

U.S. Department of Labor

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



BRB Nos. 24-0235 BLA
and 24-0236 BLA

RUBY R. HALE
(o/b/o and Widow of CARL E. HALE)

Claimant-Respondent

v.

ISLAND CREEK KENTUCKY MINING

Employer-Petitioner

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 03/26/2025

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of William P. Farley,
Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe, Brad A. Austin, and Cameron Blair (Wolfe, Williams &
Austin), Norton, Virginia, for Claimant.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

Before: GRESH, Chief Administrative Appeals Judge, BOGGS and
BUZZARD, Administrative Appeals Judges.

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

Employer appeals Administrative Law Judge (ALJ) William P. Farley's Decision and Order Awarding Benefits¹ (2020-BLA-06011 and 2021-BLA-05716) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on July 15, 2019,² and a survivor's claim filed on February 16, 2021.

In considering the miner's claim, the ALJ found Claimant established the Miner had thirty-six years of qualifying coal mine employment and a totally disabling respiratory impairment. 20 C.F.R. §718.204(b)(2). Thus, he found Claimant invoked the presumption that the Miner's total disability was due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).³ The ALJ further found Employer did not rebut the presumption and awarded benefits. In the survivor's claim, the ALJ found Claimant was entitled to derivative benefits pursuant to Section 422(l) of the Act, 30 U.S.C. §932(l).⁴

¹ The ALJ initially issued a January 12, 2024 Decision and Order Awarding Benefits. Employer filed a motion for reconsideration arguing the ALJ failed to consider all relevant evidence on rebuttal, erred in finding clinical pneumoconiosis established based on a "head-count" of the November 1, 2019 x-ray, erred in conflating the issues of total disability and pneumoconiosis when addressing the existence of a totally disabling respiratory or pulmonary impairment, and mischaracterized Dr. McSharry's opinion. Employer's Request for Reconsideration at 1-13. Claimant filed a response. The ALJ granted Employer's motion and his March 6, 2024 Decision and Order Awarding Benefits, which is the subject of this appeal, replaced his initial decision. Decision and Order at 3.

² The Miner filed a prior claim in 2017 but withdrew it. Miner Director's Exhibit 1. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306. Claimant is the widow of the Miner, who died on December 20, 2020. Claimant's Exhibit 1. She is pursuing the miner's claim on his behalf, along with her own survivor's claim.

³ Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled 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) (2018); 20 C.F.R. §718.305(b).

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) (2018).

On appeal, Employer argues the ALJ erred in finding it failed to rebut the Section 411(c)(4) presumption.⁵ Claimant responds, urging affirmance of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, did not file a substantive response.

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.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 (1965).

Miner's Claim - Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,⁷ 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.

Legal Pneumoconiosis

⁵ We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established the Miner had thirty-six years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment and therefore invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6, 29.

⁶ The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because the Miner performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 24.

⁷ "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 that is 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).

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); *see Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on Drs. Sargent’s and McSharry’s opinions that the Miner did not have legal pneumoconiosis. Miner Employer’s Exhibits 1-2, 9-10. The ALJ found both are qualified to offer opinions⁸ but determined their opinions are insufficiently reasoned and documented, and thus unable to satisfy Employer’s burden of proof. Decision and Order at 34-38. Employer argues the ALJ erred in rejecting their opinions because they “credibly explained how they determined exposure to coal mine dust had not contributed substantially to the miner’s restrictive impairment” and how they excluded the diagnosis of an obstructive impairment. Employer’s Brief at 9-18. We disagree.

Dr. Sargent examined the Miner on June 15, 2020, and prepared a report based on the exam and a review of the Miner’s medical records.⁹ Miner Employer’s Exhibit 1. He diagnosed the Miner with a “disabling restrictive ventilatory impairment” due to “severe dorsal kyphosis with resulting thoracic cage abnormality,” likely contributed to by “chronic systolic congestive heart failure” and cardiomegaly. *Id.* at 2. At his October 18, 2021 deposition, based on a review of additional medical records of the Miner’s,¹⁰ Dr. Sargent indicated that coal dust can cause obstructive and restrictive impairments but testified that “[p]ractically” legal pneumoconiosis describes “miners who have a negative chest x-ray but who have obstructive lung disease, and that can be rarely seen in miners.” Miner Employer’s Exhibit 10 at 7, 8. He agreed that Dr. Nader’s pulmonary function study showed a “very mild obstruction” but stated that “on the last set of lung function tests we

⁸ The ALJ noted Dr. Sargent is a Board-certified pulmonologist and critical care expert who is currently a hospital and medical director of Bristol Regional Medical Center. Decision and Order at 14; Miner Employer’s Exhibit 1 at 24. He also noted Dr. McSharry is a Board-certified pulmonologist and an internal medicine and critical care physician who is currently a pulmonary and critical physician and medical director in the respiratory therapy department at Bristol Regional Medical Center. Decision and Order at 17; Miner’s Employer’s Exhibit 2 at 5-6.

⁹ A comprehensive list of the records Dr. Sargent reviewed in preparing his report is contained at Miner Employer’s Exhibit 1 at 7-8.

¹⁰ A detailed list of the medical records Dr. Sargent reviewed before his deposition can be found in Exhibit 1 to his deposition. Miner Employer’s Exhibit 10 at 6, 52-54.

have, there is no obstruction present.” *Id.* at 34. In addition, he testified that the Miner was exposed to a sufficient amount of coal dust to cause lung disease in a susceptible individual, but indicated the restrictive impairment he diagnosed was due to severe dorsal kyphosis¹¹ and congestive heart failure.¹² *Id.* at 13-16, 24-26, 28, 33. Dr. Sargent explained that for coal dust to have caused the restriction, there would need to be a fibrotic reaction to a deposition of coal in the lung which causes the lungs to stiffen, and the x-ray and CT scans that he reviewed did not show interstitial lung disease consistent with clinical pneumoconiosis. *Id.* at 28.

As the ALJ accurately noted, Dr. Sargent eliminated a diagnosis of legal pneumoconiosis, in part, because Claimant does not have radiographic evidence of clinical pneumoconiosis. Decision and Order at 35. The ALJ thus permissibly found Dr. Sargent’s opinion inconsistent with the regulatory definition of legal pneumoconiosis,¹³ 20 C.F.R. §§718.201(a)(2), (b), 718.202(a)(4); 65 Fed. Reg. 79,920, 79,940-43 (Dec. 20, 2000); *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 313 (4th Cir. 2012); *Helen Mining Co. v. Director, OWCP [Obush]*, 650 F.3d 248, 256-57 (3d Cir. 2011); Decision and Order at 35; Miner Employer’s Exhibit 10 at 7-8, 27-28.

Dr. McSharry provided a May 17, 2021 report based on a review of the Miner’s medical records¹⁴ and attributed the Miner’s shortness of breath, and possibly his orthopnea, to heart disease and atrial dysrhythmia. Miner Employer’s Exhibit 2 at 3. He stated that the restrictive impairment he observed “does not appear to be the result of coal dust exposure” because there was no scarring in the lungs on the x-rays he reviewed. *Id.* Instead, he attributed the restriction to kyphosis of the spine. *Id.* At his October 14, 2021

¹¹ Dr. Sargent explained that severe dorsal kyphosis means the Miner’s “thoracic spine pancaked, meaning that his chest . . . got a lot smaller, and it prevents his lungs from expanding normally.” Miner Employer’s Exhibit 10 at 25.

¹² Dr. Sargent indicated he didn’t “have any evidence that coal dust has caused the impairment that we’re seeing, and we certainly have a very adequate explanation for why he has a restrictive impairment.” Miner Employer’s Exhibit 10 at 28.

¹³ Contrary to Employer’s contention, this finding by the ALJ is not dependent on his determination that the x-ray evidence is in equipoise. *See* Employer’s Brief at 9.

¹⁴ Dr. McSharry details the medical records he reviewed in his report. Miner Employer’s Exhibit 2 at 1-2.

deposition, based on a review of additional medical records of the Miner's,¹⁵ Dr. McSharry reiterated his belief that the Miner's restrictive impairment was due to kyphosis of the spine resulting from an injury where he may have suddenly lost nine inches of height. Miner Employer's Exhibit 9 at 34, 43-44. He agreed that coal dust can cause obstructive or restrictive lung disease but indicated he did not believe an obstructive impairment was present¹⁶ and he did not "see any support for the idea that there is fibrotic scarring that would contribute to the restriction." *Id.* at 7, 23-25, 34.

The ALJ permissibly found Dr. McSharry's opinion is speculative that the Miner's lung volumes would be normal if corrected for the fact that his lungs are smaller due to the extrinsic restrictive pressure caused by his kyphosis. *Looney*, 678 F.3d at 316-17; Decision and Order at 37; Miner Employer's Exhibit 9 at 23, 33, 45. In addition, contrary to Employer's assertion, we see no error in the ALJ's permissible determination that even assuming the alternative etiologies that Drs. Sargent and McSharry gave for the Miner's impairment, the physicians failed to adequately explain why the Miner's exposure to coal dust did not also contribute to his restrictive impairment. *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 38; Employer's Brief at 10-18.

Employer's arguments on legal pneumoconiosis amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); Employer's Brief at 9-18. Because the ALJ permissibly discredited Drs. Sargent's and McSharry's opinions,¹⁷ we affirm his determination that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(1)(i)(A). *Owens*, 724 F.3d at

¹⁵ A complete list of the medical records Dr. McSharry reviewed in anticipation of his deposition are attached to his deposition as Exhibit 1. Miner Employer's Exhibit 9 at 57-59.

¹⁶ Dr. McSharry found that "looking at the entire picture," Dr. Nader's pulmonary function testing did not show restrictive or obstructive lung disease. Miner Employer's Exhibit 9 at 23-24. He explained that Dr. Nader's evaluation was performed ten days after the Miner's hospitalization for chest pain and that the studies he performed "under represent [the Miner's] best lung function" and "could be explained by pulmonary edema or fluid that can be seen in the setting of cardiac disease and heart failure." *Id.* at 24-25.

¹⁷ Because the ALJ provided a valid reason for discrediting Drs. Sargent's and McSharry's opinions on legal pneumoconiosis, we need not address Employer's remaining arguments concerning the weight accorded to their opinions. See *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 9-18.

558; Decision and Order at 37-39. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis.¹⁸ 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established that “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); Decision and Order at 39-40. The ALJ permissibly discounted the opinions of Drs. Sargent and McSharry regarding the cause of the Miner’s respiratory disability because they did not diagnose legal pneumoconiosis, contrary to the ALJ’s finding that Employer failed to disprove the existence of the disease.¹⁹ 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); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 40; Employer’s Brief at 18-19. We therefore affirm the ALJ’s finding that Employer failed to establish no part of the Miner’s respiratory disability was caused by legal pneumoconiosis, 20 C.F.R. §718.305(d)(1)(ii), and the award of benefits in the miner’s claim.

Survivor’s Claim

Because we have affirmed the award of benefits in the miner’s claim and Employer raises no specific challenge to the survivor’s claim,²⁰ we affirm the ALJ’s determination

¹⁸ Having affirmed the ALJ’s findings on legal pneumoconiosis, we need not address Employer’s arguments that the ALJ erred in concluding it also failed to disprove clinical pneumoconiosis. See *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); see Employer’s Brief at 4-9.

¹⁹ Drs. Sargent’s and McSharry’s opinions as to whether the Miner’s respiratory disability was related to legal pneumoconiosis rested on their assumption that the Miner did not have legal pneumoconiosis.

²⁰ Employer asserts only that if the Board vacates the award in the miner’s claim, it must vacate the ALJ’s finding that Claimant is entitled to derivative benefits in her survivor’s claim. Employer’s Brief at 19.

that Claimant is derivatively entitled to survivor's benefits. 30 U.S.C. §932(l); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring:

I concur in the result only.

JUDITH S. BOGGS
Administrative Appeals Judge