**U.S. Department of Labor**

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

BRB No. 25-0014 BLA

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| THOMAS M. HOFFMAN<br><br>Claimant-Respondent<br><br>v.<br><br>KEYSTONE COAL MINING CORPORATION<br><br>Employer-Petitioner<br><br>DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR<br><br>Party-in-Interest | ) | **NOT-PUBLISHED**<br><br>DATE ISSUED: 09/17/2025<br><br>DECISION and ORDER |

Appeal of the Decision and Order Awarding Benefits on Remand of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

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

Christopher Lee Wildfire (SutterWilliams, LLC), Pittsburgh, Pennsylvania, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits on Remand (2017-BLA-06238) rendered on a claim filed

pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (the Act). This case involves a subsequent claim filed on January 10, 2017,[1] and is before the Benefits Review Board for the second time.

In his initial Decision and Order Denying Benefits, the ALJ credited Claimant with nine years and four months of coal mine employment and thus found he could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018). Turning to whether Claimant could establish entitlement under 20 C.F.R. Part 718, the ALJ found the new medical evidence established total disability and therefore established a change in an applicable condition of entitlement.[3] 20 C.F.R. §§718.204(b)(2), 725.309(c). The ALJ, however, found the evidence did not establish the existence of legal or clinical pneumoconiosis, 20 C.F.R. §718.202(a), and denied benefits.

In consideration of Claimant's appeal, the Board rejected Claimant's assertion that the ALJ erred in failing to credit his employment with Charles J. Merlo, Incorporated (Merlo), from 1972 to 1977, as coal mine employment under the Act. *Hoffman v. Keystone Coal Mining Corp.*, BRB No. 19-0175 BLA, slip op. at 3 (Feb. 20, 2020) (unpub.). The Board observed the ALJ credited Claimant with nine years and four months of coal mine employment and Claimant asserted error in this finding only to the extent that the ALJ's

[1] Claimant filed a prior claim on August 17, 2006. Director's Exhibit 1. The district director denied the claim because Claimant did not establish any element of entitlement. *Id.*

[2] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is 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) (2012); *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 any element of entitlement in his prior claim, he had to submit new evidence establishing any element to obtain review of his current claim on the merits. *See White*, 23 BLR at 1-3; Director's Exhibit 1.

calculation differed from the district director's finding of "more than 14 years."[4] *Id*. Thus, the Board rejected Claimant's alleged error as harmless without reaching the merits of Claimant's contentions concerning the nature of his employment with Merlo. *Id*. The Board also affirmed the ALJ's finding that Claimant did not establish pneumoconiosis under 20 C.F.R. Part 718 and thus the denial of benefits. *Id.* at 4-5.

Claimant timely moved for reconsideration, contending he has at least fifteen years of coal mine employment, as his employment for Merlo constitutes qualifying coal mine employment under the Act and regulations. 20 C.F.R. §§718.305, 725.202. The Board granted reconsideration and reversed the ALJ's holding that Claimant's transportation work as a supply man for Merlo did not constitute qualifying coal mine employment. *Hoffman v. Keystone Coal Mining Corp.*, BRB No. 19-0175 BLA, slip op. at 5 (Nov. 30, 2022) (Order) (unpub.). The Board thus remanded the claim to the ALJ to include Claimant's employment with Merlo when calculating the length of his coal mine employment to determine if Claimant invoked the Section 411(c)(4) presumption and, if so, whether Employer rebutted the presumption. *Id.* at 6. However, if the ALJ again found less than fifteen years of coal mine employment, the Board instructed the ALJ to reinstate the denial of benefits as it affirmed the ALJ's finding that Claimant failed to establish the existence of pneumoconiosis. *Id.*

On remand, the ALJ found Claimant established fifteen years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment.[5] 20 C.F.R. §718.204(b)(2). Thus, he found Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis. 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits.

[4] The Board noted the district director found 14.54 years of coal mine employment. *Hoffman v. Keystone Coal Mining Corp.*, BRB No. 19-0175 BLA, slip op. at 3 (Feb. 20, 2020) (unpub.); *see* Director's Exhibit 23 at 2.

[5] The ALJ stated the Board affirmed his finding that Claimant established total disability. Decision and Order on Remand at 10. While the Board did not explicitly affirm the ALJ's total disability finding, we indicated that Claimant will have invoked the Section 411(c)(4) presumption if the ALJ found that Claimant established at least fifteen years of qualifying coal mine employment on remand. *Hoffman v. Keystone Coal Mining Corp.*, BRB No. 19-0175 BLA, slip op. at 6 (Nov. 30, 2022) (Order) (unpub.). In any event, the parties have not challenged the ALJ's finding on total disability; thus, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 25.

In the current appeal, Employer argues the ALJ again erred in calculating the length of Claimant's coal mine employment and thus in finding Claimant invoked the Section 411(c)(4) presumption.[6] Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, declined to file a 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.[7] 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).

**Section 411(c)(4) Presumption—Length of Coal Mine Employment**

To invoke the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis, Claimant must establish he worked at least fifteen years in underground coal mines, or in "substantially similar" surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden of establishing 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 calculation of the length of coal mine employment if it is based on a reasonable method of computation and is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

In considering the length of Claimant's coal mine employment, the ALJ noted Claimant's testimony, his Social Security Administration (SSA) earnings records, and a letter from Employer's Human Resources Supervisor regarding Claimant's employment. Decision and Order on Remand at 6. The ALJ found Claimant's testimony that he worked in coal mine employment from 1972 to 1989 supported by his SSA earnings records. *Id.* He credited Claimant with full years of coal mine employment for the years 1973 through 1984 and 1986 through 1987, totaling fourteen years, based on "substantial earnings" indicated on his SSA earnings records and as consistent with his testimony. *Id.* In addition, he credited Claimant with nine months of coal mine employment in 1972 based on earnings

[6] We affirm, as unchallenged on appeal, the ALJ's determination that Employer failed to rebut the Section 411(c)(4) presumption if it were invoked. *See Skrack*, 6 BLR at 1-711; Decision and Order at 22.

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

indicated on his SSA earnings records that he was paid in the last three quarters of that year. *Id*. Finally, he credited Claimant with three months of coal mine employment in 1988 based on Employer's records that indicated Claimant last worked on March 31, 1988. *Id.* Accordingly, the ALJ found Claimant had a total of fifteen years of coal mine employment sufficient to invoke the Section 411(c)(4) presumption. *Id.*

Employer does not challenge the ALJ's findings that Claimant worked for full calendar years in coal mine employment from 1973 through 1979, 1981, 1982,[8] and for nine months in 1972. Employer's Brief at 7. Thus, we affirm the ALJ's finding that Claimant established nine years and nine months of coal mine employment for the years 1972 through 1979, 1981, and 1982. *See Skrack*, 6 BLR at 1-711; Decision and Order on Remand at 6. However, it disputes the ALJ's remaining findings that Claimant worked for full calendar years in 1980, 1983, 1984, 1986, and 1987, and for three months in 1988 and thus that Claimant established fifteen years of coal mine employment. Decision and Order on Remand at 14-17; Employer's Brief at 6-7, 12, 14-17. Specifically, it contends that the ALJ failed to consider direct evidence regarding the beginning and ending dates of Claimant's coal mine employment for those years. Decision and Order on Remand at 16-17; Employer's Brief at 14-17. Claimant contends that, when adding his employment with Merlo to the ALJ's prior findings, Claimant has established more than fifteen years of coal mine employment.[9] Claimant's Response at 7-8. Employer's contentions have merit.

[8] Employer also agreed that Claimant worked for a full year in 1985, but it did not include that year in its calculations. *See* Employer's Brief at 7, 16. Thus, we assume Employer's concession is a scrivener's error. We note the ALJ did not include 1985 in his length of coal mine employment determinations and that Employer's records regarding Claimant do not include employment in 1985; however, Claimant's SSA earnings records reflect $1,901.50 in earnings from Helvetia Coal Company (Helvetia) in 1985. Decision and Order on Remand at 6; Director's Exhibits 6, 7.

[9] Claimant asserts the Board previously remanded the case for the ALJ to add Claimant's employment with Merlo to the ALJ's previously awarded nine years and four months of coal mine employment. Claimant's Response at 5. However, the Board did not affirm the ALJ's prior findings, but rather indicated it is the ALJ's purview to calculate Claimant's coal mine employment based on a reasonable method of calculation and instructed the ALJ to include Claimant's employment with Merlo "when calculating the length of Claimant's coal mine employment." *Hoffman*, BRB No. 19-0175 BLA, slip op. at 6 (Nov. 30, 2022) (Order); *see also Dale v. Wilder Coal Co.*, 8 BLR 1-119, 1-120 (1985) (effect of the Board's vacating the ALJ's prior finding was to return the parties to the status

When determining the length of a miner's coal mine employment, the ALJ should first determine, if possible, the beginning and ending dates of a miner's period or periods of coal mine employment. 20 C.F.R. §725.101(a)(32)(ii); *Dawson v. Old Ben Coal Co.*, 11 BLR 1-58, 1-60 n.1 (1988). The dates and length of a miner's coal mine employment "may be established by any credible evidence including (but not limited to) company records, pension records, earnings statements, coworker affidavits, and sworn testimony." 20 C.F.R. §725.101(a)(32)(ii). To credit a miner with a year of coal mine employment, the ALJ must first determine whether the miner was engaged in coal mine employment for a period of one calendar year, i.e., 365 days, or partial periods totaling one year. 20 C.F.R. §725.101(a)(32); *see Daniels Co. v. Mitchell*, 479 F.3d 321, 334-36 (4th Cir. 2007); *Clark v. Barnwell Coal Co.*, 22 BLR 1-277, 1-280 (2003). If the threshold one-year period is met, then the ALJ must determine whether the miner worked for at least 125 working days within that one-year period. 20 C.F.R. §725.101(a)(32); *Armco, Inc. v. Martin*, 277 F.3d 468, 474-75 (4th Cir. 2002) (2001 amendments to the regulations require a one-year employment relationship during which the miner worked 125 days to establish a year of employment).

As Employer argues, the ALJ found full years of employment for the years from 1980 through 1984 and 1986 through 1987, generally citing "substantial" earnings in Claimant's SSA earnings records; however, he did not address direct evidence that, if credited, could establish beginning and ending dates of coal mine employment, potentially for less than a calendar year, during 1980, 1983, 1984, 1986, and 1987.[10] *See Osborne v. Eagle Coal Co.*, 25 BLR 1-195, 1-204-05 (2016) (recognizing the preference for the use of direct evidence to compute the length of coal mine employment); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand); Director's Exhibit 6; Employer's Brief at 14-17. Further, while the ALJ consulted this evidence in finding Claimant's last day of coal mine employment

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quo ante on that issue, with all of the rights, benefits, or obligations they had prior to the ALJ's decision).

[10] Employer submitted a letter, signed by its Human Resources Supervisor, providing Claimant's employment history at Helvetia, Keystone Coal Mining Corporation (Keystone), and The Florence Mining Company (Florence). Director's Exhibit 6. The document indicates that Claimant worked at Helvetia from September 2, 1980, through December 12, 1983, when he became injured, and then again from January 16, 1984, through December 28, 1984, when he was laid off. *Id.* It also indicates that Claimant worked at Keystone from January 3, 1986, through October 26, 1987, when he was injured. *Id.* We note there are also earnings from other coal companies reflected in Claimant's SSA earnings records in 1980. Director's Exhibit 7.

was March 31, 1988, and thus that Claimant established three months of coal mine employment in 1988, Employer correctly argues that the ALJ did not address the fact that Employer's letter notes employment only from March 24, 1988 to March 31, 1988 in that year.[11] Employer's Brief at 15, 17; Director's Exhibit 6.

Thus, we agree that the ALJ failed to address all relevant evidence, resolve conflicts in the evidence, and adequately explain his determinations as the Administrative Procedure Act requires.[12] U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); Employer's Brief at 17. Therefore, while we affirm the ALJ's findings of nine years and nine months of coal mine employment for the years 1972 through 1979, 1981, and 1982, *supra* at 5, we vacate his remaining findings as to the length of Claimant's coal mine employment and thus his conclusion that Claimant established fifteen years of coal mine employment.[13] Decision

[11] Employer's letter notes Claimant was "released to return to work and laid off effective 3/23/88" from Keystone and began work at Florence on March 24, 1988. Director's Exhibit 6 (citation modified). Claimant's SSA earnings records reflect $1,903.57 from Keystone and $1,348.91 from Florence in 1988. *See* Director's Exhibit 7. We also note that Claimant testified to working in coal mine employment until 1989 and indicated 1989 as his last year of coal mine employment on his application for benefits. Director's Exhibits 3, 4; Employer's Exhibit 5 at 15; Hearing Transcript at 16; Decision and Order at 6. Claimant's SSA earnings record reflects $1,348.91 in earnings from Florence in 1989.

[12] The Administrative Procedure Act provides every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[13] We decline to address Employer's suggested calculations, as the ALJ may use any reasonable calculation supported by substantial evidence in making his determinations. *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); Employer's Brief at 14-16. As Employer apparently suggests, application of the formula at 20 C.F.R. §725.101(a)(32)(iii) is permitted to determine the length of coal mine employment when beginning and ending dates cannot be ascertained or the miner's employment was for less than a calendar year. When applying the formula, the regulation directs that the miner's yearly earnings be divided by the coal mine industry's daily earnings provided by the Bureau of Labor Statistics. *See* C.F.R. §725.101(a)(32)(iii). This information is provided in Exhibit 610 of the *Office of Workers' Compensation Programs Coal Mine (Black Lung Benefits Act) Procedural Manual*. The yearly average earnings in Exhibit 610 reflect earnings for 125

and Order on Remand at 6. Consequently, we vacate the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption and the award of benefits. *Id.* at 6, 10, 22-23.

**Remand Instructions**

We remand the case for the ALJ to calculate the length of Claimant's coal mine employment in addition to the finding of nine years and nine months of coal mine employment that the Board previously affirmed, as addressed above. He must first determine whether the beginning and ending dates of Claimant's coal mine employment can be determined and make the threshold determination of whether Claimant established a full calendar year of coal mine employment or partial periods totaling one year. For each calendar year of coal mine employment established, he must also determine whether Claimant worked for at least 125 working days within that one-year period.[14] 20 C.F.R. §725.101(a)(32); *see Mitchell*, 479 F.3d at 334-36; *Clark*, 22 BLR at 1-280. In doing so, the ALJ must consider all relevant evidence and utilize a reasonable method of calculation. *See Muncy*, 25 BLR at 1-27; *Vickery*, 8 BLR at 1-432; *McCune*, 6 BLR 1-998.

If the ALJ finds Claimant established fifteen years of coal mine employment, Claimant will have invoked the Section 411(c)(4) presumption and the ALJ may reinstate his award of benefits given our affirmance of his finding that Employer failed to rebut the presumption. *See supra* note 6. However, if the ALJ finds Claimant failed to establish fifteen years of coal mine employment, he may deny benefits as the Board previously affirmed his finding that Claimant did not establish the existence of pneumoconiosis under 20 C.F.R. Part 718, without benefit of the presumption.

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days, which in and of itself does not establish the threshold inquiry of a calendar year of coal mine employment. *See* Exhibit 610; *see also Clark*, 22 BLR at 1-281 (proof that a miner worked at least 125 days or that a miner's earnings exceeded the industry average for 125 days of work in a given year does not satisfy the requirement that such employment occurred during a 365-day period of coal mine employment and therefore, in itself, does not establish one full year of coal mine employment as defined in the regulations).

[14] If the threshold calendar-year period is met, "it must be presumed, in the absence of evidence to the contrary, that the miner spent 125 working days in such employment." 20 C.F.R. §725.101(a)(32)(ii).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Awarding Benefits on Remand and remand the case for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge