U.S. Department of Labor

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

BRB No. 21-0333 BLA

THOMAS C. FOWLER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
THE MARION COUNTY COAL COMPANY	)	
	)	
and	)	
	)	DATE ISSUED: 01/27/2022
MURRAY AMERICAN ENERGY CORPORATION	)	
	)	
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 Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick, & Long), Ebensburg, Pennsylvania, for Claimant.

Aimee M. Stern (Dinsmore & Shohl, LLP), Wheeling, West Virginia, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits (2019-BLA-05865) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

Claimant filed this claim on October 9, 2015. In a December 21, 2017 Decision and Order Denying Benefits, ALJ Natalie A. Appetta concluded Claimant failed to establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2); Director's Exhibit 34. Claimant timely requested modification of that denial on December 10, 2018. Director's Exhibit 35.

In his January 28, 2021 Decision and Order, the subject of the current appeal, ALJ Swank (the ALJ) found Claimant established thirty years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore 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 also found Employer did not rebut the presumption. Thus he found Claimant established modification based on a mistake in a determination of fact. 20 C.F.R. §725.310. He further found granting modification would render justice under the Act and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant is totally disabled and invoked the Section 411(c)(4) presumption. It also argues he erred in finding it did not rebut the presumption.[2] Claimant responds in support of the award of benefits. The 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

[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); 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established thirty years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5; Hearing Tr. at 6, 12.

accordance with applicable law.[3] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

An ALJ may grant modification based on either a change in conditions or a mistake in a determination of fact. 20 C.F.R. §725.310(a). When a request for modification is filed, the ALJ may correct any mistake, including the ultimate issue of benefits eligibility. *See Betty B Coal Co. v. Director, OWCP* [*Stanley*], 194 F.3d 491, 497 (4th Cir. 1999); *Nataloni v. Director, OWCP*, 17 BLR 1-82, 1-84 (1993).

Invocation of the Section 411(c)(4) Presumption – Total Disability

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). Claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, 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 weigh all relevant supporting evidence against all relevant 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.[4] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 16. He specifically found "there is consensus that Claimant has a totally disabling respiratory impairment" because Drs. Allen, Cohen, and Ranavaya all opined Claimant is totally disabled and there is no contrary opinion. Decision and Order at 13-15; Director's Exhibit 33; Employer's Exhibit 1. In light of that finding, he concluded the medical opinions establish total disability. Decision and Order at 15.

Employer argues the ALJ erred in crediting Dr. Cohen's opinion. Employer's Brief at 9. It does not challenge the ALJ's findings that Drs. Allen and Ranavaya diagnosed total

[3] 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); Director's Exhibit 5; Hearing Tr. at 12.

[4] The ALJ found Claimant did not establish total disability based on the pulmonary function studies, arterial blood gas studies, or evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 9-13.

respiratory disability and their opinions are sufficient to meet Claimant's burden of establishing total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 15. In light of Employer's failure to raise a specific argument with respect to these doctors, we affirm the ALJ's finding that the opinions of Drs. Allen and Ranavaya establish total disability. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). As Claimant established total disability through the opinions of Drs. Allen and Ranavaya, we need not address Employer's argument with respect to Dr. Cohen. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

Thus we affirm the ALJ's determination that Claimant established total disability based on the medical opinion evidence and the evidence as a whole. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 15-16. We therefore affirm his determination that Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

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[5] or "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 establish rebuttal by either method.[6]

To disprove legal pneumoconiosis, Employer must establish Claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated

[5] 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 encompasses 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).

[6] The ALJ found Employer rebutted the presumed existence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 21.

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 Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ weighed Dr. Ranavaya's opinion that Claimant has chronic bronchitis and chronic obstructive lung disease due to asthma and cigarette smoking, and unrelated to coal mine dust exposure. Decision and Order at 22; Employer's Exhibit 1. The ALJ discredited Dr. Ranavaya's opinion because he found the doctor provided no explanation for why Claimant's thirty years of coal mine dust exposure did not significantly contribute to or aggravate Claimant's respiratory condition. Decision and Order at 22; *see Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 n.4 (4th Cir. 2017); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013).

Employer generally argues Dr. Ranavaya's opinion is "the most comprehensive and well-reasoned" of record, and the doctor is the most qualified expert to render an opinion. Employer's Brief at 9-11. Employer's argument is a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because the ALJ acted within his discretion in discrediting Dr. Ranavaya's opinion, we affirm his determination that Employer did not disprove legal pneumoconiosis.[7] 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); Decision and Order at 25-26. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. Therefore, we affirm the ALJ's conclusion that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

Upon finding Employer did not disprove pneumoconiosis, the ALJ addressed whether Employer established 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). He discredited Dr. Ranavaya's disability causation opinion because the doctor's "conclusion that no part of Claimant's total disability is caused by pneumoconiosis is not supported by the medical evidence." Decision and Order at 24. Because Employer raises no specific allegations of error regarding the ALJ's finding on disability causation, we affirm his determination that Employer failed to establish no part of Claimant's respiratory disability was due to legal pneumoconiosis. *Cox*, 791 F.2d at 446-47; *Sarf*, 10

[7] Because the ALJ permissibly discredited Dr. Ranavaya's opinion, the only opinion supportive of Employer's burden on rebuttal, we need not address Employer's arguments regarding the opinions of Drs. Allen and Cohen diagnosing legal pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 8-9.

BLR at 1-120-21; *Fish*, 6 BLR at 1-109; *Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 22-23.

Thus we affirm the ALJ's conclusion that Employer did not establish rebuttal of the Section 411(c)(4) presumption and Claimant therefore established a mistake in a determination of fact. 20 C.F.R. §725.310; Decision and Order at 23. We further affirm, as unchallenged, the ALJ's determination that granting modification would render justice under the Act. *See Skrack*, 6 BLR at 1-711 (1983); Decision and Order at 4-5.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge