

U.S. Department of Labor

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



BRB No. 21-0575 BLA

CHARLES E. REECE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: 03/16/2023
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits and Decision and Order Granting Reconsideration and Denying Benefits of Larry W. Price, Administrative Law Judge, United States Department of Labor.

J. Thomas Walker (Maples Tucker & Jacobs, LLC), Birmingham, Alabama, for Claimant.

Sarah M. Hurley (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Larry W. Price's Decision and Order Denying Benefits and Decision and Order Granting Reconsideration and Denying

Benefits (2020-BLA-05775) rendered on a subsequent claim filed on June 15, 2018,<sup>1</sup> pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with one year of coal mine employment and thus found he 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 failed to establish he has either clinical<sup>3</sup> or legal pneumoconiosis.<sup>4</sup> 20 C.F.R. §718.202(a). Thus he denied benefits. Pursuant to Claimant's motion for reconsideration, the ALJ did not disturb the denial of benefits.

On appeal, Claimant contends that the ALJ erred in finding only one year of coal mine employment established. The Director, Office of Workers' Compensation Programs (the Director), responds in support of the ALJ's denial of benefits.<sup>5</sup>

The Benefit Review Board's scope of review is defined by statute. We must affirm the ALJ's Decisions and Orders if they are rational, supported by substantial evidence, and

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<sup>1</sup> Claimant filed two previous claims. Director's Exhibits 1, 2, 42. The record indicates only that both claims were administratively closed and does not indicate the basis of the denial of either claim. *Id.*

<sup>2</sup> 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 impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

<sup>3</sup> "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 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).

<sup>4</sup> "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 significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

<sup>5</sup> The district director determined that there is no responsible operator that can be held liable in this case and that the Black Lung Disability Trust Fund would be responsible for the payment of any benefits awarded. Director's Exhibit 31.

in accordance with applicable law.<sup>6</sup> 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).

Claimant bears the burden of establishing the length of his coal mine employment. *See 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 the ALJ’s determination if it is based on a reasonable method of calculation and is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-26 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986).

The ALJ considered Claimant’s Social Security Administration (SSA) earnings records, signed questionnaires, and affidavits from his former co-workers and their family members. Decision and Order at 8-10; Director’s Exhibits 6, 7, 10-12; Claimant’s Exhibit 1. He found Claimant’s SSA earnings records are the most reliable evidence of record. *See Mills v. Director, OWCP*, 348 F.3d 133, 136 (6th Cir. 2003) (crediting SSA earnings records over the miner’s statements is permissible); *Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984) (ALJ may credit SSA earnings records over testimony and other sworn statements); Decision and Order at 10; Order on Reconsideration at 3-5.

With respect to the signed questionnaires, the ALJ noted Claimant set forth his employment with four companies, Reece Coal, John Stevens & Charles Floyd, John Boyd & Howard Elleson, and Lon Cooley, that are not reflected in his SSA earnings records.<sup>7</sup> Order on Reconsideration at 3-5. Acknowledging that “occasionally employers fail to report earnings to [the SSA],” the ALJ determined it is “unlikely that each of these employers failed to do so” and the questionnaires are “less than perfectly reliable” because Claimant could not recall specific dates of his employment with those other companies. *Id.* The ALJ found affidavits from James Fischer, the son of a miner who worked with Claimant, and Alton Anderson, an individual who worked with Claimant, “are either too vague or lack additional verification” to establish additional coal mine employment. *Id.*

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<sup>6</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Tennessee. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 8.

<sup>7</sup> The ALJ noted Claimant also identified employment with TA Birdwell Coal and Haskel Bonner Coal that is already reflected in his SSA earnings records, and he found this evidence “lacks necessary verification” to establish any further employment with these entities. Order on Reconsideration at 5.

Based on Claimant's SSA earnings records, the ALJ found one year of coal mine employment established. Decision and Order at 10; Order on Reconsideration at 3-5.

Claimant argues his SSA earnings records are not credible and the ALJ should have credited the other evidence of record as more reliable. Claimant's Brief at 2-8. It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983). The Board cannot substitute its inferences for those of the ALJ. *Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). We consider Claimant's argument to be a request that the Board reweigh the evidence, which we are not empowered to do. *Id.* As the Claimant raises no other argument, we affirm his finding Claimant established one year of coal mine employment and therefore is not entitled to invoke the Section 411(c)(4) presumption.

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 element 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).

With respect to the issue of legal pneumoconiosis, Dr. Ajarapu diagnosed the disease if Claimant had twelve years of coal mine employment, but she opined he does not have the disease based on an assumed one-year employment history. Director's Exhibits 18, 26. Because the ALJ found one year of coal mine employment, the ALJ correctly found Dr. Ajarapu's opinion does not establish legal pneumoconiosis. Decision and Order at 12-13. The ALJ correctly found no other doctor diagnosed legal pneumoconiosis and there is no evidence Claimant has clinical pneumoconiosis. *Id.* at 11-13. Thus we affirm the ALJ's finding that Claimant failed to establish pneumoconiosis.<sup>8</sup> 20 C.F.R. §718.202(a). Because Claimant failed to establish a requisite element of entitlement, we affirm the ALJ's denial of benefits. *Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27.

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<sup>8</sup> As the Director correctly asserts, and contrary to Claimant's contention, there was no stipulation regarding the issue of disability causation. Claimant's Brief at 8; Director's Brief at 4; Hearing Transcript at 6-7.

Accordingly, the ALJ's Decision and Order Denying Benefits and Decision and Order Granting Reconsideration and Denying Benefits are affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JUDITH S. BOGGS  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge