U.S. Department of Labor

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

BRB No. 25-0129 BLA

THURMAN E. COX, SR. Claimant-Petitioner v. JONES TRUCK & EQUIPMENT, LLC Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 03/04/2026 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

Thurman E. Cox, Sr., Wise, Virginia.

Sara May (Jones & Jones Law Office PLLC), Pikeville, Kentucky, for Employer.

Kathleen H. Kim (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Denying Benefits (2022-BLA-05645) rendered on a claim filed on January 9, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 2.28 years of surface coal mine employment in conditions substantially similar to those in an underground mine and thus found he could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[2] 20 C.F.R. §725.309(c). She further found Claimant did not establish complicated pneumoconiosis and therefore could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304. While she found Claimant established the existence of simple clinical pneumoconiosis, she determined he failed to establish a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b), an essential element of entitlement, and denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Employer and the Director, Office of Workers' Compensation Programs, respond in support of the denial of benefits.

In an appeal a claimant files without representation, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law.[3] 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).

---

[1] On Claimant's behalf, Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested the Benefits Review Board review the ALJ's decision, but Ms. Napier is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] 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.

[3] 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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 2.

Invocation of the Section 411(c)(3) Presumption: Complicated Pneumoconiosis

Section 411(c)(3) of the Act provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. In determining whether Claimant has invoked the irrebuttable presumption, the ALJ must consider all evidence relevant to the presence or absence of complicated pneumoconiosis. 30 U.S.C. §923(b); *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56 (4th Cir. 2000); *see Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

The ALJ found none of the evidence supports a finding of complicated pneumoconiosis.[4] 20 C.F.R. §718.304(a)-(c); Decision and Order at 7-10 (unpaginated). Thus, weighing all the evidence together, she concluded Claimant did not establish the disease. 20 C.F.R. §718.304; Decision and Order at 8, 10.

The ALJ considered seven interpretations of three x-rays dated September 13, 2019, December 4, 2020, and April 19, 2022. Decision and Order at 8. She noted all the interpreting physicians are dually-qualified as B readers and Board-certified radiologists. *Id.*

Dr. DePonte interpreted the September 13, 2019 x-ray as positive for simple and complicated pneumoconiosis, noting a Category "A" opacity. Claimant's Exhibit 2. Dr. Simone interpreted the x-ray as completely negative for pneumoconiosis. Employer's Exhibit 1. Affording each interpretation equal weight, the ALJ found the readings of this x-ray neither support nor refute a finding of pneumoconiosis. Decision and Order at 8.

Drs. DePonte and Ramakrishnan both interpreted the December 4, 2020 x-ray as positive for simple pneumoconiosis, but did not note a large opacity. Director's Exhibits 25, 29. Dr. Simone interpreted the x-ray as negative for pneumoconiosis. Director's Exhibit 33. Finding the two positive readings outweighed the single negative reading of

[4] The ALJ accurately noted Claimant's treatment records, including a computed tomography (CT) scan, and the medical opinion evidence do not support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 9-11 (unpaginated); Director's Exhibits 25, 27, 30; Claimant's Exhibit 3; Employer's Exhibit 3. There is no pathology evidence of record. 20 C.F.R. §718.304(b).

equally qualified readers, the ALJ found this x-ray supports a finding of simple pneumoconiosis. Decision and Order at 8.

Dr. DePonte interpreted the April 19, 2022 x-ray as positive for simple clinical pneumoconiosis while Dr. Simone interpreted the x-ray as negative for the disease. Claimant's Exhibit 1; Employer's Exhibit 2. According each interpretation equal weight, the ALJ found the readings of this x-ray neither support nor refute a finding of pneumoconiosis. Decision and Order at 8.

Thus, weighing the x-ray evidence together, the ALJ found it does not support a finding of complicated pneumoconiosis. Decision and Order at 8. We affirm, as supported by substantial evidence, the ALJ's finding that the x-ray evidence does not support a finding of complicated pneumoconiosis. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); 20 C.F.R. §718.304(a); Decision and Order at 8.

As no other evidence of record supports a finding of complicated pneumoconiosis, we also affirm the ALJ's finding that the record as a whole does not establish the presence of complicated pneumoconiosis. *Cox*, 602 F.3d at 283; *Scarbro*, 220 F.3d at 255-56 (4th Cir. 2000); Decision and Order at 10.

We therefore affirm the ALJ's finding that Claimant did not invoke the Section 411(c)(3) presumption. 20 C.F.R. §718.304; Decision and Order at 10.

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

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment.[5] 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). Claimant may establish total disability based on qualifying

[5] Claimant must also establish at least fifteen years of underground or substantially similar surface coal mine employment. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(b). He alleged approximately forty years of coal mine employment as a truck driver, but the ALJ found he established 2.28 years of qualifying coal mine employment under Section 411(c)(4). Director's Exhibits 1, 2; Decision and Order at 6. Because we affirm the ALJ's finding that Claimant did not establish total disability, we need not address the ALJ's finding as to the length of Claimant's coal mine employment.

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 that Claimant failed to establish total disability by any method.[7] Decision and Order at 10-11.

There are two non-qualifying pulmonary function studies dated November 11, 2019, and December 4, 2020, of record. Director's Exhibits 25 at 6, 27 at 19. The ALJ stated only one study was submitted and because it is non-qualifying, the pulmonary function study evidence does not establish total disability. Decision and Order at 10. While the ALJ erred by not specifying which study she considered and in not considering one of the studies, any error is harmless as both studies are non-qualifying. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). Because it is supported by substantial evidence, we affirm the ALJ's finding that the pulmonary function study evidence does not support finding total disability at 20 C.F.R. §718.204(b)(2)(i). Decision and Order at 10.

The ALJ next considered a single arterial blood gas study obtained December 4, 2020. Decision and Order at 10-11; Director's Exhibit 25 at 11. The ALJ accurately found the study was non-qualifying and thus does not support total disability. Decision and Order at 11. Because it is supported by substantial evidence, we affirm the ALJ's finding that the December 4, 2020 arterial blood gas study does not support finding total disability at 20 C.F.R. §718.204(b)(2)(ii). *Id.*

The ALJ also considered the opinions of Drs. Forehand, Dahhan, and Broudy on the issue of total disability. Decision and Order at 11. Dr. Forehand indicated that Claimant performed "very heavy" labor, but did not find a respiratory impairment, noting no measurable impairment. Director's Exhibit 25. Dr. Dahhan also found no impairment, finding Claimant retains the capacity to return to his coal mining work. Employer's Exhibit

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

[7] The ALJ accurately found there is no evidence that Claimant has cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 11.

3. Finally, Dr. Broudy noted "very little" restrictive impairment, but did not find a disabling impairment, finding the objective testing "easily" exceeds federal criteria for disability. Director's Exhibit 30.

The ALJ thus appropriately found none of the physicians, all of whom she found were qualified to provide an opinion on the issue, diagnosed a totally disabling respiratory or pulmonary impairment. Decision and Order at 11. Therefore, we affirm as supported by substantial evidence, the ALJ's finding that the medical opinion evidence does not support a finding of total disability. *Id.*; 20 C.F.R. §718.204(b)(iv). Thus, we also affirm the ALJ's finding that Claimant failed to establish total disability based on the evidence as a whole.[8] Decision and Order at 11.

As Claimant has failed to establish total disability, which is necessary to invoke the Section 411(c)(4) presumption and is an essential element of entitlement under 20 C.F.R. Part 718, we also affirm the denial of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); Decision and Order at 12.

[8] As the ALJ notes, Claimant's treatment records indicate respiratory symptoms, including shortness of breath, wheezing, and cough. Decision and Order at 9; Claimant's Exhibit 3. Claimant also complained of dyspnea on exertion. Director's Exhibit 27. While the ALJ did not specifically analyze the treatment records to determine whether there was evidence from which total disability could be inferred, we find this error harmless as these records do not quantify the extent of any respiratory impairment. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995) (physical limitations described in doctor's report sufficient to establish total disability); *Gee v. W.G. Moore and Sons*, 9 BLR 1-4, 1-6 (1986) (en banc) (medical evidence that fails to state the miner is totally disabled or otherwise address the severity of the impairment in such a way as to permit the ALJ to infer total disability is not probative evidence of total disability); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

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