

U.S. Department of Labor

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



BRB Nos. 24-0192 BLA  
and 24-0192 BLA-A

ROGER L. MALCOMB	)
	)
Claimant-Petitioner	)
	)
v.	)
	)
LAUREL CREEK MINING COMPANY	)
	)
and	)
	)
WEST VIRGINIA COAL WORKERS’	)
PNEUMOCONIOSIS FUND	)
	)
Employer/Carrier-	)
Cross-Petitioners	)
	)
DIRECTOR, OFFICE OF WORKERS’	)
COMPENSATION PROGRAMS, UNITED	)
STATES DEPARTMENT OF LABOR	)
	)
Party-in-Interest	)

**NOT-PUBLISHED**

DATE ISSUED: 10/11/2024

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Sean M. Ramaley,  
Administrative Law Judge, United States Department of Labor.

Deanna Lyn Istik (Sinatra & Istik Law Office, PLLC), Cranberry Township,  
Pennsylvania, for Claimant.

Francesca Tan (Jackson Kelly PLLC), Morgantown, West Virginia, for  
Employer and its Carrier.

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

PER CURIAM:

Claimant appeals, and Employer and its Carrier (Employer) cross-appeal, Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Denying Benefits (2022-BLA-05086) rendered on a subsequent claim<sup>1</sup> filed November 6, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established 10.55 years of coal mine employment and thus could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).<sup>2</sup> Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established total disability, 20 C.F.R. §718.204, but did not establish the existence of pneumoconiosis, an essential element of entitlement. 20 C.F.R. §718.202. He therefore found Claimant did not establish a change in an applicable condition of entitlement,<sup>3</sup> 20 C.F.R. §725.309(c), and denied benefits.

On appeal, Claimant argues the ALJ erred in finding he did not establish the existence of pneumoconiosis. Employer responds in support of the denial of benefits, and

---

<sup>1</sup> Claimant filed two prior claims. Director's Exhibits 1; 2. His more recent claim, filed December 20, 2013, was denied by ALJ Carrie Bland on January 31, 2018, for failure to establish the existence of pneumoconiosis. Director's Exhibit 2. Claimant timely requested modification of that denial. *Id.* The district director denied the request on August 13, 2019, for failure to establish the existence of pneumoconiosis and thereby establish a mistake in a determination of fact. *Id.* Claimant took no further action until filing his current claim.

<sup>2</sup> Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if they have 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); *see* 20 C.F.R. §718.305.

<sup>3</sup> 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 they find "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 pneumoconiosis in his prior claim, he had to submit new evidence establishing that element to obtain review of the merits of his current claim. *Id.*

on cross-appeal, argues the ALJ erred in weighing the medical opinion evidence regarding pneumoconiosis.<sup>4</sup> The Director, Office of Workers' Compensation Programs, declined to file 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.<sup>5</sup> 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, 361-62 (1965).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Statutory presumptions may assist claimants in establishing the elements of entitlement if certain conditions are met, but failure to establish any of them precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

To establish legal pneumoconiosis, Claimant must establish he has 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(b).

The ALJ considered the opinions of Drs. Celko, Go, Sood, Zaldivar, and Spagnolo. Decision and Order at 22-24. Drs. Celko, Go, and Sood opined Claimant has legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) due to coal mine dust exposure and smoking. Director's Exhibit 13; Claimant's Exhibits 1; 1a; 3; 3a. Drs. Zaldivar and Spagnolo opined Claimant has asthma complicated by his smoking history but unrelated to his coal mine dust exposure. Director's Exhibit 23; Employer's Exhibits 6; 9; 10. Dr. Zaldivar further opined Claimant has emphysema that is not related

---

<sup>4</sup> We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 10.55 years of coal mine employment and a totally disabling respiratory or pulmonary impairment and that he did not establish the existence of clinical pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5, 21, 26.

<sup>5</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5.

to coal mine work and therefore is not legal pneumoconiosis. Director's Exhibit 23; Employer's Exhibit 9. The ALJ discredited the opinions of Drs. Celko, Go, Sood, Zaldivar, and Spagnolo as not reasoned or documented. Decision and Order at 22-24. Consequently, the ALJ found Claimant did not establish legal pneumoconiosis based on the medical opinion evidence. *Id.* at 24.

Claimant argues the ALJ erred in considering the opinions of Drs. Celko, Go, and Sood. Claimant's Brief at 8-11. On cross-appeal, Employer argues the ALJ erred in considering the opinions of Drs. Zaldivar and Spagnolo. Employer's Brief at 18-42.

Dr. Celko opined Claimant's thirteen years of coal mine dust exposure and smoking history are consistent with Claimant's obstructive and diffusing capacity abnormalities that he found on objective testing. Director's Exhibit 13 at 2. He opined both are significant contributors to Claimant's COPD because even though Claimant continued to smoke after he quit mining, "it is well known that coal mine dust is retained in the lungs and has an ongoing impact on lung function." *Id.*

Dr. Go diagnosed COPD based on Claimant's obstructive ventilatory defect seen on pulmonary function testing, dyspnea and wheezing, and emphysema seen on x-ray. Claimant's Exhibit 1 at 8. He opined Claimant's COPD is legal pneumoconiosis because he had thirteen years of coal mine dust exposure, noting medical literature that shows "significant coal mine dust exposure can be an important contributor to clinically significant COPD." *Id.* at 9. Further, he opined Claimant's COPD was caused by coal mine dust exposure and smoking, and there are no "other occupational or environmental exposures that would explain the findings." *Id.* at 8.

Dr. Sood diagnosed Claimant with "emphysema phenotype of COPD" based on his "consistent chronic progressive respiratory symptoms," airflow obstruction and air trapping seen on his pulmonary function studies, reduced diffusing capacity, and x-rays demonstrating changes of COPD. Claimant's Exhibit 3 at 17. He opined Claimant's COPD is legal pneumoconiosis because his coal mine dust exposure "was of adequate duration (13 years); intensity (working underground and surface in self-reported dusty conditions); and latency (of approximately four decades between onset of exposure and onset of disease)." *Id.* In addition, he acknowledged that smoking was a substantial contributory cause of Claimant's COPD and that it is "impossible to apportion" the contribution of each cause because the "symptoms and pulmonary function tests do not differentiate between smoking-related COPD and coal dust-related COPD." *Id.* at 17, 19.

The ALJ found the opinions of Drs. Celko, Go, and Sood are not credible because they did not point to any findings specific to Claimant to explain their opinion that his COPD was caused by coal mine dust exposure. Decision and Order at 23-24.

An ALJ has the discretion to weigh the evidence and draw inferences therefrom. *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135, 140 (1990). The Board cannot disturb factual findings that are supported by substantial evidence even if it might reach a different conclusion if it were reviewing the evidence de novo. *Consolidation Coal Co. v. Held*, 314 F.3d 184, 189 (4th Cir. 2002).

Claimant's argument that the opinions of Drs. Celko, Go, and Sood are credible because they are adequately explained amounts to a request to reweigh the evidence, which we are not empowered to do. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764 (4th Cir. 1999); *Anderson*, 12 BLR at 1-113. Contrary to Claimant's contention, the ALJ accurately summarized the opinions of Drs. Celko, Go, and Sood and permissibly found their statements that coal mine dust can cause COPD, and that Claimant had sufficient exposure to cause COPD, do not persuasively establish his impairment was significantly related to, or substantially aggravated by, coal mine dust exposure in his specific case. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Underwood*, 105 F.3d at 949; Decision and Order at 22-24.

Thus we affirm the ALJ's finding the medical opinion evidence does not establish legal pneumoconiosis. 20 C.F.R. §§718.201(a)(2), 718.202. Decision and Order at 24. Consequently, we need not address Employer's cross-appeal argument that the ALJ erred in weighing the opinions of Drs. Zaldivar and Spagnolo that Claimant does not have legal pneumoconiosis. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 18-42. Because Claimant failed to establish pneumoconiosis, an essential element of entitlement, we affirm the denial of benefits. *Trent*, 11 BLR at 1-27.

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

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JUDITH S. BOGGS  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge