U.S. Department of Labor

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

BRB No. 22-0350 BLA

RONALD LAWSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
UNICORN MINING, INCORPORATED	)	
	)	
and	)	
	)	
BIRMINGHAM FIRE INSURANCE COMPANY/AIG	)	DATE ISSUED: 04/27/2023
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Asher, Kentucky, for Claimant.

Timothy J. Walker and Daniel G. Murdock (Fogle Keller Walker, PLLC), Lexington, Kentucky, for Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Joseph E. Kane's Decision and Order Denying Benefits (2014-BLA-05493) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim filed on May 3, 2013,[1] and is before the Benefits Review Board for a second time.

In the initial Decision and Order Denying Benefits, ALJ John P. Sellers, III, credited Claimant with sixteen years of underground coal mine employment and found the new evidence established the existence of clinical and legal pneumoconiosis. 20 C.F.R. §718.202(a). He therefore found Claimant established a change in an applicable condition of entitlement.[2] 20 C.F.R. §725.309. However, he further found Claimant failed to establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b). Thus he found Claimant failed to invoke the presumption of total disability due to

[1] This is Claimant's second claim for benefits. Director's Exhibit 2. On March 21, 2005, ALJ Joseph E. Kane (the ALJ) denied Claimant's prior claim, filed on May 4, 2001, because he did not establish the existence of pneumoconiosis and total disability. *Id.* at 239.

[2] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant did not establish the existence of pneumoconiosis and total disability in his previous claim, he had to submit evidence establishing at least one of these elements to obtain review of the merits of his current claim. *Id.*; Director's Exhibit 2 at 239.

pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[3] Based on Claimant's failure to establish an essential element of entitlement,[4] he denied benefits.

Pursuant to Claimant's appeal, the Board accepted the concession of the Director, Office of Workers' Compensation Programs (the Director), that the Department of Labor (DOL) failed to provide Claimant with a complete pulmonary evaluation as the Act requires because Dr. Ajjarapu's opinion did not clearly state whether Claimant is totally disabled. *Lawson v. Unicorn Mining, Inc.*, BRB No. 18-0414 BLA, slip op. at 3 (July 12, 2019) (unpub.). Thus, the Board vacated the decision and granted the Director's request for the case to be remanded to the district director for further development of the evidence and reconsideration of the merits of entitlement. *Id.* at 3-4.

The district director obtained a supplemental report from Dr. Ajjarapu clarifying her opinion regarding whether Claimant is totally disabled due to pneumoconiosis. Director's Exhibit 57. The case was then referred back to the Office of Administrative Law Judges on November 12, 2019, and was assigned to ALJ Kane (the ALJ), who thereafter issued the Decision and Order that is the subject of this appeal. Director's Exhibits 58, 59.

The ALJ found Claimant established the existence of clinical pneumoconiosis, and thus a change in an applicable condition of entitlement. 20 C.F.R. §725.309. He further found, however, that Claimant did not establish a totally disabling respiratory or pulmonary impairment or complicated pneumoconiosis, and thus could not invoke the rebuttal presumption at Section 411(c)(4) or the irrebuttable presumption at Section 411(c)(3). 30 U.S.C. §§921(c)(3), 921(c)(4) (2018); 20 C.F.R. §§718.204(b), 718.304. Because Claimant did not establish total disability, an essential element of entitlement, the ALJ denied benefits.

On appeal, Claimant argues the ALJ erred in finding he failed to establish complicated pneumoconiosis and invoke the irrebuttable presumption at Section 411(c)(3). In the alternative, he argues the ALJ erred in finding he failed to establish total disability

[3] 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 or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[4] Because Claimant did not establish complicated pneumoconiosis at 20 C.F.R. §718.304, the ALJ also found he could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3).

and invoke the rebuttable presumption at Section 411(c)(4).[5] Employer responds in support of the denial of benefits. The Director has not filed a response brief.

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.[6] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Invocation of the Section 411(c)(3) Presumption

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more large opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means is a condition that would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. In determining whether Claimant has invoked the irrebuttable presumption, the ALJ must consider all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found the x-ray and medical opinion evidence does not support a finding of complicated pneumoconiosis, and Claimant's treatment records do not aid him in establishing the existence of the disease.[7] 20 C.F.R. §718.304(a), (c); Decision and Order

[5] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established the existence of clinical pneumoconiosis and a change in an applicable condition of entitlement. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §§718.202(a), 725.309; Decision and Order at 4.

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 2 at 193; Hearing Tr. at 16.

[7] We affirm, as unchallenged, the ALJ's finding that Claimant's treatment record evidence does not support a finding of complicated pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order at 8.

at 6-8. Weighing all the evidence together, he found Claimant did not establish complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 8.

Claimant argues the ALJ erred in weighing the x-ray and medical opinion evidence. Claimant's Brief at 2-4.

20 C.F.R. §718.304(a) – X-ray Evidence

The ALJ considered four interpretations of two x-rays dated August 21, 2013, and December 6, 2013; all of the interpreting physicians are dually-qualified B-readers and Board-certified radiologists. Director's Exhibit 2 at 110, 135; Employer's Exhibits 4, 5. Dr. DePonte read the August 21, 2013 x-ray as positive for complicated pneumoconiosis while Drs. Meyer and Adcock read the x-ray as negative. Director's Exhibit 2 at 110, 135; Employer's Exhibit 4. Dr. Adcock also read the December 6, 2013 x-ray as negative for complicated pneumoconiosis. Employer's Exhibit 5. The ALJ found the August 21, 2013 x-ray negative for complicated pneumoconiosis because all of the interpreting physicians are equally qualified and a preponderance of the interpretations is negative. *Id.* He further found the only reading of the December 6, 2013 x-ray is negative for complicated pneumoconiosis and thus the overall weight of the x-ray evidence is negative for complicated pneumoconiosis. *Id*.

Claimant generally argues Dr. DePonte's positive interpretation of the August 21, 2013 x-ray is sufficient to establish he has complicated pneumoconiosis. Claimant's Brief at 3. But Claimant has not identified any specific error in the ALJ's finding that Drs. Meyer's and Adcock's negative readings of the August 21, 2013 x-ray outweighed Dr. DePonte's positive reading of the x-ray. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 109 (1983); 20 C.F.R. §802.211(b); Decision and Order at 6. Thus, we affirm the ALJ's finding that the x-ray evidence does not establish complicated pneumoconiosis. 20 C.F.R. §718.304(a).

20 C.F.R. §718.304(c) – "Other" Medical Evidence

The ALJ next considered whether the medical opinions establish complicated pneumoconiosis. He considered Dr. Ajjarapu's opinion that Claimant has complicated pneumoconiosis and Dr. Rosenberg's opinion that he does not. Decision and Order at 7-8; Director's Exhibits 2 at 158, 57; Employer's Exhibit 8. He found Dr. Ajjarapu's opinion not well-reasoned and Dr. Rosenberg's opinion persuasive. Decision and Order at 7-8. Thus, he found the medical opinion evidence does not establish complicated pneumoconiosis. *Id.* at 8.

Claimant argues the ALJ erred in discrediting Dr. Ajjarapu's opinion. Claimant's Brief at 3-4. Contrary to Claimant's assertion, the ALJ permissibly found Dr. Ajjarapu's opinion that Claimant has complicated pneumoconiosis not credible because it is based on the August 21, 2013 x-ray, which he found negative for the disease. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 7.

As Claimant raises no further argument regarding the weighing of the evidence on complicated pneumoconiosis, we affirm the ALJ's finding that the x-ray and medical opinion evidence does not establish the disease. 20 C.F.R. §718.304.

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

To invoke the Section 411(c)(4) presumption, a claimant must establish "a totally disabling respiratory or pulmonary impairment." 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful 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 ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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).

Claimant asserts the ALJ erred in finding the medical opinions do not establish total disability.[8] Claimant's Brief at 5-6.

The ALJ considered Dr. Ajjarapu's opinion that Claimant is totally disabled and Dr. Rosenberg's opinion that he is not. Decision and Order at 10-11; Director's Exhibits 2 at 158, 57; Employer's Exhibit 8. He found Dr. Ajjarapu's opinion not well-reasoned and that Dr. Rosenberg's opinion does not aid Claimant in establishing total disability.

[8] We affirm, as unchallenged, the ALJ's finding that the pulmonary function studies and blood gas studies do not establish total disability. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.204(b)(2)(i), (ii); Decision and Order at 9-10. In addition, there is no evidence demonstrating he suffers from cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 8 n.21.

Decision and Order at 11. Thus he found the medical opinions do not establish total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 11-12.

Claimant argues the ALJ erred in discrediting Dr. Ajjarapu's opinion. Claimant's Brief at 5-6. We disagree.

As discussed above, in her initial report Dr. Ajjarapu did not clearly state whether Claimant is totally disabled. *Lawson*, BRB No. 18-0414 BLA, slip op. at 3; *see supra* p. 3. In her supplemental report admitted into the record on remand, she opined that "[b]ased on his exam and test results, [Claimant] is totally and completely disabled from complicated pneumoconiosis based on chest [x-ray] findings." Director's Exhibit 57. The ALJ permissibly found Dr. Ajjarapu's opinion not credible because it is based solely on her belief that Claimant has complicated pneumoconiosis, which is contrary to his finding that Claimant did not establish the disease. *See Napier*, 301 F.3d at 713-14; *Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; Decision and Order at 11.

We therefore affirm the ALJ's finding that Claimant did not establish total disability and thus did not invoke the Section 411(c)(4) presumption or establish an essential element of entitlement. *See Shedlock*, 9 BLR at 1-198; 20 C.F.R. §718.204(b)(2).

Accordingly, the ALJ's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge