U.S. Department of Labor

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

BRB No. 25-0144 BLA

LEROY BOWMAN Claimant-Petitioner v. U.S. STEEL MINING COMPANY Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 03/30/2026 DECISION and ORDER

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

Leroy Bowman, Bluefield, Virginia.

Aimee M. Stern (Dinsmore & Shohl, LLP), Wheeling, West Virginia, for Employer.

Kevin A. Shanahan (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, JONES and ULMER, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order on Remand Denying Benefits (2021-BLA-05134) rendered on a subsequent claim[2] filed on July 5, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act). This case is before the Board for a second time.[3]

In a July 28, 2022 Decision and Order Denying Benefits, the ALJ found Claimant established at least twenty-nine years of underground coal mine employment and 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, 30 U.S.C. §921(c)(4),[4] and therefore established a change in an applicable condition of entitlement.[5] 20 C.F.R. §725.309. She further found Employer rebutted the presumption and thus denied benefits.

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

[2] This is Claimant's second claim for benefits. Director's Exhibit 1. The prior claim file is not included in the record; however, the parties do not contest the ALJ's statement that Claimant's first claim was denied before the Office of Administrative Law Judges for failure to establish any element of entitlement. *Bowman v. U.S. Steel Mining Co*., BRB No. 22-0471 BLA, slip op. at 2 n.2 (Feb. 15, 2024) (unpub.); Decision and Order at 4.

[3] We incorporate the procedural history of this case as set forth in *Bowman*, BRB No. 22-0471 BLA, slip op. at 2. Chief Administrative Appeals Judge Daniel T. Gresh and Administrative Appeals Judge Glenn E. Ulmer are substituted on the panel for Administrative Appeals Judges Judith S. Boggs and Greg J. Buzzard, who are no longer members of the Board.

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

[5] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she finds that "one of the applicable conditions of entitlement . . . has changed since the date

Pursuant to Claimant's appeal, the Board affirmed the ALJ's findings that Claimant established at least twenty-nine years of underground coal mine employment and total disability and therefore invoked the Section 411(c)(4) presumption.[6] *Bowman v. U.S. Steel Mining Co.*, BRB No. 22-0471 BLA, slip op. at 5 (Feb. 15, 2024) (unpub.). However, the Board vacated her determination that Employer rebutted the presumption, holding the ALJ erroneously placed the burden on Claimant to establish pneumoconiosis when she had invoked the presumption. *Id.* at 6, 8. The Board also held the ALJ erred as she did not consider the medical opinion evidence when weighing the evidence regarding clinical pneumoconiosis and did not explain her analysis of the medical opinion evidence regarding legal pneumoconiosis. *Id.* at 6-8. Thus, the Board vacated the ALJ's findings regarding rebuttal of both forms of pneumoconiosis and disability causation, vacated the denial of benefits, and remanded the case for further consideration. *Id.* at 7-10.

On remand, the ALJ again found Employer rebutted the Section 411(c)(4) presumption because it established that no part of Claimant's total disability was due to pneumoconiosis. Therefore, she denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Employer responds in support of the denial. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to reverse the ALJ's finding that Employer rebutted disability causation and to award 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

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upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). As Claimant did not previously establish any element of entitlement, he had to submit new evidence establishing at least one element to obtain review of the current claim on the merits. *See* 20 C.F.R. §725.309(c)(3), (4); *White*, 23 BLR at 1-3; Decision and Order at 4.

[6] Thus, the ALJ's finding that Claimant established a change in an applicable condition of entitlement was also affirmed. *Bowman*, No. 22-0471 BLA, slip op. at 3 n.7; Decision and Order at 4.

accordance with applicable law.[7] 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).

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[8] 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); *Minich v. Keystone Coal Mining Corp*., 25 BLR 1-149, 1-155 n.8 (2015). The ALJ found that Employer did not rebut the presence of pneumoconiosis,[9] but established that no part of Claimant's total disability was caused by pneumoconiosis.

Clinical Pneumoconiosis

To disprove clinical pneumoconiosis, Employer must establish Claimant does not have any of the 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. §§718.305(d)(1)(i)(B), 718.201(a)(1). The ALJ found the Employer did not rebut the presence of clinical pneumoconiosis. Decision and Order on Remand at 5.

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

[8] "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).

[9] The ALJ found Employer failed to rebut the presence of clinical pneumoconiosis but succeeded in rebutting legal pneumoconiosis. Decision and Order on Remand at 5-6.

Employer does not contend the ALJ erred in finding it failed to disprove clinical pneumoconiosis; thus, we affirm the ALJ's finding. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Remand at 5; Employer's Response. Employer's failure to disprove clinical pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis.[10] 20 C.F.R. §718.305(d)(1)(i); *see W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137 (4th Cir. 2015).

Disability Causation

To disprove disability causation, Employer must establish "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); *Bender*, 782 F.3d at 143.

Employer submitted the opinions of Drs. Zaldivar and McSharry in support of rebuttal.[11] Director's Exhibit 20; Employer's Exhibit 1. Dr. Zaldivar opined Claimant does not have clinical pneumoconiosis, based on his reading of the x-ray from his examination of Claimant as supported by other negative readings of record. Employer's Exhibit 1. He further opined that Claimant's restrictive impairment was not due to pneumoconiosis, but due to obesity, indicating that a miner with restriction due to coal dust exposure is expected to have opacities on x-ray, which he believed were not present here. *Id.* Similarly, Dr. McSharry opined there was not "compelling" evidence of clinical pneumoconiosis and opined Claimant's moderate restriction and hypoxemia are due to his obesity. Director's Exhibit 20 at 4-5. The ALJ accorded each medical opinion of record "equal weight" and found when "[c]onsidering the totality of the physicians' opinions,"

[10] We find the ALJ erred in weighing the evidence regarding legal pneumoconiosis, as her summary finding that each opinion is "reasoned, documented, and afford[ed] . . . equal weight" and thus that Drs. Zaldivar's and McSharry's opinions are sufficient to rebut the existence of legal pneumoconiosis does not comply with the explanatory requirements of the Administrative Procedure Act. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. 932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); Decision and Order on Remand at 6. As discussed below, however, we also conclude Employer cannot establish that no part of Claimant's total disability is due to clinical pneumoconiosis and thus cannot establish rebuttal of disability causation. 20 C.F.R. §718.305(d)(1)(ii). Because Claimant is entitled to benefits based on the evidence relevant to clinical pneumoconiosis, we need not remand the claim for the ALJ to explain her legal pneumoconiosis findings. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[11] Dr. Ajjarapu opined Claimant's disability is due to a combination of coal dust exposure, smoking, and obesity. Director's Exhibits 18, 22.

Employer met its burden to rebut disability causation. Decision and Order on Remand at 6-7.

The Director argues that neither of the opinions supporting rebuttal of disability causation found the presence of clinical pneumoconiosis, contrary to the ALJ's finding that it was not disproven; thus, the ALJ's crediting of these opinions is contrary to Fourth Circuit precedent. Director's Response at 2-3 (citing *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015)). The Director therefore argues reversal is warranted. *Id.* We agree with the Director's position.

The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that where a physician erroneously fails to diagnose pneumoconiosis, his opinion as to disability causation "is not worthy of much, if any, weight." *Cedar Coal Co. v. Director, OWCP* [*Mullins*], 168 F.4th 685, 693 (4th Cir. 2026) (quoting *Epling*, 783 F.3d at 504); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995); *see also Oak Grove Res., LLC v. Director, OWCP* [*Ferguson*], 920 F.3d 1283, 1289 (11th Cir. 2019).

Neither Dr. Zaldivar nor Dr. McSharry offered any explanation for their opinions that no part of Claimant's total disability was caused by clinical pneumoconiosis other than their erroneous belief that Claimant does not suffer from the disease. *See Bender*, 782 F.3d at 144 ("to make the required showing," physician "must consider pneumoconiosis together with all other possible causes, and adequately explain why pneumoconiosis was not at least a partial cause of the miner's respiratory or pulmonary disability"); *Toler*, 43 F.3d at 116 (where physician erroneously fails to diagnose pneumoconiosis, an ALJ "may not credit" their opinion absent "specific and persuasive reasons" independent of the mistaken belief the miner does not have the disease); Director's Exhibit 20; Employer's Exhibit 1. Thus, substantial evidence does not exist to find the doctors provided specific and persuasive reasons to credit their opinions that no part of Claimant's total disability is due to pneumoconiosis. *See Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477 (1951) (substantial evidence is such evidence "that a reasonable mind would accept to support a conclusion"); *see also Scott v. Mason Coal Co.*, 289 F.3d 263, 269-70 (4th Cir 2002) ("Two opinions that may hold no weight, or at most may hold the little weight allowed by *Toler*, cannot suffice as substantial evidence to support the ALJ determination that [Claimant's] respiratory impairment was not caused at least in part by pneumoconiosis."). As there is no other evidence in the record that could support Employer's burden of disproving disability causation, as a matter of law Employer has failed to establish rebuttal by proving no part of Claimant's total disability was caused by clinical pneumoconiosis. *See* 20 C.F.R. §718.305(d)(2)(ii)

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 v. Pond Creek Mining Co*., 751 F.3d 180, 187 (4th Cir. 2014). We thus reverse the ALJ's finding that Employer rebutted the Section 411(c)(4) presumption. Because Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, and Employer did not rebut the presumption, Claimant is entitled to benefits.

Accordingly, we reverse the ALJ's Decision and Order on Remand Denying Benefits and remand this case for entry of an award of benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge