U.S. Department of Labor

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

BRB No. 20-0122 BLA

LENVILLE MULLINS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	
	)	DATE ISSUED: 02/24/2021
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 S. Colwell, Associate Chief Administrative Law Judge, United States Department of Labor.

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

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

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

PER CURIAM:

Employer appeals Associate Chief Administrative Law Judge William S. Colwell's Decision and Order Awarding Benefits (2018-BLA-05151) rendered on a claim filed on January 31, 2017 pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2018) (Act).

The administrative law judge credited Claimant with 28.38 years of underground coal mine employment and found he has 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 further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer contends the administrative law judge erred in finding it did not rebut the Section 411(c)(4) presumption.[2] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has not filed a response.

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'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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,[4] or "no part of [his] respiratory or pulmonary total disability

[1] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is 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 administrative law judge's finding that Claimant invoked the Section 411(c)(4) presumption. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3, 5-10.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant's coal mine employment occurred in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4.

[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

was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The administrative law judge found Employer failed to establish rebuttal by either method.

Employer argues the administrative law judge erred in finding it failed to rebut the presumption of legal pneumoconiosis. Employer's Brief at 6-13. Employer's arguments have no merit.

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, 159 (2015) (Boggs, J., concurring and dissenting).

Employer relied on the medical opinion of Dr. Sargent to establish rebuttal. Dr. Sargent diagnosed a disabling respiratory impairment evidenced by a severe reduction in diffusion capacity and arterial oxygen desaturation with exercise. Director's Exhibit 17. He attributed the impairment to Claimant's rheumatoid arthritis, and found it unrelated to coal mine dust exposure. *Id*. He explained rheumatoid arthritis causes the appearance of irregular opacities on x-ray and pneumoconiosis results in rounded ones. *Id*. Because Claimant's x-rays are positive for irregular opacities, and thus are negative for pneumoconiosis, Dr. Sargent opined Claimant's respiratory impairment is more consistent with rheumatoid arthritis. *Id*.

Contrary to Employer's argument, the administrative law judge permissibly rejected Dr. Sargent's opinion because "a diagnosis of legal pneumoconiosis may be made in the absence of positive x-ray readings of clinical pneumoconiosis." Decision and Order at 11-12; *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012) (the regulations "separate clinical and legal pneumoconiosis into two different diagnoses" and "provide that no claim for benefits shall be denied solely on the basis of a negative chest x-ray") (internal quotations omitted); 20 C.F.R. §718.201(a)(2); 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000). Moreover, although Dr. Sargent explained Claimant's respiratory impairment can be explained by his rheumatoid arthritis, the administrative law judge permissibly found the doctor did not provide "any explanation on how he eliminated Claimant's substantial coal mine employment history as a possible etiology in Claimant's pulmonary condition."[5] Decision and Order at 11-12; *see Mingo*

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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] We reject Employer's argument that the administrative law judge did not apply the proper standard in evaluating whether it rebutted the presumption of legal pneumoconiosis.

Logan Coal Co. v. Owens, 724 F.3d 550, 558 (4th Cir. 2013); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 530 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439-40 (4th Cir. 1997).

Employer argues Dr. Sargent's opinion is well-reasoned and documented and adequate to rebut the presumption of legal pneumoconiosis. Employer's Brief at 6-13. It argues Dr. Sargent's opinion is based on a physical examination of Claimant and a "thorough" understanding of Claimant's medical history. *Id*. We consider Employer's arguments on appeal 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). Because the administrative law judge acted within his discretion in rejecting Dr. Sargent's opinion, we affirm his finding Employer did not disprove legal pneumoconiosis and his determination it did not rebut the Section 411(c)(4) presumption by establishing the absence of pneumoconiosis.[6] *See* 20 C.F.R. §718.305(d)(1)(i).

The administrative law judge next considered whether Employer established "no part of the miner'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). He permissibly discredited Dr. Sargent's disability causation opinion because the doctor provided no "specific or persuasive reason" that Claimant's disability was not caused by pneumoconiosis other than his opinion that Claimant does not have the disease.[7] Decision

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Employer's Brief at 6-13. Because Claimant invoked the Section 411(c)(4) presumption, the respiratory impairment Dr. Sargent diagnosed is presumed to be significantly related to, or substantially aggravated by, coal mine dust exposure. *See Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 159 (2015) (Boggs, J., concurring and dissenting). The administrative law judge properly evaluated whether Dr. Sargent credibly explained why Claimant's respiratory impairment is not significantly related to, or substantially aggravated by, coal mine dust exposure. *Id*.; *see* Decision and Order at 11-12.

[6] The administrative law judge correctly noted Employer must disprove both legal and clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i); Decision and Order at 12. He also correctly found that because Employer did not disprove legal pneumoconiosis, rebuttal under 20 C.F.R. §718.305(d)(1)(i) is precluded. Decision and Order at 12. Thus, we need not address Employer's allegation that the administrative law judge erred in failing to address whether it disproved clinical pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 3-6.

[7] We reject Employer's argument that the administrative law judge cannot discredit Dr. Sargent's disability causation opinion for failing to diagnose legal pneumoconiosis where the disease is established by the Section 411(c)(4) presumption. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015) (physician who incorrectly fails to

and Order at 12; *see Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015), *quoting Toler v. E. Associated Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995). We therefore affirm the administrative law judge's finding Employer did not rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(ii) and the award of benefits.[8]

diagnose legal pneumoconiosis cannot be credited on rebuttal of disability causation "absent specific and persuasive reasons"); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013) (rejecting the employer's argument that the administrative law judge "erred by discrediting an opinion that ruled out legal pneumoconiosis where legal pneumoconiosis is only presumed, rather than factually found"); Employer's Brief at 14-15.

[8] In light of our affirmance of the administrative law judge's award of benefits, we need not address Claimant's argument raised in his response brief that the evidence established complicated pneumoconiosis and thus he invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304; Claimant's Response Brief at pp.1-2 (unpaginated).

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge