U.S. Department of Labor

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

BRB No. 22-0051 BLA

RONALD E. RUNYON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PINE RIDGE COAL COMPANY	)	
	)	
and	)	DATE ISSUED: 12/16/2022
	)	
PEABODY ENERGY CORPORATION	)	
	)	
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 Sean M. Ramaley, Administrative Law Judge, United States Department of Labor.

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

Paul E. Frampton (Bowles Rice LLP), Charleston, West Virginia, for Employer and its Carrier.

Sarah M. Hurley (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Awarding Benefits (2020-BLA-05339) rendered on a claim filed on April 4, 2018,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Pine Ridge Coal Company (Pine Ridge) is the responsible operator and Peabody Energy Corporation (Peabody Energy) is the responsible carrier. He also determined Claimant established nineteen years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he found Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018). He concluded Employer did not rebut the presumption and awarded benefits.

On appeal, Employer asserts Peabody Energy is not the responsible carrier and liability for the payment of benefits should transfer to the Black Lung Disability Trust Fund (Trust Fund). On the merits, Employer argues the ALJ erred in finding the Section 411(c)(4) presumption was unrebutted. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response, urging the Benefits Review Board to affirm the ALJ's determination that Employer is liable for benefits.[3]

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

[1] Claimant's prior claim was withdrawn. Director's Exhibit 1. A withdrawn claim is considered not to have been filed. *See* 20 C.F.R. §725.306.

[2] 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.

[3] We affirm, as unchallenged on appeal, the ALJ's determination that Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6, 26.

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).

Responsible Insurance Carrier

Employer does not challenge the ALJ's findings that Pine Ridge is the correct responsible operator and was self-insured by Peabody Energy on the last day Pine Ridge employed Claimant; thus we affirm these findings. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§725.494(e), 725.495, 726.203(a); Decision and Order at 16-19; Employer's Brief at 19-36. Rather, it alleges Patriot Coal Corporation (Patriot) should have been named the responsible carrier and thus liability for the claim should transfer to the Trust Fund.[5] *Id.*

Patriot was initially another Peabody Energy subsidiary. Director's Exhibit 52. In 2007, after Claimant ceased his coal mine employment with Pine Ridge, Peabody Energy transferred a number of its other subsidiaries, including Pine Ridge, to Patriot. Director's Exhibit 52; Employer's Exhibit 9 at 338; *see* Hearing Transcript at 37. That same year, Patriot was spun off as an independent company. Director's Exhibit 52; Employer's Exhibit 9 at 338. On March 4, 2011, Patriot was authorized to insure itself and its subsidiaries, retroactive to 1973. Director's Exhibit 52; Employer's Exhibit 9 at 338. Although Patriot's self-insurance authorization made it retroactively liable for the claims of miners who worked for Pine Ridge, Patriot later went bankrupt and can no longer provide for those benefits. Director's Exhibits 32, 52. Neither Patriot's self-insurance authorization nor any other arrangement, however, relieved Peabody Energy of liability for

[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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4.

[5] Employer contends the Trust Fund was erroneously not put on notice of this claim as a potentially responsible party and therefore Peabody Energy should be dismissed and liability should be transferred to the Trust Fund. Employer's Brief at 18-19. We reject this argument as the Act provides that the Director is a party in all black lung claims and represents the interests of the Trust Fund. 30 U.S.C. §932(k); 20 C.F.R. §802.211(b); *see Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983); *see also Betty B. Coal Co. v. Director, OWCP* [*Stanley*], 194 F.3d 491, 502 n.5 (4th Cir. 1999) (Director is a party in all black lung claims); Director's Response Brief at 6, n.3.

paying benefits to miners last employed by Pine Ridge when Peabody Energy owned and provided self-insurance to that company, as the ALJ held. Decision and Order at 18-22.

Employer raises several arguments to support its contention that Peabody Energy was improperly designated as the self-insured carrier in this claim and thus the Trust Fund, not Peabody Energy, is responsible for the payment of benefits following Patriot's bankruptcy: (1) the Director failed to present evidence that Peabody Energy self-insured Pine Ridge; (2) 20 C.F.R. §725.495(a)(4) precludes Peabody Energy's liability; (3) because Patriot cannot pay benefits, Black Lung Benefits Act Bulletin Nos. 12-07 and 14-02 place liability on the Trust Fund; (4) before transferring liability to Peabody Energy, the DOL must establish it exhausted any available funds from the security bond Patriot gave to secure its self-insurance status; (5) the DOL released Peabody Energy from liability; (6) the Director is equitably estopped from imposing liability on Peabody Energy. Employer's Brief at 18-36. It maintains that a separation agreement – a private contract between Peabody Energy and Patriot – released it from liability and the DOL endorsed this shift of complete liability when it authorized Patriot to self-insure. *Id.* at 25-29.

The Board has previously considered and rejected these arguments in *Bailey v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0094 BLA, slip op. at 3-19 (Oct. 25, 2022) (en banc); *Howard v. Apogee Coal Co.*, BLR , BRB No. 20-0229 BLA, slip op. at 5-17 (Oct. 18, 2022); and *Graham v. E. Assoc. Coal Co.*, BLR , BRB No. 20-0221 BLA, slip op. at 7-8 (June 23, 2022). For the reasons set forth in *Bailey*, *Howard*, and *Graham*, we reject Employer's arguments. Thus, we affirm the ALJ's determination that Pine Ridge and Peabody Energy are the responsible operator and carrier, respectively, and are liable for this claim.

Rebuttal of the 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,[6] or that "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.

[6] "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). "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).

§718.305(d)(1)(i), (ii). The ALJ found Employer failed to establish rebuttal by either method.[7] Decision and Order at 39.

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 Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 555 (4th Cir. 2013); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on the medical opinions of Drs. Zaldivar and Rosenberg to disprove the existence of legal pneumoconiosis. Director's Exhibit 24; Employer's Exhibits 3, 4, 8, 9. Dr. Zaldivar opined Claimant does not have legal pneumoconiosis, but instead has severe chronic obstructive pulmonary disease (COPD)/emphysema due to cigarette smoking and asthma unrelated to coal mine dust exposure. Director's Exhibit 24; Employer's Exhibits 3 at 4, 7; 8 at 17. Dr. Rosenberg opined that Claimant does not have legal pneumoconiosis, but instead has advanced COPD/emphysema due to cigarette smoking. Director's Exhibit 26 at 4, 9-10; Employer's Exhibit 7 at 9-10, 12-13. The ALJ accorded little weight to both of their opinions and found they did not meet Employer's burden to affirmatively rebut the existence of legal pneumoconiosis. Decision and Order at 35-36.

Employer contends the ALJ erred in discrediting the opinions of Drs. Zaldivar and Rosenberg. Employer's Brief at 3-14. We disagree.

Dr. Zaldivar opined that Claimant's COPD was unrelated to coal mine dust exposure, in part, because his impairment developed after he left coal mining. Employer's Exhibits 3, 8. Contrary to Employer's arguments, the ALJ reasonably accorded little weight to Dr. Zaldivar's medical opinion as it is inconsistent with the 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. 20 C.F.R. §§718.201(a), (c); 65 Fed. Reg. 79,920, 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 35; Employer's Brief at 3-5.; Employer's Exhibit 8 at 33, 45, 57. The ALJ further permissibly found that Dr. Zaldivar's opinion, that because Claimant's asthma and

[7] The ALJ found Employer rebutted the existence of clinical pneumoconiosis based on the x-ray and medical opinion evidence. Decision and Order at 31-34; *see* 20 C.F.R. §718.305(d)(1)(i)(B).

smoking were sufficient to cause Claimant's impairment "there is no room" for a diagnosis of legal pneumoconiosis, did not adequately explain why Claimant's impairment was unrelated to his nineteen years of coal mine employment. *See Owens*, 724 F.3d at 558; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); 65 Fed. Reg. at 79,940; Decision and Order at 35; Employer's Brief at 6.

We further reject Employer's argument that the ALJ erroneously required Dr. Zaldivar to "rule out" coal mine dust exposure as a cause of Claimant's pulmonary condition. Employer's Brief at 6-8; 17-18. The ALJ set forth the correct standard for rebuttal of legal pneumoconiosis, explaining Employer must establish by a preponderance of the evidence that Claimant did not have a lung disease "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 23, citing 20 C.F.R. §718.201(b). As explained above, the ALJ rejected Dr. Zaldivar's opinion because he did not adequately explain why Claimant's severe COPD was unrelated to coal mine dust exposure. *See Owens*, 724 F.3d at 558; *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); Decision and Order at 35.

We further reject Employer's argument that the ALJ erred in discrediting Dr. Rosenberg's opinion. Employer's Brief at 9-14. Dr. Rosenberg opined that Claimant's COPD was due solely to cigarette smoking because his FVC result on pulmonary function testing was severely reduced in comparison to his FEV1 and his diffusion capacity was too severely reduced to be due to coal mine dust exposure. Director's Exhibit 26; Employer's Exhibit 7. Contrary to Employer's arguments, the ALJ permissibly found the physician's rationale inconsistent with the DOL's position based on the scientific evidence it found credible that coal mine dust exposure can cause clinically significant obstructive lung disease which can be shown by a reduction in the FEV1/FVC ratio. 65 Fed. Reg. at 79,943; *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 (4th Cir. 2017); *Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483 (6th Cir. 2014); Decision and Order at 35-36; Employer's Brief at 10-14. Finally, the ALJ permissibly found Dr. Rosenberg's opinion did not adequately explain why Claimant's exposure to coal mine dust during his nineteen years of underground coal mine employment did not contribute to his severe COPD. *See Owens*, 724 F.3d at 555, 558; *Hicks*, 138 F.3d at 528; *Minich*, 25 BLR at 1-155 n.8; Decision and Order at 35-36.

Employer's arguments on appeal 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); Employer's Brief at 8-9, 12-13. Having permissibly discredited the opinions of Drs. Zaldivar and Rosenberg that Claimant's impairment did not constitute legal pneumoconiosis, we affirm the ALJ's finding that Employer failed to establish Claimant

did not have legal pneumoconiosis.[8] Decision and Order at 36. Accordingly, we affirm his determination that Employer failed to rebut the Section 411(c)(4) presumption by establishing that the Miner did not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i); Decision and Order at 36.

Disability Causation

Next, the ALJ addressed whether Employer established the second method of rebuttal by showing that no part of Claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 37-38. The ALJ discounted the opinions of Drs. Zaldivar and Rosenberg that Claimant's totally disabling respiratory impairment is not due to legal pneumoconiosis because they did not diagnose legal pneumoconiosis, contrary to his findings. *See Epling*, 783 F.3d at 505; *Toler v. Eastern Associated Coal Co*., 43 F.3d 109, 116 (4th Cir. 1995); Decision and Order at 38. As Employer does not challenge these findings, they are affirmed. *See Skrack*, 6 BLR at 1-711. We therefore affirm the ALJ's finding that Employer failed to establish that no part of Claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 38.

[8] Because Employer bears the burden of disproving pneumoconiosis and we affirm the ALJ's rejection of its experts, we need not address Employer's arguments concerning the ALJ's weighing of the opinions of Drs. Raj and Werchowski, who diagnosed legal pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 36; Employer's Brief at 14-18.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge