U.S. Department of Labor

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

BRB No. 24-0190 BLA

JOHN ADAMS Claimant-Respondent v. PARAMONT CONTURA, LLC Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 01/24/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

Kendra Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

Wes Addington (Appalachian Citizens' Law Center, Inc.), Whitesburg, Kentucky, for Claimant.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) John P. Sellers, III's Decision and Order Awarding Benefits (2021-BLA-05698) rendered on a claim filed August 3, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with thirty-one years of surface coal mine employment in conditions substantially similar to those in an underground coal mine. He found Claimant established he has a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b), and thus found he 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 Claimant established total disability and invoked the Section 411(c)(4) presumption. It further argues he erred in finding it failed to rebut the presumption.[2] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

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).

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. §§718.204(b)(2), 718.305(b)(1)(i). A miner is totally disabled if his respiratory or pulmonary impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A miner may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,[4] evidence of

[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); *see* 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established thirty-one years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3-5.

[3] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 17.

[4] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part

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 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).

The ALJ found Claimant established total disability based on the pulmonary function study and medical opinion evidence, and in consideration of the evidence as a whole.[5] Decision and Order at 7-19. Employer argues the ALJ erred in weighing the pulmonary function studies and medical opinions. Employer's Brief at 4-14.

Pulmonary Function Studies

The ALJ considered the results of three pulmonary function studies dated July 2, 2019, January 30, 2020, and June 14, 2022. Decision and Order at 7-12. The July 2, 2019 and January 30, 2020 studies produced qualifying values before and after the administration of a bronchodilator, while the June 14, 2022 study was non-qualifying pre- and post-bronchodilator. Director's Exhibits 32; 41 at 8; Employer's Exhibit 1 at 11. The ALJ found the January 30, 2020 and June 14, 2022 studies are invalid. Decision and Order at 10-12. He further found the July 2, 2019 pre-bronchodilator study is valid, but the post-bronchodilator results are invalid. *Id*. Because the only valid study of record is qualifying, he determined the pulmonary function study evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 12.

Employer argues the ALJ erred in finding the July 2, 2019 study's pre-bronchodilator results are valid. Employer's Brief at 5-10. We disagree.

When weighing the pulmonary function studies, an ALJ must determine whether they are in substantial compliance with the regulatory quality standards. 20 C.F.R. §§718.101(b), 718103(c); 20 C.F.R. Part 718, Appendix B; *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc). In the absence of evidence to the contrary, compliance with the quality standards is presumed. 20 C.F.R. §718.103(c). If a study does not precisely conform to the quality standards, but is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b).

718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[5] The ALJ found the arterial blood gas study evidence does not establish 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), (iii); Decision and Order at 5, 12-13.

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).

The technician who conducted the July 2, 2019 study noted "[g]ood patient effort [and] cooperation." Director's Exhibit 32 at 1-2. Dr. Gaziano reviewed the study and opined the "[v]ents are not acceptable," explaining the "variable post broncho-dilator values" indicate Claimant had "[l]ess than optimal effort, cooperation and comprehension." Director's Exhibit 33. Dr. Alam acknowledged Dr. Gaziano's opinion but stated Claimant produced his best effort given his limited lung function and relied, in part, on the pulmonary function study to form his disability opinion. Director's Exhibits 35 at 1-2; 37.

In his initial report, Dr. McSharry opined the July 2, 2019 and January 30, 2020 studies were "sub-optimally performed and cannot be interpreted[, but] likely under-represent [Claimant's] best lung function." Director's Exhibit 41 at 3. In a supplemental report, he opined Claimant's pulmonary function studies underestimate his true lung function because the "significant workload" Claimant was able to tolerate during the exercise blood gas study he conducted would "not likely be possible in a claimant with a severely abnormal FEV1" result on a pulmonary function study. Employer's Exhibit 2 at 1-2. During his deposition, Dr. McSharry stated he agreed with Dr. Gaziano's invalidation of the July 2, 2019 study. Employer's Exhibit 4 at 18. He further opined that although the June 14, 2022 study was invalid, its non-qualifying results indicate Claimant can achieve normal values and gave "less than optimal effort" on the earlier, qualifying studies. *Id.* at 20-21.

Dr. Sargent opined that although each of Claimant's pulmonary function studies is invalid, the June 14, 2022 study he conducted represents Claimant's best effort and produced normal values. Employer's Exhibit 1 at 2. At his deposition, he opined the results of the July 2, 2019 study are not reproducible because the flow volume loops are inconsistent, which indicates Claimant was not "giving consistent effort with the different trials." Employer's Exhibit 3 at 15-17.

The ALJ found Drs. McSharry and Sargent did not distinguish between the pre- and post-bronchodilator results, and he therefore permissibly discredited them for failing to explain with sufficient specificity how they determined the July 2, 2019 pre-bronchodilator study fails to substantially comply with the quality standards. *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order at 9. He also rationally discredited Dr. McSharry's opinion that the pulmonary function study is invalid based on Claimant's performance on his blood gas study because, as the ALJ correctly observed, blood gas studies and pulmonary function studies measure different types of impairment. *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41 (6th Cir. 1993); *Sheranko v. Jones & Laughlin Steel Corp*, 6 BLR 1-797, 1-798 (1984); Decision and Order at 9, 16. Further, he

permissibly found unpersuasive Dr. McSharry's and Dr. Sargent's explanations that the higher results on the June 14, 2022 pulmonary function study demonstrate Claimant did not give good effort on the July 2, 2019 study. *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order at 9-10.

Considering that the pre-bronchodilator results meet the quality standards for reproducibility[6] and that Dr. Gaziano explained the July 2, 2019 study showed suboptimal effort based on variable *post-bronchodilator values*, the ALJ permissibly inferred that Dr. Gaziano's invalidation of the study was relevant to the post-bronchodilator result alone. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 428, 441 (4th Cir. 1997); 20 C.F.R. Part 718 Appendix B(2)(ii)(G); Decision and Order at 9. He therefore permissibly found the July 2, 2019 post-bronchodilator results, but not the pre-bronchodilator results, are entitled to no weight due to their invalidity. *Id.*

Thus, contrary to Employer's argument, the ALJ permissibly rejected the opinions of Drs. McSharry and Sargent that the July 2, 2019 pre-bronchodilator pulmonary function study is invalid. *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order at 9. Moreover, the ALJ permissibly credited the comments from the technician who administered the study that Claimant gave good effort and cooperation, as they were corroborated by the reproducibility of the pre-bronchodilator results. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); Decision and Order at 10.

Therefore, as it is supported by substantial evidence, we affirm the ALJ's finding the pre-bronchodilator results of the July 2, 2019 study are valid.[7] *See Compton v. Island*

[6] The ALJ observed that the regulations state a pulmonary function study will be judged unacceptable when the "variation between the two largest FEV1's of the three acceptable tracings [exceeds five] percent of the largest FEV1 or 100 ml, whichever is greater." 20 C.F.R. Part 718, Appendix B(2)(ii)(G); Decision and Order at 8. He then noted the pre-bronchodilator results of the July 2, 2019 study are acceptable under this criterion because the variation between the two largest FEV1 values is 10 milliliters, or 0.9 percent. Decision and Order at 8. Conversely, he noted the post-bronchodilator result was unacceptable under this criterion because the variation was 12.3 percent. *Id.*

[7] Because the ALJ provided valid bases for discrediting the opinions of Drs. McSharry and Sargent, we decline to address Employer's remaining arguments concerning the weight he afforded their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 7-9.

Creek Coal Co., 211 F.3d 203, 207-08 (4th Cir. 2000); Decision and Order at 10. As Employer raises no additional arguments regarding the ALJ's weighing of the pulmonary function study evidence, we affirm his determination that the pulmonary function study evidence, namely the valid and qualifying July 2, 2019 pre-bronchodilator study, supports a finding of total disability. 20 C.F.R. §§718.103(c), 718.204(b)(2)(i); Decision and Order at 12.

Medical Opinions

The ALJ considered the opinions of Drs. Alam, McSharry, and Sargent. Decision and Order at 13-18. Dr. Alam opined Claimant is totally disabled based on his July 2, 2019 pulmonary function study results and Claimant's clinical symptoms. Director's Exhibits 35; 37. Drs. McSharry and Sargent opined Claimant is not totally disabled because the qualifying pulmonary function testing is invalid and the blood gas testing is non-qualifying. Director's Exhibit 41 at 3-4; Employer's Exhibits 1-4. The ALJ discredited the opinions of Drs. McSharry and Sargent as poorly reasoned and contrary to his finding that the June 2, 2019 qualifying study is valid and supports total disability. Decision and Order at 15-18. He also credited Dr. Alam's opinion as reasoned and consistent with the objective medical evidence. *Id.* at 14. He thus found the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 18.

We disagree with Employer's argument that the ALJ erred in discrediting the opinions of Drs. Sargent and McSharry. Employer's Brief at 12-13. Both physicians opined Claimant is not totally disabled because the blood gas studies are non-qualifying and the qualifying pulmonary function studies are invalid and likely under-represent his lung function. Director's Exhibit 40 at 3-4; Employer's Exhibits 1 at 1-2; 2 at 1-2; 3 at 10-20; 4 at 15-21. They also opined that, even though the June 14, 2022 pulmonary function study is invalid, it is non-qualifying and represents Claimant's minimum lung function. Employer's Exhibit 1 at 2; 4 at 19-20. Contrary to Employer's contentions, the ALJ permissibly discredited their opinions as being premised on their faulty view that the qualifying July 2, 2019 pre-bronchodilator pulmonary function study is invalid, contrary to the ALJ's finding that the study is valid and entitled to probative weight. *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; *Looney*, 678 F.3d at 316-17; Decision and Order at 16-18.

Nor are we persuaded by Employer's contention that the ALJ erred in crediting Dr. Alam's total disability diagnosis. Employer's Brief at 11-12. Dr. Alam observed Claimant's usual coal mine employment required operating "dozer[s], loader[s], trucks, [excavators], [and] water trucks," and that he did some "blasting," shoveled belts, and operated a drill. Director's Exhibit 25 at 1. He opined Claimant would be unable to perform this work based on his clinical symptoms of daily sputum, wheezing, dyspnea,

cough, and paroxysmal nocturnal dyspnea, as well as the respiratory impairment evidenced by the qualifying July 2, 2019 pulmonary function study results. Director's Exhibits 25 at 2; 35 at 1-2; 37 at 1-2. The ALJ observed that Dr. Alam had an accurate understanding of the exertional requirements of Claimant's usual coal mine employment and permissibly concluded the physician's opinion is credible as it is reasoned and consistent with the ALJ's finding that the July 2, 2019 pulmonary function study is valid and qualifying pre-bronchodilator. *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order at 14. Moreover, while Employer asserts that the ALJ should have discredited Dr. Alam's opinion because he did not consider all the medical evidence of record, an ALJ is not required to discredit a physician who did not review all of a miner's medical records when the opinion is otherwise well-reasoned, documented, and based on his own examination of the miner and objective test results. *See Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); Employer's Brief at 11.

Because it is supported by substantial evidence, we affirm the ALJ's determination that the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 18. We further affirm the ALJ's finding that Claimant established total disability based on the evidence as a whole. *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; 20 C.F.R. §718.204(b)(2); Decision and Order at 18-19. Thus, we affirm his finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305.

Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish that Claimant has neither legal nor clinical pneumoconiosis,[8] 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.

[8] "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).

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 six readings of three x-rays taken on January 10, 2019, January 30, 2020, and June 14, 2022, and noted all the interpreting physicians are dually-qualified B readers and Board-certified radiologists.[9] Decision and Order at 20-22. Drs. Alexander and Ropp read the January 10, 2019 x-ray as positive for pneumoconiosis while Dr. Adcock read it as negative. Director's Exhibits 25 at 6; 39 at 2; Claimant's Exhibit 1. Dr. Crum read the January 30, 2020 x-ray as positive for pneumoconiosis while Dr. Adcock read it as negative. Director's Exhibits 38; 41 at 25. Dr. Adcock provided the sole reading of the June 14, 2022 x-ray and determined it is negative. Employer's Exhibit 1 at 41.

The ALJ found the January 10, 2019 x-ray positive because a greater number of dually-qualified radiologists read it as positive. *Id.* at 21. He found the readings of the January 30, 2020 x-ray are in equipoise given that an equal number of dually-qualified radiologists read it as positive and negative. *Id.* Finally, he found the June 14, 2022 x-ray is negative based on the sole reading by Dr. Adcock. *Id*. Because one x-ray is positive, the readings of one are in equipoise, and one is negative, the ALJ found the weight of the x-ray evidence is in equipoise and thus does not meet Employer's burden of rebutting the existence of clinical pneumoconiosis. *Id.* at 21-22.

Contrary to Employer's argument that the ALJ erred by simply "counting heads" when resolving the conflicting readings of each x-ray, he properly considered the number of x-ray interpretations along with the readers' qualifications and the findings set forth in their interpretations. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016) (ALJ performs a qualitative and quantitative assessment of the x-ray evidence when they take into account the radiological qualifications of each reader and the number of readings by better qualified readers); Employer's Brief at 14-17. Because he conducted both a qualitative and quantitative assessment of the x-ray evidence, we affirm his finding that the x-ray evidence does not support Employer's burden to rebut the presumption of

[9] The ALJ noted Claimant's treatment records contain three additional x-rays but assigned them no weight because they were silent regarding pneumoconiosis. Decision and Order at 21. As it is unchallenged, we affirm this finding. *See Skrack*, 6 BLR at 1-711.

clinical pneumoconiosis. *See Addison*, 831 F.3d at 256-57; *Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992); Decision and Order at 20-22.

As Employer does not challenge the ALJ's weighing of the medical opinions on clinical pneumoconiosis, we affirm the ALJ's finding that they do not support Employer's burden. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 23. Consequently, we affirm the ALJ's finding that Employer failed to disprove clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 23. Employer's failure to disprove clinical pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis.[10] *See* 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 26-27. The ALJ rationally discredited the disability causation opinions of Drs. Sargent and McSharry because they did not diagnose clinical pneumoconiosis, contrary to his finding that Employer failed to disprove the existence of the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order at 26-27. As it is supported by substantial evidence, we affirm the ALJ's finding that Employer failed to establish that no part of Claimant's totally disabling respiratory or pulmonary impairment was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

[10] We therefore need not address Employer's allegations of error with respect to the ALJ's findings concerning rebuttal of legal pneumoconiosis. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Larioni*, 6 BLR at 1-1278; Employer's Brief at 17-24.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge