U.S. Department of Labor

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

BRB No. 24-0293 BLA

THERESA WOLFORD and TAMARA MURRAY (o/b/o FERRELL W. MUTTER)	)	
Claimants-Petitioners	)	**NOT-PUBLISHED**
v.	)	
C & H COAL COMPANY, INCORPORATED	)	DATE ISSUED: 04/11/2025
Employer-Respondent	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

Theresa Wolford, Bumpass, Virginia, and Tamara Murray, Pounding Mill, Virginia.

Michael A. Pusateri (Greenberg Traurig LLP), Washington, D.C., for Employer.

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

PER CURIAM:

Claimants appeal, without the assistance of counsel,[1] Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Denying Benefits (2021-BLA-05651) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent miner's claim filed on June 24, 2019.[2]

The ALJ found Claimants did not establish the Miner[3] had complicated pneumoconiosis and therefore could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304. She credited the Miner with 26.07 years of qualifying coal mine employment, but found he did not have a totally disabling respiratory or pulmonary impairment at the time of his death. 20 C.F.R. §718.204(b)(2). She therefore found Claimants did not invoke the presumption of total disability due to pneumoconiosis at

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

[2] On January 26, 2011, the district director denied the Miner's most recent prior claim, filed on July 19, 2010, because he did not establish any element of entitlement. Director's Exhibit 5. The Miner did not further pursue this denial. Subsequently, the Miner filed claims on November 29, 2012, and November 6, 2018, but withdrew both claims. Director's Exhibits 6, 7. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306.

[3] The Miner died on August 20, 2021, while his claim was pending before the ALJ. On January 4, 2023, the ALJ remanded the case to the district director to determine if there was an authorized party to pursue the miner's claim. The Miner's daughters, Theresa Wolford and Tamara Murray, filed birth certificates demonstrating the Miner was their father, along with statements notifying the Office of Administrative Law Judges (OALJ) of their intent to pursue their deceased father's claim. The OALJ re-assigned the case to the ALJ, who issued an Order Granting Request for Decision on the Record, Cancelling the Hearing, and Setting Briefing Schedule. ALJ's January 5, 2022 Order. She issued an Order Admitting Evidence, admitting Director's Exhibits 1 through 44, Claimant's Exhibits 1 through 3, and Employer's Exhibits 1 through 3 into the record and officially closing the record. ALJ's March 29, 2022 Order. On April 30, 2024, she issued an Order Substituting Party and Amending Caption to substitute the Miner's daughters as Claimants in this case. ALJ's April 30, 2024 Order.

Section 411(c)(4) of the Act,[4] 30 U.S.C. §921(c)(4) (2012), or establish entitlement to benefits under 20 C.F.R. Part 718. Thus, she denied benefits.

On appeal, Claimants generally challenge the ALJ's denial of benefits. Employer responds in support of the ALJ's decision. The Acting Director, Office of Workers' Compensation Programs, has not filed a response brief.[5]

In an appeal that a claimant files without representation, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law.[6] 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).

To be entitled to benefits under the Act, a 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. Statutory presumptions may assist claimants in establishing the elements of entitlement if certain conditions are met, but 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).

Invocation of the Section 411(c)(3) Presumption – Complicated Pneumoconiosis

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

[5] We affirm the ALJ's finding that the Miner worked in qualifying coal mine employment for 26.07 years as this determination is unchallenged on appeal. 20 C.F.R. §718.204(b); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 9-10.

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the Miner performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 10.

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more large opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means is a condition that would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304. The ALJ must determine whether the evidence in each category tends to establish the existence of complicated pneumoconiosis and then weigh the evidence together at subsections (a), (b), and (c) before determining whether Claimants have invoked the irrebuttable presumption. *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56 (4th Cir. 2000); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found the x-ray, computed tomography (CT) scan, and medical opinion evidence does not support a finding of complicated pneumoconiosis.[7] 20 C.F.R. §718.304(a), (c); Decision and Order at 12-15.

X-ray Evidence at 20 C.F.R. §718.304(a)

The ALJ considered five readings of two chest x-rays dated September 12, 2019, and October 28, 2020. Decision and Order at 12-14. The physicians who read the x-rays include Drs. Crum, Meyer, and Adcock, who are dually-qualified Board-certified radiologists and B readers, as well as Dr. Forehand, who is a B reader only. Drs. Forehand and Crum read the September 12, 2019 x-ray as positive for complicated pneumoconiosis, Category A large opacity, while Drs. Adcock and Meyer read it as positive for simple pneumoconiosis only.[8] Director's Exhibits 16 at 7; 19 at 2; Claimant's Exhibit 1; Employer's Exhibit 2. Dr. Adcock read the October 28, 2020 x-ray as positive for simple pneumoconiosis only.[9] Employer's Exhibit 1.

[7] Because there is no biopsy or autopsy evidence of record, Claimants cannot establish complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(b).

[8] The ALJ noted Dr. Ranavaya interpreted the September 12, 2019 x-ray for film quality only. Decision and Order at 12; Director's Exhibit 17.

[9] Dr. Fino also read the October 28, 2020 x-ray as positive for simple pneumoconiosis, but he found no evidence of complicated pneumoconiosis. Director's Exhibit 20. The ALJ did not consider this interpretation as neither party designated it as affirmative x-ray evidence in this case. Decision and Order at 13 n.4.

Initially, the ALJ observed Dr. Forehand had "lesser qualifications" because he is only a B reader, but she noted he has been providing complete pulmonary examinations for the Department of Labor (DOL) in excess of twenty years. She therefore gave some, but lesser, weight to his opinion as compared to the opinions of the dually-qualified physicians. *See Melnick v. Consol. Coal Co*., 16 BLR 1-31, 1-33 (1991) (en banc); Decision and Order at 13. With respect to the September 12, 2019 x-ray, the ALJ correctly found Drs. Forehand and Crum identified a large opacity consistent with complicated pneumoconiosis, whereas Drs. Adcock and Meyer did not diagnose the disease. Decision and Order at 13. Because Drs. Crum and Meyer are both dually-qualified radiologists, and Dr. Adcock's reading is "counterbalanced" by Dr. Forehand's,[10] the ALJ found the readings of the September 12, 2019 x-ray in equipoise as to the presence of complicated pneumoconiosis. Because the ALJ permissibly conducted both a qualitative and quantitative assessment of the conflicting interpretations of the September 12, 2019 x-ray, and her determination is supported by substantial evidence, we affirm her finding that this x-ray is insufficient to establish the presence of complicated pneumoconiosis. 20 C.F.R. §718.304(a); *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 279-81 (1994); *see also Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); Decision and Order at 13.

The ALJ correctly found Dr. Adcock read the October 28, 2020 x-ray as positive for simple pneumoconiosis only and therefore this x-ray does not support a finding of complicated pneumoconiosis. Decision and Order at 13. Having found the readings of neither the September 12, 2019 x-ray nor the October 28, 2020 x-ray support a finding of complicated pneumoconiosis, the ALJ permissibly found the preponderance of the x-ray evidence does not support a finding of the disease. 20 C.F.R. §718.304(a); *Adkins*, 958 F.2d at 52-53; Decision and Order at 13. As it is rational and supported by substantial evidence, we affirm the ALJ's determination that the x-ray evidence does not establish complicated pneumoconiosis.

Medical evidence under 20 C.F.R. §718.304(c)

[10] The ALJ considered the specific findings of each physician who read the September 12, 2019 x-ray; she noted Drs. Forehand, Crum, and Meyer identified opacities in all six lung zones, whereas Dr. Adcock identified opacities in the middle lung zone only. Decision and Order at 13. In assessing the profusion levels that the physicians found, she noted Drs. Forehand, Crum, and Meyer each identified a 2/1 level, while Dr. Adcock observed a level of 1/1. *Id.* The ALJ found Dr. Adcock's x-ray reading as to the identification of zones and profusion levels was inconsistent with the readings of the other physicians and therefore accorded less weight to his reading. *Id*.

CT scans

The ALJ considered Dr. Ramakrishnan's reading of the only CT scan of record, dated April 16, 2019. Decision and Order at 14. Dr. Ramakrishnan, whose radiological qualifications are not in the record, interpreted this CT scan as showing simple pneumoconiosis and a 4.5 centimeter ascending thoracic aortic aneurysm, but he did not identify any abnormalities consistent with a finding of complicated pneumoconiosis. Claimant's Exhibit 2. As the ALJ properly found the CT scan evidence does not support a finding of complicated pneumoconiosis, we affirm her determination. *See Adkins*, 958 F.2d at 52; Decision and Order at 14.

Medical Opinions

The ALJ considered the opinions of Drs. Forehand and Fino. Dr. Forehand diagnosed complicated pneumoconiosis, whereas Dr. Fino did not. Director's Exhibits 16, 20; Employer's Exhibit 3.

Dr. Forehand diagnosed complicated pneumoconiosis because "the appearances of [the Miner's] chest x-ray reveal[ed] a fibrotic reaction in his lungs." Director's Exhibit 16 at 4. The ALJ correctly observed Dr. Forehand relied on his interpretation of the September 12, 2019 x-ray to diagnose complicated clinical pneumoconiosis, but further accurately found Dr. Forehand provided no additional information as grounds for his opinion. Decision and Order at 14-15; Director's Exhibit 16. Thus, she permissibly discounted Dr. Forehand's opinion that the Miner had complicated pneumoconiosis because she found the physician's conclusion to be little more than a restatement of his positive x-ray reading. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576 (6th Cir. 2000) ("a mere restatement of an x-ray should not count as a reasoned medical judgment"); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993) (medical opinion that purports to be based on clinical findings beyond an x-ray reading may be found to be based solely on the x-ray reading); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405, 1-406-07 (1985); Decision and Order at 14-15.

As the ALJ properly found the preponderance of the medical opinion evidence does not support a finding of complicated pneumoconiosis, we affirm her determination. *See Adkins*, 958 F.2d at 52; Decision and Order at 14-15. As the record does not contain any other evidence relevant to the presence of complicated pneumoconiosis, progressive massive fibrosis, or massive lesions, we affirm the ALJ's finding that Claimants failed to establish the existence of complicated pneumoconiosis. 20 C.F.R. §718.304(a)-(c); *see Cox*, 602 F.3d at 283; *Scarbro*, 220 F.3d at 256; *Melnick*, 16 BLR at 1-33-34. Thus, we affirm the ALJ's finding that Claimants did not invoke the irrebuttable presumption at Section 411(c)(3).

Invocation of the Section 411(c)(4) Presumption - Total Disability

Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. *See* 20 C.F.R. §718.305. A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

The ALJ determined the pulmonary function studies, arterial blood gas studies, medical opinions, and the Miner's treatment records do not support a finding of total disability. Decision and Order at 15-21.

Pulmonary Function Studies

The record contains two pulmonary function studies, dated September 12, 2019, and October 28, 2020.[11] Director's Exhibits 16, 20. The ALJ accurately noted these two tests produced non-qualifying results,[12] and she thus found the pulmonary function study evidence does not establish total respiratory disability. Decision and Order at 17. Because none of the pulmonary function studies yielded qualifying values, we affirm the ALJ's determination that they do not support a finding of total disability. 20 C.F.R.

[11] The ALJ resolved the discrepancy in the Miner's height recorded on the pulmonary function studies, finding the preponderance of the evidence shows Claimant's height is 64.5 inches. She therefore applied the closest greater table height of 64.6 inches to assess whether the studies qualify for total disability. *See Carpenter v. GMS Mine & Repair Maint. Inc.*, 26 BLR 1-33, 1-38-39 (2023); Decision and Order at 16-17.

[12] A "qualifying" pulmonary function study yields values equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" pulmonary function study yields values in excess of those values. 20 C.F.R. §718.204(b)(2)(i).

§718.204(b)(2)(i); *see Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); *Winchester v. Director, OWCP*, 9 BLR 1-177 (1986); Decision and Order at 17.

Arterial Blood Gas Studies

The ALJ next accurately noted the two arterial blood gas studies of record, dated September 12, 2019, and October 28, 2020, produced non-qualifying values.[13] Director's Exhibits 16, 20. Thus we affirm her determination that the arterial blood gas study evidence does not support a total disability finding. 20 C.F.R. §718.204(b)(2)(ii); *see Tucker v. Director, OWCP*, 10 BLR 1-35 (1987); Decision and Order at 17-18.

Cor Pulmonale

The ALJ accurately noted there is no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 16. We therefore affirm her finding that the evidence does not support total disability under this subsection. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 16.

Medical Opinions

The ALJ considered the medical opinions of Drs. Forehand and Fino. 20 C.F.R. §718.204(b)(2)(iv). Dr. Forehand opined the Miner was totally disabled, while Dr. Fino concluded he was not. Director's Exhibits 16, 20; Employer's Exhibit 3.

Dr. Forehand opined the Miner had a significant respiratory impairment that would preclude him from performing his last coal mine work. Director's Exhibit 16 at 4. Specifically, he opined the Miner "could not return to his last coal mining job[] because additional exposure to coal mine dust of any extent would further injure already severely damaged lungs." *Id.* After he acknowledged the Miner's pulmonary function study and arterial blood gas study do not meet the DOL criteria to establish for total disability, Dr. Forehand relied on his diagnosis of complicated pneumoconiosis, as seen on chest x-ray, and stated this diagnosis constitutes a finding of "statutory" total disability. *Id.* The ALJ permissibly found Dr. Forehand's opinion that the Miner should not return to his coal mine work constituted a recommendation against further coal dust exposure, which is not tantamount to a determination of total respiratory disability. *See Zimmerman v. Director, OWCP*, 871 F.2d 564, 567 (6th Cir. 1989); *see also Migliorini v. Director, OWCP*, 898 F.2d 1292, 1296-97 (7th Cir. 1990), *cert. denied*, 498 U.S. 958 (1990); Decision and Order

[13] A "qualifying" blood gas study yields values equal to or less than the applicable table values listed in Appendix C of 20 C.F.R. Part 718. A "non-qualifying" blood gas study yields values in excess of those values. 20 C.F.R. §718.204(b)(2)(ii).

at 19. Moreover, the ALJ permissibly discounted Dr. Forehand's total disability assessment because it was based solely on the September 12, 2019 x-ray interpretation of complicated pneumoconiosis, which was inconsistent with the ALJ's finding that "the overall weight of the evidence in this case" is insufficient to establish the existence of the disease. *See Furgerson v. Jericol Mining Inc.*, 22 BLR 1-216, 1-226 (2002) (en banc) (reliability of a physician's opinion may be "called into question" when the diagnostic tests upon which the physician based his diagnosis have been undermined); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984); Decision and Order at 19. Therefore, the ALJ permissibly accorded little weight to Dr. Forehand's opinion as inadequately documented and not reasoned. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998) (ALJ must consider the quality of a physician's reasoning); *see also Piney Mountain Coal Co. v. Mays*, 176 F.3d 753 (4th Cir. 1999); *Lane v. Union Carbide Corp*., 105 F.3d 166 (4th Cir. 1977); Decision and Order at 19. As the ALJ permissibly discounted Dr. Forehand's opinion, the only medical opinion of record that could support a finding of total disability, we affirm her finding that the medical opinion evidence does not support a finding of total disability. *See Lane*, 105 F.3d at 171; Decision and Order at 19-20.

The Miner's Treatment Records

The ALJ accurately noted the Miner's treatment records contain a report from Dr. Harris which did not contain an opinion on whether the Miner was disabled. Decision and Order at 20-21; Claimant's Exhibit 3. Dr. Harris stated that because the Miner's pulmonary function studies were not available for him to review, he was "not able to fully characterize [the Miner's] lung disease." Claimant's Exhibit 3 at 3. Thus the ALJ rationally concluded this evidence was insufficient to establish total respiratory or pulmonary disability. *See Hicks*, 138 F.3d at 534; *Marcum v. Director, OWCP*, 11 BLR 1-23 (1987); Decision and Order at 20-21.

It is the ALJ's prerogative to draw inferences from the evidence and determine the weight to accord medical opinions. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319 (4th Cir. 2013); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989) (Board is not empowered to reweigh the evidence). As the ALJ's credibility determinations are rational and supported by substantial evidence,[14] we affirm her finding

[14] We need not address the ALJ's findings regarding Dr. Fino's opinion that the Miner did not have a totally disabling respiratory impairment because his opinion does not assist Claimants in establishing the Miner was totally disabled. Decision and Order at 19-20; Director's Exhibit 20; Employer's Exhibit 3.

that the medical opinion evidence does not establish total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 18-21.

We also affirm, as supported by substantial evidence, the ALJ's finding that the weight of the evidence, like and unlike, fails to establish total respiratory or pulmonary disability. *See Rafferty*, 9 BLR at 1-232; *Fields*, 10 BLR at 1-21; Decision and Order at 23. As Claimants did not prove the Miner was totally disabled, an essential element of entitlement under both Section 411(c)(4) of the Act and 20 C.F.R. Part 718, an award of benefits is precluded. *See Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27.

Accordingly, the ALJ's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge