U.S. Department of Labor

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

BRB No. 22-0114 BLA

ALBERT DIGIANDOMENICO, JR.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
THE MARSHALL COUNTY COAL COMPANY	)	
	)	
	)	
and	)	DATE ISSUED: 7/18/2023
	)	
MURRAY ENERGY CORPORATION TRUST	)	
	)	
Employer/Carrier-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 Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick, & Long), Ebensburg, Pennsylvania, for Claimant.

Aimee M. Stern (Dinsmore & Shohl, LLP), Wheeling, West Virginia, for Employer and its Carrier.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits (2020-BLA-05485) rendered on a claim filed on October 18, 2016, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with fifteen years of underground coal mine employment and found he established total disability. Therefore, he found Claimant invoked the rebuttable 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 did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding it failed to rebut the presumption.[2] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file 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 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 had neither legal nor clinical pneumoconiosis,[4] or that "no part of

[1] Under Section 411(c)(4) of the Act, a miner is presumed totally disabled due to pneumoconiosis if he has 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).

[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); Decision and Order at 23.

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

[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 that is

[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.[5] Decision and Order at 23.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish Claimant did not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *Minich v. Keystone Coal Mining Co.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on the medical opinions of Drs. Fino and Ranavaya to disprove legal pneumoconiosis. Dr. Fino opined Claimant does not have legal pneumoconiosis, but has a mild restrictive impairment due to prior lung tissue removal and a significant obstruction due to cigarette smoking and his history of Aspergillus fungus in the lungs. Employer's Exhibit 1. Dr. Ranavaya opined Claimant does not have legal pneumoconiosis, but has centrilobular emphysema due to cigarette smoking. Director's Exhibit 19 at 56. The ALJ found their opinions not well-reasoned and accorded them no weight. Decision and Order at 13-14.

While Employer generally asserts that a preponderance of the evidence demonstrates Claimant does not suffer from legal pneumoconiosis, it does not identify any specific error in the reasons the ALJ gave for discrediting the opinions of Drs. Fino and Ranavaya. 20 C.F.R. §802.211(b) (requirements for an issue to be adequately briefed); *Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); Employer's Brief at 6-7. Employer's arguments amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Thus, we affirm the ALJ's determination that the opinions of Drs. Fino and Ranavaya are entitled to no weight, and Employer has failed to rebut the

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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).

[5] The ALJ determined Employer rebutted the existence of clinical pneumoconiosis. Decision and Order at 12-13.

existence of legal pneumoconiosis.[6] 20 C.F.R §§718.201(a)(2), 718.202(a)(4); Decision and Order at 23. 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 found Employer did not rebut the presumption by establishing "no part of [Claimant'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 22. Because Employer raises no specific allegations of error regarding the ALJ's findings on disability causation other than its assertion that Claimant does not have legal pneumoconiosis, we affirm the ALJ's determination that Employer failed to establish no part of Claimant's respiratory or pulmonary total disability is due to legal pneumoconiosis. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 22. 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.

[6] Because Employer bears the burden of proof on rebuttal and we have affirmed the ALJ's discrediting of the opinions of Drs. Fino and Ranavaya, we need not address Employer's argument that the ALJ erred in crediting Dr. Lenkey's opinion that Claimant has legal pneumoconiosis. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); Employer's Brief at 7.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge