U.S. Department of Labor

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

BRB No. 23-0032 BLA

HENRY F. COMBS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	
	)	DATE ISSUED: 11/07/2023
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

Kendra Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

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

GRESH, Chief Administrative Appeals Judge, and ROLFE, Administrative Appeals Judge:

Employer appeals Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Awarding Benefits (2021-BLA-05329) rendered on a claim filed on April 9, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[1]

The ALJ accepted the parties' stipulation that Claimant had 21.86 years of coal mine employment and credited him with at least 20 years of underground coal mine employment. 20 C.F.R. §718.305(b)(1)(i). She found Claimant established a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b)(2), and thus found he invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[2] 30 U.S.C. §921(c)(4) (2018). Further, she found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding it did not rebut the presumption.[3] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has not filed a response.

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.[4] 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] Claimant filed a prior claim but withdrew it. Director's Exhibit 1. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

[2] 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.

[3] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established at least twenty years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §§718.204(b)(2), 718.305(b)(1)(i); s*ee Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5, 14.

[4] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 16, 39.

Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[5] 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). The ALJ found Employer failed to rebut the presumption by either method.[6]

To disprove legal pneumoconiosis, Employer must establish Claimant does not have 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), 718.305(d)(1)(i)(A); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ considered the opinions of Drs. Sargent and McSharry that Claimant does not have legal pneumoconiosis.[7] Decision and Order at 19-24. Dr. McSharry opined Claimant has modest restrictive lung disease likely due to obesity and unrelated to his coal mine dust exposure. Director's Exhibit 18 at 3; Employer's Exhibits 3, 10. Dr. Sargent opined Claimant has pulmonary hypertension and gas exchange abnormalities most likely caused by sleep apnea, but not related to his coal mine dust exposure. Employer's Exhibits

[5] "Legal pneumoconiosis" includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. 20 C.F.R. §718.201(a)(2). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

[6] The ALJ found Employer rebutted the existence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 25.

[7] The ALJ correctly observed that the opinions of Drs. Nader, Habre, and Raj that Claimant has legal pneumoconiosis do not aid Employer in rebutting the presumption. Decision and Order at 18 n.10. Thus, we decline to address Employer's argument that the ALJ erred in weighing their opinions. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 14-16.

1, 9. The ALJ found both opinions are inadequately reasoned and unpersuasive. Decision and Order at 24.

Employer argues the ALJ erred in discrediting the opinions of Drs. Sargent and McSharry. Employer's Brief at 5-12. We disagree.

Initially, we reject Employer's argument that the ALJ applied an incorrect legal standard, requiring Drs. Sargent and McSharry to "rule out" legal pneumoconiosis. Employer's Brief at 7, 12-14. The ALJ correctly stated that to rebut the presumption of legal pneumoconiosis, Employer must "demonstrate the miner does not have a chronic lung disease or impairment 'significantly related to, or substantially aggravated by, dust exposure in coal mine employment.'" Decision and Order at 15, *quoting* 20 C.F.R. §718.201(b). Moreover, the ALJ did not discredit the opinions of Drs. Sargent and McSharry because they failed to satisfy an erroneous heightened legal standard. Rather, she noted that both physicians ruled out coal dust exposure as a cause or contributor to Claimant's impairment, and permissibly found their opinions unpersuasive. *Id.* at 24.

The ALJ considered the opinions of Drs. McSharry and Sargent that Claimant does not have legal pneumoconiosis based, in part, on the absence of evidence of pneumoconiosis on his x-rays. Director's Exhibit 18 at 3; Employer's Exhibits 1 at 2; 9 at 15-16. She permissibly found their opinions unpersuasive because the regulations provide that legal pneumoconiosis may be present even in the absence of a positive x-ray for clinical pneumoconiosis. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012) (the regulations "separate clinical and legal pneumoconiosis into two different diagnoses" and "provide that no claim for benefits shall be denied solely on the basis of a negative chest x-ray") (internal quotations omitted); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012) (ALJ properly concluded the regulations provide legal pneumoconiosis may exist in the absence of clinical pneumoconiosis); 20 C.F.R. §§718.201, 718.202(a)(4), 718.202(b); Decision and Order at 21, 23-24.

Further, both Drs. McSharry and Sargent suggested they could exclude legal pneumoconiosis as a cause of Claimant's respiratory impairment because his pulmonary function studies showed a restrictive impairment rather than an obstructive impairment. Employer's Exhibits 9 at 20, 29; 10 at 13, 16-17. The ALJ permissibly discounted this rationale as inconsistent with the regulations and the preamble to the 2001 revised regulations recognizing coal dust exposure can cause either obstructive or restrictive impairments. 20 C.F.R. §718.201(a)(2) ("'Legal pneumoconiosis' includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic *restrictive* or obstructive pulmonary disease arising out of coal mine employment.") (emphasis added); 65 Fed. Reg. 79,920, 79,937-39 (Dec. 20, 2000); Decision and Order at 21, 23.

Finally, contrary to Employer's argument, the ALJ permissibly discredited the opinions of Drs. Sargent and McSharry because they failed to explain how coal dust exposure did not cause or contribute to Claimant's impairment, even if pulmonary hypertension or obesity were primary or more likely causes. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 673-74 n.4 (4th Cir. 2017) (ALJ permissibly discredited medical opinions that "solely focused on smoking" as a cause of obstruction and "nowhere addressed why coal dust could not have been an additional cause"); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 21, 24. Moreover, the ALJ permissibly found Dr. McSharry's opinion that Claimant's restrictive impairment may be due to neuromuscular or musculoskeletal issues, pulmonary hypertension, intracardiac shunting, liver disease, or pulmonary embolism is not adequately explained or documented and thus unpersuasive. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 20-21; Director's Exhibit 18 at 3; Employer's Exhibit 10 at 14, 18.

Employer's remaining argument that Drs. McSharry and Sargent provided credible explanations, and thus their opinions rebut the presumption, amounts to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); Employer's Brief at 7-12.

Because the ALJ permissibly discredited the opinions of Drs. Sargent and McSharry, the only opinions supportive of Employer's burden on rebuttal, we affirm her determination that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §718.201(a)(2), (b); Decision and Order at 25. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

The ALJ next considered whether Employer established "no part of the miner'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). The ALJ rationally discredited the disability causation opinions of Drs. Sargent and McSharry because they did not diagnose legal pneumoconiosis, contrary to her finding that Employer failed to disprove the existence of the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order at 26-27. As it is supported by substantial evidence, we affirm the ALJ's finding that Employer failed to establish no part of Claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

I concur in the result only.

JUDITH S. BOGGS
Administrative Appeals Judge