U.S. Department of Labor

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

BRB No. 25-0184 BLA

WALTER GRIFFIN Claimant-Respondent v. CONSOL MINING COMPANY, LLC, c/o CONSOL ENERGY, INCORPORATED Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 05/28/2026 DECISION and ORDER

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

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

David Casserly (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals Administrative Law Judge Willow Eden Fort's Decision and Order Awarding Benefits (2022-BLA-05897) rendered on a subsequent claim[1] filed on September 15, 2021, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ credited Claimant with 15.12 years of underground coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she determined 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), and established a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c).[3] The ALJ further found Employer failed to rebut the presumption and awarded benefits.

On appeal Employer argues the ALJ erred in her length of coal mine employment finding and in her findings of total disability and invocation of the Section 411(c)(4) presumption. It further contends she erred in finding the presumption unrebutted. Claimant did not file a response brief. The Director, Office of Workers' Compensation Programs, filed a limited response brief in support of affirming the ALJ's length of coal mine employment finding.

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[1] Claimant filed five prior claims for benefits. Director's Exhibits 1-5. Claimant's first claim was closed. Director's Exhibit 1. Claimant withdrew his second through fourth claims. Director's Exhibits 2-4. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b). On July 31, 2020, the district director denied Claimant's most recent prior claim, filed on November 18, 2019, for failure to establish total disability. Director's Exhibit 5 at 2, 166.

[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); *see* 20 C.F.R. §718.305.

[3] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "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). Because Claimant failed to establish total disability in his prior claim, Claimant had to submit new evidence establishing total disability to obtain review of the merits of this claim. Director's Exhibit 5 at 2, 166

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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc*., 380 U.S. 359, 361-62 (1965).

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 and in accordance with law. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011).

The ALJ considered Claimant's hearing testimony; application for benefits form; employment history; Social Security Administration earnings records; and the medical reports of Drs. Forehand, Dahhan, and McSharry. Hearing Tr. at 17-18, 36-38; Director's Exhibits 7, 8, 10, 11, 16, 24, 47; Employer's Exhibit 10. The ALJ noted Employer stipulated Claimant worked for it as a coal miner for "at least fourteen years." Hearing Tr. at 17; Decision and Order at 4. Initially, the ALJ found Claimant's work at several other employers was not related to coal mining. Decision and Order at 5. However, she found Claimant's work at Middlesboro Block Company, Incorporated (Middlesboro Block) was coal mine employment and, thus, she would include his time employed there in calculating Claimant's length of coal mine employment. Decision and Order at 4.

The ALJ found the record insufficient to identify the specific beginning and ending dates of Claimant's periods of coal mine employment and, thus, applied the calculation at 20 C.F.R. §725.101(a)(32)(iii) to ascertain the number of days Claimant worked.[5] Decision

[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 Tennessee. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 22, 29; Director's Exhibit 8.

[5] 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

and Order at 6-7. For each year in which Claimant's earnings met or exceeded the average yearly earnings of coal miners as reported in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedure Manual*, the ALJ credited the Miner with a full year of coal mine employment. *Shepherd v. Incoal, Inc.*, 915 F.3d 392, 406 (6th Cir. 2019); Decision and Order at 6-7. For the years in which Claimant's earnings fell short of 125 days (1974, 1981, 1984, 1985, 1990, 1991), the ALJ credited him with a fractional year calculated by dividing his annual earnings by Exhibit 610's average daily earnings. Decision and Order at 6-7. Applying this formula, the ALJ found Claimant established 15.12 years of coal mine employment from 1974 to 1991. *Id.* The ALJ further determined all of Claimant's coal mine employment was qualifying, as Claimant testified all his coal mine work was underground. *Id.* at 7.

Employer first argues the ALJ erred by calculating Claimant's length of coal mine employment. Specifically, Employer asserts the length of coal mine employment findings in Claimant's prior claims could not be challenged because Claimant had no additional subsequent coal mine employment. Employer's Brief at 2-4. We disagree.

In a subsequent claim, the claimant must establish that one of the applicable conditions of entitlement "upon which the prior denial was based has changed." 20 C.F.R. §725.309(c)(3). Once a claimant does so, "no findings made in connection with the prior claim, except those based on a party's failure to contest an issue [. . .] will be binding on any party in adjudication of the subsequent claim." 20 C.F.R. §725.309(c)(5). As Claimant established total disability and thus established a change in an applicable condition of entitlement, any prior length of coal mine employment findings were not binding on the ALJ. *See id.*

Employer next argues the ALJ erred in making a length of coal mine employment finding because Claimant waived challenging the district director's finding of 14.79 years at the hearing and because Employer had no notice that the length of coal mine employment was an issue contested by Claimant. Employer's Brief at 3. We disagree.

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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.

Contrary to Employer's contention, length of coal mine employment was specifically listed as a contested issue on the district director's referral of the claim. Director's Exhibit 46; *see* 20 C.F.R. §§725.421(b)(7), 725.463(a). Moreover, Claimant explicitly stated he contested the district director's length of coal mine employment calculation at the hearing. Hearing Tr. at 18-19.

Employer finally argues substantial evidence does not support the ALJ's finding that "all of the work" at Middlesboro Block constituted coal-mine employment, as Claimant did not spend all his time working there inside a mine. Employer's Brief at 3-4. We disagree.

Under the regulations, a "year" is one calendar year "during which the miner worked in or around a coal mine or mines for at least 125 'working days.' A 'working day' means any day or *part of a day* for which a miner received pay for work as a miner." 20 C.F.R. §725.101(a)(32) (emphasis added). The ALJ determined Claimant's work at Middlesboro Block constitutes coal mine work based on Claimant's testimony that he worked building brattices inside Employer's underground coal mine when working with Middlesboro Block in 1974. Decision and Order at 5; Hearing Tr. at 37-38. The ALJ rationally interpreted Claimant's testimony that "he went inside the coal mines" for only a small percentage of the time as meaning he spent a part of his workdays in the mine, not that Claimant only worked sporadically at the mine site itself. Decision and Order at 5; *see* 20 C.F.R. §725.101(a)(30). Thus, the ALJ permissibly concluded Claimant's testimony is sufficient to meet the regulatory requirements. Decision and Order at 5; *see Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989).

As Employer raises no further challenge to the ALJ's length of coal mine employment calculation, we affirm her finding that Claimant established at least fifteen years of qualifying coal mine employment. *See* 20 C.F.R. §725.101(a)(32); *Shepherd*, 915 F.3d at 402.

Total Disability

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,[6] evidence of

[6] 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.

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 total disability based on the pulmonary function studies, arterial blood gas studies, the medical opinion evidence,[7] and when weighing the evidence as a whole.[8] Decision and Order at 7-16.

Pulmonary Function Studies

The ALJ considered the results of four pulmonary function studies dated December 15, 2021, April 29, 2022, May 19, 2022, and October 24, 2023. Decision and Order at 9-10; Director's Exhibits 16, 22, 25; Employer's Exhibit 10. The December 15, 2021 and May 19, 2022 pulmonary studies produced qualifying values both before and after the administration of a bronchodilator. Director's Exhibits 15, 25. The April 29, 2022 pulmonary function study produced qualifying values; a bronchodilator was not administered. Director's Exhibit 22. The October 24, 2023 pulmonary function study produced non-qualifying values; a bronchodilator was not administered. Employer's Exhibit 10. The ALJ found that, as the preponderance of the pulmonary function study evidence is qualifying, it supports a finding of total disability. Decision and Order at 7-10.

Employer argues the ALJ erred in failing to accord greater weight to the more recent, nonqualifying pulmonary function study or to consider the pulmonary function study evidence from Claimant's prior denied claim. Employer's Brief at 4. However, Employer has failed to demonstrate how any alleged error regarding the ALJ's consideration of the pulmonary function study evidence would make a difference, as

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Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[7] Employer does not challenge the ALJ's finding that the arterial blood gas study evidence supports a finding of total disability. Thus, we affirm this finding as unchallenged. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 10-15.

[8] The ALJ found there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 7.

Employer does not challenge the ALJ's finding that the arterial blood gas study evidence supports a finding of total disability. *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"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); *see also Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984) (because blood gas studies and pulmonary function studies measure different types of impairment, the results of a qualifying pulmonary function study are not called into question by a contemporaneous normal blood gas study).

Medical Opinion Evidence

Before weighing the medical opinions, the ALJ found Claimant's usual coal mine employment was working as a shuttle car and roof bolter operator, which required heavy manual labor. Decision and Order at 8. As this finding is unchallenged, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ considered the medical opinions of Drs. Forehand, Dahhan, and McSharry. Decision and Order at 11-14. Drs. Forehand and Dahhan opined Claimant is totally disabled by a significant, work-limiting impairment which prevents him from performing his last coal mine work. Director's Exhibits 16, 24, 47; Employer's Exhibit 8. Dr. McSharry opined Claimant is not totally disabled and retains the capacity to perform his usual coal mine employment. Employer's Exhibit 10. The ALJ discredited Dr. McSharry's opinion because it is inconsistent with her findings regarding the arterial blood gas study evidence and pulmonary function study evidence and because Dr. McSharry did not explain how Claimant could perform heavy manual labor given the test results he considered. Decision and Order at 13-14. On the other hand, the ALJ found the opinions of Drs. Forehand and Dahhan reasoned, documented and entitled to probative weight. *Id.* at 11-13. The ALJ thus found the preponderance of the medical opinion evidence weighs in favor of a finding of total disability. *Id.* at 15.

Employer argues the ALJ erred in discrediting Dr. McSharry's opinion as inconsistent with her findings and in failing to give it greater weight because it was based on the most recent medical examination of Claimant.[9] Employer's Brief at 8-9. We disagree.

Dr. McSharry conceded Claimant was unable to perform an exercise arterial blood gas study due to his oxygen saturation dropping from ninety-three percent to eighty-eight

[9] As Employer does not challenge the ALJ's crediting of Dr. Dahhan's opinion supporting a finding of total disability, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order at 12-13.

percent during a four-minute walk test. Employer's Exhibit 10 at 1, 9. The ALJ permissibly found Dr. McSharry's opinion did not adequately explain how Claimant could perform his usual coal mine employment as a shuttle car operator requiring heavy labor when he was unable to walk for more than four minutes without desaturating. *See Jericol* 301 F.3d at 713-14; *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, 1-51-52 (1986); Decision and Order at 14; Employer's Exhibit 10.

Employer further argues the ALJ erred in crediting Dr. Forehand's medical opinion as it asserts his opinion "fails to reconcile the prior testing or the later testing results." Employer's Brief at 6. We disagree.

An opinion need not incorporate every piece of evidence in the record to be credited; what matters is whether the physician's underlying documentation and reasoning support his conclusions. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987). As Employer does not otherwise challenge the ALJ's determination to credit Dr. Forehand's opinion as reasoned and documented, we affirm this finding.

Employer's remaining arguments amount to 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 Cir. 2007); *Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (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).

As Employer raises no further challenges, we affirm the ALJ's determination that Claimant established total disability at 20 C.F.R. §718.204(b)(2). Decision and Order at 7-16. We thus affirm her finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305; Decision and Order at 15-16.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis[10] or "no part

[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

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). The ALJ found Employer failed to establish rebuttal by either method. Decision and Order at 16-25.

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 has held 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)).

The ALJ considered three medical opinions regarding the presence of legal pneumoconiosis. Director's Exhibits 16, 24; Employer's Exhibits 8, 10. Dr. Forehand opined that Claimant has legal pneumoconiosis, while Drs. Dahhan and McSharry concluded he does not have the disease. Director's Exhibits 16, 24; Employer's Exhibits 8, 10. The ALJ determined neither Dr. Dahhan's opinion nor Dr. McSharry's opinion on the issue of legal pneumoconiosis was well-reasoned or well-documented, and she thus found them insufficient to rebut the presumption of pneumoconiosis.[11] Decision and Order at 21-24. Employer argues generally that the ALJ erred in evaluating the opinions of Drs. Dahhan and McSharry because she erred in finding that Claimant invoked the presumption of legal pneumoconiosis. Employer's Brief at 7-9. However, as discussed above, we have affirmed the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption. As Employer raises no further arguments, we affirm the ALJ's determination that Employer did not disprove legal pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i); Decision and Order at 21-25. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).[12]

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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 determined that, as Dr. Forehand diagnosed legal pneumoconiosis, his opinion does not aid Employer in carrying its burden of proof. Decision and Order at 24-25.

[12] Because we have affirmed the ALJ's finding that Employer failed to disprove legal pneumoconiosis, we need not consider its argument that the ALJ erred in finding it

Disability Causation

The ALJ next considered whether Employer established that "no part of the [Miner'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 found Drs. Dahhan's and McSharry's opinions entitled to little weight because they did not diagnose legal pneumoconiosis, contrary to her finding that Employer failed to disprove the disease. *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013). As Employer does not challenge the ALJ's disability causation finding, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order at 25-26.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge

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also failed to disprove clinical pneumoconiosis. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 5.