

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 19-3142

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Dec 06, 2019
DEBORAH S. HUNT, Clerk

GOOD COAL COMPANY, INCORPORATED,)
)
Petitioner,)
)
v.)
)
BETTY SUE HAYNES, o/b/o and Widow of)
Albert L. Haynes, et al.,)
Respondents,)
)
and)
)
AMERICAN INTERNATIONAL)
SOUTH/CHARTIS.)

ON PETITION FOR REVIEW
FROM THE BENEFITS REVIEW
BOARD

ORDER

Before: SUHRHEINRICH, COOK, and READLER, Circuit Judges.

Good Coal Company petitions for review of a decision by the Benefits Review Board (BRB) affirming an administrative law judge’s (ALJ) decision awarding black lung benefits to a former employee and his widow. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

The deceased respondent, Albert L. Haynes, was born in 1950 and worked for more than twenty-four years in coal mining. He died from cancer in 2011. He had filed a claim for black lung benefits in 2004 that was denied based on a finding that he was not totally disabled. He filed a second claim for benefits in 2011, shortly before his death. Following his death, his widow also filed a claim. An ALJ determined that the new evidence did not change the conclusion that the miner was not totally disabled, and therefore denied the claims. The BRB remanded the case for reconsideration of the physicians’ opinions on total disability. The ALJ assigned on remand found

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that total disability had been established based on the physicians' opinions and awarded benefits on both claims. The BRB affirmed.

In its brief before this court, petitioner argues that the ALJs in this case were not properly appointed and that their decisions must be vacated and the case reassigned to properly appointed ALJs, relying on *Lucia v. Securities & Exchange Commission*, 138 S. Ct. 2044 (2018). Petitioner also contests the ALJ's decision on the merits.

Petitioner challenged the appointment of the ALJs before the BRB only in a motion to remand filed months after its initial brief. The BRB declined to address the issue because it was not raised in the initial brief. Because the BRB had the authority to address this claim and provide relief, its decision not to address the claim on procedural grounds means that the issue has not been exhausted for this court's review. See *Nat'l Mines Corp v. Conley*, ___ F. App'x ___, No. 19-3139, 2019 WL 5446005, at *3 (6th Cir. Oct. 24, 2019); *Island Creek Coal Co. v. Bryan*, 937 F.3d 738, 751-52 (6th Cir. 2019).

Turning to the merits of the decision below, our review is limited to ascertaining whether the ALJ's decision is supported by substantial evidence and in accordance with the law. *Zurich Am. Ins. Grp. v. Duncan*, 889 F.3d 293, 299 (6th Cir. 2018); *Greene v. King James Coal Mining, Inc.*, 575 F.3d 628, 633-34 (6th Cir. 2009).

Petitioner first argues that the ALJ erred in finding that total disability was established by automatically crediting the opinions of two treating physicians, citing *Eastover Mining Co. v. Williams*, 338 F.3d 501, 511-13 (6th Cir. 2003), and *Peabody Coal Co. v. Groves*, 277 F.3d 829, 834 (6th Cir. 2002). However, review of the ALJ's decision reveals that he did not state that he was required to give more weight to the treating physicians but instead analyzed the doctors' opinions exactly as contemplated in the decisions cited before concluding that the two opinions were persuasive. Moreover, the BRB noted that it did not even need to address this argument because all of the physicians' opinions of record supported a finding of total disability, not just those of the two treating physicians. Petitioner also argues that another physician's opinion was equivocal, but that physician merely opined that, although the last pulmonary function study in the record resulted in values above those which establish a total disability, the miner nevertheless had

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a respiratory disability prior to his death. Finally, petitioner argues that none of the physicians discussed the exertional requirements of the deceased miner's work. However, the BRB reasonably concluded that the doctors' reports that the miner was on oxygen and unable to leave his house implied inability to perform his usual coal mine employment.

Because the deceased miner had more than fifteen years of coal mine employment and a total disability was established, he was entitled to a statutory presumption that his disability was due at least in part to coal dust exposure. *See* 30 U.S.C. § 921(c)(4); 20 C.F.R. § 718.305. Petitioner could rebut the presumption by establishing that the deceased miner did not have legal or clinical pneumoconiosis or that his disability was not due to pneumoconiosis arising out of his coal mine employment. *See* 20 C.F.R. § 718.305(d)(1); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1071 (6th Cir. 2013). Petitioner argues on this point that the ALJ erred in discrediting the opinion of a physician who found no coal workers' pneumoconiosis because he saw no rounded opacities in the upper lung zones. Because the regulations require neither that the opacities be rounded in shape nor that they be found in the upper lung zones, the ALJ's finding was in conformance with the applicable law. Petitioner also challenges the ALJ's decision not to credit the opinions of its two reviewing physicians on the issue of the source of the miner's disability because they did not find that he had pneumoconiosis. This finding was also in conformance with the applicable law, because when a physician finds that pneumoconiosis is not established, his opinion on whether pneumoconiosis contributed to disability is tainted by that finding. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504 (4th Cir. 2015). Because petitioner failed to rebut the presumption of disability due to coal dust exposure, benefits were properly awarded on the deceased miner's claim. Benefits on the widow's claim were therefore also properly awarded. *See Vision Processing, LLC v. Groves*, 705 F.3d 551, 554-55 (6th Cir. 2013).

For all the above reasons, we **DENY** the petition for review.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk