U.S. Department of Labor

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

BRB No. 24-0459 BLA

DAVID M. TILLEY Claimant-Respondent v. PINNACLE MINING COMPANY, 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 on Remand Granting Benefits of Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

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

Abigail C. Wearden and 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) Francine L. Applewhite's Decision and Order on Remand Granting Benefits (2019-BLA-06266) rendered on a

subsequent claim[1] filed on June 8, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Benefits Review Board for a second time.[2]

In a September 7, 2021 Decision and Order Granting Benefits, the ALJ found Claimant established at least fifteen years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she 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),[3] and therefore established a change in an applicable condition of entitlement. 20 C.F.R. §725.309.[4] She further found Employer did not rebut the presumption and awarded benefits.

Employer appealed the ALJ's Decision and Order Granting Benefits. On appeal, the Board affirmed, as unchallenged, the ALJ's findings that Claimant established at least fifteen 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.

[1] This is Claimant's third claim for benefits. Director's Exhibits 1, 2. On April 27, 2016, the district director denied Claimant's most recent prior claim, filed on July 18, 2014, because he failed to establish total disability. 20 C.F.R. §718.204(b)(2); Director's Exhibit 2.

[2] We incorporate the procedural history of this case as set forth in *Tilley v. Pinnacle Mining Co.*, BRB No. 22-0012 BLA (Feb. 7, 2023) (unpub.).

[3] 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.

[4] If 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). Because Claimant failed to establish total disability in his prior claim, he had to submit new evidence establishing this element of entitlement to obtain review of his current claim on the merits. *See* 20 C.F.R. §725.309(c)(3), (4); *White*, 23 BLR at 1-3; Director's Exhibit 2 at 14.

Tilley v. Pinnacle Mining Co., BRB No. 22-0012 BLA, slip op. at 2 n.4 (Feb. 7, 2023) (unpub.). However, the Board vacated her determination that Employer failed to disprove legal pneumoconiosis and therefore failed to establish rebuttal of the Section 411(c)(4) presumption, noting the ALJ erred in failing to explain her weighing of the medical opinions and Claimant's treatment records.[5] Because the ALJ's errors regarding legal pneumoconiosis affected her credibility findings on the issue of disability causation, the Board also vacated her determination that Employer failed to prove no part of Claimant's respiratory disability was due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); *Tilley*, BRB No. 22-0012 BLA, slip op. at 6-7. Thus, the Board vacated the award of benefits and remanded the case for further consideration of the evidence.

On remand, the ALJ again found Employer did not rebut the Section 411(c)(4) presumption and, therefore, awarded benefits. On appeal, Employer argues the ALJ erred in finding it did not rebut the presumption. Claimant responds in support of the award of benefits. Though he has declined to weigh in on the merits of the case, the Acting Director, Office of Workers' Compensation Programs, asserts Employer's argument on appeal misconstrues and misapplies the holding in *American Energy v. Director, OWCP* [*Goode*], 106 F.4th 319 (4th Cir. 2024).

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order on Remand 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 (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,[7] or that "no part of

[5] As Administrative Appeals Judge Judith S. Boggs is on administrative leave in anticipation of retiring and Administrative Appeals Judge Greg J. Buzzard is no longer a member of the Board, Chief Administrative Appeals Judge Daniel T. Gresh and Administrative Appeals Judge Melissa Lin Jones are substituted on this panel. 20 C.F.R. §802.407(a).

[6] 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); Director's Exhibits 6, 9, 10; Hearing Tr. at 26.

[7] "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.[8]

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).

In her initial Decision and Order, the ALJ considered the opinions of Drs. Nader, Green, Zaldivar, and Basheda and Claimant's treatment records from Bluefield Pulmonary Consultants. Decision and Order at 12-13. Dr. Nader opined Claimant has legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD), and Dr. Green opined Claimant has legal pneumoconiosis in the form of chronic obstruction, which they both attributed to smoking and occupational coal dust exposure. Director's Exhibit 13 at 3; Claimant's Exhibit 1 at 3. Dr. Basheda opined Claimant has asthma, unrelated to coal dust. Employer's Exhibit 4 at 18-19. He opined Claimant's asthma lacks the features related to occupational asthma, noting Claimant has intermittent asthma symptoms rather than progressive airway obstruction or restriction. Employer's Exhibit 12 at 20. Dr. Zaldivar also opined Claimant has asthma acquired through genetics and smoking. Employer's Exhibit 9 at 8. The ALJ also considered Claimant's treatment records, which include diagnoses of asthma and COPD. Claimant's Exhibit 2; Employer's Exhibit 3. Giving each medical opinion "some weight," the ALJ found that the medical opinions and Claimant's treatment records overall weigh in favor of a finding of legal pneumoconiosis. Decision and Order at 13.

---

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).

[8] The ALJ found Employer disproved the existence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order on Remand at 3-4 (unpaginated).

The Board vacated the ALJ's finding that Drs. Nader's and Green's opinions outweigh Drs. Zaldivar's and Basheda's contrary opinions. *Tilley*, BRB No. 22-0012 BLA, slip op. at 3-6. In addition, the Board noted that the ALJ failed to consider the depositions from Drs. Zaldivar and Basheda. *Id*. at 6 n.12. Thus, the Board vacated the ALJ's determination that Employer did not rebut the existence of legal pneumoconiosis and remanded the case for reconsideration.

On remand, the ALJ found Drs. Zaldivar's and Basheda's opinions to be not well documented or reasoned for failing to discuss the effect of Claimant's coal dust exposure on his respiratory and pulmonary impairment. Decision and Order on Remand at 7. She afforded Drs. Nader's and Green's opinions greater weight, noting they discussed the contributions of smoking and coal dust to Claimant's impairment. *Id.* Thus, she concluded the medical opinion evidence supports a finding of legal pneumoconiosis. *Id*. After also considering Claimant's treatment records, which include diagnoses of asthma, COPD, and sleep apnea, she concluded the overall medical evidence "establishes legal pneumoconiosis" and that Employer did not rebut the presumption Claimant has the disease. *Id*. at 7-8 (unpaginated). She thus concluded Employer did not rebut the existence of legal pneumoconiosis. *Id.*

Employer argues the ALJ erred in weighing the medical opinions of Drs. Zaldivar and Basheda.[9] Employer's Brief at 10-25. We agree.

As Employer asserts, the ALJ did not consider relevant evidence in finding the medical opinion evidence supports a diagnosis of legal pneumoconiosis. Employer's Brief at 10-25. Specifically, the ALJ discredited the opinions of Drs. Zaldivar and Basheda for failing to document or discuss the effects of Claimant's exposure to respirable coal dust on his current respiratory or pulmonary impairment. Decision and Order on Remand at 7 (unpaginated).

[9] We reject Employer's argument that the ALJ erred in failing to apply the holding in *American Energy, LLC v. Director, OWCP* [*Goode*], 106 F.4th 319 (4th Cir. 2024). Employer's Brief at 5-10. *Goode* provides that an ALJ may discredit a physician's opinion if it "is, in fact, inconsistent with the preamble[]" to the 2001 revised regulations. *Goode*, 106 F.4th at 332. As the ALJ did not rely on the preamble in crediting or discrediting the medical opinions, we reject Employer's arguments. Employer's Brief at 5-10. As Employer does not raise any further arguments regarding the ALJ's weighing of the opinions of Drs. Nader and Green, we affirm the ALJ's finding that their opinions are documented and reasoned. Decision and Order on Remand at 7 (unpaginated).

Contrary to the ALJ's finding, both Drs. Zaldivar and Basheda testified regarding their reasoning for concluding Claimant's coal dust exposure was not a contributing or aggravating factor to his respiratory or pulmonary impairment. Employer's Exhibits 12, 13. Dr. Zaldivar testified Claimant's respirable coal dust did not aggravate his asthma, noting that nothing in Claimant's medical history led him to believe his time in the coal mines aggravated his condition. Employer's Exhibit 13 at 19. He noted some forms of obstructive lung disease are reversible, such as asthma, and opined asthma was the more likely cause of Claimant's obstruction. *Id*. at 9-10. Dr. Basheda explained Claimant's spirometry results showed improvement and noted Claimant had normal spirometry ten years after leaving coal mine employment. Employer's Exhibit 12 at 8-9. He testified he concluded Claimant's coal dust exposure did not aggravate his obstructive impairment because he believed an obstruction caused by coal dust would not occur and subside over time as Claimant's did. Employer's Exhibit 12 at 9.

Although the ALJ identified Drs. Zaldivar's and Basheda's depositions as evidence of record, she did not discuss or analyze their testimony. Decision and Order at 5-6 (unpaginated). Because the ALJ did not adequately address Drs. Basheda's and Zaldivar's deposition testimony regarding their rationales for concluding Claimant's obstructive impairment did not constitute legal pneumoconiosis, her findings do not satisfy the requirements of the Administrative Procedure Act (APA).[10] *See Wojtowicz v. Duquesne Light Co*., 12 BLR 1-162, 1-165 (1989); *see also McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand). We therefore vacate the ALJ's determination that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A).

The ALJ also found Employer failed to establish that no part of Claimant's respiratory or pulmonary disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order on Remand at 8-9 (unpaginated). The ALJ discredited Drs. Basheda's and Zaldivar's opinions on disability causation because they did not diagnose legal pneumoconiosis or total disability. Decision and Order on Remand at 8-9 (unpaginated). Since we have vacated the ALJ's findings on legal pneumoconiosis, we also vacate her determination that Employer did not establish Claimant's respiratory disability is unrelated to pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). Thus, we vacate the award of benefits.

[10] The Administrative Procedure Act requires the ALJ to set forth his "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

Remand Instructions

On remand, the ALJ must reconsider whether Employer disproved the existence of legal pneumoconiosis by affirmatively establishing 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*, 25 BLR at 1-155 n.8. In doing so, she must fully address Drs. Basheda's and Zaldivar's opinions and deposition testimony when analyzing whether Claimant's obstructive impairment does not constitute legal pneumoconiosis.

In evaluating Drs. Basheda's and Zaldivar's opinions on remand, the ALJ should address their explanations for their diagnoses, the documentation underlying their medical judgments, and the sophistication of, and bases for, their conclusions. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). Further, she must consider all the relevant evidence in reaching her determinations. *See McCune*, 6 BLR at 1-998; Employer's Exhibits 4, 9, 12, 13. She must also set forth her findings in detail, including the underlying rationale for her decision as the APA requires. *See Wojtowicz,* 12 BLR at 1-165.

If the ALJ finds Employer has disproved the existence of legal pneumoconiosis, Employer has rebutted the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(i), and she need not reach the issue of disability causation. However, if Employer fails to rebut the presumption at 20 C.F.R. §718.305(d)(1)(i), the ALJ must determine whether Employer has rebutted the presumed fact of disability causation at 20 C.F.R. §718.305(d)(1)(ii) with credible proof that "no part of [Claimant's] total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order on Remand Granting Benefits and remand the case to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge