U.S. Department of Labor

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

BRB No. 21-0166 BLA

THOMAS E. MARTIN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SEA "B" MINING COMPANY	)	
	)	
and	)	
	)	
PITTSTON COMPANY	)	DATE ISSUED: 8/24/2022
	)	
Employer/Carrier-Petitioners	)	
	)	
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 Timothy J. McGrath, Administrative Law Judge, Department of Labor.

Joseph E. Wolfe (Wolfe, Williams, & Reynolds), Norton, Virginia, for Claimant.

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

Before: BOGGS, Chief Administrative Appeals Judge, GRESH and JONES, Administrative Appeals Judges.

GRESH and JONES, Administrative Appeals Judges:

Employer appeals Administrative Law Judge (ALJ) Timothy J. McGrath's Decision and Order Awarding Benefits (2017-BLA-05119) rendered on a subsequent claim filed on September 24, 2014,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 11.55 years of coal mine employment and thus found he could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[2] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, he found Claimant established clinical and legal pneumoconiosis,[3] and a totally disabling respiratory or pulmonary impairment due to pneumoconiosis. 20 C.F.R. §§718.202, 718.203, 718.204(b), (c). He therefore found Claimant established a change in an applicable condition of entitlement,[4] 20 C.F.R. §725.309, and awarded benefits.

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[1] Claimant filed a prior claim on November 18, 2009, which the district director denied on July 6, 2010, for failure to establish disability causation. Director's Exhibit 1; Decision and Order at 28.

[2] 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.

[3] "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). "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).

[4] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, an ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R.

On appeal, Employer argues the ALJ erred in finding that Claimant has clinical and legal pneumoconiosis and that his disability was caused by pneumoconiosis.[5] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs has not 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 accordance with applicable law.[6] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Statutory presumptions may assist claimants in establishing the elements of entitlement if certain conditions are met, but failure to establish any element precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must prove he has 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). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held a miner can establish legal pneumoconiosis by showing coal dust exposure contributed "in part" to his respiratory or pulmonary impairment. *See Westmoreland Coal Co., Inc. v.*

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§725.309(c)(3). Because Claimant failed to establish disability causation in his prior claim, he had to submit new evidence establishing this element to obtain a review of his subsequent claim on the merits. *See* 20 C.F.R. §725.309(c); *White*, 23 BLR at 1-3.

[5] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established total disability. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.204(b); Decision and Order at 28, n. 21.

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 10; Director's Exhibit 4.

Cochran, 718 F.3d 319, 322-23 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 311 (4th Cir. 2012).

The ALJ considered the medical opinions of Drs. Forehand, Green, Nader, McSharry, and Sargent.[7] Decision and Order at 30-31. Dr. Forehand diagnosed legal pneumoconiosis in the form of obstructive lung disease caused by a combination of smoking and coal mine dust exposure. Director's Exhibit 11 at 16-17. Drs. Nader and Green diagnosed legal pneumoconiosis in the form of chronic obstructive lung disease (COPD) caused by a combination of smoking and coal mine dust exposure. Claimant's Exhibits 1 at 3; 2 at 3-4. Dr. McSharry diagnosed emphysema caused by smoking and unrelated to coal mine dust exposure. Employer's Exhibits 2 at 3; 4 at 16-19. Dr. Sargent diagnosed an obstructive ventilatory impairment in the form of emphysema and opined it is caused by smoking and unrelated to coal mine dust exposure. Director's Exhibit 26 at 2; Employer's Exhibit 3 at 11-14. Crediting the opinions of Drs. Forehand, Green, and Nader over the contrary opinions of Drs. Sargent and McSharry, the ALJ found Claimant established legal pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Initially, Employer contends the ALJ erred in discrediting the opinions of Drs. Sargent and McSharry. Employer's Brief at 12-17. We are not so persuaded. The ALJ discredited Drs. Sargent's and McSharry's opinions because they failed to address why coal mine dust exposure could not have contributed along with smoking to Claimant's emphysema. Decision and Order at 29-30. Employer does not challenge the ALJ's rationale for discrediting Drs. Sargent's and McSharry's opinions but instead asserts only that they should be afforded great weight because they "reviewed all the medical evidence in the record," and their "opinions are well-documented and well-reasoned." Employer's Brief at 15, 17. Employer's arguments are a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. We thus affirm the ALJ's discrediting of Drs. Sargent's and McSharry's opinions.

Further, Employer contends the ALJ erred in evaluating the opinions of Drs. Forehand, Green, and Nader. Employer's Brief at 12, 17-19. We disagree.

[7] Before weighing the medical opinions on the issue of legal pneumoconiosis, the ALJ addressed Claimant's smoking and work history, and determined that Claimant had a 57 pack-year smoking history and an 11.55-year coal mine employment history. Decision and Order at 9. As Employer does not challenge these findings on appeal, they are affirmed. *See Skrack*, 6 BLR at 1-711.

Specifically, Employer contends the ALJ erred in crediting the opinions of Drs. Forehand, Green and Nader because they had an inaccurate understanding of Claimant's employment history. *Id.* at 17. While the ALJ noted "these physicians based their diagnoses of legal pneumoconiosis on an exaggerated coal mine work history," he permissibly concluded "the discrepancy between their coal mine history of 15 years and the 11.55 years as found does not significantly undermine the credibility of their opinions." Decision and Order at 30; *see Looney*, 678 F.3d at 311 n.2 (characterizing a four-year difference in the length of coal mine employment between what the ALJ found and what a physician relied on as "relatively insignificant" and therefore concluding the discrepancy did not compel rejection of the physician's opinion).

Next, Employer asserts the ALJ erred in crediting the opinions of Drs. Forehand, Green, and Nader because they did not have access to the entirety of Claimant's medical history. Employer's Brief at 17-18. However, an ALJ is not required to discredit a physician who did not review all of a miner's medical records when the opinion is otherwise well-reasoned, documented, and based on his own examination of the miner, objective test results, and exposure histories. *See Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996). While an ALJ may give greater credit to an opinion based upon greater documentation, Employer has not shown that the credibility of the physicians' opinions was in any way undermined by the evidence they did not review.

We likewise reject Employer's assertion that the ALJ should have discredited the opinions of Drs. Forehand, Green, and Nader because they failed to consider Claimant's smoking history. Employer's Brief at 17-18. The ALJ found Claimant smoked for forty years at a rate of 1.43 packs-per-day. Decision and Order at 9. Dr. Forehand noted a 43-year smoking history which, as the ALJ noted, he determined had a "substantial" contribution to Claimant's impairment. Decision and Order at 14-15; Director's Exhibit 11 at 14, 16. Similarly, the ALJ noted Dr. Nader recorded a smoking history of forty-five years at a rate of one to one-and-a-half packs-per-day, and Dr. Green documented a smoking history of forty years at a rate of one-and-a-half packs-per-day. Decision and Order at 17, 29; Claimant's Exhibits 1 at 2; 2 at 2. All three physicians attributed Claimant's impairment to both smoking and coal dust exposure. Director's Exhibit 11 at 16; Claimant's Exhibits 1 at 3; 2 at 3-4. As the record reflects that the physicians not only considered Claimant's smoking history but attributed his impairment to smoking as well as to coal dust exposure, we reject Employer's allegation of error.

Employer also argues the ALJ erred in crediting Dr. Nader's opinion because the physician opined he was unable to determine the relative contribution of smoking and coal mine dust exposure to Claimant's impairment. Employer's Brief at 18-19. However, a physician need not apportion a specific percentage of a miner's lung disease to cigarette smoke as opposed to coal mine dust exposure in order to establish the existence of legal pneumoconiosis. *See Consolidation Coal Co. v. Williams*, 453 F.3d 609, 622 (4th Cir. 2006); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 530 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439-40 (4th Cir. 1997).

Employer additionally contends that the ALJ erred in crediting Dr. Green's opinion because the physician opined only that Claimant's impairment is caused "in part" by coal mine dust exposure but does not specifically state coal mine dust exposure was a "significantly contributing cause" of Claimant's impairment. Employer's Brief at 19. Dr. Green stated that Claimant's chronic obstructive disease was due "at least in part" to his history of coal dust exposure. Claimant's Exhibit 2 at 3. The ALJ interpreted his opinion as meeting the definition of legal pneumoconiosis.[8] Decision and Order at 29. Any error in this regard, however, is harmless, as the ALJ rested his determination regarding the medical opinion evidence on the opinion of Dr. Forehand and gave credit to the opinions of Drs. Green and Nader only "to some extent" as supporting evidence. *Id.* at 30-31. Employer has not shown that excluding Dr. Green's opinion would make any difference to the ALJ's determination. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which he points could have made any difference").

Finally, contrary to Employer's arguments, the ALJ adequately explained his conclusion that the medical opinion evidence establishes legal pneumoconiosis. Decision and Order at 32, 35; Employer's Brief at 12. As the ALJ explained, he found Dr. Forehand well-qualified to provide an opinion, noted his opinion is "buttressed by the cross-examination testimony of Dr. McSharry, who acknowledged that Claimant had sufficient coal mine dust exposure to cause emphysema, hypoxemia, lung injury as shown by pulmonary function testing, and arterial desaturation," and found his opinion supported to "some extent by the conclusions of Drs. Green and Nader." Decision and Order at 9, 32, 35. The ALJ has the discretion to weigh the evidence and to draw his own inferences therefrom. *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990). The Board is not empowered to reweigh the evidence or substitute its judgment for that of the ALJ, nor can it disturb factual findings that are supported by substantial evidence, even if we,

[8] We note there is no requirement that a physician repeat the precise words of the regulation defining legal pneumoconiosis. *See Black Diamond Mining Co. v. Benefits Review Board* [*Raines*], 758 F.2d 1532, 1534 (11th Cir. 1985).

or our dissenting colleague, might reach a different conclusion after reviewing the evidence de novo. *Consolidation Coal Co. v. Held*, 314 F.3d 184, 187 (4th Cir. 2002). Thus, because the ALJ's finding that Dr. Forehand's opinion is sufficient to establish legal pneumoconiosis is supported by substantial evidence, we affirm the ALJ's finding that Claimant established legal pneumoconiosis.[9] *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000) (it is the province of the ALJ to evaluate medical opinions); *Underwood*, 105 F.3d at 949; Decision and Order at 30, 35.

Disability Causation

To establish disability causation, Claimant must prove pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause of a miner's totally disabling impairment if it has "a material adverse effect on the miner's respiratory or pulmonary condition" or "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii).

As Employer itself admits, its "arguments here are very similar to those regarding the existence of legal pneumoconiosis." Employer's brief at 21. However, Employer stipulated that Claimant is totally disabled. Hearing Transcript at 6; Employer's Brief at 19. And we have affirmed the ALJ's determination that Dr. Forehand's opinion establishes that Claimant's totally disabling impairment constitutes legal pneumoconiosis. *See Hicks*, 138 F.3d at 533; Decision and Order at 32, 35. We therefore see no error in the ALJ's finding that Dr. Forehand's opinion is also sufficient to establish that Claimant's legal pneumoconiosis is a substantially contributing cause of his total disability. *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668-69 (6th Cir. 2015); *Hawkinberry v. Monongalia County Coal Co.*, 25 BLR 1-249, 1-255-57 (2019); Decision and Order at 35. As substantial evidence supports the ALJ's finding that Claimant is totally disabled due to legal pneumoconiosis, we affirm it. 20 C.F.R. §718.204(c).

[9] Because we affirm the ALJ's determination that Claimant established legal pneumoconiosis, we need not address Employer's challenges to his determination that Claimant established clinical pneumoconiosis. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Chief Administrative Appeals Judge, concurring and dissenting:

Although I agree with my colleagues in all other respects regarding the ALJ's legal pneumoconiosis findings and conclusions, I respectfully dissent from the majority's affirmance of the administrative law judge's determinations as to the medical opinions finding legal pneumoconiosis. I do so because the ALJ failed to give equal scrutiny to the reasoning of the medical opinions and adequately explain his determination that the opinions of Drs. Forehand, Green and Nader were reasoned and documented, as is required by the Administrative Procedure Act (APA).[10] 5 U.S.C. §557(c)(3)(A) (requiring that an ALJ set forth the rationale underlying his findings of fact and conclusions of law); *see Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-139-40 (1999) (en banc); *Wojtowicz v.*

[10] The Administrative Procedure Act provides every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented. . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

Duquesne Light Co., 12 BLR 1-162, 1-165 (1989); Employer's Brief at 12-19. These errors require remand.[11]

Employer correctly points out that the ALJ provided an extensive analysis of whether its experts adequately explained their rationales while summarily concluding the opinions of Claimant's experts were sufficient to establish legal pneumoconiosis. Employer's Brief at 12. In reference to the credibility of the opinions of Drs. Forehand, Green, and Nader, the ALJ merely stated, "I find their opinions are both documented and reasoned. I find their opinions are adequately 'reasoned' because they are supported by the underlying documentation." Decision and Order at 30 (internal citations omitted). While the ALJ analyzed the reasoning of the opinions of Drs. Sargent and McSharry, he simply accepted the conclusions of Drs. Forehand, Green, and Nader. *See* Decision and Order at 29-31. The ALJ is entitled to weigh and draw inferences from the evidence, *see, e.g., Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); however, he also is required to analyze the evidence fairly and provide a reasoned analysis and explanation for his findings. 30 U.S.C. §923(b); *see Hughes*, 21 BLR at 1-139-40; *see also* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). As he did not do so here, *see* Decision and Order at 29-31, I would remand for him to reconsider whether Claimant established the existence of legal pneumoconiosis and provide appropriate explanations for his findings. Thus, I also would vacate his determination as to total disability causation because it was affected by his analysis of the legal pneumoconiosis evidence and his determination that Claimant established he has legal pneumoconiosis. *See* Employer's Brief at 19-24.

If those determinations are vacated, it also is necessary to consider Employer's contentions that the ALJ erred in concluding Claimant has clinical pneumoconiosis. I agree with Employer that the ALJ committed substantive errors in this regard. Employer's Brief at 7-9.

The ALJ considered ten x-ray readings relating to five x-rays (dated January 27, 2015, April 21, 2016, December 12, 2017, January 16, 2018, and February 13, 2018). For each of the x-rays, except that of January 2018 (for which there was a single negative reading), one dually qualified physician read the x-ray as positive for pneumoconiosis while another dually qualified physician read it as negative.[12] The ALJ concluded that the

[11] I concur with affirming the ALJ's discrediting of the opinions of Drs. McSharry and Sargent for the reason stated by the majority.

[12] The x-ray of January 27, 2015 also was interpreted as positive for pneumoconiosis by a physician who was a B reader, but not a radiologist. Director's Exhibit 11.

x-ray evidence overall was positive for pneumoconiosis.[13] Key to that finding was his determination that the positive readings of Dr. Crum warranted greater weight than the negative readings of other dually qualified physicians because they were more detailed with observations of additional abnormalities. Decision and Order at 28-29. However, as Employer argues, stating that an x-ray report contains additional diagnoses does not explain why that x-ray interpretation is more credible with respect to the existence of *pneumoconiosis*; indeed, the mere provision of additional detail does not even establish that the additional detail is accurate. *See* 65 Fed. Reg. 79,919, 79,929 (Dec. 20, 2000) (A physician's finding of "no pneumoconiosis" on an x-ray "may be considered sufficiently detailed" for an administrative law judge to make a factual finding on the presence or absence of pneumoconiosis, notwithstanding its lack of ILO classification.). Thus, to the extent the ALJ gave greater credit to Dr. Crum's positive x-ray readings simply because he identified more abnormalities than the physicians who provided negative readings, , the ALJ failed to provide an adequate explanation for his determination.[14] 5 U.S.C. §557(c)(3)(A).

Employer also is correct that the ALJ erred in evaluating the CT scan evidence. Employer's Brief at 10. The ALJ summarized two CT scan reports from Dr. Knapp, neither of which diagnosed clinical pneumoconiosis and adverted to CT scans in the treatment records presented in the subsequent claim.[15] Decision and Order at 27, 35; Claimant's

[13] The ALJ determined the January 27, 2015 x-ray is positive for pneumoconiosis because "Dr. Crum's report is more detailed, with observations of additional abnormalities," and is "corroborated by Dr. Forehand," whereas Dr. Tarver indicated the x-ray showed no abnormalities. Decision and Order at 28; Director's Exhibits 11, 35, 37. He found the April 21, 2016 x-ray positive for pneumoconiosis because, having identified "other abnormalities," Dr. Crum's report is "more detailed and comprehensive" than Dr. Wolfe's, which indicated the x-ray was completely negative. Decision and Order at 28-29; Director's Exhibits 26, 39. He found the December 12, 2017 and February 13, 2018 x-rays in equipoise because the contradictory readings of Drs. Crum and Seaman "are equally probative." Decision and Order at 29; Claimant's Exhibits 1-2; Employer's Exhibits 1, 5. He determined the January 16, 2018 x-ray is negative based on Dr. Seaman's uncontradicted reading. Decision and Order at 29; Employer's Exhibit 2.

[14] I also note the ALJ erred in stating that "Dr. Wolfe did not indicate" whether the April 21, 2016 x-ray demonstrated the existence of "other abnormalities." Decision and Order at 29. Dr. Wolfe read the April 21, 2016 x-ray as "[c]ompletely [n]egative," including for abnormalities other than pneumoconiosis. Director's Exhibit 26 at 32.

[15] Dr. Knapp indicated the June 11, 2008 CT scan showed severe upper lobe predominance and central lobular emphysema, but that no lung nodules were seen.

Exhibit 3 at 1-3. However, how he considered the CT scan evidence, including Dr. Knapp's findings that there were no lung nodules on the CT scans he reviewed, is not evident. He provided no analysis of the CT scan evidence and gave no explanation of the weight it received or how he resolved the conflict between this evidence, the x-ray evidence, and the biopsy evidence,[16] both of which he determined demonstrated the presence of clinical pneumoconiosis. Decision and Order at 29, 34-35. Thus, this aspect of the ALJ's decision does not comply with the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), and the statutory requirement for consideration of all relevant evidence 30 USC §.923(b). *See Island Creek Coal Co*. v. *Compton* 211 F3d 203 (4th Cir. 2000); *Wojtowicz*, 12 BLR at 1-165 (1989).

Accordingly, I would vacate the ALJ's findings that Claimant established clinical pneumoconiosis, legal pneumoconiosis, and total disability due to pneumoconiosis, and remand for the ALJ to: 1) further evaluate the x-ray and CT scan evidence, and weigh all of the evidence relating to clinical pneumoconiosis together, resolving conflicts in the evidence and providing adequate explanation for his determinations; 2) re-evaluate the medical opinion evidence relevant to legal pneumoconiosis, giving equal scrutiny to the positive and negative opinions and explaining his findings and determinations in accordance with the requirements of the APA; and 3) reconsider the evidence as to

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Claimant's Exhibit 1 at 1. He likewise interpreted the June 14, 2008 CT scan as showing upper-lobe dominant severe centrilobular emphysema and trace right pleural effusion, but specifically indicated the study demonstrated "[n]o lung nodules or masses." *Id.* at 3.

[16] The ALJ determined the June 30, 2008 biopsy demonstrates the presence of clinical pneumoconiosis. 20 C.F.R. §718.202(a)(2); Decision and Order at 34; Director's Exhibit 27 at 1-6.

disability causation in light of his findings and determinations regarding the existence of clinical and legal pneumoconiosis.

Therefore, I respectfully concur in part and dissent in part.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge