U.S. Department of Labor

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

BRB No. 24-0417 BLA

JAMES A. PHILLIPS Claimant-Respondent v. CARBON RESOURCES, INCORPORATED Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 05/13/2025 DECISION and ORDER

Appeal of the Decision and Order Granting Modification and Awarding Benefits of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

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

Christopher Pierson (Burns White, LLC), Pittsburgh, Pennsylvania, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Granting Modification and Awarding Benefits (Decision and Order on

Modification) (2023-BLA-06115) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a request for modification of a subsequent claim[1] filed on July 21, 2016.

In a Decision and Order on Remand Denying Benefits dated April 19, 2021,[2] the ALJ found Claimant failed to establish total disability and thus failed to establish a change in an applicable condition of entitlement. 20 C.F.R. §§718.204(b)(2), 725.309; Director's Exhibit 120. Claimant appealed the ALJ's denial but subsequently requested the withdrawal of his appeal, Director's Exhibits 121, 125, 126, which the Benefits Review Board granted.[3] *Phillips v. Carbon Resources, Inc.*, BRB No. 21-0396 BLA/A (Aug. 18, 2021) (Order). Thereafter, Claimant timely requested modification of the denial on December 13, 2021. Director's Exhibit 140. On September 6, 2022, the district director denied Claimant's request for modification. Director's Exhibit 146. Claimant timely requested modification of that denial on January 9, 2023. Director's Exhibits 153, 154. On June 27, 2023, the district director denied Claimant's request. Director's Exhibit 159. Claimant requested a hearing, and the district director forwarded the case to the Office of Administrative Law Judges. Director's Exhibits 165-167. The ALJ held a hearing on January 29, 2024.

In her Decision and Order on Modification, the subject of the current appeal, 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

[1] Claimant filed two prior claims for benefits. Director's Exhibits 1, 2. He withdrew the first claim, filed on August 10, 2009. Director's Exhibits 1; 167 at 1. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b). On April 21, 2014, the district director denied Claimant's second claim, filed on August 9, 2013, because he failed to establish total disability. Director's Exhibits 2; 167 at 1.

[2] We incorporate the procedural history of this case as set forth in *Phillips v. Carbon Res. Inc.*, BRB No. 19-0207 BLA (May 29, 2020) (unpub.).

[3] By letter dated December 9, 2021, the district director informed Claimant that the district director prematurely acknowledged Claimant's June 15, 2021 correspondence as a request for modification because the case was still pending before the Board. Director's Exhibits 136, 139. The district director also asked Claimant to submit a new request for modification within thirty days or he would proceed with initial overpayment procedures in accordance with the ALJ's April 19, 2021 Decision and Order on Remand Denying Benefits. Director's Exhibit 139.

the Act,[4] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established legal pneumoconiosis substantially contributed to a totally disabling respiratory impairment. 20 C.F.R. §§718.202(a), 718.204(b), (c). She thus found Claimant established a change in an applicable condition of entitlement.[5] 20 C.F.R. §725.309(c). Further, she found granting modification would render justice under the Act and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established legal pneumoconiosis and disability causation.[6] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

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.[7] 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).

[4] 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).

[5] When a claimant 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 she finds "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). As the district director denied Claimant's prior claim because he failed to establish total disability, he had to submit evidence establishing this element to obtain review of the merits of his claim. *See White*, 23 BLR at 1-3; Director's Exhibit 2.

[6] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established a totally disabling respiratory impairment and thus a change in an applicable condition of entitlement. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§718.204(b), 725.309(c); Decision and Order on Modification at 8, 21.

[7] The Board will apply the law of the United States Court of Appeals for the Third Circuit because Claimant performed his last coal mine employment in Pennsylvania. *See*

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. §§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 ALJ considered the medical opinions of Drs. Holt, Saludes, Aulick, Fino, and Basheda. Decision and Order on Modification at 15-20, 25-26. Drs. Holt and Saludes opined Claimant has legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) related to coal mine dust exposure. Director's Exhibits 10 at 6, 13; 78 at 12-16. Dr. Aulick opined Claimant has a restrictive pulmonary impairment related to coal mine dust exposure. Director's Exhibit 158 at 4-5. In contrast, Dr. Fino opined Claimant does not have legal pneumoconiosis or any respiratory impairment but has mild reductions in FEV_1 and FVC results on pulmonary function testing unrelated to coal mine dust exposure. Director's Exhibit 79 at 74-76, 110. Similarly, Dr. Basheda opined Claimant does not have legal pneumoconiosis but has asthma unrelated to coal mine dust exposure. Director's Exhibits 79 at 22-23, 166-67; 145 at 22-24.

The ALJ found Dr. Saludes's opinion reasoned and documented. Decision and Order on Modification at 25-26. She found Drs. Holt's and Fino's opinions "poorly" documented and entitled to little weight. *Id*. In addition, she found Dr. Aulick's opinion inadequately explained and entitled to little weight. *Id*. Further, she found Dr. Basheda's opinion inconsistent with the regulations and entitled to little weight. *Id*. Thus, she concluded Claimant established the existence of legal pneumoconiosis based on Dr. Saludes's opinion. *Id.* at 26.

Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 106 at 254.

As the ALJ's findings that Drs. Holt's, Aulick's, and Fino's opinions are entitled to little weight are unchallenged on appeal, we affirm them. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Modification at 25-26.

Employer argues the ALJ erred in crediting Dr. Saludes's opinion that Claimant has legal pneumoconiosis because she did not explain what specific "data" supports the doctor's diagnosis of the disease. Employer's Brief at 13. We disagree.

Dr. Saludes examined Claimant on June 13, 2018, and considered his social, medical, and work histories; symptoms; and objective testing. Director's Exhibit 78 at 12-16. He noted Claimant has a "significant coal dust exposure history" and has never smoked cigarettes. *Id.* at 13. In addition, he noted Claimant experiences shortness of breath walking across the room and has symptoms of daily cough, sputum production, and wheezing. *Id.* at 12-13. Further, he noted the June 13, 2018 pulmonary function study results show mild obstruction and restriction, and that the significant improvement of Claimant's mild lung disease after the administration of bronchodilators "suggest[s] underlying obstructive lung disease." *Id.* at 13. He concluded Claimant has COPD. *Id.* In a supplemental report, Dr. Saludes opined Claimant's coal mine dust exposure is the "major causative factor" of his COPD. *Id.* at 15.

The ALJ concluded Dr. Saludes diagnosed legal pneumoconiosis based on Claimant's pulmonary function study results after the administration of bronchodilators and his symptoms, employment history, medical history, and lack of a smoking history. Decision and Order on Modification at 25-26. It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 162-63 (3d Cir. 1986); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989). The ALJ considered the relevant evidence and permissibly found Dr. Saludes's opinion reasoned and documented because the data he considered supports his diagnosis and he "adequately explained how the testing, histories, and symptoms support" a finding that Claimant's coal mine dust exposure significantly contributed to his COPD. Decision and Order on Modification at 25; *see Balsavage*, 295 F.3d at 396; *Kertesz*, 788 F.2d at 163. Because we can discern the ALJ's basis for crediting Dr. Saludes's opinion, her findings satisfy the Administrative Procedure Act (APA).[8] *See Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 354 (3d Cir. 1997); *Mining Co. v.*

[8] The Administrative Procedure Act, 5 U.S.C. §§500-591, 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); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

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).

We also reject Employer's argument that the ALJ erred in crediting Dr. Saludes's opinion because he provided contradictory statements regarding the diffusion capacity on the pulmonary function study. Employer's Brief at 13. Dr. Saludes stated in his initial report that Claimant's "diffusion was normal when corrected for alveolar volume." Director's Exhibit 78 at 13. However, he stated in his pulmonary function study report that Claimant had a "[m]oderate reduction in diffusion capacity when corrected for alveolar volume." *Id*. at 16. The ALJ acknowledged that Dr. Saludes provided "contradicting assessments" of Claimant's diffusion capacity, but she acted within her discretion in declining to assign reduced weight to the doctor's opinion because he did not rely on the diffusing capacity in rendering his diagnosis of legal pneumoconiosis. Decision and Order on Modification at 25 n.30; *see Balsavage*, 295 F.3d at 396; *Kertesz*, 788 F.2d at 163.

We further reject Employer's argument that the ALJ erred in discrediting Dr. Basheda's opinion. Employer's Brief at 14. Dr. Basheda diagnosed Claimant with asthma based on his bronchodilator response demonstrated in pulmonary function tests. Director's Exhibits 79 at 166-67; 145 at 22-23. He opined Claimant's asthma is unrelated to coal mine dust exposure because he would not have "asthma symptoms two decades after leaving the coal mines." Director's Exhibit 145 at 23. The ALJ permissibly discredited Dr. Basheda's rationale because the regulations recognize that legal pneumoconiosis is "a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 209-10 (3d Cir. 2002); Decision and Order on Modification at 25-26.

Employer's arguments regarding the physicians' opinions are a request that the Board reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113; *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); Employer's Brief at 12-14. Thus, we affirm the ALJ's finding that Claimant established legal pneumoconiosis based on Dr. Saludes's opinion. 20 C.F.R. §718.202(a)(4); Decision and Order on Modification at 25-26.

Disability Causation

To establish total disability due to pneumoconiosis, Claimant must prove that pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory

or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause of a miner's totally disabling impairment if it has "a material adverse effect on the miner's respiratory or pulmonary condition" or if it "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii); *Gross v. Dominion Coal Co.*, 23 BLR 1-8, 1-17 (2003).

The ALJ considered the medical opinions of Drs. Holt, Saludes, Aulick, Fino, and Basheda. Decision and Order on Modification at 28-29. She found Dr. Holt's opinion did not address the cause of Claimant's disability and thus is not entitled to probative weight on the issue. *Id*. at 28. Further, she found Drs. Fino and Basheda's opinions unpersuasive and entitled to "little" weight. *Id*. at 28. In contrast, she found Drs. Saludes's and Aulick's opinions persuasive and entitled to the "most" weight. *Id.* at 28-29. She thus found Claimant established legal pneumoconiosis substantially contributes to his totally disabling respiratory impairment. *Id*. at 29.

As Employer does not challenge the ALJ's decision to credit the opinions of Drs. Saludes and Aulick, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order on Modification at 28-29. We further affirm, as unchallenged, the ALJ's decision to discredit Dr. Holt's opinion. *Id*.

Employer argues the ALJ erred in finding the opinions of Drs. Basheda and Fino not credible. Employer's Brief at 14. Contrary to Employer's argument, the ALJ permissibly discredited their opinions on disability causation because they did not diagnose legal pneumoconiosis, contrary to her finding that Claimant established the disease. *See Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015); *Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995); *Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order on Modification at 29. Therefore, we affirm the ALJ's finding that Claimant established he is totally disabled due to legal pneumoconiosis. 20 C.F.R. §718.204(c); Decision and Order on Modification at 29.

Consequently, having affirmed the ALJ's determination that Claimant established the requisite elements of entitlement, we affirm the award of benefits.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge