



BRB No. 23-0354 BLA

WALTER TOMBLIN, SR. ¹)	
)	
Claimant-Respondent)	
)	
v.)	
)	
SOUTHERN OHIO COAL COMPANY)	
)	
and)	
)	
CONSOL ENERGY, INCORPORATED)	DATE ISSUED: 06/26/2024
c/o CHARLES TAYLOR TPA, LLC)	
)	
Employer/Carrier-)	
Petitioners)	
)	
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 Steven D. Bell,
Administrative Law Judge, United States Department of Labor.

Christopher L. Wildfire and Toni J. Williams (SutterWilliams, LLC),
Pittsburgh, Pennsylvania, for Employer and its Carrier.

¹ After briefing, but prior to decision, Wes Addington with The Appalachian Citizens' Law Center of Whitesburg, Kentucky, filed a Notice of Appearance as counsel for Claimant on April 30, 2024.

Before: GRESH, Chief Administrative Appeals Judge, BOGGS and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Steven D. Bell's Decision and Order Awarding Benefits (2021-BLA-05249) rendered on a claim filed on August 27, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulations that Claimant has more than fifteen years of underground coal mine employment and a totally disabling respiratory or pulmonary 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,² 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits commencing June 2015.

On appeal, Employer challenges the ALJ's finding that benefits commence in June 2015.³ Neither Claimant nor the Director, Office of Workers' Compensation Programs, has 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.⁴ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

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); *see* 20 C.F.R. §718.305.

³ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established entitlement to benefits. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 30.

⁴ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Ohio. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 9; Director's Exhibit 4.

Commencement Date for Benefits

Employer challenges the ALJ's determination that Claimant's benefits commence in June 2015, the month of his earliest qualifying pulmonary function study that Dr. Rosenberg relied on in part to diagnose total respiratory disability. It alleges benefits should commence in August 2019, the month in which Claimant filed this claim. Employer's Brief at 8-9. We disagree.

The commencement date for 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 from all relevant evidence, benefits commence in the month the claim was filed, unless credited 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, 1-50 (1990).

The ALJ considered Dr. Rosenberg's medical opinion and found him to be "the only physician who provided an opinion on when Claimant first became disabled." Decision and Order at 30. Dr. Rosenberg testified during a deposition that all of Claimant's pulmonary function studies from June 10, 2015 produced qualifying results,⁵ "even though there was a bronchodilator response."⁶ Employer's Exhibit 7 at 48-54. When asked about the date Claimant developed a totally disabling obstructive lung disease, Dr. Rosenberg answered it was "from 2015 on" that Claimant "met disability standards." *Id.* at 48-49. The ALJ found Dr. Rosenberg's opinion that "Claimant was totally disabled starting in June 2015" based on "the date of his qualifying [pulmonary function study]" to be reasoned and documented. Decision and Order at 30. Consequently, he determined Claimant is entitled to benefits commencing in June 2015. *Id.*

Employer argues the ALJ erred in relying on Dr. Rosenberg's opinion to determine the commencement date for benefits because, although the doctor found "Claimant disabled from a respiratory standpoint," he did not "diagnose a disability due to pneumoconiosis" as Section 725.503(b) requires. Employer's Brief at 8-9. It thus argues

⁵ A "qualifying" pulmonary function study yields results equal to or less than the applicable table values contained in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i).

⁶ The ALJ stated Claimant's pulmonary function studies produced "qualifying [results] in 2007," "non-qualifying [results] in 2013," and "qualifying [results] from 2015 onward." Decision and Order at 30.

“entitlement cannot be traced back to 2015” based on Dr. Rosenberg’s opinion. *Id.* at 9. We disagree.

The regulation governing the commencement of benefits in a living 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 Section 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).⁷ In doing so, the plain language of Section 718.204(c) allows a claimant to establish disability causation with proof of total disability, fifteen years of qualifying coal mine employment, and invocation of the Section 411(c)(4) presumption.

⁷ Without the Section 718.305 presumption, the burden rests with Claimant to establish his total disability is 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. Peter Cave Coal Co.*, 22 BLR 1-296, 1-304 (2003) (proof that a claimant 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 [Section] 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 paragraphs (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). The regulation at 20 C.F.R. §718.305 provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of qualifying coal mine employment and “a totally disabling respiratory or pulmonary impairment established pursuant to [20 C.F.R.] §718.204.” 20 C.F.R. §718.305(b)(iii).

Because Claimant invoked the Section 411(c)(4) presumption, he is presumed to have been totally disabled due to pneumoconiosis, at a minimum, in June 2015 – 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 Claimant has been totally disabled since June 2015 based on his pulmonary function study evidence and Dr. Rosenberg’s opinion.⁸ Similarly, there is no dispute that Claimant has more than fifteen years of underground coal mine employment for purposes of invoking the Section 411(c)(4) presumption. Further, there is no dispute that Employer failed to rebut the presumption and Employer points to no credited evidence establishing that Claimant was not totally disabled due to pneumoconiosis at any subsequent time.⁹ 20 C.F.R. §725.503(b).

As we have affirmed the ALJ’s findings with regard to invocation, rebuttal, and the June 2015 onset of total disability, we affirm his finding that Claimant established he was totally disabled due to pneumoconiosis as of June 2015. We thus affirm the ALJ’s determination that benefits commence in June 2015. 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.

⁸ Employer does not challenge the ALJ’s determination to credit the pulmonary function study evidence and Dr. Rosenberg’s opinion as establishing a totally disabling respiratory impairment as of June 2015. Decision and Order at 30.

⁹ The ALJ found Drs. Rosenberg’s and Manaker’s opinions unpersuasive and thus insufficient to rebut the presumption that Claimant is totally disabled due to pneumoconiosis. Decision and Order at 29-30.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge