

U.S. Department of Labor

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



BRB No. 23-0269 BLA

BRENDA G. STURGILL)
(o/b/o GLADYS E. YORKE, Widow of)
DONALD J. YORKE))

Claimant-Respondent)

v.)

CLINCHFIELD COAL COMPANY)

DATE ISSUED: 05/29/2024

Employer-Petitioner)

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

Party-in-Interest)

DECISION and ORDER

Appeal of the Decision and Order Granting Modification and Awarding Benefits of Theodore W. Annos, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Rachel Wolfe (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Theodore W. Annos's Decision and Order Granting Modification and Awarding Benefits (2019-BLA-05505) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a request for modification of a survivor's claim filed on February 8, 2011.

In a Proposed Decision and Order – Award of Benefits dated August 17, 2012, the district director determined the Miner's widow established his death was due to pneumoconiosis. Director's Exhibit 26. Following Employer's request for a hearing, the case was transferred to the Office of Administrative Law Judges (OALJ) and assigned to ALJ Morris D. Davis. Director's Exhibits 27, 30.

In his Decision and Order Denying Award of Benefits dated February 23, 2017, ALJ Davis found the Miner's widow failed to establish the Miner was totally disabled at the time of his death or that his death was due to pneumoconiosis. Director's Exhibit 52. On February 23, 2018, Claimant¹ timely requested modification of that denial. Director's Exhibit 54. Because Claimant did not submit any additional evidence, the district director transferred the case to the OALJ, which assigned it to ALJ Annos (the ALJ). Director's Exhibits 56, 57.

In his Decision and Order Granting Modification and Awarding Benefits dated March 20, 2023, the subject of the current appeal, the ALJ found Claimant established the Miner had twenty-five years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment at the time of his death. 20 C.F.R. §718.204(b)(2). Thus, he found Claimant invoked the presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act,² 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption. Thus, he found Claimant established modification based on a mistake in a determination of fact and found that

¹ Claimant is the daughter of the Miner's widow, who died on April 11, 2017. Director's Exhibit 53. She is pursuing the survivor's claim on her mother's behalf. Director's Exhibits 11, 54.

² Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's death was 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 at the time of his death. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

granting modification would render justice under the Act. 20 C.F.R. §725.310. He therefore awarded benefits.³

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption.⁴ Employer also argues the ALJ erred in finding it failed to rebut the presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

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.⁵ 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).

Modification

The sole ground for modification in a survivor's claim is that a mistake in a determination of fact was made in the prior denial. 20 C.F.R. §725.310; *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-164 (1989). The ALJ has broad discretion to correct mistakes of fact, including the ultimate fact of entitlement. *Betty B Coal Co. v. Director, OWCP [Stanley]*, 194 F.3d 491, 497 (4th Cir. 1999); *Jessee v. Director, OWCP*, 5 F.3d 723, 725 (4th Cir. 1993). A party need not submit new evidence, as the ALJ may correct mistakes of fact "whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keefe v. Aerojet-General*

³ The Miner died on October 3, 2010. Director's Exhibit 15. He never successfully established entitlement to benefits during his lifetime. Director's Exhibits 1-3. Thus, Claimant is not entitled to benefits under Section 422(l) of the Act, 30 U.S.C. §932(l), which provides that a survivor of a miner 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).

⁴ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established twenty-five years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Modification at 4; Hearing Tr. at 5-6.

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the Miner performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 6; 52 at 4.

Shipyards, Inc., 404 U.S. 254, 256 (1971).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner had a totally disabling respiratory or pulmonary impairment at the time of his death. 20 C.F.R. §718.305(b)(1)(i). A miner is considered to have been totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, 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). Qualifying evidence in any of the four categories establishes total disability when there is no “contrary probative evidence.” 20 C.F.R. §718.204(b)(2).

The ALJ found Claimant established total disability based on the Miner’s treatment records and the evidence as a whole.⁶ 20 C.F.R. §718.204(b)(2)(iv); Decision and Order on Modification at 8-9.

Medical Opinions/Treatment Records

Before weighing the medical opinions and the Miner’s treatment records, the ALJ addressed the exertional requirements of the Miner’s usual coal mine work as a section foreman. Decision and Order on Modification at 5-6 n.32. The ALJ noted the Miner’s last coal mine job as a section foreman required him to lift fifty pounds. *Id.* at 5 n.32; *see* Director’s Exhibits 6; 8; 52 at 4. Relying on the Dictionary of Occupation Titles, the ALJ found the Miner’s usual coal mine job as a section foreman required a medium level of exertion. Decision and Order on Modification at 5-6 n.32 (citing *Dictionary of Occupational Titles* (4th Ed., Rev. 1991)). As this finding is unchallenged, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

⁶ The ALJ found Claimant did not establish total disability based on the pulmonary function studies, arterial blood gas studies, or evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order on Modification at 6.

The ALJ next considered the Miner’s treatment records from January 2002 to October 2010, and the medical opinions of Drs. Bush and Castle. Decision and Order on Modification at 6-9. He determined the Miner “did not have the respiratory or pulmonary capacity to perform the medium level of exertion required in his usual coal mine work at the time of his death” based on his “treating physicians’ well-documented symptoms, findings, diagnoses, and treatment” of him as reflected in hospital records during “the two months leading up to [his] death – i.e., August and September 2010.”⁷ *Id.* at 7-8. Further, the ALJ found that to the extent Drs. Bush’s and Castle’s reports “can be interpreted as providing an opinion that [the Miner] did not have a totally disabling respiratory or pulmonary impairment,” they are “wholly inconsistent with the significant respiratory and pulmonary deficiencies consistently documented in [his] treatment records,” and thus entitled to “no” weight. *Id.* at 6 n.33. He therefore found the medical evidence supports a finding of total disability. *Id.* at 8-9.

Employer argues the ALJ substituted his opinion for that of the medical experts by erroneously inferring that the Miner’s treatment records establish total disability. Employer’s Brief at 9-11 (unpaginated). We disagree.

A physician need not phrase his or her opinion specifically in terms of “total disability” to support a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990) (citing *Black Diamond Coal Co. v. Benefits Review Board [Raines]*, 758 F.2d 1532, 1534 (11th Cir. 1985)). Rather, treatment records may support a finding of total disability if they provide sufficient information from which an ALJ can reasonably infer a miner was unable to do his usual coal mine work. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1142 (4th Cir. 1995); *Poole*, 897 F.2d at 894; *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988).

The ALJ correctly noted that during the Miner’s hospitalizations between August 6, 2010 and September 23, 2010, his treatment records indicate he reported symptoms of shortness of breath, coughing, rhonchi, and wheezing. Director’s Exhibit 18 at 67, 70, 72, 74, 76, 80, 82, 84. The Miner’s treatment records also indicate he had acute exacerbation of his “end-stage” chronic obstructive pulmonary disease (COPD) with persistent bronchitis, emphysema, metastatic small-cell lung cancer, pulmonary candidiasis, and

⁷ The ALJ found the Miner’s “older” treatment records were not probative on the issue of total disability because the relevant inquiry is whether he was totally disabled at the time of his death. Decision and Order on Modification at 7; *see* 20 C.F.R. §725.203(b)(1); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015); *Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 624 (6th Cir. 1988). As this finding is unchallenged, we affirm it. *See Skrack*, 6 BLR at 1-711.

diastolic congestive heart failure. *Id.* at 64, 67, 70-73, 77, 82. In addition, the Miner's treatment records indicate his home treatment included steroids, inhalers, nebulizers, and continuous supplemental oxygen. *Id.* at 64, 67-69, 70-73, 81-82. Further, the Miner's treatment records indicate he was discharged from the hospital on September 23, 2010 "to hospice for terminal care" because he had COPD exacerbation, "progressive decline," worsening shortness of breath, and lung cancer with a "very poor prognosis." *Id.* at 64.

The ALJ accurately noted the Miner's treatment records of his hospitalizations during the last two months preceding his death "consistently documented significant respiratory and pulmonary deficiencies." Decision and Order on Modification at 8; *see* Director's Exhibits 16-18. He also noted the Miner's treatment records state he "routinely complained of respiratory and pulmonary symptoms." *Id.* In addition, the ALJ noted the Miner's treatment records always included a "COPD exacerbation diagnosis" and documented his "use of supplemental oxygen therapy at home and a prescription for supplemental oxygen upon discharge from his final hospitalization . . . a mere [ten] days before his death." *Id.* He thus permissibly found the Miner's treatment records well-documented and credible based on their descriptions of his symptoms and their findings, diagnoses, and treatment. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order on Modification at 8. Based on the Miner's treatment records, the ALJ permissibly found that he was unable, from a respiratory or pulmonary standpoint, to perform the exertional requirements of his usual coal mine work at the time of his death. *Scott*, 60 F.3d at 1142; *Poole*, 897 F.2d at 894; *McMath*, 12 BLR at 1-9; Decision and Order on Modification at 8; Employer's Brief at 9-10 (unpaginated).

We also reject Employer's argument that the ALJ erred in crediting the Miner's treatment records because they are not reasoned or supported by the objective evidence. Employer's Brief at 8-11 (unpaginated). It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 316-17 (4th Cir. 2012). Employer's argument is 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).

We further reject Employer's argument that the ALJ erred in discrediting Dr. Castle's opinion.⁸ Employer's Brief at 10 (unpaginated). As the ALJ correctly stated, Dr.

⁸ Employer does not challenge the ALJ's finding that Dr. Bush's opinion is entitled to no weight because the doctor did not render a finding on the issue of total disability; thus, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order on Modification at 6 n.33.

Castle did not render a disability opinion in his medical report or deposition. Decision and Order on Modification at 6 n.33; *see* Director’s Exhibits 41, 46. Based on his review of Dr. Bush’s reports and the Miner’s treatment records, Dr. Castle stated he was unable to determine the extent of any impairment the Miner may have had or whether he was able to perform his usual coal mine work. Director’s Exhibit 46 at 32-33. Thus, substantial evidence supports the ALJ’s finding that Dr. Castle’s opinion is entitled to no weight. *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order on Modification at 6.

Because substantial evidence supports it, we affirm the ALJ’s finding that Claimant established the Miner was totally disabled from a pulmonary or respiratory impairment at the time of his death based on his treatment records, 20 C.F.R. §718.204(b)(2)(iv), and in consideration of the evidence as a whole. 20 C.F.R. §718.204(b); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order on Modification at 8-9. We therefore affirm the ALJ’s finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305; Decision and Order on Modification at 9.

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,⁹ or that “no part of [his] death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201.” 20 C.F.R. §718.305(d)(2)(i), (ii). The ALJ found Employer did not establish rebuttal by either method.

Employer stipulated that the Miner had clinical pneumoconiosis.¹⁰ Decision and Order on Modification at 9; Director’s Exhibits 45 at 6; 52 at 3 n.3; 56 at 1; Hearing Tr. at 5-6. Consequently, Employer is foreclosed from rebutting the Section 411(c)(4)

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).

¹⁰ Stipulations of fact fairly entered into are binding on the parties. *See Richardson v. Director, OWCP*, 94 F.3d 164, 167 (4th Cir. 1996); *Consolidation Coal Co. v. Director, OWCP [Burris]*, 732 F.3d 723, 730 (7th Cir. 2013).

presumption by establishing that the Miner did not have clinical pneumoconiosis. Although Employer's failure to disprove clinical pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis, we will address rebuttal of legal pneumoconiosis because the ALJ relied on those findings in evaluating the second method of rebuttal, death causation.

Legal Pneumoconiosis

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." See 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(2)(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. Bush and Castle. Decision and Order on Modification at 10-12. They opined the Miner did not have legal pneumoconiosis but had COPD, chronic bronchitis, emphysema, and lung cancer related to his tobacco smoking, and unrelated to his coal mine dust exposure. Director's Exhibits 19 at 2, 5; 41 at 42; 46 at 7, 10, 21. The ALJ found their opinions unpersuasive and assigned them "no probative weight." Decision and Order on Modification at 12.

Initially, we reject Employer's argument that the ALJ applied the wrong standard when addressing the issue of rebuttal of legal pneumoconiosis. Employer's Brief at 12-14, 18-19 (unpaginated). Contrary to Employer's argument, the ALJ applied the correct standard by requiring Employer to affirmatively disprove the existence of legal pneumoconiosis by a preponderance of the evidence. 20 C.F.R. §§718.201(b)(2), (c), 718.305(d)(2)(i)(A); see *Minich*, 25 BLR at 1-155 n.8; Decision and Order on Modification at 10. Moreover, as discussed below, the ALJ discredited the opinions of Drs. Bush and Castle because they failed to adequately explain their conclusions that any lung disease or impairment the Miner had was unrelated to his coal mine dust exposure -- not because they failed to meet a heightened legal standard. Decision and Order on Modification at 10-12.

Dr. Bush noted the Miner's smoking history "accounts for the findings of an increase in mucus cells in intramural glands and centrilobular emphysema in the lung parenchyma not related to dust deposits." Director's Exhibit 19 at 5. He opined the Miner's lung carcinoma is "not associated with coal dust exposure." *Id.* at 2, 5. Dr. Castle noted the Miner's coal mine dust exposure "ha[d] no causal relationship" to his lung cancer and his "limited amount" of pneumoconiosis "played no role whatsoever in causing, contributing to, or hastening [his] death." Director's Exhibit 41 at 42. He attributed the Miner's condition to "two bronchogenic carcinomas related to his long smoking history"

and stated his smoking history is “certainly sufficient enough” to have caused his COPD, chronic bronchitis, emphysema and lung cancer. Director’s Exhibits 41 at 40; 46 at 7, 10.

Contrary to Employer’s argument, the ALJ permissibly found Drs. Bush and Castle did not adequately explain why the Miner’s history of coal mine dust exposure did not significantly contribute, along with his history of cigarette smoking, to his COPD. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 (4th Cir. 2017); *Helen Mining Co. v. Director, OWCP [Obush]*, 650 F.3d 248, 257 (3d Cir. 2011); 20 C.F.R. §718.201(b); 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000); Decision and Order on Modification at 10-11.

Further, the ALJ permissibly found Dr. Castle’s opinion unpersuasive because the doctor’s testimony that there is no documentation of COPD is unfounded and inconsistent with his earlier report and the Miner’s treatment records. Decision and Order on Modification at 12; *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441. Specifically, Dr. Castle testified “the records that [he] reviewed did not provide documentation of COPD.” Director’s Exhibit 46 at 21. However, in his initial medical report, he stated COPD was “indeed present,” he diagnosed the Miner with the disease, and he made multiple references to the Miner’s treatment records discussing COPD. Director’s Exhibits 16-18; 41 at 12, 25, 27, 28, 30, 34-38, 40.

Because the ALJ acted within his discretion in discrediting the opinions of Drs. Bush and Castle, the only medical opinions supportive of Employer’s burden, we affirm his finding that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(2)(i)(A); Decision and Order on Modification at 12. We therefore affirm the ALJ’s finding that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(2)(i). Decision and Order on Modification at 12.

Death Causation

The ALJ next considered whether Employer established “no part of [the Miner’s] death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201.” 20 C.F.R. §718.305(d)(2)(ii). The ALJ rationally discredited Drs. Bush’s and Castle’s opinions on death causation because they did not diagnose legal pneumoconiosis, contrary to his 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); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order on Modification at 12-13. As it is supported by substantial evidence, we affirm the ALJ’s finding that Employer failed to establish no part of the Miner’s death was due to pneumoconiosis. 20 C.F.R. §718.305(d)(2)(ii).

We therefore affirm the ALJ's findings that Employer did not rebut the Section 411(c)(4) presumption, 20 C.F.R. §718.305(d)(2), and Claimant established a mistake in a determination of fact. 20 C.F.R. §725.310; Decision and Order on Modification at 13-14. We further affirm, as unchallenged, the ALJ's finding that granting modification would render justice under the Act. *See Skrack*, 6 BLR at 1-711; Decision and Order on Modification at 14. Therefore, we affirm the award of benefits.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge