U.S. Department of Labor

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

BRB No. 24-0364 BLA

EUGENE R. MARTIN Claimant-Respondent v. THE MARION COUNTY COAL COMPANY and MURRAY ENERGY CORPORATE TRUST Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 01/23/2025 DECISION and ORDER

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

Aimee M. Stern (Dinsmore & Shohl, LLP), Wheeling, West Virginia, for Employer and its Carrier.

Joseph E. Wolfe, Donna E. Sonner, and Cameron Blair (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Awarding Benefits (2022-BLA-05853) rendered on a subsequent claim[1] filed October 1, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulation that Claimant has twenty-seven years of underground coal mine employment and found Claimant established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[2] 30 U.S.C. §921(c)(4), and established a change in an applicable condition of entitlement.[3] 20 C.F.R. §725.309(c). Further, he found Employer failed to rebut the presumption and thus awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established a totally disabling respiratory or pulmonary impairment. Alternatively, it argues he erred in finding it failed to rebut the Section 411(c)(4) presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

[1] Claimant filed two prior claims. Director's Exhibits 1, 2. On May 14, 2012, the district director denied his most recent prior claim, filed July 28, 2011, for failure to establish any element of entitlement. Director's Exhibit 2.

[2] 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.

[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 his prior claim, he had to submit new evidence establishing any element to obtain review of the merits of his current claim. *Id.*

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.[4] 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)(i). 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. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies, qualifying arterial blood gas studies,[5] 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 upon the arterial blood gas studies and medical opinions.[6] 20 C.F.R. §718.204(b)(2)(ii), (iv); Decision and Order at 20-21. Employer argues the ALJ erred in considering the medical opinions. Employer's Brief at 9-10. We disagree.

The ALJ considered Dr. Habre's opinion that Claimant is totally disabled, and the contrary opinion of Dr. Fino. Decision and Order at 20-21. He found Dr. Habre's opinion documented, well-reasoned, and entitled to significant weight as the physician considered

[4] This case arises under the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as Claimant 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 18.

[5] 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).

[6] The ALJ found the pulmonary function study evidence does not establish total disability, and there is no evidence of cor pulmonale with right-sided congestive heart failure in the record. 20 C.F.R. §718.204(b)(2)(i), (iii); Decision and Order at 19.

Claimant's coal mine employment, symptoms, diagnostic testing, and comorbidities in formulating his opinion. Decision and Order at 20. He found Dr. Fino's opinion documented but poorly reasoned and entitled to less weight because his opinion conflated the issues of disability and disability causation and failed to address the exertional requirements of Claimant's usual coal mine employment. *Id*. at 21. Thus, he found Claimant established total disability based upon Dr. Habre's opinion. *Id*. at 21-22.

Employer argues the ALJ should have assigned less weight to Dr. Habre's opinion because the physician was unable to consider the results of Claimant's oxygen saturation testing when forming his opinion. Employer's Brief at 10. We disagree. A medical opinion need not be discounted merely because the physician did not review additional medical evidence of record. *See Minnich v. Pagnotti Enterprises, Inc.*, 9 BLR 1-89, 1-90 n.1 (1986) (ALJ properly considered whether objective data offered as documentation adequately supported the opinion). Further, Dr. Habre reviewed the arterial blood gas study that Dr. Fino suggested indicated normal oxygenation, and Employer has not explained how the variability shown in the later testing indicated his opinion was erroneous.

Dr. Fino opined Claimant's arterial blood gas study showed disabling resting hypoxemia, but essentially normal oxygenation, and later oxygen saturation testing was variable. Employer's Exhibit 1 at 5-6. He concluded Claimant had intermittent hypoxemia related to heart failure and possibly obesity and "very well may be disabled due to heart disease." *Id*. at 6.

Employer generally argues Dr. Fino's opinion is well-reasoned and documented. Employer's Brief at 9-10. Its argument amounts to a request to reweigh the evidence, which we are not empowered to do. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Moreover, the ALJ permissibly assigned less weight to Dr. Fino's opinion because he conflated the issues of disability and disability causation and failed to address the exertional requirements of Claimant's usual coal mine employment in opining Claimant's oxygenation abnormality is not a disabling respiratory or pulmonary impairment. *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 21.[7]

[7] If "a nonpulmonary or nonrespiratory condition or disease causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered in determining whether the miner is or was totally disabled due to pneumoconiosis," 20 C.F.R. §718.204(a); consequently, even if Claimant's heart condition caused his

We therefore affirm the ALJ's finding Dr. Habre's opinion establishes total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 21-22. Further, we affirm the ALJ's finding Claimant established total disability in consideration of the evidence as a whole, 20 C.F.R. §718.204(b)(2);[8] *Rafferty*, 9 BLR at 1-232, thereby invoked the Section 411(c)(4) presumption, 20 C.F.R. §718.305(b)(1), and established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c); Decision and Order at 17-18, 21-22.

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

Because Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,[9] or that "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.[10]

Legal Pneumoconiosis

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respiratory impairment, the ALJ had to consider it in determining whether Claimant is totally disabled.

[8] We affirm, as unchallenged on appeal, the ALJ's finding Claimant's arterial blood gas study evidence supports a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii) and his treatment records support a finding of total disability. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 20-22.

[9] "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).

[10] The ALJ found Employer rebutted the existence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 30.

Employer argues the ALJ erred in finding it failed to rebut the presumption of legal pneumoconiosis. We disagree. 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 Minnich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ considered Dr. Fino's opinion that Claimant does not have a lung disease or impairment significantly related to, or substantially aggravated by, coal mine dust exposure, and the contrary opinion of Dr. Habre. Decision and Order at 28-29. He found Dr. Habre's opinion better documented and reasoned and entitled to greater weight than Dr. Fino's and thus found Employer did not rebut the existence of legal pneumoconiosis. *Id.* Substantial evidence supports the ALJ's finding.

Dr. Habre diagnosed Claimant with chronic bronchitis – based upon his chronic symptoms of cough, sputum, and shortness of breath – and disabling oxygenation impairment seen on his arterial blood gas study. Director's Exhibit 15 at 14-15. He opined coal dust exposure is a substantial cause of Claimant's disabling impairment based upon his lengthy underground coal mine employment history, chronic respiratory symptoms consistent with irritation caused by inhaled dust, and preservation of normal pulmonary function study results despite abnormal arterial blood gas studies. *Id.* Moreover, he opined Claimant's condition cannot be attributed to obesity because obesity would result in hypercapnia on an arterial blood gas study in addition to hypoxemia. *Id.* at 16.

Dr. Fino opined Claimant's abnormal oxygenation was caused by heart failure and possibly obesity, and unrelated to coal dust exposure. Employer's Exhibit 1 at 5-6. He explained Claimant's oxygen saturation testing demonstrated variability that would not be consistent with coal dust-induced disease. *Id.*

The ALJ permissibly found Dr. Habre's opinion more persuasive than Dr. Fino's because Dr. Habre considered Claimant's comorbidities such as obesity but explained why coal dust exposure is a substantial cause of Claimant's impairment based upon his symptoms and lengthy coal dust exposure history. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 29. Conversely, he found Dr. Fino's opinion did not adequately consider Claimant's pulmonary condition or coal mine dust exposure history in attributing Claimant's condition to heart disease and obesity. Decision and Order at 29.

Employer argues Dr. Fino's opinion is well-reasoned and documented and sufficient to rebut the existence of legal pneumoconiosis. Employer's Brief at 10-11. Its argument amounts to a request to reweigh the evidence, which we are not empowered to do. *See Anderson*, 12 BLR at 1-113.

Because the ALJ permissibly found the only opinion supportive of Employer's burden on rebuttal less credible, we affirm his finding Employer did not disprove legal pneumoconiosis. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

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). The ALJ rationally discredited the disability causation opinion of Dr. Fino because he did not diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer failed to disprove the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995) (physician's opinion on disability causation "may not be credited at all" absent "specific and persuasive reasons" for concluding it is independent of his or her mistaken belief the miner did not have pneumoconiosis); Decision and Order at 31.

As it is supported by substantial evidence, we affirm the ALJ's finding that Employer failed to establish no part of Claimant's total disability was due to pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

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