U.S. Department of Labor

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

BRB No. 25-0034 BLA

WILLIAM C. CREEKMUR	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK KENTUCKY MINING	)	
	)	**NOT-PUBLISHED**
and	)	
	)	
SELF-INSURED THROUGH CONSOL ENERGY INCORPORATED	)	DATE ISSUED: 12/12/2025
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	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 Scott Lu (Vowels Law PLC), Henderson, Kentucky, for Claimant.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer and its Carrier.

Olgamaris Fernandez (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for

Administrative Appeals), Washington, D.C., for the Acting Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Steven D. Bell's Decision and Order Awarding Benefits (2021-BLA-05849), rendered on a claim filed on September 26, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ determined Claimant established 12.57 years of coal mine employment and therefore found he could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established total disability due to clinical and legal pneumoconiosis[2] and awarded benefits. 20 C.F.R. §§718.202(a), 718.204(b)(2).

On appeal, Employer argues the ALJ erred in finding Claimant established the existence of clinical and legal pneumoconiosis and that his totally disabling respiratory impairment is due to pneumoconiosis. Claimant responds, urging affirmance of the award of benefits. The Acting Director, Office of Workers' Compensation Programs (the Director), responds urging the Benefits Review Board to reject Employer's contention that

[1] Section 411(c)(4) 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] "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). "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).

the ALJ applied an improper standard when weighing the evidence regarding legal pneumoconiosis.

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.[3] 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).

Without the benefit of the Section 411(c)(3)[4] or Section 411(c)(4) presumptions, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must prove he has 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). The United States Court of Appeals for the Sixth Circuit has held a miner can establish a lung impairment is significantly related to coal mine dust exposure "by showing that his disease was caused 'in part' by coal mine employment." *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014); *see also Island Creek Coal Co. v. Young*, 947 F.3d 399, 407 (6th Cir. 2020) ("[I]n [*Groves*] we defined 'in part' to mean 'more than a *de minimis* contribution' and instead 'a contributing cause of some discernible consequence.'").

[3] 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 Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 7.

[4] The ALJ accurately found there is no evidence of complicated pneumoconiosis and thus Claimant cannot invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). 20 C.F.R. §718.304; Decision and Order at 26.

The ALJ considered the medical opinions of Drs. Majmudar, Pearle, Selby, and Fino. Decision and Order at 20-26; Director's Exhibits 18, 21, 25; Claimant's Exhibit 4; Employer's Exhibits 4-6.

Dr. Majmudar opined Claimant has legal pneumoconiosis in the form of totally disabling obstructive lung disease arising out of his coal mine dust exposure. Director's Exhibit 18 at 6-7; Director's Exhibit 25. Similarly, Dr. Pearle opined Claimant has disabling chronic obstructive pulmonary disease (COPD) and a restrictive impairment due to cigarette smoking[5] and coal mine dust exposure. Claimant's Exhibit 4 at 2.

In contrast, Dr. Selby opined that Claimant does not have legal pneumoconiosis but instead has a mild but significantly reversible obstruction and mild to moderate restriction due to asthma caused by genetics and a viral infection but unrelated to his coal mine dust exposure. Director's Exhibit 21 at 5-6; Employer's Exhibit 5 at 10-17. Finally, Dr. Fino opined Claimant does not have legal pneumoconiosis but instead has a restrictive impairment due to significant coronary artery disease and pulmonary embolism. Employer's Exhibit 4 at 6-7; Employer's Exhibit 6 at 16-17.

The ALJ found Dr. Majmudar's and Dr. Pearle's opinions well-reasoned, documented, and entitled to full weight. Decision and Order at 20-26. Conversely, he found Dr. Selby's and Dr. Fino's opinions not well-reasoned and entitled to little weight. *Id.* He thus found the medical opinion evidence establishes legal pneumoconiosis. *Id.* at 26.

We initially reject Employer's argument that the ALJ applied an improper standard requiring it to rule out the existence of legal pneumoconiosis. Employer's Brief at 5-6. The ALJ accurately stated that Claimant bears the burden to prove that his respiratory impairment is significantly related to, or substantially aggravated by, his exposure to coal mine dust. Decision and Order at 9-11; *see Groves*, 761 F.3d at 598; 20 C.F.R. §718.202(b). Further, as we discuss below, the ALJ permissibly weighed the medical opinions to find Claimant carried his burden to establish the existence of the disease by a preponderance of the evidence. Decision and Order at 26.

Nor are we persuaded by Employer's argument that the ALJ erred in crediting the opinions of Drs. Majmudar and Pearle. Employer's Brief at 8-10.

[5] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant had a smoking history of at least twenty-two pack years. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

Contrary to Employer's arguments, the ALJ was not required to discredit Dr. Majmudar's opinion because he considered less evidence. Employer's Brief at 10. Rather, an ALJ may credit a physician who did not review all of a miner's medical records when that doctor's opinion is otherwise reasoned, documented, and based on an examination of the miner and objective test results. 20 C.F.R. §718.202(a)(4); *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 212 (4th Cir. 2000); *Smith v. Kelly's Creek Res.*, 26 BLR 1-15, 1-28 (2023); *Fields v. Island Creek Coal Co*., 10 BLR 1-19, 1-21-22 (1987) (reasoned opinion is one in which the ALJ finds the underlying documentation adequate to support the physician's conclusion).

Dr. Majmudar performed the Department of Labor-sponsored evaluation of Claimant on January 15, 2019. Director's Exhibit 18. He noted Claimant's smoking and occupational histories, his symptoms and medical history, and conducted a physical examination, chest x-ray, pre- and post-bronchodilator pulmonary function studies, resting and exercise arterial blood gas studies and an EKG. *Id.* He diagnosed Claimant with a totally disabling obstructive impairment due to coal mine dust exposure and cigarette smoking. Director's Exhibit 18 at 6-7; Director's Exhibit 21. The ALJ found that although Dr. Majmudar did not use the term "legal pneumoconiosis" in this report, his opinion constituted a diagnosis of it because he explained that the significant reduction in Claimant's FEV1 value was due to coal workers' pneumoconiosis caused by twelve years of exposure to coal and rock dust. Decision and Order at 20-21; Director's Exhibit 18 at 7. Additionally, the ALJ found that conclusion bolstered by Dr. Majmudar's later report clarifying that he believes Claimant has both clinical and legal pneumoconiosis.[6] Director's Exhibit 21. Contrary to Employer's contention, the ALJ permissibly found Dr. Majmudar's opinion adequately documented and reasoned as the physician explained the basis of his findings, acknowledged and addressed Claimant's smoking history, and was consistent with the objective testing he considered. *See Church v. E. Associated Coal Corp*., 20 BLR 1-8, 1-13 (1996); *Fields*, 10 BLR at 1-21-22; Decision and Order at 21.

We further reject Employer's argument that the ALJ should have discredited Dr. Pearle's opinion because there is no evidence he has experience examining coal miners.

[6] To the extent Employer implies Dr. Majmudar relied on the existence of clinical pneumoconiosis on x-ray to diagnose legal pneumoconiosis and this opinion is compromised by his failure to consider the computed tomography scan evidence, we disagree. Employer's Brief at 10. Dr. Majmudar opined Claimant has clinical and legal pneumoconiosis and further explained that the reduction in his FEV1 was due to his exposure to coal and rock dust, noting that Claimant has an insignificant smoking history. Director's Exhibits 18, 21. The ALJ properly considered these diagnoses separately. 20 C.F.R §718.201(a)(1), (2); Decision and Order at 15-16, 20-21.

Employer's Brief at 8. As the ALJ noted, Dr. Pearle's credentials are in the record and document that he is board-certified in internal medicine and pulmonary disease. Decision and Order at 18; Claimant's Exhibit 4. Thus, the ALJ permissibly found him well qualified to offer an opinion as to the presence and cause of Claimant's pulmonary disease. *See Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993); Decision and Order at 18.

Nor are we persuaded that Dr. Pearle's opinion must be discredited because it is "equivocal" and based on the erroneous assumption that all obstructive impairments are legal pneumoconiosis. Employer's Brief at 8-9. Dr. Pearle indicated Claimant has disabling airflow obstruction and a restrictive impairment based on the objective studies, and he attributed Claimant's impairment to both smoking and coal mine dust exposure. Claimant's Exhibit 4 at 2. He explained that, although there is a reversible portion of Claimant's impairment, COPD, bronchitis, and asthma all have a reversible component, and therefore the partial reversibility in Claimant's impairment "in no way" means the obstruction is not legal pneumoconiosis. *Id.* at 5. Further explaining that there is no way to distinguish between the effects of cigarette smoking or coal mine dust exposure, he opined Claimant's coal mine dust exposure was a substantially contributing cause of his impairment. *Id.* at 4-5.

The ALJ permissibly found Dr. Pearle's opinion well-documented and reasoned as his diagnosis was consistent with the objective testing and Claimant's medical and work history, and he accounted for all of Claimant's exposure histories. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576-77 (6th Cir. 2000) (because coal dust need not be the sole cause of the miner's respiratory or pulmonary impairment, legal pneumoconiosis can be proven based on a physician's opinion that coal dust and smoking were both causal factors and that it was impossible to allocate between them); *see also Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 763 (4th Cir. 1999) (opinion that pneumoconiosis "could be" a complicating factor in miner's death was not equivocal); *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366 (4th Cir. 2006) ("refusal to express a diagnosis in categorical terms is candor, not equivocation"); Decision and Order at 25.

Employer further asserts that the ALJ erred in discrediting Drs. Selby's and Fino's opinions. Employer's Brief at 5-8. We disagree.

Dr. Selby diagnosed Claimant with a mild obstructive impairment with significant reversibility and a mild to moderate restriction. Director's Exhibit 21 at 5; Employer's Exhibit 5. He opined that the obstructive impairment was due solely to asthma caused by genetics in response to a likely viral infection because Claimant has symptoms consistent with asthma, asthma is "more than enough" to cause those symptoms, and he had a significant response to bronchodilators. Director's Exhibit 21 at 5-6. Dr. Selby also opined some of the symptoms were due to coronary artery disease, pulmonary emboli, and obesity,

none of which were due to coal mine dust exposure. *Id.* at 6. Finally, he opined that if there is any additional damage to Claimant's lungs, it must be due to his significant smoking history or remodeling of his airways by poorly treated asthma. *Id.* at 11-12. On the other hand, Dr. Fino diagnosed Claimant with a moderate restrictive impairment, which he attributed to coronary bypass surgery and pulmonary emboli. Employer's Exhibit 4 at 6; Employer's Exhibit 6. Dr. Fino opined Claimant's coal mine dust exposure did not contribute to this impairment due to the lack of clinical pneumoconiosis and the response to bronchodilators. Employer's Exhibit 4 at 6.

Although both physicians relied, in part, on the response to bronchodilators to find Claimant's lung disease is unrelated to his coal mine dust exposure, the ALJ accurately noted Claimant's pulmonary function study results showed only partial reversibility post-bronchodilator. Decision and Order at 22, 24; Director's Exhibit 18 at 8; Director's Exhibit 21 at 14. Thus, contrary to Employer's argument, the ALJ permissibly discredited Drs. Selby's and Fino's opinions because they did not adequately address why the irreversible component of Claimant's respiratory impairment was not caused by coal mine dust exposure.[7] *See Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007) (ALJ may accord less weight to a physician who fails to adequately explain why a miner's response to bronchodilators necessarily eliminated coal dust exposure as a cause of his obstructive lung disease); Decision and Order at 22, 24. The ALJ further permissibly found their opinions unpersuasive because they did not adequately explain why Claimant's 12.57 years of coal mine dust exposure did not also contribute to his pulmonary impairment in addition to the contribution from his heart conditions and pulmonary emboli. *See* 20 C.F.R. §718.201(b); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir.

[7] Employer challenges the ALJ's finding that the pulmonary function study and medical opinion evidence establishes total disability. Employer's Brief at 2. However, in arguing that Dr. Fino's opinion "deserves full weight" on the issue of legal pneumoconiosis, it incorrectly asserts that the pulmonary function tests did not show disability, when in fact the October 8, 2020 study produced qualifying values. *See* Employer's Brief at 8; Director's Exhibit 21 at 14. To the extent this assertion may be interpreted as a challenge to the ALJ's weighing of the evidence relevant to total disability, we find it inadequately briefed. *See K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-47 (2008); *Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); Employer's Brief at 8. Thus, we affirm, as unchallenged on appeal, the ALJ's finding that Claimant established total disability. *See Skrack*, 6 BLR at 1-711; Decision and Order at 37.

2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 23-25.

Employer's arguments on legal pneumoconiosis amount to a request to reweigh the evidence, which the Board may not do. *Anderson*, 12 BLR at 1-113. Because the ALJ acted within his discretion in rendering his credibility findings, we affirm the ALJ's conclusion that Claimant established legal pneumoconiosis. Decision and Order at 26.

Disability Causation

To establish total disability due to pneumoconiosis, Claimant must establish by a preponderance of the evidence that pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause of a miner's totally disabling impairment if it has "a material adverse effect on the miner's respiratory or pulmonary condition," or "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii); *Gross v. Dominion Coal Co.*, 23 BLR 1-8, 1-17 (2003).

The ALJ credited as well-documented and reasoned Dr. Pearle's opinion that legal pneumoconiosis substantially contributes to Claimant's disability. Decision and Order at 38; Claimant's Exhibit 4 at 4-5. Because the ALJ permissibly found Dr. Pearle's opinion sufficient to prove Claimant's totally disabling obstructive lung disease constitutes legal pneumoconiosis, the ALJ rationally found his opinion also establishes Claimant is totally disabled due to the disease. *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668-69 (6th Cir. 2015); *see also Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013) (where COPD caused the miner's total disability, the legal pneumoconiosis inquiry "completed the causation chain from coal mine employment to legal pneumoconiosis which caused [the miner's] pulmonary impairment that led to his disability"); Decision and Order at 38. Moreover, the ALJ permissibly discredited Drs. Selby's and Fino's opinions regarding the cause of Claimant's total respiratory disability because they did not diagnose legal pneumoconiosis, contrary to his finding that Claimant established the disease. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Adams v. Director, OWCP*, 886 F.2d 818, 826 (6th Cir. 1989); Decision and Order at 39. Consequently, we affirm the ALJ's determination that Claimant is totally disabled due to pneumoconiosis.[8] Decision and Order at 39.

[8] As we have affirmed the ALJ's determination that Claimant is totally disabled due to legal pneumoconiosis, we need not address Employer's challenge to the ALJ's finding

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge

that Claimant also established he has clinical pneumoconiosis. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 3-5.