**U.S. Department of Labor**

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

BRB No. 23-0096 BLA

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| JOHN A. McCULLOUGH | ) | |
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| Claimant-Respondent | ) | |
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| v. | ) | |
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| KEYSTONE COAL MINING CORPORATION | ) | |
| | ) | |
| and | ) | |
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| ROCHESTER & PITTSBURGH COAL COMPANY | ) | DATE ISSUED: 01/05/2024 |
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| Employer/Carrier-Petitioners | ) | |
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| DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR | ) | |
| | ) | |
| Party-in-Interest | ) | DECISION and ORDER |

Appeal of the Decision and Order on Remand Awarding Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick, & Long), Ebensburg, Pennsylvania, for Claimant.

Toni J. Williams (SutterWilliams, LLC), Pittsburgh, Pennsylvania, for Employer and its Carrier.

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

GRESH, Chief Administrative Appeals Judge, and BUZZARD, Administrative Appeals Judge:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order on Remand Awarding Benefits (2017-BLA-06163) 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 15, 2015,[1] and is before the Benefits Review Board for a second time.[2]

In his initial Decision and Order Awarding Benefits, the ALJ credited Claimant with over fifteen 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). He therefore determined Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[3] and established a change in an applicable condition of entitlement.[4] 20 C.F.R. §§718.305, 725.309. Further, he found Employer did not rebut the presumption and awarded benefits.

[1] This is Claimant's second claim for benefits. On July 2, 2003, the district director denied Claimant's prior claim because he did not establish any element of entitlement. Director's Exhibit 1.

[2] We incorporate the procedural history of this case and the Board's prior holdings, as set forth in *McCullough v. Keystone Coal Mining Corp.*, BRB No. 19-0035 BLA (Dec. 13, 2019) (unpub.).

[3] 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.

[4] When 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 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. §725.309(c)(3). Because the district director denied Claimant's prior claim for failure to establish any element of entitlement, he had to submit new evidence establishing at least one element to

In consideration of Employer's appeal, the Board affirmed the ALJ's findings that Claimant had more than fifteen years of qualifying coal mine employment and was totally disabled, and therefore invoked the Section 411(c)(4) presumption. *McCullough v. Keystone Coal Mining Corp.*, BRB No. 19-0035 BLA, slip op. at 2 n.4, 5 (Dec. 13, 2019) (unpub.). However, it vacated his determination that Employer failed to rebut the presumption of legal pneumoconiosis because it was unclear whether the ALJ considered the evidence under the correct rebuttal standard and because he did not fully consider Dr. Basheda's opinion. *Id.* at 7-9. Having vacated the ALJ's finding on legal pneumoconiosis, the Board also vacated his determination that Employer failed to establish rebuttal at 20 C.F.R. §718.305(d)(1)(ii). *Id.* at 9. Thus, the Board vacated the award of benefits and remanded the case for further consideration. *Id*.

On remand, the ALJ again found Employer did not rebut the Section 411(c)(4) presumption and, therefore, awarded benefits. On appeal, Employer argues the ALJ 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, did not file a response brief.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order on Remand 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).

**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,[6] or that "no part of

warrant a review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3; 20 C.F.R. §725.309(c); Director's Exhibit 1.

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

[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). "Clinical pneumoconiosis" consists of "those

[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.[7]

**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).

Employer relies on the opinions of Drs. Ranavaya and Basheda that Claimant does not have legal pneumoconiosis. Decision and Order on Remand at 5-11; Director's Exhibit 12; Employer's Exhibits 3, 6. Dr. Ranavaya conducted the Department of Labor's complete pulmonary evaluation of Claimant on December 17, 2015, and diagnosed chronic bronchitis/chronic obstructive pulmonary disease (COPD) based on "history and physical examination," and he opined the disease was unrelated to coal dust exposure. Director's Exhibit 12 at 4. Dr. Basheda diagnosed hypoxemic respiratory failure due to cirrhosis and opined that it was unrelated to coal mine dust exposure. Employer's Exhibits 3 at 19-20; 6 at 32. The ALJ found their opinions poorly reasoned and documented and, therefore, insufficient to satisfy Employer's burden of proof. Decision and Order on Remand at 5-6, 9-11.

Employer contends the ALJ failed to apply the "proper standard" and did not adequately consider all of the relevant evidence, including the entirety of Drs. Ranavaya's and Basheda's opinions, in accordance with the Administrative Procedure Act (APA).[8]

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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).

[7] The ALJ determined that Employer disproved clinical pneumoconiosis. Decision and Order on Remand at 4; *see McCullough*, BRB No. 19-0035 BLA, slip op. at 6 n.12.

[8] The APA provides that 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).

Employer's Brief at 11-23; *see* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). We disagree.

Initially we reject Employer's general assertion that the ALJ did not apply the "proper standard." Employer's Brief at 13. The ALJ accurately noted that in order to disprove legal pneumoconiosis, Employer must establish that Claimant's impairment is not "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order on Remand at 4; *see* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A). Moreover, as explained below, the ALJ discredited Drs. Ranavaya's and Basheda's opinions because he found they were not well-reasoned or documented, not because he applied the wrong legal standard. Decision and Order on Remand at 6-11.

While the ALJ acknowledged that Dr. Ranavaya examined Claimant, conducted objective testing, and reviewed Claimant's occupational history, the ALJ permissibly found the physician's opinion "poorly reasoned" because he provided "absolutely no support" for his conclusion that Claimant's chronic bronchitis/COPD is unrelated to his coal dust exposure or otherwise provide any explanation for its cause. *See Balsavage v. Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002) ("ALJ has broad discretion to determine the weight accorded each doctor's opinion") (citation omitted); *Mancia v. Director, OWCP*, 130 F.3d 579, 588-89 (3d Cir. 1997); *Lango v. Director, OWCP*, 104 F.3d 573, 578 (3d Cir. 1997) ("An assertion which does not explain how the doctor reached the opinion expressed or contain his reasoning does not qualify as a reasoned medical opinion.") (citations omitted); *see also Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc) (Board will not interfere with credibility determinations unless they are inherently incredible or patently unreasonable); Decision and Order on Remand at 5-6.

In considering the credibility of Dr. Basheda's opinion on legal pneumoconiosis, the ALJ accurately noted the physician excluded a diagnosis of legal pneumoconiosis, in part, because of the late onset of Claimant's respiratory symptoms after leaving the mines. Decision and Order on Remand at 9-10; Employer's Exhibit 6 at 25. The ALJ permissibly found Dr. Basheda's opinion less credible because it is inconsistent with the regulations which recognize pneumoconiosis as "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); *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 209-10 (3d Cir. 2002); Decision and Order on Remand at 10.

Dr. Basheda also opined Claimant does not have legal pneumoconiosis based in part on Claimant's "normal" chest x-ray and computed tomography scan. Decision and Order on Remand at 9; Employer's Exhibit 6 at 27. The doctor indicated that when coal mine dust exposure causes hypoxemia, it "occur[s] in the setting of either pulmonary function

abnormalities or radiographic abnormalities to define coal workers' pneumoconiosis." Decision and Order on Remand at 9; Employer's Exhibit 6 at 31-32. Contrary to Employer's contention, the ALJ permissibly found Dr. Basheda's opinion inconsistent with the regulations which do not require radiographic evidence of clinical pneumoconiosis to support a diagnosis of legal pneumoconiosis. *See* 20 C.F.R. §718.202(a)(4) ("A determination of the existence of pneumoconiosis may . . . be made if a physician, exercising sound medical judgment, notwithstanding a negative x-ray, finds that the miner suffers or suffered from pneumoconiosis . . . ."), (b); 65 Fed. Reg. 79,920, 79,945 (Dec. 20, 2000); *Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 256-57 (3d Cir. 2011); Decision and Order on Remand at 9-10.

Employer's arguments are 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 the ALJ sufficiently explained his credibility determinations in accordance with the APA, and his findings are supported by substantial evidence, we affirm his determination that Employer did not disprove legal pneumoconiosis.[9] *See* 20 C.F.R. §718.305(d)(1)(i)(A); *Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 354-56 (3d Cir. 1997) (duty of explanation under the APA is satisfied if reviewing court is able to determine the analytic process behind the result); *see also Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522 (6th Cir. 2002) (APA satisfied where the ALJ properly addressed the relevant evidence and provided a sufficient rationale for his findings); Decision and Order on Remand at 10-11. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i).

**Disability Causation**

The ALJ next considered whether Employer established "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); Decision and Order on Remand at 11-13. Contrary to Employer's contentions, the ALJ permissibly discounted the opinions of

[9] As the ALJ gave valid reasons for discrediting Drs. Ranavaya's and Basheda's opinions, we need not address Employer's additional challenges to the ALJ's evaluation of their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 13-23. Further, because Employer has the burden of proof and we have affirmed the ALJ's rejection of the medical experts opining Claimant does not have legal pneumoconiosis, we need not address Employer's contention that the ALJ erred by crediting Dr. Cohen's opinion that Claimant has the disease. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 16-18, 21-23.

Drs. Ranavaya and Basheda regarding the cause of Claimant's respiratory disability because they did not diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer failed to disprove the existence of the disease.[10] *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order on Remand at 12-13; Employer's Brief at 24-28. We therefore affirm the ALJ's finding that Employer failed to establish no part of Claimant's total respiratory disability is caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

[10] Drs. Ranavaya and Basheda did not address whether legal pneumoconiosis caused Claimant's total respiratory disability independent of their conclusions that he does not have the disease.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

I concur in the result only.

JUDITH S. BOGGS
Administrative Appeals Judge