U.S. Department of Labor

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

BRB No. 21-0302 BLA

DONALD L. ASHBY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK KENTUCKY MINING	)	
	)	DATE ISSUED: 4/27/2022
Employer-Petitioner	)	
	)	
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 Richard M. Clark, Administrative Law Judge, United States Department of Labor.

Catherine A. Karczmarczyk (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

Steven Winkelman (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Christian P. Barber, Acting Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor).

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Richard M. Clark's Decision and Order Awarding Benefits (2018-BLA-06254) rendered on a miner's claim filed on

March 7, 2016, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found, consistent with Employer's stipulation at the hearing, that Claimant established at least fifteen years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). 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) (2018). He further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer challenges the constitutionality of the Section 411(c)(4) presumption and requests the Board hold this case in abeyance pending resolution of a legal challenge to the Affordable Care Act (ACA). It further argues the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption. Claimant has not filed a response. The Director, Office of Workers' Compensation Programs, responds, urging the Benefits Review Board to reject Employer's constitutional challenges to the Section 411(c)(4) presumption.[2]

The 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.[3] 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).

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

[1] Section 411(c)(4) provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he establishes 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); 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established at least fifteen years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment, and therefore invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 2, 4; Hearing Transcript at 5-6, 29-30; Employer's Brief at 5-6.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 3 n.5; Director's Exhibit 3; Hearing Transcript at 16.

Citing *Texas v. United States*, 340 F. Supp. 3d 579, *decision stayed pending appeal*, 352 F. Supp. 3d 665, 690 (N.D. Tex. 2018), Employer contends the ACA, which reinstated the Section 411(c)(4) presumption, Pub. L. No. 111-148, §1556 (2010), is unconstitutional. Employer's Brief at 4-5. Employer's arguments with respect to the constitutionality of the ACA and the severability of its amendments to the Black Lung Benefits Act are now moot. *California v. Texas*, 593 U.S. , 141 S. Ct. 2104, 2120 (2021).

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[4] or "no part of [his] 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 ALJ found Employer failed to rebut the presumption by either method. Decision and Order at 13-14.

Legal Pneumoconiosis

To prove Claimant does not have legal pneumoconiosis, Employer must establish he does not have 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), 718.305(d)(1)(i)(A).

Employer relies on Dr. Sargent's opinion to disprove legal pneumoconiosis. The ALJ concluded it was not adequately reasoned to satisfy Employer's burden of proof. Contrary to Employer's contentions, we see no error in the ALJ's determination.

Dr. Sargent examined Claimant and diagnosed a mild obstructive impairment and severely reduced diffusion capacity based on the pulmonary function studies he obtained. He also diagnosed hypoxemia based on the blood gas studies. Director's Exhibit 24. Dr. Sargent indicated Claimant has pulmonary hypertension unrelated to coal mine dust exposure and stated it would not be reasonable to ascribe Claimant's symptoms to

[4] "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). "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).

pneumoconiosis without further workup for pulmonary hypertension. *Id*. Dr. Sargent explained that "[p]rimary pulmonary hypertension is a disease of the blood vessels of the lung associated with destruction of pulmonary vasculature." *Id*. at 6. He stated it is measured by decreased diffusion capacity" along with exercise-induced arterial oxygen desaturation and no "significant pulmonary function abnormalities," as Claimant's testing demonstrated. *Id*. The ALJ found Dr. Sargent's opinion inadequately reasoned and documented, and thus concluded Employer did not rebut the presumption. Decision and Order at 7-8, 12-13.

Employer argues the ALJ erred in rejecting Dr. Sargent's opinion because, contrary to the ALJ's finding, it asserts it is well-reasoned and documented. Employer's Brief at 7-9. We disagree.

The ALJ correctly noted Dr. Sargent based his opinion on the twenty-year lapse of time between the end of Claimant's coal mine employment[5] and the manifestation of his totally disabling pulmonary impairment, and he assumed Claimant's pulmonary hypertension, "which was present 10 years ago," progressively worsened. Decision and Order at 12-13; Director's Exhibit 24 at 6. He also noted accurately that Claimant's medical records chronicle diagnoses of "mild to moderate" pulmonary hypertension in 2005 and "mild" pulmonary hypertension in 2007, while his post-hospitalization treatment records from 2015 document "mild" pulmonary hypertension underlying a primary diagnosis of coal workers' pneumoconiosis. Decision and Order at 7-8, 12-13; Director's Exhibit 24 at 227, 230, 238, 244. Thus, the ALJ permissibly determined Claimant's medical records do not support Dr. Sargent's reliance on a progressive worsening of Claimant's pulmonary hypertension to support his rationale. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 12-13; Director's Exhibit 24 at 6, 227, 230, 238, 244.

Additionally, the ALJ observed that "there are multiple findings of lung fibrosis in Claimant's [treatment] records, and Drs. Seaman and DePonte both found moderate emphysema on Claimant's [computed tomography] scans, yet Dr. Sargent provided no explanation for why Claimant's pulmonary fibrosis and emphysema are either not related to his occupational exposures to coal mine dust or not significant contributors to his disabling pulmonary impairment."[6] Because the ALJ correctly noted these conditions can

[5] The ALJ found Claimant last worked in coal mine employment in 1992. Decision and Order at 3; Hearing Transcript at 20, 28.

[6] Dr. Sargent did not review the readings of the 2019 and 2020 computed tomography (CT) scans by Drs. DePonte and Seaman, which were conducted after his

constitute legal pneumoconiosis if they were significantly related to coal dust exposure, he found Dr. Sargent's opinion "problematic" and insufficient to disprove Claimant has legal pneumoconiosis. Decision and Order at 12-13; Director's Exhibits 24 at 36, 129, 133, 139-40, 153, 155, 189, 205-06, 216, 222, 224, 235, 241, 246, 377; 53 at 25, 35, 40, 61, 70-71. Employer raises no specific issue with the ALJ's analysis and findings in this regard. Consequently, we affirm them.[7] *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993), and the Board may not substitute its own inferences on appeal. *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764 (4th Cir. 1999). Employer's arguments are a request to reweigh the evidence, which the Board cannot do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). We therefore affirm the ALJ's conclusion that Employer failed to establish Claimant does not have legal pneumoconiosis, thereby precluding a rebuttal finding that he does not have pneumoconiosis.[8] *See* 20 C.F.R. §718.305(d)(1)(i); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013).

Disability Causation

To disprove disability causation, Employer must establish "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis." 20 C.F.R.

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report. However, he reviewed medical records, including other CT scans, reflecting diagnoses of both pulmonary fibrosis and emphysema but did not address these diseases at all. He failed to refute that Claimant has these conditions and did not address their etiology, as the ALJ correctly observed. Director's Exhibit 24 at 36, 129, 133, 139-40, 153, 155, 189, 205-06, 216, 222, 224, 235, 241, 246, 377; Claimant's Exhibit 9; Employer's Exhibits 4-6, 8. Employer also does not dispute on appeal that Claimant has been diagnosed with these conditions. Employer's Brief at 12.

[7] Because Claimant has invoked the Section 411(c)(4) presumption, Employer must disprove legal pneumoconiosis by establishing that Claimant's diagnosed conditions of pulmonary fibrosis and emphysema are not "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 554-56 (4th Cir. 2013).

[8] Therefore, we need not address Employer's arguments challenging the ALJ's finding that it failed to rebut the presence of clinical pneumoconiosis. Decision and Order at 12; Employer's Brief at 5-7, 9-10.

§718.305(d)(1)(ii). The ALJ permissibly found Dr. Sargent's opinion on the cause of Claimant's respiratory disability unpersuasive because he did not diagnose legal pneumoconiosis, contrary to the ALJ's finding that Employer failed to disprove the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-505 (4th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 13-14; Director's Exhibit 24 at 6. Hence, Employer's reiterated argument that the ALJ erred in his rebuttal finding on legal pneumoconiosis fails to demonstrate error in the ALJ's disability causation finding. Employer's Brief at 8-10. We therefore affirm the ALJ's conclusion that Employer did not rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(ii).

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge