U.S. Department of Labor

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

BRB Nos. 21-0455 BLA
and 21-0456 BLA

VIRGINIA E. CASTLE (o/b/o and Widow of BERNARD S. CASTLE)	)	
Claimant-Respondent	)	
v.	)	
CLINCHFIELD COAL COMPANY	)	DATE ISSUED: 8/15/2022
Employer-Petitioner	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Granting Benefits (2018-BLA-06305 and 2020-BLA-05312)[1] rendered on claims filed pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on September 11, 2017, and a survivor's claim filed on September 30, 2019.[2]

The ALJ accepted the parties' stipulation that the Miner had 21.81 years of coal mine employment and found all his employment was performed underground. She also found the Miner had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Therefore, she found Claimant invoked 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, she found Employer failed to rebut the presumption and awarded benefits in the Miner's claim. 20 C.F.R. §718.305. Because the Miner was entitled to benefits at the time of his death, the ALJ found Claimant automatically entitled to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).[4]

[1] Employer inadvertently failed to include the survivor's claim number in its notice of appeal to the Board. July 21, 2021 Board Order. The Board issued an order accepting appeals in both the miner's and survivor's claims and consolidating them for purposes of decision. *Id.*

[2] Claimant is the widow of the Miner, who died on September 16, 2017. Survivor's Claim Director's Exhibits 2-3. She is pursuing the Miner's claim on his behalf as well as her survivor's claim.

[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.

[4] Under Section 422(*l*) of the Act, a survivor of a miner who was determined to be eligible to receive benefits at the time of 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).

On appeal, Employer argues the ALJ erred by finding it failed to rebut the Section 411(c)(4) presumption and thus awarding benefits in both claims.[5] Neither Claimant nor the Director, Office of Workers' Compensation Programs, has 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.[6] 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- Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[7] or that "no part of the miner'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)(i), (ii); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 555 (4th Cir. 2013); *Minich v. Keystone Coal Mining Corp*., 25 BLR 1-149, 1-154-56 (2015). The ALJ found Employer failed to establish rebuttal by either method.[8]

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[5] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant 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 7.

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the Miner performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 14; Miner's Claim Director's Exhibit 3.

[7] "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).

[8] The ALJ found Employer rebutted the presumption of clinical pneumoconiosis. Decision and Order at 9.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish the Miner did 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*, 25 BLR at 1-155 n.8.

Employer relies on the medical opinion of Dr. Sargent, who opined the Miner did not have legal pneumoconiosis but rather had obstructive lung disease from severe emphysema caused by smoking and unrelated to coal mine dust exposure. Employer's Exhibits 3, 14 at 22-24. The ALJ also considered Dr. Ajjarapu's opinion that the Miner had legal pneumoconiosis in the form of chronic bronchitis, which she opined was due to the combined effects of smoking and coal mine dust exposure. Miner's Claim Director's Exhibit 16. The ALJ found the opinions to be in equipoise and thus found the evidence insufficient to disprove legal pneumoconiosis.[9] Decision and Order at 10-11.

Employer argues the ALJ applied the wrong legal standard in evaluating the evidence regarding legal pneumoconiosis and mischaracterized Dr. Sargent's opinion; it contends the ALJ improperly required Dr. Sargent to explain why the Miner's smoking history "ruled out" the presence of legal pneumoconiosis. Employer's Brief at 9-10. In addition, it contends the ALJ erred in finding Dr. Sargent's opinion not well-reasoned or documented because she found it inconsistent with the medical literature accepted by the Department of Labor in the preamble to the 2001 revised regulations. Finally, it asserts she mischaracterized Dr. Sargent's opinion when discrediting it for failing to address this specific Miner. *Id.* at 7. We disagree.

As the ALJ correctly observed, because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to rebut the presumed existence of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i); Decision and Order at 7-8. She correctly noted this standard requires Employer prove the Miner's pulmonary impairment was not "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 8-9, *citing* 20 C.F.R. §718.201(b); *see Minich*, 25 BLR at 1-155. Moreover, contrary to Employer's characterization of the ALJ's decision, the ALJ did not discredit Dr. Sargent's opinion based on an incorrect standard, as contrary to the preamble, or as based on generalities. Indeed, the ALJ did not find Dr. Sargent's opinion undermined on any basis. Rather, she found the two conflicting opinions

[9] The ALJ also considered the Miner's treatment records which included diagnoses of chronic obstructive pulmonary disease, emphysema, lung cancer, and hypoxemia, and "unspecified" chronic bronchitis. Decision and Order at 10.

of Drs. Sargent and Ajjarapu to be in equipoise and thus insufficient to disprove the presumed presence of legal pneumoconiosis. Decision and Order at 10-11; *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 279-81 (1994) (the burden of proof is not met when the evidence is equally balanced).

An argument framed in terms of the decision below is a threshold requirement for Board review. *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); *see Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987). Employer's arguments regarding Dr. Sargent's opinion do not address the ALJ's reasoning for finding it did not rebut the presumed existence of legal pneumoconiosis: that Dr. Sargent's opinion is in equipoise with the conflicting opinion of Dr. Ajjarapu. Decision and Order at 10-11. Because Employer does not argue the ALJ erred in finding the medical opinion evidence on the issue of legal pneumoconiosis to be in equipoise, we affirm her determination that Employer failed to rebut the presumption by establishing the Miner did not have pneumoconiosis. 20 C.F.R. §718.305(d)(1); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 11.

Disability Causation

To disprove disability causation, Employer must establish "no part of the [M]iner's disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii). Employer raises no specific allegations of error regarding the ALJ's causation finding other than its assertions that the Miner did not have legal pneumoconiosis and that the ALJ erroneously found Dr. Sargent's opinion regarding legal pneumoconiosis entitled to no weight. Employer's Brief at 10-12. As with its arguments regarding legal pneumoconiosis, Employer fails to raise a valid challenge based on the ALJ's actual findings. *Sarf*, 10 BLR at 1-120-21; *Fish*, 6 BLR at 1-109. Thus, we affirm the ALJ's determination that Employer failed to establish no part of the Miner's respiratory disability was caused by legal pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order at 11.

Survivor's Claim

Because we have affirmed the award in the Miner's claim and Employer raises no additional error as to the survivor's claim, we affirm the ALJ's determination that Claimant

is derivatively entitled to survivor's benefits. 30 U.S.C. §932(*l*); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge