U.S. Department of Labor

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

BRB No. 24-0474 BLA

DWIGHT W. ESTEP Claimant-Petitioner v. BROOKS RUN SOUTH MINING, LLC Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 05/30/2025 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

Dwight W. Estep, Hanover, West Virginia.

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for Employer.

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

PER CURIAM:

Claimant appeals, without representation,[1] the Decision and Order Denying Benefits (2022-BLA-05006) of Administrative Law Judge (ALJ) Theresa C. Timlin rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim filed on January 24, 2020.[2]

The ALJ found Claimant did not establish complicated pneumoconiosis and therefore could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304. She further found Claimant had more than fifteen years of qualifying coal mine employment but does not have a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant unable to invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018), to establish a change in an applicable condition of entitlement,[4] or to establish entitlement to benefits under 20 C.F.R. Part 718. Consequently, she denied benefits.

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[1] On Claimant's behalf, Vicki Combs, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested the Benefits Review Board review Administrative Law Judge (ALJ) Theresa C. Timlin's decision, but she does not represent Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] Claimant filed three previous claims for benefits. Director's Exhibits 1-3. On March 16, 2018, the district director denied his most recent prior claim, filed on November 9, 2015, because he failed to establish total disability. Director's Exhibit 3.

[3] 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 impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

[4] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the subsequent claim must also be denied unless the ALJ finds "one of the applicable conditions of entitlement . . . has changed since the date 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). Thus, Claimant needed to submit new evidence establishing total disability. 20 C.F.R. §725.309(c); *see White*, 23 BLR at 1-3; Director's Exhibit 3.

On appeal, Claimant generally challenges the ALJ's denial of benefits. Employer responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief, unless requested.

In an appeal filed without representation, the Board addresses whether substantial evidence supports the Decision and Order below. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). 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'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Invocation of the Section 411(c)(3) Presumption – Complicated Pneumoconiosis

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. In determining whether a claimant has invoked the irrebuttable presumption, the ALJ must weigh all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56 (4th Cir. 2000); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

The ALJ found the x-rays and medical opinions do not support a finding of complicated pneumoconiosis.[6] 20 C.F.R. §718.304(a), (c); Decision and Order at 28, 30-31. Weighing all the evidence together, she determined Claimant did not establish the disease. 20 C.F.R. §718.304; Decision and Order at 31. We affirm the ALJ's findings.

[5] We will apply the law of the United States Court of Appeals for the Fourth Circuit as Claimant performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 15, 22.

[6] Because there is no biopsy or autopsy evidence of record, Claimant cannot establish complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(b).

X-ray Evidence – 20 C.F.R. §718.304(a)

The ALJ considered seven interpretations of four x-rays dated January 16, 2020, June 20, 2020, March 7, 2022, and July 6, 2022. Decision and Order at 24-27. She noted all the interpreting physicians are dually-qualified Board-certified radiologists and B-readers except Dr. Forehand, who is a B-reader. *Id.* at 28.

Claimant and Employer provided two separate interpretations by Dr. Ramakrishnan of the January 16, 2020 x-ray. Claimant's Exhibit 1; Employer's Exhibit 4 at 1. Dr. Ramakrishnan's initial interpretation of the x-ray appeared as part of Claimant's treatment records. Employer's Exhibit 4 at 1. Dr. Ramakrishnan observed "[t]he lungs were clear" and "no acute cardiopulmonary abnormalities are seen." *Id.* His second interpretation of the x-ray used the International Labour Organization (ILO) x-ray form and noted a large "A" opacity. Claimant's Exhibit 1.

Dr. Forehand interpreted the June 2, 2020 x-ray as negative for simple and complicated pneumoconiosis. Director's Exhibit 25 at 6. Drs. Seaman and Ramakrishnan read the March 7, 2022 x-ray as negative for simple and complicated pneumoconiosis. Employer's Exhibits 4 at 2; 8 at 1-2. While Dr. Miller interpreted the same x-ray as positive for simple pneumoconiosis, he read it as negative for complicated pneumoconiosis. Claimant's Exhibit 2. Dr. Seaman interpreted the July 6, 2022 x-ray as negative for simple and complicated pneumoconiosis. Employer's Exhibit 3 at 1-2.

The ALJ noted that while Dr. Ramakrishnan's ILO x-ray form interpretation of the January 16, 2020 x-ray identified a large Category "A" opacity, his earlier interpretation of the same x-ray indicated it showed no cardiopulmonary abnormalities. Decision and Order at 28. Although she recognized the different purposes of the two interpretations, she rationally concluded the contradictory nature of the two interpretations detracted from their credibility. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 310 (4th Cir. 2012); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); Decision and Order at 28. Furthermore, the ALJ rationally found the June 2, 2020 and July 6, 2022 x-rays negative for complicated pneumoconiosis because all the physicians read them as negative for the disease. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); Decision and Order at 28.

As it is rational and supported by substantial evidence, we affirm the ALJ's determination that the x-ray evidence does not support finding complicated pneumoconiosis.

Other Evidence – 20 C.F.R. §718.304(c)

The ALJ considered the medical opinions of Drs. Zaldivar and Spagnolo regarding the presence of complicated pneumoconiosis. Decision and Order at 29-30. Drs. Zaldivar and Spagnolo opined Claimant does not have complicated pneumoconiosis. Employer's Exhibits 1 at 5; 2 at 11; 6 at 25-27; 7 at 54-58. The other physician who offered an opinion in this claim, Dr. Forehand, neither observed small or large opacities on Claimant's x-ray taken during Claimant's Department of Labor-sponsored complete pulmonary examination on January 2, 2020, nor diagnosed Claimant with either simple or complicated pneumoconiosis. Director's Exhibit 25 at 4, 6.

Consequently, as the ALJ rationally found the "other" relevant medical evidence does not aid Claimant in establishing complicated pneumoconiosis, we affirm her determination that Claimant failed to establish complicated pneumoconiosis at 20 C.F.R. §718.304(c). Decision and Order at 30-31. We therefore affirm the ALJ's conclusion that the evidence weighed as a whole does not establish complicated pneumoconiosis, as it is supported by substantial evidence. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 174 (4th Cir. 1997); Decision and Order at 31.

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

A miner is totally disabled if he has a pulmonary or respiratory impairment which, 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,[7] 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).

[7] 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).

The ALJ found the pulmonary function studies, arterial blood gas studies, and medical opinions do not support a finding of total disability.[8] Decision and Order at 9-13.

Pulmonary Function Studies

The ALJ considered four pulmonary function studies dated January 9, 2020, June 9, 2020, March 7, 2022, and July 6, 2022. Decision and Order at 16-17; Claimant's Exhibits 3; 4; Director's Exhibit 25 at 7-12; Employer's Exhibit 1 at 12-27. She accurately noted all the studies produced non-qualifying results and thus found the pulmonary function study evidence does not support a finding of total disability. Decision and Order at 17. Because it is supported substantial evidence, we affirm the ALJ's determination that the pulmonary function study evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(i); *see Hicks*, 138 F.3d at 528; *Winchester v. Director, OWCP*, 9 BLR 1-177, 1-178-79 (1986); Decision and Order at 10.

Arterial Blood Gas Studies

The ALJ considered two arterial blood gas studies dated June 6, 2020, and July 6, 2022. Director's Exhibit 25 at 13-14; Employer's Exhibit 1 at 28-76; Decision and Order at 17-18. The ALJ correctly noted both studies yielded non-qualifying values at rest and with exercise. Decision and Order at 17-18. Thus, we affirm her finding the arterial blood gas study evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); *see Tucker v. Director, OWCP*, 10 BLR 1-35, 1-39-40 (1987); Decision and Order at 18.

Medical Opinions

The ALJ next considered the medical opinions of Drs. Forehand, Zaldivar, and Spagnolo, who each opined Claimant retains the respiratory capacity to perform his coal mine employment. Decision and Order at 18-22. Dr. Forehand opined that while Claimant has a respiratory impairment, "[s]ufficient residual ventilatory capacity remains to return to last coal mine job." Director's Exhibit 25 at 4. Dr. Zaldivar opined Claimant can perform his coal mine employment based on Claimant's normal testing. Employer's Exhibits 1 at 6; 7 at 36, 49-50, 53-54, 58. Dr. Spagnolo opined that, although Claimant has

[8] The ALJ accurately found the record contains no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 18. Thus, we affirm her finding the evidence does not support total disability under this subsection. 20 C.F.R. §718.204(b)(2)(iii); *see* Decision and Order at 18.

a respiratory impairment in the form of asthma, Claimant retains the respiratory capacity to return to his coal mine employment. Employer's Exhibits 2 at 11; 6 at 11, 22-23, 27-28.

Thus, the ALJ determined the medical opinion evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Gee v. W.G. Moore & Sons*, 9 BLR 1-4 (1986) (en banc); Decision and Order at 18-22. Because this determination is supported by substantial evidence, we affirm it.

Treatment Records and Evidence as a Whole

Finally, the ALJ considered Claimant's treatment records from the Lung Disease and Sleep Disorder Clinic between April 6, 2020, and May 2, 2022. Decision and Order at 22-23; Claimant's Exhibit 5. She accurately noted that, while the records discuss Claimant's respiratory symptoms, they do not specifically address whether he has a totally disabling respiratory impairment. Decision and Order at 22-23; Claimant's Exhibit 5. Thus, we affirm, as supported by substantial evidence, the ALJ's finding that the treatment records do not support a finding of total disability. *See Compton*, 211 F.3d at 207-08; Decision and Order at 23.

Having affirmed the ALJ's findings that the evidence did not support finding total disability under any of the subsections at 20 C.F.R. §718.204(b)(2)(i)-(iv) when considered separately by category, we affirm, as supported by substantial evidence, the ALJ's conclusion that the evidence considered together, like and unlike, did not support finding total disability and that Claimant did not establish he has a totally disabling respiratory or pulmonary impairment. We therefore affirm the ALJ's determination that Claimant did not invoke the Section 411(c)(4) presumption or establish a change in an applicable condition of entitlement at 20 C.F.R. §725.309. *See Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 198; Decision and Order at 23-24. Further, because Claimant failed to establish total disability, a requisite element of entitlement, we affirm the ALJ's finding that Claimant did not establish entitlement to benefits under 20 C.F.R. Part 718. 20 C.F.R. §718.204(b)(2); *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

Accordingly, the ALJ's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge