

U.S. Department of Labor

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



BRB No. 26-0053 BLA

MARJORIE J. BORING
(Widow of DAVID L. BORING)

Claimant-Petitioner

v.

TUNNELTON MINING COMPANY

and

STATE WORKERS' INSURANCE FUND
(PA)

Employer/Carrier-
Respondents

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 07/22/2026

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Natalie A. Appetta,
Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick & Long),
Ebensburg, Pennsylvania, for Claimant.

Stephanie S. Ringbloom (Rulis & Bochicchio, LLC), Pittsburgh,
Pennsylvania, for Employer and its Carrier.

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

PER CURIAM:

Claimant¹ appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Denying Benefits (2024-BLA-05439) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act). This case involves a survivor's claim filed on March 9, 2022.

The ALJ credited the Miner with at least fifteen years of underground coal mine employment but found he did not have a totally disabling respiratory or pulmonary impairment at the time of his death. 20 C.F.R. §718.204(b)(2). Therefore, Claimant could not invoke the presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act,² 30 U.S.C. §921(c)(4). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established the Miner had clinical and legal pneumoconiosis,³ but did not establish his death was due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.205(c). Thus, she denied benefits.

¹ Claimant is the widow of the Miner, David L. Boring, who died on December 2, 2021. Director's Exhibit 8. The Miner did not file a claim for benefits during his lifetime; thus, Claimant is not entitled to derivative benefits under Section 422(l) of the Act, 30 U.S.C. §932(l).

² Section 411(c)(4) provides a rebuttable presumption that a miner's 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 at the time of his death. 30 U.S.C. §921(c)(4); *see* 20 C.F.R. §718.305.

³ "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). "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). This definition 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).

On appeal, Claimant argues the ALJ erred in finding she did not establish total disability and thus was not entitled to invoke the Section 411(c)(4) presumption. Employer and its Carrier (Employer) respond, urging affirmance of the denial of benefits.⁴ The Director, Office of Workers' Compensation Programs, 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.⁵ 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).

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

To invoke the Section 411(c)(4) presumption, a claimant must establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work or 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,⁶ 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 failed to establish total disability by any method. 20 C.F.R. §718.204(b)(2)(i)-(iv); Decision and Order at 7-14.

⁴ We affirm, as unchallenged on appeal, the ALJ's findings that the Miner worked at least fifteen years in underground coal mine employment and had clinical and legal pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5, 14-18.

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because the Miner performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

⁶ A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values 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).

Claimant argues the ALJ erred in finding she did not establish the Miner had pneumoconiosis and cor pulmonale with right-sided congestive heart failure at 20 C.F.R. §718.204(b)(2)(iii).⁷ Claimant's Brief at 6-10 (unpaginated).

The ALJ considered reports by Drs. Heggere, Go, and Swedarsky. Decision and Order at 9-10. Dr. Heggere, the autopsy prosector, opined the Miner had cor pulmonale with right-sided congestive heart failure. Director's Exhibit 10. Dr. Go, a pulmonologist, opined the Miner had cor pulmonale, based on the autopsy. Claimant's Exhibit 1. Dr. Swedarsky, a pathologist, opined the Miner did not have cor pulmonale or right-sided congestive heart failure. Employer's Exhibits 1, 2.

The ALJ found Dr. Heggere's opinion inadequately explained and unsupported and thus found Dr. Go's reliance on his autopsy report rendered his opinion poorly documented. Decision and Order at 9. She further found Dr. Go's opinion insufficient on its face, as he did not diagnose right-sided congestive heart failure. *Id.* In contrast, she found Dr. Swedarsky's opinion detailed, well-reasoned, and supported by medical literature. *Id.* Finding Dr. Swedarsky's opinion outweighed the conflicting opinions, the ALJ determined the evidence was insufficient to establish the Miner had cor pulmonale with right-sided congestive heart failure. *Id.* at 9-10. Claimant contends the ALJ erred in weighing the conflicting evidence. Claimant's Brief at 4-7 (unpaginated). We disagree.

Cor pulmonale is a cardiovascular disease defined as right ventricular enlargement secondary to malfunction of the lungs, commonly associated with pneumoconiosis. *Mancia v. Director, OWCP*, 130 F.3d 579, 585-86 (3d Cir. 1997) (internal citations omitted); *see also Newell v. Director, OWCP*, 13 BLR 1-37, 1-39 (1989) (cor pulmonale is "heart disease due to hypertension secondary to disease of the blood vessels of the lungs") (internal citations omitted). When pulmonary hypertension is severe, it may cause right-sided heart failure. *See Newell*, 13 BLR at 1-39; 20 C.F.R. §718.204(b)(2)(iii). A diagnosis of cor pulmonale on its own, without right-sided congestive heart failure, is insufficient to support a finding of total disability under the regulations. *Newell*, 13 BLR at 1-39.

Dr. Heggere opined the Miner had mildly thickened pulmonary arteries and the right heart ventricle was enlarged, "consistent with cor [] pulmonale, right sided heart failure." Director's Exhibit 10 at 1. Dr. Go reviewed Dr. Heggere's autopsy report, the Miner's

⁷ We affirm, as unchallenged on appeal, that Claimant failed to establish total disability through the pulmonary function studies, arterial blood gas studies, or medical opinion evidence. 20 C.F.R. §718.204(b)(2)(i), (ii), (iv); *see Skrack*, 6 BLR at 1-711; Decision and Order at 8, 14.

death certificate, and Dr. Swedarsky's report. Claimant's Exhibit 1. Based on the autopsy findings of "cor pulmonale," he opined the Miner "had a total pulmonary disability." *Id.* at 3. Dr. Swedarsky reviewed the Miner's autopsy slides, autopsy report, treatment records, and death certificate, as well as other evidence of record. Employer's Exhibit 1. He indicated the clinical record⁸ and the gross and microscopic findings from the autopsy do not support a diagnosis of cor pulmonale with right-sided congestive heart failure. Employer's Exhibits 1 at 26; 2 at 27-28. Citing to medical literature, he explained that the right ventricle measurement⁹ provided in the autopsy is within the normal range. Employer's Exhibits 1 at 10, 26; 2 at 27-28. He also opined the autopsy slides showed no evidence of pulmonary hypertension,¹⁰ which he explained is a precedent condition to cor pulmonale with right-sided congestive heart failure. Employer's Exhibits 1 at 10; 2 at 28.

Claimant generally contends that, contrary to the ALJ's finding, Dr. Heggere provided a "thorough" explanation of his findings regarding cor pulmonale. Claimant's Brief at 9 (unpaginated). However, it is within the ALJ's discretion to reasonably assess the credibility of the medical evidence. *See Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 162-63 (3d Cir. 1986). Claimant's arguments regarding the ALJ's evaluation of the medical opinion evidence amount to a question of whether the ALJ erred in resolving a "battle of the experts;" appellate review in such a situation is only to ensure the ALJ has considered all the relevant evidence and sufficiently explained her rationale. *Cedar Coal Co. v. Director, OWCP [Mullins]*, 168 F.4th 685, 691 (4th Cir. 2026). In weighing the conflicting opinions, the ALJ permissibly found Dr. Swedarsky's opinion outweighs the contrary opinion of Dr. Heggere because Dr. Swedarsky provided a detailed explanation of why the autopsy evidence does not establish the Miner had cor pulmonale with right-sided congestive heart failure, as supported by medical literature and the evidence of record. *See Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 211 (3d Cir. 2002); *Barren*

⁸ Dr. Swedarsky indicated there was no diagnosis or evidence of pulmonary hypertension or congestive heart failure in the Miner's treatment records. Employer's Exhibits 1 at 26; 2 at 27-28.

⁹ Dr. Swedarsky explained that a diagnosis of cor pulmonale also "should not be based on a single right ventricle wall measurement," as was the case here, but instead should be measured "at multiple points." Employer's Exhibits 1 at 10; 2 at 29.

¹⁰ Dr. Swedarsky opined there are no pathological findings of pulmonary hypertension, such as abnormalities consistent with intimal and medial hyperplasia, occlusion or alterations in the pulmonary architecture, or intrinsic anatomical damage to the lung. Employer's Exhibits 1 at 10; 2 at 28.

Creek Coal Co. v. Witmer, 111 F.3d 352, 354 (3d Cir. 1997); *Kertesz*, 788 F.2d at 162-63; Decision and Order at 9.

She therefore also properly found Dr. Go's opinion undermined given his reliance on Dr. Heggere's diagnosis. See *Lango v. Director, OWCP*, 104 F.3d 573, 578 (3d Cir. 1997); *Kertesz*, 788 F.2d at 163; Decision and Order at 9. Moreover, the ALJ correctly found Dr. Go's diagnosis of cor pulmonale, but not right-sided congestive heart failure, is insufficient to demonstrate total disability under the regulations, a finding Claimant does not specifically contest. See *Newell*, 13 BLR at 1-39; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 9.

Claimant further contends the ALJ erred in crediting Dr. Swedarsky's opinion because he "imposes multiple requirements" to diagnose cor pulmonale which are not required by "statute, rules, or regulations." Claimant's Brief at 9 (unpaginated). We disagree. Dr. Swedarsky simply explained what is required to make a medical diagnosis of cor pulmonale with right-sided congestive heart failure, and that those criteria were not present in this specific case. Employer's Exhibits 1, 2. These are factual issues. The ALJ, as the fact-finder, has the discretion to weigh the credibility of such evidence.¹¹ See *Kramer*, 305 F.3d at 211.

Claimant's arguments are a request to reweigh the evidence, which we are not empowered to do. *Sun Shipbuilding & Dry Dock Co. v. McCabe*, 593 F.2d 234, 237 (3d Cir. 1979); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). As the ALJ's determinations are rational and supported by substantial evidence, we affirm her finding that the evidence does not establish cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 9-10.

We also affirm, as supported by substantial evidence, the ALJ's finding that the weight of the evidence as a whole fails to establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2); see *Defore*, 12 BLR at 1-28-29; *Rafferty*, 9 BLR at 1-232; Decision and Order at 14. As Claimant did not establish that the

¹¹ The applicable regulation specifies that total disability can be established if "[t]he miner has pneumoconiosis and has been shown by the medical evidence to be suffering from cor pulmonale with right sided congestive heart failure." 20 C.F.R. §718.204(b)(2)(iii). The regulation does not set forth any criteria by which medical evidence would establish cor pulmonale with right-sided congestive heart failure, leaving it for the ALJ in each case to resolve the conflicting medical evidence presented on that issue. Thus, our holding here is based on the specific facts of this case, and the ALJ's permissible weighing of the evidence.

Miner was totally disabled at the time of his death, we further affirm the ALJ's finding that Claimant could not invoke the Section 411(c)(4) presumption. Decision and Order at 14. Thus, the burden remained with Claimant to establish the Miner's pneumoconiosis was a substantially contributing cause of his death. *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 281 (1994); *Hill v. Director, OWCP*, 562 F.3d 264, 270-72 (3d Cir. 2009).

Claimant has not challenged the ALJ's determination that Claimant failed to establish the Miner's pneumoconiosis was a substantially contributing cause of his death; thus, we affirm it. 20 C.F.R. §718.205(b); *see Skrack*, 6 BLR at 1-711; Decision and Order at 20. As Claimant failed to establish an essential element of entitlement, we affirm the ALJ's denial of benefits. *See Anderson*, 12 BLR at 1-112; *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); Decision and Order at 20.

Accordingly, we affirm the ALJ's Decision and Order Denying Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge