U.S. Department of Labor

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

BRB No. 24-0303 BLA

BRENDA JUSTUS (o/b/o FREDDY E. JUSTUS)	)	
Claimant-Respondent	)	
v.	)	**NOT-PUBLISHED**
ISLAND CREEK COAL COMPANY	)	
Employer-Petitioner	)	DATE ISSUED: 08/05/2025
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Heather C. Leslie, Administrative Law Judge, United States Department of Labor.

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

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Heather C. Leslie's Decision and Order Granting Benefits (2020-BLA-06116) rendered on a request for modification of

the denial of a miner's subsequent claim filed on August 31, 2018,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited the Miner with 19.4 years of qualifying coal mine employment and found he had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant[2] established a change in an applicable condition of entitlement,[3] 20 C.F.R. §725.309(c), and invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[4] 30 U.S.C. §921(c)(4) (2018). She further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer argues that the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption. Alternatively, Employer

[1] The Miner filed three prior claims for benefits. Director's Exhibit 1. He withdrew his third claim, filed on October 25, 2011. *Id.* at 9. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306(b). The district director denied the Miner's second claim, filed on January 25, 2002, for failure to establish any element of entitlement. *Id.* at 389.

[2] Claimant is the surviving spouse of the Miner, who died on February 1, 2021, while his claim was pending before the ALJ. Claimant's Exhibit 1. She is pursuing the miner's claim on behalf of her husband's estate.

[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 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 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 review of the merits of the Miner's current claim. *See White*, 23 BLR at 1-3; 20 C.F.R. §725.309(c).

[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.

argues the ALJ erred in finding it did not rebut the presumption.[5] Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, has not filed 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.[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, 361-62 (1965).

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

To invoke the Section 411(c)(4) presumption, 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. 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 found Claimant established total disability based on the pulmonary function studies, blood gas studies, medical opinions,[7] and the evidence as a whole. 20 C.F.R. §718.204(b)(2)(i),(ii),(iv); Decision and Order at 18-19, 28-29. Employer

[5] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established the Miner had 19.4 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 12, 14.

[6] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because the Miner performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 5; 8; 10 at 2-5; 11 at 3-6.

[7] The ALJ determined that Claimant could not establish total disability at 20 C.F.R. §718.204(b)(2)(iii) because there is no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 20.

contends the ALJ erred in finding the medical opinion evidence supports a finding of total disability.[8] Employer's Brief at 6-13.

The ALJ considered the medical opinions of Drs. Mabe, Dahhan, and Fino. Decision and Order at 20-29. The physicians agreed the Miner had a totally disabling respiratory impairment, but they disagreed as to the etiology of that impairment. Director's Exhibits 22 at 4; 25 at 4; 27 at 3; 31 at 1-2; Employer's Exhibits 10 at 10-11; 11 at 26; 13 at 5-6. Dr. Mabe attributed the Miner's total disability to chronic obstructive pulmonary disease (COPD) and chronic bronchitis, whereas Dr. Dahhan opined the Miner's disabling respiratory impairment was caused by a spinal deformity, exacerbated by emphysema, and Dr. Fino opined the Miner's respiratory impairment was caused by neurological issues, enlarged lymph nodes, or his residuals from a history of pneumonia and infection. Director's Exhibits 22 at 4; 25 at 4; 27 at 3; 31 at 1-2; Employer's Exhibits 10 at 10-11; 11 at 26; 13 at 5-6. Crediting Dr. Mabe's opinion over the opinions of Drs. Dahhan and Fino, the ALJ found the medical opinion evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 28-29.

Employer contends the ALJ erred in crediting Dr. Mabe's opinion over the opinions of Drs. Dahhan and Fino because Dr. Mabe failed to address whether the Miner's respiratory condition could have been caused by his other physical impairments, whereas Drs. Dahhan and Fino explained that it was.[9] Employer's Brief at 6-13. We disagree.

The relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether the Miner had a totally disabling respiratory or pulmonary impairment; the cause 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

[8] We affirm, as unchallenged, the ALJ's findings that the pulmonary function and arterial blood gas studies support a finding of total disability. *See* 20 C.F.R. §718.204(b)(2)(i),(ii); *Skrack*, 6 BLR at 1-711; Decision and Order at 18-19.

[9] Employer also argues the ALJ erroneously failed to consider evidence from the Miner's prior claims. Employer's Brief at 13-14. Contrary to Employer's assertions, the ALJ noted the evidence from the prior claims but permissibly gave it little weight because it offered "little probative value" in evaluating the Miner's more recent condition at the time he filed his application and the time of the hearing. *See Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015); *Parsons v. Wolf Creek Collieries*, 23 BLR 1-29, 1-34-35 (2004) (en banc) (more recent medical evidence may be accorded greater probative value than that submitted with a prior claim because of the progressive nature of pneumoconiosis); Decision and Order at 29 n.171.

411(c)(4) presumption pursuant to 20 C.F.R. §718.305. *See Island Creek Coal Co. v. Blankenship*, 123 F.4th 684, 692 (4th Cir. 2024); *Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989); *Johnson v. Apogee Coal Co*., 26 BLR 1-1, 1-10-11 (2023), *appeal docketed*, No. 23-3612 (6th Cir. July 25, 2023). Because the physicians agreed the Miner had a totally disabling respiratory impairment, any error by the ALJ in crediting Dr. Mabe's disability opinion over the opinions of Drs. Dahhan and Fino is harmless. *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, 1-1278 (1984); Director's Exhibits 22 at 4; 25 at 4; 27 at 3; 31 at 1-2; Employer's Exhibits 10 at 10-11; 11 at 26; 13 at 5-6. Thus, 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). As Employer raises no further argument, we also affirm her finding that Claimant established total disability and invoked the Section 411(c)(4) presumption.

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,[10] or that "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). The ALJ found Employer failed to establish rebuttal by either method.[11]

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),

[10] "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).

[11] The ALJ found Employer rebutted the presence of clinical pneumoconiosis. Decision and Order at 35-38.

718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on Drs. Dahhan's and Fino's opinions that the Miner did not have legal pneumoconiosis.[12] Decision and Order at 24-26. The ALJ found their opinions unpersuasive and insufficient to satisfy Employer's burden of proof. Decision and Order at 39-40.

Employer contends remand is required because the ALJ erred in discrediting Drs. Dahhan's and Fino's opinions. Employer's Brief at 6-13. We are not persuaded.

Dr. Dahhan opined the Miner had "severe ventilatory impairment associated with abnormalities in his blood gas exchange mechanisms" but that this impairment was caused by a spinal deformity, exacerbated by emphysema, and unrelated to coal mine dust exposure. Director's Exhibit 25 at 4; Employer's Exhibit 13 at 5-6. The ALJ permissibly discredited Dr. Dahhan's opinion because he did not adequately explain why the Miner's impairment could not have been aggravated by his 19.4 years of coal mine employment. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313-14 (4th Cir. 2012); Decision and Order at 39-40.

Dr. Fino opined the Miner's restrictive impairment was due to neurological issues, enlarged lymph nodes, or residuals from a history of pneumonia and infection, and unrelated to coal mine dust exposure. Employer's Exhibits 10 at 10-11; 11 at 26. Although Dr. Fino acknowledged coal workers' pneumoconiosis may be latent and progressive, he nevertheless opined that the Miner's impairment was unrelated to coal mine dust exposure because the Miner "had normal lung function five to seven years after leaving the mines" and he "would not expect it to deteriorate due to coal dust after that." Employer's Exhibit 11 at 9-10, 23, 31. The ALJ permissibly found Dr. Fino's reasoning inconsistent with the regulations' acknowledgment that pneumoconiosis can be a "latent and progressive disease which may first become detectable only after cessation of coal mine dust exposure." *See*

[12] Dr. Mabe diagnosed legal pneumoconiosis. Director's Exhibits 22 at 4; 27 at 3; 31 at 1-2; Employer's Exhibit 6 at 23. His opinion therefore does not assist Employer in meeting its burden to disprove the disease, and we thus decline to consider Employer's contentions regarding his opinion on the existence of pneumoconiosis. *See W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018); *Epling*, 783 F.3d at 506; *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 10-13.

20 C.F.R. §718.201(c); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015); 65 Fed. Reg. 79,920, 79,971 (Dec. 20, 2000); Decision and Order at 39-40.

Employer quotes at length from Dr. Fino's opinion and generally argues the physician explained why the Miner's impairment was not latent or progressive in this case. Employer's Brief at 8-9. However, as the trier-of-fact, the ALJ is charged with assessing the credibility of the medical evidence and assigning it appropriate weight. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013); *Looney*, 678 F.3d at 314-15. Employer's arguments amount to a request to reweigh the evidence, which we are not authorized to do.[13] *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988). Because it is supported by substantial evidence, we affirm the ALJ's finding that Employer failed to establish the Miner did not have legal pneumoconiosis. 20 C.F.R. §718.305(d)(2)(i); Decision and Order at 40.

Disability Causation

The ALJ next considered whether Employer established "no part of the [M]iner'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); Decision and Order at 42-45. The ALJ permissibly discredited Drs. Dahhan's and Fino's disability causation opinions because neither physician diagnosed legal pneumoconiosis, contrary to her finding that Employer failed to disprove the disease. *See Epling*, 783 F.3d at 504-05; *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order at 43-45. We therefore affirm the ALJ's conclusion that Employer failed to establish no part of the Miner's respiratory or pulmonary disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

[13] Because the ALJ provided a valid reason for discrediting the opinions of both of Employer's experts, we need not address Employer's remaining contentions that the ALJ erred in weighing their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 6-13.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge