U.S. Department of Labor

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

BRB No. 24-0150 BLA

JOHN R. RICHARDSON Claimant-Petitioner v. GREENWICH COLLIERIES COMPANY c/o TALEN ENERGY (B-LUNG CLAIMS) and PENNSYLVANIA MINES CORPORATION c/o SMART CASUALTY CLAIMS Employer/Carrier- Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 06/20/2025 DECISION and ORDER

Appeal the Decision and Order Denying Benefits 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.

Ralph J. Trofino, Johnstown, Pennsylvania, for Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Denying Benefits (2022-BLA-05957) rendered on a claim filed on August 27, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 12.25 years of underground coal mine employment, based on the parties' stipulation. Because Claimant established fewer than fifteen years of coal mine employment, the ALJ 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).[1] Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established the existence of legal pneumoconiosis but failed to establish that he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §§718.202(a)(4), 718.204(b)(2). Thus, the ALJ denied benefits.

On appeal, Claimant asserts the ALJ erred in finding he failed to establish total disability. Employer responds in support of the denial of benefits.[2] The Acting Director, Office of Workers' Compensation, has declined to file a brief unless requested.

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.[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, 361-62 (1965).

[1] Section 411(c)(4) 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); *see* 20 C.F.R. §718.305.

[2] We affirm, as unchallenged, the ALJ's finding that Claimant established 12.25 years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4, 6-7. We further affirm, as unchallenged, the ALJ's findings that Claimant established legal pneumoconiosis, based on the well-reasoned opinions of Drs. Zlupko and Pickerill, and that Claimant failed to establish clinical pneumoconiosis. 20 C.F.R. §718.202(a); *see Skrack*, 6 BLR at 1-711; Decision and Order at 13-14; Director's Exhibits 8, 14; Claimant's Exhibit 2.

[3] This 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); Hearing Transcript at 11-12; Director's Exhibits 2, 3.

To be entitled to benefits under the Act without the benefit of the Section 411(c)(3)[4] or 411(c)(4) 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. §§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). The ALJ found Claimant did not establish total disability. Decision and Order at 20-21.

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). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, 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 consider all relevant evidence and weigh the 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). Claimant argues the ALJ erred in finding that the medical opinion evidence does not establish total disability.[5] Claimant's Brief at 5-8.

Before weighing the medical opinions, the ALJ found Claimant's usual coal mine work was working as a shuttle car operator. Decision and Order at 19. He took official notice of the *Dictionary of Occupational Titles* and found it "classifies a shuttle car operator as medium exertional work." Decision and Order at 19 n.16; Hearing Transcript at 5. He further referred to the *Dictionary of Occupational Titles* for the definition of medium work. Decision and Order at 19 n.16 (citing *Dictionary of Occupational Titles*, Appendix C, Part IV (defining medium work as requiring exerting twenty-five-to-fifty pounds of force occasionally and ten-to-twenty-five pounds of force frequently to move objects)).

[4] The irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304 is not applicable because there is no evidence in the record that Claimant has complicated pneumoconiosis. 30 U.S.C. §921(c)(3).

[5] We affirm, as unchallenged on appeal, the ALJ's findings that the evidence does not establish total disability at 20 C.F.R. §718.204(b)(2)(i)-(iii). *See Skrack*, 6 BLR at 1-711; Decision and Order at 6-8.

Claimant argues the ALJ erred in finding his usual coal mine work as a shuttle car operator required medium exertion because he failed to consider all the evidence of record. Claimant's Brief at 10-11. We agree.

Pertinent to the exertional requirements of Claimant's usual coal mine work, the record contains Claimant's Form CM-913, Description of Coal Mine Work (Form CM-913), Claimant's testimony, and Dr. Fino's description of Claimant's occupational history. Director's Exhibit 3; Employer's Exhibit 1 at 1; Hearing Transcript at 12-16. On his Form CM-913, Claimant reported his last coal mining job was working as a roof bolter and that this work required him to lift fifty pounds fifty times per day. Director's Exhibit 3 at 1. At the hearing, Claimant testified he last worked as a shuttle car operator loading and unloading, by hand and sometimes with assistance, bundles of roof bolts weighing more than 50 pounds, bags of rock dust weighing 25 to 50 pounds, timbers weighing 10 to 50 pounds, and rolls of canvas weighing 100 or 150 pounds. Hearing Transcript at 12-15. He further testified this work required crawling to the mine face to help install the supplies he carried as well as shoveling rock and coal for one hour or more per day. *Id.* at 15-16. Dr. Fino reported Claimant's last coal mine job was working as a roof bolter helper and shuttle car operator, and that this job required 20% very heavy labor, 70% heavy labor, and 10% moderate labor. Employer's Exhibit 1 at 1.

We agree with Claimant's argument that the ALJ failed to consider all relevant evidence in determining the exertional requirements of his usual coal mine employment. Claimant's Brief at 10-11. The ALJ has not explained how he determined Claimant's exertional requirements beyond stating he relied on the *Dictionary of Occupational Titles* definitions of "shuttle car operator" and "medium work." *See* Decision and Order at 19 n.16. Importantly, the ALJ failed to consider relevant evidence that Claimant's work as a shuttle car operator routinely required him to lift and move equipment and supplies weighing well-above the weight defined as medium work. *See McCune v. Cent. Appalachian Coal Co*., 6 BLR 1-996, 1-998 (1984) (failure to discuss relevant evidence requires remand); *see, e.g.*, *Dictionary of Occupational Titles*, Appendix C, Part IV (defining heavy work as "[e]xerting 50 to 100 pounds of force occasionally, and/or 25 to 50 pounds of force frequently, and/or 10 to 20 pounds of force constantly to move objects"); Hearing Transcript at 13-15. Because the ALJ's analysis does not discuss all relevant evidence and is not adequately explained, it does not satisfy the Administrative Procedure Act (APA).[6] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165

[6] The APA requires every adjudicatory decision 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).

(1989). We therefore vacate the ALJ's finding that Claimant's usual coal mine employment required medium labor. Decision and Order at 19 n.16.

The ALJ next considered the medical opinions of Drs. Zlupko, Pickerill, and Fino. Decision and Order at 19-20. Dr. Zlupko opined Claimant is totally disabled based on pulmonary function testing demonstrating mild-to-moderate restrictive and obstructive impairments and an overall severe impairment. Director's Exhibits 8 at 4-5; 14. Dr. Pickerill diagnosed moderate obstructive and restrictive impairments, based on the pulmonary function testing, and opined Claimant cannot perform his usual coal mining work. Claimant's Exhibit 2 at 7. Dr. Fino diagnosed a "very mild respiratory impairment" and opined Claimant is not totally disabled. Employer's Exhibit 1 at 9.

The ALJ discredited Drs. Zlupko's and Pickerill's opinions as unreasoned because neither physician "listed or discussed the exertional nature" of Claimant's usual coal mine work. Decision and Order at 20. He found Dr. Fino's opinion well-reasoned because it is consistent with the ALJ's finding that the pulmonary function and blood gas studies do not support a finding of total disability. *Id.* Thus, the ALJ found the medical opinions do not support a finding of total disability. *Id.*

Because the ALJ's error with respect to the exertional requirements of Claimant's usual coal mine work affected his weighing of the medical opinions, we vacate his credibility findings regarding Drs. Zlupko, Pickerill, and Fino. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 19-20, 19 n.16.

Additionally, we agree with Claimant's argument that the ALJ erred in weighing Drs. Zlupko's, Pickerill's, and Fino's opinions. Claimant's Brief at 8-10. As Claimant asserts, the ALJ summarily discredited Drs. Zlupko's and Pickerill's opinions on the sole basis that they did not "list[ ] or discuss[ ] the exertional nature" of Claimant's usual coal mine work. Decision and Order at 20; Claimant's Brief at 8. However, a medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably conclude a miner is unable to do his usual coal mine employment.[7] *See Balsavage v. Director, OWCP*, 295 F.3d 390, 396-97 (3d Cir. 2002); *Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, 1-51-52 (1986) (en banc); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577

[7] Further, contrary to the ALJ's finding, Dr. Pickerill did, in fact, identify Claimant's most recent coal mine job as a "shuttle car operator and roof bolter." Claimant's Exhibit 2 at 1. Moreover, as Claimant asserts, Drs. Zlupko and Pickerill both reported having reviewed Claimant's work history and job duties forms in opining Claimant is unable to perform his usual coal mine work. Claimant's Brief at 8; Director's Exhibit 8 at 1, 4-5; Claimant's Exhibit 2 at 1, 7.

(6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment).

Therefore, we vacate the ALJ's finding that the medical opinion evidence does not establish total disability at 20 C.F.R. §718.204(b)(2)(iv), and that the evidence overall does not establish total disability. 20 C.F.R. §718.204(b)(2); Decision and Order at 20-21.

Remand Instructions

On remand, the ALJ must first consider all relevant evidence to determine the exertional requirements of Claimant's usual coal mine employment and then must consider the medical opinions given those requirements. 20 C.F.R. §718.204(b)(1)(i), (b)(2)(iv); *see Gonzales v. Director, OWCP*, 869 F.2d 776, 779-80 (3d Cir. 1989); *Cross Mountain Coal, Inc. v. Ward*, 93 F.3d 211, 218 (6th Cir. 1996); *Eagle v. Armco*, 943 F.2d 509, 512-13 (4th Cir. 1991); *Black Diamond Mining Co. v. Benefits Review Board* [*Raines*], 758 F.2d 1532, 1534 (11th Cir. 1985).

In weighing the medical opinions, the ALJ must consider the comparative credentials of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, the sophistication of and bases for their diagnoses, and any conflicts presented. *See Balsavage*, 295 F.3d at 396; *Kertesz v. Director, OWCP*, 788 F.2d 158, 163 (3d Cir. 1986). He must compare the exertional requirements of Claimant's usual coal mine employment to the physicians' descriptions of his pulmonary impairment and physical limitations. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997); *Eagle*, 943 F.2d at 512 n.4; *Gonzales*, 869 F.2d at 779-80; 20 C.F.R. §718.204(b)(2)(iv); *see also Cornett*, 227 F.3d at 577. In reaching his credibility determinations, the ALJ must set forth his findings in detail and explain his rationale as the APA requires. *See Wojtowicz*, 12 BLR at 1-165.

If the ALJ determines the medical opinion evidence supports a finding of total disability, he must weigh the evidence as a whole to determine whether Claimant has established he has a totally disabling respiratory or pulmonary impairment. *See* 20 C.F.R. §718.204(b)(2); *Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Shedlock*, 9 BLR at 1-198. If Claimant establishes total disability, the ALJ must then determine whether Claimant has established that his legal pneumoconiosis caused his total disability. 20 C.F.R. §718.204(c).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Denying Benefits, and we remand the case for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge