U.S. Department of Labor

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

BRB No. 22-0473 BLA

RANDAL MORGAN (o/b/o the Estate of CLEATIS E. MORGAN)	)	
Claimant-Petitioner	)	
v.	)	
U.S. STEEL MINING COMPANY, LLC	)	DATE ISSUED: 03/14/2024
Employer-Respondent	)	
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 Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

Randal Morgan, Summerville, South Carolina.

Howard G. Salisbury, Jr. (Key Casto & Chaney PLLC), Charleston, West Virginia, for Employer.

David Casserly (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, BUZZARD and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant[1] appeals, without the assistance of counsel,[2] Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Denying Benefits (2021-BLA-05192) rendered on a claim filed on July 22, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulation that the Miner had twenty-five years of qualifying coal mine employment and found Claimant established a totally disabling respiratory or pulmonary impairment.[3] Thus, she determined Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[4] 30 U.S.C. §921(c)(4) (2018). She concluded, however, that Employer rebutted the presumption and denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Employer responds in support of the ALJ's finding that it rebutted the presumption. However, it also argues the ALJ erred in finding that the Miner was totally disabled.[5] The Director, Office of

[1] Claimant is the estate of the Miner, who died on May 2, 2022. July 5, 2022 Order Recaptioning Case; Claimant's July 1, 2022 Letter to the ALJ. Randal Morgan is pursuing the claim on behalf of the Miner's estate.

[2] On Claimant's behalf, Bradley Johnson, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested the Benefits Review Board review the ALJ's decision, but Mr. Johnson is not representing Claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[3] As the record contains no evidence of complicated pneumoconiosis, Claimant is unable to 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) (2018).

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

[5] Employer's arguments in its response brief are in support of another method by which the ALJ may reach the same result and deny benefits. Employer's Brief at 17-19. Therefore, this argument is properly before the Board, and no cross-appeal is required. *See Malcomb v. Island Creek Coal Co.*, 15 F.3d 364, 370 (4th Cir. 1994); *Dalle Tezze v. Director, OWCP*, 814 F.2d 129, 133 (3d Cir. 1987); *Whiteman v. Boyle Land & Fuel Co.*,

Workers' Compensation Programs (the Director), filed a response urging the Board to affirm the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption, despite her errors when evaluating the medical opinions, but vacate her findings on rebuttal.[6]

In an appeal a claimant files without representation, the Board addresses whether substantial evidence supports the Decision and Order below. *Hodges v. BethEnergy Mines, Inc*., 18 BLR 1-84 (1994). We must affirm the Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[7] 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. 361-62 (1965).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b). A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based upon pulmonary function tests, 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). The ALJ found Claimant established total disability based on the pulmonary function studies and the evidence as a whole.[8] Decision and Order at 6-8; *see* 20 C.F.R. §718.204(b)(2)(i).

---

15 BLR 1-11, 1-18 (1991) (en banc); *King v. Tenn. Consolidated Coal Co*., 6 BLR 1-87, 1-92 (1983).

[6] We affirm, as unchallenged on appeal, the ALJ's finding that the Miner had twenty-five years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 3.

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the Miner performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 15; Director's Exhibit 3.

[8] The ALJ found the arterial blood gas evidence does not establish total disability and there was no evidence of cor pulmonale with right-sided congestive heart failure.

Pulmonary Function Studies

The ALJ considered five pulmonary function studies dated July 18, 2019, September 12, 2019, February 21, 2020, January 6, 2021, and June 11, 2021. Decision and Order at 5-6; Director's Exhibits 15 at 10; 39 at 10; 42 at 4; Claimant's Exhibit 5 at 1-3; Employer's Exhibit 1 at 17. Because the studies reported different heights, the ALJ permissibly averaged them to find the Miner was 69.2 inches tall.[9] *K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-44 (2008); *Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 5-6, n.6. The July 18, 2019 and September 12, 2019 studies produced qualifying values[10] before and after the administration of bronchodilators. Director's Exhibits 15 at 10; 42 at 4. The February 21, 2020 and January 6, 2021 studies produced qualifying values before the administration of bronchodilators but non-qualifying values after. Director's Exhibit 39 at 10; Employer's Exhibit 1 at 17. The June 11, 2021 study produced qualifying values without bronchodilators, and no post-bronchodilator study was performed. Claimant's Exhibit 5 at 1-3. Weighing the studies together, the ALJ determined they support a finding of total disability at 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 8.

Employer generally argues the pulmonary function study evidence does not support a finding of total disability because "the testing is widely variable over time," and "is subject to validity and reliability concerns as all the testing (aside from the testing performed for Dr. Zaldivar) is shown to be unreproducible and subject to suboptimal effort on the part of [the Miner] . . . ." Employer's Brief at 17-18. Although Employer summarizes Dr. Zaldivar's critiques of the July 18, 2019, September 12, 2019, and February 21, 2020 studies,[11] Employer's Brief at 8, it does not set forth any specific error the ALJ allegedly committed in evaluating the pulmonary function evidence. *Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*,

---

Decision and Order at 6. We therefore affirm the ALJ's determination that Claimant was unable to establish total disability at 20 C.F.R. §718.204(b)(2)(ii), (iii). *Id.*

[9] Thus, we reject Employer's assertion that the ALJ should have found the Miner was between sixty-eight and sixty-nine inches tall. Employer's Brief at 15 n.6.

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

[11] Employer notes Dr. Zaldivar opined the July 18, 2019 and September 12, 2019 pulmonary function studies are invalid while the February 21, 2020 study showed fair effort at best. Employer's Brief at 8 (referencing Employer's Exhibit 1 at 2-3).

10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); Employer's Brief at 17-18. Employer also has not explained how any error in evaluating these allegedly invalid studies would make a difference given that the remaining valid studies from January 6, 2021, and June 11, 2021, both produced qualifying values.[12] *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); Director's Exhibit 39 at 10; Claimant's Exhibit 5 at 1-3; Employer's Exhibit 1 at 17. Thus, as it is supported by substantial evidence, we affirm the ALJ's determination that the pulmonary function study evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 6.

Medical Opinions

The ALJ considered the medical opinions of Dr. Ajjarapu[13] that the Miner was totally disabled and the opinions of Drs. Zaldivar and McSharry that he was not. Decision and Order at 8; Director's Exhibits 1 at 7; 39 at 3; Employer's Exhibit 1 at 7. The ALJ afforded each medical opinion "some weight" and determined the overall medical opinion evidence does not support a finding of total disability. Decision and Order at 8.

Employer generally contends the ALJ erred in crediting Dr. Ajjarapu's opinion, asserting it is "simply not credible or supported by the weight of the valid, reliable and probative medical evidence," whereas it asserts the opinions of Drs. McSharry and Zaldivar "are well documented and well-reasoned," and consistent with the medical evidence of record. Employer's Brief at 18. Employer's argument amounts to a request to reweigh the

[12] We reject Employer's additional contention that the pulmonary function studies do not evidence a disabling impairment, but instead suggest the Miner had asthma, because four of the five studies indicate a response to bronchodilators. Employer's Brief at 14, 17-18. Contrary to Employer's contention, the relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether the miner had a totally disabling respiratory or pulmonary impairment; the cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305. *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989); *Johnson v. Apogee Coal Co.*, BLR , BRB No. 22-0022 BLA, slip op. at 10-11 (May 26, 2023), *appeal docketed*, No. 23-3612 (6th Cir. July 25, 2023).

[13] Dr. Ajjarapu initially opined that whether the Miner was totally disabled could not be determined as there were reproducibility issues with the September 12, 2019 pulmonary function study. Director's Exhibit 15 at 8. After reviewing Dr. McSharry's February 21, 2020 testing, however, she provided a supplemental report opining the testing demonstrates the Miner was totally disabled. Director's Exhibit 18 at 1.

evidence, which the Board may not do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

The Director contends the ALJ erred in finding Drs. McSharry's and Zaldivar's opinions weigh against a finding of total disability. Director's Response Brief at 1-2. He asserts that, although Dr. McSharry opined there is "no evidence of disability from a pulmonary perspective," his opinion was based on his belief that the Miner's pulmonary function studies would improve with more aggressive treatment, and he did not specifically opine as to whether the Miner could perform his usual coal mine employment. *Id.* (quoting Director's Exhibit 39 at 5). Thus, the Director argues Dr. McSharry did not offer an opinion on whether the Miner was totally disabled. Likewise, he asserts Dr. Zaldivar's opinion supports a finding of total disability because he opined the Miner would have been capable of performing his usual coal mine work only if he underwent "intensive bronchodilator treatment." *Id.* at 2 (quoting Employer's Exhibit 1 at 7).

We need not address the Director's contentions. Even accepting his argument that Drs. McSharry's and Zaldivar's opinions support a total disability finding, any error is harmless because the ALJ nevertheless found Claimant established total disability and, as discussed, Employer has set forth no basis to overturn that finding. 20 C.F.R. §§718.204(b)(2), 718.305(b)(1); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 8. We therefore affirm the ALJ's finding that Claimant established total disability and invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305; Decision and Order at 8.

Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[14] 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). The ALJ found

[14] "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 that is 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).

Employer rebutted the presumption because the evidence did not establish clinical pneumoconiosis or legal pneumoconiosis. Decision and Order at 10-11.

The Director argues the ALJ erred in failing to shift the burden to Employer to affirmatively disprove both clinical and legal pneumoconiosis as the Section 411(c)(4) presumption requires and also failed to support her credibility determinations. Director's Response Brief at 2-4. We agree with the Director's argument.

Clinical Pneumoconiosis

To disprove clinical pneumoconiosis, Employer must establish the Miner did not have any of the 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. §§718.305(d)(1)(i)(B), 718.201(a)(1).

The ALJ considered eleven interpretations of five x-rays dated May 23, 2019, September 12, 2019, February 21, 2020, January 6, 2021, and June 11, 2021. Decision and Order at 9-10; Director's Exhibits 15 at 9; 30; 39 at 21; 42; Claimant's Exhibits 1-4; Employer's Exhibits 2, 3, 5. The ALJ correctly noted all of the interpreting physicians are dually qualified as radiologists and B readers. Decision and Order at 10; Director's Exhibits 15 at 9; 30 at 5; 42 at 7; Claimant's Exhibits 1 at 3-4; 2 at 5.

Dr. Crum interpreted the May 23, 2019 x-ray as positive for pneumoconiosis, while Dr. Willis interpreted it as negative for the disease. Director's Exhibit 42; Employer's Exhibit 3. Dr. Miller read the September 12, 2019 x-ray as positive for clinical and complicated pneumoconiosis, while Drs. DePonte and Willis read it as negative for pneumoconiosis. Director's Exhibits 15 at 9; 30; Claimant's Exhibit 4. Dr. Miller interpreted the February 21, 2020 x-ray as positive for pneumoconiosis, while Dr. Willis read it as negative for the disease. Director's Exhibit 39 at 21; Claimant's Exhibit 2. Dr. Miller read the January 6, 2021 x-ray as positive for pneumoconiosis,[15] whereas Dr. Willis interpreted it as negative for the disease. Claimant's Exhibit 3; Employer's Exhibit 2. Dr. Ramakrishnan interpreted the June 11, 2021 x-ray as positive for clinical and complicated

[15] Dr. Miller indicated "[t]here is coalescence of small opacities (ax) at the left base that falls just shy of meeting the criteria for a large opacity of complicated pneumoconiosis." Claimant's Exhibit 3 at 1. He stated that a follow-up examination or chest computerized tomography (CT) scan "may be considered." *Id.*

pneumoconiosis,[16] while Dr. Willis interpreted it as negative for the disease. Claimant's Exhibit 1; Employer's Exhibit 5.

The ALJ found the September 12, 2019 x-ray to be negative for pneumoconiosis because two of three dually-qualified physicians read the x-ray as negative. Decision and Order at 10. Because an equal number of dually-qualified physicians read the remaining x-rays as positive and negative, she determined the readings of those x-rays are in equipoise and thus "neither support nor refute a finding of pneumoconiosis." *Id.* Determining that "none of the x-rays fully support a finding of pneumoconiosis," she found Employer rebutted the presumption because "the overall x-ray evidence does not establish clinical or complicated pneumoconiosis." *Id.*

We disagree with the Director's assertion that the ALJ simply counted heads to resolve the conflicting interpretations of each individual x-ray. Director's Response Bref at 2-3. The ALJ set forth the qualifications of the interpreting physicians, separately analyzed the differing interpretations of each x-ray, and acted within her discretion in separately finding that the interpretations of the May 23, 2019, February 21, 2020, January 6, 2021, and June 11, 2021 x-rays neither support nor refute the existence of clinical pneumoconiosis and the September 12, 2019 x-ray does not support the existence of the disease. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27-28 (1987); *Dixon v. North Camp Coal Co*., 8 BLR 1-344, 1-345 (1985); *see also Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012) (If a reviewing court can discern what the ALJ did and why they did it, the duty of explanation under the Administrative Procedure Act (APA) is satisfied.).

We agree with the Director's argument, however, that in weighing the five x-rays together, the ALJ did not explain her overall clinical pneumoconiosis findings in light of any qualitative differences that may exist in the evidence, *Adkins*, 958 F.2d at 51-52; *Woodward v. Director*, OWCP, 991 F.2d 314, 321 (6th Cir. 1993), and she erroneously placed the burden of proof on Claimant to establish the Miner had the disease. Decision and Order at 10; Director's Response Brief at 2-3. Clinical pneumoconiosis is presumed to exist in this case because the Section 411(c)(4) presumption has been invoked. The ALJ was tasked with evaluating whether Employer disproved its existence by establishing, by a preponderance of the evidence, the Miner did not have clinical pneumoconiosis. *W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018); *W. Va. CWP*

[16] Dr. Ramakrishnan read the x-ray as showing size A large opacities and a coalescence of small opacities and 2/2 profusion. Claimant's Exhibit 1.

Fund v. Bender, 782 F.3d 129, 134-35 (4th Cir. 2015); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 554-59 (4th Cir. 2013).

Because the ALJ failed to weigh the evidence using the proper burden of proof, we must vacate her determination that Employer rebutted the presumption of clinical pneumoconiosis. 20 C.F.R. §§718.201(a), 718.202(a)(1), 718.305(d)(1)(i)(B); Decision and Order at 10.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish the Miner did not have 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), 718.305(d)(1)(i)(A).

The ALJ considered the medical opinions of Drs. Ajjarapu, Zaldivar, and McSharry. Decision and Order at 11. Dr. Ajjarapu diagnosed the Miner with legal pneumoconiosis in the form of chronic bronchitis due to the Miner's "work in the mines and tobacco use." Director's Exhibits 15 at 7; 18 at 1. Dr. Zaldivar opined the Miner did not have legal pneumoconiosis but rather had asthma, a partly reversible airway obstruction, and a moderate diffusion abnormality unrelated to coal mine dust exposure. Employer's Exhibit 1 at 5-7. Dr. McSharry also opined the Miner did not have legal pneumoconiosis but instead had asthma not caused by coal mine dust exposure. Director's Exhibit 39 at 2-3. After briefly summarizing the physicians' opinions, the ALJ accorded "some weight" to each opinion and found "they do not support the finding of a chronic lung disease or impairment and its sequelae arising out of coal mine employment." Decision and Order at 11. She therefore determined Employer rebutted the presumption of legal pneumoconiosis. *Id.*

The APA requires the ALJ to consider all relevant evidence in the record, and to set forth her "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); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). While the ALJ summarized the opinions of Drs. Forehand, Sargent, and McSharry, she did not make any findings regarding the credibility of each opinion as to the role coal mine dust played in the Miner's obstructive disease, which all the physicians agreed is present. Decision and Order at 11; Director's Exhibits 15 at 7; 18 at 1; 39 at 5; Employer's Exhibit 1 at 5. Because the ALJ provided no analysis of the physicians' opinions and failed to resolve the conflict in the evidence, her findings are not in compliance with the APA. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165.

Moreover, as the Director argues, rather than determining whether the evidence rebutted the existence of legal pneumoconiosis, the ALJ instead found it does not *support* a finding of legal pneumoconiosis. Decision and Order at 11; Director's Response Brief at 3-4. The ALJ thus failed to properly evaluate whether Employer met its burden to establish that the Miner's coal mine dust exposure did not "significantly contribute to, or substantially aggravate," his obstructive impairment and instead again erroneously placed the burden of proof on Claimant. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Smith*, 880 F.3d at 699; *Bender*, 782 F.3d at 134-35; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). We therefore vacate the ALJ's finding that the medical opinion evidence, and the evidence overall, established the Miner did not have legal pneumoconiosis as well as her determination that Employer rebutted the Section 411(c)(4) presumption. 20 C.F.R. §§718.201(a)(2), 718.202(a)(4), 718.305(d)(1)(i)(A); Decision and Order at 11.

Remand Instructions

On remand, the ALJ must reconsider whether Employer has rebutted the Section 411(c)(4) presumption. In determining whether Employer established rebuttal of the presumption, the ALJ should determine whether Employer has established rebuttal at 20 C.F.R. §718.305(d)(1)(i) by disproving the presumed existence of both legal and clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A), (B); *see Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 159 (2015).

In evaluating whether Employer has disproved legal pneumoconiosis, the ALJ must reconsider the medical opinion evidence. She must consider the physicians' qualifications, explanations for their conclusions, the documentation underlying their medical judgements, and the sophistication of, and bases for, their diagnoses and medical conclusions. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 530 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439 (4th Cir. 1997). In so doing, she must set forth her findings in detail, including the underlying rationale. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165.

If the ALJ determines that Employer has failed to establish the absence of legal pneumoconiosis, she should then determine whether Employer has disproven the presence of clinical pneumoconiosis arising out of coal mine employment at Section 718.305(d)(1)(i)(B). In doing so, the ALJ must consider all relevant evidence and explain her underlying rationale as the APA requires. *Wojtowicz*, 12 BLR at 1-165.

If the ALJ determines that Employer has established the Miner did not have clinical or legal pneumoconiosis, Employer will have rebutted the Section 411(c)(4) presumption by establishing the absence of pneumoconiosis and Claimant will not have established a

requisite element of entitlement pursuant to 20 C.F.R. Part 718. If she finds Employer has not rebutted the presumed fact of either clinical or legal pneumoconiosis, she must consider whether Employer has established that no part of the Miner's total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). If Employer proves that the Miner did not have legal and clinical pneumoconiosis, or no part of his disabling pulmonary impairment was caused by legal and clinical pneumoconiosis, Employer has rebutted the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(d)(1); *see Minich*, 25 BLR at 1-159. If Employer fails to do so, however, Claimant is entitled to benefits.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge