U.S. Department of Labor

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

BRB No. 24-0147 BLA

RENDELL N. BARTLEBAUGH Claimant-Respondent v. EIGHTY-FOUR MINING COMPANY and CONSOL ENERGY, INCORPORATED Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 06/04/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits on Remand of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick, & Long), Ebensburg, Pennsylvania, for Claimant.

Christopher L. Wildfire (SutterWilliams, LLC), Pittsburgh, Pennsylvania, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits on Remand (2019-BLA-05335)

rendered on a claim filed on December 21, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901–944 (2018) (Act). This case is before the Benefits Review Board for the third time.[1]

Pursuant to Employer's prior appeal,[2] the Board affirmed the ALJ's finding invocation of the Section 411(c)(4) presumption established, as well as the ALJ's discrediting of Dr. Rosenberg on the issue of legal pneumoconiosis. *Bartlebaugh v. Eighty-Four Mining Co.*, BRB No. 22-0158 BLA, slip op. at 6-9 (Sept. 29, 2023) (unpub.). However, the Board vacated the ALJ's discrediting of Dr. Basheda's opinion and therefore vacated the ALJ's findings that Employer rebutted the existence of legal pneumoconiosis and disability causation. *Id.* The Board instructed the ALJ to reconsider Dr. Basheda's opinion, to fully address his reasoning why Claimant's chronic obstructive pulmonary disease (COPD), emphysema, and asthma do not constitute legal pneumoconiosis. *Id*. at 9. Finally, because the Board vacated the ALJ's finding that Employer disproved the existence of pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i), the Board vacated the ALJ's related finding that Employer failed to establish that no part of Claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(ii). *Id*. Consequently, the Board remanded the case for reconsideration of those issues. *Id.*

On remand, the ALJ again found the evidence insufficient to disprove the existence of legal pneumoconiosis and that Claimant's total disability is due to legal pneumoconiosis and, therefore, insufficient to rebut the Section 411(c)(4) presumption. 20 C.F.R. §718.305(d)(1)(i)(A), (ii). Accordingly, he awarded benefits.

In the present appeal, Employer challenges the ALJ's findings that it failed to rebut the Section 411(c)(4) presumption. Claimant responds, urging affirmance of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, did not file a brief in this appeal.

The Board's scope of review is defined by statute. The ALJ's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with

[1] *Bartlebaugh v. Eighty-Four Mining Co.*, BRB No. 20-0225 BLA (Apr. 29, 2021) (unpub.); *Bartlebaugh v. Eighty-Four Mining Co.*, BRB No. 22-0158 BLA (Sept. 29, 2023) (unpub.).

[2] A detailed procedural history is contained in the Board's prior Decision and Order. *Bartlebaugh*, BRB No. 22-0158 BLA, slip op. at 2.

applicable law.[3] 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).

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 that Claimant has neither legal nor clinical pneumoconiosis, 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).

Legal Pneumoconiosis

To rebut the presumption of legal pneumoconiosis, Employer must prove that Claimant's pulmonary or respiratory impairment is not significantly related to, or substantially aggravated by, his coal mine dust exposure. *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A). In addressing this issue on second remand, the ALJ reconsidered Dr. Basheda's medical opinion.[4]

Dr. Basheda opined Claimant's COPD is unrelated to coal mine dust exposure because his objective pulmonary function testing demonstrated a "variable airway obstruction" with "acute bronchodilator response."[5] Employer's Exhibit 2 at 22-26. The ALJ found his opinion equivocal and inconsistent and therefore accorded it no weight. Decision and Order III at 17.

[3] The case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because Claimant performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Tr. at 11-12.

[4] The Board affirmed the ALJ's discrediting of Dr. Rosenberg's opinion on the issue of legal pneumoconiosis in its prior decision. *Bartlebaugh*, BRB No. 22-0158 BLA, slip op. at 2. Because Employer has not shown the Board's decision was clearly erroneous or set forth any other valid exception to the law of the case doctrine, we decline to disturb our prior disposition. *See Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-150-51 (1990); *Bridges v. Director, OWCP*, 6 BLR 1-988, 1-989-90 (1984).

[5] The Board instructed the ALJ to address Dr. Basheda's specific rationale and explain the weight accorded to his opinion on remand. *Bartlebaugh*, BRB No. 22-0518 BLA, slip op. at 9.

Employer contends the ALJ erred in her analysis of Dr. Basheda's opinion. Employer's Brief at 20-25. We disagree.

Dr. Basheda excluded a diagnosis of legal pneumoconiosis based on his belief that one would not see an acute bronchodilator response, as seen with Claimant, with an irreversible obstruction associated with coal dust. Employer's Exhibit 6 at 25. However, he acknowledged there was "always a possibility" that the variable component of Claimant's obstruction could be related to smoking, while the fixed component could be related to coal mine dust exposure. *Id.* at 35-36. The ALJ permissibly found Dr. Basheda's opinion not credible due to its equivocal nature and the fact that Claimant continued to have a fixed respiratory obstruction after administration of the bronchodilator.[6] *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988) (equivocal opinion regarding etiology may be given less weight); Decision and Order III at 17.

It is the ALJ's role, as the trier-of-fact, to determine both the credibility of the evidence and the inferences to be drawn from it. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989). The Board will not disturb an ALJ's credibility findings unless they are inherently unreasonable. *See Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc). The ALJ sufficiently explained his rationale for finding Dr. Basheda's testimony unpersuasive, and his conclusion is not inherently unreasonable. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *Tackett*, 12 BLR at 1-14. We thus affirm the ALJ's discrediting of Dr. Basheda's opinion on legal pneumoconiosis and his finding that Employer failed to rebut the presumption of legal pneumoconiosis.[7] *See* 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order III at 13-18.

---

[6] Because the ALJ gave a permissible reason for rejecting Dr. Basheda's opinion, we need not address Employer's additional challenges to the ALJ's evaluation of his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Decision and Order III at 16-17; Employer's Brief at 20-25.

[7] Employer makes a limited argument that the ALJ should not defer to the Department of Labor's interpretations of the preamble to the revised 2001 regulations. Employer's Brief at 27 (citing *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024)). The ALJ, however, did not defer to the preamble; he permissibly referenced scientific evidence cited in it in determining whether the medical opinions are credible on the issue of legal pneumoconiosis. *See Spring Creek Coal Co. v. McLean*, 881 F.3d 1211, 1223-24 (10th Cir. 2018); *Energy West Mining Co. v. Estate of Blackburn*, 857 F.3d 817, 830 (10th Cir. 2017); *Bartlebaugh,* BRB No. 22-0158 BLA, slip op. at 7; Decision and Order II at 15. To the extent he might have made any error in referencing the preamble, that error would be harmless because he permissibly discredited Dr. Basheda's opinion

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). Contrary to Employer's contentions, the ALJ permissibly discredited the opinions of Drs. Basheda and Rosenberg on disability causation opinion because they did not diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer failed to disprove Claimant has the disease.[8] *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order III at 25-28. We therefore affirm the ALJ's finding that Employer failed to establish no part of Claimant's total disability was due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

based on the fixed obstructive impairment Claimant demonstrated even after administration of the bronchodilator and Dr. Basheda's concession that such a fixed impairment could be caused by coal dust exposure. *See Kozele*, 6 BLR at 1-382 n.4.

[8] Neither physician offered an opinion on this subject independent of his reasoning relating to the absence of pneumoconiosis. Employer's Exhibits 2, 4, 6, 7.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits on Remand.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge