U.S. Department of Labor

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

BRB No. 21-0142 BLA

GARY L. HATFIELD	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
KENAMERICAN RESOURCES, INCORPORATED	)	
	)	
and	)	
	)	
ROCKWOOD CASUALTY INSURANCE COMPANY	)	DATE ISSUED: 12/14/2021
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Randy G. Clark, Lexington, Kentucky, for Claimant.

Paul E. Jones and Denise Hall Scarberry (Jones & Jones Law Office, PLLC), Pikeville, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Joseph E. Kane's Decision and Order Awarding Benefits (2018-BLA-06279) on a miner's claim filed on January 9, 2018, pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with at least fifteen years of qualifying coal mine employment and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore determined 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.[2]

On appeal, Employer challenges the ALJ's finding that it did not rebut the Section 411(c)(4) presumption. Claimant filed a response brief urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response in this appeal.

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 the ALJ's unchallenged 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 2-3, 6.

[3] The Board will apply the law of 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); Director's Exhibits 3, 5, 7; Hearing Transcript at 14.

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

Because Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to Employer to establish Claimant 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 did not rebut the presumption under either method. Decision and Order at 14, 15.

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 Co*., 25 BLR 1-149, 1-159 (2015). The Sixth Circuit holds Employer can "disprove the existence of legal pneumoconiosis by showing that [the miner'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)).

Employer relies on the opinions of Drs. Rosenberg and Jarboe. Dr. Rosenberg opined Claimant has chronic obstructive pulmonary disease (COPD)/emphysema caused by smoking and unrelated to coal mine dust exposure. Dr. Jarboe opined Claimant has COPD/chronic bronchitis due to entirely to smoking. The ALJ found their opinions not

[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).

well reasoned and inconsistent with the preamble to the 2001 revised regulations. Decision and Order at 12-14.

Employer initially argues the ALJ applied an incorrect legal standard because he required Drs. Rosenberg and Jarboe to effectively "rule out" coal mine dust exposure in order to disprove legal pneumoconiosis. We disagree. The ALJ stated the correct legal standard and, as explained below, permissibly discredited the physicians' explanations for their opinions. Thus, the ALJ's rejection of Employer's experts was not based on an improper legal standard but was based his finding that their opinions are not well-reasoned.

The ALJ correctly observed that Drs. Rosenberg and Jarboe eliminated coal dust exposure as a contributing factor for Claimant's COPD, in part, because his pulmonary function studies show a severely reduced FEV1/FVC ratio, which they opined is inconsistent with an obstruction due to coal mine dust exposure. Decision and Order at 10-11, 13; Employer's Exhibits 1 at 5-7, 4 at 5-6. The ALJ permissibly discredited their opinions based on the Department of Labor's recognition in the preamble to the revised regulations that coal dust exposure may cause COPD with associated decrements in the FEV1/FVC ratio. *See* 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); *Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d at 483, 491 (6th Cir. 2014); Decision and Order at 12, 13.

The ALJ also accurately noted that Drs. Rosenberg and Jarboe excluded coal mine dust as a cause of Claimant's smoking-related chronic bronchitis because his coal mine employment was remote, and they believed that aggravation from coal mine dust would have resolved when Claimant's exposure stopped. Employer's Exhibits 1 at 10-11, 4 at 7-8; Decision and Order at 11, 13. He permissibly found these opinions inconsistent with the regulations which recognize that legal pneumoconiosis is 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 Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 738-39 (6th Cir. 2014) (upholding ALJ's decision to discredit physician whose opinion regarding legal pneumoconiosis conflicted with the recognition that pneumoconiosis is a latent and progressive disease); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 488 (6th Cir. 2012) (same); Decision and Order at 12, 13-14. Further, we see no error in the ALJ's finding that neither Dr. Rosenberg nor Dr. Jarboe adequately explained why Claimant's significant coal mine dust exposure was not an additive factor, along with smoking, in causing his disabling respiratory impairment. *See* 65 Fed. Reg. at 79,940; *Young*, 947 F.3d at 407; *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 674 (4th Cir. 2017); *Energy West Mining Co. v. Estate of Blackburn*, 857 F.3d 817, 828-29 (10th Cir. 2017); Employer's Exhibits 1, 4-7; Decision and Order at 11, 13-14. The ALJ therefore reasonably found Drs. Rosenberg's and Jarboe's opinions insufficient to rebut the

presumed existence of legal pneumoconiosis. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 14.

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 Employer failed to disprove Claimant has pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i).[5]

Disability Causation

The ALJ also found Employer failed to establish 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)(ii). He rejected the opinions of Drs. Rosenberg and Jarboe on the cause of Claimant's respiratory disability because they did not diagnose legal pneumoconiosis. See *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 15. Employer raises no error with regard to the ALJ's findings on disability causation, other than its general contention Claimant does not have legal pneumoconiosis, which we have rejected. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). We therefore affirm the ALJ's finding that Employer failed to prove that no part of Claimant's total disability was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). Decision and Order at 15.

[5] The ALJ found Employer disproved clinical pneumoconiosis. Decision and Order at 10. However, 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)(A), (B).

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge