U.S. Department of Labor

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

BRB No. 23-0033 BLA

GENE T. KISER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	
	)	DATE ISSUED: 02/15/2024
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 Granting Benefits of Carrie Bland, Associate Chief Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

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

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

PER CURIAM:

Employer appeals Associate Chief Administrative Law Judge (ALJ) Carrie Bland's Decision and Order Granting Benefits (2019-BLA-05670) 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 subsequent claim filed on April 19, 2017.[1]

The ALJ credited Claimant with 15.17 years of underground coal mine employment and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Therefore, she found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[2] 30 U.S.C. §921(c)(4) (2018), and established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c). She further found Employer did not rebut the presumption and awarded benefits.

Employer contends the ALJ erred in finding Claimant established at least fifteen years of coal mine employment and total disability necessary to invoke the Section 411(c)(4) presumption. It also contends she erred in finding it did not rebut the presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response in this appeal.

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] This is Claimant's second claim for benefits. On May 4, 2005, the district director denied his prior claim, filed on July 6, 2004, because he failed to establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2); Director's Exhibit 1 at 9 (unpaginated). Where a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she 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); *see 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. §725.309(c)(3). Claimant was therefore required to establish total disability to obtain review of his subsequent claim on the merits. *White*, 23 BLR at 1-3.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled 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.

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

Invocation of the Section 411(c)(4) Presumption - Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mines, or "substantially similar" surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden to establish the number of years he worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold an ALJ's determination if it is based on a reasonable method of calculation that is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

The ALJ found Claimant's Social Security Administration (SSA) earnings record establishes 0.75 years of coal mine employment with Rasnick Wise Coal and Beech/Lambert Coal for the years 1966 and 1967. Decision and Order at 6. Employer does not challenge this finding. Thus we affirm it. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ next calculated Claimant's coal mine employment with Employer, Clinchfield Coal Company (Clinchfield Coal). She found there is direct evidence establishing the beginning and ending dates of employment with this company. Decision and Order at 6. Specifically, she concluded employment personnel records establish Clinchfield Coal continuously employed Claimant "from November 7, 1969 until May 22, 1982, then from April 23, 1984 until August 4, 1984, and finally from June 27, 1985 until January 31, 1987." *Id.*, *citing* Director's Exhibit 6.

Thus the ALJ credited Claimant with whole years of employment for each year from 1970 to 1981 and 1986 for a total of thirteen years. Decision and Order at 6. She then credited him with partial years of coal mine employment for the years 1969, 1982, 1984, 1985, and 1987 by dividing the number of days in the respective time periods he was employed by 365 calendar days in a year. *Id.* Using this method, she found he had 0.15 years of coal mine employment in 1969, 0.39 years of coal mine employment in 1982, 0.28 years of coal mine employment in 1984, 0.52 years of coal mine employment in 1985, and 0.08 years of coal mine employment in 1987. *Id.* In total, she found Claimant had 14.42 years of coal mine employment with Clinchfield Coal. *Id.* When adding this coal mine

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[3] 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); Director's Exhibit 6.

employment to the 0.75 years from 1966 and 1967, the ALJ found 15.17 years of coal mine employment. *Id.*

Employer argues the ALJ failed to consider evidence that Claimant stopped working for it on September 24, 1986, rather than January 31, 1987. Employer's Brief at 4-7. Thus it contends Claimant was improperly credited with four additional months of coal mine employment with Employer, as he worked for it for only 14.08 years. *Id.* Employer acknowledges, however, that Claimant had coal mine related earnings from Westwood Coal in 1982, 1983, and 1984 as reflected in Claimant's SSA earnings record that the ALJ also failed to consider. Employer's Brief at 6-7; *see* Director's Exhibit 7. Based on Claimant's earnings with Westwood in those years and use of the calculation method at 20 C.F.R. §725.101(a)(32)(iii),[4] Employer concedes Claimant is entitled to an additional 0.8 years of coal mine employment. Employer's Brief at 6-7. Thus Employer states Claimant worked for it and Westwood for 14.88 years from November 7, 1969, to September 24, 1986. *Id.*

Adding the 14.88 years of coal mine employment for the years 1969 to 1986 that Employer concedes, to the unchallenged finding of 0.75 years Claimant established for the years 1966 and 1967 results in 15.63 years. Because Claimant still had at least fifteen years of coal mine employment, Employer has not explained how the error it alleges makes a

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[4] Pursuant to 20 C.F.R. §725.101(a)(32)(iii):

> If the evidence is insufficient to establish the beginning and ending dates of the miner's coal mine employment, or the miner's employment lasted less than a calendar year, then the adjudication officer may use the following formula: divide the miner's yearly income from work as a miner by the coal mine industry's daily average earnings for that year, as reported by the Bureau of Labor Statistics (BLS).

The BLS data is reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine* (*Black Lung Benefits Act*) *Procedure Manual*. Employer contends the ALJ should have used this method because the record does not include the beginning and ending dates of Claimant's employment with Westwood. Employer's Brief at 6-7. Doing so, Employer asserts, would have allowed the ALJ to determine the number of working days Claimant had with Westwood in those years. *Id.* Thus, it argues the ALJ should have divided the number of working days in 1982, 1983, and 1984 by 250 working days in a year. *Id.* Using this method, Employer asserts Claimant is entitled to credit for an additional 0.068 of a year in 1982, 0.468 of a year in 1983, and 0.263 of a year in 1984. *Id.*

difference. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). As it is supported by substantial evidence, we affirm the ALJ's finding of at least fifteen years of coal mine employment. Employer does not challenge the ALJ's finding that all of Claimant's coal mine employment took place in underground mines; thus we also affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order at 4, 21.

Total Disability

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying[5] pulmonary function studies or 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 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).

The ALJ found Claimant established total disability based on the medical opinion evidence and the evidence as a whole.[6] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 7-15. Employer challenges the ALJ's finding that the medical opinion evidence establishes total disability. Employer's Brief at 8-13. We are not persuaded by its arguments.

The ALJ considered Dr. Green's opinion that Claimant is totally disabled and Dr. McSharry's opinion that he is not. Decision and Order at 9-10; Director's Exhibits 14, 17-19; Employer's Exhibits 1, 5; Claimant's Exhibit 7.

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

[6] The ALJ found Claimant did not establish total disability based on the pulmonary function studies or arterial blood gas studies, and there is no evidence he has cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 7-9.

Dr. Green

Dr. Green stated that Claimant's usual coal mine employment required him to operate a roof bolter, shuttle car, scoop, and continuous miner, as well as shoot coal, rock dust, hang curtains, and shovel belts. Director's Exhibit 14 at 1. He recognized Claimant "lifted or carried [fifty to one-hundred] pounds at any given time." *Id.* Interpreting the August 23, 2017 resting arterial blood gas study, he opined it demonstrates "significant resting hypoxemia." *Id.* at 3. He noted Claimant has symptoms of chronic cough, wheezing, shortness of breath, and mucous expectoration which support the diagnosis of coal workers' pneumoconiosis and chronic obstructive pulmonary disease (COPD). *Id.* at 1, 3. In addition, he noted Claimant uses supplemental oxygen at night. *Id.* at 3. Because Claimant's significant resting hypoxemia affects his ability to operate heavy equipment, Dr. Green opined Claimant is totally disabled from his usual coal mine employment. *Id.*

After reviewing Dr. McSharry's medical opinion, including the results of the September 26, 2018 non-qualifying blood gas study, Dr. Green reiterated his opinion that Claimant is totally disabled. Director's Exhibit 19. He stated the discrepancy between his August 23, 2017 blood gas study that demonstrates significant hypoxemia and Dr. McSharry's September 26, 2018 blood gas study may be related to different testing protocols. *Id.* Specifically, he explained he conducted his study according to Department of Labor protocols, including drawing blood before use of any bronchodilators or oxygen that could affect results. *Id.* He opined "perhaps the [September 26, 2018] blood gases were drawn after pulmonary function testing or after the use of a bronchodilator for post-bronchodilator pulmonary function testing." *Id.* at 2. In maintaining his opinion that Claimant is totally disabled, he stated "at least some of the time this [Claimant] does demonstrate significant qualifying blood gas results," and thus he does not have the pulmonary capacity to perform his usual coal mine employment. *Id.*

Dr. McSharry

Dr. McSharry opined Claimant is not totally disabled because there is no evidence Claimant has a pulmonary impairment. Director's Exhibit 17 at 3. He stated the pulmonary function and arterial blood gas studies he conducted as part of his September 26, 2018 examination of Claimant are non-qualifying. *Id.* at 3-4. While acknowledging Claimant "has asthma, a chronic lung disease," he stated "the airflow at [the] time [of his examination] is normal as are arterial blood gas measurements." *Id.* He stated the "mildly abnormal airflow seen in the past, and possibly hypoxemia documented in the past, could be related to exacerbations of asthma," but these exacerbations were not present at the time of his examination. *Id.*

After reviewing Dr. Green's opinion, Dr. McSharry issued a supplemental report. Employer's Exhibit 1. He stated Claimant's "history of cough, wheezing, shortness of breath, and sputum production" are all consistent with asthma. *Id.* at 1. Further, he noted Dr. Baron previously treated Claimant for asthma and stated Dr. Baron's "aggressive bronchodilator and anti-asthma therapies, including Albuterol, Symbicort, DuoNeb, Xyzal, Spiriva, and Perforomist," explain why Claimant "has relatively fewer pulmonary symptoms . . . and normalized spirometry results." *Id.* With respect to the testing protocol his office used for the September 26, 2018 examination, Dr. McSharry testified that "it looks like" Claimant performed arterial blood gas testing before pulmonary function testing, and that he believed that was the general procedure in his office, but Dr. McSharry did not conduct the tests. Employer's Exhibit 5 at 17-18. In a later deposition, when asked about the sequence in which activities at his office are performed, Dr. McSharry stated that:

> [I]nitially after being registered, [a patient] gets most of the pulmonary function tests performed. They receive a bronchodilator treatment, a baseline arterial blood gas is obtained, and then generally I will come in and talk to the miner at that point, perform a physical exam after obtaining a history (sic).

Claimant's Exhibit 7 at 19-20.

The ALJ permissibly found Dr. Green's opinion is reasoned and documented because it is supported by Claimant's "medical histories, symptoms, objective testing, comprehensive medical records review, and [] physical examination."[7] Decision and Order at 14; *see Westmoreland Coal Co. v. Cochran*, 718 F.3d 319 (4th Cir. 2013); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 530 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Greer v. Director, OWCP*, 940 F.2d 88, 90-91 (4th Cir. 1991) (recognizing that, because pneumoconiosis is a chronic condition, a miner's

[7] Employer argues the ALJ should have discredited Dr. Green's opinion because Dr. McSharry explained that his office performs blood gas testing before pulmonary function testing. Employer's Brief at 9-10. It contends this undermines Dr. Green's explanation that a difference in testing protocol may explain the conflicting results between his August 23, 2017 blood gas study and Dr. McSharry's September 26, 2018 blood gas study. *Id.* As discussed below, the ALJ found Dr. McSharry provided conflicting testimony as to whether his office performs pulmonary function testing or blood gas testing first. Decision and Order at 14-15. Thus we reject Employer's argument that the ALJ was required to discredit Dr. Green's opinion on this basis.

functional ability on objective testing may vary, and thus could measure higher on any given day than its typical level).

The ALJ permissibly discredited Dr. McSharry's opinion on the basis that he provided conflicting testimony with respect to his office's examination protocol. *Hicks*, 138 F.3d at 530; *Akers*, 131 F.3d at 441; Decision and Order at 14-15. As discussed above, Dr. McSharry stated in his initial deposition that when Claimant came to his office for an examination, "it looks like" he underwent bronchodilator therapy after he performed blood gas testing, and that he understood that was the process as a general rule, although Dr. McSharry did not personally examine the testing. Exhibit 5 at 17-18. However, when asked by Claimant's counsel at his second deposition as to the "order of examination" and what happens "first, second, and so on," Dr. McSharry described the process his office uses "as a rule," pulmonary function testing with bronchodilators before an arterial blood gas study. Claimant's Exhibit 7 at 19-20. Because the timing of the pulmonary function and arterial blood gas testing is relevant to whether Claimant has hypoxemia on blood gas testing, and the ALJ permissibly found Dr. McSharry provided conflicting testimony with respect to the testing protocol his office follows, the ALJ permissibly discredited his opinion. *Hicks*, 138 F.3d at 530; *Akers*, 131 F.3d at 441.

The ALJ also found Dr. McSharry's opinion is "internally contradictory" and "less persuasive" as the doctor opined Claimant had no pulmonary impairment at the time of his examination, but conceded that Claimant has "asthma, a chronic lung disease," that requires treatment with medication. Decision and Order at 14-15. This finding is supported by substantial evidence. *See Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (substantial evidence is such evidence that a reasonable mind would accept to support a conclusion); *Logan Coal Co. v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013).

Although Dr. McSharry indicated Claimant underwent aggressive bronchodilator treatment with Dr. Baron, he nonetheless conceded that, during his September 26, 2018 examination, Claimant complained of shortness of breath, coughing at night with sputum production, and daily wheezing. Employer's Exhibit 5 at 7. Further, Claimant went to the emergency room on December 29, 2020 for shortness of breath and wheezing. Claimant's Exhibit 7 at 42. In his medical report, Dr. McSharry stated Claimant's "history of cough, wheezing, shortness of breath, and sputum production" are all consistent with asthma. Employer's Exhibit 1 at 1. Nonetheless, he testified that when he examined Claimant, he was not experiencing asthma as his medication kept it under control. Claimant's Exhibit 7 at 33. Dr. McSharry stated Claimant would be able to perform his usual coal mine employment if he took his medication for asthma as the medication would keep it under control. *Id*. 38. The ALJ permissibly discredited Dr. McSharry's diagnosis of no impairment as "internally contradictory" and "less persuasive" in light of the physician's

discussion of Claimant's asthma. Decision and Order at 14; *see Hicks*, 138 F.3d at 530; *Akers*, 131 F.3d at 441.

Employer generally argues the ALJ should have credited Dr. McSharry's opinion because it is reasoned and documented and because the doctor reviewed all of Claimant's medical records. Employer's Brief at 11-13. Employer's argument is a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Because it is supported by substantial evidence, we affirm the ALJ's finding the medical opinions support total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 14-15. We further affirm the ALJ's conclusion that the evidence, when weighed together, establishes total disability and Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §§718.204(b)(2), 718.305(b)(1); *Rafferty*, 9 BLR at 1-232; Decision and Order at 15.

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 nor clinical pneumoconiosis, 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.

Clinical Pneumoconiosis

To disprove clinical pneumoconiosis, Employer must establish Claimant does not have any of the 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. §§718.305(d)(1)(i)(B), 718.201(a)(1).

The ALJ found the x-rays and medical opinions insufficient to rebut the presumption of clinical pneumoconiosis. Decision and Order at 16-18. Employer argues the ALJ erred in weighing the x-rays. Employer's Brief at 13-15. We disagree.

The ALJ considered eight interpretations of four x-rays dated August 23, 2017, September 26, 2018, February 12, 2021, and March 22, 2021. Decision and Order at 16-

17. She noted all of the interpreting physicians are dually-qualified as Board-certified radiologists and B-readers.[8] *Id.*

Drs. DePonte and Adcock read the August 23, 2017 x-ray as negative for pneumoconiosis. Director's Exhibits 14, 16. Based on their uncontradicted readings, the ALJ found this x-ray is negative. Decision and Order at 17. Dr. Crum read the September 26, 2018 x-ray as positive for pneumoconiosis, but Dr. Adcock read it as negative for the disease. Claimant's Exhibit 1; Director's Exhibit 17. Dr. DePonte read the February 12, 2021 and March 22, 2021 x-rays as positive for pneumoconiosis, but Dr. Seaman read both x-rays as negative for the disease. Claimant's Exhibits 2, 3; Employer's Exhibits 3, 4. The ALJ found the readings of the September 26, 2018, February 12, 2021, and March 22, 2021 x-rays are in equipoise because an equal number of dually-qualified radiologists read each x-ray as positive and negative for pneumoconiosis. Decision and Order at 17.

The ALJ permissibly found the August 23, 2017 negative x-ray entitled to diminished weight because it is older than the other x-rays of record and the regulations recognize pneumoconiosis as a progressive and irreversible disease. 20 C.F.R. §718.201(c); *see also Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); *Labelle Processing Co. v. Swarrow*, 72 F.3d 308, 315 (3d Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 320 (6th Cir. 1993); Decision and Order at 17-18. She properly conducted both a qualitative and quantitative analysis of the conflicting x-ray readings, taking into consideration the physicians' radiological qualifications. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256 (4th Cir. 2016); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59 (6th Cir. 1995); Decision and Order at 17. Because the readings of the most recent x-rays are in equipoise, the ALJ rationally found the x-ray evidence insufficient to rebut the presumption of clinical pneumoconiosis. Decision and Order at 17.

Employer does not challenge the ALJ's finding that the medical opinions are insufficient to rebut the presumption of clinical pneumoconiosis. Decision and Order at 17-18. Thus we affirm this finding. *Skrack*, 6 BLR at 1-711. Based on the foregoing, we affirm her finding Employer did not disprove clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 17-18.

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),

[8] Dr. Ranavaya, a B reader only, read the August 23, 2017 x-ray for quality purposes only. Director's Exhibit 15.

718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relied on Dr. McSharry's opinion that Claimant has asthma unrelated to coal mine dust exposure. Director's Exhibit 17; Employer's Exhibits 1, 5; Claimant's Exhibit 7. The ALJ found Dr. McSharry's opinion inadequately explained and contrary to the regulations, and thus insufficient to disprove legal pneumoconiosis. Decision and Order 19-20.

Employer argues the ALJ applied an improper standard by requiring Dr. McSharry to "rule out" coal mine dust exposure as a causative factor for Claimant's asthma. Employer's Brief at 18-21. We disagree.

The ALJ correctly recognized Employer has the burden to establish Claimant does not have a chronic lung disease or impairment significantly related to, or substantially aggravated by, coal mine dust exposure. *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i); Decision and Order at 16. Moreover, she discredited Dr. McSharry's opinion because she found it is contrary to the regulations and inadequately reasoned, not because he failed to meet a heightened legal standard. *See W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018); *Energy West Mining Co. v. Estate of Blackburn,* 857 F.3d 817, 832-33 (10th Cir. 2017) (rejecting argument that ALJ improperly applied a rule out standard where he found medical opinions excluding legal pneumoconiosis not credible); *see also Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020); Decision and Order at 19-20.

In weighing Dr. McSharry's opinion, the ALJ accurately summarized the doctor's rationale for excluding legal pneumoconiosis. Decision and Order at 18-20. Dr. McSharry opined Claimant's symptoms, including shortness of breath, coughing with sputum production, and wheezing, are unrelated to coal mine dust exposure because Claimant "has not been exposed to coal [mine] dust for more than [thirty] years." Employer's Exhibit 1 at 1. He stated there "is no reasonable justification . . . that coal [mine] dust exposure more than [three] decades ago is causing [current] symptoms." *Id*. The ALJ permissibly discredited Dr. McSharry's rationale because the regulations provide that pneumoconiosis is "a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be both latent and progressive may be discredited); 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000) (coal mine dust exposure can cause COPD, which includes chronic bronchitis); Decision and Order at 19-20.

In addition, Dr. McSharry excluded a diagnosis of legal pneumoconiosis because coal mine dust exposure does not cause asthma. Director's Exhibit 17 at 3; Claimant's Exhibit 7 at 35-36. However, the ALJ noted that the Department of Labor (DOL), in the preamble to the 2001 revised regulations, recognized that COPD includes three disease processes characterized by airway dysfunction: chronic bronchitis, emphysema, and asthma. Decision and Order at 20, *citing* 65 Fed. Reg. at 79,939. Further, based on its review of the medical and scientific literature, the DOL concluded that the prevailing view of the medical community is that COPD may be caused by coal mine dust exposure. 65 Fed. Reg. at 79,939. The ALJ thus permissibly found Dr. McSharry did not adequately explain why Claimant's coal mine dust exposure did not substantially contribute to, or aggravate, his asthma. *See Smith*, 880 F.3d at 699; *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 673-74 n.4 (4th Cir. 2017); *Young*, 947 F.3d at 405-09; Decision and Order at 20.

Because the ALJ permissibly discredited Dr. McSharry's opinion, the only opinion supportive of Employer's burden on rebuttal, we affirm her finding that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 18-20. Employer's failure to establish Claimant has neither legal nor clinical pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ also found Employer failed to establish "no part of [Claimant's] 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)(ii); *see* Decision and Order at 21. As Employer does not separately challenge this finding, we affirm it. *See Skrack*, 6 BLR at 1-711. Because Employer did not rebut the Section 411(c)(4) presumption, we affirm the award of benefits.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge