U.S. Department of Labor

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

BRB Nos. 24-0378 BLA
and 24-0379 BLA

MARJORIE SPEARS
(o/b/o and Widow of SHAWN R. SPEARS)

Claimant-Respondent

v.

PINNACLE MINING COMPANY, LLC

and

ROCKWOOD CASUALTY INSURANCE COMPANY

Employer/Carrier-
Petitioners

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 04/11/2025

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Lystra A. Harris, Administrative Law Judge, United States Department of Labor.

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

T. Jonathan Cook (Cipriani & Werner, PC), Charleston, West Virginia, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Lystra A. Harris's Decision and Order Awarding Benefits (2021-BLA-06031 and 2022-BLA-05230) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's subsequent claim filed on June 10, 2019,[1] and a survivor's claim filed on May 24, 2021.[2]

The ALJ accepted the parties' stipulation that the Miner had at least thirty-eight years of underground coal mine employment. She further found that Claimant established the Miner had a totally disabling respiratory or pulmonary impairment at the time of his death and thus established a change in an applicable condition of entitlement at 20 C.F.R. §725.309(c)[3] and invoked the presumption that he was totally disabled due to pneumoconiosis at Section 411(c)(4) of the Act.[4] Additionally, the ALJ determined that

[1] The Miner previously filed a claim on April 4, 2017, which the district director denied for failure to establish any element of entitlement. Miner's Claim (MC) Director's Exhibit 1.

[2] Claimant is the widow of the Miner, who died on March 23, 2021. Survivor's Claim (SC) Director's Exhibit 9. Claimant is pursuing the miner's claim on her husband's behalf and her own survivor's claim. The Benefits Review Board consolidates these appeals for purposes of decision only.

[3] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co*., 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the Miner failed to establish any element of entitlement in his prior claim, Claimant had to submit new evidence establishing at least one element to obtain a review of the Miner's subsequent claim on the merits. *See White*, 23 BLR at 1-3; MC Director's Exhibit 2.

[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

Employer failed to rebut the presumption and therefore awarded benefits in the miner's claim. In the survivor's claim, the ALJ found that Claimant is derivatively entitled to benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).[5]

Employer appeals, arguing the ALJ erred in finding the Miner was totally disabled and therefore that Claimant invoked the Section 411(c)(4) presumption. It also asserts Claimant did not meet her burden of establishing that the Miner had pneumoconiosis. Finally, Employer asserts the ALJ incorrectly identified the onset date for the commencement of benefits.[6] Claimant responds in support of the award. The Acting Director, Office of Workers' Compensation Programs (the Director), declined to file a substantive response.

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[7] 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, 361-62 (1965).

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pulmonary impairment at the time of his death. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[5] Under Section 422(*l*) of the Act, a survivor of a miner who was eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[6] Employer contends the ALJ erroneously identified April 2017 as the commencement date based on her mistaken belief that it was the month the current claim was filed. Employer's Brief at 20. On December 18, 2024, the ALJ issued an Errata Order Correcting Onset Date (Errata Order) and clarified that benefits are awarded effective June 2019, the month the Miner filed the current claim. Errata Order at 2. Thus, this issue is now moot.

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the Miner performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director's Exhibit 4.

Miner's Claim

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

To invoke the Section 411(c)(4) presumption, a claimant must establish the miner had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work and comparable gainful work.[8] *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,[9] 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 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). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

Employer contends the ALJ erred in finding Claimant established total disability based on the arterial blood gas studies, medical opinions, and the evidence as a whole.[10] Decision and Order at 7, 14; *see* 20 C.F.R. §718.204(b)(2)(ii), (iv). We disagree.

Arterial Blood Gas Studies

The ALJ considered two blood gas studies conducted on June 25, 2019, and December 9, 2020. Decision and Order at 7; MC Director's Exhibits 16, 25. The June 25, 2019 study was non-qualifying at rest but qualifying with exercise, while the December 9,

[8] We affirm, as unchallenged on appeal, the ALJ's findings that the Miner had at least thirty-eight years of underground coal mine employment and that his last coal mining job as a surface utility worker required heavy manual labor. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

[9] A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[10] The ALJ found Claimant did not establish total disability based on the pulmonary function studies and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii); Decision and Order at 5 n.3, 6.

2020 study was non-qualifying and performed only at rest. MC Director's Exhibits 16, 25. The ALJ gave additional weight to the exercise blood gas study and concluded the blood gas study evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 7.

We reject Employer's argument that the ALJ should have given more weight to the Miner's most recent study because it "showed notable improvement . . . likely due to the deceased miner's recovery from having part of his lung removed."[11] Employer's Brief at 18. While an ALJ *may* give increased weight to more recent studies under certain circumstances, she is not required to do so. *See Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992); *Thorn v. Itmann Coal Co.*, 3 F.3d 713, 719 (4th Cir. 1993); *see also Kincaid v. Island Creek Coal Co.*, 26 BLR 1-43, 1-49 (2023); *Smith v. Kelly's Creek Res.*, 26 BLR 1-15, 1-28 (2023); Employer's Brief at 18. In this case, the ALJ permissibly found the qualifying June 25, 2019 exercise study to be most indicative of Claimant's ability to perform his usual coal mine employment, which required heavy labor. *Coen v. Director, OWCP*, 7 BLR 1-30, 1-31-32 (1984) (exercise blood gas study may be given more weight than resting blood gas studies); Decision and Order at 7.

We therefore affirm as supported by substantial evidence the ALJ's determination that the blood gas studies support a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 7.

Medical Opinions

The ALJ considered the medical opinions of Drs. Habre, Green, and Zaldivar regarding whether the Miner was totally disabled. Decision and Order at 7. As the ALJ noted, all three physicians opined that the Miner had a pulmonary or respiratory impairment that prevented him from performing his usual coal mine work. Decision and

[11] We also reject Employer's contention that Dr. Habre's "abnormal" June 25, 2019 blood gas studies "were impacted by the presence of the sarcoma and were performed too close to the [July 26, 2019] surgery to represent an accurate indicator of the [Miner's] impairment." Employer's Brief at 19. Appendix C to 20 C.F.R. Part 718 provides that arterial blood gas studies should "not be performed during or soon after an acute respiratory or cardiac illness," and 20 C.F.R. §718.105(d) provides that arterial blood gas studies performed during a hospitalization that ended in the miner's death must be "accompanied by a physician's report that the test results were produced by a chronic respiratory or pulmonary condition." However, neither Employer nor any of the physicians have alleged either situation exists in the current case, and no one has specifically questioned the validity of the June 25, 2019 study.

Order at 8-13; MC Director's Exhibit 16 at 3, 25 at 4; Claimant's Exhibit 3 at 9. The ALJ gave full probative weight to Drs. Habre's and Green's[12] opinions regarding total disability. Decision and Order at 13. On the other hand, the ALJ discredited Dr. Zaldivar's opinion on total disability because he acknowledged a totally disabling pulmonary impairment but attributed the Miner's inability to work to his cancer, which the ALJ found was relevant to the cause of the Miner's total disability, not its existence.[13] *Id.* Consequently, the ALJ found the medical opinion evidence established total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id*.

Employer generally asserts the ALJ erred in discrediting Dr. Zaldivar's opinion on total disability but fails to explain its allegation with any specificity.[14] *See Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); Employer's Brief at 19. Moreover, Employer does not dispute that Dr. Zaldivar specifically opined Claimant is totally disabled from a pulmonary standpoint. *See Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53, 1-55 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); MC Director's Exhibit 25 at 4. To the extent it is sufficiently briefed, we reject Employer's argument that the ALJ erred in discrediting Dr. Zaldivar's opinion because the physician focused on causation in discussing Claimant's respiratory disability. Employer's Brief at 19. The relevant inquiry at 20 C.F.R. §718.204(b) is whether the Miner had a totally disabling respiratory or pulmonary impairment; the underlying etiology of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption. *See Island Creek Coal Co. v. Blankenship*, 123 F.4th 684, 691-92 (4th Cir. 2024); *Bosco v. Twin Pines*

[12] Employer asserts Drs. Habre's and Green's opinions are not credible because they relied on the June 25, 2019 blood gas study, which Employer contends is not an accurate representation of the Miner's impairment. Employer's Brief at 16-19. However, having rejected Employer's contention regarding the validity of the June 2019 blood gas study, this argument is moot. As Employer does not otherwise challenge the ALJ's finding that Drs. Habre's and Green's opinions are well reasoned and documented with respect to total disability irrespective of causation, we affirm that finding. *Skrack*, 6 BLR at 1-711; Decision and Order at 12-13.

[13] The ALJ indicated that even if he gave weight to Dr. Zaldivar's opinion on total disability, "it would weigh in favor of Claimant's burden to establish that the Miner was totally disabled." Decision and Order at 14 n.7; MC Director's Exhibit 25 at 4.

[14] Employer argued the Miner's "total disability and subsequent death was due to the rapid progression of sarcoma from the heart to the lung, to the spinal cord, to the forehead, and to the brain." Employer's Brief at 19.

Coal Co., 892 F.3d 1473, 1480-81 (10th Cir. 1989). Consequently, we affirm the ALJ's finding that the medical opinion evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 14.

We further affirm the ALJ's finding that Claimant established total disability based on the evidence as a whole and established an applicable change in condition. 20 C.F.R. §§718.204(b)(2), 725.309(c); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 14-15. Thus, we affirm his finding that Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305; Decision and Order at 15.

Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[15] or that "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201."[16] 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer failed to rebut the presumption by either method.[17]

[15] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

[16] As we have affirmed the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption, we reject Employer's assertion that Claimant bore the burden of proving the existence of pneumoconiosis or total disability causation. *See* Employer's Brief at 14-15, 18-20.

[17] We need not address Employer's arguments that Drs. Habre's and Green's opinions are "flawed, unreasoned, and unreliable," as they both diagnosed legal pneumoconiosis and a totally disabling respiratory impairment due to legal pneumoconiosis and therefore cannot aid Employer in establishing rebuttal at 20 C.F.R. §718.305(d)(1)(i). *See* Employer's Brief at 16-18; MC Director's Exhibit 16 at 2-3; Claimant's Exhibit 3 at 4-10.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish the Miner did not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relied on Dr. Zaldivar's opinion to disprove legal pneumoconiosis. Dr. Zaldivar opined that the Miner had a restriction of forced vital capacity on pulmonary function testing with a reduction of the diffusion capacity and no airway obstruction. MC Director's Exhibit 25 at 3-4. He further opined that any abnormalities on the blood gas studies are strictly due to the Miner's cancer, for which he had surgery. *Id*. at 4. The ALJ found his opinion not well reasoned and entitled to little weight, and therefore insufficient to satisfy Employer's burden to establish that Claimant does not have legal pneumoconiosis. Decision and Order at 21.

To the extent that it is sufficiently briefed,[18] we disagree with Employer's argument that the ALJ erred in discrediting Dr. Zaldivar's opinion. Employer's Brief at 16-20. The ALJ permissibly found that Dr. Zaldivar's opinion was based on generalities; specifically, a medical journal article stating that left-sided cardiac tumors cause vascular embolization in the lungs, when there is no evidence of record that the Miner had a pulmonary embolism. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013) (ALJ may find medical opinion unpersuasive if based on statistical generalities rather than specifics of the claimant's case); Decision and Order at 21; MC Director's Exhibit 25; *see* Claimant's Exhibits 1, 2. The ALJ also permissibly found Dr. Zaldivar engaged in speculation when he opined that the Miner's left diaphragm "may not be working well." *See Cochran*, 718 F.3d at 324 (as the trier-of-fact, the ALJ has discretion to assess the credibility of the medical opinions based on the experts' explanations for their diagnoses and assign those opinions appropriate weight); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d

[18] Although acknowledging the 20 C.F.R. §718.305 presumption, Employer asserts that Claimant has not met her burden to establish the elements of entitlement in the miner's and survivor's claims, including the existence of pneumoconiosis. Employer's Brief at 14-15, 18-20. Concerning Dr. Zaldivar's opinion, Employer generally states that it is "[t]he most objective and well-reasoned opinion" and indicates "[a]ny abnormality on diffusion [noted] by Dr. Zaldivar was caused by the removal of 1/3 of the lung and the loss of capillary beds due to the surgery, chemotherapy, and radiation treatment." *Id*. at 18-19. Employer also alleges that "the deceased miner did not cease working due to pneumoconiosis but due to cancer." *Id*. at 20.

305, 316-17 (4th Cir. 2012); *U.S. Steel Mining Co. v. Director, OWCP* [*Jarrell*], 187 F.3d 384, 389 (4th Cir. 1999) (ALJ may not credit a purely speculative opinion); Decision and Order at 21.

Employer's arguments amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989). Because the ALJ permissibly gave little weight to Dr. Zaldivar's opinion, the only opinion supportive of Employer's burden on rebuttal, we affirm her determination that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §718.201(a)(2), (b); Decision and Order at 21. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis.[19] 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established that "no part of the [Miner's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(ii). The ALJ permissibly found Dr. Zaldivar's opinion is entitled to little weight because he did not diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer failed to disprove the disease.[20] *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015). Moreover, Employer does not specifically challenge the ALJ's discrediting of Dr. Zaldivar's opinion aside from generally asserting that the Miner's total disability "was due to the rapid progression of sarcoma . . . . ." Employer's Brief at 18; *see Skrack*, 6 BLR at 1-711. Consequently, we affirm the ALJ's determination that Employer failed to establish no part of the Miner's respiratory disability was caused by pneumoconiosis. 20 C.F.R.

[19] We need not address Employer's contentions relevant to clinical pneumoconiosis, as we have affirmed the ALJ's findings on legal pneumoconiosis and thus Employer is unable to rebut the Section 411(c)(4) presumption by establishing the Miner did not have pneumoconiosis. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1278 (1984); Decision and Order at 21; Employer's Brief at 15-19.

[20] The ALJ erroneously stated that Dr. Zaldivar opined the Miner was not totally disabled. Decision and Order at 22; *see* Director's Exhibit 25. But this error is harmless as the ALJ correctly observed Dr. Zaldivar did not diagnose legal pneumoconiosis, and thus the ALJ gave an alternate and permissible reason for discrediting his opinion. *See Johnson*, 12 BLR at 1-55; *Larioni*, 6 BLR at 1-1278; Decision and Order at 22.

§718.305(d)(1)(ii); Decision and Order at 22-23. We therefore affirm the award of benefits in the miner's claim.

Survivor's Claim

Because we have affirmed the award of benefits in the miner's claim and Employer raises no specific challenge to the award in the survivor's claim beyond the issues raised in the underlying miner's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits pursuant to Section 422(*l*).[21] 30 U.S.C. §932(*l*) (2018); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

[21] As we affirm the ALJ's finding that Claimant is derivatively entitled to survivor's benefits, Employer's arguments regarding whether the Miner's death was caused by pneumoconiosis are moot. 30 U.S.C. §932(*l*) (2018); Decision and Order at 24; Employer's Brief at 14-20.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge