U.S. Department of Labor

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

BRB No. 22-0053 BLA

KATHRYN KNIGHT (Widow of HERMAN D. KNIGHT) Claimant-Respondent v. PEABODY COAL COMPANY, LLC and PEABODY ENERGY CORPORATION Employer/Carrier- Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 7/26/2023 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Jerry R. DeMaio, Administrative Law Judge, United States Department of Labor.

Austin P. Vowels (Vowels Law PLC), Henderson, Kentucky, for Claimant.

Tighe A. Estes (Reminger Co., L.P.A.), Lexington, Kentucky, for Employer and its Carrier.

Jeffrey S. Goldberg (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals),

Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: BUZZARD, ROLFE, and JONES, Administrative Appeals Judges.

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Jerry R. DeMaio's Decision and Order Awarding Benefits (2019-BLA-05563) 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 survivor's claim filed on April 10, 2017.

The ALJ initially found Peabody Coal Company (Peabody Coal), is the responsible operator and Peabody Energy Corporation (Peabody Energy), is the responsible carrier. He credited the Miner with 11.44 years of coal mine employment; therefore, he found Claimant[1] could not invoke the presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305. Considering whether Claimant could establish entitlement under 20 C.F.R. Part 718, the ALJ determined Claimant established the Miner had legal pneumoconiosis and the Miner's death was due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.203(b), 718.205(c). He therefore awarded benefits.

On appeal, Employer contends the ALJ erred in finding Peabody Energy is the liable carrier. It further contends the ALJ erred in evaluating the Miner's length of coal mine employment and smoking history and in finding legal pneumoconiosis and death due to pneumoconiosis were established. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, urging rejection of Employer's liability arguments.

[1] Claimant is the widow of the Miner, who died on October 28, 2012. Director's Exhibit 13. The Miner did not establish entitlement to benefits during his lifetime. Thus, Claimant is not entitled to benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), which provides that a survivor of a miner determined to be eligible to receive benefits at the time of his death is automatically entitled to receive survivor's benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[2] Section 411(c)(4) provides a rebuttable presumption that a miner's death was 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 at the time of his death. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

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.[3] 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).

Responsible Insurance Carrier

Employer does not challenge the ALJ's findings that Peabody Coal is the correct responsible operator and it was self-insured by Peabody Energy on the last day Peabody Coal employed the Miner; thus we affirm these findings. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 711 (1983); 20 C.F.R. §§725.494(e), 725.495, 726.203(a); Decision and Order at 26. Rather, it alleges Patriot Coal Corporation (Patriot) should have been named the responsible carrier and thus liability for the claim should transfer to the Black Lung Disability Trust Fund (the Trust Fund).

Patriot was initially another Peabody Energy subsidiary. Director's Exhibit 30. In 2007, after the Miner ceased his coal mine employment with Peabody Coal, Peabody Energy transferred a number of its other subsidiaries, including Peabody Coal, to Patriot. *Id*. That same year, Patriot was spun off as an independent company. *Id*. On March 4, 2011, Patriot was authorized to insure itself and its subsidiaries, retroactive to 1973. *Id*. Although Patriot's self-insurance authorization made it retroactively liable for the claims of miners who worked for Peabody Coal, Patriot later went bankrupt and can no longer provide for those benefits. *See* Director's Brief at 2; Decision and Order at 27. Neither Patriot's self-insurance authorization nor any other arrangement, however, relieved Peabody Energy of liability for paying benefits to miners last employed by Peabody Coal when Peabody Energy owned and provided self-insurance to that company, as the ALJ held. Decision and Order at 26-29.

Employer raises several arguments to support its contention that Peabody Energy was improperly designated the self-insured carrier in this claim and thus the Trust Fund, not Peabody Energy, is responsible for the payment of benefits following Patriot's bankruptcy: (1) the district director is an inferior officer not properly appointed under the Appointments Clause;[4] (2) before transferring liability to Peabody Energy, the Department

[3] We will apply the law of the United States Court of Appeals for the Sixth Circuit as the Miner performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 11; Claimant's Exhibit 2.

[4] Employer raised this issue for the first time in its closing brief to the ALJ. Employer's Closing Brief at 34.

of Labor (DOL) must establish it exhausted any available funds from the security bond Patriot gave to secure its self-insurance status; (3) the DOL released Peabody Energy from liability; (4) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; (5) the Director is equitably estopped from imposing liability on Peabody Energy; (6) the regulatory scheme whereby the district director determines the liability of a responsible carrier and its operator, while also administering the Trust Fund, creates a conflict of interest that violates its due process right to a fair hearing; (7) the DOL violated its due process rights by not maintaining adequate records with respect to Patriot's bond and failing to monitor Patriot's financial health; (8) 20 C.F.R. §725.456(b)(1) violates the Longshore and Harbor Workers' Compensation Act and the Administrative Procedure Act (APA); and (9) Black Lung Benefits Act (BLBA) Bulletin No. 16-01[5] contradicts liability rules under the Act, was issued without notice and comment, and violates the APA.[6] It maintains that a separation agreement – a private contract between Peabody Energy and Patriot – released it from liability and the DOL endorsed this shift of complete liability when it authorized Patriot to self-insure. Employer's Brief at 16-62.

The Board has previously considered and rejected these arguments in *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 3-19 (Oct. 25, 2022); *Howard v. Apogee Coal Co.*, 25 BLR 1-301, 1-312-18 (2022); and *Graham v. E. Assoc. Coal Co.*, 25 BLR 289, 1-295-99 (2022) under the same dispositive facts. For the reasons set forth in *Bailey*, *Howard*, and *Graham*, we reject Employer's arguments. Thus, we affirm the ALJ's determination that Peabody Coal and Peabody Energy are the responsible operator and carrier, respectively, and are liable for this claim.

Entitlement Under 20 C.F.R. Part 718

Without the benefit of the Section 411(c)(3) or Section 411(c)(4) statutory presumptions,[7] Claimant must establish the Miner had pneumoconiosis arising out of coal

[5] The Director of the Division of Coal Mine Workers' Compensation issued BLBA Bulletin No. 16-01 on November 12, 2015, to "provide guidance for district office staff in adjudicating claims" affected by Patriot's bankruptcy.

[6] Employer also states it wants to "preserve" its argument that its due process rights were violated because the ALJ "cut off" discovery "prematurely." Employer's Brief at 55-60 (unpaginated). It neither asks the Board to address this issue nor sets forth any argument that would permit our review. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); 20 C.F.R. §802.211(b).

[7] The ALJ found there was no evidence of complicated pneumoconiosis. Decision and Order at 17. Thus, Claimant is unable to invoke the irrebuttable presumption of total

mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). Death is considered due to pneumoconiosis if pneumoconiosis, or its complications, hastens the miner's death. 20 C.F.R. §718.205(b)(6); *see Conley v. Nat'l Mines Corp.*, 595 F.3d 297, 303-04 (6th Cir. 2010). The United States Court of Appeals for the Sixth Circuit has explained that pneumoconiosis may be found to have hastened a miner's death if it does so "through a specifically defined process that reduces the miner's life by an estimable time." *Eastover Mining Co. v. Williams*, 338 F.3d 501, 518 (6th Cir. 2003). A physician who opines that pneumoconiosis hastened death through a "specifically defined process" must explain how and why it did so. *Conley*, 595 F.3d at 303-04.

The ALJ awarded benefits because he found legal pneumoconiosis hastened the Miner's death. Decision and Order at 20, 23. We reject Employer's contention the ALJ erred.

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must establish the Miner had a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(2), (b). The Sixth Circuit has held that a claimant can satisfy this burden by showing that the disease was caused "in part" by coal mine dust exposure. *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 598-99, 600 (6th Cir. 2014); *see also Island Creek Coal Co. v. Young*, 947 F.3d 399, 407 (6th Cir. 2020) ("[I]n [*Groves*] we defined 'in part' to mean 'more than a *de minimis* contribution' and instead 'a contributing cause of some discernible consequence.'").

The ALJ considered the medical opinions of Drs. Krefft, Baker, Broudy, and Rosenberg. Decision and Order at 8-12, 18-23. Dr. Krefft diagnosed chronic obstructive pulmonary disease (COPD) in the form of severe emphysema due to both coal mine dust exposure and smoking. Claimant's Exhibit 8. Dr. Baker initially diagnosed legal pneumoconiosis in the form of severe COPD, chronic bronchitis, and resting hypoxemia due to smoking and coal mine dust exposure. Director's Exhibit 16 at 464. In a supplemental report, he opined the Miner's conditions "could be" caused by coal mine dust exposure based on a sixteen-year coal mine employment history, but opined coal dust

---

disability due to pneumoconiosis and Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304. Claimant is also precluded from invoking the rebuttable presumption of total disability or death due to pneumoconiosis at Section 411(c)(4) because the ALJ found less than fifteen years of coal mine employment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305(b)(1)(iii); Decision and Order at 23.

exposure would not have been contributory to the Miner's respiratory conditions if he had only five years of coal mine employment. Director's Exhibit 16 at 462. Dr. Broudy opined the Miner had obstructive airway disease due to smoking and unrelated to coal mine dust exposure. Director's Exhibit 17; Employer's Exhibit 2 at 9. Dr. Rosenberg also opined the Miner did not have legal pneumoconiosis but had COPD due solely to smoking. Employer's Exhibits 4, 5.

The ALJ found Dr. Krefft's opinion, diagnosing legal pneumoconiosis, reasoned and documented and entitled to "significant weight" because it was based on the Miner's symptoms, objective testing, and accurate smoking and employment histories. Decision and Order at 20-21. He found Drs. Broudy's and Rosenberg's opinions not well-reasoned or documented as they relied on a misunderstanding of the Miner's coal mine dust exposure, were inadequately explained, and were contrary to the regulations. *Id.* at 21-23. The ALJ also gave Dr. Baker's opinion little weight as equivocal and unclear based on the ALJ's findings regarding the Miner's smoking and employment histories.[8] *Id.* at 21. Weighing the evidence together, he found Claimant established the Miner had legal pneumoconiosis based on Dr. Krefft's opinion. *Id.* at 23.

Employer first challenges the ALJ's findings regarding the length of the Miner's coal mine employment and smoking history, both of which are relevant to the ALJ's analysis of legal pneumoconiosis.

Length of Coal Mine Employment

Claimant bears the burden to establish the number of years the Miner 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); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

In determining the length of the Miner's coal mine employment, the ALJ considered the Miner's testimony admitted from his miner's claim, Claimant's testimony, and the Miner's Social Security Administration earnings records. Decision and Order at 3-4, 16; Director's Exhibit 11; Claimant's Exhibit 2. For the Miner's pre-1978 coal mine employment, the ALJ credited him with a quarter of a year of coal mine employment for each quarter in which he earned at least $50.00 from coal mine operators. *See Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984); *see also Shepherd v. Incoal, Inc.*, 915 F.3d 392, 405-06 (6th Cir. 2019); Decision and Order at 16; Director's Exhibit 11. Using this

[8] The parties do not challenge the ALJ's findings regarding Dr. Baker's opinion.

method, the ALJ credited the Miner with 27 quarters (6.75 years) of coal mine employment from 1969 through 1977.[9] Decision and Order at 16. For the remaining years of coal mine employment, the ALJ compared the Miner's earnings to the average yearly earnings of coal miners as reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine Procedure Manual*[10] to find 4.69 years of coal mine employment with Employer in the years 1978 through 1982. *Id.* In total, the ALJ credited the Miner with a 11.44 years of coal mine employment. *Id.*

Employer generally challenges the ALJ's calculation, providing its own alternate calculation totaling 9.3 years of employment. Employer's Brief at 11. But it has not argued how the ALJ's method of calculation is unreasonable. Thus we affirm the ALJ's calculation of the Miner's years of coal mine employment.[11] *Shepherd*, 915 F.3d at 401-03; *Muncy*, 25 BLR at 1-27.

Employer also argues that "given Claimant's lack of knowledge on the issue," the ALJ had no factual basis to find the Miner's employment with Frank L. White (White Brothers), United Dock Service, Inc. (United Dock), and Tennessee Virginia Leasing, Inc. (Tennessee Virginia) constitutes coal mine employment. Employer's Brief at 11. Subtracting this employment from its calculations, it alleges Claimant can only prove 5.43 years of coal mine employment. *Id.* We disagree.

Employer ignores the Miner's testimony from his miner's claim in which he explained he transported unprocessed coal as a truck driver for White Brothers, United Dock, and Tennessee Virginia.[12] Decision and Order at 16; Claimant's Exhibit 2 at 19-21.

---

[9] Claimant was employed by Frank L. White for two quarters in 1969, United Dock Service, Inc. from 1970 through 1976 (twenty-two quarters), and Heritage Coal (Peabody Coal) for three quarters in 1977.

[10] Exhibit 610, titled *Average Earnings of Employees in Coal Mining*, sets forth the average "daily earnings" of miners and the "yearly earnings (125 days)" by year for employees in coal mining, as reported by the Bureau of Labor Statistics.

[11] Employer argues that the Miner should not be credited with an entire year of employment for 1977 as the Social Security Administration earnings records reflect earnings in only three quarters of that year. Employer's Brief at 11. The ALJ did not credit the Miner with a full calendar year of coal mine employment in 1977. Decision and Order at 16.

[12] The Miner testified the raw coal was loaded into his truck directly at the pit or mine site and he breathed in coal dust "every day." Claimant's Exhibit 2 at 19-21, 28.

Citing the Miner's testimony, the ALJ specifically found such employment qualifies as the work of a coal miner. *Navistar, Inc. v. Forester*, 767 F.3d 638, 641 (6th Cir. 2014) (to satisfy the situs-function test, a miner must have worked in or around a coal mine or coal preparation facility and must have done work necessary to the extraction and preparation of coal); *Norfolk v. W. Ry v. Director*, 5 F.3d 777, 780 (4th Cir. 1993); Decision and Order at 16. Moreover, assessing the credibility of witness testimony is within the discretion of the ALJ as the factfinder. *See Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988). Because the Miner's testimony was uncontradicted, and Employer has not challenged the credibility of his testimony or identified any error in the ALJ's findings, we affirm the ALJ's permissible reliance on the Miner's testimony regarding his employment with these operators to find it constituted coal mine employment. *See Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989) (it is within the discretion of the ALJ to assess the credibility of the evidence and witnesses); *Skrack*, 6 BLR at 1-711.

Thus, we affirm his finding that Claimant established 11.44 years of coal mine employment. *See* 20 C.F.R. §725.101(a)(32); *Shepherd*, 915 F.3d at 401-03.

Smoking History

The ALJ considered the Miner's testimony, treatment records, and medical reports and the parties' stipulations[13] to determine the extent of the Miner's smoking history. Decision and Order at 14-15; 2002 Decision and Order at 3. He determined the Miner smoked twenty pack-years, based on the Miner's testimony he smoked a pack per day from 1970 through 1986, and then reduced the amount of smoking to approximately a quarter pack per day in 1986 until 2002.[14] Decision and Order 14-15.

Employer contends the ALJ erred in finding only twenty pack-years, arguing the evidence supports a thirty-three pack-year smoking history. Employer's Brief at 9-10; Director's Exhibit 16. It points to Dr. Baker's reporting of a twenty-nine pack-year smoking history and treatment records indicating the Miner smoked through 2012. *Id.* We disagree.

The length and extent of the Miner's smoking history is a factual determination for the ALJ. *See Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988); *Maypray v. Island*

[13] Employer stipulated to the Miner having "at least" a fifteen pack-year smoking history. Decision and Order at 14; Joint Pre-hearing Report.

[14] The ALJ noted the treatment records tend to support the Miner's testimony that he reduced the number of cigarettes he smoked after his myocardial infarction, as they indicated he smoked at least a half a pack per day in 2002. Decision and Order 14.

Creek Coal Co., 7 BLR 1-683, 1-686 (1985). Contrary to Employer's argument, the ALJ was not required to credit the smoking history reported by Dr. Baker. Further, the ALJ specifically addressed Dr. Baker's report of twenty-nine pack-years and found it unsupported by the record, as it was based upon the assumption that the Miner continued to smoke one pack daily after his 1986 heart attack until 1998, which is contrary to the Miner's credited testimony. Decision and Order at 15. The ALJ also acknowledged some notations of "occasional" smoking after 2002 but found the evidence insufficient to quantify any additional amounts. *Id.* at 14-15. Employer does not specifically address these findings and fails to explain how they are in error. As it is supported by substantial evidence, we affirm the ALJ's finding that Claimant smoked for twenty pack-years. *See Martin v. Ligon Preparation Co*., 400 F.3d 302, 305 (6th Cir. 2005); *Maypray*, 7 BLR at 1-686; Decision and Order at 14.

Employer's contentions of error regarding the ALJ's credibility determinations are based primarily on its own calculations of the Miner's employment and smoking histories, which we have rejected. Employer's Brief at 14. Of note, Employer challenges Dr. Krefft's understanding of the Miner's smoking history; however, she relied on twenty pack-years, the same history found by the ALJ and affirmed herein. Claimant's Exhibit 8 at 5. The ALJ also noted Dr. Krefft's understanding of a coal mine employment history of twelve to thirteen years, as well as her explanation that her opinion would not change if the employment history was ten years.[15] Decision and Order at 21; Claimant's Exhibit 8 at 13-14. The ALJ permissibly determined any alleged discrepancy in Dr. Krefft's assumptions regarding the Miner's coal mine employment history did not undermine the reliability of her opinion. *See Huscoal, Inc., v. Dir., OWCP* [*Clemons*], 48 F.4th 480, 491 (6th Cir. 2022); *Sellards v. Director, OWCP*, 17 BLR 1-77, 1-80-81 (1993); Decision and Order at 21. Further, other than its rejected argument that the ALJ miscalculated the Miner's length of coal mine employment, Employer does not challenge the ALJ's finding that Dr. Rosenberg's opinion is undermined based on an underestimated employment history and

[15] Based on Dr. Krefft's indication that a higher smoking history and an employment history of ten rather than twelve to thirteen years would not change her opinion, Employer argues her opinion should be discounted because she exhibited bias as a "change in the underlying data would not affect [her] opinion." Employer's Brief at 14. Dr. Krefft's assessment that some variations in the length of the Miner's smoking history and coal mine employment would not change her opinion is insufficient to show bias. *See Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-35-36 (1991) (en banc) (it is error to discredit, as biased, a medical report prepared for litigation absent a specific basis for finding the report to be unreliable).

"inadequately account[ing] for [the] Miner's dust exposure as a truck driver." *See Clemons*, 48 F.4th at 491; Decision and Order at 22.

Employer also contends that the ALJ mischaracterized Dr. Broudy's opinion as to length of coal mine employment. Employer's Brief at 12. It argues Dr. Broudy did not rely solely on a five-year employment history but indicated he would also opine that the Miner's coal mine employment did not contribute to his COPD, even assuming an additional five to seven years of employment hauling coal, consistent with the ALJ's findings regarding length of coal mine employment. *Id.* at 12-13. However, as Claimant argues, the ALJ did not find Dr. Broudy's opinion undermined based solely on his reliance of a five-year employment history; the ALJ also considered the doctor's assumption that the Miner's additional above-ground mining would have resulted in insignificant coal mine dust exposure, contrary to the Miner's testimony. Decision and Order at 21-22; Claimant's Response at 8-9; Claimant's Exhibit 2 at 28-29. Thus, the ALJ permissibly found Dr. Broudy's opinion undermined based on his lack of understanding regarding the Miner's coal mine employment history and dust exposure. *Clemons*, 48 F.4th at 491; *Sellards*, 17 BLR at 1-80-81; Decision and Order at 21-22.

Further, we see no error in the ALJ's finding that Drs. Broudy and Rosenberg failed to adequately explain why, even if cigarette smoking is the primary cause of the Miner's COPD, coal mine dust exposure was not also a contributing or aggravating factor.[16] *See* 20 C.F.R. §718.201(a)(2), (b); *Clemons*, 48 F.4th at 490; *Crockett Colleries, Inc. v. Director, OWCP* [*Barrett*], 478 F.3d 350, 356 (6th Cir. 2007); Decision and Order at 22-23.

Employer also contests the ALJ's crediting of Dr. Krefft's opinion because she "ignored" other comorbidities and diagnosed clinical pneumoconiosis, contrary to the ALJ's finding. Employer's Brief at 14. Employer's arguments are not convincing.

First, contrary to Employer's argument, Dr. Krefft discussed the Miner's heart disease, including significant ischemic cardiomyopathy. Claimant's Exhibit 8 at 5, 11. Further, Employer's argument that Dr. Krefft's diagnosis of clinical pneumoconiosis necessarily undermines her diagnosis of legal pneumoconiosis is misplaced. There is no indication that Dr. Krefft relied on her finding of clinical pneumoconiosis in diagnosing legal pneumoconiosis; moreover, Employer's argument ignores the fact that Claimant may

[16] As the ALJ has provided permissible reasons for finding Drs. Broudy's and Rosenberg's opinions undermined, we need not address Employer's additional contentions of error regarding their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 12-14.

establish legal pneumoconiosis notwithstanding negative x-ray readings for clinical pneumoconiosis. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713 (6th Cir. 2002); Claimant's Exhibit 8; Decision and Order at 9.

The ALJ permissibly found Dr. Krefft's diagnosis of legal pneumoconiosis is reasoned and documented as it was based on her review of the Miner's objective testing and accurate knowledge of his medical, smoking, and work histories. *Napier*, 301 F.3d at 713-14; *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 8-10, 20-21; Claimant's Exhibit 8.

Employer's arguments amount to a request to reweigh the evidence, which the Board may not do. *See Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because it is supported by substantial evidence, we affirm the ALJ's finding that the Miner had legal pneumoconiosis. 20 C.F.R. §718.202(a); *see Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); *Napier*, 301 F.3d at 713-14; *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 20.

Death Due to Pneumoconiosis

Having found Claimant established the existence of legal pneumoconiosis in the form of COPD, the ALJ considered the opinions of Drs. Krefft, Broudy, and Rosenberg,[17] together with the Miner's death certificate and treatment records, to determine whether it hastened his death. Decision and Order at 23-26.

The physicians all agreed the Miner's death was primarily due to sepsis resulting from an E. coli infection; however, they disagreed as to whether legal pneumoconiosis hastened his death. Decision and Order at 24. Dr. Krefft opined that the Miner's legal pneumoconiosis, in the form of severe COPD, hastened his death. Claimant's Exhibit 8. Drs. Broudy and Rosenberg acknowledged that COPD may shorten an individual's life expectancy and result in less respiratory reserve but opined that the Miner would have died from the sepsis infection whether or not he had COPD. Employer's Exhibits 2-4.

The ALJ accorded greatest weight to Dr. Krefft's opinion, finding it well-reasoned and documented. Decision and Order at 24. The ALJ found Dr. Broudy failed to adequately explain why the Miner's COPD did not hasten his death and gave his opinion little weight. *Id.* at 25. The ALJ found that while Dr. Rosenberg's opinion was "generally well-reasoned," it was somewhat undermined as he overlooked evidence in the hospice

[17] Dr. Baker's reports pre-dated the Miner's death. Director's Exhibit 16; Decision and Order at 24.

records which tended to weaken his hypothesis; thus, he accorded Dr. Rosenberg's opinion only "moderate" weight.[18] *Id.* at 25-36. Weighing the evidence together, he found the evidence supports a finding that the Miner's legal pneumoconiosis hastened his death. *Id.* at 26.

Employer argues the ALJ erred in crediting Dr. Krefft's opinion that pneumoconiosis hastened the Miner's death. Specifically, Employer argues Dr. Krefft's opinion is equivocal as she failed to identify a "distinct medical process" by which pneumoconiosis hastened the Miner's death and failed to establish an estimable length of time by which pneumoconiosis reduced the Miner's lifespan. Employer's Brief at 14-15. We disagree.

Dr. Krefft agreed that the "actual triggering event that ultimately caused [the Miner's] death was sepsis," but opined that, due to the severity of the Miner's COPD, he was at "very high risk for death with multi-organ failure related to sepsis." Decision and Order at 24; Claimant's Exhibit 8 at 10. In this case, the Miner went into acute renal failure and had a non-ST-elevation myocardial infarction. Decision and Order at 24; Claimant's Exhibit 8 at 10. Dr. Krefft indicated that sepsis often triggers COPD exacerbation, which in turn can increase the myocardial demand on the heart and contribute to worsening ischemia. Decision and Order at 24; Claimant's Exhibit 8 at 10-11. The ALJ acknowledged Dr. Krefft's assessment that, while there is no specific evidence that a COPD exacerbation "triggered" the Miner's death, "it would be difficult to conclude that [his COPD] did not hasten or aggravate the severity of his severe sepsis and coronary artery disease." Decision and Order 24; Claimant's Exhibit 8 at 11. Dr. Krefft concluded that legal pneumoconiosis, in addition to the Miner's other significant and interrelated conditions, hastened the Miner's death, precluded him from surviving the sepsis infection, and reduced his total life expectancy by seventeen to eighteen years. Decision and Order at 24; Claimant's Exhibit 8 at 12-13.

The determination of whether a medical opinion is adequately reasoned and documented is for the ALJ as the factfinder. *Banks*, 690 F.3d at 482-83; *Clark*, 12 BLR at 1-155. The ALJ permissibly found Dr. Krefft's opinion that the Miner's severe COPD precluded the Miner from surviving his sepsis infection and resulted in increased

[18] Dr. Rosenberg acknowledged that chronic obstructive pulmonary disease (COPD) could hasten an individual's death due to sepsis if there was evidence of respiratory failure or worsening respiratory insufficiency, but he indicated he saw no evidence of this in the Miner's treatment records. Employer's Exhibit 5 at 21, 28-30 The ALJ, however, noted that the Miner's hospice records document poorly-treated COPD, dyspnea at rest, and supplemental oxygen requirements. Decision and Order at 24, 26; Director's Exhibit 16.

ventilatory demand and multiple organ failure (as demonstrated in the treatment and hospice records) satisfied Claimant's burden to establish that legal pneumoconiosis hastened the Miner's death by reducing his life by a specifically defined process.[19] 20 C.F.R. §718.205(c)(5); *see Conley*, 595 F.3d at 303-04; *Williams*, 338 F.3d at 518; *Martin*, 400 F.3d at 305; Decision and Order at 23-24.

Moreover, Employer does not challenge the ALJ's finding that Drs. Broudy's and Rosenberg's opinions are "not inconsistent" with Dr. Krefft's opinion as they acknowledged that COPD could hasten a death primarily due to sepsis. Decision and Order at 26. Employer also does not challenge the ALJ's findings regarding the credibility of their opinions. *Id.* at 25-26. We thus reject Employer's argument that the ALJ erred in crediting Dr. Krefft's opinion over those of Drs. Broudy and Rosenberg. *Napier*, 301 F.3d at 713-14; *Rowe*, 710 F.2d at 255; Employer's Brief at 19-22.

As the ALJ considered the credibility of Dr. Krefft's opinion based on its reasoning and underlying documentation, the other relevant evidence, and the record as a whole, we affirm the ALJ's finding that it is sufficient to establish death causation. *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1072-73 (6th Cir. 2013); *Conley*, 595 F.3d at 303-04; *Williams*, 338 F.3d at 518.

[19] Employer argues Dr. Krefft "goes so far" as to opine the Miner died in part from a "do not resuscitate order" due to his COPD. Employer's Brief at 15. As Claimant argues, however, Dr. Krefft does not make such a statement. Claimant's Response at 18. Dr. Krefft suggested that the Miner's COPD may have affected his hospice treatment as to ventilatory support. Claimant's Exhibit 8 at 11. The ALJ found her opinion in this regard speculative, as there was no evidence that the Miner's hospice plan was affected by his COPD, but he did not find it undermined her otherwise reasoned opinion. Decision and Order at 24.

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge