U.S. Department of Labor

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

BRB No. 25-0175 BLA

LONNIE DEAN HELTON Claimant-Respondent v. ENTERPRISE MINING COMPANY, LLC c/o ALPHA METALLURGICAL RESOURCE and SUMMITPOINT INSURANCE COMPANY/ENCOVA MUTUAL INSURANCE GROUP Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 05/20/2026 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for Claimant.

Joseph D. Halbert and Adam O. Stanley (Halbert Legal, PLLC), Lexington, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) John P. Sellers, III's Decision and Order Awarding Benefits (2019-BLA-05914) rendered on a claim filed on June 22, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ[1] credited Claimant with 15.6175 years of underground coal mine employment and found that he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he 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). He further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established more than fifteen years of coal mine employment and total disability, and thus erred in finding Claimant invoked the Section 411(c)(4) presumption. It also argues he erred in finding the presumption unrebutted. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response.

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.[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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[1] This case was initially assigned to ALJ Peter B. Silvian, Jr., who conducted a formal hearing, but upon his departure from the Office of Administrative Law Judges it was reassigned to the ALJ. The ALJ subsequently remanded the case to the district director to provide Claimant with a complete pulmonary examination. Director's Exhibit 81. After complying with the ALJ's instructions, the district director returned the case to him. Director's Exhibit 121.

[2] Section 411(c)(4) 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 or pulmonary impairment. 30 U.S.C. §921(c)(4); *see* 20 C.F.R. §718.305.

[3] 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

Length of Coal Mine Employment

To invoke the Section 411(c)(4) presumption, Claimant must establish he worked at least fifteen years in underground coal mines or in substantially similar surface coal mine employment. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden to establish the number of years he worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985). The Board will uphold an ALJ's determination if it is based on a reasonable method of calculation that is supported by substantial evidence. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

The ALJ considered Claimant's hearing testimony and Social Security Administration (SSA) earnings records. Decision and Order at 4. He did not credit Claimant with coal mine employment for the time he worked for his first employer, where he was paid in cash and was unsure of the amount of time he worked. *Id.*; Hearing Transcript at 17. But he credited Claimant for his coal mine employment with other employers who were also included in his SSA earnings records from 1988 to 2016, and he found that Claimant's last date of coal mine employment was July 1, 2016. Decision and Order at 4.

To determine the length of Claimant's coal mine employment from 1988 through 2016, the ALJ applied a method of calculation articulated by the United States Court of Appeals for the Sixth Circuit in *Shepherd v. Incoal Inc.*, 915 F.3d 392 (6th Cir. 2019). Decision and Order at 5; *see* 20 C.F.R. §725.101(a)(32)(iii).[4] For each year in which Claimant's earnings met or exceeded the average yearly earnings of coal miners as reported

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Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 17.

[4] Section 725.101(a)(32)(iii) provides that, if the beginning and ending dates of a miner's coal mine employment cannot be ascertained or the miner's coal mine employment lasted less than a calendar year, the ALJ may determine the length of the miner's work history by dividing the miner's yearly income from work as a miner by the average daily earnings of employees in the coal mining industry for that year, as reported by the Bureau of Labor Statistics (BLS). 20 C.F.R. §725.101(a)(32)(iii). Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual* (titled *Average Earnings of Employees in Coal Mining*) sets forth the average "daily earnings" of miners and the "yearly earnings (125 days)" by year for employees in coal mining, as reported by the BLS.

in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual*, the ALJ credited him with a full year of coal mine employment. Decision and Order at 5-6. For the years in which Claimant's earnings fell short of 125 days, the ALJ credited him with a fractional year, calculated by dividing his annual earnings by Exhibit 610's average daily earnings and then dividing that number by 125 days. *Id.* at 5. Using this formula, the ALJ credited Claimant with 15.6175 years of coal mine employment from 1988 to 2016. *Id.* at 5-6.

Employer argues the ALJ erred in applying *Shepherd* without first analyzing evidence of the "readily ascertainable" beginning and ending dates of Claimant's coal mine employment. Employer's Brief at 3-5 (unpaginated). It specifically contends the ALJ erred in crediting Claimant with a full year of employment in 2016 because the record shows he stopped working on July 1, 2016.[5] *Id.* at 4; Hearing Transcript at 27. We disagree, for three reasons.

First, contrary to Employer's assertion, the Sixth Circuit's decision in *Shepherd* explains that the formula at 20 C.F.R. §725.101(a)(32)(iii) can be applied "if the beginning and ending dates of the miner's employment cannot be determined *or – even if such dates are ascertainable* – if the miner was employed by the mining company for 'less than a calendar year.'" *Shepherd*, 915 F.3d at 402 (emphasis added). Thus, regardless of whether the ending date of Claimant's employment with Employer is ascertainable, the ALJ permissibly relied on *Shepherd* to determine the length of Claimant's coal mine employment in 2016 by dividing his yearly income by the average daily earnings of an employee in the coal mining industry. *See Id.* at 402; 20 C.F.R. §725.101(a)(32)(iii); Decision and Order at 4-5.

Second, the ALJ found that even if he followed Employer's suggestion to calculate the length of Claimant's coal mine employment based on specific dates of employment gathered from the record—rather than relying on the formula articulated in *Shepherd*—Claimant would still have more than 125 working days in 2016;[6] thus, the ALJ found Claimant established a full year of coal mine employment by either method, a finding

[5] Initially we affirm, as unchallenged on appeal, the ALJ's finding that Claimant has 14.6175 years of coal mine employment from 1988 to 2015. *See Skrack v. Island Creek Coal Co*., 6 BLR 710, 1-711 (1983); Decision and Order at 5.

[6] Relying on January 1, 2016, and July 1, 2016, as the beginning and ending dates of Claimant's coal mine employment in 2016, the ALJ determined Claimant would have worked 130 days in 2016 if he worked five days per week and 156 days if he worked six days per week. Decision and Order at 5.

Employer has not challenged. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5-6.

And third, if Claimant is credited with only half a year of employment in 2016, as Employer conceded,[7] he would still be entitled to the Section 411(c)(4) presumption as his total years of coal mine employment would be 15.1175 (15.6175-0.50). *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"). Therefore, we affirm the ALJ's finding that Claimant established at least fifteen years of qualifying coal mine employment. *See* 20 C.F.R. §725.101(a)(32); Decision and Order at 6.

Total Disability

Claimant must also prove he has a totally disabling respiratory or pulmonary impairment to invoke the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1)(iii). 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,[8] 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 evidence supporting total disability 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). 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 medical opinion evidence.[9] Decision and Order at 29.

[7] Employer states "[w]e already know how many years Claimant worked in the coal industry, specifically the last year of his coal mine employment, which was from 01/1/16-07/1/16." Employer's Brief at 4 (unpaginated).

[8] A "qualifying" pulmonary function study or arterial blood gas study yields results equal to or less than the applicable table values listed 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).

[9] The ALJ found that Claimant failed to establish total disability based on the pulmonary function studies or arterial blood gas studies, and that the record does not

Before weighing the medical opinion evidence, the ALJ addressed the exertional requirements of Claimant's usual coal mine work as a miner operator. Decision and Order at 7-8. Based on Claimant's Form CM-913, Description of Coal Mine work, his testimony, and the physicians' reports, the ALJ found his work "routinely required heavy to very heavy physical labor." *Id.* at 8. We affirm this finding as unchallenged on appeal. *Skrack*, 6 BLR at 1-711.

The ALJ next considered the medical opinions of Drs. Green and Alam that Claimant is totally disabled and the opinions of Drs. Dahhan and Broudy that he is not. Decision and Order at 21-29. Crediting Dr. Alam's opinion over Drs. Green's, Dahhan's, and Broudy's, he found the medical opinion evidence supports a finding of total disability. *Id.* at 29.

Employer argues the ALJ erred in crediting Dr. Alam's opinion because the doctor relied on a pulmonary function study not in the record. Employer's Brief at 5-8. We disagree.

Dr. Alam testified he began treating Claimant for "significant" breathing problems in March 2018. Claimant's Exhibit 1 at 4. As part of that treatment, Claimant underwent examinations, x-rays, and other testing to rule out malignancy, Alpha-1 Antitrypsin Deficiency, and other lung issues. *Id.* at 6-7; Director's Exhibit 37. He also underwent pulmonary function tests on March 26, 2018, and June 25, 2019. *Id.* at 6. Dr. Alam opined Claimant is totally disabled from performing strenuous labor or lifting up to one-hundred pounds because the pulmonary function testing produced "significantly low" FEV1 values. *Id.* at 6, 15-16.

Contrary to Employer's arguments, the ALJ was not required to exclude Dr. Alam's report because he considered the June 25, 2019 pulmonary function study that was not submitted into evidence. Employer's Brief at 6-7 (unpaginated). Rather, an ALJ has discretion in reviewing an opinion that relies on evidence outside of the record and can consider the facts in determining the weight to give such evidence. *See Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-108 (2006) (en banc); *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-67 (2004) (en banc). Here, the ALJ permissibly found Dr. Alam "heavily relied" on the results of the March 26, 2018 pulmonary function study, which was admitted in evidence and found valid, and permissibly found the physician credibly explained why that test indicates Claimant cannot perform his job duties such as lifting up to one-hundred

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contain 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 at 7, 21.

pounds. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 28.

To the extent Employer argues the March 26, 2018 study does not support Dr. Alam's opinion because it is non-qualifying, 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 an impairment detected on a non-qualifying test 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); Employer's Brief at 6. Here, the ALJ rationally found Dr. Alam had an accurate understanding of the exertional requirements of Claimant's last coal mine job and supported his opinion that Claimant is incapable of performing that job by comparing its exertional requirements with the results of the March 26, 2018 study. *See Cornett*, 227 F.3d at 578; *Crisp*, 866 F.2d at 185; Decision and Order at 28. Thus, the ALJ permissibly found Dr. Alam's opinion well-reasoned and well-documented, and that he need not discredit Dr. Alam's opinion based on "the fact that the June 2019 [study] is not in the record." *See Rowe*, 710 F.2d at 255; *Harris*, 23 BLR at 1-108; Decision and Order at 28-29.

As Employer raises no other challenges to the ALJ's weighing of the medical opinion evidence, we affirm the ALJ's finding that the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 29. We therefore affirm the ALJ's findings that Claimant established total disability based on the evidence as a whole and thus invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 29.

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,[10] or "no part of

[10] "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

[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). The ALJ found Employer failed to establish rebuttal by either method.[11] Decision and Order at 15-22.

Legal Pneumoconiosis

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). The Sixth Circuit holds this standard requires Employer to show Claimant's coal mine dust exposure "did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). "An employer may prevail under the not 'in part' standard by showing that coal dust exposure had no more than a *de minimis* impact on the miner's lung impairment." *Id.* at 407 (citing *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014)).

To rebut the presumption, Employer relies on Drs. Dahhan's and Broudy's opinions that Claimant does not have legal pneumoconiosis. Employer's Exhibits 3 at 3; 8 at 3. The ALJ found both physicians' opinions unpersuasive and consequently insufficient to rebut the presumption of legal pneumoconiosis. Decision and Order at 37-40.

Employer argues the ALJ applied the wrong legal standard in considering its experts' opinions because, when discussing Dr. Dahhan's opinion, he stated that the "burden on the Employer is not simply to identify possible alternative causes, but to provide a convincing rationale for eliminating coal dust exposure as a cause." Employer's Brief at 8. We are not persuaded by Employer's argument.

The ALJ began his rebuttal analysis by correctly recognizing that to disprove legal pneumoconiosis, Employer must show "that [the Claimant's] coal mine employment did not contribute, in part, to his alleged pneumoconiosis." Decision and Order at 36 (citing *Young*, 947 F.3d at 405). He then considered the medical opinions of Drs. Dahhan and Broudy.

Dr. Dahhan initially opined Claimant has a restrictive impairment, but he attributed it to obesity and not coal mine dust exposure based on his belief that coal mine dust

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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).

[11] The ALJ found Employer disproved clinical pneumoconiosis. Decision and Order at 36; *see* 20 C.F.R. §718.305(d)(1)(i)(B).

exposure causes a restrictive impairment only "if there are abnormalities on the x-ray consistent with the disease, i.e. opacities of various size, shape, and distribution." Employer's Exhibit 3 at 3. He subsequently stated that Claimant does not have legal pneumoconiosis as he has no impairment. Employer's Exhibit 13 at 12. Dr. Broudy initially opined Claimant has mild hypoxemia at rest and abnormal pulmonary function testing due to suboptimal effort and obesity, but he stated "there was neither the characteristic radiographic [n]or pathologic findings required" to diagnose pneumoconiosis. Employer's Exhibit 8 at 3. He "did not find enough evidence to justify a diagnosis of legal pneumoconiosis," as Claimant's blood gas studies were non-qualifying and his pulmonary function studies are invalid. Employer's Exhibits 10 at 2; 14 at 19. The ALJ permissibly found their opinions—that Claimant has no impairment or, if he does have an impairment, one unrelated to coal mine dust exposure—not well-reasoned because they did not adequately explain why Claimant's fifteen years of coal mine dust exposure could not have contributed to his respiratory impairment. *See Crockett Colleries, Inc. v. Director, OWCP* [*Barrett*], 478 F.3d 350, 356 (6th Cir. 2007); *Groves*, 277 F.3d at 836; *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 311-12 (4th Cir. 2012); *see also* 65 Fed. Reg. 79,920, 79,971 (Dec. 20, 2000); Decision and Order at 38-39.

Thus, the ALJ did not reject the opinions of Drs. Dahhan and Broudy as insufficient to meet a "rule out" standard. Rather, he found their opinions unpersuasive because they failed to adequately explain how they determined coal mine dust exposure did not contribute to Claimant's impairment. Decision and Order at 37-39. Consequently, because the ALJ correctly stated Employer's burden to establish that Claimant does not have pneumoconiosis and found Employer's physicians' opinions were not credible, we reject Employer's argument that he applied an improper standard. Thus, we affirm the ALJ's finding that Employer failed to establish that Claimant does not have legal pneumoconiosis.[12] *See Young*, 947 F.3d at 405; Decision and Order at 40.

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). The ALJ permissibly discredited Drs. Dahhan's and Broudy's opinions regarding the cause of Claimant's total respiratory disability because they did not diagnose legal pneumoconiosis or total disability, contrary

[12] Because the ALJ provided a valid reason to discredit Drs. Dahhan's and Broudy's opinions, we need not address the additional reasons he gave for rejecting their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Decision and Order at 37-40.

to his findings. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Adams v. Director, OWCP*, 886 F.2d 818, 826 (6th Cir. 1989); Decision and Order at 41. Consequently, we affirm the ALJ's determination that Employer failed to establish no part of Claimant's total disability was due to legal pneumoconiosis. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 41.

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

GLENN E. ULMER
Administrative Appeals Judge