U.S. Department of Labor

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

BRB No. 24-0460 BLA

ERNEST C. EDGELL Claimant-Respondent v. THE OHIO COUNTY COAL COMPANY and MURRAY ENERGY CORPORATE TRUST Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 09/18/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

Heath M. Long & Matthew A. Gribler (Pawlowski, Bilonick, & Long), Ebensburg, Pennsylvania, for Claimant.

Aimee M. Stern (Dinsmore & Shohl, LLP), Wheeling, West Virginia, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Awarding Benefits (2023-BLA-05943) rendered on a subsequent claim filed on May 5, 2022, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[1]

The ALJ accepted the parties' stipulation that Claimant had twenty-four 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). Thus, she found Claimant established a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c),[2] and invoked 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). She 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 thus invoked the Section 411(c)(4) presumption. Alternatively, it argues the ALJ erred in finding it failed to rebut the presumption.[4] Claimant responds in support of

[1] Claimant filed a prior claim on February 21, 2008, which the district director denied for failure to establish any element of entitlement. Director's Exhibit 46.

[2] 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 she 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 any element in his prior claim, he had to submit new evidence establishing any element to obtain review of the merits of the current claim. *See White*, 23 BLR at 1-3; 20 C.F.R. §725.309(c); Director's Exhibit 46.

[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 or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant has twenty-four years of underground coal mine employment. *See Skrack v. Island Creek*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5.

the award. The Acting Director, Office of Workers' Compensation Programs, has not filed a response brief.

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.[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)(4) Presumption – Total Disability

To invoke the Section 411(c)(4) presumption, 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 and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function and arterial blood gas studies,[6] 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 pulmonary function studies and medical opinion evidence.[7] 20 C.F.R. §718.204(b)(2)(i), (iv);

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his 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 Transcript at 17, 31.

[6] 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).

[7] The ALJ found the arterial blood gas study evidence does not establish total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure in the record. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 19.

Decision and Order at 9-15. Employer argues the ALJ erred in considering the medical opinions.[8] Employer's Brief at 9-10. We disagree.

The ALJ considered the medical opinions of Drs. Posin and Fino. Decision and Order at 12-14; Director's Exhibit 15; Claimant's Exhibit 2; Employer's Exhibit 1. While Dr. Posin initially found Claimant was not totally disabled based on the objective testing obtained during his July 21, 2022 examination, after reviewing the subsequent April 27, 2023 pulmonary function study,[9] he opined that "there is a marked worsening" in Claimant's pulmonary function test results since his examination. Claimant's Exhibits 1, 2. Thus, he concluded that Claimant would be unable to return to his last coal mining job based on the more recent, qualifying pulmonary function study results. Claimant's Exhibit 2. Dr. Fino did not find Claimant totally disabled, observing that Claimant's blood gas studies were non-qualifying and his April 27, 2023 pulmonary function study showed moderate obstruction with improvement following administration of a bronchodilator. Employer's Exhibit 1 at 2-3, 6.

Because Dr. Posin considered the qualifying objective testing in coming to his conclusion, the ALJ found his opinion reasoned and documented and gave it probative weight. Decision and Order at 14. The ALJ found Dr. Fino did not adequately address why he concluded that Claimant is not impaired after considering the April 27, 2023 qualifying pulmonary function study; thus, she found Dr. Fino's opinion was poorly documented and poorly reasoned. *Id.* Giving Dr. Posin's opinion more weight, the ALJ found the medical opinion evidence supports a finding of total disability. *Id.* at 15.

Employer argues the ALJ erred in concluding Claimant is totally disabled because it asserts Dr. Posin's conclusion, that Claimant would not be able to perform his last coal mine job based on the 2023 pulmonary function test, is not well-documented because the two pulmonary function studies both demonstrate a "moderate obstructive defect" and are therefore "essentially identical." Employer's Brief at 10. It also contends Dr. Posin's failure to address the cause of the "marked worsening" in Claimant's pulmonary function test results in only nine months' time renders his opinion not well-reasoned. *Id.* We disagree.

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[8] We affirm, as unchallenged on appeal, the ALJ's finding that the pulmonary function study evidence supports a finding of total disability under 20 C.F.R. §718.204(b)(2)(i). *See Skrack*, 6 BLR at 1-711; Decision and Order at 9-11.

[9] The July 21, 2022 pulmonary function study obtained during Dr. Posin's examination of Claimant was non-qualifying under the regulations, while the subsequent April 27, 2023 study was qualifying. Director's Exhibit 15; Claimant's Exhibit 1.

As noted, Employer raises no challenge to the ALJ's finding that the April 27, 2023 qualifying pulmonary function study supports a finding of a totally disabling impairment or that the pulmonary function study evidence as a whole supports total disability. Therefore, contrary to Employer's contention, substantial evidence supports the ALJ's determination that Dr. Posin's disability conclusion based on the qualifying April 27, 2023 pulmonary function study is well-documented. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998). Further, one pulmonary function test qualifies under the Department of Labor's disability standards and one does not; thus, the tests are not, as Employer suggests, "essentially identical." Employer's Brief at 10. In this case, the ALJ permissibly found Dr. Posin's opinion well-documented because he credibly addressed the qualifying objective medical data. *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).

Additionally, in arguing that Dr. Posin's opinion is poorly reasoned because he did not address the cause of the "marked worsening" in Claimant's pulmonary function study results, Employer's Brief at 10, Employer conflates the existence of a totally disabling impairment with disease causation. *See Island Creek Coal Co. v. Blankenship*, 123 F.4th 684, 691-92 (4th Cir 2024) (ALJ erred in conflating distinct issues of total disability and disability causation); *Johnson v. Apogee Coal Co.*, 26 BLR 1-1, 1-11 (2023) (relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether the miner has a totally disabling respiratory or pulmonary impairment; the cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305); Decision and Order at 14.

Employer also generally argues Dr. Fino's opinion is well-reasoned and documented because it is supported by his conclusion that Claimant has "only a moderate obstructive defect." Employer's Brief at 9-10. However, the ALJ permissibly found Dr. Fino did not adequately explain why he determined Claimant is not totally disabled given the qualifying 2023 pulmonary function study. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000) (it is the province of the ALJ to evaluate the physicians' opinions and the ALJ is not required to accept the opinion or theory of any medical expert); *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993); Decision and Order at 14. Employer's argument amounts to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

We therefore 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 14. As Employer raises no further arguments regarding the weighing of the relevant evidence on total disability, we further affirm the ALJ's finding that Claimant established total

disability in consideration of the evidence as a whole. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; Decision and Order at 15. Consequently, we also affirm that Claimant invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement. 20 C.F.R. §§718.305(b)(1), 725.309(c); Decision and Order at 8, 14.

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

Because Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[10] 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.[11]

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); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on Dr. Fino's medical opinion that Claimant does not have legal pneumoconiosis. Decision and Order at 17-18. Dr. Fino attributed Claimant's obstructive impairment to asthma, which he indicated is a disease of the general population, unrelated to coal mine dust exposure. Employer's Exhibit 1 at 5. Specifically, Dr. Fino stated he was able to exclude coal mine dust as a factor because Claimant's obstruction is responsive

[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 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 that Employer disproved clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 16-18.

to bronchodilators on pulmonary function testing and is variable, which is consistent with asthma and inconsistent with coal mine dust exposure. *Id.* at 2-3.

Employer contends the ALJ erred in discrediting Dr. Fino's opinion.[12] Employer's Brief at 11. We disagree.

The ALJ permissibly discredited Dr. Fino's opinion because she found that, even assuming Claimant has asthma arising from another cause, Dr. Fino did not adequately explain why Claimant's years of coal mine dust exposure did not aggravate his pulmonary condition. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 673-74 n.4 (4th Cir. 2017); *Looney*, 678 F.3d at 316-17 (it is the duty of the ALJ to make findings of fact and to resolve conflicts in the evidence); *Compton*, 211 F.3d at 211; *see also Crockett Colleries, Inc. v. Director, OWCP* [*Barrett*], 478 F.3d 350, 356 (6th Cir. 2007) (ALJ was within his discretion to determine a physician did not adequately explain why response to bronchodilators on pulmonary function testing necessarily eliminated coal dust exposure as a cause of a miner's obstructive lung disease); Decision and Order at 18-19.

Therefore, we affirm the ALJ's finding that Employer did not rebut the presumption of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A). Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1).

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); Decision and Order at 19-20. She found Dr. Fino's opinion regarding the cause of Claimant's respiratory disability unpersuasive because he did not diagnose legal pneumoconiosis, contrary to her finding that Employer did not disprove the existence of the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995)

[12] Employer also argues the ALJ erred in crediting Dr. Posin's opinion "to conclude that the presumption had not been rebutted." Employer's Brief at 11. However, it is Employer's burden to rebut the presumption and, as the ALJ correctly noted, Dr. Posin diagnosed legal pneumoconiosis; thus, his opinion does not support its burden. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015); Decision and Order at 18; Director's Exhibit 15. Therefore, we need not address Employer's argument regarding the credibility of Dr. Posin's opinion. *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").

(such an opinion "may not be credited at all" on disability causation absent "specific and persuasive reasons" for concluding the physician's view on disability causation is independent of his or her erroneous opinion on pneumoconiosis); Decision and Order at 20.

Employer does not challenge this finding apart from its contention that Claimant does not have legal pneumoconiosis, an argument we have rejected. Employer's Brief at 11. We thus affirm the ALJ's finding that Employer failed to prove that no part of Claimant's total disabling respiratory impairment is due to legal pneumoconiosis. *See Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Skrack v. Island Creek*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 20.

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
Acting Administrative Appeals Judge