U.S. Department of Labor

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

BRB No. 22-0430 BLA

ELIZABETH COOK (o/b/o ROGER D. COOK)	)	
Claimant-Respondent	)	
v.	)	
MYSTIC ENERGY, INCORPORATED	)	
and	)	DATE ISSUED: 01/26/2024
WEST VIRGINA COAL WORKERS' PNEUMOCONIOSIS FUND	)	
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 Lystra A. Harris, Administrative Law Judge, United States Department of Labor.

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

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Lystra A. Harris's Decision and Order Awarding Benefits (2020-BLA-05673) rendered on a subsequent claim filed on August 30, 2018,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901–944 (2018) (Act).

The ALJ found Claimant[2] failed to establish complicated pneumoconiosis and therefore failed to invoke the irrebuttable presumption that the Miner was totally disabled due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). *See* 20 C.F.R. §718.304. However, the ALJ found Claimant established the Miner had 32.06 years of underground coal mine employment and had a totally disabling respiratory or pulmonary impairment.[3] Thus, the ALJ found Claimant invoked the rebuttable presumption that the Miner was totally disabled due to pneumoconiosis at Section 411(c)(4) of the Act,[4] 30

[1] The Miner filed two prior claims. Director's Exhibits 1, 2. On November 1, 2012, the district director denied his most recent prior claim, filed on March 16, 2012, because he failed to establish he had a totally disabling respiratory impairment. Director's Exhibit 2.

[2] Claimant is the widow of the Miner, who died on March 7, 2019. Director's Exhibit 13. She is pursuing this claim on behalf of the Miner's estate. *Id*.

[3] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the Miner's prior claim was denied for failure to establish total disability, Claimant was required to submit new evidence establishing total disability to warrant a review of the Miner's subsequent claim on the merits. *White*, 23 BLR at 1-3; Director's Exhibit 2. As Claimant established total disability, the ALJ found she established a change in an applicable condition of entitlement. Decision and Order at 41.

[4] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if he had 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); 20 C.F.R. §718.305.

U.S.C. §921(c)(4) (2018). The ALJ further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer challenges the ALJ's finding that it failed to rebut the Section 411(c)(4) presumption.[5] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response.

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

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[7] 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); *Minich v. Keystone Coal*

[5] We affirm, as unchallenged on appeal, the ALJ's determination that Claimant invoked the Section 411(c)(4) presumption. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 42.

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the Miner performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 13.

[7] "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).

Mining Corp., 25 BLR 1-149, 1-155 n.8 (2015). The ALJ found Employer failed to establish rebuttal by either method.[8] Decision and Order at 42-50.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish the Miner did 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*, 25 BLR at 1-155 n.8.

Employer relies on the opinions of Drs. Zaldivar and Spagnolo that the Miner did not have legal pneumoconiosis.[9] Employer's Exhibits 2, 3, 6, 7. Dr. Zaldivar attributed the Miner's impairment to his lung cancer and obesity, while Dr. Spagnolo attributed the impairment to lung cancer, obesity, heart disease, and sleep apnea. *Id.* The ALJ found neither physician "persuasively established that [the Miner]'s lung impairment is not attributable, in any significant way, to his coal mine dust exposure." Decision and Order at 48. She therefore found neither opinion sufficiently reasoned to disprove legal pneumoconiosis. *Id*.

Employer contends the ALJ held its experts to "a standard which is impossible to meet" and failed to provide adequate rationales for discrediting their opinions. Employer's Brief at 4-10. We disagree.

The ALJ set forth the correct standard for rebuttal of the existence of legal pneumoconiosis, explaining Employer must establish that the Miner did not have a lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 47, *citing* 20 C.F.R. §718.201(b). She further correctly stated that it was Employer's burden to affirmatively disprove the existence of pneumoconiosis by a preponderance of the evidence. *Id*. at 42. Moreover, contrary to Employer's contentions, the ALJ did not require its experts to "rule out" coal mine dust exposure. Employer's Brief at 4-10. Rather, as discussed below, she found Drs. Zaldivar and Spagnolo did not sufficiently explain their conclusion that the

[8] The ALJ found Employer disproved clinical pneumoconiosis. Decision and Order at 42-47.

[9] The ALJ also considered Dr. Forehand's opinion, but she accurately found it does not assist Employer in rebutting the presumption because he diagnosed legal pneumoconiosis. Decision and Order at 47; Director's Exhibit 14.

Miner's impairment was completely unrelated to his coal mine dust exposure. Decision and Order at 48.

Dr. Zaldivar opined that the there is "no evidence in this case to justify a diagnosis of legal pneumoconiosis" and that the Miner's impairment was unrelated to his coal mine dust exposure because he had a restrictive, rather than obstructive, impairment with no evidence of pneumoconiosis on x-rays. Employer's Exhibit 2 at 11, 13. He further testified that the Miner later developed an obstructive impairment and blood gas exchange impairment, but these could be directly linked to his cancer as they developed concurrently. Employer's Exhibit 7 at 32-33.

Similarly, Dr. Spagnolo opined "there is not sufficient available evidence" of legal pneumoconiosis, noting that there was no impairment indicated on the Miner's pulmonary function studies taken several years after he left coal mine employment and there is no evidence of clinical pneumoconiosis. Employer's Exhibit 3 at 20-21. He further testified that the Miner's impairment did not develop until after he developed lung cancer and his heart disease worsened, and that he was able to "rule-out" coal mine dust as a contributing cause of the Miner's impairment. Employer's Exhibit 6 at 20-21, 29.

The ALJ permissibly found Drs. Zaldivar and Spagnolo "[a]t best" explained why they believed factors other than coal mine dust exposure were more likely to have caused all or most of the Miner's impairment, but neither sufficiently explained why "occupational exposure to coal mine dusts did not also significantly contribute to or aggravate the Miner's condition" along with his lung cancer, lung cancer treatment, obesity, and heart disease. Decision and Order at 48; *see Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 173 (4th Cir. 1997).

It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000). Employer's arguments on legal pneumoconiosis 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 the ALJ acted within her discretion in rejecting Drs. Zaldivar's and Spagnolo's opinions, we affirm her finding that Employer did not disprove legal pneumoconiosis. Decision and Order at 49. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established "no part of the [M]iner'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); Decision and Order at 49-50. The ALJ permissibly discredited the opinions of Drs. Zaldivar and Spagnolo on the cause of the Miner's pulmonary disability because they did not diagnose legal pneumoconiosis, contrary to her determination Employer failed to disprove the disease. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995); Decision and Order at 50. We therefore affirm the ALJ's finding that Employer failed to rebut the Section 411(c)(4) presumption and the award of benefits. *See* 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 49-50.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.0

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge