No. 19-23

In the Supreme Court of the United States

ROCKWOOD CASUALTY INSURANCE COMPANY,
PETITIONER

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether this Court should consider the extent to which administrative proceedings under the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, are governed by the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, an issue that was not raised in or addressed by the court of appeals below.

2. Whether the court of appeals correctly affirmed the decision of an administrative law judge (ALJ) denying petitioner's motion to withdraw its stipulation as the "responsible operator" for purposes of a miner's claim for BLBA benefits.

3. Whether the court of appeals correctly determined that substantial evidence supported the ALJ's decision to grant benefits under the BLBA.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 3-52) is reported at 917 F.3d 1198.

JURISDICTION

The judgment of the court of appeals was entered on March 5, 2019. A petition for rehearing was denied on April 2, 2019 (Pet. App. 1-2). The petition for a writ of certiorari was filed on June 28, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, provides "benefits for miners totally disabled due at least in part to pneumoconiosis arising out of coal mine employment, and to the dependents and survivors of such miners." *Pauley* v. *BethEnergy Mines,*

Inc., 501 U.S. 680, 683-684 (1991); see 30 U.S.C. 901(a); 20 C.F.R. 718.1. Paying benefits is generally the responsibility of the coal mine operator that employed the claimant-miner. See 30 U.S.C. 932(a). Congress instructed the Secretary of Labor to "by regulation establish standards, which may include appropriate presumptions, for determining whether [a miner's] pneumoconiosis arose out of employment in a particular coal mine or mines." 30 U.S.C. 932(h); see 20 C.F.R. 725.1(c).

The Secretary's implementing regulations provide that, if a miner is totally disabled by pneumoconiosis as a result of work in a coal mine, liability for BLBA benefits is assessed against the "responsible operator," which is the financially capable operator that, *inter alia*, last employed the claimant as a miner for at least one year. Pet. App. 6-7; see 20 C.F.R. 725.495(a)(1). As a fallback alternative, Congress created the Black Lung Disability Trust Fund, which assumes liability for a miner's benefits if "there is no operator who is liable for the payment of such benefits," Pet. App. 6 (quoting 26 U.S.C. 9501(d)(1)(B)), such as where the responsible operator defaults, see 20 C.F.R. 725.490(a).

A miner may obtain BLBA benefits with proof that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mining employment, that he is totally disabled due to a respiratory or pulmonary impairment, and that pneumoconiosis is a substantially contributing cause of the total disability. Pet. App. 8; see 30 U.S.C. 902, 921. A miner is considered "totally disabled" if a pulmonary or respiratory impairment prevents him from performing his or her usual coal mine work and from engaging in gainful employment requiring comparable skills and abilities. 20 C.F.R. 718.204(b)(1);

see 30 U.S.C. 902(f)(1)(A). Under the Secretary's regulations, a miner can establish total disability by submitting evidence from any of several sources: (1) pulmonary function tests; (2) arterial blood gas tests; (3) medical evidence of cor pulmonale with right-sided congestive heart failure; or, even in the absence of any of those, (4) a "physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques, [who] concludes that a miner's respiratory or pulmonary condition prevents * * * the miner from engaging in [his usual] employment." 20 C.F.R. 718.204(b)(2).[1]

The BLBA also includes a rebuttable "'presumption that a miner is disabled due to pneumoconiosis,'" known as "the 15-year presumption," that applies when the miner "'has worked for 15 years in underground coal mines or substantially similar conditions and is totally disabled from a respiratory or pulmonary condition.'" Pet. App. 8-9 (citation omitted); see 30 U.S.C. 921(c)(4); 20 C.F.R. 718.305. "The party opposing an award of

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[1] "Pulmonary function tests measure the degree to which breathing is obstructed." *Yauk* v. *Director*, 912 F.2d 192, 196 n.2 (8th Cir. 1989). Blood-gas studies detect an impairment in the process of alveolar gas exchange, which involves the transfer of oxygen from the lungs into the bloodstream, and the removal of carbon dioxide from the bloodstream into the lungs. See Rebecca Dezube, MD, MHS, *Exchanging Oxygen and Carbon Dioxide, Merck Manual Consumer Version* (2019), http://www.merckmanuals.com/home/lung-and-airway-disorders/biology-of-the-lungs-and-airways/exchanging-oxygen-and-carbon-dioxide. Cor pulmonale refers to an abnormal enlargement of the right side of the heart as a result of a disease of the lungs or the pulmonary blood vessels. See Sanjiv J. Shah, MD, *Cor Pulmonale, Merck Manual Prof'l Version* (2017), https://www.merckmanuals.com/professional/cardiovascular-disorders/heart-failure/cor-pulmonale.

benefits under the BLBA may rebut the 15-year presumption by establishing that (1) the claimant does not have pneumoconiosis or (2) pneumoconiosis did not cause any part of the miner's respiratory or pulmonary total disability." Pet. App. 9; see 20 C.F.R. 718.305(d).

b. The process of administrative review of a miner's BLBA claim begins with a district director in the United States Department of Labor's (Department) Office of Workers' Compensation Programs (OWCP). Pet. App. 14-16. Using a claimant's employment history, a district director notifies one or more "potentially liable operators" (and their respective insurance carriers, if applicable) of the claim. 20 C.F.R. 725.407(c), 725.494. The notice of claim includes a copy of the claim for benefits and evidence of the miner's employment, and instructs the recipient to either admit or deny several facts, including whether "the operator employed the miner as a miner for a cumulative period of not less than one year." 20 C.F.R. 725.408(a)(2)(ii); see 20 C.F.R. 725.494, 725.495(a).

The notified operator has 30 days to "file a response indicating its intent to accept or contest its identification as a potentially liable operator," and 90 days to submit supporting documentary evidence. 20 C.F.R. 725.408(a)(1) and (b)(1). The regulations emphasize that an operator that fails at this stage of the claim process to dispute its status as a potentially liable operator, or to submit supporting documentary evidence, may not do so later. 20 C.F.R. 725.408(a)(3) and (b)(2). These deadlines, the consequences of failing to meet them, and the ability to extend them, are all included in the notice of claim. Pet. App. 15-16; 20 C.F.R. 725.423.

Following each potentially liable operator's response to the notice of claim and the initial development of

medical evidence, the district director issues a "schedule for the submission of additional evidence" (SSAE) that makes a preliminary designation of the "responsible operator," which is the potentially liable operator that most recently employed the miner for at least one year. 20 C.F.R. 725.410(a)(3), 725.495(a)(1). The designated responsible operator then has at least 60 days to submit additional evidence addressing the claimant's eligibility for benefits or showing that it is not the responsible operator because another potentially liable operator more recently employed the miner. See 20 C.F.R. 725.410(b). After considering any additional medical or employment-related evidence submitted by the parties, the district director issues a "proposed decision and order" awarding or denying benefits and designating the responsible operator. 20 C.F.R. 725.418(a). At that point, the district director must "dismiss, as parties to the claim, all other potentially liable operators." 20 C.F.R. 725.418(d).

Any party may request revision of the district director's proposed decision and order, or in the alternative, de novo review of the district director's determinations by an administrative law judge (ALJ). 20 C.F.R. 725.419(a); see 20 C.F.R. 725.455(a) (providing that ALJs resolve contested issues of fact or law without considering findings or determinations made by the district director). Parties are instructed to "specify the findings and conclusions with which [they] disagree[ ]." 20 C.F.R. 725.419(b). If a party requests review by an ALJ, the ALJ will hold a hearing and issue a decision regarding the claim. 20 C.F.R. 725.451, 725.455. Under the regulations, the ALJ hearing is confined to the issues contested by the parties and identified by the district director, 20 C.F.R. 725.463(a), unless the ALJ determines that a new issue

"was not reasonably ascertainable by the parties at the time the claim was before the district director." 20 C.F.R. 725.463(b).[2]

"Any party dissatisfied with a decision and order issued by an [ALJ] may * * * appeal the decision and order to" the Benefits Review Board (BRB). 20 C.F.R. 725.481; 33 U.S.C. 921(b)(3) (incorporated by 30 U.S.C. 932(a)). The BRB does not adduce new evidence, but instead issues a decision after considering the record. See 33 U.S.C. 921(b)(3); 20 C.F.R. 802.301-802.309. Following review by the BRB, a dissatisfied party may seek review in a federal court of appeals. 20 C.F.R. 725.482; 33 U.S.C. 921(c) (incorporated by 30 U.S.C. 932(a)).

The Director of OWCP is automatically a party to every proceeding related to a BLBA claim, including judicial proceedings. See 30 U.S.C. 932(k); 20 C.F.R. 725.360(a)(5).

2. a. Tony Kourianos worked in underground coal mines for over 27 years. Pet. App. 22, 93. His last work in the coal mining industry was for Hidden Splendor Resources, insured by petitioner Rockwood Casualty Insurance Company. *Id.* at 94. He worked inside the mines for Hidden Splendor for two distinct periods, from December 26, 2006 to April 11, 2007, and from November 16, 2010 to January 21, 2011. *Id.* at 84, 95, 141. During a third period—April 5, 2011 to October 14,

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[2] If the ALJ finds that the designated responsible operator is not liable, the ALJ may not remand the claim to the district director to identify a new responsible operator. Instead, in that circumstance, liability shifts to the Trust Fund. See 20 C.F.R. 725.407(d), 725.418; Pet. App. 37-38. The Secretary has explained that "[t]his limitation will eliminate a major source of delays in the adjudication of claims, and prevent a claimant from having to relitigate his entitlement to benefits." 65 Fed. Reg. 79,920, 79,990 (Dec. 20, 2000).

2011—Kourianos worked outside the mine as a security guard. *Id.* at 20.

b. Kourianos filed his claim for federal black lung benefits on June 27, 2012. Pet. App. 56. The district director issued a notice of claim to Hidden Splendor and petitioner, notifying them of their potential liability for any benefits. *Id.* at 145. As petitioner admits, it first disputed, then conceded, the district director's preliminary finding that Hidden Splendor had employed Kourianos as a miner for at least one year, and was a "potentially liable operator[ ]." Pet. 8; Pet. App. 18-19. The district director then issued an SSAE, which identified Hidden Splendor as "the responsible operator liable for the payment of benefits." Pet. App. 19 (citation omitted). Petitioner responded to the SSAE by stating that it "accepted the designation of Responsible Operator but contests Claimant's entitlement for benefits." *Ibid.* (citation omitted). After examining all of the evidence, the district director issued a proposed decision and order awarding benefits to Kourianos to be paid by petitioner. *Ibid.* Petitioner sought ALJ review, but its "statement of contested issues" confirmed that "it does *not* dispute its designation as the Responsible Operator in this claim." *Id.* at 20 (brackets and citation omitted). Accordingly, the district director indicated that the responsible operator issue was uncontested in forwarding the claim to the ALJ for a hearing. *Id.* at 60.

c. At the ALJ hearing, Kourianos testified that the "very last section" of his work for Hidden Splendor, lasting four to five months, had not exposed him to coal mine dust because the mine was not operational. Pet. App. 84 (citation omitted). Based on this testimony, petitioner moved to withdraw its stipulation that it was the responsible operator for Kourianos's BLBA claim. *Ibid.*

The ALJ denied the motion, explaining that the nature of Kourianos's employment with Hidden Splendor had been "reasonably ascertainable" when the case was before the district director and, therefore, petitioner was precluded from raising that "new issue" by 20 C.F.R. 725.463(b). Pet. App. 126-127.

Regarding Kourianos's entitlement to benefits, the ALJ concluded that the 15-year presumption applied after finding that Kourianos had worked for 27 years in underground coal mines and suffered from a totally disabling respiratory impairment. Pet. App. 93, 113-116. The medical evidence addressing disability included pulmonary function tests, arterial blood gas tests, and three medical opinions. See *id.* at 99-103, 115, 144, 150. Weighing that evidence, the ALJ determined that the tests "yield[ed] equivocal results" and did not establish total disability. *Id.* at 115. The ALJ found, however, that the medical opinion evidence, particularly the testimony of Dr. Gagon, established Kourianos's total disability. See *id.* at 103-116. The ALJ then found that petitioner had failed to rebut the 15-year presumption because its evidence did not demonstrate either that Kourianos did not suffer from pneumoconiosis or that pneumoconiosis played no role in his disability. *Id.* at 117-122 (citing 20 C.F.R. 718.305). The ALJ accordingly issued a decision awarding benefits to Kourianos, for which petitioner was responsible. *Id.* at 122-123.

d. The BRB affirmed the ALJ's decision. Pet. App. 55-77. The BRB concluded that petitioner was not permitted to belatedly contest its status as the responsible operator for Kourianos's claim, because "the [ALJ] did not abuse his discretion in finding that [Kourianos's] job duties with [Hidden Splendor] were reasonably ascer-

tainable when this matter was before the district director." *Id.* at 62-63. The BRB also affirmed the ALJ's findings that Kourianos successfully invoked the 15-year presumption of total disability due to pneumoconiosis, and that petitioner's evidence did not rebut that presumption. *Id.* at 63-76.

e. The court of appeals affirmed the BRB's decision. Pet. App. 3-52.[3]

The court of appeals first determined that the ALJ did not err in denying petitioner's motion to withdraw its responsible-operator stipulation, explaining that Petitioner could have "'reasonably ascertain[ed]' Mr. Kourianos's job duties in a number of ways" prior to his testimony at the hearing. Pet. App. 40 (quoting 20 C.F.R. 725.463(b)) (brackets in original). The court observed that petitioner knew from Hidden Splendor's own records that Kourianos did not work "'in the mine'" during his last period of employment, yet petitioner "failed to investigate [his] employment and did not dispute the responsible operator question until the ALJ's hearing

[3] As explained above, the statute and regulations designated the Director as a party to the judicial proceeding. See 30 U.S.C. 932(k); 20 C.F.R. 725.360(a)(5). The Director's brief to the court of appeals argued that the ALJ had correctly refused petitioner's motion to withdraw its stipulation as the responsible operator for Kourianos's claim, but did not address Kourianos's entitlement to benefits. Although the court stated that the Director declined to take a position on Kourianos's eligibility for benefits in order "[t]o defend the interests of the Trust Fund," Pet. App. 35, that statement is not accurate. The Director explained at oral argument that its usual practice is to appear in BLBA litigation in the court of appeals to address disputes over the meaning and application of the Secretary's regulations, not necessarily to address disputes over an ALJ's weighing of the medical evidence. See C.A. Oral Arg. at 16:50, https://www.ca10.uscourts.gov/oralarguments/18/18-9520.mp3.

more than two years after Mr. Kourianos filed his claim." *Id.* at 39. The court observed further that there was no evidence that petitioner sought any information from Kourianos or his co-workers prior to the ALJ hearing. *Ibid.* The court rejected petitioner's excuses for its failure to investigate, including its complaint about the deadlines applicable before the district director. The court noted that the regulations allowed the district director to set the deadlines aside "[i]n appropriate cases," *id.* at 40 (citation omitted), that petitioner had not sought any extension of time, and that the documentation in the notice of claim concerning Kourianos's employment history was not misleading, *id.* at 40-43.

The court of appeals also affirmed the ALJ's award of benefits to Kourianos, concluding that substantial evidence supported the ALJ's invocation of the 15-year presumption based on the medical evidence and the ALJ's finding that the presumption was not rebutted. Pet. App. 45, 49-51. The court recognized that it "do[es] not reweigh evidence." *Id.* at 48. And the court concluded that the ALJ was justified in giving greater weight to the medical opinion testimony of Dr. Gagon—who diagnosed Kourianos with totally disabling respiratory impairments—as opposed to the testimony of other physicians who diagnosed Kourianos with milder impairments, because the ALJ found that Dr. Gagon's medical opinion best accounted for the exertional requirements of Kourianos's work as a miner. *Id.* at 48-49. The court also rejected petitioner's argument that the blood gas tests had conclusively shown that Kourianos does not have a respiratory disability, finding that argument to be based on a misreading of the

record. *Id.* at 46-47 & n.14. Finally, the court determined that substantial evidence supported the ALJ's finding that the doctors' opinions failed to demonstrate that Kourianos's impairments were not caused by his coal-mine work. *Id.* at 50-51. The court noted that "[t]he ALJ did not find [the doctors'] reasoning convincing" on that point, and the court would "not disturb that determination when it is based on reasoned judgment." *Id.* at 50.

ARGUMENT

The decision of the court of appeals is correct, is heavily factbound, and does not conflict with any decision of this Court or another court of appeals. Further review is unwarranted.

1. Petitioner initially contends (Pet. 5-6) that this Court should grant review to determine whether "the Secretary's regulations, and adjudications under the BLBA, are constrained by" the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* Pet. 6. But this case does not present that question because the court of appeals did not hold or even suggest that the resolution of BLBA claims is exempt from the APA, and the Director has not taken that position in this litigation.

What petitioner characterizes (Pet. 5) as the "Secretary's assertion that the APA did not apply" to BLBA cases refers to a revised notice of rulemaking from 1999 in which the Department explained that this Court's decision in *Director* v. *Greenwich Collieries*, 512 U.S. 267 (1994), did not eliminate the Department's authority to "assign burdens of proof to parties as necessary to accomplish the purposes of the [BLBA] * * * us[ing] regulatory presumptions where * * * appropriate." 64 Fed. Reg. 54,966, 54,973 (Oct. 8, 1999). Petitioner does not challenge those regulatory presumptions in this case.

The portions of 20 C.F.R. 725.408 that deal with burdens of proof were upheld by the D.C. Circuit in *National Mining Ass'n* v. *Department of Labor*, 292 F.3d 849 (2002) (per curiam), and no other court of appeals has disagreed.

Petitioner's first question presented is therefore not suitable for this Court's review.

2. Petitioner contests (Pet. 6-17) the court of appeals' affirmance of the ALJ's denial of petitioner's effort to release it from its stipulation as the responsible operator for Kourianos's BLBA claim. Petitioner no longer disputes that, under the applicable regulations, it was not permitted to withdraw its stipulation, because it belatedly attempted before the ALJ to invoke a "new issue" regarding Kourianos's employment history that was "reasonably ascertainable" by Hidden Splendor "at the time the claim was before the district director." 20 C.F.R. 725.463(b); see Pet. App. 36-43. Instead petitioner contends (Pet. 14-17) that the Secretary's BLBA regulations violate the APA by limiting the time period within which an employer can contest its status as the responsible operator for a BLBA claim. Petitioner's challenge is forfeited and, in any event, meritless.

a. The court of appeals correctly determined that petitioner was not entitled to withdraw its stipulation as the responsible operator for purposes of Kourianos's claim. As the court observed, petitioner "conceded its responsible operator status" three different times: "(1) in its amended response to the district director's notice of claim, in which it stated that it was 'the responsible operator within the meaning of the [BLBA]'; (2) in its response to the district director's SSAE, in which it stated that 'Hidden Splendor has accepted the designa-

tion of Responsible Operator'; and (3) in its initial submission to the ALJ, in which it stated that Hidden Splendor 'does *not* dispute its designation as the Responsible Operator.'" Pet. App. 39 (citations omitted; brackets original).

In light of those repeated concessions, the court of appeals stated that it would "apply the general rule that 'stipulations and concessions bind those who make them,'" Pet. App. 38 (citation omitted), subject to the "potential exception," provided for in the BLBA regulations, that "'[a]n [ALJ] may consider a new issue only if such issue was not reasonably ascertainable by the parties at the time the claim was before the district director,'" *id.* at 38-39 (quoting 20 C.F.R. 725.463(b)) (first set of brackets in original). Here, the court observed that petitioner could have reasonably ascertained Kourianos's employment history and job duties in any number of ways while his claim was before the district director, including by checking its own records or attempting to speak to Kourianos or his co-workers about his work at Hidden Splendor. *Id.* at 40. "Any of [those] steps would have been reasonable, but [petitioner] did not take them," and "[petitioner's] excuses for Hidden Splendor's failure to investigate [were] not convincing." *Ibid.* The Secretary's regulations therefore barred petitioner from contesting its status as the responsible operator for Kourianos's claim before the ALJ. *Id.* at 43.[4]

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[4] Petitioner contends (Pet. 12-14) that the court of appeals erred by suggesting that the Secretary's evidentiary regulations would afford an employer like petitioner "a *longer* period to submit evidence than [is] allowed under the regulations." Pet. 14 (emphasis added). That reading of the regulations—if petitioner had succeeded in resurrecting the responsible-operator issue before the ALJ—would have *benefitted* petitioner, and therefore provides no basis for its

b. Petitioner is incorrect in contending (Pet. 14-17) that 20 C.F.R. 725.408(b)(2), in conjunction with 20 C.F.R. 725.414(b), violates a provision of the APA, 5 U.S.C. 556(d), by limiting the time period for a potentially liable operator to submit evidence to the district director regarding its liability, while not imposing the same limitation on other parties.

In the first place, petitioner raised this argument for the first time in a reply brief in the court of appeals, see Pet. C.A. Reply Br. 15, and thereby forfeited the issue under that court's precedent. See *Tran* v. *Trustees of State Colls. in Colo.*, 355 F.3d 1263, 1266 (10th Cir. 2004) ("Issues not raised in the opening brief are deemed abandoned or waived.") (citation omitted). The court accordingly did not address the argument, instead noting only that "Hidden Splendor did not ask to submit additional evidence or suggest that it wanted to challenge its responsible operator status before the district director." Pet. App. 41. This Court ordinarily does not consider issues that were not passed on below. See *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Nothing justifies a departure from that practice in this case.

In any event, the Secretary's regulations do not impinge on the APA procedural rights granted by Section 556(d), which "come[ ] down to the question of the procedure's integrity and fundamental fairness." *Richardson* v. *Perales*, 402 U.S. 389, 410 (1971).

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petition for a writ of certiorari. In fact, though, the court of appeals declined to determine conclusively how the regulatory time limits for introducing evidence would apply to petitioner, because the court found that 20 C.F.R. 725.463(b) prohibited petitioner from raising the "new issue" of its responsible-operator status before the ALJ after petitioner failed to raise that issue before the district director. See Pet. App. 43 n.13.

Section 725.414(b) provides that all parties are permitted to submit evidence regarding the liability of a potential responsible operator, but under Section 725.408(b)(2), an operator must submit certain documentary evidence within 90 days of the notice of claim. The latter provision allows a notified operator (and only the notified operator) to escape liability, and be dismissed as a party, at the *beginning* of the claim process by timely submitting evidence that it is not even "potentially liable." See p. 4, *supra*. Later in the claim process, *i.e.*, after the district director issued the SSAE, all parties to the proceeding, including the designated responsible operator as well as the claimant and the Director, are given 60 days to submit evidence relevant to the designated operator's liability, and then 30 days to respond to evidence submitted by other parties. See 20 C.F.R. 725.410(b). However, because the designated responsible operator has already had 90 days to submit evidence relevant to its potential liability, the designated responsible operator is limited to submitting evidence that a different potentially liable operator should be responsible. See 20 C.F.R. 725.414(b)(1). A designated responsible operator that believes the district director unfairly excluded its documentary evidence can seek to have that evidence admitted before the ALJ upon a showing of extraordinary circumstances. 20 C.F.R. 725.456(b)(1). All told, these procedures provide ample opportunity for operators to make their case that they are not responsible for a miner's injuries. The D.C. Circuit upheld these procedures in *National Mining*, *supra*, and no court of appeals has reached a contrary conclusion.

Petitioner is therefore incorrect in asserting (Pet. 16) that the regulations impose "inequitable" timing deadlines. And petitioner cannot reasonably complain (Pet.

14) that Kourianos's testimony before the ALJ gave rise to "two different time limits for opposing parties to submit evidence on the same issue." It was *petitioner* that attempted to take advantage of Kourianos's testimony regarding his work history at Hidden Splendor, in support of petitioner's request to be excused from its stipulation as the responsible operator for the claim. See Pet. App. 126-127. As explained above, however, the ALJ rejected that request because petitioner had failed to raise the issue at an earlier stage of the proceedings, despite Kourianos's employment history being reasonably ascertainable.

To the extent that the petition for a writ of certiorari attempts to raise a more general APA challenge to the 90-day limitation in which to contest potentially liable operator status before the district director, that argument was not pressed or passed on below, and it lacks merit. In promulgating 20 C.F.R. 725.408, the Department accepted comments that its originally proposed 60-day time deadline was too short, and the Department therefore extended the deadline to 90 days. 64 Fed. Reg. at 54,990. But the Department decided against adopting a longer period, because it "hope[d] to streamline the processing and adjudication of claims for benefits under the Act, * * * [and] [a] longer time period could result in significant delays in the adjudication of an applicant's entitlement to benefits." *Ibid.* The Department explained that, "in cases in which even the 90-day period may not afford a potentially liable operator sufficient time to obtain employment evidence, this time period may be extended for good cause pursuant to the general authority for extensions of time contained in proposed § 725.423." *Ibid.* The Department's 90-day

deadline therefore reasonably balanced industry's concerns against the need for effective processing of miners' claims, and the regulation more than meets the requirements of the APA. See *Motor Vehicle Mfrs. Ass'n of U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (an agency "must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made") (citation and internal quotation marks omitted).

3. Petitioner contends (Pet. 17-35) that the court of appeals erred in holding that the ALJ's decision finding petitioner entitled to BLBA benefits was supported by substantial evidence. The court's decision was correct, and its factbound determination does not conflict with any decision of this Court or another court of appeals.

a. Petitioner argues (Pet. 17-26) that the court of appeals improperly weighed the evidence of total disability and, in doing so, "failed to provide a rationale for [its] conclusion, as required by the APA." Pet. 25. Petitioner is incorrect. As the court explained, it reviews an ALJ's finding of disability only for "substantial evidence," Pet. App. 35 (citation omitted), that is, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion," *id.* at 35-36 (quoting *Consolidated Edison Co.* v. *NLRB*, 305 U.S. 197, 229 (1938)); see also *INS* v. *Elias-Zacarias*, 502 U.S. 478, 481 & n.1, 483-484 (1992). The court then correctly determined that the ALJ's findings easily satisfied the substantial-evidence standard.

The court of appeals first observed that the ALJ supported his conclusion that Kourianos was totally disabled by considering arterial blood gas studies and then, after finding those studies "equivocal," by considering

and weighing the medical opinions of the medical experts. Pet. App. 45 (citation omitted). The court noted that all three doctors found that Mr. Kourianos suffered from chronic respiratory problems. *Id.* at 48. The court noted further that the ALJ explained and justified his decision to give greater weight to the testimony of Dr. Gagon—who diagnosed Kourianos with "chronic bronchitis, a chronic productive cough, and a significant drop in PO2 levels with exercise"—as opposed to the testimony of Dr. Zaldivar and Dr. Selby—who diagnosed Kourianos with less-severe impairments—because Dr. Gagon was "'the only physician who discussed (in his deposition) the specific duties [Kourianos] performed as a fire boss'" in the mine. *Ibid.* (citation omitted).

Petitioner's criticisms (Pet. 24-25) of the opinions of the ALJ and the court of appeals are insubstantial. Petitioner asserts that the blood gas studies showed Kourianos was not disabled; that the ALJ did not consider the results of the blood gas studies "with the medical opinion evidence"; and that the ALJ did not explain why it gave more weight to the medical opinion evidence than to Kourianos's test results. *Ibid.* All of those assertions are contrary to the record. As the court of appeals explained, petitioner's charge that "'all of Mr. Kourianos's testing values were normal'" "misconstrues the record," which showed abnormal results under the regulatory standards for the relevant conditions. Pet. App. 47 n.14 (brackets and citation omitted). Moreover, the court reviewed how the ALJ considered both testing and medical-opinion evidence to assess whether Kourianos was disabled, and ultimately relied on the physicians' diagnoses of an impairment after finding the test results inconclusive. *Id.* at 45-49.

Petitioner's argument largely reduces to a suggestion that the court of appeals should have weighed the medical evidence differently than the ALJ. See Pet. 24 ("The ALJ's analysis of the [physicians'] opinion evidence was not rational or supported by substantial evidence."). But as the court recognized, the task of weighing medical evidence "is within the sole province of the ALJ," because "the trier of fact is in a unique position to determine credibility and weigh the evidence." Pet. App. 36 (citation omitted). Petitioner in fact concedes (Pet. 22) that the "[d]eterminations of whether a physician's report is sufficiently documented and reasoned is a matter of credibility left to the trier of fact." The court of appeals' conclusion that the ALJ's opinion satisfied the substantial-evidence standard is therefore correct. And in any event, the court's factbound holding does not conflict with the decision of any other court and is not suitable for this Court's review. See Sup. Ct. R. 10.

b. Petitioner next argues (Pet. 26-35) that the ALJ and the court of appeals erred in various ways in finding that petitioner failed to rebut the 15-year presumption that his disability was caused by pneumoconiosis. At bottom, however, petitioner claims only that the court should have found that petitioner's evidence was sufficient to rebut the presumption. See Pet. 33 ("[I]t is difficult to see how the evidence [before the ALJ] was insufficient to rebut the presumption."); Pet. 35 (arguing that this Court should grant certiorari "to provide clarity as to the level of evidence required to rebut the presumption"). And the court of appeals correctly explained why petitioner's evidence was not sufficient to rebut the presumption that Kourianos was disabled as a result of his coal-mine work.

Petitioner's arguments regarding rebuttal of the presumption rely once again on the erroneous assertion (Pet. 29) that Kourianos's blood gas test results were "normal" and "reveal[ed] no pulmonary impairment"—essentially, that Kourianos had no impairment caused by any disease. As explained above, the court of appeals found that petitioner's assertion about the blood gas test results misconstrued the record. Pet. App. 47 n.14. And in any event, Dr. Gagon—whose medical opinion testimony the ALJ found deserved the most weight—diagnosed Kourianos with chronic respiratory ailments that qualified as legal pneumoconiosis. *Id.* at 48. The court of appeals additionally observed that the ALJ explained why petitioner had failed to rebut the presumption that Kourianos suffered from legal pneumoconiosis. *Id.* at 49. Petitioner attempted to "point[ ] to Mr. Kourianos's history of smoking as an alternative cause of his impairment," *ibid.*, but the ALJ "gave limited weight" to petitioner's experts, who failed to persuade the ALJ that coal mine dust did not cause his respiratory problems. *Id.* at 50.

Petitioner next asserts that the ALJ "discounted Dr. Gagon's diagnosis of chronic bronchitis as being 'conclusory and not well-reasoned.'" Pet. 30 (quoting Pet. App. 119). That is not accurate. The ALJ did not reject Dr. Gagon's diagnoses of Kourianos with chronic respiratory impairments; instead, the ALJ criticized Dr. Gagon's explanation that the *cause* of those impairments was "equally" "coal dust exposure and cigarette smoke," because his submission on that causation issue (like that of the other doctors) was not specific to Kourianos's medical conditions. Pet. App. 119. The court of appeals thus correctly held that, under the applicable substantial-evidence standard of review, the ALJ gave a reasoned

explanation for his weighing of the medical opinion testimony that was sufficient to justify his conclusion.

Finally, petitioner argues (Pet. 34-36) that the "rule-out" standard for rebutting the 15-year presumption, which permits a party to rebut a miner's entitlement to benefits by showing that "no part" of the miner's disability was caused by pneumoconiosis, 20 C.F.R. 718.305(d)(1)(ii), places too high a burden on mine operators, contrary to the BLBA. In particular, petitioner contends (Pet. 35 n.20) that the "rule-out" standard improperly requires a greater showing than the "substantially contributing cause" standard, which is the disability causation standard that claimants must establish in claims unaffected by a presumption. 20 C.F.R. 718.204(c). Petitioner is correct insofar as the "rule-out" standard requires a greater showing, but incorrect that the different standard is improper: The Secretary, when promulgating the rule-out standard, specifically explained that Congress's "underlying intent and purpose" for the 15-year presumption warranted "adopting a rigorous rebuttal standard." See 78 Fed. Reg. 59,102, 59,106-59,107 (Sept. 25, 2013). Furthermore, every court of appeals to address the issue has upheld the rule-out standard. See *Consolidation Coal Co.* v. *Director*, 864 F.3d 1142, 1150-1151 (10th Cir. 2017); *Helen Mining Co.* v. *Elliott*, 859 F.3d 226, 236-239 (3d Cir. 2017); *West Virginia CWP Fund* v. *Bender*, 782 F.3d 129, 144 (4th Cir. 2015); *Big Branch Res., Inc.* v. *Ogle*, 737 F.3d 1063, 1069-1070 (6th Cir. 2013). The issue is therefore not worthy of this Court's review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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