U.S. Department of Labor

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

BRB No. 22-0187 BLA

ELDON R. MCCOY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DICKENSON-RUSSELL COAL COMPANY, LLC	)	
	)	
	)	DATE ISSUED: 01/31/2023
and	)	
	)	
AIG PROPERTY CASUALTY COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	DECISION and ORDER
Party-in-Interest	)	

Appeal of the Decision and Order Awarding Benefits of Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

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

Joseph E. Wolfe and Brad A. Austin (Wolfe, Williams & Reynolds) Norton, Virginia, for Claimant.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Awarding Benefits (2020-BLA-05799) rendered pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on March 27, 2019.

The ALJ found Claimant established 38.22 years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she 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). She further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer asserts the ALJ erred in finding Claimant established total disability, thereby invoking the Section 411(c)(4) presumption.[2] Claimant responds, urging affirmance of the award. The Director, Office of Workers' Compensation Programs, has declined to file a brief unless requested.

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) 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] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 38.22 years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3.

[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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Transcript at 20.

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

A miner is totally disabled if he has a pulmonary or respiratory impairment that, standing alone, prevents him from performing his usual coal mine work.[4] *See* 20 C.F.R. §718.204(b)(1). A miner 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 opinions and evidence as a whole.[5] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 14. Employer argues the ALJ erred in finding the medical opinion evidence established total disability. 20 C.F.R. §718.204(b)(2)(iv); Employer's Brief at 9-16. We disagree.

The ALJ considered the medical opinions of Drs. Raj and Rajbhandari that Claimant is totally disabled by a pulmonary impairment and the contrary opinions of Drs. Sargent and McSharry that he is not. Decision and Order at 7-13; Claimant's Exhibit 1, 4; Director's Exhibit 15, 20; Employer's Exhibit 1. She found the medical opinions of Drs. Raj and Rajbhandari well-reasoned and documented and the opinions of Drs. Sargent and McSharry not well-reasoned. Decision and Order at 9-13.

Employer argues the ALJ erred in crediting the medical opinions of Drs. Raj and Rajbhandari because they did not adequately explain how Claimant is totally disabled given the non-qualifying objective testing.[6] Employer's Brief at 10. We disagree. A

[4] The ALJ found Claimant's usual coal mine employment was working as an underground roof bolter that required heavy manual labor. Decision and Order at 3. This finding is not challenged. Thus we affirm it. *Skrack*, 6 BLR at 1-711.

[5] The ALJ found the pulmonary function studies and arterial blood gas studies do not establish total disability and there is no evidence that Claimant has cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 5-7.

[6] A "qualifying" pulmonary function study or 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).

physician may conclude a miner is totally disabled even if the objective studies are non-qualifying. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); 20 C.F.R. §718.204(b)(2)(iv). Further, as discussed below, the ALJ permissibly found both Drs. Raj and Rajbhandari persuasively explained their conclusions that Claimant's respiratory symptoms would prevent him from performing his usual coal mine work. Director's Exhibit 15, Claimant's Exhibit 2, 4.

Dr. Raj reviewed the April 2, 2019 pulmonary function test and arterial blood gas study conducted during his Department of Labor sponsored complete pulmonary evaluation of Claimant. Director's Exhibit 15. He opined "the pulmonary function testing showed a moderate obstructive defect" and the "resting arterial blood gas study revealed severe hypoxemia." *Id.* at 3-4. He specifically explained that because Claimant "gets short of breath walking about eight steps on the stairs" and "require[es] oxygen in the night and as needed during the day," Claimant "cannot meet the exertional requirement of his last coal mine job." *Id.* at 4. He further reviewed the diagnostic testing of Claimant taken during his examination on January 8, 2021 and again opined that because Claimant has reduced physical capacity and need for oxygen, Claimant "cannot meet the exertional requirement of his last job and is totally disabled." Claimant's Exhibit at 8-9.

Dr. Rajbhandari also reviewed the pulmonary function and blood gas study conducted during his examination of Claimant. Claimant's Exhibit 4 at 2-3. He opined the pulmonary function testing showed "[m]oderate obstruction." *Id.* at 3. He specifically explained that because Claimant "has severely reduced exercise tolerance of less than fifty feet on a flat plane and less than one flight of stairs[,] . . . [a] significant history of coal and rock dust exposure[,] . . . and chronic obstructive pulmonary disease," Claimant "will not be able to perform duties associated with his last coal mining job." *Id.*

The ALJ permissibly found the medical opinions of Drs. Raj and Rajbhandari well-reasoned and documented because they took into account Claimant's breathing limitations and testing results. *See Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 316-17 (4th Cir. 2012); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997).

We further reject Employer's argument the ALJ should have discredited the opinions of Drs. Raj and Rajbhandari because they did not review all the evidence of record. Employer's Brief at 11. An ALJ is not required to discredit a physician who did not review all of the medical evidence when the opinion is otherwise well-reasoned,

documented, and based on the physician's own examination of the miner and objective test results. *See Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996).

Employer also argues the ALJ erred in rejecting the medical opinions of Drs. McSharry and Sargent. Employer's Brief at 13. We disagree.

As the trier-of-fact, the ALJ has discretion to assess the credibility of the medical opinions based on the experts' explanations for their diagnoses and assign those opinions appropriate weight. *See Looney*, 678 F.3d at 316-17; *Mays*, 176 F.3d at 756; *Lane*, 105 F.3d at 172. Here, the ALJ examined the reasoning of each physician to determine if his opinion was adequately explained. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); Decision and Order at 9-13. Contrary to Employer's argument, the ALJ permissibly discredited the opinions of Drs. Sargent and McSharry because they did not adequately explain why Claimant's severe respiratory impairment would or would not prevent him from performing his usual coal mine employment, which required heavy labor.[7] *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1142 (4th Cir. 1995); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 587 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); Decision and Order at 13-14.

We therefore affirm the ALJ's finding that the medical opinions establish total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 14. Furthermore, we affirm the ALJ's conclusion that the evidence, when weighed together, establishes total disability. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; Decision and Order at 14. Consequently, we affirm the ALJ's finding Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1). As Employer does not challenge the ALJ's finding that it did not rebut the presumption, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order at 15-16.

[7] As noted, the ALJ credited Drs. Raj's and Rajbhandari's diagnoses of a severe impairment. Dr. McSharry stated Claimant has "severe shortness of breath," while Dr. Sargent similarly noted Claimant's "exertional tolerance was limited by shortness of breath." Employer's Exhibits 1 at 2, 5; 3 at 7.

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge