U.S. Department of Labor

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

BRB No. 24-0104 BLA

GLEN P. PECK, JR. Claimant-Respondent v. CONSOL MINING COMPANY, LLC/CONSOL ENERGY, INCORPORATED Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 05/13/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Awarding Benefits (2022-BLA-05616) rendered on a claim[1] filed on January 22, 2021, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulation of at least thirty-four years of qualifying coal mine employment and found Claimant established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). She therefore found Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[2] The ALJ further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer challenges the ALJ's findings that it failed to rebut the Section 411(c)(4) presumption.[3] Claimant and the Acting Director, Office of Workers' Compensation Programs, have not filed responses.

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).

[1] Claimant filed three prior claims, all of which he later withdrew. Director's Exhibits 1-3. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306(b).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 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); 20 C.F.R. §718.305.

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant 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 5, 13-14.

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 21-22.

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,[5] 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 Employer failed to establish rebuttal by either method.[6] Decision and Order at 13-31.

Legal Pneumoconiosis

While Employer's failure to disprove clinical pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis under 20 C.F.R. §718.305(d)(1)(i), we will address rebuttal of legal pneumoconiosis because the ALJ relied, in part, on those findings in evaluating the second method of rebuttal, disability causation. Decision and Order at 32-33. To disprove legal pneumoconiosis, Employer must establish Claimant does 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).

Employer relied on Dr. Sargent's opinion that Claimant's coal mine dust exposure "has not substantially contributed to his impairment," but rather Claimant has pulmonary fibrosis due to his previous COVID-19 infection with pneumonia in 2020.[7] Employer's Exhibits 1, 30. The ALJ also considered the opinions of Drs. Habre and Harris, who

[5] "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).

[6] The ALJ found Employer failed to disprove clinical pneumoconiosis. Decision and Order at 31. As Employer does not challenge this finding, we affirm it. *See Skrack*, 6 BLR at 1-711.

[7] Dr. Sargent acknowledged that a "low profusion" of simple clinical pneumoconiosis is also present. Employer's Exhibit 30.

diagnosed legal pneumoconiosis in the form of chronic bronchitis significantly related to Claimant's coal mine dust exposure.[8] Director's Exhibit 24; Claimant's Exhibit 4. The ALJ found Dr. Sargent's opinion unpersuasive and thus found Employer did not rebut legal pneumoconiosis. Decision and Order at 26-27.

Employer argues the ALJ substituted her own opinion for that of a physician when she discredited Dr. Sargent's opinion based on his statement that Claimant was not impaired before he contracted COVID-19 in 2020, when, it asserts, the ALJ found Claimant's 2016 arterial gas study was abnormal "based on her own determination." Employer's Brief at 4. We do not find Employer's argument persuasive.

Employer addresses only the ALJ's finding (made in a footnote) that the 2016 arterial blood gas study obtained before Claimant's COVID-19 infection undermined Dr. Sargent's opinion that Claimant's COVID-19 infection caused his disability. *See* Employer's Brief at 4-5. However, this finding was not the only basis the ALJ provided for discrediting Dr. Sargent's opinion regarding legal pneumoconiosis. The ALJ also found Dr. Sargent did not explain why, contrary to the other physicians of record, he did not diagnose chronic bronchitis based on Claimant's symptoms of shortness of breath and chronic cough or address whether it constituted legal pneumoconiosis. Decision and Order at 26-27, 33. She further found Dr. Sargent failed to explain why coal mine dust exposure did not substantially cause or significantly aggravate Claimant's restrictive defect. *Id.* at 27. As Employer has not challenged these reasons for discrediting Dr. Sargent's legal pneumoconiosis opinion, we affirm them.[9] *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Therefore, we affirm the ALJ's finding that Employer failed to rebut the presumption that Claimant has legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 31-32.

[8] Dr. Harris also opined that the fibrosis identified on Claimant's x-rays and computed tomography (CT) scans reflects progression of his clinical pneumoconiosis, which was identified prior to his diagnosis of COVID-19. Claimant's Exhibit 4.

[9] We further affirm, as unchallenged on appeal, the ALJ's findings that Dr. Adcock's medical opinion based on the radiographic evidence "lacks probative value" regarding legal pneumoconiosis, that Claimant's treatment records are of limited probative value on the issue of pneumoconiosis, and that the CT scans do not address legal pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order at 27, 31.

Disability Causation

The ALJ next considered whether Employer established "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); Decision and Order at 32. Because Dr. Sargent failed to diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer failed to rebut the presumption that Claimant has legal pneumoconiosis, substantial evidence supports the ALJ's finding that Dr. Sargent's disability causation opinion is not credible. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015) (where a physician erroneously fails to diagnose pneumoconiosis, his opinion as to disability causation "is not worthy of much, if any, weight"); Decision and Order at 32-33. Moreover, the ALJ found no reasoned medical opinion ruled out clinical pneumoconiosis as a cause of Claimant's total disability, a finding Employer does not specifically contest. Decision and Order at 33; Employer's Brief; *see Skrack*, 6 BLR at 1-711. We therefore affirm the ALJ's finding that Employer failed to establish that no part of Claimant's respiratory disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge