U.S. Department of Labor

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

BRB No. 20-0193 BLA

CAROL SPATAFORE (o/b/o JOHN R. SPATAFORE, SR., deceased)	)	
Claimant-Respondent	)	
v.	)	
CONSOLIDATION COAL COMPANY	)	DATE ISSUED: 05/25/2021
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 on Remand Awarding Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Evan B. Smith (Appalachian Citizens' Law Center), Whitesburg, Kentucky, for Claimant.

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

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

BOGGS, Chief Administrative Appeals Judge:

Employer appeals Administrative Law Judge Drew A. Swank's Decision and Order on Remand Awarding Benefits (2012-BLA-06015) 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 March 25, 2011,[1] and is before the Benefits Review Board for a third time. Claimant is not eligible for the Section 411(c)(4) presumption, 30 U.S.C. §921(c)(4) (2018),[2] because the Miner had fewer than fifteen years of coal mine employment.[3] Claimant therefore must establish entitlement to benefits under 20 C.F.R. Part 718.

The Board vacated the administrative law judge's most recent decision on remand because he applied an incorrect standard when assessing the credibility of Claimant's experts and failed to adequately explain the bases for his findings that she did not establish the Miner had clinical or legal pneumoconiosis. *Spatafore v. Consolidation Coal Co.*, BRB No. 17-0428 BLA (Sept. 27, 2018) (unpub.). On remand, the administrative law judge

[1] The Miner died on September 14, 2016. Employer's Brief at 1 n.1. Claimant, the Miner's widow, is pursuing the claim on his behalf.

[2] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability was due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[3] The administrative law judge initially issued a Decision and Order Awarding benefits on April 7, 2015. He found Claimant established the Miner had 17.8 years of coal mine employment, with at least fifteen years working underground or in substantially similar conditions, that the Miner was totally disabled, and that Claimant thereby invoked the Section 411(c)(4) presumption. The administrative law judge further found the presumption unrebutted. In consideration of Employer's appeal, the Board affirmed, as unchallenged, the administrative law judge's findings that the Miner had seven years of underground coal mine employment, but vacated his crediting of an additional 10.8 years of the Miner's employment as a West Virginia state mine safety trainer as not constituting coal mine employment. *Spatafore v. Consolidation Coal Co.*, 25 BLR 1-179, 1-183 n.6, 1-189 (2016). Because Claimant did not establish fifteen years of qualifying coal mine employment, the Board vacated the administrative law judge's determination that she invoked the Section 411(c)(4) presumption and the award of benefits, instructing the administrative law judge to consider Claimant's entitlement under 20 C.F.R. Part 718. *Id*. In his April 19, 2017 Decision and Order on Remand, the administrative law judge denied benefits because he found Claimant did not establish the existence of pneumoconiosis. The Board's second decision in *Spatafore v. Consolidation Coal Co.*, BRB No. 17-0428 BLA (Sept. 27, 2018) (unpub.), vacated that award and remanded the case again for further consideration as discussed herein. This appeal concerns the administrative law judge's Decision and Order on Remand issued on January 28, 2020.

found Claimant established the Miner was totally disabled due to legal pneumoconiosis and awarded benefits. 20 C.F.R. §§718.202(a)(4), 718.204(b)(2)(i).

On appeal, Employer argues the administrative law judge misconstrued the Board's remand instructions and therefore erred in finding legal pneumoconiosis and disability causation established. Employer also argues that Drs. Sood and Rasmussen are not credible because they relied on an inaccurate coal mine employment history. Claimant responds in support of the award of benefits and also contends that if the Board finds error with the administrative law judge's analysis of legal pneumoconiosis, the award is affirmable on alternate grounds.[4] 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.[5] 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.

[4] Claimant asks the Board to reverse the administrative law judge's finding that she failed to establish the Miner had clinical pneumoconiosis based on the x-ray evidence and therefore affirm the award of benefits on the alternate basis that the Miner was totally disabled due to clinical pneumoconiosis. Claimant's Brief at 11-15. We decline Claimant's request. Any error in the administrative law judge's weighing of the x-ray evidence is harmless as there is no evidence to support a finding that the Miner was totally disabled due to clinical pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). Specifically, Dr. Celko is the only physician to diagnose clinical pneumoconiosis and he opined that the Miner was not totally disabled. Director's Exhibit 11 at 4. Thus, even if the Miner had clinical pneumoconiosis as Claimant asserts, she is unable to establish the Miner was totally disabled due to clinical pneumoconiosis, thereby precluding an award of benefits on that alternative basis. Claimant also asks the Board to revisit its prior determination that the Miner's work as a safety trainer was not coal mine employment and to reinstate the administrative law judge's initial finding that she invoked the Section 411(c)(4) presumption. *See Spatafore*, BRB No. 17-0428 BLA, slip op. at 3-4; Claimant's Brief at 15. We deny Claimant's request that we reconsider our prior holding on this issue, as it constitutes the law of the case. *See Brinkley*, 14 BLR at 1-150-51; *Bridges*, 6 BLR at 1-988.

[5] Because the Miner performed his coal mine employment in West Virginia, 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); Director's Exhibits 4, 5.

359 (1965). We cannot affirm a Decision and Order if we cannot ascertain what the administrative law judge did and why. *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316, 25 BLR 2-115, 2-133 (4th Cir. 2012).

Without the benefit of the Section 411(c)(3)[6] 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);[7] 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).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must prove the Miner had a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). Claimant can establish a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment" by showing coal dust exposure contributed "in part" to the Miner's respiratory or pulmonary impairment. *See Westmoreland Coal Co., Inc. v. Cochran*, 718 F.3d 319, 322-23 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 309 (4th Cir. 2012); *see also Arch on the Green v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014).

The Board previously vacated the administrative law judge's finding that Claimant did not establish legal pneumoconiosis, as it was unclear whether he discredited Dr. Rasmussen's and Dr. Sood's opinions because they failed to apportion the Miner's

[6] The administrative law judge found no evidence of complicated pneumoconiosis and thus Claimant is unable to invoke the irrebuttable presumption that the Miner was totally disabled due to pneumoconiosis at Section 411(c)(3) of the Act. *Spatafore v. Consolidation Coal Co.*, BRB No. 17-0428 BLA (Sept. 27, 2018) (unpub.); *see* 20 C.F.R. §§718.203(a), 718.304.

[7] We affirm, as unchallenged on appeal, the administrative law judge's finding that the Miner was totally disabled. 20 C.F.R. §718.204(b)(2); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Remand Awarding Benefits at 23-26.

relative impairment from smoking and coal mine dust exposure, which they are not required to do.[8] *Spatafore*, BRB No. 17-0428 BLA, slip op. at 8-9; *see Consolidation Coal Co. v. Williams*, 453 F.3d 609, 622 (4th Cir. 2006); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576-77 (6th Cir. 2000); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-18-19 (2003). The administrative law judge also applied the wrong legal standard governing Claimant's burden of proof. *Spatafore*, BRB No. 17-0428 BLA, slip op. at 9 n.15. Noting the opinions of Drs. Rasmussen and Sood were facially sufficient to meet Claimant's burden if found credible, the Board directed the administrative law judge to first determine whether the opinions were reasoned and documented and, if so, determine whether they were persuasive when weighed against the other evidence of record. *Id.*

Employer asserts the administrative law judge misunderstood the Board's remand instructions as requiring that he find the opinions of Drs. Rasmussen and Sood reasoned and documented and did not properly assess the credibility of the evidence.[9] Employer's Brief at 7-13. *Id*. Specifically, Employer argues the administrative law judge erred in not addressing whether Drs. Rasmussen and Sood based their diagnoses of legal pneumoconiosis on an accurate length of coal mine employment of seven years. *Id*. Employer's assertions of error have merit.

The administrative law judge found that Claimant established legal pneumoconiosis and explained his determination as follows:

> Consistent with the Board's findings and instructions in *Spatafore II* [BRB No. 17-0428 BLA], the undersigned now concludes that the diagnosis of legal pneumoconiosis by Drs. Rasmussen and Sood are sufficiently reasoned and documented to be credited as they are based on the Miner's relevant histories, symptoms and objective diagnostic test results as well as

[8] It was unclear whether the administrative law judge was finding the opinions inadequately explained on the basis that they set forth the reasons that coal dust exposure can cause pneumoconiosis but failed to adequately address why more likely than not coal dust exposure caused pneumoconiosis in this miner's specific case (which can be an appropriate basis for discrediting an opinion as not sufficiently reasoned) or requiring apportionment (an inappropriate basis for discrediting an opinion).

[9] Employer also notes the administrative law judge erred in evaluating the opinions of Drs. Basheda and Bellotte at legal pneumoconiosis. Employer's Brief at 15 n. 5. We decline to address this argument as it is inadequately briefed. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983).

> consideration of relevant medical literature, and because Drs. Rasmussen and Sood adequately explained why they concluded that the Miner's exposure to coal dust more likely than not significantly caused or aggravated his disabling COPD.

Decision and Order on Remand Awarding Benefits at 21.

The administrative law judge apparently misapprehended the Board's holding that Drs. Rasmussen and Sood's opinions are "facially sufficient" to support Claimant's burden to prove legal pneumoconiosis as mandate on remand that he find their opinions credible to establish legal pneumoconiosis. Facial sufficiency does not substitute for, or eliminate, the need for an analysis of whether an opinion is well-reasoned, well-documented, and persuasive. The administrative law judge must perform that analysis. *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); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). Consequently, the Board specifically instructed the administrative law judge to "evaluate the credibility of the medical opinions," and to reconsider whether each physician provided a reasoned explanation for his opinion on legal pneumoconiosis "based on the specific facts of the case." *Spatafore*, BRB No. 17-0428 BLA, slip op. at 10. Employer correctly asserts the administrative law judge failed to follow the Board's instruction that he independently determine whether the opinions of Drs. Rasmussen and Sood are sufficiently reasoned and documented, based on their respective rationales for why Claimant has legal pneumoconiosis. Most importantly, because the Board held that the Miner's work as a West Virginia state mine safety trainer did not constitute coal mine employment, it was imperative that the administrative law judge address whether Drs. Rasmussen's and Sood's diagnoses of legal pneumoconiosis were credible in view of their understanding of the Miner's work history and the length of his coal mine employment.[10] *Spatafore*, 25 BLR at 1-188. The administrative law judge did not conduct this necessary analysis as he was required to do. *Id.* We therefore vacate

[10] Contrary to our dissenting colleague's position, because the administrative law judge misconstrued the Board's holdings and instructions, we are unable to overlook that he did not independently consider whether the physicians' opinions were credible based on their understanding of Claimant's length of coal mine employment. The Board specifically instructed the administrative law judge to consider their underlying rationales and to independently determine their credibility, which he failed to do. *Spatafore*, BRB No. 17-0428 BLA, slip op. at 10. Because we are unable to discern the basis for the administrative law judge's findings, the law requires we remand this case. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

the administrative law judge's finding that Claimant established legal pneumoconiosis. 20 C.F.R. §718.202(a)(4).

Because we have vacated the administrative law judge's findings on legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), we also vacate his finding that the Miner's total disability was due to pneumoconiosis at 20 C.F.R. §718.204(c). We therefore vacate the award on benefits and remand this case for further consideration.

Remand Instructions

The administrative law judge must comply with the Board's directives and independently assess whether the opinions of Drs. Rasmussen and Sood are adequately reasoned and documented to establish that the Miner had legal pneumoconiosis. The administrative law judge must consider the credibility of the medical opinions given the physicians' understanding of the Miner's length of coal mine employment. The proper analysis for legal pneumoconiosis is to consider whether the physician has provided a reasoned explanation, based on the specific facts of the case, as to why it is more likely than not that coal dust exposure significantly contributed to, or substantially aggravated, the Miner's respiratory or pulmonary impairment. *Spatafore*, BRB No. 17-0428 BLA, slip op. at 9 n.15 and 10.

If Claimant establishes the existence of legal pneumoconiosis, the administrative law judge must also determine whether she established that the Miner's total disability was due to legal pneumoconiosis. In rendering all of his findings on remand, the administrative law judge must explain the bases for his credibility determinations as the Administrative Procedure Act requires.[11] 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

[11] The Administrative Procedure Act, 5 U.S.C. §§500-591, provides that every adjudicatory decision must include "findings and conclusions and the reasons or basis

Accordingly, the administrative law judge's Decision and Order on Remand Awarding Benefits is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

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 and would not remand this case for a third time. The one specific error alleged by Employer and accepted by the majority -- that the administrative law judge (ALJ) did not consider that Dr. Sood overestimated Claimant's coal dust exposure by three years -- does not justify sending this back for another round of litigation, particularly where Claimant (now Claimant's widow) has been waiting for over ten years for a final decision. *See Rickey v. Director, OWCP*, 7 BLR 1-106, 108 (1984) (discrepancy between seven years of coal mine employment found by adjudicator and eleven years assumed by doctor did not affect the weight given opinion).

Instead, I would hold the ALJ adequately understood the material aspects of our instructions and held in a dispositive manner that Drs. Rasmussen and Sood submitted documented, reasoned, and persuasive opinions under the correct legal standard, establishing that the miner's disabling chronic obstructive pulmonary disease (COPD) was

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).

legal pneumoconiosis. Given that no one has attempted to articulate how those mistaken three years of exposure could somehow make a difference in the outcome of this case, his decision should be affirmed. *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (Substantial evidence is such evidence that a "reasonable mind might accept as adequate to support a conclusion"); *see also Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

In our prior decision, the Board held that the ALJ's conclusion that Drs. Rasmussen and Sood did not provide "a well-documented and reasoned explanation for why coal dust exposure was *necessarily* a contributing cause of the miner's lung disease" misstated Claimant's burden of proof. *Spatafore v. Consolidation Coal Co.*, BRB No. 17-0428 BLA, slip. op. at 8-9, n.15 (Sept. 27, 2018) (unpub.), *quoting* Decision and Order on Remand at 19. To establish the existence of legal pneumoconiosis, a claimant only must establish by a *preponderance of the evidence* that the miner suffered from an impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. § 718.201(b); *see Westmoreland Coal Co., Inc. v. Cochran*, 718 F.3d 319, 322-23 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 309 (4th Cir. 2012).

Further, the Board held that both doctors' opinions were facially sufficient to establish the disease if the ALJ found them to be documented, reasoned, and persuasive when weighed against Employer's experts. *Spatafore*, BRB No. 17-0428 BLA, slip. op. at 9 n.15, 10. Both Dr. Sood and Dr. Rasmussen conducted all of the required testing and set forth opinions stating definitively that the miner had legal pneumoconiosis: they explained why they believed that the miner's exposure to coal dust more likely than not significantly caused or aggravated the miner's disabling COPD. *See, e.g.*, Claimant's Exhibit 2 at 4 (Rasmussen); Claimant's Exhibit 7 at 9 (Sood). The Board therefore instructed the ALJ to determine whether, *in fact*, they were documented, reasoned, and persuasive. *Spatafore*, BRB No. 17-0428 BLA, slip. op. at 10.

The ALJ complied. On remand, he summarized the medical opinions and acknowledged his prior finding that he erroneously held Drs. Rasmussen and Sood to a higher standard than contemplated by the regulations. Decision and Order on Remand at 14-20. He acknowledged, "consistent with the Board's findings" that Claimant need only prove "coal dust more likely than not significantly caused or aggravated [the Miner's] disabling COPD." *Id*. at 20. He further found Drs. Rasmussen's and Sood's opinions "sufficiently reasoned and documented" because they were based on "the Miner's relevant histories, symptoms and objective diagnostic test results as well as consideration of relevant medical literature." *Id.* at 21; *see Compton v. v. Island Creek Coal Co.*, 211 F.3d 203, 207-08, 211 (4th Cir. 2011); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); (a reasoned opinion is one in which the ALJ finds the underlying documentation adequate to

support the physician's conclusions). Applying the correct standard, he therefore found their opinions adequately explained why the Miner's exposure to coal dust "more likely than not significantly caused or aggravated his disabling COPD[.]" Decision and Order on Remand at 21; *see Westmoreland Coal Co., Inc. v. Cochran*, 718 F.3d 319, 322-23 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 309 (4th Cir. 2012).[12]

The administrative law judge then determined the opinions were more persuasive than the other opinions of record. Weighing the totality of the medical opinion evidence in accordance with the Board's instructions, he considered Dr. Sood the most qualified physician. *Id*. at 22. He found: Dr. Sood "provided the most thorough explanation of his conclusions and discussion of the underlying documentation"; his report "reflects a high level of medical sophistication and reasoned articulation of the bases for his opinions"; he "thoroughly reviewed the medical evidence including the opinions from Drs. Celko, Rasmussen, Basheda and Bellotte"; and he also "discussed in detail the Miner's smoking and employment histories." *Id*. The administrative law judge also determined that while "not as sophisticated and thoroughly explained as Dr. Sood's reports, the diagnosis of legal pneumoconiosis from Dr. Rasmussen is consistent with and supportive of Dr. Sood." *Id*.[13]

He further found the contrary opinions of Drs. Basheda and Bellotte entitled to little weight, based on his prior determination they relied "on assumptions regarding the nature

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[12] Dr. Rasmussen examined the Miner on May 14, 2012. Claimant's Exhibit 2. He recorded the miner's symptoms, past medical history, psychiatric history, smoking history, medications, family history, and occupational history. *Id.* He obtained pulmonary function and blood gas studies. *Id*. He noted three risk factors for Claimant's impairment: an ongoing smoking habit (forty-seven pack-years); coal mine employment (initially working underground with "pretty minor" dust exposure after 1983, when he left Employer and began working as a state mine safety instructor); and a history asthma. *Id.*; Employer's Exhibit 13 at 8-14.

Dr. Sood reviewed "the Miner's medical records, including the reports from Drs. Celko, Rasmussen, Basheda and Bellotte, that detailed his employment history, smoking history, clinical evaluations, and diagnostic tests." Decision and Order on Remand at 19; *see* Claimant's Exhibit 7. Dr. Sood attributed the miner's impairment to smoking and asthma but also opined his "exposure to coal mine dust was of "sufficient duration . . . [and] intensity" to have been a substantially contributing cause of his COPD." Claimant's Exhibit 7.

[13] Notably, there would have been no reason for the Board to remand the case had it determined Dr. Sood's opinion was documented, reasoned, and credible when weighed against the coal company's experts. It would have simply reversed the ALJ's prior

of pneumoconiosis that are inconsistent with the broad legal definition of the disease." *Id.*; *see* April 19, 2017 Decision and Order on Remand at 14, 17. Employer does not realistically challenge *any* of these findings, and the law dictates they thus should be affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).[14]

Ultimately, other than general requests to reweigh evidence combined with speculation the ALJ misinterpreted our instructions, Employer centers its appeal on an alleged discrepancy in Dr. Sood's understanding of the Miner's length of coal mine employment. And the majority accepts that sole reason as sufficient to turn this case back -- yet again.

But the length of that discrepancy is severely overstated by Employer, and left unidentified by my colleagues. As Claimant points out, "while Dr. Sood recited an accurate employment history (including Mr. Spatafore's 24 years as a mine-safety trainer for the state of West Virginia) the important part for [disease] causation purposes is that Dr. Sood adopted Dr. Basheda's understanding of only 10 years of coal-mine dust exposure." Claimant's Brief at 9, *citing* Claimant's Exhibit 7 at 7.

Claimant established seven. *See Spatafore v. Consolidation Coal Co.*, 25 BLR 1-179, 1-183 n.6, 1-189 (2016); April 19, 2017 Decision and Order on Remand at 4.

And neither Employer nor my colleagues have attempted to articulate how a three year discrepancy could have made a difference in the outcome under the totality of circumstances. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). In my view, it does not. *See Rickey*, 7 BLR at 1-108. Moreover, it is not the primary conflict we directed the ALJ to resolve on remand. I agree with Claimant that the crux of our prior remand concerned "the level of certainty necessary for a legal pneumoconiosis causation finding" and that "once the ALJ applied the proper standard" here he appropriately "found

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decision. Moreover, contrary to Employer's and the majority's speculation, while the ALJ's language is imprecise, there would be no need to perform this additional analysis had he truly understood the Board's instructions to mean as much.

[14] Although Employer generally argues the administrative law judge erred in his consideration of the opinions of Drs. Basheda and Bellotte it does not identify the alleged error. *See* 20 C.F.R. §802.211(b); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); Employer's Brief at 15 n. 5.

Dr. Sood and Dr. Rasmussen to be persuasive to it." Claimant's Brief at 8. I would therefore affirm the award of benefits.[15]

JONATHAN ROLFE
Administrative Appeals Judge

[15] As Claimant further demonstrates, Employer's arguments on disability causation largely restate its flawed arguments on disease causation. Claimant's Brief at 10. Finally, given Claimant has met her burden regarding legal pneumoconiosis, I would not reach her arguments on clinical pneumoconiosis.