

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ORIGINALLY ENTERED: October 5, 2022
OPINION WITHDRAWN: October 19, 2022
OPINION RE-ENTERED: October 19, 2022

CLAIM NO. 202100586, 202100585 & 202100584

MRM MINING, INC.

PETITIONER

VS. APPEAL FROM HON. JOHN H. MCCRACKEN,
ADMINISTRATIVE LAW JUDGE

BARRY MOORE
and HON. JOHN H. MCCRACKEN,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

BEFORE: ALVEY, Chairman, STIVERS and MILLER, Members.

STIVERS, Member. MRM Mining, Inc. ("MRM") seeks review of the April 13, 2022, Opinion, Award, and Order of Hon. John H. McCracken, Administrative Law Judge ("ALJ"), finding Barry Moore ("Moore") sustained work-related hearing loss, coal workers pneumoconiosis ("CWP"), and injuries to his shoulders. The ALJ found Moore's injuries to the shoulders resulted from work-related cumulative

trauma and awarded income and medical benefits. Although the ALJ determined Moore sustained work-related hearing loss, because the impairment rating attributable to the hearing loss did not meet the statutory threshold mandated by KRS 342.7305(2), the ALJ awarded only medical benefits. Relying upon the University Evaluator's opinions, the ALJ also found Moore sustained simple CWP Category 1/0 and his last exposure occurred while employed by MRM. Pursuant to KRS 342.732(1)(b)1., the ALJ found Moore's CWP resulted in a 25% disability rating and awarded income and medical benefits. MRM also appeals from the May 17, 2022, Order denying its Petition for Reconsideration.

On appeal, MRM argues the ALJ erroneously failed to find Dr. Bruce Broudy's report rebutted the presumptive weight afforded the findings and opinions of Dr. Srinu M. Ammisetty, the University Evaluator selected pursuant to KRS 342.315 and KRS 342.316. Thus, the finding of CWP and the resulting award are erroneous. In the alternative, it argues the ALJ erred in awarding benefits based upon a 25% disability rating since Dr. Ammisetty did not attribute any appreciable portion of the pulmonary impairment to Moore's employment. Consequently, an award of Retraining Incentive Benefits ("RIB") should have been entered.

BACKGROUND

On April 16, 2021, Moore filed three separate claims for multiple work injuries occurring due to cumulative trauma at work (2021-00584), for occupational hearing loss (2021-00585), and a CWP claim (2021-00586). Those claims were consolidated by the ALJ. Since the sole issue only encompasses the ALJ's finding of occupational CWP and the award of income benefits for CWP, we will not discuss

the testimony and medical evidence relating to the other alleged work-related conditions.

Moore testified at an August 5, 2021, deposition and at the February 14, 2022, hearing. At the time of his deposition, Moore was 57 years old, 6' 2" tall, and weighed 255 pounds. He completed the 10th grade and had no vocational training. Moore became a certified mine foreman. MRM was his last employer where he worked from June 2019 through August 7, 2020, as a mine foreman/superintendent of an underground mine. His duties included running equipment and rock dusting. He was the first person in the mine every morning where he performed a pre-shift safety check. He estimated he and other miners worked within a three-foot seam of coal. He provided a description of what his work entailed. During the entire time he worked for MRM, he was exposed to coal dust. He wore a 3M dust mask for "a little while." His last day of work for MRM was August 7, 2020. Moore testified he quit on that day because he was "hurting so bad [he] couldn't work."

Before MRM, Moore worked for Adella Coal Company ("Adella") from 2018 to 2019 as a supervisor/foreman. He was exposed to coal dust daily and he also wore a 3M white mask. He believed he worked for MRM off and on from 2001 through 2020. Moore explained:

A: ... I started for them in 2001, and then we'd mine out and I'd go somewhere else. And then they'd get a mines [sic], and I'd come back to them. I worked for MRM probably from 2001 to '20, you know, off and on.

Q: Right. So, when you were working for them back then, from 2001 up until – we talked a while ago where

you were there at the one up in Tram. What'd you do for them back then?

A: I was a section foreman then.

Q: Alright. So, you were over that section that was being mined.

A: Over ...

Q: Not over the whole shift, just that section.

A: Just the section.

Q: Alright. So, what'd you – how was that different in what you actually do versus being like the superintendent or big full foreman like you were up there at Tram?

A: Well, before the only thing I took care of was the section, you know, like curtains and dust and stuff like that. And they had people that took care of the out-by.

Q: Right.

A: I didn't take care of the out-by.

Q: So, as section foreman you did or did not have to take care of out-by?

A: I did not have to take care of the out-by when I was section foreman.

Q: Just your – your just right there, what you guys had your hands on, basically.

A: Right. The section and the crew of men. That's what I was over.

Q: Okay. So, did you operate equipment there or did you – or were you mostly just watching curtains and keeping the air flowing, things like that?

A: Well, it's been like that ever since I've been working in the mines, since I've been a mine foreman. If somebody misses – like I said, we're a small – a small company. If somebody misses, you know, somebody has to take over their position to try to run coal.

Q: Right.

A: So, yeah, I run equipment when I was section foreman.

Between 2001 and 2020, Moore was exposed to coal dust daily. During that period, he wore the same mask he used when he last worked for MRM. He was unable to remember his employers prior to 2001. He provided the following testimony regarding his inability to remember his employers prior to 2001:

Q: Okay. That's all the work that you have on your history there. Is that all the places you've worked that we've talked about here?

A: No, I've worked – I've worked since I was eighteen years old, but I can't remember the name of the companies and stuff like that. I started back when I was eighteen years old working in the mines.

Q: You can't remember anywhere you would have worked before 2001?

A: Bubber Coal.

Q: What was it? Bubber Coal?

A: Bubber Coal.

Q: I've heard of them.

A: That was – that was before 2001.

Q: Right.

A: I was a roof bolt operator there.

Because he and his wife did not have health insurance, Moore did not seek medical care from a doctor until after he quit work. He has no family doctor. He estimated he worked thirty-seven years in underground coal mines. His last exposure to coal dust was his last day with MRM on August 7, 2020.

The first doctor he saw for breathing problems was Dr. Ayesha Sikder in late 2020 or the first of 2021. She gave him an inhaler which has helped a little. Late in 2020, Dr. Mahmood Alam informed him he had black lung. Moore has been a smoker for almost thirty years. He estimated he smoked half a pack or approximately ten cigarettes per day. He recounted the symptoms he believes arose from CWP:

Q: You talked about your lungs. What are symptoms that you have? What kind of problems are you having?

A: Breathing.

Q: Okay. You've got shortness of breath?

A: Shortness of breath. I can't – I can't do nothing. I can't – I can't walk far. I can't – if it's hot, I can't breathe. It's got to be cold. I've got to have cool air or I can't breathe. I can't get outside what time it's hot.

Q: So, if you do tasks and things, being more active, would that make it worse?

A: Yes. I can't – I can't do nothing. I can't walk to the mailbox without being out of breath. And it ain't probably thirty foot from the house, forty.

Q: So, these things were going on while you were working there? Is that right?

A: Well, no, it was – they was getting worse and worse. That's just – just like the last day I got to where I knowed [sic] I couldn't breathe and I was hurting. I couldn't do it no more.

Q: That's what I'm saying. You're saying you couldn't walk more than thirty or forty feet now getting to the mailbox without having to stop and be out of breath.

A: Right.

Q: But you were ...

A: That's the way it was – that's the way it was at the mines. You know, if I was outside, I could – I had to sit. Or if I crawled underground, I couldn't crawl far. I had to wait. I mean ...

Q: Okay. So, you were doing all this work on this equipment and doing all these things and inspections, but you're saying you can't – you couldn't do it because you – you couldn't crawl or what? I'm having trouble jiving these two together there. You're saying you can't breathe, you can't really do much. But you're telling me you've got all these – you were working all these types of things there at MRM and had to do all this work.

A: But you ride. You don't crawl. That's just like if I could, I rode on the machine. I didn't crawl beside it. Or if I run the scoop, I laid on it. I didn't crawl beside it.

...

Q: Okay. Do you have any problem coughing at all?

A: No. I – I wake up coughing. If it gets hot in my bedroom, I wake up coughing.

Because he was diagnosed with sleep apnea, Moore is being fitted for a C-PAP machine. He denied asserting any previous CWP claims.

Moore's hearing testimony is primarily a reiteration of his deposition testimony. He began working in underground coal mines when he was 18-years-old and stopped when he was 56-years-old. He was exposed to coal dust, rock dust, and sand dust during the period he worked in the coal mines. Every day at work, dust would be in his nose and ears and on his clothes. His face was black at the end of each day. When he blew his nose or spit, the substances he emitted were black.

Moore provided a description of the jobs he performed while working in the underground coal mines. In every coal mine he worked, he was exposed daily to dust in the confined areas of the mine. Operating any type of machinery exposed

him to dust. Moore has not worked since August 7, 2020. During the years he worked in the underground mines, a physician had never imposed work restrictions related to his breathing. He agreed that Dr. Sikder's record indicating he smoked one pack per day for forty years is accurate.

In support of his CWP claim, Moore submitted the reports of Dr. James Crum, Dr. Michael Alexander, Dr. Alam, and Dr. Sikder. MRM relied solely upon Dr. Broudy's report. The chest radiograph classification reports of Dr. Crum dated May 10, 2021, and September 10, 2021, reflect a diagnosis of Category 1/2 CWP. Dr. Alexander's radiographic interpretation report dated December 22, 2020, reveals he diagnosed Category 1/1 CWP. Attached to the Form 101 is a report from Dr. Alam in which he diagnosed Category 1/1. His spirometric testing on December 16, 2020, yielded a FEV1 of 62 and an FVC of 57. Dr. Alam's subsequent ventilatory report of April 19, 2021, based on testing of that same date revealed an FEV1 of 64 and an FVC of 66. Moore also submitted the pulmonary function test signed by Dr. Alam and Dr. Graziano indicating the ventilatory studies were acceptable.¹

Dr. Sikder's November 11, 2020, pulmonary function test was introduced and revealed an FEV1 of 40 and an FVC of 46. Dr. Sikder's medical records arising from treatment of Moore from November 11, 2020, through May 3, 2021, confirm an FEV1 of 40 and an FVC of 46. Her assessment was COPD, CWP, and nicotine dependence cigarettes uncomplicated. Dr. Sikder noted Moore was 56 years old and had a history of tobacco abuse and significant occupational exposure.

¹ Dr. Graziano's first name is not in the record.

Dr. Broudy's June 7, 2021, report submitted by MRM reveals an FEV1 of 57 and an FVC of 70. However, Dr. Broudy found no evidence of a lung disease which arose as a result of Moore's work as a coal miner. Dr. Broudy concluded the "abnormalities on x-ray did not arise to positivity for CWP." He acknowledged the results of his pulmonary function studies exceed the minimum for criteria and disability for coal workers.

The report of Dr. Ammisetty, the University Evaluator, reflects he diagnosed simple CWP. He interpreted the chest x-ray as 1/0 with no large opacity.

Dr. Ammisetty also provided the following:

2. Pt. had a pulmonary function test done reported as in 108-form. Pt. has significantly decreased FEV1 and FVC below the Crapo values for 57-year-old male and 74 inches. He does have a severe obstruction with component of restriction. He has underlying emphysema changes noticed in the lung zones that is more clear on the CT chest.

3. His decreased FEV1 and FVC is multifactorial:

1. Cigarette smoking.

2. Morbidly obese.

3. Coal workers' pneumoconiosis is very minimal effect for his pulmonary impairment.

4. In summary, this pleasant gentleman worked in the mines enough number of years to [sic] expose to coal dust and rock dust, later developed simple coal workers' pneumoconiosis. His chest x-ray 1/0 profusion. His FEV1 and FVC is significantly decreased. The major etiology for decreased lung function is due to:

1. Smoking.

2. Morbid obesity and artificial decreased FEV1 and FVC.

5. Again the coal workers' pneumoconiosis has very minimal effect on his pulmonary impairment.

On the Form 108, in answer to the questions pertaining to causation,

Dr. Ammisetty checked the following:

Within reasonable medical probability, is plaintiff's disease the result of exposure to coal dust in the severance or processing of coal? Yes.

Within reasonable medical probability, is any pulmonary impairment the result of exposure to coal dust in the severance or processing of coal? No.

The testing of Dr. Ammisetty revealed an FVC of 60 and an FEV1 of 45.

In finding Moore suffers from CWP as a result of his last exposure to coal dust at MRM, the ALJ provided the following findings of fact and conclusions of law:

Coal Workers' Pneumoconiosis.

The ALJ is required to give Dr. Ammisetty's findings and opinions from his examination of Moore presumptive weight. The ALJ has reviewed all the conflicting evidence from the examining and treating physicians and does not find a sufficient reason to depart from the findings and opinions of Dr. Ammisetty. The ALJ relies on Dr. Ammisetty to find that Moore sustained simple coal workers' pneumoconiosis category 1/0 from his work as a coal miner. The ALJ finds that his last exposure was while he worked with MRM.

The ALJ relies on Dr. Broudy's FEV1 of 70% to find that Moore is entitled to a 25% award pursuant to KRS 342.732(1)(a)(7). $\$734.25 \times 25\% = \183.56 weekly for 425 weeks.

The ALJ awarded income and medical benefits for CWP.

MRM filed a Petition for Reconsideration asserting the ALJ erred in failing to find Dr. Broudy's opinion rebutted the presumptive weight of Dr. Ammisetty's opinions. As it does on appeal, it alternatively argued the ALJ erred in finding a 25% disability rating attributable to CWP pursuant to KRS 342.732, as Dr. Ammisetty did not attribute any of the pulmonary impairment due to coal dust exposure. The ALJ disagreed and denied the Petition for Reconsideration setting forth the following rationale which reads *verbatim* as follows:

Defendant filed a Petition for Reconsideration asserting that the ALJ failed to give the opinions of the University Evaluator, Dr. Ammesitty, presumptive weight. Defendant notes that Dr. Ammisetty indicated "no" on the Form 108 in response to whether any pulmonary function was due to coal worker's pneumoconiosis, his written opinion letter states otherwise. He wrote on page two of his written report that there were three reasons for Plaintiff's decreased FEV1 and FVC: 1) cigarette smoking, 2) morbid obesity and 3) coal workers' pneumoconiosis is very minimal effect for his pulmonary impairment. The ALJ interprets this to mean that while Plaintiff's CWP is not a main cause of his pulmonary impairment, it is a contributing factor, and is work-related. The ALJ gave Dr. Ammesitty's report presumptive weight. The Petition for Reconsideration is denied.

In support of its first argument, MRM notes Dr. Broudy performed a June 7, 2021, evaluation, and Dr. Ammisetty's evaluation took place on July 7, 2021. It asserts Dr. Broudy interpreted the study in connection with his evaluation as 0/1, negative for CWP. Dr. Broudy also noted the film quality of the study performed in connection with his evaluation is Film Quality 1, which MRM characterizes as "the most optimal quality for interpreting studies." On the other hand, Dr. Ammisetty noted the film quality of the study performed in connection

with his evaluation is Film Quality 2. Consequently, according to MRM, Moore's claim should have been dismissed since Dr. Broudy's study was the most reliable for interpretation purposes and should have been adopted by the ALJ.

Alternatively, MRM complains Dr. Ammisetty cannot be relied upon in finding a 25% disability rating pursuant to KRS 342.732(1)(b)1. since he did not attribute Moore's pulmonary impairment to coal dust exposure. It cites to Dr. Ammisetty's statement that "Plaintiff's decreased FEV1 and FVC was multifactorial including cigarette smoking and morbid obesity." Further, MRM notes there are notations within the record of emphysema and Moore's marked elevation of carboxyhemoglobin level indicating continued exposure to smoke as measured by Dr. Broudy during his evaluation. MRM emphasizes that under the causation portion of the Form 108, Dr. Ammisetty marked "no" to the following question: "Is any pulmonary impairment the result of exposure to coal dust in the severance or processing of coal?" It asserts this answer demonstrates Dr. Ammisetty "did not attribute any appreciable portion of his alleged impairment to [Moore's] employment." Thus, Dr. Ammisetty's opinions only support an award of RIB benefits.

ANALYSIS

Moore, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action, including the presence of CWP. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Moore was successful in that burden, the question on appeal is whether there was substantial evidence of record to support the ALJ's decision. Wolf

Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). “Substantial evidence” is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party’s total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney’s Discount Stores, 560 S.W.2d 15 (Ky. 1977). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ’s decision is limited to a determination of whether the findings made are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). The Board, as an appellate tribunal, may not usurp the ALJ’s role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that

otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

Both KRS 342.315(2) and Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000) establish that a University Evaluator's opinions are to be accorded presumptive weight which is the presumptive belief his/her opinions are correct. KRS 342.315(2) reads as follows:

The physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings and opinions in the form prescribed by the commissioner. Except as otherwise provided in KRS 342.316, the clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.

The Kentucky Supreme Court in Magic Coal Co. v Fox, supra, held that the term "presumptive weight" as used in KRS 342.315(2) amounts to nothing more than a rebuttable presumption that may be overcome by countervailing evidence. Id. at 94. The presumptive weight given to a University Evaluator's opinion can be rejected by the ALJ if there is a reasonable basis for doing so. Id. at 94. However, as set out above, the ALJ must specifically set out his reasons for rejecting the University Evaluator's opinion in the decision. Id. at 95.

In Magic Coal Co., supra, the Supreme Court addressed the significance of the mandate found in KRS 342.315(2) that the opinions of a University Evaluator be afforded "presumptive weight." The Supreme Court held the

statute merely creates a rebuttable presumption, imposing upon the party against whom it is directed the burden of going forward with evidence to rebut or meet the presumption. *Id.* at 95. Citing the Kentucky Rules of Evidence, KRE 301, the Supreme Court clarified that a rebuttable presumption “does not shift to such party the burden of proof in the sense of the risk of nonpersuasion, which remains throughout the trial upon the party on whom it was originally cast.” *Id.* at 95. The Supreme Court distilled its holding thus: “Stated otherwise, the clinical findings and opinions of the university evaluator constitute substantial evidence with regard to medical questions which, if uncontradicted, may not be disregarded by the fact-finder.” *Id.* at 96. Where the findings and opinions of the University Evaluator are contradicted, KRS 342.315(2) does not restrict the authority of the ALJ to weigh the conflicting medical evidence. “In instances where a fact-finder chooses to disregard the testimony of the university evaluator, a reasonable basis for doing so must be specifically stated.” *Id.* at 97.

On review, we find MRM’s appeal to be nothing more than a re-argument of the evidence before the ALJ. MRM impermissibly requests this Board to engage in fact-finding and substitute its judgment as to the weight and credibility of the evidence for that of the ALJ. That is not the Board’s function. *See* KRS 342.285(2); Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985).

Within his discretion, the ALJ declined to disregard the opinions of the University Evaluator, Dr. Ammisetty. Notably, in its Petition for Reconsideration, MRM did not seek findings of fact regarding the ALJ’s acceptance of Dr. Ammisetty’s opinions. Rather, it requested the ALJ reject the findings of the

University Evaluator and rely upon the opinions expressed by Dr. Broudy because his evaluation was based on Film Quality 1 which MRM deems “the most optimal for interpretation purposes.”

Dr. Ammisetty opined Moore suffered from simple CWP and fell within Category 1/0 with no large opacity. He noted Moore had “significantly decreased FEV1 and FVC below the Crapo values of a 57-year-old male and 74 inches.” He believed Moore had “a severe obstruction with component of restriction” and “underlying emphysema changes were noticed in the lung zones that is more clear on CT chest.” Dr. Ammisetty opined the decreased FEV1 and FVC were caused by multiple factors; specifically, cigarette smoking, morbid obesity, and CWP. Although the CWP had a minimal effect on Moore’s pulmonary impairment, it still was a causal factor. We reject the premise the quality of the film reviewed by Dr. Broudy alone requires the ALJ to reject the University Evaluator’s findings and opinions. Dr. Ammisetty’s opinions constitute substantial evidence supporting the ALJ’s determination Moore suffers from CWP as a result of his exposure to coal dust in the severance and processing of coal. While the contrary opinions of Dr. Broudy pertaining to causation may have supported a different outcome in favor of MRM, such testimony represented nothing more than conflicting evidence compelling no particular outcome. Copar, Inc. v. Rogers, 127 S.W.3d 554 (Ky. 2003). Further, the fact Dr. Ammisetty believed the quality of the film he reviewed in conjunction with his evaluation was Film Quality 2 merely goes to the weight and credibility to be afforded his testimony, a matter exclusively within the ALJ’s province as fact-finder. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). Since Dr.

Ammisetty's report amply demonstrates Moore suffered from CWP and his pulmonary impairment was caused in part by CWP, the ALJ, within his discretion, could rely upon his opinions. Hence, we find no error in the ALJ's reliance upon Dr. Ammisetty's opinions in determining Moore has CWP.

Similarly, we find no merit in MRM's argument the ALJ erred in finding Moore is entitled to income benefits based upon a 25% disability rating. According to MRM, since as opined by Dr. Ammisetty, the primary cause of Moore's lung function is due to cigarette smoking and morbid obesity, the ALJ should have awarded RIB benefits.

KRS 342.732(1)(b)1 reads as follows:

If an employee has a radiographic classification of category 1/0, 1/1, or 1/2 coal workers' pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, or category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and spirometric test values of eighty percent (80%) or more of the predicted normal values, there shall be an irrebuttable presumption that the employee has a disability rating of twenty-five percent (25%) resulting from exposure to coal dust, and the employee shall be awarded an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage, but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of twenty-five percent (25%). The award shall be payable for a period not to exceed four hundred twenty-five (425) weeks.

The statute does not provide support for MRM's argument.

Dr. Ammisetty determined Moore had a radiographic classification of category 1/0. Other physicians placed Moore in a more severe category. Dr.

Ammisetty's FEV1 was 45 and FVC was 60. The ALJ in finding the award should be based upon KRS 342.732(1)(b)1 relied upon Dr. Ammisetty's opinion that Moore fell within category 1/0 and Dr. Broudy's spirometric FEV1 and FVC test results. We will not disturb the ALJ's findings Moore has a radiographic classification of category 1/0 and spirometric test values of 55% or more but less than 80% of the predicted normal values and retains a 25% disability rating.

Even though Dr. Ammisetty believed CWP had a minimal effect on Moore's pulmonary impairment, the fact remains it was his opinion the CWP is, in part, a causal factor of Moore's pulmonary impairment. Nothing in the statute requires the CWP to be the primary factor as the cause of the respiratory impairment. So long as CWP is, in part, the cause of the employee's pulmonary impairment, he/she is entitled to the appropriate award. *See Newberg v. Reynolds*, 831 S.W.2d 170 (Ky. 1992).

We acknowledge that in the Form 108, Dr. Ammisetty responded as follows:

Within reasonable medical probability, is any pulmonary impairment the result of exposure to coal dust in the severance or processing of coal? No.

However, as previously noted, the ALJ is permitted to disregard Dr. Ammisetty's answer to that question in favor of his statements in the July 2021 letter in which he stated the CWP is one of the causal factors of Moore's pulmonary impairment. Consequently, the ALJ did not err in finding Moore's disability rating is 25%.

Moreover, the ALJ's opinion provides an evidentiary basis sufficient to enable this Board to determine whether the finding is supported by substantial

evidence and is reasonable. The opinions expressed in Dr. Ammisetty's report and spiropgraphic test values of Dr. Broudy constitute substantial evidence supporting the ALJ's decision. Thus, the ALJ did not err in determining Moore has CWP and retains a 25% disability rating as a result of his exposure to coal dust.

Accordingly, the April 13, 2022, Opinion, Award, and Order and the May 17, 2022, Order ruling on the Petition for Reconsideration are **AFFIRMED**.

ALL CONCUR.

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