U.S. Department of Labor

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

BRB No. 25-0073 BLA

PATRICIA CARPENTER, on behalf of
JAMES E. CARPENTER, JR.,

Claimant-Petitioner

v.

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 12/17/2025

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Sean M. Ramaley, Administrative Law Judge, United States Department of Labor.

Patricia Carpenter, Orgas, West Virginia.

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

PER CURIAM:

Claimant[1] appeals, without representation, Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Denying Benefits (2021-BLA-05894) rendered on a

[1] Claimant is the widow of the Miner, who died on March 29, 2022, during the pendency of this claim. Director's Exhibit 74. She is pursuing the miner's claim on her husband's behalf. Director's Exhibit 75.

miner's subsequent claim[2] filed on June 29, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited the Miner with 8.85 years of coal mine employment and thus found Claimant could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[3] Considering entitlement under 20 C.F.R. Part 718, the ALJ determined Claimant did not establish the Miner had clinical pneumoconiosis, legal pneumoconiosis, or a totally disabling respiratory impairment.[4] 20 C.F.R. §§718.202(a), 718.204(b). He therefore found Claimant did not establish a change in an applicable condition of entitlement at 20 C.F.R. §725.309(c).[5]

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[2] This is the Miner's third claim for benefits. His first claim was filed on January 25, 2010; ALJ Natalie A. Appetta denied the claim, finding the Miner failed to establish any element of entitlement. Director's Exhibit 1. The Miner filed his second claim on January 31, 2018, and the district director denied it due to abandonment. Director's Exhibit 19. A denial by reason of abandonment is "deemed a finding that the claimant has not established any applicable condition of entitlement." 20 C.F.R. §725.409(c).

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if he had 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.

[4] 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). This definition encompasses "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).

[5] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the subsequent claim must also be denied unless the ALJ finds that "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); *see White v. New White Coal Co.*, 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 the Miner's prior claim was denied for failure to establish any element of entitlement, Claimant had to submit new evidence to establish at least one

Moreover, because Claimant failed to establish any essential element of entitlement under 20 C.F.R. Part 718, the ALJ denied benefits.

On appeal, Claimant generally challenges the ALJ's denial of benefits. The Acting Director, Office of Workers' Compensation Programs (the Director), has not filed a response.[6]

In an appeal filed without representation, the Benefits Review Board addresses whether substantial evidence supports the Decision and Order below. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[7] 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 –
Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner worked at least fifteen years in underground coal mines or "substantially similar" surface coal mine employment and had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden to establish the number of years the Miner worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The dates and length of employment may be established by any credible evidence, and the Board will uphold an ALJ's determination based on a reasonable method of calculation that is supported by substantial evidence. 20 C.F.R. §725.101(a)(32)(ii); *see Muncy v.*

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element to obtain a review of the miner's claim on the merits. *See White*, 23 BLR at 1-3; 20 C.F.R. §725.309(c).

[6] On July 20, 2022, the ALJ issued an Order Granting Employer's Motion for Remand and Motion to Dismiss, stating that the Director agreed dismissal of Employer (Eastern Associated Coal Company) and its Carrier (Peabody Energy Corporation) was proper based on their dismissal in the prior claim due to the bankruptcy of Patriot Coal Corporation. *See* Director's Exhibit 77.

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 4, 27; Hearing Transcript at 18.

Elkay Mining Co., 25 BLR 1-21, 1-27 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

The ALJ considered the Miner's application for benefits, his Social Security Earnings Statement (SSES), his prior claim application and documents, and the previous Decision and Order denying benefits in his prior claim. Decision and Order at 4-5; Director's Exhibits 1, 26-29. Claimant contended the Miner worked for fifteen years in coal mine employment. Decision and Order at 4-5; Director's Exhibit 26; Hearing Transcript at 15. The ALJ noted some inconsistency in the dates of coal mine employment on the Miner's application, as he indicated multiple times that he worked from 1972 until 1987 for Eastern Associated Coal Company (Eastern), but elsewhere indicated that he stopped working in 1978. Decision and Order at 4-5; Director's Exhibits 26-28. In either circumstance, the ALJ found the Miner's SSES does not confirm the length of coal mine employment claimed on the Miner's application.[8] Decision and Order at 5; Director's Exhibit 29.

The ALJ also noted ALJ Appetta credited the Miner with 8.85 years of coal mine employment in the prior claim and that the district director credited him with eight years of coal mine employment in the current claim. Decision and Order at 5; Director's Exhibits 1, 61. He summarily concluded that, "after reviewing all the relevant documentation," Claimant established 8.85 years of coal mine employment. Decision and Order at 5.

As the ALJ did not explain how he determined Claimant established the Miner had 8.85 years of coal mine employment, but seemingly merely adopted ALJ Appetta's prior finding,[9] the ALJ erred. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165

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[8] The Miner's Social Security Earnings Statement (SSES) indicates earnings from Eastern Associated Coal Company in the years 1975 through 1986. Director's Exhibit 29. There are no earnings listed in 1987. *Id.*

[9] ALJ Appetta indicated the district director's finding of 8.85 years is "generally supported by the [Miner's SSES,] which show[s] earnings in certain quarters and yearly for the period reported." Director's Exhibit 1 at 3 (unpaginated) (2016 Decision and Order at 3). She found the district director provided "the most detailed determination of employment having computed it pursuant to 20 C.F.R. §725.101(a)(32) and it contains earnings information consistent with the [SSES] which are the most credible and consistent information as to the miner's length of employment." *Id.* We note the district director's calculations in the prior claim assumed 125 days was equivalent to one year of coal mine employment, which is not a permitted basis of calculation in the Fourth Circuit. *See id.* at 522 (unpaginated); *see also Daniels Co. v. Mitchell*, 479 F.3d 321, 334-36 (4th Cir. 2007)

(1989); *Oggero v. Director, OWCP*, 7 BLR 1-860, 1-863 (1985) (hearing before the ALJ is de novo). However, as the ALJ noted, the Miner's SSES does not support Claimant's contention that the Miner worked fifteen years in coal mine employment. Decision and Order at 4-5. The SSES indicates earnings with Eastern, the only coal mine employment noted on the Miner's application, in the years 1975 through 1986. Director's Exhibit 29. Thus, even assuming the Miner had worked full calendar years during all those years,[10] it is only possible to establish twelve years of coal mine employment. *Id.* Therefore, we find the ALJ's error in determining the length of the Miner's coal mine employment to be harmless, and we therefore affirm his finding that the Miner had less than fifteen years of coal mine employment and cannot invoke the Section 411(c)(4) presumption. 20 C.F.R. §718.305; *see Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 5, 8.

Entitlement Under 20 C.F.R. Part 718

To be entitled to benefits under the Act, 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. Statutory presumptions may assist a claimant in establishing these elements when certain conditions are met, but failure to establish any element precludes an award of benefits.[11] *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). The ALJ found Claimant did not establish the existence of either clinical or legal pneumoconiosis.

(proof that a miner worked at least 125 days in a given year does not, by itself, establish one full year of coal mine employment as defined by the regulations).

[10] We note earnings were only recorded for two quarters in 1975, and earnings in 1986 were significantly lower than the prior year. Director's Exhibit 29.

[11] The ALJ accurately found there is no evidence of complicated pneumoconiosis; therefore, Claimant is unable to 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). Decision and Order at 12.

Clinical Pneumoconiosis

As the ALJ noted, the Miner did not attend his Department of Labor (DOL)-sponsored complete pulmonary evaluation,[12] and no other x-ray readings were submitted. Decision and Order at 11. No pathology evidence or computed tomography scan readings are of record. *See* 20 C.F.R. §§718.106, 718.107; Director's Exhibit 74; Decision and Order at 11.

Thus, the ALJ considered evidence from the prior claim. The ALJ considered a single reading of a March 11, 2010 x-ray obtained and interpreted by Dr. Gaziano in the Miner's DOL-sponsored complete pulmonary evaluation at that time. Director's Exhibit 1 at 494 (unpaginated). He correctly noted that Dr. Gaziano read the x-ray as negative for pneumoconiosis; thus, it does not support a finding of clinical pneumoconiosis. Decision and Order at 11; Director's Exhibit 1 at 494 (unpaginated).

Also of record are documents from the Miner's various state workers' compensation claims filed in 1977, 1978, 1980, 1981, 1983, 1984, and 1985.[13] Director's Exhibit 32. A reading of a 1981 x-ray by Dr. Cook noted pneumoconiosis and resection of the upper lobe. *Id.* at 629. In a subsequent x-ray in 1985, Dr. Wersbha noted "[n]o active process" seen in the lungs but similarly noted evidence of prior surgery. Director's Exhibit 32 at 93; Decision and Order at 12. The ALJ indicated the doctors' qualifications were not of record and there was no notation of the profusion or film quality of the x-ray and thus they did not meet "regulatory criteria." Decision and Order at 11-12. Therefore, he found the x-rays in the Miner's state workers' compensation claims were not sufficiently probative to support a finding of clinical pneumoconiosis. *Id.* at 12. It is within the ALJ's discretion to weigh the credibility of the evidence; thus, we affirm the ALJ's permissible finding. *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 310 (4th Cir. 2012); *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993) (ALJ has exclusive power to make credibility determinations and resolve inconsistencies in the evidence).

[12] Claimant indicated that the Miner was unable to attend his scheduled evaluation because he was bed-ridden due to Parkinson's and Alzheimer's diseases. Director's Exhibits 36, 38, 54; Hearing Transcript at 14-15.

[13] As the ALJ notes, these claims addressed wrist, knee, clavicle, toe, back, and rib injuries, as well as a chest injury resulting in a collapsed lung. Decision and Order at 7; Director's Exhibit 32.

Finally, the ALJ noted no new treatment records were submitted in the current claim,[14] but that the Miner's death certificate was of record. Decision and Order at 14. He correctly noted that Dr. Bhavsar, the certifying physician, made no mention of pneumoconiosis on the death certificate. *Id.* at 12; Director's Exhibit 74.

We therefore affirm the ALJ's determination that Claimant did not establish clinical pneumoconiosis as supported by substantial evidence. 20 C.F.R. §718.202(a); *see Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); Decision and Order at 9-12.

Legal pneumoconiosis

To establish legal pneumoconiosis, Claimant must demonstrate the Miner had 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).

There were no medical opinions submitted in conjunction with the current claim. Thus, the ALJ again considered the prior claim evidence. Dr. Gaziano provided a medical opinion in conjunction with the Miner's prior claim, as part of his DOL-sponsored complete pulmonary evaluation in 2010. Director's Exhibit 1 at 495 (unpaginated). As the ALJ noted, Dr. Gaziano did not specifically diagnose legal pneumoconiosis. Decision and Order at 11; Director's Exhibit 1 at 498 (unpaginated). While Dr. Gaziano diagnosed mild chronic obstructive pulmonary disease (COPD), he indicated it was due "largely" to the Miner's smoking history, noting his "limited" underground mining and no x-ray evidence of pneumoconiosis. Director's Exhibit 1 at 498 (unpaginated); Decision and Order at 9, 11. As Dr. Gaziano did not opine that the Miner's coal mine dust exposure significantly contributed to or substantially aggravated his COPD, we affirm the ALJ's finding that his opinion is insufficient to support a finding of legal pneumoconioses. *See* 20 C.F.R. §718.201(a)(2), (b); Decision and Order at 9, 11.

[14] The ALJ noted that the treatment records submitted in the prior claim included treatment for the Miner's Parkinson's disease and related neuropathy and tremors. Decision and Order at 9; Director's Exhibit 1 at 45-185 (unpaginated). As the ALJ correctly indicates, these records do not address respiratory or pulmonary conditions. Decision and Order at 9, 14.

The only remaining evidence of record was the Miner's death certificate.[15] Director's Exhibit 74. Dr. Bhavsar identified the immediate cause of death as "acute respiratory failure[,] [COPD,] hypoxemia." *Id.* He further identified underlying causes of death as a history of cardioembolic stroke and Parkinson's disease. *Id.* Dr. Bhavsar also identified tobacco smoking as contributing to the Miner's death. *Id.* As the ALJ found, while Dr. Bhavsar identified COPD, there is no evidence connecting this disease to the Miner's coal mine dust exposure. Decision and Order at 12.

Claimant has the burden of establishing entitlement and bears the risk of non-persuasion if the evidence is found insufficient to establish a required element of entitlement. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994); *Young v. Barnes & Tucker Co.*, 11 BLR 1-147, 1-150 (1988); *Oggero v. Director, OWCP*, 7 BLR 1-860, 1-865 (1985). Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant did not establish legal pneumoconiosis. 20 C.F.R. §718.202(a)(4); *see Hicks*, 138 F.3d at 533; Decision and Order at 11-12.

[15] As the ALJ indicated, neither the Miner's treatment records nor state workers' compensation records address legal pneumoconiosis. Decision and Order at 7, 9; Director's Exhibits 1 at 45-185 (unpaginated); 32.

As Claimant did not establish pneumoconiosis, an essential element of entitlement, an award of benefits is precluded. *See 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).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge