U.S. Department of Labor

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

BRB No. 25-0114 BLA

GARY JUDE Claimant-Respondent v. PREMIUM ENERGY INCORPORATED and WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 02/27/2026 DECISION and ORDER

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

Ashley M. Harman and Lucinda L. Fluharty (Jackson Kelly PLLC), Morgantown, West Virginia, for Employer and its Carrier.

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

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits (2023-BLA-06119) rendered on a claim filed on January 20, 2022, 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 surface coal mine employment in conditions substantially similar to those in an underground mine and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore concluded 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). 20 C.F.R. §718.305. The ALJ further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer challenges the ALJ's finding that it failed to rebut the Section 411(c)(4) presumption.[2] Claimant and the Director, Office of Workers' Compensation Programs, did not 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 & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

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

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[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he establishes 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 finding that Claimant 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 6-7, 26.

[3] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his most recent coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 14.

[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).

[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 18, 29.

Employer does not challenge the ALJ's finding that it failed to establish Claimant has neither legal nor clinical pneumoconiosis and therefore cannot establish rebuttal at 20 C.F.R. §718.305(d)(1)(i). Decision and Order at 18. Thus we affirm that finding. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ also found Employer did not rebut the Section 411(c)(4) presumption by establishing "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); *see* Decision and Order at 26-29.

The ALJ discredited the opinions of Drs. Basheda and Rosenberg that no part of Claimant's total disability was caused by pneumoconiosis because neither physician diagnosed legal pneumoconiosis, contrary to his finding that Employer did not disprove the existence of the disease. Decision and Order at 26-29; Director's Exhibit 27; Employer's Exhibits 3; 8; 9. Employer argues the ALJ erred in doing so. Employer's Brief at 3-9. We disagree.

Drs. Basheda and Rosenberg opined Claimant has a mild to moderate restrictive impairment potentially caused by chronic bronchitis and asthma, as well as other factors extrinsic to the lungs, and that he does not have legal pneumoconiosis. Director's Exhibit 27 at 12-13; Employer's Exhibits 3 at 3-4; 8 at 14-16, 22-24, 32-33; 9 at 13-21. Because Drs. Basheda and Rosenberg failed to diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer failed to rebut the presumption that Claimant has legal pneumoconiosis, substantial evidence supports the ALJ's finding that their disability causation opinions are not credible.[5] *See 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"); *Big Branch*

[5] We reject Employer's argument that "[e]ven assuming the presence of legal" pneumoconiosis, Drs. Basheda and Rosenberg credibly explained why no part of Claimant's disability is caused by pneumoconiosis. Employer's Brief at 4-9. Because *neither physician* assumed that Claimant has legal pneumoconiosis yet explained why no part of Claimant's disability is due to the disease, the ALJ properly found their opinions "incomplete." Decision and Order at 29; *see Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015) (alternative causation analysis "must be accompanied by some reasoned explanation . . . of why the expert would continue to believe that pneumoconiosis was not the cause of the miner's disability, even if pneumoconiosis were present").

Res., Inc. v. Ogle, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 29. We therefore affirm the ALJ's conclusion that Employer failed to establish no part of Claimant's total respiratory 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.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge