U.S. Department of Labor

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

BRB Nos. 25-0090 BLA, 25-0090 BLA-A,
25-0180 BLA, and 25-0180 BLA-A

CHRISTINE MAYNARD (o/b/o and Widow of LEWIS MAYNARD) Claimant-Petitioner Cross-Respondent v. BUFFALO MINING COMPANY and PITTSON COMPANY, c/o SMART CASUALTY CLAIMS Employer/Carrier-Respondents Cross-Petitioners 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 Orders Denying Benefits in Living Miner and Surviving Widow Claims of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

Christine Maynard, Inez, Kentucky.

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals, without representation,[1] and Employer and its Carrier (Employer) cross-appeal Administrative Law Judge (ALJ) John P. Sellers, III's Decision and Orders Denying Benefits in Living Miner and Surviving Widow Claims (2021-BLA-05809 and 2023-BLA-05062) 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 November 16, 2018,[2] and a survivor's claim filed on February 10, 2021.[3]

Adjudicating the miner's claim, the ALJ credited the Miner with less than fifteen years of coal mine employment and thus found Claimant could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[4] Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant

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

[2] This is the Miner's fifth claim for benefits. On July 18, 2003, the district director denied the Miner's most recent prior claim, filed on December 5, 2001, for failure to establish any element of entitlement. Miner's Claim (MC) Director's Exhibit 4. The Miner subsequently filed a claim on July 17, 2018, but withdrew it on August 22, 2018. MC Director's Exhibit 45 at 7. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b). The Miner took no further action on the denial of his December 5, 2001 claim until filing this current claim on November 16, 2018. MC Director's Exhibit 7.

[3] Claimant is the widow of the Miner, who died on January 25, 2021. MC Employer's Exhibit 8; Survivor's Claim (SC) Employer's Exhibit 8. She is pursuing the miner's claim on behalf of her husband's estate and her own survivor's claim. MC Director's Exhibit 57.

[4] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability or death was due to pneumoconiosis if he had at least fifteen years of

established clinical pneumoconiosis arising out of coal mine employment, a totally disabling respiratory impairment, and a change in an applicable condition of entitlement,[5] but did not establish total disability causation (pneumoconiosis substantially contributed to the disability). 20 C.F.R. §§718.202(a), 718.203(b), 718.204(b)(2), (c). Thus he denied benefits in the miner's claim because Claimant failed to establish an essential element of entitlement.

Addressing the merits of the survivor's claim,[6] the ALJ initially found because the Miner worked less than fifteen years in coal mine employment, Claimant could not invoke the presumption of death due to pneumoconiosis at Section 411(c)(4). 20 C.F.R. §718.305. He next found Claimant established clinical pneumoconiosis arising out of coal mine employment, but failed to establish the Miner's death was due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.203(b), 718.205(b). Thus he denied benefits in the survivor's claim.

On appeal, Claimant generally challenges the denial of benefits in both claims. Employer responds in support of the denial of benefits in both claims. The Director, Office of Workers' Compensation Programs (the Director), declined to file a response brief.

On cross-appeal, Employer argues the ALJ erred in finding Claimant established the Miner had clinical pneumoconiosis arising out of coal mine employment and a totally disabling respiratory impairment. Neither Claimant nor the Director has filed a response to the cross-appeal.

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underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4); *see* 20 C.F.R. §718.305.

[5] 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 any element of entitlement to obtain review of the merits of the miner's claim. *Id.*

[6] Because the ALJ found the Miner was not entitled to benefits at the time of his death, Claimant would not be automatically entitled to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*).

In an appeal a claimant files without representation, the Board considers whether the Decision and Orders below are 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.[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).

Miner's Claim: Invocation of the Section 411(c)(4) Presumption

Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner worked at least fifteen years in underground coal mines, or surface coal mines in conditions "substantially similar" to underground mines. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden of establishing the length of coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (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. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011). The United States Court of Appeals for the Fourth Circuit 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).

The ALJ determined the Miner worked for fourteen years, five months, and five days in coal mine employment. 20 C.F.R. §718.305(b)(1)(i). In reaching this finding, he reviewed statements from the Miner's employers and the Miner's Social Security Administration (SSA) earnings records. Decision and Order at 5-6; Miner's Claim (MC) Director's Exhibits 12-15. He first calculated the Miner's coal mine employment where he could determine the beginning and ending dates of the Miner's work. Decision and Order at 5-6.

Based on statements from the Miner's employers, the ALJ determined the length of the Miner's employment for the following coal companies:

[7] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because the Miner performed his most recent coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director's Exhibit 3; Hearing Tr. at 27-28.

> Wolf Creek Collieries Company from November 14, 1966, to May 12, 1969; the ALJ credited the Miner with one month and thirteen days in 1966, a full year in both 1967 and 1968, and five months and twelve days in 1969.
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> Island Creek Coal Company from March 30, 1970, to April 21, 1972, and August 23, 1972, to September 29, 1972; the ALJ credited the Miner with nine months and one day in 1970, a full year in 1971, and nine months and twelve days in 1972, when combined with his employment that year with Buffalo Mining Company.
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> Buffalo Mining Company from June 12, 1972, to August 14, 1972, and October 13, 1972, to May 11, 1982; the ALJ credited the Miner with, as noted above, nine months and twelve days in 1972 when combined with his employment that year with Island Creek Coal Company, nine years for 1973 through 1981, and four months and eleven days for 1982.

Decision and Order at 6; MC Director's Exhibits 12-14.

In total, the ALJ credited the Miner with fourteen years, two months, and nineteen days of employment for these periods where he could determine the beginning and ending dates of the Miner's coal mine employment. Decision and Order at 6. Additionally, the ALJ noted the Miner's SSA earnings records reported earnings from Pine Creek Coal Company in 1966 and Burning Creek Coal Company in 1969 and 1970. *Id.*; MC Director's Exhibits 11, 15. For these years, he could not determine the beginning and ending dates of the Miner's employment. Decision and Order at 6.

As the ALJ was unable to determine the beginning and ending dates of the Miner's employment in 1966, 1969, and 1970, he permissibly applied the calculation at 20 C.F.R. §725.101(a)(32)(iii) to ascertain the number of days the Miner worked.[8] Decision and Order at 6. He divided the Miner's yearly earnings as reported in his SSA earnings records by the coal mine industry's average yearly earnings for 125 days of employment, as reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine* (*Black Lung Benefits Act*) *Procedure Manual*. *Id.*; MC Director's Exhibits 11, 15. Applying this method of calculation, he credited the Miner with two days of employment in 1966, fifty-six days in 1969, and eighteen days in 1970 (seventy-six days

[8] 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 annual earnings by the average daily earnings for a coal miner as reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual*. 20 C.F.R. §725.101(a)(32)(iii).

in total). Decision and Order at 6. The ALJ added these together and credited the Miner with an additional two months and sixteen days of coal mine employment. *Id*. He added this figure to the fourteen years, two months, and nineteen days of coal mine employment for these periods where he could determine the beginning and ending dates of the Miner's employment. *Id.* In total, the ALJ credited the Miner with fourteen years, five months, and sixteen days of coal mine employment. *Id.*

We cannot affirm the ALJ's length of coal mine employment finding because we cannot ascertain his basis for calculating the Miner's coal mine employment in years 1966, 1969, 1970, and 1972. Although the ALJ found he could determine the beginning and ending dates for these partial years of employment, the specific length of coal mine employment determination he found is not rational. For example, in 1966 the Miner worked from November 14 through December 31. This equals 48 calendar days, or the full month of December (31 days) and November 14 to 30 (17 days). Yet the ALJ credited the Miner with one month and thirteen days. Likewise, the Miner worked from January 1 to May 12 in 1969. This equals 132 calendar days, or the full month of January (thirty-one days), the full month of February (twenty-eight days), the full month of March (thirty-one days), the full month of April (thirty days), and May 1 to 12 (twelve days). Thus, this equals four months and twelve days. Yet the ALJ credited the Miner with five months and twelve days. The ALJ's calculations for the periods of partial annual employment in 1970 and 1972 are likewise flawed. Similarly, we are unable to determine how the ALJ determined that the seventy-six days he found the Miner worked in 1966, 1969, and 1970 equals two months and sixteen days.[9]

Regardless of the accuracy of the ALJ's calculations of the length of the Miner's partial periods of coal mine employment, he made no attempt to determine the number of days the miner worked during those partial periods.[10] Decision and Order at 5-6. As we noted above, the Fourth Circuit recently held that the plain language of 20 C.F.R. §725.101(a)(32) requires a miner to show only that he worked 125 working days in a coal mine within a calendar year (or partial periods totaling one year) to establish a year of employment for purposes of the Act's fifteen-year presumption. *Baldwin*, 170 F.4th at 282. Thus, in this case, a determination of how many days the Miner worked in 1966,

[9] Assuming thirty-one days as the length of a "month," seventy-six days equals two months and fourteen days.

[10] We note a precise determination of the number of days the Miner worked during these periods may only be possible by applying the calculation at 20 C.F.R. §725.101(a)(32)(iii) as the only evidence regarding the amount the Miner worked is Claimant's testimony that he worked "five to six days a week." Hearing Transcript at 26.

1969, 1970, and 1972 may make a difference in whether the ALJ credits him with a full year, rather than a partial year, for those periods. *Id.* at 292 ("After making his findings as to the beginning and end dates of . . . employment," the ALJ "should have then calculated the number of 'working days' within each year-long period that [the miner] spent working in or around a coal mine.")

The Administrative Procedure Act (APA) requires the ALJ to consider all relevant evidence in the record and set forth his "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 803 (4th Cir. 1998); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Because we cannot discern the basis for the ALJ's calculation of the length of the Miner's coal mine employment, we vacate that finding and remand the case for reconsideration of this issue. Because we vacate the ALJ's findings regarding the length of the Miner's coal mine employment, we also vacate his findings that Claimant was not entitled to invoke the Section 411(c)(4) presumption and the denial of benefits in both the miner's and survivor's claims.

Although we vacate the denial of benefits and remand the cases for the ALJ to address the length of the Miner's coal mine employment and Claimant's entitlement to benefits in light of his finding, we further address, in the interest of judicial economy, Employer's challenge to the ALJ's total disability finding as it pertains to whether Claimant can invoke the Section 411(c)(4) presumption in both claims.[11]

Total Disability

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 qualifying pulmonary function studies, qualifying arterial blood gas studies,[12] evidence of

[11] We decline to address, as premature, Employer's cross-appeal arguments with respect to the issues of pneumoconiosis and total disability causation. Employer's Brief at 21-28. Because we have vacated the ALJ's finding that Claimant did not invoke the Section 411(c)(4) presumption, the burdens of proof on remand may change. Further, the ALJ's coal mine employment finding may affect his credibility findings.

[12] 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).

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 found Claimant established total disability based on the medical opinion evidence and the record as a whole. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 36. Employer argues the ALJ erred in weighing the medical opinion evidence. Employer's Brief at 17-34. We disagree.

The ALJ considered the opinions of Drs. Forehand, Jarboe, and Zaldivar. Decision and Order at 31-36. Dr. Forehand opined the Miner was totally disabled based on the April 1, 2019 blood gas study he obtained and the exertional requirements of the Miner's usual coal mine employment. Director's Exhibit 19 at 4. Dr. Jarboe concluded that, although the Miner's earlier arterial blood gas studies were affected by a heart condition, the study he administered was normal and the Miner retained the pulmonary capacity to perform his usual coal mine job. Employer's Exhibit 1 at 4. Dr. Zaldivar also acknowledged that the Miner's 2019 arterial blood gas study results were "very low" but opined it was a result of fluid buildup in the Miner's lungs due to congestive heart failure. Employer's Exhibit 6 at 45-46. He noted the Miner had "intermittent breathing problems" but, given the later non-qualifying arterial blood gas study results, he concluded the Miner was not totally disabled. *Id.*

The ALJ found Dr. Forehand's opinion reasoned and documented. Decision and Order at 36. He found the contrary opinions of Drs. Jarboe and Zaldivar are not persuasive as inadequately reasoned. *Id.* Thus, the ALJ found Dr. Forehand's opinion outweighed those of Drs. Jarboe and Zaldivar and the medical opinion evidence supports a finding of total disability. *Id.*

Employer argues the ALJ erred in crediting Dr. Forehand's opinion because it relies on the April 1, 2019 arterial blood gas study, whereas the ALJ found the blood gas study evidence overall does not support a finding of total disability. Employer's Brief at 36. We disagree.

Dr. Forehand noted the Miner's usual coal mine employment consisted of performing various coal mining jobs, including roof bolting.[13] Director's Exhibit 19 at

[13] As it is unchallenged on appeal, we affirm the ALJ's finding that the Miner's usual coal mine employment as a roof bolter involved significant physical activity and

1. He opined the Miner's April 1, 2019 blood gas testing demonstrated a significant, work-limiting respiratory impairment and that the Miner had "insufficient residual gas exchange capacity" to perform his usual coal mine employment. *Id.* at 3-4. The ALJ permissibly found Dr. Forehand's opinion probative of the Miner's pulmonary and respiratory capacity and accorded it substantial weight. Decision and Order at 32.

Contrary to Employer's argument, even if total disability cannot be established at 20 C.F.R. §718.204(b)(2)(i) or (ii), "total disability may nevertheless be found if a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques, concludes that a miner's respiratory or pulmonary condition prevents" him from performing his usual coal mine employment. 20 C.F.R. §718.204(b)(2)(iv). Further, a medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably infer that a miner is unable to do his last coal mine job, as in this case. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1142 (4th Cir. 1995); *see also Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988). Thus, the ALJ permissibly found Dr. Forehand's opinion credible because it is reasoned and documented and based on the doctor's consideration of the exertional requirements of the Miner's usual coal mine employment. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 36.

Additionally, we reject Employer's argument that the ALJ erred in crediting Dr. Forehand's opinion because he did not review all the medical records. Employer's Brief at 35. An ALJ may credit a physician who did not review all of a miner's medical records when that physician's opinion is otherwise reasoned, documented, and based on an examination of objective test results. 20 C.F.R. §718.204(b)(2)(iv); *see Smith v. Kelly's Creek Res.*, 26 BLR 1-15, 1-28 (2023); *Church v. E. Assoc. Coal Corp.*, 20 BLR 1-8, 1-13 (1996).

Because it is supported by substantial evidence, we affirm the ALJ's finding Claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv) and by a preponderance of the evidence as a whole.

Remand Instructions

On remand, the ALJ must reconsider the length of the Miner's coal mine employment. In doing so, he may use any reasonable method of calculation that is in

required heavy manual labor. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 27.

accordance with law. *See Muncy*, 25 BLR at 1-27; *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986). But, he must address all relevant evidence and explain all material findings in accordance with the APA. *See Lockhart*, 137 F.3d at 803; *Wojtowicz*, 12 BLR at 1-165; *McCune v. Cent. Appalachian Coal Co*., 6 BLR 1-996, 1-998 (1984).

The ALJ must first determine whether the beginning and ending dates of the Miner's employment established a full calendar year of coal mine employment or partial periods totaling one year. 20 C.F.R. §725.101(a)(32). If the one-year calendar period is met, "it must be presumed, in the absence of evidence to the contrary, that the miner spent 125 working days in such employment[,]" in which case the miner would be entitled to credit for one full year of employment. 20 C.F.R. §725.101(a)(32)(ii). If the one-year calendar period is not met, the ALJ must determine the number of days the Miner worked during any of the partial years of employment; if that calculation yields at least 125 working days, the Miner can be credited with a year of coal mine employment, regardless of the actual duration of employment for the year. *Baldwin*, 170 F.4th at 287.

If the ALJ finds Claimant established the Miner had at least fifteen years of qualifying coal mine employment,[14] she will have invoked the Section 411(c)(4) presumption. The burden will then shift to Employer to establish the Miner had neither legal nor clinical pneumoconiosis, or "no part of [his] 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)(i), (ii). If Claimant cannot establish at least fifteen years of coal mine employment, the ALJ must consider whether Claimant can establish entitlement to benefits under 20 C.F.R. Part 718 in the miner's claim.

If the ALJ awards benefits in the miner's claim, Claimant is automatically entitled to survivor's benefits under Section 422(*l*).[15] 30 U.S.C. §932(*l*). If the ALJ denies benefits in the miner's claim, he must consider Claimant's entitlement in the survivor's claim. If she establishes the Miner had fifteen years of qualifying coal mine employment, then she will invoke the Section 411(c)(4) presumption of death due to pneumoconiosis in the

[14] If the ALJ finds the Miner had at least fifteen years of coal mine employment, he must also make a finding regarding whether the Miner's coal mine employment was performed underground or in conditions substantially similar to an underground mine. 20 C.F.R. §718.305(b)(1)(i), (2)

[15] Section 422(*l*) of the Act provides that the survivor of a miner who was determined to be 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*).

survivor's claim. 20 C.F.R. §718.305. Employer must then establish the Miner had neither legal nor clinical pneumoconiosis, or "no part of [his] death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(2)(i),(ii). If Claimant establishes the Miner had less than fifteen years of qualifying coal mine employment, the ALJ must consider whether Claimant can establish entitlement to benefits under 20 C.F.R. Part 718 in the survivor's claim.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Orders Denying Benefits in Living Miner and Surviving Widow Claims 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