ("ALJ"). The ALJ denied claimant's request to join employer's corporate officers pursuant to Section 38(a). He granted employer's motion to preclude claimant from pursuing benefits for his alleged psychological injuries and to exclude exhibits attached to claimant's remand brief. The ALJ ultimately granted employer's motion for summary decision, holding that claimant is not covered under Section 1(a)(5).

<u>Section 1(a)(5)</u>

The Board reversed the ALJ's finding that claimant has not met the requirements of Section 1(a)(5). Agreeing with claimant and the Director, the Board stated that its prior decision held that, as a matter of law, claimant is covered under Section 1(a)(5). USAID "approved" claimant's contract, as it had approval authority over many aspects of the business relationship with employer, including staff salaries, despite its not having approved claimant's specific employment contract. Claimant's employment contract fell within the broad spectrum of overseeing and approving employer's budget and its international staff's salaries. That holding constitutes the law of the case. The ALJ's statement that the Board ordered the OALJ to further review Section 1(a)(5) was inaccurate. The ALJ compounded this error by premising his denial of claimant's claim on his finding that the funding

instruments financing claimant's faculty position did not include a requirement to secure workers' compensation insurance – a finding contrary to law and inconsistent with the procedural posture of this case.

When the Board remands a case, the ALJ must comply with its instructions. Deviation from the mandate rule is permitted only in a few exceptional circumstances, which include (1) when controlling legal authority has changed dramatically; (2) when significant new evidence, not earlier obtainable in the exercise of due diligence, has come to light; and (3) when a blatant error in the prior decision will, if uncorrected, result in a serious injustice. None of these circumstances existed in this case.

In the interest of judicial economy, the Board also addressed claimant's challenges to the ALJ's procedural findings.

Denial of Claimant's Motion for Joinder

The Board reversed the ALJ's denial of claimant's motion to join employer's officers under Section 38(a) of the Act.

Pursuant to Section 38(a), certain officers may be held liable, jointly with the corporation, for benefits if the employer fails to secure payment of compensation as required by Section 32. Further, Section 19(c) requires the ALJ to give notice of the hearing to all potentially liable entities. The Board has held corporate officers are "interested parties" under Section 19(c), even if Section 38(a) operates as a matter of law, because they are entitled to the opportunity to argue that Section 38(a) is not applicable. Where an "interested" party has not received notice, there exists a due process violation. In such instances, the ALJ must vacate the award and, after proper notification to all parties, hold a new hearing.

Here, employer's corporate officers were not provided with a notice of ALJ Davis's hearing. There has been no determination made as to whether employer failed to secure payment of compensation and, thus, whether Section 38(a), applied. Both ALJs denied coverage and did not adjudicate the potential liability of employer, its corporate officers, or both. For these reasons, claimant's motion to join employer's corporate officers was timely. Given the present procedural posture of this case – coverage assessed but liability not yet adjudicated – joining the corporate officers as parties does not violate their respective due process rights of notice and an opportunity to be heard. They would still be able to argue the yet undecided issue of whether Section 38(a) applies.

The Board also rejected employer's contentions that Section 38 is inapplicable because it applies only to Longshore Act claims and not to DBA claims, and that it applies only in

instances where the employer is a corporation and not a non-profit institution of higher learning under Afghani law.

The Board noted that, in accordance with Section 23(a), an ALJ "shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure . . . but may make such investigation or inquiry or conduct such hearing in a manner as to best ascertain the rights of the parties." Pursuant to this duty, the ALJ may, on remand, reopen the record for receipt of additional evidence and/or hold a new evidentiary hearing on the relevant issues, including the applicability of Section 38(a).

Grant of Employer's Motions to Exclude

The ALJ granted employer's motion to exclude exhibits claimant attached to his brief on remand and accompanying arguments on the ground that claimant untimely alleged for the first time that his psychological injuries are disabling. The Board held that the ALJ's ruling was contrary to the record, which established that, form the start, claimant maintained he is entitled to disability and medical benefits for both physical and psychological injuries. Accordingly, the Board reversed the ALJ's rulings.

Next, the Board rejected claimant's contention that the ALJ improperly struck the five exhibits attached to his post-hearing brief on remand. Claimant asserted these medical records fell within the "limited" discovery the ALJ permitted on remand. The Board reasoned that the ALJ has great discretion concerning the admission of evidence, and any decisions regarding the admission or exclusion of evidence are reversible only if arbitrary, capricious, an abuse of discretion, or not in accordance with law. Moreover, an ALJ has the discretion to exclude even relevant and material testimony for failure to comply with the terms of an order. Here, the ALJ concluded that the exhibits were outside the scope of allowed discovery and were not submitted in compliance with his pre-hearing order. The ALJ's order stated that based on employer's request and the parties' agreement, discovery would consist of employer's discovery requests and claimant's responses and would be limited to claimant's relevant medical care since the end of the previous discovery period. The parties waived a formal hearing and agreed to a submission schedule; claimant's responses were due by August 30, 2021, but were not submitted until October 11, 2021. Although claimant's post-hearing exhibits appeared to fall within the subject matter of the agreed upon limited discovery, they fell outside the allotted time frame for submission. As the submission violated the ALJ's discovery order, claimant has not shown the ALJ's denial action is arbitrary, capricious, or an abuse of discretion. Accordingly, the Board affirmed the ALJ's exclusion of the exhibits accompanying claimant's remand brief.

The Board remanded the case for further consideration consistent with its opinion.

Administrative Appeals Judge Boggs, concurred and dissented. She agreed that the case falls within the DBA's provisions, reversal of the ALJ's findings excluding consideration of claimant's psychological injuries, and affirmance of the ALJ's exclusion of exhibits. She also agreed, as a matter of law, that the ALJ erred in ruling the DBA does not apply merely because insurance was not secured or mentioned in the contract. However, she would remand the case, per her original dissent, for the ALJ to reconsider whether this injury fell within the DBA – specifically addressing whether there was approval of the contract, or merely review, to ensure the proper spending of funds under the cooperative agreement. She also would have the ALJ obtain more information, and closely address that information, regarding the dismissal of the officers, including any prejudice to their ability to adequately present defenses, as well as equitable considerations pertaining to claimant's failure to timely act given the length of time before the attempted joinder.

[Defense Base Act – Coverage (Section 1(a)(5)); Admission of Evidence — In General; Pre-Hearing Order; Reopening the Record on Reconsideration and Remand; Section 19(c) —Notice of Hearing and Timely Decision; Section 38(a) – liability of corporate officers; due process]

II. Black Lung Benefits Act

A. U.S. Court of Appeals

1. Published Decisions

Fourth Circuit:

Extra Energy, Inc. v. Lawson, No. 23-1544, 2025 U.S. App. LEXIS 13484 (4th Cir. June 3, 2025)

On June 3, 2025, the Fourth Circuit Court of Appeals ("Fourt Circuit" or "Court") issued a published opinion affirming an Administrative Law Judge's ("ALJ") decision to award benefits to Glen Lawson ("Claimant"), who worked as a coal miner for twelve years. The Claimant had used oxygen since 2014, had part of his lung surgically removed in 2017, and had been hospitalized with pneumonia several times. The parties stipulated that he was totally disabled from a pulmonary standpoint. The ALJ found that the Claimant smoked for approximately thirty pack-years, had legal pneumoconiosis, and was totally disabled due to legal pneumoconiosis. In awarding benefits, the ALJ credited the opinions of Drs. Forehand, Green, and Raj, who concluded that the Claimant had legal pneumoconiosis and that both smoking and coal mine employment caused his pulmonary ailments, over the opinions of Drs. McSharry and Rosenberg, who attributed the Claimant's pulmonary

ailments solely to smoking. The Benefits Review Board ("Board") affirmed the ALJ's decision.

Before the Fourth Circuit, Extra Energy, Inc. ("Employer") argued the ALJ erred in finding that the Claimant had legal pneumoconiosis. Specifically, it argued that by crediting Drs. Forehand, Green, and Raj, the ALJ relied on the erroneous assumption that exposure to coal mine dust and smoking are always additive, and smoking is never the only cause of a miner's pulmonary impairment. In rejecting the Employer's argument, the Fourth Circuit held that the ALJ analyzed each expert opinion independently, evaluated whether each opinion was reasoned and documented, and did not credit or discredit all the expert opinions based on a single, erroneous interpretation of the preamble to the regulations.

Before analyzing the ALJ's decision, the Fourth Circuit reaffirmed its longstanding view that an ALJ may discredit opinions that are inconsistent with the preamble to the regulations. It cited prior opinions in which it held that an ALJ has the discretion to reject expert opinions based on the preamble and that an ALJ may appropriately give little weight to findings that conflict with the regulations. However, it cautioned that an ALJ errs when he credits a medical opinion for being consistent with the preamble when the opinion contradicts the preamble's text. Additionally, citing its recent decision in Am. Energy, LLC v. Dir., Off. of Workers' Comp. Programs, 106 F.4th 319, 324 (4th Cir. 2024), the Court stated than an ALJ may only discredit an expert's opinion as inconsistent with the preamble if the opinion is, in fact, inconsistent with the preamble.

Applying these principles, the Court analyzed the ALJ's reasons for crediting Drs. Forehand, Green, and Raj and for discrediting Drs. McSharry and Rosenberg. The Court found that the ALJ explained exactly which aspects of each medical report were persuasive and why he found the totality of each report well-reasoned. The Court emphasized that unlike the ALJ in Am. Energy, 106 F.4th 319, who interpreted the preamble to mandate a presumption that respiratory and pulmonary disabilities in a miner with a smoking history are caused by both smoking and coal dust, and used that presumption to evaluate all the expert opinions based solely on that, the ALJ in this case analyzed each expert opinion independently and evaluated the level of reasoning and documentation in each opinion. The Court also discussed the ALJ's reasons for giving little probative weight to Drs. McSharry and Rosenberg and concluded that he did not err in his analysis.

For all these reasons, and after emphasizing that its standard of review is highly deferential, the Fourth Circuit denied the Employer's petition for review.

[Use of Preamble in weighing medical opinions]

2. Unpublished Decisions

Fourth Circuit Court of Appeals

Island Creek Coal Co. v. Osborne, No. 23-1708, 2025 U.S. App. LEXIS 11812 (4th Cir. May 15, 2025)

On May 15, 2025, the Fourth Circuit Court of Appeals ("Fourt Circuit" or "Court") issued an unpublished opinion affirming an award of benefits to Curtis M. Osborne ("Claimant"). The Administrative Law Judge ("ALJ") awarded benefits after concluding that the Claimant was totally disabled from a pulmonary standpoint based on Dr. Green's medical opinion and entitled to invoke the fifteen-year presumption. He further found that Island Creek Coal 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 the Claimant totally disabled. Specifically, it argued the ALJ erred in giving Dr. Green more weight than he gave to the Employer's physicians. The Fourth Circuit found no merit in the Employer's argument that the ALJ did not hold the Claimant to his burden of establishing total disability. The Court noted that the ALJ found Dr. Green's medical opinion well-reasoned and well-documented, and it rejected the Employer's argument that Dr. Green's opinion was not entitled to probative weight simply because he did not review the ABG performed during Dr. McSharry's examination, which occurred after Dr. Green's examination. Therefore, the Court denied the Employer's petition for review.

[Weighing medical reports where later evidence was not considered]

Cavendish v. Dir., OWCP, No. 24-1126, 2025 U.S. App. LEXIS 14628 (4th Cir. June 13, 2025)

On June 13, 2025, the Fourth Circuit Court of Appeals issued an unpublished opinion vacating and remanding an Administrative Law Judge's ("ALJ") decision and order denying benefits to Juanita Cavendish ("Claimant") on behalf of Jamie Cavendish ("Miner"). The ALJ denied benefits after finding that the Miner was not totally disabled from performing light work as a bulldozer operator. The Benefits Review Board ("Board") found the ALJ permissibly characterized the Miner's job as only requiring light exertion and affirmed her decision.

In a split opinion, the majority concluded that the ALJ failed to adequately explain her reasons for finding that the Miner's job as a bulldozer operator only required light exertion. It noted that the ALJ gave paramount weight to the Miner's Form CM-913, Description of

Coal Mine Work and Other Employment, in which he wrote that he sat for "up to 8" hours per day but did not write anything in the other blanks, such as how much he lifted or carried daily. The Court noted that Form CM-913 asks for daily activities, but it but does not include obvious space for a miner to report occasional, or non-daily, activities or exertions. The Court emphasized that the ALJ interpreted the Miner's omissions as assertions that he did not lift or carry anything. It found the ALJ failed to explain why the Miner's Form CM-913 was more credible than the other evidence of record, including state workers' compensation records showing that the Miner injured his back while lifting a bulldozer battery, the Dictionary of Occupational Titles' ("DOT") classification of bulldozer operator as involving heavy work, Dr. Sood's characterization of a bulldozer operator's job, the Claimant's testimony that the Miner lifted and replaced batteries, and the Claimant's testimony that he was injured while lifting a battery that weighed between seventy-five and 100 pounds. The Court further found that the ALJ was not entirely consistent in her treatment of omissions on Form CM-913. For example, it noted that although the Miner did not write anything about operating foot controls on Form CM-913, the ALJ concluded that he operated foot controls. Because the majority could not understand the ALJ's rationale for crediting her interpretation of the Miner's answers on Form CM-913 above all the other record evidence, it remanded the case for her to better explain her rationale.

Judge Agee issued a dissenting opinion. He opined that the ALJ carefully surveyed the record, including Form CM-913, the Claimant's testimony, state workers' compensation records, and the DOT's dozer operator definition, and concluded the Miner's job did not involve significant lifting or carrying. Because he thought the ALJ adequately explained her conclusion that the Miner's usual coal mine job involved light work, he would have denied the Claimant's petition for review and affirmed the Board's decision.

[Total disability: determining exertional level of the miner's work]

Consolidation Coal Co. v. Dir., OWCP, No. 23-1989, 2025 U.S. App. LEXIS 14775 (4th Cir. June 16, 2025)

On June 16, 2025, the Fourth Circuit Court of Appeals issued an unpublished opinion affirming an award of benefits to Joseph Murphy ("Claimant"). The Administrative Law Judge ("ALJ") found that the Claimant was entitled to invoke the fifteen-year presumption and Consolidation Coal Co. ("Employer") failed to rebut it. The Benefits Review Board affirmed the ALJ's decision.

On appeal, the Employer challenged the ALJ's finding that the arterial blood gas ("ABG") evidence established total disability. The Claimant underwent an ABG in 2017, an ABG in 2018, and three ABGs in 2020. The ALJ accorded the 2020 ABGs the most weight because

they were the most recent. A resting ABG in February 2020 was qualifying, resting and exercise ABGs in June 2020 were not qualifying, and a resting ABG in October was qualifying. An exercise ABGs was not performed in February or October of 2020. In concluding that the preponderance of the ABG evidence supported finding the Claimant totally disabled, the ALJ considered and rejected the Employer's argument that she should credit the non-qualifying exercise ABG from 2020 over the qualifying resting ABGs from 2020. The ALJ emphasized that the regulations recognize that a gas exchange impairment may manifest either at rest or during exercise. The Fourth Circuit held that the ALJ correctly observed that the regulations permit, but do not require, an ALJ to credit exercise ABGs over resting ABGs. The Court found that the ALJ considered all the evidence and reasonably determined that the preponderance of it supported a finding of total disability.

The ALJ also considered the medical opinions and concluded that while none merited full probative weight, the preponderance of the medical opinion evidence supported finding the Claimant totally disabled. The Fourth Circuit considered and rejected the Employer's argument that the ALJ erred in giving less weight to Dr. Ranavaya because he was not a pulmonologist. The Court explained that Dr. Ranavaya's credentials were not the only reason the ALJ gave him less probative weight. Rather, she also gave him less weight because his opinion was vague and inconclusive, he conflated the issues of total disability and disability causation, he incorrectly described the Claimant's usual coal mine work as mostly sedentary rather than moderate to heavy, and he failed to explain why the Claimant's extensive history of coal dust exposure did not significantly contribute to the Claimant's respiratory impairment.

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

[Total disability: assigning more weight to exercise ABGs over resting ABGs is discretionary, not mandatory]

Sixth Circuit Court of Appeals

S. Ohio Coal Co. v. Dir., OWCP, No. 24-3733, 2025 U.S. App. LEXIS 14718 (6th Cir. June 13, 2025)

On June 13, 2025, the Sixth Circuit Court of Appeals ("Sixth Circuit" or "Court") issued an unpublished opinion affirming an Administrative Law Judge's ("ALJ") decision to award benefits beginning in June 2015 rather than in August 2019, when Walter Tomblin ("Claimant") filed his claim for benefits. Before the ALJ, Southern Ohio Coal Company ("Employer") stipulated that the Claimant was totally disabled from a pulmonary standpoint. The ALJ found that the Claimant was entitled to invoke the fifteen-year

presumption of total disability due to pneumoconiosis and the Employer failed to rebut the presumption. The ALJ concluded that the Claimant was entitled to benefits beginning in June 2015, when the evidence established that he became totally disabled. The Benefits Review Board affirmed the ALJ's decision.

The only issue on appeal to the Sixth Circuit was the commencement date for paying the Claimant's benefits. The Employer argued that the ALJ should have found the Claimant entitled to benefits no earlier than August 2019, when he filed his claim. In rejecting the Employer's argument, the Court stated that the Employer failed to rebut the presumption that the Claimant was totally disabled due to pneumoconiosis as of June 2015. It also rejected the Employer's argument that the Claimant needed to prove the cause of his total disability through a physician's documented and reasoned medical report. The Court explained that 20 C.F.R. § 718.204(c)(2) provides that "[e]xcept as provided" in 20 C.F.R. § 718.305 (the fifteen-year presumption), proof of a totally disabling respiratory or pulmonary impairment "shall not, by itself, be sufficient to establish that the miner's impairment is or was due to pneumoconiosis." The Court stated that a "fair reading of that text leads one to conclude that when" the fifteen-year presumption "does apply, such proof **shall** be 'sufficient' 'by itself.'" Because the fifteen-year presumption applied in this case, and the Employer failed to rebut it, the Court found that the Claimant had sufficient evidence to establish that his total disability was due to pneumoconiosis. Consequently, it denied the Employer's petition for review.

[Commencement date for payment of benefits where 15-year presumption applies]

ICG Knott County, LLC v. Johnson, No. 24-3881, 2025 U.S. App. LEXIS 11969 (6th Cir. May 14, 2025)

On May 14, 2025, the Sixth Circuit Court of Appeals ("Sixth Circuit" or "Court") issued an unpublished opinion affirming an award of benefits to Justin Johnson ("Claimant"). The Administrative Law Judge ("ALJ") found that the Claimant worked as an underground coal miner for thirty-one years, was totally disabled from a pulmonary impairment, and was entitled to invoke the fifteen-year presumption of total disability due to pneumoconiosis. He further found that ICG Knott County, LLC ("Employer") failed to rebut the presumption. The Benefits Review Board ("Board") affirmed the ALJ's decision.

On appeal to the Sixth Circuit, the Employer argued the ALJ erred in considering three pulmonary function tests ("PFTs") the Claimant performed during treatment. Each PFT in the treatment records only contained one tracing. The Court explained that because the PFTs were conducted for medical treatment rather than litigation, the ALJ only needed to determine they were reliable – he did not need to find that they met the regulatory quality standards at 20 C.F.R. § 718.103 and Appendix B to Part 718. In finding the PFTs reliable,

the ALJ explained that Dr. Mahmood Alam, the Claimant's treating physician, wrote that the Claimant put forth good effort and cooperated during each PFT, which implied reliable results, and Dr. Alam relied on the PFT results to diagnose and treat the Claimant. The Sixth Circuit agreed with the Board and found that the ALJ adequately explained his reasons for finding the PFTs reliable. It further found that substantial evidence supported the ALJ's decision to award benefits. Consequently, it denied the Employer's petition for review.

[Treatment PFTs are not required to meet regulatory quality standards of § 718.103 and Appendix B]

Eleventh Circuit

Warrior Met Coal Mining, LLC v. Dir., OWCP, No. 24-11625, 2025 U.S. App. LEXIS 11815 (11th Cir. May 15, 2025)

On May 15, 2025, the Eleventh Circuit Court of Appeals ("Eleventh Circuit" or "Court") issued an unpublished opinion affirming an award of benefits to Hershell Robbins ("Claimant"). The Administrative Law Judge ("ALJ") found that the Claimant worked as an underground coal miner for more than thirty years and was totally disabled based on Dr. Green's medical opinion. She further found that Warrior Met Coal Mining, LLC ("Employer") failed to rebut the presumption. The Benefits Review Board affirmed the ALJ's decision.

Before the Eleventh Circuit, the Employer argued the ALJ erred in crediting Dr. Green's opinion on disability. In concluding that the Claimant was totally disabled, Dr. Green relied on the Claimant's shortness of breath with exertion, symptoms of cough and smothering, and low blood oxygen and high carbon dioxide during exercise. The Court rejected the Employer's argument that Dr. Green relied on a flawed ABG that was contradicted by subsequent ABGs. It emphasized that the ALJ based her finding of total disability on Dr. Green's medical opinion rather than on the ABG evidence. Therefore, it concluded that the ALJ gave ample grounds for giving probative weight to Dr. Green.

The Court further upheld the ALJ's decision to give less probative weight to Drs. Raj and McSharry. It stated the ALJ reasonably gave more weight to Dr. Green because his opinion was consistent with the objective medical testing, he considered the Claimant's "black secretions," and he accounted for the Claimant's thirty-year underground coal mining career. The Court also upheld the ALJ's decision to give less probative weight to Dr. McSharry because his credentials were not of record.

Because substantial evidence supported the ALJ's decision, the Eleventh Circuit denied the Employer's petition for review.

[Weighing medical opinions on the issue of total disability]

Chappell v. United States DOL, No. 24-10805, 2025 U.S. App. LEXIS 12235 (11th Cir. May 20, 2025)

On May 20, 2025, the Eleventh Circuit Court of Appeals ("Eleventh Circuit" or "Court") issued an unpublished opinion dismissing an appeal for lack of jurisdiction. On January 11, 2024, the Benefits Review Board ("Board") issued an order denying Jewell Chappell's ("Claimant") motion for reconsideration of an earlier order. The Eleventh Circuit explained that the Claimant had sixty days to petition for review of the Board's order, so she needed to file it on or before March 11, 2024. Because the Court did not receive the Claimant's appeal until March 18, 2024, and because the time limit for review is jurisdictional, it dismissed her appeal for lack of jurisdiction.

[Dismissal of untimely petition for review]

B. Benefits Review Board

1. Published Decisions

No decisions to report.

2. Unpublished Decisions

Teresa Parrish (obo William Parrish) v. Rend Lake Mine, BRB No. 24-0227 BLA (April 18, 2025):

In this Seventh Circuit claim, the Board stated that nothing in the Act or regulations requires a miner to show that his total disability is chronic to invoke the Section 411(c)(4) presumption. It explained that the relevant inquiry for invoking the § 411(c)(4) presumption is whether the deceased miner had a totally disabling respiratory impairment, and it rejected the Employer's argument that the ALJ was required to address whether the Miner's impairment was chronic before invoking the presumption.

[Claimant is not required to establish that the total disability is chronic]

Nicholas Cox (obo and survivor of David Cox) v. Wellmore Energy Co., LLC, BRB Nos. 24-0434 BLA and 24-0435 BLA (April 23, 2025):

The Board affirmed the ALJ's decision to credit Dr. Nader's opinion that the Miner's totally

disabling restrictive lung disease arose out of coal mine employment and was legal pneumoconiosis. Therefore, the Board found no error in the ALJ's finding that Dr. Nader's opinion was also sufficient to establish that the Miner's legal pneumoconiosis was a substantially contributing cause of his total disability.

[Determining whether legal pneumoconiosis is a substantially contributing cause of total disability]

Larry D. Hensley v. Rockhampton Energy, LLC, BRB No. 24-0177 BLA (April 28, 2025):

The Board affirmed the ALJ's conclusion that the Claimant had complicated pneumoconiosis. In weighing the conflicting x-ray evidence, the ALJ found the November 2019 x-ray positive for complicated pneumoconiosis, the August 2020 x-ray negative for pneumoconiosis, and the two most recent x-rays in equipoise. In giving the positive x-ray more weight than the negative x-ray, the ALJ observed that two dually qualified physicians, who interpreted the November 2019 x-ray, concluded the Claimant had complicated pneumoconiosis, while only one, Dr. Simone, who interpreted the August 2020 x-ray, concluded the Claimant did not have pneumoconiosis. The ALJ also gave reduced weight to Dr. Simone's negative x-ray interpretations because he did not observe at least simple pneumoconiosis, unlike every other physician who interpreted the x-rays. Therefore, the ALJ gave the most weight to the November 2019 x-ray and concluded that the x-ray evidence established both simple and complicated pneumoconiosis. The Board rejected the Employer's argument that the Employer was disadvantaged because both parties were permitted to submit an interpretation in rebuttal to the November 2019 x-ray, which was performed as part of the Department's complete pulmonary evaluation. The Board explained that the evidentiary regulations specifically provide that each party may submit an x-ray interpretation in rebuttal to the Department's x-ray. The Board also held that the ALJ permissibly found Dr. Simone's negative interpretations to be less credible given that he did not identify at least simple pneumoconiosis, contrary to every other radiologist's interpretation. The Board also affirmed the ALJ's decision to give Dr. Simone's CT scan interpretation less weight to the extent he required a "background of rounded opacities" before diagnosing any form of pneumoconiosis.

[Complicated pneumoconiosis: weighing conflicting x-ray evidence]

Gerald W. Smith v. KenAmerican Resources, Inc., BRB No. 24-0063 BLA (May 16, 2025):

The Board affirmed the ALJ's finding that the Claimant's CM-913 employment history form and testimony were consistent with each other and established that the Claimant's usual coal mine work as a maintenance director required very heavy manual labor. The Board rejected the Employer's argument that the ALJ mistakenly inferred that the Claimant dragged heavy equipment weighing over 300 pounds on his own. The Board stated that nothing in the ALJ's decision indicated that she inferred that the Claimant moved the

equipment without help. The Board also rejected the Employer's argument that the ALJ needed to find that the Claimant regularly or usually moved that much weight. The Board explained that the Claimant was not required to show that he dragged heavy equipment regularly to establish that it was part of his duties for purposes of determining his usual coal mine employment. Although this case arose in the Sixth Circuit, the Board cited Eagle v. Armco Inc., 943 F.2d 509 (4th Cir. 1991), for the principle that whether a miner can perform his usual coal mine work depends on whether he can perform the "most arduous" part of his work. Therefore, the Board held that substantial evidence supported the ALJ's determination that the Claimant's usual coal mine employment required very heavy manual labor.

[Total disability: determining exertional level of Claimant's work]

Bonita Y. Ratliff (obo and survivor of Rinnie A. Ratliff) v. R&H Coal Co., BRB Nos. 24-0103 BLA and 24-0263 BLA (May 20, 2025):

The Board affirmed the ALJ's finding that the Miner's two most recent CT scans, taken on August 5, 2015 and January 28, 2016, were positive for complicated pneumoconiosis. Dr. Ramakrishan interpreted the CT scan taken on August 5, 2015 as showing "stable reticular nodular changes of the lung fields bilaterally, consistent with pneumoconiosis" and a stable twelve-millimeter nodule "in the right upper lobe suggesting [a] coalescent fibrotic nodule." He compared the CT scan to two earlier CT scans. The ALJ noted that Dr. Ramakrishnan did not specifically diagnose complicated pneumoconiosis, but she found that his identification of a twelve-millimeter nodule consistent with pneumoconiosis would be "of an equivalent size on chest x-ray, that is 1.2 cm," and, therefore, constituted a diagnosis of complicated pneumoconiosis at 20 C.F.R. § 718.304(c). The Board explained that the Fourth Circuit required the ALJ to perform equivalency determinations based on her evaluation of all the medical evidence of record, so "the absence of a specific statement of equivalency by a physician is not a bar to establishing complicated pneumoconiosis." The Board stated that the ALJ permissibly found that the 1.2-centimeter opacity present on the CT scan would exceed one centimeter on x-ray and was positive for complicated pneumoconiosis. The ALJ also credited Dr. Ramakrishnan's interpretation of a CT scan taken on January 28, 2016 over Dr. Adcock's interpretation. Dr. Ramakrishnan opined the 2016 CT scan showed a "stable upper lobe reticular nodular fibrosis consistent with pneumoconiosis" similar to the August 2015 CT scan. Dr. Adcock opined it showed some minor coalescence of small opacities but no large opacities. The Board stated that the ALJ permissibly found Dr. Ramakrishnan's interpretation more persuasive than Dr. Adcock's because Dr. Ramakrishnan specified the nodule was the same size as the nodule identified on the August 2015 CT scan, whereas Dr. Adcock was ambiguous regarding the size of the coalescence he observed. Therefore, the Board affirmed the ALJ's finding that

the August 2015 and January 2016 CT scans supported finding that the Miner had complicated pneumoconiosis.

[Complicated pneumoconiosis: weighing CT scan evidence]

Curtis D. McCoy v. Cumberland River Coal Co., BRB No. 24-0084 BLA (May 28, 2025):

The Board affirmed the ALJ's finding that the Claimant's usual coal mine work required heavy exertion. The ALJ considered the Claimant's description of coal mine work (Form CM-913), deposition testimony, and hearing testimony, and he found that the Claimant worked as a roof bolter and shuttle driver/operator. As the Claimant reported that his usual coal mine work required lifting and carrying as much as forty pounds forty times per day, the ALJ found that his usual coal mine employment required heavy exertional work. The Employer argued that the ALJ erred in finding that the Claimant's usual coal mining work required heavy exertion because he "focused on the hardest part of [Claimant's] work rather than his usual coal mine employment." In rejecting the Employer's argument, the Board stated that a miner does not need to perform a task every day for it to be considered part of a miner's duties for purposes of determining whether he can perform his usual coal mine employment. It stated that the ALJ considered the Claimant's uncontradicted testimony and other evidence of record and permissibly found that the Claimant's usual coal mine work required heavy exertion.

[Total disability: determining exertional level of Claimant's work]

Linda Carol Christian v. Star Services Corp., BRB No. 24-0117 BLA (May 29, 2025):

In this survivor's claim that arose in the Sixth Circuit, the Board cited the Seventh Circuit's opinion in Consolidation Coal Co. v. Dir., OWCP, 129 F.4th 409 (7th Cir. Feb. 18, 2025), and stated that nothing in the Act or regulations requires the Claimant to show that the Miner's total disability was chronic in order to invoke the § 411(c)(4) presumption.

[Claimant is not required to establish that the total disability is chronic]

Sandora Ratliff (obo Terry A. Ratliff) v. Island Creek Coal Co., BRB No. 24-0073 BLA (June 17, 2025):

In this claim arising in the Fourth Circuit, the Board affirmed the ALJ's use of three different methods to calculate how long the Miner worked as a coal miner. The ALJ credited the Miner with nine quarters (2.25 years) of coal mine employment from 1975 to 1977. In affirming her calculation, the Board emphasized that both the U.S. Court of Appeals for the Fourth Circuit and the Board have held it is reasonable to credit a miner for any quarter in

which the record shows earnings of at least $50.00 in coal mine employment. From 1978 to 1986, the ALJ relied on the Miner's Social Security Itemized Statement of Earnings (SSISE) and applied the formula at 20 C.F.R. § 725.101(a)(32)(iii) to determine the Miner's working days in each calendar year. She then divided the Miner's yearly earnings by the coal mine industry's average daily earnings in Exhibit 610 and used 254 days as a divisor to determine the threshold finding of a calendar year of work. The ALJ explained that she assumed a calendar year of employment excluded pay for weekends and seven major holidays, resulting in 254 days, and she credited the Miner with 7.3 years of coal mine work from 1978 to 1986. The Board held that her use of 254 days as a divisor was reasonable and supported by substantial evidence. Finally, the ALJ credited the Miner with one year and seven months of coal mine employment from 1986 to 1988 based primarily on his testimony. The Board stated that the ALJ considered the Miner's uncontradicted testimony, which she found credible, as well as other evidence of record and reasonably relied on his testimony to credit him with this employment. Consequently, the Board affirmed all three methods the ALJ used to find that the Miner worked as a coal miner for 16.4 years.

[Permissible to employ more than one method in determining length of coal mine employment]

Esther F. Yankuskie (survivor of Joseph John Yankuskie) v. Consol of PA Coal Co., BRB No. 24-0389 BLA (June 17, 2025):

The Board rejected the Employer's argument that the ALJ's "deference to federal agency guidelines (like the DOL's Preamble), and interpretations of statutes as controlling authority" for purposes of weighing medical opinions under the Act may have been improper under Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). The Board agreed with the Director that Loper Bright was not relevant to the ALJ's weighing of the medical evidence because the ALJ permissibly consulted the preamble to the regulations in evaluating the credibility of a physician's opinion. The Board concluded that the case did not involve statutory interpretation or Chevron deference.

[ALJ's use of Preamble when weighing medical evidence is permissible]