U.S. Department of Labor

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

BRB No. 22-0467 BLA

JOYCE T. BROWNING (o/b/o CARL EDWARD BROWNING)	)	
Claimant-Respondent	)	
v.	)	
ISLAND CREEK KENTUCKY MINING	)	
and	)	
	)	DATE ISSUED: 9/26/2023
ISLAND CREEK COAL COMPANY	)	
Employer/Carrier-Petitioners	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding of Sean M. Ramaley, Administrative Law Judge, United States Department of Labor.

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

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Awarding Benefits (2019-BLA-06381) rendered pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a claim filed on May 15, 2018.[1]

The ALJ found Claimant established the Miner had 16.84 years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment.[2] 20 C.F.R. §718.204(b)(2). Therefore, he found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption. It also argues he erred in finding it did not rebut the presumption.[4] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

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

[1] The Miner died on March 15, 2019, while his claim was pending. Director's Exhibit 12. Claimant, his surviving spouse, is pursuing the miner's claim on his behalf. Director's Exhibit 19.

[2] The ALJ found Claimant did not establish complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 29. Consequently, Claimant could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3).

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if he had 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 on appeal, the ALJ's finding that Claimant established 16.84 years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 26.

accordance with applicable law.[5] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(i). A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work and comparable gainful 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 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). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

The ALJ found Claimant established total disability based on the arterial blood gas studies, medical opinions, and in consideration of the evidence as a whole.[6] 20 C.F.R. §718.204(b)(2)(ii), (iv); Decision and Order at 30-32.

Employer argues the ALJ erred in finding total disability established based on the arterial blood gas study and medical opinion evidence. Employer's Brief at 7-11. We disagree.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the Miner performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3, 4, 6, 7.

[6] The ALJ found Claimant did not establish total disability based on the pulmonary function studies, and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii); Decision and Order at 30-31.

Arterial Blood Gas Study Evidence

The ALJ weighed one arterial blood gas study dated June 20, 2018. Decision and Order at 7, 30-31; Director's Exhibit 14 at 8-9. The study produced non-qualifying[7] values at rest but qualifying values with exercise. *Id*. The ALJ permissibly found the qualifying exercise study entitled to the most weight because exercise testing is more probative of the Miner's respiratory or pulmonary capacity to perform his usual "strenuous" coal mine work as an electrician, in which he routinely had to lift and carry up to seventy pounds. *Coen v. Director, OWCP*, 7 BLR 1-30, 1-31-32 (1984) (exercise blood gas study may be given more weight than resting blood gas studies); Decision and Order at 4, 30-31.

Employer generally argues the ALJ erred in crediting the exercise blood gas study over the resting blood gas study, but it identifies no specific error in the ALJ's credibility finding. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); Employer's Brief at 9-10. As it is supported by substantial evidence, we affirm the ALJ's finding that the arterial blood gas study evidence supports total disability. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 30-31.

Medical Opinions

The ALJ considered the medical opinions of Drs. Forehand and Green that the Miner was totally disabled by a respiratory or pulmonary impairment and Dr. Ranavaya's opinion that he was not. Decision and Order at 7-14, 31-32; Director's Exhibit 14 at 3-7 (unpaginated); Claimant's Exhibit 1; Employer's Exhibits 1, 6-8. The ALJ found the opinions of Drs. Forehand and Green reasoned and documented, and he determined Dr. Ranavaya's opinion is not credible because the physician conflated the issues of total disability and total disability causation. Decision and Order at 32.

As it is unchallenged, we affirm the ALJ's finding that the opinions of Drs. Forehand and Green are reasoned and documented. *Skrack*, 6 BLR at 1-711; Decision and Order at 31-32.

Employer argues the ALJ erred in discrediting Dr. Ranavaya's opinion. Employer's Brief at 7-11. We disagree. Dr. Ranavaya acknowledged the exercise blood gas testing is qualifying, but he opined the result is due to the Miner's cardiovascular disease or anemia and not an intrinsic respiratory or pulmonary impairment. *See* Employer's Exhibit 8 at 30-32, 40-41. He also opined the blood gas test results are normal when accounting for the

[7] A "qualifying" arterial blood gas study yields values that are equal to or less than the appropriate values set out in the table at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study yields values that exceed those values. 20 C.F.R. §718.204(b)(2)(ii).

Miner's age at the time the test was performed. *Id.* The ALJ permissibly gave less weight to Dr. Ranavaya's opinion because he conflated the issues of total disability and total disability causation. *Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989); *Johnson v. Apogee Coal Co.*, BLR , BRB No. 22-0022 BLA, slip op. at 10-11 (May 26, 2023) (relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether the miner had a totally disabling respiratory or pulmonary impairment; the cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305); Decision and Order at 32. Because it is supported by substantial evidence, we affirm the ALJ's finding that the medical opinions support total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 32.

Employer next argues that, in weighing all relevant evidence, the ALJ failed to weigh the qualifying arterial blood gas testing against the non-qualifying pulmonary function testing. Employer's Brief at 9-10. This argument has no merit. Because blood gas studies and pulmonary function studies measure different types of impairment, the results of a qualifying blood gas study are not called into question by a contemporaneous normal pulmonary function study. *See Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984). Thus we affirm the ALJ's finding that Claimant established total disability based on the evidence as a whole. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 32. We therefore affirm his finding that Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305; Decision and Order at 32.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[8] or "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined

[8] "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).

in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer did not establish rebuttal by either method.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish the Miner did 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); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ considered Dr. Ranavaya's medical opinion. Decision and Order at 7-14, 26-29; Employer's Exhibits 1, 6-8. Dr. Ranavaya opined the Miner had usual interstitial pneumonia (UIP) and emphysema due to cigarette smoking and unrelated to coal mine dust exposure. Employer's Exhibits 6, 8. The ALJ found Dr. Ranavaya's opinion unpersuasive.[9] Decision and Order at 42-43.

Employer asserts the ALJ erred in discrediting Dr. Ranavaya's opinion. Employer's Brief at 16-19. We are not persuaded.

Dr. Ranavaya testified UIP is not caused by coal mine dust exposure but is caused by cigarette smoking. Employer's Exhibit 6 at 23. He also stated UIP can be caused by other environmental exposures, including stone and sand dust. *Id.* at 24. With respect to the Miner's emphysema, he stated "cigarette smoking in this case is the most significant pulmonary risk factor for developing emphysema." Employer's Exhibit 6 at 11. In addition, he explained the Miner had centrilobular emphysema "mainly in the upper and lower lobes which is typically caused by cigarette smoking whereas the emphysema caused by coal dust exposure is characterized by air space enlargement immediately surrounding coal dust macules aptly termed as focal emphysema." *Id.* He testified focal emphysema is a hallmark of coal workers' pneumoconiosis and is a subset of centrilobular emphysema. Employer's Exhibit 8 at 20.

The ALJ permissibly found that, even if smoking caused the Miner's UIP and emphysema, Dr. Ranavaya failed to adequately explain why the Miner's significant history of coal mine dust exposure, along with smoking, was not a contributing or aggravating factor to these conditions. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 n.4 (4th Cir. 2017); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013);

[9] Employer argues the ALJ erred in applying the preamble to the 2001 revised regulations when weighing Dr. Ranavaya's medical opinion. Employer's Brief at 12-14. The ALJ did not weigh Dr. Ranavaya's opinion in conjunction with the preamble.

Westmoreland Coal Co. v. Cochran, 718 F.3d 319, 324 (4th Cir. 2013); 20 C.F.R. §718.201(a)(2), (b); Decision and Order at 41-42.

Because the ALJ acted within his discretion in rejecting Dr. Ranavaya's opinion,[10] the only medical opinion supportive of Employer's burden on rebuttal,[11] we affirm his finding that Employer did not disprove the existence of legal pneumoconiosis.[12] 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); Decision and Order at 43. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis.[13] 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

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); Decision and Order at 44-46. He permissibly discredited Dr. Ranavaya's opinion on total disability causation because he did not diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer did not disprove the existence of the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498,

[10] Because the ALJ provided valid reasons for discrediting Dr. Ranavaya's opinion, we need not address Employer's additional arguments regarding the weight he assigned to his opinion. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 16-19.

[11] The ALJ found Dr. Vey was equivocal in addressing whether the Miner had legal pneumoconiosis. Decision and Order at 38. Employer does not challenge this finding. Thus we affirm it. *Skrack*, 6 BLR at 1-711. Employer contends the ALJ erred by discussing Dr. Vey's report as an autopsy report rather than a medical opinion. Employer's Brief at 12. Employer has not explained why this alleged error requires remand as the ALJ discredited the doctor's conclusion. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

[12] As Dr. Green diagnosed legal pneumoconiosis, his opinion cannot support Employer's burden to disprove the disease; we therefore need not address Employer's arguments regarding the ALJ's consideration of his opinion. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 19-21.

[13] Because we affirm the ALJ's finding that Employer failed to disprove legal pneumoconiosis, we need not address Employer's challenges to his finding that it also failed to disprove clinical pneumoconiosis. *See Larioni*, 6 BLR at 1-1278; Decision and Order at 37, 41, 43; Employer's Brief at 14-21.

504-05 (4th Cir. 2015) (physician who fails to diagnose pneumoconiosis, contrary to the ALJ's finding, cannot be credited on rebuttal of disability causation absent specific and persuasive reasons); Decision and Order at 45. We therefore affirm the ALJ's finding that Employer failed to establish no part of the Miner's total respiratory disability was due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); *see Minich*, 25 BLR at 154-56; Decision and Order at 45-46.

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

MELISSA LIN JONES
Administrative Appeals Judge