

U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601



BRB No. 17-0065 BLA

GARY L. ORRAHOOD)

Claimant-Respondent)

v.)

MONONGALIA COUNTY COAL)
COMPANY)

and)

MURRAY ENERGY CORPORATION)

Employer/Carrier-)
Petitioners)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

DATE ISSUED: 11/14/2017

DECISION and ORDER

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

Heath M. Long (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

Jessica Spencer Benedict and Christopher Prezioso (Dinsmore & Shohl, LLP), Wheeling, West Virginia, for employer/carrier.

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

PER CURIAM

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2016-BLA-5270) of Administrative Law Judge Natalie A. Appetta rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's subsequent claim filed on April 2, 2014.¹

The administrative law judge found that claimant established twenty-six years of underground coal mine employment, and has a thirty-four pack-year smoking history.² Decision and Order at 5. The administrative law judge also found that the new evidence established the existence of a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). She therefore found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012),³ and established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Finally, the administrative law judge found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that employer failed to rebut the presumption of total disability due to pneumoconiosis at Section 411(c)(4). Claimant responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, did not file a brief in this appeal.⁴

¹ This is claimant's second claim. Director's Exhibit 1. Claimant's first claim, filed on April 29, 1998, was denied on July 21, 1998 because claimant did not establish any of the elements of entitlement. Director's Exhibit 1.

² The administrative law judge found that while the record reflected conflicting smoking histories, the most credible evidence established that claimant smoked for forty-five years, at a rate of one-half to one pack per day, for a total history of approximately thirty-four pack-years. Decision and Order at 4-5.

³ Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where the claimant establishes at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

⁴ We affirm, as unchallenged on appeal, the administrative law judge's findings

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.⁵ 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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

Because claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to employer to rebut the presumption by establishing that claimant has neither legal nor clinical pneumoconiosis,⁶ or by establishing that "no part of [claimant'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)(i), (ii). The administrative law judge found that employer failed to rebut the presumption at Section 411(c)(4) by either method.⁷

that claimant invoked the Section 411(c)(4) presumption, and established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). We further affirm, as unchallenged, the administrative law judge's finding that claimant has a smoking history of approximately thirty-four pack-years. *Id.*

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as claimant's coal mine employment was in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5.

⁶ "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). "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).

⁷ The administrative law judge found that employer disproved the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(i)(B). Decision and Order at 19, 21.

In finding that employer failed to rebut the presumed fact that claimant has legal pneumoconiosis, the administrative law judge discredited the opinion of Dr. Ranavaya⁸ that claimant's obstructive impairment is unrelated to coal mine dust exposure, as inadequately explained.⁹ Decision and Order at 21.

Employer argues that the administrative law judge should have credited Dr. Ranavaya's opinion that claimant does not have legal pneumoconiosis, as he relied on all of the available medical evidence and the most accurate smoking history. Employer's Brief at 10; Employer's Exhibit 5. We disagree. The administrative law judge specifically acknowledged that Dr. Ranavaya's understanding of claimant's smoking history was the most accurate,¹⁰ but discredited his opinion, as inadequately explained.

⁸ Dr. Ranavaya opined that claimant does not have legal pneumoconiosis. Rather, Dr. Ranavaya diagnosed chronic obstructive pulmonary disease (COPD)/emphysema "most probably caused by a significant history of smoking" and "substantially aggravated by ongoing naturally occurring bronchial asthma which is a major contributory cause of his current pulmonary impairment." Decision and Order at 10-11, 16, 21; Employer's Exhibit 5.

⁹ The administrative law judge also considered the opinions of Drs. Jaworski and Fino, together with claimant's medical treatment records. Dr. Jaworski diagnosed legal pneumoconiosis in the form of severe airway obstruction due to coal mine dust exposure and bronchial asthma. Director's Exhibit 14. Dr. Fino diagnosed disabling emphysema with a severe obstructive defect, and stated that he was unable to exclude coal mine dust as a cause. Employer's Exhibit 4. Claimant's medical treatment records reflect that he was diagnosed with asthma, COPD, and coal workers' pneumoconiosis. Employer's Exhibits 7, 8. The administrative law judge discounted Dr. Jaworski's opinion as based on an inaccurate smoking history, discounted Dr. Fino's opinion as equivocal, and found that the medical treatment notes do not contain a reasoned opinion on the presence or absence of pneumoconiosis. Decision and Order at 19, 21-22. The administrative law judge further found, however, that none of these opinions aids employer in carrying its burden to establish that claimant does not have legal pneumoconiosis. See 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 21-22. As employer raises no challenge to this determination, it is affirmed. *Skrack*, 6 BLR at 1-711; Decision and Order at 21-22; Employer's Brief at 10-11.

¹⁰ In conducting his records review, Dr. Ranavaya noted that while claimant's reported smoking histories varied greatly, claimant told his treating physician that he smoked for forty-five years, at a rate of one-half to one pack per day. Dr. Ranavaya opined that this history was likely the most accurate, because a smoking history that is reported by a patient in a therapeutic treatment situation is likely to be more credible and

See Decision and Order at 4-5, 11, 21; Employer's Brief at 10. Specifically, the administrative law judge permissibly found that Dr. Ranavaya did not adequately discuss how he excluded claimant's coal mine dust exposure as an aggravating factor in claimant's obstructive lung disease.¹¹ See 20 C.F.R. §718.201(a)(2), (b); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558, 25 BLR 2-339, 2-353 (4th Cir. 2013); *Barber v. Director, OWCP*, 43 F.3d 899, 901, 19 BLR 2-61, 2-67 (4th Cir. 1995); Decision and Order at 21; Employer's Exhibit 5 at 8. As the administrative law judge's basis for discrediting Dr. Ranavaya's opinion is rational and supported by substantial evidence, this finding is affirmed. See *Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208, 22 BLR 2-162, 2-168 (4th Cir. 2000).

As the administrative law judge permissibly discounted the opinion of Dr. Ranavaya, the only opinion supportive of a finding that claimant does not suffer from legal pneumoconiosis, we affirm the administrative law judge's finding that employer failed to disprove the existence of legal pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i)(A). 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).

Finally, the administrative law judge addressed whether employer could establish the second method of rebuttal by showing that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). The administrative law judge rationally discounted Dr. Ranavaya's opinion because he did not diagnose pneumoconiosis, contrary to the administrative law judge's finding that employer failed to disprove the presence of pneumoconiosis.¹² See *Hobet Mining, LLC v.*

reliable than a history reported in a benefits claim. Employer's Exhibit 5 at 5-7, referencing Dr. Abraham's December 17, 2014 treatment note. The administrative law judge credited Dr. Ranavaya's opinion in finding that claimant smoked for approximately thirty-four pack-years. Decision and Order at 4-5.

¹¹ Legal pneumoconiosis encompasses "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(a)(2), 718.201(b).

¹² The administrative law judge further found no "specific and persuasive reasons" for concluding that Dr. Ranavaya's opinion on the issue of disability causation was independent of his opinion regarding the existence of pneumoconiosis. See *Toler v. Eastern Associated Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995); Decision and Order at 23 n.22.

Epling, 783 F.3d 498, 504-05, 25 BLR 2-713, 2-720-21 (4th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-452 (6th Cir. 2013); Decision and Order at 22-23. Moreover, employer raises no specific challenge to this determination. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). We therefore affirm the administrative law judge's finding that employer failed to establish that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. See 20 C.F.R. §718.305(d)(1)(ii).

Because claimant invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis, and employer did not rebut the presumption, claimant has established his entitlement to benefits.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge