U.S. Department of Labor

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

BRB No. 21-0605 BLA

CORNEL D. SUTHERLAND	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MAXXIM SHARED SERVICES, LLC	)	
	)	
and	)	
	)	
CHARTIS CASUALTY COMPANY	)	DATE ISSUED: 04/20/2023
	)	
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 Jonathan C. Calianos, District Chief Administrative Law Judge, United States Department of Labor.

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

Kendra R. Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal District Chief Administrative Law Judge (ALJ) Jonathan C. Calianos's Decision and Order Awarding Benefits (2020-BLA-05007) rendered on a claim filed October 11, 2017,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with at least twenty-five years of qualifying coal mine employment and found he has a totally disabling pulmonary or respiratory impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018). The ALJ further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thus erred in finding he invoked the Section 411(c)(4) presumption.[3] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Benefits Review 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.[4] 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).

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[1] Claimant filed and withdrew a prior claim. Director's Exhibit 1. A withdrawn claim is considered not to have been filed. *See* 20 C.F.R. §725.306(b).

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability is due to pneumoconiosis if he had 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.

[3] We affirm as unchallenged on appeal the ALJ's findings that Claimant established at least twenty-five years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7.

[4] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit as Claimant performed his last coal mine employment in Virginia and West

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 upon 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 ALJ must weigh all relevant supporting evidence against all relevant 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). The ALJ found Claimant established total disability based on the medical opinions and when weighing the evidence together as a whole.[5] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 19.

Medical Opinions

The ALJ considered the medical opinions of Drs. Green, Sargent, and McSharry. Decision and Order at 12-20. While Dr. Green opined Claimant is totally disabled from performing his usual coal mine employment, Drs. Sargent and McSharry opined he is not. Director's Exhibits 17, 31, 34; Claimant's Exhibit 2; Employer's Exhibits 7-9.

First, the ALJ considered the exertional requirements of Claimant's coal mine employment as a field engineer, which he found required a "fairly physical level of exertion," including lifting and carrying boxes that weighed as much as 100 pounds, as well as carrying containers that weighed thirty to forty pounds for half a mile. Decision and Order at 5, 12. We affirm this finding as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

He then determined Dr. Green's opinion was the best-reasoned and supported by the medical evidence, Claimant's reported symptoms, and his knowledge of Claimant's work history. Decision and Order at 20. He accorded Dr. Sargent's opinion little weight as the doctor did not demonstrate an understanding of the exertional requirements of Claimant's usual coal mine employment. *Id.* at 19. The ALJ also found Dr. McSharry's

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Virginia. *See Shupe v. Director*, *OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 42-44.

[5] The ALJ found Claimant failed to establish total disability based on the pulmonary function studies or arterial blood gas studies, and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 10-11.

opinion not well-reasoned for, while the doctor acknowledged an impairment in gas exchange during exercise, he did not adequately explain how this impairment would not be disabling based on the exertional requirements of Claimant's usual coal mine employment. *Id.* at 19-20. Weighing the opinions together, the ALJ found Dr. Green's opinion outweighed the conflicting opinions and supported a finding of total disability. *Id.* at 20.

Employer argues the ALJ erred in weighing the medical opinion evidence to find total disability. Employer's Brief at 5. We disagree.

First, Employer argues the ALJ's findings crediting Dr. Green's opinion fail to comply with the Administrative Procedure Act (APA)[6] because he did not adequately explain how Dr. Green's opinion could be well-reasoned when the physician based his opinion solely on Claimant's symptoms and a single qualifying arterial blood gas study, without knowledge of the other, more recent non-qualifying results. Employer's Brief at 7-8. Contrary to Employer's contention, Dr. Green examined Claimant twice, as part of the Department of Labor sponsored evaluation of Claimant on January 9, 2018, and again as part of an independent evaluation on March 20, 2020. Director's Exhibit 17; Claimant's Exhibit 2. He also considered Dr. Sargent's September 28, 2018 examination and the August 23, 2018 blood gas testing Dr. Raj, Claimant's treating physician, obtained.[7] Director's Exhibit 34. However, even if Dr. Green had not considered additional evidence, a medical opinion can be reasoned and documented based on the expert's examination of the miner and review of the objective testing obtained in the examination. *Thorn v. Itmann Coal Co.*, 3 F.3d 713, 719 (4th Cir. 1993); *Church v. E. Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-296 (1984).

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[6] The Administrative Procedure Act requires that every adjudicatory decision include a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[7] The only objective testing Dr. Green did not consider was from Dr. McSharry's September 11, 2020 examination. Claimant's Exhibit 2; Employer's Exhibit 7. Dr. McSharry, consistent with Dr. Green's explanations, indicated there was "exertional desaturation seen with exercise." Employer's Exhibit 7 at 3.

Moreover, as the ALJ correctly stated, a physician may offer a reasoned medical opinion diagnosing total disability notwithstanding non-qualifying[8] objective studies. 20 C.F.R. §718.204(b)(2)(iv); *see Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 587 (6th Cir. 2000). As Employer acknowledges, even a mild impairment can be disabling, depending on the exertional requirements of the miner's usual coal mining work.[9] *Cornett*, 227 F.3d at 587; Employer's Brief at 7. As the ALJ found, and Employer does not contest, Dr. Green understood the exertional requirements of Claimant's usual coal mine employment. Decision and Order at 20; Director's Exhibits 17, 34; Claimant's Exhibit 2. While acknowledging the pulmonary function studies and most of the arterial blood gas studies were non-qualifying,[10] Dr. Green explained that Claimant is totally disabled from performing his usual coal mine employment based on blood gas results that have consistently demonstrated significant hypoxemia with exercise. Director's Exhibits 17 at 4-5, 34 at 3; Claimant's Exhibit 2 at 6-7; Decision and Order at 20.

Thus, the ALJ permissibly found Dr. Green's opinion well-reasoned and well-documented because he understood Claimant's symptoms and employment history, knew the exertional demands of his last coal mining job, and found him incapable of performing his usual coal mine employment given the significant and consistent hypoxemia seen in the exercise blood gas studies. *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); Decision and Order at 20. We therefore reject Employer's assertion that the ALJ's credibility determination is inadequately explained and fails to comply with the APA. *See*

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[8] A "qualifying" pulmonary function study or arterial 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).

[9] Dr. Sargent interpreted the blood gas results in his examination as demonstrating mild hypoxemia at rest and moderate hypoxemia with exercise. Director's Exhibit 31 at 24. Dr. McSharry classified Claimant's impairment as "modest." Employer's Exhibit 7 at 3.

[10] Employer argues that Dr. Green's reliance on the earlier, qualifying blood gas sample obtained in Dr. Raj's testing to support his opinion that Claimant is total disabled undermines his opinion, based on Dr. Sargent's explanation that the subsequent sample, presumably at peak exercise, improved to non-disabling levels. Employer's Brief at 10. However, Dr. Green's opinion is not dependent solely on the fact that this blood gas sample is qualifying under the regulations.

Piney Mountain Coal Co. v. Mays, 176 F.3d 753, 762 (4th Cir. 1999); *Scott v. Mason Coal Co.*, 60 F.3d 1138, 1142 (4th Cir. 1995); Decision and Order at 20; Employer's Brief at 8.

Next, Employer argues the ALJ erred in discrediting Drs. Sargent's and McSharry's opinions. Employer's Brief at 8. Specifically, it argues the ALJ failed to adequately explain why Dr. Sargent did not understand Claimant's usual coal mine employment because all the experts described similar exertional requirements. Employer's Brief at 12. It further argues the ALJ mischaracterized Dr. McSharry's opinion and contends the ALJ selectively scrutinized the evidence to find his opinion inadequately explained. We disagree.

Dr. Sargent opined Claimant is not totally disabled from performing his last coal mining job as a "mine engineer and management person," although he acknowledged consistent desaturation in Claimant's blood gases with exercise. Director's Exhibit 31 at 3. Employer generally argues that Dr. Sargent understood Claimant's usual coal mine employment included core drilling, "which involved heavy labor." Employer's Brief at 12. However, as the ALJ found, Dr. Sargent did not address the specific exertional requirements of Claimant's last coal mine employment, including that he was required to consistently lift up to 100 pounds. Decision and Order at 5, 12, 19. Rather, Dr. Sargent indicated Claimant's work did not involve a lot of heavy labor since he was "basically in management." Employer's Exhibit 8 at 18-19. The ALJ therefore permissibly rejected Dr. Sargent's opinion because he did not understand the exertional requirements of Claimant's usual coal mining work. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997) (physician's opinion that a miner's impairment is not totally disabling lacks probative value if the physician does not know the miner's job requirements); *Eagle v. Armco, Inc.*, 943 F.2d 509, 512 (4th Cir. 1991).

Dr. McSharry opined Claimant is not totally disabled because although the arterial blood gas studies show an "abnormal" response to exercise, the results remained non-qualifying under the regulatory standards for disability. Employer's Exhibits 7 at 3, 16; 9 at 15.

The ALJ found that while Dr. McSharry demonstrated an understanding of the exertional requirements of Claimant's usual coal mine employment, the doctor's opinion was inadequate to contradict Dr. Green's opinion. Decision and Order at 19-20. The ALJ permissibly discredited Dr. McSharry's opinion because he emphasized the non-qualifying results but did not adequately explain why Claimant's abnormal response to exercise, which Dr. McSharry explained was a "significant drop in oxygen tension," did not prevent Claimant from meeting the exertional demands of his last coal mining job. Decision and Order at 19-20; *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000)

(it is the province of the ALJ to evaluate the physicians' opinions); *Cornett*, 227 F.3d at 587. Employer's arguments amount to a request to reweigh the evidence, which the Board is not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Thus, we affirm the ALJ's finding that Claimant established total disability based on the medical opinion evidence. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 21.

Because Employer submits no specific arguments regarding the ALJ's weighing of the categories of evidence together, we also affirm his finding that the evidence when weighed together as a whole establishes total disability. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232. Consequently, we also affirm the ALJ's determination that Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018).

Finally, as Employer does not challenge the ALJ's finding that it failed to rebut the Section 411(c)(4) presumption, we affirm it. 20 C.F.R. §718.305; *see Skrack*, 6 BLR at 1-711; Decision and Order at 31.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge