U.S. Department of Labor

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

BRB No. 25-0081 BLA

DONALD L. SPARKMAN Claimant-Respondent v. CONSOL BUCHANAN MINING COMPANY, LLC c/o CONSOL ENERGY, INCORPORATED Self-insured Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 12/22/2025 DECISION and ORDER

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

Joseph E. Wolfe and Rachel Wolfe (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, 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-05094) rendered on a claim filed on December 19, 2022, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established thirty-nine years and nine months of underground coal mine employment and a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b)(2). Thus, he determined Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[1] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption.[2] Claimant responds in support of the award. The Acting Director, Office of Workers' Compensation Programs, declined to file a substantive 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.[3] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

[1] 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.

[2] We affirm, as unchallenged on appeal, the ALJ's determinations that Claimant established thirty-nine years and nine months of underground coal mine employment and a totally disabling respiratory or pulmonary impairment and therefore invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4, 8, 24.

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

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,[4] 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.[5] Decision and Order at 15-17, 24-26.

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." *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *Minich v. Keystone Coal Mining Co*., 25 BLR 1-149, 1-155 n.8 (2015).

Employer relied on Drs. Sargent's and McSharry's medical opinions to disprove the existence of legal pneumoconiosis.[6] Decision and Order at 12-17, Employer's Exhibits 1, 2. Dr. Sargent opined that Claimant does not suffer from legal pneumoconiosis, instead

[4] "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).

[5] The ALJ found Employer rebutted the presence of clinical pneumoconiosis but failed to rebut the presence of legal pneumoconiosis. Decision and Order at 15-17.

[6] The ALJ correctly observed that Drs. Sarodia, Davidson, and Mabe 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 16-17; Director's Exhibit 32; Claimant's Exhibits 1, 3. Thus, we need not address Employer's arguments that the ALJ erred in crediting Drs. Sarodia's and Davidson's opinions regarding legal pneumoconiosis. *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"); Employer's Brief at 6-8.

attributing his "exercise-induced arterial oxygen desaturation" to his history of pulmonary emboli and pulmonary hypertension with a possible contribution from his sleep apnea. Employer's Exhibits 1 at 2; 11 at 37-38. Also, he initially indicated Claimant "may" have a restrictive impairment unrelated to coal mine dust exposure but subsequently explained that when Claimant cooperates and gives good effort, his pulmonary function study values are normal and therefore he does not have a restrictive impairment. Employer's Exhibits 1 at 1-2; 11 at 36-37. Similarly, Dr. McSharry diagnosed Claimant with "arterial desaturation with exertion" that was "unlikely" due to coal mine dust exposure because Claimant's pulmonary embolism and pulmonary hypertension are "much more likely causes for his symptoms." Employer's Exhibit 2 at 2-3.

The ALJ gave each opinion little probative value. Decision and Order at 16. He noted Dr. Sargent's opinion that, because there was no evidence of a restrictive or obstructive impairment on the diagnostic testing, Claimant does not have legal pneumoconiosis. *Id.* But the ALJ determined that a lack of a restrictive or obstructive impairment "does not mean *per se* that Claimant does not suffer from legal pneumoconiosis" given that other types of respiratory or pulmonary impairments may also constitute legal pneumoconiosis. *Id.* (citing 20 C.F.R. §718.201(a)(2)). In addition, the ALJ found Dr. McSharry's opinion equivocal because he used descriptions such as "unlikely" and "much more likely" when addressing the etiology of Claimant's lung disease. Decision and Order at 16. Finding both Drs. McSharry's and Sargent's opinions entitled to little weight, the ALJ found Employer did not rebut the presumption of legal pneumoconiosis. *Id.* at 17.

Employer initially argues the ALJ applied an improper standard by requiring Drs. Sargent and McSharry to essentially "rule out" coal mine dust exposure as a causative factor for Claimant's respiratory or pulmonary impairment. Employer's Brief at 6. However, the ALJ correctly stated Employer must establish that Claimant's impairment is not "'significantly related to, or substantially aggravated by, dust exposure in coal mine employment.'" Decision and Order at 9 (quoting 20 C.F.R. §718.201(b)); *see Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020); *W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018). Moreover, he discredited their opinions because he found them inadequately reasoned and therefore insufficient to support their own conclusions that coal mine dust did not contribute to or aggravate Claimant's pulmonary impairment, not because they failed to meet a particular legal standard. *See Minich*, 25 BLR at 1-155 n.8; Decision and Order at 16-17.

Employer also argues the ALJ's reasons for discrediting Drs. Sargent and McSharry's opinions are not in accordance with law or supported by substantial evidence. Employer's Brief at 9-14. We disagree.

As the trier-of-fact, the ALJ has broad authority to assess the credibility of the medical opinions and assign them appropriate weight. *See Balsavage* v. *Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002); *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163 (3d Cir. 1986). In this case, Dr. Sargent's opinion that there was no evidence of a restrictive or obstructive impairment based on Claimant's diagnostic testing does not preclude a finding of legal pneumoconiosis.[7] Employer's Exhibit 11 at 36-37. Dr. Sargent diagnosed a respiratory impairment and, as the ALJ found, the regulation indicates that "'legal pneumoconiosis' includes – but is not limited to – any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." Decision and Order at 16 (citing 20 C.F.R. §718.201(a)(2)). Thus, we affirm the ALJ's discrediting of Dr. Sargent's opinion. *Balsavage*, 295 F.3d at 396; Decision and Order at 11-13.

In addition, contrary to Employer's contention, the ALJ permissibly found Dr. McSharry's opinion equivocal based on its speculative terminology and thus unpersuasive to establish Claimant does not have legal pneumoconiosis. *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 n.12 (3d Cir. 2004) (ALJ may "minimize the probative value" of an equivocal opinion); *Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668 (6th Cir. 2015); *U.S. Steel Mining Co. v. Director, OWCP* [*Jarrell*], 187 F.3d 384, 389 (4th Cir. 1999) (ALJ may not credit a purely speculative opinion); *Garcia v.*

[7] Dr. Sargent testified that he did not diagnose legal pneumoconiosis because Claimant did not have an obstructive impairment or a significant restrictive impairment that would explain his symptoms. Employer's Exhibit 11 at 36-37. He then stated that Claimant's "drop in his pO2 with exercise" on blood gas testing "is consistent with pulmonary emboli resulting in pulmonary hypertension, possibly exacerbated by his sleep apnea with no evidence of parenchymal or airways disease." *Id*. at 37-38. He later reiterated that he did not find an additive effect from coal mine dust because "there [are] no imaging abnormalities consistent with an interstitial lung disease caused by coal dust exposure, and there [are] no physiologic spirometry abnormalities consistent with an obstructive impairment caused by legal pneumoconiosis." *Id*. at 59. Instead, he opined that Claimant has a "purely pulmonary vascular issue manifested by arterial oxygen desaturation" and there is "a well recognized clinical history that could be causing that." *Id*. Thus, contrary to Employer's contention, while Dr. Sargent may not have relied exclusively "on a mere absence of an obstructive or restrictive impairment," Employer's Brief at 14, substantial evidence supports the ALJ's permissible determination that it played a role in his conclusion that Claimant does not have legal pneumoconiosis and therefore detracted from its probative value. *See Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163 (3d Cir. 1986). Employer's argument is a request to reweigh the evidence, which we are not authorized to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Director, OWCP, 869 F.2d 1413, 1416-17 (10th Cir.1989) (expert's statement that a miner's physical condition was "probably" unrelated to his pneumoconiosis was too speculative for an ALJ to rely on to deny benefits)*; Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988) (ALJ may reject an equivocal medical opinion); Decision and Order at 14-15; Employer's Brief at 9.

As the ALJ's findings are rational and supported by substantial evidence, we affirm his discrediting of Drs. Sargent's and McSharry's opinions as insufficient to rebut the presumption of legal pneumoconiosis. Decision and Order at 16-17. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established "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); Decision and Order at 24-26. He permissibly discredited the disability causation opinions of Drs. Sargent and McSharry because they failed to diagnose legal pneumoconiosis, contrary to his finding that Employer failed to disprove Claimant has the disease. *See Soubik*, 366 F.3d at 234; *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 26. As it is supported by substantial evidence,[8] we affirm the ALJ's finding that Employer failed to establish no part of Claimant's total disability was caused by pneumoconiosis.[9] 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 24-26.

[8] 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 the existence of legal pneumoconiosis. *See* Employer's Brief at 14.

[9] Employer also contends the ALJ erred in crediting the opinions of Drs. Sarodia, Mabe, and Davidson concerning total disability causation. Employer's Brief at 14-15. However, as the ALJ determined, these physicians found coal mine dust exposure contributed to Claimant's totally disabling respiratory or pulmonary impairment. Decision and Order at 26; Director's Exhibit 32; Claimant's Exhibits 1, 3. Thus, their opinions do not aid Employer in rebutting the Section 411(c)(4) presumption, and we need not consider Employer's arguments concerning the ALJ's weighing of them. *See Shinseki*, 556 U.S. at 413.

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