U.S. Department of Labor

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

BRB No. 24-0440 BLA

MELBOURNE WOODWARD Claimant-Respondent v. MANALAPAN MINING COMPANY Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 07/08/2025 DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Heather C. Leslie, Administrative Law Judge, United States Department of Labor.

H. Brett Stonecipher and Tighe A. Estes (Reminger Co., L.P.A.), Lexington, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Heather C. Leslie's Decision and Order Granting Benefits (2022-BLA-05100) rendered on a claim filed on January 8,

2016,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established twelve years of coal mine employment and thus could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[2] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established clinical pneumoconiosis, legal pneumoconiosis, and a totally disabling respiratory or pulmonary impairment due to pneumoconiosis. 20 C.F.R. §§718.201, 718.202(a), 718.204(b)(2), (c). She therefore awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established clinical pneumoconiosis and legal pneumoconiosis.[3] Neither Claimant nor the Acting Director, Office of Workers' Compensation Programs, has filed a response brief.

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, 361-62 (1965).

Entitlement to Benefits – 20 C.F.R. Part 718

Without the benefit of the statutory presumptions, Claimant must establish disease (pneumoconiosis); 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.

[1] Claimant filed two prior claims which he withdrew. Director's Exhibits 1; 2; 65 at 1. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

[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(b).

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established a totally disabling respiratory or pulmonary impairment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.204(b)(2); Decision and Order at 24-25.

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5.

§§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 prove 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). The United States Court of Appeals for the Sixth Circuit has held a miner can establish a lung impairment is significantly related to coal mine dust exposure "by showing that his disease was caused 'in part' by coal mine employment."[5] *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014); *see also Island Creek Coal Co. v. Young*, 947 F.3d 399, 407 (6th Cir. 2020) ("[I]n [*Groves*] we defined 'in part' to mean 'more than a *de minimis* contribution' and instead 'a contributing cause of some discernible consequence.'").

Before weighing the medical opinions, the ALJ resolved the conflict in the record with respect to Claimant's cigarette smoking history. Decision and Order at 5. She found he did not have a cigarette smoking history of any sufficient duration. *Id*.

The ALJ then considered the medical opinions of Drs. Ajjarapu, Gregonis, Broudy, and Tuteur. Decision and Order at 18-24. Dr. Ajjarapu opined Claimant has legal pneumoconiosis in the form of chronic bronchitis and a disabling respiratory impairment arising out of coal mine employment. Director's Exhibits 12, 61. In reaching this diagnosis, Dr. Ajjarapu noted Claimant has no cigarette smoking history. *Id*. Dr. Gregonis, Claimant's treating physician, opined he has legal pneumoconiosis in the form of moderate obstructive lung disease arising out of coal mine employment. Claimant's Exhibit 5.

Dr. Broudy acknowledged Claimant has severe chronic obstructive pulmonary disease (COPD) caused by asthma and cigarette smoke, but contended he does not have legal pneumoconiosis because the COPD is completely unrelated to coal mine dust exposure. Director's Exhibit 22. Dr. Tuteur likewise acknowledged a disabling moderately severe obstructive lung disease due to asthma but similarly contended it is completely unrelated to coal mine dust exposure. Employer's Exhibit 11.

[5] The ALJ applied the *Groves* standard and maintained the burden of proof on Claimant to establish legal pneumoconiosis. Decision and Order at 3, 8, 23, 26. We therefore reject Employer's argument that she applied an improper legal standard. Employer's Brief at 28-31.

The ALJ found Dr. Ajjarapu's opinion reasoned and documented because the data she relied on supports her conclusion, she had a thorough understanding of Claimant's coal mine dust exposure and employment, and she discussed Claimant's respiratory symptoms. Decision and Order at 20. In contrast, she found Dr. Gregonis's opinion unpersuasive because the doctor did not indicate the extent of her care of Claimant or her knowledge of his employment, family, or medical histories. *Id*. at 21. The ALJ found Dr. Broudy's opinion unpersuasive because his assumption that Claimant is a heavy cigarette smoker is contrary to her finding that Claimant did not have a cigarette smoking history of any significant duration. *Id*. at 22. Further, she found Dr. Tuteur's opinion unpersuasive because he failed to address "the amount or duration of coal [mine] dust exposure that [Claimant] experienced." *Id*. at 23. Thus, she found Claimant established legal pneumoconiosis based on Dr. Ajjarapu's opinion. *Id.* at 24.

Employer argues the ALJ erred in evaluating Claimant's smoking history. Employer's Brief at 41-43. We disagree as substantial evidence supports the ALJ's determination that Claimant did not have a significant smoking history. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005) (substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion).

The ALJ noted Claimant testified during the hearing that he never smoked and reported having never smoked to Dr. Ajjarapu at his Department of Labor (DOL)-sponsored complete pulmonary evaluation. Decision and Order at 5; Hearing Tr. at 15; Director's Exhibit 12 at 2. In addition, the ALJ noted Claimant's treatment records reference a wide range of smoking histories. Decision and Order at 5. Dr. Dineen noted Claimant smoked one pack of cigarettes per day for twenty-two years and stopped in 1984. Employer's Exhibit 2; Claimant's Exhibit 8. In a separate note, Dr. Dineen stated Claimant smoked one to two packs a day for fifteen years. *Id*. Dr. Preston noted Claimant smoked either a week or a month when he was a teenager, but then quit. Employer's Exhibit 5 at 49-50. A record from Georgetown Hospital indicates Claimant never smoked. Claimant's Exhibit 10. Dr. Augustine noted Claimant smoked one pack of cigarettes per day for ten years and stopped in 1983. Claimant's Exhibit 9 at 1.

Because Claimant's treatment records did not demonstrate a consistent smoking history, the ALJ permissibly declined to rely on them. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 712-14 (6th Cir. 2002); Decision and Order at 12. Further, as Claimant testified he never smoked and similarly informed Dr. Ajjarapu as part of his DOL pulmonary evaluation, substantial evidence supports the ALJ's finding that Claimant did not have a significant smoking history.[6] Decision and Order at 5; *see Martin*, 400 F.3d at 305; *Napier*,

[6] Contrary to Employer's argument, the ALJ did not substitute her opinion for that of a medical expert when evaluating Claimant's smoking history. Employer's Brief at 17-18. She properly rendered a finding on Claimant's smoking history based on the

301 F.3d at 712-14; *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983) (ALJ is granted broad discretion in evaluating the credibility of the evidence, including witness testimony); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985) (length and extent of a miner's smoking history is a factual determination for the ALJ). Thus we affirm the ALJ's finding Claimant's smoking history is insignificant.

Employer next argues the ALJ "improperly commingled the analysis of clinical and legal pneumoconiosis, failing to identify what evidence she considered in which pneumoconiosis analysis." Employer's Brief at 15. Thus it contends her analysis does not satisfy the explanatory requirements of the Administrative Procedure Act (APA),[7] 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). Contrary to Employer's argument, the ALJ specifically found Dr. Ajjarapu's opinion on both clinical pneumoconiosis and legal pneumoconiosis to be reasoned and documented. Decision and Order at 16-24. She also set forth her basis for discrediting the contrary opinions of Drs. Broudy and Tuteur. *Id*. Because we can discern what the ALJ did and why she did it, her findings with respect to legal pneumoconiosis satisfy the APA. *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012) (if a reviewing court can discern what the ALJ did and why she did it, the duty of explanation under the APA is satisfied); *Mingo Logan Coal Co v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (duty of explanation under the APA is satisfied as long as the reviewing court can discern what the ALJ did and why she did it).

Employer further argues the ALJ erred in weighing the opinions of Drs. Ajjarapu, Tuteur, and Broudy. It first argues she should not have credited Dr. Ajjarapu's opinion because the doctor did not adequately discuss Claimant's childhood asthma when diagnosing legal pneumoconiosis. Employer's Brief at 34. Employer's argument amounts to 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). Thus we affirm the ALJ's permissible finding that Dr. Ajjarapu's opinion is reasoned and documented because the data she relied on supports her conclusion, she had a thorough understanding of Claimant's coal mine dust exposure and employment, and she discussed Claimant's respiratory

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conflicting evidence and weighed the medical opinions in light of that finding. *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988) (ALJ has discretion in determining the effect of an inaccurate smoking history on the credibility of a medical opinion); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985).

[7] The Administrative Procedure Act, 5 U.S.C. §§500-591, provides that every adjudicatory decision must include "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

symptoms. *Napier*, 301 F.3d at 712-14; *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 20.

Employer also asserts the ALJ erred in weighing Dr. Tuteur's opinion. Employer's Brief at 34-39. We disagree. Although Dr. Tuteur opined Claimant's disabling obstructive lung disease can be explained by his asthma, the ALJ permissibly found the doctor's opinion not credible because he did not adequately explain why the disease is not significantly related to, or substantially aggravated by, coal mine dust exposure. *Young*, 947 F.3d at 405; *Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522 (6th Cir. 2002); *Director, OWCP v. Rowe,* 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 22-24. Employer argues Dr. Tuteur's opinion is credible because he acknowledged Claimant's history of coal mine dust exposure and did not attribute Claimant's obstructive lung disease to the exposure. Employer's Brief at 35-39. This again amounts to a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113.

Finally, we hold the ALJ permissibly discredited Dr. Broudy's opinion because he assumed Claimant was a heavy cigarette smoker, and that assumption is contrary to her finding that Claimant did not have a cigarette smoking history of any duration. *Rowe,* 710 F.2d at 255; *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988) (ALJ has discretion in determining the effect of an inaccurate smoking history on the credibility of a medical opinion); Decision and Order at 22.

Thus, we affirm[8] the ALJ's finding Claimant established legal pneumoconiosis[9] based on Dr. Ajjarapu's opinion.[10] 20 C.F.R. §718.202(a)(4); Decision and Order at 24.

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[8] Employer argues the ALJ erred in finding Claimant's treatment records also establish legal pneumoconiosis. Employer's Brief at 2, 22-28. Because we affirm the ALJ's finding that Dr. Ajjarapu's opinion establishes legal pneumoconiosis, any error in considering the treatment records is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[9] Contrary to Employer's argument, the ALJ did not find Claimant established complicated pneumoconiosis or that a finding of complicated pneumoconiosis supports Dr. Ajjarapu's legal pneumoconiosis opinion. Employer's Brief at 2, 28-29. The ALJ specifically found Claimant failed to establish complicated pneumoconiosis. Decision and Order at 10.

[10] Because we have affirmed the ALJ's finding that Claimant established legal pneumoconiosis, we decline to consider Employer's arguments concerning clinical pneumoconiosis. *See Larioni*, 6 BLR at 1-1278; Employer's Brief at 16-17, 22-28, 31-34.

Finally, because Employer does not specifically challenge the ALJ's finding Claimant established total disability causation beyond its arguments we already addressed regarding legal pneumoconiosis, we also affirm her finding Claimant established legal pneumoconiosis substantially contributed to his totally disabling respiratory or pulmonary impairment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.204(c); Decision and Order at 25-26.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge