

U.S. Department of Labor

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



BRB No. 21-0475 BLA

ARVIL F. HENDRICKS)

Claimant-Respondent)

v.)

SOUTHERN APPALACHIAN COAL)
COMPANY)

and)

Self-Insured Through AEP KENTUCKY c/o)
EAST COAST RISK MANAGEMENT)

Employer/Carrier-)
Petitioners)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

DATE ISSUED: 7/29/2022

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of John P. Sellers, III,
Administrative Law Judge, United States Department of Labor.

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

Mark J. Grigoraci (Robinson & McElwee PLLC), Charleston, West Virginia,
for Employer.

Before: ROLFE, GRESH, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) John P. Sellers, III's Decision and Order Awarding Benefits (2019-BLA-06086) rendered on a subsequent claim,¹ filed on August 20, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with at least eight but no more than ten years of coal mine employment and thus found he could not invoke 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 Considering entitlement under 20 C.F.R. Part 718,³ the ALJ found Claimant established he has a totally disabling respiratory or pulmonary impairment and therefore established a change in an applicable condition of entitlement. 20 C.F.R. §§718.204(b)(2), 725.309(c). He further found Claimant established legal pneumoconiosis⁴ and total disability due to legal pneumoconiosis, and thus awarded benefits. 20 C.F.R. §§718.202(a), 718.204(c).

¹ Claimant filed two previous claims. He withdrew his more recent prior claim; therefore, it is considered not to have been filed. *See* 20 C.F.R. §725.306(b); Director's Exhibit 2. The ALJ stated Claimant filed one other claim but "there are no documents available from the Claimant's first claim as the file has been destroyed." Decision and Order at 2, 5; Director's Exhibit 1. Thus, he proceeded as if Claimant had not established any elements of entitlement.

² Section 411(c)(4) of the Act 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 impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

³ The ALJ found no evidence of complicated pneumoconiosis; therefore, Claimant is unable to invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304; Decision and Order at 7.

⁴ "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).

On appeal, Employer contends the ALJ erred in finding Claimant established legal pneumoconiosis, pneumoconiosis arising out of coal mine employment, and total disability due to pneumoconiosis.⁵ Claimant responds, urging affirmance of the award. The Director, Office of Workers' Compensation Programs (the Director), 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'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis);⁷ disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *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); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must demonstrate he has 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), 718.202(a).

The ALJ considered the opinions of Drs. Raj, Nader, Rajbhandari, Rosenberg, and Ranavaya. Decision and Order at 17-20. Dr. Raj diagnosed legal pneumoconiosis in the

⁵ We affirm, as unchallenged on appeal, the ALJ's finding Claimant established total disability and a change in an applicable condition of entitlement. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§718.204(b)(2), 725.309; Decision and Order at 13.

⁶ 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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 18-21.

⁷ The ALJ found Claimant failed to prove the existence of clinical pneumoconiosis. *See* 20 C.F.R. §§718.201(a)(1), 718.202(a); Decision and Order at 15-17.

form of a restrictive pulmonary defect arising out of coal mine dust exposure. Director's Exhibit 14. Dr. Nader diagnosed legal pneumoconiosis in the form of chronic restrictive lung disease with chronic bronchitis arising out of coal mine dust exposure. Claimant's Exhibit 1. Dr. Rajbhandari diagnosed legal pneumoconiosis in the form of chronic bronchitis arising out of coal mine dust exposure. Claimant's Exhibit 3. Drs. Rosenberg and Ranavaya opined Claimant has a restrictive impairment unrelated to coal mine dust exposure due to his extensive rib deformities, obesity, and smoking history. Employer's Exhibits 1, 4, 5. The ALJ found the opinions of Drs. Rosenberg and Ranavaya not adequately reasoned and entitled to little weight. Decision and Order at 19-20. He further found the opinions of Drs. Raj, Nader, and Rajbhandari reasoned and documented, and sufficient to establish legal pneumoconiosis.⁸ *Id.* at 17-20.

Employer argues the ALJ erred in finding Dr. Nader diagnosed legal pneumoconiosis. Employer's Brief at 16. Contrary to Employer's contention, Dr. Nader diagnosed chronic bronchitis and chronic restrictive lung disease. Claimant's Exhibit 1; Employer's Exhibit 7 at 33. He determined Claimant's ten year "occupational history of exposure to respirable coal and rock dust is considered a significant contributing and aggravating factor for the diagnosis of . . . chronic bronchitis with chronic restrictive lung disease." Claimant's Exhibit 1 at 3. During his deposition, he testified that if Claimant had emphysema along with a restrictive impairment, it would be difficult to identify the cause of the restrictive impairment because it would be masked by the presence of a mixed obstructive and restrictive lung condition. Employer's Exhibit 7 at 21-23. He opined, however, that Claimant does not have emphysema. *Id.* Again, he reiterated during his deposition that Claimant has legal pneumoconiosis. *Id.* at 32-34.

We further reject Employer's argument the ALJ erred in crediting the opinions of Drs. Raj, Nader, and Rajbhandari. Employer's Brief at 15-20. Dr. Raj diagnosed restrictive lung disease based on the results of Claimant's abnormal pulmonary function study and respiratory symptoms of coughing, shortness of breath, wheezing, and sputum production. Director's Exhibit 14. He acknowledged Claimant's exposure to coal mine dust and his smoking history. Noting there was no evidence of smoking-related disease, Dr. Raj opined coal dust exposure had a "substantial and significant role in [Claimant's] pulmonary impairment." *Id.*

⁸ Drs. Raj, Nader, and Rajbhandari all concluded Claimant's respiratory impairments, in the form of restrictive lung disease and chronic bronchitis, were totally disabling and opined he lacked the respiratory capacity to perform his usual coal mine employment. Director's Exhibit 13; Claimant's Exhibits 1, 3.

Dr. Nader diagnosed Claimant with chronic restrictive lung disease and chronic bronchitis based on Claimant's pulmonary function study and symptoms of chronic cough, wheezing, shortness of breath, and mucus expectoration. Claimant's Exhibit 1. He opined Claimant's impairments are caused by both cigarette smoking and coal mine dust exposure, but he could not distinguish the relative contribution of each to Claimant's impairment. *Id.* Nonetheless he concluded Claimant's ten-year "occupational history of exposure to respirable coal and rock dust is considered a significant contributing and aggravating factor for the diagnosis of coal worker pneumoconiosis." *Id.*

Dr. Rajbhandari diagnosed Claimant with chronic bronchitis based on Claimant's symptoms of wheezing and daily cough with phlegm production. Claimant's Exhibit 3. In addition, he noted Claimant's pulmonary function studies showed a significantly reduced FEV1. *Id.* Dr. Rajbhandari attributed Claimant's chronic bronchitis to smoking and coal mine dust exposure and opined the individual contribution of either one to his impairment could not be quantified. *Id.*

Contrary to Employer's argument, the ALJ permissibly found the opinions of Drs. Raj, Nader, and Rajbhandari reasoned and documented because they are well-explained, based on the objective evidence, and consistent with the regulations. *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 17-19.

Employer asserts the objective evidence does not support the opinions of Drs. Raj, Nader, and Rajbhandari, and these doctors did not adequately explain their conclusions. But Employer's arguments amount to a request to reweigh the evidence, which we are not empowered to do. *See Anderson*, 12 BLR at 1-113. Furthermore, Employer argues the ALJ erred by not considering Dr. Rosenberg's supplemental opinion when finding his opinion inadequately reasoned. Employer's Brief at 9-10, 14, 17. We disagree.

In his initial opinion, Dr. Rosenberg opined the restriction evidenced by Claimant's pulmonary function testing is not caused by coal mine dust exposure, but rather by "his weight superimposed on chest deformity from previous rib fractures." Employer's Exhibit 5. The ALJ found Dr. Rosenberg did not persuasively explain how "skeletal deformities" could cause Claimant's chronic cough, phlegm production, and wheezing, or how he excluded coal mine dust exposure as a contributing cause of Claimant's impairment. Decision and Order at 19. In his supplemental opinion, Dr. Rosenberg again opined Claimant's "weight superimposed on chest deformity from the previous rib fractures likely has contributed to his decreasing ventilatory measurements" but did not provide any additional explanation regarding how Claimant's rib deformities caused his respiratory symptoms or chronic bronchitis, or why coal mine dust could not have contributed to his respiratory condition. Employer's Exhibit 5. Thus, contrary to Employer's contention, Dr.

Rosenberg's supplemental opinion does not address the ALJ's reasons for finding his opinion unpersuasive, and any error in failing to consider it is therefore harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 19. Because Employer raises no other argument, we affirm the ALJ's discrediting of Dr. Rosenberg's opinion as inadequately reasoned. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000); *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 316-17 (4th Cir. 2012).

Employer asserts the ALJ erred in weighing Dr. Ranavaya's opinion. Employer's Brief at 14-15. Dr. Ranavaya considered a twenty-five pack-year cigarette smoking history, and opined Claimant's pulmonary impairment is caused by obesity and his smoking history. Employer's Exhibit 4 at 4, 9, 12. The ALJ determined Claimant has an eight to twelve pack-year smoking history. Decision and Order at 3-4. Contrary to Employer's contention, the ALJ permissibly discredited Dr. Ranavaya's opinion because he based his opinion on an inaccurate understanding of Claimant's smoking history.⁹ *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-89 (1994); *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988) (ALJ may reject medical opinions that rely on an inaccurate smoking history); Decision and Order at 19.

Moreover, Employer argues that in discrediting the opinions of Drs. Rosenberg and Ranavaya, the ALJ misapplied the definition of legal pneumoconiosis. Employer's Brief at 13-15. It asserts he required the doctors to "rule out" coal mine dust exposure as a cause of Claimant's pulmonary condition to constitute contrary probative evidence rather than evaluating whether their opinions are reasoned and documented. *Id.* Employer's contention is without merit. The ALJ correctly noted no presumption applies in this case and Claimant is required to establish he has a "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); *see* Decision and Order at 14. He did not require Drs. Rosenberg and Ranavaya to "rule out" coal mine dust exposure, but rather evaluated whether their opinions are adequately reasoned to support their conclusions that coal mine dust exposure did not contribute to Claimant's respiratory or pulmonary condition. Decision and Order at 19-20.

Finally, Employer generally argues Drs. Ranavaya and Rosenberg persuasively explained why Claimant does not have legal pneumoconiosis and their opinions are

⁹ Because the ALJ provided a valid reason for discrediting Dr. Ranavaya's opinion on the issue of legal pneumoconiosis, we need not address Employer's remaining arguments regarding the weight accorded to his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

supported by the objective testing of record. Employer's Brief at 15-18. Again, we consider Employer's arguments to be a request to reweigh the evidence, which we are not empowered to do. *See Anderson*, 12 BLR at 1-113.

We thus affirm the ALJ's finding that Claimant established the existence of legal pneumoconiosis.¹⁰ 20 C.F.R. §718.202(a); Decision and Order at 17-20.

Disability Causation

To establish disability causation, Claimant must prove pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause of a miner's totally disabling impairment if it has "a material adverse effect on the miner's respiratory or pulmonary condition" or if it "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii); *see Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 37-38 (4th Cir. 1990).

Employer raises the same arguments on disability causation that it does regarding legal pneumoconiosis. Employer's Brief at 19-20. As discussed above, however, the ALJ permissibly relied on the opinions of Drs. Raj, Nader, and Rajbhandari in finding Claimant's pulmonary impairment, which was determined to be totally disabling, constitutes legal pneumoconiosis. *See Hicks*, 138 F.3d at 533; Decision and Order at 21-22. We therefore see no error in the ALJ's finding their opinions also sufficient to establish Claimant's legal pneumoconiosis is a substantially contributing cause of his total disability. *See Brandywine Explosives & Supply v. Director, OWCP [Kennard]*, 790 F.3d 657, 668-

¹⁰ Employer asserts the ALJ should have credited Claimant with 8.67 years of coal mine employment instead of at least eight, but not more than ten years, which "enables the improper invocation of the rebuttable presumption" of disease causation. Employer's Brief at 10-13. We need not address this argument because the ALJ did not find Claimant invoked the presumption at 20 C.F.R. §718.203(b). *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."). Contrary to Employer's contention, the ALJ properly found Claimant established legal pneumoconiosis, *i.e.*, he has a chronic lung disease or impairment "arising out of coal mine employment," 20 C.F.R. §718.201(a)(2), and that the finding of disease causation is subsumed in the legal pneumoconiosis finding. *Kiser v. L & J Equipment Co.*, 23 BLR 1-246 (2006); *Henley v. Cowan & Co., Inc.*, 21 BLR 1-147 (1999); Decision and Order at 20; Employer's Brief at 18-19.

69 (6th Cir. 2015); *Hawkinberry v. Monongalia County Coal Co.*, 25 BLR 1-249, 1-255-57 (2019); Decision and Order at 21-22.

Additionally, the ALJ permissibly discounted the opinions of Drs. Rosenberg and Ranavaya on the cause of Claimant’s pulmonary disability because they did not diagnose legal pneumoconiosis, contrary to the ALJ’s finding legal pneumoconiosis was established. *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995) (such an opinion “may not be credited at all” on disability causation absent “specific and persuasive reasons” for concluding the physician’s view on disability causation is independent of his or her erroneous opinion on pneumoconiosis); Decision and Order at 21. As substantial evidence supports the ALJ’s finding Claimant is totally disabled due to legal pneumoconiosis, we affirm it. 20 C.F.R. §718.204(c).

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge