U.S. Department of Labor

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

BRB No. 24-0463 BLA

RONALD W. RENFROW Claimant-Respondent v. HOKE COMPANY, INCORPORATED and AMERICAN RESOURCES INSURANCE COMPANY, INCORPORATED Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 07/24/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits, Order Denying Employer's Motion for Reconsideration of the Decision and Order, and Amended Decision and Order Awarding Benefits of Steven D. Bell, Administrative Law Judge, United States Department of Labor.

Austin P. Vowels (Vowels Law PLC), Henderson, Kentucky, for Claimant.

Thomas L. Ferreri and Matthew J. Zanetti (Ferreri Partners, PLLC), Louisville, Kentucky, for Employer.

Jeffery S. Goldberg (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) Steven D. Bell's Decision and Order Awarding Benefits, Order Denying Employer's Motion For Reconsideration of the Decision and Order, and Amended Decision and Order Awarding Benefits (2021-BLA-05906) rendered on a claim filed on February 4, 2020,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[2]

The ALJ credited Claimant with 15.43 years of surface coal mine employment in conditions substantially similar to underground coal mine employment and found he has a

[1] Claimant filed a prior claim but withdrew it. Director's Exhibit 1. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306.

[2] ALJ Bell (the ALJ) originally issued a Decision and Order Awarding Benefits on July 11, 2024. On August 9, 2024, Employer moved for reconsideration, asking the ALJ to: 1) make additional findings regarding whether Claimant has clinical pneumoconiosis because the decision did not contain an ultimate conclusion on the issue; 2) reconsider his reliance on the preamble to the revised 2001 regulations given the Supreme Court's recent decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024); and 3) reconsider whether he otherwise properly discounted the opinions of Drs. Tuteur and Rosenberg. Employer's Mot. for Recons. at 1-6. On August 26, 2024, the ALJ issued both an Order Denying Employer's Motion for Reconsideration and an Amended Decision and Order Awarding Benefits. In denying reconsideration, the ALJ explained that he had amended his original decision to provide a conclusion on clinical pneumoconiosis and to note that his credibility determinations as to legal pneumoconiosis are consistent with the United States Court of Appeals for the Sixth Circuit's holding in *Wilgar Land Co. v. Director, OWCP* [*Adams*], 85 F.4th 828, 838-39 (6th Cir. 2023), that an ALJ may use the preamble for interpretive guidance, for explanations regarding why the Department of Labor (DOL) amended the regulation setting out the definition of legal pneumoconiosis to include obstructive disease, and for statements of scientific fact when resolving evidentiary disputes. Order Den. Employer's Mot. for Recons. of the Decision and Order at 2. In all other respects, the Decisions and Orders are the same.

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).[3] He further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in relying on the preamble to the 2001 revised regulations and 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 (the Director), filed a limited response, urging the Benefits Review Board to reject Employer's challenge to the ALJ's reliance on the preamble.

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.[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, 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,[6] or that "no part of

[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] We affirm, as unchallenged on appeal, the ALJ's finding Claimant established 15.43 years of qualifying coal mine employment and total disability and therefore invoked 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); Decision and Order at 8-19 (unpaginated).

[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 Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4; Hearing Transcript at 7.

[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

[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 rebut the presumption by either method.[7]

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish Claimant does not have a chronic lung disease or impairment "significant related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(2)(i)(A); *see Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on the opinions of Drs. Tuteur and Rosenberg that Claimant does not have legal pneumoconiosis. Dr. Tuteur opined Claimant has chronic obstructive pulmonary disease (COPD) and emphysema due solely to cigarette smoking and not coal mine dust exposure, while Dr. Rosenberg opined he has COPD, emphysema, and chronic bronchitis due solely to cigarette smoking and not coal mine dust exposure. Director's Exhibit 46 at 3-5; Employer's Exhibits 2 at 11-13, 3 at 6-10. The ALJ found their opinions inconsistent with the preamble to the revised 2001 regulations and inadequately reasoned. Decision and Order at 27-31 (unpaginated).

First, we reject Employer's argument that the ALJ impermissibly deferred to the preamble in violation of the Supreme Court's holding in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), when weighing the medical opinions. We agree with the Director's assertion that nothing in the Supreme Court's decision in *Loper Bright* supports Employer's argument that the ALJ impermissibly considered the preamble in assessing the credibility of its experts' opinions. In *Loper Bright*, which overruled *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), the Court held that "courts need not and under the [Administrative Procedure Act (APA)] may not defer to an agency interpretation of the law simply because a statute is ambiguous." 603 U.S. at 413.

---

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 the existence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 25 (unpaginated).

As the Director argues, the preamble is not a rule and the ALJ did not treat it as a rule. Director's Response at 2. In addition, the ALJ did not defer to the preamble; he permissibly referenced it in determining whether the medical opinions are credible on the issue of legal pneumoconiosis as the preamble sets forth the DOL's resolution of questions of scientific fact relevant to the elements of entitlement. *See Wilgar Land Co. v. Director, OWCP* [*Adams*], 85 F.4th 828, 837-43 (6th Cir. 2023); *Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491 (6th Cir. 2014); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); Decision and Order at 27-29 (unpaginated); *see also Blue Mountain Energy v. Director, OWCP* [*Gunderson*], 805 F.3d 1254, 1260-62 (10th Cir. 2015) (ALJ's reliance on scientific facts in the preamble does not implicate *Chevron* deference).

We are also not persuaded by Employer's argument that the ALJ otherwise erred in discrediting the opinions of Drs. Tuteur and Rosenberg. Employer's Brief at 11-13. Regarding Dr. Tuteur, the ALJ discredited his opinion that Claimant's March 4, 2021 x-ray shows "classic" emphysema due to smoking because he found this aspect of Dr. Tuteur's opinion constitutes an undesignated x-ray interpretation that exceeds the evidentiary limitations. Decision and Order at 28 (unpaginated) (citing *Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-240 (2007) (en banc)); Director's Exhibit 46 at 2; Employer's Exhibit 2 at 9-10. As Employer does not challenge this finding, we affirm it. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). We therefore reject Employer's assertion that the ALJ erred in referencing the preamble's recognition that coal mine dust-induced emphysema and smoke-induced emphysema occur through similar mechanisms as an additional reason to discredit Dr. Tuteur's x-ray reading. *Larioni v. Director, OWCP,* 6 BLR 1-1276, 1-1278 (1984); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Decision and Order at 27 (unpaginated); Employer's Brief at 9.

Dr. Rosenberg eliminated coal mine dust exposure as a contributing cause of Claimant's COPD because Claimant's pulmonary function study showed a markedly reduced FEV_1/FVC ratio consistent with smoking. Employer's Exhibit 3 at 3-6. He eliminated coal dust as a contributing cause of both Claimant's COPD and chronic bronchitis because coal dust-related lung disease does not progress after exposure to coal mine dust ceases.[8] *Id.* at 7-9. The ALJ permissibly discredited Dr. Rosenberg's opinion because it conflicts with both the scientific evidence cited in the preamble that coal dust exposure may cause COPD with associated decrements in FEV1 and FEV1/FVC ratio and the Act's implementing regulation recognizing pneumoconiosis as both a latent and

[8] Dr. Rosenberg also explained that "[c]hronic bronchitis dissipates within months after exposure ceases." Employer's Exhibit 3 at 7 (internal citation omitted).

progressive disease.[9] *See Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 738-39 (6th Cir. 2014) (upholding ALJ's decision to discredit a physician whose opinion regarding legal pneumoconiosis conflicted with the recognition that pneumoconiosis is a latent and progressive disease); *Sterling*, 762 F.3d at 491 (upholding ALJ's decision to discredit physician's opinion as inconsistent with the preamble's recognition that "coal dust exposure may cause COPD, with associated decrements in FEV1/FVC"); 20 C.F.R. §718.201; 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000); Decision and Order at 29-31 (unpaginated); Employer's Exhibit 3 at 5-10.

Further, both physicians eliminated coal dust exposure as a cause of Claimant's obstruction and emphysema because: 1) Claimant's pulmonary function studies demonstrated partial reversibility of his obstructive impairment in response to bronchodilators consistent with hyperreactive airways disease; and 2) studies of smokers who never worked in coal mines, when compared to studies of coal miners who never smoked, show smoking carries a greater risk of pulmonary impairment than coal mine dust exposure. Director's Exhibit 46 at 5-10; Employer's Exhibits 2 at 4, 14-17; 3 at 4, 8. The ALJ permissibly found the opinions of Drs. Tuteur and Rosenberg unpersuasive because they did not adequately explain why, even if smoking and hyperreactive airways disease are causes of Claimant's impairment, coal mine dust exposure neither caused nor substantially aggravated the fixed portion of his impairment. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 28, 30-31 (unpaginated). He further permissibly discredited their opinions as based on statistical generalities drawn from medical literature rather than information particular to Claimant, who is both a smoker and

[9] We reject Employer's assertion that the Sixth Circuit's decision in *Adams*, 85 F.4th at 842-43, suggests the ALJ erred in discrediting Dr. Rosenberg's opinion as inconsistent with the regulatory definition of pneumoconiosis when Dr. Rosenberg stated latent and progressive pneumoconiosis is "rare." Employer's Brief at 13 (emphasis added). Although the *Adams* court questioned whether the ALJ's credibility findings would withstand a substantial evidence challenge, it explicitly noted the employer had preserved only a legal challenge to the ALJ's reliance on the preamble. *Adams*, 85 F.4th at 842-43. Moreover, we note that -- unlike *Adams*, in which it was the claimant's burden to establish pneumoconiosis under 20 C.F.R. Part 718 -- in order to rebut the Section 411(c)(4) presumption, it is Employer's burden to disprove the presumed existence of the disease. *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(2)(i)(A); *see also Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

a miner.[10] *Adams*, 85 F.4th at 841; *Island Creek Coal Co. v. Young*, 947 F.3d 399, 408-09 (6th Cir. 2020); *Knizer v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); 65 Fed. Reg. at 79,940-41 (statistical averaging can hide the effect of coal mine dust exposure in individual miners); Decision and Order at 27-28 (unpaginated).

Thus, we see no error in the ALJ's overall finding that Drs. Tuteur and Rosenberg failed to adequately explain why coal mine dust exposure was not additive along with smoking in causing or aggravating Claimant's COPD, emphysema, and bronchitis. *See Adams*, 85 F.4th at 840; *Collieries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); 20 C.F.R. §718.201(a)(2), (b); 65 Fed. Reg. at 79,939-41; Decision and Order at 27-29 (unpaginated). Because the ALJ acted within his discretion in discrediting the opinions of Drs. Tuteur and Rosenberg, we affirm his finding Employer did not disprove legal pneumoconiosis. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A). Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. Therefore, we affirm the ALJ's finding Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(2)(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 32-34 (unpaginated). The ALJ discredited the disability causation opinions of Drs. Tuteur and Rosenberg because they did not diagnose legal pneumoconiosis, contrary to his finding that Employer failed to disprove the existence of the disease. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order at 33-34 (unpaginated). Because Employer raises no specific allegations of error regarding the ALJ's findings on disability causation, we affirm them. 20 C.F.R. §718.305(d)(1)(ii); *see Skrack*, 6 BLR at 1-711; Decision and Order at 32-34 (unpaginated). As it is supported by substantial evidence, we affirm the ALJ's finding Employer failed to establish that no part of Claimant's totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

[10] We similarly reject Employer's assertion that the dicta in *Adams*, 85 F.4th at 842-43, suggests the ALJ erred in discrediting its experts' opinions as insufficiently specific to Claimant's case. *See supra* note 9; Employer's Brief at 11-12.

Accordingly, the ALJ's Amended 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