U.S. Department of Labor

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

BRB No. 25-0066 BLA

GLENN SADLER Claimant-Respondent v. COWIN & COMPANY, INCORPORATED Self-Insured Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 12/19/2025 DECISION and ORDER

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

Paisley Newsome (Maples Tucker & Jacobs LLC), Birmingham, Alabama, for Claimant.

Mary Lou Smith (Howe, Anderson & Smith, P.C.), Washington, D.C., 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) Lystra A. Harris's Decision and Order Awarding Benefits (2022-BLA-05177) rendered on a claim filed on January 16, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 20.68 years of qualifying coal mine employment and found he has a totally disabling respiratory or pulmonary impairment.[1] 20 C.F.R. §718.204(b)(2). Thus, she found 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 challenges the ALJ's findings of total disability and invocation of the rebuttable presumption, as well as the ALJ's determination that it failed to rebut the presumption. Claimant filed a response in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, declined to file a response.

[1] As Employer does not challenge the ALJ's finding of 20.68 years of qualifying coal mine employment, we affirm her finding. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5-10.

[2] 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) (2018); 20 C.F.R. §718.305.

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.[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).

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. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, 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 supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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).

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit because Claimant performed his coal mine employment in Alabama. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Transcript at 14.

The ALJ found Claimant established total disability based on the pulmonary function testing, 20 C.F.R. §718.204(b)(2)(i), and the evidence as a whole.[4] Decision and Order at 11-14, 18.

Pulmonary Function Studies

The ALJ considered the results of four pulmonary function studies dated February 12, 2018, June 21, 2018, July 22, 2019, and November 4, 2022.[5] Decision and Order at 11-14; Director's Exhibits 11, 15; Claimant's Exhibit 4; Employer's Exhibit 1. All four pulmonary function studies produced qualifying values both before and after the administration of a bronchodilator.[6] The ALJ found the February 12, 2018 and June 21, 2018 pulmonary function studies invalid, the November 4, 2022 pulmonary function study valid, and the July 22, 2019 pulmonary function study to have reproducibility issues. Decision and Order at 11-14. Specifically, the ALJ determined only the November 4, 2022 pulmonary function study deserved "normal weight," Decision and Order at 13, while the

[4] The ALJ found the arterial blood gas studies and medical opinion evidence do not support a finding of total disability, and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii)-(iv). Decision and Order at 14-18.

[5] The July 22, 2019 pulmonary function study was included as part of Claimant's treatment notes. Claimant's Exhibit 4.

[6] A "qualifying" pulmonary function study yields results equal to or less than the applicable table values contained in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i).

July 22, 2019 pulmonary function study deserved "some weight." *Id.* The ALJ further found "all pulmonary function study tests demonstrated – throughout a six-year period – a severe pulmonary impairment" and found the pulmonary function study evidence as a whole supports a finding of total disability. *Id.* at 14.

Employer argues the ALJ erred in finding Claimant established a totally disabling pulmonary impairment through the pulmonary function study evidence, and the evidence as a whole. Employer's Brief at 7-10. We disagree.

When considering pulmonary function study evidence, the ALJ must determine whether the studies are in substantial compliance with the quality standards.[7] 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, App. B; *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc). A study need not precisely conform to the quality standards; if it is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b). The ALJ, as the factfinder, must determine the probative weight to assign the study. *See Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-55 (1987). "In the absence of evidence to the contrary, compliance with the [regulatory

[7] An ALJ must consider a reviewing physician's opinion regarding a miner's effort in performing a pulmonary function study and whether the study is valid and reliable. *See Revnack v. Director, OWCP*, 7 BLR 1-771, 1-773 (1985). A physician's opinion regarding the reliability of a pulmonary function study may constitute substantial evidence for an ALJ's decision to credit or reject the results of the study. *Siegel v. Director, OWCP*, 8 BLR 1-156, 1-157 (1985).

quality standards] shall be presumed." 20 C.F.R. §718.103(c). Thus, the party challenging the validity of a study has the burden to establish the results are suspect or unreliable. *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984).

Dr. Fino opined the November 4, 2022 study was invalid, but the ALJ found Dr. Fino's attempts to invalidate all of the pulmonary function study evidence[8] lacked credibility. Decision and Order at 13; Employer's Exhibit 2. The ALJ considered Dr. Fino's validity opinion but found Dr. Fino did not state with specificity how he determined the individual pulmonary function study tests were invalid; rather, he generally found the pulmonary function tests were invalid. Decision and Order at 13 (citing 20 C.F.R. §718.103(c)). In addition, the ALJ noted that for the November 4, 2022 pulmonary function study, the technician wrote Claimant's spirometry was "acceptable and reproducible," which the ALJ found undermined Dr. Fino's contrary opinion. *Id.* The ALJ thus determined the November 4, 2022 pulmonary function study was in substantial compliance with the governing quality standards and therefore valid. *Id.*

Employer argues the ALJ erred in rejecting Dr. Fino's opinion that the November 4, 2022 pulmonary function test was invalid, and in finding the test was valid and entitled to probative weight. Employer's Brief at 9-10. Specifically, Employer contends the ALJ's

[8] Dr. Fino stated all the pulmonary function studies were invalid because of "premature termination to exhalation," "lack of reproducibility in the expiratory tracings," and "lack of an abrupt onset to inhalation." Employer's Exhibit 2 at 4.

finding that Dr. Fino did not state "with specificity" how he determined the study's invalidity is inaccurate. Employer's Brief at 9. We disagree. The ALJ permissibly found Dr. Fino's opinion regarding the validity of the November 4, 2022 test to be less probative, as Dr. Fino addressed the pulmonary function studies as a whole rather than individually when discussing why he found each pulmonary function study to be invalid. *See U.S. Steel Mining Co. v. Director, OWCP* [*Jones*], 386 F.3d 977, 992 (11th Cir. 2004) (whether a medical opinion is sufficiently reasoned is a credibility determination for the ALJ); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Orek*, 10 BLR at 1-54 (party alleging objective study is invalid must "specify in what way the study fails to conform to the quality standards" and "demonstrate how this defect or omission renders the study unreliable"); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985) (physician opinion based on generalities rather than specifics may be discredited).

Employer also argues the ALJ erred in characterizing Dr. Connelly's pulmonary function test as a treatment record and therefore not subject to the quality standards, as Claimant submitted the test results as an affirmative exhibit rather than as a treatment record. Employer's Brief at 10. Employer is correct that, while Claimant designated the July 22, 2019 pulmonary function study as a treatment record at 20 C.F.R. §725.414(a)(4), Claimant's Exhibit 4, he also designated it as one of his affirmative pulmonary function studies at 20 C.F.R. §725.414(a)(2)(i) on his evidence summary form. Employer thus identifies, at most, a harmless error. Even if the ALJ were to find the July 22, 2019

pulmonary function study invalid if subject to the quality standards, as discussed above, the pulmonary function study evidence would still weigh in favor of a finding of total disability as the ALJ permissibly found the November 4, 2022 pulmonary function study to be valid and gave weight to it. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the alleged "error to which [it] points could have made any difference").[9]

We therefore affirm the ALJ's finding that the November 4, 2022 pulmonary function study is valid, and her weighing of the pulmonary function study evidence as a whole. 20 C.F.R. §718.204(b)(2)(i). Further, we affirm the ALJ's finding Claimant established total disability in consideration of the evidence as a whole, 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232, and therefore invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1).

[9] Employer also argues the ALJ erred in finding "all pulmonary function studies demonstrated – throughout a six-year period – a severe pulmonary impairment," in spite of the invalidity of the 2018 pulmonary function studies. Employer's Brief at 7-8. However, Employer fails to identify how any error would have made any difference, given the ALJ's according probative weight to the November 4, 2022 pulmonary function study, which she permissibly found to be valid. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the alleged "error to which [it] points could have made any difference").

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,[10] or "no part of [his] respiratory or pulmonary 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.[11] Decision and Order at 19-25.

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); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ considered three medical opinions and found Employer failed to meet its burden. Decision and Order at 23-24. Dr. Barney opined Claimant does not have legal

[10] "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). "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).

[11] The ALJ found Employer disproved clinical pneumoconiosis. Decision and Order at 20-22.

pneumoconiosis; he initially determined Claimant has chronic obstructive pulmonary disease (COPD) due, in part, to coal mine dust exposure, but after reviewing Claimant's supplemental pulmonary function test and Dr. Gaziano's findings that the pulmonary function studies were not acceptable, Dr. Barney opined Claimant has no evidence of any disabling chronic lung disease. Director's Exhibits 11, 20. The ALJ found Dr. Barney's opinion entitled to little weight because he did not consider the July 22, 2019 and November 4, 2022 pulmonary function tests, which may have changed his conclusion on legal pneumoconiosis. Decision and Order at 23.

Dr. Fino opined Claimant does not have legal pneumoconiosis; he concluded Claimant has no lung disease or impairment at all. Employer's Exhibit 2. The ALJ accorded little weight to Dr. Fino's opinion because he did not give specific reasons why any of the individual pulmonary function tests were invalid. Decision and Order at 23-24.

The ALJ also determined Dr. Goldstein did not offer a conclusive opinion as to whether Claimant has legal pneumoconiosis, and thus found his opinion merited no weight on the issue. Employer's Exhibit 1; Decision and Order at 23. As none of the opinions received probative weight, the ALJ found Employer failed to disprove legal pneumoconiosis. Decision and Order at 24.

Employer argues the ALJ erred in discrediting Dr. Barney's opinion based on "speculation" that he might have changed his opinion had he reviewed the July 22, 2019

and November 4, 2022 pulmonary function tests. Employer's Brief at 11. The ALJ, however, permissibly discredited Dr. Barney's opinion as he did not have a complete picture of Claimant's pulmonary condition. *See Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163 (3d. Cir. 1986); *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986) (ALJ may assign less weight to a medical opinion that presents an incomplete picture of the miner's health). Employer also argues the ALJ erred in discrediting Dr. Fino's opinion because he did not give specific reasons for the invalidity of any of the pulmonary function tests of record. Employer's Brief at 12. However, as discussed above, this was a permissible credibility determination. *See Jones*, 386 F.3d at 992; *Rowe*, 710 F.2d at 255; *Knizner*, 8 BLR at 1-7. Employer further argues the ALJ erred in disregarding Dr. Goldstein's opinion. We disagree. Given Dr. Goldstein's conflicting statements, the ALJ reasonably found the physician's opinion equivocal on the issue of legal pneumoconiosis. *See Griffith v. Director, OWCP*, 49 F.3d 184, 186-87 (6th Cir. 1995); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988).

Employer's arguments are a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because substantial evidence supports the ALJ's determination to discredit the opinions of

Drs. Barney, Fino, and Goldstein,[12] we affirm her finding that Employer did not rebut the presumed existence of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A).

Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1).

Disability Causation

To disprove disability causation, Employer must establish "no part of [Claimant's] 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). Because the physicians of record failed to diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer failed

[12] The ALJ also considered the portion of Dr. Connolly's black lung evaluation relevant to legal pneumoconiosis as a treatment record. Decision and Order at 24. Dr. Connolly diagnosed a severe restriction with a severe reduction of diffusion capacity. Claimant's Exhibit 4. Nevertheless, Dr. Connolly attributed Claimant's impairment entirely to obesity. *Id.* The ALJ found Dr. Connolly's opinion was not well documented or reasoned and gave it little weight. Decision and Order at 24. Employer argues the ALJ erred in discrediting Dr. Connolly's opinion. Employer's Brief at 12-13. We disagree. The ALJ permissibly discounted Dr. Connolly's opinion because he failed to discuss Claimant's coal mine employment and dust exposure as a potential etiology of the restrictive impairment. *See U.S. Steel Mining Co. v. Director, OWCP* [*Jones*], 386 F.3d 977, 992 (11th Cir. 2004); *Jordan v. Benefits Review Board*, 876 F.2d 1455, 1460 (11th Cir. 1989); *Taylor v. Ala. By-Products Corp*., 862 F.2d 1529, 1531 n.1 (11th Cir. 1989). Moreover, the ALJ noted Dr. Connolly did not review the November 4, 2022 pulmonary function test showing an obstructive impairment and, thus, discredited his opinion for not considering or discussing whether the obstructive impairment represented legal pneumoconiosis. *See Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163 (3d. Cir. 1986); *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986) (ALJ may assign less weight to a medical opinion that presents an incomplete picture of the miner's health); Decision and Order at 24.

to rebut the presumption that Claimant has legal pneumoconiosis, substantial evidence supports the ALJ's finding that their disability causation opinions are not credible. *See Oak Grove Res., LLC v. Director, OWCP* [*Ferguson*], 920 F.3d 1283, 1289 (11th Cir. 2019); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015) (where a physician erroneously fails to diagnose pneumoconiosis, his opinion as to disability causation "is not worthy of much, if any, weight"); Decision and Order at 25-26. We therefore affirm the ALJ's conclusion that Employer failed to establish no part of Claimant's respiratory disability was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

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