U.S. Department of Labor

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

BRB No. 24-0073 BLA

SANDORA RATLIFF (o/b/o TERRY A. RATLIFF)	)	
Claimant-Respondent	)	**NOT-PUBLISHED**
v.	)	
ISLAND CREEK COAL COMPANY	)	DATE ISSUED: 06/17/2025
Employer-Petitioner	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Carrie Bland, Associate Chief Administrative Law Judge, United States Department of Labor.

Andrew D. Dye (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

Ann Marie Scarpino (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, BOGGS and ROLFE, Administrative Appeals Judges.

GRESH, Chief Administrative Appeals Judge, and ROLFE, Administrative Appeals Judge:

Employer appeals Associate Chief Administrative Law Judge (ALJ) Carrie Bland's Decision and Order Awarding Benefits (2017-BLA-05254)[1] rendered on a claim filed on July 29, 2014, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited the Miner[2] with sixteen years, five months, one week, and three days of qualifying coal mine employment and found he had a totally disabling respiratory or pulmonary impairment, thus invoking the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[3] 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §§718.204(b)(2), 718.305. She further found Employer failed to rebut the presumption and thus awarded benefits.

On appeal, Employer contends that ALJ incorrectly calculated the Miner's years of coal mine employment and thus impermissibly invoked the Section 411(c)(4) presumption. Alternatively, Employer asserts the ALJ erred in concluding that it failed to rebut the presumption.[4] Claimant has not responded to Employer's appeal. The Acting Director, Office of Workers' Compensation Programs (the Director), filed a response, urging affirmance of one of the methods the ALJ used in calculating the length of the Miner's coal mine employment.

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[1] The ALJ previously issued a Decision and Order awarding benefits on June 29, 2020. Employer thereafter timely filed a Motion for Reconsideration. Subsequently, the ALJ granted Employer's motion by Order dated August 7, 2023, and vacated her June 29, 2020 decision. Order Granting Reconsideration Request. She noted the delay in addressing the motion was because she had not received prior notice that it was filed. *Id.*

[2] The Miner died on May 21, 2023, while the case was pending before the ALJ. Decision and Order at 2 n.3. Claimant, his widow, is pursuing the claim on his behalf. *Id.*

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability is due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4)(2018); *see* 20 C.F.R. §718.305.

[4] We affirm, as unchallenged on appeal, that the Miner was totally disabled from a respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 35.

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 (1965).

Invocation of the Section 411(c)(4) Presumption
Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner worked at least fifteen years in underground coal mines, or "substantially similar" surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden of establishing the number of years the Miner worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The dates and length of employment may be established by any credible evidence, and the Board will uphold an ALJ's determination based on a reasonable method of calculation that is supported by substantial evidence. 20 C.F.R. §725.101(a)(32)(ii); *see Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

The regulations define a "year" of coal mine employment as "a period of one calendar year (365 days, 366 days if one of the days is February 29), or partial periods totaling one year, during which the miner worked in or around a coal mine or mines for at least 125 'working days.'" 20 C.F.R. §725.101(a)(32); *see Daniels Co. v. Mitchell*, 479 F.3d 321, 334-36 (4th Cir. 2007); *Clark v. Barnwell Coal Co.*, 22 BLR 1-277, 1-280 (2003).

In calculating the length of coal mine employment, the ALJ considered the Miner's hearing testimony, CM-911a Employment History Form, Social Security Earnings Statement (SSES) records, and an employment verification letter from Consol Energy. Decision and Order at 5-9. The Miner believed he worked 16.5 years as a coal miner. Hearing Transcript at 14. Using multiple methods to calculate the Miner's length of coal

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the Miner performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 22; Director's Exhibit 3.

mine employment, the ALJ determined Claimant established sixteen years, five months, one week, and three days of qualifying coal mine employment.[6] Decision and Order at 14.

Employer contends the ALJ erred in finding Claimant established more than fifteen years of coal mine employment, challenging various methods used by the ALJ to do so. Employer's Brief at 3-12. Specifically, Employer asserts that the ALJ erred in using the "quarter method" when calculating employment for the years 1975 to 1977, that she used an incorrect divisor when applying the method at 20 C.F.R. §725.101(a)(32)(iii) when calculating employment for the years 1978 to 1986, and that she erred in crediting the Miner with one year and seven months of undocumented employment with Merger Coal between 1986 and 1988.[7] *Id*. We disagree.

Employment from 1975 to 1977

In determining the Miner's coal mine employment from 1975 to 1977, the ALJ credited him with a quarter-year of employment for each quarter in which he earned at least $50.00 from coal mine operators. Decision and Order at 10. Using this method, the ALJ credited the Miner with nine quarters (2.25 years) of coal mine employment from 1975 to 1977. Decision and Order at 11.

Employer contends this method relieves Claimant's burden to establish the Miner's employment lasted a full calendar year as the current version of the regulations require. Employer's Brief at 7-8 (citing *Shepherd v. Incoal*, 915 F.3d 392, 406 (6th Cir. 2019)). We disagree.

Both the United States Court of Appeals for the Fourth Circuit and the Board have held it is reasonable to credit a miner for any quarter in which the record shows earnings of at least $50.00 in coal mine employment. *See Shrader v. Califano*, 608 F.2d 114, 117 n.3 (4th Cir. 1979) (income exceeding fifty dollars is "an appropriate yardstick for determining quarters which will be fully credited to a black lung claimant in determining

[6] Employer indicates that based on the ALJ's assumptions regarding the length of a month, this amount would equate to 16.41 years. Employer's Brief at 3-4.

[7] Employer does not challenge the ALJ's finding that between May 1988 and October 1993, Claimant established five years, three months, one week, and three days (5.3 years) of coal mine employment based on the specific beginning and ending dates provided in the Consol Energy employment verification letter. Decision and Order at 11-12; Director's Exhibit 5. Therefore, we affirm this finding. *See Skrack*, 6 BLR at 1-711.

the duration of his coal mine employment"); *Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984).

Moreover, while this case does not arise under the Sixth Circuit's jurisdiction, we note the court did not preclude application of the "quarter method," but acknowledged that "as quarterly income approaches that floor of $50.00, it seems reasonable to conclude that the miner did not work in the mines most days in the quarter." *Shepherd*, 915 F.3d at 405-06. The court also held that if an ALJ determines a miner was not employed by a coal mining company for a full calendar quarter, then the quarter method cannot be used. *Id.* at 406. Employer has not contended the Miner did not work a full calendar quarter or that his earnings approached the $50.00 "floor." Employer's Brief at 7-8; Director's Exhibit 6. Therefore, we affirm the ALJ's finding of 2.25 years of coal mine employment for the 1975 to 1977 period.[8] Decision and Order at 11.

Employment from 1978 to 1986

The ALJ indicated that while the Miner's CM-911a Employment History form and testimony were credible, the evidence was insufficient to determine the specific beginning and ending dates of his employment for the years 1978 through 1986. Decision and Order at 9-10. Thus, she found the SSES was the most probative evidence as to the length of the Miner's coal mine employment for these years. *Id.* at 9. The ALJ thus applied the formula at 20 C.F.R. §725.101(a)(32)(iii)[9] to determine Claimant's number of workdays in each of

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[8] Employer also asserts the ALJ failed to determine whether Claimant's employment with Beatrice Pocahontas Coal Company as a warehouse worker in 1976 constituted coal mine employment within the meaning of 20 C.F.R. §725.202. Employer's Brief at 12-13. As Employer failed to raise this argument below, we decline to address it. 20 C.F.R. §802.301(a); *see Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-298-99 (2003); *Dankle v. Duquesne Light Co.*, 20 BLR 1-1, 1-6 (1995); Employer's Closing Brief.

[9] Pursuant to 20 C.F.R. §725.101(a)(32)(iii):

> If the evidence is insufficient to establish the beginning and ending dates of the miner's coal mine employment, or the miner's employment lasted less than a calendar year, then the adjudication officer may use the following formula: divide the miner's yearly income from work as a miner by the coal mine industry's daily average earnings for that year, as reported by the Bureau of Labor Statistics (BLS).

The BLS data is reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual.* Exhibit 610, entitled "Average

these calendar years. *Id.* at 10. She divided the Miner's yearly earnings reported in his SSES earnings record by the coal mine industry's average daily earnings, as reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual*. *Id.* at 10-13. The ALJ then used 254 days as the divisor to determine the threshold finding of a calendar year of work, and she credited the Miner with a fractional year based on the ratio of the actual number of days worked to 254.[10] *Id.* Based on these calculations, she credited the Miner with 7.3 years of coal mine employment for the years from 1978 to 1986. *Id.* at 13.

Employer asserts the ALJ's use of 254 days as a divisor to determine a calendar year is unreasonable as it assumes the Miner was not paid for major holidays and worked a five-day work week, which was not established by the record. Employer's Brief at 9. It contends that if the Miner worked more than five days a week, then the calculation could result in less than fifteen years of coal mine employment. *Id.* We find Employer's argument unpersuasive.

The Board will affirm the ALJ's determination if it is based on a reasonable method of calculation that is supported by substantial evidence. 20 C.F.R. §725.101(a)(32)(ii); *see Muncy*, 25 BLR at 1-27; *Vickery*, 8 BLR at 1-432. In this case, the ALJ explained her methodology: she assumed a calendar year of employment excludes pay for weekends and seven major holidays, resulting in 254 days. Decision and Order at 11. Although Employer argues different divisors would change the results, it has not explained why the ALJ's determination is unreasonable. Employer's Brief at 8. Employer also does not explain how or why one divisor is more reasonable than another.[11] *Id.* at 10. As the ALJ's length of coal mine employment findings are based on a reasonable method of calculation and are supported by substantial evidence, we affirm her finding that Claimant established 7.3 years of coal mine employment from 1978 to 1986. *See Muncy*, 25 BLR at 1-27; Decision and Order at 13.

Wage Base," contains the average daily earnings of employees in coal mining and the earnings for those who worked 125 days during a year.

[10] If the threshold one-year period is met, "it must be presumed, in the absence of evidence to the contrary, that the miner spent 125 working days in such employment[,]" in which case the miner would be entitled to credit for one full year of employment. 20 C.F.R. §725.101(a)(32)(ii).

[11] It appears Employer used 365 days as a divisor based on the calculations it provided to the ALJ in its closing brief. *See* Employer's Closing Argument at 12.

Employment from 1986 to 1988 with Merger Coal

Finally, the ALJ credited the Miner with one year and seven months of coal mine employment from 1986 to 1988 with Merger Coal based primarily on his testimony. Decision and Order at 12. Employer argues the ALJ erred in crediting the Miner with this employment, as it is undocumented and the Miner provided conflicting information regarding when his employment for the company began and ended. Employer's Brief at 11-12. We disagree.

It is the role of the ALJ, as the trier-of-fact, to determine both the credibility of the evidence and the inferences to be drawn from it. *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017) (declining to reweigh witness testimony on smoking history despite alleged inconsistencies that the employer identified); *Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989). An ALJ may rely on lay testimony regarding a miner's coal mine employment where it is uncontradicted and credible. *Bizarri v. Consolidation Coal Co.*, 7 BLR 1-343, 1-344-45 (1984). And the Board will not disturb an ALJ's credibility findings unless they are inherently unreasonable. *See Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc).

The ALJ found the Miner was a credible witness and thus found he established he had coal mine employment with Merger Coal although the work was not reflected on his SSES records. Decision and Order at 12. The ALJ acknowledged that Claimant's testimony that he started working for Merger Coal in the "latter part" of 1986 was not entirely consistent with his CM-911a Employment History form that he started working for the company in May 1986.[12] *Id.* She noted "substantial" earnings from his prior employer, Farwest Coal Company, in 1986; thus, she found it more reasonable to conclude he began working for Merger Coal in the latter part of 1986 and credited him with two months of employment in 1986. *Id.* She also noted the Miner's testimony that he worked the full year of 1987 with Merger Coal and worked there until he started working for Island Creek Coal Company (Island Creek) in May 1988. *Id.*; Hearing Transcript at 39. The employment letter from Consol Energy indicated the Miner started working for Island Creek on May 31, 1988; thus, she found his last day of employment for Merger Coal would have been May 27, 1988 - the last working day before he started working at Island Creek. Decision and Order at 12; Director's Exhibit 5.

[12] The Miner testified that Bobby Cline operated Merger Coal. Hearing Transcript at 38; Decision and Order at 12. He indicated on his CM-911a Employment History form that he worked for Bobby Cline from May 1986 to August 1988. Director's Exhibit 3; Decision and Order at 12.

We find the ALJ's findings regarding the Miner's work for Merger Coal to be reasonable and therefore affirm her finding that the Miner had coal mine employment with this operator. *Bizarri*, 7 BLR at 1-344-45; *Tackett*, 12 BLR at 1-14; Decision and Order at 12. She considered the Miner's uncontradicted testimony, which she found credible, as well as other evidence of record to further support her conclusions regarding the length of the Miner's employment with Merger Coal. *See U.S. Steel Mining, Co., Inc. v. Director, OWCP* [*Jarrell*], 187 F.3d 384, 389 (4th Cir. 1999); *Stallard*, 876 F.3d at 670.

Employer contends the ALJ did not explain how she determined the Miner worked two months with Merger Coal in 1986 given that he only indicated he did so in the "latter part" of 1986. Employer's Brief at 11; Decision and Order at 12. However, as the ALJ correctly noted, even if she had determined Claimant established only one full year of coal mine employment in 1987 for Merger Coal, this would not result in less than fifteen years of coal mine employment (2.25 + 5.3 + 7.3 + 1.0 = 15.85). Decision and Order at 12 & 14 n.9. Thus, Employer has failed to explain how, even if the ALJ did not credit the Miner with two months of coal mine employment in 1986 (or even five months in 1988), this determination would make a difference in the outcome. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). Thus, we affirm the ALJ's crediting the Miner with one year and seven months (1.58 years) of coal mine employment with Merger Coal in 1986 to 1988. Decision and Order at 12.

Having affirmed the ALJ's different methods of calculation, we also affirm her determination that the Miner worked a total of 16.4 years[13] in coal mine employment. Decision and Order at 14. As Employer has not challenged the ALJ's finding that all the Miner's coal mine employment was qualifying, we affirm this finding. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.305(b)(1); Decision and Order at 14. Thus, we also affirm her finding that Claimant has invoked the Section 411(c)(4) presumption. Decision and Order at 35.

Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish that the Miner had neither legal nor clinical pneumoconiosis,[14] or

[13] The ALJ's calculations added together are: 2.25 (1975-1977) + 7.3 (1978-1986) + 1.58 (1986-1988) + 5.3 (1988-1993) = 16.43 years.

[14] "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 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

that "no part of [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. Decision and Order at 37-38.

Legal pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish the Miner did 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); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relied on the opinions of Drs. Basheda and McSharry to carry its burden on rebuttal. Both Drs. Basheda and McSharry opined that the Miner had emphysema due to cigarette smoking, unrelated to his coal mine dust exposure. Employer's Exhibits 1, 4, 46, 47. The ALJ found neither doctor adequately explained why coal mine dust did not cause or substantially aggravate the Miner's emphysema. Decision and Order at 36. Thus, the ALJ found Employer did not rebut the presence of legal pneumoconiosis. *Id.*

Employer argues the ALJ applied an incorrect legal standard and failed to provide any analysis for discrediting Drs. Basheda's and McSharry's opinions, in violation the Administrative Procedure Act (APA). Employer's Brief at 13. Specifically, it contends she based her determination on a "superficial assessment" of whether their opinions were consistent with the preamble to the 2001 amended regulations' recognition that coal dust can cause emphysema, while failing to recognize coal mine dust does not always cause emphysema. *Id.* at 14.

While Employer is correct that the preamble does not state that coal mine dust always causes or contributes to a miner's emphysema, its argument appears to assume it is Claimant's burden to establish the Miner's emphysema is due to his coal mine dust exposure. Employer's Brief at 14 (citing *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 863 (D.C. Cir. 2002)). However, in this case, the Section 411(c)(4) presumption has been invoked. Thus, it is assumed that the Miner's emphysema constitutes legal pneumoconiosis, and it is Employer's burden to disprove it. *See W. Va. CWP Fund v.*

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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).

Director, OWCP [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018) (rebuttal inquiry is "whether the employer has come forward with affirmative proof that the [miner] does not have legal pneumoconiosis, because his impairment is not in fact significantly related to his years of coal mine employment"). Thus, we reject Employer's argument that the ALJ applied an incorrect legal standard.

In addition, an ALJ may evaluate expert opinions in conjunction with the Department of Labor's resolution of questions of scientific fact in the preamble. *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313-14 (4th Cir. 2012). In this case, the ALJ noted that both Drs. Basheda and McSharry diagnosed emphysema solely due to cigarette smoking, indicating the Miner's objective findings are common for smoking-induced diseases, but they failed to recognize the potential additive effect of his exposure to both cigarette smoke and coal dust exposure, a finding Employer does not contest. *See Stallard*, 876 F.3d at 671-72; *see also Skrack*, 6 BLR at 1-711; Decision and Order at 36-37. Thus, the ALJ adequately explained her determinations and permissibly found Drs. Basheda's and McSharry's opinions undermined as they did not adequately explain why the Miner's coal mine dust exposure did not contribute to or substantially aggravate his emphysema. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000) (it is the province of the ALJ to evaluate physician's opinions); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998). We therefore affirm the ALJ's determination that Employer failed to rebut the presumption of legal pneumoconiosis.[15] 20 C.F.R. §718.305(d)(2)(i)(A); Decision and Order at 37.

Disability Causation

The ALJ next addressed whether Employer established "no part of the miner'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). She rationally discounted Drs. Basheda's and McSharry's disability causation opinions because neither doctor diagnosed legal pneumoconiosis, contrary to her finding that Employer failed to disprove the Miner had the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2017); *Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995); Decision and Order at 37-38. We therefore affirm the ALJ's finding that Employer did not rebut the Section

[15] As the ALJ found, a finding that Employer failed to rebut legal pneumoconiosis precludes a finding that the Miner did not have pneumoconiosis. 20 C.F.R. §718.305(d)(2)(i); Decision and Order at 37. Thus, the ALJ was not required to also address whether Employer rebutted the presence of clinical pneumoconiosis. Decision and Order at 37 n.17.

411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(ii) and the award of benefits. Decision and Order at 38.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring:

I concur in the result only.

JUDITH S. BOGGS
Administrative Appeals Judge