

U.S. Department of Labor

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



BRB No. 22-0127 BLA

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| JOSEPH F. MUZYDLA, JR. |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| CONSOL MINING COMPANY, LLC |) | |
| |) | |
| and |) | |
| |) | |
| CONSOL ENERGY, INCORPORATED |) | DATE ISSUED: 01/05/2023 |
| |) | |
| Employer/Carrier- |) | |
| Respondents |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Party-in-Interest |) | DECISION and ORDER |

Appeal of the Decision and Order Denying Benefits of Drew A. Swank,
Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for Claimant.

Deanna Lyn Istik (SutterWilliams, LLC), Pittsburgh, Pennsylvania, for
Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Denying Benefits (2020-BLA-05539) rendered on a claim filed on May 9, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 20.58 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). Further, he found Employer and its Carrier (Employer) rebutted the presumption by establishing Claimant has neither clinical² nor legal pneumoconiosis³. 20 C.F.R. §718.305(d)(1)(i). Thus he denied benefits.

On appeal, Claimant argues the ALJ erred in finding Employer rebutted the Section 411(c)(4) presumption by disproving legal pneumoconiosis.⁴ Employer responds in support of the award of benefits.⁵ The Director, Office of Workers' Compensation Programs (the Director), has not filed a response brief.

¹ Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is 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).

³ "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 that is significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

⁴ Claimant does not challenge the ALJ's finding that Employer rebutted the presumption of clinical pneumoconiosis. Decision and Order at 14. Thus, this finding is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

⁵ In its response brief, Employer does not specifically challenge the ALJ's findings that Claimant established 20.58 years of qualifying coal mine employment, total disability,

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'Keefe v. Smith, Hinchman and Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

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." See 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(2)(i)(A); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ considered the medical opinions of Drs. Basheda and Manaker that Claimant does not have legal pneumoconiosis.⁷ Decision and Order at 11-16; Director's Exhibit 14; Claimant's Exhibits 5, 7, 9, 10; Employer's Exhibits 3, 4, 6.

Dr. Basheda opined there is no evidence of chronic obstructive or restrictive lung disease, and stated Claimant's moderately reduced FEV1, FVC, and diffusion measurements on pulmonary function testing are caused by obesity and an elevated right hemidiaphragm. Employer's Exhibit 4, 6. Dr. Manaker determined any respiratory symptoms or lung impairment Claimant has are due to obesity, cardiovascular disease, gastroesophageal reflux disease, and degenerative joint disease. Employer's Exhibit 3.

The ALJ found Dr. Manaker's opinion not well-reasoned and afforded it no weight.⁸ Decision and Order at 15. He summarily found Dr. Basheda's opinion "well-reasoned,"

and invocation of the Section 411(c)(4) presumption. Thus these findings are affirmed. *Skrack*, 6 BLR at 1-711; Decision and Order at 4, 6-7, 23.

⁶ This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because Claimant performed his coal mine employment in Pennsylvania. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 5; Director's Exhibit 3; Hearing Tr. at 5.

⁷ Drs. Celko, Go, and Sood all diagnosed legal pneumoconiosis. Director's Exhibit 14; Claimant's Exhibit 5, 7, 9, 10. The ALJ correctly found their opinions do not aid Employer in rebutting the presumption. Decision and Order at 15.

⁸ In its response brief, Employer does not specifically challenge the ALJ's finding that Dr. Manaker's medical opinion is not well-reasoned, not entitled to any weight, and

“supported by the totality of the evidence,” and entitled to “great weight.” *Id.*; Employer’s Exhibit 3. Thus, he found Employer rebutted the presumption that Claimant has legal pneumoconiosis. 20 C.F.R. §718.305(a); Decision and Order at 16.

Claimant argues the ALJ erred in finding Dr. Basheda’s opinion well-reasoned. Claimant’s Brief at 5-14. We agree. Because the ALJ did not explain his basis for summarily finding Dr. Basheda’s opinion well-reasoned, his credibility finding does not satisfy the explanatory requirements of the Administrative Procedure Act (APA).⁹ *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

We also agree with Claimant that the ALJ erred in finding Dr. Basheda’s opinion that Claimant’s impairment was caused by an elevated right hemidiaphragm to be supported by Claimant’s medical treatment records. Decision and Order at 15. As Claimant correctly points out, the treatment records contain a single mention of a slight increase in the elevation of the right hemidiaphragm in comparison to a prior x-ray, but they do not discuss this condition’s effect on Claimant’s respiratory condition or, specifically, its contribution to any abnormalities demonstrated on pulmonary function study testing. Claimant’s Brief at 5-6. Thus, the ALJ failed to explain how Claimant’s medical treatment records support Dr. Basheda’s conclusion that this condition is a cause of Claimant’s impairment.

Further, to the extent the ALJ found Dr. Go’s opinion supports Dr. Basheda’s conclusion that Claimant’s objective test results were a byproduct of obesity, this too is unexplained. Decision and Order at 15. Dr. Go noted there was a marked decline in Claimant’s lung function between the 2014 pulmonary function study and those administered in 2019 and 2021, despite Claimant losing weight. Claimant’s Exhibit 9. Thus, he opined Claimant’s obesity is a “poor sole or dominant explanation” for Claimant’s

therefore does not aid Employer in rebutting the presumption of legal pneumoconiosis. Decision and Order at 15. Thus, these findings are affirmed. *Skrack*, 6 BLR at 1-711.

⁹ The Administrative Procedure Act (APA) provides that every adjudicatory decision must 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).

impairment. *Id.* Given Dr. Go's conclusion, the ALJ failed to explain how his opinion supports Dr. Basheda's conclusion that Claimant's impairment is caused by obesity.¹⁰

In view of the foregoing, we must vacate the ALJ's finding that Employer disproved the existence of legal pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(A). *See Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 354 (3d Cir. 1997); *Wojtowicz*, 12 BLR at 1-165. Therefore, we also vacate the ALJ's determination that Employer rebutted the Section 411(c)(4) presumption by establishing Claimant does not have pneumoconiosis, and therefore the denial of benefits. *See* 20 C.F.R. §718.305(d)(1)(i).

Remand Instructions

On remand, the ALJ must determine whether Employer has affirmatively established Claimant does not have legal pneumoconiosis, 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); *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208 (4th Cir. 2000); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc).

Specifically, the ALJ must consider whether Employer has rebutted the presumed existence of legal pneumoconiosis. When weighing the opinion of Dr. Basheda on this issue, the ALJ must consider the explanations for his conclusions, the documentation underlying his medical judgment, and the sophistication of, and bases for, his diagnoses. *See Lango v. Director, OWCP*, 104 F.3d 573, 578 (3d Cir. 1997). In doing so, he must set forth his findings in detail, including the underlying rationale. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz*, 12 BLR at 1-165.

The ALJ must also resolve any conflicts among the medical opinions and explain his findings. *See Hicks*, 138 F.3d at 533; *Wojtowicz*, 12 BLR at 1-165. To that end, given that the ALJ found Dr. Sood's opinion, that Claimant has "occult airway obstruction" consistent with chronic obstructive pulmonary disease (COPD) severe enough to prevent him from performing his usual coal mine work, well-reasoned, and assigned it great weight,

¹⁰ Moreover, the ALJ discredited Dr. Manaker's opinion that Claimant's testing results could be explained by obesity and cardiovascular disease, noting "merely because they *can* be explained by those does not mean that those impairments *are* responsible for his results." Decision and Order at 15 (emphasis in original). Given that the ALJ did not discuss or point to any evidence regarding Dr. Basheda's specific rationale for his conclusion on the etiologies of Claimant's impairment, the ALJ seemingly did not apply this same reasoning to Dr. Basheda's opinion.

the ALJ must fully explain any decision to credit the opinion of Dr. Basheda who excluded a diagnosis of legal pneumoconiosis in part because he believed there is no evidence Claimant has either obstructive or restrictive lung disease. Decision and Order at 22; Claimant's Exhibits 7, 10; Employer's Exhibit 4, 6.

Further, the ALJ must consider whether Dr. Basheda's opinion sufficiently addresses Claimant's more than twenty years of coal mine dust exposure and explains how he eliminated it as a contributing or aggravating factor to Claimant's totally disabling lung impairment. *W. Va. CWP Fund v. Director, OWCP* [Smith], 880 F.3d 691, 699 (4th Cir. 2018) (rebuttal inquiry is "whether the employer has come forward with affirmative proof that the [miner] does not have legal pneumoconiosis, because his impairment is not in fact significantly related to his years of coal mine employment").

Accordingly, the ALJ's Decision and Order Denying Benefits is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge