U.S. Department of Labor

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

BRB No. 24-0318 BLA

MICHAEL R. SARGENT (Deceased)[1]	)	
	)	
Claimant	)	
	)	
v.	)	**NOT-PUBLISHED**
	)	
CUMBERLAND RIVER COAL COMPANY	)	
	)	
Employer-Petitioner	)	DATE ISSUED: 05/12/2025
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

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

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

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

PER CURIAM:

[1] Claimant died on October 31, 2022, while Employer's first appeal was pending before the Board. Decision and Order on Remand at 2 (unpaginated).

Employer appeals Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order on Remand Granting Benefits (2018-BLA-06093) 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 claim filed on April 4, 2017, and is before the Benefits Review Board for the second time.

In her initial Decision and Order Granting Benefits, the ALJ found Employer is the properly designated responsible operator. She found Claimant established at least fifteen years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment. Thus, she found Claimant invoked 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). The ALJ further found Employer did not rebut the presumption and therefore awarded benefits.

In response to Employer's appeal, the Board affirmed the ALJ's findings that Employer is the responsible operator and Claimant invoked the Section 411(c)(4) presumption. *Sargent v. Cumberland River Coal Co.*, BRB No. 21-0051 BLA, slip op. at 2 n.2, 5 (Dec. 21, 2022) (unpub.) (Buzzard, J., concurring). However, it vacated her finding that Employer did not rebut the presumption of legal pneumoconiosis because she did not adequately address the medical opinions, including rendering a finding regarding Claimant's smoking history. *Id*. at 7-9. Having vacated the ALJ's finding on legal pneumoconiosis, the Board also vacated her determination that Employer failed to disprove disability causation at 20 C.F.R. §718.305(d)(1). *Id.* at 8-9. Thus, the Board vacated the award of benefits and remanded the case for further consideration. *Id*.

On remand, the ALJ again found Employer did not rebut the presumption and awarded benefits. On appeal, Employer contends the ALJ erred in finding it did not rebut the presumption. No response has been received on Claimant's behalf. The Director, Office of Workers' Compensation Programs, declined to file a response brief.

The 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.[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 (1965).

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[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled 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. 30 U.S.C. §92l(c)(4) (2018); *see* 20 C.F.R. §7l8.305.

[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*

Rebuttal of the Section 411(c)(4) Presumption

Legal Pneumoconiosis

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he had neither legal nor clinical pneumoconiosis[4] 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).

Dr. Dahhan opined that Claimant did not have legal pneumoconiosis but instead had chronic obstructive pulmonary disease (COPD) caused exclusively by cigarette smoking and unrelated to coal dust exposure. Director's Exhibits 28, 30, 36; Employer's Exhibit 2. Conversely, Dr. Green opined that Claimant's COPD was caused by both smoking and coal mine dust exposure. After summarily concluding that "both smoking and exposure to coal dust likely contributed to the obstructive pulmonary/ventilatory impairment[,]" the ALJ gave greater probative weight to Dr. Green's opinion. Decision and Order on Remand at 6-7 (unpaginated). Consequently, the ALJ determined that Employer failed to rebut the presumption that Claimant had legal pneumoconiosis. *Id*. at 7 (unpaginated).

We agree with Employer's argument that the ALJ once again failed to adequately weigh the medical opinion evidence. *See* Employer's Brief at 7-16.

As the ALJ failed to consider and address the credibility of the rationales Drs. Dahhan and Green provided for their opinions -- including their findings regarding Claimant's smoking history -- her findings again do not comport with the explanatory

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v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order on Remand at 2 (unpaginated) n.4; Director's Exhibits 3, 5; *see also Sargent v. Cumberland River Coal Co.*, BRB No. 21-0051 BLA, slip op. at 2 n.3, 3-4 (Dec. 21, 2022) (unpub.) (Buzzard, J., concurring).

[4] "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).

requirements of the Administrative Procedure Act (APA).[5] *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co*., 12 BLR 1-162, 1-165 (1989); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683, 1-686 (1985) (ALJ is responsible for making a factual determination as to the length and extent of a miner's smoking history and the effect, if any, of an inaccurate smoking history on the credibility of a medical opinion).

Given the ALJ's errors, we must vacate her weighing of the medical opinion evidence and remand this case for further consideration. We thus vacate her determination that Employer failed to rebut the Section 411(c)(4) presumption by disproving legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i). And because the ALJ's errors on the issue of legal pneumoconiosis affected her credibility findings on the issue of disability causation, we vacate her finding that Employer failed to prove no part of Claimant's respiratory disability was due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). Thus, we vacate the award of benefits.

Remand Instructions

The ALJ must first reconsider whether Employer has rebutted the Section 411(c)(4) presumption by disproving the existence of legal pneumoconiosis. The ALJ should determine whether Employer disproved the existence of legal pneumoconiosis by affirmatively establishing Claimant did not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment" by a preponderance of the evidence. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018) (rebuttal inquiry is "whether the employer has come forward with

[5] The Administrative Procedure Act provides that every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). Dr. Green reported a smoking history of one-half pack per day for twenty-five years in his initial opinion and one-half pack per day for thirty-two years in his supplemental opinion, whereas Dr. Dahhan recorded a history of thirty-six pack years. Director's Exhibits 28 at 2; 36; Employer's Exhibit 2 at 1. The ALJ acknowledged that both physicians believed that Claimant still smoked at the time of their evaluations based on his carboxyhemoglobin levels, but stated she was unable to determine whether Claimant currently smoked because he did not testify at the hearing and did not have additional carboxyhemoglobin testing. Decision and Order on Remand at 6 (unpaginated). Then, without further explanation, she concluded that Claimant had "at least a 26 years ½ pack a day smoking history." *Id*.

affirmative proof that the [miner] does not have legal pneumoconiosis, because his impairment is not in fact significantly related to his years of coal mine employment"); *Minich,* 25 BLR at 1-155 n.8.

Employer has the burden of proof; therefore, the ALJ first must determine whether Dr. Dahhan's opinion is reasoned and documented. Director's Exhibit 30; Employer's Exhibit 2. If it is not, then Employer has failed to disprove legal pneumoconiosis without regard to the weight given to Dr. Green's opinion. Dr. Dahhan opined that Claimant's COPD is due solely to cigarette smoking with no contribution from Claimant's thirty-four years of dust exposure and therefore not legal pneumoconiosis. Director's Exhibit 30; Employer's Exhibit 2. He relied in part on his belief that Claimant's impairment is too severe to have been caused by coal mine dust exposure alone, while his smoking history was sufficient to cause the whole of his impairment. Director's Exhibit 30; Employer's Exhibit 2. He further opined Claimant's coal mine employment would not be "considered as being heavy or significantly injurious to the respiratory system" as it was performed on the surface and he "did not operate a drill" but instead loaded coal and rock. Employer's Exhibit 2. Finally, he opined that Claimant's significant response to the administration of bronchodilators on pulmonary function testing is consistent with cigarette smoking and not coal mine dust exposure. Director's Exhibit 30; Employer's Exhibit 2.

If the ALJ finds Dr. Dahhan's opinion that coal dust did not contribute to Claimant's impairment to be credible on its own terms, she must determine whether it is persuasive when weighed against Dr. Green's contrary opinion. In that case, the ALJ should address the comparative credentials of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). She must critically analyze the evidence and explain the bases for her credibility determinations, findings of fact, and conclusions of law as the APA requires. *See Wojtowicz*, 12 BLR at 1-165. In doing so, the ALJ should address the credibility of the medical opinions based on her specific findings as to Claimant's smoking history. *Trumbo v. Reading Anthracite Co*., 17 BLR 1-85, 1-89 (1993); *Sellards v. Director, OWCP*, 17 BLR 1-77, 1-80-81 (1993).

If the ALJ determines Employer has rebutted the Section 411(c)(4) presumption by establishing Claimant did not have pneumoconiosis, the ALJ must deny benefits. If the ALJ finds Employer has not disproven that Claimant had pneumoconiosis, she must reconsider whether Employer has established that "no part of the [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).

Accordingly, we vacate the ALJ's Decision and Order on Remand Granting Benefits, and we remand the case to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge