U.S. Department of Labor

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

BRB No. 20-0284 BLA

ROBERT L. SMITH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DEAN KNUCKLES ENTERPRISES	)	
	)	
and	)	
	)	
KENTUCKY EMPLOYERS MUTUAL INSURANCE	)	DATE ISSUED: 09/23/2021
	)	
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 Denying Benefits of Christopher Larsen, Administrative Law Judge, United States Department of Labor.

Robert L. Smith, Roark Kentucky.

Paul E. Jones and Denise Hall Scarberry (Jones & Walters, PLLC), Pikeville, Kentucky, for Employer and its Carrier.

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

BOGGS, Chief Administrative Appeals Judge:

Claimant appeals, without the assistance of counsel,[1] Administrative Law Judge (ALJ) Christopher Larsen's Decision and Order Denying Benefits (2017-BLA-05145) rendered on a miner's claim filed on September 11, 2015, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant did not establish complicated pneumoconiosis and thus could not invoke the irrebutable presumption of total disability due to pneumoconiosis under Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The ALJ also found Claimant did not establish at least fifteen years of coal mine employment and thus could not invoke the rebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018). Considering Claimant's entitlement under 20 C.F.R. Part 718, the ALJ determined that, while Claimant established he has a totally disabling respiratory or pulmonary impairment, he did not establish the existence of pneumoconiosis and thus denied benefits. 20 C.F.R. §§718.202(a), 718.204(b)(2).

On appeal, Claimant generally challenges the ALJ's denial of benefits. Employer responds in support of the denial. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

In an appeal filed without the assistance of counsel, the Board addresses whether substantial evidence supports the Decision and Order below. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[3] 33

[1] On Claimant's behalf, Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested that the Benefits Review Board review the ALJ's decision, but she does not represent Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] Under Section 411(c)(4) of the Act, Claimant is entitled to 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 impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[3] 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*

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). The Board reviews the ALJ's evidentiary rulings for an abuse of discretion. *McClanahan v. Brem Coal Co.*, 25 BLR 1-171, 1-175 (2016); *Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-236 (2007) (en banc).

Section 411(c)(4) Presumption – Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mines or in "substantially similar" surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden to establish the number of years he worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold an ALJ's determination based on a reasonable method of calculation that is supported by substantial evidence. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011). Claimant alleges between fifteen and sixteen years of coal mine employment from 1997 to 2012. Director's Exhibits 2, 29 at 7.

At the hearing, Claimant testified he last worked for Employer as a coal truck driver on September 12, 2012, when he was laid off from his job. Hearing Transcript at 9-11. Claimant spent all of his coal mine employment working as a coal truck driver in Kentucky. *Id*. at 9-10, 13. He testified at the hearing and in his deposition that he last worked in coal mine employment for Employer and also previously worked for Collett & Howard Trucking, Collett Trucking, and Ray Finley Trucking. Hearing Transcript at 9-11; Director's Exhibit 29 at 11. He also testified by deposition that he worked as a security guard for Storm Security from 1995 through 1977, and indicated it involved "stay[ing] on mine property and watch[ing] equipment and anything on the property and keep[ing] record of anyone coming and going." Director's Exhibits 6; 29 at 8.

The ALJ determined that Claimant established 10.42 years of coal mine employment from 1997 to October 12, 2012.[4] Decision and Order at 21-24. The ALJ

Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3; 29 at 8; Hearing Transcript at 9-10.

[4] On his claim form, Claimant noted he stopped work in the coal mines on October 29, 2012; on his employment history form he wrote October 2012; in a January 30, 2016 statement, he noted that he stopped work on September 20, 2012; in his deposition he testified he quit working in September 2012. Director's Exhibits 2, 3, 6, 29. Based on these varying statements, it is unclear why the ALJ found Claimant worked until October 12, 2012; however, any error is harmless because the difference still would not afford the

found there was "no specific direct evidence of beginning and ending dates [of Claimant's employment], such as paystubs or employer personnel records." Decision and Order at 22. He therefore relied on Claimant's Social Security Administration (SSA) earnings records, his 2012 W-2 form, and the work history forms to reconstruct his employment history. *Id.* Initially, we affirm the ALJ's permissible finding that Claimant's employment as a security guard for Storm Security from 1995 to 1997 was not coal mine employment because Claimant described this employment as merely watching the equipment and property and keeping a record of anyone coming and going on the mine site. *See Falcon Coal Co. v. Clemons*, 873 F.2d 916, 922 (6th Cir. 1989) (night watchman who sat in a guardhouse and occasionally drove around the mine was not a miner); *but see Sammons v. EAS Coal Co.*, 980 F.2d 731 (Table), 1992 WL 348976 (6th Cir. Nov. 24, 1992) (unpub.) (night watchman worked as a miner because part of his shift included safety checks, repairs, and replacements that kept the mine "operational, safe, and in repair" and thus his duties were essential to the production and extraction of coal); *Wackenhut Corp. v. Hansen*, 560 F. App'x 747 (10th Cir. 2014) (unpub.) (security guard was a miner because he patrolled mines and inspected equipment to eliminate fire and safety hazards, duties integral to the operation of the mine and coal extraction; court noting that guard's security duties of patrolling for trespassers and checking in employees at gate "do not negate [claimant's] essential work in insuring the safe operation of the mine"); Decision and Order at 21 n.23, 24; Director's Exhibit 6.

We also see no error in the ALJ's determination that Claimant's work for K. Hatfield LTD in 1996 and 1997 as a security guard was not coal mine employment.[5] Decision and Order at 23. Claimant did not allege any coal mine employment for this company. Director's Exhibits 2, 3.

Regarding Claimant's alleged employers and the record proof of employment, the ALJ prepared a chart that compared Claimant's yearly earnings as set forth in the SSA earnings records to the average yearly earnings for miners who worked 125 days during a

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claimant the fifteen years needed to invoke the Section 411(c)(4) presumption. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[5] The SSA records also show earnings for Leslie Knott Letcher Perry Community Action Council (1981-82), Rose Packing Company (1983-84), and WM Resources (2000), but there is no evidence to support a finding that this work was coal mine employment. *See* Director's Exhibit 8.

year as set out in Exhibit 610.[6] Director's Exhibit 23. The ALJ permissibly found that Claimant established three years of coal mine employment for the years 2006, 2008, and 2011 as Claimant worked for at least 125 days in each of those years. *See Shepherd v. Incoal, Inc.*, 915 F.3d 392, 401 (6th Cir. 2019), *reh'g denied*, No. 17-4313 (6th Cir. May 3, 2019);[7] Decision and Order at 23; Director's Exhibit 8. We also affirm the ALJ's crediting of Claimant with four full years of coal mine employment in 1998, 1999, 2009, and 2010 as it appears he inferred Claimant worked for a full calendar year during each of those years and these findings are not contested. Decision and Order at 23.

For the years where it is unclear if Claimant worked a full calendar year, the ALJ calculated fractional years of coal mine employment based on the ratio of days worked to the yearly wages set forth in Exhibit 610 for miners who worked at least 125 days. Decision and Order at 23. The ALJ reasonably credited Claimant with .54 of a year in 1997, .48 of a year in 2000, .48 of a year in 2001, .35 of a year in 2005, and .76 of a year in 2007 for a total of 2.61 years. *Id.*; *see Shepherd*, 915 F.3d at 401. With regard to 2012, the ALJ noted that while Claimant worked more than 125 days, Claimant indicated that he stopped work for Employer on October 12, 2012. Thus, the ALJ credited Claimant with only .81 of a year of coal mine employment for 2012.[8] Decision and Order at 23-24; Director's Exhibits 2, 3.

Because the ALJ's calculations are reasonable and supported by substantial evidence, we affirm his finding that Claimant established 10.42 years of coal mine

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[6] Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (BLBA) Procedure Manual*, entitled "Average Wage Base," contains the average daily earnings of employees in coal mining and yearly earnings for those who worked 125 days during a year. It is referenced in 20 C.F.R. §725.101(a)(32)(iii).

[7] In *Shepherd v. Incoal, Inc.*, 915 F.3d 392, 401 (6th Cir. 2019), *reh'g denied*, No. 17-4313 (6th Cir. May 3, 2019), the Sixth Circuit held if the formula set out at 20 C.F.R. §725.101(a)(32)(iiii) yields at least 125 working days, a miner can be credited with a year of coal mine employment, regardless of the actual duration of employment for the year. If the results yield less than 125 days, the miner still can be credited with a fractional portion of a year based on the ratio of the days worked to 125.

[8] Even if Claimant were credited with a full year of coal mine employment in 2012, he still would have less than fifteen years of coal mine employment. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

employment. *See Muncy*, 25 BLR at 1-27. As Claimant established less than fifteen years of coal mine employment, we also affirm the ALJ's finding that Claimant is unable to invoke the Section 411(c)(4) presumption. Decision and Order at 27.

Entitlement Under 20 C.F.R. Part 718

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).

Claimant may establish the existence of pneumoconiosis by x-rays, autopsies or biopsies, operation of one of the presumptions described in 20 C.F.R. §§718.304, 718.305, or a physician's opinion.[9] 20 C.F.R. §718.202(a)(1)-(4). The ALJ must consider all of the relevant evidence and weigh the evidence as a whole to determine if it establishes the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *See Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 700 F.3d 878, 880-81 (6th Cir. 2012). The ALJ found that Claimant did not establish the existence of clinical or legal pneumoconiosis.[10]

X-ray Evidence - Evidentiary Issue

At the hearing, the ALJ admitted Dr. DePonte's positive reading of a January 5, 2017 x-ray as Claimant's Exhibit 1 with the understanding that Employer would be given

[9] The ALJ accurately found there is no biopsy evidence for consideration at 20 C.F.R. §718.202(a)(2). Decision and Order at 7, 27.

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

the opportunity post-hearing to obtain the film for a rebuttal reading. Hearing Transcript at 4-7, 22. On July 26, 2018, Employer filed a post-hearing Motion to Strike Claimant's Exhibit 1 because it had been unable to obtain the January 5, 2017 x-ray from the Department of Labor or St. Charles Community Health Clinic – a division of Stone Mountain Health Services, which represented Claimant at the hearing and submitted Dr. DePonte's reading.

In his decision, the ALJ excluded Claimant's Exhibit 1, noting correctly that the regulations require that the original x-ray film or digital x-ray image upon which an x-ray report is based be provided to the Office of Workers' Compensation Programs. Decision and Order at 2-3; *see* 20 C.F.R. §718.102(f). The ALJ correctly noted that Claimant's lay representative from Stone Mountain did not supply the x-ray to either the District Director or Employer and offered no explanation as to why she failed to do so. Because we discern no abuse of discretion by the ALJ, we affirm his exclusion of Claimant's Exhibit 1. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc); Decision and Order at 2-3.

Weighing of the X-ray Evidence

The ALJ considered seven interpretations of four x-rays. Decision and Order at 8-10. All of the interpreting physicians are dually qualified as Board-certified radiologists and B readers. *Id*. at 27. The ALJ accurately found Drs. DePonte, Kendall, and Miller each read the November 16, 2015 x-ray as negative for simple clinical pneumoconiosis and there are no positive readings.[11] 20 C.F.R. §718.102(d)(3); Decision and Order at 8-9, 28; Director's Exhibits 12, 19; Claimant's Exhibit 4. The ALJ permissibly found the August 12, 2015 x-ray "in equipoise" because Dr. DePonte read the x-ray as positive for simple clinical pneumoconiosis while Dr. Tarver read it as negative. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 280-81 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730 (3d Cir. 1993); Decision and Order at 9, 28; Director's Exhibits 18, 22. Additionally, the ALJ accurately found Dr. Kendall provided the only readings of the February 23, 2017 and July 20, 2017 x-rays, which were negative for simple clinical pneumoconiosis. Decision and Order at 10, 28; Employer's Exhibits 1, 3. Because the ALJ properly conducted a qualitative and quantitative analysis of the x-ray evidence, and permissibly found three x-rays are negative and one x-ray is in equipoise, we affirm his finding that the x-ray evidence did not establish clinical pneumoconiosis at

[11] Dr. Lundberg reviewed the November 16, 2015 x-ray only to assess its film quality. Director's Exhibit 11.

20 C.F.R. §718.202(a)(1).[12] *See Staton v. Norfolk & W. Ry. Co.*, 65 F.3d 55, 59-60 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993); Decision and Order at 28.

Legal Pneumoconiosis

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 that 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." *See Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014); *see also Island Creek Coal Co. v. Young*, 947 F.3d 399, 407 (6th Cir. 2020) ("[I]n [*Groves*], we defined 'in part' to mean 'more than a *de minimis* contribution' and instead 'a contributing cause of some discernible consequence.'"). The ALJ considered four medical opinions. He rejected Dr. Ajjarapu's opinion that Claimant has legal pneumoconiosis and found the opinions of Drs. Jarboe and Rosenberg, that Claimant does not have legal pneumoconiosis, more credible.[13]

Dr. Ajjarapu diagnosed chronic bronchitis based on Claimant's subjective description of daily cough with sputum production. She stated the "Underlying etiologies [of Claimant's chronic bronchitis were] his work in the [coal] mines and continued tobacco smok[ing]" because "[b]oth cigarette smoking and [c]oal dust cause airway inflammation leading to bronchospasm and cause excessive airway secretions and bronchitic symptoms." Director's Exhibit 12 at 7. She also wrote, "This is the basis for legal coal worker

[12] The ALJ did not address the physicians' opinions or treatment records relevant to clinical pneumoconiosis. However, any error is harmless as no physician diagnosed clinical pneumoconiosis and only one treatment record entry identified the disease, but expressed no basis for the diagnosis. *See Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 192 (4th Cir. 2000); *Larioni*, 6 BLR 1-1278; (1984); Director's Exhibits 12 at 3, 7; 20; Employer's Exhibits 1 at 5; 2 at 11-12; 3 at 7-8; 4 at 16-18, 23, 28; Claimant's Exhibit 6 (March 9, 2017 entry).

[13] Dr. Vuskovich opined Claimant's obstructive impairment is related to asthma, obesity and smoking but not coal mine dust exposure. The ALJ found his opinion was not adequately reasoned. Decision and Order at 16, 29; Director's Exhibit 20. The ALJ did not address Claimant's treatment notes but we consider the error to be harmless because even though they include diagnoses of chronic obstructive pulmonary disease, they do not address its etiology. *See Larioni*, 6 BLR at 1-1278; Claimant's Exhibits 6-9.

pneumoconiosis/chronic bronchitis." *Id*. Noting Claimant's "objective data . . . show[s] severe pulmonary impairment," she stated the impairment is "multifactorial," and that "Major contributors are his continued tobacco smoke and extreme obesity." *Id*. She concluded "Even though [Claimant's] chest x-ray is negative for CWP, I believe that his employment in the mines played a role, but not a substantial role" in his pulmonary impairment. *Id*.

The ALJ found that Dr. Ajjarapu "hedged" her opinion regarding the extent to which coal mine dust contributed to Claimant respiratory impairment. Decision and Order at 30. Thus, he found her opinion unpersuasive to establish that Claimant has legal pneumoconiosis. *Id*. at 31. Although a doctor need not apportion the causes of a miner's lung disease to establish the existence of legal pneumoconiosis, the ALJ must still be satisfied that the evidence is sufficient to establish that Claimant's respiratory disease is due at least in part to coal mine dust exposure. *See Groves*, 761 F.3d at 598-99; *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-18-19 (2003). Because the ALJ acted within his discretion, we affirm his finding that Dr. Ajjarapu's opinion on legal pneumoconiosis is not adequately explained. *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); *Clark*, 12 BLR at 1-155; *Justice v. Island Creek Coal Co*., 11 BLR 1-91, 1-94 (1988); Decision and Order at 31.

Claimant has the burden of establishing entitlement and bears the risk of non-persuasion if the evidence is found insufficient to establish a crucial element of entitlement. *See Ondecko*, 512 U.S. at 281; *Young v. Barnes & Tucker Co.*, 11 BLR 1-147, 1-150 (1988); *Oggero v. Director, OWCP*, 7 BLR 1-860, 1-865 (1985). Moreover, the ALJ has discretion to determine the credibility of the evidence and we are not empowered to reweigh the evidence or substitute our inferences for those of the ALJ. *See Anderson*, 12 BLR at 1-113. Because the ALJ permissibly discredited the only opinion supportive of a finding of legal pneumoconiosis, we affirm the ALJ's finding that Claimant did not establish the existence of legal pneumoconiosis.[14] *See Ondecko*, 512 U.S. at 280-81.

Because it is supported by substantial evidence, we affirm the ALJ's finding that the medical opinion evidence is insufficient to establish that Claimant has legal pneumoconiosis. 20 C.F.R. §718.202(a). Claimant's failure to establish the existence of

[14] Drs. Rosenberg and Jarboe opined Claimant does not have legal pneumoconiosis and attributed his obstructive respiratory impairment to smoking. Employer's Exhibits 1-4. Because we affirm the ALJ's rejection of Dr. Ajjarapu's opinion we need not address the ALJ's findings regarding Drs. Jarboe and Rosenberg.

pneumoconiosis, a requisite element of entitlement, precludes an award of benefits.[15] *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668-69 (6th Cir. 2015); *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-1.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

I concur.

MELISSA LIN JONES
Administrative Appeals Judge

BUZZARD, Administrative Appeals Judge, concurring:

I write separately because I would vacate the ALJ's finding on legal pneumoconiosis but affirm the denial of benefits on the alternate ground the majority identifies. *See* n.15, *supra*. The ALJ erred in finding that Dr. Ajjarapu "hedged" her opinion on whether Claimant has legal pneumoconiosis, as she unequivocally diagnosed chronic bronchitis due, in part, to his coal mine dust exposure. Director's Exhibit 12 at 7. I agree with the majority, however, that Dr. Ajjarapu's opinion is insufficient to establish

[15] Even if we were to conclude that the ALJ erred in finding Dr. Ajjarapu's opinion insufficient to establish legal pneumoconiosis, we need not remand this case for further consideration. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). Dr. Ajjarapu opined that Claimant's work in the mines did not play a "substantial role" in his disabling impairment and she did not relate any diagnosis of legal pneumoconiosis to Claimant's disability. Director's Exhibit 12 at 7. Because Dr. Ajjarapu's opinion does not establish that Claimant's pneumoconiosis is a substantially contributing cause of his respiratory or pulmonary disability, a required element of entitlement, he is unable to establish entitlement to benefits. 20 C.F.R. §718.204(c)(1); *see 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).

disability causation because she did not identify chronic bronchitis/legal pneumoconiosis as a cause of Claimant's disabling impairment and specifically stated coal dust exposure did not play a "substantial role" in the disability. 20 C.F.R. §718.204(c)(1). Because there is no evidence to satisfy Claimant's burden to establish that he is totally disabled due to legal pneumoconiosis, and the ALJ permissibly found he does not have clinical pneumoconiosis, benefits are precluded. *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).

GREG J. BUZZARD
Administrative Appeals Judge