U.S. Department of Labor

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

BRB No. 19-0260 BLA

ROBERT L. KOONS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SOUTHERN OHIO COAL CO., Self-insured by EAST COAST RISK MANAGEMENT, LLC	)	DATE ISSUED: 04/28/2020
	)	
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 Benefits of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

J. Lawson Johnston and Michael A. Muha (Dickie, McCamey & Chilcote, P.C.), Pittsburgh, Pennsylvania, for employer/carrier.

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

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2017-BLA-05056) of Administrative Law Judge John P. Sellers, III, rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's claim filed on December 26, 2013.

The administrative law judge credited claimant with twenty-seven years of coal mine employment, all at underground mines, and found he had a totally disabling respiratory impairment. He therefore found claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4). He further found employer did not rebut the presumption and awarded benefits.

On appeal, employer argues the administrative law judge erred in finding claimant established total disability and invoked the Section 411(c)(4) presumption. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[2]

The 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.[3] 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).

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he had at least fifteen years of underground or substantially similar coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the administrative law judge's finding claimant established twenty-seven years of coal mine employment at underground mines. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4, 16.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as claimant's coal mine employment occurred in Ohio. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 14-15; Director's Exhibit 3.

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

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine 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 administrative law judge must consider all relevant evidence and weigh the evidence supporting total disability against the contrary evidence. *See 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). Notwithstanding the non-qualifying pulmonary function and blood gas studies, the administrative law judge found claimant established total disability based on Dr. Feicht's medical opinion and his weighing of the evidence as a whole.[4] Decision and Order at 11-15; *see* 20 C.F.R. §718.204(b)(2)(iv).

Employer acknowledges qualifying objective tests are not required to establish total disability and that a physician's reasoned medical opinion based on non-qualifying tests, "along with other evidence," may establish disability. Employer's Brief at 5, *citing Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 744 (6th Cir. 1997). Employer argues, however, the administrative law judge erred in relying on Dr. Feicht's opinion because it is "not grounded in medically acceptable diagnostic techniques or objective indications gleaned from Claimant's physical examination." Employer's Brief at 1, 4-6. We disagree.

Based on a physical examination and objective tests, Dr. Feicht diagnosed claimant with a moderate obstructive process and exercise-induced hypoxia due to his emphysema and chronic obstructive pulmonary disease (COPD). Director's Exhibit 11. He found claimant totally disabled "based on [his] degree of symptoms,"[5] and supported by his

[4] The administrative law judge found total disability was not established at 20 C.F.R. §718.204(b)(2)(i)-(ii) because none of the pulmonary function or blood gas studies were qualifying. Decision and Order at 6-7, 12-13; *see* Director's Exhibit 11; Claimant's Exhibit 1. He further found the record insufficient to establish cor pulmonale with right-sided congestive heart failure. Decision and Order at 12; 20 C.F.R. §718.204(b)(2)(iii). Additionally, he determined claimant does not suffer from complicated pneumoconiosis. 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.204(b)(1); Decision and Order at 6 n.5, 12.

[5] Dr. Feicht noted claimant has shortness of breath, wheezing and coughing, typically related to exertion. Director's Exhibit 11. He stated the level of exertion required for claimant to be symptomatic "is usually greater than [one] flight of stairs, such as

abnormal pulmonary function study and blood gas study test results, and concluded he was "not able to work at the capacity required by his last year of mining." *Id*. In his supplemental opinion, Dr. Feicht again noted claimant's symptoms are primarily related to exertion, finding claimant "is able to walk [one] flight of stairs, is able to walk up hills for less than 30 yards, is able to do some grass mowing, and does not have difficulties in normal daily activities of life." Director's Exhibit 25. Dr. Feicht then discussed the job requirements of claimant's usual coal mine work, including "lifting 30 to 80 pounds 5 to 7 times a day, lifting rock dust 80 pounds for 20 feet 8 times a day, setting timbers 50 pounds 12 times per day, and shoveling coal 25 pounds 3 times per day" and concluded claimant's respiratory impairment would prevent him from performing these duties. *Id.* Dr. Feicht noted claimant's disability was "supported by his evidence of COPD, which is moderate." *Id*.

Contrary to employer's contention, the administrative law judge permissibly found Dr. Feicht persuasively compared the specific physical requirements of claimant's usual coal mine employment with his respiratory symptoms to find he is totally disabled.[6] *See Peabody Coal Co. v. Groves*, 277 F.3d 829, 836 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000); *see also Manning Coal Corp. v. Wright*, 257 Fed.Appx. 836, 840-41 (6th Cir. 2007); Decision and Order at 14. He also rationally concluded Dr. Feicht's opinion is sufficiently reasoned because it is based on "his examination of the Claimant, the Claimant's employment history, and the Claimant's objective test results." *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); Decision and Order at 14. We therefore affirm the administrative law judge's determination that Dr. Feicht's opinion establishes total disability at 20 C.F.R. §718.204(b)(2)(iv).[7] *See Hunt*, 124 F.3d at 744; Decision and Order at 15. Employer has not otherwise challenged the administrative law judge's total disability findings. Consequently, we further affirm the administrative law judge's overall determination that claimant is totally disabled and therefore invoked the Section 411(c)(4)

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walking up hills or doing some heavy lifting or brisk walking such as mowing the grass." *Id*.

[6] We affirm, as unchallenged, the administrative law judge's finding claimant's job as a longwall helper required "heavy manual labor." Decision and Order at 11-12; *see Skrack*, 6 BLR at 1-711.

[7] The administrative law judge found there are no contrary medical opinions because Drs. Grodner and Lenkey did not address total disability. Decision and Order at 15; Claimant's Exhibit 1; Employer's Exhibit 1. As employer has not challenged this finding, it is affirmed. *See Skrack*, 6 BLR at 1-711.

presumption. 30 U.S.C. §921(c)(4); *see Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198. We also affirm, as unchallenged, the administrative law judge's finding employer did not rebut the Section 411(c)(4) presumption. *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.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge