U.S. Department of Labor

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

BRB No. 24-0480 BLA

JOHN R. ROWE Claimant-Respondent v. ISLAND CREEK COAL COMPANY Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 09/12/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Theodore W. Annos, Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Theodore W. Annos's Decision and Order Awarding Benefits (2021-BLA-05497) rendered on a claim[1] filed on October

[1] Claimant filed a prior claim but withdrew it. Director's Exhibit 1. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

31, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The parties stipulated to twenty-eight years of qualifying coal mine employment, and the ALJ found Claimant has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he concluded Claimant invoked the presumption of total disability due to pneumoconiosis 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 that Employer failed to rebut the Section 411(c)(4) presumption. Claimant has not responded. The Acting Director, Office of Workers' Compensation Programs (the Director), declined to file a substantive 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.[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, 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 he has a pulmonary or respiratory impairment that, standing alone, prevents him from performing his usual coal mine work or comparable gainful work.[4] 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor

[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); 20 C.F.R. §718.305.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as Claimant performed his coal mine employment in Virgina. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4.

[4] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant's usual coal mine work was as a heavy equipment operator and required medium to very heavy exertion and that Claimant established twenty-eight years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 4-5.

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 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 weight of the evidence as a whole.[5] 20 C.F.R. §718.204(b)(2)(iv).

Medical Opinions

The ALJ considered three medical opinions. Dr. Werchowski diagnosed Claimant with a mixed obstructive-restrictive impairment with hypercapnia and hypoxia. Director's Exhibits 12, 24. Based on Claimant's qualifying blood gas tests, Dr. Werchowski opined Claimant does not have the pulmonary capacity to return to his prior coal mine employment. Director's Exhibits 12 at 9, 24 at 1. Similarly, Dr. Fino diagnosed a moderate ventilatory and severe oxygen transfer impairment which he opined precludes Claimant's usual work. Employer's Exhibit 1 at 12. By contrast, Dr. Ranavaya stated the objective studies he conducted show mild restriction and minimal hypoxemia; he diagnosed obesity hypoventilation syndrome and asthma but concluded Claimant has "no evidence of any pulmonary impairment or disability." Director's Exhibit 21 at 12; Employer's Exhibit 5 at 11.

The ALJ found each physician adequately understood the exertional requirements of Claimant's usual coal mine work. Decision and Order at 11. He found Drs. Werchowski's and Fino's opinions well-reasoned as even the nonqualifying studies they identified support their conclusions that Claimant cannot engage in the medium to very heavy level of exertion required in his usual coal mine employment. *Id.* at 16. On the other hand, the ALJ found Dr. Ranavaya's opinion unreasoned and internally inconsistent as he did not explain why Claimant's hypoventilation syndrome and asthma are not pulmonary or respiratory impairments or are not disabling. *Id.* Further finding Drs. Werchowski and Fino, as Board-certified pulmonologists, better qualified to offer an opinion as to total pulmonary or respiratory disability than Dr. Ranavaya, who is Board-certified in Occupational Medicine, the ALJ found Drs. Werchowski's and Fino's opinions outweigh Dr. Ranavaya's and the weight of the medical opinions therefore support a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.* at 16-17; Director's Exhibits 13, 21;

[5] The ALJ found Claimant did not establish total disability based on the pulmonary function studies or the arterial blood gas studies and found there was no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 6-10.

Employer's Exhibit 1. Contrary to Employer's assertions, we see no error in the ALJ's credibility determinations.

Initially, we reject Employer's assertion that the ALJ erred in crediting Dr. Fino's disability assessment as documented and reasoned because the ALJ found the weight of the pulmonary function and blood gas studies are non-qualifying. Employer's Brief at 5-6. A physician may conclude a miner is disabled even if the objective studies are non-qualifying. *See Eagle v. Armco, Inc.*, 943 F.2d 509, 512-13 (4th Cir. 1991) (minimal impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); 20 C.F.R. §718.204(b)(2)(iv). Dr. Fino understood Claimant's usual coal mine work required very heavy exertion and considered all of the objective studies of record in concluding Claimant's "major problem has been an oxygen transfer abnormality." Employer's Exhibit 1 at 4, 10-11. In addition, Dr. Fino found Claimant has "resting hypoxemia, a drop in his pO2 [on blood gas testing] with exertion and a drop in his oxygen saturations with exertion" that render him "disabled from returning to his last job or job requiring similar effort." *Id.* at 10-11. Thus, the ALJ permissibly credited the physician's opinion as sufficiently documented and reasoned. *See Eagle*, 943 F.2d at 512-13; Decision and Order at 16.

We further see no error in the ALJ's finding that Dr. Ranavaya's opinion is internally inconsistent and not well-reasoned. Despite diagnosing Claimant with hypoventilation syndrome and asthma, Dr. Ranavaya opined Claimant "does not have any [coal mine dust-related] pulmonary or respiratory impairment" because his hypoventilation syndrome is due to morbid obesity and he has had lifelong asthma since childhood. Director's Exhibit 21 at 6-12; Employer's Exhibit 5 at 9. The relevant inquiry with respect to total disability at 20 C.F.R. §718.204(b)(2), however, is whether the miner has a totally disabling respiratory or pulmonary impairment. The cause of the impairment is addressed at 20 C.F.R. §718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption at 20 C.F.R. §718.305. *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989). As the ALJ accurately observed Dr. Ranavaya did not otherwise explain why Claimant's obesity hypoventilation syndrome and asthma are not disabling respiratory or pulmonary impairments, the ALJ permissibly found Dr. Ranavaya's disability opinion not well-reasoned. *See Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993) (ALJ has exclusive power to make credibility determinations and resolve inconsistencies in the evidence); *Mabe* v. *Bishop Coal Co.*, 9 BLR 1-67, 1-68 (1986).

Employer's arguments on total disability are 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). Because substantial evidence supports the ALJ's determination to credit Dr. Fino and discredit Dr. Ranavaya, we affirm his finding that Claimant established

total disability by medical opinion evidence.[6] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 16-17. As Employer raises no specific challenge to the ALJ's weighing of the evidence as a whole, we affirm that Claimant established total disability at 20 C.F.R. §718.204(b)(2). Decision and Order at 17. We therefore affirm the ALJ's determination that Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); Decision and Order at 17.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,[7] or "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.

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),

[6] We need not address Employer's arguments that the ALJ failed to adequately explain why he found Dr. Werchowski's opinion credible or why he found Drs. Werchowski's and Fino's credentials as Board-certified pulmonologists superior to Dr. Ranavaya's Board-certification in Occupational Medicine. Employer's Brief at 4-6. As Dr. Werchowski diagnosed Claimant as totally disabled and the ALJ permissibly credited Dr. Fino's disability assessment as better reasoned than Dr. Ranavaya's contrary assessment, the credibility of Dr. Werchowski's opinion and the superior-credentials issues are immaterial to the ALJ's finding at 20 C.F.R. §718.204(b)(2)(iv). *See Larioni v. Director, OWCP,* 6 BLR 1-1276, 1-1278 (1984); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Decision and Order at 16.

[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 that is 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).

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

The ALJ considered three medical opinions and found Employer failed to meet its burden. Decision and Order at 18-21. Dr. Ranavaya opined Claimant does not have legal pneumoconiosis; he attributed Claimant's pulmonary complaints and varying levels of hypoxemia seen on his blood gas study results to morbid obesity and pulmonary damage due to lifelong asthma. Director's Exhibit 21; Employer's Exhibit 5. The ALJ found Dr. Ranavaya's opinion not well-reasoned or documented because he did not address whether coal mine dust is a partially contributing or aggravating cause of Claimant's restrictive impairment or his hypoxemia and pulmonary symptoms due to obesity hypoventilation syndrome and asthma.[8] Decision and Order at 19-20. In addition, the ALJ found Dr. Werchowski diagnosed legal pneumoconiosis and that Dr. Fino testified he could not offer an opinion on the cause of Claimant's restrictive impairment. *Id.* at 20-21. As none of the opinions refute coal dust exposure as a contributing or aggravating cause of Claimant's chronic lung disease or impairment, the ALJ found Employer failed to disprove legal pneumoconiosis. *Id.*

In challenging the ALJ's conclusion, Employer asserts the ALJ erred in crediting Dr. Werchowski's diagnosis of legal pneumoconiosis. Employer's Brief at 10. It further asserts the ALJ erred in discrediting Dr. Ranavaya's opinion as inadequately explained because the physician stated that the varying degrees of hypoxemia demonstrated on Claimant's blood gas tests support obesity hypoventilation syndrome as the "direct[]" cause of his hypoxemia. *Id*. We reject these arguments as they reflect a misunderstanding of the applicable burden and amount to a request to reweigh the evidence, which we cannot do. *See Anderson*, 12 BLR at 1-113.

As the ALJ correctly observed, because Claimant invoked the Section 411(c)(4) rebuttable presumption, the burden shifted to Employer to establish Claimant does not have a pulmonary disease or impairment that is "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 Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 555 (4th Cir. 2013); *Minich*, 25 BLR at 1-155 n.8; Decision and Order at 17-18. As Employer's assertions fail to identify error in the ALJ's findings that Dr. Werchowski's diagnosis of legal pneumoconiosis does not aid Employer at rebuttal and that Dr. Ranavaya failed to

[8] The ALJ found Dr. Ranavaya did not address the cause of the "mild restrictive pattern" he observed on Claimant's pulmonary function study and "focused extensively" on the "[most probable and] major" or "primary" causes of Claimant's resting hypoxemia and pulmonary complaints. Decision and Order at 19 (quoting Director's Exhibit 21 at 10 and Employer's Exhibit 5 at 9).

address coal dust exposure as a contributing or aggravating cause of Claimant's pulmonary disease or impairment, we affirm that Employer did not rebut the presumed existence 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); *see* Decision and Order at 21-22. He discredited Dr. Ranavaya's opinion because he did not diagnose legal pneumoconiosis, contrary to his finding that Claimant has 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); Decision and Order at 21-22; Director's Exhibit 21; Employer's Exhibit 5. Employer does not challenge this finding. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). We thus affirm that Employer failed to prove no part of Claimant's total respiratory disability is due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 21-22.

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

MELISSA LIN JONES
Administrative Appeals Judge