U.S. Department of Labor

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

BRB No. 22-0411 BLA

MICHAEL C. FITZPATRICK	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
W&B COAL COMPANY, INCORPORATED	)	
	)	
and	)	
	)	DATE ISSUED: 12/22/2023
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
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 of Tracy A. Daly, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

Michael A. Pusateri (Greenberg Traurig LLP), Washington, D.C., for Employer and its Carrier.

Sarah M. Hurley (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Tracy A. Daly's Decision and Order on Remand (2016-BLA-05937) 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 subsequent claim filed on September 28, 2015,[1] and is before the Benefits Review Board for the second time.[2]

In his initial Decision and Order, the ALJ found Employer is the responsible operator, rejecting its contention that Claimant subsequently worked in coal mine construction for at least one year with Alminco, Incorporated (Alminco). He further found Claimant established a total of 11.75 years of coal mine employment and thus could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[3] Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established total disability due to pneumoconiosis

[1] Claimant filed a previous claim on September 8, 1997, which the district director denied by reason of abandonment. Director's Exhibit 1. The regulations provide that, "[f]or purposes of [20 C.F.R.] §725.309, a denial by reason of abandonment shall be deemed a finding that the claimant has not established any applicable condition of entitlement." 20 C.F.R. §725.409(c).

[2] We incorporate the procedural history of the case and the Board's prior holdings, as set forth in *Fitzpatrick v. W&B Coal Co., Inc.*, BRB No. 20-0133 BLA (Oct. 20, 2021) (unpub.).

[3] Section 411(c)(4) 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.

and a change in an applicable condition of entitlement. 20 C.F.R. §§718.202(a)(4), 718.204(b), (c), 725.309. Thus, he awarded benefits.[4]

Upon Employer's appeal, the Board vacated the ALJ's finding that Claimant established only one quarter (.25) of a year of coal mine employment with Alminco and thus vacated his determination that Employer is the responsible operator. *Fitzpatrick v. W&B Coal Co., Inc.*, BRB No. 20-0133 BLA, slip op. at 10-11 (Oct. 20, 2021) (unpub.). On the merits, the Board affirmed, as unchallenged, the ALJ's determination that Claimant established total disability and 11.5 years of coal mine employment from July 1972 to December 31, 1983. *Id.* at 3 n.5, 15 n.23. However, the Board vacated the ALJ's finding that Claimant established clinical and legal pneumoconiosis and total disability due to both diseases. *Id.* at 12-14. Thus, the Board vacated the award of benefits and remanded the case for further consideration. *Id.* at 14.

The Board instructed the ALJ on remand to reconsider if Employer is the responsible operator by resolving whether Claimant worked for at least one year in coal mine employment for Alminco and to also resolve whether Claimant can invoke the Section 411(c)(4) presumption. *Id.* at 14-15. Alternatively, the ALJ was instructed to reconsider whether Claimant established total disability due to either clinical or legal pneumoconiosis if Claimant could not invoke the presumption. *Id.* at 15-16.

On remand, the ALJ found Claimant failed to establish any of his work for Alminco constituted coal mine employment, and thus concluded Employer is the responsible operator and that Claimant did not invoke the Section 411(c)(4) presumption, having established only 11.5 years of coal mine employment. However, considering Claimant's entitlement under Part 718, the ALJ determined Claimant is totally disabled due to legal pneumoconiosis and awarded benefits. 20 C.F.R. §§718.202(a)(4), 718.204(c), 725.309.

On appeal, Employer argues the ALJ erred in finding it is the responsible operator and in finding Claimant entitled to benefits. Claimant responds in support of the award of

[4] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because his prior claim was denied by reason of abandonment, Claimant must submit new evidence establishing at least one element to warrant a review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3; Director's Exhibit 1.

benefits regardless of whether Employer is found to be the responsible operator. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to affirm the ALJ's finding that Employer is the responsible operator. Employer replied to Claimant's and the Director's briefs, reiterating its contentions on appeal.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order on Remand 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 Assocs., Inc.*, 380 U.S. 359 (1965).

Responsible Operator

The responsible operator is the potentially liable operator that most recently employed the miner.[6] 20 C.F.R. §725.495(a)(1). The district director is initially charged with identifying and notifying operators that may be liable for benefits, and then identifying the "potentially liable operator" that is the responsible operator. 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b). Once the district director designates a responsible operator, that operator may be relieved of liability only if it shows either that it is financially incapable of assuming liability for benefits or that another potentially liable operator that is financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R. §725.495(c)(2). Relevant to this appeal, the term "miner" includes "any person who works or has worked in coal mine construction . . . in or around a coal mine or coal preparation facility." 20 C.F.R. §725.202(a).

[5] Because we affirm that Claimant's work for Alminco in West Virginia did not constitute coal mine employment, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed all of his coal mine work in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 1 at 76; 4 at 1. However, we note that the law of both the Sixth Circuit and the United States Court of Appeals for the Fourth Circuit align on the relevant issues presented in this case.

[6] For a coal mine operator to meet the regulatory definition of a "potentially liable operator," each of the following conditions must be met: a) the miner's disability or death must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

In accordance with the Board's remand instructions, the ALJ reconsidered whether Claimant worked for at least one year in coal mine construction at Alminco. 20 C.F.R. §725.495(c)(2); *Fitzpatrick*, BRB No. 20-0133 BLA, slip op. at 14-15; Decision and Order on Remand at 3-6. The ALJ considered Claimant's CM-911a Employment History Forms from both of his claims, his CM-913 Description of Coal Mine Work Form, tax returns, Social Security Administration (SSA) earnings records, hearing and deposition testimony, and a letter from Alminco's General Manager. Decision and Order on Remand at 3-5. Ultimately, the ALJ concluded that there was "no credible evidence" establishing Claimant had any coal mine construction or coal mine employment with Alminco and thus found Employer is the responsible operator. *Id.* at 5-6.

Employer asserts the ALJ failed to comply with the Board's remand instructions because he did not "assess and resolve" the inconsistencies within the relevant evidence and "abdicated his fact-finding responsibilities by discarding, summarily, the entirety of [Claimant's] tenure at Alminco . . . ."[7] Employer's Brief at 14-20; Employer's Reply to the Director's Brief at 1-6. The Director argues the ALJ permissibly found no credible evidence establishing Claimant performed coal mine work for Alminco. Director's Brief at 4. We agree with the Director.

The ALJ first addressed the "extensive contradictions" in the relevant documentary evidence regarding the length of time Claimant worked for Alminco and the nature of his work for it. Decision and Order on Remand at 3-4. Specifically, the ALJ pointed to Claimant's CM-911a form from his prior claim, where Claimant indicated he worked at Alminco from December 1992 to May 1997; the CM-911a form from his present claim, which indicated he worked at Alminco from 1991 to 1997; and his CM-913 form, which indicated his last coal mine job lasted from 1984 to 1997. *Id.* at 3; Director's Exhibits 1 at 76; 4; 5. The ALJ also reviewed Claimant's SSA earnings records which reflect self-

[7] We reject Employer's assertion that the ALJ exceeded the mandate of the Board's remand instructions with respect to his consideration of the time Claimant worked for Alminco and his job titles rather than only addressing the nature of his work. Employer's Brief at 6-7. The Board specifically instructed the ALJ to reconsider "whether Claimant worked for one year in coal mine employment with Alminco in coal mine construction[,]" which necessarily requires consideration of both his job title and duties, when did he work for Alminco, and what he did while employed for Alminco. *Fitzpatrick*, BRB No. 20-0133 BLA, slip op. at 14-15. Further, in vacating the ALJ's findings, the Board specifically noted the Director's argument that the evidence "does not credibly support a finding of any coal mine construction employment for Alminco." *Id.* at 10, *quoting* Director's Brief on First Appeal at 10, 11. Thus, the ALJ did not exceed the scope of the remand instructions.

employment earnings from 1993 to 1997,[8] including the years Claimant allegedly worked for Alminco.[9] Decision and Order on Remand at 4; Director's Exhibits 1 at 88; 9 at 4. In addition, the ALJ noted Claimant's tax returns show he reported nonemployee, self-employment, or contract labor income from Alminco in 1993, 1994, and 1996, and there was a check dated November 15, 1997, to the Internal Revenue Service, with a "handwritten notation" stating "Alminco Inc. 1995 - $4,385.00." Decision and Order on Remand at 3-4; Director's Exhibits 1 at 44, 46-48; 6 at 4.

Further, the ALJ noted Claimant's CM-911a form from his prior claim indicated he worked as an "underground seals safety inspector" at Alminco, whereas his CM-911a form from his present claim indicated he reopened underground mines at Alminco, and his CM-913 form from the present claim indicated his last coal mine job was working as a mine foreman and doing general labor and maintenance. *Id.* at 3; Director's Exhibits 1 at 76; 4; 5. The ALJ compared these "contradict[ory]" forms to a letter from Alminco's General Manager, Mr. L. Pat Flanagan, indicating Claimant worked only as a "safety advisor" and never in a mining, construction, or manufacturing capacity. Decision and Order on Remand at 3-4; Director's Exhibit 1 at 19.

Next, the ALJ discussed several discrepancies in Claimant's hearing and deposition testimony. Decision and Order on Remand at 4-5. The ALJ found Claimant's testimony, that he worked twelve-hour shifts six to seven days per week at Alminco while also teaching four-hour classes as a mine safety and electrical instructor, was "embellished and lack[ed] candor." Decision and Order on Remand at 5; Hearing Transcript at 27, 37; Director's Exhibit 22 at 14. In addition, he found Claimant's accounting of his job titles and duties were inconsistent across his deposition and hearing testimony as well as his descriptions on his CM-911a forms. Decision and Order on Remand at 4-5; Director's Exhibits 1 at 76; 4; 5. The ALJ further found Claimant's deposition and hearing testimony regarding the extent and duration of his work with Alminco were uncorroborated by the documentary evidence. Decision and Order on Remand at 5.

The ALJ found Claimant's "varied" and "inconsistent" descriptions of his job titles and duties with Alminco were not probative for determining the nature of his employment with Alminco and were contradicted by Alminco's statement about the nature of his work

[8] The ALJ noted that Claimant's SSA earning records are inconsistent regarding whether he had self-employment earnings in 1995. Decision and Order at 4 n.1; Director's Exhibits 1 at 88; 9 at 1, 4.

[9] The ALJ noted that Claimant testified Alminco paid him "under the table" for "a lot of [his work.]" Decision and Order on Remand at 3-4; Hearing Transcript at 35.

as a "safety advisor."[10] Decision and Order on Remand at 4-5. Because the ALJ acted within his discretion, we affirm the ALJ's permissible determination that there is "no credible evidence" to establish that Claimant's work for Alminco constituted coal mine employment under the Act.[11] *Id.* at 5-6; *see Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012) (the ALJ's function is to weigh the evidence, draw appropriate inferences, and determine credibility); *Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) ("The Board will not interfere with credibility determinations unless they are inherently incredible or patently unreasonable.") (citation omitted); *see also Mingo Logan Coal Co v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (the duty of explanation under the Administrative Procedure Act (APA) is satisfied as long as the reviewing court can discern what the ALJ did and why he did it).

Employer's arguments constitute a request to reweigh the evidence of record, which we are not empowered to do.[12] *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-

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[10] Employer contends the ALJ improperly credited Alminco's letter "to the exclusion of all other proof." Employer's Brief at 16-17; Employer's Reply to the Director's Brief at 4-5. We disagree. The ALJ concluded the letter contradicted Claimant's inconsistent and at times not credible account of his work for Alminco and ultimately concluded there is "*no credible evidence to establish whether any of Claimant's work* for Alminco qualifies as coal mine construction work." Decision and Order on Remand at 5 (emphasis added).

[11] Employer asserts the ALJ failed to reconcile his conclusion that Claimant did not establish any coal mine employment whatsoever with Alminco with his prior finding that Claimant spent four years working in coal mine construction as an independent contractor for Alminco. Employer's Brief at 14, 18-19; Employer's Reply to the Director's Brief at 3. However, the effect of the Board's vacating the ALJ's prior finding was to return the parties to the status quo ante on that issue, with all of the rights, benefits, or obligations they had prior to the ALJ's decision. *See Dale v. Wilder Coal Co.*, 8 BLR 1-119, 1-120 (1985); *Fitzpatrick*, BRB No. 20-0133 BLA, slip op. at 11, 14-15. For the reasons set forth in this decision, we conclude the ALJ's credibility findings regarding Claimant's work with Alminco are adequately explained. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005).

[12] We reject Employer's contention that Claimant was entitled to the presumption that his construction work for Alminco exposed him to coal mine dust. Employer's Brief at 18-20, *citing* 20 C.F.R. §725.202(b); Employer's Reply to the Director's Brief at 5-6. Because the ALJ permissibly determined that Claimant did not establish he engaged in any

113 (1989). As Employer failed to establish that Claimant worked for at least one year in coal mine employment at Alminco, we affirm the ALJ's finding that Employer is the responsible operator. Decision and Order on Remand at 6.

Part 718 Entitlement

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis);[13] 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*, 12 BLR at 1-113; *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 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(a)(2), (b). The United States Court of Appeals for the Sixth Circuit has held that 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." *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 evaluated four medical opinions. Decision and Order on Remand at 11-13. Drs. Everhart and Green diagnosed Claimant with a restrictive lung disease due in part to his ten years of coal mine dust exposure. Director's Exhibit 13 at 29; Claimant's Exhibit 1 at 4. Additionally, Dr. Green diagnosed Claimant with an obstructive lung disease to which coal mine dust exposure is a significant contributing and aggravating factor. Claimant's Exhibit 1 at 4. Similarly, Dr. Raj diagnosed Claimant with an obstructive lung disease and stated Claimant's coal mine dust exposure had a "substantial and significant role in" that disease. Claimant's Exhibit 4 at 4. On the other hand, Dr. Dahhan opined

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form of coal mine construction work with Alminco, the presumption of dust exposure is not applicable. Decision and Order on Remand at 5; Director's Brief at 4 n.5.

[13] The ALJ found Claimant did not establish the existence of clinical pneumoconiosis. 20 C.F.R. §718.202(a)(1); Decision and Order on Remand at 11.

Claimant has a "moderate, non-parenchymal, restrictive ventilatory impairment" due to his obesity and that there is no evidence of legal pneumoconiosis. Director's Exhibit 14 at 4.

In finding Claimant has legal pneumoconiosis, the ALJ gave "full probative weight" to the opinions of Drs. Everhart and Green and little probative weight to Dr. Dahhan's contrary opinion.[14] Decision and Order on Remand at 12-13. He thus found Claimant established legal pneumoconiosis based on a preponderance of the medical opinion evidence at 20 C.F.R. §718.202(a)(4). *Id.* at 13.

Employer generally contends the ALJ did not comply with the Board's remand instructions and "confuse[d] legal and clinical pneumoconiosis." Employer's Brief at 21. It also contends the ALJ failed to equally scrutinize the medical opinions and explain his credibility determinations as the APA requires.[15] *Id.* at 20-23; *see* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). We disagree.

Contrary to Employer's contentions, the ALJ accurately noted Claimant must establish he has either clinical or legal pneumoconiosis and separately analyzed whether Claimant established legal pneumoconiosis independent of his finding that Claimant did not prove clinical pneumoconiosis. Decision and Order on Remand at 6-13. Moreover, as discussed below, the ALJ equally scrutinized the medical opinions and explained his credibility determinations in accordance with the APA as the Board directed. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Director, OWCP v. Rowe*, 710 F.2d 251, 254-55 (6th Cir. 1983); Decision and Order on Remand at 11-13.

Dr. Everhart

The ALJ accurately noted Dr. Everhart attributed Claimant's "restrictive lung disease" to his smoking and work histories, and while the doctor opined he was "unable to determine the exact contribution of each," he found Claimant's impairment was "primarily related to coal mine employment." Decision and Order on Remand at 11; Director's Exhibit 13 at 29. As Dr. Everhart indicated that Claimant's "restrictive lung disease" was "primarily" caused by coal mine employment, we see no error in the ALJ's determination that his opinion is sufficient to establish legal pneumoconiosis. *See Groves*, 761 F.3d at

[14] The ALJ gave Dr. Raj's opinion little probative weight because he relied on an inaccurate coal mine employment history. Decision and Order on Remand at 13.

[15] The APA 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).

598-99; *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576-77 (6th Cir. 2000) (an opinion that coal dust and smoking were both significant causal factors and that it was impossible to allocate between them establishes legal pneumoconiosis); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-18-19 (2003) (a physician need not specifically apportion the extent to which various causal factors contribute to a respiratory or pulmonary impairment); Decision and Order on Remand at 11-13.

Further, as the ALJ found Dr. Everhart's opinion supported by Claimant's relevant work[16] and smoking histories, his physical findings, and the results of objective testing, we affirm his determination that Dr. Everhart's opinion is reasoned and documented. *See Rowe*, 710 F.2d at 255; *Fields v. Island Creek Coal Co*., 10 BLR 1-19, 1-21-22 (1987) (a reasoned opinion is one in which the ALJ finds the underlying documentation adequate to support the physician's conclusions); Decision and Order on Remand at 12-13. Thus, we affirm the ALJ's conclusion that Dr. Everhart's opinion supports a finding that Claimant has legal pneumoconiosis.

Dr. Dahhan

Dr. Dahhan attributed Claimant's restrictive ventilatory impairment solely to his "marked obesity." Director's Exhibit 14 at 4. The ALJ permissibly found that "[w]hile Dr. Dahhan recorded Claimant's coal mine employment history and smoking history, he failed to provide any rationale for completely excluding Claimant's history of coal mine dust exposure or his smoking history as contributing factors to Claimant's condition." Decision and Order on Remand at 12; *see Young*, 947 F.3d at 405; *Banks*, 690 F.3d at 488-89; *Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255. We therefore affirm his finding that Dr. Dahhan's opinion is conclusory and not well-reasoned. *See Grundy Mining Co. v. Flynn*, 353 F.3d 467, 483 (6th Cir. 2003) (conclusory statements do not reflect a reasoned medical judgment); Decision and Order on Remand at 12.

Moreover, the ALJ permissibly assigned little weight to Dr. Dahhan's opinion because "even assuming Claimant's restrictive lung impairment was caused by Claimant's obesity," Dr. Dahhan provided no explanation as to why neither Claimant's smoking history nor his coal mine dust exposure "did not aggravate or exacerbate" his

[16] We reject Employer's assertion that Dr. Everhart "seems to have relied upon an exaggerated seventeen-year mining history." Employer's Brief at 20 n.4, 24; Employer's Reply to Claimant's Brief at 2. Dr. Everhart merely acknowledged that Claimant had ten years of coal mine employment as "confirmed" by the Department of Labor, but that Claimant alleged seventeen years. Director's Exhibit 13 at 29. There is no indication that Dr. Everhart relied on Claimant's allegation of seventeen years.

restrictive impairment. Decision and Order on Remand at 12; *see Banks*, 690 F.3d at 488-89; *Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255. We therefore affirm the ALJ's determination that Dr. Dahhan's opinion is entitled to little probative weight. Decision and Order on Remand at 12.

We consider Employer's arguments to be a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. Because the ALJ sufficiently explained his credibility determinations in accordance with the APA, and his findings are supported by substantial evidence, we affirm his conclusion that Claimant established legal pneumoconiosis based on the medical opinions and in consideration of the evidence of the whole.[17] *See* 20 C.F.R. §§718.201(a)(2), 718.202(a)(4); *Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522 (6th Cir. 2002) (the APA is satisfied where the ALJ properly addressed the relevant evidence and provided a sufficient rationale for his findings); Decision and Order on Remand at 11-13.

Disability Causation

To establish disability causation, Claimant must prove his legal pneumoconiosis is a "substantially contributing cause" of his 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); *Gross*, 23 BLR at 1-17.

Employer raises the same arguments on disability causation that it did regarding legal pneumoconiosis. Employer's Brief at 23. However, as discussed above, the ALJ permissibly relied on Dr. Everhart's opinion that Claimant's totally disabling impairment,

[17] Dr. Green diagnosed two forms of legal pneumoconiosis. He opined Claimant has both chronic obstructive pulmonary disease (COPD) and a disabling restrictive impairment due to coal mine dust exposure. Claimant's Exhibit 1 at 4. The ALJ failed to properly discuss Dr. Green's opinion as to the etiology of Claimant's restrictive impairment but credited his opinion that Claimant's COPD constitutes legal pneumoconiosis and Employer challenges that determination. Employer's Brief at 22-23. Because we affirm the ALJ's finding that Claimant established legal pneumoconiosis based on Dr. Everhart's opinion, we need not address Employer's challenge to Dr. Green's opinion. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). However, we note that Dr. Green's diagnosis of legal pneumoconiosis based on Claimant's restrictive impairment is consistent with Dr. Everhart's opinion.

as demonstrated in part by his pulmonary function study results and symptoms, constituted legal pneumoconiosis. Decision and Order on Remand at 14-15. We therefore see no error in the ALJ's finding that Dr. Everhart's opinion is also sufficient to establish that Claimant's legal pneumoconiosis is a substantially contributing cause of his total disability. *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668-69 (6th Cir. 2015); *Hawkinberry v. Monongalia Cnty. Coal Co.*, 25 BLR 1-249, 1-255-57 (2019); Decision and Order on Remand at 14-15.

Additionally, the ALJ permissibly discounted Dr. Dahhan's opinion on the cause of Claimant's pulmonary disability because he did not diagnose legal pneumoconiosis, contrary to the ALJ's finding that legal pneumoconiosis was established. *See Island Creek Kentucky Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); *Adams v. Director, OWCP*, 886 F.2d 818, 826 (6th Cir. 1989); Decision and Order on Remand at 14. As the ALJ permissibly credited Dr. Everhart's opinion[18] and there are no credible contrary opinions, we affirm the ALJ's finding that Claimant established total disability causation. 20 C.F.R. §718.204(c); Decision and Order on Remand at 14-15. We further affirm, as unchallenged on appeal, the ALJ's finding that Claimant therefore established a change in

[18] Because Dr. Everhart's opinion constitutes substantial evidence to support the ALJ's finding of total disability causation, we need not address Employer's contention that the ALJ erred in relying on Dr. Green's opinion at 20 C.F.R. §718.204(c).

an applicable condition of entitlement. *See* 20 C.F.R. §725.309; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Remand at 15.

Accordingly, we affirm the ALJ's Decision and Order on Remand.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge