U.S. Department of Labor

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

BRB No. 23-0263 BLA

BOBBY D. CHANDLER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PARAMONT COAL COMPANY VIRGINIA, LLC	)	
	)	DATE ISSUED: 01/11/2024
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 Dierdra M. Howard, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

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

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

GRESH, Chief Administrative Appeals Judge, and BUZZARD, Administrative Appeals Judge:

Employer appeals Administrative Law Judge (ALJ) Dierdra M. Howard's Decision and Order Awarding Benefits (2021-BLA-06012) 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 subsequent claim filed on July 29, 2020.[1]

The ALJ credited Claimant with thirty-seven years of underground coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant invoked 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), and established a change in an applicable condition of entitlement.[3] 20 C.F.R. §725.309(c). She further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption.[4] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not 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

---

[1] This is Claimant's second claim for benefits. Director's Exhibit 3. The district director denied Claimant's first claim on January 14, 2016, because he failed to establish total disability. Director's Exhibit 1.

[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); *see* 20 C.F.R. §718.305.

[3] Where 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); *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 he did not establish total disability in his prior claim, Claimant had to submit new evidence establishing this element of entitlement in order to obtain review of the current claim on the merits. *See* 20 C.F.R. §725.309(c)(3), (4); *White*, 23 BLR at 1-3.

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established thirty-seven years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3-4, 11.

accordance with applicable law.[5] 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).

Invocation of the Section 411(c)(4) Presumption – Total Disability

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(i). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work.[6] *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,[7] 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 Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

[5] 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); Decision and Order at 2 n.3; Director's Exhibits 4, 5; Hearing Tr. at 11-12.

[6] Before weighing the medical opinions, the ALJ addressed the exertional requirements of Claimant's usual coal mine employment. Decision and Order at 4. She found Claimant's usual coal mine employment was primarily working as a shuttle car operator. *Id.* Specifically, she noted Claimant testified he was exposed daily to rock and coal dust, and his work was "strenuous" and "required lots of walking, crawling, and rock dusting." Decision and Order at 4; *see* Hearing Tr. at 13-15. She found this work involved a "heavy" level of exertion. Decision and Order at 4, 7, 11. We affirm this finding as unchallenged. *Skrack*, 6 BLR at 1-711.

[7] A "qualifying" pulmonary function study or arterial blood gas study yields results equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

The ALJ found Claimant established total disability based on the medical opinions and evidence as a whole.[8] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 11. In weighing the medical opinions, the ALJ considered the medical reports of Drs. Fino, McSharry, and Shady. Decision and Order at 6-11; Director's Exhibits 15, 18, 19; Employer's Exhibits 2, 3, 5, 6. Dr. Shady opined Claimant has a totally disabling respiratory impairment, while Drs. Fino and McSharry opined he does not. Director's Exhibits 15, 18, 19; Employer's Exhibits 2, 3, 5, 6. The ALJ found Dr. Shady's opinion reasoned and documented and entitled to "significant probative weight." Decision and Order at 8. She determined the opinions of Drs. Fino and McSharry are unpersuasive. *Id.* at 9-10. Thus, she concluded Claimant established total disability by a preponderance of the medical opinion evidence. *Id.*

Employer argues the ALJ did not explain why Dr. Shady's opinion is reasoned and documented as the Administrative Procedure Act (APA)[9] requires. Employer's Brief at 6-9. We disagree.

Dr. Shady noted Claimant's usual coal mine employment required "bending and crawling in [twenty-inch] coal height." Director's Exhibit 15 at 15. She also noted he had to carry fifty-pound bags of rock dust and operate a continuous miner. *Id.* In addition, she highlighted that he experienced progressively worsening dyspnea and becomes "mildly short of breath after one flight of stairs." *Id.* She opined his pulmonary function testing demonstrates mild airway obstruction. *Id.* at 16. Ultimately, she concluded Claimant "has total respiratory disability and is unable to meet the physical demands of his last job in the coal industry" as a result of his impairment. *Id.*

In a supplemental report, Dr. Shady stated Claimant's "disabling dyspnea can present secondary to mechanics of breathing with or without adequate or normal gas exchange." Director's Exhibit 18. She also noted the "[m]ild airway obstruction documented by [pulmonary function testing] performed when breathing 'well' does not preclude severe exacerbation when challenged by noxious stimuli such as heavy dust

[8] The ALJ found Claimant did not establish total disability based on the pulmonary function studies and arterial blood gas studies. 20 C.F.R. §718.204(b)(2)(i), (ii); Decision and Order at 4-6. She also found there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 6.

[9] The Administrative Procedure Act, 5 U.S.C. §§500-591, requires that every adjudicatory decision include a statement of "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).

exposures." *Id.* In a second supplemental report, Dr. Shady stated she reviewed Dr. Fino's objective testing and report and concluded his testing revealed a "pattern of lung volume abnormality [] consistent with [Claimant's] complaints of dyspnea on exertion," which she characterized as respiratory in nature. Director's Exhibit 19. She reiterated that Claimant is totally disabled. *Id.*

The ALJ permissibly found Dr. Shady's opinion reasoned and documented as the doctor "adequately identified the data on which she based her opinion and sufficiently explained how that data supports her conclusion." Decision and Order at 8; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). Because we can discern the ALJ's basis for crediting Dr. Shady's opinion, her credibility finding satisfies the APA. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012) (The APA does not "impose a duty of long-windedness on an ALJ"; to the contrary, "if a reviewing court can discern what the ALJ did and why [she] did it, the duty of explanation under the APA is satisfied.") (citations omitted); *Mingo Logan Coal Co v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (the duty of explanation under the APA is satisfied as long as the reviewing court can discern what the ALJ did and why she did it).

Employer next asserts the ALJ erred in crediting Dr. Shady's opinion because it was based solely on Claimant's symptoms and coal mine dust exposure rather than on objective medical testing. Employer's Brief at 8-9. We are not persuaded.

The ALJ did not credit Dr. Shady's opinion based solely on Claimant's coal mine dust exposure and symptoms, but rather assigned it weight because the doctor identified the objective data on which she based her opinion. Decision and Order at 8. She also found the doctor "effectively explained" that Claimant's "mild [chronic obstructive pulmonary disease]" as shown on the lung function testing, chronic bronchitis and emphysema as demonstrated by chest x-ray, and symptoms of progressive dyspnea prevent him from performing the heavy exertion required in his usual coal mine job. *Id.*

We also reject Employer's contention the ALJ erroneously credited Dr. Shady's opinion because the doctor did not have access to Claimant's extensive medical history, treatment records, and most recent object medical testing results. Employer's Brief at 7. As discussed above, in her second supplemental report Dr. Shady indicated she reviewed Dr. Fino's March 24, 2021 evaluation and testing in addition to pulmonary function studies and chest x-rays dated between June 29, 2015 and February 24, 2021, and she reiterated that Claimant is totally disabled. Director's Exhibit 19. Thus Dr. Shady did not rely solely on her own examination when diagnosing total disability. Regardless, an ALJ is not required to discredit a physician who did not review all of a miner's medical records when her opinion is otherwise well-reasoned, documented, and based on her own examination

and objective test results. *See Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996).

Employer further contends the ALJ erred in crediting Dr. Shady's opinion because Claimant failed to establish total disability based on qualifying pulmonary function testing at 20 C.F.R. §718.204(b)(2)(i). Employer's Brief at 7-8. Contrary to Employer's assertion, it is well established that total disability can be demonstrated with a reasoned medical opinion even in the absence of qualifying pulmonary function or arterial blood gas studies. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1142 (4th Cir. 1995); *Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); 20 C.F.R. §718.204(b)(2)(iv).

Finally, Employer argues the ALJ erred in discrediting the opinions of Drs. Fino and McSharry. Employer's Brief at 9-11. We disagree.

Dr. Fino opined Dr. Shady's October 6, 2020 arterial blood gas study is normal, but concluded Claimant is totally disabled based on an oxygen transfer abnormality demonstrated by the February 24, 2021 arterial blood gas test he conducted. Employer's Exhibit 2 at 1, 3-4. In his deposition, he changed his opinion following his review of Dr. McSharry's March 17, 2022 testing. Employer's Exhibit 5 at 6, 11-13, 25-27. He noted the blood gas testing Dr. McSharry conducted was "more vigorous" than any other study with respect to Claimant's heart rate and exercise. *Id.* at 11-12. Because he concluded Dr. McSharry's study did not demonstrate a drop in oxygenation with exercise, Dr. Fino opined Claimant is not totally disabled. *Id.*

During cross-examination, Dr. Fino conceded that Dr. McSharry did not identify the process or timing by which he drew Claimant's blood when conducting exercise blood gas testing. Employer's Exhibit 5 at 23-24. Further, he agreed his February 24, 2021 blood gas study was reliable. *Id.* at 25. He stated it "does not make sense that" on October 6, 2020, Claimant's oxygenation was normal, then abnormal on February 24, 2021, and then normal again on March 17, 2022. *Id.* at 25-26. Thus he stated that any impairment would "not be a coal-dust-related condition." *Id.* But he conceded he could not explain the impairment demonstrated by the prior blood testing that he acknowledged was reliable. The ALJ permissibly found Dr. Fino's opinion unpersuasive and assigned it "minimal probative weight" because, despite acknowledging that his own testing was reliable, he "did not adequately explain how the results of [that testing], which formed the basis of his initial opinion [diagnosing total disability], did not factor [into] his changed opinion [diagnosing no total disability]." Decision and Order at 9; *see Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441.

Dr. McSharry opined Claimant is not totally disabled because his pulmonary function and arterial blood gas studies are not qualifying. Employer's Exhibit 3. However, he reported Claimant has "significant symptoms of dyspnea with exertion and a daily cough that could represent chronic bronchitis." *Id.* at 2. He also stated Claimant could walk only about one hundred yards due to shortness of breath. Employer's Exhibit 6 at 7. Considering Dr. McSharry's awareness of Claimant's respiratory symptoms and physical limitations from shortness of breath, the ALJ permissibly found the doctor did not adequately explain how Claimant could perform the heavy labor his previous coal mine employment required. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 10.

Employer argues the opinions of Drs. Fino and McSharry are credible because they explained their findings, and their conclusions are supported by the objective testing. Employer's Brief at 9-11. Its 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).

Because the ALJ's findings are supported by substantial evidence, we affirm her finding that Claimant established total disability based on the medical opinion evidence. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 11. As Employer raises no additional arguments, we affirm the ALJ's finding that the evidence as a whole establishes total disability. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; Decision and Order at 11.

Thus, we affirm the ALJ's determinations that Claimant established a change in an applicable condition of entitlement and invoked the Section 411(c)(4) presumption. Decision and Order at 3, 11; *see* 20 C.F.R. §§718.305, 725.309. Because Employer does not challenge the ALJ's finding that it failed to rebut the presumption, we affirm it. Decision and Order at 15; *see Skrack*, 6 BLR at 1-711.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring.

I concur in result only.

JUDITH S. BOGGS
Administrative Appeals Judge