



BRB No. 20-0475 BLA

TED L. BOYD)	
)	
Claimant-Respondent)	
)	
v.)	
)	
BLACK LICK TRUCKING,)	
INCORPORATED)	
)	
and)	
)	
KENTUCKY EMPLOYERS MUTUAL)	DATE ISSUED: 08/27/2021
INSURANCE)	
)	
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 Theodore W. Annos, Administrative Law Judge, United States Department of Labor.

William A. Lyons (Lewis and Lewis Law Offices), Hazard, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge Theodore W. Annos's Decision and Order Awarding Benefits (2017-BLA-05645) rendered on a claim filed on July 18, 2014, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The administrative law judge credited Claimant with 14.93 years of coal mine employment, and thus found he could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4)(2018).¹ Considering entitlement under 20 C.F.R. Part 718, he found Claimant established legal pneumoconiosis and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §§718.202(a), 718.204(b)(2). He further found Claimant totally disabled due to the pneumoconiosis. 20 C.F.R. §718.204(c). Thus he awarded benefits.

On appeal, Employer argues the administrative law judge erred in finding legal pneumoconiosis.² Neither Claimant nor the Director, Office of Workers' Compensation Programs, has filed 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.³ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (pneumoconiosis 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.

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 We affirm, as unchallenged on appeal, the administrative law judge's findings that Claimant established 14.93 years of coal mine employment and total disability. 20 C.F.R. §718.204(b); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 9, 20-22.

³ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 33.

§901; 20 C.F.R. §§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).

To establish legal pneumoconiosis, Claimant must prove he has 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(b). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held a miner may establish his lung impairment is significantly related to coal mine dust exposure “by showing that his disease was caused ‘in part’ by coal mine employment.” *Arch on the Green v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014).

The administrative law judge weighed the medical opinions of Drs. Ajjarapu, Fino, and Dahhan. Dr. Ajjarapu diagnosed legal pneumoconiosis in the form of chronic bronchitis caused by coal mine dust exposure and cigarette smoking, along with a disabling respiratory impairment caused by coal mine dust exposure, cigarette smoking, and obesity. Director’s Exhibits 9, 13, 20. Dr. Fino agreed Claimant has a disabling respiratory impairment, but opined it is caused by Claimant’s liver cirrhosis that resulted in pleural effusions in the lungs with an associated restrictive defect. Director’s Exhibit 18; Employer’s Exhibit 9. He opined coal mine dust exposure did not cause or contribute to the impairment. *Id.* Dr. Dahhan opined Claimant has a disabling restrictive impairment due to a combination of a previous lung surgery, morbid obesity worsened by sleep apnea, and congestive heart failure. Employer’s Exhibits 7, 8. He also opined coal mine dust exposure did not cause or contribute to the impairment. *Id.* The administrative law judge found Dr. Ajjarapu’s opinion well-reasoned and documented, and the opinions of Drs. Fino and Dahhan unpersuasive. Decision and Order at 18-20.

We first reject Employer’s argument that the administrative law judge erred in crediting Dr. Ajjarapu’s opinion. Employer’s Brief at 15-21 (unpaginated).

Dr. Ajjarapu diagnosed Claimant with chronic bronchitis based on his symptoms of dyspnea, wheezing, and cough. Director’s Exhibit 9. She concluded the “etiology for his underlying chronic bronchitis is his work in the mines and his tobacco abuse,” explaining that the inhalation of coal mine dust and cigarette smoke “cause[s] airway inflammation leading to bronchospasm [along with] excessive airway secretions and bronchitic symptoms.” *Id.* She further diagnosed a moderately severe pulmonary impairment based on an August 27, 2014 pulmonary function study that is qualifying for total disability and an arterial blood gas study taken the same day that evidences resting hypoxemia. *Id.* She concluded Claimant is totally disabled by the moderate pulmonary impairment and “his total disability is due in part to his work in the coal mines.” *Id.*

In a supplemental report,⁴ Dr. Ajjarapu acknowledged Claimant's obesity and other unknown factors could be contributing to the hypoxemia evidenced by arterial blood gas testing. Director's Exhibit 13. She also noted that x-rays reveal the presence of pleural plaque of unknown origin, which could be contributing to Claimant's restrictive pulmonary impairment. *Id.* She concluded that Claimant's "disability is due to multifactorial causes."⁵ *Id.* Thereafter she reviewed Dr. Fino's medical report and opined his "arterial blood gas testing shows that [Claimant] has moderate resting hypoxemia" and pulmonary function testing "shows severe pulmonary impairment." Director's Exhibit 20. She reiterated her opinion that Claimant "is totally and completely disabled and his disability is due to his work in the mines." *Id.* She explained Claimant "has been exposed to coal dust that contributed to his already declining pulmonary deterioration due to obesity," and "coal dust has played a material adverse effect on his lung function." *Id.*

The administrative law judge found Dr. Ajjarapu's opinion is consistent with the objective testing of record along with Claimant's medical and work histories. Decision and Order at 18-19. He specifically noted Claimant's treatment records "consistently show diminished breath sounds, reduced air entry, wheezing, and oxygen desaturation." *Id.* He concluded Claimant has a "history of being treated for and diagnosed with chronic bronchitis, chronic obstructive pulmonary disease, and coal workers' pneumoconiosis, all of which required treatment with both oxygen and bronchodilators." *Id.* Moreover, he noted Claimant worked in coal mining for over fourteen years, and testified that his work as a coal truck driver was actually dustier than his time working underground. *Id.* Contrary

⁴ Dr. Ajjarapu noted she reviewed Dr. Michos's medical report. Director's Exhibit 13. She stated that even if the MVV results from the August 27, 2014 pulmonary function study are sub-optimal, as Dr. Michos opined, the FEV1 and FVC values are still qualifying. Director's Exhibit 13. Thus she opined Claimant is still "totally and completely disabled based on spirometry results, chronic bronchitic symptoms, and chest x-ray results." Director's Exhibits 12, 13.

⁵ We reject Employer's argument that Dr. Ajjarapu repeatedly "reversed" her opinion on legal pneumoconiosis. Employer's Brief at 16 (unpaginated). In her April 14, 2015 supplemental report, she concluded by stating Claimant's "disability is due to multifactorial causes and I do believe that his disability is due to some other cause other than inhalational coal dust." Director's Exhibit 13. However, in a March 29, 2016 letter, she corrected the error in the April 14, 2015 report, stating it should have stated Claimant's "disability is due to multifactorial causes and *I do believe* that his disability is due in part to his work in the coal mines." Director's Exhibit 14 (emphasis added).

to Employer's argument, the administrative law judge permissibly found Dr. Ajjarapu's opinion well-reasoned and documented. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 18-19.

We further reject Employer's argument the administrative law judge should have discredited Dr. Ajjarapu's opinion because she did not review all of the evidence of record.⁶ Employer's Brief at 15-21 (unpaginated). An administrative law judge is not required to discredit a physician who did not review all of a miner's medical records when the opinion is otherwise well-reasoned, documented, and based on her own examination of the miner and objective test results.⁷ See *Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996). We consider Employer's argument to be a request that the Board reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

With respect to Drs. Fino and Dahhan, the administrative law judge found "the record does not contain the credentials of either [doctor], rendering their opinions less persuasive." Decision and Order at 19. Employer does not challenge this credibility finding, and thus we affirm it. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The administrative law judge also found their opinions inadequately explained. Decision and Order at 19. He noted they both focused on other potential causes of Claimant's disabling respiratory impairment but permissibly found that even if the "other conditions - congestive heart failure, obesity, sleep apnea, and liver cirrhosis with subsequent pleural effusions and surgery - contributed to his respiratory/pulmonary impairment, the doctors failed to explain how [fourteen] plus years of coal dust exposure did not also contribute to Claimant's respiratory/pulmonary impairment." *Id.*; see *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020); *Brandywine Explosives & Supply v. Director, OWCP [Kennard]*, 790 F.3d 657, 668 (6th Cir. 2015); *Groves*, 761 F.3d

⁶ Employer specifically asserts Dr. Ajjarapu was not aware that Claimant had "cirrhosis of the liver," and thus she did not address "how it had formed effusions around his lungs and would need to be surgically removed." Employer Brief at 15 (unpaginated). Contrary to Employer's argument, she specifically noted Claimant's x-rays revealed pleural plaque that could be contributing to his disabling restrictive impairment. Director's Exhibit 13.

⁷ As previously noted, Dr. Ajjarapu also reviewed Drs. Michos's and Fino's opinions and testing.

at 598-99; 20 C.F.R. §718.201(b). The administrative law judge also permissibly found neither doctor explained why Claimant's chronic bronchitis is not significantly related to, or substantially aggravated by, coal mine dust exposure. *Young*, 947 F.3d at 405; *Kennard*, 790 F.3d at 668; *Groves*, 761 F.3d at 598-99; 20 C.F.R. §718.201(b); Decision and Order at 19.

Employer argues the opinions of Drs. Fino and Dahhan are well-reasoned and supported by the treatment records. Employer's Brief at 20-21 (unpaginated). Again, Employer's arguments constitute a request that the Board reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113.

Because the administrative law judge acted within his discretion in crediting Dr. Ajarapu's opinion and rejecting Drs. Fino's and Dahhan's opinions, we affirm his finding that Claimant established the existence of legal pneumoconiosis. 20 C.F.R. §718.202(a)(4); Decision and Order at 18-20.

Employer does not challenge the administrative law judge's finding Claimant's total disability is due to pneumoconiosis. Decision and Order at 20-23. Therefore we affirm this determination. *Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.204(c). We further affirm the award of benefits.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge