U.S. Department of Labor

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

BRB No. 22-0135 BLA

JAMES MEADE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	
	)	DATE ISSUED: 8/11/2023
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 Heather C. Leslie, Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Heather C. Leslie's Decision and Order Awarding Benefits (2020-BLA-05250) rendered on a claim filed on December 11, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with twelve years of underground coal mine employment, and therefore found he could not invoke the rebuttable presumption of total

disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, she found Claimant established he has legal pneumoconiosis and clinical pneumoconiosis[2] due to coal dust exposure. She further found Claimant established a totally disabling pulmonary impairment caused by his pneumoconiosis and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant has pneumoconiosis and that it is a substantially contributing cause of his totally disabling pulmonary or respiratory impairment.[3] Neither Claimant nor the Director, Office of Workers' Compensation Programs, has filed a response.

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).

[1] Section 411(c)(4) 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.

[2] "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). "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).

[3] We affirm, as unchallenged on appeal, the ALJ's determination that Claimant established he is totally disabled. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 14.

[4] 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); Hearing Transcript at 9.

Without the benefit of the Section 411(c)(3) and (c)(4) presumptions,[5] 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. §§718.3, 718.202, 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 (1986) (en banc).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must prove he has a "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).

The ALJ considered the medical opinions of Drs. Forehand, Fino, and Basheda. Decision and Order at 6-9. Dr. Forehand diagnosed Claimant with legal pneumoconiosis in the form of a mixed restrictive and obstructive impairment due to cigarette smoking and coal mine dust exposure. Director's Exhibit 19. Dr. Fino opined Claimant does not have legal pneumoconioses but instead has an oxygen transfer impairment due to pulmonary emboli. Director's Exhibit 24; Employer's Exhibit 4. Dr. Basheda also opined Claimant does not have legal pneumoconiosis and diagnosed a restrictive impairment due to obesity and an elevated right hemidiaphragm, and exercise-induced hypoxemia possibly related to his elevated right hemidiaphragm. Employer's Exhibit 3. The ALJ found Dr. Forehand's opinion to be well-documented and reasoned and accorded it substantial weight. Decision and Order at 6. Conversely, she found the opinions of Drs. Fino and Basheda not well-reasoned and accorded them little weight. *Id*. at 8-9. Thus, she found the medical opinion evidence establishes legal pneumoconiosis. *Id*. at 9.

Employer contends the ALJ erred in her weighing of the medical opinion evidence. Employer's Brief at 7-17 (unpaginated). We disagree.

Contrary to Employer's argument that Dr. Forehand did not review Claimant's extensive medical history and medical record, an ALJ is not required to discredit a physician who did not review all the medical evidence when the opinion is otherwise well-reasoned, documented, and based on the physician's own examination of the miner and

[5] Because there is no evidence Claimant suffers from complicated pneumoconiosis, he could not invoke the Section 411(c)(3) irrebuttable presumption that he is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §718.304.

objective test results. 20 C.F.R. §718.202(a)(4); *see Island Creek Coal Co. v. Compton*, 211 F.3d 203, 212 (4th Cir. 2000); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21-22 (1987) (a reasoned opinion is one in which the ALJ finds the underlying documentation adequate to support the physician's conclusion); Employer's Brief at 15 (unpaginated). Dr. Forehand examined Claimant on March 25, 2019 and noted Claimant's medical, occupational, and smoking histories, as well as his symptoms including a productive cough and dyspnea. Director's Exhibit 19. He diagnosed a mixed restrictive-obstructive impairment on pulmonary function studies but found no arterial hypoxemia on blood gas studies and no acute changes on an EKG. *Id.* Regarding causation, he opined Claimant's mixed restrictive-obstructive impairment was due to cigarette smoking and coal mine dust exposure. *Id.* He explained that Claimant's regular exposure to coal mine dust triggered "an inflammatory reaction leading to stiffness of his lungs and congestion and narrowing of his airways," and his cigarette smoking similarly "triggered an inflammatory reaction leading to congestion and narrowing of his airways." *Id.* Further, he explained that the effects of Claimant's cigarette smoking and coal mine dust were additive and led to a more significant lung disease than if he were exposed to only one risk factor. *Id.* Thus, the ALJ permissibly found Dr. Forehand's opinion is well-reasoned and well-documented and it reasonably follows the test results. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 6.

We further reject Employer's argument that the ALJ mischaracterized the opinions of Drs. Fino and Basheda and "fail[ed] to provide sufficient reasoning for discrediting" their opinions. Employer's Brief at 9.

Dr. Fino initially opined that Claimant has a disabling oxygen transfer impairment due to cigarette smoking. Director's Exhibit 24 at 9. Subsequently, he opined that the impairment was caused by pulmonary emboli, pleural effusion, and an elevated diaphragm with possible contributions from Claimant's smoking history. Employer's Exhibit 4 at 20. He opined coal mine dust exposure did not contribute to Claimant's impairment as it "seems" his respiratory problems began in 2018, thirty years after he left coal mining, and so Dr. Fino could not "see how his remote yet many years of working in the mines has anything to do with this." *Id.* at 21. The ALJ permissibly found Dr. Fino's opinion inconsistent with the regulations and the preamble to the 2001 revised regulations which recognize that pneumoconiosis is a latent and progressive disease that may first become detectable only after the cessation of coal mine dust exposure. *See* 20 C.F.R. §718.201 (a), (c); 65 Fed. Reg. 79,920, 79,937, 79,971 (Dec. 20, 2000); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (a medical opinion not in accord with the accepted view that pneumoconiosis can be both latent and progressive may be discredited); Decision and Order at 8.

Dr. Basheda opined Claimant has a moderate restrictive impairment due to obesity and an elevated right hemidiaphragm, as well as exercise-induced hypoxemia of unknown origin. Employer's Exhibit 3 at 16-17. He stated that "further investigation is needed to evaluate [Claimant's] cardiopulmonary status, as well as the elevated right hemidiaphragm, which can contribute to exercise-induced oxygen desaturation." *Id.* at 17-18. The ALJ permissibly discredited Dr. Basheda's opinion as speculative as he was unable to determine the cause of Claimant's oxygen impairment and did not address the cause of Claimant's elevated right hemidiaphragm. *U.S. Steel Mining Co. v. Director, OWCP* [*Jarrell*], 187 F.3d 384, 389 (4th Cir. 1999) (an ALJ may not credit a purely speculative opinion); *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order at 8-9.

Nor, as Employer argues, did the ALJ apply an incorrect legal standard in requiring Drs. Fino and Basheda to effectively "rule out" coal mine dust exposure to disprove legal pneumoconiosis. Employer's Brief at 16 (unpaginated). The ALJ correctly required Claimant to prove he has a lung disease "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 4; 20 C.F.R. §718.201(b).

The ALJ permissibly discredited the opinions of Drs. Fino and Basheda as not well-reasoned and accorded the greatest weight to Dr. Forehand's opinion, which she found to be the only well-reasoned medical opinion of record. *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order at 7-9. It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 543 (4th Cir. 1988). Employer's arguments amount to a request to reweigh the evidence, which the Board may not do. *Anderson*, 12 BLR at 1-113. Accordingly, we affirm the ALJ's determination as supported by substantial evidence that Dr. Forehand's opinion is the most credible opinion of record and establishes Claimant has legal pneumoconiosis in the form of a mixed restrictive-obstructive impairment due in part to coal mine dust exposure. 20 C.F.R. §§718.201(a)(2), 718.202(a)(4); Decision and Order at 9

Disability Causation

The ALJ next considered whether Claimant established his pneumoconiosis is 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 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).

Because the ALJ permissibly found Dr. Forehand's opinion reasoned and documented, and therefore sufficient to prove Claimant's totally disabling mixed restrictive-obstructive lung disease constituted legal pneumoconiosis, the ALJ rationally found his opinion also establishes Claimant is totally disabled due to the disease; it is the only logical conclusion from the facts. *See Collins v. Pond Creek Mining Co.*, 751 F.3d 180, 186-87 (4th Cir. 2014); *Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668-69 (6th Cir. 2015); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); *Hawkinberry v. Monongalia Cnty. Coal Co.*, 25 BLR 1-249, 1-255-57 (2019); Decision and Order at 35. Consequently, we affirm the ALJ's determination that Claimant is totally disabled due to legal pneumoconiosis.[6] 20 C.F.R. §718.204(c); Decision and Order at 14.

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

MELISSA LIN JONES
Administrative Appeals Judge

[6] As we have affirmed the ALJ's determination that Claimant is totally disabled due to legal pneumoconiosis, we need not address Employer's challenge to the ALJ's finding that Claimant also established he has clinical pneumoconiosis. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 3-6 (unpaginated).