U.S. Department of Labor

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

BRB No. 24-0063 BLA

GERALD W. SMITH Claimant-Respondent v. KENAMERICAN RESOURCES, INCORPORATED and ROCKWOOD CASUALTY INSURANCE COMPANY Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 05/16/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Willow Eden Fort, Administrative Law Judge, United States Department of Labor.

M. Alexander Russell (Vowels Law PLC), Henderson, Kentucky, for Claimant.

James M. Kennedy (Baird and Baird, P.S.C.), Pikesville, Kentucky, for Employer.

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

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

Employer appeals Administrative Law Judge (ALJ) Willow Eden Fort's Decision and Order Awarding Benefits (2021-BLA-06013) rendered on a miner's claim filed on October 22, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[1]

The ALJ credited Claimant with thirty-six years of qualifying coal mine employment and found he has a totally disabling respiratory or pulmonary impairment, thereby invoking the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §§718.204(b)(2), 718.305. She further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant is totally disabled.[3] Claimant responds in support of the award of benefits. The Acting 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.[4] 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).

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[1] Claimant previously filed a claim which he later withdrew. Director's Exhibits 1; 37 at 7. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306(b).

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability is due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant had thirty-six years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See*

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. 20 C.F.R. §§718.204(b)(2), 718.305(b)(1)(i). 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). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,[5] 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 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 Claimant established total disability based on the medical opinions and the weight of the evidence as a whole.[6] 20 C.F.R. §718.204(b)(2); Decision and Order at 15.

Claimant's Usual Coal Mine Employment

Before weighing the medical opinions, the ALJ determined the exertional requirements of Claimant's usual coal mine employment. Decision and Order at 5-6. A miner's usual coal mine employment is the most recent job he performed regularly and over a substantial period of time. *See Pifer v. Florence Mining Co.*, 8 BLR 1-153, 1-155 (1985); *Shortridge v. Beatrice Pocahontas Coal Co.*, 4 BLR 1-534, 1-539 (1982).

The ALJ considered Claimant's CM-913 employment history form and hearing and deposition testimony to find the Miner's usual coal mine employment was working as a maintenance director, which required "very heavy" manual labor. Decision and Order at 5-6. Employer contends the ALJ erred in her findings regarding the exertional

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Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4; Hearing Transcript at 36.

[5] 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).

[6] The ALJ found Claimant did not establish total disability based on the pulmonary function or arterial blood gas studies and there was no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 5, 9-10.

requirements of Claimant's work as a maintenance director.[7] Employer's Brief at 5-12. We disagree.

Claimant testified at the hearing that his last coal mine employment was working as a maintenance manager. Hearing Transcript at 40. He explained this job required some time directing work, as well as hauling heavy parts to and from the warehouse for maintenance. *Id.* at 40, 44-45, 58-59. Specifically, he testified he was required to lift heavy objects every day; the lightest item he would lift on his own was a bucket of oil weighing thirty pounds, and he estimated the heaviest object might be a drive that weighed sixty-five to seventy pounds. *Id.* at 44, 64. In addition, he would at times drag motors weighing 500 to 600 pounds and shuttle car tires weighing 600 to 700 pounds using various devices such as come-alongs, chains, and pulleys with the help of a "couple of people." *Id.* at 45, 61-62. He also explained he had to crawl into small spaces, climb on machinery, and usually walk bent over. *Id.* at 46-47.

Claimant provided similar testimony in his deposition, indicating his last job was working as a maintenance coordinator, directing work at the beginning of a shift, ensuring "everything ran," and dragging heavy motors weighing around 450 pounds and shuttle car tires weighing 500 or 600 pounds by "any means possible" using come-alongs, blocks, and pry bars – sometimes with "two or three guys." Employer's Exhibit 2 at 63-65. He noted a come-along itself weighs fifty to sixty pounds and his tool belt weighed fifty pounds. *Id.* at 77. Further, he testified that he climbed twenty sets of stairs to inspect machinery and performed most of his labor bent over as the mine had a forty-eight-inch to fifty-four-inch coal seam. *Id.* at 66.

On his CM-913 form, Claimant reported his last job as maintenance director required him to sit for less than two hours per day, stand for ten or more hours per day, crawl various distances per day, and lift and carry up to fifty pounds "multiple/varied" times per day. Director's Exhibit 5. He noted the height of the coal seam was approximately fifty-four inches. *Id.*

The ALJ found Claimant's testimony credible and corroborated by his CM-913 form. Decision and Order at 6. She concluded that because Claimant was required to stand bent over for most of his shift, drag heavy equipment weighing in excess of 300 pounds, and lift and carry up to fifty pounds multiple times a day, his work involved "very heavy manual labor." *Id.*

[7] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant's usual coal mine employment was working as a maintenance director. *See Skrack*, 6 BLR at 1-711; Decision and Order at 6.

Initially, we reject Employer's assertion that the ALJ failed to adequately address, in violation of the Administrative Procedure Act (APA), the alleged conflicts in Claimant's work descriptions when finding Claimant's usual coal mine work required very heavy manual labor. Employer's Brief at 7; *see* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). Contrary to Employer's contention, the ALJ specifically considered the relevant evidence and found Claimant's testimony regarding his job requirements consistent with his CM-913 form and, therefore, credible. Decision and Order at 5-6.

During Claimant's hearing and deposition testimony, he recounted multiple heavy objects he was required to drag or lift in his last coal mining job, in addition to crawling, climbing, and working bent over. *See* Hearing Transcript at 40-44; Employer's Exhibit 2 at 64-65; Decision and Order at 5-6. Employer has not contended the ALJ erred in finding Claimant's testimony credible. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002) (it is within the purview of the ALJ to weigh the evidence, draw inferences, and determine credibility); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983) (ALJ is granted broad discretion in evaluating the credibility of the evidence, including witness testimony). As the ALJ noted, Claimant also reported on his CM-913 form that he lifted heavy objects multiple times a day, crawled various distances, and worked bent over.[8] Decision and Order at 6. Thus, she considered the relevant evidence and permissibly found Claimant's testimony was consistent with his CM-913 form and, therefore, credible.[9]

[8] While not specifically noted by the ALJ, Claimant also explained on his CM-913 form that he worked alongside the workers he supervised and "perform[ed] the same duties," which further supports her finding that Claimant's CM-913 form is consistent with his testimony. Director's Exhibit 5.

[9] Employer implies that Claimant's allegedly conflicting job descriptions do not all refer to his last job as working as a maintenance director, as he worked different jobs for Employer, specifically noting his deposition testimony regarding a "shop job" he performed. Employer's Brief at 6-7, 11. Claimant acknowledged he had different job titles during his time with Employer, Director's Exhibit 5, but testified the duties of his last job were the "basically" the same as the day he started - "just repairing equipment wherever it broke down." Hearing Transcript at 63-64. In addition, while different terms were used interchangeably to refer to Claimant's last job position, including maintenance coordinator, maintenance manager, maintenance foreman, and maintenance director, the ALJ reasonably found Claimant consistently described lifting and dragging heavy objects as duties of his last coal mine job. *See Director, OWCP v. Rowe*, 710 F.2d 251, 254-55 (6th Cir. 1983); Decision and Order at 6; Director's Exhibit 5; Employer's Exhibit 2 at 63-65; Hearing Transcript at 40, 44-45, 66.

Decision and Order at 6; *see Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); *see also Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 (4th Cir. 1999) (APA duty of explanation is satisfied if reviewing court can discern what the ALJ did and why he did it).

Employer next contends the ALJ "mistakenly inferred" that Claimant dragged heavy equipment weighing between 300 and 600 pounds without the help of mechanical devices or other workers and did not resolve how much he lifted on his own. Employer's Brief at 8-9. It further contends Claimant repeatedly explained that his work varied and "never said" he regularly moved this amount of weight, or it was a "usual task." Employer's Brief at 5, 7. Employer's arguments are unpersuasive.

Although the ALJ did not specifically note Claimant's use of devices to assist in dragging heavy equipment, nothing in the decision indicates she "inferred" Claimant moved the equipment without help. Indeed, the ALJ specifically considered that Claimant dragged the heavy equipment with the help of two or three other people. Decision and Order at 5. Further, contrary to Employer's contention, the ALJ drew a distinction between Claimant's duties of dragging heavy equipment and his lifting and carrying objects on a regular basis, concluding Claimant: 1) dragged equipment weighing 300 to 600 pounds and 2) lifted and carried objects weighing up to fifty pounds. *Id.* at 6.

Moreover, Employer does not explain how dragging equipment weighing 300 or more pounds with help would change the ALJ's finding that Claimant's job required very heavy manual labor, nor does it address Claimant's other job duties the ALJ relied on.[10] *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").

Finally, contrary to Employer's argument, Claimant is not required to establish that he dragged heavy equipment "regularly" to establish it was part of his duties for purposes of determining his usual coal mine employment. *See Eagle v. Armco Inc.,* 943 F.2d 509, 511-12 & n.4 (4th Cir. 1991) (whether a miner can perform his usual coal mine work depends on whether he can perform the "most arduous" part of that work); *Heavilin v. Consolidation Coal Co.*, 6 BLR 1-1209, 1-1213 (1984) (determination of nature of usual coal mine work and its physical requirements is for the fact-finder). As substantial

[10] Employer's arguments focus solely on how much weight Claimant lifted or moved; however, the ALJ also permissibly considered Claimant's other job duties in making her determination. *See Heavilin v. Consolidation Coal Co.*, 6 BLR 1-1209, 1-1213 (1984) (determination of nature of usual coal mine work and its physical requirements is for the factfinder).

evidence supports it, we affirm the ALJ's determination that Claimant's usual coal mine employment required very heavy manual labor.[11] *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005).

Medical Opinions

The ALJ considered the medical opinions of Drs. Majmudar and Istanbouly, who opined Claimant is incapable of performing his usual coal mine employment, and those of Drs. Tuteur and Jarboe, who opined that Claimant is not totally disabled. Decision and Order at 10-15; Director's Exhibit 24; Claimant's Exhibits 6, 7; Employer's Exhibits 3, 7, 8, 11. The ALJ found Drs. Majmudar and Istanbouly had an accurate understanding of the exertional requirements of Claimant's usual coal mine employment, found their opinions well-reasoned and documented, and accorded their opinions probative weight. Decision and Order at 11, 14-15. She found Drs. Tuteur's and Jarboe's opinions unsupported and poorly reasoned as they failed to adequately explain how Claimant could perform his usual coal mining work, thus according their opinions little probative weight. *Id.* at 12-13. Weighing the medical opinions together, she found they weigh in favor of a finding of total disability. *Id.* at 15. Employer argues the ALJ erred in weighing the medical opinions. Employer's Brief at 8-9, 12-13. We disagree.

Total disability can be established with a reasoned medical opinion even "[w]here total disability cannot be shown" by qualifying objective testing, as a non-qualifying impairment may still render a miner incapable of performing his usual coal mine work. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment). In determining whether a miner is totally disabled, the ALJ must compare the exertional requirements of a miner's usual coal mine work with the physician's description of the miner's pulmonary impairment and

[11] Further, we reject Employer's argument that the ALJ was required to cite to or provide judicial notice of the *Dictionary of Occupational Titles* (DOT) because she "seemingly relied" on it to determine the exertional level of Claimant's usual coal mine employment. Employer's Brief at 10. The ALJ does not reference the DOT or its definitions and thus was not required to take notice of the DOT. *See Snorton v. Zeigler Coal Co.*, 9 BLR 1-106, 1-107-08 (1986). Further, she may classify the exertion required by a miner's usual coal mine employment based on the evidence of record without using the DOT. *See Cross Mountain Coal,* 93 F.3d 211, 218 (6th Cir. 1996); *Eagle v. Armco Inc.*, 943 F.2d 509, 511-13 (4th Cir. 1991); *Onderko v. Director, OWCP*, 14 BLR 1-2, 1-4-5 (1989).

physical limitations. *See Cornett*, 227 F.3d at 578; *Cross Mountain Coal, Inc. v. Ward*, 93 F.3d 211, 218-19 (6th Cir. 1996); *Eagle*, 943 F.2d at 512 n.4.

Dr. Majmudar opined Claimant is totally disabled because his last coal mine job was "very laborious" and required a "tremendous amount" of oxygen and endurance. Director's Exhibit 24 at 2-3; Claimant's Exhibit 6 at 2. While acknowledging Claimant's FEV1 values on pulmonary function testing were "slightly" above the threshold of qualifying for disability, Dr. Majmudar opined the values were "too low for him to carry out the work that he was doing." Director's Exhibit 24 at 3. Dr. Istanbouly opined Claimant has a "severe" impairment, preventing him from performing any physical job based on the pulmonary function studies showing moderate obstruction, abnormal blood gas studies, and documented chronic respiratory symptoms. Claimant's Exhibit 7 at 2-3.

Dr. Tuteur opined Claimant has the pulmonary capacity to "return to work in the coal mine industry" as none of the valid objective studies meet disability standards; however, he acknowledged Claimant experiences breathlessness, which the doctor believed could be explained by cardiac issues or obesity. Employer's Exhibits 3 at 3; 7 at 16-17, 20-21, 37. Dr. Jarboe also opined Claimant retains the capacity to perform the physical demands of his last coal mine work because the pulmonary function studies produced non-qualifying values, "especially after bronchodilators," and the blood gas studies produced "basically normal values." Employer's Exhibit 8 at 23, 26-27; Employer's Exhibit 11 at 6. He opined that Claimant's dyspnea is "best explained" by asthma and obesity. Employer's Exhibits 8 at 41-22; 11 at 6. Thus, he did not believe the objective studies support a finding that Claimant's work is too strenuous for him to perform as he did not believe Claimant would have to perform the heaviest labor on a "sustained and constant basis." Employer's Exhibit 8 at 28-30.

Initially, insofar as Employer's argument that the ALJ erred in crediting Drs. Majmudar's and Istanbouly's opinions relies on its contention that the ALJ erred in finding Claimant's usual coal mine work required very heavy manual labor, we reject its argument, as we have affirmed the ALJ's finding on this issue. *See* Employer's Brief at 8-9.

Further, as Employer notes and the ALJ acknowledges, Dr. Istanbouly did not specifically discuss the exertional requirements of Claimant's usual coal mine work; however, the ALJ reasonably found Dr. Istanbouly nonetheless had an accurate understanding of the exertional requirements because he indicated he reviewed Claimant's CM-913 form. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); Decision and Order at 14-15; Claimant's Exhibit 7 at 12. Further, Dr. Istanbouly opined Claimant was totally disabled from performing any physical job; thus, even assuming the ALJ failed to adequately assess his understanding of the exertional requirements of

Claimant's usual coal mine employment, any such error is harmless.[12] *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); *DeFlice v. Consolidation Coal Co.*, 5 BLR 1-275 (1982) (opinion which concludes a miner's impairment precludes him from doing any work is sufficient to support a finding of total disability); Claimant's Exhibit 7 at 3; Decision and Order at 14-15. Thus, we affirm, as supported by substantial evidence, the ALJ's finding that Drs. Majmudar's and Istanbouly's opinions are well-reasoned and supported by the evidence they considered. *See Napier*, 301 F.3d at 713-14; Decision and Order at 15.

Employer further contends the ALJ erred in discrediting Drs. Tuteur's and Jarboe's opinions, as they did not premise their opinions on any exertional level; rather, they found Claimant can perform any coal mine work. Employer's Brief at 12-13. It further argues the doctors explained their opinions based on the objective studies. *Id.* Employer's arguments are unpersuasive.

The ALJ permissibly found Dr. Tuteur's opinion did not adequately explain how Claimant could perform his usual coal mine employment requiring very heavy labor given he acknowledged Claimant's breathlessness and accounts of physical limitations, including the inability to walk more than 500 feet or climb more than one flight of stairs. *See Napier*, 301 F.3d at 713-14; *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, 1-51-52 (1986) (en banc) (description of physical limitations in performing routine tasks may be sufficient to allow the ALJ to infer total disability); Decision and Order at 12; Employer's Exhibit 3 at 2. Similarly, the ALJ permissibly discredited Dr. Jarboe's opinion that Claimant could return to his last coal mine job, as he did not adequately explain how Claimant could perform what Dr. Jarboe acknowledged was "heavy to very heavy" manual labor, given the doctor identified mild restriction on some of the objective studies and was aware Claimant became short of breath after walking 100 feet. *See Napier*, 301 F.3d at 713-14; *Cornett*, 227 F.3d at 578; *Budash*, 9 BLR at 1-51-52; Decision and Order at 12; Employer's Exhibits 8 at 8, 45, 48; 11 at 4.

Employer's arguments are a request to reweigh the evidence which the Board is not empowered to do. *Crockett Colleries, Inc. v. Director, OWCP* [*Barrett*], 478 F.3d 350, 352-53 (6th 2007); *Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113

[12] Employer also contends that Dr. Istanbouly's opinion should be discredited given his statement that Claimant is totally disabled from his usual coal mining work because further exposure to coal mine dust would aggravate his condition, which is not a valid basis to find total disability. Employer's Brief at 9 (citing *Taylor v. Evans & Gambrel Co.*, 12 BLR 1-83 (1988)). However, as noted, that was not the sole basis of Dr. Istanbouly's opinion; thus, we reject Employer's argument.

(1989). Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv) and when weighing the evidence as a whole. 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 15.

We therefore further affirm that Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis. 20 C.F.R. §718.305; Decision and Order at 15. Moreover, because Employer does not challenge the ALJ's finding that it failed to rebut the Section 411(c)(4) presumption, we affirm that determination.[13] *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 24.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

[13] While Employer generally states the ALJ erred in considering the medical opinion evidence "initially and on rebuttal," it provides no arguments identifying the ALJ's alleged errors on rebuttal absent those already addressed. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446 (6th Cir. 1986); Employer's Brief at 12.

I concur in the result only.

JUDITH S. BOGGS
Administrative Appeals Judge