

U.S. Department of Labor

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



BRB No. 23-0090 BLA

JERRY W. MOOREHEAD)

Claimant-Petitioner)

v.)

THE MONONGALIA COUNTY COAL)
COMPANY)

and)

MURRAY ENERGY CORPORATION,)
c/o SMARTY CASUALTY CLAIMS)

Employer/Carrier-)
Respondents)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

DATE ISSUED: 01/11/2024

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits on Remand of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for Claimant.

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

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Denying Benefits on Remand (2020-BLA-05647) 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 request for modification of the denial of a claim filed on July 7, 2017, and is before the Benefits Review Board for the second time.¹

In a July 12, 2021 Decision and Order on Modification Denying Benefits, the ALJ found Claimant established at least fifteen years of underground coal mine employment. However, he found Claimant failed to establish a totally disabling respiratory or pulmonary impairment and thus could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.² 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.204(b)(2). Although he found Claimant established clinical and legal pneumoconiosis, 20 C.F.R. §718.202, he denied benefits based on Claimant's failure to establish total disability, an essential element of entitlement.

Considering Claimant's appeal, the Board affirmed the ALJ's findings that Claimant established at least fifteen years of underground coal mine employment and clinical and legal pneumoconiosis. *Moorehead v. The Monongalia County Coal Co.*, BRB No. 21-0528 BLA, slip op. at 3 n.4 (Sept. 27, 2022) (unpub.). The Board also affirmed his findings that the pulmonary function study and arterial blood gas study evidence does not establish total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. *Id.* at 4; 20 C.F.R. §718.204(b)(2)(i)-(iii). However, the Board held the ALJ erred in weighing the medical opinion evidence and thus vacated the denial of benefits and remanded the case for further consideration of the medical opinions. *Moorehead*, BRB No. 21-0528 BLA, slip op. at 5-7; 20 C.F.R. §718.204(b)(2)(iv).

¹ We incorporate the procedural history of this case as set forth in *Moorehead v. The Monongalia County Coal Co.*, BRB No. 21-0528 BLA, slip op. at 2-3 (Sept. 27, 2022) (unpub.).

² 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.

On remand, the ALJ found the medical opinion evidence does not establish total disability at 20 C.F.R. §718.204(b)(2)(iv). Thus he found Claimant failed to establish total disability, an essential element of entitlement, and denied benefits.

On appeal, Claimant contends the ALJ erred in finding that he failed to establish total disability. Employer and its Carrier respond in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, declined to file a substantive response brief.

The 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).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (pneumoconiosis 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 claimants in establishing the elements of entitlement if certain conditions are met, but failure to establish any one of these elements 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, 1-2 (1986) (en banc).

A miner is totally disabled if he has a pulmonary or respiratory impairment which, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

³ The Board will apply the law of the United States Court of Appeals for the Third Circuit because Claimant performed his last coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 12.

Pursuant to the Board's remand instructions, the ALJ considered the medical opinions of Drs. Cohen, Ranavaya, and Jaworski.⁴ 20 C.F.R. §718.204(b)(2)(iv); Decision and Order on Remand at 3-8. Dr. Cohen opined that Claimant is totally disabled by a respiratory impairment, whereas Drs. Jaworski and Ranavaya opined that he is not. Director's Exhibits 14, 55; Employer's Exhibit 2. The ALJ found Dr. Cohen's opinion inadequately explained and based on an inaccurate assessment of Claimant's usual coal mine employment; thus he discredited this opinion. Decision and Order on Remand at 6-8. He found the opinions of Drs. Ranavaya and Jaworski reasoned and documented and entitled to dispositive weight. *Id.* Therefore he concluded the medical opinion evidence does not establish total disability. *Id.*

Claimant contends the ALJ erred in weighing Dr. Cohen's opinion. Claimant's Brief at 9-10.

Dr. Cohen opined that Claimant's pulmonary function testing "demonstrate[s] an early obstructive [respiratory] defect with diffusion impairment reduced to 65% of reference and a DL/Va of 57% of reference." Director's Exhibit 55 at 7. Further, he reported that Claimant's "cardiopulmonary exercise testing showed abnormal widening of the A-a gradient, a gas exchange abnormality" *Id.* He concluded that "[t]hese combined impairments are totally disabling for the extremely heavy manual labor required by [Claimant's] last coal mining job as an inside laborer or beltman." *Id.*

The ALJ reiterated his finding that the exertional requirements of Claimant's usual coal mine employment as a beltman required "heavy work,"⁵ noting that the Board affirmed this determination. Decision and Order on Remand at 3-4, 8; *see Moorehead*, BRB No. 21-0528 BLA, slip op. at 5 n.7. In regard to Dr. Cohen's opinion, the ALJ observed that the doctor initially reported Claimant's usual coal mine employment required "heavy manual labor," but then later in his report stated Claimant could not perform the exertional requirements of an "extremely heavy manual labor" job. Decision and Order on Remand at 7-8 (emphasis added); *see* Director's Exhibit 55 at 3, 7. The ALJ found that

⁴ The Board affirmed the ALJ's previous determination, as unchallenged, that Dr. Saludes's opinion does not support a finding of total disability because the doctor did not specifically address this issue. *Moorehead*, BRB No. 21-0528 BLA, slip op. at 5 n.8.

⁵ Addressing the exertional requirements of Claimant's usual coal mine employment work as a beltman, the ALJ credited Claimant's testimony that his duties required him to install rollers and lift 100 pounds daily. Decision and Order on Modification at 7. Taking official notice of the *Dictionary of Occupational Titles*, the ALJ found the job duties Claimant described "required heavy manual labor." *Id.*

because Dr. Cohen “overstate[d] the exertional level of Claimant’s [usual] coal mine employment” when diagnosing total disability, it is “unclear” if the doctor is opining Claimant cannot perform heavy manual labor. Decision and Order on Remand at 8. Thus the ALJ discredited his opinion. Claimant does not specifically challenge this finding. Thus we affirm it. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Although Claimant challenges the ALJ’s finding that Dr. Cohen did not adequately explain his conclusion, we need not address this argument as the ALJ provided an alternative reason for discrediting his opinion that we have affirmed. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983). Because the ALJ discounted Dr. Cohen’s opinion, the only medical opinion supportive of Claimant’s burden of establishing total disability, we affirm his finding that Claimant failed to establish total disability based on the medical opinion evidence.⁶ 20 C.F.R. §718.204(b)(2)(iv); Decision and Order on Remand at 7-8.

As Claimant failed to establish he has a totally disabling respiratory or pulmonary impairment by any method set forth at 20 C.F.R. §718.204(b)(2)(i)-(iv), we affirm the ALJ’s finding that Claimant did not invoke the Section 411(c)(4) presumption. 20 C.F.R. §718.305. Further, because Claimant failed to establish total disability, an essential element of entitlement, we affirm the denial of Claimant’s request for modification. *Anderson*, 12 BLR at 1-112; 20 C.F.R. §725.310.

⁶ We need not address Claimant’s assertion that the ALJ erred in weighing the opinions of Drs. Ranavaya and Jaworski that Claimant does not have a totally disabling respiratory impairment because they do not assist him in satisfying his burden to establish total disability. *See* Claimant’s Brief at 8; Director’s Exhibit 14; Employer’s Exhibit 2.

Accordingly, the ALJ's Decision and Order Denying Benefits on Remand is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge