

U.S. Department of Labor

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



BRB No. 19-0375 BLA

DANNY C. PARSONS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BEECH FORK PROCESSING, LLC)	DATE ISSUED: 06/25/2020
)	
and)	
)	
NEW HAMPSHIRE INSURANCE)	
COMPANY/AIG)	
)	
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 of Larry A. Temin, Administrative Law Judge, United States Department of Labor.

Thomas W. Moak (Moak & Nunnery, P.S.C.), Prestonsburg, Kentucky, for claimant.

Cameron Blair and Caleb T. Taylor (Fogle Keller Walker, PLLC), Lexington, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2017-BLA-06062) of Administrative Law Judge Larry A. Temin rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This appeal involves a claim filed on July 13, 2016.

The administrative law judge credited claimant with thirty-seven years of qualifying coal mine employment based on the parties' stipulation, but found the evidence did not establish a totally disabling respiratory or pulmonary impairment. Because claimant did not prove he is totally disabled, the administrative law judge found claimant did 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) (2012),¹ or establish entitlement to benefits under 20 C.F.R. Part 718. The administrative law judge declined to address any other issues and denied benefits. Decision and Order at 7, 16-17.

On appeal, claimant contends the administrative law judge erred in finding the medical opinion evidence did not establish total disability under 20 C.F.R. §718.204(b)(2)(iv) and, therefore, erred in finding he did not invoke the Section 411(c)(4) presumption. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, did not file a response brief.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's decision and order if it is rational, supported by substantial evidence, and in accordance with applicable law.² 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, 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

¹ Under Section 411(c)(4) of the Act, a miner is presumed totally disabled due to pneumoconiosis if he has at least fifteen years of underground coal mine employment, or surface coal mine employment in substantially similar conditions, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

² This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as claimant's coal mine employment occurred in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 4, 7; Hearing Transcript at 18.

(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).

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work. See 20 C.F.R. §718.204(b)(1). Total disability may be established based on pulmonary function studies, arterial blood gas studies, evidence of cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must weigh the relevant evidence supporting total disability against the 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).

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), total disability can be established if a physician exercising reasoned medical judgment, based on medically acceptable diagnostic techniques, concludes the miner's respiratory or pulmonary condition prevents him from performing his usual coal mine work.³ In this case, the administrative law judge considered the medical opinions of Drs. Alam, Rosenberg, and Broudy. Dr. Alam opined claimant is totally disabled based on his clinical symptoms, thirty-seven years of coal mine employment, abnormal x-ray, and low "FEV1 at rest and his legal [coal worker's pneumoconiosis which] is severe enough that he cannot work in mines or any place where [he has] any lung insult." Director's Exhibits 13, 33. Both Drs. Rosenberg and Broudy found claimant is able to return to his usual coal mine employment. Employer's Exhibits 5, 7, 8 at 30-31.

³ The administrative law judge found the pulmonary function studies and arterial blood gas studies did not establish total disability. 20 C.F.R. §718.204(b)(2)(i), (ii); Decision and Order at 11. These findings are affirmed as unchallenged on appeal. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). The administrative law judge did not consider whether claimant established he has cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(d)(2)(iii). The only reference in the record to cor pulmonale appears in Dr. Alam's December 19, 2016 letter, where he stated claimant had "a problem with possible cor pulmonale;" he did not diagnose right-sided congestive heart failure. Director's Exhibit 33.

Claimant argues the administrative law judge erred in discrediting Dr. Alam's opinion.⁴ Claimant's Brief at 3. We disagree, as the administrative law judge provided several valid rationales for finding Dr. Alam's opinion insufficient to establish claimant has a totally disabling respiratory or pulmonary impairment. The administrative law judge permissibly determined Dr. Alam's opinion is inadequately reasoned because he did not explain how claimant's unspecified "clinical symptoms" support a finding of total disability. Director's Exhibits 13, 33; *see Director, OWCP v. Rowe* 710 F.2d 251, 255 n.6 (6th Cir. 1983); *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 12. The administrative law judge also rationally found Dr. Alam's diagnosis is not adequately documented as the pulmonary function study he obtained on August 18, 2016 was invalidated by Drs. Gaziano, Rosenberg, and Broudy,⁵ and he observed claimant's arterial blood gas study showed no hypoxia at rest.⁶ *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); Decision and Order at 11; Director's Exhibits 14, 33; Employer's Exhibits 5, 7. The administrative law judge further reasonably discredited Dr. Alam's opinion because he relied on claimant's abnormal x-ray as evidence of total disability when an x-ray, in and of itself, is "not a measurement of ventilatory or respiratory capacity" and Dr. Alam "failed to explain how the small profusions in the [c]laimant's chest correlated to or caused a ventilatory or respiratory impairment." Decision and Order at 12; *see* 20 C.F.R. §718.204(b). Finally, he permissibly determined Dr. Alam's statement that claimant must avoid additional coal dust exposure does not constitute a diagnosis of total disability. *See Zimmerman v. Director, OWCP*, 871 F.2d 564, 567 (6th Cir. 1989) (a recommendation against further dust exposure is not a diagnosis of total respiratory or pulmonary disability); Decision and Order at 12. Based on the administrative law judge's reasonable credibility determinations, we affirm his finding Dr. Alam's opinion does not establish total respiratory or pulmonary disability. *See Crisp*, 866 F.2d at 185.

⁴ We affirm as unchallenged on appeal the administrative law judge's crediting of the opinions of Drs. Rosenberg and Broudy. *See Skrack*, 6 BLR at 1-711; Decision and Order at 12; Director's Exhibit 22; Employer's Exhibits 5-8.

⁵ We affirm the administrative law judge's finding that the August 18, 2016 pulmonary function study is not valid, as it is unchallenged on appeal. *See Skrack*, 6 BLR at 1-711; Decision and Order at 11. We note further that claimant does not dispute Dr. Rosenberg's and Dr. Broudy's opinions that claimant did not put forth good effort in this pulmonary function study.

⁶ Dr. Alam noted claimant was unable to perform an exercise blood gas study. Director's Exhibits 13, 33.

Because there are no other medical opinions in the record supportive of claimant's burden of proof, we further affirm the administrative law judge's finding the medical opinion evidence is insufficient to establish claimant has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. 718.204(b)(2); *see Rafferty*, 9 BLR at 1-232; Decision and Order at 12. We also affirm his determination that the evidence of record, when weighed as a whole, does not establish total disability or invocation of the Section 411(c)(4) presumption. 20 C.F.R. §§718.204(b), 718.305(b)(1)(iii). In light of claimant's failure to establish total disability, an essential element of entitlement, we further affirm the administrative law judge's finding that an award of benefits is therefore precluded in this case. *Trent*, 11 BLR at 1-28; *Perry*, 9 BLR at 1-1.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge