U.S. Department of Labor

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

BRB No. 19-0363 BLA

ANITA L. HENDERSON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DRUMMOND COMPANY, INCORPORATED	)	
	)	
	)	DATE ISSUED: 07/14/2020
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 Larry W. Price, Administrative Law Judge, United States Department of Labor.

Anita L. Henderson, Jasper, Alabama.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals Administrative Law Judge Larry W. Price's Decision and Order Denying Benefits (2018-BLA-05362) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (the Act). This case involves a claim filed on May 9, 2016.

The administrative law judge found Claimant did not establish complicated pneumoconiosis and therefore could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20

C.F.R. §718.304. Although the administrative law judge credited Claimant with nineteen years, two months and three days of underground coal mine employment,[1] he found she did not establish total disability. He therefore found Claimant did 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), or establish entitlement to benefits under 20 C.F.R. Part 718. The administrative law judge therefore denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Neither Employer nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

In an appeal filed by a claimant without the assistance of counsel, the Benefits Review Board addresses whether substantial evidence supports the decision and order below. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to prove entitlement, 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. 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 (1986) (en banc).

A miner is totally disabled if she has a pulmonary or respiratory impairment which, standing alone, prevents her from performing her usual coal mine work and comparable

[1] Claimant's coal mine employment occurred in Alabama. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if she has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

gainful work.[3] *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 administrative law judge 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).

The administrative law judge accurately noted that Claimant's pulmonary function studies conducted on August 3, 2016 and August 4, 2017 are non-qualifying.[4] Decision and Order at 9; Director's Exhibits 16, 21. He also noted that the results of pulmonary function studies found in Claimant's treatment records are normal.[5] *Id.* at 5; Employer's Exhibits 3, 7. Because it is based on substantial evidence, we affirm the administrative law judge's finding that the pulmonary function studies did not establish total disability. 20 C.F.R. §718.204(b)(2)(i).

The administrative law judge accurately found that the two arterial blood gas studies of record, conducted on August 3, 2016 and August 4, 2017, are non-qualifying. Decision and Order at 10; Director's Exhibits 16, 21. The administrative law judge also accurately found there is no evidence of cor pulmonale with right-sided congestive heart failure. *Id.* at 10. We therefore affirm the administrative law judge's findings that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iii).

Before considering the medical opinions, the administrative law judge addressed the exertional requirements of Claimant's usual coal mine employment. The administrative

[3] The administrative law judge accurately found no evidence of complicated pneumoconiosis in the record. Decision and Order at 8. We therefore affirm his finding that Claimant cannot invoke the irrebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

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

[5] Claimant's treatment records contain the results of numerous pulmonary function studies conducted from October 23, 2008 to December 19, 2017. Employer's Exhibits 3 at 8, 25, 57-58; 7 at 4, 25, 28, 42, 49. All of these studies produced non-qualifying values. *Id.*

noted that Claimant's usual coal mine employment was that of an "outby utility" worker, a position she held for the last four months of her coal mine employment. Director's Exhibits 3, 28. The administrative law judge noted that Claimant indicated this positon "involved any job they needed [her] to do," including operating a ram car, rock dusting, being a fire boss, and brattice building. Director's Exhibit 3. Claimant indicated that although the physical demands of the job varied, she had to lift up to fifty pounds. *Id.* The administrative law judge determined this was a "medium duty job" based on the Department of Labor's *Dictionary of Occupational Titles*, which defines "medium duty work" as "[e]xerting 20 to 50 pounds of force occasionally, and/or 10 to 25 pounds of force frequently, and/or greater than negligible up to 10 pounds of force constantly to move objects." Decision and Order at 7. Because it is supported by substantial evidence, we affirm the administrative law judge's determination of the exertional requirements of Claimant's usual coal mine employment.

The administrative law judge next considered the medical opinions of Drs. Hawkins and Rosenberg.[6] Dr. Hawkins opined that Claimant's "mild airflow obstruction" would prevent her "from working in her previous occupation as an underground coal miner." Director's Exhibit 24. Dr. Rosenberg, however, opined that Claimant was not disabled from a pulmonary standpoint. Employer's Exhibit 2.

The administrative law judge permissibly found Dr. Hawkins's opinion not adequately reasoned because the doctor failed to adequately explain how Claimant's mild airflow obstruction would prevent her from performing her medium duty job as an "outby utility" worker.[7] *See Jordan v. Benefits Review Board*, 876 F.2d 1455, 1460 (11th Cir. 1989) ("The question of whether [a] medical report is sufficiently documented and reasoned is one of credibility for the fact finder."); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 12. Because no other medical opinion supports a finding that Claimant has a totally disabling respiratory or pulmonary impairment, we affirm the administrative law judge's finding that the medical opinions did not establish total disability. 20 C.F.R. §718.204(b)(2)(iv).

[6] The administrative law judge also considered Dr. Connelly's medical opinion, but accurately noted the physician did not address the issue of disability. Decision and Order at 11 n.10.

[7] Because the administrative law judge provided a valid basis for according less weight to Dr. Hawkins's opinion, any error he may have made in according less weight to his opinion for other reasons would be harmless. *See Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

Because Claimant did not establish total disability under 20 C.F.R. §718.204(b)(2)(i)-(iv), we affirm the administrative law judge's determinations that Claimant did not invoke the Section 411(c)(4) presumption or establish entitlement under 20 C.F.R. Part 718. *See* 30 U.S.C. §921(c)(4); *Trent*, 11 BLR at 1-27.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge