



**RECENT SIGNIFICANT BLACK LUNG BENEFITS ACT DECISIONS  
December 2015**

*Stephen R. Henley*  
Chief Judge

*William S. Colwell*  
Associate Chief Judge for Black Lung

*Alexander Smith*  
Senior Attorney

**A. Circuit Courts of Appeals**

**[No Decisions to Report]**

**B. Benefits Review Board**

In [\*Richardson v. J. Smith Coal, Inc.\*, BRB No. 15-0051 BLA \(Dec. 14, 2015\) \(unpub.\)](#), which involved a miner's subsequent claim, the ALJ found that Claimant, despite establishing the existence of legal pneumoconiosis and a totally disabling respiratory impairment, had failed to prove that he was totally disabled due to legal pneumoconiosis.<sup>1</sup> Accordingly, the ALJ denied benefits.

Claimant appealed, arguing that the ALJ erred in finding that he had not established disability causation. Employer responded in support of the denial. The Director filed a limited response, in which he argued that the Board should reverse the denial of benefits. In support, the Director posited that, "because the [ALJ] found that claimant's chronic obstructive pulmonary disease constitutes legal pneumoconiosis, and as this pulmonary disease is the sole cause of claimant's total disability, claimant has established that his pneumoconiosis is a substantially contributing cause of the disability." *Richardson*, slip op. at 2.

In addressing the arguments on appeal, the Board initially noted that the ALJ articulated the proper disability causation standard: "claimant must prove that pneumoconiosis is a substantially contributing cause of his totally disabling respiratory or pulmonary impairment." *Id.* at 4 (citing 20 C.F.R. §718.204(c); *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 25 BLR 2-615 (6<sup>th</sup> Cir. 2014)). However, the Board concluded that the ALJ applied an incorrect standard when determining whether the relevant

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<sup>1</sup> The ALJ credited Claimant with thirteen years and seven months of qualifying coal mine employment (CME). The Board affirmed this finding on appeal. Accordingly, Claimant was unable to avail himself of the rebuttable 15-year presumption at Section 411(c)(4), 30 U.S.C. §921(c)(4). The Board also affirmed the ALJ's finding of legal pneumoconiosis.

medical opinions - namely, those of Drs. Chavda, Baker, and Houser – carried Claimant’s burden to establish disability causation. The Board noted the following:

Instead of focusing on the contribution which *pneumoconiosis* makes to claimant’s total respiratory disability at Section 718.204(c)(1), the [ALJ] revisited the question of the extent to which claimant’s respiratory impairment is attributable to *coal dust exposure*, which is the relevant inquiry in establishing the existence of legal pneumoconiosis pursuant to Section 718.201(a)(2).

*Id.* at 5-7 (emphasis included in original) (internal references omitted). According to the Board, after the ALJ found that Claimant had established the existence of legal pneumoconiosis, he should have determined “whether that condition is a substantially contributing cause of claimant’s disability.” *Id.* at 7.

Finally, the Board rejected the Director’s contention that the denial of benefits should be reversed. If Claimant’s COPD – which the ALJ found to be legal pneumoconiosis – was Claimant’s only respiratory or pulmonary impairment that could have caused his total disability, the Board agreed with the Director that reversal would be appropriate. However, the Board noted that “a review of the record reveals evidence of alternate pulmonary diseases or conditions that could potentially cause or contribute to claimant’s disability.” *Id.* at 7. Therefore, the Board concluded that a remand was warranted in order for the ALJ “to consider all of the relevant evidence of record and determine whether claimant has established disability causation.” *Id.*

Accordingly, the Board affirmed in part, and vacated in part, the ALJ’s decision and remanded the matter for further consideration.

#### **[Etiology of total disability]**

In [Stacy v. Diamond May Coal Co., BRB No. 15-0084 BLA \(Dec. 22, 2015\)](#), which involved Claimant’s request to modify a denial of benefits in a survivor’s claim, the ALJ credited the miner with twenty years of surface CME in conditions substantially similar to those of an underground mine. The ALJ also found that Claimant established the miner suffered from a totally disabling respiratory or pulmonary impairment. Therefore, the ALJ found that Claimant invoked the 15-year rebuttable presumption at Section 411(c)(4). Upon finding that Employer did not rebut the presumption, the ALJ awarded benefits.

Employer appealed to the Board. Initially, the Board rejected Employer’s argument that the ALJ’s award of benefits based on modification in this case represented an improper modification based on a change in law. The Board noted that it “has held that modification is available to permit re-examination of entitlement in circumstances similar to those in the [present] case,” and that it “has applied [the holding in *Mullins v. ANR Coal Co., LLC*, 25 BLR 1-49, 1-53 (2012),] to cases such as this involving Section 411(c)(4).” *Stacy*, slip op. at 5. The Board also rejected Employer’s allegation that Claimant filed her modification request based on an improper motive: to avail herself of the 15-year presumption. Noting at the outset that Claimant had actually filed her modification request before the

PPACA was enacted, the Board also stated that, “by filing a request for modification, claimant was exercising her right to pursue a claim for benefits under the Act.” *Id.* Therefore, the Board concluded that “there was nothing improper about her motive in seeking modification of her denied claim.” *Id.*

The Board next addressed Employer’s argument that the ALJ erred in relying on the preamble to the 2001 regulations to discredit the opinions of its experts, Drs. Oesterling and Rosenberg, on rebuttal.<sup>2</sup> In rejecting Employer’s argument, the Board concluded as follows:

Contrary to employer’s contention, when the [ALJ] discredited the opinions of Drs. Oesterling and Rosenberg on the existence of legal pneumoconiosis, he explicitly indicated that their conclusions conflicted with the following evidence from scientific studies found credible by the DOL in the preamble to the revised regulations, and cited to their location in the Federal Register: coal dust exposure and cigarette smoking cause damage to the lungs by similar mechanisms; a finding of complicated pneumoconiosis is not required before a miner’s disabling obstructive lung disease can be found to be attributable to coal dust exposure; and coal dust exposure is clearly associated with clinically significant airways obstruction and chronic bronchitis, even in the absence of smoking.

*Id.* at 6-7. Finally, the Board rejected Employer’s contention that the ALJ improperly considered the science referenced in the preamble when he evaluated the credibility of its doctors’ opinions. *Id.* at 7.

In light of the above, the Board affirmed the ALJ’s award of benefits on modification.

**[Mistake (or change) of law, not a basis for modification; General Principles of Weighing Medical Evidence: The preamble to the amended regulations]**

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<sup>2</sup> On appeal, Employer did not challenge the ALJ’s finding that Claimant invoked the 15-year rebuttable presumption of total disability due to pneumoconiosis.