U.S. Department of Labor

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

BRB No. 24-0193 BLA

GARY R. ALBRIGHT Claimant-Respondent v. COONEY BROTHERS COAL COMPANY and ROCKWOOD CASUALTY INSURANCE COMPANY Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 04/11/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

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

Christopher Pierson (Burns White LLC), Pittsburgh, Pennsylvania, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits (2023-BLA-05625) rendered on a claim filed on March 23, 2022, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established over fifteen years of qualifying 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, 30 U.S.C. §921(c)(4) (2018).[1] He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability. It further argues the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption.[2] Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, has not 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.[3] 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).

[1] Section 411(c)(4) 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.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established over fifteen years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4-5, 7.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because Claimant performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 12; Director's Exhibit 3.

Invocation of the Section 411(c)(4) Presumption – Total Disability

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(i). 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,[4] 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 Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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).

The ALJ found Claimant established total disability based on the medical opinions and the evidence as a whole.[5] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 20-23. In making that finding, he considered the opinions of Drs. Celko, Sood, Go, and Basheda. Decision and Order at 21-23. Dr. Celko conducted the Department of Labor (DOL) complete pulmonary evaluation of Claimant on April 11, 2022, diagnosed Claimant with chronic obstructive pulmonary disease (COPD), and opined Claimant does not have the pulmonary capacity to return to his last coal mining job. Director's Exhibit 12 at 1-2. Drs. Sood and Go reviewed Claimant's medical records, diagnosed COPD, and opined he is totally disabled from continuing his usual coal mine employment. Claimant's Exhibits 2 at 7; 4 at 7. Dr. Basheda examined Claimant on February 1, 2023, and diagnosed Claimant with a mild to moderate obstructive impairment with an acute bronchodilator response. Employer's Exhibit 3 at 11-12. He opined the DOL and American Medical Association guidelines would not "label" Claimant as having a "significant pulmonary impairment"

[4] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained 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).

[5] The ALJ found Claimant did not establish total disability based on the pulmonary function or arterial blood gas studies, and that there was no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 18-20.

that would prevent him from performing his last coal mining job. *Id.* at 14-15; Employer's Exhibit 6 at 13-14, 16.

The ALJ found Drs. Celko's, Sood's, and Go's opinions well-reasoned and entitled to "great weight" and Dr. Basheda's opinion not well-reasoned and entitled to no weight. Decision and Order at 21-23. The ALJ thus concluded the medical opinion evidence supports a finding of total disability. *Id.* at 22-23.

Employer contends the ALJ failed to adequately assess Dr. Basheda's opinion.[6] Employer's Brief at 10-11. We disagree.

The ALJ acknowledged that Dr. Basheda opined Claimant has a mild to moderate obstruction and that he is not totally disabled from performing his usual coal mine work. Decision and Order at 21-22; Employer's Exhibits 3 at 11-12, 14-15; 6 at 13-14. The ALJ permissibly found Dr. Basheda's opinion not well-reasoned and entitled to "no weight," however, because it was "limit[ed]" by his reliance on the non-qualifying nature of the objective testing.[7] 20 C.F.R. §718.204(b)(2)(iv); *see Balsavage v. Director, OWCP*, 295 F.3d 390, 396 (3d Cir. 2002) ("ALJ has broad discretion to determine the weight accorded each doctor's opinion") (citation omitted); *see also Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005) (claimant can establish total disability despite non-qualifying objective tests); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 587 (6th Cir. 2000) ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"); Decision and Order at 22 (citing Employer's Exhibits 3 at 14; 6 at 13-14, 16).

As the trier-of-fact, the ALJ has broad discretion to assess the credibility of the medical opinions and assign them appropriate weight. *See Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 211 (3d Cir. 2002); *Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 163 (3d Cir. 1986). Employer's arguments are a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because it is supported by substantial evidence, we affirm the ALJ's finding that the medical opinion evidence is sufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 21-23. Further, we affirm his finding

[6] As Employer does not challenge the ALJ's finding that Drs. Celko's, Sood's, and Go's opinions are well-reasoned and entitled to great weight, we affirm those findings. *See Skrack*, 6 BLR at 1-711; Decision and Order at 22.

[7] Because the ALJ provided a valid reason for discrediting Dr. Basheda's opinion on total disability, we need not address Employer's remaining argument regarding the weight accorded to his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 10-11.

that Claimant established total disability based on the evidence as a whole. 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 23. Therefore, we affirm his finding that Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305; Decision and Order at 7, 23.

Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[8] or "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer failed to rebut the presumption by either method.[9] Decision and Order at 14-16, 24-25.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish Claimant does not have 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), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on Dr. Basheda's opinion that Claimant does not have legal pneumoconiosis.[10] Decision and Order at 14-16; Employer's Exhibits 3, 6. Dr. Basheda

[8] "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). "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 the 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).

[9] The ALJ found Employer disproved clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 14.

[10] The ALJ accurately noted Drs. Celko, Sood, and Go diagnosed legal pneumoconiosis and therefore determined their opinions do not aid Employer in rebutting the existence of legal pneumoconiosis. Decision and Order at 15-16.

opined his findings were consistent with "tobacco induced COPD/asthma" but stated he could not diagnose Claimant with COPD "in the absence of respiratory therapy." Employer's Exhibit 3 at 13. He also diagnosed Claimant with a mild to moderate obstructive impairment with an acute bronchodilator response and opined Claimant's symptoms and testing results are "inconsistent with the fixed obstruction related to coal dust." *Id.* at 6, 11-13; Employer's Exhibit 6 at 17. During his deposition, Dr. Basheda testified that while miners can develop "occupational asthma," Claimant "would not be having asthma symptoms years after leaving the coal mines if it was related to coal dust." Employer's Exhibit 6 at 15-16. The ALJ found Dr. Basheda's opinion not well-reasoned and entitled to no weight and, therefore, insufficient to satisfy Employer's burden of proof. Decision and Order at 15-16.

Employer contends the ALJ erred in rejecting Dr. Basheda's opinion based on the preamble to the 2001 revised regulations. Employer's Brief at 10. We disagree.

Dr. Basheda eliminated coal mine dust exposure as a contributing cause of Claimant's "tobacco induced COPD/asthma[,]" in part, because of Claimant's acute response to bronchodilators, which he explained is inconsistent with the fixed nature of a coal mine dust-induced lung disease. Employer's Exhibits 3 at 11-13; 6 at 17. The ALJ noted Dr. Basheda provided "no citation or reference to a medical text, study, or treatise" to support this assertion. Decision and Order at 15. Additionally, the ALJ accurately noted Dr. Basheda admitted that despite Claimant's significant response to bronchodilators, Claimant did not return to "normal" levels, which the ALJ found demonstrated a fixed component to his impairment. *Id.*; Employer's Exhibits 3 at 6, 11-13; 6 at 26-27. Because Dr. Basheda did not explain the cause of the fixed portion of Claimant's impairment, we see no error in the ALJ's determination that the physician's opinion is not well-reasoned. *See Balsavage*, 295 F.3d at 396; *Lango v. Director, OWCP*, 104 F.3d 573, 578 (3d Cir. 1997) (ALJ may reject a medical opinion which fails to adequately explain the bases for its conclusion); *Kertesz*, 788 F.2d at 163; *see also Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007) (ALJ may accord less weight to a physician who fails to adequately explain why a miner's response to bronchodilators necessarily eliminated coal dust exposure as a cause of his obstructive lung disease); Decision and Order at 15.

The ALJ also accurately noted that Dr. Basheda excluded coal mine dust exposure as a cause of Claimant's symptoms because they developed years after he was exposed to coal mine dust. Decision and Order at 15; Employer's Exhibit 6 at 15-16. The ALJ permissibly discounted Dr. Basheda's opinion because it is inconsistent with the regulations that recognize pneumoconiosis as "a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Kramer*, 305 F.3d at 209-10; Decision and Order at 15.

Because the ALJ provided valid reasons for discrediting Dr. Basheda's opinion, the only medical opinion supportive of Employer's burden, we affirm his finding that Employer did not disprove legal pneumoconiosis.[11] *See Kertesz*, 788 F.2d at 163; Decision and Order at 15-16. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i); Decision and Order at 16.

Disability Causation

The ALJ next considered whether Employer established "no part of [Claimant's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(ii); Decision and Oder at 23-25. The ALJ permissibly discredited Dr. Basheda's opinion on the cause of Claimant's respiratory disability because he did not diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer did not disprove the disease.[12] *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); Decision and Order at 24-25. Because Employer raises no specific allegations of error regarding the ALJ's findings on disability causation, we affirm his determination that Employer failed to establish no part of Claimant's respiratory or pulmonary disability was due to legal pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 24-25. We therefore affirm his finding that Employer did not rebut the Section 411(c)(4) presumption.

[11] Because the ALJ provided valid reasons for discrediting Dr. Basheda's opinion, we need not address Employer's contention that the ALJ erred in relying on the preamble to link COPD, including asthma, to coal mine dust exposure and therefore that Claimant's asthma constitutes legal pneumoconiosis. *See Kozele*, 6 BLR at 1-382 n.4; Decision and Order at 15-16; Employer's Brief at 10.

[12] Dr. Basheda did not address whether legal pneumoconiosis caused Claimant's total respiratory disability independent of his conclusion that Claimant does not have the disease.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge