U.S. Department of Labor

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

BRB No. 21-0073 BLA

ROY L. RIFE	)
	)
Claimant-Petitioner	)
	)
v.	)
	)
CLINCHFIELD COAL COMPANY	)
	) DATE ISSUED: 01/17/2023
Employer-Respondent	)
	)
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)
	)
Party-in-Interest	) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

Roy L. Rife, Pilgrim Knob, Virginia.

Ashley M. Harman and Lucinda L. Fluharty (Jackson Kelly PLLC), Morgantown, West Virginia, for Employer.

Ann Marie Scarpino (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, GRESH, and JONES, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Denying Benefits (2017-BLA-05908)[2] rendered on a claim filed on March 16, 2015, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant had at least fifteen years of qualifying underground coal mine employment and established he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). She therefore determined Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[3] 30 U.S.C. §921(c)(4) (2018). However, the ALJ found Employer rebutted the presumption and denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Employer responds, urging the Benefits Review Board to affirm the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), responds, arguing that substantial evidence does not support the ALJ's determination that Employer successfully rebutted the presumption.

In an appeal filed by an unrepresented claimant, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994). We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in

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[1] Vickie Combs, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested on Claimant's behalf that the Benefits Review Board review the ALJ's decision, but Ms. Combs is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order). The Board accepted Claimant's November 4, 2020 appeal of the ALJ's September 21, 2020 Decision and Order Denying Benefits as timely because Claimant's lay representative was not properly served with the Decision and Order. *Rife v. Clinchfield Coal Co.*, BRB No. 21-0073 BLA (Mar. 21, 2022) (Order) (unpub.).

[2] On November 5, 2020, a day after Claimant's appeal, the ALJ released a "Reissued Decision and Order Denying Benefits" because Claimant and his lay representative had not been served her original Decision and Order. However, the decisions are identical.

[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. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

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).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Statutory presumptions may assist a claimant in establishing these elements, but failure to establish any element precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP,* 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,[5] 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 rebutted the presumption by establishing Claimant has neither clinical nor legal pneumoconiosis.

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),

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[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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Transcript at 15-17.

[5] "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconiosis, *i.e.*, the condition 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). "Legal pneumoconiosis" refers to "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

In determining Employer rebutted the existence of legal pneumoconiosis, the ALJ considered the opinions of Drs. Ajjarapu, Basheda, and Spagnolo. Decision and Order at 11. Dr. Ajjarapu opined that there is no evidence of legal pneumoconiosis, but also attributed Claimant's moderate impairment as indicated on pulmonary function studies to coal mine employment, cigarette smoking, and obesity. Director's Exhibits 21, 25, 42. Dr. Basheda opined Claimant does not have legal pneumoconiosis, but instead has persistent asthma and a possible obstructive impairment due to cigarette smoking. Employer's Exhibits 1, 2, 5. Similarly, Dr. Spagnolo opined Claimant does not have legal pneumoconiosis, but instead has asthma and possible cardiac disease. Employer's Exhibits 4, 6. The ALJ determined that none of the opinions support a diagnosis of legal pneumoconiosis, and therefore found Employer rebutted the existence of legal pneumoconiosis. Decision and Order at 10-11.

We agree with the Director that the ALJ applied the incorrect standard when weighing the medical opinion evidence. Director's Response Brief at 2. The ALJ found that because the medical opinion evidence "do[es] not support a finding" of legal pneumoconiosis, Employer has rebutted the existence of the disease. Decision and Order at 10-11. However, even if the evidence is negative for the disease, Employer must still present reasoned and documented evidence sufficient to *affirmatively* rebut the presumed existence of legal pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i)(A); *Griffith v. Terry Eagle Coal Co.*, 25 BLR 1-223, 1-228 (2017); *Minich*, 25 BLR at 1-155 n.8.

Further, as the Director argues, the ALJ's findings do not comply with the requirements of the Administrative Procedure Act.[6] 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); Director's Response Brief at 2. Specifically, the ALJ summarily concluded that all of the medical opinions are entitled to equal weight and are sufficient to rebut the presumption of legal pneumoconiosis without any analysis of the bases for the physicians' opinions. *Wojtowicz*, 12 BLR at 1-165; Decision and Order at 11.

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[6] The Administrative Procedure Act, 5 U.S.C. §§500-591, provides that every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Moreover, the ALJ erred in failing to determine whether Dr. Ajjarapu's diagnosis of a moderate obstructive impairment due in part to coal mine dust exposure constitutes a diagnosis of legal pneumoconiosis, regardless of the physician's opinion that Claimant does not have legal pneumoconiosis because he does not have chronic bronchitis.[7] 20 C.F.R. §718.201(a)(2) (legal pneumoconiosis includes "any chronic restrictive or *obstructive* pulmonary disease arising out of coal mine employment") (emphasis added); Director's Exhibits 21, 25, 42. The ALJ also failed to consider Claimant's treatment records, which include diagnoses of chronic obstructive pulmonary disease, lung nodules, coal workers' pneumoconiosis, hypoxemia, and chronic bronchitis. *See Wojtowicz*, 12 BLR at 1-165; Claimant's Exhibits 6-7.

Because the ALJ applied the wrong standard for rebuttal, failed to consider all relevant evidence, and failed to explain her consideration of the medical opinion evidence, we vacate her determination that Employer rebutted the existence of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); *Minich*, 25 BLR at 1-155 n.8; *Wojtowicz*, 12 BLR at 1-165. As the ALJ did not consider if Employer rebutted the presumption that Claimant's total disability is due to pneumoconiosis, we vacate her finding that Employer rebutted the Section 411(c)(4) presumption, 20 C.F.R. §718.305(d)(1)(i), and the denial of benefits.

Clinical Pneumoconiosis

In the interest of judicial economy, we also address the ALJ's determination that Employer rebutted the existence of clinical pneumoconiosis. To disprove clinical pneumoconiosis, Employer must establish Claimant does not have any of the 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. §§718.305(d)(1)(i)(B), 718.201(a)(1).

The ALJ considered nine interpretations of four x-rays, dated February 3, 2015, March 30, 2015, March 2, 2017, and August 25, 2017. Decision and Order at 9. The ALJ accurately found that all of the physicians who provided an x-ray interpretation were dually qualified as Board-certified radiologists and B readers. *Id.* at 9-10. Dr. DePonte interpreted the February 3, 2015 x-ray as positive for pneumoconiosis, Director's Exhibit 22, while Dr. Tarver opined it was negative for the disease. Employer's Exhibit 7. Dr. Miller interpreted the March 30, 2015 x-ray as positive for pneumoconiosis, Director's

[7] Dr. Ajjarapu opined "[w]hen you're talking about legal pneumoconiosis, basically they are talking about chronic bronchitis which can be a legal definition." Director's Exhibit 42 at 14. Specifically, she opined Claimant does not have chronic bronchitis. *Id.*

Exhibit 24, while Drs. DePonte and Tarver opined it was negative. Director's Exhibit 19; Employer's Exhibit 7. Dr. Crum opined the March 2, 2017 x-ray was positive for pneumoconiosis, Claimant's Exhibit 2, while Dr. Seaman opined it was negative for pneumoconiosis. Employer's Exhibit 3. Finally, Dr. Alexander interpreted the August 25, 2017 x-ray as positive for pneumoconiosis, Claimant's Exhibit 1, while Dr. Seaman opined it was negative. Employer's Exhibit 9.

Because an equal number of dually-qualified experts read the February 3, 2015, March 2, 2017, and August 25, 2017 x-rays as positive and negative for pneumoconiosis, the ALJ reasonably found the readings to be in equipoise. *See Adkins v. Director, OWCP,* 958 F.2d 49, 52 (4th Cir. 1992); Decision and Order at 9-10. Because a majority of the dually-qualified experts interpreted the March 30, 2015 x-ray as negative for pneumoconiosis, the ALJ reasonably found it negative for pneumoconiosis. *Id.*; Decision and Order at 10. The ALJ concluded Employer rebutted the presumption as "[n]one of the x-ray evidence supports a finding of clinical pneumoconiosis." Decision and Order at 10.

The Director contends the ALJ erred in requiring Claimant to establish clinical pneumoconiosis. Director's Response Brief at 2. We agree.

Contrary to the ALJ's findings, Claimant was not required to submit x-ray evidence that supports a finding of clinical pneumoconiosis. Decision and Order at 10. Rather, Employer must affirmatively establish Claimant does not have clinical pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i)(B); *Griffith*, 25 BLR at 1-228; *Minich*, 25 BLR at 1-155 n.8. Moreover, in finding Employer rebutted the existence of clinical pneumoconiosis, the ALJ failed to consider the CT scan evidence, medical opinion evidence, and Claimant's treatment records relevant to clinical pneumoconiosis. *See Wojtowicz*, 12 BLR at 1-165; Decision and Order at 10; Director's Exhibits 21, 25, 42; Claimant's Exhibits 5-7; Employer's Exhibits 1, 2, 4-6, 8.

Because the ALJ applied the wrong standard and failed to consider all relevant evidence, we must vacate her determination that Employer rebutted the existence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B).

Remand Instructions

The ALJ is instructed on remand to reconsider whether Employer established rebuttal in accordance with the regulations. Specifically, the ALJ must begin her analysis by considering whether Employer disproved the existence of legal pneumoconiosis by establishing 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*, 25 BLR at 1-155 n.8. The

ALJ also must determine whether Employer has established Claimant does not have clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); *see Minich*, 25 BLR at 1-159.

If the ALJ finds Employer has disproved the existence of both legal and clinical pneumoconiosis, Employer has rebutted the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(i) and the ALJ need not reach the issue of disability causation. However, if Employer fails to establish Claimant has neither legal nor clinical pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(i), the ALJ must then determine whether Employer has rebutted the presumed fact of disability causation at 20 C.F.R. §718.305(d)(1)(ii) with credible evidence that "no part of [Claimant's] total disability was caused by pneumoconiosis as defined in [Section] 718.201." 20 C.F.R. §718.305(d)(1)(ii); *see Minich*, 25 BLR at 1-159. If Employer is unable to rebut the Section 411(c)(4) presumption pursuant to either 20 C.F.R. §718.305(d)(1)(i) or (ii), Claimant has established entitlement to benefits.

In determining whether Employer has rebutted the presumption on remand, the ALJ must consider all relevant evidence and set forth her findings in detail, including the underlying rationale of her decision, as the APA requires. *See Wojtowicz*, 12 BLR at 1-165. In weighing the medical opinion evidence, the ALJ should address the comparative credentials of the respective physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their opinions. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *see also Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983).

Accordingly, the ALJ's Decision and Order Denying Benefits is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge