U.S. Department of Labor

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

BRB No. 23-0270 BLA

BILLY D. BAILEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	
	)	DATE ISSUED: 02/15/2024
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of Decision and Order Awarding Benefits of Carrie Bland, Associate Chief Administrative Law Judge, United States Department of Labor.

Jeremy B. O'Quinn (The O'Quinn Law Office, PLLC), Wise, Virginia, for Claimant.

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

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

PER CURIAM:

Employer appeals Associate Chief Administrative Law Judge (ALJ) Carrie Bland's[1] Decision and Order Awarding Benefits (2017-BLA-05394) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's subsequent claim filed on February 23, 2015.[2]

The ALJ found Claimant established 17.42 years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she concluded Claimant invoked the presumption that his total disability was due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[3] and established a change in the applicable condition of entitlement.[4] 20 C.F.R.

[1] The case was initially assigned to ALJ Larry S. Merck; on January 16, 2018, he remanded the claim to the district director for a complete pulmonary evaluation, finding Dr. Werchowski's first report was incomplete because it did not address whether Claimant has legal pneumoconiosis. Director's Exhibits 36, 39. After Dr. Werchowski rendered two supplemental reports, Director's Exhibits 41, 43, the case was referred back to the Office of Administrative Law Judges. Director's Exhibit 44. On July 15, 2019, ALJ Jennifer Whang held a hearing and admitted exhibits. Hearing Transcript at 7-9. The case was thereafter assigned to Associate Chief Judge Bland when Judge Whang became unavailable. Decision and Order at 2 n.2.

[2] Claimant filed four prior claims. Director's Exhibits 1-4. On August 30, 2012, the district director denied his most recent prior claim filed on April 8, 2011, because he failed to establish he had a totally disabling respiratory or pulmonary impairment. Director's Exhibit 4.

[3] 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. §92l(c)(4) (2018); 20 C.F.R. §718.305(b).

[4] 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 "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(d); *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 failed to establish total disability in his most recent prior claim, he had to submit new evidence establishing this element to obtain a review of

§725.309(c). The ALJ further found Employer did not rebut the presumption and awarded benefits.[5]

On appeal, Employer argues the ALJ erred in finding it failed to rebut the Section 411(c)(4) presumption. Claimant responds, urging affirmance of the award. The Director, Office of Workers' Compensation Programs, declined to file a substantive response brief.[6]

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.[7] 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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[8] or "no part of [his]

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the current, subsequent claim on the merits. *See White*, 23 BLR at 1-3; 20 C.F.R. §725.309(c); Director's Exhibit 4.

[5] Subsequent to her award, the ALJ granted Claimant's motion for reconsideration, and amended the onset date to reflect the date Claimant filed his claim in February 2015, not February 2016. March 30, 2023 Order Granting Claimant's Motion for Reconsideration and Order Amending Onset Date. No party challenges the amended onset date.

[6] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established 17.42 years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment, invoked the Section 411(c)(4) presumption, and established a change in the applicable condition of entitlement. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5, 14.

[7] 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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 7.

[8] "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 that is 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

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.[9]

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish the Miner did 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); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on Dr. Sargent's opinion that Claimant does not have legal pneumoconiosis.[10] Employer's Exhibits 8, 10. The ALJ found his opinion poorly reasoned and entitled to no weight, and therefore insufficient to satisfy Employer's burden to establish that Claimant does not have legal pneumoconiosis. Decision and Order at 15-16.

Employer asserts the ALJ applied the wrong legal standard and did not adequately explain her credibility determinations. Employer's Brief at 7-16 (unpaginated). We disagree.

Initially, we reject Employer's contention that the ALJ improperly required Dr. Sargent either to "rule out" coal mine dust exposure or establish it played "no role" in Claimant's respiratory or pulmonary impairment in order to disprove legal pneumoconiosis. Employer's Brief at 7-10 (unpaginated). Contrary to Employer's characterization, the ALJ specifically required Employer's expert to adequately explain why Claimant's coal mine dust exposure was not a "contributing or substantially aggravating factor" in his respiratory impairment, consistent with the definition of legal pneumoconiosis at 20 C.F.R. §718.201(a)(2), (b). Decision and Order at 15-16; *see W. Va.*

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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).

[9] The ALJ found Employer failed to disprove that Claimant has both clinical and legal pneumoconiosis. Decision and Order at 23, 27.

[10] The ALJ found the opinions of Drs. Werchowski and Baker do not assist Employer in rebutting the presumption because they diagnosed Claimant with legal pneumoconiosis. Decision and Order at 15 n.3; Director's Exhibits 14, 17, 19, 41, 43; Claimant's Exhibit 4.

CWP Fund v. Director, OWCP [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018). Further, as explained below, the ALJ discredited Dr. Sargent's opinion because she found it "poorly reasoned," and not because it failed to meet a heightened legal standard. Decision and Order at 15-16.

Dr. Sargent examined Claimant and reviewed his medical records. Employer's Exhibit 8. He opined that Claimant has a disabling obstructive ventilatory impairment caused by asthma and unrelated to coal mine dust exposure. *Id*. at 2. Dr. Sargent excluded coal mine dust exposure as a causative factor for Claimant's impairment, in part, because Claimant had normal pulmonary function studies when he left the mines in 1979, and as late as 2001, twenty-two years after leaving coal mine employment. Employer's Exhibits 8 at 2; 10 at 15-16, 22-23, 27, 32-33. The ALJ permissibly found Dr. Sargent's rationale inconsistent with the regulations which recognize pneumoconiosis "as a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see* 65 Fed. Reg. 79,920, 79,971 (Dec. 20, 2000) ("[I]t is clear that a miner who may be asymptomatic and without significant impairment at retirement can develop a significant pulmonary impairment after a latent period."); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be both latent and progressive may be discredited); Decision and Order at 15-16; Employer's Exhibits 8 at 2; 10 at 15-16, 22-23, 27, 32-33.

Additionally, the ALJ permissibly found Dr. Sargent's opinion unpersuasive because the physician did not adequately explain why Claimant's 17.42 years of underground coal mine dust exposure did not aggravate Claimant's respiratory condition, even if it was caused by asthma and smoking. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 673-74 n.4 (4th Cir. 2017) (ALJ permissibly discredited medical opinions that "solely focused on smoking" as a cause of obstruction and "nowhere addressed why coal dust could not have been an additional cause"); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013) (ALJ may discount physician's opinion for failure to adequately address whether coal dust played a role in the miner's impairment); Decision and Order at 16; Employer's Exhibits 8, 10. She also permissibly found Dr. Sargent's opinion failed to account for the Department of Labor's recognition in the preamble that the risks of coal mine dust exposure and smoking may be additive. 65 Fed. Reg. at 79,940; Decision and Order at 15-16; Employer's Exhibits 8, 10.

Employer's arguments are a request to reweigh the evidence which we are not empowered to do. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because the ALJ permissibly discredited Dr. Sargent's opinion, we affirm her determination that Employer failed to rebut the Section 411(c)(4) presumption by establishing Claimant does not have legal pneumoconiosis. *See* 20 C.F.R.

§718.305(d)(1)(i)(A); Decision and Order at 16. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis.[11] 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ 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); Decision and Order at 17-18. Contrary to Employer's argument, the ALJ permissibly discounted Dr. Sargent's opinion regarding the cause of Claimant's respiratory or pulmonary disability because he did not diagnose legal pneumoconiosis, contrary to her determination Employer did not disprove the disease.[12] *See Epling*, 783 F.3d at 504-05 (causation opinion that erroneously fails to diagnose pneumoconiosis may not be credited at all absent "specific and persuasive reasons" that the doctor's judgment does not rest upon the misdiagnosis, in which case the opinion is entitled to at most "little weight"); Decision and Order at 17-18; Employer's Brief at 16-17 (unpaginated). We therefore affirm the ALJ's finding that Employer failed

[11] Because we affirm the ALJ's findings on legal pneumoconiosis, we need not address Employer's contention that the ALJ erred in finding it did not disprove clinical pneumoconiosis. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 16-17; Employer's Brief at 3-7 (unpaginated).

[12] Dr. Sargent did not address whether legal pneumoconiosis caused Claimant's respiratory or pulmonary disability independent of his conclusion that he did not have the disease. Employer's Exhibits 8, 10.

to establish no part of Claimant's respiratory or pulmonary total disability was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

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

MELISSA LIN JONES
Administrative Appeals Judge