U.S. Department of Labor

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

BRB No. 24-0396 BLA

DELBERT L. MITCHELL Claimant-Respondent v. SEQUOIA ENERGY, LLC and NATIONAL UNION FIRE/AIG Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 04/29/2025 DECISION and ORDER

Appeal of Decision and Order Awarding Benefits of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

Eugene E. Siler III, Williamsburg, Kentucky, for Claimant.

Daniel G. Murdock (Fulton, Delvin & Powers, LLC), Lexington, Kentucky, 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) John P. Sellers, III's Decision and Order Awarding Benefits (2022-BLA-05018) rendered on a claim filed on October 8, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established at least twenty-two years of underground 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,[1] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer 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, 361-62 (1965).

[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.

[2] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established at least twenty-two years of underground coal mine employment, total disability at 20 C.F.R. §718.204(b)(2), and invocation of the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4, 13-14.

[3] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 9, 12-13; Director's Exhibits 2, 9.

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,[4] or that "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 establish rebuttal by either method.[5]

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 Co.*, 25 BLR 1-149, 1-155 n.8 (2015). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, requires Employer to establish Claimant's "coal mine employment did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). "An employer may prevail under the not 'in part' standard by showing that coal dust exposure had no more than a *de minimis* impact on the miner's lung impairment." *Id.* at 407, *citing Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014).

The ALJ considered the medical opinions of Drs. Dahhan and Broudy. Decision and Order at 17-19; Employer's Exhibits 1-4. Dr. Dahhan opined Claimant does not have legal pneumoconiosis but has a restrictive ventilatory impairment due to his morbid obesity, sleep apnea, and narcotics use and unrelated to coal mine dust exposure. Employer's Exhibits 1 at 6; 3 at 14; 4 at 11-12. Dr. Broudy opined Claimant does not have legal pneumoconiosis but has a restrictive ventilatory impairment due to his obesity and diabetic complications and unrelated to coal mine dust exposure. Employer's Exhibits 2

[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 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).

[5] The ALJ found Employer disproved the existence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 16.

at 3-4; 3 at 14. The ALJ found Dr. Dahhan's basis for attributing Claimant's restriction to narcotics use is speculative. Decision and Order at 17-19. He also found the rationale set forth by Drs. Dahhan and Broudy unpersuasive because they required a positive x-ray for clinical pneumoconiosis to diagnose legal pneumoconiosis. *Id*. Finally, he found both doctors failed to persuasively explain why Claimant's impairment, even if caused by other conditions, is not also significantly related to, or substantially aggravated by, coal mine dust exposure. *Id*. He thus found Employer did not meet its burden of disproving the existence of legal pneumoconiosis. *Id*.

Employer's sole argument on appeal is the ALJ erred in discrediting Drs. Dahhan's and Broudy's opinions, that Claimant does not suffer from legal pneumoconiosis, based on negative x-ray readings. Employer's Brief at 6-9.

Initially, we note Employer does not challenge the ALJ's findings that Dr. Dahhan's opinion is speculative or his discrediting of the opinions of Drs. Dahhan and Broudy because they failed to explain why Claimant's coal mine dust exposure did not significantly contribute to, or substantially aggravate, his restrictive impairment. *See Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 16-19. As these findings are unchallenged, we affirm them. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Further, because the ALJ provided valid bases for discrediting Drs. Dahhan's and Broudy's opinions that are unrelated to the ground Employer raised, we need not address Employer's assertion of error regarding the ALJ's alternative basis for discrediting their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 6-9.

Because the ALJ acted within his discretion in rejecting the opinions of Drs. Dahhan and Broudy, we affirm his finding that Employer did not disprove the existence of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 19. 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).

Disability Causation

To disprove disability causation, Employer must establish "no part of [Claimant's] disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii). Because Drs. Dahhan and Broudy failed to diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer did not disprove the existence of the disease, the ALJ permissibly found their opinions on disability causation entitled to little weight. *See Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision

and Order at 20. Employer raises no specific allegations of error regarding the ALJ's findings other than its assertion that Claimant does not have legal pneumoconiosis, which we have rejected. Employer's Brief at 6-7. Thus, we affirm the ALJ's finding that Employer failed to rebut the presumption under 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

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge