U.S. Department of Labor

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

BRB No. 24-0481 BLA

CHARLES M. THACKER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
HUMPHREYS ENTERPRISES INCORPORATED	)	
	)	
	)	**NOT-PUBLISHED**
and	)	
	)	
ROCKWOOD CASUALTY INSURANCE COMPANY	)	DATE ISSUED: 06/04/2025
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Granting Benefits on Remand of Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

Kendra Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

Amanda Torres (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) Jodeen M. Hobbs's Decision and Order Granting Benefits on Remand (2021-BLA-05421) rendered on a claim filed on October 24, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Benefits Review Board for a second time.

In her initial Decision and Order Denying Benefits, the ALJ credited Claimant with more than forty years of qualifying coal mine employment. 20 C.F.R. §718.204(b)(2). But she found Claimant did not establish a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b)(2), and therefore could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[1] 30 U.S.C. §921(c)(4) (2018). She further found Claimant did not establish pneumoconiosis, 20 C.F.R. §718.202(a), and denied benefits.

Pursuant to Claimant's appeal, the Board affirmed the ALJ's findings Claimant had forty years of qualifying coal mine employment and the pulmonary function study evidence supports a finding of total disability. *Thacker v. Humphreys Enters., Inc.*, BRB No. 22-0359 BLA, slip op. at 2 n.3 (Sept. 22, 2023) (unpub.). The Board, however, reversed her findings that the medical opinion evidence constitutes contrary probative evidence and that the evidence overall does not establish total disability. *Id.* at 5-9. Thus the Board concluded Claimant established total disability and invoked the Section 411(c)(4) presumption, 20 C.F.R. §718.305(b), and consequently vacated the denial of benefits and remanded the case for further consideration. *Id.* at 9-10.

On remand, the ALJ found Employer failed to rebut the Section 411(c)(4) presumption and awarded benefits.

On appeal, Employer argues the Board exceeded its scope of review in reversing the ALJ's finding regarding total disability and the ALJ erred in finding it did not rebut the presumption. Claimant did not file a response brief. The Acting Director, Office of

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has 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); 20 C.F.R. §718.305(b).

Workers' Compensation Programs (the Director), filed a limited response, urging the Board to reject Employer's request to revisit its prior determinations.

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.[2] 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).

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

Initially, we reject Employer's argument that the Board exceeded its scope of review by reversing the ALJ's finding in her initial Decision and Order Denying Benefits that Claimant did not establish total disability. Employer's Brief at 3-7. Contrary to Employer's characterization, we are not limited to reviewing only whether an ALJ's findings are supported by substantial evidence; they also must accord with law. 30 U.S.C. §932(a); *see Collins v. Pond Creek Mining Co*., 751 F.3d 180, 187 (4th Cir. 2014); *Adams v. Director, OWCP*, 886 F.2d 818, 826 (6th Cir. 1989). Moreover, while factual determinations are the province of the ALJ, reversal is warranted where no factual issues remain to be determined and no further factual development is necessary. *See Collins*, 751 F.3d at 187 (reversing denial with direction to award benefits without further administrative proceedings); *Adams*, 886 F.2d at 826 (same).

In reversing the ALJ's initial finding that Claimant did not prove total disability, the Board concluded the ALJ's determination that the opinions of Drs. McSharry and Sargent outweigh the opinion of Dr. Forehand and the qualifying pulmonary function study evidence is "contrary to the regulations, applicable law, and her own findings." *Thacker*, BRB No. 22-0359 BLA, slip op. at 6; *see* 20 C.F.R. §718.204(b)(2). Because Drs. McSharry and Sargent did not provide a valid rationale to support their conclusion that Claimant is not totally disabled and are the only doctors who excluded total disability, the Board concluded there is no contrary probative evidence undermining the qualifying pulmonary function study evidence and the ALJ's findings were not in accordance with applicable law.

The Board's prior resolution of this issue constitutes law of the case. *See Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-150-151 (1990); *Thacker*, BRB No. 22-0359 BLA, slip op. at 6-9. Because Employer has not shown the Board's decision was clearly

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Tr. at 14, 20-21, 27.

erroneous or set forth any other valid exception to the law of the case doctrine, we decline to disturb our prior disposition. *See Brinkley*, 14 BLR at 1-150-51; *Bridges v. Director, OWCP*, 6 BLR 1-988, 989-90 (1984).

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,[3] or "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.[4]

Legal Pneumoconiosis

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

The ALJ considered the opinions of Drs. McSharry and Sargent.[5] Decision and Order at 4-8. Dr. McSharry opined Claimant does not have legal pneumoconiosis because

[3] "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 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).

[4] The ALJ found Employer disproved clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 11.

[5] The ALJ also correctly noted Dr. Forehand's opinion that Claimant has legal pneumoconiosis does not aid Employer in rebutting the Section 411(c)(4) presumption. Decision and Order at 8. Thus we decline to address Employer's argument regarding the ALJ's weighing of his opinion. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 15; Director's Exhibits 11; 26.

the objective studies do not show a significant pulmonary impairment and concluded he suffers from moderately severe shortness of breath which he attributes to asthma. Employer's Exhibits 1 at 2-3; 4 at 28. While acknowledging Claimant's forty-four years of work in the coal industry in aboveground positions and his status as a lifelong non-smoker, Dr. Sargent opined Claimant does not have legal pneumoconiosis because he does not have a restrictive impairment with a "positive chest x-ray" or an obstructive impairment. Employer's Exhibits 2 at 1; 5 at 21-22. The ALJ discredited the opinions of Drs. McSharry and Sargent as poorly reasoned and documented, and thus he found them insufficient to rebut the presumption of legal pneumoconiosis. Decision and Order at 4-8.

Initially, we reject Employer's argument that the ALJ applied an incorrect legal standard requiring Drs. McSharry and Sargent to "rule out" legal pneumoconiosis. Employer's Brief at 7-11, 14-16. The ALJ correctly stated that to rebut the presumption of legal pneumoconiosis, Employer must "demonstrate [Claimant] does not have a chronic lung disease or impairment 'significantly related to, or substantially aggravated by, dust exposure in coal mine employment.'" Decision and Order at 3, *quoting* 20 C.F.R. §718.201(b). Moreover, the ALJ did not discredit the opinions of Drs. Sargent and McSharry because they failed to satisfy an erroneous heightened legal standard, but rather because they did not persuasively explain their own opinions completely excluding coal mine dust exposure as a cause or contributor to Claimant's impairment. *Id.* at 8.

Employer argues the ALJ erred in discrediting the opinions of Drs. Sargent and McSharry. Employer's Brief at 7-16. We disagree.

Drs. Sargent and McSharry opined, in part, that Claimant does not have legal pneumoconiosis because he has no impairment based on the blood gas studies and pulmonary function studies. Employer's Exhibits 1 at 2-3; 2 at 1. The ALJ permissibly discredited this portion of their opinions as contrary to her finding the pulmonary function study evidence demonstrates Claimant has a totally disabling pulmonary impairment. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 428, 441 (4th Cir. 1997); Decision and Order at 4, 7.

Dr. McSharry opined Claimant is not totally disabled, but if disability were to be found based on the January 6, 2020 pulmonary function study, as it was in this case,[6] the

[6] The Board previously affirmed the ALJ's finding the January 6, 2020 pre-bronchodilator pulmonary function study is the only valid and qualifying study and that the pulmonary function study evidence overall supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(i). *Thacker v. Humphreys Enters., Inc.*, BRB No. 22-0359 BLA, slip op. at 4 (Sept. 22, 2023) (unpub.).

cause of his disability would be asthma and not coal mine dust exposure. Employer's Exhibit 1 at 3. He reasoned that asthma is not pneumoconiosis and "is not caused by coal dust exposure, and prior coal dust exposure would not be aggravating his lung function at this time." *Id.* at 3. In his deposition, Dr. McSharry stated Claimant has "no history of asthma in his medical report," but if he does have a chronic lung disease, it is asthma based on his shortness of breath. Employer's Exhibit 4 at 11, 28.

The ALJ permissibly found Dr. McSharry's opinion that any pulmonary or respiratory impairment Claimant has is due to asthma is not documented because, as Dr. McSharry acknowledged, Claimant has no history of asthma. *See Akers*, 131 F.3d at 441 (ALJ may discount medical opinions contradicted or unsupported by the underlying objective evidence); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 4-5. Further, she permissibly found that even if Claimant did have asthma, Dr. McSharry failed to persuasively explain why Claimant's forty-years of coal mine dust exposure could not have contributed to or aggravated it. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 673 n.4 (4th Cir. 2017); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); Decision and Order at 5. Additionally, we discern no error in the ALJ's finding that Dr. McSharry's opinion is inconsistent with the preamble to the revised 2001 regulations which recognizes asthma as a form of chronic obstructive pulmonary disease that can constitute legal pneumoconiosis if it is caused or aggravated by coal mine dust exposure. Decision and Order at 5, *citing* 65 Fed. Reg. at 79,920, 79,939; *see Stallard*, 876 F.3d at 671.

Dr. Sargent opined Claimant does not have an obstructive impairment because his pulmonary function studies do not demonstrate a reduced FEV1/FVC ratio, but he does have a mild restrictive impairment. Employer's Exhibits 2 at 1; 5 at 22. However, Dr. Sargent stated in order to diagnose legal pneumoconiosis with a restrictive impairment, "there should be definite changes of high profusion simple pneumoconiosis or complicated pneumoconiosis," which Claimant does not have. Employer's Exhibit 5 at 22. The ALJ permissibly found Dr. Sargent's reasoning inconsistent with the regulations that recognize legal pneumoconiosis can exist in the absence of positive x-ray evidence. 20 C.F.R. §§718.202(a)(4), 718.202(b); *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012) (the regulations "separate clinical and legal pneumoconiosis into two different diagnoses" and "provide that '[n]o claim for benefits shall be denied solely on the basis of a negative chest [x]-ray'") (internal quotations omitted); Decision and Order at 7.

Employer's remaining arguments amount to a request to reweigh the evidence, which we are not empowered to do. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); Employer's Brief at 11-15. Because the ALJ permissibly discredited the only medical opinions supportive of Employer's burden on rebuttal, we affirm her

finding that Employer did not disprove legal pneumoconiosis. Decision and Order at 8. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(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 11-12. The ALJ rationally discredited the disability causation opinions of Drs. McSharry and Sargent because they did not diagnose legal pneumoconiosis, contrary to her finding that Employer failed to disprove the existence of the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Toler v. E. Assoc. Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995) (physician's opinion on disability causation may not be credited absent "specific and persuasive reasons" for concluding it is independent of his or her mistaken belief the miner did not have pneumoconiosis); Decision and Order at 11-12. We therefore affirm the ALJ's finding that Employer failed to establish no part of Claimant's respiratory disability is caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

Accordingly, the ALJ's Decision and Order Granting Benefits on Remand is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge