U.S. Department of Labor

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

BRB No. 25-0005 BLA

MICHAEL R. ADDAIR Claimant-Respondent v. BROOKS RUN SOUTH MINING COMPANY, LLC Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 06/11/2025 DECISION and ORDER

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

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

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for Employer.

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

PER CURIAM:

Employer appeals Associate Chief Administrative Law Judge (ALJ) Carrie Bland's Decision and Order on Remand Awarding Benefits (2017-BLA-06115) rendered on a claim filed on August 11, 2016, 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 Awarding Benefits (Initial Decision and Order), the ALJ credited Claimant with 16.47 years of underground coal mine employment or surface coal mine employment in conditions substantially similar to those in an underground mine and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant invoked 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 Employer did not rebut the presumption and awarded benefits.

Considering Employer's appeal, the Board affirmed the ALJ's finding that Claimant's coal mine employment was performed underground or in surface coal mine employment in conditions substantially similar to those in an underground mine and that he established total disability. *Addair v. Brooks Run S. Mining Co., LLC*, BRB No. 21-0607 BLA, slip op. at 2 n.2, 4 n.8 (Apr. 5, 2023). However, the Board vacated the ALJ's finding that Claimant had more than fifteen years of coal mine employment and the award of benefits because she applied an improper method of calculation to determine the length of Claimant's coal mine employment. *Id.* at 4. Consequently, it declined to address Employer's arguments on the issue of rebuttal of the Section 411(c)(4) presumption as premature. *Id.* at 4 n.9.

In her Decision and Order on Remand Awarding Benefits (Decision and Order), the subject of this appeal, the ALJ found Claimant established 15.46 years of coal mine employment. Thus she again found Claimant invoked the Section 411(c)(4) presumption and Employer failed to rebut it, and she awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established at least fifteen years of qualifying coal mine employment and invoked the Section 411(c)(4) presumption and in finding it did not rebut the presumption. Claimant responds in support

[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); *see* 20 C.F.R. §718.305(b).

of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, has not filed a response brief.

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).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground or "substantially similar" surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden to establish the number of years he worked in coal mine employment. *See Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold an ALJ's determination if it is based on a reasonable method of calculation that is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

In her initial Decision and Order, the ALJ considered Claimant's coal mine employment with various employers from 1978 to 2016. Initial Decision and Order at 4-6. The Board previously affirmed the ALJ's finding Claimant established 1.25 years of coal mine employment with Employer from 2015 to 2016. *Addair*, BRB No. 21-0607 BLA, slip op. at 3 n.5. However, it vacated her findings regarding Claimant's coal mine employment in the remaining years because prior to determining whether Claimant worked at least 125 days in a year she failed to make a threshold finding of whether the record establishes a calendar year of coal mine employment in a given year; therefore, it remanded the case for reconsideration. *Id.* at 4. Further, the Board directed the ALJ to consider, on remand, all of Claimant's Social Security Administration (SSA) earnings records and the parties' arguments regarding whether Claimant established he was engaged in coal mine employment with each of his employers. *Id.* at 5.

On remand, the ALJ considered Claimant's coal mine employment from 1975 to 2016. Decision and Order at 3-6. In doing so, she considered his hearing testimony, Employer's admissions at the hearing, Claimant's CM-911 Claim for Benefits form and CM-911a Employment History form, and Claimant's SSA earnings records. She permissibly gave the most weight to Claimant's SSA earnings records as the most probative

[2] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 36.

evidence. *See Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984) (ALJ may credit SSA earnings records over a miner's testimony and other sworn statements); Decision and Order at 4-6.

The ALJ found Claimant established 1.5 years of coal mine employment from 1975 to 1977; 2.94 years of coal mine employment from 1979 to 1983; 0.54 years of coal mine employment for the years 1978, 1984, 1989, 1992, and 1995, combined; and 10.48 years of coal mine employment from 2005 to 2016, which includes the 1.25 years the Board previously affirmed.[3] Decision and Order at 4-6; *see Addair*, BRB No. 21-0607 BLA, slip op. at 3.

Employer argues the ALJ erred in finding Claimant had 1.5 years of coal mine employment from 1975 to 1977 and 2.94 years of coal mine employment from 1979 to 1983.[4] Employer's Brief at 16-22.

Initially, we reject Employer's assertion that the ALJ erred in calculating Claimant's pre-1978 employment. Employer's Brief at 20-22. Contrary to its assertion, the ALJ permissibly credited Claimant with a full quarter of coal mine employment for each pre-1978 quarter in which his SSA earnings records indicate he earned at least $50.00 from coal mine operators. *See Shrader v. Califano*, 608 F.2d 114, 117 n.3 (4th Cir. 1979) (pre-1978 income exceeding fifty dollars is "an appropriate yardstick for determining quarters which will be fully credited to a black lung claimant in determining the duration of his coal mine employment"); *Tackett*, 6 BLR at 1-841 n.2; Decision and Order at 4. Using this method, the ALJ rationally credited Claimant with six quarters, or 1.5 years, of coal mine employment from 1975 to 1977. Decision and Order at 4.

[3] The ALJ found Claimant's coal mine employment includes working for Hawley Mining Corporation from 1975 to 1976; Betty Coal Co. from 1977 to 1980; Clinton Road Ash in 1978; Pitt Mining in 1981; Pentagon Mining from 1981 to 1982; Fray Mining in 1982; Ida Mae Coal in 1983; Vesta Mining in 1984; RH&D Mining in 1989; Quality Deep Mining in 1992; White Horse Mining in 1995; and Brooks Run Mining and Brooks Runs South Mining from 2005 to 2016. Decision and Order at 4-6; Director's Exhibit 6.

[4] We affirm, as unchallenged on appeal, the ALJ's finding Claimant had 0.54 years of coal mine employment in the years 1978, 1984, 1989, 1992, and 1995, combined, and 10.48 years of coal mine employment from 2005 to 2016. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4-6.

We also reject Employer's arguments that the ALJ erred in calculating Claimant's coal mine employment from 1978 to 1984.[5] Employer's Brief at 16-20. It asserts the ALJ erred in finding Claimant had a continuous coal mine employment relationship with coal mine operators during those years to establish a full calendar year of coal mine employment and improperly credited him with a year of coal mine employment if the evidence established at least 125 working days in a given year. *Id.*

The regulations define "year" as "a period of one calendar year (365 days, or 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). If the miner's coal mine employment lasted for a calendar year, "it must be presumed, in the absence of evidence to the contrary, that the miner spent 125 working days in such employment[,]" and the miner is entitled to credit for one full year of coal mine employment. 20 C.F.R. §725.101(a)(32)(ii).

The ALJ found Claimant's SSA earnings records "reflect[] a continuous period of coal mine employment" from 1978 to 1984, but that it was not possible to discern the beginning and ending dates of his coal mine employment in 1978 and 1984. Decision and Order at 5. While she acknowledged Claimant had additional employment that was not in coal mining in 1979, 1980, and 1982, she found "the earnings for those employers [were] minimal compared to the coal mine earnings." *Id.* She observed those earnings "could plausibly reflect weekend work or a part-time job that supplemented his primary coal mine employment" and concluded it "did not disrupt his continuous coal mine employment."[6]

[5] We note Employer argues the ALJ erred in finding Claimant had continuous coal mine employment between 1979 and 1984, and that Claimant "met the threshold finding of one year of coal mine employment between 1978 and 1995." Employer's Brief at 16-17, 19. However, contrary to Employer's assertions, the ALJ found Claimant had continuous employment between 1978 and 1984, and calendar year relationships with coal mine operators from 1979 through 1983. Decision and Order at 5. Additionally, she found Claimant worked only a portion of a year in 1978, 1984, 1989, 1992, and 1995. *Id.*

[6] Specifically, the ALJ found that, aside from $292.50 earned in non-coal mine employment in 1979, $588.44 earned in non-coal mine employment in 1980, and $826.88 earned in non-coal mine employment in 1982, Claimant's SSA earnings records show only coal mine companies employed Claimant from 1978 to 1984. Decision and Order at 5 n.3; Director's Exhibit 6 at 3-5. Thus, the record supports the ALJ's determination that Claimant had continuous coal mine employment during those years.

Id. In addition, she noted Claimant was engaged in coal mine employment in both the prior and subsequent years, which she found credibly establishes ongoing coal mine employment. *Id.* Based on these findings, the ALJ concluded the record establishes Claimant had calendar year employment relationships with coal mine operators from 1979 to 1983. *Id*.

The ALJ next ascertained whether Claimant worked for at least 125 days during those years by dividing Claimant's yearly earnings as reported in his SSA earnings records 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*. Decision and Order at 5-6. If Claimant had at least 125 working days in a calendar year, the ALJ credited him with a full year of coal mine employment. 20 C.F.R. §725.101(a)(32)(i); Decision and Order at 5. If Claimant had less than 125 working days, the ALJ credited him with a fractional year based on the ratio of the actual number of days worked to 125.[7] Decision and Order at 5. Applying this method of calculation, the ALJ found Claimant worked 2.94 years from 1979 to 1983. *Id.* at 5-6. Adding those years to Claimant's remaining coal mine employment, the ALJ credited Claimant with a total of 15.46 years of coal mine employment. *Id.* at 6.

Because Employer identifies no error in the ALJ's calculation,[8] and her finding is based on a reasonable method of calculation that is supported by substantial evidence, we affirm it. *See Muncy*, 25 BLR at 1-27; Decision and Order at 6. We thus affirm the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1)(i).

[7] Employer asserts the ALJ should have applied a divisor of 260, which would have resulted in less than fifteen years of coal mine employment. Employer's Brief at 19-20. We disagree. If the threshold one-year period is met, the ALJ must then determine whether Claimant worked for at least 125 working days within that one-year period. 20 C.F.R. §725.101(a)(32).

[8] Employer argues the ALJ failed to explain how she found Claimant established 15.46 years of coal mine employment but then the ALJ later stated in the conclusion paragraph of her decision on remand that Claimant established 15.39 years of coal mine employment. Employer's Brief at 11. This inconsistency appears to be a harmless scrivener's error, as Employer has not explained how it makes any difference. *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"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (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,[9] or 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.

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 Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ considered the medical opinions of Drs. Basheda and Zaldivar. Initial Decision and Order at 8-11, 14-15. Both doctors opined Claimant does not have legal pneumoconiosis but has chronic obstructive pulmonary disease (COPD) in the form of asthma due to cigarette smoking and unrelated to coal mine dust exposure. Employer's Exhibits 1, 2, 8, 9. The ALJ found their opinions are not reasoned or documented and are thus insufficient to rebut the presumption of legal pneumoconiosis. Initial Decision and Order at 15.

Employer argues the ALJ erred in discrediting the opinions of Drs. Basheda and Zaldivar. Employer's Brief at 25-30, 32-40. We disagree.

Dr. Basheda opined Claimant's symptoms are consistent with smoking-induced asthma and his pulmonary function testing reveals his pulmonary disorder is variable, "possibly totally reversible with medications, [which is] inconsistent with a coal dust form of obstructive lung disease." Employer's Exhibits 1 at 10, 8 at 28. He stated he could not

[9] "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).

say what the cause of the residual, fixed impairment is without Claimant undergoing "appropriate therapy." Employer's Exhibits 1 at 11, 8 at 23.

Dr. Zaldivar diagnosed Claimant with asthma and COPD overlap, which is characterized by "a portion of the lungs respond[ing] to bronchodilators and [while] some portions do not." Employer's Exhibits 2 at 6, 9 at 19-20. He explained asthma responds to bronchodilators and the portion of the lung that does not respond is airway remodeling caused by uncontrolled asthma and smoking-induced emphysema. Employer's Exhibit 9 at 19-20. Specifically, he opined Claimant's ventilatory impairment is caused by his "adult[-]onset asthma which may have been caused by smoking or hereditary causes" and that there is no evidence of occupational asthma caused by his coal mine dust exposure. Employer's Exhibits 2 at 6, 9 at 18-19, 38. He stated Claimant's asthma would not be aggravated by coal mine dust because "if the exposure is intensive enough, the person would have to quit doing what they are doing and leave the area, and that would be just a nuisance." Employer's Exhibit 9 at 38.

Contrary to Employer's argument, the ALJ permissibly found the opinions of Drs. Basheda and Zaldivar are unpersuasive because they did not adequately explain why the irreversible portion of Claimant's impairment is not significantly related to, or substantially aggravated by, coal mine dust exposure. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); Initial Decision and Order at 15. Moreover, in light of the Department of Labor's recognition that the risks of smoking and coal mine dust exposure may be additive, the ALJ permissibly found the opinions of Drs. Basheda and Zaldivar unpersuasive because they did not adequately explain why Claimant's history of coal mine dust exposure did not significantly contribute, along with his cigarette smoking, to his COPD.[10] *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-74, n.4 (4th Cir. 2017); *Owens*, 724 F.3d at 558; 20 C.F.R. §718.201(b); 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000); Initial Decision and Order at 15.

Employer's general assertion that the opinions of Drs. Basheda and Zaldivar are reasoned and documented and therefore sufficient to establish Claimant does not have legal pneumoconiosis is a request to reweigh the evidence which we are not empowered to do.

[10] As the ALJ provided valid reasons for discrediting the opinions of Drs. Basheda and Zaldivar, we need not address Employer's argument the ALJ erred in discounting their opinions for stating coal mine dust exposure does not cause asthma as both physicians opined it may cause occupational asthma. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 33-35.

See Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111, 1-112 (1989); Employer's Brief at 27-30, 36-40.

Because the ALJ acted within her discretion in discrediting the opinions of Drs. Basheda and Zaldivar, the only medical opinions supportive of Employer's burden on rebuttal, we affirm her finding that Employer failed to disprove legal pneumoconiosis. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); Initial Decision and Order at 15. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. Thus we affirm the ALJ's finding that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(2)(i). Decision and Order at 6.

Disability Causation

To disprove disability causation, Employer must establish "no part of [Claimant's] respiratory or pulmonary disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii). The ALJ rationally discredited the disability causation opinions of Drs. Basheda and Zaldivar because they did not diagnose legal pneumoconiosis, contrary to her finding that Employer failed to disprove the existence of the disease. 20 C.F.R. §718.305(d)(1)(i); *see Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995) (where a physician failed to properly diagnose pneumoconiosis, an ALJ "may

not credit" that physician's opinion on causation absent "specific and persuasive reasons," in which case the opinion is entitled to at most "little weight"); Initial Decision and Order at 16. 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); Initial Decision and Order at 16; Decision and Order at 6.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge