U.S. Department of Labor

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

BRB Nos. 22-0547 BLA
and 22-0548 BLA

DONNA BULLION (o/b/o and Widow of CLARENCE BULLION)	)	
Claimant-Petitioner	)	
v.	)	
RDM ENTERPRISES, INCORPORATED	)	
and	)	
	)	DATE ISSUED: 12/22/2023
AMERICAN MINING INSURANCE COMPANY/BERKLEY INDUSTRIAL COMP	)	
Employer/Carrier-Respondents	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits in Miner's Claim and Denying Benefits in Survivor's Claim of Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

Donna Bullion, Coeburn, Virginia.

Anne Rife (Midkiff, Muncie & Ross, P.C.), Bristol, Tennessee, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel,[1] Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Denying Benefits in Miner's Claim and Denying Benefits in Survivor's Claim (2019-BLA-05819 and 2021-BLA-05676) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on March 14, 2017, and a survivor's claim filed on February 9, 2021.[2]

Adjudicating the miner's claim, the ALJ credited the Miner with at least fifteen years of qualifying coal mine employment but found Claimant did not establish complicated pneumoconiosis. Therefore, Claimant did not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The ALJ also found the Miner did not have a totally disabling respiratory or pulmonary impairment at the time of his death. 20 C.F.R. §718.204(b)(2). She therefore found Claimant did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[3] 30 U.S.C. §921(c)(4)

[1] Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested on Claimant's behalf that the Benefits Review Board review the ALJ's decision, but Ms. Napier is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] The Miner died on December 23, 2020, while his claim was pending. Miner's Claim (MC) Director's Exhibit 62. Claimant, the Miner's widow, indicated she would pursue his claim on behalf of his estate. MC Director's Exhibit 63. She also separately filed a survivor's claim on February 12, 2021. Survivor's Claim (SC) Director's Exhibit 4. The ALJ consolidated the two claims and held a telephonic hearing for both claims on February 3, 2022.

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if he had 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.

(2012). Because the ALJ found Claimant did not establish total disability, a requisite element of entitlement under 20 C.F.R. Part 718, she denied benefits in the miner's claim.

Addressing the merits of the survivor's claim, the ALJ initially determined that because the Miner was not entitled to benefits at the time of his death, Claimant is not automatically entitled to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).[4] She next found the Miner did not suffer from simple or complicated clinical pneumoconiosis or legal pneumoconiosis. 20 C.F.R. §§718.202(a), 718.304. Thus, she denied benefits in the survivor's claim.

On appeal, Claimant generally challenges the denial of benefits in both the miner's and survivor's claims. Employer and its Carrier (Employer) respond in support of the decision. The Director, Office of Workers' Compensation Programs, did not file a response brief in this appeal.

In an appeal a claimant files without the assistance of counsel, the Board considers whether the Decision and Order below is supported by substantial evidence. *See McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in 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 Assocs., Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, a 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 one of these elements precludes an award of benefits. *Anderson v. Valley Camp of*

[4] Under Section 422(*l*) of the Act, a survivor of a miner who was eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the Miner performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director's Exhibit 5.

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).

Miner's Claim: Invocation of the Section 411(c)(4) Presumption - Total Disability

To invoke the Section 411(c)(4) presumption, a claimant must establish the miner had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work and comparable gainful work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). In this case, the ALJ determined Claimant did not establish total disability, as the sole qualifying[6] arterial blood gas study was outweighed by the contrary probative evidence of record. Decision and Order at 11-23.

Pulmonary Function Studies

The ALJ considered four pulmonary function studies dated March 9, 2017, May 10, 2017, March 12, 2018, and June 19, 2019. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 11. The studies performed on May 10, 2017, March 12, 2018, and June 19, 2019 yielded non-qualifying values. Miner's Claim (MC) Director's Exhibit 14; MC Employer's Exhibits 1, 2. In contrast, the March 9, 2017 study yielded qualifying values. MC Director's Exhibit 16. The ALJ accorded diminished weight to the March 9, 2017 qualifying study because Dr. Rosenberg called into question its reliability, commenting that the Miner's "efforts were incomplete based on the shape of the spirometric curves."[7] MC Employer's Exhibit 2 at 2; *see* Decision and Order at 12. In addition, the ALJ correctly noted Dr. Ajjarapu agreed with Dr. Rosenberg's opinion and that Dr. Fino also found the

[6] A "qualifying" pulmonary function study or blood gas study yields values equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" pulmonary function study or blood gas study yields values in excess of those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[7] Dr. Rosenberg referenced a pulmonary function study dated March 29, 2017. MC Employer's Exhibit 2 at 2. As there is no study with that date, it appears Dr. Rosenberg was actually referring to the March 9, 2017 pulmonary function study.

study unacceptable. Decision and Order at 12; MC Director's Exhibits 24, 25; MC Employer's Exhibit 1 at 12.

When considering pulmonary function studies, an ALJ must determine whether they are in substantial compliance with the quality standards. 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, Appendix B; *see Keener v. Peerless Eagle Coal Co*., 23 BLR 1-229, 1-237 (2007) (en banc). "In the absence of evidence to the contrary, compliance with the [quality standards in] Appendix B shall be presumed." 20 C.F.R. §718.103(c). The party challenging the validity of a study has the burden to establish the results are suspect or unreliable. *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984). If a study does not precisely conform to the quality standards, but is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b). The ALJ, as the fact-finder, must determine the probative weight to assign the study. *See Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-55 (1987).

In this case, the ALJ considered all of the relevant evidence and permissibly found the March 9, 2017 qualifying pulmonary function study does not support total disability as all three physicians offering an opinion, Drs. Rosenberg, Ajjarapu, and Fino, agreed that the results are invalid. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 12. Having found the sole qualifying pulmonary function study to be unreliable, the ALJ rationally found the weight of the pulmonary function study evidence did not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 12. As this determination is rational and supported by substantial evidence, we affirm it. *See Alexander v. Island Creek Coal Co.*, 12 BLR 1-44, 1-47 (1988); *Burich v. Jones and Laughlin Steel Corp.*, 6 BLR 1-1189, 1-1191 (1984).

Arterial Blood Gas Studies

The ALJ considered three arterial blood gas studies dated May 10, 2017, March 12, 2018, and June 19, 2019. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 12. The May 10, 2017 study yielded non-qualifying values at rest, while the exercise portion was qualifying. Director's Exhibit 14. The March 12, 2018 arterial blood gas study produced non-qualifying values both at rest and exercise. Employer's Exhibit 1. The June 19, 2019 arterial blood gas study, administered only at rest, also produced non-qualifying results. Employer's Exhibit 2.

The ALJ accurately noted all three resting blood gas studies produced non-qualifying results while the results of the two exercise studies are in equipoise. *See Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 740-41 (6th Cir. 2014); Decision and Order at 12. Weighing the non-qualifying resting studies along with the indeterminate results of

the exercise tests, the ALJ permissibly found the preponderance of the arterial blood gas study evidence does not support finding total disability. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 13. As it is rational and supported by substantial evidence, we affirm the ALJ's determination. *See Tucker v. Director, OWCP*, 10 BLR 1-35, 1-41 (1987).[8]

Medical Opinions

The ALJ considered the medical opinions of Drs. Ajjarapu, Fino, and Rosenberg. 20 C.F.R §718.204(b)(2)(iv). Dr. Ajjarapu opined the Miner was totally disabled, while Drs. Fino and Rosenberg concluded he was not. MC Director's Exhibits 14, 23-25; Employer's Exhibits 1, 2.

The ALJ noted Dr. Ajjarapu first opined the Miner was not totally disabled but "later changed her opinion, and asserted that [the] Miner was totally disabled." Decision and Order at 18; MC Director's Exhibits 14, 23-25. Dr. Ajjarapu initially opined the Miner "doesn't meet [Department of Labor] criteria for total and complete disability" and "retains the pulmonary capacity to do his previous coal mine employment." MC Director's Exhibit 14. After reviewing additional objective studies and treatment records, Dr. Ajjarapu provided a supplemental report wherein she opined the Miner was totally disabled. MC Director's Exhibits 24, 25. Dr. Ajjarapu stated that "*even if* [*the Miner*] *could do his previous coal mine job*," he should nevertheless "abstain from continued dust exposure," despite her contrary conclusion that he "meets the criteria for total disability." Director's Exhibit 23 [emphasis added]; Decision and Order at 15. In addition, Dr. Ajjarapu agreed with Dr. Rosenberg that the March 9, 2017 qualifying pulmonary function study was invalid, observed the pulmonary function studies she administered were non-qualifying and the exercise blood gas study demonstrated hypoxia. MC Director's Exhibits 23-25. The ALJ found Dr. Ajjarapu's opinion equivocal and therefore entitled to reduced weight. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); *Justice v. Island Creek Coal Co.*, 11 BLR 1-90, 1-94 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16, 1-19 (1987); Decision and Order at 15. She permissibly found Dr. Ajjarapu's opinion that the Miner should not return to his coal mine work constituted a recommendation against further coal dust exposure, which is not tantamount to a determination of total respiratory disability. *See Zimmerman v. Director, OWCP*, 871 F.2d 564, 567 (6th Cir. 1989); *see also Migliorini v. Director, OWCP*, 898 F.2d 1292, 1296-97 (7th Cir. 1990), *cert. denied*, 498 U.S. 958 (1990); Decision and Order at 15. Moreover, recognizing Dr. Ajjarapu based her

[8] The ALJ correctly found the record contains no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 13. Consequently, we affirm her finding that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(iii).

total disability assessment on the exercise arterial blood gas study result,[9] the ALJ concluded the doctor "did not sufficiently explain why her opinion changed" or provide an adequate rationale underlying her new conclusion. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 149, 1-155 (1989) (en banc); *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988) (ALJ properly discredited a physician's opinion as the doctor failed to explain the changes between his initial report and subsequent deposition testimony); Decision and Order at 18-19. The ALJ further noted Dr. Ajjarapu's admission, that "there were significant gaps in the medical records provided to her," rendered her opinion less probative. Decision and Order at 18-19. Therefore, the ALJ permissibly accorded little weight to Dr. Ajjarapu's revised opinion as it was less persuasive. *See Hicks*, 138 F.3d at 532-34; *see also Piney Mountain Coal Co. v. Mays*, 176 F.3d 753 (4th Cir. 1999); *Lane v. Union Carbide Corp*., 105 F.3d 166 (4th Cir. 1977); Decision and Order at 19. As the ALJ permissibly discounted Dr. Ajjarapu's opinion, the only medical opinion of record that could support a finding of total disability, we affirm her finding that the medical opinion evidence does not support total disability. *See Lane*, 105 F.3d at 171; Decision and Order at 19.

Medical Treatment Records

The ALJ accurately noted the treatment records "document[ed] [the] Miner's treatment for symptoms of shortness of breath, productive cough, chest pain, nausea, … vomiting, and confusion," but lacked a definitive diagnosis of a totally disabling respiratory or pulmonary impairment.[10] Decision and Order at 19-22; MC Director's Exhibit 20; MC

[9] In her August 24, 2017 supplemental opinion, Dr. Ajjarapu declared she originally believed the May 10, 2017 arterial blood gas study accompanying her examination was "not an accurate test." MC Director's Exhibit 23. Subsequently, she re-evaluated this test to find its results were acceptable, but also reported the Miner's pulmonary function study results from her examination exceeded the Department of Labor criteria for disability. *Id*. In her January 20, 2019 supplemental report, after acknowledging "there are predominantly negative chest x-rays" and that the cause of his repeated pneumonia infections was unknown, she suggested "the only underlying etiology that seems to fit here is the occupational exposure to coal dust" and opined the Miner was "totally disabled due to coal dust exposure." MC Director's Exhibits 24, 25. The ALJ rationally found Dr. Ajjarapu's opinion conclusory because she did not provide a rationale or discussion explaining her disability opinion. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-90, 1-94 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16, 1-19 (1987); Decision and Order at 15.

[10] The ALJ recognized a physician need not phrase his or her opinion or diagnosis in terms of "total disability" to support a finding of total disability under 20 C.F.R. §718.204(b)(2)(iv) but, rather, an opinion or diagnosis is sufficient if it provides enough information to infer a miner is or was unable to do his last coal mine job. Decision and

Employer's Exhibits 8, 13, 14, 16. She rationally concluded that while the hospitalization and treatment records document the Miner's bouts with pneumonia and/or empyema[11] from 2014 to 2020, this evidence was insufficient to establish total respiratory or pulmonary disability. *See Hicks*, 138 F.3d at 534; *Marcum v. Director, OWCP*, 11 BLR 1-23 (1987); Decision and Order at 22.

It is the ALJ's prerogative to draw inferences from the evidence and determine the weight to accord the medical opinions. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319 (4th Cir. 2013); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989) (Board is not empowered to reweigh the evidence). As the ALJ's credibility determinations are rational and supported by substantial evidence,[12] we affirm her finding that the medical opinion evidence does not establish total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 19.

Finally, weighing the evidence supporting total disability against the contrary probative evidence, the ALJ permissibly found Claimant failed to establish the Miner was incapable of performing his usual coal mine work from a respiratory standpoint prior to his death. *See Fields*, 10 BLR at 1-21; *Shedlock*, 9 BLR at 1-198; Decision and Order at 23. Thus, we affirm the ALJ's finding that Claimant did not establish total respiratory disability, an essential element of entitlement, and the denial of benefits in the miner's claim. 30 U.S.C. §921(c)(4); *see Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

Survivor's Claim: 20 C.F.R. Part 718 Entitlement to Benefits

The ALJ determined because the Miner was not entitled to benefits at the time of his death, Claimant was not automatically entitled to survivor's benefits under Section

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Order at 21-22 (citing *Poole v Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990); *Scott v. Mason Coal Co.*, 60 F.3d 1138, 1142 (4th Cir. 1995)).

[11] Empyema is a collection of pus in the cavity between the lung and the membrane that surrounds it (pleural space). *See* Johns Hopkins Medicine, Health, Conditions and Diseases – Lung and Respiratory System, https://www. https://www.hopkinsmedicine.org/health/conditions-and-diseases/empyema (last visited Nov. 22, 2023).

[12] We need not address the ALJ's findings regarding the opinions of Drs. Fino and Rosenberg because they opined the Miner did not have a totally disabling respiratory impairment and, therefore, do not assist Claimant in establishing the Miner was totally disabled. Decision and Order at 16-19; MC Employer's Exhibits 1, 2.

422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018). In a survivor's claim where no statutory presumptions are invoked,[13] Claimant must establish the Miner had pneumoconiosis arising out of coal mine employment and his death was due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.203(b), 718.205(b)(1), (2). The ALJ determined Claimant did not establish the Miner had clinical or legal pneumoconiosis and, as this is a requisite element of entitlement, denied benefits in the survivor's claim. Decision and Order at 24-29.

Clinical Pneumoconiosis

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). The ALJ considered five interpretations of three x-rays dated May 10, 2017, March 12, 2018, and June 19, 2019, and correctly observed all of the interpreting physicians are dually qualified as Board-certified radiologists and B readers, and thus found their readings equally probative. 20 C.F.R. §718.202(a)(1); Decision and Order at 26.

Drs. DePonte and Wiener interpreted the May 10, 2017 x-ray as negative for pneumoconiosis, while Dr. Miller interpreted it as positive.[14] Survivor's Claim (SC) Director's Exhibits 14, 18; SC Claimant's Exhibit 2. Dr. Kendall provided an uncontradicted interpretation of the March 12, 2018 x-ray, reading it as negative for pneumoconiosis. SC Employer's Exhibit 2. Dr. Adcock similarly provided an uncontradicted interpretation of the June 19, 2019 x-ray, reading it as negative for pneumoconiosis. SC Employer's Exhibit 1.

The ALJ found the May 10, 2017 x-ray neither confirms nor disproves the presence of clinical pneumoconiosis. *See Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 820 F.3d 833, 843 (6th Cir. 2016), *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 740 (6th Cir. 2014). Having found two x-rays negative and another inconclusive, the ALJ permissibly

[13] We affirm the ALJ's determination that the presumptions at 20 C.F.R. §718.202(a)(3) are not applicable because there is no evidence establishing the presence of complicated pneumoconiosis, and Claimant did not establish the Miner has a totally disabling respiratory impairment. Decision and Order at 25. Thus, Claimant cannot establish the existence of pneumoconiosis under this method. 20 C.F.R. §§718.202(a)(3), 718.304, 718.305.

[14] Dr. Gaziano interpreted the May 10, 2017 x-ray for quality purposes only. MC Director's Exhibit 15.

found the preponderance of the x-ray evidence insufficient to establish clinical pneumoconiosis. 20 C.F.R. §718.202(a)(1); *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 279-81 (1994); *see also Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); Decision and Order at 26. As it is rational and supported by substantial evidence, we affirm the ALJ's determination that the x-ray evidence does not establish clinical pneumoconiosis.

The ALJ considered biopsy evidence consisting of Dr. Combs's review of an April 20, 2016 biopsy of a right lung mass. Dr. Combs diagnosed benign bronchial mucosa, mild fibrosis, and anthracotic pigment. SC Claimant's Exhibit 7; SC Employer's Exhibit 17. The ALJ found that while Dr. Combs diagnosed "mild fibrosis or anthracotic pigment," she did not specify any details about these abnormalities or render any detailed analysis. Decision and Order at 27. Thus, the ALJ rationally found the biopsy report was equivocal, and insufficient to affirmatively establish the existence of clinical pneumoconiosis. *See* 20 C.F.R. §718.202(a)(2) ("A finding in [a] . . . biopsy of anthracotic pigmentation, however, must not be considered sufficient, by itself, to establish the existence of pneumoconiosis."); *Justice*, 11 BLR at 1-94; *Campbell*, 11 BLR at 1-19; Decision and Order at 27.

Legal Pneumoconiosis

"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). In order to establish legal pneumoconiosis, Claimant must prove that he has a "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).

The ALJ considered the medical opinions of Drs. Ajjarapu, Fino, and Rosenberg. 20 C.F.R. §718.202(a)(4); Decision and Order at 27-29. Dr. Ajjarapu opined the Miner had legal pneumoconiosis, while Drs. Fino and Rosenberg concluded he did not. SC Claimant's Exhibit 6; SC Employer's Exhibits 1, 2, 5, 6.[15] 20 C.F.R. §718.202(a)(4); Decision and Order at 15-17. Specifically, Dr. Ajjarapu diagnosed the Miner with legal pneumoconiosis in the form of chronic bronchitis due to his coal mine employment. SC Claimant's Exhibit 6. Dr. Ajjarapu stated chronic bronchitis symptoms caused by smoking and/or occupational dust exposure "are identical except for chronic bronchitis due to

[15] Because the Miner's death certificate listed the immediate cause of death as congestive heart failure, coronary artery disease, chronic kidney disease, and diabetes mellitus, it does not support a finding of clinical or legal pneumoconiosis. SC Director's Exhibit 5.

infectious causes." *Id.* She further opined that because the Miner did not smoke, had no known coronary artery disease, was not morbidly obese, and the underlying etiology for his frequent pneumonia infections was unknown, the "only logical etiology" for his bronchitis was his occupational dust exposure. In assessing the probative value of Dr. Ajjarapu's opinion, the ALJ noted that while Dr. Ajjarapu asserted the record before her did not support any etiologies aside from the Miner's coal dust exposure,[16] that record was incomplete as Dr. Ajjarapu did not review any of the Miner's treatment records from 2012 to 2017 or any records from the Miner's pneumonia treatments in 2013 or 2015. Decision and Order at 28. Thus, the ALJ permissibly found Dr. Ajjarapu's opinion is neither well-reasoned nor well-documented and is entitled to little weight. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 28.

It is within the ALJ's discretion as the fact-finder to weigh the credibility of the experts and determine the persuasiveness of their opinions. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997). As substantial evidence supports the ALJ's determination to discredit Dr. Ajjarapu's opinion, the only opinion supportive of a finding that the Miner suffered from legal pneumoconiosis, we affirm the ALJ's finding that Claimant failed to establish pneumoconiosis.[17] 20 C.F.R. §718.202(a)(4).

The ALJ properly weighed the x-ray evidence, together with the biopsy evidence, the Miner's treatment records, and the medical opinion evidence,[18] and permissibly determined Claimant did not establish the Miner had clinical or legal pneumoconiosis. *See Compton*, 211 F.3d at 211; Decision and Order at 25-26. As this determination is rational

[16] We note Dr. Ajjarapu's observation that the Miner had no known coronary artery disease is at odds with the disease being listed as an immediate cause of death on the Miner's death certificate.

[17] As the ALJ noted, Drs. Fino and Rosenberg did not diagnose either clinical or legal pneumoconiosis. Decision and Order at 28-29; SC Employer's Exhibits 1, 2, 5, 6. Thus, their opinions cannot assist Claimant in establishing the existence of pneumoconiosis. 20 C.F.R. §718.202(a)(4).

[18] The computed tomography scan and medical treatment record evidence is the same in both the miner's and survivor's claims. SC Director's Exhibit 32; SC Employer's Exhibits 2, 8, 9; MC Director's Exhibits 26, 29. Therefore the ALJ reiterated her finding from the miner's claim that this evidence does not establish the existence of clinical or legal pneumoconiosis. Decision and Order at 25. As we affirmed this determination in the miner's claim, we also affirm it in the survivor's claim. *Id.*

and supported by substantial evidence, we affirm the ALJ's determination that benefits are precluded in the survivor's claim.

Accordingly, the ALJ's Decision and Order Denying Benefits in Miner's Claim and Denying Benefits in Survivor's Claim is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge