U.S. Department of Labor

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

BRB No. 22-0240 BLA

JAMES A. DAVIS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	
	)	DATE ISSUED: 02/21/2023
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 Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

Jason A. Mullins (Penn, Stuart, & Eskridge), Bristol, Virginia for Employer.

Before: BOGGS, BUZZARD, and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Awarding Benefits (2020-BLA-05722) rendered on a subsequent claim filed on May 3, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901–944 (2018) (Act).

The ALJ found Claimant established 16.46 years of underground coal mine employment and has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). The ALJ therefore found he invoked the rebuttable presumption of total

disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[1] and established a change in an applicable condition of entitlement.[2] 20 C.F.R. §725.309(c). The ALJ further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer challenges the ALJ's conclusion that it failed to rebut the presumption.[3] Claimant did not file a response and the Director, Office of Workers' Compensation Programs, declined to file a substantive 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) 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); 20 C.F.R. §718.305.

[2] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant's prior claim was not included in the file before the ALJ, and the ALJ could not determine the conditions upon which the prior denial was based, she reviewed all elements to determine whether Claimant established entitlement. Decision and Order at 3; Director's Exhibit 1.

[3] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5–11.

[4] 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. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4; Hearing Transcript at 17.

Rebuttal of the Section 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,[5] 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); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015). The ALJ found Employer failed to establish rebuttal by either method.[6] Decision and Order at 21–27.

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).

Employer relies on the opinions of Drs. Adcock and Fino that Claimant does not have legal pneumoconiosis, but instead suffers from sarcoidosis. Director's Exhibit 27, Employer's Exhibits 3, 4, 12. The ALJ found neither physician adequately addressed whether Claimant's coal mine dust exposure contributed to, or substantially aggravated, his chronic obstructive pulmonary disease (COPD) and emphysema, apart from his sarcoidosis. Decision and Order at 22–25. She therefore found neither opinion sufficiently reasoned to rebut legal pneumoconiosis.

Employer argues that Drs. Adcock and Fino provided well-reasoned medical opinions that Claimant has sarcoidosis, not legal pneumoconiosis. Employer's Brief at 4-7. But it has not set forth any specific allegation of error by the ALJ in finding that neither physician adequately addressed whether coal mine dust exposure contributed to or

[5] "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).

[6] The ALJ found Employer disproved clinical pneumoconiosis. Decision and Order at 21.

aggravated Claimant's other diagnosed lung conditions, including COPD and emphysema, or was otherwise additive to the impairment resulting from his sarcoidosis. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); 20 C.F.R. §802.211(b). At best, Employer's argument amounts to a request to reweigh the evidence, which the Board may not do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Therefore, we affirm the ALJ's finding that the opinions of Drs. Adcock and Fino are insufficiently reasoned to rebut the presumption that Claimant has legal pneumoconiosis.[7] 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 22-25. 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

The ALJ next 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 25-27. The ALJ discounted the opinions of Drs. Adcock and Fino on the cause of Claimant's pulmonary disability because they did not diagnose legal pneumoconiosis, contrary to her finding that Employer failed to disprove the existence of the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order at 25-27. Apart from repeating its argument that the ALJ erred in finding it did not rebut legal pneumoconiosis, Employer does not challenge the ALJ's finding that it failed to rebut disability causation. Employer's Brief at 12. Thus, we affirm the ALJ's determination that Employer failed to establish no part of Claimant's respiratory disability was caused by legal pneumoconiosis. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Consequently, we affirm the ALJ's conclusion that Employer did not rebut the Section 411(c)(4) presumption.

[7] As the ALJ recognized, the opinions of Drs. Harris, Jawad, and Snyder diagnosing Claimant with legal pneumoconiosis do not support Employer's rebuttal burden. Decision and Order at 22. Therefore, to the extent Employer challenges the ALJ's analysis of those opinions, we need not address its argument that they are flawed. Employer's Brief at 7-11.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge