

U.S. Department of Labor

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



BRB Nos. 25-0189 BLA
and 25-0196 BLA

VIRGINIA STEPP)
(Widow of and on behalf of GREGORY)
STEPP))

Claimant-Respondent)

v.)

COWIN & COMPANY, INCORPORATED)

Employer-Petitioner)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 07/24/2026

DECISION and ORDER

Appeal of the Decisions and Orders Awarding Benefits of Sean M. Ramaley,
Administrative Law Judge, United States Department of Labor.

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

Mary Lou Smith (Howe, Anderson & Smith, P.C.), Washington D.C., for
Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Sean M. Ramaley's Decisions and Orders Awarding Benefits (2023-BLA-05692 and 2023-BLA-05716) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).¹ This case involves a request for modification of a miner's claim filed on July 13, 2020,² and a survivor's claim filed on June 10, 2021.

The ALJ found Claimant established the Miner had 40.80 years of underground or substantially similar coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he found Claimant invoked the

¹ Claimant is the widow of the Miner, who died on April 9, 2021. Miner's Claim (MC) Director's Exhibits 10, 11, 34. She is pursuing the miner's claim on behalf of his estate and her own survivor's claim. *Id.*; Hearing Tr. at 5. Employer states the ALJ found Mr. Stepp was a "miner" within the legal definition of the Act but "the designation as a factual matter is not precisely accurate." Employer's Brief at 2. However, Employer does not specifically challenge on appeal the ALJ's determination that Mr. Stepp's work for it met the definition of a miner under the Act and our decision therefore refers to him as "the Miner."

² On September 1, 2021, the district director issued a Proposed Decision and Order denying benefits in the miner's claim because the evidence, although it established the existence of pneumoconiosis arising out of coal mine employment, did not show that the Miner had a totally disabling respiratory or pulmonary impairment. MC Director's Exhibit 56. Claimant timely requested modification and, on December 21, 2022, the district director issued a Proposed Decision and Order Denying Request for Modification, finding that the evidence is not sufficient to support that the Miner had a totally disabling respiratory or pulmonary impairment and therefore the Miner did not establish a change in condition or a mistake in a determination of fact. MC Director's Exhibits 63, 67. Upon Claimant's request, the case was referred to the Office of Administrative Law Judges for a formal hearing. MC Director's Exhibits 73, 75. The miner's claim and survivor's claim were consolidated at the ALJ level, and a joint hearing was held, but the ALJ issued separate decisions in the claims. *See* Hearing Tr. at 5. 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).

presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,³ 30 U.S.C. §921(c)(4). The ALJ further found Employer failed to rebut the presumption and awarded benefits in the miner's claim. In a subsequent decision, he determined that, because the Miner was entitled to benefits at the time of his death, Claimant is automatically entitled to derivative benefits under Section 422(l) of the Act.⁴ 30 U.S.C. §932(l).

On appeal, Employer argues the ALJ erred in finding the Miner was totally disabled and therefore invoked the Section 411(c)(4) presumption.⁵ Claimant responds in support of the award of benefits in both claims. The Director, Office of Workers' Compensation Programs, has not filed a substantive response.

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decisions and Orders if they are 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'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

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 respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305.

⁴ Section 422(l) of the Act provides that the survivor of a miner who was 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).

⁵ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 40.80 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); MC Decision and Order at 7-8.

⁶ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because the Miner performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director's Exhibit 3, Hearing Tr. at 17-18.

Miner's Claim

Invocation of the Section 411(c)(4) Presumption: Total Disability

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,⁷ 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).

The ALJ found Claimant established total disability based on the medical opinion evidence and the evidence as a whole.⁸ Decision and Order at 9-26. Employer argues the ALJ erred in finding the Miner's usual coal mine work required moderate exertion and in finding Claimant established total disability. Employer's Brief at 9-12.

Miner's Usual Coal Mine Work

In assessing total disability, an ALJ must determine the exertional requirements of a miner's usual coal mine work and then consider them in conjunction with the medical opinions. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988). A miner's usual coal mine employment is

⁷ A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

⁸ The ALJ found the pulmonary function study and arterial blood gas study evidence does not support a finding of total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); MC Decision and Order at 23-24. The ALJ also determined Claimant did not establish the Miner had complicated pneumoconiosis at 20 C.F.R. §718.304 and therefore could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); MC Decision and Order at 20-22.

the most recent job he performed regularly and over a substantial period of time. *Pifer v. Florence Mining Co.*, 7 BLR 1-153, 1-155 (1985); *Daft v. Badger Coal Co.*, 7 BLR 1-124, 1-127 (1984); *Shortridge v. Beatrice Pocahontas Coal Co.*, 4 BLR 1-534, 1-539 (1982).

Before weighing the medical opinions, the ALJ addressed the exertional requirements of the Miner's last coal mine work as a supervisor. MC Decision and Order at 8. He considered the Miner's Form CM-913 (Description of Coal Mine Work and Other Employment) and Claimant's hearing testimony. *Id.*

On Form CM-913, the Miner reported that he stood for ten hours per day, worked at the face of a forty-two-inch coal seam, supervised twenty-four men, and noted he did not use tools, machines, or equipment. MC Director's Exhibit 4 at 1-2. In response to a question asking what type of equipment he used, the Miner wrote "supervisor work." *Id.* at 1. He further remarked that he approached the coal seam via a tunneling slope and that his work was performed at the face of the mine. *Id.*

Claimant testified that the Miner's job for Employer was as a superintendent, supervising several employees and that the main part of his job was creating shafts at new mine sites to get them ready for the coalminers to work at the mines. Hearing Tr. at 16-17. She indicated that the Miner's job had "three main components[:] . . . drill, shoot, and muck." *Id.* at 16. When digging shafts for new mines, she reported that the Miner poured concrete on the sides of new shaft walls and would come home "black from head to toe" with grout down his boots and cement on him. *Id.* at 17, 19. Claimant described the Miner's use of a safety harness to climb to the bottom of the mine shafts. *Id.* at 23.

Considering the foregoing evidence, the ALJ found that the "Miner's last coal mine job was as a supervisor," that he "worked underground in a 42-inch seam at the face of the mine," and his job required moderate exertion. MC Decision and Order at 8.

Employer argues the ALJ's finding that the Miner's usual coal mine work required moderate exertion is not supported by substantial evidence and does not meet the definition of medium work as defined by the *Dictionary of Occupational Titles* (DOT), which requires frequent lifting and carrying of objects up to twenty-five pounds and up to fifty pounds on occasion. Employer's Brief at 9-11. We disagree.

The ALJ is granted broad discretion in evaluating the credibility of the evidence, including witness testimony. *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-152 (1989) (en banc). The Board will not disturb an ALJ's credibility findings unless they are inherently unreasonable. *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc).

The ALJ found Claimant “credibly testified” that the Miner told her about his work and that she understood that it included digging new shafts at coal mine sites to allow for the extraction of coal. MC Decision and Order at 5-6; *see* Hearing Tr. at 16. In addition, the ALJ noted Claimant’s testimony that the Miner had to wear a harness and climb to reach the bottom of the shaft. MC Decision and Order at 8; *see* Hearing Tr. at 23. The ALJ then relied on Claimant’s testimony, along with the Miner’s statement that he worked in a forty-two-inch seam, to support a finding that the Miner’s job required moderate labor. MC Decision and Order at 8. Thus, contrary to Employer’s assertions, to the extent there is any conflict between Claimant’s testimony and the Miner’s employment history form, the ALJ permissibly relied on her testimony, which he repeatedly found credible.⁹ *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002) (ALJ’s finding a witness was “very credible” adequately resolved any discrepancy in the evidence concerning the nature of his coal mine work); *Shepherd v. Incoal, Inc.*, 915 F.3d 392, 406-07 (6th Cir. 2019) (requiring consideration of survivor’s recollection of the deceased miner’s employment history even though her recollection conflicted with some of his statements); *Rowe*, 710 F.2d at 255; *Tackett*, 12 BLR at 1-14; Employer’s Brief at 10.

We also reject Employer’s contention that the ALJ’s finding on the exertional requirements of the Miner’s last coal mine work must be consistent with the definition of medium work as defined by the DOT. Employer’s Brief at 9-10. The ALJ did not rely on the DOT in making his finding, nor is he required to. Rather, he may classify the exertion required by a miner’s usual coal mine employment based on the evidence of record without using the DOT. *See Cross Mountain Coal, Inc. v. Ward*, 93 F.3d 211, 218 (6th Cir. 1996); *Onderko v. Director, OWCP*, 14 BLR 1-2, 1-4-5 (1989). Here, the ALJ relied on Claimant’s testimony concerning the Miner’s use of a harness to climb down into the coal shafts, along with the Miner’s statement that he worked in a forty-two-inch coal seam, in evaluating the exertional requirements of his usual coal mine work. MC Decision and Order at 8. Because we can discern the ALJ’s basis for finding the Miner’s usual coal mine work required moderate exertion, his determinations satisfy the Administrative Procedure Act (APA).¹⁰ *See Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 316 (4th Cir. 2012) (The APA does not “impose a duty of long-windedness on an ALJ;” to the contrary, “if a reviewing court can discern what the ALJ did and why he did it, the duty of

⁹ The ALJ also found credible Claimant’s testimony that the Miner stopped his coal mine employment in 2020. Decision and Order at 7.

¹⁰ The Administrative Procedure Act provides that every adjudicatory decision must include “findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented” 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

explanation under the APA is satisfied.”) (citations omitted); *Mingo Logan Coal Co v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (duty of explanation under the APA is satisfied as long as the reviewing court can discern what the ALJ did and why he did it). We therefore affirm, as supported by substantial evidence, the ALJ’s finding that the Miner’s usual coal mine work required moderate exertion. See *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005).

Medical Opinions

The ALJ next considered the medical opinions of Drs. Gaziano, Green, and Fino. MC Decision and Order at 12-15, 24-26. Dr. Gaziano acknowledged the Miner’s objective testing was non-qualifying¹¹ but found the Miner totally disabled based on the significant restrictive impairment he observed combined with the FEV1 value on pulmonary function testing, which meets the Department of Labor (DOL) disability criteria, and the Miner’s moderate abnormal gas study. Director’s Exhibits 13, 17, 19. He noted that the physical requirements of the Miner’s coal mine employment ranged from a moderate to a very heavy level of exertion. Director’s Exhibit 13 at 2. Dr. Green similarly observed the FEV1 value on pulmonary function testing met the DOL criteria for disability and noted the other values, while not qualifying, were “significantly abnormal” and contributed to the Miner’s obstructive impairment. Claimant’s Exhibit 1 at 10. He concluded the Miner’s reduction in forced vital capacity, along with the reduction in FEV1 and Diffusing Capacity of the Lung for Carbon Monoxide (DLCO) values, would prevent him from performing his usual coal mine work, which he opined the Miner may have oversimplified in his description of his duties. *Id.* at 3, 11. Dr. Fino did not find the Miner totally disabled, observing that regardless of his smoking or coal mine employment history, “[the Miner] was not disabled from standing 10 hours a day.” Director’s Exhibit 15 at 5. In his supplemental report, based on a review of additional records including computed tomography scans and Dr. Green’s medical opinion, Dr. Fino opined that the reduction in FVC and FEV1 values on pulmonary function testing and the hypoxemia he observed were not totally disabling. Employer’s Exhibit 1 at 3.

The ALJ gave less probative weight to Dr. Gaziano’s opinion because he did not clarify whether the moderate to heavy exertion requirements of the Miner’s coal mine employment that he noted applied to the Miner’s total career or related exclusively to his

¹¹ The record contains one pulmonary function study and one blood gas study, both dated September 29, 2020. The pulmonary function study had non-qualifying values before and after the administration of bronchodilators. Director’s Exhibit 13 at 8. The resting blood gas values were non-qualifying, and no exercise values were obtained due to “[a]bnormal spirometry.” *Id.* at 23.

last mining role. MC Decision and Order at 25. The ALJ gave the most probative value to Dr. Green's opinion, finding it well-reasoned and documented, as he explained how the Miner's objective testing, even if non-qualifying, would prevent him from doing his work as a supervisor. *Id.* While the ALJ acknowledged that the walking, crawling, and duck walking that Dr. Green speculated the Miner likely also performed were not reported on the Miner's employment history forms, the ALJ found such duties consistent with Claimant's testimony about the Miner's job duties and his work in a forty-two-inch coal seam when he was 66.5 inches tall. *Id.* Finally, the ALJ gave the least weight to Dr. Fino's opinion because his assessment "included an over-simplification of [the] Miner's actual duties," rendering his opinion unreliable. *Id.* Further, the ALJ noted that Dr. Fino's statement that the Miner's pulmonary function study met the regulations is not consistent with his finding that the testing was non-qualifying. *Id.*

Employer argues that the ALJ erred in determining that the medical opinion evidence supports a finding of total disability. Employer's Brief at 11-12. We disagree.

We initially reject Employer's contention that the ALJ erred in crediting the opinions of Drs. Green and Gaziano because they misrepresented the nature of the Miner's usual coal mine work. Employer's Brief at 11. As previously indicated, we have affirmed the ALJ's finding, based on Claimant's credible testimony and the Miner's statement that he worked in a forty-two-inch coal seam, that the Miner's work as a supervisor required moderate exertion. *See supra* p. 7. Further, the ALJ gave less weight to Dr. Gaziano's opinion for not specifying whether the moderate to heavy exertional requirements of the Miner's coal mine employment that he identified applied to the supervisor position. MC Decision and Order at 25. Thus, Employer has not specified how the error, if any, to which it points would have affected the ALJ's weighing of their opinions. *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"). We also see no error in the ALJ's permissible finding that, although the Miner did not report on his claim forms walking, crawling, or duck walking, Dr. Green's opinion that the Miner's supervisor work in a forty-two inch coal seam likely required him to perform such exertion was consistent with Claimant's testimony about the Miner using a harness to climb to the bottom of the mine shafts and the fact that the Miner was substantially taller than the forty-two inch seam in which he worked. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); MC Decision and Order at 25. As Employer raises no other issues with their opinions, we affirm the ALJ's finding that Dr. Green's opinion is entitled to "the most probative weight" and Dr. Gaziano's opinion is entitled to "the next most weight." MC Decision and Order at 25.

For similar reasons, we also reject Employer's assertion that the ALJ erred in discrediting Dr. Fino's opinion for relying on an "over-simplification" of the actual duties of the Miner's usual coal mine work. MC Decision and Order at 25; Employer's Brief at

11-12. Because Dr. Fino relied on the Miner's job as a supervisor as having required only standing for ten hours a day, contrary to the ALJ's finding that this job required moderate exertion, which we have affirmed, the ALJ permissibly found his opinion "not reliable" on this basis. MC Decision and Order at 25; Director's Exhibit 15 at 5; *see Banks*, 690 F.3d at 489; *Cornett*, 227 F.3d at 578. In addition, as the ALJ found, Dr. Fino stated "[t]he values for the pulmonary function studies meet regulations[,]" contrary to his determination that the study was non-qualifying. Director's Exhibit 15 at 5; MC Decision and Order at 25. Although Employer attempts to recharacterize Dr. Fino's opinion as making this reference concerning only the study's FEV1 value, which met DOL disability criteria in isolation, the evidence supports the ALJ's permissible finding. *See Banks*, 690 F.3d at 489; *Rowe*, 710 F.2d at 255; MC Decision and Order at 25; Employer's Brief at 11. We therefore affirm the ALJ's finding that Dr. Fino's opinion is entitled to "diminished probative weight."¹² MC Decision and Order at 25. Thus, we also affirm his determination that the medical opinion evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv) and a finding of total disability is established based on a weighing of the evidence as a whole.¹³ 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; MC Decision and Order at 26. Consequently, we affirm his determination that Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); MC Decision and Order at 26-27.

Employer does not challenge the ALJ's finding that it failed to establish rebuttal of the Section 411(c)(4) presumption, and thus we affirm it. *Skrack v. Island Creek Coal Co.*,

¹² Employer further asserts that the ALJ erred in giving less weight to Dr. Fino's opinion because his credentials are "not of record." MC Decision and Order at 13, 24; Employer's Brief at 12. However, as outlined above, the ALJ permissibly gave less weight to Dr. Fino's opinion for reasons unrelated to his credentials. MC Decision and Order at 25. Thus, Employer has failed to explain how the error, if any, that it points to would have made a difference. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009)

¹³ When assessing whether Claimant established total disability, the ALJ also considered Claimant's testimony regarding the Miner's breathing difficulties and found her testimony supports the "weighted medical opinion" evidence. MC Decision and Order at 26. Employer contends the ALJ's reliance on her testimony is erroneous. Employer's Brief at 12. But as the ALJ acknowledged, Claimant's testimony could not provide the sole basis for a total disability finding and such a finding could not be based on her testimony where medical evidence addressing total disability is in the record. MC Decision and Order at 26; *see* 20 C.F.R. §718.305(b)(4). We have affirmed the ALJ's finding that the medical opinion evidence establishes a totally disabling respiratory or pulmonary impairment. Thus, Employer has not explained how an error, if any, in the ALJ's weighing of Claimant's testimony would disturb this finding. *See Shinseki*, 556 U.S. at 413.

6 BLR 1-710, 1-711 (1983); MC Decision and Order at 35-38. We therefore affirm the award of benefits in the miner's claim.

The Survivor's Claim

Because we have affirmed the award of benefits in the miner's claim and Employer raises no specific challenge as to the survivor's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits pursuant to Section 422(*l*). 30 U.S.C. §932(*l*) (2018); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

Accordingly, we affirm the ALJ's Decisions and Orders Awarding Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge