U.S. Department of Labor

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

BRB No. 22-0359 BLA

CHARLES M. THACKER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
HUMPHREYS ENTERPRISES, INCORPORATED	)	
	)	
	)	
Employer-Respondent	)	
	)	DATE ISSUED: 9/22/2023
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 Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

Charles M. Thacker, Norton, Virginia.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

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

PER CURIAM:

Claimant, without the assistance of counsel,[1] appeals Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Denying Benefits (2021-BLA-05421) rendered on a claim filed on October 24, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with over forty years of coal mine employment with at least fifteen years in underground coal mines or surface coal mines in conditions substantially similar to those in an underground mine. However, she found Claimant did not establish a totally disabling respiratory or pulmonary impairment and therefore could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305. She also found Claimant did not establish pneumoconiosis. 20 C.F.R. §718.202(a). Because Claimant failed to establish an essential element of entitlement, she denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Employer responds in support of the denial. The Director, Office of Workers' Compensation Programs, declined to respond.[3]

In an appeal filed without representation, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994). We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable

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

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

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established forty years of coal mine employment with at least fifteen years that are qualifying. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3.

law.[4] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Invocation of the Section 411(c)(4) Presumption – Total Disability

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). Claimant may establish total disability based on qualifying[5] pulmonary function studies or arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

The ALJ found the pulmonary function studies support a finding of total disability, but Claimant failed to establish total disability based on the arterial blood gas studies, evidence of cor pulmonale with right-sided congestive heart failure,[6] or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv); Decision and Order at 6-15. She further found Claimant

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

[5] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[6] The ALJ considered two arterial blood gas studies dated January 6, 2020, and May 10, 2021. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 9-10. Both studies produced non-qualifying results both at rest and with exercise. Director's Exhibit 11 at 15; Employer's Exhibit 1 at 15. Because each study produced non-qualifying values before and after exercise, the ALJ found the blood gas study evidence does not establish total disability. Decision and Order at 10. As this finding is supported by substantial evidence, we affirm it. 20 C.F.R. §718.204(b)(2)(ii). Further, the ALJ correctly found the record contains no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 10.

failed to establish total disability based on the evidence as a whole.[7] 20 C.F.R. §718.204(b)(2); Decision and Order at 15. The ALJ erred in finding Claimant failed to establish total disability.

Discussing the pulmonary function testing, the ALJ weighed the results of four studies dated July 31, 2019, January 6, 2020, July 27, 2020, and May 10, 2021. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 6-9; Director's Exhibits 11, 16; Claimant's Exhibits 3, 4; Employer's Exhibit 1. She found the July 27, 2020 and May 10, 2021 studies invalid, and thus she did not consider them. Decision and Order at 8. She found the July 31, 2019 and January 6, 2020 studies valid. *Id*. at 8-9.

The ALJ then weighed the July 31, 2019 study that produced non-qualifying values pre-bronchodilator, but did not include post-bronchodilator testing, against the January 6, 2020 study that produced qualifying values pre-bronchodilator and non-qualifying values post-bronchodilator. Decision and Order at 6-9; Director's Exhibits 11, 16. She permissibly credited the January 6, 2020 study over the July 31, 2019 study because the January 6, 2020 study is the most recent valid study. *Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992); *Smith v. Kelly's Creek Res.*, BLR , BRB No. 21-0329 BLA, slip op. at 10 (June 27, 2023); Decision and Order at 9. In addition, she permissibly credited the pre-bronchodilator results of the January 6, 2020 study over its post-bronchodilator results because, "when making disability determinations, the question is whether the miner is able to perform his job, not whether he is able to perform his job after he takes medication such as a bronchodilator." Decision and Order at 9; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980) (The Department of Labor (DOL) has cautioned against reliance on post-bronchodilator pulmonary function test results in determining total disability, stating that "the use of a bronchodilator does not provide an adequate assessment of the miner's disability, [although] it may aid in determining the presence or absence of pneumoconiosis.").

Because it is supported by substantial evidence, we affirm the ALJ's finding that the January 6, 2020 qualifying pre-bronchodilator results support total disability at 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 9.

The ALJ then considered the opinions of Drs. Forehand, McSharry, and Sargent. 20 C.F.R. §718.204(b)(2)(iv).

[7] Because the record contains no evidence of complicated pneumoconiosis, Claimant cannot invoke the irrebuttable presumption that he is totally disabled due to pneumoconiosis. *See* 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

Dr. Forehand opined Claimant is totally disabled from his usual coal mine employment by a mixed obstructive and restrictive ventilatory impairment. Director's Exhibits 11 at 3-5; 26 at 1-2. He cited the January 6, 2020 pulmonary function study, which produced qualifying FEV1 and FVC values pre-bronchodilator, to support his opinion.[8] *Id.*

Dr. McSharry opined Claimant is not totally disabled because all of his arterial blood gas studies are non-qualifying and his July 31, 2019 pulmonary function study is non-qualifying.[9] Employer's Exhibits 1 at 2-4; 4 at 22-23. He acknowledged the pre-bronchodilator results from the January 6, 2020 pulmonary function study are valid under the DOL quality standards and the results are qualifying for total disability, but he stated the "excellent results seen after bronchodilator . . . better represent [Claimant's] true lung function." Employer's Exhibits 1 at 2-4; 4 at 18-19. Noting Claimant performed "significant exercise" and a "heavy degree of exertion" during the January 6, 2020 and May 10, 2021 exercise blood gas testing,[10] Dr. McSharry explained an individual with

[8] Dr. Forehand explained this impairment is a "significant work limiting respiratory impairment," notwithstanding the improvement in lung function following bronchodilator administration. Director's Exhibit 11 at 4. He further explained an FEV1 of forty-five percent predicted as demonstrated by the January 6, 2020 pulmonary function study "leaves [Claimant] with insufficient 'wind' (the ability to increase ventilation in response to an increase in physical activity) to return to [or] meet the physical demands of" his usual coal mine employment." *Id.*

[9] Dr. McSharry opined that the July 27, 2020 and May 10, 2021 pulmonary function studies are invalid. Employer's Exhibit 4 at 11-12, 20-22.

[10] Dr. McSharry specifically noted that, in performing the May 10, 2021 blood gas study, Claimant was "able to exercise for nearly ten minutes at two miles per hour on an increasing grade starting with a flat treadmill, but increasing [to] [five] and [eight] percent, [eleven] and [twelve] percent, up to [fifteen] percent grade, which is a pretty steep treadmill." Employer's Exhibit 4 at 12-14. Further, he noted Claimant "was able to do that [fifteen] percent grade at two miles per hour for about two minutes before having to stop exercise and a [non-qualifying] blood gas [was] obtained during that degree of exercise, which was a MET workload of 6.6 METS." *Id.* With respect to the January 6, 2020 blood gas study, Dr. McSharry noted the treadmill that Claimant exercised on "was up to a [ten] percent grade, and [he exercised at] 1.7 miles per hour for three minutes, so very similar kind of workload" to the May 10, 2021 study. *Id.* He opined both studies were done with "a pretty significant amount of work, and the workload estimated by metabolic units, METS, is at 6.6 METS . . . is not a mild exercise." *Id.* at 15.

qualifying pulmonary function testing would not be "able to successfully perform the exercise that [Claimant] performed." Employer's Exhibit 4 at 22-24. Thus Dr. McSharry questioned whether Claimant put forth adequate effort when performing the January 6, 2020 pre-bronchodilator pulmonary function study. *Id*. at 23-25. However, he reiterated that the pre-bronchodilator portion of the study is "valid by the usual metrics." *Id*. Nonetheless Dr. McSharry concluded Claimant's ability to achieve a high degree of exercise during blood gas testing indicates "there is no pulmonary limitation of any kind, blood gas or [pulmonary function testing], that would prevent him from doing a high level of workload." *Id*. at 22-23.

Dr. Sargent also opined Claimant is not totally disabled because his arterial blood gas studies are all non-qualifying, his July 31, 2019 pulmonary function study is non-qualifying, and the post-bronchodilator portion of the January 6, 2020 study is non-qualifying.[11] Employer's Exhibit 2. Because Claimant has no history of asthma but his January 6, 2020 pulmonary function study improved from qualifying to non-qualifying following bronchodilator administration, Dr. Sargent attributed the pre-bronchodilator results to poor effort. *Id*. To further support this opinion, he cited the fact that all the arterial blood gas studies are non-qualifying and Claimant, during exercise blood gas testing, "was able to walk on a treadmill for almost [ten] minutes at a speed of [two miles per hour] with as maximum grade of [fifteen] percent." *Id*. Dr. Sargent explained this "is above average exercise tolerance for a [sixty-five] year old man." *Id*. During his deposition, Dr. Sargent reiterated that the improvement in Claimant's post-bronchodilator January 6, 2020 pulmonary function study "represents a better effort and not an actual bronchodilator response" caused by asthma. Employer's Exhibit 5 at 17, 20.

The ALJ found the opinions of Drs. Forehand, McSharry, and Sargent well-reasoned and documented and afforded each opinion probative weight. Decision and Order at 10-15. However, she found Drs. McSharry and Sargent persuasively explained that the level of exertion Claimant was able to achieve during the exercise portion of the January 6, 2020 and May 10, 2021 blood gas studies "supports their opinion that Claimant's qualifying [January 6, 2020 pulmonary function study] results were due to suboptimal effort, rather than a pulmonary impairment." *Id*. at 15. In addition, she found Dr. Forehand did not discuss the exercise portion of the blood gas testing when opining Claimant is totally disabled based on the results of pulmonary function testing. *Id*. Thus she found the opinions of Drs. McSharry and Sargent outweigh Dr. Forehand's opinion and the January 6, 2020 qualifying pre-bronchodilator pulmonary function study. *Id*.

[11] Dr. Sargent also opined that the July 27, 2020 and May 10, 2021 pulmonary function studies are invalid. Employer's Exhibit 5 at 19-20.

The ALJ's credibility determination is contrary to the regulations, applicable law, and her own findings. The DOL quality standards constitute objective criteria for evaluating the validity of a pulmonary function study, including whether Claimant put forth adequate effort. *See Zeigler Coal Co. v. Sieberg*, 839 F.2d 1280, 1283 (7th Cir. 1988) (regulations require tracings of each pulmonary function study for the very purpose of permitting independent verification of the test results); 20 C.F.R. Part 718, Appendix B (setting forth criteria for when a miner's effort shall be judged unacceptable); 20 C.F.R. §718.103(c) (generally incorporating the requirements in Appendix B). As discussed above, the ALJ found the pre-bronchodilator portion of the January 6, 2020 study valid because it substantially complies with the DOL quality standards.[12] Decision and Order at 8-9. Neither Dr. McSharry nor Dr. Sargent identified any specific aspect of the study to support a finding that Claimant did not put forth adequate effort when performing it.[13] Rather, Dr. McSharry conceded that the study is "valid by the usual metrics." Employer's Exhibit 4 at 23-25. Further, Dr. Gaziano reviewed the study on behalf of the DOL and stated the vents are acceptable, and the technician who performed the study indicated Claimant's cooperation and ability to understand instructions were good. Employer's Exhibits 11 at 6; 13. Because the study is valid, as the ALJ found, it constitutes evidence of the fact for which it is proffered – Claimant is totally disabled by a respiratory or pulmonary impairment. 20 C.F.R. §718.101(b).

Further, the ALJ erred in discrediting the January 6, 2020 pulmonary function study based on Drs. McSharry's and Sargent's speculation that Claimant did not put forth adequate effort based on the results of his arterial blood gas testing. Decision and Order at 15; Employer's Exhibits 1, 2, 4, 5. Because arterial blood gas studies and pulmonary

[12] When weighing the pulmonary function studies, an ALJ must determine whether they are in substantial compliance with the regulatory quality standards. 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, Appendix B; *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc). In the absence of evidence to the contrary, compliance with the quality standards is presumed. 20 C.F.R. §718.103(c); *see Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984) (party challenging the validity of a study has the burden to establish the results are unreliable); 20 C.F.R. Part 718, Appendix B. If a study does not precisely conform to the quality standards, but is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b).

[13] To the extent Dr. Sargent addressed whether the pre-bronchodilator January 6, 2020 pulmonary function study meets the DOL quality standards, he generally stated that the results "almost meet minimal reproducibility criteria," but he did not opine that the study fails to meet any particular quality standard. Employer's Exhibit 5 at 16.

function studies measure different types of impairment, the results of an arterial blood gas study do not call into question pulmonary function testing results.[14] *Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984). Further, Claimant's ability to exercise at a specific exertional level is not, standing alone, a basis to exclude total disability because a medical opinion relying on this rationale is not based on medically acceptable diagnostic techniques. 20 C.F.R. §718.204(b)(2)(iv); *see Greer v. Director, OWCP*, 940 F.2d 88, 90-91 (4th Cir. 1991) (recognizing that, because pneumoconiosis is a chronic condition, a miner's functional ability on a pulmonary function study may vary, and thus could measure higher on any given day than its typical level). Thus we vacate the ALJ's finding the opinions of Drs. McSharry and Sargent outweigh Dr. Forehand's opinion and also the January 6, 2020 qualifying pre-bronchodilator pulmonary function testing. Decision and Order at 15.

Despite the ALJ's error, it is not necessary to remand this case for further consideration of the issue. While factual determinations are the province of the ALJ, reversal is warranted where no factual issues remain to be determined and no further factual development is necessary. *See Collins v. Pond Creek Mining Co.*, 751 F.3d 180, 187 (4th Cir. 2014) (reversing denial, with directions to award benefits without further administrative proceedings); *Scott v. Mason Coal Co.*, 289 F.3d 263, 269-70 (4th Cir. 2002) (denial of benefits reversed where "only one factual conclusion is possible"); *Adams v. Director, OWCP*, 886 F.2d 818, 826 (6th Cir. 1989) (same).

Drs. McSharry and Sargent did not set forth any additional explanation for their opinions that a reasonable factfinder could credit; thus their opinions cannot outweigh the January 6, 2020 qualifying pre-bronchodilator pulmonary function study. *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (explaining that substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion). They excluded total disability based on non-qualifying arterial blood gas testing. Employer's Exhibits 1, 2, 4, 5. As discussed above, non-qualifying arterial blood gas testing does not undermine pulmonary function testing. *Sheranko*, 6 BLR at 1-798. They cited the July 31, 2019 non-qualifying pulmonary function study, but the ALJ found the January 6, 2020 study entitled to more weight because it is more recent. *Adkins*, 958 F.2d at 51-52; Decision and Order at 9; Employer's Exhibits 1, 2, 4, 5. They noted post-

[14] For the same reason, the ALJ erred by faulting Dr. Forehand because he failed to discuss the arterial blood gas testing even though he diagnosed total disability based on the pulmonary function testing. Decision and Order at 15; Director's Exhibits 11, 26. However, because we reverse the ALJ's total disability finding as discussed below, remand for further consideration of Dr. Forehand's opinion is unnecessary. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009).

bronchodilator testing is non-qualifying, but the ALJ found post-bronchodilator testing is entitled to less weight than pre-bronchodilator testing. *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order at 9. Thus they did not set forth any rationale to support their conclusions that Claimant is not totally disabled independent of their disagreements with the ALJ that the January 6, 2020 qualifying pre-bronchodilator pulmonary function study is the most credible study of record.

Because Drs. McSharry and Sargent are the only doctors who excluded total disability, we hold there is no contrary probative evidence undermining the January 6, 2020 pre-bronchodilator pulmonary function study and thus Claimant has established total disability. 20 C.F.R. §718.204(b)(2) (in the absence of contrary probative evidence, evidence which meets the standards of paragraph (b)(2)(i) of this section shall establish a miner's total disability). Because the pulmonary function study evidence establishes total disability, Claimant has invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4). 20 C.F.R. §718.305(b)(1).

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,[15] or that "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). Because the ALJ erroneously placed the burden of proof on Claimant to establish pneumoconiosis and total disability causation, we remand this case for further consideration.

Remand Instructions

On remand, the ALJ is instructed to consider whether Employer established rebuttal of the Section 411(c)(4) presumption. Specifically, the ALJ must begin her analysis by considering whether Employer disproved the existence of legal pneumoconiosis by establishing Claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment."[16] 20

[15] "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconiosis, *i.e.*, the condition characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). "Legal pneumoconiosis" refers to "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

[16] The ALJ credited the opinions of Drs. McSharry and Sargent on the issue of legal pneumoconiosis by repeating her erroneous total disability findings. Decision and Order

C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015). The ALJ also must determine whether Employer has established Claimant does not have clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); *see Minich*, 25 BLR at 1-159.

In determining whether Employer has rebutted the presumption on remand, the ALJ must consider all relevant evidence and set forth her findings in detail, including the underlying rationale of her decision, as the Administrative Procedure Act (APA) requires.[17] 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). In weighing the medical opinion evidence, the ALJ should address the comparative credentials of the respective physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their opinions. *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441.

If the ALJ finds Employer has disproved the existence of both legal and clinical pneumoconiosis, Employer has rebutted the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(i) and the ALJ need not reach the issue of disability causation. However, if Employer fails to establish Claimant has neither legal nor clinical pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(i), the ALJ must then determine whether Employer has rebutted the presumed fact of disability causation at 20 C.F.R. §718.305(d)(1)(ii) with credible evidence that "no part of [Claimant's] total disability was caused by pneumoconiosis as defined in [Section] 718.201." 20 C.F.R. §718.305(d)(1)(ii); *see Minich*, 25 BLR at 1-159. If Employer is unable to rebut the Section 411(c)(4) presumption pursuant to either 20 C.F.R. §718.305(d)(1)(i) or (ii), Claimant has established entitlement to benefits.

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at 19-20. On remand, the ALJ must reconsider the doctors' rationale for excluding legal pneumoconiosis. *See W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018) (rebuttal inquiry is "whether the *employer* has come forward with affirmative proof that the [miner] does *not* have legal pneumoconiosis, because his impairment is not in fact significantly related to his years of coal mine employment") (emphasis in original).

[17] The Administrative Procedure Act provides that every adjudicatory decision must include "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).

Accordingly, the ALJ's Decision and Order Denying Benefits is affirmed in part, reversed in part, and vacated in part, and the case is remanded to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge