U.S. Department of Labor

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

BRB No. 20-0343 BLA

RANDALL K. SHRADER Claimant-Respondent v. CONSOL BUCHANAN MINE c/o HEALTHSMART CASUALTY CLAIMS Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 07/29/2021 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Paul R. Almanza, Associate Chief Administrative Law Judge, United States Department of Labor.

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

Catherine A. Karczmarczyk (Penn, Stuart & Eskridge), Johnson City, Tennessee, for Employer.

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

PER CURIAM:

Employer appeals Associate Chief Administrative Law Judge (ALJ) Paul R. Almanza's Decision and Order Awarding Benefits (2016-BLA-05739) rendered on a claim

filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). Claimant filed his claim for benefits on June 19, 2015. Director's Exhibit 2.

The ALJ found Claimant established 18.47 years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018). He further found Employer failed to 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.[2] Claimant filed a response brief, urging affirmance 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 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 Associates, Inc.*, 380 U.S. 359 (1965).

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[1] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is 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.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

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

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[4] 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 failed to establish rebuttal by either method.

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. Green, Raj, McSharry, and Sargent. Drs. Green and Raj opined that Claimant has legal pneumoconiosis, while Drs. McSharry and Sargent opined that he suffers from a vascular disorder or pulmonary hypertension unrelated to coal mine dust exposure. Director's Exhibits 12-13, 22; Claimant's Exhibits 1-2; Employer's Exhibits 1, 16-17.

The ALJ found Drs. Raj's and Sargent's opinions regarding legal pneumoconiosis worthy of little weight. Decision and Order at 28-29. He found Dr. McSharry's opinion that Claimant does not have legal pneumoconiosis well-reasoned and documented. Decision and Order at 28. He also found Dr. Green's opinion that Claimant has legal pneumoconiosis well-reasoned and documented and gave it "great weight." *Id.* at 26, 28. Weighing the evidence together, the ALJ found "the opinions concluding the Claimant does not have legal pneumoconiosis do not outweigh the opinions concluding that the

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[4] "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).

[5] "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).

Claimant does have legal pneumoconiosis." Decision and Order at 29. Thus, he found Employer failed to meet its burden to rebut legal pneumoconiosis. *Id.*

Employer argues the ALJ's analysis of Dr. Green's opinion violates the Administrative Procedure Act (APA)[6] because he did not explain why Dr. Green's opinion regarding legal pneumoconiosis is reasoned and documented. Employer's Brief at 9-10. We disagree.

Employer misconstrues the ALJ's decision as including only one rationale, with "no further explanation," for crediting Dr. Green's opinion: that it "is well documented (because it reviewed contrary opinions), and is well reasoned." Employer's Brief at 9; Decision and Order at 28. However, the ALJ discussed Dr. Green's opinions regarding both clinical and legal pneumoconiosis in detail. Decision and Order at 25. He noted Dr. Green's examinations of Claimant, his consideration of Dr. Sargent's report, and his diagnosis of chronic obstructive pulmonary disease (COPD). Decision and Order at 25. As the ALJ indicated, Dr. Green opined that Claimant's history of coal mine employment was a significant and contributing factor to his COPD, as it was not possible to distinguish the relative contribution of Claimant's mining or cigarette smoking histories. Decision and Order at 25; Director's Exhibits 12, 22; Claimant's Exhibit 2. The ALJ found Dr. Green's reasoning "consistent with the premises underlying the regulations that coal dust and cigarette smoking have additive effects" and therefore gave his opinion "great weight." Decision and Order at 25-26.

Further, while the ALJ found Dr. Green's opinion well-documented as he considered contrary opinions, he also indicated Dr. Green "took relevant histories, conducted a physical examination, and performed objective tests." Decision and Order at 25, 28. The ALJ permissibly found Dr. Green's opinion to be well-documented based on his examinations, testing, and consideration of Dr. Sargent's report. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 211 (4th Cir. 2000) (it is the province of the ALJ to evaluate the medical opinions); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-296 (1984) (an opinion may be adequately documented if it is based on items such as physical examination, symptoms, and work and social histories).

Thus, the record demonstrates the ALJ provided adequate explanation for finding Dr. Green's opinion well-reasoned and documented. *See* 5 U.S.C. §557(c)(3)(A), as

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[6] The APA 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).

incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Further, he permissibly found Dr. Green's opinion consistent with the principles underlying the regulations. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 674 (4th Cir. 2017); 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000) (setting forth the Department of Labor's acceptance of the view that smoking and coal mine dust exposure have additive effects on pulmonary and respiratory function). Moreover, Employer does not specifically challenge this credibility determination. Accordingly, we affirm the ALJ's determination that Dr. Green's opinion regarding legal pneumoconiosis is well-reasoned and documented and entitled to "great weight." Decision and Order at 26, 28.

The ALJ next found Dr. Sargent's opinion unpersuasive because he did not adequately explain why Claimant's significant coal mine dust exposure was not a contributing or aggravating factor in his lung disease. *See* 20 C.F.R. §718.201(a)(2), (b); *Mingo Logan Coal Co. v. Owens,* 724 F.3d 550, 558 (4th Cir. 2013); Decision and Order at 28-29. Employer alleges the ALJ erred in discrediting Dr. Sargent's opinion because "[h]is opinion was well-reasoned and well-documented and based on the objective and subjective evidence of record." Employer's Brief at 12. This argument amounts to a request to reweigh the evidence, which the Board is not permitted to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). The ALJ permissibly found Dr. Sargent's opinion not sufficiently persuasive to carry Employer's burden to rebut legal pneumoconiosis. *See Owens,* 724 F.3d at 558. Accordingly, we affirm the ALJ's decision to discredit Dr. Sargent's opinion.

Employer further argues the ALJ merely "counted heads" in analyzing the medical opinion evidence to find Employer failed to meet its burden to rebut legal pneumoconiosis. Employer's Brief at 10-12. We disagree, as the ALJ considered the reasoning each physician provided and weighed the conflicting opinions. As discussed above, he permissibly credited Dr. Green's opinion that Claimant has legal pneumoconiosis in the form of COPD due to both smoking and coal mine dust exposure. In considering Dr. McSharry's opinion, he indicated Dr. McSharry took into account contrary opinions and "adequately explained why he believes coal dust did not contribute to Claimant's impairment," and concluded his opinion that Claimant does not have legal pneumoconiosis was "well-reasoned and well-documented." Decision and Order at 28. He further noted each of the physicians' qualifications and found both Drs. Green and McSharry "well qualified" to provide opinions. Decision and Order at 25-26.

It is the province of the ALJ as the fact-finder to weigh the conflicting evidence. *See Compton*, 211 F.3d at 211. If a reviewing court can discern what the ALJ did and why he or she did it, the duty of explanation under the APA is satisfied. *Owens*, 724 F.3d at

557; *Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 354 (3d Cir. 1997). We can discern the ALJ's reasoning here.

The ALJ found Dr. Green's opinion that Claimant has legal pneumoconiosis worthy of "great weight" as it is consistent with the principles underlying the regulations. While he also found Dr. McSharry's opinion excluding a diagnosis of legal pneumoconiosis to be "well-reasoned and documented," he did not make a similar finding that Dr. McSharry's opinion was consistent with the regulations nor did he afford it any special weight. Thus, weighing the conflicting evidence of the well-qualified physicians together, the ALJ found the opinions supporting rebuttal did not outweigh the contrary opinions. Decision and Order at 29. The ALJ permissibly weighed the conflicting medical opinions qualitatively and quantitatively to find the evidence insufficient to meet Employer's burden of rebuttal. *See Compton*, 211 F.3d at 211; *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 950-51 (4th Cir. 1997); *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992). We therefore affirm the ALJ's determination that Employer did not rebut legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A). Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis.[7] 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ found Employer failed to establish that "no part of the [M]iner'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). The ALJ permissibly discredited the disability causation opinions of Drs. McSharry and Sargent because they were premised on the physicians' rejected view that Claimant does not have legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); *see Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015) (such an opinion "may not be credited at all" on disability causation absent "specific and persuasive reasons" for concluding the physician's view on disability causation is independent of his or her erroneous opinion on pneumoconiosis); Decision and Order at 30. We therefore affirm the ALJ's determination that Employer failed to establish no part of Claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(ii).

[7] Because we have affirmed the ALJ's determination that Employer failed to rebut legal pneumoconiosis, we need not address its allegations of error regarding clinical pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge