U.S. Department of Labor

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

BRB No. 24-0485 BLA

ORA P. ROBINETTE (Widow of ROY ROBINETTE) Claimant-Respondent v. BIG LUMP COAL COMPANY and TRAVELERS INSURANCE COMPANY Employer/Carrier- Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 07/18/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits on Modification in Survivor's Claim of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

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

Donald L. Jones (Law Office of Donald L. Jones), Paintsville, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) John P. Sellers, III's Decision and Order Awarding Benefits on Modification in Survivor's Claim (2021-BLA-05948) 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 survivor's claim[1] filed on June 2, 2014.[2]

The ALJ found Claimant established the Miner had fifteen years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Therefore, he found Claimant invoked the presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits.

[1] Claimant is the widow of the Miner, who died on May 2, 2012. Director's Exhibits 3, 9. The Miner never successfully established entitlement to benefits during his lifetime. Director's Exhibit 1. Thus, Claimant is not entitled to benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), which provides that a survivor of a miner determined to be eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[2] In an April 15, 2015 Proposed Decision and Order, the district director denied Claimant's survivor's claim because she failed to establish the Miner's death was due to pneumoconiosis. Director's Exhibit 27. Claimant filed four subsequent requests for modifications, each of which the district director denied. Director's Exhibits 34, 37, 43, 45, 49, 51, 58, 61. Claimant requested a hearing for the first time on July 16, 2021, and the case was assigned to the Office of Administrative Law Judges. Director's Exhibit 67. In cases involving a request for modification of a district director's decision, the ALJ proceeds de novo and "the modification finding is subsumed in the [ALJ's] findings on the issues of entitlement." *Kott v. Director, OWCP*, 17 BLR 1-9, 1-13 (1992); *Motichak v. BethEnergy Mines, Inc.*, 17 BLR 1-14, 1-19 (1992).

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability or death was due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thus invoked 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 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.[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).

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner had a totally disabling respiratory or pulmonary impairment at the time of his death. 20 C.F.R. §718.305(b)(1)(iii). A miner is considered to have been totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work and comparable gainful work.[6] *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). Qualifying evidence in any of

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respiratory or pulmonary impairment at the time of his death. 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 fifteen years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4; Hearing Tr. at 9-10.

[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); Director's Exhibit 4; Hearing Tr. at 26.

[6] The ALJ found the Miner's usual coal mine employment was working as an equipment operator which required "some level of physical labor," although he found it was not possible to quantify the precise level of exertion required. Decision and Order at 6. As no party challenges this finding, we affirm it. *See Skrack*, 6 BLR at 1-711.

the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

The ALJ found Claimant established total disability based on the Miner's treatment records and the evidence as a whole.[7] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 10-15.

Employer argues the ALJ erred in finding the Miner's treatment records are sufficient to establish he had a totally disabling respiratory or pulmonary impairment. Employer's Brief at 5-9. We disagree.

Treatment records may support a finding of total disability if they provide sufficient information from which the ALJ can reasonably infer a miner was unable to do his last coal mine job. *See Cornett v. Benham Coal, Inc.,* 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9-10 (1988); *see also Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995); *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990).

The ALJ considered and summarized the Miner's treatment records from King's Daughters Medical Center from February 21, 2012, until the Miner's death on May 2, 2012. Decision and Order at 10-14. The Miner's final hospitalization began on April 30, 2012, when he went to the emergency room for a malfunctioning dialysis catheter and was in mild respiratory distress with severe shortness of breath, decreased breath sounds, and moderate expiratory wheezing. Director's Exhibit 11 at 13-14, 26, 36-37. He was diagnosed with right lower lobe pneumonia and fluid overload and was admitted to the intensive care unit and given supplemental oxygen because he was not oxygenating well. *Id.* at 13, 28. The next day, May 1, 2012, the Miner was evaluated for acute respiratory failure and ventilator management, and he required intubation due to respiratory distress. *Id.* at 28-29. One day later, on May 2, 2012, he died due to acute respiratory failure and pneumonia, with a comorbidity of end-stage renal disease. *Id.* at 25.

The ALJ noted the Miner's treatment records document he was in respiratory distress, required supplemental oxygen, and underwent an evaluation for respiratory failure prior to being intubated. Decision and Order at 10-11. He stated "it is reasonable to infer

[7] The ALJ found Claimant did not establish total disability based on the pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv); Decision and Order at 6-9.

that [the Miner] no longer had the respiratory or pulmonary capacity to perform his usual coal mine work." *Id.* at 11-12.

To the extent Employer contends the ALJ erred in not requiring Claimant to establish the Miner's impairment was due to a "chronic" rather than an "acute" disease, we reject its argument. Employer's Brief at 8. Nothing in the Act or regulations requires a showing that the Miner's total disability was chronic in order to invoke the Section 411(c)(4) presumption. *Consol. Coal Co. v. Director, OWCP* [*Staten*], 129 F.4th 409, 414 (7th Cir. 2025). The relevant inquiry for invocation of the Section 411(c)(4) presumption is whether the deceased miner had a totally disabling respiratory impairment. 20 C.F.R. §718.305(b)(1)(iii).

Further, Employer's argument that the Miner's treatment records are insufficient to establish total disability is 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). Contrary to Employer's contention, the ALJ rationally found the Miner would not have been able to perform his usual coal mine employment while experiencing shortness of breath, oxygen dependency, and acute respiratory failure requiring intubation as documented in the treatment records. *See Cornett*, 227 F.3d at 578; *McMath*, 12 BLR at 1-9; Decision and Order at 11-12, 14. Thus the ALJ permissibly found the Miner was unable, from a respiratory or pulmonary standpoint, to perform the exertional requirements of his usual coal mine work at the time of his death. *See Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 478 (6th Cir. 2011); *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989).

Therefore, we affirm the ALJ's finding Claimant established total disability based on the Miner's treatment records. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 14. As Employer raises no further argument, we affirm the ALJ's finding that all the relevant evidence, when weighed together, establishes total disability and that Claimant invoked the Section 411(c)(4) presumption. *See Rafferty*, 9 BLR at 1-232; *Shedlock,* 9 BLR at 198; 20 C.F.R. §718.305; Decision and Order at 14-15. We further affirm, as unchallenged, his finding Employer failed to rebut the presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 16-19. Thus, we affirm the award of benefits.

Accordingly, the ALJ's Decision and Order Awarding Benefits on Modification in Survivor's Claim is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge