U.S. Department of Labor

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

BRB No. 19-0266 BLA

DANIEL LOONEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	
	)	DATE ISSUED: 06/25/2020
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 Benefits of Paul R. Almanza, Associate Chief Administrative Law Judge, United States Department of Labor.

Jeffrey R. Soukup (Jackson Kelly PLLC), Lexington, Kentucky, for employer.

Cynthia Liao (Kate S. O'Scannlain, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2014-BLA-05109) of Associate Chief Administrative Law Judge Paul R. Almanza rendered on a claim filed on February 7, 2013, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).

The administrative law judge credited claimant with 10.66 years of coal mine employment[1] and found he could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2012). Considering claimant's entitlement under 20 C.F.R. Part 718, the administrative law judge found claimant established clinical pneumoconiosis arising out of coal mine employment, predisposing him to later contracting a mycobacterial avium complex infection ("MAC infection"), which the administrative law judge deemed legal pneumoconiosis based on claimant's increased susceptibility due to coal dust exposure. 20 C.F.R. §§718.202(a), 718.203(b). He further found claimant totally disabled due to a combination of clinical pneumoconiosis and his MAC infection, and awarded benefits. 20 C.F.R. §718.204(b), (c).

On appeal, employer argues the administrative law judge lacked the authority to preside over the case because he was not appointed consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2.[3] It also argues he erred in finding claimant

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[1] Claimant's coal mine employment occurred in Virginia. Decision and Order at 3; Hearing Transcript at 23-24. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[2] Under Section 411(c)(4), claimant is entitled to a rebuttable presumption that he is totally disabled due to pneumoconiosis if he establishes 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); 20 C.F.R. §718.305(b).

[3] Article II, Section 2, Clause 2, sets forth the appointing powers:

> [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.

established clinical pneumoconiosis, in calculating claimant's qualifying coal mine work necessary for invoking the presumption his pneumoconiosis arose out of coal mine employment, and in determining his MAC infection constitutes legal pneumoconiosis. Claimant did not file a response brief. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response arguing employer forfeited its Appointments Clause argument and the administrative law judge did not err in calculating claimant's coal mine employment.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's decision and order if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Appointments Clause Challenge

Employer urges the Board to vacate the award and remand the case to be heard by a different, constitutionally appointed administrative law judge pursuant to *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044 (2018).[4] Employer's Brief at 26-31. We agree with the Director that employer forfeited its Appointments Clause argument by failing to raise it when the case was before the administrative law judge. *See Lucia*, 138 S. Ct. at 2055 (requiring "a timely challenge to the constitutional validity of the appointment of an officer who adjudicates [a party's] case"); *Island Creek Coal Co. v. Wilkerson*, 910 F.3d 254, 256 (6th Cir. 2018) ("Appointments Clause challenges are not jurisdictional and thus are subject to ordinary principles of waiver and forfeiture.") (citation omitted); *Powell v. Serv. Emps. Int'l, Inc.*, 53 BRBS 13, 15 (2019).

U.S. Const. art. II, § 2, cl. 2.

[4] *Lucia* involved an Appointments Clause challenge to the appointment of a Securities and Exchange Commission (SEC) administrative law judge. The United States Supreme Court held that, similar to Special Trial Judges at the United States Tax Court, SEC administrative law judges are "inferior officers" subject to the Appointments Clause. *Lucia v. SEC*, 585 U.S. , 138 S.Ct. 2044, 2055 (2018) (citing *Freytag v. Commissioner*, 501 U.S. 868 (1991)). On July 20, 2018, the Department of Labor (DOL) expressly conceded the Supreme Court's holding in *Lucia* applies to the DOL's administrative law judges. *Big Horn Coal Co. v. Sadler*, 10th Cir. No. 17-9558, Brief for the Fed. Resp. at 14 n.6.

Lucia was decided seven months before the administrative law judge issued his January 29, 2019 Decision and Order Awarding Benefits, but employer failed to raise its argument while the claim was before him. At that time, the administrative law judge could have addressed employer's argument and, if appropriate, taken steps to have the case assigned for a new hearing before a different administrative law judge. *See Kiyuna v. Matson Terminals Inc.*, 53 BRBS 9, 11 (2019). Instead, employer waited to raise the issue until after the administrative law judge issued an adverse decision. Because employer has not raised any basis for excusing its forfeiture of the issue, we reject its argument that this case should be remanded to the Office of Administrative Law Judges for a new hearing before a different administrative law judge. *See Glidden Co. v. Zdanok*, 370 U.S. 530, 535 (1962) (cautioning against resurrecting lapsed arguments because of the risk of sandbagging).

Part 718 Entitlement

To be entitled to benefits under the Act, 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, 718.203, 718.204. Statutory presumptions may assist claimants if certain conditions are met, but 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).

Claimant has met all elements based on the administrative law judge's findings that his clinical pneumoconiosis contributed to and combined with his MAC infection to completely disable him. While the administrative law judge awarded benefits based on his determination claimant's MAC infection is legal pneumoconiosis, any potential error in conflating the disease and disability causation elements in examining the relationship between claimant's clinical pneumoconiosis and his MAC infection is harmless, as demonstrated below. 20 C.F.R. §718.204(c)(1)(i), (ii).

Disease -- clinical pneumoconiosis

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 coal dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

The administrative law judge found the preponderance of the x-ray readings, biopsy reports, and medical opinions establish clinical pneumoconiosis in the form of anthracosis. 20 C.F.R. §718.202(a)(1), (2), (4); Decision and Order at 26-30. He found the CT scan readings "largely silent" on pneumoconiosis. Decision and Order at 27; *see* 20 C.F.R. §718.202(a)(4). Weighing all the relevant evidence, he was "specifically persuaded by the pathology reports in this case, which identified pigment bearing macrophages, anthracosis, and a coal dust nodule." Decision and Order at 30. He found these reports, "coupled with the ILO x-ray interpretations, [establish] by a preponderance of the evidence that [c]laimant has clinical pneumoconiosis." *Id*.; *see* 20 C.F.R. §718.202(a).

Employer argues the administrative law judge erred in evaluating the x-ray[5] and medical opinion evidence. 20 C.F.R. §718.202(a)(1), (4); Employer's Brief at 6-9. It contends he erred in finding the positive ILO-classified x-ray readings from Drs. Miller, DePonte, and Alexander credible because they are "relatively uniform[,]" and he failed to consider inconsistent diagnoses within these positive x-ray readings. Decision and Order at 25-26; Employer's Brief at 6-9. It also argues he did not adequately explain his basis for finding the medical opinions of Drs. Habre and Akhrass diagnosing clinical pneumoconiosis reasoned and documented. *Id*. at 13-14.

Employer, however, does not challenge the administrative law judge's finding the biopsy evidence establishes clinical pneumoconiosis in the form of anthracosis. 20 C.F.R. §§718.201(a)(1) (definition of clinical pneumoconiosis includes anthracosis),

[5] The administrative law judge considered eleven interpretations of four x-rays from dually qualified Board-certified radiologists and B readers. 20 C.F.R. §718.202(a)(1); Decision and Order at 9-10, 25. Dr. Miller read the November 26, 2012 x-ray as positive for pneumoconiosis, 1/1. Director's Exhibit 17. Dr. Meyer read it as negative for pneumoconiosis, but identified non-calcified hilar nodes, parenchymal bands, and a density in the right upper lung. Employer's Exhibit 6. Drs. DePonte and Miller read the March 11, 2013 x-ray as positive for pneumoconiosis, 1/0. Claimant's Exhibit 3; Director's Exhibit 14. Dr. Shipley read it as negative for pneumoconiosis, but identified post-operative lung changes and possible lung cancer. Employer's Exhibit 3. Drs. DePonte and Alexander read the May 9, 2013 x-ray as positive for pneumoconiosis, 1/1. Director's Exhibit 17; Claimant's Exhibit 1. Drs. Tarver and Seaman read it as negative for pneumoconiosis. Employer's Exhibits 7, 8. Dr. Tarver identified cancer while Dr. Seaman only identified post-operative lung changes. *Id*. Finally, Dr. Alexander read the November 21, 2013 x-ray as positive for pneumoconiosis, 3/3. Claimant's Exhibit 2. Dr. Halbert read it as negative for pneumoconiosis, but identified chronic pleural changes and scarring. Employer's Exhibit 2.

718.202(a)(2); Decision and Order at 28. We therefore affirm this finding. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Further, the administrative law judge permissibly discredited the contrary evidence. Employer also does not challenge his finding the negative x-ray readings of Drs. Meyer, Shipley, Tarver, Seaman, and Halbert are not credible because they contradict one another as to their alternative diagnoses, the narrative x-rays are "cryptic" and therefore are not credible, and the CT scan readings are silent on the issue of pneumoconiosis. Decision and Order at 25-30. Thus we affirm these findings. *See Skrack*, 6 BLR at 1-711.

Moreover, the administrative law judge permissibly found Dr. Jarboe's opinion entitled to no weight because he relied "heavily" on his own interpretation of a November 21, 2013 x-ray that was not admitted into the record. Decision and Order at 17, 29; *see Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-108 (2006) (en banc) (McGranery and Hall, JJ., concurring and dissenting); *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-67 (2004). He also permissibly discredited Dr. Spagnolo's opinion because he assumed the biopsy evidence was negative for pneumoconiosis, contrary to the administrative law judge's finding that it supported the existence of the disease. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 29.

Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the biopsy evidence[6] establishes claimant has clinical pneumoconiosis and outweighs the contrary evidence of record. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 208-09 (4th Cir. 2000) (holding all types of relevant evidence must be weighed together to determine whether the miner suffers from pneumoconiosis); 20 C.F.R. §718.202(a); Decision and Order at 30.

Disease causation -- clinical pneumoconiosis arose out of coal mine employment

If a miner is employed for ten or more years in coal mines, a rebuttable presumption arises that his "pneumoconiosis arose out of such employment." 20 C.F.R. §718.203(b). Claimant bears the burden of establishing the length of his coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-711 (1985). The Board will uphold the administrative law judge's determination if it is based on a reasonable method of computation and is supported by substantial evidence

[6] Because we affirm the administrative law judge's finding that the biopsy evidence establishes clinical pneumoconiosis and outweighs the contrary evidence, any errors in his crediting the positive x-ray readings and the opinions of Drs. Habre and Akhrass are harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

in the record. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

Employer argues the administrative law judge erred in crediting claimant with 10.66 years of coal mine employment. Employer's Brief at 10-13. We disagree.

The administrative law judge found claimant's earnings set forth in his Social Security Administration (SSA) records are the "most probative" evidence with respect to his coal mine employment. Decision and Order at 5. We affirm as unchallenged the administrative law judge's finding claimant had one quarter of coal mine employment in 1975. *Id*. at 5, 7, *citing Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 n.2 (1984) (for pre-1978 employment, reasonable to credit miner with one quarter where SSA-reported earnings exceed $50); *Skrack*, 6 BLR at 1-711.

For claimant's coal mine employment from 1978 to 1994, the administrative law judge addressed whether the record establishes claimant was engaged in coal mine employment for a period of one calendar year, or partial periods totaling one year. Decision and Order at 5-7. He found employment records established claimant had a calendar year long employment relationship with coal mine operators for each year from 1982 through 1993. Decision and Order at 6-8. This finding is also affirmed as unchallenged. *See Skrack*, 6 BLR at 1-711.

Having found claimant established a calendar year long employment relationship for these years, he then evaluated whether claimant's "employment was regular, *i.e*., whether [he] actually worked as a miner for 125 days during the [respective] one year period." Decision and Order at 6. In order to make this calculation, the administrative law judge divided claimant's yearly earnings as reflected in his SSA records by the average yearly earnings for coal miners for a 125-day period as set forth in Exhibit 610 of the *Black Lung Benefits Act Procedure Manual*. *Id*. at 5-7; *see* 20 C.F.R. §725.101(a)(32)(iii). Where claimant's yearly earnings were less than the average earnings for a 125-day period, he credited claimant with a fractional year of coal mine employment. *Id*. For the years 1985, 1986, and 1988-1992, he credited claimant with full years of coal mine employment because he earned more than the yearly average for a 125-day period as reflected in Exhibit 610. *Id*. at 7-8. For 1982, 1983, 1984, 1987, and 1993, he found claimant earned less than the yearly average for a 125-day period and, based on the calculated fractional years, credited claimant with an additional 2.64 years of coal mine employment. *Id*.

Contrary to employer's argument, the administrative law judge relied on a reasonable method of computation to calculate claimant's employment for the years 1982-

1993.[7] *See Daniels Co. v. Mitchell*, 479 F.3d 321, 334-36 (4th Cir. 2007); *Clark v. Barnwell Coal Co*., 22 BLR 1-277, 1-280 (2003); 20 C.F.R. §725.101(a)(32)(i) (a miner is entitled to credit for one year of coal mine employment if he worked in or around coal mines at least 125 working days during a calendar year and a fractional year based on the ratio of days worked to 125 if he worked less.). Because it is supported by substantial evidence, we affirm the administrative law judge's finding claimant established 10.66 years of coal mine employment.

Having credited claimant with over ten years of coal mine employment, the administrative law judge found him entitled to the rebuttable presumption his clinical pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b); Decision and Order at 34-35. Employer does not challenge the administrative law judge's finding that it failed to rebut the presumption. Thus we affirm it. *See Skrack*, 6 BLR at 1-711.

Disability -- claimant is totally disabled by a respiratory impairment

The administrative law judge found claimant totally disabled because all the pulmonary function studies are qualifying and no physicians "argue [claimant] is not totally disabled from a respiratory standpoint." Decision and Order at 23-24. Employer does not challenge this finding, which we affirm as supported by substantial evidence and unchallenged on appeal. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.204(b); Decision and Order at 23-24, 35.

Disability causation -- clinical pneumoconiosis substantially contributes to claimant's disability

A miner is totally disabled due to pneumoconiosis if it substantially contributes to a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis "substantially contributes" if it:

[7] To the extent claimant did not establish a calendar year long employment relationship for any given year, however, the administrative law judge divided claimant's yearly earnings by the average "daily" earnings for coal miners as set forth in Exhibit 610 to calculate the number of claimant's working days. Decision and Order at 6. He then divided the number of working days by a 250-day work year to calculate claimant's coal mine employment. *Id*. Finding claimant did not establish a calendar year long employment relationship for the years 1980, 1981, and 1994, the administrative law judge used this method to credit claimant with 0.318 of a year for 1980, 0.379 of a year for 1981, and 0.075 of a year for 1994. *Id*. at 7-8. We affirm these calculations as unchallenged. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

> (i) Has a material adverse effect on the miner's respiratory or pulmonary condition; or
>
> (ii) Materially 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); *see Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 37-38 (4th Cir. 1990) (claimant must prove by a preponderance of the evidence pneumoconiosis is a "contributing cause" of his totally disabling respiratory impairment).

Drs. Jarboe, Spagnolo, and Akhrass addressed the role clinical pneumoconiosis plays in claimant's disability. Director's Exhibit 20; Claimant's Exhibit 5; Employer's Exhibits 2, 13-14. Dr. Akhrass opined clinical pneumoconiosis "tremendously affected" claimant prior to his contraction of his MAC infection, predisposed him to contracting the infection, and combined with it to "ruin" claimant's lungs. Claimant's Exhibit 5. Drs. Jarboe and Spagnolo opined claimant does not suffer from clinical pneumoconiosis, but is totally disabled by his MAC infection, which is unrelated to claimant's coal mine employment. Employer's Exhibits 2, 13-14. The administrative law judge acted within his discretion in finding Dr. Akhrass's opinion on the relationship between claimant's clinical pneumoconiosis and his MAC infection better reasoned than the opinions of employer's experts. *Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013) (Traxler, C.J., dissenting) (because the administrative law judge is the trier of fact, the reviewing court must defer to his evaluation of the proper weight to accord conflicting medical opinions); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764 (4th Cir. 1999) (for a reviewing court to overturn an administrative law judge's finding that an opinion is reasoned, it would have to rule as a matter of law that no reasonable mind could have interpreted and credited the physician's opinion); *see also Compton*, 211 F.3d at 212; *Hicks*, 138 F.3d at 533.

Dr. Akhrass noted claimant experienced difficulty breathing in 2011 with increasing cough and phlegm production. Director's Exhibit 20. An x-ray revealed a 10 centimeter by 10 centimeter mass in his right upper lung that tested positive for MAC. *Id.* At that time, he was treated for a MAC infection. Claimant's Exhibit 5. As a result, claimant underwent a lobectomy of this right lung mass. *Id.*

Dr. Akhrass acknowledged the resultant biopsy of the lung mass where the MAC infection was present was negative for cancer but positive for clinical pneumoconiosis. Director's Exhibit 20. It revealed pigment laden macrophages, focal nodular fibrosis, and necrotizing granulomatous inflammation, with a lymph node biopsy showing sinus

histiocytosis and anthracosis. *Id*. The administrative law judge found the presence of anthracosis on biopsy established clinical pneumoconiosis. Decision and Order at 34-35.

Claimant subsequently underwent eighteen months of treatment and was ultimately put on chronic oxygen therapy and inhaler treatment. Director's Exhibit 20; Claimant's Exhibit 5. Dr. Akhrass opined claimant is totally disabled by his advanced lung disease, chronic shortness of breath, and ongoing need for oxygen therapy and inhaler treatment.[8] Director's Exhibit 20.

Dr. Akhrass concluded claimant's disabling clinical picture was caused by "black lung disease," chronic obstructive pulmonary disease, and his pulmonary MAC infection. Claimant's Exhibit 5. He explained MAC infections "often occur in patients with preexisting pulmonary disease" and claimant's "coal workers' pneumoconiosis (black lung disease) predisposed him to contract" this MAC infection. *Id*. He determined claimant was "tremendously affected by coal workers' pneumoconiosis" and his condition was subsequently "aggravated by the presence of active mycobacterial avium complex infection that has ruined his lungs, predisposed by black lung disease." *Id*. He concluded his report with a narrative describing how claimant's pneumoconiosis affects his daily life, including struggling to breathe doing simple daily activities. *Id.*

Dr. Akhrass's opinion satisfies the disability causation element under the Act: he opined clinical pneumoconiosis both has an independently materially adverse effect on claimant's impairment and materially worsens his impairment caused by his MAC infection. 20 C.F.R. §718.204(c)(1)(i), (ii).

First, Dr. Akhrass's reasoned opinion -- based on his treatment of claimant and claimant's objective test results -- that pneumoconiosis has a "tremendous[] [e]ffect[]" on claimant's impairment satisfies the Fourth Circuit's requirement for disability causation under 20 C.F.R. §718.204(c)(1)(i). *See, e.g., Robinson*, 914 F.2d at 37-38 ("the disability causation requirement" most "consistent with the remedial purpose of the Act is simply 'contributing cause.'"). Dr. Akhrass outlined the manner that clinical pneumoconiosis severely limited claimant in his daily life, Claimant's Exhibit 5, and given he was the only physician to diagnose clinical pneumoconiosis, his opinion on the substantial role it plays in claimant's disability is unrebutted. While the administrative law judge stated Dr.

[8] In a supplemental report, Dr. Akhrass noted claimant underwent a left upper lobectomy in 2014, and continues to have productive cough and worsening shortness of breath, with respiratory failure and continuous oxygen supplementation. Claimant's Exhibit 5. He reiterated claimant is totally disabled due to severely reduced lung function evidenced by worsening obstructive lung disease. *Id.*

Akhrass did not "directly [address] the degree by which clinical pneumoconiosis affects [c]laimant's disability," Decision and Order at 34, he was not required to specifically apportion between causes to meet the standard under 20 C.F.R. §718.204(c)(1)(i). *See Consol. Coal Co. v. Williams*, 453 F.3d 609, 622 (4th Cir. 2006). It is enough that Dr. Akhrass offered a documented and reasoned opinion that pneumoconiosis independently contributes to claimant's disability. *Robinson*, 914 F.2d at 37-38.

Second, Dr. Akhrass adequately explained how clinical pneumoconiosis predisposed claimant to contract his MAC infection and combined with it to disable him under 20 C.F.R. §718.204(c)(1)(ii). While the effects of claimant's MAC infection alone may be totally disabling, as employer's experts contend, that does not preclude an award where claimant's clinical pneumoconiosis also contributes to his further decline: "Even presuming, with [employer's experts], that in the absence of pneumoconiosis, [claimant's] non-coal-related disease and exposure would still result in a 'totally disabling respiratory or pulmonary impairment[,]' [claimant] may nonetheless possess a compensable injury if his pneumoconiosis 'materially worsens' this condition." *Tennessee Consol. Coal v. Kirk*, 264 F.3d 602, 611 (6th Cir. 2001).

Dr. Akhrass explained claimant's clinical pneumoconiosis found in the same area as his MAC infection predisposed him to contract the infection in 2011, and the two combined over time to progressively "ruin his lungs." Claimant's Exhibit 5. Claimant progressed from requiring an upper right lobectomy in 2011, to eight weeks of IV therapy, to requiring an upper left lobectomy in 2014, to eventually requiring "24/7 oxygen supplementation and 2 Liters nasal cannula." *Id.* Dr. Akhrass's well-reasoned opinion documenting the deteriorating condition of claimant's lungs because of the interplay of his clinical pneumoconiosis and his MAC infection thus also satisfies 20 C.F.R. §718.204(c)(1)(ii). *See, e.g., Kirk*, 264 F.3d at 611 (pneumoconiosis substantially contributed to preexisting totally disabling impairment where claimant's condition continued to deteriorate after establishing disability, eventually requiring "continuous oxygen, together with other medical intervention"); *see* 65 Fed. Reg. 79,920, 79,948 (miner entitled to benefits when pneumoconiosis causes further deterioration of a totally disabling non-occupationally related pulmonary or respiratory impairment).[9]

[9] We reject employer's contention the administrative law judge erred in relying on Dr. Akhrass's opinion because the doctor based his opinion on the erroneous belief that claimant has complicated pneumoconiosis. Employer's Brief at 21-22. The Fourth Circuit has explained that a reviewing court should be cognizant of "the descriptive facts and opinions of a doctor and not upon whether his use of some medical term of art jibes with [an administrative law judge's] use of some legal term of art." *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 761-762 (4th Cir. 1999). Dr. Akhrass noted claimant is an

Employer argues the administrative law judge's decision to credit Dr. Akhrass's opinion as establishing claimant's MAC infection constitutes legal pneumoconiosis does not satisfy the explanatory requirements of the Administrative Procedure Act[10] (APA). Employer's Brief at 17-19. We disagree. As the Fourth Circuit has explained, the duty of explanation under the APA "is not intended to be a mandate for administrative verbosity or pedantry." *Mays*, 176 F.3d at 762 n.10. If a reviewing court can discern what the administrative law judge did and why he did it, the duty of explanation is satisfied. *Id.*

We can. The administrative law judge adequately determined Dr. Ahkrass provided the only reasoned opinion on the relationship between claimant's clinical pneumoconiosis, his MAC infection, and his respiratory disability. Decision and Order at 34. That opinion does not require designating claimant's MAC infection as constituting legal pneumoconiosis because it satisfies the regulatory requirements for disability causation based on claimant's clinical pneumoconiosis. 20 C.F.R. §718.204(c)(1)(i), (ii). Any potential error in the administrative law judge's conflating the disease and disability causation elements in classifying the relationship between claimant's clinical pneumoconiosis and his MAC infection therefore is harmless.[11] *Harman Mining Co. v.*

"underground miner with complicated black lung disease." Director's Exhibit 20; Claimant's Exhibit 5. Throughout his opinion, however, he linked claimant's disability to his "black lung disease" and noted claimant's biopsy was consistent with anthracosis. *Id.* The administrative law judge found the biopsy evidence establishes anthracosis. Decision and Order at 34-35. Because there is "nothing in [Dr. Akhrass's] description of [claimant's] lungs that could lead anyone to believe that he" diagnosed complicated pneumoconiosis "required for application of 20 C.F.R. § 718.304," *Mays*, 176 F.3d at 761-762, there is no inconsistency between Dr. Akhrass's opinion and the administrative law judge's finding on complicated pneumoconiosis.

[10] The Administrative Procedure Act provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

[11] Moreover, "an individual who has clinical pneumoconiosis necessarily has legal pneumoconiosis as well." *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 306 (6th Cir. 2005), *citing Island Creek Coal Co. v. Compton*, 211 F.3d 203, 210 (4th Cir. 2005) ("[l]egal pneumoconiosis is a much broader category of diseases, which includes, but is not limited to medical or coal worker's pneumoconiosis"). To the extent Dr. Akhrass's opinion supports the determination claimant's completely disabling MAC infection is a direct consequence of his clinical pneumoconiosis, the MAC infection qualifies as legal pneumoconiosis. *Id.*; *see also* 20 C.F.R. §718.201(a)(2) ("Legal pneumoconiosis includes

Director, OWCP [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Nor did the administrative law judge err in discrediting the contrary opinions of Drs. Jarboe and Spagnolo on disability causation. He noted Dr. Jarboe[12] "stated that the nearly '20 year delay' between when [c]laimant left the mines and when [c]laimant's breathing problems manifested 'suggest[ed] . . . that his impairment is not related to his inhalation of coal mine dust.'" Decision and Order at 32-33, *quoting* Employer's Exhibit 13 at 15-16. He permissibly found the doctor's reasoning contrary to the principle that pneumoconiosis can be a latent and progressive disease. *See* 20 C.F.R. §718.201(c); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (a medical opinion not in accord with the accepted view that pneumoconiosis can be both latent and progressive may be discredited).

Further, Dr. Jarboe also opined claimant's disability is unrelated to clinical pneumoconiosis because claimant does not have the disease. Employer's Exhibits 2, 13. Where a physician erroneously fails to diagnose pneumoconiosis, his opinion on causation "may not be credited at all" absent "specific and persuasive reasons" for concluding it is independent of the mistaken belief the miner did not have the disease. *See Epling*, 783 F.3d at 504-05, *citing Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995). Even then, the opinion can only be assigned, at most, "little weight." *Id*. Dr. Jarboe did not offer an opinion why claimant's clinical pneumoconiosis did not contribute to his disability, other than his mistaken belief that claimant does not suffer from this disease. Employer's Exhibits 2, 13. As such, his causation opinion cannot be credited. *Epling*, 783 F.3d at 504-05.

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any chronic lung disease or impairment *and its sequelae* arising out of coal mine employment.") (emphasis added).

[12] Dr. Jarboe opined claimant has a disabling pulmonary impairment evidenced by reduced FEV1 values on claimant's pulmonary function testing. Employer's Exhibits 2, 13. He attributed claimant's disability to his MAC infection: the lingering effects of surgery to remove a lesion in claimant's right upper lung that his infection caused and extensive infiltrates in his left lung that his infection caused. Employer's Exhibits 2, 13. He also attributed claimant's disability to a moderate airflow obstruction that his cigarette smoking and bronchial asthma caused. Employer's Exhibit 2 at 15. He opined claimant's clinical pneumoconiosis did not contribute to his disability because he does not have the disease.

The administrative law judge also permissibly rejected Dr. Spagnolo's disability causation opinion[13] because the doctor failed "to recognize the presence of anthracosis in the pathology reports," contrary to the administrative law judge's finding that the biopsy evidence established anthracosis. Decision and Order at 33; *see Epling*, 783 F.3d at 506. He also permissibly found Dr. Spagnolo "could not provide an informed answer" on the issue of whether "pneumoconiosis could render an individual more susceptible to MAC infection," as the doctor only noted that "[m]ost of the people that get this never set foot in a mine." Decision and Order at 33, *quoting* Employer's Exhibit 14 at 39; *see Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441.

As substantial evidence supports the administrative law judge's finding that Dr. Akhrass's opinion is well-reasoned, and because it establishes clinical pneumoconiosis substantially contributes to claimant's disability, we affirm his finding of disability causation pursuant to 20 C.F.R. §718.204(c).[14] We therefore affirm the award of benefits.

[13] Dr. Spagnolo also diagnosed a progressive MAC infection, and opined claimant does not have pneumoconiosis. Employer's Exhibit 14 at 20, 33-34. He testified claimant has been treated for a MAC infection since 2011 and it has resulted in the loss of both of his upper lung lobes. *Id*. at 16-17. He attributed claimant's reduced FEV1 and FVC values on pulmonary function testing "to the treatment of his mycobacterial avium complex infection and the surgical treatment of his infection." *Id*. at 29-30.

[14] Because the administrative law judge found Dr. Akhrass's opinion outweighs those of Drs. Jarboe and Spagnolo based on their respective explanations, we decline to address employer's argument that he also erred in finding Dr. Akhrass's status as claimant's treating physician "bolster[s] his opinion." Decision and Order at 32; *see Larioni*, 6 BLR at 1-1278.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge