U.S. Department of Labor

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

BRB No. 20-0142 BLA

MANUEL RAY STAFFORD	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CRYSTAL SPRINGS, INCORPORATED	)	
	)	DATE ISSUED: 05/27/2021
and	)	
	)	
TRAVELERS INDEMNITY COMPANY	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand Denying Benefits of Larry W. Price, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for Claimant.

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for Employer and its Carrier.

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

BOGGS, Chief Administrative Appeals Judge:

Claimant appeals Administrative Law Judge Larry W. Price's Decision and Order on Remand Denying Benefits (2013-BLA-05513) 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 miner's claim filed on February 23, 2012, and is before the Benefits Review Board for the second time.[1]

Administrative Law Judge Alan L. Bergstrom initially denied the claim. In considering Claimant's appeal, the Board affirmed, as unchallenged, Judge Bergstrom's findings that Claimant established 13.32 years of coal mine employment and, thus, could not invoke the Section 411(c)(4) presumption;[2] and that the evidence did not establish complicated pneumoconiosis or simple clinical pneumoconiosis.[3] *Stafford v. Crystal Springs, Inc.*, BRB No. 17-0424 BLA, slip op. at 3 n.3 (June 20, 2018) (unpub.). However the Board vacated Judge Bergstrom's finding that Claimant did not establish legal pneumoconiosis[4] because he mischaracterized the evidence. *Id*. at 9. Thus, the Board vacated the denial of benefits and remanded the case for further consideration. *Id*.

On remand, the case was reassigned to Administrative Law Judge Larry W. Price (the administrative law judge). He found that Claimant did not establish the existence of legal pneumoconiosis and denied benefits.

On appeal, Claimant argues the administrative law judge erred in finding that he did not establish the existence of legal pneumoconiosis. Employer and its Carrier (Employer)

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[1] We incorporate the procedural history of the case and the Board's prior holdings as set forth in *Stafford v. Crystal Springs, Inc.*, BRB No. 17-0424 BLA (June 20, 2018) (unpub.).

[2] Section 411(c)(4) of the Act provides a miner with a rebuttable presumption that he 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); 20 C.F.R. §718.305.

[3] 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 tissues to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. 718.201(a)(1).

[4] 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).

respond in support of the administrative law judge's denial of benefits.[5] The Director, Office of Workers' Compensation Programs, declined to file a substantive response brief.

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.[6] 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).

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, 718.203, 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).

To establish legal pneumoconiosis, Claimant must demonstrate he has 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(b). The United States Court of Appeals for the Sixth Circuit holds a miner can establish a lung impairment is significantly related to coal mine dust exposure "by showing that his disease was caused 'in part' by coal mine employment." *Arch on the Green v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014); *see also Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020).

[5] On April 16, 2020, the Board granted Employer's request for an extension of time to file a response brief and directed Employer to file that brief within thirty days from receipt of its Order. *Stafford v. Crystal Springs, Inc.*, BRB No. 20-0142 BLA (Apr. 16, 2020) (Order) (unpub.). On December 14, 2020, Employer filed an "Affidavit and Unopposed Motion to File Attached Response Brief," alleging it never received the Board's order granting the extension, and that Claimant has no objection to Employer now filing its response brief. Based on the foregoing, the Board accepts Employer's response brief as part of the record. 20 C.F.R. §§802.212, 802.217.

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 6; Hearing Transcript at 19-20.

There are four medical opinions. Drs. Rasmussen and Cohen opined that Claimant suffers from legal pneumoconiosis in the form of a reduced diffusing capacity impairment that is due, in part, to coal mine dust exposure. Director's Exhibit 9; Claimant's Exhibit 1. Dr. Rosenberg opined that Claimant does not suffer from a reduced diffusing capacity impairment, but that, if he did, it would not be due to coal mine dust exposure. Dr. Jarboe also opined that Claimant does not suffer from any coal mine dust-related disease or impairment.

In his initial report, Dr. Rasmussen opined that Claimant has legal pneumoconiosis because his diffusing capacity impairment was "at least minimally [caused] by coal mine dust exposure." Director's Exhibit 9 at 27. He also noted that Claimant's smoking history and extensive chemotherapy treatment for testicular cancer were factors contributing to his impairment. *Id*. at 26. In a supplemental report, Dr. Rasmussen stated that Claimant has "diffusing capacity [impairment] to a degree, which would be considered significant. He therefore has legal pneumoconiosis, which contributes significantly to his disabling chronic lung disease." *Id*. at 21. The administrative law judge gave Dr. Rasmussen's opinion less weight on legal pneumoconiosis because he "does not provide any reasoning for his change of opinion" regarding the degree to which coal mine dust exposure contributed to Claimant's impairment and cites to no evidence or studies supporting his conclusion that coal dust exposure reduced Claimant's diffusion capacity. Decision and Order on Remand at 5.

The administrative law judge also found Dr. Cohen's opinion less persuasive. Dr. Cohen attributed Claimant's diffusing capacity impairment to both coal mine dust exposure and smoking. He explained that they both damage the alveolar-capillary membranes through similar methods, by causing scarring and impeding gas transfer from the lungs to the blood vessels, and one cannot distinguish between the two causes. Claimant's Exhibit 1 at 7-8, 13. Dr. Cohen disagreed with Dr. Jarboe that the absence of significant restriction or obstruction pointed to a non-coal mine dust-related cause, noting that a reduction in diffusing capacity may signal a gas exchange problem before obstruction or restriction develops. *Id*. at 15. Further, Dr. Cohen asserted that the studies cited by Dr. Jarboe concluding that coal mine dust does not cause a significant reduction in diffusing capacity are deficient. *Id.* The administrative law judge gave Dr. Cohen's opinion less weight because "[w]hile [he] discounted the possible link between chemotherapy for testicular cancer and pulmonary toxicity with a reduced diffusing capacity, Drs. Rasmussen, Rosenberg and Jarboe all agree that the chemotherapeutic agents used to treat testicular cancer commonly cause pulmonary toxicity, with a reduced diffusing capacity."[7] Decision

[7] Dr. Jarboe opined that Claimant's chemotherapy was "more likely" or "most likely" the cause of Claimant's reduced diffusing capacity. Employer's Exhibits 3 at 6; 5 at 14. Dr. Rosenberg opined that any abnormalities in Claimant's lung function could be

and Order on Remand at 6. He further noted that while Dr. Cohen supported his rationale by citing to medical studies linking coal mine dust exposure to reductions in diffusing capacity, none of the medical studies discussed by either Dr. Jarboe or Dr. Cohen is in the record. *Id*. Additionally, the administrative law judge found Dr. Cohen's opinion less persuasive because there was no evidence indicating that Claimant has obstruction or restriction on pulmonary function testing, as noted by Dr. Jarboe, and "no evidence of record that Claimant has emphysema or scarring."[8] *Id*. Thus, the administrative law judge found that Claimant failed to establish the existence of legal pneumoconiosis. *Id*. at 7.

Claimant summarizes the conflicting medical opinion evidence, outlines applicable law for finding a medical opinion documented and reasoned, and then generally asserts Drs. Rasmussen's and Cohen's opinions are adequately reasoned to establish legal pneumoconiosis and "should have been given the greatest amount of weight." Claimant's Brief at 10-21. However, Claimant does not identify any specific error with the administrative law judge's rationale for discrediting their opinions.[9] *See* 20 C.F.R.

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due to his chemotherapy as well as his weight, sternotomy for coronary artery disease, anemia, elevated carboxyhemoglobin levels, and pancreatitis. Director's Exhibit 10 at 6; Employer's Exhibits 4 at 10, 12; 9.

[8] Dr. Cohen testified that Claimant may have interstitial lung disease or emphysema related to a combination of smoking and coal mine dust exposure that is not detectable by x-ray. Claimant's Exhibit 1 at 15, 17-18. The administrative law judge discounted this aspect of Dr. Cohen's opinion because, based on the current record, "Claimant does not have interstitial lung disease or emphysema . . . ." Decision and Order on Remand at 6.

[9] Contrary to our dissenting colleague's conclusion, Claimant does not assert in his brief that the administrative law judge erred in finding he did not establish a "chronic" respiratory impairment and does not brief the issue as the Board requires. *See* 20 C.F.R. §802.211(b). In fact, Claimant's brief is, for the most part, identical to the brief he filed in the prior appeal, except this time it lacks any specific allegation of error by the administrative law judge and merely summarizes the conflicting evidence. The Board has consistently interpreted 20 C.F.R. §§802.210, 211(b) to require the party challenging the administrative law judge's Decision and Order to do more than merely recite evidence favorable to his case; rather the party must identify any alleged error with specificity otherwise there is no basis for review. *Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987) (Board must limit its review to contentions of error that the parties specifically raise and declines to address issues that are not adequately briefed).

§802.211(b); *Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987) (Board must limit its review to contentions of error that the parties specifically raise).

It is the administrative law judge's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See 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). Claimant's general challenge to the administrative law judge's findings on legal pneumoconiosis is a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. We therefore affirm the administrative law judge's determination that Claimant did not establish legal pneumoconiosis. 20 C.F.R. §718.202(a)(4). Claimant's failure to establish the existence of pneumoconiosis, a necessary element of entitlement, precludes a finding that he is entitled to benefits under 20 C.F.R. Part 718. *Anderson*, 12 BLR at 1-112.

Accordingly, the administrative law judge's Decision and Order on Remand Denying Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

I concur.

MELISSA LIN JONES
Administrative Appeals Judge

ROLFE, Administrative Appeals Judge, dissenting:

I respectfully dissent from my colleague's decision to affirm the denial of benefits and would remand for the administrative law judge (ALJ) to determine whether legal pneumoconiosis substantially contributes to a disabling respiratory impairment. The ALJ committed fundamental errors of law and fact in finding the opinions of Drs. Rasmussen and Cohen insufficient to meet the legal standard to establish pneumoconiosis. 20 C.F.R. §718.202(a)(4); *see, e.g.*, *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 306 (6th Cir. 2005) (claimant can establish legal pneumoconiosis using reduced diffusing capacity as part of a doctor's opinion diagnosing the disease). Contrary to the majority's view,

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Claimant's articulation of the correct legal standard, and his explanation why those doctors' opinions meet it, squarely puts those material errors in front of us. 20 C.F.R. §802.211(b); *see, e.g.*, *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); (Board must vacate ALJ decisions containing errors of law or that lack substantial basis in fact).

The way the medical and legal concepts in this case interact in a real-world application can be difficult to understand at first blush. Medically, diffusing capacity measures how well the lungs and blood transfer oxygen and carbon dioxide; it thus tests for, and monitors the treatment of, lung disease. A reduced diffusing capacity indicates reduced lung function. Doctors therefore customarily use it in their medical reports, along with other pulmonary function indicators, to diagnose and determine the severity of lung impairments. *See, e.g.*, *Ligon Preparation Co.*, 400 F.3d at 306.

Legally, the dispute has narrowed to two separate but related sets of questions about the significance of that testing. The first is whether Claimant's coal dust inhalation factored enough into his reduced diffusing capacity to meet the regulatory definition of legal pneumoconiosis (the disease and disease causation elements of his claim). Second, if so, whether that legal pneumoconiosis then factored enough into a disability to meet the regulatory definition of disability due to pneumoconiosis (the remaining disability and disability causation elements).[10]

In our original decision, we held ALJ Bergstrom mistakenly found Claimant's reduced diffusing capacity improved over time; the evidence indisputably establishes it remained the same. *See Stafford v. Crystal Springs, Inc.*, BRB No. 17-0424 BLA, slip op. at 7-9 (June 20, 2018) (unpub.). Given the irreversible nature of pneumoconiosis, he then used that mistaken finding to discredit Drs. Rasmussen's and Cohen's opinions on legal pneumoconiosis. *Id.* We therefore directed the ALJ on remand to determine whether -- reweighing the opinions with a correct view of the facts -- they adequately established coal

[10] The disease causation element is baked into the disease element. The inquiry can be viewed pragmatically as the answer to one question: whether medical opinion evidence establishes coal dust significantly caused or aggravated a reduced diffusing capacity, thus establishing an "impairment" covered by the Act. The severity of that impairment (the severity of legal pneumoconiosis), and the contribution of any other respiratory or non-respiratory conditions, are then weighed when considering the disability elements of the claim.

dust caused or aggravated Claimant's reduced diffusing capacity. If so, we directed him to examine how that legal pneumoconiosis factored in any respiratory disability. *Id.*

To establish legal pneumoconiosis, Claimant must demonstrate he has 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(b). Both Dr. Rasmussen and Dr. Cohen unambiguously testified that Claimant's reduced diffusing capacity met this standard. Director's Exhibit 9 at 21, 26-27, 31; Claimant's Exhibit 1 at 7-8, 24, 26.

On remand, however, the ALJ found neither opinion sufficient to establish the disease. But his two rationales for doing so cannot be affirmed: *first*, his initial finding that neither opinion facially meets the standard because neither diagnosed a "chronic" condition contains both legal and factual errors; *second*, it is impossible to determine whether those errors -- along with further unresolved conflicts -- affected his subsequent decision to credit as more persuasive the opinions that coal dust played no role in the impairment.[11]

Relying on *Pyle v. Allegheny River Mining Co.*, 2-BLR 1-1143 (1981), the ALJ held that Claimant has not established his reduced diffusing capacity is a chronic condition because "under the regulations a disease that lasts for at least 12 months should be considered chronic[,]" Decision at 3, and the diffusion testing took place in this case "less than 4 months apart." *Id.* In addition, he further found that neither Dr. Rasmussen nor Dr. Cohen discussed "whether Claimant's diffusing capacity was 'chronic.'" *Id.* at 4.[12]

Neither of those premises is true. As a legal matter, the regulations do not establish a minimum time period for a condition to be considered chronic instead of acute. 20 C.F.R. §718.202(a)(2). Instead, it is enough for a physician to credibly offer an opinion that the impairment did not develop suddenly, flare up, or be expected to only last for a short period of time. *Id*. The ALJ's threshold finding -- and much of the subsequent analysis contained

[11] Having found Claimant did not establish legal pneumoconiosis, the ALJ ostensibly did not reach the disability elements of his claim, although his analysis frequently conflates the elements.

[12] To the extent that *Pyle* could be understood at one time as standing for a black letter rule that any disease must exist for 12 months to be considered chronic, it has since been overruled. In *Hunter v. Director, OWCP*, 8 BLR 1-120, 1-122 (1985) aff'd, 9 BLR 2-140 (4th Cir. 1986) the Board held and the Fourth Circuit affirmed that whether a disease is chronic is a question of fact to be determined on a case-by-case basis.

in his decision -- thus flows from an undeniable legal error derived from an overruled case. *Id*; *Hunter v. Director, OWCP*, 8 BLR 1-120, 1-122 (1985).

Moreover, as a factual matter, both doctors *did* unequivocally testify that Claimant's reduced diffusing capacity was a chronic impairment. Drs. Rasmussen and Cohen both diagnosed legal pneumoconiosis, fully cognizant the definition applies only to chronic conditions. Although the ALJ is correct Dr. Cohen did not specifically use the word "chronic" in his deposition, magic words are not required if a diagnosis is clear. *See*, *e.g.*, *Pittsburg & Midway Coal Mining Co.*, 508 F.3d 975, 987 (11th Cir. 2007) (explaining where the DOL has not defined terms by regulation, it has elected to proceed in a common law fashion based on the facts of each case). And no reasoning mind could read that transcript and conclude he did not diagnose a chronic impairment notwithstanding the absence of that one specific word. Dr. Rasmussen, for his part, specifically stated in his supplemental report that Claimant has "legal pneumoconiosis, which contributes significantly to his disabling *chronic* lung disease." Director's Exhibit 9 at 21 (emphasis added); *see also* Director's Exhibit 9 at 26-27, 31.[13]

These errors on their own would require remand. *Rowe*, 710 F.2d at 255. But it is further impossible to unscramble the egg to determine whether they also tainted the ALJ's consideration of the persuasiveness of the medical opinions. Regardless, the ALJ made further factual misstatements and left unresolved conflicts weighing the competing opinions against each other.[14]

After summarizing selective portions of the physicians' opinions, the ALJ concluded that "Drs. Rasmussen, Rosenberg, and Jarboe all agree that the

[13] Indeed, Employer did not even argue below, or here, that any reduction in diffusing capacity was an acute condition. Nor do its experts contend as much, they argue the impairment, if it exists, is the result of a combination of other causes and that, in any event, it is not disabling -- not that a reduced diffusing capacity caused by coal dust exposure is a transient condition. Notably, any discussion of the separate question of the severity of the impairment should take place in determining disability.

[14] The majority's assertion that Claimant did not challenge the ALJ's finding that Claimant's condition was chronic is belied by a plain reading of his brief. Claimant unequivocally notes the regulatory definition of legal pneumoconiosis is a "chronic" condition, Claimant's Brief at 12-13, and he spends the next nine pages explaining why Drs. Rasmussen's and Cohen's opinions establish his reduced diffusing capacity was a chronic condition caused, in part, by coal dust inhalation. *Id.* at 12-21. The fact that his brief is similar to the last brief he filed on appeal is not surprising -- the ALJ largely left the same disputes unresolved. Further, the majority's speculation that the ALJ's plain error

chemotherapeutic agents used to treat testicular cancer commonly cause pulmonary toxicity, with a reduced diffusing capacity" and that these "reasoned and documented opinions outweigh Dr. Cohen's opinion that it was pure speculation Claimant's chemotherapy treatment caused his reduction in diffusing capacity." Decision at 6-7.

That conclusion fundamentally mischaracterizes Dr. Rasmussen's opinion. As Claimant points out in his brief, while he acknowledged "[c]ertain chemotherapy treatments can cause respiratory damage," Dr. Rasmussen stressed *"we have no clear indication of use of such chemicals" here*. Director's Exhibit 9 at 26-27; Claimant's Brief at 14, emphasis added. Moreover, contrary to the ALJ's finding, Dr. Rasmussen did not change his opinion over time: he diagnosed legal pneumoconiosis in his initial report and unequivocally confirmed it in his supplemental report. *See Stafford*, BRB No. 17-0424 BLA, slip op. at 4 n.6; Director's Exhibit 9 at 21, 26-27, 31. And he supported that conclusion through testing, relying on the pattern of impairment caused by a reduced diffusing capacity. *See 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 on Remand at 5; Director's Exhibit 9 at 21, 26-27, 31. The ALJ's conclusion Dr. Rasmussen's opinion supports Employer's experts is simply untenable.

The ALJ similarly oversimplified Dr. Cohen's reasoning and failed to meaningfully resolve conflicts between his true opinion and the others. Dr. Cohen did not merely generalize that it is pure speculation that chemotherapy caused Claimant's impairment. Rather, he backed that up by specifically analyzing Claimant's condition, reasoning that a reduced diffusing capacity due to chemotherapy treatments is almost always seen on x-ray with changes of interstitial lung disease, not seen here, which the ALJ did not recognize. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 440-41 (4th Cir. 1997); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59-60 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993); Claimant's Brief at 19-20; Claimant's Exhibit 1 at 16-17. As a result of these misconceptions, the threshold conflict that we directed the ALJ to address on remand remains unresolved. *See Rowe*, 710 F.2d at 254-55 (when "[the ALJ] fails to make important and necessary factual findings, the proper course for the Board is to remand the case to the administrative law judge pursuant to 33 U.S.C. §921(b)(4) rather than attempting to fill the gaps in the [ALJ's] opinion"); *see also*

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categorically does not affect his reasoning on the persuasiveness of the opinions is puzzling: the discussion comprises the majority of the ALJ's analysis and completely misconstrues what Dr. Rasmussen and Dr. Cohen said. To find that they did not diagnosis legal pneumoconiosis and then subsequently find it played no role in determining whether they were persuasive in proving the disease exists defies logic.

Wojtowicz v. Duquesne Light Co., 12 BLR 1-162, 1-165 (1989); *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984).

I am aware it is not our job to reweigh facts, and that we often hold that an ALJ satisfies his job under the APA if we can "understand what he did and why he did it." *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012), *quoting Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 n.10 (4th Cir. 1999). But that is precisely my problem here: I can't tell if, after removing these basic errors, there's anything left of the ALJ's decision to defer to. And in affirming the ALJ's decision, the majority cherry picks bits and pieces of it out of context to seemingly do just that. In so doing, it ignores inconvenient and fundamental errors, under the justification that they were not adequately raised by Claimant. Claimant, however, distinctly argues the ALJ incorrectly discredited Drs. Rasmussen and Cohen under a correct view of the law, and he points out specific instances of unresolved conflicts in his brief. Claimant's Brief at 14-21. That is enough. 20 C.F.R. §802.211(b); *see Howell v. Einbinder*, 350 F.2d 442, 444 (D.C. Cir. 1965) (despite its limited review authority, the Board cannot accept an outcome if the decision was reached in an invalid manner).

JONATHAN ROLFE
Administrative Appeals Judge