U.S. Department of Labor

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

BRB Nos. 25-0071 BLA
and 25-0072 BLA

DOUGLAS ALENE BALLOU (o/b/o and Widow of RAY BALLOU)	)	
Claimant-Respondent	)	**NOT-PUBLISHED**
v.	)	
ENTERPRISE MINING COMPANY, LLC	)	DATE ISSUED: 09/17/2025
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 Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

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

Daniel G. Murdock (Fulton, Devlin & Powers, LLC), Lexington, Kentucky, for Employer.

Before: ROLFE and JONES, Administrative Appeals Judges, and ULMER, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Awarding Benefits (2022-BLA-05786 and 2023-BLA-05226) rendered on claims[1] filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[2] This case involves a miner's subsequent claim filed on September 18, 2019,[3] and a survivor's claim filed on October 14, 2021.

The ALJ accepted the parties' stipulation that the Miner worked for thirty years in underground coal mine employment and found he had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). She therefore found Claimant established a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c), and invoked the presumption that the Miner was totally disabled due to pneumoconiosis at Section 411(c)(4) of the Act,[4] 30 U.S.C. §921(c)(4) (2018). She further found Employer did not rebut the presumption and awarded benefits in the miner's claim. Because the Miner was entitled to benefits at the time of his death, the ALJ also determined Claimant is automatically entitled to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).[5]

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[1] Claimant is the widow of the Miner, who died on September 20, 2021. Survivor's Claim (SC) Director's Exhibit 13. She is pursuing both his claim and her survivor's claim. SC Director's Exhibit 14.

[2] Because this case involves both a miner's subsequent claim and a survivor's claim, the ALJ consolidated these appeals for purposes of decision. Jan. 4, 2023 Order.

[3] This is the Miner's third claim for benefits. On June 21, 2017, ALJ Christopher Larsen denied the Miner's first claim, filed on November 15, 2012, because he failed to establish total disability. Miner's Claim (MC) at 7, 12 (2012). He subsequently filed a claim on August 14, 2018, but withdrew it. MC Director's Exhibit 2. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b). The Miner took no further action until filing his current claim. MC Director's Exhibit 4.

[4] 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.

[5] Under Section 422(*l*) of the Act, a survivor of a miner who was determined to be eligible to receive benefits at the time of his or her death is automatically entitled to survivor's benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thereby 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, has declined to file a response.

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.[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, 361-62 (1965).

The Miner's Claim

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented 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 studies or arterial blood gas studies,[8] 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).

[6] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established thirty years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3.

[7] 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); MC Director's Exhibit 5; Hearing Tr. at 33.

[8] A "qualifying" pulmonary function study or arterial blood gas study yields values equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

The ALJ found Claimant established total disability based on the medical opinions as supported by the Miner's treatment records and the evidence as a whole.[9] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 9-15. Employer argues the ALJ erred in finding the medical opinions establish total disability. Employer's Brief at 6-12. We disagree.

Before weighing the medical opinions, the ALJ found the Miner's usual coal mine work was as a scoop operator or supply man and his work required heavy to very heavy manual labor. Decision and Order at 5. We affirm this finding as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ considered the opinions of Drs. Shah, Rosenberg, and Dahhan. Dr. Shah opined the Miner was totally disabled from a pulmonary standpoint based on his abnormal diffusion capacity tests. MC Claimant's Exhibits 19, 27. Dr. Rosenberg opined that, given the Miner had no ventilatory abnormalities and his gas exchange was preserved with exercise, he had no disability from a pulmonary perspective. MC Director's Exhibit 25 at 4; Employer's Exhibit 9. Dr. Dahhan opined the totality of the pulmonary function studies and arterial blood gas studies demonstrated the Miner retained the ventilatory capacity to perform his usual coal mine work. Employer's Exhibit 3 at 4-5.

The ALJ found Dr. Shah's opinion is reasoned and documented and entitled to great weight. Decision and Order at 9-11, 15. She found the contrary opinions of Drs. Rosenberg and Dahhan insufficiently explained and thus worthy of diminished weight. *Id*. at 11-15. Therefore she found the Miner had a totally disabling respiratory or pulmonary impairment. *Id*. at 15.

Employer does not challenge the ALJ's crediting of Dr. Shah's opinion that the Miner was totally disabled or her discrediting of Dr. Rosenberg's opinion that the Miner was not. Thus we affirm these determinations. *See Skrack*, 6 BLR at 1-711; Decision and Order at 9-13.

Employer argues the ALJ improperly shifted the burden of proof in considering total disability because she required Employer to disprove this element rather than requiring Claimant to establish its presence. Employer's Brief at 11-12.

Contrary to Employer's argument, the ALJ correctly imposed the burden on Claimant with respect to the issue of total disability in stating, "a miner may establish total

[9] The ALJ found Claimant did not establish total disability based on the pulmonary function studies or arterial blood gas studies, and there is 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 6-9.

disability if a physician, exercising reasoned medical judgment and based on medically acceptable clinical and laboratory diagnostic techniques, concludes that a miner's respiratory or pulmonary condition prevents the miner from performing his usual coal mine work" or from comparable employment. Decision and Order at 9 (citing 20 C.F.R. §718.204(b)(2)(iv)); *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267 (1994). She found Claimant met her burden through Dr. Shah's reasoned and documented opinion which establishes the Miner had a disabling diffusion capacity impairment at the time of his death. Decision and Order at 9-11, 15. Further, she did not shift the burden of proof to Employer; as is her duty, she considered whether Employer's experts credibly explained their opinions that the Miner was not totally disabled by this diffusion capacity impairment and permissibly found they failed to do so. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 482-83 (6th Cir. 2012); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); Decision and Order at 9-15.

We likewise reject Employer's argument that the ALJ erred in discrediting Dr. Dahhan's opinion. Employer's Brief at 7-11. Dr. Dahhan stated that, because the Miner's pulmonary function studies are normal, the Miner did not exhibit any ventilatory defect. Employer's Exhibit 3 at 3-4. When addressing the Miner's diffusion capacity test, he acknowledged the "absolute diffusion capacity was low at [fifty-four percent]." *Id*. But he explained that value should be adjusted to seventy-five percent because the Miner exhibited low alveolar ventilation, which can be attributed to the fact that the Miner "did not take a full inspiratory effort during the maneuver." *Id.* Thus he opined the diffusion capacity is "*near* normal" when corrected for alveolar ventilation and low effort. *Id.* (emphasis added).

Contrary to Employer's argument, the ALJ acted within her discretion in finding Dr. Dahhan's opinion entitled to little weight because he "did not explain what a normal value would be, and did not quantify how much of the reduction [of diffusion capacity] was due to effort as opposed to a pulmonary impairment." Decision and Order at 14-15; *see Banks*, 690 F.3d at 482-83; *Napier*, 301 F.3d at 713-14. Further, she also rationally discredited Dr. Dahhan's opinion because he failed to reconcile his assessment of the Miner's less than optimal effort on the test with the technician's report that the Miner provided good effort and understanding. *See Banks*, 690 F.3d at 482-83; *Napier*, 301 F.3d at 713-14; Decision and Order at 14-15.

Employer's argument amounts to a request to reweigh the evidence, which the Board is not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because it is supported by substantial evidence, we affirm the ALJ's finding

that Dr. Dahhan's opinion that the Miner was not totally disabled is entitled to less weight.[10] *Martin v. Ligon Preparation Co*., 400 F.3d 302, 305 (6th Cir. 2005) (substantial evidence is defined as relevant evidence that a reasonable mind might accept as adequate to support a conclusion).

We therefore affirm the ALJ's finding that the medical opinion evidence supports total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 15. Further, we affirm the ALJ's conclusion that the evidence, when weighed together, establishes total disability and Claimant established a change in an applicable condition of entitlement. *Rafferty*, 9 BLR at 1-232; 20 C.F.R. §§725.309(c), 718.204(b)(2); Decision and Order at 20.

Because we affirm the ALJ's findings that the Miner worked for thirty years in qualifying coal mine employment and had a totally disabling respiratory or pulmonary impairment, we also affirm her conclusions that Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis. 20 C.F.R. §718.305(b)(1); Decision and Order at 20-21.

Employer does not challenge the ALJ's finding that it failed to establish rebuttal of the Section 411(c)(4) presumption, and thus we affirm it. *Skrack*, 6 BLR at 1-711; Decision and Order at 21-27. Thus we affirm the award of benefits in the miner's claim.

The Survivor's Claim

Because we have affirmed the award of benefits in the miner's claim and Employer raises no specific challenge as to the survivor's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits pursuant to Section 422(*l*). 30 U.S.C. §932(*l*) (2018); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

[10] Because the ALJ provided a valid reason for discrediting Dr. Dahhan's opinion on total disability, we need not address Employer's remaining arguments regarding the weight accorded to his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 12.

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge