U.S. Department of Labor

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

BRB No. 25-0103 BLA

HOWARD T. CORDLE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	**NOT-PUBLISHED**
	)	
APPLE JACKS COAL COMPANY	)	
	)	
Employer-Respondent	)	DATE ISSUED: 02/26/2026
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand Denying Benefits of Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

Howard T. Cordle, Pounding Mill, Virginia.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

William M. Bush, Acting Counsel for Administrative Appeals (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order on Remand Denying Benefits (2021-BLA-05090) rendered on a subsequent claim[2] filed on March 18, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). The case is before the Board for a second time.[3]

In her initial Decision and Order Denying Benefits dated September 30, 2022, the ALJ credited Claimant with at least fifteen years of underground coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she determined Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[4] 30 U.S.C. §921(c)(4) (2018), and established a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c).[5] However, she found Employer rebutted the presumption and denied benefits.

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[1] Vickie Combs, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested the Benefits Review Board review the ALJ's decision, but Ms. Combs is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] Claimant filed two prior claims for benefits. Director's Exhibit 35 at 7. His previous claim, filed on September 23, 2015, was closed but the record does not indicate the basis for the denial. *Id.* Because the basis for the previous denial was unavailable to the ALJ, she proceeded as if Claimant failed to establish any element of entitlement. Decision and Order at 5-6.

[3] Administrative Appeals Judges Melissa Lin Jones and Glenn E. Ulmer are substituted on the panel for Administrative Appeals Judges Judith S. Boggs and Greg J. Buzzard, who are no longer members of the Board.

[4] 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); *see* 20 C.F.R. §718.305.

[5] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she 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 ALJ proceeded as if Claimant failed to establish any element

Pursuant to Claimant's appeal, the Board affirmed the ALJ's findings that Claimant established at least fifteen years of coal mine employment and total disability, thereby invoking the Section 411(c)(4) presumption. *Cordle v. Apple Jacks Coal Co.*, BRB Nos. 23-0234 BLA and 23-0234 BLA-A, slip op. at 2-5 (Aug. 4, 2023) (unpub.). However, the Board held the ALJ erred in finding Employer rebutted the Section 411(c)(4) presumption by disproving clinical and legal pneumoconiosis. *Id.* at 5-7. Thus, the Board vacated the ALJ's finding that Employer rebutted the Section 411(c)(4) presumption and remanded the case for further consideration. *Id.* at 6-8.

On remand, the ALJ again found Employer rebutted the Section 411(c)(4) presumption by disproving clinical and legal pneumoconiosis. Decision and Order at 3-8 (unpaginated). Thus, she denied benefits. *Id.* at 8.

On appeal, Claimant generally challenges the denial of benefits. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, submitted a brief challenging the denial of benefits.

In an appeal a claimant files without representation, the 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.[6] 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).

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[7] or that "no part of

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of entitlement in the prior claim, Claimant had to submit new evidence establishing at least one element of entitlement to obtain review of the merits of this claim. *Id.*

[6] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 10.

[7] "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 pneumoconiosis, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the

[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); *see Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 555 (4th Cir. 2013); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-150 (2015). The ALJ found Employer rebutted the existence of clinical and legal pneumoconiosis and did not reach disability causation. 20 C.F.R. §718.305(d)(1)(i), (ii); Decision and Order at 6-8 (unpaginated).

Clinical Pneumoconiosis

To disprove clinical pneumoconiosis, Employer must establish Claimant does not have any of the 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. §§718.305(d)(1)(i)(B), 718.201(a)(1).

The ALJ considered ten interpretations of five x-rays dated March 1, 2019, September 16, 2019, June 18, 2020, June 7, 2021, and August 16, 2021. Decision and Order at 4-5 (unpaginated). She noted all the interpreting physicians are dually-qualified as Board-certified radiologists and B readers. *Id.* at 5.

She found the interpretations of the March 1, 2019, June 7, 2021, and August 16, 2021 x-rays in equipoise because an equal number of dually-qualified radiologists read each x-ray as positive and negative for the disease. Decision and Order at 5 (unpaginated); Claimant's Exhibits 1-3; Employer's Exhibits 1, 2, 13. She found the September 16, 2019 x-ray positive for clinical pneumoconiosis because a greater number of dually-qualified radiologists read it as positive for the disease. Decision and Order at 5 (unpaginated); Director's Exhibits 15, 18; Claimant's Exhibit 4. Finally, she found the June 18, 2020 x-ray negative for clinical pneumoconiosis because one physician read it as negative for the disease and the reading is unrebutted. Decision and Order at 5 (unpaginated); Director's Exhibit 19.

Weighing the evidence together, the ALJ found the x-ray interpretations are in equipoise. Decision and Order at 5 (unpaginated). The ALJ therefore found the x-ray evidence "neither establishes nor does not establish pneumoconiosis, clinical or complicated." *Id.*

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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).

The ALJ weighed the computed tomography (CT) scan evidence in the same manner.[8] She considered four readings of two CT scans, dated February 21, 2020, and February 26, 2021, by dually-qualified experts. Decision and Order at 7 (unpaginated). Because Dr. Ramakrishnan interpreted both CT scans as positive for clinical pneumoconiosis, while Dr. Simone interpreted both CT scans as negative for the disease, she found the CT scan interpretations are in equipoise and do not establish that Claimant suffers from pneumoconiosis. *Id.* at 8.

The ALJ's consideration of the x-ray and CT scan evidence of clinical pneumoconiosis reflects legal error. Once Claimant invokes the Section 411(c)(4) presumption, "there is no need for [him] to prove the existence of pneumoconiosis; instead, pneumoconiosis arising from coal mine employment is presumed, subject only to rebuttal by [Employer]." *W. Va. CWP Fund. v. OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018). The inquiry at rebuttal is "whether [Employer] has come forward with affirmative proof that [Claimant] does not have [pneumoconiosis]," *id.*; i.e., the burden of persuasion is on Employer to disprove pneumoconiosis. *See Owens*, 724 F.3d at 555; *Minich*, 25 BLR at 1-159 n.14. Thus, a finding that the x-ray and CT scan evidence is in equipoise on the issue of clinical pneumoconiosis must be deemed insufficient to carry Employer's burden of disproving the disease. *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994), *aff'g sub nom*. *Greenwich Collieries v. Director, OWCP*, 990 F.2d 730 (3d Cir. 1993) (invalidating the true doubt rule, because the burden of persuasion rests with moving party).

The ALJ applied the same erroneous legal standard in considering the three medical opinions[9] and Claimant's treatment records on the issue of clinical pneumoconiosis.[10]

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[8] The ALJ correctly considered the CT scan evidence as "other relevant evidence" under 20 C.F.R. §718.107, but erroneously stated her conclusion regarding the CT scan evidence was relevant to legal pneumoconiosis rather than clinical pneumoconiosis. Decision and Order at 7-8 (unpaginated).

[9] Dr. Harris diagnosed Claimant with clinical pneumoconiosis based on his symptoms and radiographic findings, whereas Drs. Sargent and McSharry opined Claimant does not have clinical pneumoconiosis based on the radiographic evidence they each considered. Director's Exhibits 15, 19; Employer's Exhibit 1.

[10] Claimant submitted treatment records from February 11, 2021 to March 22, 2021, indicating a history of and treatment for "coal workers' pneumoconiosis." Claimant's Exhibit 7. Employer submitted Claimant's treatment records indicating chest pain in April 2011, treatment records indicating cardiac symptoms and disease from February 2017 through April 2017, and a non-International Labour Organization portable x-ray reading

Decision and Order at 5, 7 (unpaginated). Specifically, she found each medical opinion, but none of Claimant's treatment records, reasoned and documented as to the existence of pneumoconiosis. *Id.* She afforded Drs. Sargent's and McSharry's negative opinions and Dr. Harris's positive opinion equal weight, afforded the treatment records no weight, and concluded neither the medical opinions nor treatment records establish Claimant has clinical pneumoconiosis. *Id.* However, as we note above, clinical pneumoconiosis is presumed and the burden rests with Employer to disprove the disease. *See Owens*, 724 F.3d at 555; *Minich*, 25 BLR at 1-159 n.14. Thus, the ALJ was tasked with evaluating whether the opinions of Drs. Sargent and McSharry disproved pneumoconiosis. *Smith*, 880 F.3d at 669. She was similarly tasked with evaluating whether the treatment records disprove, rather than prove, the disease. *Id.* Therefore, we vacate the ALJ's finding that Employer rebutted clinical pneumoconiosis.

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); *Smith*, 880 F.3d at 695; *Minich*, 25 BLR at 1-155 n.8.

The ALJ considered Dr. Harris's opinion that Claimant has legal pneumoconiosis and the opinions of Drs. McSharry and Sargent that he does not have the disease. Director's Exhibits 15, 19, 20; Employer's Exhibits 1, 3.[11] The ALJ summarized their opinions and gave them each "equal weight." Decision and Order at 6 (unpaginated). She then concluded that after "[c]onsidering the overall reasoned medical opinion evidence, it does not establish a chronic pulmonary or respiratory disease/impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." *Id.* Again, this was erroneous. Because legal pneumoconiosis is presumed, the ALJ was tasked with evaluating whether Employer, relying on the opinions of Drs. McSharry and Sargent, disproved the existence of legal pneumoconiosis by a preponderance of the evidence, not

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dated November 4, 2020, finding mild cardiomegaly, clear lungs, and no active disease. Employer's Exhibits 4-12.

[11] Dr. Harris opined that Claimant has "chronic lung disease" due to smoking and his coal mine employment, Director's Exhibit 15 at 8, whereas Dr. Sargent opined that he does not believe Claimant suffers from legal pneumoconiosis because he does not believe his "dust exposure . . . contributed substantially to [the Claimant's] impairment," Director's Exhibit 19 at 3, and Dr. McSharry opined that he found "no evidence of a chronic lung disease caused by or significantly aggravated by coal dust exposure," Employer's Exhibit 1 at 2.

whether Claimant proved the existence of the disease. *Smith*, 880 F.3d at 699. The ALJ similarly erred in failing to address whether Claimant's treatment records disproved the existence of legal pneumoconiosis by a preponderance of evidence.[12] *Id*. Therefore, we vacate the ALJ's finding that Employer rebutted legal pneumoconiosis.

Because the ALJ applied an incorrect standard, we vacate her finding Employer established rebuttal of the Section 411(c)(4) presumption by disproving the existence of pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i). We thus vacate the denial of benefits.[13]

Remand Instructions

On remand, the ALJ must consider whether Employer rebutted the Section 411(c)(4) presumption. *See Owens*, 724 F.3d at 555; *Minich*, 25 BLR at 1-159 n.14. In assessing whether Employer disproved the existence of pneumoconiosis, the ALJ must consider and weigh all relevant evidence as to both clinical and legal pneumoconiosis. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441-42 (4th Cir. 1997). Regarding clinical pneumoconiosis, the ALJ must consider whether the x-ray, CT scan, medical opinion, and Claimant's treatment record evidence, individually and taken as a whole, rebut the presumed existence of pneumoconiosis. *See Owens*, 724 F.3d at 555; *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 208-09 (4th Cir. 2000). In doing so, if the ALJ finds the x-ray or CT scan evidence in equipoise, the ALJ must find it weighs against rebuttal. *See Ondecko*, 512 U.S. at 281. In reconsidering the medical opinion and Claimant's treatment record evidence, the ALJ must assess the credibility of each opinion and treatment record as to the absence of clinical pneumoconiosis based on its ability to persuade. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441-42; *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992). The ALJ may not count heads to assign value to this evidence. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256 (4th Cir. 2016).

The ALJ must also reweigh the medical opinion and Claimant's treatment record evidence in assessing whether Employer has rebutted the presumed existence of legal pneumoconiosis. *See Owens*, 724 F.3d at 555; *Compton*, 211 F.3d at 208-09. Similarly,

[12] The ALJ assessed only whether Claimant's treatment records that indicated diagnoses of pneumoconiosis and lung nodules were reasoned and documented. Decision and Order at 7 (unpaginated). She failed to address whether any of the treatment records indicated an absence of legal pneumoconiosis and, if so, whether they satisfied Employer's burden at rebuttal.

[13] As she found Employer disproved the existence of pneumoconiosis, the ALJ denied benefits without addressing whether Employer rebutted the Section 411(c)(4) presumption by disproving disability causation. 20 C.F.R. §718.305(d)(1)(ii).

the ALJ must assess the credibility of each opinion and treatment record as to the absence of legal pneumoconiosis based on its ability to persuade. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441-42; *Adkins*, 958 F.2d at 52. The ALJ may not count heads to assign value to this evidence. *See Addison*, 831 F.3d at 256.

If Employer establishes Claimant has neither clinical nor legal pneumoconiosis, it will have rebutted the presumption, and the ALJ may reinstate the denial of benefits. However, if Employer does not disprove both forms of the disease, a rebuttal finding that Claimant does not have pneumoconiosis is precluded. 20 C.F.R. §718.305(d)(1)(i). The ALJ must then specifically address the second rebuttal method and determine whether Employer established that no part of Claimant's respiratory disability is due to pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). In addition, the ALJ must adequately explain all findings on remand. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Accordingly, we vacate the ALJ's Decision and Order on Remand Denying Benefits and remand the case for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge