

U.S. Department of Labor

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



BRB No. 25-0242 BLA

BILLY R. MIDKIFF

Claimant-Respondent

v.

SOUTHERN OHIO COAL COMPANY

and

CONSOL ENERGY, INCORPORATED

Employer/Carrier-
Petitioners

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 08/05/2026

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.

Christopher L. Wildfire (SutterWilliams, LLC), Pittsburgh, Pennsylvania, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order on Remand Awarding Benefits (2019-BLA-05913) rendered on a subsequent claim¹ filed on September 27, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act). This case is before the Benefits Review Board for a second time.²

In his initial Decision and Order Denying Benefits, the ALJ found Claimant established 17.375 years of underground coal mine employment but did not establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he concluded Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,³ 30 U.S.C. §921(c)(4), or establish entitlement under 20 C.F.R. Part 718. So the ALJ denied benefits.

Pursuant to Claimant's appeal, the Board affirmed the ALJ's finding of 17.375 years of underground coal mine employment, but vacated his finding that Claimant failed to establish total disability, as the ALJ erred in his assessment of the medical opinion evidence. *Midkiff v. S. Ohio Coal Co.*, BRB No. 22-0137 BLA, slip op. at 3 n.4, 9 (Aug. 30, 2023) (unpub.). Consequently, the Board remanded the case for reconsideration.

¹ The district director denied Claimant's prior claim, filed on September 3, 2015, for failure to establish any element of entitlement. Director's Exhibit 1 at 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 he finds "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); *White v. New White Coal.*, 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 his prior claim was denied for failure to establish any element of entitlement, Claimant had to submit new evidence establishing at least one element of entitlement to obtain review on the merits of his claim. *White*, 23 BLR at 1-3; Director's Exhibit 1 at 3.

² Acting Chief Administrative Appeals Judge Jonathan Rolfe is substituted on the panel for Administrative Appeals Judge Judith S. Boggs, who is no longer with the Board.

³ 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), 20 C.F.R. §718.305.

On remand, the ALJ found Claimant established total disability and thus invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis. He further found that Employer failed to rebut the presumption and thus awarded benefits.

In the current appeal, Employer argues the ALJ erred in finding it failed to rebut the presumption.⁴ Neither Claimant nor the Director, Office of Workers' Compensation Programs, filed a response brief.

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 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, 361-62 (1965).

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,⁶ 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

⁴ We affirm, as unchallenged on appeal, that Claimant established total disability and thus invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Remand at 20.

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Ohio. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 19; Director's Exhibit 4.

⁶ "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).

failed to rebut the presumption by either method.⁷ Decision and Order on Remand at 27, 29.

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. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A). The Sixth Circuit has held this standard requires Employer to show Claimant’s coal mine dust exposure “did not contribute, in part, to his alleged pneumoconiosis.” *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). “An employer may prevail under the not ‘in part’ standard by showing that coal dust exposure had no more than a *de minimis* impact on the miner’s lung impairment.” *Id.* at 407 (citing *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014)).

The ALJ considered four medical opinions regarding the presence of legal pneumoconiosis. Director’s Exhibit 14; Claimant’s Exhibits 1, 2; Employer’s Exhibits 2-2A, 4-4A, 5, 6. Drs. Feicht and Krefft determined Claimant has legal pneumoconiosis, diagnosing chronic obstructive pulmonary disease (COPD) due to coal mine dust exposure and smoking. Director’s Exhibit 14, Claimant’s Exhibits 1, 2. Dr. Zaldivar agreed Claimant has COPD, but opined it was due to Claimant’s smoking history and age; thus, he did not diagnose legal pneumoconiosis. Employer’s Exhibits 2; 5 at 46, 59. Dr. Rosenberg concluded that Claimant does not have legal pneumoconiosis, opining Claimant has “mild” obstruction consistent with COPD, which he stated is most likely due to Claimant’s smoking history. Employer’s Exhibits 4; 6 at 25-27. The ALJ found Drs. Zaldivar’s and Rosenberg’s opinions insufficient to rebut the presumption of legal pneumoconiosis.⁸ Decision and Order on Remand at 26.

⁷ The ALJ found Employer rebutted the presumption of clinical pneumoconiosis. Decision and Order on Remand at 26.

⁸ The ALJ also considered Claimant’s treatment records and noted diagnoses and treatment of, among other conditions, COPD and emphysema. Decision and Order on Remand at 27. He indicated that while the treatment records support a diagnosis of COPD and the medical experts’ diagnosis of the same, they do not address the etiology of Claimant’s pulmonary disease and therefore do not weigh for or against a finding of legal pneumoconiosis. *Id.*

Employer contends the ALJ erred in weighing the medical opinion evidence to find legal pneumoconiosis unrebutted.⁹ We disagree.

The ALJ found Dr. Zaldivar’s opinion undermined as he failed to sufficiently address why Claimant’s age and smoking history were the sole causes of Claimant’s obstruction, with no contribution from coal mine dust exposure. Decision and Order on Remand at 26. It is within the purview of the ALJ to weigh the evidence, draw inferences and determine credibility. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989). Beyond generally arguing Dr. Zaldivar’s opinion is well-reasoned and documented and sufficient to rebut the presumption, Employer has not explained how the ALJ erred in this finding. Employer’s Brief at 33-34. As the ALJ was within his discretion to find Dr. Zaldivar’s opinion inadequately explained, we affirm it.¹⁰ See *Johnson v. Apogee Coal Co.*, 26 BLR 1-1, 1-13 (2023) (ALJ permissibly found physician’s opinion unpersuasive for failing to explain why coal mine dust did not contribute, even in part, to the miner’s impairment), *aff’d sub nom. Apogee Coal Co. v. Director, OWCP*, Nos. 23-3297, 23-3437, 23-3536, 23-3537, 23-3541, 23-3612, 23-3644, 23-3645, and 23-3662 (6th Cir. Apr. 28, 2026); *Howard v. Apogee Coal Co.*, 25 BLR 1-301, 1-320 (2022) (ALJ acted within her discretion in finding physician’s opinion unpersuasive because he did not sufficiently explain why Claimant’s coal mine dust exposure “did not substantially exacerbate” his obstructive lung disease); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc).

Employer also challenges the ALJ’s discrediting of Dr. Rosenberg’s opinion, generally arguing he is well-qualified and his opinion is well-reasoned and supported by the evidence and medical literature. Employer’s Brief at 35-36. The ALJ found Dr. Rosenberg’s opinion – that Claimant’s condition was “probably due to smoking” and that it was possibly, “though unlikely,” related to coal mine dust – to be equivocal and does not aid Employer in its burden on rebuttal. Decision and Order on Remand at 26; see *Island Creek Coal Co. v. Holdman*, 202 F.3d 873, 882 (6th Cir. 2000) (physician’s opinion which

⁹ While Employer raises multiple arguments contending the ALJ erred in crediting Drs. Feicht’s and Krefft’s opinions, both physicians diagnosed legal pneumoconiosis, so their opinions do not support Employer’s rebuttal burden. Employer’s Brief at 26-33; Decision and Order on Remand at 26; Director’s Exhibit 14; Claimant’s Exhibits 1, 2. Therefore, we need not consider Employer’s arguments that the ALJ erred in crediting their opinions. See *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009).

¹⁰ As the ALJ provided a valid basis for finding Dr. Zaldivar’s opinion undermined, we need not address Employer’s remaining contention of error. See *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer’s Brief at 33.

is qualified or equivocal may properly be discredited by an ALJ). Employer has pointed to no error in the ALJ's findings other than generally arguing the ALJ should have credited Dr. Rosenberg's opinion. Employer's Brief at 35-37; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). The Board cannot reweigh the evidence or substitute its inferences for those of the ALJ. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Because it is supported by substantial evidence, we affirm the ALJ's determination that Employer did not disprove legal pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i); *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); Decision and Order on Remand at 26. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established 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)(ii).

The ALJ permissibly found Drs. Zaldivar's and Rosenberg's opinions entitled to little weight because they did not diagnose legal pneumoconiosis, contrary to his finding that Employer failed to disprove the disease. *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order on Remand at 28. Employer does not challenge this finding beyond its arguments that Drs. Zaldivar's and Rosenberg's opinions should have been credited regarding legal pneumoconiosis. Employer's Brief at 33-37.

Thus, we affirm the ALJ's finding that Employer failed to rebut the presumption that Claimant's totally disabling impairment is caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order on Remand at 29.

Accordingly, we affirm the ALJ's 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