U.S. Department of Labor

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

BRB No. 24-0274 BLA

WILLIAM D. STROUD Claimant-Respondent v. CONSOL OF KENTUCKY, INCORPORATED and CONSOL ENERGY, INCORPORATED Employer/Carrier-Petitioners 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 Patricia J. Daum, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for Claimant.

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

Amanda Torres (Jonathan Snare, Deputy Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Acting

Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Patricia J. Daum's Decision and Order Awarding Benefits (2020-BLA-05229) rendered on a claim filed on October 29, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with at least fifteen years of qualifying coal mine employment and found he has a totally disabling pulmonary or respiratory impairment. 20 C.F.R. §718.204(b)(2). Thus, the ALJ found Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018). She concluded Employer did not rebut the presumption and awarded benefits.

On appeal, Employer asserts the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption, arguing the ALJ applied the wrong legal standard on rebuttal and improperly used the preamble to the 2001 revised regulations to weigh the medical opinion evidence.[2] Claimant responds in support of the award of benefits.[3] The Acting Director, Office of Workers' Compensation Programs, filed a response, urging the Board to reject Employer's arguments regarding the rebuttal standard and the ALJ's use of the preamble.

[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 determination that Claimant invoked the Section 411(c)(4) presumption. Decision and Order at 36, 50-51; *see Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983).

[3] The Benefits Review Board dismissed Claimant's cross-appeal at his request. *Stroud v. Consol of Ky., Inc.*, BRB No. 24-0274 BLA-A (Oct. 17, 2024) (Order) (unpub.).

The 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.[4] 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).

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,[5] 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 did not establish rebuttal by either method.[6]

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 W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018) (rebuttal inquiry is "whether the employer has come forward with affirmative proof that the [miner] does not have legal pneumoconiosis, because his

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

[5] "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).

[6] The ALJ found Employer disproved the existence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 38.

impairment is not in fact significantly related to his years of coal mine employment"); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ considered Drs. Jarboe's and Ranavaya's opinions that Claimant does not have legal pneumoconiosis. Dr. Jarboe diagnosed moderate to moderately severe obstructive airways disease, chronic asthmatic bronchitis, and reactive airways disease caused by smoking and unrelated to coal mine dust exposure. Director's Exhibit 23 at 5-9; Employer's Exhibit 5 at 35-36, 41-42. Dr. Ranavaya diagnosed a "substantially reversible airflow obstruction" due to adult-onset bronchial asthma and unrelated to coal mine dust exposure. Employer's Exhibit 4 at 10-15. The ALJ discredited both opinions as inadequately reasoned and accorded them little weight on the issue of legal pneumoconiosis. Decision and Order at 44, 49.

Employer argues the ALJ erroneously applied caselaw from the United States Court of Appeals for the Sixth Circuit requiring an employer to make an affirmative showing that a miner does not have pneumoconiosis because Fourth Circuit law applies to this case. Employer contends that under the law of the Fourth Circuit, it is not required to submit "affirmative proof of the absence of legal pneumoconiosis" and the ALJ therefore erred in requiring it to do so. Employer's Brief at 5-7; Decision and Order at 43 (citing *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480 (6th Cir. 2011)). We disagree.

Contrary to Employer's argument, the Fourth Circuit's rebuttal standard requires that Employer "come forward with affirmative proof that the claimant does not have legal pneumoconiosis . . . ." *Smith*, 880 F.3d at 699; Decision and Order at 43-44. The ALJ accurately noted Employer must establish Claimant "does not have a lung disease 'significantly related to, or substantially aggravated by, dust exposure in coal mine employment' by a preponderance of the evidence." Decision and Order at 36 (quoting 20 C.F.R. §718.201(b)). Thus, under both Fourth Circuit and Sixth Circuit law, Employer must affirmatively establish that Claimant does not have legal pneumoconiosis. *Smith*, 880 F.3d at 699; *Morrison*, 644 F.3d at 480. Therefore, any error in the ALJ's reference to Sixth Circuit precedent when considering Employer's burden of rebuttal is harmless as she correctly required Employer to provide affirmative proof that Claimant does not have legal pneumoconiosis.[7] Decision and Order at 43-44; *see Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[7] For the same reasons discussed above, we are not persuaded by Employer's contention that the ALJ required its experts to "rule[]-out" pneumoconiosis. Employer's Brief at 6.

Employer further argues the ALJ applied the preamble to the 2001 revised regulations as a binding "rule" to discredit Dr. Jarboe's and Dr. Ranavaya's opinions and erred in failing to consider their specific explanations for why Claimant's respiratory impairment did not constitute legal pneumoconiosis. Employer's Brief at 7-8, 10-17. We disagree.

Initially, we reject Employer's argument that the ALJ used the preamble as a binding "rule" in evaluating Dr. Jarboe's and Dr. Ranavaya's opinions. Employer's Brief at 7-8, 10-13, 16-17. Rather, the ALJ permissibly consulted the preamble as a statement of credible medical research findings that the Department of Labor (DOL) accepted when it revised the definition of pneumoconiosis to include obstructive impairments arising out of coal mine employment. *See Extra Energy, Inc. v. Director, OWCP* [*Lawson*], F.4th , No. 23-1544, 2025 WL 1561703, at 4 (4th Cir. June 3, 2025) ("While the preamble is nonbinding guidance[,] . . . . we have said that [it] is entirely consistent with the [Black Lung Benefits] Act and its regulations and simply explains the scientific and medical basis for the regulations.") (internal quotations omitted); *Am. Energy, LLC v. Director, OWCP* [*Goode*], 106 F.4th 319, 332 (4th Cir. 2024) (ALJ may discredit a physician's opinion if it "is, in fact, inconsistent with the preamble"); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012); Decision and Order at 38, 47-49. Nor did the ALJ "assert[] the preamble confers a presumption that all [chronic obstructive pulmonary disease (COPD)] is legal pneumoconiosis." Employer's Brief at 8, 10, 13. She simply, and accurately, stated the "[p]reamble recognizes that [COPD] includes . . . chronic bronchitis, emphysema, and asthma" and that it concluded coal mine dust exposure may cause COPD. Decision and Order at 48 (citing 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000)).

We are not persuaded by Employer's argument that the ALJ failed to resolve the scientific controversy between Dr. Cohen and Drs. Jarboe and Ranavaya regarding the significance of the FEV1/FVC ratio on pulmonary function testing in determining the cause of a respiratory impairment. Employer's Brief at 10-13. Rather, the ALJ acknowledged Drs. Jarboe and Ranavaya excluded coal mine dust exposure as a causative factor for Claimant's obstructive lung disease based, in part, on their views that his reduced FEV1/FVC ratio is consistent with an obstruction caused by smoking and not coal mine dust exposure. Decision and Order at 44-45, 48; Director's Exhibit 23 at 6-7; Employer's Exhibits 4 at 12-13; 5 at 26-27, 41-42. Consequently, the ALJ permissibly discredited their opinions as conflicting with the DOL's recognition in the preamble that coal mine dust exposure may cause clinically significant obstructive disease with associated decrements in the FEV1 value and FEV1/FVC ratio. 65 Fed. Reg. at 79,943; *see Lawson*, No. 23-1544, 2025 WL 1561703, at 10; *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 (4th Cir. 2017); Decision and Order at 44-45, 48.

Additionally, in considering Dr. Jarboe's opinion, the ALJ accurately noted he excluded coal mine dust exposure as a cause of Claimant's disease because chronic bronchitis from coal mine dust usually "clear[s] after the miner is taken out of the dust, like in six months to at most a year." Decision and Order at 28, 47; Employer's Exhibit 5 at 15-16. Thus, the ALJ permissibly discredited Dr. Jarboe's opinion as "contrary to the concept . . . that disabling pneumoconiosis, whether clinical or legal, can develop years after a miner leaves the mines." 20 C.F.R. §718.201(c); *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be both latent and progressive may be discredited); Decision and Order at 39, 47.

Moreover, in discussing the centrilobular emphysema detected on Claimant's computed tomography scans, Dr. Ranavaya opined centrilobular emphysema is "almost uniformly" caused by smoking. Employer's Exhibit 4 at 13. Consequently, the ALJ rationally discredited Dr. Ranavaya's opinion as inconsistent with the science underlying the preamble, which identifies centrilobular emphysema as a type of emphysema that may be caused by coal mine dust exposure and recognizes that centrilobular emphysema is "significantly more common" among miners than non-miners. Decision and Order at 48 (citing 65 Fed. Reg. at 79,941); *see Lawson*, No. 23-1544, 2025 WL 1561703, at 10; *Looney*, 678 F.3d at 313-14; *see also A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012).

Finally, the ALJ permissibly discredited both physicians' opinions because they failed to adequately explain why coal mine dust exposure did not significantly contribute to, or aggravate, Claimant's obstructive impairment along with smoking. *See Stallard*, 876 F.3d at 673-74 n.4; *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Looney*, 678 F.3d at 313-14 (ALJ may accord less weight to a physician who fails to adequately explain why a miner's obstructive disease "was not due at least in part to his coal dust exposure"); Decision and Order at 28-29, 31, 45-46, 49.

Employer's arguments amount to 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 provided valid reasons for discrediting Drs. Jarboe's and Ranavaya's opinions, the only opinions supportive of Employer's burden on rebuttal,[8] we

[8] Because the ALJ gave permissible reasons for rejecting Drs. Jarboe's and Ranavaya's opinions, we need not address Employer's additional challenges to the ALJ's evaluation of their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Decision and Order at 44-49; Employer's Brief at 10-17. Additionally, we need not address Employer's arguments concerning Drs. Gaziano's, Go's,

affirm her determination that Employer did not disprove legal pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 49. 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).

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 49-50. She permissibly discredited Drs. Jarboe's and Ranavaya's disability causation opinions because neither physician diagnosed legal pneumoconiosis, contrary to her finding that Employer failed to disprove that Claimant has the disease.[9] *See Epling*, 783 F.3d at 504-05; Decision and Order at 50. We therefore affirm the ALJ's finding that Employer failed to establish no part of Claimant's total disability was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

and Cohen's opinions because their diagnoses of legal pneumoconiosis do not aid Employer in proving Claimant does not have the disease. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); Employer's Brief at 6-10.

[9] Neither physician offered an opinion on this subject independent of his reasoning relating to the absence of pneumoconiosis.

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