U.S. Department of Labor

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

BRB No. 21-0160 BLA

DAVID S. WILLIAMS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MILBURN COLLIERY COMPANY	)	DATE ISSUED: 7/13/2022
	)	
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Claimant's Request for Modification of Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

Kathy L. Snyder (Jackson Kelly PLLC), Morgantown, West Virginia, for Employer.

Ann Marie Scarpino (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Christian P. Barber, Acting Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Theresa C. Timlin's Decision and Order Awarding Claimant's Request for Modification (2018-BLA-05939) rendered on

a subsequent claim filed on June 19, 2015,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[2]

The ALJ found Claimant established at least 19.44 years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). She therefore found Claimant established a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c),[3] and invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[4] 30 U.S.C. §921(c)(4) (2018). Furthermore, she found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant invoked the Section 411(c)(4) presumption by establishing 19.44 years of coal mine employment and total

[1] This is Claimant's fourth claim for benefits. Director's Exhibits 1-3. His most recent prior claim, filed on July 27, 2004, initially was denied by ALJ Michael P. Lesniak on August 26, 2008, because he failed to establish the existence of pneumoconiosis. Director's Exhibit 3. Claimant filed a request for modification and ALJ Thomas M. Burke finally denied the claim on April 28, 2010, again because Claimant failed to establish the existence of pneumoconiosis. *Id.*

[2] This case involves a request for modification of a district director's denial of benefits. Director's Exhibit 39. In cases involving a request for modification of a district director's decision, the ALJ proceeds de novo and "the modification finding is subsumed in the [ALJ's] findings on the issues of entitlement." *Kott v. Director, OWCP*, 17 BLR 1-9, 1-13 (1992); *Motichak v. BethEnergy Mines, Inc.*, 17 BLR 1-14, 1-19 (1992).

[3] 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)(1); *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 Claimant did not establish the existence of pneumoconiosis in his prior claim, he had to submit evidence establishing this element to obtain review of the merits of his current claim. *Id.*; Director's Exhibit 3.

[4] 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.

disability. It further contends the ALJ erred in finding it did not rebut the presumption. Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), responds, urging rejection of Employer's argument that collateral estoppel precludes the ALJ from reconsidering the issue of the length of Claimant's coal mine employment.

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.[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).

Invocation of the Section 411(c)(4) Presumption

Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must initially establish he had at least fifteen years of underground or substantially similar surface coal mine employment. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(b)(1)(ii). Claimant bears the burden of proof 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 on the length of coal mine employment based on a reasonable method of calculation that is supported by substantial evidence. *Muncy v. Elkay Mining Co*., 25 BLR 1-21, 1-27 (2011).

Employer initially contends collateral estoppel precludes the ALJ from revisiting the issue of the length of Claimant's coal mine employment, which was determined to be less than ten years in his prior claim. Employer's Brief at 6-8. The Director responds that collateral estoppel does not apply as the length of Claimant's coal mine employment was not a critical and necessary part of the denial of his prior claim. Director's Response at 1-2. We agree with the Director.

For collateral estoppel to apply, it must be established that: 1) the issue sought to be precluded is identical to one previously litigated; 2) the issue was actually determined in the prior proceeding; 3) the issue's determination was a critical and necessary part of the decision in the prior proceeding; 4) the prior judgment is final and valid; and 5) the party

[5] 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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989); Hearing Transcript at 45.

against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue in the previous forum. *Collins v. Pond Creek Mining Co*., 468 F.3d 213, 217 (4th Cir. 2006); *Hughes v. Clinchfield Coal Co*., 21 BLR 1-134, 1-137 (1999) (en banc).

In this case, while ALJ Lesniak found less than ten years of coal mine employment established when considering Claimant's most recent prior claim, he denied the claim because Claimant failed to establish the existence of pneumoconiosis, an essential element of entitlement. Director's Exhibit 3. ALJ Burke then denied Claimant's request for modification of that denial again because Claimant failed to establish the existence of pneumoconiosis, without reconsidering the length of Claimant's coal mine employment. *Id.* We therefore agree with the Director that ALJ Lesniak's finding of less than ten years of coal mine employment was not "a critical and necessary part" of the denial of Claimant's most recent prior claim, and it is therefore not binding in this subsequent claim. *Collins*, 468 F.3d at 217; *Jessee v. Director, OWCP*, 5 F.3d 723, 725 (4th Cir. 1993); Director's Brief at 2. Consequently, collateral estoppel does not preclude the ALJ's finding at least 19.44 years of underground coal mine employment established. *Collins*, 468 F.3d at 217; *Hughes*, 21 BLR at 1-137; Decision and Order at 14.

Employer alternatively argues the ALJ erred in finding the evidence establishes at least fifteen years of coal mine employment.[6] Employer's Brief at 9-16. We find no error based on the arguments raised.

The ALJ considered Claimant's testimony, employment history forms, Social Security Administration (SSA) earnings records, employment verification letters from his former employers, and affidavits from his former coworkers and their family members. Director's Exhibits 1-3, 9, 10, 13; Hearing Transcript at 18-29, 47-48. The ALJ found Claimant's SSA earnings records and his employment verification letters were the most reliable evidence of record because they were consistent with one another and came from independent sources. Decision and Order at 11. In addition, the ALJ found Claimant's testimony credible. *Id*. at 12.

The ALJ credited Claimant with ten full calendar years of coal mine employment from 1955 to 1964 based on his testimony that he continuously worked in coal mine employment part-time from 1953 to 1955 and full-time from 1956 to 1965 for various employers "under-the-table." Decision and Order at 12-13; Hearing Transcript at 18-21. She further credited Claimant with five full calendar years of coal mine employment from

[6] We affirm, as unchallenged on appeal, the ALJ's determination that all of Claimant's coal mine employment was underground. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 15.

1966 to 1968, in 1970, and in 1973 based on his SSA earnings records and employment verification letters which established his exact dates of employment. *Id*. Finally, applying the formula at 20 C.F.R. §725.101(a)(32)(iii), the ALJ credited Claimant with partial periods of coal mine employment totaling 4.44 years in 1965, 1969, 1971, 1972, and 1974 based on Claimant's SSA earnings records. *Id*. at 12-13.

Employer initially contends the ALJ erred in crediting Claimant with ten years of coal mine employment from 1954 to 1964. Employer's Brief at 11-16. We disagree.

Contrary to Employer's arguments, the ALJ did not fail to provide her method of calculation for determining the length of Claimant's pre-1965 coal mine employment. Employer's Brief at 14-16. Claimant testified he worked part-time as a miner beginning at age 13 in 1954 and then worked full-time as a miner from 1956 to 1974. Decision and Order at 12; Hearing Transcript at 18-19, 46. The ALJ noted Claimant testified he was paid under the table in cash until 1965.[7] *Id*.; Hearing Transcript at 21. She further found the Miner provided similar accounts at hearings associated with his prior claims and testified he worked continuously from age thirteen until 1974. Decision and Order at 12; Director's Exhibits 2, 3. In addition, the ALJ found affidavits from Claimant's coworkers and their relatives corroborated his account.[8] *Id*.; Director's Exhibit 9. Finally, she found Claimant's employment history form associated with his 1991 claim was the most detailed of record and corroborated his testimony.[9] *Id*.; Director's Exhibits 2.

[7] There is no merit to Employer's argument that the ALJ erred in failing to resolve inconsistencies in Claimant's testimony as to whether he was paid under the table until 1960 or until 1965. Employer's Brief at 13-14. Claimant testified he received his coal mine work-related pay in cash from 1956 until 1965, and he did not have a Social Security card until 1960 when he was required to get one when he worked for a brief time in Ohio "finishing concrete" for a restaurant. Hearing Transcript at 21. Employer has not explained how this testimony is inherently contradictory as Claimant never testified his coal mine employment was reported to the Social Security Administration as soon as he obtained a Social Security card.

[8] Claimant's coworkers Everette Elder and James Wolfe affirmed they worked with Claimant at various mines from 1956 to 1971. Director's Exhibit 46.

[9] There is no merit to Employer's argument that the ALJ erred in not resolving the conflict in Claimant's employment history forms and its suggestion that the employment history form from his first claim was the most probative of record as it was completed more closely in time to the end of his coal mine employment. Employer's Brief at 12-13. The ALJ noted the differing reported employment histories and permissibly found the 1991

It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 543 (4th Cir. 1988). Moreover, while SSA earnings records provide important information regarding the work history of a miner, evidence of additional employment, such as a miner's testimony, is also relevant and probative. *See Hutnick v. Director, OWCP*, 7 BLR1-326, 1-329 (1984); *see* 20 C.F.R. §725.101(a)(32)(ii) ("dates and length of employment may be established by any credible evidence including . . . sworn testimony"). In this case, while the ALJ found Claimant's SSA earnings records and employment verification letters to be the most reliable evidence of his coal mine employment, she also permissibly credited Claimant's testimony as to his coal mine employment, along with corroborating affidavits.[10] *See* 20 C.F.R. § 725.101(a)(32)(ii); *see Tackett v. Cargo Mining Co*., 12 BLR 1-11, 1-14 (1988) (crediting miner's uncorroborated testimony that employer characterized as "hazy and contradictory"); *see also Bizarri v. Consolidation Coal Co.*, 7 BLR 1-343, 1-344-45 (1984) (ALJ "may rely on lay testimony regarding a miner's coal mine employment, especially if, as here, the testimony is not contradicted by any documentation of record"); Decision and Order at 11, 12-13. As Employer raises no other challenges to the ALJ's calculations, we affirm her determination to credit Claimant with ten years of coal mine employment from 1955 through 1964. Decision and Order at 12-13.

We further affirm, as unchallenged on appeal, the ALJ's determination that Clamant established an additional five years of coal mine employment in 1966, 1967, 1968, 1970, and 1973. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and

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form to be the most accurate as it provided the most detailed description of Claimant's coal mine employment. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 543 (4th Cir. 1988); Decision and Order at 11; Director's Exhibit 2.

[10] Employer contends the ALJ erred in not addressing conflicting affidavits from the wife of Claimant's coworker William Wolfe about the years he worked with Claimant. Employer's Brief at 15; Director's Exhibit 9. However, as the ALJ did not specifically rely on those affidavits and the record contains two other affidavits from Claimant's actual coworkers, stating they worked with him from 1956 to 1971, Employer has failed to explain how the ALJ's consideration of these affidavits made any difference in the outcome of the case. *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); Director's Exhibit 9.

Order at 12. Consequently, we affirm the ALJ's determination that Claimant established at least fifteen years of coal mine employment.[11] Decision and Order at 12.

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). 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 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). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2). The ALJ found Claimant established total disability based on the pulmonary function study evidence, medical opinion evidence, and the evidence as a whole.[12] 20 C.F.R. §718.204(b)(2)(i), (iv); Decision and Order at 17, 26.

We affirm, as unchallenged on appeal, the ALJ's determination that the pulmonary function study evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(i). *Skrack.*, 6 BLR at 1-711; Decision and Order at 17.

Prior to considering whether the medical opinion evidence establishes total disability, the ALJ determined the exertional requirements of Claimant's usual coal mine employment. 20 C.F.R. §718.204(b)(1)(i); Decision and Order at 15-16. Based on Claimant's testimony that his last coal mine job required him to perform several different roles, the ALJ could not determine a specific job title for Claimant's last coal mine work. Decision and Order at 15-16. However, she determined the record "clearly demonstrates that Claimant's work involved regularly lifting and carrying in excess of fifty pounds and crawling for hours each day." *Id*. at 16. Consequently, the ALJ found Claimant's usual coal mine employment required him to perform heavy manual labor. *Id*.

[11] Because Claimant established at least fifteen years of coal mine employment, we need not address Employer's argument that the ALJ erred in crediting Claimant with an additional 4.44 years of partial coal mine employment in 1965, 1969, 1971, 1972, and 1974. *Larioni*, 6 BLR at 1-1278; Employer's Brief at 9-10.

[12] The ALJ found the evidence did not establish total disability at 20 C.F.R. §718.204(b)(2)(ii), (iii). Decision and Order at 16 n.13, 18.

Employer argues the ALJ erred by failing to determine the specific job title for Claimant's usual coal mine employment work and therefore erred in finding his last coal mine employment involved "heavy" exertional work. Employer's Brief at 16-17. We disagree.

Claimant testified he worked "every shift that they had" at his last coal mine job, and he "switched around . . . on every job that come up." Hearing Transcript at 42. The ALJ found Claimant consistently described his last coal mine job as requiring him to perform a variety of job duties including loading coal and supplies, operating and repairing mining equipment, and rock dusting. Decision and Order at 15-16; Hearing Transcript at 42; Director's Exhibits 2, 3, 17, 23. The ALJ further noted that to complete these duties, Claimant had to crawl for eight to ten hours per day, lift and carry 150 pounds, and maneuver barrels weighing several hundred pounds. *Id*. The ALJ reasonably found that, irrespective of his specific job title, Claimant's uncontradicted testimony established the physical requirements of his job required heavy manual labor. *Heavilin v. Consolidation Coal Co*., 6 BLR 1-1209, 1-1213 (1984) (ALJ is responsible for determining the nature of Claimant's usual coal mine work and its physical requirements); Decision and Order at 15-16; Hearing Transcript at 42; Director's Exhibits 2; 3; 7; 17; 23. As substantial evidence supports the ALJ's determination, it is affirmed. *See McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Cregger v. U.S. Steel Corp*., 6 BLR 1-1219 (1984); Decision and Order at 15-16; Director's Exhibits 1-3, 7, 47.

The ALJ also considered the medical opinions of Drs. Forehand, Zaldivar, and Spagnolo. Decision and Order at 20-26. Drs. Forehand opined Claimant is totally disabled from a pulmonary impairment. Director's Exhibits 18, 47. Dr. Zaldivar opined Claimant would not be able to perform the heavy manual labor required by his last coal mine work. Employer's Exhibit 23; Employer's Exhibit 8. While Dr. Spagnolo initially opined Claimant was not totally disabled, the physician subsequently opined Claimant could not perform heavy manual labor or, therefore, his usual coal mine work. Employer's Exhibits 4, 7. Because all of the physicians agreed Claimant could not perform his usual coal mine work, which required heavy manual labor, the ALJ found the medical opinion evidence establishes total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 26.

To the extent Employer believes the ALJ's errors in failing to determine Claimant's specific job title affected her weighing of the medical opinion evidence, we reject this argument. Employer's Brief at 16-17. Specifically, as Claimant established his usual coal mine employment required heavy manual labor and all the experts agreed he was totally disabled from performing heavy labor, the ALJ reasonably determined Claimant is totally disabled from performing his usual coal mine employment. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997); *Eagle v. Armco Inc.*, 943 F.2d 509, 512 n.4 (4th Cir. 1991); Decision and Order at 26. As Employer raises no other challenges to the ALJ's

weighing of the medical opinion evidence, we affirm her determination that the medical opinion evidence establishes total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 26.

We therefore affirm the ALJ's determinations that the evidence as a whole establishes total disability, 20 C.F.R. §718.204(b)(2), and Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); Decision and Order at 26-27. Claimant therefore established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c).[13]

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,[14] 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 did not establish rebuttal by either method. Decision and Order at 35-36.[15]

[13] Employer contends the ALJ erred in failing to make a threshold finding regarding whether an applicable condition of entitlement has changed since the denial of Claimant's most recent prior claim. Employer's Brief at 5. However, the ALJ appropriately considered the newly submitted evidence and found Claimant established total disability and invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis, and therefore established an applicable element of entitlement "upon which the primary denial was based." 20 C.F.R. §725.309(c); Decision and Order at 16-17; Decision and Order at 3. Claimant has therefore established a change in an applicable condition of entitlement and was entitled to a review of the merits of his current claim. *White*, 23 BLR at 1-13.

[14] "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconiosis, *i.e.*, the condition 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 refers to "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

[15] The ALJ found that the x-ray evidence supports a finding that Claimant does not have clinical pneumoconiosis. Decision and Order at 30.

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).

The ALJ considered the opinions of Drs. Zaldivar, Spagnolo, and Forehand. Decision and Order at 31-33. Dr. Forehand opined that Claimant has legal pneumoconiosis in the form of obstructive lung disease due to cigarette smoking and coal mine dust exposure. Director's Exhibits 17, 47. Dr. Zaldivar opined Claimant does not have legal pneumoconiosis but instead has chronic obstructive pulmonary disease (COPD) due to smoking and asthma unrelated to his coal mine dust exposure. Director's Exhibit 23 at 10; Employer's Exhibit 8 at 26. Similarly, Dr. Spagnolo opined Claimant does not have legal pneumoconiosis, but instead has asthma unrelated to coal mine dust exposure. Employer's Exhibits 4, 7. The ALJ found Dr. Forehand's opinion supported by medical evidence and sufficiently explained, and accorded it "normal weight." Decision and Order at 32. Conversely, she found the opinions of Drs. Zaldivar and Spagnolo not well-reasoned or documented and accorded them little weight. *Id*. at 31-32. She therefore found Employer did not rebut the existence of legal pneumoconiosis. *Id*. at 32.

Employer contends the ALJ erred in her weighing of the medical opinion evidence. Employer's Brief at 18-29. We disagree.

Initially we reject Employer's argument that the ALJ applied the wrong standard when addressing rebuttal. Employer's Brief at 18-19. The ALJ properly required Employer to establish Claimant does not have a "chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 27, *citing* 20 C.F.R. §718.204(b). The ALJ did not require Employer to rule out coal mine dust exposure as a cause of Claimant's asthma, Employer's Brief at 18, but, as discussed below, permissibly found neither Drs. Spagnolo or Zaldivar adequately explained why they concluded coal mine dust exposure did not contribute to, or aggravate, his asthma. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); 20 C.F.R. §718.201(b); Decision and Order at 31-32.

The ALJ accurately noted Dr. Zaldivar opined Claimant's asthma did not arise out of his coal mine employment based in part on the lack of radiographic evidence of clinical pneumoconiosis. Decision and Order at 31; Director's Exhibit 23. Contrary to Employer's argument, the ALJ permissibly found that to the extent Dr. Zaldivar's opinion relied on the

absence of clinical pneumoconiosis on x-ray to find Claimant does not have legal pneumoconioses, his opinion is inconsistent with the regulations that provide legal pneumoconiosis may be present even in the absence of clinical pneumoconiosis. *See* 20 C.F.R. §718.202(a)(4), (b); *see also* 65 Fed. Reg. 79,920, 79,945 (Dec. 20, 2000); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012); Decision and Order at 31; Employer's Brief at 20. Moreover, the ALJ permissibly discredited Dr. Zaldivar's opinion because he did not address why Claimant's years of coal mine dust exposure did not also contribute to or aggravate his asthma. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Looney*, 678 F.3d at 313-14; 65 Fed. Reg. at 79,940; Decision and Order at 31; Employer's Brief at 20-21; Director's Exhibit 23; Employer's Exhibit 8.[16] As the ALJ also accurately noted, Dr. Zaldivar excluded coal mine dust exposure as a cause of Claimant's asthma because it developed and progressed after he left the mines. Decision and Order at 31-32; Director's Exhibit 23. The ALJ permissibly discredited Dr. Zaldivar's opinion on this basis because it is inconsistent with the regulations' recognition that pneumoconiosis is a latent and progressive disease that can manifest after exposure to coal dust ends. 20 C.F.R. §718.201(c); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015); *Island Creek Coal Co. v. Young*, 947 F.3d 399, 408 (6th Cir. 2020); Decision and Order at 31-32. Thus, because it is supported by substantial evidence, we affirm the ALJ's determination that Dr. Zaldivar's opinion is not well reasoned or documented. Decision and Order at 31-32.

The ALJ further accurately noted Dr. Spagnolo opined Claimant's asthma did not arise out of his coal mine employment based in part on the severe reduction in his FEV1 on pulmonary function testing. Decision and Order at 32; Employer's Exhibit 7 at 29. 20 C.F.R. §718.201(a)(2); *see Looney*, 678 F.3d at 313; Decision and Order at 32. The ALJ also permissibly determined Dr. Spagnolo did not adequately explain why the existence of an impairment too severe to have been caused solely by his coal mine dust exposure necessarily excluded Claimant's years of coal mine dust exposure as contributing to his asthma. *See Owens*, 724 F.3d at 558; *Looney*, 678 F.3d at 313-14; *Clark*, 12 BLR at 1-155; Decision and Order at 32, *citing* 65 Fed. Reg. at 79,939, 79,943. Thus, we affirm the ALJ's discrediting of Dr. Spagnolo's opinion as supported by substantial evidence.

[16] Because legal pneumoconiosis encompasses impairments significantly related to, or substantially aggravated by, coal dust exposure, under the presumption it is assumed, subject to rebuttal, that such a relationship or aggravation exists. 20 C.F.R. §718.201(a)(2).

Because the ALJ permissibly discredited the opinions of Drs. Zaldivar and Spagnolo,[17] the only opinions supportive of Employer's position,[18] we affirm the ALJ's determination that the medical opinion evidence does not disprove the existence of legal pneumoconiosis. Decision and Order at 32. We therefore affirm her determination that Employer did not rebut the presumption that Claimant has legal pneumoconiosis,[19] thus precluding a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i); Decision and Order at 36.

Disability Causation

The ALJ next considered whether Employer established "no part of the miner'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 at 36-37. The ALJ permissibly found the opinions of Drs. Zaldivar and Spagnolo unpersuasive on the cause of Claimant's respiratory disability because they did not diagnose legal pneumoconiosis, contrary to the ALJ's determination that the medical opinion evidence does not disprove the existence of legal pneumoconiosis, and inseparably linked their disability causation analyses to their pneumoconiosis analyses.[20] *See Epling*, 783 F.3d at 505 (physician who fails to diagnose pneumoconiosis, contrary to the ALJ's finding, cannot be credited on rebuttal of disability causation "absent specific and persuasive

[17] Because the ALJ provided valid reasons for discrediting the opinions of Drs. Zaldivar and Spagnolo, we need not address Employer's additional arguments regarding the weight the ALJ assigned them. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 19-24.

[18] Because the ALJ gave valid reasons for discrediting the only opinions supportive of Employer's burden, we need not address Employer's challenges to the crediting of Dr. Forehand's opinion that Claimant has legal pneumoconiosis. *Kozele*, 6 BLR at 1-382 n.4; Employer's Brief at 25-26.

[19] Employer contends the ALJ erred in finding two x-rays contained in Claimant's treatment records that were read as positive for clinical pneumoconiosis support a diagnosis of legal pneumoconiosis. Employer's Brief at 26-27; Decision and Order at 34-35. However, any error in this regard is harmless, as the ALJ found Claimant's treatment records were insufficiently reasoned and documented to establish legal pneumoconiosis, and determined they do not assist Employer in rebutting the presumption of legal pneumoconiosis. *Larioni*, 6 BLR at 1-1278; Decision and Order at 34-35.

[20] The physicians did not offer any explanation other than the absence of pneumoconiosis. Director's Exhibit 23; Employer's Exhibits 4,7, 8.

reasons"); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order at 36-37; Director's Exhibit 23; Employer's Exhibits 4, 7 at 33. We therefore affirm the ALJ's finding that Employer failed to establish that no part of Claimant's respiratory disability was due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). Consequently, the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption is affirmed.

Accordingly, we affirm the ALJ's Decision and Order Awarding Claimant's Request for Modification.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge