U.S. Department of Labor

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

BRB No. 22-0189 BLA

TIMOTHY S. CLOVIS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
THE MONONGALIA COAL COMPANY	)	
	)	
and	)	
	)	
MURRAY ENERGY CORPORATION	)	DATE ISSUED: 12/16/2022
	)	
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 Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Aimee M. Stern (Dinsmore & Shohl, LLP) Wheeling, West Virginia, for Employer.

Heath M. Long (Pawlowski, Bilonick, & Long) Ebensburg, Pennsylvania, for Claimant.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits (2020-BLA-05572) rendered pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on April 30, 2019.

The ALJ found Claimant established forty-one years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore 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 then found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer asserts the ALJ erred in finding it failed to rebut the presumption.[2] Claimant responds urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file a brief unless requested.

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 (1965).

Rebuttal of the Section 411(c)(4) Presumption

[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 ALJ's findings that Claimant established at least fifteen years of underground coal mine employment and total disability at 20 C.F.R. §718.204(b)(2), and therefore 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 4-7, 20.

[3] 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; Hearing Transcript at 21.

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 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. §718.305(d)(1)(i), (ii). The ALJ found Employer failed to establish rebuttal by either method.[5]

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." *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015). Employer relied on the medical opinion of Dr. Abrahams to rebut legal pneumoconiosis. Employer's Exhibits 1, 2. Dr. Abrahams initially diagnosed Claimant with "diffuse interstitial fibrosis" of an "uncertain etiology." Employer's Exhibit 1 at 2-3. Although he stated it "remains a possibility" that Claimant's diffuse fibrosis is related to his coal dust exposure, he ultimately concluded it is not related. *Id*. at 4. He further opined "if [Claimant] has a lung biopsy in the future, it would help determine the cause of the interstitial fibrosis." *Id*. After reviewing additional medical records, reports, and diagnostic tests, Dr. Abrahams issued a supplemental report reiterating his diagnosis of diffuse interstitial fibrosis of unknown etiology, stating the rapid progression of Claimant's disease is "not typical" of coal dust exposure, and opining more testing was needed to make

[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).

[5] Employer does not challenge the ALJ's finding it failed to rebut the presumption of clinical pneumoconiosis; thus, we affirm it. 20 C.F.R. §718.305(d)(1)(i); *see Skrack*, 6 BLR at 1-711; Decision and Order at 13. The ALJ's unchallenged determination that Employer did not disprove clinical pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. However, we address Employer's challenge to the ALJ's finding that Employer did not disprove legal pneumoconiosis as it is relevant to rebuttal of the presumed fact of disability causation.

a definitive diagnosis. Employer's Exhibit 2. The ALJ found Dr. Abrahams' opinion was not well-reasoned due its uncertain nature and gave it no weight. Decision and Order at 23.

Employer generally asserts the ALJ erred in discrediting Dr. Abrahams' opinion.[6] Employer's Brief at 6-7 (unpaginated). We consider Employer's argument to be a request to reweigh the evidence, which we are not empowered to do.[7] *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Therefore, we affirm the ALJ's finding Dr. Abrahams' opinion not well-reasoned and entitled to no weight.

Because the ALJ permissibly rejected the opinion of Dr. Abrahams, the only opinion supportive of a finding Claimant does not have legal pneumoconiosis, we affirm his finding Employer did not disprove legal pneumoconiosis. Decision and Order at 20. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

To disprove disability causation, Employer must establish "no part of [Claimant's] disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii). Because Dr. Abrahams failed to diagnose legal pneumoconiosis, substantial evidence supports the ALJ's finding his disability causation opinion not credible. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015) (where a physician erroneously fails to diagnose pneumoconiosis, his opinion as to disability causation "is not worthy of much, if any, weight"); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1072-73 (6th Cir. 2013); *Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); Decision and Order at 22-23. We therefore affirm the ALJ's conclusion Employer failed to establish no part of Claimant's respiratory disability was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

[6] Drs. Allen and Krefft both diagnosed Claimant with legal pneumoconiosis; thus, their opinions do not support rebuttal. Director's Exhibit 12; Claimant's Exhibit 1. The ALJ found both physicians' opinions well-reasoned and entitled to great weight. Decision and Order at 22. Employer does not specifically challenge these findings; thus, we affirm them. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[7] While Employer generally summarizes Dr. Abrahams' opinion as concluding Claimant's impairment is unrelated to coal dust exposure, it does not identify any particular error in the ALJ's finding his opinion uncertain and thus not well-reasoned.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge