

U.S. Department of Labor

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



BRB No. 24-0366 BLA

THOMAS OLBERDING

Claimant-Respondent

v.

COAL FIELD CONSTRUCTION

and

ROCKWOOD CASUALTY INSURANCE
COMPANY

Employer/Carrier-
Petitioners

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 08/12/2025

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Steven D. Bell,
Administrative Law Judge, United States Department of Labor.

Austin P. Vowels and David Littrell III (Vowels Law PLC), Henderson,
Kentucky, for Claimant.

Julie A. Webb (Craig & Craig, LLC), Mt. Vernon, Illinois, 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) Steven D. Bell's Decision and Order Awarding Benefits (2021-BLA-05622) rendered on a claim filed on January 29, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with thirty-six years of coal mine employment based on the parties' stipulation and found his work was in conditions substantially similar to those in an underground mine. 20 C.F.R. §718.305(b). He also determined Claimant has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.¹ 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption.² Claimant responds in support of the award of benefits. 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.³ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

¹ Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability is 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.

² We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established thirty-six years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment and thus invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.204(b)(2); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3, 9.

³ We will apply the law of the United States Court of Appeals for the Seventh Circuit because Claimant performed his last coal mine employment in Illinois. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Transcript at 9.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,⁴ 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). The ALJ found Employer did not establish rebuttal by either method.

Clinical Pneumoconiosis

To disprove clinical pneumoconiosis, Employer must establish Claimant does not have any of the 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. §§718.305(d)(1)(i)(B), 718.201(a)(1).

The ALJ found the x-ray evidence, computed tomography (CT) scans, and medical opinion evidence insufficient to rebut the presumption of clinical pneumoconiosis. Decision and Order at 10-17. Employer argues the ALJ erred in weighing Dr. Meyer’s interpretation of the July 15, 2020 CT scan.⁵ Employer’s Brief at 26. We disagree.

⁴ “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).

⁵ The ALJ found all the x-rays positive for simple clinical pneumoconiosis and thus that the x-ray evidence does not assist Employer with disproving clinical pneumoconiosis. Decision and Order at 12. He also discredited the medical opinions that found clinical pneumoconiosis is not present as insufficiently explained and inconsistent with the x-ray evidence. *Id.* at 16-17. As Employer does not challenge these findings, we affirm them. *See Skrack*, 6 BLR at 1-711.

CT Scan Evidence

The ALJ considered Dr. Meyer's interpretation of the July 15, 2020 CT scan as well as ten interpretations of seven CT scans from Claimant's treatment records.⁶ Decision and Order at 12-16; Director's Exhibit 32; Claimant's Exhibits 6, 7. Dr. Meyer interpreted the July 15, 2020 CT scan as showing "slight worsening basilar pulmonary fibrosis in a pattern characteristic of usual interstitial pneumonia (UIP)." Director's Exhibit 32 at 4. He further noted that the scan shows "a lower zone predominant linear process." *Id.* Dr. Meyer opined that this was "not typical of coal worker's pneumoconiosis, which characteristically begins as an upper zone predominant fine nodular process." *Id.* The ALJ found his opinion not well-documented and insufficient to prove that Claimant does not have clinical pneumoconiosis, noting Dr. Meyer "did not specifically opine whether he found that Claimant has clinical pneumoconiosis." Decision and Order at 15-16.⁷

Employer argues that the ALJ erred in his assessment of Dr. Meyer's interpretation of the July 15, 2020 CT scan. Employer's Brief at 26. Specifically, regarding the ALJ's finding that Dr. Meyer did not specifically opine whether Claimant has clinical pneumoconiosis, Employer contends that "[Dr. Meyer's] narrative report clearly leads to the inference that he did not interpret the CT scan as being consistent with pneumoconiosis." *Id.*

While the ALJ noted that Dr. Meyer discussed the pattern of Claimant's basilar pulmonary fibrosis as not being "typical" of pneumoconiosis caused by coal dust, the ALJ found he did not specifically opine whether he found clinical pneumoconiosis. Decision

⁶ The CT scan interpretations in the treatment records covered a period from June 2, 2017 to April 16, 2021, during Claimant's treatment with his pulmonologist, Dr. Johnson. Claimant's Exhibits 6, 7. They contain various diagnoses including moderate bilateral pulmonary fibrosis, findings consistent with UIP [usual interstitial pneumonia], subpleural opacities, fibroemphysematous changes, and subpleural honeycombing in various lung zones. *Id.* The ALJ found that these CT scans were silent on the issue of clinical pneumoconiosis, neither supporting nor refuting the presence of clinical pneumoconiosis; thus, he found they do not assist Employer in rebutting the Section 411(c)(4) presumption. Decision and Order at 15. Employer does not challenge this finding; thus, it is affirmed. *See Skrack*, 6 BLR at 1-711.

⁷ The ALJ noted Dr. Meyer merely opined that Claimant's pulmonary fibrosis is not typical of pneumoconiosis caused by coal mine dust (legal pneumoconiosis) and failed to discuss whether Claimant's pulmonary fibrosis could be classified as clinical pneumoconiosis. Decision and Order at 15-16.

and Order at 15. Because Dr. Meyer did not specifically exclude clinical pneumoconiosis in his discussion of Claimant's pulmonary fibrosis, the ALJ permissibly found his opinion entitled to little probative weight. *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 895 (7th Cir. 1990) (ALJ has discretion to weigh the evidence, draw appropriate inferences, and determine credibility); *Amax Coal Co. v. Burns*, 855 F.2d 499, 501 (7th Cir. 1988); Decision and Order at 15. Because the ALJ discredited Dr. Meyer's opinion, we also affirm his finding that the CT scan evidence does not support Employer's burden to disprove clinical pneumoconiosis. Decision and Order at 16.

As Employer raises no arguments regarding the ALJ's weighing of the relevant evidence on clinical pneumoconiosis together, we affirm the ALJ's conclusion that Employer failed to establish that Claimant does not have clinical pneumoconiosis. 20 C.F.R. §§718.201(a)(1), 718.305(d)(1)(i)(A); Decision and Order at 17.

Although Employer's failure to disprove clinical pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis, we will also address legal pneumoconiosis given its relevance to the second method of rebuttal. 20 C.F.R. §718.305(d)(1)(i); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish Claimant does 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. §§718.305(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich*, 25 BLR at 1-155 n.8.

Employer argues the ALJ erred in finding it failed to rebut the presumption of legal pneumoconiosis, generally arguing that Drs. Selby and Rosenberg provided "well-reasoned opinions" explaining why Claimant's disease was consistent with UIP/IPF (idiopathic pulmonary fibrosis) and unrelated to coal mine dust exposure.⁸ Employer's Brief at 27-28. We disagree.

Dr. Selby opined that Claimant does not suffer from coal workers' pneumoconiosis or "any respiratory or pulmonary abnormality as a result of coal mine dust inhalation or

⁸ The ALJ also considered Dr. Istanbuly's opinion, which the ALJ found entitled to no probative weight and thus does not assist Employer in rebutting the presumption. Decision and Order at 20; Claimant's Exhibit 1. He also correctly noted that Dr. Murthy diagnosed legal pneumoconiosis and thus her opinion does not assist Employer in meeting its burden. Decision and Order at 20; Director's Exhibits 14, 80.

coal mine employment.” Director’s Exhibit 31 at 4. Instead, he diagnosed Claimant with “advanced” UIP or IPF which is “the entire cause of his worsened shortness of breath on exertion.” *Id.* He indicated such disease usually occurs in individuals with a smoking history “in conjunction with personal genetic tendencies that have led to an overactive immune system[.]” *Id.*

Dr. Selby based his diagnosis on Claimant’s rate of decline in his pulmonary status and function, “typical” symptoms, and “classic” findings on chest imaging.⁹ *Id.* In addition, Dr. Selby noted that Claimant’s treating pulmonologist recently prescribed the medication OFEV, which Dr. Selby opined is also supportive of his diagnosis as “there is almost no other indication [for the use of OFEV]” and “[c]ertainly coal worker’s pneumoconiosis is not an indication for using OFEV.” *Id.*

Dr. Rosenberg also opined that Claimant does not suffer from legal pneumoconiosis. Employer’s Exhibit 2 at 10. He indicated that Claimant’s radiographic findings demonstrate interstitial fibrosis and progressive symptoms “typical of IPF,” unrelated to coal mine dust exposure but rather a “disorder of the general public.” *Id.* at 9-10. Further, Dr. Rosenberg observed that there are no “reliable” medical studies¹⁰ showing that coal dust causes “primary linear interstitial lung disease without some micronodular changes.” *Id.* at 9. He also noted that Claimant recently started taking OFEV, *id.* at 8, and indicated Claimant has no obstruction “or any disorder” related to coal mine dust exposure. *Id.* at 10.

In weighing their opinions, the ALJ noted that both physicians excluded legal pneumoconiosis by focusing on Claimant’s radiographic findings and identifying his condition as UIP or IPF, which they contend is not caused by coal mine dust. Decision and Order at 21, 23. He permissibly found their opinions unpersuasive because neither physician explained why Claimant’s “extensive” history of coal mine dust exposure could not have been a significantly contributing or aggravating factor to his exercise-induced hypoxemia or restrictive defect, even if UIP or IPF was also a cause. *See Zeigler Coal Co.*

⁹ Dr. Selby indicated the typical chest x-ray pattern of UIP/IPF is lower lobe predominance and the classic CT chest findings include “interstitial pattern, honeycombing and lower lobe predominance.” Director’s Exhibit 31 at 4.

¹⁰ Dr. Rosenberg stated that medical literature indicating a possible relationship between coal dust exposure and IPF is “not reliable” because “none of it has controlled for factors that can cause such linear radiographic abnormalities such as smoking, age, arthritis, medications, and numerous other whole person medical disorders.” Employer’s Exhibit 2 at 9-10.

v. Director, OWCP [Villain], 312 F.3d 332, 336 (7th Cir. 2002); *Poole*, 897 F.2d at 895; Decision and Order at 21, 23.

Additionally, both doctors relied on Claimant having been prescribed OFEV medication as a basis for excluding a diagnosis of legal pneumoconiosis. Decision and Order at 21-23 (citing Director's Exhibit 31 at 4, Employer's Exhibit 2 at 8). The ALJ permissibly found this rationale unpersuasive, noting that Dr. Johnson, who prescribed the medication, specifically acknowledged that Claimant's condition was "possible [coal workers' pneumoconiosis]." ¹¹ Decision and Order at 21 (citing Claimant's Exhibit 7 at 5); *see also Poole*, 897 F.2d at 895 ("weighing conflicting medical evidence is precisely the function of the ALJ as fact-finder").

Employer's arguments amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because the ALJ provided valid reasons for discrediting the medical opinions of Drs. Selby and Rosenberg, the only opinions supportive of Employer's burden, we affirm his finding that Employer failed to disprove legal pneumoconiosis. *See Minich*, 25 BLR at 1-155 n.8. Therefore, we affirm his finding that Employer failed to rebut the Section 411(c)(4) presumption by establishing Claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i); Decision and Order at 23.

¹¹ As noted *supra*, Dr. Johnson was Claimant's treating pulmonologist from 2017 to 2021. Claimant's Exhibit 7. Dr. Johnson's notes indicate Claimant had "significant [medication] for coal workers' pneumoconiosis, [obstructive sleep apnea], dyspnea on exertion and chronic cough." *Id.* at 67. As the ALJ noted, by May 2021, Dr. Johnson diagnosed Claimant with "coal workers' pneumoconiosis." *Id.* at 4-7. In his records, Dr. Johnson discussed coal workers' pneumoconiosis as well as IPF. *Id.* Dr. Johnson noted another pulmonologist evaluated Claimant and concurred with the diagnosis of "black lung." *Id.* at 5. The ALJ found Claimant's treatment records included diagnoses of black lung and pneumoconiosis and found they did not assist Employer in rebutting the presumption of pneumoconiosis, a finding Employer does not contest. Decision and Order at 19; *see Skrack*, 6 BLR at 1-711.

Disability Causation

To disprove disability causation, Employer must establish “no part of [Claimant’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). The ALJ permissibly found that the same reasons for discrediting Drs. Selby’s and Rosenberg’s opinions that Claimant does not suffer from clinical or legal pneumoconiosis also undercut their opinions that his disabling impairments are unrelated to pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); *see Consolidation Coal Co. v. Director, OWCP [Burris]*, 732 F.3d 723, 735 (7th Cir. 2013); Decision and Order at 24. Thus, we affirm the ALJ’s finding that Employer failed to rebut disability causation and thus failed to rebut the Section 411(c)(4) presumption. 20 C.F.R. §718.305(d)(1); Decision and Order at 24.

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