



BRB No. 21-0518 BLA

RALPH BLACKBURN)	
)	
Claimant-Respondent)	
)	
v.)	
)	
CONSOLIDATION COAL COMPANY)	
)	DATE ISSUED: 7/13/2022
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Scott R. Morris,
Administrative Law Judge, United States Department of Labor.

James W. Heslep (Jenkins Fenstermaker, PLLC), Clarksburg, West Virginia,
for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Scott R. Morris's Decision and Order Awarding Benefits (2020-BLA-05197) rendered on a subsequent claim filed on August 17, 2018,¹ pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

¹ Claimant filed two prior claims for benefits. He filed his most recent prior claim on February 10, 2003, which the district director denied on March 18, 2004. Decision and

The ALJ found Claimant established thirty-two years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),² and established a change in an applicable condition of entitlement. 20 C.F.R. §725.309.³ 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.⁴ Neither Claimant nor the Director, Office of Workers' Compensation Programs, 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

Order at 4 n.8 (noting Claimant's most recent prior claim is not contained in the Director's Exhibits).

² 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); *see* 20 C.F.R. §718.305.

³ 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 he 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).

⁴ We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established thirty-two years of underground coal mine employment, total disability, a change in an applicable condition of entitlement, and invocation of the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§718.204(b)(2), 718.305(b), 725.309(c); Decision and Order at 4, 5, 14.

accordance with applicable law.⁵ 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,⁶ 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.⁷

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); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, requires Employer to establish Claimant’s “coal mine employment did not contribute, in part, to his alleged pneumoconiosis.” *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). “An employer may prevail under the not ‘in part’ standard by showing that coal dust exposure had no more than a *de minimis* impact on the

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Tennessee. Director’s Exhibit 3; Hearing Tr. at 15.

⁶ “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 that is 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).

⁷ The ALJ found Employer disproved the existence of clinical pneumoconiosis. Decision and Order at 18-19.

miner's lung impairment." *Id.* at 407, citing *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014).

The ALJ considered Dr. Jarboe's opinion that Claimant does not have legal pneumoconiosis. Decision and Order at 19-21; Employer's Exhibit 1. Dr. Jarboe diagnosed Claimant with reversible obstructive airways disease and chronic bronchitis due to a combination of cigarette smoking, morbid obesity, and bronchial asthma. Employer's Exhibit 1. He opined any contribution from coal mine dust exposure to these conditions is "de minimis." *Id.*

The ALJ found Dr. Jarboe's opinion inadequately reasoned and inconsistent with the regulations. *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Young*, 947 F.3d at 405; *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 737-40 (6th Cir. 2014); 20 C.F.R. §718.201(a)(2), (b); Decision and Order at 19-21.

Employer identifies no error in the ALJ's credibility findings. See *Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); 20 C.F.R. §802.211(b). Rather, it generally argues Dr. Jarboe's opinion is well-reasoned and documented, and therefore sufficient to rebut legal pneumoconiosis. Employer's Brief at 7-8. It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. See *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983). Employer's argument is a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Because the ALJ permissibly discredited Dr. Jarboe's opinion, the only opinion supportive of Employer's burden on rebuttal, we affirm his finding Employer did not disprove legal pneumoconiosis.⁸ 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 21. 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).

⁸ As Dr. Forehand diagnosed legal pneumoconiosis, his opinion does not support Employer's burden to disprove the disease; we therefore need not address Employer's contentions regarding the ALJ's consideration of his opinion. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 7-8.

Disability Causation

The ALJ also found Employer did not rebut the presumption by establishing “no part of the miner’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 22. Because Employer raises no specific allegations of error regarding the ALJ’s findings on disability causation, we affirm his determination that Employer failed to establish no part of Claimant’s respiratory or pulmonary disability was due to legal pneumoconiosis. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 22. We therefore affirm the ALJ’s finding that Employer did not rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(ii) and the award of benefits.

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge