U.S. Department of Labor

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

BRB No. 23-0345 BLA

PHYLLIS HOBBS (o/b/o GEORGE HOBBS, JR.) Claimant-Petitioner v. CLINCHFIELD COAL COMPANY Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 04/17/2024 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Theodore W. Annos, Administrative Law Judge, United States Department of Labor.

Phyllis Hobbs, Blackwater, Virginia.

Kendra Price (Penn, Stuart, & Eskridge), Abingdon, Virginia, for Employer.

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

PER CURIAM:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) Theodore W. Annos's Decision and Order Denying Benefits (2020-BLA-05522) rendered on a claim filed on September 7, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant did not establish the Miner had complicated pneumoconiosis and therefore could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). *See* 20 C.F.R. §718.304. The ALJ credited the Miner with 7.69 years of underground coal mine employment; because Claimant established fewer than fifteen years of qualifying coal mine employment, he found she could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[2] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established the Miner had clinical pneumoconiosis, but not legal pneumoconiosis, and established total disability. 20 C.F.R. §§718.202(a), 718.204(b)(2). However, he found Claimant did not establish the Miner's totally disabling respiratory or pulmonary impairment was due to pneumoconiosis and 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, has not filed a substantive response.

In an appeal a claimant files 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, 1-86 (1994). We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in

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[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 Ms. Napier is not representing Claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co.*, 19 BLR 1-88 (1995) (Order). Claimant is the widow of the Miner, who died on April 4, 2019, and is pursuing this claim on his behalf. Director's Exhibit 10.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled 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.

accordance with applicable law.[3] 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).

Complicated Pneumoconiosis

Section 411(c)(3) of the Act provides an irrebuttable presumption that a miner was totally disabled due to pneumoconiosis if he suffered from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more large opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to reveal a result equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. In determining whether a claimant has invoked the irrebuttable presumption, the ALJ must weigh all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56 (4th Cir. 2000); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

X-ray Evidence – 20 C.F.R. §718.304(a)

The ALJ considered five interpretations of two x-rays. Decision and Order at 8-11. Dr. DePonte interpreted the August 23, 2018 x-ray as showing small opacities consistent with simple pneumoconiosis in all zones and a Category A large opacity of complicated pneumoconiosis measuring 12 millimeters (mm). Director's Exhibit 14. Dr. Seaman interpreted the same x-ray as positive for simple pneumoconiosis, noting small opacities in all zones, but found it negative for large opacities of complicated pneumoconiosis. Director's Exhibit 16.

Dr. DePonte read the October 23, 2018 x-ray as positive for simple and complicated pneumoconiosis, noting a "subtle category A opacity [in the] upper left lung zone." Director's Exhibit 12. Drs. Ramakrishnan and Meyer read the film as positive for simple pneumoconiosis in the upper and middle zones but negative for complicated pneumoconiosis. Director's Exhibit 17; Employer's Exhibit 1.

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[3] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as the Miner performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3, 4.

The ALJ gave no weight to Dr. Ramakrishnan's interpretation because his credentials are not in the record[4] while noting the remaining physicians are dually-qualified as B readers and Board-certified radiologists. Decision and Order at 10. The ALJ found Dr. DePonte's positive interpretations outweighed by those of Drs. Seaman and Meyer. *Id.* Further, he noted that while the two x-rays were taken two months apart, Dr. DePonte gave inconsistent readings of the x-rays. *Id.* Regarding the August 23, 2018 x-ray, Dr. DePonte noted calcified non-pneumoconiotic nodules and "[b]ilateral approximately 12mm opacities" but in the October 23, 2018 x-ray, she did not observe any non-pneumoconiotic nodules and only a "[s]ubtle category A opacity [in the] left upper lung zone." Director's Exhibits 12, 14. Meanwhile, neither Dr. Seaman nor Dr. Meyer observed any large category A opacities, and both identified the presence of a calcified nodule. Director's Exhibits 16, 17. The ALJ permissibly found the negative readings by Drs. Seaman and Meyer to be more consistent with one another and the Miner's treatment records.[5] Decision and Order at 11. We therefore affirm his finding that both x-rays are negative for complicated pneumoconiosis. 20 C.F.R. §718.202(a)(1); *see also Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992).

Even had the ALJ erred in discrediting Dr. DePonte's readings, any error would be harmless as the ALJ alternatively found that if he gave equal weight to the readings of Drs. DePonte, Seaman, and Meyer, the x-ray readings would be in equipoise and therefore insufficient to meet Claimant's burden of proof. S*ee Director, OWCP v. Greenwich*

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[4] In the chart summarizing the x-ray readings, the ALJ indicated Dr. Ramakrishnan is a B reader and Board-certified radiologist. Decision and Order at 9. Employer's evidence summary form also identifies Dr. Ramakrishnan as a B reader and Board-certified radiologist. Employer's Evidence Summary Form at 2. In addition, contrary to the ALJ's finding, the record contains Dr. Ramakrishnan's resume, specifically identifying him as at least a B reader. Employer's Exhibit 1. However, this error is harmless as Dr. Ramakrishnan did not identify any evidence of complicated pneumoconiosis, consistent with the ALJ's finding that Claimant did not establish that disease. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Exhibit 1.

[5] The ALJ observed that a February 13, 2019 x-ray in the Miner's treatment records identified the presence of a right upper lobe granuloma. Decision and Order at 11; Director's Exhibit 18 at 43. In addition, the ALJ noted the treatment records contain additional x-rays but found none of the interpretations indicated the presence or absence of pneumoconiosis. Decision and Order at 11; Director's Exhibit 18 at 44; Claimant's Exhibits 3, 4.

Collieries [*Ondecko*], 512 U.S. 267, 279-81 (1994); *Larioni*, 6 BLR at 1-1278; Decision and Order at 11.

Consequently, we affirm as supported by substantial evidence the ALJ's finding that Claimant did not establish complicated pneumoconiosis at 20 C.F.R. §718.304(a). Decision and Order at 11.

Other Evidence at 20 C.F.R. §718.304(c)[6]

The ALJ considered two chest computed tomography (CT) scan reports contained in the Miner's treatment records. Decision and Order at 11-12. Dr. Thurman opined the July 17, 2018 scan showed "nodular opacities" that were "most suggestive of coal workers' pneumoconiosis;" however, the ALJ noted he did not indicate whether the opacities represented the complicated form of the disease or make an equivalency determination that the opacities would appear as greater than one centimeter on a chest x-ray pursuant to 20 C.F.R. §718.304(a), (c). Claimant's Exhibit 6 at 2-3; Decision and Order at 11. Dr. Ellis found the March 24, 2019 scan showed "patchy airspace opacities throughout both lungs" and "bilateral smaller pleural effusions" but did not discuss the presence or absence of pneumoconiosis. Claimant's Exhibit 4 at 26. Thus, the ALJ found the CT scan evidence insufficient to support a finding of complicated pneumoconiosis. Decision and Order at 12. Because it is supported by substantial evidence, we affirm the ALJ's finding that the CT scan evidence does not establish complicated pneumoconiosis. 20 C.F.R. §718.304(c); *see Addison*, 831 F.3d at 256-57; *Adkins*, 958 F.2d at 52-53; Decision and Order at 12.

The ALJ next evaluated the Miner's treatment records and the medical opinions of Drs. Forehand and Sargent. Decision and Order at 12 at 4. As the ALJ accurately found, none of the treatment records contained a diagnosis of complicated pneumoconiosis. Decision and Order at 12; *see* Director's Exhibit 18; Claimant's Exhibits 1-6. Further, Dr. Sargent did not diagnose complicated pneumoconiosis; therefore, only Dr. Forehand's opinion can aide Claimant in meeting her burden. *See* Employer's Exhibits 2, 3.

Dr. Forehand diagnosed complicated pneumoconiosis based on the "[a]ppearance of [Dr. DePonte's interpretation of the Miner's October 23, 2018] chest x-ray revealing a fibrotic reaction in his lungs." Director's Exhibit 12. In a supplemental report, Dr. Forehand again based his complicated pneumoconiosis diagnosis on the Miner's "history of coal mine employment and the appearance of his [October 23, 2018] chest x-ray." Director's Exhibit 19.

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[6] The ALJ accurately found there is no biopsy or autopsy evidence for consideration at 20 C.F.R. §718.304(b). Decision and Order at 11.

The ALJ permissibly discredited Dr. Forehand's opinion to the extent he based his diagnosis of complicated pneumoconiosis on Dr. DePonte's positive reading of the October 23, 2018 x-ray, given the ALJ's finding that the weight of the readings of that x-ray are negative for complicated pneumoconiosis. *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); Decision and Order at 13; Director's Exhibits 12, 14. Additionally, the ALJ permissibly determined that Dr. Forehand failed to sufficiently explain how the Miner's coal dust exposure and coal mine employment history substantiated a diagnosis of complicated pneumoconiosis. *Id.* Thus, we affirm the ALJ's finding that Dr. Forehand's opinion does not meet Claimant's burden. 20 C.F.R. §718.304(c); Decision and Order at 12.

Weighing all of the evidence together, the ALJ permissibly found that the preponderance of the relevant evidence does not support a finding of complicated pneumoconiosis at 20 C.F.R. §718.304. *See Cox*, 602 F.3d at 283; *Scarbro*, 220 F.3d at 255-56; *Melnick*, 16 BLR at 1-33; 20 C.F.R. §718.304; Decision and Order at 14. Consequently, we affirm the ALJ's finding that Claimant failed to invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3). Decision and Order at 14.

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

Under Section 411(c)(4) of the Act, a miner is presumed to have been totally disabled 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. Because the ALJ's length of coal mine employment finding is relevant to invocation of the presumption, we will review his determination that the Miner worked 7.69 years in coal mine employment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

Claimant bears the burden to establish the number of years the Miner 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 if it is 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).

The ALJ considered the Miner's Social Security Earnings Record (SSER), his CM-911 Claim for Benefits, his CM-911a Employment History Form, Dr. Forehand's medical report, the Miner's treatment records, and Claimant's testimony. Decision and Order at 5-7; Director's Exhibits 2, 3, 5, 6, 12; Claimant's Exhibit 1; Hearing Transcript at 10, 12-15. The SSER indicates the Miner worked for Westmoreland Coal Company from 1949 through 1951, the Pittson Company from 1977 through 1980, Branham & Bolling Coal

Company, Inc. in 1980, and Clinchfield Coal Company (Employer) from 1981 through 1982. Director's Exhibits 5, 6. On the CM-911 claim form, the Miner indicated he worked in coal mine employment for approximately fifteen years. Director's Exhibit 2. On his CM-911a employment history form, the Miner documented that he worked for "Stonega Coke & Coal" "During 70" and for Employer "During 70-80." Director's Exhibit 3. He also told Dr. Forehand that he worked in coal mine employment for twenty years and told his treating physicians that he spent fourteen to fifteen years working at underground mines between 1952 and 1984. Director's Exhibits 12, 19; Claimant's Exhibit 1.

At the hearing, Claimant testified that she knew the Miner all of her life but they did not become a couple until 1984 and did not marry until 1987, and therefore she was not living with him while he was employed in the coal mining industry. Hearing Transcript at 12-13. She testified that although the Miner's SSER may support only 7.5 years of coal mine employment, he had additional coal mine employment "and they didn't take Social Security and stuff out" and thus "there's no record of that." *Id.* at 10, 13. Specifically, she stated that his additional coal mine work was for Craig Gillihar, Victor Gates and Stonega Coke and Coal Company, which she "assume[d]" took place during the "'60s or '70s" based on what the Miner's children indicated; she thought he was paid in cash but was not certain. *Id.* at 10, 13, 15.

Because the Miner's reported length of his coal mine employment was not consistent in the record, the ALJ permissibly found his differing reports did not represent credible evidence. *Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989); Decision and Order at 6. Specifically, the ALJ concluded that the Miner's varying reports of his coal mine employment are not credible "given the lack of detail" about the dates and length of his work with various employers and "the discrepancies regarding the total" years he worked in the coal mine industry. *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993); Decision and Order at 6. He further permissibly determined Claimant's testimony was not credible because she was not married to the Miner until after he stopped coal mining and therefore lacked direct knowledge of his coal mine employment, did not provide much detail about where he worked, and made multiple assumptions about his employment. *Id.*

The ALJ determined, within his discretion, that the Miner's SSER is the most credible evidence regarding his length of coal mine employment because it is an "official record[] created and maintained by a disinterested and impartial government agency . . . ." Decision and Order at 6; *see Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984). For the years prior to 1978, the ALJ credited the Miner with one quarter of coal mine employment for each quarter in which his SSER indicated he earned at least fifty dollars from coal mine operators. Decision and Order at 6-7. Using this method, the ALJ permissibly found Claimant established eleven quarters, or 2.75 years, of coal mine

employment from 1949 to 1977. *See Shrader v. Califano*, 608 F.2d 114, 117 n.3 (4th Cir. 1979) (income exceeding fifty dollars is "an appropriate yardstick for determining quarters which will be fully credited to a black lung claimant in determining the duration of his coal mine employment"); *Tackett*, 6 BLR at 1-841 n.2; Decision and Order at 6-7; Director's Exhibit 6.

For the years 1978 to 1982, the ALJ indicated he could not discern the start or end dates of the Miner's coal mine employment and therefore applied the formula at 20 C.F.R. §725.101(a)(32)(iii)[7] to determine the number of days the Miner worked in each calendar year. Decision and Order at 7. He divided the Miner's yearly earnings as reported in his SSER by the coal mine industry's average daily earnings, as reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual*. *Id.* If the Miner's earnings reflected 125 or more workdays in a given year, the ALJ credited him with one year of coal mine employment. *Id.* If the Miner had less than 125 workdays, the ALJ credited him with a fractional year based on the ratio of the actual number of days worked to 125. *Id.* Based on this method, he found the Miner had 4.94 years of coal mine employment from 1978 to 1982. Adding all the years together, the ALJ found that Claimant established 7.69 years of coal mine employment. *Id.*; Director's Exhibit 5.

Because the ALJ permissibly found the Miner had less than fifteen years of coal mine employment,[8] we affirm his finding Claimant did not invoke the Section 411(c)(4)

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[7] Section 725.101(a)(32)(iii) provides that if the beginning and ending dates of a miner's employment cannot be ascertained, or the miner's employment lasted less than a calendar year, the ALJ may determine the length of the miner's work history by dividing his yearly income by the average daily earnings of employees in the coal mining industry, as reported by the Bureau of Labor Statistics (BLS). 20 C.F.R. §725.101(a)(32)(iii). The BLS wage information currently is published in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual*, entitled "Average Earnings of Employees in Coal Mining."

[8] We note that the method used by the ALJ in determining length of coal mine employment followed the precedent of the United States Court of Appeals for the Sixth Circuit, whereas this case arises within the Fourth Circuit. However, any error in this regard is harmless as it resulted in crediting the Miner with more coal mine employment rather than less, and, in any event, his conclusion that Claimant established less than fifteen years of coal mine employment is affirmable. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

presumption. *See* 30 U.S.C. §921(c)(4) (2018); *Muncy*, 25 BLR at 1-27; 20 C.F.R. §718.305(b)(1)(i).

Entitlement under 20 C.F.R. Part 718

To be entitled to benefits under the Act without the Section 411(c)(3) or (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 element 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).

Pneumoconiosis

We affirm, as unchallenged, the ALJ's finding that Claimant established clinical pneumoconiosis arising out of his coal mine employment.[9] *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 15.

To establish legal pneumoconiosis, Claimant must demonstrate 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). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this claim arises, has held a claimant can establish legal pneumoconiosis 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, 311 (4th Cir. 2012); *see also Arch on the Green v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014) (A miner can establish his lung impairment is significantly related to coal mine dust exposure "by showing that his disease was caused 'in part' by coal mine employment.").

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[9] Because the Miner did not establish ten years of coal mine employment, Claimant cannot invoke the rebuttable presumption that the Miner's pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b). However, the ALJ permissibly determined that Claimant established the Miner's clinical pneumoconiosis arose out of his coal mine employment because all of the physicians agreed that the Miner had simple coal workers' pneumoconiosis. 20 C.F.R. §718.203(c); Decision and Order at 16; Director's Exhibit 19; Employer's Exhibits 2, 3.

The ALJ considered the medical opinions of Drs. Forehand and Sargent, and the Miner's treatment records. He accurately found that neither physician diagnosed legal pneumoconiosis[10] and that:

> while the treatment records sporadically reference Miner's past work as a coal miner, the records do not affirmatively state, clearly indicate, or otherwise sufficiently suggest that any of Miner's conditions or impairments were significantly related to, or substantially aggravated by, his coal mine dust exposure.[11]

Decision and Order at 15; Director's Exhibits 12, 18, 19; Claimant's Exhibits 1-6; Employer's Exhibits 2, 3. Thus, we affirm as supported by substantial evidence the ALJ's determination that Claimant did not establish legal pneumoconiosis. *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); Decision and Order at 15-16.

Total Disability

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[10] Dr. Forehand indicated that while the Miner had clinical pneumoconiosis, he did not have legal pneumoconiosis. Director's Exhibits 12, 19. Dr. Sargent diagnosed a mild restrictive impairment, but found he had no conditions that can be attributed to his coal dust exposure. Employer's Exhibits 2 at 1; 3 at 9, 17, 21, 24-26, 31-33.

[11] The Miner's treatment records document several ailments including cardiac issues, stroke, renal insufficiency, obstructive sleep apnea, and Type 2 diabetes. Director's Exhibit 18; Claimant's Exhibits 1-6. On August 23, 2018, the Miner had a "black lung physical"; it was noted that he was using oxygen at night, had CT scan evidence suggestive of coal workers' pneumoconiosis, and had a "mild restrictive lung disease." Claimant's Exhibit 1 at 2. Under "Past Medical History" and "Illnesses," it lists "Respiratory disease – BLACK LUNG" but no further explanation is provided. *Id.* at 3. Under "Plan of Care," it states that the "level of diagnoses or management options of this case is limited" and a follow-up "in 2" is recommended. *Id.* at 6. At the Miner's follow-up appointment on November 13, 2018, the record again documents that "[t]he level of diagnoses or management options of this case is limited" and a follow up is again recommended. *Id.* at 7, 11. On both August 23, 2018 and November 13, 2018, the Miner noted that he was using oxygen at night but indicated he did not have a history of lung disease, including asthma or chronic obstructive pulmonary disease (COPD). *Id.* at 2, 7. The April 5, 2019 discharge summary lists COPD under "Death Diagnoses" but no additional details are provided about the extent or cause of this diagnosis. Claimant's Exhibit 5 at 3.

The ALJ determined Claimant established total disability. Decision and Order at 17-26. Employer contends the ALJ erred in finding Claimant established the Miner was totally disabled. Although it states that the issue "d[oes] not merit appeal" because the ALJ ultimately denied benefits, it nevertheless sets forth arguments on the issue. Employer's Brief at 8.[12] As we affirm the ALJ's finding that Claimant failed to establish the Miner was totally disabled due to pneumoconiosis and, therefore, the denial of benefits, below, we need not address the ALJ's finding and Employer's contentions of error in regard to total disability.

Disability Causation

To establish disability causation, Claimant must prove pneumoconiosis is a "substantially contributing cause" of the Miner's totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause if it has "a material adverse effect on the miner's respiratory or pulmonary condition," or if it "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii); *see Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 37-38 (4th Cir. 1990).

Because we have affirmed the ALJ's finding that Claimant did not establish legal pneumoconiosis, the sole way for Claimant to establish disability causation is by showing that the Miner's clinical pneumoconiosis was a substantial contributing cause of his totally disabling respiratory impairment. The ALJ considered the opinions of Drs. Forehand and Sargent, the Miner's treatment records, and Claimant's testimony. Decision and Order at 27-28.

Dr. Forehand observed that the Miner's "COMPLICATED COAL WORKERS' PNEUMOCONIOSIS WITH PROGRESSIVE MASSIVE FIBROSIS substantially contributed to his respiratory impairment." Director's Exhibit 12*; see also* Director's Exhibit 19. The ALJ noted that Dr. Forehand provided no further explanation and found it reasonable to infer that the doctor was relying on the statutory presumption of total disability that accompanies a complicated pneumoconiosis diagnosis to support a causation finding. Decision and Order at 27-28. As Dr. Forehand's complicated pneumoconiosis diagnosis is contrary to the ALJ's finding on that issue, the ALJ permissibly found his opinion "poorly reasoned" and gave it no weight. *Looney*, 678 F.3d at 316-17; Decision and Order at 27-28. As the ALJ accurately observed, Dr. Sargent opined that the Miner

[12] Employer states it intends to preserve its right to dispute this issue in the event of a remand or appeal. Employer's Brief at 8.

was not totally disabled from a respiratory standpoint and his pneumoconiosis would not have prevented him from performing his coal mine work; therefore, the ALJ permissibly found that his opinion does not aide Claimant in meeting her burden. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); Decision and Order at 27; Employer's Exhibits 2, 3.

The ALJ further noted that the Miner's treatment records contained a diagnosis of pneumoconiosis, but he permissibly gave the treatment records little weight in regard to disability causation because they did not "affirmatively establish a causal relationship" between the Miner's simple clinical pneumoconiosis and his pulmonary disability. Decision and Order at 27; *see Looney*, 678 F.3d at 316-17; *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); Director's Exhibit 18; Claimant's Exhibits 1-6. In addition, the ALJ permissibly determined that Claimant's testimony is insufficient to establish disability causation because the record contains medical evidence addressing the Miner's respiratory or pulmonary condition and because she would be eligible for benefits if the claim were approved. 20 C.F.R. §718.204(d)(3); Decision and Order at 28.

Claimant has the burden of establishing entitlement to benefits and bears the risk of non-persuasion if the evidence is found insufficient to establish a required 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). Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant did not establish disability causation at 20 C.F.R. §718.204(c). *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); Decision and Order at 28. Because Claimant did not establish disability causation, a requisite element of entitlement, benefits are precluded. 20 C.F.R. §718.204(b)(2); *see Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27.

Accordingly, we affirm the ALJ’s Decision and Order Denying Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge