U.S. Department of Labor

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

BRB No. 24-0043 BLA

DONALD K. HALL Claimant-Petitioner v. JET COAL COMPANY, INCORPORATED and KENTUCKY EMPLOYERS' MUTUAL INSURANCE Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 03/25/2025 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits in a Subsequent Claim of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Wes Addington (Appalachian Citizens' Law Center), Whitesburg, Kentucky, for Claimant.

William A. Lyons (Lewis and Lewis Law Offices), Hazard, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals[1] Administrative Law Judge (ALJ) Joseph E. Kane's Decision and Order Denying Benefits in a Subsequent Claim (2021-BLA-05481) rendered on a claim filed on September 4, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901–944 (2018) (Act).[2]

Initially, the ALJ accepted the parties' stipulation that Claimant has at least fifteen years of qualifying coal mine employment. He then found Claimant failed to establish a totally disabling respiratory and pulmonary impairment, 20 C.F.R. §718.204(b)(2), and therefore did not establish a change in an applicable condition, 20 C.F.R. §725.309(c), or invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of

[1] While timely filing his appeal, Claimant did not timely file his petition for review and brief; therefore, Employer and its Carrier (Employer) filed a motion to dismiss the appeal as abandoned. Respondent's Motion to Dismiss. Employer also filed an initial response to Claimant's appeal in the event the Benefits Review Board considered whether the Decision and Order below is supported by substantial evidence given Claimant had not filed his petition for review. Employer's Initial Response. After receiving Employer's motion to dismiss, Claimant filed his petition for review and brief, simultaneously with a motion to accept the pleading. Claimant's Motion to Accept Petition for Review and Brief. The Board denied Employer's motion to dismiss, accepted Claimant's petition for review and brief as part of the record, and granted Employer additional time to file a brief to respond to the arguments raised in Claimant's brief. *Hall v. Jet Coal Co.*, BRB No. 24-0043 BLA (Feb. 16, 2024) (Order) (unpub.). Employer timely filed its supplemental response. Employer's Supplemental Response.

[2] Claimant filed two prior claims. Director's Exhibits 1, 2. The district director denied Claimant's more recent prior claim for failure to establish total disability. Director's Exhibit 1.

When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *see White v. New White Coal Co*., 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant failed to establish total disability in his prior claim, Claimant must submit new evidence establishing that element of entitlement to obtain review of the claim on the merits. *See* 20 C.F.R. §725.309(c)(3); *White*, 23 BLR at 1-3; Director's Exhibit 1.

the Act, 30 U.S.C. §921(c)(4) (2018).[3] Further, because Claimant failed to establish an essential element of entitlement under 20 C.F.R. Part 718, the ALJ denied benefits.

On appeal, Claimant argues the ALJ erred in finding that Claimant is not totally disabled. Employer and its Carrier (Employer) respond in support of the denial of benefits.[4] The Acting Director, Office of Workers' Compensation Programs, has not filed a response.

The 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.[5] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc*., 380 U.S. 359, 361-62 (1965).

Invocation of the Section 411(c)(4) Presumption - Total Disability

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work.[6] 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary

[3] 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.

[4] We affirm, as unchallenged, the ALJ's finding that Claimant has at least fifteen years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3.

[5] 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); Hearing Transcript at 12; Director's Exhibit 6.

[6] The ALJ determined that Claimant's usual coal mine employment was working as an electrician/repairman, and his duties consisted of heavy manual labor based on his testimony that each day he loaded and unloaded his 150-pound toolbox, throughout the workday carried tools weighing twenty-five to fifty pounds, replaced "heavy" motors, and shoveled coal for more than an hour each day. Decision and Order at 6 n.22; Hearing Transcript at 14-16. As no party challenges these findings, we affirm them. *See Skrack*, 6 BLR at 1-711.

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 weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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). The ALJ found Claimant did not establish total disability based on any category of evidence.[7] 20 C.F.R. §718.204(b)(2)(i)-(iv); Decision and Order at 5-7.

Medical Opinion Evidence

A miner may be disabled notwithstanding non-qualifying[8] objective testing. 20 C.F.R. §718.204(b)(2)(iv); *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000) ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"); *see also Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141-42 (4th Cir. 1995). The ALJ considered the medical opinion of Dr. Shah, who found Claimant could not perform his usual coal mine employment, and those of Drs. Dahhan and Tuteur, who opined that Claimant is not totally disabled. Decision and Order at 6-7; Director's Exhibit 17; Employer's Exhibits 4-7.

Dr. Shah acknowledged that the objective studies were non-qualifying; nonetheless, she opined that Claimant could not perform his usual coal mine work. Director's Exhibit 17 at 8. She explained his spirometry demonstrated mild loss of function and mild reduction in gas exchange during rest, with an abnormal response to exercise. *Id.* She opined that Claimant's exercise testing reflected that he cannot sustain heavy manual labor for a prolonged period. *Id.* Dr. Dahhan agreed that Claimant has mild obstruction, but indicated his blood gas studies at both rest and exercise were normal and opined Claimant is capable of performing his usual coal mine employment. Employer's Exhibits 4, 5. Dr. Tuteur determined Claimant is not totally disabled based on the non-qualifying studies but could not return to work because of his back condition. Employer's Exhibits 6, 7.

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[7] We affirm, as unchallenged, the ALJ's findings that the pulmonary function and arterial blood gas studies do not support a finding of total disability, that there is no evidence of cor pulmonale with right-sided congestive heart failure, and that there is no evidence of complicated pneumoconiosis. 20 C.F.R. §§718.204(b)(2)(i)-(iii), 718.304; *see Skrack*, 6 BLR at 1-711; Decision and Order at 5-6.

[8] A "qualifying" pulmonary function study or arterial blood gas study yields results equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

The ALJ found Drs. Shah's and Dahhan's opinions to be well-reasoned and well-documented. Decision and Order at 6-7. He accorded Dr. Tuteur's opinion less weight, as the physician did not adequately discuss the exertional requirements of Claimant's usual coal mine employment. *Id*. at 7. Weighing the opinions together, with similar weight accorded to the conflicting opinions of Drs. Shah and Dahhan, he found the preponderance of the medical opinion evidence insufficient to support a finding of total disability. *Id*.

Claimant argues the ALJ erred in failing to adequately address the exertional requirements of Claimant's usual coal mine employment Dr. Dahhan relied upon and thus how Dr. Dahhan's understanding of Claimant's work affected his opinion on the issue of total disability. Claimant's Brief at 5. Specifically, he contends the ALJ did not consider that Dr. Dahhan understood Claimant was required to lift only half as much weight as the ALJ credited based on Claimant's testimony. *Id.* at 6. We disagree.

Initially, we affirm the ALJ's credibility findings as to Drs. Shah's and Tuteur's opinions. As discussed below, the ALJ permissibly found Dr. Shah's opinion well-reasoned and documented as she understood the exertional requirements of Claimant's usual coal mine employment and "fully explained" her opinions based on the objective testing obtained during her examination.[9] *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); Decision and Order at 6. Further, while Employer generally responds that Dr. Tuteur's opinion weighs against a finding of total disability and the physician understood the exertional requirements of Claimant's usual coal mine employment, it did not specifically address the ALJ's contrary findings. Employer's Supplemental Response at 3. As the ALJ found, Dr. Tuteur did not address the various tasks Claimant was required to perform in his usual coal mine employment; Dr. Tuteur stated only that Claimant was required to lift fifty pounds. Decision and Order at 7; Employer's Exhibits 6, 7. Because the ALJ's credibility finding regarding Dr. Tuteur's opinion is supported by substantial evidence, we affirm it. *Martin*, 400 F.3d at 305.

Turning to Claimant's argument, the ALJ considered Dr. Dahhan's understanding of the exertional requirements of Claimant's usual coal mine employment, noting the physician indicated Claimant was required to lift "50+ pounds" several times a day. Decision and Order at 6. He also noted that Dr. Dahhan acknowledged Claimant's work was "physical" and required him to "lift, pull, and move parts to be replaced." *Id*. Contrary to Claimant's contention, Dr. Dahhan's indication that Claimant lifted "50+" pounds is not necessarily inconsistent with Claimant's testimony or the ALJ's finding that Claimant performed heavy manual labor, as this statement indicates Claimant was required to lift

[9] Moreover, Employer has not contended the ALJ erred in crediting Dr. Shah's opinion. Employer's Initial Response; Employer's Supplemental Response.

more than fifty pounds. Moreover, as the ALJ noted, Dr. Dahhan's notation that Claimant lifted "50+" pounds was not the only factor Dr. Dahhan considered regarding Claimant's job duties.

Because it is the ALJ's duty to weigh the evidence and because we understand what the ALJ did and why he did it, we affirm the ALJ's finding that Dr. Dahhan adequately understood the exertional requirements of Claimant's usual coal mine employment. *See Napier*, 301 F.3d at 713-14; *see also Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 893 (7th Cir. 1990) (Board cannot disturb factual findings that are supported by substantial evidence even if it might reach a different conclusion); Decision and Order at 6-7.

We further disagree the ALJ inadequately addressed the conflicts in the medical opinion evidence to determine if it supports a finding of total disability. Claimant's Brief at 5. The ALJ accurately noted Dr. Shah's opinion that Claimant is incapable of performing his usual coal mine employment, explaining Claimant's exercise testing demonstrated an inability to sustain heavy labor.[10] Decision and Order at 6; Director's Exhibit at 17. The ALJ also accurately noted Dr. Dahhan's contrary opinion that Claimant had a normal response to exercise and could perform his usual coal mine employment. Decision and Order at 6-7; Employer's Exhibits 4, 5.

The ALJ has broad discretion to determine the weight accorded to the medical opinion evidence, and the Board must defer to the ALJ's reasonable determinations regarding credibility. *See Napier*, 301 F.3d at 713-14; *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). He permissibly accorded similar weight to the doctors' opinions as they both considered relevant evidence, "fully explained" their reasoning, and considered the exertional requirements of Claimant's usual coal mine employment when reaching their opinions. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987) (reasoned opinion sets forth the physician's

[10] The ALJ indicated Dr. Shah opined that Claimant's objective testing demonstrated "a work level of a maximum of 40%." Decision and Order at 6. The doctor did not make this statement but rather explained "generally an individual can sustain a work level of 40% of his measured maximum VO2 for an [eight]-hour period." Director's Exhibit 17 at 18. Nonetheless, Dr. Shah explained Claimant's ventilatory reserve was reduced and he could not sustain heavy labor; thus, any error in the ALJ's summary of her opinion is harmless. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Director's Exhibit 17 at 18.

clinical findings, observations, test results, and other factors that support his assessment); Decision and Order at 6-7.

Thus, the ALJ permissibly found the medical opinion evidence is insufficient to support a finding of total disability by a preponderance of the evidence. *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994) (equally weighted evidence is insufficient to meet a claimant's burden); Decision and Order at 7. Claimant's arguments are a request to reweigh the evidence, which we are not empowered to do. *See Crockett Colleries, Inc. v. Director, OWCP* [*Barrett*], 478 F.3d 350, 352-53 (6th Cir. 2007); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). As the ALJ permissibly found the medical opinion evidence is insufficient to meet Claimant's burden, we also affirm his finding that the evidence when weighed together as a whole is insufficient to establish total disability. *See Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 7.

Accordingly, we affirm the ALJ's Decision and Order Denying Benefits in a Subsequent Claim.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge