U.S. Department of Labor

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

BRB No. 24-0383 BLA

JOHNNY N. RIAL)
)
Claimant-Respondent)
)
v.)
)
MARSHALL COUNTY COAL COMPANY)
c/o MURRAY ENERGY CORPORATION)
)
and)
)
MURRAY ENERGY CORPORATE TRUST)
c/o SMART CASUALTY CLAIMS)
)
Employer/Carrier-)
Petitioners)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 09/12/2025

DECISION and ORDER

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

Aimee M. Stern (Dinsmore & Shohl, LLP) Wheeling, West Virginia, for Employer.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE, Administrative Appeals Judge, and ULMER, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Natlie A. Appetta's Decision and Order Awarding Benefits (2023-BLA-06024) rendered on a claim filed October 24, 2022, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with fourteen years and seven months of underground coal mine employment and thus found he could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, she found Claimant established legal pneumoconiosis, but not clinical pneumoconiosis,[2] and total disability due to legal pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204(b)(2), (c). Thus, she awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established legal pneumoconiosis and disability causation.[3] Neither Claimant nor the Acting Director, Office of Workers' Compensation Programs, filed a substantive response.

[1] Section 411(c)(4) provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if they have 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.

[2] "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). "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).

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established fourteen years and seven months of underground coal mine employment as well as total disability. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5, 15.

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 (1965).

Entitlement Under 20 C.F.R. Part 718

To establish entitlement to benefits without the benefit of the Section 411(c)(3)[5] 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. §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 United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this claim arises, has held that a claimant can establish legal pneumoconiosis by showing coal dust exposure contributed "in part" to the miner's respiratory or pulmonary impairment. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 322-23 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 311 (4th Cir. 2012); *see also Arch on the Green v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014) (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.").

[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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

[5] The record contains no evidence of complicated pneumoconiosis; Claimant thus cannot invoke the presumption at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304; Decision and Order at 19.

The ALJ considered the medical opinions of Drs. Posin and Fino. Decision and Order at 18-19. Dr. Posin diagnosed legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) and mixed severe obstructive disease with a restrictive component, which he attributed to Claimant's underground coal mining and smoking. Director's Exhibit 13 at 5. Dr. Fino diagnosed emphysema with severe obstruction and oxygen transfer impairment due solely to smoking cigarettes and unrelated to coal mine dust exposure. Employer's Exhibit 1 at 10-11. The ALJ found Dr. Posin's opinion well-documented and reasoned, whereas she discredited Dr. Fino's opinion as poorly reasoned and inconsistent with the Department of Labor's discussion of the prevailing medical science as set forth in the preamble to the revised 2001 regulations. Decision and Order at 18-19. Thus, crediting Dr. Posin's opinion over the contrary opinion of Dr. Fino, the ALJ found Claimant established legal pneumoconiosis based on the medical opinion evidence. *Id.* at 19-20.

Employer argues the ALJ erred in crediting Dr. Posin's opinion because he failed to adequately explain his conclusion that coal mine dust exposure contributed to Claimant's impairment. Employer's Brief at 11. We are not persuaded.

Dr. Posin conducted the Department of Labor-sponsored complete pulmonary examination of Claimant. Director's Exhibit 13. He explained that he relied on pulmonary function and arterial blood gas testing, as well as a "walk test" during which Claimant experienced oxygen desaturation after two minutes. *Id.* at 5. Based on this testing, he diagnosed both restrictive and obstructive impairments and opined Claimant's seventy-five pack-year history of smoking cigarettes contributed to the obstructive component of his impairment, whereas his fifteen years of exposure to coal mine dust contributed to both the restrictive and obstructive impairments. *Id.* at 6. Specifically, he opined that seventy-five percent of Claimant's impairment can be attributed to his smoking history, but that the remaining twenty-five percent is due to his history of coal mine dust exposure. *Id.* Contrary to Employer's contention, the ALJ permissibly credited Dr. Posin's explanation to find his opinion well-documented and reasoned. *See Looney*, 678 F.3d at 310; *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); Decision and Order at 18-19.

Employer further asserts the ALJ erred in discrediting Dr. Fino's opinion. Employer's Brief at 9-10. We disagree.

Dr. Fino diagnosed severe emphysema with oxygen transfer impairment and severe obstruction. Employer's Exhibit 1 at 10. He excluded coal mine dust as a contributing factor in Claimant's lung disease because of "the significant obstruction and the fact that [Claimant] continued to smoke [for thirty-six] years after he left the mines." *Id.* The ALJ permissibly found this rationale unpersuasive as it is based, in part, on a premise

inconsistent with the regulations, which recognize pneumoconiosis as "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* 65 Fed. Reg. 79,920, 79,971 (Dec. 20, 2000) ("[I]t is clear that a miner who may be asymptomatic and without significant impairment at retirement can develop a significant pulmonary impairment after a latent period."); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be both latent and progressive may be discredited); *see also Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 739 (6th Cir. 2014) (Act recognizes that pneumoconioses, whether clinical or legal, can first become detectable after a miner ceases coal mine employment); Decision and Order 19. In addition, the ALJ permissibly found Dr. Fino did not adequately address the additive nature of smoking and coal mine dust exposure or explain how he determined Claimant's smoking history precludes his fourteen years and seven months of coal mine dust exposure from aggravating or contributing to Claimant's impairment.[6] *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Looney*, 678 F.3d at 316-17; *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000); Decision and Order at 19.

Employer further asserts the ALJ should have credited Dr. Fino's opinion over the opinion of Dr. Posin because "Dr. Fino is clearly more qualified." Employer's Brief at 10. Contrary to Employer's contention, while an ALJ may consider an expert's qualifications in resolving the conflicting evidence, the ALJ is not required to afford the interpretation of a physician with a certain credential greater weight. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20, 1-23 (1988).

As the trier-of-fact, the ALJ has the discretion to assess the credibility of the medical opinions and to assign them weight; the Board may not reweigh the evidence or substitute its own inferences on appeal. *Compton*, 211 F.3d at 207-08; *Anderson*, 12 BLR at 1-113. Because the ALJ permissibly credited Dr. Posin's opinion over Dr. Fino's opinion, we affirm her finding that Claimant established legal pneumoconiosis. 20 C.F.R. §718.202.

[6] In addition, contrary to Employer's contention, the ALJ did not discredit Dr. Fino's opinion on the basis that the preamble states "emphysema is always legal pneumoconiosis." Employer's Brief at 9. Rather, the ALJ expressly noted the preamble states emphysema, if it arises out of coal mine employment, may constitute legal pneumoconiosis. Decision and Order at 18-19 (quoting 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000)).

Disability Causation

To establish total disability due to pneumoconiosis, Claimant must prove pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1); *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 38 (4th Cir. 1990). Pneumoconiosis is a substantially contributing cause 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).

Employer raises the same arguments on disability causation that it did regarding legal pneumoconiosis. Employer's Brief at 10. However, as discussed above, the ALJ permissibly relied on Dr. Posin's opinion that Claimant's totally disabling impairment, as demonstrated in part by his pulmonary function study results, constitutes legal pneumoconiosis. Decision and Order at 18-19. Thus, we see no error in the ALJ's finding that Dr. Posin's opinion is also sufficient to establish that Claimant's legal pneumoconiosis is a substantially contributing cause of his total disability. *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668-69 (6th Cir. 2015); *Hawkinberry v. Monongalia Cnty. Coal Co.*, 25 BLR 1-249, 1-255-57 (2019); Decision and Order at 21-22.

Further, the ALJ permissibly discredited Dr. Fino's disability causation opinion because he did not diagnose legal pneumoconiosis, contrary to her finding that Claimant established the presence of the disease. *See Epling*, 783 F.3d at 504-05; *Toler v. E. Assoc. Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995); Decision and Order at 21-22. Thus, because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant established total disability due to legal pneumoconiosis and entitlement to benefits. 20 C.F.R. §718.204(c); Decision and Order at 22.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge