U.S. Department of Labor

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

BRB No. 25-0082 BLA

ALDEANA S. COOPER (Widow of EDDIE COOPER)	)	
Claimant-Respondent	)	
v.	)	
BANNER BLUE COAL COMPANY	)	
and	)	**NOT-PUBLISHED**
NATIONAL UNION FIRE INSURANCE COMPANY	)	DATE ISSUED: 01/29/2026
Employer/Carrier-Petitioners	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Granting Modification and Awarding Benefits of Dierdra M. Howard, Administrative Law Judge, United States Department of Labor.

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

Joseph N. Stepp (Two Rivers Law Group, P.C.), Christiansburg, Virginia, for Employer and its Carrier.

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

Before: ROLFE, JONES, and ULMER, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Dierdra M. Howard's Decision and Order Granting Modification and Awarding Benefits (2022-BLA-05223), rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a fourth request for modification of a survivor's claim[1] filed on April 22, 2013.

In a Proposed Decision and Order – Denial of Benefits dated December 13, 2013, the district director found Claimant failed to establish the Miner had pneumoconiosis. Director's Exhibit 1 at 66-71. On December 30, 2014, Claimant timely filed her first request for modification. Director's Exhibit 1 at 63. The district director denied the modification request because he found no mistake in a determination of fact. *Id.* at 58-60. Claimant filed her second request for modification on April 25, 2016. *Id.* at 41. The district director again denied the modification request because he found no mistake in a determination of fact. *Id.* at 26-28.

On August 10, 2017, Claimant filed her third request for modification. Director's Exhibit 1 at 22. The district director denied Claimant's request as untimely.[2] *Id.* at 13-14. Claimant subsequently requested that the claim be referred to the Office of Administrative

[1] Claimant is the widow of the Miner, who died on May 26, 2011. Director's Exhibit 1 at 298. The Miner previously filed a claim for benefits, which ALJ Linda S. Chapman denied in a Decision and Order issued on July 1, 2009, because the Miner failed to establish the existence of pneumoconiosis. *Id.* at 328-39, 1137-40. Thus, the Miner did not successfully establish entitlement to benefits during his lifetime. As such, Claimant is not entitled to benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), which provides a survivor of a miner determined to be eligible to receive benefits at the time of his death is automatically entitled to receive survivor's benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[2] Claimant's third modification request is dated August 4, 2017; the filing deadline was August 5, 2017. Director's Exhibit 1 at 13, 22.

Law Judges (OALJ). *Id.* at 12. On August 15, 2019, ALJ Francine L. Applewhite remanded the case to the district director after the parties stipulated that the modification request was timely. Director's Exhibit 5 at 1, 23-26. The district director subsequently denied the modification request, again finding no mistake in a determination of fact. Director's Exhibit 7 at 2-3.

On September 21, 2020, Claimant filed her fourth and current request for modification and submitted three sets of treatment records as new evidence.[3] Director's Exhibit 9 at 1. Subsequently, the district director issued a Proposed Decision and Order Granting Request for Modification, finding the new evidence demonstrates Claimant is entitled to benefits. Director's Exhibit 22 at 1-2. Employer requested a hearing before the OALJ. Director's Exhibit 25.

In her Decision and Order Granting Modification and Awarding Benefits, the subject of the current appeal, the ALJ Howard (the ALJ) found the Miner had at least fifteen years of coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Consequently, she found Claimant invoked the presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[4] She also determined Employer did not rebut the presumption. Next, finding that the need for accuracy of the substantive benefits determination outweighed the interest in finality, the ALJ concluded that granting modification would render justice under the Act and thus awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established modification and in finding that granting modification would render justice under the Act.[5]

[3] The new evidence included select treatment records from Johnson City Medical Center from 2009, Russell County Medical Center from 2005 to 2011, and Select Specialty Hospital from 2011. Director's Exhibits 9; 23 at 3-4. No additional evidence was filed with the prior modification requests.

[4] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's death was 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 at the time of his death. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[5] We affirm, as unchallenged on appeal, the ALJ's findings that the Miner had at least fifteen years of coal mine employment and a totally disabling respiratory or pulmonary impairment and thus that Claimant invoked the Section 411(c)(4) presumption. *Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 13,

Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response, arguing that, contrary to Employer's contention, the United States Court of Appeals for the Seventh Circuit's holding in *Old Ben Coal Co. v. Director, OWCP* [*Hilliard*], 292 F.3d 533, 547 (7th Cir. 2002) that accuracy of a determination is entitled to great weight in modification proceedings under the Act is not called into question by *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

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.[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, 362 (1965).

Modification

The sole ground for modification in a survivor's claim is that a mistake in a determination of fact was made in the prior decision. *See* 20 C.F.R. §725.310(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-164 (1989). In reviewing the record on modification, the ALJ has broad discretion to correct mistakes of fact, including the ultimate fact of entitlement to benefits. *See Jessee v. Director, OWCP*, 5 F.3d 723, 724-25 (4th Cir. 1993); *see also Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 230 (6th Cir. 1994); *Nataloni v. Director, OWCP*, 17 BLR 1-82, 1-84 (1993). Thus, the ALJ is authorized "to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971).

Justice Under the Act

Employer argues the ALJ erred in determining that granting modification renders justice under the Act,[7] arguing Claimant was not diligent in pursuing her claim when the

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17. We further affirm the ALJ's unchallenged determination that Employer failed to rebut the presumption. *Skrack*, 6 BLR at 1-711; Decision and Order at 17.

[6] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because the Miner performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 2; Director's Exhibit 1 at 321.

[7] For the reasons we set forth in *Kincaid v. Island Creek Coal Co.*, 26 BLR 1-43, 1-47 (2023), we reject Employer's contention that an ALJ must assess whether granting

evidence she relied upon to establish a mistake in a determination of fact was available at the time she filed her initial claim and each of her prior requests for modification. Employer's Brief at 7-18. We disagree.

Determining whether granting modification would render justice under the Act is committed to the broad discretion of the ALJ. *O'Keeffe*, 404 U.S. at 255-56; *Westmoreland Coal Co. v. Sharpe* [*Sharpe II*], 692 F.3d 317, 335 (4th Cir. 2012). Thus, the party opposing modification bears the burden of establishing the ALJ abused her discretion. *See Branham v. BethEnergy Mines*, 20 BLR 1-27, 1-34 (1996).

While an ALJ has the authority to reopen a case based on any mistake in fact, an ALJ's exercise of that authority is discretionary and requires consideration of competing equities to determine whether reopening the case will render justice under the Act. *Sharpe II*, 692 F.3d at 327-28; *Kinlaw v. Stevens Shipping & Terminal Co*., 33 BRBS 68, 72 (1999). In making that determination, the ALJ must consider several factors, including the need for accuracy, the quality of the new evidence, the moving party's diligence and motive, and whether a favorable ruling would be futile. *Sharpe v. Director, OWCP* [*Sharpe I*], 495 F.3d 125, 132-33 (4th Cir. 2007); *D.S.* [*Stiltner*] *v. Ramey Coal Co.*, 24 BLR 1-33, 1-38 (2008); *Kinlaw*, 33 BRBS at 72.

Citing the relevant factors, the ALJ determined the interest in accuracy and quality of evidence in this case weigh in favor of granting Claimant's request for modification. Decision and Order at 8. With respect to Claimant's motive and diligence, the ALJ recognized this request for modification is the first in which Claimant submitted additional evidence and acknowledged Claimant did not offer an explanation for failing to provide the evidence sooner. *Id.* However, she also noted Claimant timely filed each request for modification and thus was diligent in pursuing her claim. *Id.* at 9.

Further, while Employer alleges it was prejudiced by Claimant's submission of evidence on modification that was available before the initial denial of her claim, the ALJ was authorized to consider wholly new evidence, cumulative evidence, or merely further reflect on the evidence initially submitted in determining whether a mistake of fact was made. *See O'Keeffe,* 404 U.S. at 256; Employer's Brief at 15-17. Even if new evidence had been introduced in the current claim that was available at the time of the prior hearing, "a modification request cannot be denied out of hand . . . on the basis that the evidence may have been available at an earlier stage in the proceeding." *Hilliard*, 292 F.3d at 546. Indeed, the "modification procedure is flexible, potent, [and] easily invoked," *Betty*

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modification renders justice under the Act "as a threshold matter" before she considers the merits of a modification request. Employer's Brief at 7.

B. Coal Co. v. Director, OWCP [*Stanley*], 194 F.3d 491, 497 (4th Cir. 1999), and embodies a policy favoring accuracy of determination over finality. *See Sharpe II*, 692 F.3d at 330 (the paramount concern in granting modification is whether the entitlement determination is accurate); *Hilliard*, 292 F.3d at 541. Thus, "[o]nce a request for modification is filed, no matter the grounds stated, if any, the [ALJ] has the authority, if not the duty, to reconsider all the evidence for any mistake of fact or change in conditions." *Worrell*, 27 F.3d at 230.

Employer acknowledges that accuracy is the "prevailing factor" when considering whether modification renders justice under the Act,[8] but argues it should not render all other factors moot, contending that here finality is also an important factor given the passage of time. Employer's Brief at 18-20. The ALJ recognized the interest in finality and the potential undermining of this interest as well as the efficiency of the claims process when a party does not submit evidence previously available. But she permissibly found this factor did not outweigh the need for accuracy and the purpose of the Act.[9] Decision and Order at 9; *see Sharpe II*, 692 F.3d at 330 (finality carries a "great deal of weight" if

[8] Employer contends that the Seventh Circuit's holding in *Old Ben Coal Co. v. Director, OWCP* [*Hilliard*], 292 F.3d 533, 541-42 (7th Cir. 2002) that the modification provision reflects a preference for accuracy over finality is derived from the agency's interpretation of the statute and deference to that interpretation is predicated on *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc*., 467 U.S. 837 (1984), which was overruled by *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). Employer's Brief at 8, n.4. We agree with the Director's position that the Seventh Circuit's holding in *Hilliard* has not been called into question by *Loper Bright*. Director's Brief at 1-2 (unpaginated). Contrary to Employer's argument, *Hilliard* was not based on deference to the agency's position. 292 F.3d at 542 n.8 ("We need not decide precisely the level of deference that should attach to the DOL's interpretation of the statute and implementing regulations; its position we believe, is both reasonable and persuasive."). However, even if it were, *Loper Bright* "[does] not call into question prior cases that relied on the *Chevron* framework." 603 U.S. at 412; *see also Owens v. Lodestar Energy, Inc.*, BLR , BRB Nos. 24-0414 and 25-0012 BLA, slip op. at 6-7 (Sept. 23, 2025).

[9] Consistent with the stated purpose of the Act, "to ensure that . . . benefits are provided to coal miners and their dependents in the event of their death or total disability due to pneumoconiosis," 30 U.S.C. §901(a), Congress "incorporat[ed] within the statute a broad reopening provision to ensure the accurate disposition of benefits." *Hilliard*, 292 F.3d at 546.

the modification request is "belatedly made with an improper motive and *without compelling new evidence*") (emphasis added).

As the ALJ did not abuse her discretion, we affirm her determination that granting modification renders justice under the Act. *See O'Keeffe*, 404 U.S. at 256; *Worrell*, 27 F.3d at 230; *Branham*, 20 BLR at 1-34; Decision and Order at 9. Further, as Employer has not specifically challenged the ALJ's finding that the evidence demonstrates entitlement to benefits, we also affirm the award of benefits. 30 U.S.C. §921(c)(4); *see Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 17; *supra*, note 5.

Accordingly, we affirm the ALJ's Decision and Order Granting Modification and Awarding Benefits.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge