U.S. Department of Labor

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

BRB No. 24-0012 BLA

PHYLLIS HUBBARD o/b/o DELFORD W. HUBBARD	)	
Claimant-Petitioner	)	
v.	)	
I C G HAZARD, LLC	)	**NOT-PUBLISHED**
and	)	
ARCH COAL, INCORPORATED	)	DATE ISSUED: 01/30/2025
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 on Remand of Jason A. Golden, Administrative Law Judge, United States Department of Labor.

Phyllis Hubbard, London, Kentucky.

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

PER CURIAM:

Claimant[1] appeals, without representation,[2] Administrative Law Judge (ALJ) Jason A. Golden's Decision and Order Denying Benefits on Remand (2019-BLA-05493) rendered on a claim filed on February 23, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Board for a second time.[3]

In his initial Decision and Order Denying Benefits, the ALJ credited the Miner with thirty-four years of surface coal mine employment but found total disability was not established. 20 C.F.R. §718.204(b)(2). He therefore determined the rebuttable presumption of total disability due to pneumoconiosis was not invoked pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[4] nor entitlement to benefits established at 20 C.F.R. Part 718.[5] Consequently, the ALJ denied benefits.

On the Miner's appeal, the Board affirmed the ALJ's finding that the Miner had thirty-four years of surface coal mine employment.[6] *Hubbard v. I C G Hazard, LLC*, BRB No. 21-0503 BLA, slip op. at 2 (Dec. 28, 2022) (unpub.). However, the Board vacated his

[1] Claimant, Phyllis Hubbard, is the widow of the Miner and is appealing the ALJ's decision on his behalf. *See* Claimant's Notice of Appeal.

[2] On Claimant's behalf, Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested that the Benefits Review Board review the ALJ's decision, but is not representing Claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co*., 19 BLR 1-88 (1995) (Order).

[3] We incorporate the procedural history of this case set forth in *Hubbard v. I C G Hazard, LLC*, BRB No. 21-0503 BLA, slip op. at 1-2 (Dec. 28, 2022) (unpub.).

[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.

[5] Because the ALJ found the Miner was not totally disabled, he did not reach the issue of whether his surface employment was qualifying for the purpose of invoking the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1).

[6] As there was no evidence of complicated pneumoconiosis, the Board also affirmed the ALJ's finding that the irrebuttable presumption of total disability due to pneumoconiosis was not invoked at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); *Hubbard*, BRB No. 21-0503 BLA, slip op. at 3.

finding that total disability was not established because the ALJ erroneously relied solely on the recency of a non-qualifying pulmonary function study in determining the pulmonary function study evidence does not support total disability, which further affected his weighing of the medical opinion evidence. *Id*. at 5-6. The Board therefore vacated the ALJ's finding that the Section 411(c)(4) presumption was not invoked and the denial of benefits, and it remanded the case for further consideration. *Id.*

On remand, the ALJ again found the evidence insufficient to establish total disability. 20 C.F.R. §718.204(b)(2). Because Claimant failed to establish an essential element of entitlement, the ALJ reinstated his denial of benefits.

In the current appeal, Claimant generally challenges the denial of benefits. Neither Employer nor the Director, Office of Workers' Compensation Programs, filed a response brief.

In an appeal filed without representation, the Board addresses whether substantial evidence supports the Decision and Order below. *Hodges v. BethEnergy Mines, Inc*., 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with law.[7] 33 U.S.C. §921(b)(3), as incorporated into the Act 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 of total disability due to pneumoconiosis, Claimant must establish the Miner had 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, prevented him from performing his usual coal mine work and comparable gainful work.[8] 20 C.F.R. §718.204(b)(1). 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

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the Miner performed his coal mine employment in Kentucky. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc); Director's Exhibit 4; Hearing Transcript at 14.

[8] The ALJ found the Miner's usual coal mine employment as a dozer operator required some physical exertion but not heavy labor. Decision and Order at 6; Decision and Order on Remand at 6.

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). The ALJ found Claimant failed to establish total disability by any method.[9] Decision and Order on Remand at 7.

Pulmonary Function Studies

On remand, per the Board's remand instructions, the ALJ reconsidered the results of four pulmonary function studies. Decision and Order on Remand at 3-5. Initially, the ALJ noted the Board's affirmance of his finding that the post-bronchodilator results are less probative as to total disability than the pre-bronchodilator results. Decision and Order on Remand at 3; *see Hubbard*, BRB No. 21-0503 BLA, slip op. at 3; *see also Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491 (6th Cir. 2014); 45 Fed. Reg. 13,678, 13,682 (Feb. 29, 1980). Addressing the pre-bronchodilator values, the ALJ noted the January 16, 2014 study produced non-qualifying[10] values, the January 25, 2018 and March 26, 2018 studies produced qualifying values, and the August 22, 2018 study produced non-qualifying values. Director's Exhibits 12, 22, 23; Claimant's Exhibit 5; Decision and Order on Remand at 4. The ALJ then considered the pulmonary function studies "without reference to their chronological relationship." Decision and Order on Remand at 4-5; *see Hubbard*, BRB No. 21-0503 BLA, slip op. at 4-5; *see also Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1993). He found nothing in his review of the studies supports a conclusion that any study should be given more weight than another[11] and, weighing the two qualifying pre-bronchodilator studies and the two non-qualifying pre-bronchodilator studies together, determined the evidence is "inconclusive." Decision and Order on Remand at 5.

[9] The Board previously affirmed the ALJ's findings that the blood gas study evidence does not establish total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); *Hubbard*, BRB No. 21-0503 BLA, slip op. at 5 n.9.

[10] A "qualifying" pulmonary function study yields results that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i).

[11] The ALJ found the January 16, 2014 pulmonary function study from the Miner's treatment records was sufficiently reliable for making a disability finding and noted the parties have not challenged the validity of the pre-bronchodilator pulmonary function study evidence. Decision and Order on Remand at 5.

Because the ALJ performed a qualitative and quantitative review of the evidence and his findings are supported by substantial evidence, we affirm his determination that the pulmonary function study evidence is inconclusive and thus does not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(i). *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994); *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 740 (6th Cir. 2014); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); Decision and Order on Remand at 5.

Medical Opinions and the Evidence as a Whole

Notwithstanding non-qualifying objective testing, total disability may be established by a reasoned medical opinion that a miner is unable to perform his usual coal mining work. 20 C.F.R. §718.204(b)(2)(iv); *see also Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005); *Cornett v. Benham Coal, Inc*., 227 F.3d 569, 577 (6th Cir. 2000).

The ALJ considered three medical opinions addressing total disability.[12] Decision and Order on Remand at 6-7. Dr. Ajjarapu initially opined the Miner was totally disabled based on the qualifying pulmonary function values she obtained on March 26, 2018. Director's Exhibit 12 at 7. However, after considering additional evidence, she concluded the Miner did not have a totally disabling respiratory impairment. Director's Exhibit 21. Both Drs. Dahhan and Jarboe opined the Miner was not totally disabled. Director's Exhibit 23 at 4-5; Employer's Exhibit 6 at 8.

The ALJ accurately noted that none of the physicians ultimately opined the Miner was totally disabled from performing his usual coal mine work. Therefore, his determination that the medical opinion evidence does not support a finding of total disability is supported by substantial evidence. 20 C.F.R. §718.204(b)(2)(iv); *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); Decision and Order on Remand at 6-7. We further affirm the ALJ's conclusion that the evidence when weighed together as a whole does not establish total disability. 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232; *Shedlock v. Bethlehem Mines Corp*., 9 BLR 1-195, 1-198 (1986), *aff'd on recon*., 9 BLR 1-236 (1987) (en banc); Decision and Order on Remand at 7.

[12] The ALJ also noted the Board's affirmance of his determination that the Miner's treatment records do not address whether he had the respiratory capacity to return to his usual coal mine employment. Decision and Order on Remand at 8; *Hubbard*, BRB No. 21-0503 BLA, slip op. at 5 n.10.

As Claimant failed to establish a totally disabling respiratory or pulmonary impairment, we affirm the ALJ's conclusion that she did not invoke the Section 411(c)(4) presumption or establish entitlement to benefits under the Act in this miner's claim. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Accordingly, the ALJ's Decision and Order Denying Benefits on Remand is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge