U.S. Department of Labor

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

BRB No. 24-0259 BLA

LARRY B. WRIGHT Claimant-Respondent v. CUMBERLAND RIVER COAL COMPANY Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 07/09/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

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

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Awarding Benefits (2022-BLA-05776) rendered on a claim filed pursuant to the

Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim filed on March 31, 2021.[1]

The ALJ credited Claimant with at least fifteen years of qualifying coal mine employment based on the parties' stipulation and found he has a totally disabling pulmonary or respiratory impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant established a change in an applicable condition of entitlement[2] and invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[3] 30 U.S.C. §921(c)(4) (2018). She 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] Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, has not filed a response. Employer filed a reply brief, reiterating its contentions.

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[1] This is Claimant's third claim for benefits. Director's Exhibits 1, 2, 4. The district director denied his most recent prior claim, filed on April 13, 2016, because the evidence did not establish total disability. Director's Exhibit 2.

[2] 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 district director denied Claimant's prior claim for failure to establish total disability, Claimant had to submit new evidence establishing this element to have his claim reviewed on the merits. *See White*, 23 BLR at 1-3; Director's Exhibit 2.

[3] 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.

[4] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4, 9.

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.[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 "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

[5] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 15, 32; Director's Exhibit 5.

[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 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 clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 14.

by showing that coal-dust exposure had no more than a *de minimis* impact on the miner's lung impairment." *Id.* at 407 (citing *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014)).

Employer relies on Dr. Rosenberg's opinion that Claimant does not have legal pneumoconiosis. The ALJ found his opinion not well-reasoned and inconsistent with the regulations and, therefore, insufficient to satisfy Employer's burden of proof. Decision and Order at 12-14. Employer contends the ALJ erred. Employer's Brief at 4-13; Employer's Reply Brief at 2-8. We disagree.

Dr. Rosenberg opined Claimant's totally disabling gas exchange impairment and current respiratory symptoms of cough and sputum production are due to rheumatoid arthritis[8] and the treatment for it because the medication used for treating it can cause pulmonary toxicity, chronic bronchitis, and interstitial lung disease. Employer's Exhibit 3 at 3-4. He further opined rheumatoid arthritis "commonly causes pulmonary manifestations including bronchiolitis." *Id.* at 4. Though he acknowledged pneumoconiosis can be latent and progressive, Dr. Rosenberg explained bronchitis caused by coal mine dust exposure dissipates after exposure ceases and, thus, concluded Claimant's ongoing cough and sputum production are unrelated to coal mine dust exposure. *Id.* Finally, in discussing the cause of Claimant's gas exchange impairment, he noted that Claimant's "chest [x]-ray has not worsened over time." *Id.*

Initially, we reject Employer's contention that the ALJ presumed "all progression [and progressive diseases] must be [legal] pneumoconiosis[.]"[9] Employer's Brief at 9-11; Employer's Reply Brief at 5-6. The ALJ discredited Dr. Rosenberg's opinion based on the doctor's belief that Claimant's current respiratory symptoms are inconsistent with an

[8] Dr. Rosenberg noted that Claimant has had rheumatoid arthritis for seventeen years. Employer's Exhibit 3 at 3.

[9] In making this argument, Employer suggests that it would be improper to require Dr. Rosenberg to "exclude all possible contribution or aggravation" due to coal mine dust exposure to rebut legal pneumoconiosis. Employer's Brief at 8-11; Employer's Reply Brief at 4. The ALJ, however, accurately noted that to disprove legal pneumoconiosis, Employer must establish that Claimant's impairment was not "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 9; *see* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A). Moreover, as explained above, the ALJ discredited Dr. Rosenberg's opinion because she found it was not well-reasoned and contrary to the regulations, not because it failed to meet a heightened legal standard. Decision and Order at 9-14.

impairment caused by coal mine dust exposure because they continued after he was no longer exposed to coal mine dust. Decision and Order at 13. Consequently, the ALJ permissibly determined Dr. Rosenberg's opinion is contrary to the principle set forth in the regulation recognizing pneumoconiosis as "a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Wilgar Land Co. v. Director, OWCP* [*Adams*], 85 F.4th 828, 841 (6th Cir. 2023); *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 738 (6th Cir. 2014); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 488-89 (6th Cir. 2012); Decision and Order at 13.

We are not persuaded by Employer's contention that the ALJ improperly discredited Dr. Rosenberg's opinion on legal pneumoconiosis based on his separate analysis of whether Claimant has clinical pneumoconiosis. Employer's Brief at 11-12; Employer's Reply Brief at 6-8. Rather, the ALJ accurately acknowledged that Dr. Rosenberg stated that Claimant's "chest [x]-ray has not worsened over time" in discussing the cause of Claimant's gas exchange impairment. Decision and Order at 13; Employer's Exhibit 3 at 4. Consequently, we see no error in the ALJ determining that "[t]o the extent" Dr. Rosenberg relied on the negative chest x-ray evidence in considering whether Claimant has legal pneumoconiosis, his opinion is inconsistent with the regulation providing that a "claim for medical benefits must not be denied solely on the basis of a negative chest x-ray." Decision and Order at 13 (quoting 20 C.F.R. §718.202(b)); *see* 20 C.F.R. §§718.201(a), 718.202(a)(4); 65 Fed. Reg. 79,920, 79,945 (Dec. 20, 2000); *A & E Coal Co. v. Adams*, 694 F.3d 798, 802-03 (6th Cir. 2012); *Banks*, 690 F.3d at 487-88 (ALJ properly concluded the regulations provide legal pneumoconiosis may exist in the absence of clinical pneumoconiosis); Employer's Exhibit 3 at 4.

Finally, although Dr. Rosenberg opined rheumatoid arthritis and the treatments for it caused Claimant's gas exchange impairment and related symptoms, we see no error in the ALJ's determination that Dr. Rosenberg failed to adequately address why Claimant's history of coal mine dust exposure did not also significantly contribute to or aggravate his impairment even if Claimant has rheumatoid arthritis. *See Huscoal, Inc. v. Director, OWCP* [*Clemons*], 48 F.4th 480, 489-90 (6th Cir. 2022); *Young*, 947 F.3d at 408; *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 352-53, 356 (6th Cir. 2007); Decision and Order at 13.

Employer's arguments are 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 acted within her discretion in rejecting Dr. Rosenberg's opinion, we affirm her finding Employer did not disprove legal pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 12-14. 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).

Finally, as it is unchallenged on appeal, we also affirm the ALJ's finding that Employer failed to establish that no part of Claimant's respiratory or pulmonary disability was caused by his legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 14-15. Consequently, we affirm the ALJ's finding that Employer failed to rebut the Section 411(c)(4) presumption.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge