U.S. Department of Labor

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

BRB No. 24-0354 BLA

ROY D. WHITE Claimant-Respondent v. MC MINING CORPORATION and OLD REPUBLIC INSURANCE COMPANY Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 08/11/2025 DECISION and ORDER

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

Michael A. Pusateri (Greenberg Traurig LLP), Washington, D.C., for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Dierdra M. Howard's Decision and Order Awarding Benefits (2022-BLA-05314) rendered on a subsequent claim filed on December 19, 2019,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 15.73 years of qualifying coal mine employment and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[2] and established a change in an applicable condition of entitlement.[3] 20 C.F.R. §725.309(c). She further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer challenges the ALJ's length of Claimant's coal mine employment calculation and her determination it failed to rebut the Section 411(c)(4)

[1] Claimant filed two previous claims for benefits. Director's Exhibits 1, 2. He withdrew the second claim. Director's Exhibit 2. A withdrawn claim is "considered not to have been filed." 20 C.F.R. §725.306(b). The ALJ determined the district director denied the first claim because Claimant failed to establish any element of entitlement. Decision and Order at 17; Director's Exhibit 1.

[2] 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); 20 C.F.R. §718.305.

[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). As Claimant's prior claim was denied for a failure to establish any element of entitlement, Claimant was required to submit new evidence establishing at least one element to obtain review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3; Director's Exhibit 1.

presumption.[4] Claimant and the Acting Director, Office of Workers' Compensation Programs, declined to file a 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.[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 (1965).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mines or in "substantially similar" surface coal mine employment. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(b)(1)(ii); *see Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-29 (2011).

Length of Coal Mine Employment

Claimant bears the burden to establish the number of years he worked in 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 determination if it is based on a reasonable method of calculation and supported by substantial evidence. *See Muncy v. Elkay Mining Co*., 25 BLR 1-21, 1-27 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

In evaluating the length of Claimant's coal mine employment, the ALJ considered Claimant's Application for Benefits, Employment History Form, Social Security Earnings Records (SSER), and hearing testimony. Decision and Order at 13-16; Director's Exhibits 4, 5, 7, 9; Hearing Transcript at 14-16, 21-22.

The ALJ found Claimant established ten years of coal mine employment from 1966 to 1977 based on his SSER showing forty quarters in those years when he earned in excess

[4] As Employer does not challenge the ALJ's finding of total disability and therefore a change in an applicable condition of entitlement, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 17-21.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because 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 11.

of $50.00 per quarter from a coal mine operator. *Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 n.2 (1984); Decision and Order at 14; Director's Exhibits 7, 9.

For Claimant's coal mine employment from 1978 to 1984, the ALJ applied the method of calculation at 20 C.F.R. §725.101(a)(32)(iii).[6] Decision and Order at 14-15. For each year in which Claimant's earnings met or exceeded the average yearly earnings of coal miners as reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual*, the ALJ credited the Miner with a full year of coal mine employment. *Id.* For the years when the Miner's earnings fell short of 125 days, the ALJ credited him with a fractional year, calculated by dividing his annual earnings by the Exhibit 610 average yearly earnings. *Id.* Applying this formula, the ALJ credited the Miner with 5.73 years from 1978 to 1984. *Id.* Adding those 5.73 years to Claimant's 10 pre-1978 years, the ALJ credited Claimant with a total of 15.73 years[7] of coal mine employment and determined that all of it qualified for the purposes of invoking the Section 411(c)(4) presumption. *Id.* at 16.

Employer contends the ALJ erred in finding Claimant had 15.73 years of coal mine employment. Employer's Brief at 9-15. We agree, in part.

Initially, we reject Employer's argument that the ALJ erred in failing to sufficiently explain her use of the "quarterly method" in calculating Claimant's length of coal mine employment prior to 1977. Employer's Brief at 14-15; Decision and Order at 14.

The ALJ permissibly applied the $50.00-per-quarter method to calculate the length of Claimant's pre-1978 coal mine employment. *See Shrader v. Califano*, 608 F.2d 114, 117 n.3 (4th Cir. 1979) (pre-1978 income exceeding $50 is "an appropriate yardstick for

[6] Section 725.101(a)(32)(iii) provides that, if the beginning and ending dates of a miner's coal mine employment cannot be ascertained or the miner's coal mine employment lasted less than a calendar year, the ALJ may determine the length of the miner's work history by dividing the miner's yearly income from work as a miner by the average daily earnings of employees in the coal mining industry 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 Benefits Act) Procedure Manual* (titled *Average Earnings of Employees in Coal Mining*) sets forth the average "daily earnings" of miners and the "yearly earnings (125 days)" by year for employees in coal mining, as reported by the BLS.

[7] The ALJ adjusted the calculated total to reflect Claimant's testimony and written statements reflecting he last worked on May 11, 1984, when he was injured. Hearing Transcript at 14, 16, 21-22; Director's Exhibit 5.

determining quarters which will be fully credited to a black lung claimant in determining the duration of his coal mine employment"); *Tackett*, 6 BLR at 1-841 n.2 (1984). Further, contrary to Employer's argument, the ALJ provided sufficient explanation to determine how she arrived at her conclusion. The ALJ explained she looked to Claimant's SSER to count the quarters of coal mine employment in which Claimant earned $50.00 or more from a coal mine operator. Decision and Order at 14. Those employers that were clearly coal mine employers and reported earnings for Claimant in excess of $50.00 are as follows:

Employer	**Year**	**Number of Quarters With Earnings in Excess of $50.00**
Delta Coals, Inc.	1967	2
Delta Coals, Inc.	1968	2
Hobbs Bros Coal Co, Inc.	1968	1
Delta Coals, Inc.	1969	3
Mindy Mining Corp.	1969	1
Delta Coals, Inc.	1970	1
Mindy Mining Corp.	1970	2
Jewell Ridge Coal Co.	1970	3
Jewell Ridge Coal Co.	1971	4
Harper Valley Coal Co.	1971	1
Jewell Ridge Coal Co.	1972	4
Jewell Ridge Coal Co.	1973	4
Jewell Ridge Coal Co.	1974	4
Jewell Ridge Coal Co.	1975	4
Jewell Ridge Coal Co.	1976	4
Grassy Branch Coal Co.	1977	2
Middle Creek Coal Co.	1977	1

Director's Exhibit 9.

In both 1970 and 1971, Claimant had reported earnings in excess of $50.00 with multiple coal mine operators for more than four quarters. Director's Exhibit 9. As there are only four quarters in a year, Claimant is only entitled to four quarters of earnings in 1970 and 1971. Taking that into account, the total number of quarters with more than $50.00 of earnings from employers identifiable as coal mine operators for the eleven years from 1967 to 1977 is forty quarters or ten years, the same number that the ALJ found.

As we are able to discern how the ALJ arrived at her conclusion, her finding satisfies the Administrative Procedure Act (APA).[8] *Muncy*, 25 BLR at 1-27; *Dawson v. Old Ben Coal Co.*, 11 BLR 1-58 (1988) (en banc); *Mingo Logal Coal Co. v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (duty of explanation under the APA is satisfied if the reviewing court can discern what the ALJ did and why he did it); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 n.10 (4th Cir. 1999) (duty of explanation under the APA "is not intended to be a mandate for administrative verbosity or pedantry"). Therefore, we affirm the ALJ's finding of ten years of coal mine employment from 1965 to 1977. Decision and Order at 14.

We agree, however, with Employer's argument that the ALJ erred in calculating Claimant's years of post-1977 employment by using the 125-day method adopted by the United States Court of Appeals for the Sixth Circuit because this case falls under the Fourth Circuit's jurisdiction. Employer's Brief at 9-14.

In calculating Claimant's years of post-1977 employment, the ALJ divided his yearly earnings from coal mine employers set forth in the Claimant's SSER by the coal mine industry's average daily earnings, crediting him with a full year of employment when he worked 125 days or more and with partial periods of employment by dividing his working days by 125 to credit him with a portion of a year. Decision and Order at 14-15. However, the Board has long interpreted Fourth Circuit case law to require the ALJ to first determine whether the miner was engaged in an employment relationship for a period of one calendar year, i.e., 365 days, or partial periods totaling one year. 20 C.F.R. §725.101(a)(32)(i); *see Daniels Co., Inc. v. Mitchell*, 479 F.3d 321, 334-35 (4th Cir. 2007) (a one-year employment relationship must be established, during which the miner had 125 working days); *Armco, Inc. v. Martin*, 277 F.3d 468, 474-75 (4th Cir. 2002) (recognizing the 2001 amendments to the regulations require a one-year employment relationship during which the miner worked 125 days to establish a year of employment); *Clark v. Barnwell Coal Co.*, 22 BLR 1-277, 1-280 (2003).

If the threshold one-year period is met, the ALJ must then determine whether the miner worked for at least 125 days within that one-year period.[9] 20 C.F.R.

[8] The Administrative Procedure Act requires that every adjudicatory decision include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.,* 12 BLR 1-162, 1-165 (1989).

[9] If the threshold one-year 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

§725.101(a)(32). Proof that a miner worked at least 125 days or that a miner's earnings exceeded the industry average for 125 days of work in a given year, however, does not satisfy the requirement that such employment occurred during a 365-day period and therefore, in itself, does not establish one full year of coal mine employment as defined in the regulations. *See Clark*, 22 BLR at 1-281. Because the ALJ did not make the necessary threshold determination, we vacate her determination that Claimant established 5.73 years of coal mine employment from 1978 to 1984 to arrive at a total of 15.73 years of coal mine employment. *Mitchell*, 479 F.3d at 334-36; Decision and Order at 14-15. Thus, we vacate her finding that Claimant had at least fifteen years of coal mine employment and invoked the Section 411(c)(4) presumption.

Because we vacate the ALJ's finding that Claimant established at least fifteen years of qualifying coal mine employment, we must also vacate her finding that Claimant invoked the Section 411(c)(4) presumption and the award of benefits, and we therefore remand the case for further consideration of this issue.

Remand Instructions

On remand, the ALJ must determine the length of Claimant's coal mine employment, taking into consideration all relevant evidence, and explain all her material findings in accordance with the APA. *See Wojtowicz v. Duquesne Light Co*., 12 BLR 1-162, 1-165 (1989). In doing so, she may utilize any reasonable method of calculation. *See Muncy*, 25 BLR at 1-27; *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986). The ALJ may, in her discretion, apply the formula at 20 C.F.R. §725.101(a)(32)(iii) using the daily wage from Exhibit 610 to determine calendar years of coal mine employment. If the threshold finding of a calendar year is established, then she is to consider whether Claimant worked for 125 days during each one-year period. *Mitchell*, 479 F.3d at 334-36; *Martin*, 277 F.3d at 474-75. Regardless of the method used, in setting forth her calculations, the ALJ must explain her findings in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

If Claimant establishes at least fifteen years of qualifying 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 it.[10] 20 C.F.R. §718.305(d)(1). Alternatively, if

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which case the miner would be entitled to credit for one full year of employment. 20 C.F.R. §725.101(a)(32)(ii).

[10] Because we have vacated the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption, we decline to address, as premature, Employer's argument the ALJ erred in finding the Section 411(c)(4) presumption unrebutted; the length of coal mine

Claimant does not invoke the presumption, the ALJ must consider whether Claimant can establish entitlement to benefits under 20 C.F.R. Part 718. *See* 20 C.F.R. §§718.201, 718.202, 718.203, 718.204(b), (c).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Awarding Benefits and remand this 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

MELISSA LIN JONES
Administrative Appeals Judge

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employment finding may cause the burdens of proof to shift or affect the ALJ's credibility findings on rebuttal. Employer's Brief at 15-22.