U.S. Department of Labor

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

BRB Nos. 22-0107 BLA
and 22-0108 BLA

FREDA COMBS (o/b/o and Widow of VIRGIL COMBS) Claimant-Respondent v. LANCE COAL CORPORATION c/o READING & BATES CORPORATION and R&B FALCON CORPORATION c/o TRANSOCEAN Employer/Carrier – Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 7/27/2023 DECISION and ORDER

Appeal of the Decision and Order Granting a Request for Modification in a Subsequent Miner's Claim and Awarding Benefits in the Miner's and Survivor's Claims of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

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

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Larry S. Merck's Decision and Order Granting a Request for Modification in a Subsequent Miner's Claim and Awarding Benefits in the Miner's and Survivor's Claims (2012-BLA-06123, 2017-BLA-05860) rendered pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a request for modification in a miner's subsequent claim filed on March 24, 2006,[1] and a third request for modification in a survivor's claim filed on February 4, 2013. Both cases are before the Benefits Review Board for a second time.

In his February 22, 2008 Decision and Order Awarding Benefits in the miner's claim, ALJ Ralph A. Romano credited the Miner with six years of coal mine employment based on the parties' stipulation. Miner's Claim (MC) Director's Exhibit 62. He found the Miner established the existence of pneumoconiosis, and thus established a change in an applicable condition of entitlement.[2] 20 C.F.R. §§718.204(b)(2), 725.309. Further, the ALJ found the Miner was totally disabled due to pneumoconiosis and awarded benefits. Pursuant to Employer's appeal, the Board vacated the ALJ's determination that the Miner established pneumoconiosis and remanded the case for further consideration. *V.C. v. Lance Coal Co.*, BRB No. 08-0405 BLA (Mar. 19, 2009) (unpub.); MC Director's Exhibit 72.

[1] The Miner's prior claim, filed on January 22, 2001, was finally denied by the district director on November 27, 2002, for failure to establish any element of entitlement. Miner's Claim (MC) Director's Exhibit 1.

[2] When a miner files a claim for benefits more than one year after the denial of a previous claim, 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)(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 the Miner did not establish any element of entitlement in his prior claim, Claimant had to submit evidence establishing at least one element to obtain review of the merits of the Miner's current claim. *See White*, 23 BLR at 1-3; MC Director's Exhibit 1.

On remand, ALJ Romano denied benefits for failure to establish pneumoconiosis. MC Director's Exhibit 75.

The Miner requested modification of that denial on March 1, 2012, and the district director transferred the claim to the Office of Administrative Law Judges (OALJ) on August 16, 2012. MC Director's Exhibits 76, 79. In a December 30, 2016 Decision and Order Granting Modification[3] and Awarding Benefits, ALJ Jennifer Gee credited the Miner with six years of coal mine employment based on the parties' stipulation and therefore found the Miner could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[4] Considering entitlement under 20 C.F.R. Part 718, the ALJ found the Miner was totally disabled due to pneumoconiosis and awarded benefits.

Employer appealed ALJ Gee's Decision and Order to the Board, challenging her determination that the Miner was entitled to benefits and arguing she lacked the authority to hear and decide the case because she had not been properly appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2.[5] The Board subsequently remanded the case to ALJ Gee with instructions to "reconsider the

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[3] When evaluating a request for modification, an ALJ "must consider whether any additional evidence submitted by the parties demonstrates a change in condition and, regardless of whether the parties have submitted new evidence, whether the evidence of record demonstrates a mistake in a determination of fact." 20 C.F.R. §725.310(c).

[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.

[5] Article II, Section 2, Clause 2, sets forth the appointing powers of the President:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. Art. II, § 2, cl. 2.

substantive and procedural actions previously taken [before her appointment was ratified] and to issue a decision accordingly." *Combs v. Lance Coal Corp*., BRB No. 17-0252 BLA (April 25, 2018) (Order) (unpub). In a January 2, 2019 Order Transferring Case, ALJ Gee transferred the case for reassignment for a new hearing before a different, properly appointed ALJ in light of the intervening decision in *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044 (2018).

While the miner's claim was pending before ALJ Gee, Claimant[6] filed her survivor's claim, which the district director denied on October 15, 2013, for failure to establish that the Miner's pneumoconiosis arose out of his coal mine employment or that his death was due to the disease. Survivor's Claim (SC) Director's Exhibit 23. The district director also denied Claimant's two subsequent requests for modification of the denial.[7] SC Director's Exhibits 24, 27, 29, 32. However, pursuant to Claimant's third request for modification[8] and ALJ Gee's award of benefits in the Miner's claim, the district director subsequently awarded Claimant derivative survivor's benefits pursuant to Section 422(*l*) of the Act, 30 U.S.C. §932(*l*).[9] SC Director's Exhibit 39. The case was transferred to the OALJ on May 18, 2017, pursuant to Employer's request. SC Director's Exhibits 41, 46.

ALJ Jason A. Golden awarded Claimant derivative benefits in the survivor's claim in a February 16, 2018 Decision and Order Awarding Continuing Benefits Under the Automatic Entitlement Provision of the Black Lung Benefits Act. Pursuant to Employer's appeal, and in light of the Board's prior Order remanding the miner's claim, the Board

[6] Claimant is the widow of the Miner, who died on October 27, 2012. Survivor's Claim (SC) Director's Exhibits 10. She is pursuing the miner's claim on his behalf, along with her own survivor's claim. Survivor's Claim (SC) Director's Exhibit 1A, 18.

[7] 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).

[8] Claimant filed a new claim for benefits on January 9, 2017, less than a year after the district director last denied her claim on August 17, 2016. SC Director's Exhibits 32, 37. Thus, her new claim was treated as a timely request for modification. 20 C.F.R. §725.310; *Stanley v. Betty B Coal Co.*, 13 BLR 1-72 (1990).

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

vacated ALJ Golden's Decision and Order and remanded the survivor's claim for consolidation with the miner's claim. *Combs v. Lance Coal Co.*, BRB No. 18-0243 BLA (Feb. 14, 2019) (Order) (unpub.).

On remand, the cases were consolidated and ultimately assigned to the current ALJ.[10] He credited the Miner with 6.01 years of coal mine employment and therefore found Claimant could not invoke the Section 411(c)(4) presumption. Considering the Miner's entitlement under 20 C.F.R. Part 718, the ALJ found the Miner had clinical and legal pneumoconiosis,[11] and that both of these diseases arose out of his coal mine employment. He therefore found Claimant established a change in an applicable condition of entitlement, 20 C.F.R. §725.309, and a mistake in a determination of fact. 20 C.F.R. §725.310. Further, he found the Miner was totally disabled due to his pneumoconiosis, and that granting modification would render justice under the Act. He therefore awarded benefits in the miner's claim and found Claimant entitled to derivative benefits in the survivor's claim. 30 U.S.C. §932(*l*) (2018).

On appeal, Employer argues the ALJ erred in finding the Miner had clinical and legal pneumoconiosis, and therefore erred in awarding benefits in both claims. Employer further argues the ALJ erred in considering whether granting modification was in the interest of justice only after finding the Miner entitled to benefits and not initially as a

[10] In a January 2, 2019 Order Transferring Case, ALJ Gee transferred the case for reassignment for a new hearing before a different, properly appointed ALJ in light of the intervening decision in *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044 (2018). The case was subsequently assigned to ALJ Peter B. Silvain, who held a hearing on November 9, 2020. May 12, 2021 Order Regarding Reassignment; Hearing Transcript at 1. Due to ALJ Silvain's departure from the Office of Administrative Law Judges, the case was reassigned to ALJ Larry S. Merck. May 12, 2021 Order Regarding Reassignment.

[11] "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). "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).

threshold issue.[12] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response.

The 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.[13] 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).

The Miner's Claim

Without the benefit of the Section 411(c)(3) and (c)(4) presumptions, Claimant must establish disease (pneumoconiosis), disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must prove the Miner had a "chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). The United States Court of Appeals for the Sixth Circuit has held that a claimant can satisfy this burden by showing coal dust exposure contributed "in part" to the miner's respiratory or pulmonary impairment. *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,

[12] We affirm, as unchallenged on appeal, the ALJ's determination that the Miner had 6.01 years of coal mine employment and was totally disabled. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 33. Consequently, Claimant has established a change in an applicable condition of entitlement, 20 C.F.R. §725.309, and a mistake in a determination of fact. 20 C.F.R. §725.310.

[13] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because the Miner performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 54B at 9.

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. Forehand, Rasmussen, Jarboe, Castle, and Ranavaya.[14] Decision and Order at 25-26; 20 C.F.R. §718.202(a)(4). Dr. Forehand opined the Miner had legal pneumoconiosis in the form of an obstructive impairment and hypoxia due to cigarette smoking and coal mine dust exposure. MC Director's Exhibits 12, 14; Employer's Exhibit 1. Dr. Rasmussen opined the Miner had an obstructive impairment due to cigarette smoking with only a minimal contribution from coal mine dust exposure. MC Director's Exhibit 56. Dr. Castle was unable to determine if the Miner had a pulmonary disease and therefore did not opine as to whether he had legal pneumoconiosis. Director's Exhibit 54. Dr. Jarboe opined the Miner did not have legal pneumoconiosis but instead had an obstructive impairment and emphysema due to cigarette smoking, asthma, and heart disease. MC Director's Exhibit 55; Employer's Exhibit 2. Dr. Ranavaya similarly opined the Miner did not have legal pneumoconiosis but instead had an obstructive impairment due to asthma that was further aggravated by cigarette smoking. Employer's Exhibits 3, 4. The ALJ found Dr. Forehand's opinion well-reasoned and documented and afforded it full probative weight. Decision and Order at 19-20. He found the remaining opinions entitled to little weight as they were not well-reasoned or documented. *Id*. at 19-22.

Employer contends the ALJ erred in his consideration of the medical opinion evidence.[15] Employer's Brief at 12-31. We disagree.

Dr. Forehand examined the Miner on May 9, 2006. MC Director's Exhibit 12. He noted an obstructive impairment on pulmonary function studies, borderline hypoxemia at rest, findings of crackles on physical examination, and symptoms of a daily productive cough, wheezing "all the time," and constant dyspnea. *Id*. Regarding causation, he opined that the Miner's impairment is primarily due to cigarette smoking which weakened his lungs, but that his exposure to coal mine dust substantially worsened his impairment. *Id*. After considering a history of six years of coal mine employment, Dr. Forehand concluded that the Miner's coal mine dust exposure was still a substantially contributing cause of his

[14] The ALJ also considered the Miner's treatment records and found they neither establish nor refute the existence of legal pneumoconiosis. Decision and Order at 18-22. We affirm this finding as unchallenged on appeal. *Skrack*, 6 BLR at 1-711.

[15] We firm, as unchallenged on appeal, the ALJ's determination that Dr. Castle's opinion on the existence of legal pneumoconiosis is entitled to little weight. *Skrack*, 6 BLR at 1-711; Decision and Order at 20-21.

impairment because he was employed as a shooter, which exposed him to higher levels of dust, including the more toxic silica dust. MC Director's Exhibit 15. He further explained that the Miner's cigarette smoking made him more susceptible to the effects of coal mine dust on his lungs and clarified that it is impossible to partition or allocate the exact impact of each of his exposure histories. Employer's Exhibit 1 at 10-11.

The ALJ found Dr. Forehand considered accurate smoking and coal mine employment histories and had "an accurate understanding of the dust conditions to which the Miner was exposed." Decision and Order at 19. He permissibly found the physician's opinion consistent with the discussion of the additive nature of coal mine dust exposure and cigarette smoking set forth in the preamble to the 2001 revised regulations. *See A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 674 (4th Cir. 2017) (ALJ may rely on the principle from the preamble that the effects of smoking and coal dust exposure are "additive"); 65 Fed. Reg. 79,920, 79,941 (Dec. 20, 2000) (concluding that the risk of clinically significant airways obstruction and chronic bronchitis associated with coal mine dust exposure can be additive with cigarette smoking); Decision and Order at 19. Contrary to Employer's arguments, the ALJ permissibly found Dr. Forehand's opinion well-reasoned and documented, and supported by the objective evidence he considered.[16] *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 19.

Dr. Jarboe opined the Miner had an obstructive and restrictive impairment, which he attributed to asthma, cigarette smoking,[17] and heart disease. Director's Exhibit 55 at 8-

[16] We reject Employer's argument that Dr. Rasmussen's opinion is better reasoned than Dr. Forehand. Employer's Brief at 22. The ALJ found Dr. Rasmussen's opinion neither well-reasoned nor documented as he relied on a longer history of coal mine dust exposure and cigarette smoking which undermined his opinion. Decision and Order at 21. As Employer does not challenge this finding, it is affirmed. *Skrack*, 6 BLR at 1-711.

[17] Employer notes Dr. Jarboe understood the Miner's smoking history "was in fact 30 years . . . much worse than he reported to the opining physicians." Employer's Brief at 24 (referencing Employer's Exhibit 2 at 17-18). However, the ALJ considered the Miner's medical evaluations, testimony, and treatment records to determine he smoked "between one half and one pack of cigarettes per day for approximately twenty years" and thus "he likely smoked between ten and twenty pack-years." Decision and Order at 5 (referencing Hearing Tr. at 18; MC Director's Exhibits 12 at 15; 54A at 2, 6; 55 at 3; 56 at 13-14). As Employer does not specifically challenge the ALJ's findings relative to the Miner's smoking history, they are affirmed. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-

9. In excluding a diagnosis of legal pneumoconiosis, he explained, in part, that "since no dust retention was noted on [the Miner's] plain chest x-ray or high-resolution CT scan," the Miner's "emphysema/reduced diffusing capacity is due to other causes," not coal mine dust exposure. Director's Exhibit 55. Contrary to Employer's arguments, the ALJ permissibly found Dr. Jarboe's opinion inconsistent with the regulations stating that legal pneumoconiosis may be diagnosed "notwithstanding a negative x-ray." *See* 20 C.F.R. §718.202(a)(4), (b); 65 Fed. Reg. at 79,945; *Adams*, 694 F.3d at 801-02; *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 488-89 (6th Cir. 2012) (opinion that emphysema could not have been caused by coal mine dust exposure because insufficient dust retention was shown on the miner's x-rays was permissibly discounted as counter to the studies underlying the preamble); Decision and Order at 20; Employer's Brief at 23.

Additionally, in explaining why the Miner's obstructive and restrictive impairments were unrelated to his coal mine dust exposure, Dr. Jarboe stated that, while it was "possible," it is "very unusual to develop the degree of pulmonary impairment measured in this case" from the Miner's level of coal mine dust exposure. Director's Exhibit 55. We see no error in the ALJ's finding that Dr. Jarboe did not adequately explain why the Miner's obstructive and restrictive impairment are due solely to cigarette smoking, asthma, and heart disease, or why his coal mine dust exposure did not contribute to or aggravate his impairments.[18] *See Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007) (ALJ permissibly rejected a physician's opinion where the physician failed to adequately explain why coal mine dust exposure did not exacerbate a miner's smoking-related impairment); *Crisp*, 866 F.2d at 185; Decision and Order at 20.

We therefore affirm the ALJ's decision to give Dr. Jarboe's opinion little weight. Decision and Order at 20.

Dr. Ranavaya opined the Miner had a totally disabling obstructive impairment due to asthma and cigarette smoking, unrelated to coal mine dust exposure. Employer's Exhibit 3 at 5. He further opined that the Miner's treatment records diagnosing chronic obstructive pulmonary disease (COPD) constituted a misdiagnosis, and that these records support a

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47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); 20 C.F.R. §802.211(b); Decision and Order at 5.

[18] Because the ALJ provided valid reasons for discrediting Dr. Jarboe's opinion, we need not address Employer's remaining arguments regarding his credibility. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 22-27.

diagnosis of asthma unrelated to coal mine dust exposure. Employer's Exhibit 3, 4. The ALJ permissibly found Dr. Ranavaya's opinion was not adequately explained because he did not identify any evidence to support his opinion that the Miner was misdiagnosed other than generally noting that asthma and COPD can cause similar airway remodeling. *See Rowe*, 710 F.2d at 255; Decision and Order at 22. Moreover, the ALJ permissibly found Dr. Ranavaya failed to explain why the Miner's coal mine dust exposure did not contribute to or aggravate his asthma. *See Groves*, 761 F.3d at 601; *Adams*, 694 F.3d at 801-02; Decision and Order at 22. We thus affirm the ALJ's decision to accord little weight to Dr. Ranavaya's opinion.[19] Decision and Order at 22.

Finally, we reject Employer's statement that the ALJ "never resolved [the] tension" between Dr. Forehand's credentials and those of its experts. Employer's Brief at 13. To the extent Employer is arguing that the ALJ was required to give greater weight to its experts, and less weight to Dr. Forehand, based on their differing credentials, we disagree. *See Adkins v. Directors, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993) (ALJ may give greater weight to an expert based on the expert's credentials but must provide an explanation and such weight is not automatic); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). The ALJ acknowledged Dr. Forehand is Board-certified in Allergy, Immunology, and Pediatrics; Dr. Jarboe is Board-certified in Internal Medicine and Pulmonary Disease; Dr. Ranavaya is Board-certified in Occupational and Environmental Medicine; and all three physicians are B readers. Decision and Order at 14. In evaluating the physician's opinions, the ALJ properly considered the explanations and bases for their conclusions as well as their qualifications, and gave permissible reasons for crediting Dr. Forehand's opinion and discrediting Drs. Jarboe's and Ranavaya's opinions. Thus, we affirm the ALJ's findings. *See Rowe*, 710 F.2d at 255; *Worhach*, 17 BLR at 1-108.

It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *Banks*, 690 F.3d at 482-83; *Crisp*, 866 F.2d at 185. Employer's arguments amount to a request to reweigh the evidence, which the Board may not do. *Anderson*, 12 BLR at 1-113. Because it is supported by substantial evidence, we affirm the ALJ's finding that Dr. Forehand's opinion is the most credible opinion of record and establishes the Miner had legal pneumoconiosis in the form of an obstructive impairment due in part to coal mine dust exposure. 20 C.F.R. §§718.201(a)(2), 718.202(a)(4); *see*

[19] As the ALJ gave valid reasons for discrediting Dr. Ranavaya's opinion, we need not address Employer's other arguments regarding the ALJ's weighing of his opinion. *Kozele*, 6 BLR at 1-382 n.4; Employer's Brief at 28-31.

Peabody Coal Co. v. Groves, 277 F.3d 829, 835-36 (6th Cir. 2002); *Napier*, 301 F.3d at 712-14; Decision and Order at 22.

Disability Causation

The ALJ next considered whether Claimant established his pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause if it has "a material adverse effect on the miner's respiratory or pulmonary condition" or "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii).

Because the ALJ permissibly found Dr. Forehand's opinion reasoned and documented, and therefore sufficient to prove the Miner's totally disabling obstructive lung disease constituted legal pneumoconiosis, the ALJ rationally found his opinion also establishes the Miner was totally disabled due to the disease; it is the only logical conclusion from the facts. *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668-69 (6th Cir. 2015); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); *Hawkinberry v. Monongalia Cnty. Coal Co.*, 25 BLR 1-249, 1-255-57 (2019); Decision and Order at 35. Consequently, we affirm the ALJ's determination that the Miner was totally disabled due to legal pneumoconiosis.[20] 20 C.F.R. §718.204(c); Decision and Order at 35.

Modification

We further reject Employer's assertion the ALJ erred in reviewing the evidence *de novo*, and its suggestion that the ALJ is bound by the prior ALJs' weighing of evidence unless there is a "clear error of judgment in the conclusion the prior ALJs reached."[21] Employer's Brief at 8. In reviewing the record on modification, "[t]he fact-finder has the authority, if not the duty, to rethink prior findings of fact and to reconsider all evidence for

[20] As we have affirmed the ALJ's determination that the Miner was totally disabled due to legal pneumoconiosis, we need not address Employer's challenge to the ALJ's finding that Claimant also established the Miner had clinical pneumoconiosis. *Kozele*, 6 BLR at 1-382 n.4; Employer's Brief at 7-12.

[21] Moreover, contrary to Employer's argument, the ALJ was not bound by ALJ Gee's determinations as the Board vacated her findings. *Combs v. Lance Coal Corp.*, BRB No. 17-0252 BLA (April 25, 2018) (Order) (unpub). The issue in this case is not if there was a mistake of fact in ALJ Gee's determination, but in ALJ Romano's findings.

any mistake in fact . . . ." *Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 743 (6th Cir. 1997) (citing *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 230 (6th Cir. 1994)). The ALJ properly reconsidered all of the evidence, old and new, to determine Claimant established the Miner had legal pneumoconiosis. *Hunt*, 124 F.3d at 743; Decision and Order at 23. Consequently, he permissibly found Claimant established a mistake of fact in the prior denial. *Youghiogheny & Ohio Coal Co. v. Milliken*, 200 F.3d 942, 954 (6th Cir. 1999); *Hunt*, 124 F.3d at 743.

We also reject Employer's assertion that the ALJ erred in failing to initially make a "threshold" determination of whether granting modification would render justice under the Act before considering whether the prior denial was based on a mistake in a determination of fact. Employer's Brief at 9 (citing *Sharpe v. Director, OWCP* [*Sharpe I*], 495 F.3d 125, 128 (4th Cir. 2007); *Westmoreland Coal Co. v. Sharpe* [*Sharpe II*], 692 F.3d 317 (4th Cir. 2012), *cert. denied*, 570 U.S. 917 (2013)). There is no requirement that an ALJ conduct an initial threshold analysis in a request for modification, particularly as accuracy is a relevant factor in determining whether granting modification would render justice under the Act. *See Sharpe II*, 692 F.3d at 330 (The search for "justice under the Act" should be guided, first and foremost, by the need to ensure accurate distribution of benefits.); 20 C.F.R. §725.310(c) ("In any case forwarded for a hearing, the [ALJ] . . . *must consider* . . . whether the evidence of record demonstrates a mistake in a determination of fact.") (emphasis added); 65 Fed. Reg. at 79975 (rejecting limits on modification because Congress's overriding concern in enacting the Act was to ensure that miners who are totally disabled due to pneumoconiosis arising out of coal mine employment receive compensation).

Moreover, the ALJ properly applied the factors relevant to determining whether granting modification renders justice under the Act. Decision and Order at 36-37. He found that the need for accuracy clearly weighs in favor of granting the request for modification as "the evidence shows that the Miner was entitled to benefits and has been since he filed this subsequent claim in 2006." *See Old Ben Coal Co. v. Director, OWCP* [*Hilliard*], 292 F.3d 533, 547 (7th Cir. 2002); Decision and Order at 36. The ALJ further found the quality of the evidence weighs in favor of granting the Miner's modification request as both the new and old evidence establishes entitlement. Decision and Order at 36. He also reasonably found the Miner demonstrated adequate diligence by requesting modification within the one-year time limit established in the regulations. 20 C.F.R. §725.310(a); *Wooten v. Eastern Associated Coal Corp.*, 20 BLR 1-20, 25 (1996); Decision and Order at 36. With respect to motive, the ALJ permissibly concluded there is no evidence that the Miner's motivation in requesting modification was anything other than to obtain benefits to which he is entitled. Decision and Order at 37; *see Worrell*, 27 F.3d at 230; *see also Sharpe II*, 692 F.3d at 330; *Hilliard*, 292 F.3d at 541. Finally, the ALJ

found that the Miner's request is neither futile nor moot as the evidence demonstrates he was eligible for benefits during his lifetime. Decision and Order at 37.

Because Employer has not established an abuse of discretion, we affirm the ALJ's determination that granting modification renders justice under the Act. *See Worrell*, 27 F.3d at 230; *Branham v. BethEnergy Mines*, 20 BLR 1-27, 1-34 (1996); Decision and Order at 23. Consequently, we affirm the award of benefits in the miner's claim.

The Survivor's Claim

Because we have affirmed the award in the miner's claim and Employer raises no specific challenge to the survivor's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits. 30 U.S.C. §932(*l*); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013); Decision and Order at 38.

Accordingly, we affirm the ALJ's Decision and Order Granting a Request for Modification in a Subsequent Miner's Claim and Awarding Benefits in the Miner's and Survivor's Claims.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge