U.S. Department of Labor

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

BRB No. 24-0392 BLA

SHELDON E. SIMMONS Claimant-Respondent v. ICG TYGART VALLEY, LLC Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 04/28/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Patricia J. Daum, Administrative Law Judge, United States Department of Labor.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Patricia J. Daum's Decision and Order Awarding Benefits (2021-BLA-05780) rendered on a claim filed on October 29, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established thirty-seven years of underground coal mine employment and a totally disabling respiratory impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant invoked the presumption that his total disability is due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[1] The ALJ further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding it failed to rebut the Section 411(c)(4) presumption. Neither Claimant nor the Acting Director, Office of Workers' Compensation Programs, 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.[2] 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).

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

Because Claimant invoked the Section 411(c)(4) presumption,[3] the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[4] or "no part of

[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. §92l(c)(4) (2018); 20 C.F.R. §718.305(b).

[2] 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); Hearing Transcript at 19.

[3] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established he has thirty-seven years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment and therefore invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5, 28.

[4] "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 that is 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

[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 establish rebuttal by either method.

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." *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on Drs. Basheda's and Zaldivar's opinions that Claimant does not have legal pneumoconiosis. Director's Exhibit 58; Employer's Exhibits 5, 6. The ALJ found their opinions not well-reasoned and insufficient to satisfy Employer's burden of proof. Decision and Order at 36-38. Employer argues the ALJ's findings are contradictory and not supported by substantial evidence. Employer's Brief at 10-15. We disagree.

Dr. Basheda opined the improvement seen in Claimant's pulmonary function studies would not occur in a fixed coal workers' pneumoconiosis-related obstruction. Employer's Exhibit 6 at 15. In addition, he did not believe Claimant's severely reduced diffusion to be consistent with pneumoconiosis as there is not a very high profusion on x-ray. *Id*. Dr. Basheda further opined the diffusion is consistent with the ambulatory pulse oximetry and arterial blood gas studies, and the significant decline in diffusion with exercise hypoxemia is expected in people with tobacco-induced emphysema. *Id*. at 16.

Dr. Zaldivar opined Claimant's history of wheezing, sensitivity to smells, and response to bronchodilators on pulmonary function testing is consistent with adult-onset asthma. Director's Exhibit 58. He also opined emphysema due to intensive smoking is present, citing literature showing chronic obstructive pulmonary disease/emphysema overlap is caused by asthmatic smokers or asthmatics whose lungs have remodeled over time and do not respond to bronchodilators. *Id*. He ultimately diagnosed "very early simple pneumoconiosis" based on Drs. Meyer's and Tarver's positive x-ray readings but found Claimant's pulmonary impairment unrelated to it. *Id*. Dr. Zaldivar opined Claimant's impairment is due to lifelong smoking of an unknown intensity and duration, adult-onset asthma due to smoking, and the possibility of coronary artery disease with left

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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).

ventricular dysfunction. *Id.* Therefore, he found no legal pneumoconiosis. *Id.* He reiterated his opinions during his deposition. Employer's Exhibit 5 at 16, 27-28.

The ALJ found Dr. Basheda's opinion that Claimant's impairment includes an asthmatic component and contribution from emphysema due to smoking is well-reasoned. Decision and Order at 37. She also found Dr. Zaldivar's opinion that Claimant does not have legal pneumoconiosis to be well-documented. *Id.* at 36. Nevertheless, in rejecting their opinions, the ALJ permissibly found they failed to provide adequate reasoning as to why Claimant's lengthy coal mine employment did not also substantially contribute to his impairment.[5] *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 36-37. We therefore affirm the ALJ's findings that Drs. Basheda's and Zaldivar's opinions are not well-reasoned. Decision and Order at 36-38.

Because the ALJ's credibility findings are supported by substantial evidence, we affirm her determination that Employer did not disprove legal pneumoconiosis.[6] *See* 20 C.F.R. §718.305(d)(1)(i)(A); *Owens*, 724 F.3d at 558; Decision and Order at 38.

Disability Causation

The ALJ next considered whether Employer established that 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 Order at 39. The ALJ permissibly discounted the opinions of Drs. Basheda and Zaldivar regarding the cause of Claimant's respiratory disability because they did not diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer failed to disprove the existence of the

[5] We reject Employer's assertion that the ALJ's discussion of Dr. Basheda's opinion is "marred" due to her instead referring to him as "Dr. Rosenberg," which appears to be a scrivener's error possibly flowing from the fact that the ALJ cited a case involving Dr. Rosenberg while she was discussing Dr. Basheda's opinion. Decision and Order at 37 n.19; Employer's Brief at 13. Moreover, as the ALJ gave valid reasons for discrediting Dr. Basheda's opinion, we deem her error harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

[6] Because Employer has the burden of proof and we have affirmed the ALJ's rejection of its medical experts, we need not address Employer's contention that the ALJ erred by crediting the opinions of Drs. Go, Sood, and Celko that Claimant has legal pneumoconiosis. *See Larioni*, 6 BLR at 1-1278; Employer's Brief at 6-10.

disease.[7] *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 39. We therefore affirm the ALJ's finding that Employer failed to establish no part of Claimant's respiratory disability was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[7] Drs. Basheda's and Spagnolo's opinions as to whether the Miner's respiratory disability was related to legal pneumoconiosis rested on their assumption that the Miner did not have legal pneumoconiosis.