U.S. Department of Labor

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

BRB No. 24-0402 BLA

RONDAL CLIFTON Claimant-Petitioner v. BUCHANAN MINERALS, LLC c/o CORONADO GROUP, LLC and ENCOVA INSURANCE Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 04/30/2025 DECISION and ORDER

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

Rondal Clifton, Oakwood, Virginia.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Denying Benefits (2023-BLA-05591) rendered on a claim[2] filed on December 27, 2021, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant did not establish complicated pneumoconiosis and thus 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 accepted Employer's concession that Claimant has at least forty-four years of underground coal mine employment but found he does not have a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018), or establish entitlement to benefits under 20 C.F.R. Part 718. Consequently, she denied benefits.

On appeal, Claimant generally challenges the ALJ's denial of benefits. Employer and its Carrier respond in support of the denial. The Acting Director, Office of Workers' Compensation Programs, has not filed a response brief.[4]

In an appeal a claimant files without representation, the Benefits Review 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

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

[2] Claimant filed two prior claims but withdrew them. Director's Exhibits 1, 2. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306.

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has 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.

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant has at least forty-four years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law.[5] 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).

To be entitled to benefits under the Act, 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 element precludes an award of benefits. *See 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

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 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, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304. In determining whether a claimant has invoked the irrebuttable presumption, the ALJ must weigh all evidence relevant to the presence or absence of complicated pneumoconiosis. *See 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. Consol. Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found the x-rays, computed tomography (CT) scans, medical opinions, and Claimant's treatment records do not support a finding of complicated pneumoconiosis.[6] 20 C.F.R. §718.304(a), (c); Decision and Order at 7-13. She further found all the relevant

[5] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 30.

[6] Because there is no biopsy or autopsy evidence of record, Claimant cannot establish complicated pneumoconiosis at 20 C.F.R. §718.304(b).

evidence weighed together does not establish the existence of complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 13.

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

The ALJ considered seven interpretations of three x-rays dated August 16, 2021, April 25, 2022,[7] and January 17, 2023. Decision and Order at 7-9. She accurately found all the physicians who interpreted these x-rays are dually qualified as B readers and Board-certified radiologists, with the exception of Drs. Forehand and Gaziano, both of whom are only B readers. *Id.* at 7-8; Director's Exhibits 18-20; Claimant's Exhibits 1-3; Employer's Exhibits 1, 2.

Dr. Alexander read the August 16, 2021 x-ray as positive for complicated pneumoconiosis, Category A opacities, while Dr. Adcock read the x-ray as negative for the disease. Claimant's Exhibit 1; Employer's Exhibit 2. Drs. Forehand, Adcock, and Ramakrishnan read the April 25, 2022 x-ray as negative for complicated pneumoconiosis. Director's Exhibits 18 at 6; 20; Claimant's Exhibit 3. Finally, Drs. Adcock and DePonte read the January 17, 2023 x-ray as negative for complicated pneumoconiosis. Employer's Exhibit 1 at 36; Claimant's Exhibit 2.

The ALJ permissibly found the August 16, 2021 x-ray does not support a finding of complicated pneumoconiosis because an equal number of dually-qualified radiologists read the x-ray as positive and negative for complicated pneumoconiosis, and thus the readings of the x-ray are in equipoise. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994); *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992); Decision and Order at 9. She accurately found the April 25, 2022 and January 17, 2023 x-rays are negative for complicated pneumoconiosis because the negative readings for the disease are unrebutted. Decision and Order at 9.

The ALJ properly conducted both a qualitative and quantitative analysis of the conflicting x-ray readings, taking into consideration the physicians' radiological qualifications. *See Addison*, 831 F.3d at 256-57; *Adkins*, 958 F.2d at 52-53; Decision and Order at 9. Having found two x-rays negative for complicated pneumoconiosis and the readings of one in equipoise, the ALJ permissibly found the x-ray evidence does not support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a); *see Ondecko*, 512 U.S. at 281; *Addison*, 831 F.3d at 256-57; Decision and Order at 9. As it is supported

[7] Dr. Gaziano read the April 25, 2022 x-ray for quality purposes only. Director's Exhibit 19.

by substantial evidence, we affirm the ALJ's finding that the x-ray evidence does not establish complicated pneumoconiosis.

20 C.F.R. §718.304(c) – Other Evidence

The ALJ next considered whether the CT scans, medical opinions, or Claimant's treatment records support a finding of complicated pneumoconiosis. Decision and Order at 9-13.

CT scans

The ALJ considered four interpretations of three CT scans dated November 20, 2018, July 28, 2021, and December 8, 2022. Decision and Order at 10-11. Dr. Adcock opined the November 20, 2018 CT scan shows an 8.5-millimeter subpleural nodule in the anterior segment of the left upper lobe but no large opacities of coal workers' pneumoconiosis. Employer's Exhibit 6. Dr. Adcock opined both the July 28, 2021, and December 8, 2022 CT scans show two densely calcified granulomata in each of the upper lobes but no large opacities of coal workers' pneumoconiosis. Employer's Exhibits 7, 8. Dr. Ramakrishnan opined the July 28, 2021 CT scan shows stable "small calcified and noncalcified ground-glass nodules" in the left upper lobe and right upper lobe but no "significant new or suspicious parenchymal lung nodules." Claimant's Exhibit 4. Because it is supported by substantial evidence, we affirm the ALJ's finding that the CT scan evidence does not support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 11.

Medical Opinions and Claimant's Treatment Records

The ALJ next considered the medical opinions of Drs. Forehand, Sargent, Adcock, and Jawad. Decision and Order at 12-13. Drs. Forehand and Jawad did not render an opinion regarding the presence or absence of complicated pneumoconiosis. Director's Exhibit 18 at 4; Claimant's Exhibit 6. Dr. Sargent opined Claimant does not have pneumoconiosis based on the January 17, 2023 x-ray. Employer's Exhibits 1 at 2; 3. Dr. Adcock opined Claimant does not have pneumoconiosis because the CT scans do not show any small or large opacities of coal workers' pneumoconiosis. Employer's Exhibits 4, 5. We therefore affirm, as supported by substantial evidence, the ALJ's finding that the medical opinions do not support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 12-13.

The ALJ also considered Claimant's treatment records from May 11, 2017, through September 9, 2022, and accurately found the treatment records do not address whether he has complicated pneumoconiosis. Decision and Order at 12; Employer's Exhibits 9-13; Claimant's Exhibit 5. Thus, we affirm the ALJ's finding that Claimant's treatment records

do not support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 12.

As it is supported by substantial evidence, we affirm the ALJ's finding that Claimant did not establish complicated pneumoconiosis based on other evidence at 20 C.F.R. §718.304(c). Decision and Order at 13. We also affirm the ALJ's finding, based on her consideration of all the relevant evidence, that Claimant failed to establish complicated pneumoconiosis at 20 C.F.R. §718.304. Therefore, we affirm the ALJ's finding that Claimant did not invoke the irrebuttable presumption at Section 411(c)(3).

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

To invoke the Section 411(c)(4) presumption, a claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work or comparable gainful employment. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function or arterial blood gas studies,[8] 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, and medical opinions do not support a finding of total disability.[9] Decision and Order at 9-13.

[8] A "qualifying" pulmonary function study or arterial blood gas study yields results equal to or less than the applicable table values contained in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[9] The ALJ accurately found there is no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 14. Thus, we affirm her finding that the evidence does not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 14.

Pulmonary Function Studies

The ALJ considered two pulmonary function studies Claimant performed on April 25, 2022, and January 17, 2023, and two pulmonary function studies included in Claimant's treatment records that he performed on August 16, 2021, and September 9, 2022. Decision and Order at 12, 15; Director's Exhibit 18 at 7; Employer's Exhibits 1 at 8; 9; 10. She accurately found all of the studies produced non-qualifying results. *Id*. Thus, we affirm her finding that the pulmonary function study evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 15.

Arterial Blood Gas Studies

The ALJ also considered two arterial blood gas studies Claimant performed on April 25, 2022, and January 17, 2023, and accurately found both studies produced non-qualifying results. Decision and Order at 16; Director's Exhibit 18 at 13; Employer's Exhibit 1 at 22. Thus, we affirm her finding that the arterial blood gas study evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 16.

Medical Opinions

Before weighing the medical opinions, the ALJ determined the exertional requirements of Claimant's usual coal mine employment. Decision and Order at 5. A miner's usual coal mine employment is the most recent job he performed regularly and over a substantial period of time. *See Pifer* v. *Florence Mining* Co., 8 BLR 1-153, 1-155 (1985); *Shortridge v. Beatrice Pocahontas Coal Co*., 4 BLR 1-534, 1-539 (1982).

The ALJ noted Claimant stated on his Description of Coal Mine Work form that his last coal mine job as a face man required him to lift "up to 100" pounds "8 to 10" times per day. Decision and Order at 5 (citing Director's Exhibit 7). She also noted Claimant testified his job as a face man required him to operate a scoop or coal hauler. *Id.* (citing Hearing Tr. at 22-23). In addition, she noted Claimant testified he subsequently worked outside the mine because it was "hard" for him to "get around" after "two hip surgeries" and that his job as an outside beltman required him to "shovel coal" and lift fifty-pound bags of rock dust. *Id.* (citing Hearing Tr. at 21). Further, she noted Dr. Forehand reported Claimant's last coal mine job as a face man required heavy exertion. *Id.* (citing Director's Exhibit 18 at 1). As substantial evidence supports the ALJ's finding that Claimant's usual coal mine work as a face man required heavy exertion, we affirm it. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998) (substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion") (citations omitted); *see also Eagle v. Armco Inc*., 943 F.2d 509, 511-12 & n.4 (4th Cir. 1991) (whether a miner can perform his usual coal mine work depends on whether he can perform the "most arduous" part of that work); *Heavilin v. Consolidation Coal Co.*, 6 BLR 1-1209,

1-1213 (1984) (determination of nature of usual coal mine work and its physical requirements is for the fact-finder); Decision and Order at 5.

The ALJ next considered the medical opinions of Drs. Forehand, Sargent, and Jawad.[10] Decision and Order at 16-19. Dr. Forehand opined Claimant has no measurable respiratory impairment based on the pulmonary function and arterial blood gas studies he administered. Director's Exhibit 18 at 4. Similarly, Dr. Sargent opined Claimant has "no significant respiratory impairment" and thus "has the respiratory capacity to do any job required in the mining of coal." Employer's Exhibit 1. In contrast, Dr. Jawad opined Claimant is totally disabled because he "suffers from dyspnea." Claimant's Exhibit 6 at 2.

The ALJ permissibly discredited Dr. Jawad's opinion because he did not demonstrate an understanding of the exertional requirements of Claimant's usual coal mine employment,[11] nor did he adequately explain why he opined Claimant is totally disabled. *See Hicks*, 138 F.3d at 533; Decision and Order at 18. Because the ALJ discredited the only medical opinion supportive of Claimant's burden,[12] we affirm her finding that the

[10] The ALJ acknowledged that Dr. Adcock did not render an opinion on total disability. Decision and Order at 19; Employer's Exhibits 4, 5. She also considered Claimant's treatment records. Decision and Order at 11-12, 19-20. The treatment records report shortness of breath and chronic cough but do not opine Claimant has a pulmonary impairment. Employer's Exhibits 9-13; Claimant's Exhibit 5. The ALJ correctly determined the treatment records "do not provide any assessment of Claimant's ability to return to his usual coal mine employment or include the results of medical testing that meet the regulatory standard for total disability." Decision and Order at 19. Further, she found that while the treatment records document a "mild impairment," they "do not support [a finding] that Claimant is totally disabled" from a pulmonary or respiratory impairment "under the [r]egulations." *Id*. at 20. Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant's treatment records "do not provide sufficient documentation for [her] to conclude that Claimant is totally disabled from a pulmonary capacity." *Id*. at 19.

[11] Dr. Jawad did not set forth any physical limitations that Claimant could not perform given his dyspnea, nor did he indicate the degree of the dyspnea. Claimant's Exhibit 6 at 2.

[12] The ALJ found the opinions of Drs. Forehand and Sargent reasoned and documented. Decision and Order at 19. Because neither doctor's opinion supports a finding of total disability, and the ALJ permissibly discredited the only medical opinion

medical opinions do not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987); *Gee v. W.G. Moore & Sons*, 9 BLR 1-4, 1-6 (1986) (en banc); Decision and Order at 20.

We also affirm the ALJ's finding that the evidence as a whole does not establish total disability and thus Claimant did not invoke the Section 411(c)(4) presumption. *See Shedlock*, 9 BLR at 1-198; Decision and Order at 20. Because Claimant did not establish total disability, a requisite element of entitlement, we affirm the denial of benefits. *Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27.

supportive of Claimant's burden, we need not address the ALJ's weighing of their opinions. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge