U.S. Department of Labor

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

BRB No. 25-0050 BLA

CHARLES J. BARRON Claimant-Respondent v. SOLAR SERVICE COMPANY and AMERICAN CASUALTY COMPANY Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 12/09/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Deanna Lyn Istik (Sinatra & Istik Law Office, PLLC), Cranberry Township, Pennsylvania, for Claimant.

T. Jonathan Cook (Cipriani & Werner, PC), Charleston, West Virginia, 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) Drew A. Swank's Decision and Order Awarding Benefits (2024-BLA-05068) rendered on a claim filed on November 20, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulation that Claimant had eleven years of coal mine employment. He therefore found Claimant 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 did not establish clinical pneumoconiosis, but established legal pneumoconiosis[2] and a totally disabling respiratory or pulmonary impairment due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204(b)(2), (c). Consequently, he awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established legal pneumoconiosis.[3] Claimant responds, urging affirmance of the award. The Acting Director, Office of Workers' Compensations 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

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[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).

[3] We affirm, as unchallenged on appeal, that Claimant established eleven years of coal mine employment and a totally disabling respiratory or pulmonary impairment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4, 27.

accordance with applicable law.[4] 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).

Entitlement to Benefits – 20 C.F.R. Part 718

Without the benefit of the Section 411(c)(3)[5] and (c)(4) statutory 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 one 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, 1-27 (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 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(a)(2), (b).

The ALJ considered the medical opinions of Drs. Celko, Sood, Go, Jin, and Rosenberg. Decision and Order at 15-19. Drs. Celko, Sood, and Go opined that Claimant has legal pneumoconiosis, in the form of chronic obstructive pulmonary disease (COPD) and chronic bronchitis due in part to coal mine dust exposure.[6] Director's Exhibit 19 at 2; Claimant's Exhibits 1 at 7; 1a at 3; 3 at 4; 3a at 3. Drs. Jin and Rosenberg opined that he

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[4] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because Claimant performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3; 19 at 4-5.

[5] There is no evidence of complicated pneumoconiosis in the record; thus, Claimant cannot invoke the presumption at Section 411(c)(3). 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304; Decision and Order at 15.

[6] Dr. Sood indicated that asthma and obesity also likely contributed to Claimant's impairment, explaining in his supplemental report that Claimant's asthma "also constitutes a diagnosis of legal pneumoconiosis." Claimant's Exhibit 1a at 3. Dr. Go also noted that Claimant has evidence of asthma, which he did not believe was due "in significant part" to coal mine dust exposure. Claimant's Exhibit 3 at 5.

does not have the disease, finding his impairment due to asthma and obesity, unrelated to coal mine dust exposure. Employer's Exhibits 2; 3 at 5-6; 3 Supp at 2-3. The ALJ accorded no weight to the opinions of Drs. Sood, Go, Jin, and Rosenberg, finding them not well-reasoned. Decision and Order at 17-18. But he credited Dr. Celko's opinion, finding it well-reasoned and consistent with the principles underlying the preamble to the 2001 revised regulations. *Id.* at 17. Thus, he concluded Claimant established legal pneumoconiosis by a preponderance of the evidence. *Id.* at 19.

Employer asserts that the ALJ "improperly credited the preamble over well documented scientific and medical evidence establishing the claimant's medical condition is unrelated to coal mine dust exposure." Employer's Brief at 8-11. It further generally contends that Drs. Jin and Rosenberg gave well-reasoned opinions supported by scientific and medical literature and the ALJ failed to provide adequate reasons for determining otherwise. *Id.* at 11. We disagree.

Initially, we reject Employer's argument that the ALJ erroneously relied on the preamble when weighing the medical opinions. Federal circuit courts, including the United States Court of Appeals for the Third Circuit, under whose jurisdiction this case arises, have consistently held that an ALJ may permissibly evaluate expert opinions in conjunction with the Department of Labor's resolution of questions of scientific fact relevant to the elements of entitlement in the preamble. *See Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 257 (3d Cir. 2011); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012); *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726 (7th Cir. 2008).

Further, Employer has not explained how the ALJ erred in crediting Dr. Celko's opinion that Claimant has legal pneumoconiosis. The ALJ permissibly found Dr. Celko's opinion diagnosing legal pneumoconiosis well-reasoned based on the obstruction indicated on Claimant's pulmonary function testing, Claimant's limited smoking history, and his opinion's consistency with the preamble's recognition that COPD is linked to coal mine dust exposure. Decision and Order at 13, 17; 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000) ("Clinical studies, pathological findings, and scientific evidence regarding the cellular mechanisms of lung injury link, in a substantial way, coal mine dust exposure to pulmonary impairment and chronic obstructive lung disease."); *Kertesz v. Director, OWCP*, 788 F.2d 158, 163 (3d Cir. 1986) (ALJ may weigh the medical evidence and draw his own conclusions); Director's Exhibit 19. We therefore affirm, as supported by substantial evidence, the ALJ's determination to accord "great weight" to Dr. Celko's opinion. *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); *Mancia v. Director, OWCP*, 130 F.3d 579, 584 (3d Cir. 1997).

We also reject Employer's argument that the ALJ erred in discrediting Dr. Jin's opinion that Claimant does not have legal pneumoconiosis. Employer's Brief at 10-11. Dr. Jin diagnosed Claimant with asthma and stated no scientific evidence indicates "that coal dust causes asthma." Employer's Exhibit 2 at 6-7. The ALJ permissibly found Dr. Jin's opinion inconsistent with the medical findings set forth in the preamble, which states asthma can be substantially aggravated by coal mine dust and thus constitute legal pneumoconiosis. Decision and Order at 17-18; 65 Fed. Reg at 79,939, 79,943; *Helen Mining Co. v. Elliott*, 859 F.3d 226, 239-40 (3d Cir. 2017); *see also Am. Energy, LLC v. Director, OWCP* [*Goode*], 106 F.4th 319, 332 (4th Cir. 2024); Employer's Exhibit 2 at 7. Moreover, as the ALJ found, Dr. Jin acknowledged that coal mine dust "might have played a role" in Claimant's remaining "mild" impairment even after the administration of bronchodilators on pulmonary function testing, which the ALJ determined was inconsistent with her opinion that Claimant does not have legal pneumoconiosis. Decision and Order at 18; Employer's Exhibit 2 at 7. Employer does not challenge this finding. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Thus, we affirm the ALJ's discrediting of Dr. Jin's opinion.

In addition, we reject Employer's argument that the ALJ failed to provide adequate reasons for discrediting Dr. Rosenberg's opinion that Claimant does not have legal pneumoconiosis. Employer's Brief at 11. Dr. Rosenberg opined that if coal mine dust were responsible for Claimant's impairment, then such impairment would have been exhibited in the first few years of Claimant's coal mine employment. Employer's Exhibits 3 at 5-6; 3 Supp at 3. The ALJ permissibly discredited this reasoning as inconsistent with the regulations' recognition that pneumoconiosis is "a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 209-10 (3rd Cir. 2002); *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be latent and progressive may be discredited); Decision and Order at 18. We therefore affirm, as supported by substantial evidence, the ALJ's discrediting of Dr. Rosenberg's opinion.[7] Decision and Order at 18-19; *see Soubik*, 366 F.3d at 234; *Mancia*, 130 F.3d at 584.

Thus, contrary to Employer's argument, Employer's Brief at 11, the ALJ sufficiently explained his credibility determinations, in accordance with the Administrative

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[7] Because the ALJ provided a valid basis for discrediting Dr. Rosenberg's opinion unrelated to the argument Employer raised, we need not address Employer's assertion of error regarding the ALJ's alternative bases for discrediting his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 11.

Procedure Act.[8] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Employer's arguments that the ALJ should have credited Drs. Jin's and Rosenberg's opinions amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113; Employer's Brief at 11.

Consequently, we affirm the ALJ's determination that Claimant established legal pneumoconiosis by a preponderance of the evidence, based on Dr. Celko's well-reasoned opinion.[9] 20 C.F.R. §718.202(a); Decision and Order at 19.

As Employer raises no specific allegations of error in the ALJ's finding that Claimant established total disability[10] and disability causation, we further affirm his finding that Claimant established his legal pneumoconiosis is a "substantially contributing cause" of his totally disabling pulmonary impairment. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.204(c); Decision and Order at 31.

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[8] The Administrative Procedure Act requires that every adjudicatory decision include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

[9] Neither party contests the ALJ's findings that Drs. Sood's and Go's opinions are not well-reasoned and thus do not support Claimant's burden. Decision and Order at 17. Thus, we affirm these determinations. *See Skrack*, 6 BLR at 1-711.

[10] Employer contends the ALJ did not address Dr. Rosenberg's explanation that when the pulmonary function studies are adjusted for Claimant's "advanced age," they are no longer qualifying. Employer's Brief at 10; Employer's Exhibit 3 at 5. However, Employer does not contend the ALJ erred in finding Claimant established a totally disabling respiratory or pulmonary impairment by a preponderance of the evidence; thus, we decline to address this 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); *supra* note 3. Of note, Dr. Rosenberg acknowledged Claimant demonstrated "severe" obstruction on pulmonary function testing pre-bronchodilator. Employer's Exhibit 3 Supp at 3.

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