U.S. Department of Labor

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

BRB No. 23-0132 BLA

JIMMY H. SPARKS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WEST VIRGINIA ELECTRIC CORPORATION	)	
	)	
	)	DATE ISSUED: 07/17/2024
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of William P. Farley, Administrative Law Judge, United States Department of Labor.

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

Mary Lou Smith (Howe, Anderson & Smith, P.C.), Washington, D.C., for Employer.

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

GRESH, Chief Administrative Appeals Judge:

Employer appeals Administrative Law Judge (ALJ) William P. Farley's Decision and Order Awarding Benefits (2020-BLA-05341) rendered on a claim filed on August 6, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established 14.35 years of coal mine employment.[1] Thus, the ALJ found he 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).[2] Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant is totally disabled due to legal pneumoconiosis and awarded benefits.

On appeal, Employer challenges the ALJ's findings regarding Claimant's length of coal mine employment, legal pneumoconiosis, and disability causation.[3] Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, did not file a response.

The Benefits Review Board's scope of review is defined by statute. 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).

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[1] In the ALJ's table calculating the length of coal mine employment, he noted 14.36 years of coal mine employment, while in the body of the decision he noted 14.31 years. Decision and Order at 10. However, the table's values total 14.35 years; thus, we assume that 14.36 and 14.31 years of coal mine employment are scrivener's errors.

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

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established total disability under 20 C.F.R. §718.204(b)(2). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 29-31.

[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); Director's Exhibit 4; Hearing Transcript at 17.

I. Length of Coal Mine Employment[5]

Employer argues that the ALJ erred in his determinations regarding the length of Claimant's coal mine employment, which it contends affected the ALJ's weighing of the medical opinions. Claimant bears the burden to establish the number of years he worked in coal mine employment. *See Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold an ALJ's determination if it is based on a reasonable method of calculation that is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

In considering the length of Claimant's coal mine employment, the ALJ first considered which of Claimant's jobs constituted coal mine employment. The ALJ considered Claimant's benefits application, resume, and hearing testimony and concluded his employment with West Virginia Electric Corporation (WV Electric), R&E Electric Company, Incorporated (R&E Electric), Becon Construction Company, Incorporated (Becon Construction),[6] and Deana Enterprises LLC (Deana Enterprises) constituted coal mine employment. Decision and Order at 7.

Then, in calculating the length of Claimant's coal mine employment, the ALJ relied upon his earnings for those employers as reported on his Social Security Earnings Statement (SSES) record. The ALJ noted "largely uninterrupted coal mine employment" for the years 1978 to 1999 and in 2004. Decision and Order at 8-9. He then divided the yearly earnings reported in Claimant's SSES record by the average daily earnings from Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual* and credited Claimant with a full year of coal mine employment for those years that met or exceeded 125 days. *Id.* at 9-10.[7] For each year in

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[5] Chief Judge Gresh and Judge Boggs join this part of the decision. Judge Buzzard dissents.

[6] Claimant lists "Beacon Construction" as a coal mine employer. Director's Exhibits 4, 6. His Social Security Earnings Statement record does not include such an employer but includes earnings from Becon Construction. Director's Exhibit 8. Thus, we assume "Beacon Construction" is a misspelling of Becon Construction.

[7] If an ALJ cannot ascertain the beginning and ending dates of a miner's coal mine employment, or the miner's employment lasted less than a calendar year, the ALJ may divide the miner's yearly income from work as a miner by the coal mine industry's average daily earnings for that year as reported by the Bureau of Labor Statistics (BLS). 20 C.F.R.

which Claimant's earnings fell short, he credited him with a fractional year, using 125 days as a divisor. *Id.* Applying this formula, the ALJ credited Claimant with 14.35 years of coal mine employment. *Id.* at 10.

Employer contends that Claimant's testimony addressed only his nine years of coal mine employment with WV Electric. Employer's Brief at 9. It thus argues the ALJ erred in finding Claimant's employment with Becon Construction and Deana Enterprises constituted coal mine employment. *Id.* at 9-10. Further, it contends the ALJ erred in his calculation of Claimant's coal mine employment, as he relied on the "125-day approach" without first determining whether Claimant was employed for a calendar year. *Id.* at 10-11. We address each of Employer's contentions of error in turn.

A. Coal Mine Employment Under the Act

Employer contests the ALJ's finding that Claimant's work with Becon Construction from 1990 through 1994 constituted coal mine employment under the Act. Employer's Brief at 9-10. Additionally, Employer contends that the ALJ's inclusion of Deana Enterprises as coal mine employment is erroneous, as it is not identified anywhere in the record as coal mine employment.[8] *Id.* at 10.

As Employer acknowledges, Claimant listed Becon Construction as coal mine employment both on his application for benefits and resume. Employer's Brief at 3, 9; Decision and Order at 7; Director's Exhibits 4, 6. At no point before the ALJ did Employer argue this employment did not constitute coal mine employment under the Act. *See* Employer's Post-Hearing Brief; Employer's Supplemental Post-Hearing Brief.

Because Employer failed to raise this argument regarding Becon Construction before the ALJ, we decline to address it. 20 C.F.R. §802.301(a) (Board's review authority limited to "findings of fact and conclusions of law on which the decision or order appealed from was based"); *see Joseph Forrester Trucking v. Director, OWCP* [*Davis*], 987 F.3d 581, 588 (6th Cir. 2021) (regulations require that an issue be "raised before the ALJ to preserve the issue for the Board's review"); *Dankle v. Duquesne Light Co.*, 20 BLR 1-1,

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§725.101(a)(32)(iii). Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung) Procedure Manual* displays average earnings for coal miners by year, but the data it contains represents the average earnings of coal miners for 125 days of work, rather than average earnings of coal miners during the calendar year.

[8] Employer does not challenge the ALJ's determination that Claimant's employment with R&E Electric and WV Electric constituted coal mine employment; thus, we affirm that finding. *Skrack*, 6 BLR at 1-711.

1-6-7 (1995). However, Employer is correct that Claimant did not identify Deana Enterprises as coal mine employment. Employer's Brief at 10; Claimant's Response at 6. Consequently, it should not have been included in the ALJ's coal mine employment calculation.

B. Calculation of Length of Coal Mine Employment

Employer also asserts that the ALJ erred in using the method at 20 C.F.R. §725.101(a)(32)(iii) because the record contains direct evidence regarding Claimant's employment history with WV Electric, which also affects the ALJ's determination of his length of coal mine employment with R&E Electric. Employer's Brief at 10-11. It further contends the ALJ erroneously relied on 125 days to establish a year of coal mine employment. *Id.* Employer's arguments have merit.

When determining the length of a miner's coal mine employment, the ALJ should first determine, if possible, the beginning and ending dates of the miner's period or periods of coal mine employment. 20 C.F.R. §725.101(a)(32)(ii); *Dawson v. Old Ben Coal Co.*, 11 BLR 1-58, 1-60 n.1 (1988). The dates and length of the miner's coal mine employment "may be established by any credible evidence including (but not limited to) company records, pension records, earnings statements, coworker affidavits, and sworn testimony." 20 C.F.R. §725.101(a)(32)(ii). To credit a miner with a year of coal mine employment, the ALJ must first determine whether that miner was engaged in coal mine employment for a period of one calendar year, i.e., 365 days, or partial periods totaling one year. 20 C.F.R. §725.101(a)(32)(i); *see Daniels Co. v. Mitchell*, 479 F.3d 321, 334-36 (4th Cir. 2007); *Clark v. Barnwell Coal Co.*, 22 BLR 1-277, 1-280 (2003). If the threshold one-year period is met, then the ALJ must determine whether the miner worked for at least 125 working days within that one-year period.[9] 20 C.F.R. §725.101(a)(32). Proof that a miner worked at least 125 days or that a miner's earnings exceeded the industry average for 125 days of work in a given year, however, does not satisfy the requirement that such employment occurred during a 365-day period of coal mine employment and therefore, in itself, does not establish one full year of coal mine employment as defined in the regulations. *See Clark,* 22 BLR at 1-281.

In attempting to apply the formula at 20 C.F.R. §725.101(a)(32)(iii), the ALJ acknowledged the threshold inquiry of whether the record establishes a calendar year of

[9] If the threshold one-year period is met, "it must be presumed, in the absence of evidence to the contrary, that the miner spent 125 working days in such employment[,]" in which case the miner would be entitled to credit for one full year of employment. 20 C.F.R. §725.101(a)(32)(ii).

employment in a given year prior to determining whether the Miner worked at least 125 days in that year, noting Claimant had "largely uninterrupted" coal mine employment from 1978 to 1999 and in 2004. *See Mitchell*, 479 F.3d at 334-36; *Clark*, 22 BLR at 1-281; Decision and Order at 7, 9. However, as Employer argues, Claimant's employment during those years was not continuous. Employer's Brief at 3-4. No coal mine employment is documented for the years 1983 and 1984 or 1986 through 1989. Director's Exhibit 8; Decision and Order at 8-10. Further, in several years where Claimant worked as a miner, his SSES record also shows earnings from non-coal mine employment.[10] Director's Exhibit 8.

Thus, the ALJ's finding that Claimant could establish calendar years of employment based on "largely uninterrupted" coal mine employment for each year from 1978 to 1999 and in 2004 is not supported by substantial evidence. The ALJ effectively found a full year of coal mine employment if Claimant worked 125 days, which is impermissible.[11] *See Clark*, 22 BLR at 1-281; Decision and Order at 10. Moreover, as Employer agues, the ALJ failed to consider documentation in the record which, if credited, demonstrates the beginning and ending dates for part[12] of Claimant's employment with WV Electric. *See Osborne v. Eagle Coal Co.*, 25 BLR 1-195, 1-204-05 (2016) (recognizing the preference for the use of direct evidence to compute the length of coal mine employment); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand); Employer's Brief at 5, 11; Director's Exhibit 20 at 99.

We therefore vacate the ALJ's finding that Claimant established 14.35 years of coal mine employment and remand the case for reconsideration of the length of Claimant's coal mine employment. *See* 30 U.S.C. §923(b); *Mitchell*, 479 F.3d at 334-36; Decision and Order at 7-10.

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[10] In addition to the coal mine employment noted by the ALJ, Claimant's SSES record also reflects earnings from non-coal mine employment in 1978, 1982, 1985, 1990, 1994, 1995, 1996, and 2004. Director's Exhibit 8.

[11] The ALJ divided Claimant's earnings by the average earnings in Exhibit 610, which sets forth average earnings for 125 days of work. Under the ALJ's method of calculation, that evidence thus could establish at least 125 working days, but not that such work occurred during "a period of one calendar year . . . or partial periods totaling one year." 20 C.F.R. §725.101(a)(32).

[12] Employer implies Claimant's entire employment history with WV Electric is included in this document; however, the document provides information only through 1998. Director's Exhibit 20 at 99.

II. Entitlement - 20 C.F.R. Part 718

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc). The ALJ found Claimant established legal, but not clinical, pneumoconiosis[13] and that he is totally disabled from the disease.

A. Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must prove 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 ALJ considered Drs. Mabe's and Habre's opinions, which diagnosed legal pneumoconiosis, and Drs. McSharry's and Fino's opinions, which did not. Director's Exhibits 18, 20; Claimant's Exhibit 4; Employer's Exhibit 3. Dr. Mabe diagnosed chronic obstructive pulmonary disease (COPD), and Dr. Habre diagnosed chronic bronchitis; both attributed the conditions to coal mine dust exposure and cigarette smoking. Director's Exhibit 18; Claimant's Exhibit 4. In a 2003 opinion, Dr. McSharry diagnosed mild airflow obstruction, while Dr. Fino diagnosed COPD in the form of severe emphysema, each attributing the obstruction solely to Claimant's smoking history. Director's Exhibit 20; Employer's Exhibit 3.

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[13] "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). "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). Because the ALJ found clinical pneumoconiosis was not established, we need not address Employer's contention that the ALJ erred in according no weight to Dr. Fino's negative x-ray reading. Employer's Brief at 15.

The ALJ rejected the opinions of Drs. McSharry and Fino, finding their opinions contrary to the preamble to the 2001 revised regulations and further finding Dr. McSharry's 2003 opinion worthy of no weight given the time that had passed since it was obtained. Decision and Order at 26-28. He accorded Drs. Mabe's and Habre's opinions "some weight," and thus found the preponderance of the evidence supported a finding of legal pneumoconiosis. *Id.* at 27-28.

Employer raises several challenges to the ALJ's weighing of the medical opinions. First, it argues the ALJ misapplied the preamble to the 2001 revised regulations when he rejected the opinions of Drs. McSharry and Fino. Employer's Brief at 14-15. It further asserts the ALJ's erroneous findings regarding the length of Claimant's coal mine employment undermined the ALJ's weighing of the medical opinions. *Id.* at 12-14. Finally, Employer contends the ALJ's conclusion that Drs. Mabe and Habre offered reasoned and documented opinions is irrational and unsupported by the ALJ's own findings. *Id.* at 14. We agree remand is necessary, except with respect to Dr. McSharry's opinion.

1. *Dr. McSharry's Medical Opinion*[14]

The ALJ provided multiple reasons for discrediting Dr. McSharry's opinion. Among those reasons, he found the doctor's opinion was not probative given that pneumoconiosis is a latent and progressive disease, and Dr. McSharry based his conclusions on evidence obtained in 2003, several years before the other medical opinions and testing of record. Decision and Order at 26-27. Employer does not challenge this finding; thus, we affirm the ALJ's discrediting of Dr. McSharry's opinion.[15] *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 26-27; Employer's Brief at 14-15.

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[14] All three panel members join this part of the decision.

[15] Because Employer did not challenge the ALJ's discrediting Dr. McSharry's medical opinion for this reason, we need not address Employer's remaining arguments regarding the weight accorded to his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n. 4 (1983); Employer's Brief at 14-15.

2. *Drs. Habre's and Mabe's Medical Opinions Require Remand Given the ALJ's Coal Mine Employment Calculation*[16]

As discussed above, the ALJ erred in his calculation of the length of Claimant's coal mine employment. As the ALJ's determination on remand regarding Claimant's length of coal mine employment may affect the credibility of the medical opinions, we must vacate the ALJ's weighing of the opinions of Drs. Habre and Mabe and remand for reconsideration of their opinions. *See Sellards v. Director, OWCP*, 17 BLR 1-77, 1-80-81 (1993); Decision and Order at 26-28. However, we will also address Employer's additional arguments regarding their opinions to avoid any potential repetition of error on remand.

3. *Drs. Habre's and Fino's Medical Opinions: Other Issues Raised*[17]

We agree with Employer's argument that the ALJ did not adequately explain his reliance on the preamble to credit Dr. Habre's opinion and discredit Dr. Fino's.

Dr. Habre opined Claimant's disabling respiratory impairment is due solely to his coal mine dust exposure, noting Claimant is a "never smoker." Claimant's Exhibit 4 at 3. Although the ALJ found Dr. Habre's unawareness of Claimant's fifty-eight pack-year smoking history[18] "limited" the physician's opinion, the ALJ nevertheless gave it "some weight." Decision and Order at 28. The ALJ reasoned that an accurate understanding of Claimant's smoking history would not have been relevant to Dr. Habre's opinion because, according to the ALJ, "the preamble notes that a doctor cannot distinguish the individual effects of coal dust and smoking history." *Id.* (citing 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000)).

Dr. Fino, on the other hand, diagnosed Claimant with disabling smoking-related emphysema but concluded his coal dust exposure was not "a clinically significant factor." Director's Exhibit 20 at 9. The ALJ gave his opinion "no weight" because he diagnosed emphysema and "attempt[ed] to distinguish the individual effect of coal dust and smoking history in direct contradiction of the preamble." Decision and Order at 28.

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[16] Chief Judge Gresh and Judge Boggs join this part of the decision. Judge Buzzard dissents.

[17] All three panel members join this part of the decision.

[18] The ALJ found Claimant had a smoking history of about fifty-eight pack-years. Decision and Order at 5. We affirm this finding as unchallenged on appeal. *See Skrack*, 6 BLR at 1-711.

We cannot affirm the ALJ's findings. An ALJ may rely on the preamble in evaluating the credibility of a physician's opinion, including the passage the ALJ cites in this case. *Looney*, 678 F.3d at 314-16; *J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-125-26 (2009), *aff'd*, *Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248 (3d Cir. 2011).[19] However, the preamble does not state that a physician can never credibly distinguish between the effects of smoking and coal dust exposure in an individual miner's case. Nor does it automatically render irrelevant a miner's smoking history to the legal pneumoconiosis inquiry. Rather, the preamble sets forth the Department's position that medical literature demonstrates "dust-induced emphysema and smoke-induced emphysema occur through similar mechanisms." *See* 65 Fed. Reg. at 79,943. Whether a particular miner's COPD is related to coal mine dust exposure must be determined by the ALJ on a case-by-case basis. *Id.* at 79,938; *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 861 (D.C. Cir. 2002); *see Am. Energy LLC v. Director, OWCP* [*Goode*], F.4th , No. 22-1740 at 19, 2024 WL 3240532 (4th Cir. 2024) ("The preamble simply says that a history of smoking does not foreclose a conclusion that coal dust caused or contributed to a miner's lung disease. It does not say that a history of both coal dust exposure and smoking forecloses a conclusion that smoking, and not coal dust exposure, caused a miner's lung disease.").

Thus, in this case, the ALJ did not adequately explain why Dr. Habre's lack of knowledge of Claimant's smoking history rendered his opinion still worthy of "some weight" and more particularly did not examine Dr. Habre's reasoning and the documentation underlying his opinion when making his findings and determinations. Relatedly, the ALJ did not address the reasoning Dr. Fino provided in coming to his conclusions regarding the etiology of Claimant's obstruction. The ALJ therefore did not comply with his obligations under the Administrative Procedure Act (APA).[20] 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998) (ALJ must adequately explain his

[19] Although an ALJ may permissibly rely on the preamble to evaluate the credibility of medical opinions, the preamble itself is not binding. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013) (parties may submit evidence of scientific innovations that archaize or invalidate the science underlying the preamble); *Wilgar Land Co. v. Director, OWCP* [*Adams*], 85 F.4th 828, 838-39 (6th Cir. 2023).

[20] The Administrative Procedure Act requires that every adjudicatory decision include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

credibility determinations); Decision and Order at 28. Accordingly, we vacate his credibility determinations with respect to Drs. Habre and Fino.

4. *Dr. Mabe's Medical Opinion: Other Issues Raised*[21]

However, we disagree with Employer's argument that the ALJ did not adequately address whether Dr. Mabe's opinion regarding legal pneumoconiosis could be well-documented and reasoned based on the ALJ's finding that he relied upon an unreliable pulmonary function study.[22] *See Hicks*, 138 F.3d at 533; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). The ALJ found Dr. Mabe's opinion regarding legal pneumoconiosis well-reasoned and documented as to his understanding of Claimant's coal mine employment and smoking histories, but not "regarding the [pulmonary function study] he conducted."[23] Decision and Order at 27. Thus, the ALJ specifically considered the issue regarding the pulmonary function testing in reaching his conclusions and found it did not preclude providing Dr. Mabe's opinion "some weight." *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012) (it is the duty of the ALJ to make findings of fact and resolve conflicts in evidence); Decision and Order at 27.

We also reject Employer's argument that the ALJ did not adequately address Dr. Mabe's understanding of Claimant's smoking history. Employer states Dr. Mabe's opinion is not "substantial evidence" because he "relied on a shorter history of cigarette smoking than that found by the ALJ."[24] Employer's Brief at 14. But Employer does not explain

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[21] Chief Judge Gresh and Judge Buzzard join this part of the decision. Judge Boggs dissents.

[22] After Dr. Ranavaya indicated the December 1, 2018 study obtained by Dr. Mabe was unacceptable, the district director requested that Claimant perform a second pulmonary function study. Director's Exhibits 15, 16, 32. Dr. Green obtained a second study on April 13, 2019, which Dr. Michos found acceptable. Director's Exhibits 15, 17. The record does not indicate whether Dr. Mabe ever reviewed the new study.

[23] Like the other physicians, Dr. Mabe found the pulmonary function study he obtained reflected an obstructive defect. Director's Exhibit 18.

[24] Based on varying smoking histories generally showing Claimant had an extended period of smoking cigarettes, followed by an extended period of smoking a tobacco pipe, the ALJ found Claimant "smoked around 58 years of about a pack per day." Decision and Order at 4-5. Dr. Mabe stated Claimant smoked a half-pack of cigarettes per day for thirty years and then smoked a pipe of tobacco daily for the next twenty-nine years. Director's Exhibit 18.

how the alleged difference undermines the ALJ's decision to give some weight to Dr. Mabe's opinion that both smoking and coal mine dust contributed to Claimant's impairment. *See Trumbo*, 17 BLR at 1-89; Employer's Brief at 14; Decision and Order at 17-18, 27; Director's Exhibit 18.

Based on the foregoing, we vacate, in part, the ALJ's weighing of the medical evidence regarding legal pneumoconiosis, vacate the ALJ's finding that legal pneumoconiosis is established, and remand for further consideration. 20 C.F.R. §718.201(a)(2), (b); Decision and Order at 28. As we have vacated the ALJ's finding that legal pneumoconiosis is established, we also vacate the ALJ's finding that Claimant established disability causation. 20 C.F.R. §718.204(c).

Remand Instructions

On remand, the ALJ must reconsider Claimant's length of coal mine employment. He must first determine whether the beginning and ending dates of employment can be determined and make the threshold determination of whether Claimant established a full calendar year of coal mine employment or partial periods totaling one year. For each calendar year of coal mine employment established, he must also determine whether Claimant worked for at least 125 working days within that one-year period. 20 C.F.R. §725.101(a)(32); *see Mitchell*, 479 F.3d at 334-36; *Clark*, 22 BLR at 1-280. In doing so, the ALJ must consider all relevant evidence and utilize a reasonable method of calculation. *See Muncy*, 25 BLR at 1-27; *Vickery*, 8 BLR at 1-432; *McCune*, 6 BLR 1-998.

Then, the ALJ must reconsider the evidence regarding legal pneumoconiosis. In evaluating the medical opinions on remand, the ALJ should address the comparative credentials of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441. Specifically, he should address whether the physicians relied on an accurate understanding of Claimant's coal mine dust exposure history when weighing their opinions on the issue of legal pneumoconiosis. *Sellards*, 17 BLR at 1-80-81. Regarding Dr. Habre's medical opinion, the ALJ should consider whether his lack of knowledge of Claimant's smoking history undermined his opinion. *See Maypray v. Island Creek Coal Co.*, 7 BLR 1-683, 1-686 (1985) (ALJ is responsible for making a factual determination as to the length and extent of a miner's smoking history and the effect of an inaccurate smoking history on the credibility of a medical opinion).

If the ALJ again finds Claimant established legal pneumoconiosis under 20 C.F.R. §718.201(a)(2), the ALJ should then also reconsider whether Claimant is totally disabled due to pneumoconiosis. 20 C.F.R. §718.204(c). If Claimant establishes total disability due

to pneumoconiosis, Claimant will have established entitlement to benefits, and the ALJ may reinstate his award in the claim.

In making his determinations, the ALJ must consider all relevant evidence, set forth his findings in detail, and explain his underlying rationale as the APA requires. 5 U.S.C. §557(c)(3)(A); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order on Remand Awarding Benefits and remand the case to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring and dissenting:

I agree remand is required for the ALJ to reconsider Claimant's length of coal mine employment and the medical opinion evidence on the issue of legal pneumoconiosis. However, I disagree with the majority's finding that the ALJ did not err in his consideration of Dr. Mabe's opinion in respect to his explanation for giving Dr. Mabe's opinion some weight despite his reliance on an unreliable pulmonary function study. Further, I agree with Employer that the ALJ should have considered the disparity between the smoking history he found and the history on which Dr. Mabe relied.

The ALJ specifically found Dr. Mabe's opinion was unreasoned as to his reliance on the pulmonary function study found invalid by Dr. Ranavaya; however, he found the physician's opinion reasoned based on his knowledge of Claimant's exposure to coal dust and his smoking history. Decision and Order at 27. Further, although the ALJ noted Dr. Mabe's knowledge of Claimant's smoking history as a basis for giving his opinion credit, the amount of smoking assumed by Dr. Mabe differs from that found by the ALJ. The ALJ found Claimant's history amounted to about fifty-eight pack years, while Dr. Mabe assumed only half a pack of cigarettes for thirty years and twenty-nine years of pipe smoking (i.e. a maximum of forty-four pack years of smoking, if the pipe smoking is considered equivalent to a year of pack a day cigarette smoking). Decision and Order at 5; Director's Exhibit 18.

ALJs are required to examine the reasoning of the medical opinions and the documentation underlying them as to whether that is sufficient to support their conclusions.

They also must provide adequate explanations for their conclusions. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). It is not self-evident why an opinion as to the existence of a respiratory impairment related to coal dust would be reasoned and documented just because it is based on a proper understanding of length of coal dust exposure and smoking (assuming that is the case); the need for further explanation is all the more clear here since Dr. Mabe's understanding of Claimant's smoking history differs from that found by the ALJ, and he relied on a pulmonary function test the ALJ determined is unreliable. Thus, the ALJ failed in his duty to provide an adequate explanation for his findings and determinations as the APA requires. 5 U.S.C. §557(c)(3)(A); *see Addison*, 831 F.3d at 256-57; *Wojtowicz*, 12 BLR at 1-165.

Consequently, I would remand for the ALJ to examine the reasoning and documentation of Dr. Mabe's opinion and to provide an adequate explanation for his determination. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012) (it is the duty of the ALJ, and not the responsibility of the courts, to make findings of fact and to resolve conflicts in the evidence); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998) (ALJ must adequately explain his reasoning for crediting a physician); *Hutchens v. Director, OWCP*, 8 BLR 1-16, 1-19 (1985) (ALJ must consider factors that tend to undermine the reliability of a physician's conclusions before accepting the medical opinion).

JUDITH S. BOGGS
Administrative Appeals Judge

BUZZARD, Administrative Appeals Judge, concurring and dissenting:

I disagree that remand is required for the ALJ to reconsider the length of Claimant's coal mine employment. *See* Parts I, II(A)2. The majority's coal mine employment determination is based on its belief that Fourth Circuit law prohibits an ALJ from crediting a miner with a full year of coal mine employment unless he establishes a 365-day employment relationship with his employer(s). However, as I explained in *Baldwin v. Island Creek Kentucky Mining*, a miner is entitled to credit for a full year of coal mine employment "for all purposes under the Act" if he establishes 125 working days in a given

year.[25] *Baldwin*, BRB No. 21-0547 BLA, slip op. at 8-13 (July 14, 2023) (unpub.) (Buzzard, J., concurring and dissenting).

That conclusion is consistent with the Sixth Circuit's holding that the "plain" and "unambiguous" language of the regulatory definition of "year" "permits a one-year employment finding" based on 125 working days "without a 365-day [employment relationship] requirement." *See Shepherd v. Incoal, Inc.*, 915 F.3d 392, 402 (6th Cir. 2019); *see also Landes v. OWCP*, 997 F.2d 1192, 1195 (7th Cir. 1993) (125 working days equals "one year of work" under the prior definition of "year"). Applying that definition to the present claim demonstrates the ALJ did not err in finding Claimant established more than fourteen years of coal mine employment. Thus, remanding the claim for reconsideration of the medical opinion evidence on this issue is not warranted.[26]

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[25] Notably, the majority's statement that Fourth Circuit law requires a 365-day employment relationship is contrary to the Director's position in *Baldwin* that the circuit has not issued any binding precedent on the matter. *Baldwin v. Island Creek Ky. Mining*, BRB No. 21-0547 BLA, slip op. at 12 (July 14, 2023) (unpub.) (Buzzard, J., concurring and dissenting) (explaining why Fourth Circuit decisions predating the effective date of the current regulation do not foreclose the Sixth Circuit's *Shepherd* rationale).

[26] Error, if any, in finding Claimant's work for Deana Enterprises was coal mine employment is harmless. The ALJ found Claimant's limited earnings of $1,158.00 with Deana equates to 6.56 days of coal mine employment, or one-half of one percent of a year (0.05), the exclusion of which has no practical bearing on the ALJ's length of coal mine employment findings or his weighing of the medical opinions. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 9-10; Director's Exhibit 8.

Moreover, even if *Shepherd* did not apply to this claim, the ALJ's analysis also satisfies the definition of "year" that the majority asserts is required. The ALJ first addressed whether the record establishes calendar-year periods of employment, noting Claimant had "largely uninterrupted" coal mine employment from 1978 to 1999 and in 2004. Finding Claimant established periods "encompassing full calendar years and various partial calendar years totaling more than one year," the ALJ addressed whether Claimant worked 125 days within each year. *See Daniels Co. v. Mitchell*, 479 F.3d 321, 334-36 (4th Cir. 2007); *Clark v. Barnwell Coal Co.*, 22 BLR 1-277, 1-280 (2003); Decision and Order at 9-10.

Thus, I would affirm the ALJ's findings as to the length of Claimant's coal mine employment. I therefore disagree that remand is required for the ALJ to reconsider this issue or reweigh the legal pneumoconiosis opinions on that basis. *See* Parts I, II(A)2. As such, I would affirm the ALJ's permissible decision to give Dr. Mabe's diagnosis some weight. *See* Part II(A)(4). I would also affirm his permissible discrediting of Dr. McSharry's opinion. *See* Part II(A)(1).

I do, however, agree that remand is required for the ALJ to reconsider whether Claimant established legal pneumoconiosis given the ALJ's misapplication of the preamble to credit Dr. Habre and discredit Dr. Fino. *See* Part II(A)(3).

GREG J. BUZZARD
Administrative Appeals Judge