U.S. Department of Labor

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

BRB No. 23-0077 BLA

JAMES H. RUTHERFORD	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
MATE CREEK TRUCKING INCORPORATED	)	
	)	
and	)	
	)	DATE ISSUED: 07/08/2024
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Modification and Denying Benefits of Patricia J. Daum, Administrative Law Judge, United States Department of Labor.

James H. Rutherford, Uneeda, West Virginia.

Ashley M. Harman and Lucinda L. Fluharty (Jackson Kelly PLLC), Morgantown, West Virginia, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) Patricia J. Daum's Decision and Order Denying Modification and Denying Benefits (2018-BLA-06062) rendered on a claim filed on June 10, 2005, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

In a November 29, 2010 Decision and Order Denying Benefits, ALJ Ralph A. Romano credited Claimant with 22.17 years of underground coal mine employment. However, he found Claimant did not establish he had a totally disabling pulmonary or respiratory impairment and denied benefits. 20 C.F.R. §718.204(b)(2).

Claimant timely requested modification of the denial and submitted new evidence.[2] In an October 25, 2016 Decision and Order Denying Benefits, ALJ Richard A. Morgan found the evidence established Claimant had more than fifteen years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He thus determined Claimant established a change in condition since the prior denial and invoked 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] However, he found Employer rebutted the presumption by disproving the presence of pneumoconiosis and denied benefits. 20 C.F.R. §718.305.

Claimant again timely requested modification and submitted new evidence. In a November 25, 2022 Decision and Order that is the subject of this appeal, ALJ Patricia J. Daum (the ALJ) determined Claimant did not establish complicated pneumoconiosis and

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

[2] When evaluating a request for modification, the ALJ "must consider whether any additional evidence submitted by the parties demonstrates a change in condition and, regardless of whether the parties have submitted new evidence, whether the evidence of record demonstrates a mistake in a determination of fact." 20 C.F.R. §725.310(c).

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability is 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.

therefore failed 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). She credited Claimant with at least twenty-four years of qualifying coal mine employment and found he invoked the Section 411(c)(4) presumption by establishing he is totally disabled. 20 C.F.R. §718.305. However, she found Employer rebutted the presumption by disproving the existence of pneumoconiosis and denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Employer and its Carrier (Employer) respond, urging the Benefits Review Board to affirm the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response.

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 ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable 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).

Complicated Pneumoconiosis

Section 411(c)(3) of the Act provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers 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, is a condition that would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. In determining whether 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).

20 C.F.R. §718.304(a) – X-rays

The ALJ first considered the eighteen interpretations of eight x-rays reviewed by ALJ Morgan prior to Claimant's most recent request for modification and accurately found

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

that none of the readings supported a finding of complicated pneumoconiosis. Decision and Order on Second Modification at 22; Decision and Order on Modification at 7-8.

The ALJ additionally considered two interpretations of an x-ray dated September 26, 2018, submitted in Claimant's most recent request for modification. Decision and Order on Second Modification at 23-24. Dr. Crum read the September 26, 2018 x-ray as positive for complicated pneumoconiosis. Claimant's Exhibit 1. Dr. Meyer opined the film was negative for complicated pneumoconiosis but showed basilar pulmonary fibrosis characteristic of usual interstitial pneumonia (UIP) which is not associated with coal mine dust exposure. Employer's Exhibit 1.

The ALJ accurately noted both interpreting physicians are dually-qualified B readers and Board-certified radiologists but found Dr. Meyer more qualified than Dr. Crum due to his "extensive publication history, which Dr. Crum lacks, academic appointment at a large prestigious research university, and professional history." *See Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993) (relevant academic qualifications such as whether a physician is a professor of radiology may be considered by the ALJ in weighing the x-ray evidence); Decision and Order on Second Modification at 23. Additionally, the ALJ found Dr. Meyer's interpretation more persuasive because it was consistent with the weight of the x-ray evidence overall, his three prior x-ray interpretations, and computed tomography (CT) scan and x-ray evidence in Claimant's treatment records that describe similar findings.[5] *Id.* at 24. Thus, the ALJ found that the x-ray was negative for complicated pneumoconiosis, or the readings of the x-ray were "at best in equipoise." *Id.* As the ALJ performed both a quantitative and qualitative evaluation of the conflicting readings, she permissibly found the September 26, 2018 x-ray does not support a finding of complicated pneumoconiosis. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992); Decision and Order on Modification at 24.

The ALJ also considered the chest x-ray dated April 3, 2019 that Dr. Skeens read as part of Claimant's treatment at Boone Memorial Hospital. Claimant's Exhibit 3; Decision and Order on Second Modification at 7. Dr. Skeens observed "increased interstitial lung markings at both lung bases which appear chronic in nature similar to prior exam consistent with interstitial fibrosis," but did not address whether the x-ray showed complicated

[5] The record contains CT scans from January 27, 2007, January 18, 2011, July 19, 2011, July 17, 2012, August 4, 2013, July 29, 2015, March 15, 2018, and April 2, 2019. Director's Exhibits 59, 124; Claimant's Exhibit 2. Dr. Meyer read the January 27, 2007 CT scan as negative for large opacities, and no other reader addressed complicated pneumoconiosis. Director's Exhibit 59.

pneumoconiosis or the cause of the fibrosis. Claimant's Exhibit 3 at 1. The ALJ permissibly found that this film did not support a finding of complicated pneumoconiosis and so supports Dr. Meyer's negative interpretation. *See Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-218-19 (1984) (ALJ has discretion to determine the weight to accord an x-ray that is silent on the existence of pneumoconiosis); Decision and Order on Second Modification at 24. Thus, the ALJ permissibly found the x-ray evidence as a whole does not establish complicated pneumoconiosis. 20 C.F.R. §718.304(a); Decision and Order on Second Modification at 24.

20 C.F.R. §718.304(c) – Other Evidence

The ALJ also considered medical opinion evidence, CT scans, and Claimant's treatment records relevant to complicated pneumoconiosis.[6] 20 C.F.R. §718.304(c); Decision and Order on Second Modification at 24-25. Dr. Meyer read the January 27, 2007 CT scan as negative for large opacities and for pneumoconiosis, and no other reader of the CT scan addressed complicated pneumoconiosis. Director's Exhibit 59. While Dr. Harris noted Dr. Crum's interpretation of a September 26, 2018 x-ray in his medical opinion, he did not diagnose complicated pneumoconiosis himself and noted that the most recent x-ray in Claimant's treatment records was positive for only simple pneumoconiosis. Claimant's Exhibit 5. Dr. Spagnolo, the only physician to directly address the issue, opined that Claimant does not have complicated pneumoconiosis. Employer's Exhibits 4-5. The ALJ thus accurately found that none of the CT scans or treatment records diagnose complicated pneumoconiosis or a large opacity. Decision and Order on Second Modification at 24-25.

Consequently, as the ALJ rationally found the "other" relevant medical evidence does not aid Claimant in establishing complicated pneumoconiosis, we affirm her determination that Claimant failed to establish complicated pneumoconiosis at 20 C.F.R. §718.304(c). Decision and Order on Second Modification at 24-25. We therefore affirm the ALJ's conclusion that the evidence weighed as a whole does not establish complicated pneumoconiosis, as it is supported by substantial evidence. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Lane v. Union Carbide Corp.*, 105 F.2d 166, 174 (4th Cir. 1997); Decision and Order on Second Modification at 25.

[6] As there is no biopsy or autopsy evidence, the ALJ correctly found Claimant cannot establish complicated pneumoconiosis at 20 C.F.R. §718.304(b). Decision and Order on Second Modification at 24.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish Claimant has neither legal[7] nor clinical[8] pneumoconiosis, 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 Employer rebutted the presumption by establishing Claimant has neither clinical nor legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

Clinical Pneumoconiosis

Chest X-ray Evidence

The ALJ initially adopted ALJ Morgan's finding that the prior x-ray evidence establishes the absence of clinical pneumoconiosis. Decision and Order on Second Modification at 22. ALJ Morgan considered thirteen interpretations of four chest x-rays dated July 21, 2005, January 24, 2007, December 11, 2008, and September 16, 2011. Decision and Order on Modification at 28-30. All the physicians who read these films were dually-qualified B readers and Board-certified radiologists, except for Drs. Gaziano and Repsher, who are only B readers. *Id.* He further considered four x-ray interpretations from Claimant's treatment records. *Id.*

The July 21, 2005 x-ray was read as positive for simple pneumoconiosis by Drs. Gaziano and Dr. Baek, Director's Exhibits 11, 12, while Dr. Meyer interpreted the film as negative for the disease, noting only "basilar fibrosis" in a pattern consistent with UIP or idiopathic pulmonary fibrosis (IPF). Director's Exhibit 59. The January 24, 2007 x-ray was read as positive for simple pneumoconiosis by Drs. Repsher and Miller, although Dr. Respher also opined the pattern of the small opacities was not consistent with pneumoconiosis and instead attributed the opacities to UIP/IPF. Director's Exhibits 61,

[7] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[8] "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).

62. Dr. Meyer interpreted the film as negative for pneumoconiosis and instead diagnosed "basilar pulmonary fibrosis in a UIP pattern." Director's Exhibit 58.

The December 11, 2008 x-ray was read as positive for simple pneumoconiosis by Drs. Miller and Ahmed, Director's Exhibits 56, 57, while Drs. Meyer and Wiot interpreted the film as negative for pneumoconiosis and opined it showed bibasilar interstitial fibrosis consistent with UIP/IPF. Director's Exhibit 67. The September 16, 2011 x-ray was read as positive for pneumoconiosis by Drs. Alexander and DePonte, Director's Exhibits 83, 125, while Drs. Shipley and Meyer interpreted the film as negative for pneumoconiosis and noted changes of IPF/UIP. Director's Exhibits 90, 99.

As part of Claimant's regular medical treatment, he underwent chest x-rays at the Madison Medical Group on November 26, 2006, December 6, 2006, and February 6, 2007. Director's Exhibit 67. Dr. Smith opined that these films demonstrated "bibasilar interstitial infiltrates" that are "suggestive of pulmonary fibrosis." *Id*. Claimant also underwent a chest x-ray at the Charleston Area Medical Center on August 15, 2011, which Dr. Leef opined showed pulmonary fibrosis. Director's Exhibit 89.

ALJ Morgan found Dr. Wiot to be the best qualified radiologist of record, noting he also was a professor of radiology who published on radiology, followed by Drs. Meyer and Shipley, who also are professors in radiology. *See Worhach*, 17 BLR at 1-108; Decision and Order on Modification at 10, 29. However, he permissibly determined that Dr. Meyer's interpretations were entitled to the greatest weight because 1) he interpreted all the x-rays of record; 2) his interpretations of these x-rays were consistent and were consistent with his interpretation of the January 27, 2007 CT scan; 3) he also considered Claimant's treatment records and explained why his rheumatoid arthritis would solely account for the x-ray changes; and 4) his interpretations were supported by the other negative x-ray readings and the relevant treatment records.[9] *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); Decision and Order on

[9] ALJ Morgan accurately noted that the chest x-rays and CT scans contained in Claimant's treatment records indicate that there are no focal infiltrates or pulmonary nodules, but find chronic interstitial fibrosis with peripheral honeycombing, honeycombing at the lung bases, and lower lung zone predominant pulmonary fibrosis with honeycombing. Decision and Order on Modification at 29; Director's Exhibits 67, 89, 124. ALJ Morgan permissibly found these interpretations are more consistent with the interpretations of Drs. Wiot, Meyer, and Shipley, who described bibasilar fibrosis in the lower lungs with honeycombing, than the interpretations of Drs. Miller and Ahmed, who described parenchymal nodules in all of the lung zones. *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993); Decision and Order on Modification at 29.

Modification at 29-30. Thus, as Dr. Meyer interpreted each of the x-rays as negative for the disease, and Drs. Wiot and Shipley also interpreted the December 11, 2008 and September 16, 2011 x-rays as negative, ALJ Morgan permissibly found each of the x-rays to be negative for pneumoconiosis and found the x-ray evidence as a whole establishes the absence of clinical pneumoconiosis. *Addison*, 831 F.3d at 256-57; *Adkins*, 958 F.2d at 52-53; Decision and Order on Modification at 29-30. Consequently, we affirm the ALJ's determination that there was no mistake of fact in ALJ Morgan's determination that the previously submitted evidence establishes the absence of clinical pneumoconiosis. Decision and Order on Second Modification at 22.

The ALJ next considered new interpretations of the September 26, 2018 x-ray from two dually-qualified readers; these interpretations were submitted in Claimant's most recent request for modification. Decision and Order on Second Modification at 20-21. Dr. Crum read the September 26, 2018 x-ray as positive for simple pneumoconiosis, while Dr. Meyer read it as negative for simple pneumoconiosis with evidence of IPF/UIP. Claimant's Exhibit 1; Employer's Exhibit 1. The ALJ noted that the readings of this x-ray were at best in equipoise. Decision and Order on Second Modification at 24, 31. However, she found Dr. Meyer was better qualified than Dr. Crum based on his "extensive publication history" in diagnostic radiology, his "academic appointment at a large prestigious research university," and his "professional history." Decision and Order on Second Modification at 24, 31. Moreover, she credited Dr. Meyer's interpretation as he read all the x-ray films, and provided consistent interpretations that were also consistent with the relevant treatment records. *Id*. at 24, 31. Thus, the ALJ properly considered the number of x-ray interpretations, along with the readers' radiological qualifications and the physicians' specific findings, and permissibly found the September 26, 2018 x-ray negative for pneumoconiosis. *Addison*, 831 F.3d at 256-57; *Adkins*, 958 F.2d at 52-53; *Worhach*, 17 BLR at 1-108; Decision and Order on Second Modification at 24, 31.

The ALJ further considered Dr. Skeen's interpretation of the April 3, 2019 chest x-ray from Claimant's treatment records. Decision and Order on Second Modification at 24; Claimant's Exhibit 3. Dr. Skeen noted bibasilar scarring as well as increased interstitial lung markings at the lung bases and diagnosed "chronic findings including interstitial fibrosis" with no definite acute infiltrate. *Id*. The ALJ permissibly found this reading supportive of Dr. Meyer's x-ray interpretations. *Marra*, 7 BLR at 1-218-19; Decision and Order on Second Modification at 24. Consequently, because it is supported by substantial evidence, we affirm the ALJ's determination that the x-ray evidence "is supportive of a non-finding" of clinical pneumoconiosis. 20 C.F.R. §718.202(a)(1); Decision and Order on Second Modification at 24, 31.

Other Medical Evidence

The ALJ also considered medical opinions, Claimant's treatment records, and CT scans relevant to clinical pneumoconiosis.[10] 20 C.F.R. §718.202(a)(4); Decision and Order on Second Modification at 33-34. Prior to considering the new evidence submitted in Claimant's most recent request for modification, the ALJ adopted ALJ Morgan's prior findings that the CT scans, treatment records, and medical opinion evidence rebut the existence of clinical pneumoconiosis. Decision and Order on Second Modification at 33-34.

CT Scan Evidence

ALJ Morgan considered Dr. Meyer's interpretation of the January 27, 2007 CT scan and interpretations of five CT scans from Claimant's treatment records. Decision and Order on Modification at 8-9. Dr. Meyer interpreted the January 27, 2007 CT scan as showing paraseptal emphysema with basilar pulmonary fibrosis in a UIP pattern in the middle and lower lung zones with honeycombing, that he opined is not a manifestation of pneumoconiosis. Director's Exhibit 59. Dr. Abramowitz read the CT scans dated January 18, 2011, and July 19, 2011, noting advanced nonspecific interstitial and bullous disease most prominent in the lower lung zones. Director's Exhibit 124. Dr. Baek interpreted the July 17, 2012 CT scan as showing interstitial and emphysematous changes with areas of fibrosis and honeycombing. *Id.* Dr. Connor interpreted the August 14, 2013 CT scan as showing chronic interstitial fibrosis with honeycombing. *Id.* Dr. Vanhoose interpreted the July 29, 2015 CT scan as showing pulmonary fibrosis with honeycombing predominantly in the lower lungs. *Id.*

Initially, ALJ Morgan determined that Dr. Meyer's deposition testimony establishes that the use of a CT scan is medically acceptable and relevant to establishing or refuting the existence of pneumoconiosis. Decision and Order on Second Modification at 9; 20 C.F.R. §718.107(b); Director's Exhibit 70 at 11-13. He permissibly found that the interpretations from Claimant's treatment records are consistent with Dr. Meyer's own interpretation and therefore support his opinion that Claimant does not have clinical pneumoconiosis. *Addison*, 831 F.3d at 256-57; *Adkins*, 958 F.2d at 52-53; Decision and Order on Modification at 30. Thus, we affirm the ALJ's determination that there was no mistake of fact in ALJ Morgan's determination that the CT scans support a finding of the non-existence of pneumoconiosis. Decision and Order on Second Modification at 30.

[10] Again, the ALJ accurately found there is no biopsy or autopsy evidence in the record. 20 C.F.R. §718.202(a)(2); Decision and Order on Second Modification at 32.

Considering the new evidence submitted in Claimant's most recent request for modification, the ALJ considered two interpretations of CT scans dated March 16, 2018, and April 2, 2019, from Claimant's treatment records. Decision and Order on Second Modification at 32. Dr. Muto interpreted the March 16, 2018 CT scan as showing basilar pulmonary fibrosis with honeycombing. Claimant's Exhibit 2. Dr. King interpreted the April 2, 2019 CT scan as showing bilateral peripheral reticular opacities and diagnosed stable pulmonary fibrosis. *Id*. The ALJ permissibly found these readings support Dr. Meyer's opinion that Claimant's fibrosis is due solely to rheumatoid arthritis and are thus "supportive of a finding of the non-existence of pneumoconiosis," as neither physician diagnosed clinical pneumoconiosis and they described findings similar to those of Dr. Meyer. *Looney*, 678 F.3d at 316-17; *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149, 1-155 (1989) (en banc); *Marra*, 7 BLR at 1-218-19; Decision and Order on Second Modification at 29, 32.

Medical Opinion Evidence

While the case was previously before ALJ Morgan, Employer relied on the medical opinions of Drs. Meyer, Repsher, and Castle to disprove clinical pneumoconiosis, each of whom opined that Claimant has UIP/IPF due to his rheumatoid arthritis and not clinical pneumoconiosis. Director's Exhibits 61, 69, 70, 99, 125, 126, 136.

Dr. Meyer considered all of Claimant's x-rays, a CT scan, his treatment records, and the results of his examinations. Director's Exhibit 70. He opined that the abnormalities seen on Claimant's x-rays imply a fibrotic process, but the distribution and appearance are inconsistent with clinical pneumoconiosis, noting that the films show coarse irregular opacities primarily in the lower lung zones with honeycombing but with no nodules in the parenchyma. *Id*. at 15. Specifically, he explained that the opacities are consistent with UIP which may be associated with IPF or with a collagen vascular disease, and that Claimant's treatment records indicate he has rheumatoid arthritis which explains the x-ray changes. *Id*. at 19-20. Dr. Meyer further opined that he did not believe there was evidence of clinical pneumoconiosis on x-ray or on the CT scans, and that pneumoconiosis would not cause the findings found on the x-ray or CT scans. *Id.* at 20-21. ALJ Morgan found Dr. Meyer was one of the highest qualified physicians of record and permissibly found he persuasively explained why the abnormalities seen on the x-ray are consistent with UIP due to rheumatoid lung and why there was no pneumoconiosis present. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Hicks*, 138 F.3d at 528; *Underwood v. Elkay Mining, Inc*., 105 F.3d 946, 951 (4th Cir. 1997); *Clark*, 12 BLR at 1-155; Decision and Order on Modification at 30. He further permissibly found Dr. Meyer's opinion supported by the weight of the x-rays, CT scans, and Claimant's treatment records, as well as the x-ray readings from Drs. Wiot and Shipley, whom he found were highly

qualified. *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; *Underwood*, 105 F.3d at 951; Decision and Order on Modification at 30.

Dr. Repsher examined Claimant on January 24, 2007, and reviewed Claimant's medical records. Director's Exhibits 61, 69, 99. Dr. Repsher opined that the changes on Claimant's x-rays are characteristic of UIP/IPF with peripheral interstitial fibrosis and honeycombing and not clinical pneumoconiosis and attributed these changes to Claimant's long-standing rheumatoid arthritis. Director's Exhibits 61 at 2, 69 at 33-34, 99 at 14. Similarly, Dr. Castle reviewed Claimant's medical records, and opined that Claimant has UIP due to rheumatoid arthritis based upon the CT scan evidence, noting that the radiographic findings "are clearly due to his severe rheumatoid arthritis" and that "there are no findings in this case to justify" a diagnosis of clinical pneumoconiosis. Director's Exhibits 125 (Deposition at 30, April 7, 2016 Report at 18-21), 129, 136. ALJ Morgan permissibly found the opinions of Drs. Castle and Repsher supported by the objective evidence and consistent with his finding that the x-rays are negative for pneumoconiosis. *Compton*, 211 F.3d at 212; Decision and Order on Modification at 30. He further permissibly found that the physicians disproved the existence of clinical pneumoconiosis, noting their "excellent credentials," their review and integration of "a plethora of evidence," their consideration of all of Claimant's risk factors, and finding that Dr. Castle provided a "detailed and thorough report convincingly establishing" that the damage to Claimant's lungs is due to his rheumatoid arthritis. *See Akers*, 131 F.3d at 441; *Hicks*, 138 F.3d at 528; *Underwood*, 105 F.3d at 951; Decision and Order on Modification at 30. Consequently, because it is supported by substantial evidence, we affirm the ALJ's determination that there was no mistake of fact in ALJ Morgan's determination that the previously submitted medical opinion evidence rebuts the existence of clinical pneumoconiosis.[11] Decision and Order on Second Modification at 32.

[11] Dr. Gaziano examined Claimant on July 21, 2005, and diagnosed simple clinical pneumoconiosis and rheumatoid lung disease based on his interpretation of the July 21, 2005 chest x-ray and Claimant's twenty-seven years of coal mine dust exposure at the face. Director's Exhibit 11. ALJ Morgan permissibly accorded little weight to Dr. Gaziano's opinion as he primarily relied on his own interpretation of the July 21, 2005 x-ray, which the ALJ found negative for pneumoconiosis. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); Decision and Order on Modification at 31-32. Dr. Forehand examined Claimant on May 27, 2016, and, although his testing was limited to a physical examination and administering an arterial blood gas study, he diagnosed Claimant with "coalmine dust-related lung disease." Director's Exhibit 127. To the extent Dr. Forehand diagnosed clinical pneumoconiosis, ALJ Morgan permissibly accorded his opinion little weight as he did not adequately explain the bases for his determinations. *See*

In Claimant's most recent request for modification, Employer relied upon the supplemental opinion of Dr. Castle and the new medical opinion of Dr. Spagnolo that there is no evidence of clinical pneumoconiosis and the fibrosis in Claimant's lungs is due to his rheumatoid arthritis. Director's Exhibits 125, 136; Employer's Exhibits 3-5. After reviewing additional medical records, Dr. Castle reiterated his opinion that Claimant's x-rays show typical findings for someone with rheumatoid arthritis, which are not consistent with pneumoconiosis or coal mine dust fibrosis, and noted that Claimant's diagnosis of rheumatoid arthritis was made by blood testing. Director's Exhibits 125, 136; Employer's Exhibit 3. Dr. Spagnolo also reviewed the medical records and opined that the x-ray findings are most consistent with and are a "classic picture" of UIP due to rheumatoid arthritis. Employer's Exhibits 4, 5. The ALJ permissibly found the opinions of Drs. Castle and Spagnolo well-reasoned and documented, noting they considered a wide range of records dating back to 1994, including all of the chest x-rays and CT scans of record, and they extensively explained why they found the negative x-rays readings more reliable.[12] *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; *Underwood*, 105 F.3d at 951; Decision and Order on Second Modification at 35.

Claimant's Treatment Records

ALJ Morgan also considered Claimant's treatment and hospitalization records from Bone and Joint Surgeons, Madison Medical, Pulmonary Associates, Charleston Area Medical Center, Stone Mountain Health Services, The Rheumatology Group, and Dr. Eggleston. Decision and Order on Modification at 17, 30; Director's Exhibits 60, 67, 83,

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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); Decision and Order on Modification at 32.

[12] The ALJ permissibly discredited Dr. Harris's opinion that Claimant's fibrosis is "likely" due to coal mine dust exposure as he reviewed only the positive x-ray interpretations and did not have access to Claimant's treatment records for rheumatoid arthritis. *Compton*, 211 F.3d at 212; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21-22 (1987); Decision and Order on Second Modification at 34; Claimant's Exhibit 5. In addition, the ALJ permissibly discredited Dr. Forehand's supplemental opinion that, while Claimant has a component of arthritis-related lung disease, the pattern of his lung disease does not rule out clinical pneumoconiosis because he considered x-ray readings not contained in the record, failed to adequately explain his findings, and did not adequately address the contrary evidence. *See Compton*, 211 F.3d at 212; *Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-108 (2006) (en banc); *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-67 (2004) (en banc); Decision and Order on Second Modification at 33; Director's Exhibit 136.

89, 124, 125, 127. He accurately noted that these records documented chronic obstructive pulmonary disease (COPD), pulmonary fibrosis, and treatment for rheumatoid arthritis. *Id.* In relevant part, he permissibly found that these treatment records do not support a finding of clinical pneumoconiosis but, as discussed above, instead are consistent with Dr. Meyer's x-ray interpretations and the CT scans as they documented similar objective findings. *Looney*, 678 F.3d at 316-17; *Clark*, 12 BLR at 1-155; *Marra*, 7 BLR at 1-218-19; Decision and Order on Modification at 30.

Reviewing the new evidence submitted in Claimant's most recent request for modification, the ALJ considered Claimant's treatment records from the Pulmonary Associates of Charleston, Boone Memorial Hospital, and Stone Mountain Health Services. Decision and Order on Second Modification at 16-17; Claimant's Exhibits 2-6. The ALJ found that the x-ray and CT scans from the treatment records support a diagnosis of UIP due to rheumatoid arthritis as they describe findings similar to those of Dr. Meyer. *Id*. at 23-24. She further noted that on two occasions, Claimant's treating physicians diagnosed him with coal workers' pneumoconiosis. *Id*. at 16; Claimant's Exhibit 2 at 5-6; Claimant's Exhibit 6. However, noting their evaluations were simple treatment encounter summaries and not medical opinions setting forth the basis of their opinions, she permissibly found their conclusory opinions not well-reasoned or documented. *Looney*, 678 F.3d at 316-17; *Clark*, 12 BLR at 1-155; Decision and Order on Second Modification at 31.

Thus, we affirm the ALJ's finding that there was no mistake of fact in ALJ Morgan's prior determination that the previously submitted CT scans, medical opinions, and Claimant's treatment records rebut the existence of clinical pneumoconiosis. 20 C.F.R. §718.202(a)(4); Decision and Order on Second Modification at 32. We further affirm the ALJ's determination that the new "other" medical evidence submitted in Claimant's most recent request for modification does not support a finding of clinical pneumoconiosis. 20 C.F.R. §718.202(a)(4); Decision and Order on Second Modification at 31-34. The ALJ therefore reasonably found that, weighing the evidence as a whole, Employer rebutted the existence of clinical pneumoconiosis based on a preponderance of the x-ray evidence and CT scan evidence, as well as the reasoned and documented medical opinion evidence. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order on Second Modification at 36.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish Claimant does not have a chronic lung disease or impairment[13] "significantly related to, or substantially aggravated

[13] ALJ Morgan found total disability established because Claimant's most recent exercise blood gas study was qualifying and Drs. Repsher and Castle found him disabled

by, dust exposure in coal mine employment." 20 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).

Employer relies on the opinions of Drs. Meyer, Repsher, Castle, and Spagnolo, each of whom opined Claimant does not have legal pneumoconiosis. The ALJ adopted ALJ Morgan's determination that the previously submitted opinions of Drs. Meyer, Repsher, and Castle rebut the existence of legal pneumoconiosis by establishing that Claimant's coal mine dust exposure did not contribute to or aggravate his COPD/emphysema or the damage to his lungs from rheumatoid arthritis. Decision and Order on Second Modification at 32; Decision and Order on Modification at 33. She further found that Dr. Castle's new supplemental opinion and Dr. Spagnolo's new opinion rebut the existence of legal pneumoconiosis by establishing that Claimant's coal mine dust exposure did not contribute to or aggravate his arterial hypoxemia. Decision and Order on Second Modification at 34-36.

Dr. Meyer opined that Claimant does not have legal pneumoconiosis and attributed the entirety of his pulmonary fibrosis to his rheumatoid arthritis. Director's Exhibit 70 at 33. He also explained that while Claimant has mild paraseptal emphysema, it is not a type of emphysema associated with coal dust exposure or cigarette smoking but is instead related to connective tissue disease. *Id*. at 16-17. Similarly, Dr. Repsher opined that Claimant does not have legal pneumoconiosis, attributing his pulmonary fibrosis solely to his rheumatoid arthritis and his abnormal blood gas study to his history of smoking, rheumatoid lung disease, and congestive heart failure as he had normal pulmonary function studies, a normal diffusion capacity, normal lung volumes, and a variable blood gas impairment. Director's Exhibits 61, 69 at 22-23, 99 at 15. Similarly, Dr. Castle opined Claimant does not have legal pneumoconiosis, attributing his pulmonary fibrosis and abnormal blood gas study to his rheumatoid lung disease. Director's Exhibits 125 (April 7, 2016 Report at 20), 129, 136. Dr. Spagnolo also opined that Claimant does not have legal pneumoconiosis, attributing his pulmonary fibrosis solely to his rheumatoid arthritis and his blood gas impairment to his heart disease. Director's Exhibit 136; Employer's Exhibit 5.

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as a whole person due in part to his severe rheumatoid lung disease. Decision and Order on Modification at 39. Claimant's initial resting blood gas study was also qualifying. Director's Exhibit 11; Decision and Order on Modification at 12. A "qualifying" blood gas study yields results equal to or less than the applicable table values contained in Appendix C 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)(ii).

ALJ Morgan permissibly found Dr. Meyer's opinion entitled to great weight as he was highly qualified and explained his findings, which the ALJ determined are consistent with Claimant's treatment records. *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order on Modification at 30. He further permissibly found that Drs. Castle and Repsher "considered a wealth of medical treatment records," considered the impact of Claimant's risk factors, and offered well-documented and reasoned opinions explaining why Claimant's coal mine dust exposure did not contribute to his COPD/emphysema or to the damage to his lungs from rheumatoid arthritis. *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order on Modification at 33. Thus, he permissibly found that Dr. Castle's "detailed and thorough report convincingly" establishes that the significant damage to Claimant's lungs was caused by his rheumatoid arthritis and that the opinions of Drs. Castle and Repsher disproved the existence of legal pneumoconiosis by establishing that coal mine dust did not contribute to his rheumatoid arthritis or his impairment. *See Mingo Logan Coal Co v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013) (ALJ did not err in requiring the employer's experts to explain why the miner's interstitial fibrosis did not constitute legal pneumoconiosis); *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order on Modification at 33. Thus, we affirm the ALJ's determination that there was no mistake of fact in ALJ Morgan's determination that the previously submitted evidence rebuts the existence of legal pneumoconiosis.[14] 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order on Second Modification at 32.

In his new opinion submitted in Claimant's most recent request for modification, Dr. Castle reiterated his opinion that Claimant does not have legal pneumoconiosis as his coal mine dust exposure did not contribute to or aggravate his blood gas impairment or pulmonary fibrosis. Director's Exhibits 125, 126, 136; Employer's Exhibits 3. He explained that Claimant did not have consistent physical findings of lung disease such as rales, crackles, or crepitations; his pulmonary function studies, lung volumes, and diffusion capacity are normal; and his blood gas studies were variable. Director's Exhibit 125 (April 7, 2016 Report at 19-20); Employer's Exhibit 3 at 31-32. The ALJ found Dr. Castle well-qualified to offer an opinion and noted he reviewed all the medical records. Decision and Order on Second Modification at 33-35. She permissibly found his opinion "very well-

[14] Dr. Forehand diagnosed Claimant with "coal mine dust-related disease" based on a physical examination and blood gas study. Director's Exhibit 127. Dr. Gaziano, who conducted a full examination of Claimant, diagnosed him with legal pneumoconiosis based on a moderate impairment on blood gas studies and a history of twenty-seven years of coal mine employment. Director's Exhibit 11. ALJ Morgan permissibly accorded their opinions little weight as they did not explain the bases for their determinations or adequately address Claimant's other risk factors. *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order on Modification at 32.

reasoned as he extensively explains how this evidence supports his conclusions" and accorded it great weight. *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order on Second Modification at 35-36.

Dr. Spagnolo reviewed Claimant's medical records and opined that he did not have legal pneumoconiosis as his coal mine dust exposure did not contribute to or aggravate his respiratory impairment or his pulmonary fibrosis. Director's Exhibit 136; Employer's Exhibits 4, 5. He explained that Claimant has a gas exchange impairment due to coronary artery disease, opining that coal mine dust exposure did not contribute to the impairment as the medical records lack consistent evidence of a restrictive or obstructive impairment on ventilatory studies, these records document only intermittent physical findings of crackles and rales, there is great variability in the resting blood gas studies, and Claimant's diffusion capacity is normal. Director's Exhibit 136; Employer's Exhibit 5 at 32-39; Employer's Exhibit 5 at 18-19. The ALJ found Dr. Spagnolo is the best qualified physician of record based on his "prestigious professorship, long and distinguished practice history, and extensive publication history," and he "considered the totality of the medical evidence on record." Decision and Order on Second Modification at 33-35. She permissibly found Dr. Spagnolo's opinion well-reasoned and documented, determining that the physician "explained thoroughly" how the documentation he reviewed supported his opinion that Claimant's blood gas impairment is unrelated to his coal mine dust exposure.[15] *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order on Second Modification at 35.

The ALJ also considered Claimant's treatment records, adopting ALJ Morgan's finding that the previously submitted treatment records are non-supportive of a finding of legal pneumoconiosis, and found the newly submitted treatment records entitled to little

[15] On Claimant's most recent request for modification, Dr. Forehand considered additional records and opined that Claimant's medical record does not rule out the existence of legal pneumoconiosis as he worked at the face, some of that work was before the enactment of the dust regulations, and coal mine dust exposure may cause blood gas impairments. Director's Exhibit 136. The ALJ permissibly found Dr. Forehand's opinion unpersuasive as he failed to adequately explain his opinion and did not adequately address the contrary evidence he considered. *See Compton*, 211 F.3d at 212; *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order on Second Modification at 33. Similarly, the ALJ permissibly found Dr. Harris's opinion that Claimant's coal mine dust exposure likely contributed to his impairment based on the extent of his dust exposure conclusory and not adequately explained, and further found his opinion unpersuasive as he admitted to not having reviewed Claimant's treatment records for his rheumatoid arthritis. *See Compton*, 211 F.3d at 212; *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order on Second Modification at 35.

weight. Decision and Order on Second Modification at 17. ALJ Morgan considered Claimant's treatment and hospitalization records from Bone and Joint Surgeons, Madison Medical, Pulmonary Associates, Charleston Area Medical Center, Stone Mountain Health Services, The Rheumatology Group, and Dr. Eggleston. Decision and Order on Modification at 17, 30; Director's Exhibits 60, 67, 83, 89, 124, 125, 127. He permissibly found that although these records documented COPD, pulmonary fibrosis, and treatment for rheumatoid arthritis, they do not reflect a "reasoned diagnosis" of legal pneumoconiosis but instead reflect findings consistent with those of Drs. Meyer, Castle, and Repsher. *Looney*, 678 F.3d at 316-17; *Clark*, 12 BLR at 1-155; Decision and Order on Second Modification at 30. Thus, we affirm the ALJ's finding that there was no mistake of fact in ALJ Morgan's determination that the previously submitted treatment records are supportive of the non-existence of legal pneumoconiosis. Decision and Order on Second Modification at 32.

The ALJ further considered Claimant's new treatment record evidence submitted in his most recent request for modification from the Pulmonary Associates of Charleston, Boone Memorial Hospital, and Stone Mountain Health Services. Decision and Order on Second Modification at 16-17; Claimant's Exhibits 2-6. She noted that these records include treatment for Claimant's heart condition and his rheumatoid arthritis, as well as a diagnosis for coal workers' pneumoconiosis. Decision and Order on Second Modification at 30. However, the ALJ permissibly found that the conclusory opinions were not well-reasoned or documented. *Looney*, 678 F.3d at 316-17; *Clark*, 12 BLR at 1-155; Decision and Order on Second Modification at 31. Consequently, we affirm the ALJ's determination that these treatment records are entitled to little weight. *Underwood*, 105 F.3d at 951; Decision and Order on Second Modification at 31-34.

Because they are based upon substantial evidence, we affirm the ALJ's findings that the opinions of Drs. Meyer, Repsher, Castle, and Spagnolo were well-reasoned and sufficient to carry Employer's burden to demonstrate that Claimant does not have legal pneumoconiosis and that his coal mine dust exposure did not contribute to his pulmonary fibrosis or blood gas impairment. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order on Second Modification at 36. In light of our affirmance of the ALJ's finding that Employer disproved the existence of clinical and legal pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(A), (B), we affirm her finding that Employer rebutted the Section 411(c)(4) presumption.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge