**U.S. Department of Labor**

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

BRB No. 20-0335 BLA

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| LARRY D. HORTON | ) | |
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| Claimant-Respondent | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| CLINCHFIELD COAL COMPANY | ) | |
| | ) | DATE ISSUED: 08/03/2021 |
| Employer-Petitioner | ) | |
| | ) | |
| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| | ) | |
| Party-in-Interest | ) | DECISION and ORDER |

Appeal of the Decision and Order Awarding Benefits of Theodore W. Annos, Administrative Law Judge, United States Department of Labor.

Kendra R. Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

Before: ROLFE, GRESH, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Theodore W. Annos's Decision and Order Awarding Benefits (2017-BLA-06000) rendered on a claim filed pursuant to the

Black Lung Benefits Act, as amended 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's subsequent claim[1] filed on March 4, 2014. Director's Exhibit 5.[2]

The ALJ accepted the parties' stipulation that Claimant has 18.7 years of qualifying coal mine employment and found the new evidence established he has a totally disabling respiratory impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant established a change in an applicable condition of entitlement and invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[3] 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §725.309(c). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer alleges the ALJ erred in finding it failed to rebut the presumption.[4] Neither Claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in

[1] Claimant filed three prior claims. *See* Decision and Order at 2. The district director denied the third claim, filed on July 15, 2010, because Claimant did not establish he had a totally disabling respiratory impairment. *Id.* None of the prior claim records are included in the record before us. However, the ALJ's summary of the most recent prior claim denial is not disputed on appeal.

[2] The citations to the Director's Exhibits in the ALJ's Decision and Order do not correspond with those in the record before us. The ALJ cites this exhibit as Director's Exhibit 5, while it appears in the record before us as Director's Exhibit 30.

[3] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[4] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established a change in an applicable condition of entitlement and invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Employer's Brief at 4.

accordance with applicable law.[5] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

**Rebuttal of the Section 411(c)(4) Presumption**

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal[6] nor clinical pneumoconiosis,[7] or that "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i),(ii). The ALJ found Employer failed to establish rebuttal by either method.[8]

**Legal Pneumoconiosis**

To disprove legal pneumoconiosis, Employer must establish Claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2),(b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp*., 25 BLR 1-149, 1-155 n.8 (2015).

[5] We will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 10.

[6] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[7] "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

[8] The ALJ found Employer disproved clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 14.

The ALJ considered Dr. Sargent's opinion that Claimant does not have legal pneumoconiosis. Decision and Order at 14-17; Director's Exhibit 18;[9] Employer's Exhibit 5. Dr. Sargent opined that Claimant has a mixed restrictive and obstructive defect and oxygenation desaturation with exercise due to his obesity, heart disease, and potentially "some form of interstitial lung disease" unrelated to his coal mine dust exposure. Director's Exhibit 18 at 2; Employer's Exhibit 5 at 13-15, 20-21, 29.[10]

The ALJ found Dr. Sargent's opinion not well-reasoned because he failed to adequately explain why Claimant's respiratory impairment is not "significantly related to, or substantially aggravated by, his 18.7 years of coal mine employment." Decision and Order at 14. Although Dr. Sargent acknowledged Claimant's impairment is "multifactorial" and that his coal dust exposure placed him "at risk" for developing pneumoconiosis, the physician did not adequately explain why Claimant's coal mine dust exposure did not also contribute to his impairment, along with his obesity and "some form of interstitial lung disease." *Id.* at 16. The ALJ also discounted Dr. Sargent's opinion that when pneumoconiosis causes a severe impairment such as Claimant's, it usually is associated with "advanced simple or complicated pneumoconiosis," which "all [x-ray] readers agree" are not present. The ALJ found his reasoning at odds with the principle that legal pneumoconiosis can exist despite a negative x-ray. *Id*. at n.80 (citing 65 Fed. Reg. 79,920, 79,971 (Dec. 20, 2000) and 20 C.F.R. §718.202(b)). Finally, he found Dr. Sargent's opinion less persuasive given his reliance on "numerous generalities."[11] *Id.* at 16-17. Accordingly, the ALJ found Dr. Sargent's opinion worthy of little probative weight and thus found Employer failed to rebut legal pneumoconiosis. *Id.* at 17.

Employer argues the ALJ applied an improper standard by "effectively requiring Dr. Sargent to 'rule out' coal mine dust exposure as [sic] cause of the [M]iner's pulmonary or respiratory disease." Employer's Brief at 9. Employer points to the ALJ's finding that Dr. Sargent failed to explain how coal mine dust "did not also contribute" to Claimant's

[9] In the record before us, Dr. Sargent's report is identified as Director's Exhibit 28.

[10] Dr. Ajjarapu, the only other expert to provide an opinion, diagnosed legal pneumoconiosis; thus, her opinion does not support rebuttal. Decision and Order at 17; Director's Exhibit 13. In the record before us, Dr. Ajjarapu's report is identified as Director's Exhibit 25.

[11] The ALJ set forth several "broad and inexact phrases" found in Dr. Sargent's opinion that convinced him that Dr. Sargent based his opinion more on probabilities than on the particular circumstances of Claimant's case. Decision and Order at 16-17; Director's Exhibit 18.

impairment as applying a standard different from whether coal mine dust "substantially contributed" to the impairment. Employer's Brief at 10-11. Employer's argument lacks merit.

The ALJ set forth the correct standard for rebuttal of legal pneumoconiosis, explaining Employer must establish by a preponderance of the evidence that Claimant does not have a lung disease "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 13 (internal citations excluded). Further, the ALJ did not require Dr. Sargent to explain why coal mine dust exposure had no effect on Claimant's impairment to meet Employer's burden; rather, he found Dr. Sargent did not provide adequate reasoning for his opinion that coal mine dust exposure contributed in no way to Claimant's impairments. Decision and Order at 14-17. The ALJ thus found Dr. Sargent did not adequately explain how Claimant's exposure to coal mine dust did not significantly contribute to or substantially aggravate Claimant's multifactorial impairment. *See* 20 C.F.R. §718.201(a)(2), (b); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 173 (4th Cir. 1997) (ALJ "may weigh the medical evidence and draw his own conclusions").

Employer further argues the ALJ failed to provide sufficient reasoning for discrediting Dr. Sargent's opinion and mischaracterized the evidence. Employer's Brief at 6. We need not spend a significant amount of deliberation addressing these arguments. As summarized above, the ALJ provided multiple, specific reasons for discrediting Dr. Sargent's opinion, none of which Employer challenges. We therefore affirm them. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Further, Employer provides no support for its assertion that the ALJ mischaracterized the evidence. As Employer has not attempted to identify any such error, we decline to address its argument. 20 C.F.R. §802.211(b); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987). We therefore affirm the ALJ's determination that Employer did not rebut legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

**Disability Causation**

The ALJ next addressed whether Employer established rebuttal of disability causation. 20 C.F.R. §718.305(d)(1)(ii). To rebut disability causation, Employer must demonstrate that "no part" of Claimant's disability was caused by pneumoconiosis. *Id.* The ALJ found Dr. Sargent's opinion regarding disability causation unpersuasive for the same reasons he rejected his opinion regarding legal pneumoconiosis. Decision and Order at 18.

Employer argues the ALJ's alleged errors in his determination regarding legal pneumoconiosis undermine his findings regarding disability causation. Employer's Brief at 12-13. As we held above, the ALJ did not err in discounting Dr. Sargent's opinion that Claimant does not have legal pneumoconiosis. We therefore reject Employer's allegation of error.

Employer argues the ALJ erred in discrediting Dr. Sargent's opinion as inconsistent with his finding regarding legal pneumoconiosis, because the ALJ did not find legal pneumoconiosis; rather, it was presumed. Employer's Brief at 12. The ALJ did not state he discredited Dr. Sargent's disability causation opinion because Dr. Sargent did not diagnose legal pneumoconiosis. Decision and Order at 18. Rather, he found the flaws in Dr. Sargent's reasoning regarding legal pneumoconiosis also undercut his disability causation opinion. *Id*.

Nevertheless, contrary to Employer's argument, an ALJ may discredit an expert's opinion regarding disability causation when that expert does not diagnose legal pneumoconiosis, contrary to the ALJ's finding that legal pneumoconiosis was not disproven. Such opinions cannot be credited unless the ALJ finds "specific and persuasive reasons" for concluding the physician's opinion on disability causation is independent of his or her belief that the miner does not have pneumoconiosis, in which case the opinion can receive, at most, "little weight." *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015) (quoting *Scott v. Mason Coal Co.*, 289 F.3d 262, 269-70 (4th Cir. 2002)); *see also Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995) (recognizing that a physician's judgment as to whether pneumoconiosis is a cause of a miner's disability is necessarily influenced by the accuracy of his underlying diagnosis). Employer does not argue Dr. Sargent's disability causation opinion is independent of his opinion that Claimant does not have legal pneumoconiosis. Employer's Brief at 12. We therefore reject its argument and affirm the ALJ's finding that Employer failed to establish that no part of Claimant's respiratory disability is due to legal pneumoconiosis and thus failed to rebut the Section 411(c)(4) presumption. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 18.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge