

U.S. Department of Labor

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



BRB No. 20-0434 BLA

KENNETH E. COLLINS)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
GLEN ALUM OPERATIONS, LLC)	
)	
and)	
)	
THE INSURANCE COMPANY OF)	DATE ISSUED: 08/31/2021
PENNSYLVANIA)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of Decision and Order Denying Benefits of Sean M. Ramaley,
Administrative Law Judge, United States Department of Labor.

Dennis James Keenan (Hinkle & Keenan P.S.C.) South Williamson,
Kentucky, for Claimant.

Sarah Y. M. Himmel and Joseph N. Stepp (Two Rivers Law Group, P.C.)
Christiansburg, Virginia, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge Sean M. Ramaley's Decision and Order Denying Benefits (2018-BLA-05663) rendered on a claim filed on February 21, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The administrative law judge credited Claimant with 7.72 years of coal mine employment¹ and found he established the existence of legal pneumoconiosis² and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §§718.202; 718.204(b)(2). However, the administrative law judge also found Claimant failed to establish total disability due to pneumoconiosis and therefore denied benefits. 20 C.F.R. §718.204(c).

On appeal, Claimant argues the administrative law judge erred in weighing the medical opinions regarding whether his total disability is due to pneumoconiosis. Employer filed a response brief. The Director, Office of Workers' Compensation Programs, has not participated in the appeal.

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

Without the benefit of the statutory presumptions, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R.

¹ Because Claimant established fewer than fifteen years of coal mine employment, the administrative law judge found he was not eligible for the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

² 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).

³ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 4; Director's Exhibit 3.

§§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

Claimant received a double lung transplant on October 9, 2015, as treatment for chronic obstructive pulmonary disease (COPD) and emphysema. Decision and Order at 6; Director's Exhibit 21 at 40. The administrative law judge found Claimant established clinical pneumoconiosis based on the biopsy evidence of Claimant's explanted lungs and total disability. Decision and Order at 17, 20. He further noted the biopsy evidence showed severe emphysema and COPD, and found a preponderance of the medical opinions by Drs. Ammisetty, Johnson, and McSharry established Claimant has legal pneumoconiosis. *Id.* at 20. In finding Claimant did not establish disability causation, however, he credited Dr. Sporn's opinion that Claimant's respiratory disability is due solely to smoking. *Id.* at 23.

Claimant argues the administrative law judge erred in finding he did not establish that his respiratory disability is due to legal pneumoconiosis. To establish disability causation, Claimant must prove pneumoconiosis was a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause of a miner's totally disabling impairment if it has "a material adverse effect on the miner's respiratory or pulmonary condition" or "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii).

The administrative law judge considered three medical opinions.⁴ Dr. Johnson diagnosed legal pneumoconiosis and concluded Claimant's "coal dust exposure led to his severe respiratory failure and the need for lung transplantation."⁵ Decision and Order at

⁴ The administrative law judge accurately observed Dr. Ammisetty, who evaluated Claimant on behalf of the Department of Labor after Claimant's lung transplant, opined Claimant has a non-disabling pulmonary impairment. Decision and Order at 24; Director's Exhibit 9 at 7. Because Dr. Ammisetty opined Claimant is not totally disabled, the administrative law judge found his opinion not probative as to disability causation. Decision and Order at 25.

⁵ Dr. Johnson treated Claimant after his lung transplant and prepared a report to "address the cause of the respiratory failure that required the double lung transplantation." Claimant's Exhibit 4 at 1. He stated that "[b]ased on [Claimant's] explant pathology findings, we know he had enough coal dust exposure to cause coal workers' pneumoconiosis, and I suspect that his emphysema was caused or worsened by his coal

25. Dr. McSharry diagnosed legal pneumoconiosis but attributed Claimant's disabling pulmonary impairment solely to smoking.⁶ *Id.* at 24. Finally, Dr. Sporn did not diagnose legal pneumoconiosis and further opined Claimant's clinical pneumoconiosis did not cause his disabling smoking-related emphysema.⁷ *Id.* at 24-25. The administrative law judge concluded that Dr. Sporn's opinion was entitled to controlling weight "because he is the most qualified, his opinion is well-documented and well-reasoned, and he observed the biopsy." *Id.* at 25.

We agree with Claimant that the administrative law judge failed to adequately explain why he credited Dr. Sporn's opinion that Claimant's totally disabling COPD and emphysema were not caused by pneumoconiosis. Dr. Sporn did not diagnose legal pneumoconiosis, contrary to the administrative law judge's finding that Claimant

dust exposure as well." Claimant's Exhibit 4 at 2. He further stated, "[i]n my medical opinion, coal dust exposure led to [Claimant's] severe respiratory failure and the need for lung transplantation." *Id.*

⁶ Dr. McSharry prepared a report at Employer's request based on his review of the record. He stated Claimant had "severe emphysematous change that resulted in disability and ultimately lung transplantation." Employer's Exhibit 3 at 3. He opined Claimant's pulmonary impairment "was likely a direct result of his long-time smoking history," and clinical or legal coal workers' pneumoconiosis did not cause or worsen it. *Id.* Dr. McSharry opined Claimant was not disabled after his lung transplant but, if he were, "the cause for the disability could not in any way be attributed to his history of coal dust exposure." *Id.*

⁷ Dr. Sporn prepared a report based on his review of the biopsy slides from Claimant's explanted lungs. Employer's Exhibit 4 at 1. He found simple clinical coal workers' pneumoconiosis but stated the "dominant" finding in Claimant's explanted lungs is "severe and bullous emphysema, accompanied by chronic and respiratory bronchiolitis." *Id.* at 1. He opined Claimant's emphysema was due to cigarette smoking because it "is by far the most common cause of centrilobular emphysema which is not at all a typical form of lung injury following inhalation of coal dust." *Id.* He opined that "any contribution to [Claimant]'s disability resultant from the mild [coal workers' pneumoconiosis] demonstrated in his native lungs was trivial and de minimis. Similarly, any disability suffered by [Claimant] following his lung transplant would not be causally related to simple [coal workers' pneumoconiosis]." *Id.*

established the existence of the disease.⁸ Employer’s Exhibit 4. The Fourth Circuit, within whose jurisdiction this case arises, has held that “where a physician erroneously fails to diagnose pneumoconiosis,” his opinion on causation “may not be credited at all” absent “specific and persuasive reasons” for concluding his view on causation is independent of his mistaken belief that the miner did not have the disease. *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995); *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Scott v. Mason Coal Co.*, 289 F.3d 263, 269-70 (4th Cir. 2002).⁹ Because the administrative law judge did not provide specific and persuasive reasons for concluding that Dr. Sporn’s opinion on disability causation is independent of his view that Claimant does not have legal pneumoconiosis, we vacate his reliance on it. *See Toler*, 43 F.3d at 116. Thus, we vacate the administrative law judge’s determination that Claimant did not establish disability causation at 20 C.F.R. §718.204(c). Decision and Order at 25.

On remand, the administrative law judge must reconsider whether Claimant established that he is totally disabled due to legal pneumoconiosis. 20 C.F.R. §718.204(c). He must address Claimant’s contention that Dr. Johnson’s opinion is entitled to additional weight because he treated Claimant. 20 C.F.R. §718.104(d).¹⁰ The administrative law judge must further determine the credibility of the conflicting medical opinions based on the physician’s rationales and the evidence they relied on, and must explain his findings

⁸ The administrative law judge also accurately observed, “Dr. Sporn did not opine on total disability.” Decision and Order at 23; *see* Employer’s Exhibit 4 at 1.

⁹ We reject Employer’s contention that because Dr. Sporn diagnosed clinical pneumoconiosis, his opinion satisfies the standard set forth in *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995). Legal pneumoconiosis encompasses more diseases than just clinical pneumoconiosis. 20 C.F.R. §718.201(a)(2). Because the administrative law judge found Claimant has legal pneumoconiosis, Dr. Sporn’s opinion that Claimant does not have legal pneumoconiosis undermines the credibility of his opinion on disability causation. Employer does not allege that Dr. Sporn’s disability causation opinion is independent of his belief that Claimant does not have legal pneumoconiosis.

¹⁰ An administrative law judge may give controlling weight to a treating physician’s opinion based on the nature and duration of the physician’s relationship with the miner and the frequency and extent of the treatment. 20 C.F.R. §718.104(d)(1)-(4). The weight given to a treating physician’s opinion, however, “shall also be based on the credibility of the physician’s opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole.” 20 C.F.R. §718.104(d)(5); *see Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

and credibility determinations in accordance with the Administrative Procedure Act.¹¹ 5 U.S.C. §557(c)(3)(A); *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 536-37 (4th Cir. 1998); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

¹¹ The Administrative Procedure Act provides that every adjudicatory decision must include “findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented. . . .” 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2).