

U.S. Department of Labor

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



BRB No. 23-0210 BLA

ISOM G. SMITH, II)	
)	
Claimant-Respondent)	
)	
v.)	
)	
STILLHOUSE MINING, LLC c/o ALPHA)	
NATURAL RESOURCES)	
)	
and)	
)	
AMERICAN INTERNATIONAL)	DATE ISSUED: 04/10/2024
SOUTH/AIG)	
)	
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 on Remand of Scott R. Morris, Administrative Law Judge, United States Department of Labor.

Jason A. Mullins (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Scott R. Morris's Decision and Order Awarding Benefits on Remand (2018-BLA-06117) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a claim filed June 30, 2016, and is before the Benefits Review Board for a second time.

In his initial Decision and Order Denying Benefits, the ALJ credited Claimant with 13.68 years of coal mine employment and therefore 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).¹ Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established a totally disabling respiratory impairment but did not establish the existence of pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204. Thus he denied benefits.

Pursuant to Claimant's appeal, the Board affirmed the ALJ's finding Claimant established total disability but less than fifteen years of coal mine employment, and therefore could not invoke the Section 411(c)(4) presumption. *Smith v. Stillhouse Mining, LLC*, BRB No. 20-0401 BLA, slip op. at 2 n.3, 5 (Oct. 26, 2021) (unpub.). However, the Board vacated the ALJ's finding that Claimant did not establish pneumoconiosis because the ALJ failed to consider whether the x-ray and computed tomography scan evidence establish the existence of complicated pneumoconiosis, and thus whether Claimant could invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). *Id.* at 3. Additionally, the Board reversed the ALJ's finding that Claimant did not establish the existence of clinical pneumoconiosis. *Id.* at 8. Finally, the Board vacated the ALJ's finding that Claimant did not establish legal pneumoconiosis because the ALJ failed to resolve a conflict in the medical opinion evidence. *Id.* at 9. The Board thus remanded the case for the ALJ to consider whether Claimant established complicated pneumoconiosis; if he found Claimant failed to establish that form of the disease, the Board instructed him to address whether Claimant established legal pneumoconiosis and disability causation. *Id.* at 10-11.

On remand, the ALJ found Claimant did not establish the existence of complicated pneumoconiosis and, therefore, could not invoke the Section 411(c)(3) presumption. 30

¹ 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.

U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304. Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established legal pneumoconiosis and total disability due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204(c). Thus he awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established legal pneumoconiosis. Neither Claimant nor the Director, Office of Workers' Compensation Programs, have filed 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.² 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).

Entitlement under 20 C.F.R. Part 718

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 a claimant in establishing these elements when 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, 1-2 (1986) (en banc).

Employer argues the ALJ erred in finding Claimant established legal pneumoconiosis. To establish the disease, Claimant must demonstrate 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(a)(2), (b). The Sixth Circuit has held a claimant satisfies this standard "by showing that his disease was caused 'in part' by coal mine employment." *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014); *see also Island Creek Coal Co. v. Young*, 947 F.3d 399, 407 (6th Cir. 2020) ("[I]n [*Groves*] we defined 'in part' to mean 'more than a *de minimis* contribution' and instead 'a contributing cause of some discernible consequence.'").

The ALJ considered the medical opinions of Drs. Ajarapu, Dahhan, and Sargent. Decision and Order on Remand at 16-18. Dr. Ajarapu opined Claimant has legal

² This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

pneumoconiosis in the form of chronic bronchitis caused by his coal mine dust exposure and smoking history. Director's Exhibit 15 at 7. Dr. Dahhan diagnosed Claimant with chronic obstructive pulmonary disease in the form of chronic bronchitis caused entirely by his smoking history. Director's Exhibit 24 at 5-6; Employer's Exhibit 15 at 13-15. Dr. Sargent diagnosed Claimant with a partially reversible obstructive impairment consistent with asthma and exercise-induced arterial oxygen desaturation caused by his smoking history. Employer's Exhibits 1 at 2-3; 14 at 10-14.

The ALJ found Dr. Ajjarapu's opinion reasoned and documented. Decision and Order on Remand at 17. Conversely, he found the opinions of Drs. Dahhan and Sargent not credible because they are poorly documented, as they rely heavily on an April 12, 2007 biopsy that the ALJ found is not representative of Claimant's current condition. *Id.* at 17-18. Additionally, the ALJ found their opinions do not adequately explain how they determined Claimant's coal mine dust exposure did not cause or substantially aggravate his respiratory impairments. *Id.*

Employer argues the ALJ erred in crediting Dr. Ajjarapu's opinion because she did not address Dr. Caffrey's biopsy report and the opinions of Drs. Sargent and McSharry that Claimant's impairment is due to Langerhans cell-associated disease caused by smoking. Employer's Brief at 3-5 (unpaginated). We disagree.

Dr. Caffrey reviewed the report and slides from an April 12, 2007 biopsy. Director's Exhibit 23. He noted the presence of Langerhans cell histiocytes in his microscopic observations but ultimately diagnosed Claimant with interstitial lung disease, stating he was unsure of the exact etiology. *Id.* at 3-4. Dr. Sargent opined Claimant has "biopsy-proven Langerhans cell granuloma, which is [a smoking-related] interstitial lung disease" and the cause of Claimant's respiratory impairment. Employer's Exhibits 1 at 2-3; 14 at 12-14. Dr. Dahhan's opinion references Dr. Caffrey's biopsy report but, contrary to Employer's contention, does not mention Langerhans cells. Director's Exhibit 24; Employer's Exhibit 15 at 10-11, 18.

Employer does not challenge the ALJ's finding that the opinions of Drs. Sargent and McSharry are not credible; thus we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Remand at 17-18. We further affirm, as unchallenged, the ALJ's decision to give no weight to the April 12, 2007 biopsy reports³

³ In addition to Dr. Caffrey's biopsy report, the record contains a pathology report from Dr. Saha dated the same day the biopsy was conducted. Claimant's Exhibit 5. Dr. Saha diagnosed "respiratory bronchiolitis-associated interstitial lung disease with [desquamative interstitial pneumonia]-like reaction and intercurrent pulmonary

as the biopsy is not recent enough to be probative of Claimant's current condition. *See Skrack*, 6 BLR at 1-711; Decision and Order on Remand at 8, 17-18. Because the ALJ did not credit any of the evidence that suggests Langerhans cell-associated disease is the cause of Claimant's impairment, we reject Employer's argument that the ALJ was required to discredit Dr. Ajarapu's opinion because she did not specifically address the disease.⁴ *See Tenn. 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).

Moreover, Dr. Ajarapu attributed Claimant's chronic bronchitis to coal mine dust exposure and smoking. Director's Exhibits 15 at 7; 16 at 3. Thus, while she did not specifically discuss Langerhans cell-associated disease, she did acknowledge smoking as a cause of Claimant's respiratory impairment but explained that coal dust exposure also caused Claimant's condition, as the ALJ accurately noted. Decision and Order on Remand at 17. We therefore see no error in the ALJ's crediting of her opinion. *See Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; Decision and Order on Remand at 17.

We thus affirm the ALJ's finding Claimant established the existence of legal pneumoconiosis based upon Dr. Ajarapu's credible medical opinion. 20 C.F.R. §718.202(a)(4); Decision and Order on Remand at 18. As Employer raises no further arguments, we also affirm his unchallenged finding that Claimant established his pneumoconiosis arose out of his coal mine employment and that he is totally disabled by pneumoconiosis. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §§718.203, 718.204(c); Decision and Order on Remand at 19. We therefore affirm the award of benefits.

Langerhans-cell histiocytosis." Claimant's Exhibit 5 at 1. He further opined that these three findings "are pathogenetically considered smoking-related." *Id.*

⁴ We further reject Employer's argument that the ALJ erroneously gave more weight to Dr. Ajarapu's opinion than Dr. Caffrey's biopsy report because Dr. Caffrey has superior credentials. Employer's Brief at 7-8 (unpaginated). Employer has not shown why Dr. Caffrey's credentials are relevant because, as discussed above, the ALJ gave no weight to his report based on the age of the biopsy. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); Decision and Order on Remand at 8, 17-18.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge