

U.S. Department of Labor

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



BRB No. 19-0550 BLA

JAMES K. BROWN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DIAMOND MAY COAL COMPANY,	)	DATE ISSUED: 09/18/2020
c/o PROGRESS ENERGY	)	
	)	
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 Jason A. Golden, Administrative Law Judge, United States Department of Labor.

James M. Kennedy (Baird & Baird, P.S.C.), Pikeville, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge Jason A. Golden's Decision and Order Awarding Benefits (2018-BLA-06050) on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §901-944 (2018) (Act). This case

involves a subsequent claim filed on March 13, 2015.<sup>1</sup>

After crediting Claimant with 9.26 years of coal mine employment,<sup>2</sup> the administrative law judge found the evidence did not establish clinical pneumoconiosis. He found Claimant established legal pneumoconiosis, however, and therefore established a change in an applicable condition of entitlement.<sup>3</sup> 30 U.S.C. §921(c)(3); 20 C.F.R. §§718.202(a)(4), 725.309. He further found Claimant established total disability due to legal pneumoconiosis, 20 C.F.R. §718.204(b), (c), and awarded benefits.

On appeal, Employer contends the administrative law judge erred in finding Claimant established legal pneumoconiosis. Neither Claimant nor the Director, Office of the Workers' Compensation Programs, has filed a response brief.

The Benefits Review Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Without the benefit of the Section 411(c)(3) and (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.

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<sup>1</sup> Claimant's initial claim, filed on November 18, 2003, was denied as abandoned on March 22, 2004. Director's Exhibit 1. A denial by reason of abandonment is "deemed a finding that the claimant has not established any applicable condition of entitlement." 20 C.F.R. §725.409(c).

<sup>2</sup> The Benefits Review Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant's last coal mine employment occurred in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 22.

<sup>3</sup> Where a claimant files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge 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(d). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2). To obtain review of the merits of his claim, Claimant had to establish any element of entitlement.

§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).

To establish legal pneumoconiosis, Claimant must demonstrate 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(b). The United States Court of Appeals for the Sixth Circuit holds a miner can establish a lung impairment is significantly related to coal mine dust exposure “by showing that his disease was caused ‘in part’ by coal mine employment.” *Arch on the Green v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014).

The administrative law judge considered the medical opinions of Drs. Ajjarapu, Tuteur and Fino. Dr. Ajjarapu diagnosed legal pneumoconiosis in the form of chronic bronchitis due to coal mine dust exposure and cigarette smoking. Director’s Exhibit 10. Drs. Tuteur and Fino, however, opined Claimant does not have legal pneumoconiosis. Director’s Exhibit 18; Employer’s Exhibits 2-3, 6. Dr. Tuteur opined Claimant has “chronic obstructive pulmonary disease (COPD) with far advanced emphysema, associated with persistent chronic bronchitis.” Director’s Exhibit 18. But he found Claimant’s “COPD phenotype” is due to cigarette smoking and not to coal mine dust exposure. Director’s Exhibit 18. Dr. Fino opined Claimant has emphysema due solely to cigarette smoking. Employer’s Exhibit 2.

The administrative law judge found Dr. Ajjarapu’s diagnosis of legal pneumoconiosis was well-reasoned. Decision and Order at 25-26. Conversely, he found the opinions of Drs. Tuteur and Fino were not. *Id.* at 26-27. The administrative law judge therefore found the medical opinions established legal pneumoconiosis. *Id.* at 27-28.

Employer argues that Dr. Ajjarapu’s diagnosis of legal pneumoconiosis is not well-reasoned because she did not provide any basis for her opinion. Employer’s Brief at 20-21. The determination of whether a medical opinion is adequately reasoned is designated to the administrative law judge. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). The administrative law judge noted that Dr. Ajjarapu based her diagnosis of a severe pulmonary impairment with moderate resting hypoxemia on her review of the objective test results. Decision and Order at 25. He found that she diagnosed the Claimant with chronic bronchitis “based on the presence of symptoms of daily cough with sputum production.”<sup>4</sup>

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<sup>4</sup> The administrative law judge pointed out that the regulations recognize that chronic obstructive pulmonary disease (COPD) includes three disease processes

*Id.* He further found Dr. Ajjarapu attributed Claimant’s bronchitis to both coal mine dust exposure and cigarette smoking, as Dr. Ajjarapu explained that both etiologies “cause airway inflammation leading to bronchospasm and cause excessive airway secretions and bronchitic symptoms.” *Id.*, citing Director’s Exhibit 10 at 8. The administrative law judge found Dr. Ajjarapu’s opinion consistent with the prevailing view of the medical community that the risks of smoking and coal mine dust exposure are additive. *Id.*; 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000); see *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 480 (6th Cir. 2011). The administrative law judge therefore permissibly found Dr. Ajjarapu’s diagnosis well-reasoned. See *Rowe*, 710 F.2d at 255; *Clark*, 12 BLR at 1-155; Decision and Order at 28.

We also reject Employer’s contention that the administrative law judge erred in his consideration of the opinions of Drs. Tuteur and Fino. Employer’s Brief at 4-5. The administrative law judge permissibly discredited their opinions because they attributed Claimant’s impairment entirely to his cigarette smoking without adequately explaining why coal dust exposure did not contribute, along with cigarette smoking, to Claimant’s respiratory impairment. See *Groves*, 761 F.3d at 599 (legal pneumoconiosis includes lung disease “caused ‘in part’ by coal mine employment”); *Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007) (an administrative law judge permissibly rejected physician’s opinion where physician failed to adequately explain why coal dust exposure did not exacerbate claimant’s smoking-related impairments); 65 Fed. Reg. at 79,940; Decision and Order at 26-28. Because it is supported by substantial evidence, we affirm the administrative law judge’s finding that the medical opinion evidence established legal pneumoconiosis. 20 C.F.R. §718.202(a)(4). In light of this affirmance, we also affirm the administrative law judge’s finding that Claimant established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c); Decision and Order at 28.

We further affirm, as unchallenged on appeal, the administrative law judge’s findings that Claimant established a totally disabling respiratory or pulmonary impairment,

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characterized by airway dysfunction: chronic bronchitis, emphysema, and asthma. Decision and Order at 23, citing 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000). In this regard, the administrative law judge noted that Drs. Ajjarapu, Tuteur and Fino agree Claimant is totally and permanently disabled by COPD. Decision and Order at 23. In addition, Dr. Tuteur, like Dr. Ajjarapu, diagnosed “persistent chronic bronchitis.” Director’s Exhibit 18 at 3.

20 C.F.R. §718.204(b)(2), and that his total disability is due to legal pneumoconiosis. 20 C.F.R. §718.204(c); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

JONATHAN ROLFE  
Administrative Appeals Judge

DANIEL T. GRESH  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge