U.S. Department of Labor

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

BRB No. 25-0102 BLA

STEVEN GANNON Claimant-Respondent v. PREPARATION MAINTENANCE, INCORPORATED and WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 11/21/2025 DECISION and ORDER

Appeal of the Decision and Order on Remand Awarding Benefits of Sean M. Ramaley, Administrative Law Judge, United States Department of Labor.

Jonathan C. Masters (Masters Law Office PLLC), South Williamson, Kentucky, for Claimant.

Ashley M. Harman and Lucinda L. Fluharty (Jackson Kelly PLLC), Morgantown, West Virginia, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order on Remand Awarding Benefits (2020-BLA-05659) rendered on a claim filed on March 28, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This matter is before the Benefits Review Board for the second time.[1]

In his March 18, 2022 Decision and Order Denying Benefits, the ALJ determined Claimant established 21.88 years of underground coal mine employment but failed to establish a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b), an essential element of entitlement, and denied benefits.

Pursuant to Claimant's appeal, the Board affirmed the ALJ's finding that Claimant established 21.88 years of qualifying coal mine employment but vacated his finding that the medical opinions do not support a finding of total disability, holding the ALJ erred in weighing the opinions of Drs. Gaziano and Zaldivar. *Gannon v. Preparation Maint., Inc.*, BRB No. 22-0292 BLA, slip op. at 2 n.2, 5-7 (June 12, 2023) (unpub.). The Board thus vacated the denial of benefits and remanded the case for further consideration of the evidence. *Id.* at 7-8.

On remand, the ALJ found Claimant established a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b)(2), and thus invoked the presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[2] He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thereby invoked the Section 411(c)(4) presumption. It also contends the ALJ

[1] Acting Administrative Appeals Judge Glenn E. Ulmer is substituted on the panel for Administrative Appeals Judge Greg J. Buzzard, who is no longer a member of the Board.

[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); *see* 20 C.F.R. §718.305.

erred in finding it did not rebut the presumption. Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, has not filed a substantive 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, 361-62 (1965).

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

To invoke the Section 411(c)(4) presumption, a claimant must establish he has a totally disabling respiratory or pulmonary impairment. 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 or 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,[4] 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 Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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). The ALJ found Claimant established total disability based on the medical opinions and the evidence as a whole.[5] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 13-18.

[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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4; Hearing Tr. at 15-18.

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

[5] The Board previously affirmed the ALJ's findings that the pulmonary function and arterial blood gas studies do not support a finding of total disability, and there is no evidence of cor pulmonale with right-sided congestive heart failure. *Gannon v.*

The ALJ considered the opinions of Drs. Gaziano, Spagnolo, and Zaldivar. Decision and Order at 15-17. Dr. Gaziano opined Claimant is unable to perform his usual coal mine employment based on his pulmonary function and blood gas studies. Director's Exhibits 14 at 4; 17. Drs. Spagnolo and Zaldivar opined Claimant is not totally disabled because his objective testing is non-qualifying. Employer's Exhibits 4 at 2; 7; 8 at 29-33.

The ALJ found Dr. Gaziano's opinion documented and reasoned. Decision and Order at 15-16. He further discredited the opinions of Drs. Spagnolo and Zaldivar because they did not adequately consider the exertional requirements of Claimant's usual coal mine employment work, which the ALJ determined required moderate exertion, nor explain why the abnormalities seen on his objective testing would not prevent him from performing moderate labor. *Id.* at 16-17. He therefore found Dr. Gaziano's opinion outweighs the opinions of Drs. Spagnolo and Zaldivar and concluded the medical opinion evidence supports a finding of total disability. *Id.* at 17.

Employer contends the ALJ erred in finding Dr. Gaziano's opinion documented and reasoned. Employer's Brief at 7-8. We disagree.

Dr. Gaziano noted Claimant worked as a roof bolter and superintendent where he was required to walk and repair machinery in a stooped position. Director's Exhibit 14 at 1. He acknowledged Claimant's blood gas studies are non-qualifying, but opined they show his a-A oxygen gradient decreased with exercise to the point where he would not be able to perform his usual coal mine employment work. Director's Exhibits 14 at 4; 17. Further, he observed Claimant's pulmonary function study results demonstrated a low diffusion capacity of fifty-five percent of predicted which, according to the American Medical Association standards of impairment, "represents a moderate degree of pulmonary functional impairment." Director's Exhibits 14 at 4; 17.

Contrary to Employer's argument, the ALJ permissibly credited Dr. Gaziano's opinion because he had an accurate understanding of the exertional requirements of Claimant's usual coal mine employment work and explained why the blood gas studies demonstrate total disability despite being non-qualifying. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *see also Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997); Decision and Order at 16. He further stated he found Dr. Gaziano's opinion credible because he "specifically explained his assessment that Claimant's diffusion capacity was [fifty-five] percent of predicted, which . . . represent[s] a moderate degree of

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Preparation Maint., Inc., BRB No. 22-0292 BLA, slip op. at 3 n.4, 4 (June 12, 2023) (unpub.); 20 C.F.R. §718.204(b)(2)(i)-(iii).

pulmonary impairment" that would prevent Claimant from performing moderate exertional work. Decision and Order at 16. As the ALJ's determination that Dr. Gaziano credibly opined Claimant is totally disabled is rational and supported by substantial evidence, we affirm it. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 16.

Employer next argues the ALJ erred in weighing Dr. Spagnolo's opinion because he was not explicitly instructed to do so on remand by the Board. Employer's Brief at 8-10.

In his initial Decision and Order, the ALJ found Dr. Spagnolo's opinion was "not well-reasoned" because he had an incorrect understanding of the exertional requirements of Claimant's usual coal mine employment work, but found the opinion more persuasive than those of Drs. Gaziano and Zaldivar. Initial Decision and Order at 17. On appeal, the Board noted the ALJ found Dr. Spagnolo's opinion not well-reasoned and vacated the ALJ's weighing of Drs. Gaziano's and Zaldivar's opinions. *Gannon*, BRB No. 22-0292 BLA, slip op. at 5, 7. Because any weight the ALJ accorded Dr. Spagnolo's opinion in his initial Decision and Order was in relation to his weighing of the opinions of Drs. Gaziano and Zaldivar, and the Board instructed him to reweigh that evidence on remand, we discern no error in the ALJ's reconsidering the weight afforded to all the medical opinions on remand. Initial Decision and Order at 17; *Gannon*, BRB No. 22-0292 BLA, slip op. at 7.

Moreover, the ALJ rationally discredited Dr. Spagnolo's opinion as based on an inaccurate understanding that Claimant's usual coal mine employment required only light physical work, Employer's Exhibit 7 at 8, whereas the ALJ determined it required moderate exertion. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252-53 (4th Cir. 2016); *Eagle v. Armco, Inc.*, 943 F.2d 509, 512 (4th Cir. 1991); Decision and Order at 5, 16; Initial Decision and Order at 5, 17. Additionally, he permissibly found Dr. Spagnolo did not sufficiently explain his opinion that Claimant's abnormal pulmonary function and blood gas study results had no impact on his ability to perform his usual coal mine employment. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 16.

Finally, Employer argues the ALJ erred in weighing Dr. Zaldivar's opinion. Employer's Brief at 10-11.

Dr. Zaldivar diagnosed Claimant with a mild restriction of forced vital capacity on pulmonary function testing with a mild airway obstruction, mild air trapping, a moderate diffusion abnormality, and resting hypoxemia. Employer's Exhibits 4 at 2; 8 at 26-33. He stated Claimant "is really sick" and exhausted, and it is difficult for him to do well on a pulmonary function study, but he is not totally disabled because "the Department of Labor does not use the diffusion" capacity results and the other values are not qualifying. Employer's Exhibit 8 at 28-31. Further, he opined the blood gas studies show hypoxemia

but not total disability because they are not qualifying, and that "[a]nyone can do heavy labor with this kind of pleurodesis." *Id.* at 31-33.

The ALJ summarized Dr. Zaldivar's opinion and found it focused heavily on the cause of Claimant's pulmonary impairments and did not explain his opinion that Claimant is not totally disabled beyond stating that his objective studies are non-qualifying. Decision and Order at 16-17. Further, we discern no error in the ALJ's permissible finding that Dr. Zaldivar's opinion is unpersuasive because he did not discuss whether Claimant could perform the specific exertional requirements of his usual coal mine employment work given the impairments he diagnosed.[6] *See Addison*, 831 F.3d at 252-53; *Eagle*, 943 F.2d at 512; Decision and Order at 16-17.

Because it is supported by substantial evidence, we affirm the ALJ's finding that the medical opinion evidence supports a finding of total disability and the record as a whole establishes total disability. *Rafferty*, 9 BLR at 1-232; 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 14-18. Thus, we affirm his determination that Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305; Decision and Order at 18.

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,[7] or that "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). The ALJ found Employer failed to establish rebuttal by either method. Decision and Order at 18-27. Employer challenges

[6] Because the ALJ provided a valid reason for discrediting Dr. Zaldivar's opinion, we need not address Employer's additional arguments that the ALJ erred in weighing his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 10-11.

[7] "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).

the ALJ's finding that it failed to rebut the presumption of disability causation.[8] Employer's Brief at 13-14. We affirm the ALJ's finding that Employer failed to rebut the presumed existence of clinical pneumoconiosis as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 25.

The ALJ 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 26-27.

Employer relied on the opinions of Drs. Spagnolo and Zaldivar to rebut the presumption of disability causation.[9] Dr. Spagnolo opined Claimant does not suffer from clinical pneumoconiosis or total disability. Employer's Exhibit 7 at 9. Dr. Zaldivar diagnosed clinical pneumoconiosis but did not find Claimant totally disabled. Employer's Exhibits 4 at 3; 8 at 22-24, 33.

Employer argues the ALJ erred in discrediting Dr. Spagnolo's opinion because he addressed the cause of Claimant's total disability. Employer's Brief at 13. Contrary to Employer's argument, the ALJ permissibly discredited Dr. Spagnolo's opinion because he failed to diagnose clinical pneumoconiosis, contrary to his finding that Employer failed to disprove the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Employer's Brief at 13.

Employer also argues the ALJ erred in discrediting Dr. Zaldivar's opinion. Employer's Brief at 13-14. We disagree.

Dr. Zaldivar suggested many causes for Claimant's pulmonary impairment, including asthma and cancer, but also opined it "is possible that he may have work related injury due to clinical pneumoconiosis" and that he could not "state that there is absolutely no contribution" to his impairment from pneumoconiosis. Employer's Exhibits 4 at 3; 8 at 34. Thus the ALJ rationally concluded Dr. Zaldivar's opinion is insufficient to establish

[8] Employer also asserts the ALJ erred in failing to consider whether it rebutted the presumption of legal pneumoconiosis. Employer's Brief at 12. Because, as discussed below, we affirm the ALJ's finding that Claimant established total disability due to clinical pneumoconiosis, we reject Employer's argument. *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).

[9] The ALJ correctly observed Dr. Gaziano attributed Claimant's disability to pneumoconiosis and therefore his opinion does not aid Employer in rebutting the presumption. Decision and Order at 27; Director's Exhibit 14.

clinical pneumoconiosis played no part in Claimant's totally disabling pulmonary impairment. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 27.

Consequently, we affirm the ALJ's finding that Employer failed to rebut the presumption of total disability due to clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 26-27. Thus we affirm the award of benefits.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge