U.S. Department of Labor

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

BRB No. 24-0467 BLA

TERESA DAY (o/b/o of TIMOTHY DAY)	)	
Claimant-Respondent	)	**NOT-PUBLISHED**
v.	)	
ICG HAZARD, LLC	)	DATE ISSUED: 09/25/2025
Employer-Petitioner	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of John M. Herke, Administrative Law Judge, United States Department of Labor.

Wes Addington (Appalachian Citizens' Law Center), Whitesburg, Kentucky, for Claimant.

William S. Mattingly[1] (Jackson Kelly, PLLC), Lexington, Kentucky, for Employer.

Victoria Yee (Jonathan Snare, Deputy Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for

[1] Abigail C. Wearden, an attorney at Jackson Kelly, PLLC, filed a brief on behalf of Employer. On April 8, 2025, William S. Mattingly, another attorney at Jackson Kelly, PLLC, filed a notice that Ms. Wearden was no longer with the firm and he would be acting as counsel in this matter.

Administrative Appeals), Washington, D.C., for the Acting Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) John M. Herke's Decision and Order Awarding Benefits (2022-BLA-05141) rendered on a claim filed on June 18, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[2]

The ALJ accepted the parties' stipulation that the Miner had thirty years of coal mine employment, all of which he found occurred in conditions substantially similar to those in an underground mine. He also found the Miner had a totally disabling pulmonary or respiratory 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,[3] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption. Employer further argues that the ALJ erred in setting the onset date for the commencement of benefits.[4] Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs (the Director) also filed a response, urging the Benefits Review Board to reject Employer's arguments regarding rebuttal and the onset date for the commencement of benefits.

[2] Claimant is the widow of the Miner, who died on December 19, 2018, and she is pursuing the miner's claim on his behalf. Decision and Order at 2 n.4; Director's Exhibits 10, 11.

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if he had 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 invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3-6, 8-15.

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.[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).

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,[6] 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 rebutted the existence of clinical pneumoconiosis but did not establish rebuttal of the existence of legal pneumoconiosis or disability causation. Decision and Order at 15-20.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish the Miner did 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. §§718.305(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). The Sixth Circuit holds this standard requires Employer to show the Miner'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*

[5] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because the Miner performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3, 9.

[6] "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).

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)).

Employer relies on Dr. Broudy's opinion to rebut the existence of legal pneumoconiosis. Employer's Exhibit 4. Dr. Broudy opined the Miner did not have legal pneumoconiosis but instead had "[v]ery severe chronic obstructive pulmonary disease" (COPD) which he attributed solely to cigarette smoking. *Id.* The ALJ found Dr. Broudy's opinion was not adequately explained and accorded it no weight. Decision and Order at 18.

Employer argues the ALJ erred in discrediting Dr. Broudy's medical opinion. Employer's Brief at 5-9. We disagree.

Contrary to Employer's arguments, the ALJ acknowledged Dr. Broudy's opinion that there is no evidence of coal workers' pneumoconiosis, as there is no radiographic or pathological evidence of pneumoconiosis. Employer's Brief at 11; Employer's Exhibit 4. However, the ALJ permissibly found Dr. Broudy's opinion cannot rebut the existence of legal pneumoconiosis as the regulatory definition of legal pneumoconiosis does not require the presence of clinical pneumoconiosis. 20 C.F.R. §§718.201(a)(2), (b), 718.202(a)(4); 65 Fed. Reg. 79,920, 79,940-43 (Dec. 20, 2000); *see A & E Coal Co. v. Adams*, 694 F.3d 798, 802-03 (6th Cir. 2012); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 487-88 (6th Cir. 2012) (affirming ALJ's discrediting of physician who relied on negative radiographic evidence to exclude a diagnosis of legal pneumoconiosis, as legal pneumoconiosis may exist in the absence of clinical pneumoconiosis); Decision and Order at 18 n.117.

Nor are we persuaded by Employer's argument that the ALJ erred in consulting the preamble to the 2001 revised regulations in considering Dr. Broudy's opinion. Employer's Brief at 11-12. Federal circuit courts have consistently held that an ALJ may evaluate expert opinions in conjunction with the preamble, as it sets forth the Department of Labor's (DOL) resolution of questions of scientific fact relevant to the elements of entitlement. *See Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491 (6th Cir. 2014); *see also Energy W. Mining Co. v. Estate of Blackburn*, 857 F.3d 817, 830-31 (10th Cir. 2017); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012); *Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 257 (3d Cir. 2011); *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726 (7th Cir. 2008). In this case, as discussed below, the ALJ permissibly evaluated Dr. Broudy's opinion in conjunction with the DOL's discussion of the prevailing medical science set forth in the preamble. *See Sterling*, 762 F.3d at 491; *Adams*, 694 F.3d at 801-02; Decision and Order at 17-18. Nor did the ALJ use the preamble to substitute his own opinion for that of the physician, as Employer argues. Employer's Brief at 5-9.

Dr. Broudy attributed the entirety of the Miner's COPD to cigarette smoking, simply marking a box "No" when answering a question asking if his coal mine dust exposure contributed to his COPD or impairment, and Dr. Broudy provided no further explanation for his opinion. Employer's Exhibit 4 at 3-4. Given the DOL's recognition that the effects of smoking[7] and coal mine dust can be additive, the ALJ permissibly found Dr. Broudy failed to adequately explain why the Miner's thirty-year history of coal mine dust exposure did not significantly contribute to or aggravate his smoking-related "very severe" obstructive lung disease. *See Crockett Colleries, Inc. v. Director, OWCP* [*Barrett*], 478 F.3d 350, 352-353 (6th 2007); *See Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); 20 C.F.R. §718.201(a)(2), (b); 65 Fed. Reg. at 79,939-941; Decision and Order at 18-19; Employer's Brief at 5-9.

Employer's arguments are a request that the Board reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because the ALJ acted within his discretion in rejecting Dr. Broudy's opinion, the only opinion supportive of Employer's burden, we affirm his finding that Employer did not disprove the Miner had legal pneumoconiosis. Decision and Order at 18-19. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established "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); Decision and Order at 19-20. He permissibly discredited Dr. Broudy's opinion on disability causation because the doctor did not diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer did not disprove the existence of the disease. *See Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013) (where COPD caused the miner's total disability, the legal pneumoconiosis inquiry "completed the causation chain from coal mine employment to legal pneumoconiosis which caused [the miner's] pulmonary impairment that led to his disability"); Decision and Order at 19. We therefore affirm the ALJ's determination that Employer failed to prove

[7] We affirm, as unchallenged on appeal, the ALJ's finding that the Miner had a twenty pack-year history of smoking. *See Skrack*, 6 BLR at 1-711; Decision and Order at 3.

no part of the Miner's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 19.

Commencement Date of Benefits

The date for the commencement of benefits is the month in which the Miner became totally disabled due to pneumoconiosis. 20 C.F.R. §725.503(b); *see Lykins v. Director, OWCP*, 12 BLR 1-181, 1-182 (1989). If the date is not ascertainable, benefits commence the month the claim was filed, unless credible evidence establishes the Miner was not totally disabled due to pneumoconiosis at any subsequent time. 20 C.F.R. §725.503(b); *see Edmiston v. F&R Coal Co.*, 14 BLR 1-65, 1-69 (1990); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47 (1990).

The ALJ found that, while the record did not establish the exact date upon which the Miner became totally disabled due to pneumoconiosis, Dr. Broudy's February 9, 2016 pulmonary function study and medical opinion established that the Miner had already developed totally disabling COPD at that time. Decision and Order at 21. Further, the ALJ found there was no credible evidence that the Miner was not totally disabled due to pneumoconiosis after that date. *Id.* Consequently, he determined benefits are payable commencing in February 2016. *Id.* Employer argues that, because Dr. Broudy opined the Miner was totally disabled due to smoking-related COPD, benefits should not commence in February 2016, but should instead commence in June 2018, the month in which the Miner filed this claim. Employer's Brief at 9-10. The Director and Claimant respond in support of the ALJ's finding that benefits should commence in February 2016. Claimant's Response Brief at 10-18; Director's Response Brief at 3-4. We agree with the position of Claimant and the Director.

The regulation governing the commencement of benefits in a miner's claim, 20 C.F.R. §725.503(b), states in relevant part: "Benefits are payable to a miner who is entitled beginning with the month of onset of total disability due to pneumoconiosis arising out of coal mine employment." 20 C.F.R. §725.503(b). Although 20 C.F.R. §725.503(b) requires the ALJ to account for disability causation, i.e., when the Miner became totally disabled *due to pneumoconiosis*, the regulation governing disability causation, 20 C.F.R. §718.204(c), expressly states its criteria can be met through invocation of the presumption at 20 C.F.R. §718.305, implementing the rebuttable presumption at Section 411(c)(4) of the Act. *See* 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.204(c)(2).[8] In doing so, the

[8] Without the 20 C.F.R. §718.305 presumption, the burden would rest with Claimant to establish the Miner was total disabled due to pneumoconiosis. 20 C.F.R. §718.204(c); *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994) (moving party must carry its burden of proof by a preponderance of evidence); *Chaffin v.*

plain language of 20 C.F.R. §718.204(c) allows a claimant to establish disability causation with proof of total disability, fifteen years of qualifying coal mine employment, and therefore invocation of the Section 411(c)(4) presumption.

Because Claimant invoked the Section 411(c)(4) presumption, the Miner is presumed to have been totally disabled due to pneumoconiosis, at a minimum, in February 2016 – the point in time when he met the presumption's two prerequisites: having a totally disabling respiratory impairment and fifteen years of qualifying coal mine employment. There is no dispute that the Miner was totally disabled as early as February 2016 based on his pulmonary function study evidence and Dr. Broudy's opinion. Similarly, there is no dispute that the Miner had more than fifteen years of underground coal mine employment for purposes of invoking the Section 411(c)(4) presumption. Further, the Board has affirmed the ALJ's finding that Employer failed to rebut the presumption and Employer points to no credited evidence establishing that the Miner was not totally disabled due to pneumoconiosis at any subsequent time. 20 C.F.R. §725.503(b).

As we have affirmed the ALJ's findings with regard to invocation and rebuttal of the Section 411(c)(4) presumption, we affirm his finding that Claimant established the Miner was totally disabled due to pneumoconiosis as of February 2016. Decision and Order at 21. We thus affirm the ALJ's determination that benefits commence in February 2016. 20 C.F.R. §725.503(b); *see Williams v. Director, OWCP*, 13 BLR 1-28, 1-29-30 (1989); *Lykins*, 12 BLR at 182-83; Decision and Order at 21.

Peter Cave Coal Co., 22 BLR 1-296, 1-304 (2003) (proof that a claimant or miner was disabled on a particular date does not establish the source of the disability). Section 718.204(c), however, specifies in pertinent part:

> *Except as provided in [20 C.F.R.] § 718.305* and paragraph (b)(2)(iii) of this section, proof that the miner suffers or suffered from a totally disabling respiratory or pulmonary impairment as defined in paragraph[] (b)(2)(i) . . . of this section shall not, by itself, be sufficient to establish that the miner's impairment is or was due to pneumoconiosis. Except as provided in paragraph (d) [regarding claims of survivors and deceased miners which lack relevant medical evidence], the cause or causes of a miner's total disability shall be established by means of a physician's documented and reasoned medical report.

20 C.F.R. §718.204(c)(2) (emphasis added).

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
Acting Administrative Appeals Judge