U.S. Department of Labor

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

BRB No. 20-0152 BLA

BRENT FRANCIS LITTLE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
EAGLE COAL COMPANY	)	
	)	
and	)	
	)	
KENTUCKY EMPLOYERS MUTUAL INSURANCE	)	DATE ISSUED: 04/19/2021
	)	
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 Steven D. Bell, Administrative Law Judge, United States Department of Labor.

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

Denise Hall Scarberry and Paul Jones (Jones & Walters, PLLC), Pikeville, Kentucky, for Employer/Carrier.

Before: BUZZARD, GRESH and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer/Carrier (Employer) appeals Administrative Law Judge Steven D. Bell's Decision and Order Awarding Benefits (2018-BLA-05801) rendered on a claim filed pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on January 26, 2017.

The administrative law judge accepted Employer's stipulation that Claimant has 37 years of qualifying coal mine employment. *See* Decision and Order at 14. He further found Claimant established he is totally disabled based on the medical opinions of Dr. Nader and Dr. Raj and therefore entitled to the Section 411(c)(4) presumption.[1] *See id.* at 18. He found Employer failed to rebut the presumption and awarded benefits commencing in January 2017, the month Claimant filed his claim. *See id.* at 22-23.

On appeal, Employer challenges the administrative law judge's finding that Claimant established total disability and, in the alternative, the onset date for benefits. Claimant filed a response brief in support of the award. The Director, Office of Workers' Compensation Programs, did not file a response brief.

The Benefits Review 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.[2] 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).

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

A miner is totally disabled if he has a pulmonary or respiratory impairment which, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 30 U.S.C. §921(c)(3); 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,[3]

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[2] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant's last coal mine employment occurred in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Transcript at 13.

[3] The administrative law judge found Claimant did not establish complicated pneumoconiosis because the only two x-rays interpreted as positive for complicated

or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must weigh all relevant evidence supporting total disability against all contrary probative 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); 20 C.F.R. §718.204(b)(2).

The administrative law judge found the pulmonary function tests do not establish total disability because none of them produced qualifying values.[4] *See* Decision and Order at 16. He found the blood gas studies inconclusive as to total disability because the results are inconsistent.[5] *See id.* at 16-17. He concluded, however, that the preponderance of the medical opinions establishes Claimant is totally disabled.

Employer first contends the administrative law judge erred in finding the blood gas studies inconclusive as the record contains more non-qualifying studies than qualifying ones. We disagree. The administrative law judge acted within his discretion in determining that the mere number of qualifying as opposed to non-qualifying blood gas study results is not dispositive of Claimant's disability status. *See Prater v. Hite Preparation Co.*, 829 F.3d 1363 (6th Cir. 1987). We also reject Employer's contention that the administrative law judge erred in referring to the results of the October 2018 blood

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pneumoconiosis were also interpreted as negative for complicated pneumoconiosis by one or more dually-qualified physicians. *See* Decision and Order at 15-16. He also noted there is no evidence of cor pulmonale with right-sided heart failure. *See id.* at 11 n.58. We affirm these findings as they are unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[4] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[5] The record contains five blood gas studies, two of which are non-qualifying at rest and after exercise (Director's Exhibit 24 at 8-9, 17-19, Employer's Exhibit 1); one was non-qualifying at rest but did not include an exercise test (Claimant's Exhibit 2); one was qualifying at rest but did not include an exercise test (Claimant's Exhibit 1); and one was non-qualifying at rest but qualifying after exercise (Director's Exhibit 12). *See* Decision and Order at 16. The administrative law judge found valid the March 21, 2017 blood gas study which produced qualifying values after exercise but noted the most recent blood gas study was non-qualifying. *See id.* He also noted the two non-qualifying blood gas studies were taken nearly a year before the qualifying resting blood gas study, but seven months after the qualifying exercise blood gas study. *See id.* at 16-17.

gas study as "borderline" or "nearly qualifying" because it produced values which are close to qualifying. The administrative law judge permissibly described the study this way, while accurately concluding its results are non-qualifying and thus do not support Claimant's burden to establish total disability at 20 C.F.R. §718.204(b)(2)(ii). *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703 (6th Cir. 2002) (administrative law judge has broad discretion to draw his own conclusions and inferences from the evidence).

Employer next contends the administrative law judge erred in finding total disability established by the medical opinion evidence. Dr. Nader opined Claimant is totally disabled based on the qualifying blood gas study he administered, which showed significant hypoxemia that would prevent Claimant from performing his previous coal mine employment, as well as the non-qualifying pulmonary function study he administered showing air trapping and hyperinflation.[6] *See* Director's Exhibit 12 at 4. Dr. Raj also concluded Claimant is totally disabled based on Dr. Nader's qualifying blood gas study showing hypoxemia, the non-qualifying but abnormal blood gas study he administered also showing hypoxemia, and the non-qualifying pulmonary function test he administered showing a mild to moderate obstruction.[7] *See* Claimant's Exhibit 2 at 4-5. In contrast, Dr. Dahhan concluded Claimant is not totally disabled based on his non-qualifying pulmonary function tests and blood gas studies. *See* Director's Exhibit 24 at 4-5; Employer's Exhibit 3 at 3-4. He noted Claimant's inconsistent blood gas study results but found they do not show "abnormalities due to coal dust exposure or coal workers' pneumoconiosis that produce a permanent steady impairment that does not wax or wane or show such a significant variation in severity." *See* Employer's Exhibit 8 at 3-5. Dr. Jarboe found Claimant has reduced diffusing capacity and impairment of oxygen transfer but concluded Claimant is not totally disabled based on his non-qualifying pulmonary function tests and blood gas studies. *See* Employer's Exhibit 1 at 3-5.

The administrative law judge credited the opinions of Dr. Nader and Dr. Raj because he found them well-documented and well-reasoned. *See* Decision and Order at 17-18. He found Dr. Dahhan did not make a clear determination on total disability after reviewing Claimant's qualifying September 18, 2018 blood gas study results, but instead couched his disability opinion in terms of whether it was due to coal dust exposure or pneumoconiosis.

[6] Dr. Nader noted Claimant's usual coal mine employment involved heavy underground work which included lifting 50-75 pounds on a regular basis. *See* Director's Exhibit 12; Claimant's Exhibit 1.

[7] Dr. Raj described Claimant's usual coal mine employment entailed working as an electrician in an underground mine, with heavy coal and rock dust exposure, and requiring lifting 50-75 pounds regularly. *See* Claimant's Exhibit 2 at 2-5.

See id. at 18. He gave less weight to Dr. Jarboe's opinion because he did not consider Claimant's most recent blood gas studies. *See id.* The administrative law judge thus concluded Claimant established total disability by a preponderance of the medical opinion evidence based on Dr. Nader's and Dr. Raj's opinions. *See id.*

We reject Employer's contentions concerning the medical opinion evidence. Non-qualifying objective test results do not preclude a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000) (a physician is "entitled to base a reasonable [total disability] opinion on non-qualifying test results); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). Both Dr. Nader and Dr. Raj were familiar with the exertional requirements of Claimant's usual coal mine employment and their understanding of Claimant's job requirements is not contradicted by any other evidence in the record. The administrative law judge rationally found both opinions well-reasoned and documented, and supported by Claimant's qualifying blood gas tests and his underlying symptoms.[8] He permissibly found Dr. Dahhan's opinion focused on causation but was inconclusive as to whether Claimant's impairment was totally disabling. *See* 20 C.F.R. §718.204(b), (c) (the existence of a totally disabling impairment and the cause of that impairment are separate inquiries). He also acted within his discretion in discounting Dr. Jarboe's opinion because Dr. Jarboe did not consider the results of Claimant's two most recent blood gas studies. *See Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986) (administrative law judge may assign less weight to a physician's opinion which reflects an incomplete picture of a miner's health). The determination of whether a physician's opinion is sufficiently reasoned and documented is a credibility matter within the administrative law judge's province. *See Director, OWCP v. Rowe*, 710 F.2d 251 (6th Cir. 1983). Employer's contention that the administrative law judge should have credited Drs. Dahhan and Jarboe over Drs. Nader and Raj asks the Board to reweigh the evidence, which we are not permitted to do. *Peabody Coal Co. v. Groves*, 277 F.3d 829 (6th Cir. 2002).

Employer also contends the administrative law judge erred by not weighing the non-qualifying objective evidence against the qualifying blood gas study evidence and the medical opinion evidence of total disability. We disagree. As noted, the administrative law judge weighed the non-qualifying pulmonary function studies and found they do not establish total disability. He then weighed the non-qualifying blood gas studies against the

[8] We reject Employer's assertion that the administrative law judge erred by relying on Dr. Green's opinion, as it misstates the administrative law judge's finding. The administrative law judge specifically noted Dr. Green's opinion was not entered into the record and thus he properly did not rely on it in reaching his conclusions. *See* Decision and Order at 17 n.112.

qualifying blood gas studies and found them inconsistent and inconclusive on the issue of total disability. Finally, he weighed the medical opinions and rationally determined that Drs. Nader and Raj credibly explained why Claimant's qualifying and non-qualifying objective testing and symptoms render him totally disabled, while Dr. Dahhan was inconclusive and Dr. Jarboe failed to consider the most recent objective testing. Thus, the administrative law judge considered all of the relevant evidence in determining Claimant is totally disabled and properly considered the objective tests and other documentation underlying each medical opinion in determining the weight to be afforded the doctors' conclusions. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987).

We therefore affirm the administrative law judge's finding that Claimant established he is totally disabled by a respiratory or pulmonary impairment and is entitled to the Section 411(c)(4) presumption as it supported by substantial evidence of record. 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232. As Employer does not challenge the administrative law judge's finding that it did not rebut the presumption, we affirm the award of benefits.

Onset Date of Benefits

Employer also challenges the administrative law judge's finding regarding the onset date of Claimant's benefits. He awarded benefits to commence in January 2017, the month Claimant filed his claim. *See* Decision and Order at 23-24.

If a miner is entitled to benefits, the award commences in the month of onset of his total disability due to pneumoconiosis. 20 C.F.R. §725.503(b); *Lykins v. Director, OWCP*, 12 BLR 1-181 (1989). Consequently, an administrative law judge is required to determine when the evidence establishes the miner became totally disabled due to pneumoconiosis. If the medical evidence does not establish the onset date, then the miner is entitled to benefits as of the date he filed his claim, unless there is credited evidence that establishes the miner was not totally disabled at some point subsequent to the filing date. *Id.* at 1-182.

Employer's objection to the onset date finding is without merit. The administrative law judge found the evidence insufficient to establish when the miner first became totally disabled, noting Dr. Nader's credited opinion establishes Claimant was totally disabled at the time of his examination in March 2017. *See* Decision and Order at 24. He stated there is no credited evidence that Claimant was not disabled at any time after this date. The administrative law judge therefore set an onset date of January 2017, the month in which Claimant filed his claim. *See id.* We affirm the administrative law judge's determination that January 2017 is the appropriate onset date as it is supported by substantial evidence and in accordance with law. 20 C.F.R. §725.503; *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47 (1990) ("Medical evidence of total disability does not establish the onset date

of disability; rather, it is merely indicative that claimant became totally disabled at some time prior to that date.").

Accordingly, we affirm the administrative law judge's Decision and Order Awarding Benefits.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge