U.S. Department of Labor

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

BRB No. 22-0104 BLA

WELDON BLAND	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	
	)	
and	)	DATE ISSUED: 7/25/2023
	)	
PITTSON COMPANY	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand (Denying Benefits Claim) of Tracy A. Daly, Administrative Law Judge, United States Department of Labor.

Weldon Bland, Nora, Virginia.

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

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

BOGGS and JONES, Administrative Appeals Judges:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) Tracy A. Daly's Decision and Order on Remand (Denying Benefits Claim) (2014-BLA-05035) 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 claim filed on May 23, 2012, and is before the Board for a second time.

In his initial August 23, 2018 Decision and Order Awarding Benefits, the ALJ credited Claimant with 25.51 years of qualifying coal mine employment and found he established 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, 33 U.S.C. §921(c)(4) (2018).[2] Further, he found Employer did not rebut the presumption and awarded benefits.

On appeal, the Board affirmed the ALJ's finding that Claimant established 25.51 years of qualifying coal mine employment and that his usual coal mine work required heavy to very heavy physical exertion. *Bland v. Clinchfield Coal Co.*, BRB No. 18-0594 BLA, slip op. at 2 n.2, 3 n.5 (Feb. 5, 2020) (unpub.). In a split decision, however, the majority of the Board's three-member panel held the ALJ did not provide a valid basis for crediting the opinions of Drs. Nida and Smiddy that Claimant is disabled. *Id.* at 4-6. The majority therefore vacated his finding that Claimant established total disability and remanded the case for further consideration.[3] *Id.* at 6. Specifically, the majority instructed the ALJ on remand to reconsider whether the medical opinion evidence supports finding total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.* The majority further instructed him to

[1] Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested the Benefits Review Board review Administrative Law Judge (ALJ) Tracy A. Daly's decision, but she is not representing Claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[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] Administrative Appeals Judge Gresh would have held the ALJ permissibly credited Drs. Nida's and Smiddy's opinions and affirmed the award of benefits. *Bland v. Clinchfield Coal Co.*, BRB No. 18-0594 BLA, slip op. at 7-12 (Feb. 5, 2020) (unpub.) (Gresh, J., concurring and dissenting).

determine whether all of the relevant evidence weighed together established total disability. *Id.*

On remand, the ALJ found Claimant failed to establish total disability at 20 C.F.R. §718.204(b)(2) and denied benefits.

On appeal, Claimant generally challenges the ALJ's denial of benefits. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

In an appeal filed without representation, the 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 ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[4] 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 (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).

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

To invoke the Section 411(c)(4) presumption of total disability due to pneumoconiosis, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). 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).

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3, 6.

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).

In its prior split decision, the Board vacated the ALJ's finding that Claimant established total disability at 20 C.F.R. §718.204(b)(2)(iv), with the majority holding his analysis of the medical opinion evidence did not comport with the requirements of the Administrative Procedure Act,[5] 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). *Bland*, BRB No. 18-0594 BLA, slip op. at 4-5. It noted the ALJ did not explain why Claimant's diagnoses, symptoms, and prescriptions support Drs. Nida's and Smiddy's opinions that Claimant is totally disabled, that neither physician specifically referenced Claimant's use of medication or oxygen to support their conclusion that he is disabled, and that "[m]ere symptoms such as shortness of breath alone are insufficient to establish total disability." *Id.* (citing *Wright v. Director, OWCP*, 8 BLR 1-245, 1-247 (1985)). Thus, it concluded the ALJ inappropriately substituted his opinion for those of Drs. Nida and Smiddy. *Id.* It further noted the ALJ did not conduct the required analysis or provide the required explanations of his findings with respect to Drs. Fino's and Castle's opinions that Claimant is not totally disabled.[6] *Id.* at 6. The Board therefore remanded the case for further evaluation of the medical opinion evidence. *Id.*

Consistent with the majority's remand instructions, the ALJ considered the opinions of Drs. Nida and Smiddy. Decision and Order on Remand at 6-9. He observed Dr. Nida opined in a May 22, 2013 letter that "Claimant is 'totally disabled at this time,'" but that this letter was accompanied by no supporting documentation and the record contains no evidence that Dr. Nida had treated Claimant prior to the date of the letter. *Id.* at 7 (quoting Director's Exhibit 14 at 6). Further, he noted Dr. Nida based his opinion on Claimant's

[5] The Administrative Procedure Act provides 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).

[6] The Board also noted that Dr. Klayton initially opined Claimant is totally disabled; however, in a supplemental opinion he asserted that upon review of additional evidence, including evidence that the pulmonary function studies performed during his examinations were invalid, there is no objective evidence to support the conclusion that Claimant is totally disabled. *Bland*, BRB No. 18-0594 BLA, slip op. at 4 n.6. The Board further observed Drs. Ponder and Emery did not specifically provide an opinion concerning whether Claimant is totally disabled. *Id.* at 4 n.7.

symptom of shortness of breath; however, the ALJ noted that the Board stated in its original decision that symptoms alone are insufficient to establish total disability, and the ALJ noted Claimant's treatment notes dated June 25, 2014, and June 29, 2015, documented that Claimant's shortness of breath was improving. *Id.* (referencing Claimant's Exhibits 8 at 10; 9 at 3). He thus permissibly concluded Dr. Nida's opinion is not reasoned and thus accorded it no weight. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Wright*, 8 BLR at 1-247; Decision and Order on Remand at 7.

Dr. Smiddy opined that Claimant is totally disabled due to pneumoconiosis in his May 23, 2013 progress note, indicating Claimant spent twenty-eight years mining and his pulmonary function study was "elevated" due to extensive medication. Director's Exhibit 14 at 11. He later opined in his September 27, 2013 progress note that Claimant is disabled due to pneumoconiosis and cor pulmonale. Claimant's Exhibit 6 at 10. The ALJ permissibly discredited Dr. Smiddy's opinion because he purported to rely on an April 3, 2012 pulmonary function study, but no such study is contained in the record; he did not explain why it demonstrated Claimant is totally disabled; and he did not explain his assertion that values from this study were elevated due to medication. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; *Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-240 (2007) (en banc); *Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-108-09 (2006) (en banc); Decision and Order on Remand at 8.

It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 543 (4th Cir. 1988). Because the ALJ permissibly discredited Drs. Nida's and Smiddy's opinions, the only medical opinions of record that could support a finding of total disability, we affirm his finding that Claimant failed to establish disability at 20 C.F.R. §718.204(b)(2)(iv). *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000); *Hicks*, 138 F.3d at 528; *Anderson*, 12 BLR at 1-113 (Board is not authorized to reweigh the evidence or substitute its inferences for those of the ALJ). We further affirm, as supported by substantial evidence, the ALJ's overall finding that the evidence, when weighed as a whole, fails to establish total disability and thus Claimant failed to establish a required element of entitlement. 20 C.F.R. §718.204(b)(2); *see Anderson*, 12 BLR at 1-112; *Rafferty*, 9 BLR at 1-232; Decision and Order at 10.

Accordingly, we affirm the ALJ's Decision and Order on Remand (Denying Benefits Claim).

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GRESH, Chief Administrative Appeals Judge, dissenting:

I respectfully dissent from the decision of my colleagues to now affirm the ALJ's denial of benefits on remand, after he originally awarded benefits in his original Decision and Order. For the reasons stated in my concurring and dissenting opinion in the Board's original split decision in this case, the ALJ permissibly determined in his original Decision and Order that the opinions of Drs. Nida and Smiddy, Claimant's treating primary care physician and treating pulmonary specialist, together with Claimant's treatment records and the opinions of Drs. Ponder and Emery, support a finding of total disability. *Bland v. Clinchfield Coal Co.*, BRB No. 18-0594 BLA, slip op. at 7-12 (Feb. 5, 2020) (unpub.) (Gresh, J., concurring and dissenting). Thus, the ALJ's original finding that the evidence, when weighed together, establishes total disability was supported by substantial evidence and, therefore, affirmable. Consequently, the ALJ's original determination that Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) was affirmable.

As I previously noted, the ALJ is empowered to weigh the medical evidence and to draw his own inferences therefrom, *see Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993), and the Board is not empowered to reweigh the evidence or substitute its judgment for that of the ALJ, even if our conclusions would have been different. *Bland*, BRB No.

18-0594 BLA, slip op. at 8-11; *see Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764 (4th Cir. 1999); *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co*., 12 BLR 1-77, 1-79 (1988). But the result of the Board's original decision in this case, in which Claimant established over 25 years of coal mine employment, is that the opinions of Drs. Nida and Smiddy were in effect reweighed and a different, inconsistent, conclusion has now been reached. Drs. Nida and Smiddy both opined that Claimant suffered from coal workers' pneumoconiosis and chronic obstructive pulmonary disease and the ALJ, originally, permissibly determined in my view that their opinions supported a finding of total disability, for the reasons stated in my original concurring and dissenting opinion. *Bland*, BRB No. 18-0594 BLA, slip op. at 8-11; *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Underwood*, 105 F.3d at 949. Even though the Board is not empowered to reweigh the evidence, even if its conclusions would have been different, *see Consolidation Coal Co. v. Held*, 314 F.3d 184, 187 (4th Cir. 2002), that effectively has now occurred in this case after the ALJ had, in my view, permissibly determined that their opinions, and the evidence as a whole, supported a finding of total disability and, therefore, that Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4).

Thus, consistent with my original concurring and dissenting opinion, I respectfully dissent.

DANIEL T. GRESH, Chief
Administrative Appeals Judge