UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

Washington, DC

RECENT SIGNIFICANT DECISIONS -- MONTHLY DIGEST # 324

July-October 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

***Horizon Shipbuilding v. Jackson*, No. 24-12858, 2025 WL 2167913 (11th Cir. 2025) (unpub.)**

The Eleventh Circuit affirmed the district court's order dismissing claimant's claim brought under the LHWCA, following a certification of facts by an ALJ under § 27(b). The district court did not abuse its discretion in granting employer's motion to dismiss after finding that claimant repeatedly engaged in willfully disobedient conduct and that other sanctions would not suffice.

The court reviews a district court's determination of civil contempt for abuse of discretion. It also reviews a district court's dismissal of an action under Fed. R. Civ. P. 41 for a party's failure to comply with a court order for abuse of discretion.

Section 27(b) authorizes district courts to impose sanctions on parties who disobey or resist lawful orders issued by ALJs during administrative proceedings. This provision specifies that a district court may "punish" a party who disobeys a lawful order during administrative proceedings "in the same manner and to the same extent as for a contempt

committed before the court." Under the established civil contempt standards, a district court must support a finding of civil contempt with clear and convincing evidence. The clear and convincing evidence must establish that: (1) the allegedly violated order was valid and lawful; (2) the order was clear and unambiguous; and (3) the alleged violator had the ability to comply with the order. District courts have broad discretion in fashioning civil contempt sanctions. However, dismissal is a severe sanction that may only be imposed when (1) a party engages in a clear pattern of delay or willful contempt (contumacious conduct); and (2) the district court specifically finds that lesser sanctions would not suffice. Although it is an extraordinary remedy, dismissal upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion.

In this case, the ALJ compelled claimant to, among other things, undergo a medical examination by a physician selected by employer and execute various authorizations after he refused to do so upon employer's request. Thereafter, employer moved to dismiss claimant's claims with prejudice, arguing that his refusal to participate in discovery and comply with the ALJ's orders had prevented it from investigating his claims. The ALJ agreed, issuing an order that certified certain facts to the district court and recommended that the district court dismiss claimant's claims with prejudice.

The Eleventh Circuit concluded that the district court did not abuse its discretion in determining that claimant was in contempt of court or in dismissing his claims. The district court properly determined that the ALJ's orders were lawful. The statute and regulations make clear that the ALJ had discretion in conducting the administrative proceedings and was broadly authorized to compel claimant to attend a medical examination and execute the necessary authorizations to effectively carry out her duties. *See* 33 U.S.C. §§ 907(d), 927(a); 29 C.F.R. §§ 18.12(b), 18.62. While claimant argued that it was unreasonable for the ALJ to require him to travel 80 miles for an examination using the car he shared with his wife, he cited to no authority specifying a maximum distance a claimant may be required to travel or suggesting that the ALJ's order was otherwise unreasonable.

Furthermore, the ALJ's orders were clear and unambiguous. They specified that claimant was required to return the executed authorizations by a certain date and to attend the scheduled medical examination, noting the date, the physician's name, and the location. Claimant did not demonstrate that he was unable to comply with the orders. While he claimed that the distance he would be required to travel for the examination was unreasonable, he did not allege that he had no way of transporting himself to it, and employer confirmed that it would reimburse him for the travel costs. As for the authorizations, employer argued that they were overly broad, not that he was unable to execute and return them.

To the extent claimant argued that the ALJ's purported failure to rule on his motions for protective orders prevented him from complying with the discovery orders, the record belied this claim. The ALJ addressed claimant's requests for protective orders in her rulings on the parties' motions to compel, for reconsideration, and to quash subpoenas.

Nor did the district court abuse its discretion in dismissing claimant's claims based on his failure to comply with the ALJ's orders. The record showed that claimant engaged in a clear pattern of willful contempt by repeatedly disobeying the ALJ's orders. He continued to disobey the ALJ's orders by failing to attend a discovery conference. He also demonstrated a pattern of disobedience in district court, failing to comply with instructions to appear for a hearing.

Moreover, before dismissing claimant's claims, the district court considered less severe sanctions and concluded that they would not be effective. It found no indication that claimant would execute the authorizations or attend the medical examination in the future, and his refusal to do so had interfered with employer's ability to effectively dispute his claims. And claimant had been put on notice of the possible consequences -- the ALJ advised him multiple times that his failure to comply with her orders could result in sanctions, including the dismissal of his claims.

Lastly, the Eleventh Circuit found no merit in claimant's assertion that the district court erred by striking his notice of constitutional challenge to a regulation prohibiting the recording of administrative proceedings.

[Procedure -- The Claim -- Dismissal; Administrative Law Judge Adjudication -- Discovery; Section 27 Sanctions]

B. U.S. District Courts[1]

No opinions published.

C. Benefits Review Board

***McRae v. SSA Terminals*, __ BRBS __ (2025).**

Agreeing with the Acting Director, Office of Workers' Compensation Programs ("Director"), the Board held that ALJs lack jurisdiction to set aside settlement orders based on equitable grounds such as allegations of fraud, and that the only recourse for a party alleging fraud is

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

through a § 31(a) complaint brought to the appropriate United States Attorney, not before an ALJ.

Anthony T. McRae suffered an injury to his lower back in the course of his employment. He died following lumbar surgery, and his widow filed a claim for benefits under the LHWCA, seeking both death benefits and *inter vivos* benefits owed to decedent. The parties settled the claim, and an ALJ issued an order approving the § 8(i) settlement. Eight months later, employer filed a motion to set aside the ALJ's order. Employer argued that claimant procured the settlement through fraud and misrepresentation, because according to employer she was not legally married to decedent at the time of his death and knew this when she entered into the settlement agreement.

The case was assigned to an ALJ who issued an order setting a hearing on employer's motion. The ALJ determined that he had jurisdiction over employer's motion pursuant to § 19(a) of the Act, because the issue before him was "in respect of" a claim. He found that neither the Act nor the OALJ Rules provide for setting aside a settlement order due to fraud. Consequently, he determined the Federal Rules of Civil Procedure applied pursuant to OALJ Rule 18.10(a). The ALJ relied on Fed. R. Civ. P. 60(b)(3), which allows a party to seek relief from a final judgment for fraud. He also relied on *Downs v. Tex. Star Shipping Co.*, 18 BRBS 37, 40 (1986), *aff'd sub nom. Downs v. Director, OWCP*, 803 F.2d 193 (5th Cir. 1986), where the Board stated in dicta that allegations of fraud "conceivably" may be enough to reopen a settlement as a matter of common law equity.

Claimant filed three motions with the ALJ, including motions to dismiss the claim based on lack of subject matter jurisdiction and for failure to state a claim. He asserted that the ALJ lacked jurisdiction to adjudicate fraud allegations. The ALJ denied the motions and also denied claimant's motion for reconsideration.

Claimant filed an interlocutory appeal with the Board. The OWCP Director sided with claimant and argued that the ALJ lacked jurisdiction to set aside the settlement order. The Board stated that it generally does not review non-final orders, except when the order conclusively resolves an important issue which is separate from the merits, and is effectively unreviewable on appeal from a final judgment. Even if these criteria are not met, the Board may, in its discretion decide the appeal. In this case, the issue of an ALJ's jurisdictional authority was sufficiently important to accept the interlocutory appeal.

Turning to the merits, the Board concluded that the issue presented was not "in respect of a claim" as required under § 19(a). To be considered an issue raised "in respect of" a claim, it must be related to the compensation award and liability, and the remedy must arise from the Act itself and its implementing regulations. In this case, claimant and the Director argued that the settlement resolved any claim, so no claim existed. The Board

stated that although claimant's claim for benefits has arguably been resolved, employer raised a factual dispute bearing directly on its liability. So, the only remaining question was whether employer's requested remedy arose from the Act. The Board concluded that it did not.

The Board started its analysis by denouncing its prior statement in dicta in *Downs*. In *Downs*, claimant attempted to set aside an 8(i) based on his allegations that his former counsel engaged in misconduct. In that case, the Board reasoned that claimant did not present evidence of fraud by employer or insurer to justify "disturb[ing] the general rule that approved settlements cannot be reopened." It also stated that courts have allowed settlements to be reopened when allegations of fraud by employer or insurer are made. The Board acknowledged that, in *Downs*, it "seemingly posited" that ALJs "conceivably" might have the authority to reopen the settlement as a matter of common law equity. The Board concluded that this language in *Downs* constitutes dicta and lacks any statutory support. The Board reasoned that an ALJ is a judicial officer of a legislatively-created administrative tribunal (as opposed to an Article III "court"), and his authority cannot extend beyond the statutory language of the Act. Thus, an ALJ's authority is confined to a right created by Congress; and his jurisdiction is limited to a particularized area of law. The dicta in *Downs* relied on a common-law case issued by an Article III court and, therefore, is insufficient to confer such authority.

Next, the Board examined the language of the Act and concluded that it does not confer on the ALJ the authority to set aside a compensation order approving an 8(i) settlement. The Board reasoned that only two provisions of the Act allow parties to set aside a compensation order, namely §§ 21 and 22 of the Act. In this case, these provisions precluded the ALJ from addressing employer's motion, because employer failed to timely seek review of the settlement order under § 21, and § 22 prohibits the modification of settlements.

The Act also unequivocally addresses situations involving fraudulently filed claims in § 31(a). This section is an employer's sole remedy for fraud, as the Board previously held in *Valdez v. Crosby & Overton*, 34 BRBS 69 (2000). It provides that any false statement or representation knowingly and willfully made for the purpose of obtaining benefits under the Act is a felony, punishable by a fine of not more than $10,000 or imprisonment not to exceed five years, or both. Subsection (a)(2) provides that such complaints are to be investigated by the United States Attorney for the district where the injury occurred. The Board concluded that the Act provides a specific remedy in § 31, and thus the ALJ does not have authority to look beyond that remedy. The ALJ overlooked this "clear statutory language" when he found that the Act does not address setting aside a settlement order due to fraud. As a result, the ALJ erred by relying on Fed. R. Civ. P. 60(b)(3).

Accordingly, the Board reversed the ALJ's orders and dismissed the claim for lack of jurisdiction.

[Section 8(i) – Settlements, Ability to Rescind or Condition a Settlement; Authority of the Administrative Law Judge in General – Issue in Respect of a Claim; Section 31 -- Fraud]

***Dominguez v. Bethlehem Steel Corp.*, __ BRBS __ (2025) (Order).**

The Board issued a published order in three separate cases consolidated for briefing related to the holding in *Harrow v. Department of Defense*, 601 U.S. 480 (2024), and its implications regarding the time specified for filing an appeal with the Board pursuant to § 21(a) of the LHWCA. It held that the 30-day filing deadline for filing an appeal with the Board in § 21(a) is not a jurisdictional requirement, but rather a claim-processing rule and, as such, it is subject to waiver and forfeiture.

The Board found that nothing in the statutory text of the LHWCA or its structure suggests the § 21(a) timeline is "jurisdictional." As Congress did not clearly state any jurisdictional consequences in § 21(a), the Board held that the 30-day filing deadline is a mandatory claim-processing rule. As such, it is subject to waiver and forfeiture, and the respondent bears the burden of raising the untimeliness of a notice of appeal to the Board. If a respondent does not timely object to an untimely filed notice of appeal, the argument is forfeited, and the Board will proceed to the merits of the claim as if the claim were timely filed.

The Board did not resolve the question whether § 21(a) permits equitable tolling. It observed that the Supreme Court has repeatedly explained that it does not understand Congress to alter age-old procedural doctrines lightly and, therefore, nonjurisdictional timing rules are presumptively subject to equitable tolling. Nevertheless, the Board agreed with the Director's argument that whether the doctrine of equitable tolling applies to excuse a late § 21(a) appeal should be resolved in a case where the issue is squarely presented and fully briefed. It was not necessary to address this issue to resolve the timeliness of the appeals in the cases under consideration. Thus, the Board left it for another day.

Next, the Board addressed the specific timeliness issues in each of the three cases.

- *Lester v. Blackhawk Mining, LLC*, BRB No. 24-0390 BLA

In this black lung case, the ALJ's decision was not served on employer or its legal representative. Employer did not receive the ALJ's decision until an unaffiliated attorney who incorrectly received the decision forwarded it to employer. Agreeing with the Director,

the Board held that because employer's notice of appeal was filed within thirty days of receipt of the ALJ's decision, it was timely per the requirements of 20 C.F.R. § 725.479(d).

Black lung decisions must be served by registered or certified mail. 33 U.S.C. § 919(e); 20 C.F.R. § 725.478. The regulations also state that when there is a "defect in service, *actual receipt* of the decision is sufficient to commence the 30-day period for requesting reconsideration or appealing the decision." 20 C.F.R. § 725.479(d) (emphasis added). Thus, the ALJ's decision in *Lester* was not served on the date of its issuance for the purposes of §§ 19(e) and 21(a), and the deadline to file a notice of appeal began running only when employer actually received the decision. Consequently, the appeal was timely.

- *Zabid v. VHB Global, Incorporated*, BRB No. 24-0201

In *Zabid*, the ALJ issued a Decision and Order Denying Benefits, and claimant filed a petition for reconsideration. Employer asserted that the petition was untimely. The ALJ found the timeliness issue moot and denied reconsideration. Twenty-seven days later, claimant appealed the ALJ's Decision and Order Denying Benefits and Order Denying Motion for Reconsideration.

Employer moved to dismiss claimant's appeal and requested oral argument, asserting the Board lacks appellate jurisdiction to consider the appeal. Employer argued the regulations permit only a *timely* motion for reconsideration filed with the ALJ to toll the thirty-day limit for filing an appeal with the Board and asserted the ALJ had no authority to address an untimely motion for reconsideration.

Agreeing with the Director, the Board stated that an untimely filed motion for reconsideration before an ALJ does not suspend the time to appeal the ALJ's initial decision. However, if an ALJ denies a motion for reconsideration, timely or not, "the full time for filing an appeal [with the Board] commences on the date the order denying reconsideration is filed as provided in § 802.205." 20 C.F.R. § 802.206(e). Because the ALJ found the timeliness issue moot and denied reconsideration *on the merits*, the full time for filing an appeal commenced when the order was filed. Accordingly, the Board concluded claimant's notice of appeal was timely and denied employer's motion to dismiss.

- *Dominguez v. Bethlehem Steel Corp.*, BRB No. 24-0222

The Board held that service of district director's order awarding attorney's fees on one of two email addresses provided by claimant's counsel on the Department of Labor's Form LS-802 was sufficient to begin the thirty-day appeal period under § 21(a).

Claimant's counsel waived his right to service by registered or certified mail pursuant to 20 C.F.R. § 702.349(b) by executing and filing Form LS-802. On the form, he consented to be

served by email and provided two email addresses – one for himself and one for his administrative assistant. In attempting to serve the fee order, the district director incorrectly transcribed one email address. Claimant's counsel filed a notice of appeal thirty-one days after the district director filed the fee order, citing the transcription error as the reason for delay. The Director filed a motion to dismiss the appeal as untimely. Claimant's counsel opposed the motion, contending the district director's service was insufficient to begin the thirty-day appeal period.

The Board rejected claimant's counsel's contention. The LS-802 Form requires parties and their representatives to submit "separate waiver form[s]" and allows each individual to provide two email addresses. Neither the regulations, nor the LS-802 Form require service on both email addresses. As claimant's counsel did not contest that the district director properly emailed the fee order to one of the email addresses *he provided* on the LS-802 Form, *and he received it*, service by email was effective and in compliance with the regulations. 20 C.F.R. § 702.349(b). Thus, the appeal was untimely. While claimant counsel also asserted that a fee award is not a "compensation order" subject to § 21(a), the Board observed that § 21(a) refers to "a decision or order."

Even if § 21(a) were subject to equitable tolling, claimant's counsel has not met his burden to establish its applicability. Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way. Claimant's counsel asserted the district director's inadequate service caused the one-day delay. He also asserted he has not sat on his rights or obligations as to the appeal, despite the four years taken by the district director to issue a fee order. However, he did not identify any "extraordinary circumstances" which would have prevented him from timely filing the appeal. Rather, he pointed only to an error in transcription, which the Board concluded did not interfere with the effectiveness of the service. Therefore, there was no evidence establishing that the appeal deadline should be equitably tolled in this case.

Accordingly, the Board granted the Director's motion and dismissed claimant's appeal.

[Section 21(a) Appellate Procedure -- Timely Appeal and Briefing (effect of an ALJ's denial of an untimely motion for reconsideration); Appealable Decisions; Board Appellate Procedure -- Appeals of Interlocutory Orders]

***Pedroso v. Continental Maritime of San Diego*, __ BRBS __ (2025).**

The Board affirmed the ALJ's denial of employer's request for Special Fund relief under § 8(f) of the LHWCA.

Claimant worked for employer from 1991 through January 2017. He suffered a work-related back injury in 2004. He eventually returned to regular-duty work for employer and continued to experience back pain, for which he sought treatment, but he did not miss any additional work. In 2016, claimant reported bilateral knee pain as a result of a cumulative work-related trauma. In January 2017, Dr. Santore diagnosed claimant with work-related advanced arthritis in both knees, took him off work, and recommended surgery. Employer's defense medical examiner, Dr. Greenfield, concurred. Dr. Santore subsequently performed bilateral knee replacement surgery.

Claimant filed a claim alleging cumulative work-related traumatic injuries to both knees; he later amended his claim to include a work-related cumulative traumatic back injury. Employer sought relief pursuant to § 8(f). The ALJ awarded claimant temporary total disability ("TTD") benefits followed by ongoing permanent total disability ("PTD") benefits. He denied employer's request for § 8(f) relief, and employer appealed.

To qualify for relief under § 8(f) when claimant ultimately has a PTD, an employer must establish: (1) claimant had a pre-existing permanent partial disability ("PPPD"); (2) the disability was "manifest" to employer; and (3) claimant's ultimate PTD is not due solely to the employment injury but is the result of the combination of the PPPD and the subsequent work-related injury (the "contribution" requirement). In this case, only the third element was disputed. To satisfy the "contribution" requirement, the pre-existing disability must combine with the subsequent disability and contributed to the resulting PTD. Significantly, it is not sufficient for employer to prove only that claimant's PPPD combined with the work injury to result in a greater degree of disability; rather, the employer must specifically prove the work injury alone did not cause the claimant's ultimate disability, irrespective of the PPPD. While a work-related aggravation of a pre-existing condition may satisfy the contribution element in a case where the claimant is totally disabled, it is not sufficient if the evidence indicates only that claimant's two injuries created a greater disability than the second injury alone. Employer must establish, through medical or other relevant evidence, that claimant's total disability or death was not solely due to the work injury. Thus, employer must show claimant's current PTD is due to *both* the subsequent work injury and the pre-existing disability.

In this case, employer asserted that the ALJ improperly required it to prove claimant would have been able to continue working if he had sustained only the work-related injuries. Although the ALJ re-framed employer's burden, any error in the ALJ's wording was harmless because the ALJ applied the appropriate standard in substance and substantial evidence supported his conclusion. The ALJ found employer failed to show claimant's pre-existing knee and lumbar conditions contributed to his ultimate disability. The ALJ first evaluated the evidence regarding claimant's bilateral knee condition. Dr. Greenfield opined that claimant's employment significantly contributed to and worsened his pre-existing degenerative condition. He apportioned claimant's ultimate permanent disability

equally between his pre-existing osteoarthritis and his work injury. Similarly, Dr. Santore opined claimant's work was a primary trigger for his knee arthritis, and that his pre-existing knee conditions would not have resulted in advanced arthritis absent his heavy work history. While the ALJ concluded these medical opinions unequivocally established claimant's pre-existing knee arthritis combined with his cumulative work trauma to result in a greater degree of disability, he reasonably determined this was insufficient to relieve employer of liability under § 8(f)'s contribution standard. Because neither physician excluded claimant's work-related cumulative trauma (the second injury) from being the sole cause of his current PTD, the ALJ rationally and permissibly found employer did not satisfy the contribution element and is not entitled to § 8(f) relief for claimant's bilateral knee condition.

The ALJ next addressed claimant's lumbar spine condition. Dr. Greenfield attributed claimant's current back pain to a combination of his 2004 lumbar injury, the need for surgery, and subsequent natural progression of that injury. Dr. Dodge opined claimant's employment aggravated his underlying degenerative disc disease; he apportioned 85% of claimant's overall impairment to cumulative trauma from his employment, with the remaining 15% caused by nonindustrial factors such as natural progression of degenerative disc disease and degenerative arthritis. While the ALJ acknowledged Dr. Dodge identified two separate causes of claimant's current lumbar spine impairment, he found the doctor failed to address whether claimant would be disabled absent the nonindustrial factors. The ALJ rationally found Dr. Dodge's apportionment of claimant's PTD between work-related trauma (the second injury) and his PPPD was not sufficient to establish the contribution element because it merely identified two causes but failed to demonstrate claimant would not have been totally disabled absent the 15% PPPD impairment. As the Ninth Circuit explained, if the later injury was enough to totally disable claimant, it is not relevant that his pre-existing injury made his total disability even greater. Claimant cannot receive compensation greater than that for total disability. The ALJ rationally concluded that employer failed to show that the work-related back injury *alone* did not result in total disability, irrespective of his PPPD.

The Board concluded that the ALJ applied the correct legal standard, and his conclusion was supported by substantial evidence. Accordingly, it affirmed the denial of the § 8(f) relief.

[Elements of Section 8 (f) Relief -- Contribution and Aggravation -- Solely Due to -- Permanent Total Disability]

II. Black Lung Benefits Act

A. U.S. Court of Appeals

Published:

a. **Fourth Circuit:**

***Hobet Mining, Inc. v. Dir., OWCP, United States DOL*, 156 F.4th 385 (4th Cir. 2025)**

The only issue presented in this published opinion issued on October 1, 2025 was whether Hobet Mining, Inc. ("Hobet") was properly named as the responsible operator and whether Arch Coal Company, Inc.'s ("Arch") insurance covered Hobet's black lung liability. In a split decision, Fourth Circuit Court of Appeals ("Fourth Circuit" or "Court") held that neither the Act nor the regulations impose liability on Arch.

Horace Meredith (the "Claimant") last worked as a coal miner for Hobet. Arch was Hobet's parent company. Arch covered its own liabilities and those of its subsidiaries through a self-insurer indemnity bond. Arch sold Hobet to Magnum Coal ("Magnum"). Magnum then transferred those mines to Patriot Coal Company ("Patriot"), and the Department approved Patriot as a self-insurer for Hobet. Its approval was retroactive to before the time Patriot owned the subsidiaries and included the time Arch owned Hobet.

After Patriot went bankrupt in 2015, the Department of Labor ("Department") issued Bulletin No. 16-01 ("Bulletin"), which instructed the district director to determine whether a claim was covered by Arch's self-insurance or an Arch Coal commercial insurance policy. It listed Hobet as a company that was once an Arch subsidiary and "at one time, under the self-insurance authority of [Arch]" and/or also "covered, for a time, by commercial insurance policies." The Bulletin advised that if no commercial insurance could be identified, and if the miner's last employment fell within a period of Arch's self-insurance, notices of claim should be sent to the subsidiary company and to Arch. If neither commercial insurance nor self-insurance was available, the Bulletin directed the district director to transfer the claim to the Black Lung Disability Trust Fund ("Trust Fund").

Consistent with the Bulletin, the district director named Hobet and Arch as the responsible operator and carrier, respectively. The ALJ held that Hobet, self-insured by Arch, met the regulatory requirements of a potentially liable operator and Hobet was presumed to be financially capable of paying benefits. The Benefits Review Board ("Board") affirmed the ALJ's decision.

The Fourth Circuit concluded that the ALJ erred in finding that Hobet was the responsible operator and that Arch was the responsible carrier. First, the Court explained that 20 C.F.R. § 725.494(e) specifies three ways an operator can be deemed financially capable of assuming benefits, and Hobet did not satisfy any of them. It explained that an operator can be financially capable: (1) through a commercial insurance policy (§ 725.494(e)(1)); (2)

because it qualified as a self-insurer (§ 725.494(e)(2)); or (3) by having sufficient assets to secure the payment of benefits (§ 725.494(e)(3)). Nobody argued that (e)(1) or (e)(3) applied in this case. Instead, the ALJ held that Hobet was financially capable of assuming liability for the Claimant's claim through its self-insurance with Arch. The Court stated that by its express terms, that 20 C.F.R. § 725.494 (e)(2) only applies to an operator that "still qualifies as a self-insurer." Because Hobet was never a self-insurer, Arch was never named as an operator, and 20 C.F.R. § 725.494(e) applies only to operators, the Court concluded that Hobet did not satisfy the requirements of 20 C.F.R. § 725.494(e).

The Court further held that the Board erred in affirming the ALJ's conclusion that Arch was liable for the Claimant's claim because it insured Hobet on the Claimant's last day of work as a miner. The Court noted the differences in the commercial insurance regulations and the self-insurance regulations and found that neither the Act nor its regulations permitted the Department to use the fact that Arch previously covered Hobet's black lung liabilities through a self-insurance bond to show that Hobet could pay the Claimant's benefits or otherwise hold Arch responsible for the Claimant's benefits.

The Court next acknowledged that the Sixth and Seventh Circuits have also addressed this issue, and it explained why it found the Seventh Circuit's reasoning more persuasive. Finally, it explained why it was not persuaded by the dissenting judge's reasoning. Consequently, the majority granted the Employer's petition for review, vacated the decision, and remanded the case for further proceedings consistent with its opinion.

In a dissenting opinion, Judge King found that the ALJ capably applied the applicable law and deemed that Hobet was the responsible operator and Arch, as Hobet's self-insurer, was liable for paying the Claimant's benefits. He emphasized that Congress created the Black Lung Disability Trust Fund as a last-resort safety net. Finally, he emphasized that the Court's review of administrative proceedings was limited, and he accused the majority of substituting its judgment for that of the Board and the ALJ.

[Liability for payment of benefits]

b. Tenth Circuit

***Energy W. Mining Co. v. Schilpp*, 147 F.4th 1239 (10th Cir. 2025)**

On August 5, 2025, the Tenth Circuit Court of Appeals ("Tenth Circuit" or "Court") issued a to-be-published opinion affirming an award of benefits to the estate of James Lyle ("Miner"). The Administrative Law Judge ("ALJ") awarded benefits after finding that the Miner worked as a coal miner for twenty-eight years, was totally disabled from a pulmonary standpoint, and was entitled to invoke the fifteen-year presumption. He further found that

Energy West Mining Company ("Employer") failed to rebut the presumption. The Benefits Review Board ("Board") affirmed the ALJ's decision, but the Tenth Circuit remanded the case for consideration of Dr. Joseph Tomashefski's deposition testimony on legal pneumoconiosis.

On remand, the ALJ again awarded benefits after concluding that Dr. Tomashefski: (1) did not cite medical literature; (2) did not persuasively explain why coal dust did not cause the Miner's impairment; and (3) conflated legal and clinical pneumoconiosis. The Board again affirmed the ALJ's decision.

After appealing to the Tenth Circuit a second time, the Employer argued that the ALJ erred in rejecting Dr. Tomashefski's opinion on legal pneumoconiosis. The Tenth Circuit disagreed with the Employer. It explained that when Dr. Tomashefski testified by deposition, the Employer's counsel asked him whether the Miner had legal pneumoconiosis, and Dr. Tomashefski said no based on what he did not see in the Miner's lung tissue. Specifically, he testified that the lung tissue had "no evidence of dust deposition in the airways" or significant deposition of pigment and mineral particles. The Court emphasized that Dr. Tomashefski's testimony explained why the Miner did not have clinical pneumoconiosis, but it did not explain why the Miner did not have legal pneumoconiosis. Because the regulations provide that a miner may have legal pneumoconiosis even without "permanent deposition of substantial amounts of particulate matter in the lungs," the Tenth Circuit upheld the ALJ's finding that Dr. Tomashefski conflated the concepts of legal and clinical pneumoconiosis. Because the Board affirmed the ALJ's decision for this reason, the Court stated that it did not need to analyze the two other reasons the ALJ gave for discrediting Dr. Tomashefski's testimony.

The Court further concluded that because it previously upheld the ALJ's decision to credit Dr. Shane Gagon's opinion on legal pneumoconiosis, and because the Miner was presumed to have pneumoconiosis and a totally disabling pulmonary impairment due to pneumoconiosis by operation of the fifteen-year presumption, substantial evidence supported the ALJ's award of benefits. Therefore, the Tenth Circuit denied the Employer's petition for review.

[Weighing medical opinion evidence; autopsy evidence; deposition of coal particles in lung; legal pneumoconiosis]

Unpublished:

a. Third Circuit Court of Appeals

***Consol. Mining Co., LLC v. Dir., OWCP*, No. 24-1873, 2025 U.S. App. LEXIS 17026 (3d Cir. July 10, 2025)**

On July 10, 2025, the Third Circuit Court of Appeals ("Third Circuit") or ("Court") issued an unpublished opinion affirming an Administrative Law Judge's ("ALJ") award of benefits to Vonda Silk ("Claimant"), who is the surviving spouse of Stanley Silk ("Miner"). The ALJ found that the Claimant invoked the fifteen-year presumption of death due to pneumoconiosis and Consol Mining Co., LLC ("Employer") failed to rebut it. The Benefits Review Board affirmed the ALJ's decision.

On appeal to the Third Circuit, the Employer argued that the ALJ erred in finding it did not rebut the presumption. In rejecting the Employer's argument, the Court stated that the ALJ considered three medical opinions in resolving whether the Employer rebutted the presumption that the Miner had legal pneumoconiosis. The Court explained that the ALJ discounted Dr. Stephen Basheda's opinion because he failed to explain why the Miner's COPD did not constitute legal pneumoconiosis even if other factors, including tobacco and rheumatoid arthritis, also contributed to the Miner's COPD. The Court found that the ALJ carefully exercised his broad discretion to discredit Dr. Basheda and to credit the two other physicians who opined that the Miner's COPD was legal pneumoconiosis.

The Court also affirmed the ALJ's finding that the Employer failed to show that no part of the Miner's death was due to pneumoconiosis. Because no evidence existed to show that the physicians who signed the death certificate possessed any relevant qualifications or personal knowledge of the Miner upon which to assess the cause of his death, the ALJ gave no weight to the death certificate. The Court disagreed with the Employer's argument that the ALJ overlooked the fact that the death certificate did not list pneumoconiosis as a cause of death. The Court explained that even if the ALJ had given the death certificate evidentiary weight, an immediate cause of death by cardiac arrest did not preclude the possibility that the Miner also had a respiratory or pulmonary impairment. It further noted that the death certificate listed pneumonia as a cause of death, and the ALJ credited a physician who opined that pneumoconiosis increased the Miner's risk of infection and decreased the Miner's ability to tolerate infection. Thus, the Court concluded that the death certificate did not negate the ALJ's determination that the Employer failed to establish that no part of the Miner's death was caused by pneumoconiosis.

As substantial evidence supported the ALJ's findings, the Third Circuit denied the Employer's petition for view.

[Weighing death certificate that is silent regarding pneumoconiosis]

b. Fourth Circuit Court of Appeals

***ICG Tygart Valley, LLC v. Dir., OWCP*, No. 23-2214, 2025 U.S. App. LEXIS 17033 (4th Cir. July 10, 2025)**

In an unpublished opinion, the Fourth Circuit Court of Appeals ("Fourth Circuit" or "Court") affirmed an Administrative Law Judge's ("ALJ") award of benefits to James Allen Braham ("Claimant"). The ALJ found the x-ray, CT scan, and medical opinion evidence supported finding that the Claimant had complicated pneumoconiosis. The Benefits Review Board affirmed the ALJ's decision.

Before the Fourth Circuit, ICG Tygart Valley, LLC ("Employer") argued that the ALJ erred in weighing the medical evidence and in excluding an x-ray interpretation. The ALJ credited Dr. Kathleen DePonte's CT scan interpretation over other physicians' contrary interpretations. The Fourth Circuit stated that because Dr. DePonte thoroughly and persuasively explained her opinion that the x-ray and CT scan evidence was positive for complicated pneumoconiosis, the ALJ's decision to credit her opinion over Dr. Tarver's was rational and supported by substantial evidence. It further found that the ALJ rationally gave Dr. Henry Smith's CT scan interpretation less weight because he did not note the right apical lung abnormalities that both Drs. DePonte and Tarver observed.

The Court next rejected the Employer's argument that that the ALJ used a headcount to resolve the conflicting interpretations of the May 2018 x-ray and erred in weighing the x-rays in the treatment records. The Court said the ALJ explained that all three interpretations of the May 2018 x-ray were entitled to equal weight based on the physicians' similar credentials. Furthermore, because the ALJ specifically found that the treating physicians lacked expertise in interpreting x-rays for pneumoconiosis, the Court concluded that the ALJ did not err in giving less weight to the x-rays in the treatment records.

Finally, the Court concluded that the ALJ rationally excluded an interpretation of an x-ray taken in February 2017. The ALJ explained that the February 2017 x-ray was taken for the purpose of litigating the Claimant's state claim for benefits, so it was not admissible as a treatment record. As the Employer had already submitted its full complement of x-rays under the evidence limitations, the ALJ rationally concluded that the x-ray was not otherwise admissible.

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

[Complicated pneumoconiosis; CT scan evidence; x-ray reports from treatment records]

***Consol. of PA. Coal Co., LLC v. Dir., OWCP*, No. 23-2105, 2025 LX 451044 (4th Cir. Oct. 28, 2025)**

On October 28, 2025, the Fourth Circuit Court of Appeals ("Fourth Circuit" or "Court") issued an unpublished opinion affirming an Administrative Law Judge's ("ALJ") award of benefits to William Seckman ("Claimant"). The Benefits Review Board affirmed the ALJ's decision. Before the Fourth Circuit, Consol of PA Coal Co., LLC ("Employer") challenged the ALJ's finding that it failed to rebut the presumption that the Claimant was totally disabled due to pneumoconiosis. The Fourth Circuit found no merit in any of the Employer's arguments.

The Court first rejected the Employer's argument that the ALJ used the wrong legal standard in saying that the Employer had to prove the "absence" of legal pneumoconiosis. It said that such a statement was simply another way of saying that the Employer had to prove that the Claimant did not have legal pneumoconiosis, which the ALJ properly analyzed.

Next, the Court disagreed with the Employer's argument that the ALJ accorded the preamble to the regulations ("preamble") the force of law when analyzing Dr. Basheda's opinion. Rather, the Court noted that the ALJ simply observed that the preamble supported the proposition that asthma is a form of COPD that can be linked to coal dust exposure, and it concluded that the ALJ permissibly used the preamble as guidance when assessing the credibility of Dr. Basheda's opinion.

Finally, the Court concluded that substantial evidence supported the ALJ's decision to discredit the opinion of Dr. Zaldivar, who relied on statistical averages in concluding that the Claimant did not have legal pneumoconiosis, and Dr. Basheda, who attributed the Claimant's pulmonary impairment solely to smoking. Because the ALJ did not discredit the opinions of Drs. Zaldivar or Basheda for no reason or for the wrong reason, the Court deferred to ALJ's decision.

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

[Rebutting the 15-year presumption; ALJ reliance on Preamble]

***S & D Coal Co. v. Dir., OWCP*, No. 24-1026, 2025 U.S. App. LEXIS 25635 (Oct. 2, 2025)**

On October 2, 2025, the Fourth Circuit Court of Appeals issued an unpublished opinion affirming an Administrative Law Judge's decision to award benefits to Kathy Blackwell, on behalf of and survivor of Lonnie Blackwell. It found that the decision was based on

substantial evidence and without reversible error, so it denied S & D Coal Company's petition for review.

***Halstead v. Dir., OWCP*, No. 24-1543, 2025 U.S. App. LEXIS 21304 (4th Cir. Aug. 20, 2025)**

On August 20, 2025, the Fourth Circuit Court of Appeals ("Court") issued an unpublished opinion affirming an Administrative Law Judge's denial of benefits to Deborah Halstead, Executrix of the Estate of Maxine Hudson, Widow of Charles Hudson. The Court held that the Benefits Review Board's ("Board") decision was based on substantial evidence and was without reversible error. Accordingly, it denied the petition for review for the reasons stated by the Board.

***Potomac Coal Co. v. Dir., OWCP*, No. 23-2207, 2025 U.S. App. LEXIS 19799 (4th Cir. Aug. 6, 2025)**

On August 6, 2025, the Fourth Circuit Court of Appeals ("Fourth Circuit" or "Court") issued an unpublished opinion affirming an Administrative Law Judge's ("ALJ") decision and order awarding benefits to Virginia Strawser, on behalf of Richard Strawser ("Miner"). The Benefits Review Board affirmed the ALJ's decision that the Miner had complicated pneumoconiosis.

Before the Fourth Circuit, Potomac Coal Company ("Employer") argued that the ALJ failed to: (1) properly weigh the x-ray evidence against the CT scan evidence; and (2) adequately explain why Dr. Kathleen DePonte's CT scan interpretation was entitled to more weight than Dr. Robert Tarver's. The Court rejected both arguments.

Regarding the Employer's first argument, the Court stated that the ALJ considered all the evidence presented before concluding that the Miner had complicated pneumoconiosis. Although the ALJ found that the x-ray evidence did not establish complicated pneumoconiosis, he found that the CT scan evidence did. He gave the most probative weight to Dr. DePonte, who opined the CT scan showed two opacities that each would measure more than one centimeter in diameter on x-ray. The Court emphasized that the x-rays, which preceded the CT scan, did not undermine the ALJ's conclusion that Dr. DePonte's CT scan interpretation satisfied 20 C.F.R. § 718.304(c). Therefore, it found that the ALJ did not err in weighing the x-ray and CT scan evidence.

Regarding the Employer's second argument, the Court concluded that the ALJ adequately explained his reasons for crediting Dr. DePonte's CT scan interpretation over Dr. Tarver's. The Court observed that the ALJ analyzed each opinion and explained that he gave less weight to Dr. Tarver because Dr. Tarver's opinion that the Miner did not have even simple

pneumoconiosis was conclusory and not well-reasoned or well-documented. Regarding the existence of complicated pneumoconiosis, the ALJ discounted Dr. Tarver's opinion because he failed to address the abnormal finding in the Miner's left upper lobe, which Dr. DePonte opined was a large opacity consistent with complicated pneumoconiosis. Therefore, the Court concluded that the ALJ's explanation for crediting Dr. DePonte's interpretation over Dr. Tarver's was sufficient and supported by substantial evidence.

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

[Complicated pneumoconiosis; CT scan evidence]

c. Sixth Circuit Court of Appeals

***Cumberland River Coal Co. v. Dir., OWCP*, No. 25-3080, 2025 LX 499309 (6th Cir. Oct. 14, 2025)**

On October 14, 2025, the Sixth Circuit Court of Appeals ("Sixth Circuit" or "Court") issued an unpublished opinion affirming an award of benefits to Carlos Sturgill ("Claimant"). The Administrative Law Judge ("ALJ") found that the Claimant was totally disabled from a pulmonary impairment and entitled to invoke the fifteen-year presumption. She further found that Cumberland River Coal Company ("Employer") failed to rebut the presumption. The Benefits Review Board affirmed the ALJ's decision.

Before the Sixth Circuit, the Employer argued that the ALJ erred in crediting the opinion of Dr. Alam, in discrediting the opinions of Drs. Dahhan and Rosenberg, and in determining the onset date of the Claimant's benefits. The Court rejected all the Employer's arguments.

The Court first found that substantial evidence supported the ALJ's decision to credit Dr. Alam. It noted that Dr. Alam based his disability finding on a qualifying ABG and the Claimant's inability to do anything exertional due to difficulty breathing. Furthermore, it noted that Dr. Alam reviewed a later ABG, which was not qualifying, and reasonably explained that the variation between the ABGs was common in patients like the Claimant.

The Court further found that substantial evidence supported the ALJ's decision to discredit Dr. Dahhan's opinion. Dr. Dahhan administered the later, non-qualifying ABG and concluded that the Claimant could return to his prior coal mine work. In finding that the ALJ reasonably found Dr. Dahhan less probative, the Court emphasized that Dr. Dahhan did not discuss the exertional requirements of the Claimant's coal mine work, did not explain how the Claimant could return to work even though he struggled to breathe while climbing a flight of stairs, and did not review the earlier, qualifying ABG. The Court emphasized that the later evidence rule did not apply in this case given that the Claimant's earlier ABG was

qualifying. Thus, the ABG evidence was irreconcilable and needed to be reviewed without reference to its chronology, which the ALJ accurately did.

The Court also found that substantial evidence supported the ALJ's decision to discredit Dr. Rosenberg's opinion. Dr. Rosenberg reviewed both ABGs and gave the most probative weight to the most recent one without addressing Dr. Alam's reasoned conclusion that the Claimant's later, non-qualifying ABG did not necessarily negate the earlier, qualifying ABG. Moreover, like Dr. Dahhan, Dr. Rosenberg did not explain how the Claimant could return to work with shortness of breath on exertion.

Finally, the Court rejected the Employer's argument that the ALJ erred in finding the Claimant totally disabled as of the month he filed his claim because the later ABG was not qualifying. The Court concluded that because the ALJ credited Dr. Alam, who considered the later ABG and nonetheless found the Claimant totally disabled, there was no "uncontradicted" medical evidence to show that the Claimant was not totally disabled after he filed his claim.

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

[Total disability; ABG evidence; exertional requirements]

B. Benefits Review Board

1. Published Decisions

***Bonnie Owens (obo and survivor of John A. Owens) v. Lodestar Energy, Inc*., _ BLR _ , BRB Nos. 24-0414 BLA and 25-0012 BLA (Sept. 23, 2025):**

The Employer argued the ALJ erred by not giving greater weight to the more recent, non-qualifying PFTs. In support of its position, it argued that the principle of not giving more weight to later tests based solely on their recency when those tests show improvement was based on cases, including in *Woodward v. Director, Office of Workers' Compensation Programs*, 991 F.2d 314 (6th Cir. 1993), which deferred to agency interpretation of the law under *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), which was overruled by *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). In rejecting the Employer's argument, the Board noted that in *Loper Bright*, the U.S. Supreme Court held its ruling did "not call into question prior cases that relied on the *Chevron* framework." 603 U.S. at 412. The Board emphasized that the mere implication of the *Chevron* framework in cases cited in *Woodward* did not constitute a "special justification" for overruling the holding in *Woodward*. The Board further rejected the Employer's contention that *Woodward* was distinguishable from this case. It acknowledged that *Woodward* involved a diagnostic issue and x-rays, rather than total disability and PFTs, but it emphasized that both it and the U.S. Courts of Appeals have applied

Woodward's analysis to total disability determinations. Therefore, the Board affirmed the ALJ's finding that the preponderance of the PFT evidence supported a finding of total disability and affirmed the ALJ's award of benefits.

[Weighing most recent evidence; *Loper Bright*]

2. Unpublished Decisions

***Bonita Collins (obo Stanley E. Collins) v. Rockhouse Company, Inc*., BRB No. 24-0194 BLA (July 9, 2025):**

The district director disallowed fees for services the Claimant's counsel ("Counsel") performed in connection with the Miner's two prior claims, one of which was withdrawn. On appeal, Counsel argued that the district director erred in denying fees for work performed in connection with the prior claims. Specifically, he argued that if a claim was ultimately successful, the work he performed in the prior claims should be compensable if he reasonably believed it was necessary to obtain entitlement at the time he performed it. The Board disagreed with Counsel that fees could be awarded for work performed in unsuccessful prior claims. It noted that it previously held, in Broughton v. Director, OWCP, 13 BLR 1-35, 1-36 (1989), that an attorney fee petition for work performed in a prior denied claim must be rejected even though the claimant was later awarded benefits in a subsequent claim. It added that a plain reading of the statute and regulation, as well as the legislative history, demonstrated that fees are permitted for services in a single claim, but not in all claims associated with a claimant. Therefore, it affirmed the district director's exclusion of the time Counsel spent in connection with the Miner's withdrawn claim. However, the Board agreed with Counsel that fees could be awarded for services performed in a successful claim before an adversarial relationship existed. Counsel argued that he performed work in 2018 "leading up" to filing the current claim, including reviewing the Miner's file, speaking with the Miner, and reviewing the denial of benefits in the Miner's second claim. Because the district director did not determine if this work was performed in connection with the current claim, the Board vacated the denial of those hours and remanded the case for the district director to more carefully assess Counsel's fee petition insofar as it related to the current claim.

[Attorney fees; legal work performed in a prior denied claim]

***Clarence Napier v. J & G Holdings, Inc*., BRB No. 24-0477 BLA (July 15, 2025):**

The Board affirmed the ALJ's decision to find the CT scan evidence positive for complicated pneumoconiosis. The ALJ weighed Dr. Seaman's and Dr. Adcock's interpretation of a CT scan dated April 3, 2023. Dr. Seaman observed solid upper-zone predominant centrilobular/perilymphatic nodules that may have represented "calcified

pneumoconiotic nodules or sequelae of prior granulomatous infection." She further identified a large opacity measuring up to 1.2 centimeters in the periphery of the right upper lobe and diagnosed complicated pneumoconiosis. In contrast, Dr. Adcock noted scattered densely calcified granulomata with focal fibrosis in the right upper lobe and diagnosed remote granulomatous infection, which he said was more likely tuberculosis than histoplasmosis. He did not measure the right upper lobe fibrosis or diagnose simple pneumoconiosis, and he opined there was no evidence of complicated pneumoconiosis. In crediting Dr. Seaman over Dr. Adcock, the ALJ explained that Dr. Seaman's finding of a 1.2 centimeter opacity on the CT scan was equivalent to a Category A opacity on x-ray, and her diagnosis of simple and complicated pneumoconiosis was consistent with the x-ray evidence of simple pneumoconiosis, her measurement of the large opacity, and the Claimant's twenty-year history of coal mine employment. Because Dr. Adcock did not provide a measurement for the focal fibrosis he observed, the ALJ found his opinion poorly explained and speculative, particularly given that it was inconsistent with the x-ray evidence showing simple pneumoconiosis and given the Claimant's twenty-year coal mine employment history and lack of reported history of tuberculosis or histoplasmosis. The Board found that the ALJ applied the same level of scrutiny to both physicians, and it affirmed her finding that the CT scan evidence supported a finding of complicated pneumoconiosis.

[Complicated pneumoconiosis; CT scan evidence]

***Ora P. Robinette (survivor of Roy Robinette) v. Big Lump Coal Co*., BRB No. 24-0485 BLA (July 18, 2025):**

The Board affirmed the ALJ's finding that the Miner's treatment records established that the Miner had a totally disabling respiratory or pulmonary impairment. The ALJ considered the Miner's treatment records, including his final hospitalization for a malfunctioning dialysis catheter and mild respiratory distress with severe shortness of breath, decreased breath sounds, and moderate expiratory wheezing. During the Miner's hospitalization, he was diagnosed with right lower lobe pneumonia and fluid overload, and he was admitted to the intensive care unit and given supplemental oxygen. The following day, he was evaluated for acute respiratory failure and ventilator management, and he was intubated for respiratory distress. The day after that, he died due to acute respiratory failure, pneumonia, and end-stage renal disease. The ALJ noted that the Miner's treatment records showed he was in respiratory distress, required supplemental oxygen, and underwent an evaluation for respiratory failure prior to being intubated. Therefore, the ALJ concluded that he could reasonably infer that the Miner no longer had the respiratory or pulmonary capacity to perform his usual coal mine work. The Board found that the ALJ rationally found that the Miner would not have been able to perform his usual coal mine work while experiencing shortness of breath, oxygen dependency, and acute respiratory failure, as documented in the treatment records. Thus, it

concluded that the ALJ permissibly found the Miner was unable, from a respiratory or pulmonary standpoint, to perform the exertional requirements of his usual coal mine work at the time of his death. Furthermore, the Board rejected the Employer's contention that the ALJ erred in not requiring the Claimant to establish that the Miner's impairment was due to a chronic, rather than an acute, disease. It stated that neither the Act nor the regulations require total disability to be chronic to invoke the presumption. Thus, the Board affirmed the ALJ's finding that the treatment records established that the Miner was totally disabled.

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

***Cecil R. Marcum v. Sea "B" Mining*, BRB No. 25-0022 BLA (July 21, 2025):**

The Board affirmed the ALJ's finding that Dr. Tarver's x-ray interpretations were outliers that merited reduced weight. Dr Tarver was the only physician who failed to observe "atherosclerotic aorta," "coalescence of small opacities," and "enlargement of non-calcified hilar or mediastinal lymph nodes" as "other" abnormalities on the ILO form. The Board further affirmed the ALJ's finding that the Claimant established complicated pneumoconiosis by a preponderance of x-ray evidence.

[Complicated pneumoconiosis; x-ray evidence]

***Ronald W. Renfrow v. Hoke Company, Inc*., BRB No. 24-0463 BLA (July 24, 2025):**

The Board rejected the Employer's argument that the ALJ impermissibly deferred to the preamble in violation of the U.S. Supreme Court's holding in Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024). The Board agreed with the Director that Loper Bright did not support the Employer's argument that the ALJ impermissibly considered the preamble in assessing the credibility of its experts' opinions. It further stated that the ALJ did not treat the preamble as a rule or defer it. Rather, he permissibly referenced it in determining the credibility of the medical opinions on legal pneumoconiosis.

[*Loper Bright Enterprises v. Raimondo*]

***David A. Owens v. Blackjewel, LLC*, BRB Nos. 24-0241 BLA, 24-0391 BLA and 24-0470 BLA (July 31, 2025):**

The Board affirmed the ALJ's finding that the record did not clearly establish when the Claimant first became totally disabled due to complicated pneumoconiosis and that no evidence established he was not totally disabled due to pneumoconiosis at any time after he filed his claim in August 2017. The Board affirmed the ALJ's finding that the x-ray taken in November 2017 was positive for complicated pneumoconiosis. Because the November 2017 x-ray was the earliest x-ray after the date on which the Claimant filed his claim for

benefits, and because the ALJ found that all the later x-rays were all in equipoise, the record did not establish any period after August 2017 in which the Claimant had only simple pneumoconiosis. Therefore, the Board affirmed the ALJ's finding that the Claimant was entitled to benefits commencing in August 2017, when he filed his claim.

[Onset date for payment of benefits]

***Gary L. Dorsey v. Brooks Run Mining Co., LLC*, BRB No. 24-0268 BLA (July 31, 2025):**

The Board held that substantial evidence supported the ALJ's finding that Dr. DePonte's interpretation of the June 10, 2019 CT scan was the most probative of record. The Claimant underwent the CT scan during treatment. The ALJ considered the interpretations of Dr. Ramsay (the Claimant's treating physician), Dr. Kathleen DePonte, and Dr. Danielle Seaman. The ALJ found that Dr. Ramsay's interpretation did not address the presence or absence of pneumoconiosis. Thus, she weighed the interpretations of Drs. DePonte and Seaman. Dr. DePonte interpreted the CT scan as showing simple pneumoconiosis in the upper lung lobes with multiple large opacities consistent with complicated pneumoconiosis. Dr. Seaman interpreted it as showing simple pneumoconiosis with no large opacities and bilateral subpleural pseudoplaques. The ALJ noted that Drs. Seaman and DePonte had equivalent credentials, but she found Dr. DePonte's interpretation more persuasive as it was more detailed and better explained. Specifically, she stated that Dr. DePonte provided detailed and specific findings, including not just the location, size, and shape of the small and large opacities, but also of the surrounding lung tissue. Furthermore, Dr. DePonte provided an equivalency determination, opining that the large opacities would appear as greater than one centimeter on x-ray. Thus, the ALJ found Dr. DePonte's interpretation more persuasive than Dr. Seaman's "brief and cursory explanation of her findings." In affirming the ALJ's decision, the Board stated that she did not just rely on Dr. DePonte's findings regarding the size and location of the small and large opacities, as Employer suggested, but instead credited Dr. DePonte' overall attention to detail, including her description of the surrounding tissue. Thus, the Board held that substantial evidence supported the ALJ's decision to give the most probative weight to Dr. DePonte's CT scan interpretation, and it affirmed the ALJ's finding that the CT scan evidence established complicated pneumoconiosis.

[Complicated pneumoconiosis; CT scan evidence]

***Fred R. Hackney, Jr. v. Hackney Fuel Co., Inc*., BRB No. 24-0352 BLA (Aug. 15, 2025):**

The Board concluded that the ALJ adequately explained why she discredited the Claimant's testimony regarding the alleged relationship between two coal mine operators. The Employer relied, in part, on the Claimant's testimony to demonstrate that the MP & M was a successor operator to the Employer, and that the two should be considered a

combined entity. Given the Claimant's vague and contradictory statements, the Board stated that the ALJ permissibly found the Claimant's testimony insufficient to establish a successor relationship between the two companies.

[Successor Operator]

***Roy Gibson v. Lone Mountain Processing Inc*., BRB No. 25-0018 BLA (Sept. 19, 2025):**

The Board affirmed the ALJ's decision to find the Claimant totally disabled from a pulmonary impairment even though the preponderance objective tests were not qualifying. Specifically, the Board affirmed the ALJ's decision to credit Dr. Alam because he persuasively explained why the Claimant's dyspnea with exertion prevented him from being able to perform the heavy labor required by his usual coal mine work. Moreover, the Board affirmed the ALJ's decision to discredit Drs. Dahhan and Rosenberg. Although they acknowledged the Claimant's dyspnea with exertion and the heavy exertional requirements of his usual coal mine work, they did not address whether he would be able to perform heavy labor with his dyspnea. Moreover, the Board noted that the ALJ found them less credible because they did not discuss Dr. Alam's opinion that the Claimant's lung function, rather than his lack of effort, rendered him unable to perform reproducible PFTs. Therefore, it affirmed the ALJ's decision to give less probative weight to Drs. Dahhan and Rosenberg and affirmed her award of benefits.

[Medical opinion evidence of total disability]

***Teresa Day (obo Timothy Day) v. ICG Hazard, LLC*, BRB No. 24-0467 BLA (Sept. 25, 2025):**

The Board affirmed the ALJ's finding that benefits should commence in February 2016. The ALJ awarded benefits after finding that the Claimant was entitled to invoke the fifteen-year presumption and the Employer failed to rebut it. The ALJ found that Dr. Broudy's February 2016 PFT and medical opinion established that the Miner had already developed totally disabling COPD by that time. Further, the ALJ found there was no credible evidence that the Miner was not totally disabled due to pneumoconiosis after that date. Consequently, he determined benefits were payable beginning in February 2016. The Board rejected the Employer's argument that because Dr. Broudy opined the Miner was totally disabled due to smoking-related COPD, benefits should commence in June 2018, the month in which the Miner filed his claim. Although 20 C.F.R. § 725.503(b) requires the ALJ to account for disability causation, the governing regulation at 20 C.F.R. § 718.204(c) expressly states that its criteria can be met by invoking the fifteen-year presumption at 20 C.F.R. § 718.305. Because the Claimant invoked the fifteen-year presumption, the Miner was presumed to

have been totally disabled due to pneumoconiosis, at a minimum, in February 2016, which is when he met the presumption's two prerequisites. Because: (1) the Miner was totally disabled in February 2016; (2) the Miner worked as an underground coal miner for more than fifteen years; (3) the Board affirmed the ALJ's finding that the Employer failed to rebut the presumption; and (4) no evidence existed to show that the Miner was not totally disabled due to pneumoconiosis at any subsequent time, the Board affirmed the ALJ's commencement date of February 2016.

[Onset date for payment of benefits]