

U.S. Department of Labor

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



BRB No. 25-0230 BLA

TEDDY E. VARNEY

Claimant-Respondent

v.

ROCKHOUSE CREEK DEVELOPMENT
CORPORATION

and

BRICKSTREET MUTUAL INSURANCE
COMPANY, INCORPORATED

Employer/Carrier-
Petitioners

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 08/26/2026

DECISION and ORDER

Appeal of the Decision and Order on Remand Awarding Benefits of Sean M. Ramaley, Administrative Law Judge, United States Department of Labor.

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

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order on Remand Awarding Benefits (2020-BLA-05427) rendered on a claim filed on March 19, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act). The case is before the Benefits Review Board for a second time.

In his initial Decision and Order Awarding Benefits dated December 27, 2021, the ALJ found Claimant established 15.50 years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he concluded 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). He further found Employer did not rebut the presumption and awarded benefits.

Pursuant to Employer's appeal, the Board affirmed the ALJ's findings that all of Claimant's coal mine employment was underground, and therefore qualifying, and that he is totally disabled. *Varney v. Rockhouse Creek Dev. Corp.*, BRB No. 22-0156 BLA, slip op. at 2 n.3 (Aug. 31, 2023) (unpub.). However, the Board vacated the ALJ's finding that Claimant had more than fifteen years of coal mine employment and the award of benefits because he applied an improper method of calculation to determine the length of Claimant's coal mine employment. *Id.* at 3-6. Employer did not challenge the ALJ's finding that it failed to rebut the presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

On remand, the ALJ credited Claimant with more than fifteen years of qualifying coal mine employment. Consequently, he again found Claimant invoked the Section 411(c)(4) presumption and that Employer failed to rebut it, and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established at least fifteen years of qualifying coal mine employment and invoked the Section 411(c)(4) presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file a substantive response.

The 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

¹ 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); 20 C.F.R. §718.305.

with applicable law.² 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 – Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish he 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 has 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).

In determining the length of Claimant’s coal mine employment, the ALJ considered Claimant’s application for benefits, CM-911a Employment History form, CM-913 Description of Coal Mine Work and Other Employment form, Social Security Earnings Statement (SSES), and hearing testimony, as well as Employer’s statement in its Operator Response to Notice of Claim. Decision and Order at 3-9; Director’s Exhibits 2-6, 25; Hearing Tr. at 19-42. He found Claimant’s coal mine employment consisted of working for Chapmanville Construction from 1979 to 1983; Stonco in 1990 and 1991; Kirk Enterprises in 1992; and Employer from 2004 to 2014. Decision and Order at 8-9. Further, he found Claimant was continuously employed and established 125 working days in every year from 1980 to 1982, and 2005 to 2013, and thus credited him with twelve years of coal mine employment for those periods.³ *Id.* at 8. For the remaining years of 1979, 1983, 1990, 1991, 1992, and 2004, the ALJ found he could not determine the beginning and ending dates of Claimant’s employment. *Id.* at 8-9.

² 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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 36.

³ We affirm, as unchallenged on appeal, the ALJ’s finding that Claimant had nine years of coal mine employment from 2005 to 2013. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Employer’s Brief at 8.

Employer contends the ALJ erred in crediting Claimant with 3.21 years of coal mine employment for 1979, 1983, 1990, 1991, 1992, and 2004. Employer's Brief at 6-8. Specifically, Employer argues the ALJ should have credited Claimant with one year of coal mine employment if he established 250 working days, rather than 125 working days. *Id.* at 7 n.7. We disagree.

Where the ALJ found the record insufficient to identify the specific beginning and ending dates of Claimant's periods of coal mine employment, he properly applied the calculation at 20 C.F.R. §725.101(a)(32)(iii) to ascertain the number of days Claimant worked.⁴ *Baldwin*, 170 F.4th at 282; Decision and Order at 9. 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 him with a full year of coal mine employment. *See Baldwin*, 170 F.4th at 282; *Shepherd v. Incoal, Inc.*, 915 F.3d 392, 406 (6th Cir. 2019); Decision and Order at 9. For the years in which Claimant's earnings fell short of 125 days (1979, 1983, 1991, 1992, 2004), the ALJ permissibly credited him with a fractional year calculated by dividing his annual earnings by Exhibit 610's average daily earnings. *Baldwin*, 170 F.4th at 282; Decision and Order at 9. Thus we discern no error in the ALJ's applying this formula to find Claimant established 3.21 years of coal mine employment for 1979, 1983, 1990, 1991, 1992, and 2004. *Id.*

Employer also argues the ALJ erred in crediting Claimant with three years of coal mine employment with Chapmanville Construction from 1980 to 1982 because the record does not establish he was consistently employed throughout those years. Employer's Brief at 8-10. However, we need not address this argument as Employer concedes, and the record supports, that Claimant had more than 125 working days in each year from 1980 to 1982, which is sufficient to establish a year of coal mine employment in each of those years. *Baldwin*, 170 F.4th at 282; *see* Employer's Brief at 10; Director's Exhibit 5.

⁴ 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.

As Employer raises no further challenge to the ALJ's length of coal mine employment calculation, we affirm his finding that Claimant established more than fifteen years of qualifying coal mine employment and invoked the Section 411(c)(4) presumption. *See* 20 C.F.R. §§718.204(b)(2), 725.101(a)(32); Decision and Order at 9-10. We further affirm, as unchallenged, the ALJ's finding Employer failed to rebut the presumption. *See Skrack*, 6 BLR at 1-711; Decision and Order at 10.

Accordingly, we affirm the Decision and Order on Remand Awarding Benefits.

SO ORDERED.

JONATHAN ROLFE, Acting Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge