



BRB No. 25-0126 BLA

ROGER E. HALE )  
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 Claimant-Respondent )  
 )  
 v. )  
 )  
 KOCH CARBON RAVEN DIVISION VA )  
 )  
 Employer-Petitioner )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest )

**NOT-PUBLISHED**

DATE ISSUED: 04/17/2026

DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Dierdra M. Howard,  
Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Austin), Norton,  
Virginia, for Claimant.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Dierdra M. Howard's Decision  
and Order Granting Benefits (2022-BLA-05854) rendered on a subsequent claim filed on

September 28, 2020,<sup>1</sup> pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ found Claimant established 16.12 years of underground and surface coal mine employment and that all of his surface employment occurred in conditions substantially similar to those in underground mines. She further found Claimant has a totally disabling respiratory or pulmonary impairment and that he therefore established a change in an applicable condition of entitlement and invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).<sup>2</sup> The ALJ also found Employer failed to rebut the presumption and awarded benefits.

Although Employer does not challenge the ALJ's finding that all of Claimant's coal mine work is qualifying, it argues on appeal that the ALJ erred in finding Claimant established at least fifteen years of qualifying coal mine employment, thereby invoking the Section 411(c)(4) presumption.<sup>3</sup> Employer further argues the ALJ erred in finding it failed

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<sup>1</sup> Claimant filed two prior claims for benefits. On October 29, 2008, the district director denied Claimant's first claim for benefits, filed on March 13, 2008, for failing to demonstrate any element of entitlement. Director's Exhibit 1. Claimant filed his second claim in 2018 which he subsequently withdrew. Director's Exhibit 2. A withdrawn claim is "considered not to have been filed." 20 C.F.R. §725.306(b).

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 she 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); *see 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 district director denied Claimant's prior claim for failure to establish any element of entitlement, he had to submit new evidence establishing at least one element of entitlement to obtain review of the merits of his current claim. *White*, 23 BLR at 1-3; Director's Exhibit 1.

<sup>2</sup> 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); 20 C.F.R. §718.305.

<sup>3</sup> We affirm, as unchallenged on appeal, the ALJ's findings that all of Claimant's surface coal mine employment was qualifying and that Claimant established a totally disabling respiratory or pulmonary impairment and a change in an applicable condition of

to rebut the presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file a response brief.

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.<sup>4</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

### **Invocation of the Section 411(c)(4) Presumption - Length of Coal Mine Employment**

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in "underground coal mines, or in coal mines other than underground mines in conditions substantially similar to those in underground mines, or in any combination thereof[.]" 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden of establishing the number of years he worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985). The Board will uphold an ALJ's length of employment determination that is based on a reasonable method of calculation, supported by substantial evidence, and in accordance with law. 20 C.F.R. §725.101(a)(32)(ii); *see Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011) (ALJ "may apply any reasonable method of calculation"); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986) (same). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, recently held that a miner need only show he or she "worked 125 working days within a calendar year (or partial periods totaling one year) to establish a year of employment." *Baldwin v. Director, OWCP*, 170 F.4th 273, 282 (4th Cir. 2026).

In considering the length of Claimant's coal mine employment, the ALJ considered Claimant's application for benefits, Social Security Earnings Statement (SSES), and hearing testimony. Director's Exhibits 3, 5, 7; Hearing Transcript at 10, 15. She considered Claimant's stints with Epling Manufacturing Company (Epling Manufacturing) between 1976 and 1978, Gulf & Western Industries & Raven Smokeless Coal Company (GWR) in 1978, and Employer between 1980 and 1994 to be coal mine employment, summarily stating that the documentary evidence and Claimant's testimony established

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entitlement. 20 C.F.R. §725.309(c); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 9, 19-31.

<sup>4</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 30.

“largely uninterrupted coal mine employment” for these years.<sup>5</sup> Decision and Order at 6-7. She then divided the yearly earnings reported in Claimant’s SSES record by the average daily earnings from Exhibit 610 of the *Office of Workers’ Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual* and credited Claimant with a full year of coal mine employment for those years that met or exceeded 125 working days. *Id.* at 7.<sup>6</sup> For each year in which Claimant’s earnings fell short, she credited him with a fractional year, using 125 days as a divisor. *Id.* Applying this formula, the ALJ credited Claimant with 16.12 years of coal mine employment.<sup>7</sup> *Id.*

Employer contends the ALJ erred in failing to address its argument that Claimant’s employment with it as a car dropper, which Claimant stated amounts to twenty-five percent of his employment with Employer, was not work as a miner and therefore should not be included in her length of coal mine employment calculation. Employer’s Brief at 12-15. It also contends the ALJ erred in considering Claimant’s time with Epling Manufacturing to be coal mine employment because his application for benefits does not allege this work qualified and Claimant further testified the work involved manufacturing new machinery and did not expose him to coal dust. *Id.* at 7 (citing Employer’s Exhibit 12 at 41-42). Further, Employer contends the ALJ erred in crediting Claimant with a year of coal mine employment based on a showing of 125 working days without regard to a 365-day

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<sup>5</sup> Critically, the ALJ did not explicitly identify Claimant’s employment with these three employers who reported earnings and explain a finding that the employment constituted coal mine employment. Rather, she included all of Claimant’s earnings with these employers in her length of coal mine employment calculation. Decision and Order at 7. As we will discuss, the ALJ’s oversight in not identifying Claimant’s employment with these three employers and finding that it constituted coal mine employment was problematic because it resulted in her including employment that Claimant testified was not coal mine employment.

<sup>6</sup> If an ALJ cannot ascertain the beginning and ending dates of a miner’s coal mine employment, or the miner’s employment lasted less than a calendar year, the ALJ may divide the miner’s yearly income from work as a miner by the coal mine industry’s average daily earnings for that year as reported by the Bureau of Labor Statistics (BLS). 20 C.F.R. §725.101(a)(32)(iii). Exhibit 610 of the *Office of Workers’ Compensation Programs Coal Mine (Black Lung) Procedure Manual* displays average daily earnings for coal miners by year, along with yearly earnings for 125 days of work, as reported by the BLS.

<sup>7</sup> Specifically, the ALJ credited Claimant with 1.17 years of coal mine employment with Epling Manufacturing from 1976 to 1978; 0.26 of a year with GWR in 1978; and 14.69 years with Koch Raven from 1980 to 1994 (1.17 + 0.26 + 14.69 = 16.12). Decision and Order at 7; Director’s Exhibit 7.

employment relationship and the beginning and ending dates of Claimant's discrete periods of coal mine employment. *Id.* at 8-12. We address each of Employer's contentions of error in turn.

#### *A. Coal Mine Employment Under the Act*

We disagree with Employer that the ALJ erred in failing to address its argument that Claimant's car dropper work with Employer – approximately twenty-five percent of his employment with it – does not constitute coal mine employment.

First, at the hearing, Employer expressly stipulated to fourteen years of coal mine employment. Hearing Transcript at 8. A stipulation freely entered into is binding and relieves the opposing party of the burden of proving the stipulated fact. *See Richardson v. Director, OWCP*, 94 F.3d 164, 167 (4th Cir. 1996); *Consolidation Coal Co. v. Director, OWCP [Burris]*, 732 F.3d 723, 730 (7th Cir. 2013). Employer's argument that twenty-five percent of Claimant's work with Employer does not qualify as coal mine employment, if accepted, would reduce Claimant's length of coal mine employment with Employer below fourteen years. Thus, Employer's contention is inconsistent with its hearing stipulation.<sup>8</sup> Because Employer did not move to withdraw or modify its stipulation before the ALJ, it remained binding. *See Richardson*, 94 F.3d at 167; *Burris*, 732 F.3d at 730. The ALJ was not required to revisit or reconcile an argument that contradicted a stipulated fact.

Second, even if Employer were not bound by its stipulation, the law would foreclose its argument. Contrary to Employer's assertion, the issue whether an employee's work is coal preparation or commercial distribution or transportation does not turn on whether the employee handled raw or processed coal, or handled sold or unsold coal. Rather, the inquiry turns on whether the employee handled coal before or after it had left the processing

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<sup>8</sup> Employer stipulated to fourteen years of coal mine employment at the hearing and identified the exact dates of his employment with it as April 16, 1980 to November 4, 1994 – a period that spans 14.56 calendar years. Hearing Transcript at 8; Director's Exhibit 29 at 4. Nonetheless, in its brief before the ALJ, Employer argued “[a]lthough [Employer] has stipulated to 14 years of employment, the evidence actually proves closer to 10.5 years of employment.” Employer's Closing Brief at 7. Employer explained that Claimant has less than one year of employment with GWR and, although Claimant may have between 13.58 and 14.61 years of coal mine employment with Employer, Claimant should be credited with only 10.09 years of employment with Employer given his testimony that twenty-five percent of his employment with Employer was working as a car dropper. *Id.* at 8-12. It asserts this cannot be “coal preparation” work because the coal that Claimant handled “had already been processed through the tipple and sold to clients” and therefore must be deemed to have already entered the stream of commerce. *Id.* at 11.

plant and entered the stream of commerce. *See Norfolk & Western Ry. Co. v. Director, OWCP [Shrader]*, 5 F.3d 777, 780 (4th Cir. 1993) (process of loading processed coal is part of coal preparation); *Norfolk & Western Ry. Co. v. Roberson*, 918 F.2d 1144, 1150 (4th Cir. 1990) (railroad employee would not meet the function test *after* the coal is prepared and loaded into railcars); *Eplion v. Director, OWCP*, 794 F.2d 935, 937 (4th Cir. 1986) (once coal leaves the preparation facility, it has been extracted from the ground and prepared for use; the only thing lacking was its delivery to the customer). Although Claimant testified the coal he handled had been processed and sold under a contract, Hearing Transcript at 32-33, he further testified that his car dropper duties occurred at the preparation plant and involved loading the coal into rail cars *before* it left the facility and was hauled away by a railroad company. *Id.* at 11-12, 16, 32-33. This uncontradicted testimony establishes as a matter of law that Claimant's loading work occurred prior to the coal's entry into the stream of commerce and therefore constitutes coal preparation. *See Shrader*, 5 F.3d at 780.

Additionally, Employer contests the ALJ's implicit finding that Claimant's work with Epling Manufacturing from 1976 through 1978 constituted coal mine employment under the Act as it is not identified anywhere in the record as coal mine employment. Employer's Brief at 7-8. We agree with Employer that the ALJ erred in assuming Claimant's work with Epling Manufacturing constitutes coal mine employment. As Claimant bears the burden of establishing the length of his coal mine employment, and Employer correctly states that Claimant did not identify this work as coal mine employment, the ALJ erred in treating Claimant's earnings with Epling Manufacturing as coal mine employment. That time therefore must be subtracted from the ALJ's length of coal mine employment total.

Before turning to Employer's challenge to the ALJ's method of calculating the length of Claimant's coal mine employment, we next address Claimant's contention that the ALJ failed to consider additional alleged coal mine employment. In response to Employer's challenge to the ALJ's consideration of Claimant's 1976 to 1978 work with Epling Manufacturing as coal mine employment, Claimant notes that he also alleged six months to a year of additional coal mine employment with Anchor Red Cliff beginning in 1976. Claimant's Brief at 6-7. In support of his contention, Claimant cites to Director's Exhibit 5, Claimant's Employment History Form CM-911a, indicating coal mine work at the tipple of an underground mine with Anchor Red Cliff from 1976 to 1980. *See* Director's Exhibit 65 at 12; *see also* Hearing Transcript at 19-22 and Employer's Exhibit 12 at 41-45 (indicating six months to a year of coal mine employment with Anchor Red Cliff). We agree with Claimant that the ALJ should have considered his claim-form statements and testimony on this matter in determining the length of his coal mine employment. *See Bizarri v. Consolidation Coal Co.*, 7 BLR 1-343, 1-344-45 (1984).

### *B. The ALJ's Method of Calculating Length of Coal Mine Employment*

Employer also asserts that the ALJ improperly credited full years of coal mine employment under 20 C.F.R. §725.101(a)(32)(iii) without first considering Claimant's beginning and ending dates of employment and determining whether Claimant established 365-day calendar-year employment relationships. Employer's Brief at 8-12. This case, however, arises in the jurisdiction of the Fourth Circuit which, as we set forth above, recently held that 20 C.F.R. §725.101(a)(32) does not impose a 365-day employment relationship threshold requirement; rather, 125 working days in or around a coal mine equates to a full year of coal mine employment for all purposes under the Act. *Baldwin*, 170 F.4th at 282. We thus reject Employer's assertion that the ALJ was required to first find a 365-day employment relationship before crediting full or fractional years of coal mine employment under Section 725.101(a)(32). *Id.*

Because we have held that the ALJ improperly included 1.17 years of employment with Epling Manufacturing between 1976 and 1978 in her length of coal mine employment calculation, however, we must subtract it from her calculation, yielding 14.95 years of coal mine employment ( $16.12 - 1.17 = 14.95$ ). As this is less than fifteen years of coal mine employment, we vacate the ALJ's finding that Claimant established at least fifteen years of coal mine employment and invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b). Further, as Claimant alleged additional coal mine employment with Anchor Red Cliff that the ALJ failed to address, we remand the case for further consideration of the length of Claimant's coal mine employment.

Furthermore, we decline to address, as premature, Employer's argument that the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption and that the ALJ erred in her finding regarding Claimant's smoking history. Employer's Brief at 15-22. Consequently, we vacate the ALJ's award of benefits and remand the case for further consideration.

### **Remand Instructions**

On remand, the ALJ must determine the length of Claimant's coal mine employment, taking into consideration all relevant evidence and using any reasonable method of calculation that accords with the law. *See Muncy*, 25 BLR at 1-27; *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986). In doing so, the ALJ must specifically address the credibility of Claimant's assertions of an additional six months-to-one-year of coal mine employment with Anchor Red Cliff in 1976 or 1978 and explain her findings. *See* Hearing Transcript at 19-22; Director's Exhibits 5, 65 at 12; Employer's Exhibit 12 at 41-45.

If Claimant establishes at least fifteen years of coal mine employment, then he will invoke the Section 411(c)(4) presumption and the ALJ must then determine whether

Employer is able to rebut the presumed fact that Claimant is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305. But if Claimant establishes less than fifteen years of coal mine employment, the ALJ must address whether Claimant can establish entitlement under 20 C.F.R. Part 718. If Claimant fails to establish any element of entitlement, the ALJ must deny benefits. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Granting Benefits and remand the case to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

GLENN E. ULMER  
Administrative Appeals Judge