U.S. Department of Labor

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

BRB No. 23-0024 BLA

ROGER D. SALYERS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PARAMONT COAL CORPORATION	)	DATE ISSUED: 01/18/2024
	)	
	)	
Employer-Petitioner	)	
	)	
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 Carrie Bland, Associate Chief Administrative Law Judge, United States Department of Labor.

Jason A. Mullins (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

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

PER CURIAM:

Employer appeals Associate Chief Administrative Law Judge (ALJ) Carrie Bland's Decision and Order Awarding Benefits (2019-BLA-05236) rendered on a claim filed on March 20, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 43.59 years of underground coal mine employment or surface coal mine employment in conditions substantially similar to underground mines.

She found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Therefore, she found he 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 argues the ALJ erred in finding Claimant is totally disabled and thereby invoked the Section 411(c)(4) presumption. It also contends the ALJ erred in finding it did not rebut the presumption.[2] Neither Claimant nor the Director, Office of Workers' Compensation Programs, has 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.[3] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

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. 20 C.F.R. §718.204(b)(1). A 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 Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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)

[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 or pulmonary 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 43.59 years of qualifying coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6-7.

[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 10.

(en banc). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

The ALJ found Claimant established total disability based on the pulmonary function studies, medical opinions, and the evidence as a whole.[4] Decision and Order at 8-13.

Pulmonary Function Studies

The ALJ considered seven pulmonary function studies dated January 17, 2017, June 28, 2017, February 1, 2018, February 21, 2018, February 13, 2019, February 13, 2020, and September 28, 2021. Decision and Order at 9-10; Director's Exhibits 11, 18; Claimant's Exhibits 5-7; Employer's Exhibit 1. She found all of the studies produced qualifying[5] values for total disability except the September 28, 2021 study, which produced non-qualifying pre-bronchodilator values but qualifying post-bronchodilator values. *Id*.

The ALJ determined the qualifying January 17, 2017, June 28, 2017, February 1, 2018, February 13, 2019, and February 13, 2020 pulmonary function studies are valid.[6] Decision and Order at 9-10. Specifically, she weighed the opinions of Drs. Robinette, Sargent, and Fino that Claimant did not put forth adequate effort when performing these studies. Director's Exhibit 18; Employer's Exhibits 1, 4-7, 11. She found these doctors did not adequately explain their opinions in light of the fact that the physicians or

[4] The ALJ found Claimant did not establish total disability based on the arterial blood gas studies, and there is no evidence Claimant has cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); Decision and Order at 10-11.

[5] A "qualifying" pulmonary function study yields values that are equal to or less than the appropriate values set out in the tables at 20 C.F.R. Part 718, Appendix B. A "non-qualifying" study yields values that exceed those values. 20 C.F.R. §718.204(b)(2)(i).

[6] When considering pulmonary function studies, an ALJ must determine whether they are in substantial compliance with the quality standards. 20 C.F.R. §§718.101(b), 718.103(c); 20 C.F.R. Part 718, Appendix B; *see Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-237 (2007) (en banc). In the absence of evidence to the contrary, compliance with the quality standards is presumed. 20 C.F.R. §718.103(c); *see Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984) (party challenging the validity of a study has the burden to establish the results are unreliable); 20 C.F.R. Part 718, Appendix B. If a study does not precisely conform to the quality standards, but is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b). The ALJ must then, in her role as fact-finder, determine the probative weight to assign the study. *See Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-55 (1987).

technicians who conducted and observed the tests indicated Claimant put forth fair or good effort.[7] *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); Decision and Order at 10. Because a preponderance of the valid studies is qualifying, the ALJ concluded the pulmonary function testing supports total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 10.

In challenging the ALJ's finding, Employer simply summarizes the opinions of Drs. Robinette, Sargent, and Fino and contends the weight of the medical opinions establishes that the pulmonary function testing is invalid. Employer's Brief at 4-5. It identifies no specific error in the ALJ's credibility findings. *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). As Employer has not raised any error by the ALJ, we affirm her findings that the January 17, 2017, June 28, 2017, February 1, 2018, February 13, 2019, and February 13, 2020 pulmonary function studies are valid, and the weight of this testing supports total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 9-10.

Medical Opinions

The ALJ next considered the medical opinions of Drs. Ajjarapu, Fino, and Sargent. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order 11-13. Dr. Ajjarapu opined Claimant cannot perform his usual coal mine employment based on his pulmonary function study results that demonstrate a severe pulmonary impairment. Director's Exhibit 11. Drs. Fino and Sargent opined they could not diagnose a respiratory or pulmonary impairment because the qualifying pulmonary function studies are not valid, and the only valid study is non-qualifying. Director's Exhibit 18; Employer's Exhibits 1, 6, 7, 11.

The ALJ found Drs. Ajjarapu, Fino, and Sargent are equally qualified. Decision and Order at 13. She permissibly credited Dr. Ajjarapu's opinion because the doctor "adequately addressed all the information in the record, including Claimant's histories, symptoms, and testing." *Id.*; *see Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441. On the

[7] St. Charles Respiratory Center administered the January 17, 2017, February 1, 2018, February 13, 2019, and February 13, 2020 pulmonary function studies, and Claimant's cooperation and comprehension were reported as good. Claimant's Exhibits 5-7. On the reports for the February 13, 2019 and February 13, 2020 studies, Dr. Forehand wrote "acceptable spirogram" on March 2, 2020. Claimant's Exhibits 5, 6. Dr. Ajjarapu administered the June 28, 2017 pulmonary function study and noted Claimant's cooperation and comprehension as fair. Director's Exhibit 11.

other hand, she permissibly discredited the opinions of Drs. Fino and Sargent as contrary to her findings with respect to the pulmonary function testing. *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 13. She also found they failed "to explain how Claimant's occupational history and respiratory symptoms - such as shortness of breath, wheezing, and a daily, productive cough - factored into their conclusions." Decision and Order at 13; *see Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441.

Employer notes that Dr. Ajjarapu did not review all of the evidence of record. Employer's Brief at 11. To the extent Employer argues the ALJ should have discredited her opinion on that basis, we disagree as an ALJ is not required to discount a physician's opinion on the basis that she did not review all the evidence of record; rather, a physician can render a reasoned and documented opinion regarding total disability based on her own examination of a miner, review of objective test results, or both. 20 C.F.R. §718.204(b)(2)(iv); *see Church v. Eastern Assoc. Coal Corp.*, 20 BLR 1-8, 1-13 (1996).

Employer argues the ALJ should have assigned controlling weight to the opinions of Drs. Fino and Sargent because they possess qualifications superior to those of Dr. Ajjarapu. Employer's Brief at 5. Its argument is 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 it is supported by substantial evidence, we affirm the ALJ's finding the medical opinions support total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 13.

We also affirm her finding Claimant established total disability based on a consideration of the evidence as a whole. *Rafferty*, 9 BLR at 1-232; 20 C.F.R. §718.204(b)(2); Decision and Order at 13. Thus, we affirm the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305; Decision and Order at 13.

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,[8] or "no part of [his]

[8] "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

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 Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015). The ALJ found Employer failed to establish rebuttal by either method.

Legal Pneumoconiosis

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." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A).

Employer relies on the opinions of Drs. Sargent and Fino. Director's Exhibit 18; Employer's Exhibits 1, 6, 7, 11. Both physicians opined Claimant does not have a lung disease or impairment significantly related to, or substantially aggravated by, coal mine dust exposure based in part on their respective opinions that the qualifying pulmonary function studies are invalid and the sole valid study is non-qualifying. *Id*. The ALJ found their opinions contrary to her finding that the qualifying January 17, 2017, June 28, 2017, February 1, 2018, February 13, 2019, and February 13, 2020 pulmonary function studies are valid. Decision and Order at 17-18. Employer simply reiterates its general statement that these studies are invalid, but again identifies no specific error in the ALJ's finding. *See Cox*, 791 F.2d at 446-47; *Sarf*, 10 BLR at 1-120-21; *Fish*, 6 BLR at 1-109. Thus we affirm the ALJ's finding that these opinions are not credible on legal pneumoconiosis.[9] Decision and Order at 18.

As the ALJ discredited the only opinions supportive of Employer's burden, we affirm the ALJ's finding that Employer failed to rebut the presumption that Claimant has legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 17-18. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis.[10] 20 C.F.R. §718.305(d)(1)(i).

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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).

[9] As the ALJ provided a valid reason for discrediting the legal pneumoconiosis opinions of Drs. Sargent and Fino, we need not address whether her other reasons for discrediting their opinions can be affirmed. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983)

[10] Our affirmance of the ALJ's finding that Employer failed to disprove legal pneumoconiosis obviates the necessity to address Employer's challenge to the ALJ's

Disability Causation

The ALJ next considered 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); Decision and Order at 18-19. The ALJ permissibly discounted the opinions of Drs. Sargent and Fino on the cause of Claimant's total disability because they did not diagnose legal pneumoconiosis, contrary to her finding that Employer failed to disprove the existence of the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order at 19. Employer does not challenge the ALJ's finding that it failed to rebut disability causation. Thus, we affirm the ALJ's determination that Employer failed to establish no part of Claimant's respiratory disability was caused by legal pneumoconiosis. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Consequently, we affirm the ALJ's conclusion that Employer did not rebut the Section 411(c)(4) presumption.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

finding that it failed to disprove clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); *see Larioni*, 6 BLR at 1278; Employer's Brief at 6-8.