U.S. Department of Labor

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

BRB No. 25-0061 BLA

TOMMY DIXON Claimant-Respondent v. ENERGY WEST MINING COMPANY Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 12/18/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Lauren C. Boucher, Administrative Law Judge, United States Department of Labor.

Jared L. Bramwell (Kelly & Bramwell, P.C.), Draper, Utah, for Claimant.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Lauren C. Boucher's Decision and Order Awarding Benefits (2021-BLA-05405) 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 credited Claimant with twenty-one years of underground coal mine employment and found he has a totally disabling pulmonary or respiratory impairment. 20 C.F.R. §718.204(b)(2). She therefore determined Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[2] She further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption.[3] It also challenges the ALJ's finding that it did not rebut the presumption. Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, has not filed 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 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).

[1] Claimant filed a prior claim for benefits that he subsequently withdrew. Director's Exhibit 2. A withdrawn claim is "considered not to have been filed." 20 C.F.R. §725.306(b).

[2] Section 411(c)(4) of the Act 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.

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant has twenty-one years of underground coal mine employment. *Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 4; *see* Hearing Transcript at 14-15.

[4] The Board will apply the law of the United States Court of Appeals for the Tenth Circuit because Claimant performed his last coal mine employment in Utah. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5.

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

To invoke the Section 411(c)(4) presumption, 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 and comparable gainful work.[5] *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,[6] 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 evidence supporting total disability against all relevant contrary evidence. *See 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 the arterial blood gas study and medical opinion evidence supports a finding of total disability and that Claimant established total disability based on a preponderance of the evidence.[7] 20 C.F.R. §718.204(b)(2)(ii), (iv); Decision and Order at 23, 26.

Arterial Blood Gas Studies

The ALJ considered three arterial blood gas studies performed on November 12, 2019, December 17, 2020, and December 5, 2022. Decision and Order at 23; Director's Exhibit 16 at 16-18; Claimant's Exhibit 4 at 1-3; Employer's Exhibit 4 at 6-7. The November 12, 2019 and December 17, 2020 blood gas studies are non-qualifying at rest and with exercise. Director's Exhibit 16 at 16-18; Employer's Exhibit 4 at 6-7. The December 5, 2022 study is non-qualifying at rest and qualifying with exercise. Claimant's Exhibit 4 at 1-3. The ALJ accorded the most weight to the December 5, 2022 exercise test as more probative of Claimant's ability to perform the heavy exertional requirements of his usual coal mine work, crediting it over the non-qualifying studies from November 12,

[5] We affirm, as unchallenged on appeal, the ALJ's determination that Claimant's usual coal mine work on the long wall required heavy manual labor. *Skrack*, 6 BLR at 1-711; Decision and Order at 5.

[6] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained 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).

[7] The ALJ found the pulmonary function study evidence alone does not support total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii); Decision and Order at 21 n.12, 23.

2019 and December 17, 2020. Decision and Order at 23. She therefore concluded that the arterial blood gas study evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 23.

Employer argues that the arterial blood gas evidence does not support a finding of total disability according to the Alveolar-arterial (A-a) gradient,[8] which the ALJ failed to consider. Employer's Brief at 7. Employer's argument is not persuasive.

In revising Appendix C of 20 C.F.R. Part 718, the Department of Labor (DOL) recognized that altitude affects blood gas levels, but that "the relationship between the lowering of arterial oxygen tension and altitude is complex because . . . the human body has compensatory mechanisms." 45 Fed. Reg. 13,678, 13,712 (Feb. 29, 1980). The DOL also recognized that there is no "straight-forward linear lowering of arterial blood oxygen tension as the oxygen pressure in the atmosphere decreases with altitude." *Id.* Thus, the DOL created the three altitude-adjusted tables, concluding it is "an acceptable and valid compromise, which takes into account the effect of altitude without becoming overly complicated." *Id.* The DOL declined to use the A-a gradient as a measure of disability because it was laborious, difficult to administer, and few laboratories were equipped to perform it. *Id.* at 13,683. Instead, the DOL found that because "the arterial blood oxygen tension measures the overall ability of the lung to properly provide oxygen for body metabolism," it "thus provides a more useful measurement in order to determine the overall ability of the individual to function." *Id.*

Given the DOL's rejection of the A-a gradient as a standard measure of disability, and Employer's failure to show that the A-a gradient is a better indicator of disability than the tables in 20 C.F.R. Part 718, Appendix C, we reject Employer's contention that remand is necessary for the ALJ to consider the A-a gradient. *See* Employer's Brief at 7. The regulations provide three ranges of altitudes by which blood gas testing is assessed, which the ALJ correctly applied.[9] 20 C.F.R. Part 718, App. C; Decision and Order at 23; *see Big*

[8] In making this argument, Employer cites to the portion of Dr. Cahill's deposition where, concerning the November 12, 2019 blood gas study, the doctor states that while Claimant's A-a gradient was "at the upper limit . . . of normal" with exercise, it was not abnormal. Employer's Exhibit 7 at 21.

[9] Employer states that "[b]lood-gas testing is to be evaluated with both the 3,000 to 5,999 feet and the above 6,000 feet tables to be considered." Employer's Brief at 7. To the extent Employer's assertion can be considered sufficiently briefed, the ALJ properly considered the November 12, 2019 and December 17, 2020 studies using the values for studies performed at test sites 3,000 to 5,999 feet above sea level and the December 5, 2022 study using the values for studies performed at test sites 6,000 feet or more above sea level,

Horn Coal Co. v. OWCP [*Alley*], 897 F.2d 1052, 1055-56 (10th Cir. 1990) (ALJ is not required to accept a medical opinion that is contrary to the altitude adjusted Appendix C tables); *Cannelton Indus., Inc. v. Director, OWCP* [*Frye*], 93 F. App'x 551, 560 (4th Cir. 2004) (upholding the ALJ's discrediting of a medical opinion that contradicted Appendix C).

In this case, the ALJ reasonably determined that the more recent blood gas study evidence better reflects Claimant's current condition. Decision and Order at 23; *see Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992) (given the progressive nature of pneumoconiosis, when tests show a miner's condition "has worsened," all "other considerations aside, the later evidence is a more reliable indicator of the miner's condition than an earlier one."); *Kincaid v. Island Creek Coal Co*., 26 BLR 1-43, 1-50-52 (2023). She also permissibly assigned greater weight to the exercise results from the December 5, 2022 blood gas study as more reflective of Claimant's ability to perform the heavy manual labor of his usual coal mine employment.[10] *Coen v. Director, OWCP*, 7 BLR 1-30, 1-32 (1984) (exercise blood gas study may be given more weight than resting blood gas studies); Decision and Order at 23. As it is supported by substantial evidence, we affirm the ALJ's decision to credit the qualifying December 5, 2022 exercise results over the other non-qualifying blood gas results. Decision and Order at 23. We further affirm her conclusion that the blood gas evidence supports a finding of total disability. *Id.*; *see* 20 C.F.R. §718.204(b)(2)(ii).

As it is unchallenged on appeal, we also affirm the ALJ's determination that the medical opinion evidence supports a finding of total disability.[11] 20 C.F.R.

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as these were the altitudes indicated on the respective study reports. Director's Exhibit 16 at 16; Employer's Exhibit 4 at 32-33; Claimant's Exhibit 4 at 1-3.

[10] Employer asserts that "a preponderance of the arterial blood-gases at rest and with exercise do not suggest total disability." Employer's Brief at 7. However, Employer does not specifically challenge the ALJ's decision to give greater weight to the qualifying December 5, 2022 exercise study.

[11] The ALJ found all the physicians are well qualified and determined that "each physician's opinion supports a finding of total disability." Decision and Order at 26. Drs. Cahill, Daniels, Sood, and Green opined that Claimant is totally disabled due to a pulmonary or respiratory impairment. Director's Exhibit 16; Claimant's Exhibits 5, 6; Employer's Exhibits 7-9, 11, 12. Dr. Farney initially stated that Claimant is totally disabled but subsequently indicated Claimant's disability is not due to pulmonary causes. Employer's Exhibits 4, 10. The ALJ found his opinion supports a finding of total disability because he acknowledged that Claimant's respiratory symptoms affect his ability to

§718.204(b)(2)(iv); Decision and Order at 26; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). As Employer raises no further arguments regarding the ALJ's weighing of the evidence, we affirm her finding that Claimant established total disability based on the preponderance of the evidence. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198. Consequently, we also affirm her conclusion that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305.

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,[12] 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 31-33.

Legal Pneumoconiosis

To rebut 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); *Energy W. Mining Co. v. Estate of Blackburn*, 857 F.3d 817, 821-22 (10th Cir. 2017); *Minich v. Keystone Coal Mining Co*., 25 BLR 1-149, 1-154-56 (2015).

Employer relies on the opinions of Drs. Daniels and Farney to rebut the existence of legal pneumoconiosis.[13] Decision and Order at 28-31; Employer's Exhibits 4 at 21; 8 at

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perform physical tasks. Decision and Order at 26. Alternatively, the ALJ found his opinion equivocal and outweighed by the other medical opinions. *Id.*

[12] "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).

[13] The ALJ correctly observed that Drs. Sood and Green diagnosed Claimant with legal pneumoconiosis and therefore their opinions do not aid Employer in rebutting the Section 411(c)(4) presumption. Decision and Order at 30 n.16; Claimant's Exhibits 5 at 6;

15; 10 at 36; 12 at 21. Dr. Daniels diagnosed lower lung zone interstitial disease related to medication-induced lung damage. Employer's Exhibits 8 at 15; 12 at 21. He explained that Claimant does not have legal pneumoconiosis because the medical timeline and onset of symptoms align with his hospitalization for respiratory failure related to chemotherapy for leukemia, and pneumonia with aspiration. Employer's Exhibits 8 at 11, 15; 12 at 20-21. Dr. Farney diagnosed bronchiectasis, interstitial disease, and diffuse heterogenous fibrosis related to recurrent pneumonia following chemotherapy for leukemia. Employer's Exhibits 4 at 21; 10 at 33-36. He acknowledged that Claimant has impaired gas exchange but opined he does not have legal pneumoconiosis based on the absence of an obstructive or restrictive impairment. Employer's Exhibit 4 at 20-21. The ALJ found the opinions of Drs. Daniels and Farney inadequately reasoned and therefore insufficient to rebut the presumption of legal pneumoconiosis. Decision and Order at 31.

Employer argues the ALJ applied an incorrect rebuttal standard and erred in discrediting the opinions of Drs. Daniels and Farney. Employer's Brief at 9-10. We disagree.

Contrary to Employer's assertion, the ALJ correctly observed that to rebut the presumed existence of legal pneumoconiosis, Employer must prove Claimant's respiratory impairment is not "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 27, 31; *see* 20 C.F.R. §718.201(a)(2), (b); *see Minich*, 25 BLR at 1-159; Employer's Brief at 9-10. In addition, the fact that Drs. Daniels and Farney did not diagnose a restrictive or obstructive impairment does not preclude a finding of legal pneumoconiosis. Both physicians observed a respiratory impairment and, as the ALJ found, the regulation indicates that "legal pneumoconiosis [includes] any chronic lung disease or impairment arising out of coal mine employment, and it is not limited to obstructive or restrictive impairments." Decision and Order at 30

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6 at 8-10; Employer's Exhibits 9 at 25; 11 at 32. The ALJ accorded little weight to Dr. Cahill's opinion indicating that Claimant suffers from legal pneumoconiosis. Decision and Order at 18, 30 n.17; Director's Exhibit 16 at 5 (diagnosing "interstitial lung disease due to prolonged exposure to coal dust"); Employer's Exhibit 7 at 29-30 ("it's reasonable to say this is legal pneumoconiosis"). Although Employer challenges the ALJ's weighing of Dr. Cahill's opinion, it fails to explain how her opinion could make any difference in satisfying Employer's burden on rebuttal when Dr. Cahill's opinion supports a finding of legal pneumoconiosis. Employer's Brief at 8; *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"); Director's Exhibit 16 at 5; Employer's Exhibit 7 at 29-30. We therefore decline to address Employer's arguments regarding these opinions on rebuttal. Employer's Brief at 8-10; *see Shinseki*, 556 U.S. at 413.

(citing 20 C.F.R. §718.201(a)(2)); *see* Employer's Exhibit 9 at 25 (Dr. Green's deposition paraphrasing the regulation).

Further, we see no error in the ALJ's discrediting of their opinions. The ALJ recognized that Claimant suffers from multiple serious medical conditions that may have affected his pulmonary function and each physician opined that Claimant's impairment is likely multifactorial. Decision and Order at 30. Dr. Daniels found it "notable" that the onset of Claimant's symptoms coincided with his hospitalization and treatment for chemotherapy and pneumonia and concluded that "his medical timeline strongly suggests his findings are related to medication[-]induced lung damage or damage from associated pneumoconiosis and respiratory failure." Employer's Exhibit 8 at 11, 16. Dr. Farney acknowledged coal dust can cause disabling pulmonary disease and concluded Claimant was at risk for developing such a disease based on his underground coal mine work. Employer's Exhibits 4 at 20; 10 at 14. But he concluded "the effects of coal dust are far outweighed by other factors" because Claimant had no evidence of a respiratory impairment until he was diagnosed with leukemia in 2008, well after he retired in 1999. Employer's Exhibit 4 at 20; *see* Employer's Exhibit 10 at 33.

The ALJ acted within her discretion in determining that, even if the physicians' reasoning supports a conclusion that Claimant's condition was caused or contributed to by pneumonia, respiratory failure, and aspiration, their opinions failed to prove "that Claimant's impairment is not also 'significantly related to, or substantially aggravated by, dust exposure.'" Decision and Order at 30 (citing 20 C.F.R. §718.201(b)); *see N. Coal Co. v. Director, OWCP* [*Pickup*], 100 F.3d 871, 873 (10th Cir. 1996); *see also Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 712-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp,* 866 F.2d 179, 185 (6th Cir. 1989). Employer's argument is a request to reweigh the evidence, which we are not authorized to do. *See Sunnyside Coal Co. v. Director, OWCP* [*Fossat*], 112 F.4th 902, 914-15 (10th Cir. 2024); *Pickup*, 100 F.3d at 873; *Hansen v. Director, OWCP*, 984 F.2d 364, 370 (10th Cir. 1993); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Because the ALJ provided valid reasons for discrediting the opinions of Dr. Daniels and Dr. Farney, the only medical opinions supportive of Employer's burden on rebuttal, we affirm her conclusion that Employer failed to establish Claimant does not have legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 30; *see Minich*, 25 BLR at 1-159 n.14. Consequently, we affirm her finding that Employer did not rebut the presumption of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and

Order at 31. Employer's failure to disprove legal pneumoconiosis precludes a finding that Claimant does not have pneumoconiosis.[14] 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ found Employer did not rebut the presumption by establishing no part of Claimant's respiratory or pulmonary total disability was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 31-32. The ALJ rationally discredited the disability causation opinions of Drs. Daniels and Farney because they did not diagnose legal pneumoconiosis, contrary to her finding that Employer failed to disprove the disease. Decision and Order at 32; *see Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013). As it is supported by substantial evidence,[15] we affirm the ALJ's finding that Employer failed to establish no part of Claimant's total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

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

[14] Because we have affirmed the ALJ's finding that Employer failed to rebut legal pneumoconiosis, we need not consider its argument that the ALJ erred in finding it also failed to disprove clinical pneumoconiosis. *See Shinseki*, 556 U.S. at 413; *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 3-5.

[15] Employer did not raise any specific arguments concerning rebuttal of total disability causation but rather relies on its contentions that the ALJ erred in weighing the evidence concerning rebuttal of legal pneumoconiosis. *See* Employer's Brief at 7-11.