U.S. Department of Labor

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

BRB No. 23-0439 BLA

PETER L. WELCH Claimant-Respondent v. ARACOMA COAL COMPANY Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 01/22/2025 DECISION and ORDER

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

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

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for Employer.

Before: BOGGS, BUZZARD, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Awarding Benefits (2021-BLA-05273) rendered on a subsequent claim filed on

July 11, 2019[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 35.46 years of qualifying coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He thus found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[2] and established a change in an applicable condition of entitlement.[3] He 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 thus erred in finding he invoked the Section 411(c)(4) presumption. It further argues the ALJ erred in finding that it did not rebut the presumption.[4] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response.

[1] This is Claimant's second claim for benefits. Director's Exhibits 1, 4. On August 23, 1996, the district director denied Claimant's first claim, filed on April 19, 1996, for failure to establish any element of entitlement. Director's Exhibit 1 at 30, 53.

[2] 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 or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[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 he 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 Claimant failed to establish any element of entitlement in the prior claim, he had to submit new evidence establishing at least one element of entitlement to obtain review of his subsequent claim on the merits. *See* 20 C.F.R. §725.309(c); *White*, 23 BLR at 1-3; Director's Exhibit 1 at 30.

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant had 35.46 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6.

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.[5] 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).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work or 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) (en banc). The ALJ found Claimant established total disability based on the pulmonary function studies, arterial blood gas studies, medical opinions, and the evidence as a whole.[6] Decision and Order at 20; 20 C.F.R. §718.204(b)(2)(i), (ii), (iv).

Because all the new pulmonary function studies produced qualifying values before and after the administration of bronchodilators, the ALJ found the pulmonary function studies support a finding of total disability. Decision and Order at 18; 20 C.F.R. §718.204(b)(2)(i). Additionally, because the most recent blood gas study produced qualifying values with exercise and was conducted more than a year after the most recent prior study, the ALJ found the blood gas study evidence supports a finding of total disability. Decision and Order at 18; 20 C.F.R. §718.204(b)(2)(ii). As these findings are unchallenged on appeal, we affirm them. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[5] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

[6] The ALJ found Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(iii) as there is no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 18.

The ALJ also considered the opinions of Drs. Agarwal and Habre that Claimant is totally disabled and the opinions of Drs. Basheda and Spagnolo that, although his objective studies are qualifying, he likely would not be disabled with proper medication.[7] Decision and Order at 19; Director's Exhibit 18; Claimant's Exhibit 1; Employer's Exhibits 1, 2, 5, 6. The ALJ credited Drs. Agrawal's and Habre's opinions as reasoned and documented. Decision and Order at 19. However, he found Dr. Basheda's opinion unpersuasive because the physician declined to provide a final determination of disability. *Id.* He further found Dr. Spagnolo's opinion unpersuasive as he conditioned his opinion that Claimant is not totally disabled upon Claimant taking medication to treat his respiratory condition, which is not the relevant inquiry. *Id.*; *see* 20 C.F.R. §718.204(b)(1); 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980).

As noted above, Employer does not challenge the ALJ's findings that the weight of the pulmonary function studies and arterial blood gas studies is qualifying. Decision and Order at 18. Nor does it argue that the medical opinions constitute "contrary probative evidence" that these qualifying studies do not establish total disability. *See* 20 C.F.R. §718.204(b)(2) ("In the absence of contrary probative evidence, evidence which meets the standards of either paragraphs (b)(2)(i), (ii), (iii), or (iv) of this section shall establish a miner's total disability."). Rather, Employer argues the ALJ did not adequately explain his reasons for crediting Drs. Habre and Agarwal and erred in discrediting Drs. Basheda's and Spagnolo's opinions. Employer's Brief at 7-12, 27-29.

However, in alleging that the ALJ misconstrued Drs. Basheda's and Spagnolo's opinions, Employer concedes that they each opined Claimant is totally disabled. Employer's Brief at 7-12. As their opinions support a finding of total disability, and Employer does not challenge the ALJ's finding that the objective testing establishes total disability, we affirm his determination that Claimant established total disability at 20 C.F.R. §718.204(b)(2)(i), (ii), (iv) and based on the evidence as a whole. *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"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1278

[7] Dr. Basheda acknowledged that Claimant is totally disabled based on objective testing but stated he would "defer" a determination of whether Claimant is truly disabled because he was not on appropriate medication to treat his impairment and could improve. Employer's Exhibit 6 at 23-24. Similarly, Dr. Spagnolo opined Claimant's objective testing shows a moderately severe obstruction but that he could perform his usual coal mine employment "if he stops smoking and gets optimal treatment for his asthma." Employer's Exhibits 2 at 9; 5.

(1984); *Rafferty*, 9 BLR at 1-232; Decision and Order at 20. Thus, we affirm the ALJ's determination that Claimant invoked the Section 411(c)(4) presumption.

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] 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.[9]

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); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on Drs. Basheda's and Spagnolo's opinions that Claimant does not have legal pneumoconiosis. Employer's Exhibits 1, 2, 5, 6. Dr. Basheda diagnosed Claimant with smoking-induced chronic obstructive pulmonary disease (COPD) with an asthmatic component, unrelated to coal mine dust exposure. Employer's Exhibits 1 at 12-14; 6 at 12. Dr. Spagnolo diagnosed Claimant with COPD due to chronic intermittent asthma, cigarette smoking, and cardiovascular disease unrelated to coal mine dust exposure. Employer's Exhibit 2 at 6-10. The ALJ found neither opinion well-reasoned

[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 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] The ALJ found Employer rebutted the existence of clinical pneumoconiosis. Decision and Order at 26.

and therefore found Employer did not rebut the existence of legal pneumoconiosis. Decision and Order at 28.

Employer contends the ALJ erred in discrediting Drs. Basheda's and Spagnolo's opinions. Employer's Brief at 12-25. Dr. Basheda attributed Claimant's obstruction solely to cigarette smoking and asthma because his impairment "had all of the characteristics of tobacco induced obstructive lung disease." Employer's Exhibit 1 at 13-14. He cited to Claimant's response to bronchodilators, variable air trapping, periods of exacerbations of his symptoms, and his family and personal history of allergies and asthma in support of this opinion. *Id.* Similarly, Dr. Spagnolo opined Claimant's obstruction is "most consistent" with asthma, smoking, and heart disease, noting his response to bronchodilators and a lack of clinical pneumoconiosis. Employer's Exhibit 2 at 8-9. The ALJ permissibly found their reliance on Claimant's partially reversible impairment unpersuasive because the physicians failed to adequately explain why the irreversible portion of Claimant's pulmonary impairment was not significantly related to, or substantially aggravated by, coal mine dust exposure. *See Consol. Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); Decision and Order at 28; Employer's Brief at 19-22.

The ALJ has discretion, as the fact finder, to weigh the evidence, draw inferences and determine credibility. *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 557-58 (4th Cir. 2013). Employer's arguments are 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 permissibly discredited Drs. Basheda's and Spagnolo's opinions, we affirm his finding that Employer did not disprove the presumption that Claimant's totally disabling obstructive impairment is legal pneumoconiosis.[10] 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); Decision and Order at 28. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. Therefore, we affirm the ALJ's finding that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(1)(i).

[10] Because the ALJ provided a valid reason for discrediting Drs. Basheda's and Spagnolo's opinions regarding legal pneumoconiosis, we need not address Employer's remaining arguments regarding the weight accorded to their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 12-25.

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 30. He found Drs. Basheda's and Spagnolo's opinions do not sufficiently rule out a causal relationship between Claimant's disabling respiratory impairment and his coal mine employment. Decision and Order at 31. The ALJ explained that he could find "no specific or persuasive" reasons for concluding their opinions do not rest upon their disagreement with his finding that Claimant has legal pneumoconiosis. *See Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995) (An ALJ who finds a claimant suffers from pneumoconiosis and is totally disabled "may not" credit the opinion of a physician that the claimant's pneumoconiosis did not cause his impairment unless the ALJ identifies "specific and persuasive reasons for concluding that the doctor's judgment on the question of disability causation does not rest upon [his] disagreement with the ALJ's finding as to either or both of the predicates in the causal chain.").

Because the ALJ permissibly found Employer did not rebut the presumption that Claimant's totally disabling obstructive impairment is legal pneumoconiosis, Employer cannot establish that "no part" of that disability is due to pneumoconiosis. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505-06 (4th Cir. 2015); *Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668 (6th Cir. 2015); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order at 12. We therefore affirm the ALJ's conclusion that Employer failed to establish no part of Claimant's respiratory or pulmonary disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

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

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge