U.S. Department of Labor

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

BRB No. 23-0252 BLA

ROY G. RUSSELL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
LAUREL COAL CORPORATION	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	DATE ISSUED: 01/22/2024
	)	
Employer/Carrier-Petitioners	)	
	)	
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 Sean M. Ramaley, Administrative Law Judge, United States Department of Labor.

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Awarding Benefits (2021-BLA-05443) rendered on a subsequent claim[1] filed on July 15, 2019,[2] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 26.82 years of qualifying coal mine employment and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore determined Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018), and established a change in an applicable condition of entitlement.[4] 20 C.F.R.

[1] This is Claimant's second claim for benefits. On March 13, 2012, the district director denied Claimant's prior claim for failure to establish any element of entitlement. Director's Exhibit 1.

[2] We note the ALJ mistakenly relied on the date Claimant signed his miner's claim, July 1, 2019, rather than the date the claim was received by the office of the district director, July 15, 2019, to determine when the claim was filed. *See* 20 C.F.R. §725.303(a)(1) ("A claim shall be considered filed on the day it is received by the office in which it is first filed."); Decision and Order at 2; Director's Exhibit 3. The error makes no difference in this claim, however, as the ALJ held benefits commence "the month during which the claim was filed" – in other words, July 2019. 20 C.F.R. §725.503(b); Decision and Order at 38.

[3] Section 411(c)(4) 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.

[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 deny the subsequent claim unless he 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); *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 the district director denied Claimant's prior claim for failure to establish any element of entitlement, he had to submit new evidence establishing at least one element to warrant a review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3; Director's Exhibit 1.

§§718.305, 725.309. He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption.[5] Neither Claimant nor the Director, Office of Workers' Compensation Programs, filed a response brief.

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.[6] 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,[7] or that "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in

[5] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established 26.82 years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment, and therefore invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6, 23. Consequently, we also affirm the ALJ's determination that Claimant established a change in an applicable condition of entitlement at 20 C.F.R. §725.309(c). *See Skrack*, 6 BLR at 1-711; Decision and Order at 19-20.

[6] 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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 19; Director's Exhibit 4.

[7] "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).

[20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer failed to rebut the presumption by either method.[8] Decision and Order at 23-36.

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); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015). The ALJ considered the opinions of Drs. Zaldivar and Spagnolo that Claimant does not have legal pneumoconiosis. Decision and Order at 12-16, 31-33.

Dr. Zaldivar diagnosed a mild restriction and mild-to-moderate hypoxemia and explained that Claimant does not have legal pneumoconiosis because his impairments are "not compatible" with coal workers' pneumoconiosis. Director's Exhibit 36 at 3, 5. At his January 7, 2022 deposition, Dr. Zaldivar explained that because the changes observed on the x-ray and CT scan evidence were not consistent with pneumoconiosis, a combination of pneumonia and gastric reflux caused Claimant's impairment. Employer's Exhibit 8 at 7-17, 22, 25, 33-37. Dr. Spagnolo opined Claimant's "clinical respiratory symptoms, physical examinations, medical history, and testing are most consistent with a diagnosis of long-standing obesity and cardiovascular disease." Employer's Exhibit 6 at 14. At his January 12, 2022 deposition, Dr. Spagnolo testified he was able to exclude coal mine dust as causing or contributing to Claimant's reduced oxygen levels based on "the x-rays and the pulmonary function [studies]." Employer's Exhibit 9 at 39.

The ALJ found Drs. Zaldivar's and Spagnolo's opinions were not well-reasoned and inconsistent with the regulations and, therefore, insufficient to satisfy Employer's burden of proof. Decision and Order at 33. Employer asserts the ALJ "mischaracterized" the physicians' explanations regarding the significance of the negative x-ray evidence in relation to Claimant's restrictive respiratory impairment and did not consider the entirety of their opinions as to why Claimant does not have legal pneumoconiosis. Employer's Brief at 5-9. We disagree.

In discussing the potential causes of Claimant's restrictive respiratory impairment, Dr. Zaldivar explained that for "coal workers['] pneumoconiosis or silicosis to cause restriction one must have radiographic findings." Director's Exhibit 36 at 5. He stated that if the restriction is due to the shrinking of the lungs, it "must be accompanied by radiographic changes of space occupying lesions that is displacing the air within the lungs

[8] The ALJ found Employer disproved clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 30-31.

preventing full expansion," which has not happened in this case. *Id*. Similarly, Dr. Spagnolo discussed the radiographic evidence for clinical pneumoconiosis in relation to both Claimant's restrictive impairment and his disabling hypoxemia on blood gas testing. He explained that typically radiographic changes of clinical pneumoconiosis or fibrosis must occur before coal dust exposure could result in a restriction. Employer's Exhibit 9 at 27-28. Further, he testified that when coal mine dust exposure causes abnormal blood gas study results, either significant emphysema or interstitial fibrosis will be present, but there was no evidence of those conditions on Claimant's x-rays. *Id*. at 36, 41.

Contrary to Employer's contentions, although the ALJ acknowledged that both physicians provided various reasons for attributing Claimant's restriction to causes other than coal mine dust exposure, he accurately stated that both physicians rely in significant part on the absence of x-ray evidence of clinical pneumoconiosis in excluding a diagnosis of legal pneumoconiosis. Decision and Order at 12-16, 32-34. The ALJ permissibly found their opinions unpersuasive as the regulations do not require radiographic evidence of clinical pneumoconiosis in order to diagnose legal pneumoconiosis. 20 C.F.R. §§718.201(a), 718.202(a)(4), (b); 65 Fed. Reg. 79,920, 79,945 (Dec. 20, 2000); *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012) (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); *see also Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013) (ALJ has discretion in assessing the adequacy of a physician's explanation); *id.* at 33.

Employer's arguments are a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because the ALJ acted within his discretion in discrediting the opinions of Drs. Zaldivar and Spagnolo, we affirm his finding that Employer did not disprove legal pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 34. 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 also 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 35-36. Contrary to Employer's contention, the ALJ permissibly discounted Drs. Zaldivar's and Spagnolo's opinions on disability causation because they did not diagnose legal pneumoconiosis, contrary to his 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); *Toler v. E. Assoc.*

Coal Co., 43 F.3d 109, 116 (4th Cir. 1995); Decision and Order at 36. We therefore affirm the ALJ's finding that 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.

Accordingly, the Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge