U.S. Department of Labor

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

BRB No. 22-0405 BLA

LARRY D. HURLEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PARAMONT COAL COMPANY VIRGINIA, LLC	)	
	)	
	)	DATE ISSUED: 8/15/2023
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 William P. Farley, Administrative Law Judge, United States Department of Labor.

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

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

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

PER CURIAM

Employer appeals Administrative Law Judge (ALJ) William P. Farley's Decision and Order Awarding Benefits (2019-BLA-05816) rendered on a claim filed on August 25,

2017, pursuant to the Black Lung Benefits Act, as amended 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established 30.9 years of qualifying coal mine employment, based on the parties' stipulation, and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding it failed to rebut the Section 411(c)(4) presumption.[2] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (Director), has declined to file a substantive 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.[3] 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, 362 (1965).

[1] Section 411(c)(4) provides a rebuttable presumption that Claimant 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] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established 30.9 years of qualifying coal mine employment, total disability at 20 C.F.R. §718.204(b)(2), and thus invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4-5, 12; Employer's Brief at 3-4.

[3] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *Shupe v. Director,* OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 3 n.3; Director's Exhibit 4; Hearing Transcript at 31.

Rebuttal of the 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[4] or "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer rebutted the presumption of clinical pneumoconiosis, but failed to rebut legal pneumoconiosis. Decision and Order at 11, 13-16.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish Claimant does not have 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(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on the opinions of Drs. McSharry and Sargent. Dr. McSharry examined Claimant on August 15, 2018, reviewed his medical records, and opined he does not have legal pneumoconiosis, but has disabling hypoxemia on blood gas testing "in all likelihood" attributable to obesity. Director's Exhibit 19 at 3. Further, Dr. McSharry opined Claimant's history of a pulmonary embolism "could also tend to lower oxygen levels," and "may be having some residual effect on [his] oxygen level as well." *Id*. Dr. McSharry found "no evidence of a chronic lung disease caused by or aggravated by coal dust exposure." *Id.; see also* Employer's Exhibits 1, 14. Dr. Sargent examined Claimant on February 11, 2020, and reviewed his medical records. He attributed Claimant's "exercise-induced arterial oxygen desaturation" to his "previous pulmonary embolism and subsequent chronic pulmonary thromboembolic disease and pulmonary hypertension." Employer's Exhibit 11 at 2-3; *see* Employer's Exhibits 12; 13.

[4] "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). "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).

The ALJ accorded little weight to Drs. McSharry's and Sargent's opinions because he found they did not adequately account for Claimant's 30.9 years of coal mine dust exposure. Decision and Order at 12. Employer generally contends that Drs. McSharry and Sargent thoroughly explained their opinions and that the ALJ improperly acted as a medical expert in discrediting them. Employer's Brief at 5-12. In addition, Employer argues the ALJ erred in requiring its experts to "rule out" coal mine dust exposure as a cause of Claimant's lung disease or impairment, a stricter standard than the regulations require. *Id.* at 13-15. We disagree with Employer's arguments.

Regarding the proper legal standard, the ALJ correctly stated Employer has the burden to establish Claimant does not have legal pneumoconiosis, which he accurately defined as any "chronic lung disease or impairment that arises from coal mine employment," including "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); Decision and Order at 15. He also correctly observed that Employer must affirmatively disprove legal pneumoconiosis by establishing that coal mine dust exposure did not significantly contribute to, or substantially aggravate, Claimant's respiratory impairment by a preponderance of the evidence. *Id.* Thus, we find no basis for concluding the ALJ did not apply the proper legal standard in weighing the medical opinion evidence. Decision and Order at 13; *see Griffith v. Terry Eagle Coal Co., LLC*, 25 BLR 1-223, 1-228 (2017); *Minich*, 25 BLR at 1-155 n.8. Moreover, the ALJ did not discredit Employer's experts because they failed to meet a heightened legal standard. He discredited their opinions because he found them not well-reasoned and unpersuasive. Decision and Order at 14-17. Thus, we reject Employer's contention the ALJ applied a heightened legal standard.

In addressing Employer's evidence, the ALJ also did not improperly act as a medical expert as Employer contends. *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997) (as the trier-of-fact, the ALJ must evaluate the evidence, weigh it, and draw his own conclusions). The ALJ is tasked with rendering credibility determinations as to the evidence before him. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753 (4th Cir. 1999) (The Board must uphold decisions that rest within the realm of rationality; a reviewing court has no license to "set aside an inference merely because it finds the opposite conclusion more reasonable or because it questions the factual basis.").

Although Employer asserts Drs. McSharry and Sargent adequately explained why Claimant's disabling blood gas impairment is consistent with his history of a pulmonary embolism and obesity, the ALJ permissibly found both physicians failed to account for Claimant's 30.9 years of coal mine dust exposure as a causative factor for that impairment. *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 673-74 n.4 (4th Cir. 2017) (the ALJ permissibly discounted doctors' opinions because they did not address why coal dust could

not have been an additional cause, or a contributing or aggravating factor, in the claimant's respiratory impairment); *see also Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013) (ALJ permissibly discredited two physicians' opinions because the doctors failed to adequately explain their opinions); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 173 (4th Cir. 1997) (ALJ "may weigh the medical evidence and draw his own conclusions"); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc) (ALJ may reject a medical opinion where he finds the doctor failed to adequately explain his diagnosis); Decision and Order at 12, 15-16; Director's Exhibit 19; Employer's Exhibits 1, 11-14.

Employer's arguments on legal pneumoconiosis are a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). We therefore affirm the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption by establishing Claimant does not have legal pneumoconiosis.[5] 20 C.F.R. §718.305(d)(1)(i); *see Owens*, 724 F.3d at 557 (duty of explanation under the Administrative Procedure Act is satisfied if the reviewing court can discern what the ALJ did and why he did it); Decision and Order at 15-16.

Disability Causation

The ALJ also considered whether Employer established "no part of [Claimant's] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 16-17. Contrary to Employer's argument, the ALJ permissibly discounted the disability causation opinions of Drs. McSharry and Sargent because they failed to diagnose legal pneumoconiosis, contrary to his finding that Employer failed to disprove Claimant has the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995) (such an opinion "may not be credited at all" on disability causation absent "specific and persuasive reasons" for concluding the physician's view on disability causation is independent of his or her erroneous opinion on pneumoconiosis); Decision and Order at 17; Employer's Brief at 17-18. We reject Employer's specific contention that an ALJ may not discredit a disability causation opinion that excludes a diagnosis of legal pneumoconiosis in claims where legal pneumoconiosis is presumed, rather than affirmatively proven, as *Epling* itself was a rebuttal case. *Epling*,

[5] Because Employer has the burden of proof and we have affirmed the ALJ's discrediting of Drs. McSharry's and Sargent's opinions, we need not address its arguments regarding Dr. Raj's opinion that Claimant has legal pneumoconiosis. Employer's Brief at 15-17.

783 F.3d at 506; *see also Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013).

Moreover, as we have affirmed the ALJ's finding that Employer failed to disprove legal pneumoconiosis, we reject its contention that the ALJ's errors at legal pneumoconiosis require remand for reconsideration of disability causation. We therefore affirm the ALJ's finding that Employer failed to establish no part of Claimant's respiratory disability was caused by legal pneumoconiosis and thus failed to rebut the Section 411(c)(4) presumption. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 17.

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

GREG J. BUZZARD
Administrative Appeals Judge