U.S. Department of Labor

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

BRB Nos. 23-0159 BLA
and 23-0222 BLA

BARBARA YOUNCE (Widow of and o/b/o RALPH YOUNCE) Claimant-Petitioner v. CLINCHFIELD COAL COMPANY Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 04/05/2024 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits in Miner's Claim and Denying Benefits in Survivor's Claim of Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

Barbara Younce, Coeburn, Virginia.

Kendra Prince (Penn, Stuart, & Eskridge), Abingdon, Virginia, for Employer.

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

PER CURIAM:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Denying Benefits in Miner's Claim and Denying Benefits in Survivor's Claim (2020-BLA-05101 and 2021-BLA-05386) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). The Miner filed his claim on June 14, 2018, and Claimant filed her survivor's claim on December 7, 2020.[2]

The ALJ accepted the parties' stipulation that the Miner had 14.27 years of underground coal mine employment and found the evidence insufficient to establish he had a totally disabling respiratory or pulmonary impairment at the time of his death. 20 C.F.R. §718.204(b)(2). She therefore found Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[3] Further, because Claimant did not establish the Miner had a total respiratory or pulmonary disability, the ALJ found she could not establish entitlement to benefits under 20 C.F.R. Part 718 and denied benefits in the miner's claim. With respect to the survivor's claim, the ALJ found Claimant did not establish that the Miner had pneumoconiosis and thus could not establish the Miner's death was due to the disease at 20 C.F.R. §718.205(b). Accordingly, the ALJ denied benefits in the survivor's claim.

[1] On Claimant's behalf, Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested the Benefits Review Board review the ALJ's decision, but Ms. Napier is not representing Claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] Claimant is the widow of the Miner, who died on November 13, 2020. Hearing Transcript at 25. She is pursuing the miner's claim on his behalf, along with her own survivor's claim. SC Director's Exhibits 4, 5. Because the Federal Records Center destroyed the Miner's prior claim, the ALJ treated the Miner's current claim as his initial claim and reviewed all elements of entitlement. Decision and Order at 2 n.1. The Board consolidated the appeals of the miner's and survivor's claims for purposes of decision only. *Younce v. Clinchfield Coal Co.*, BRB Nos. 23-0159 BLA and 22-0222 BLA (Apr. 7, 2023) (Order) (unpub.).

[3] 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.

On appeal, Claimant generally challenges the ALJ's denial of benefits. Employer responds in support of the denial. The Director, Office of Workers' Compensation Programs, declined to file a substantive response brief.[4]

In an appeal a claimant files without representation, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law.[5] 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).

Miner's Claim - Entitlement to Benefits under 20 C.F.R Part 718

To be entitled to benefits under the Act, Claimant must establish disease (the Miner had pneumoconiosis); disease causation (his pneumoconiosis arose out of his coal mine employment); disability (he had a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to his disability).[6] 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements 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).

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[4] Ms. Napier agreed at the hearing that Claimant established 14.27 years of coal mine employment, and the Miner's Social Security Earnings Reports and Employer's statements regarding the Miner's length of coal mine employment generally support that amount. Decision and Order at 3; Director's Exhibits 6-8; Hearing Transcript at 22; Employer's Brief at 3-5. Consequently, we affirm the ALJ's crediting the Miner with 14.27 years of coal mine employment as it is consistent with the record evidence. Decision and Order at 3. Because Claimant did not establish the Miner had fifteen years of coal mine employment, she cannot invoke the Section 411(c)(4) presumption.

[5] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because the Miner performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 3 n.2; Hearing Transcript at 29.

[6] Because there is no evidence indicating the Miner had complicated pneumoconiosis, we affirm the ALJ's finding that Claimant is unable to invoke the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304 in either the miner's or survivor's claim. Decision and Order at 5, 12, 13, 18.

Total Disability

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents 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,[7] 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 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).

Based on our review of the ALJ's Decision and Order, we conclude the ALJ erred in evaluating the medical opinions on total disability. Thus, we vacate her determination that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(iv) or in consideration of the evidence as a whole. 20 C.F.R. §718.204(b).

The ALJ considered two medical opinions.[8] Decision and Order at 7-10. Dr. Ajjarapu conducted the Department of Labor (DOL) complete pulmonary evaluation of the Miner on July 2, 2018. She opined he was totally disabled from a pulmonary impairment and could not perform his usual coal mine work based on the results of the pulse oximetry and the resting blood gas study she conducted. Director's Exhibit 12 at 7. Dr. McSharry examined the Miner on June 11, 2019, reviewed his medical records, including Dr. Ajjarapu's report, and indicated there was insufficient evidence from which to conclude the Miner had a totally disabling respiratory or pulmonary impairment. Director's Exhibit 18 at 4-5; Employer's Exhibit 6.

The ALJ found both opinions well-reasoned and well-documented but gave greater weight to Dr. McSharry's opinion because he "reviewed a greater body of medical evidence and more recent testing" while Dr. Ajjarapu "conceded that the medical documentation she had available was limited." Decision and Order at 10. Thus, the ALJ

[7] A "qualifying" pulmonary function study or arterial blood gas study yields results 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 yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[8] The ALJ determined the Miner's usual coal mine work as a general inside laborer required moderate to heavy exertion. Decision and Order at 4; Director's Exhibits 12 at 7; 18 at 6.

found Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.* at 11-12. We cannot affirm the ALJ's findings.

Although an ALJ may give greater weight to a medical opinion if warranted by that physician's consideration of additional medical evidence, the ALJ in this case has not explained why that factor renders Dr. McSharry's opinion more credible. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a);[9] *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

The one reason provided by the ALJ – that Dr. McSharry's testing was "more recent" – is contrary to law. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held it is irrational to credit evidence solely on the basis of recency if it shows the miner's condition has improved. *Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992) (case involving x-rays); *see also Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993). Here, the results of Claimant's resting blood gas tests improved somewhat between Dr. Ajjarapu's examination and Dr. McSharry's examination. Similarly, Dr. McSharry indicated that he did not see the degree of oxygen desaturation on his pulse oximetry testing when compared to Dr. Ajjarapu's pulse oximetry testing. Thus, we must vacate the ALJ's reliance on the recency of Dr. McSharry's testing as the sole basis to accord his opinion greater weight. *Thorn v. Itmann Coal Co.*, 3 F.3d 713, 718 (4th Cir. 1993) (applying the holding in *Adkins* to medical opinions and noting "[a] bare appeal to 'recency' is an abdication of rational decisionmaking").

Moreover, contrary to the ALJ's characterization, both Dr. Ajjarapu and Dr. McSharry acknowledged that their opinions were based on "limited" information to the extent the Miner had not undergone pulmonary function testing and because an exercise blood gas study was medically contraindicated, so they each relied only on the results of resting blood gas studies and a pulse oximetry reading.[10] The ALJ did not equally

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[9] The Administrative Procedure Act provides that every adjudicatory decision must include "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

[10] Specifically, Dr. McSharry stated:

> [T]here is no definite evidence of pulmonary impairment of any kind either by blood gas testing or pulmonary function testing. The lack of reliable data on either account is an impediment to make a diagnosis of any type of lung disease. The **limited information** available indicates no qualifying resting

scrutinize the medical opinions regarding the quality of the available data underlying their opinions. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-93 (1988) (ALJ must consider a physician's opinion in its entirety as opposed to selectively analyzing its constituent parts).

Lastly, the ALJ did not fully consider and properly resolve the conflict between Drs. Ajjarapu's and McSharry's opinions regarding the Miner's blood gas impairment and whether it disabled him. Dr. Ajjarapu explained that the Miner had a PO2 value of 61 on the blood gas study she conducted (near the "DOL [total disability] cut off [of] 60"), his O2 saturation on room air dropped from 95 percent to 88 percent when he walked from one room to the next, and his PCO2 of 46 was "severe." Director's Exhibit 12 at 7. Based on this data, she concluded the Miner was "totally and completely disabled" and could not "perform his previous job," which required him to "crawl, drag and lift heavy objects." *Id*.

Dr. McSharry, on the other hand, concluded the Miner's blood gas values are "not normal" and demonstrate "modest hypoxemia" but stated there is no "definitive evidence" of an impairment on blood gas testing because "no qualifying resting [blood gas] values exist and no significant arterial desaturation with exercise was seen . . . ."[11] Director's Exhibit 18 at 4-5.

> ABG values exist and no significant arterial desaturation with exercise was seen to the extent the patient was able to demonstrate. If any pulmonary impairment was determined to be present in this case, I feel it could not be attributed to coal dust exposure. I find no other cause that can be attributed. Lacking evidence of any pulmonary impairment, I can find no evidence to suggest that disabling pulmonary impairment is present in this man.

Director's Exhibit 18 at 4-5 (emphasis added).

[11] Although Dr. McSharry identified the Miner's blood gas study results and shortness of breath at rest and on exertion as consistent with heart disease, obesity, and age, the *existence* of a totally disabling impairment is a separate inquiry from the *cause* of that impairment. *See Johnson v. Apogee Coal Co.*, BLR , BRB No. 22-0022 BLA, slip op. at 10-11 (May 26, 2023), *appeal docketed*, No. 23-3612 (6th Cir. July 25, 2023) (relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether the miner had a totally disabling respiratory or pulmonary impairment; the cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305); *see also Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989) (same).

Consequently, as the ALJ did not properly analyze the evidence and adequately explain her credibility determinations, we vacate her finding that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(iv). *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252-53 (4th Cir. 2016) (ALJ must conduct an appropriate analysis of the evidence to support a conclusion and render necessary credibility findings); *Wojtowicz*, 12 BLR at 1-165; *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984). We further vacate the ALJ's overall finding that the Miner was not totally disabled and the denial of benefits in the miner's claim.

Remand Instructions for the Miner's Claim

The ALJ must reweigh Drs. Ajjarapu's and McSharry's opinions on total disability, taking into consideration the qualifications of the physicians, the explanations for their medical opinions, the documentation underlying their medical judgments, and the sophistication of and bases for their conclusions. *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). In so doing, she should also consider whether the Miner was totally disabled by comparing any physical limitations credibly diagnosed in the physician's opinions or treatment records to the exertional requirements of the Miner's last coal mine work. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment can be disabling depending on the exertional requirements of the Miner's usual coal mine employment); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-10 (1988) (ALJ may infer disability by considering together the doctor's description of the miner's condition and the exertional requirements of the miner's usual coal mine employment).

If Claimant establishes total disability based on the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv), the ALJ must further determine whether the Miner was totally disabled upon consideration of the evidence as a whole. 20 C.F.R. §718.204(b)(2); *Shedlock*, 9 BLR at 1-198. If Claimant establishes total disability, the ALJ must then address the remaining elements of entitlement. However, if Claimant is unable to establish total disability, benefits are precluded in the miner's claim. In rendering her determinations on remand, the ALJ must explain her rationale and conclusions as the Administrative Procedure Act requires. *See* 5 U.S.C. §557(c)(3)(A); *Wojtowicz*, 12 BLR at 1-165.

Survivor's Claim

Having vacated the ALJ's denial of benefits in the miner's claim, we also vacate her denial of benefits in the survivor's claim as Claimant's entitlement to derivative survivor's

benefits under Section 422(*l*) of the Act remains to be determined.[12] 30 U.S.C. §932(*l*); 20 C.F.R. §725.212(a). We also decline to address as premature the ALJ's finding that Claimant did not establish the Miner's death was due to pneumoconiosis at 20 C.F.R §718.205(b).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Denying Benefits in Miner's Claim and Denying Benefits in Survivor's Claim, and we remand this case to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[12] Section 422(*l*) of the Act provides that the survivor of a miner 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).