U.S. Department of Labor

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

BRB No. 24-0457 BLA

FRANK I. BLAKE Claimant-Respondent v. PANTHER CREEK MINING, LLC 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 Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

Denise Hall Scarberry (Baird & Baird, PSC), Pikeville, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Theresa C. Timlin's Decision and Order Awarding Benefits (2022-BLA-05041) rendered on a claim filed on August 30,

2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 32.55 years of qualifying coal mine employment, consisting of "at least" twenty-two years in underground coal mines and the remainder in substantially similar surface coal mine work. She found that Claimant established a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b)(2), and thus 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). Further, she found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer contends the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption.[2] Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, has declined to file 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 and 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,[4] or that "no part of

[1] Section 411(c)(4) 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); 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established 32.55 years of qualifying coal mine employment, total disability, and invocation of the Section 411(c)(4) presumption. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 13-16, 17-32.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 22.

[4] "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

[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.[5] Decision and Order at 33-44.

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).

Employer relies on the medical opinions of Drs. Zaldivar and Vuskovich that Claimant does not have legal pneumoconiosis.[6] Decision and Order at 38-40. Dr. Zaldivar diagnosed Claimant with an obstructive impairment and hypoxemia due to non-occupational asthma, obesity, and sleep apnea, not coal dust exposure. Director's Exhibit 25 at 4-5; Employer's Exhibit 5 at 3-4. Dr. Vuskovich attributed Claimant's abnormal spirometry and blood gas test results to asthma and morbid obesity, not coal dust exposure. Employer's Exhibit 7 at 19, 21-23. The ALJ found Drs. Zaldivar's and Vuskovich's opinions not well-reasoned because they did not adequately explain how they eliminated Claimant's significant coal mine dust exposure as a contributing or aggravating cause of his pulmonary impairment. Decision and Order at 38-40. Thus, she found their opinions inadequate to rebut the presumption of legal pneumoconiosis. *Id.* at 40. Employer challenges this finding.

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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).

[5] The ALJ found Employer disproved the existence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i); Decision and Order at 34-36.

[6] The ALJ correctly observed that Drs. Habre, Gaziano, and Agarwal diagnosed Claimant with legal pneumoconiosis and therefore their opinions do not aid Employer in rebutting the Section 411(c)(4) presumption. Decision and Order at 40, 42; Director's Exhibit 17; Claimant's Exhibits 1, 3.

Employer asserts the ALJ applied an incorrect legal standard in discrediting Drs. Zaldivar's and Vuskovich's opinions as inadequately explained. Employer's Brief at 5-10 (unpaginated). It argues their diagnoses are well-reasoned because they considered the totality of Claimant's medical evidence and risk factors and relied on relevant medical literature. *Id.* at 7-10. We disagree.

As mentioned above, as Claimant invoked the Section 411(c)(4) presumption that his totally disabling respiratory or pulmonary impairment is due to pneumoconiosis, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A). In this context, any chronic pulmonary disease or impairment that Claimant has is presumed to be significantly related to, and substantially aggravated by, coal mine dust exposure. Thus, as the ALJ accurately observed, the relevant question at rebuttal is not whether Employer has disproven coal dust exposure as the direct cause of his pulmonary disease, but whether Employer has affirmatively disproven it as a contributing or substantially aggravating factor in his asthma-, obesity-, and sleep apnea-related impairment. Decision and Order at 38-40; *see Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313-14 (4th Cir. 2012).

We further see no error in the ALJ's consideration of the physicians' opinions in this regard. Contrary to Employer's assertion, the ALJ permissibly found Dr. Zaldivar's explanation, that Claimant's negative x-ray can be used to eliminate coal dust exposure as a cause of his disease and impairment, unpersuasive as the regulations recognize legal pneumoconiosis can exist in the absence of clinical pneumoconiosis. 20 C.F.R. §718.202(a)(4), (b); *see Looney*, 678 F.3d at 313, (the regulations "separate clinical and legal pneumoconiosis into two different diagnoses" and "provide that '[n]o claim for benefits shall be denied solely on the basis of a negative chest x-ray'"); Decision and Order at 40; Director's Exhibit 25 at 4-5; Employer's Brief at 8-9 (unpaginated).

The ALJ additionally acted within her discretion in discounting Drs. Zaldivar's and Vuskovich's opinions because they failed to meaningfully address whether Claimant's significant coal dust exposure could have aggravated his asthma in conjunction with his obesity or sleep apnea. As the ALJ accurately observed, Dr. Zaldivar explained he eliminated coal dust exposure as a cause of Claimant's asthma because only allergenic agents, and not coal dust, cause occupational asthma, while Dr. Vuskovich explained he eliminated it because asthma is a condition of the general population. Decision and Order at 38-39;[7] Employer's Exhibits 5 at 2, 7 at 19. The physicians' categorical exclusion of

[7] The ALJ further accurately observed that Drs. Zaldivar and Vuskovich did not discuss whether the effects of Claimant's obesity and sleep apnea could occur in

coal dust as a contributing factor conflicts with the invoked presumption of legal pneumoconiosis and the Department's position set forth in the preamble to the 2001 revised regulations that coal dust exposure can cause or aggravate obstructive lung disease, including asthma. *See* 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000); Decision and Order at 38-39. The ALJ thus rationally found their reasoning inconsistent with the regulations and not credible to rebut the presumed existence of legal pneumoconiosis. 20 C.F.R. §718.201(a)(2), (b); *see Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 n.4 (4th Cir. 2017); *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 38-39.

We therefore affirm the ALJ's finding that Employer failed to rebut the presumption of legal pneumoconiosis.[8] 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 also found Employer did not rebut the presumption by establishing "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); *see* Decision and Order at 42-43. Because Employer raises no specific arguments on disability causation, we affirm the ALJ's determination that Employer failed to prove that no part of Claimant's total disability was caused by pneumoconiosis. *Skrack v. Island Creek Coal*

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conjunction with legal pneumoconiosis. Decision and Order at 39; Director's Exhibit 25 at 2-5; Employer's Exhibits 5 at 3-4, 7 at 16-23.

[8] We reject Employer's argument that the ALJ erred in failing to reference the medical literature that Drs. Zaldivar and Vuskovich relied upon. Employer's Brief at 11-12 (unpaginated). The ALJ permissibly discredited their opinions for failing to adequately explain how they ruled out coal dust exposure as a contributing or aggravating factor in Claimant's pulmonary impairment. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Decision and Order at 38-40. Employer has not shown how the physicians' references to medical literature would have cured this analytical defect nor explained how this alleged error was prejudicial. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009).

Co., 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 42-43.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge