U.S. Department of Labor

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

BRB No. 25-0059 BLA

NOAH K. COUNTS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	**NOT-PUBLISHED**
LAMBERT COAL COMPANY, INCORPORATED	)	
	)	
	)	
Employer-Petitioner	)	DATE ISSUED: 12/19/2025
	)	
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 and Order Denying Reconsideration of Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

Before: GRESH, Chief Administrative Appeals Judge, JONES, Administrative Appeals Judge, ULMER, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Awarding Benefits and Order Denying Reconsideration (2022-BLA-05607) rendered on a miner's claim filed on March 23, 2021, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established 12.40 years of coal mine employment and thus found he could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] She further found Claimant did not establish complicated pneumoconiosis and thus could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. Considering entitlement under 20 C.F.R. Part 718, the ALJ determined Claimant established he has simple, clinical pneumoconiosis but not legal pneumoconiosis,[2] 20 C.F.R. §718.202(a), and a totally disabling impairment due to his clinical pneumoconiosis. 20 C.F.R. §718.204(b)(2), (c). Therefore, she awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant is totally disabled and that his clinical pneumoconiosis is a substantially contributing cause of his totally disabling respiratory or pulmonary impairment.[3] Neither Claimant nor the Acting 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 Orders if they are rational, supported by substantial evidence, and

[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 impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[2] "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). "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). This 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).

[3] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established the existence of simple clinical pneumoconiosis and that the pneumoconiosis arose out of his coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 8, 16.

in accordance with applicable law.[4] 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).

Entitlement Under 20 C.F.R. Part 718

Without the benefit of any presumptions, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Total Disability

A miner is totally disabled if he has a pulmonary or respiratory impairment which, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. 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,[5] 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 consider all relevant evidence and weigh the evidence supporting total disability against the contrary evidence. *See 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 opinion evidence.[6] Decision and Order at 15.

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[4] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Transcript at 11.

[5] A "qualifying" pulmonary function study or arterial 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).

[6] The ALJ found all the pulmonary function studies and arterial blood gas studies are non-qualifying and therefore do not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(i)-(ii); Decision and Order at 13-14. In addition, although the ALJ did not

Employer challenges the ALJ's determination that the medical opinion evidence supports a finding of total disability. Employer's Brief at 6.

The ALJ found Claimant's usual coal mine work required removing, repairing, and replacing motors and thus required "significant exertion at the base of the mine." Decision and Order at 14; Hearing Transcript at 11-12. We affirm the ALJ's finding as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 14.

The ALJ considered the medical opinions of Drs. Harris and Fino. Decision and Order at 14-15. Dr. Harris opined Claimant has a "significant impairment due to his pulmonary disease" and would not "be able to complete the exertional requirements of any coal mine employment." Director's Exhibit 16 at 8. Dr. Fino diagnosed a "very mild impairment," and opined Claimant is not totally disabled. Employer's Exhibit 4 at 7. Giving more weight to Dr. Harris's opinion because it is well reasoned, the ALJ found the medical opinion evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 15; Order on Reconsideration at 1-2 (unpaginated).

Employer argues the ALJ erred in crediting Dr. Harris's opinion because it is based solely on Claimant's subjective complaints.[7] Employer's Brief at 6-8. We disagree.

A medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably infer that a miner is unable to do his last coal mine job. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995) (physical limitations described in physician's report sufficient to establish total disability); *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990) ("[A]n ALJ must consider all relevant evidence on the issue of disability including medical opinions which are phrased in terms of total disability or provide a medical assessment of physical abilities or exertional limitations which lead to that conclusion."); *Budash v. Bethlehem Mines*

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specifically address the issue, there is no evidence in the record of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii).

[7] Employer asserts that Dr. Harris also based his opinion on his diagnosis of complicated coal workers' pneumoconiosis, which is contrary to the ALJ's finding. Employer's Brief at 6-7; *see* Decision and Order at 15. However, as the ALJ accurately stated, "[a] finding that a physician's opinion is not well-reasoned on one issue does not necessarily indicate the opinion cannot be credited on a separate issue." Order on Reconsideration at 2 (unpaginated) (citing *Luketich v. Director, OWCP*, 8 BLR 1-477, 1-480 n.3 (1986)).

Corp., 9 BLR 1-48, 1-51-52 (1986) (en banc) (ALJ may infer total disability by comparing physician's impairment rating and any physical limitations due to that impairment with the exertional requirements of the miner's usual coal mine work).

As the ALJ found, Dr. Harris performed the Department of Labor-sponsored complete pulmonary examination of Claimant on July 13, 2021, and having reviewed his medical history and diagnostic testing, concluded Claimant is totally disabled due to his "'severe' dyspnea on exertion and difficulty catching his breath." Decision and Order at 14; Director's Exhibit 16 at 8. Dr. Harris stated that Claimant "notes he could walk about twenty yards to get to his mailbox on a slight incline and has to stop to catch his breath on the way there" and "could climb about 1 flight [of] steps before stopping due to dyspnea." Director's Exhibit 16 at 7, 8. He therefore concluded that Claimant is totally disabled from performing the exertional requirements of his coal mine employment. *Id.* at 9.

The ALJ found Dr. Harris's opinion that Claimant is totally disabled is supported by the arterial blood gas study he conducted, during which he stopped the exercise portion of the study because Claimant became short of breath. Decision and Order at 14-15; Director's Exhibit 16 at 8, 17. In addition, the ALJ found Dr. Harris's opinion supported by Claimant's treatment records documenting Claimant's history of shortness of breath and dyspnea on exertion.[8] Decision and Order at 14-15; Order Denying Reconsideration at 2 (unpaginated); Claimant's Exhibits 3, 4. Employer does not show how the blood gas study and treatment records on which the ALJ relied to credit Dr. Harris's opinion are merely recitations of Claimant's subjective complaints, as it argues.[9] *See Scott*, 60 F.3d at 1141 (ALJ may not consider a physician's identification of symptoms "as being nothing more

[8] St. Charles Breathing Center treatment records indicate Claimant was diagnosed with cough, dyspnea, and chronic bronchitis during a November 15, 2017 respiratory clinic initial evaluation. Claimant's Exhibit 4 at 25, 31. In addition, records from the William A. Davis Clinic from November 20, 2017, to March 3, 2021, document the diagnosis of and treatment for chronic obstructive pulmonary disease (COPD) as well as ongoing symptoms of coughing, wheezing, and shortness of breath and the use of oxygen. *Id.* at 4, 8, 13, 18, 20, 25. Records from Community Physicians dated December 2017 through September 2019 also document Claimant's shortness of breath, COPD, and use of oxygen. Claimant's Exhibit 3 at 2, 5, 7, 9, 12, 15, 23-25, 31-32, 34-35.

[9] The ALJ specifically found that "contrary to Employer's assertion that Dr. Harris based his finding solely on subjective inability to exercise, Dr. Harris's examination considered symptoms, observations, diagnostic testing, diagnoses, and coal mine employment," consistent with the treatment records. Order Denying Reconsideration at 2 (unpaginated).

than mere notations of the patient's descriptions unless there is specific evidence for doing so in the report"); Employer's Brief at 6-8. Thus, contrary to Employer's arguments, the ALJ permissibly found Dr. Harris's opinion reasoned and documented because Dr. Harris considered the objective testing evidence as well as Claimant's symptoms and treatment history to explain why his respiratory condition renders him unable to complete the significant exertional requirements of his usual coal mine employment.[10] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438 441 (4th Cir. 1997); *Scott*, 60 F.3d at 1141 (physician's identification of miner's respiratory symptoms with various activities constitutes a "reasoned medical opinion"); *Jordan v. Benefits Review Bd. of the U.S. Dep't of Labor*, 876 F.2d 1455, 1460 (11th Cir. 1989) (physician's discussion of miner's symptoms is relevant evidence that ALJ must consider absent evidence that "the listed limitations are the patient's rather than the doctor's conclusions").

Employer next argues the ALJ erred in discrediting Dr. Fino's opinion. Employer's Brief at 10. We are not persuaded.

Dr. Fino acknowledged that the reduced FEV1/FVC ratio produced by Claimant's March 17, 2022 pulmonary function study demonstrates he has a very mild impairment but stated that "the impairment certainly would not be disabling" as the study is not qualifying for total disability. Employer's Exhibit 4 at 4. The ALJ permissibly assigned little weight to Dr. Fino's opinion because he based his opinion on Claimant's non-qualifying pulmonary function test results but failed to explain whether the respiratory impairment he acknowledged Claimant has would still render him unable to perform his usual coal mine work.[11] *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; *Cornett v. Benham Coal, Inc.*,

[10] Employer argues the ALJ erred in failing to consider Dr. Fino's opinion that a patient's subjective complaints are an unreliable predictor of respiratory impairment and disability. Employer's Brief at 9-10. Further, it contends that Claimant's statement upon which Dr. Harris apparently relied, that he became short of breath while walking twenty yards, is not supported by the testing. *Id.* Employer's contentions misconstrue the ALJ's findings. The ALJ did not rely on Claimant's subjective complaints or inability to walk twenty yards to establish total disability but rather permissibly inferred from Dr. Harris's opinion, the treatment records, and objective studies that Claimant would be unable to perform the significant exertion required by his usual coal mine work. *See Scott*, 60 F.3d at 1141; 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 14-15; Order Denying Reconsideration at 1-2 (unpaginated).

[11] Because the ALJ provided a valid reason to discredit Dr. Fino's opinion, we need not address Employer's remaining arguments regarding the additional reasons she gave for

227 F.3d 569, 578 (6th Cir. 2000) ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"); Decision and Order at 14. Thus, we affirm the ALJ's finding that Claimant established total disability based on the medical opinion evidence and in consideration of the evidence as a whole.[12] 20 C.F.R. §718.204(b)(2)(iv).

Disability Causation

Finally, the ALJ considered whether Claimant established his pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause if it has "a material adverse effect on the miner's respiratory or pulmonary condition" or "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii); *Robinson v. Pickands Mather & Co.*, 914 F.2d 35 (4th Cir. 1990).

The ALJ credited Dr. Harris's opinion over Dr. Fino's opinion to find that Claimant established his totally disabling respiratory impairment is due to pneumoconiosis. 20 C.F.R. §718.204(c); Decision and Order at 15-16. Employer argues that in making this finding the ALJ did not adequately explain her determination that Dr. Harris's opinion is sufficient to establish that Claimant's simple, clinical coal workers' pneumoconiosis is a substantially contributing cause of his total disability. *See* Employer's Brief at 13-14. We agree.

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rejecting his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 11-12.

[12] Contrary to Employer's argument that the ALJ failed to adequately explain her crediting of the medical opinions in light of the non-qualifying objective studies, the ALJ permissibly explained that Claimant established total disability based on Dr. Harris's reasoned opinion that he cannot perform the exertional requirements of any coal mine employment, as supported by Claimant's treatment records and the results of the non-qualifying objective studies, especially given that even Dr. Fino diagnosed a mild respiratory impairment and Claimant had to stop his exercise blood gas study due to shortness of breath. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012) (if a reviewing court can discern what the ALJ did and why he did it, the duty of explanation under the Administrative Procedure Act (APA) is satisfied); *Walker v. Director, OWCP,* 927 F.2d 181, 184-85 (4th Cir. 1991); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000); 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 15; Employer's Brief at 12-13.

As the ALJ found, Dr. Harris opined Claimant's "exposure to coal dust in the mines was a "significant and aggravating factor" in contributing to his "pulmonary condition," that he has a "significant impairment due to his pulmonary disease," and therefore that he is "totally disabled due to his pulmonary impairment." Director's Exhibit 16 at 8-9; *see* Decision and Order at 15. On the other hand, as the ALJ noted, Dr. Fino found that Claimant has only "a mild impairment that is not totally disabling" and "is silent on the cause of the mild impairment." Decision and Order at 15; *see* Employer's Exhibit 4. Thus, the ALJ found Dr. Fino's opinion "neither supports nor refutes a finding of total disability due to pneumoconiosis." Decision and Order at 15.

Specifically, Dr. Harris diagnosed Claimant with pneumoconiosis and progressive massive fibrosis based on Claimant's history of coal mine dust exposure and the results of the July 13, 2021 x-ray.[13] Director's Exhibit 16 at 8. Under a section of his report titled "Etiology of pulmonary diagnoses," he opined that Claimant's exposure to coal and rock dust, along with his cigarette smoking history, is a significant and aggravating factor contributing to his pulmonary diagnosis. *Id.* In the section titled "Disability/Impairment," he further stated that Claimant "does have significant impairment due to his pulmonary disease," based on his respiratory symptoms and chest x-ray showing simple *and* complicated pneumoconiosis. *Id.*; *see* Director's Exhibit 16 at 8; Employer's Brief at 14.

Noting Dr. Harris's discussion under the "Etiology of pulmonary diagnoses" section of his report in which he described how Claimant's exposure to coal mine dust contributed to his pulmonary condition, the ALJ found Dr. Harris's opinion established disability causation. Decision and Order at 15; *see* Director's Exhibit 16 at 8. However, as Employer argues, the ALJ failed to determine whether Dr. Harris's opinion specifically establishes that Claimant's simple clinical pneumoconiosis, the only coal mine dust-related disease the ALJ found established, is a substantially contributing cause of his totally disabling pulmonary impairment. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 761-62 (4th Cir. 1999); Decision and Order at 15. Thus, we vacate the ALJ's finding that Claimant

[13] Dr. Harris relied on Dr. DePonte's reading of the July 13, 2021 x-ray to diagnose pneumoconiosis. Director's Exhibit 16 at 8. Dr. DePonte read the x-ray as showing small opacities in all lung zones with a 2/1 profusion, coalescence of the small opacities, and a 51-millimeter Category B large opacity in the right upper lung zone. *Id.* at 8, 18.

established his total disability is due to pneumoconiosis.[14] 20 C.F.R. §718.204(c); Decision and Order at 15-16. We therefore vacate the award of benefits.

Remand Instructions

On remand, the ALJ must reconsider whether Claimant can establish that his clinical pneumoconiosis is a substantially contributing cause of his totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(c). In doing so, the ALJ must adequately explain the bases for all findings of fact and conclusions of law in accordance with the Administrative Procedure Act.[15] 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[14] Employer does not challenge the ALJ's determination to accord less weight to Dr. Fino's opinion because it is "silent on the cause of the mild impairment" that he diagnosed. *See* Decision and Order at 15. Thus, we affirm it. *Skrack*, 6 BLR at 1-711.

[15] The APA, 5 U.S.C. §§500-591, requires that every adjudicatory decision include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Awarding Benefits and Order Denying Reconsideration, and we remand the case for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge