



BRB No. 25-0042 BLA

PERCY T. DAWES)
)
 Claimant-Respondent)
)
 v.)
)
 BHP MINERALS INTERNATIONAL LLC)
)
 and)
)
 TRANSPORTATION INSURANCE)
 COMPANY)
 c/o CNA INSURANCE COMPANY)
)
 Employer/Carrier-)
 Petitioners)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 08/06/2025

DECISION and ORDER

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

H. Brett Stonecipher (Reminger Co., L.P.A.), Lexington, Kentucky, for
Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Steven D. Bell's Decision and Order Awarding Benefits (2021-BLA-05013) rendered on a claim filed on September 11, 2019,¹ pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established at least fifteen years of qualifying coal mine employment and 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.² 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 Claimant is totally disabled and thereby invoked the Section 411(c)(4) presumption. It also contends the ALJ erred in finding it did not rebut the presumption.³ Claimant and the Acting Director, Office of Workers' Compensation Programs (the Director), declined to file response briefs.

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.⁴ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman and Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

¹ Claimant filed an initial claim on September 14, 2018, but subsequently withdrew it. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306.

² Section 411(c)(4) 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); *see* 20 C.F.R. §718.305.

³ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established at least fifteen years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5.

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Tenth Circuit because Claimant performed his coal mine employment in New Mexico. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 10.

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

To invoke the Section 411(c)(4) presumption, a claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work or comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,⁵ 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 Dr. Cahill's opinion, which is the sole medical opinion of record, as supported by Claimant's treatment records and the evidence as a whole.⁶ 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 9-15. Employer contends the ALJ erred because it argues Dr. Cahill never diagnosed a respiratory or pulmonary condition. *Id.* Employer's argument is unpersuasive.

Dr. Cahill completed Department of Labor Form CM-988. Director's Exhibit 13. She listed dyspnea on exertion, orthopnea, and paroxysmal exertional dyspnea as Claimant's "chronic respiratory/pulmonary disease(s) or condition(s)." *Id.* at 5. She also stated he becomes short of breath doing household chores. *Id.* at 26. When asked to identify the etiology of Claimant's respiratory or pulmonary disability, she stated she suspected the conditions are cardiac in nature but may also be related to gastroesophageal reflux disease (GERD). *Id.* at 5.

⁵ A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

⁶ The ALJ found Claimant did not establish total disability based on the pulmonary function studies or arterial blood gas studies. 20 C.F.R. §718.204(b)(2)(i)-(ii); Decision and Order at 6-10. Further, a review of the record reveals there is no evidence of cor pulmonale with right-sided congestive heart failure; thus Claimant cannot demonstrate total disability by this method. 20 C.F.R. §718.204(b)(2)(iii).

Dr. Cahill noted Claimant reported he has been diagnosed with asthma and uses aggressive albuterol inhaler treatment to manage it. Director's Exhibit 13 at 26. 29. She also noted his inhaler provides relief for the dyspnea. *Id.* Further, she opined that if GERD is present, it may be contributing to Claimant's dyspnea/asthma. *Id.* She concluded that Claimant's significant dyspnea on exertion and exercise intolerance would preclude him from performing his usual coal mine employment operating heavy equipment. *Id.* In a supplemental report, Dr. Cahill opined that, based on Claimant's pulmonary function testing, he is "unlikely to be suffering from asthma, and his complaints of dyspnea on exertion are reasonably attributable to his heart disease." ALJ Exhibit 1.

Substantial evidence supports the ALJ's determination that Dr. Cahill diagnosed a respiratory or pulmonary disability, albeit one she opined was caused in part by non-pulmonary conditions or diseases. *See* 20 C.F.R. §718.204(a); *Energy W. Mining Co. v. Oliver*, 555 F.3d 1211, 1217 (10th Cir. 2009) (substantial evidence is evidence in the record that a reasonable mind might accept as adequate to support its conclusion); *N. Coal Co. v. Director, OWCP [Pickup]*, 100 F.3d 871, 873 (10th Cir. 1996); *Hansen v. Director, OWCP*, 984 F.2d 364, 370 (10th Cir. 1993); Decision and Order at 12. The relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether the miner has 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 411(c)(4) presumption pursuant to 20 C.F.R. §718.305. *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989); *Johnson v. Apogee Coal Co.*, 26 BLR 1-1, 1-11 (2023), *appeal docketed*, No. 23-3612 (6th Cir. July 25, 2023). The pertinent regulation provides that "[i]f . . . a nonpulmonary or nonrespiratory condition or disease causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered in determining whether the miner is or was totally disabled due to pneumoconiosis." 20 C.F.R. §718.204(a).

Employer also argues the ALJ erred in crediting Dr. Cahill's opinion because it is contrary to the objective testing of record that shows no total disability. Employer's Brief at 11-12 (unpaginated). Contrary to Employer's contention, 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, such as in this case, if it provides sufficient information from which the ALJ can reasonably infer that a miner is unable to do his last coal mine job. *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). We therefore affirm the ALJ's finding that Dr. Cahill's opinion is credible and

supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 12. Further, we affirm the ALJ's finding Claimant established total disability in consideration of the evidence as a whole, 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232, and thereby invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1); Decision and Order at 14.

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,⁷ 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. Decision and Order at 15-23.

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.” See 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relied on Dr. Cahill's opinion to rebut the presumption. Decision and Order at 21-22. In her initial report, Dr. Cahill noted Claimant's January 14, 2020 pulmonary function study is completely normal. Director's Exhibit 13 at 4. However, she reported Claimant was a good historian, and acknowledged he told her in the last three years he was diagnosed with asthma that he manages with aggressive inhaler therapy. *Id.* at 28-29. She therefore recommended Claimant undergo a methacholine challenge test to determine if he has asthma and advised that if the test was positive, he should be reassessed. *Id.* She concluded that until the test ruled out asthma, she would consider it a differential

⁷ “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).

cause for his dyspnea. *Id.* In her supplemental report, Dr. Cahill noted she reviewed an August 2022 pulmonary function test that was also normal. ALJ's Exhibit 1 at 3. She opined it is "unlikely" Claimant has asthma and thus opined Claimant does not have legal pneumoconiosis. *Id.*

The ALJ discredited Dr. Cahill's opinion because he found she was equivocal in discussing the presence of asthma. Decision and Order at 21-22. Employer argues the ALJ erred. Employer's Brief at pp. 16-19 (unpaginated). We disagree. *Oliver*, 555 F.3d at 1217.

As the ALJ correctly recognized, Dr. Cahill was initially unable to exclude the possibility Claimant has asthma and that it contributed to his dyspnea even though he had normal pulmonary function testing. Director's Exhibit 13 at 28-29. However, in her supplemental report, Dr. Cahill completely reversed course and excluded asthma based on normal pulmonary function testing. ALJ Exhibit 1. Given the fundamental discrepancy in the two reports, the ALJ permissibly found Dr. Cahill's opinion equivocal. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764 (4th Cir. 1999) (weight to give the testimony of an uncertain witness is a question for the trier of fact); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 (1993); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988) (ALJ permissibly considered the equivocal nature of a physician's opinion). We consider Employer's challenge to the ALJ's credibility finding 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 permissibly discredited the only opinion⁸ supportive of Employer's burden on rebuttal, we affirm his finding that Employer failed to rebut the Section 411(c)(4) presumption by establishing Claimant does not have legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 22. Employer's

⁸ Employer argues the ALJ erred in finding Claimant's treatment records support a finding of legal pneumoconiosis. Employer's Brief at pp. 17-18 (unpaginated). Because we affirm the ALJ's finding Claimant invoked the Section 411(c)(4) presumption, it is Employer's burden to disprove legal pneumoconiosis, rather than Claimant's burden to establish its existence. Because Employer has not explained how the error it alleges would make a difference, we reject its argument. *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).

failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis.⁹ 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established “no part of the [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); Decision and Order at 22-23. He discredited the disability causation opinions of Dr. Cahill because she failed to diagnose legal pneumoconiosis, contrary to his finding that Employer failed to disprove Claimant has the disease. *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 22-23. Employer raises no specific allegations of error regarding the ALJ’s findings other than its assertion that the ALJ should have credited Dr. Cahill’s opinion as it is well reasoned. Employer’s Brief at pp. 19-20 (unpaginated). We reject Employer’s argument as it amounts to a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113.

Consequently, we affirm the ALJ’s finding that Employer failed to establish no part of Claimant’s total respiratory disability is due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); *see Minich*, 25 BLR at 154-56; Decision and Order at 22-23. Because Employer did not rebut the Section 411(c)(4) presumption, we affirm the award of benefits.

⁹ Because we have affirmed the ALJ’s finding that Employer failed to rebut the existence of legal pneumoconiosis, we need not consider Employer’s argument that the ALJ erred in finding it also failed to disprove clinical pneumoconiosis. *See Larioni*, 6 BLR at 1-1278; Employer’s Brief at pp. 12-15 (unpaginated).

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge