U.S. Department of Labor

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

BRB No. 22-0196 BLA

JOSEPH MURPHY, JR.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CONSOLIDATION COAL COMPANY	)	
	)	
Self-Insured	)	DATE ISSUED: 7/26/2023
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 Lauren C. Boucher, Administrative Law Judge, United States Department of Labor.

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

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Lauren C. Boucher's Decision and Order Awarding Benefits (2019-BLA-06317) 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 September 25, 2017.[1]

The ALJ found Claimant established at least twenty-seven years of qualifying coal mine employment based on the parties' stipulation and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). She therefore found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018),[2] and established a change in an applicable condition of entitlement, 20 C.F.R. §725.309.[3] Further, she 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] It also argues she erred in finding it did not rebut the presumption. Claimant responds in support of the award. 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

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[1] On December 29, 2015, the district director denied Claimant's prior claim, filed on May 13, 2014, because he failed to establish a totally disabling respiratory or pulmonary impairment. 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] When a miner files a claim for benefits more than one year after the denial of a previous claim, the ALJ must also deny the subsequent claim unless she finds "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)(1); *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 Claimant did not establish total disability in his prior claim, he had to submit new evidence establishing this element to obtain review of the merits of his current claim. *Id.*

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established at least twenty-seven years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6; Director's Exhibits 4-8; Hearing Tr. at 35-36.

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. *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 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).

The ALJ found Claimant established total disability based on the arterial blood gas studies, medical opinions, and in consideration of the evidence as a whole.[6] 20 C.F.R. §718.204(b)(2)(ii), (iv); Decision and Order at 6-20.

Arterial Blood Gas Studies

The ALJ considered five arterial blood gas studies dated October 26, 2017, October 16, 2018, February 4, 2020, June 25, 2020, and October 14, 2020. Decision and Order at 8-9. The October 26, 2017, February 4, 2020, and October 14, 2020 studies produced

[5] 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); Decision and Order at 5 n.3; Director's Exhibits 4, 5; Hearing Tr. at 15, 28.

[6] The ALJ found Claimant did not establish total disability based on the pulmonary function studies, or evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii); Decision and Order at 6 n.4, 8.

qualifying[7] values at rest and during exercise. Director's Exhibit 12; Claimant's Exhibits 1, 3. The June 25, 2020 study produced non-qualifying values at rest and during exercise. Employer's Exhibit 7. The October 16, 2018 study produced non-qualifying values at rest and no exercise study was conducted. Director's Exhibit 19.

The ALJ accorded greater weight to the February 4, 2020, June 25, 2020, and October 14, 2020 studies because they are more recent than the October 26, 2017 and October 16, 2018 studies. Decision and Order at 9. She further found two of the three most recent blood gas studies conducted in 2020 are qualifying and thus found the preponderance of the arterial blood gas study evidence supports a finding of total disability. *Id*.

Employer argues the ALJ erred in weighing the blood gas studies as she "does not resolve the medical dispute presented." Employer's Brief at 14-15. We disagree. Contrary to Employer's argument, the ALJ properly performed both a qualitative and quantitative analysis of the conflicting blood gas studies and explained her basis for resolving the conflict in the evidence. *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).

Employer also asserts the ALJ should have determined the preponderance of Claimant's 2020 blood gas study results do not support a finding of a totally disabling gas exchange impairment because exercise blood gas tests are more probative of Claimant's ability to work than resting blood gas tests. Employer's Brief at 14-15. We disagree. While the ALJ may give greater weight to exercise study results, she is not required to do so, as she correctly noted. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-31-32 (1984) (it is within the ALJ's discretion to find a particular study more probative than another study); 20 C.F.R. §718.105(a) (gas exchange impairment may manifest "either at rest or during exercise"); 20 C.F.R. §718.105(b) ("If the results of the blood-gas test at rest do not satisfy the requirements of Appendix C to this part, an exercise blood-gas test shall be offered to the miner unless medically contraindicated."); Decision and Order at 9. We consider Employer's argument to be 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).

Further, even if the ALJ determined the exercise blood gas tests are more probative of Claimant's ability to perform the exertional requirements of his usual coal mine work, three of the four total exercise studies and two of the three 2020 exercise studies produced

[7] A "qualifying" arterial blood gas study yields values equal to or less than the applicable table values listed in Appendix C of 20 C.F.R. Part 718. A "non-qualifying" study yields values in excess of those values. 20 C.F.R. §718.204(b)(2)(ii).

qualifying values. *See Parsons v. Wolf Creek Collieries*, 23 BLR 1-29, 1-35 (2004) (en banc); *Workman v. Eastern Associated Coal Corp.*, 23 BLR 1-22, 1-27 (2004) (en banc); *Schetroma v. Director, OWCP*, 18 BLR 1-19, 1-22 (1993); *Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990) (ALJ may consider the amount of time separating studies). Because the majority of the exercise blood gas studies produced qualifying values, Employer has failed to explain how the error it alleges would make a difference. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

Additionally, Employer generally argues the ALJ erred in failing to address whether the normal single breath carbon monoxide diffusion capacity (DLCO) test in the record undermines the qualifying arterial blood gas testing. Employer's Brief at 13. Employer has not, however, identified any specific medical evidence in the record that the ALJ failed to consider. Thus we decline to address this argument. *Cox v. Director*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); 20 C.F.R. §802.211(b).

Employer raises no further error with respect to the ALJ's weighing of the arterial blood gas studies. Thus, as it is supported by substantial evidence, we affirm the ALJ's finding that the arterial blood gas study evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 9.

Medical Opinions

The ALJ next considered the medical opinions of Drs. Habre, Green, Ranavaya, Raj, and Fino. Decision and Order at 10-20. Drs. Habre, Green, Ranavaya,[8] and Raj opined Claimant is totally disabled from a pulmonary or respiratory impairment, while Dr. Fino opined he is not. Director's Exhibits 12, 19, 22, 43; Claimant's Exhibits 1, 3; Employer's Exhibits 5, 7, 9-11. The ALJ found that "none of the physician opinions of record merits full probative weight on the issue of disability." Decision and Order at 20. She determined the opinions of Drs. Ranavaya and Raj "merit very little probative weight."[9] *Id*. In

[8] Dr. Ranavaya opined Claimant's "morbid obesity with a BMI [Body Mass Index] of 37.4 certainly is a totally and permanently disabling condition in and of itself as it relates to performing his last coal mining job or a job with similar exertion." Employer's Exhibit 5 at 13.

[9] The ALJ found Dr. Ranavaya's opinion entitled to "very little" weight because it is "vague and inconclusive," he did not have an adequate understanding of the exertional requirements of Claimant's usual coal mine work, and he is "less qualified" than the other physicians because he is not a Board-certified pulmonologist. Decision and Order at 17-

addition, she determined that while the opinions of Drs. Habre, Green, and Fino "merit reduced weight," they have "some probative value."[10] *Id.* Further, she found Drs. Habre's and Green's opinions outweighed Dr. Fino's contrary opinion. *Id.* She thus concluded the medical opinion evidence "provides some support toward" a finding of total disability. *Id.*

As Employer does not challenge the ALJ's weighing of the opinions of Drs. Habre, Green, Ranavaya, Raj, and Fino, we affirm her weighing of their opinions. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 20.

Further, Employer does not challenge the ALJ's finding that Dr. Ranavaya's opinion is entitled to "very little" weight because it is "vague and inconclusive" and the doctor did not have an adequate understanding of the exertional requirements of Claimant's usual coal mine work; thus, we affirm this finding. Decision and Order at 17-19; *see Skrack*, 6 BLR at 1-711.

Employer argues the ALJ erred in finding Dr. Ranavaya "less" qualified than the other physicians because he is not Board-certified in pulmonary medicine. Employer's Brief at 15-16. It asserts the ALJ failed to explain why a pulmonologist "is better qualified than a Board certified Occupational and Environmental Medicine physician that [the Department of Labor] has relied on for over 30 years." *Id.* In light of our affirmance of the ALJ's unchallenged finding that Dr. Ranavaya's opinion is entitled to "very little" weight because it is "vague and inconclusive," and because the doctor did not have an adequate understanding of the exertional requirements of Claimant's usual coal mine work, Employer has failed to explain how its argument would make a difference. *See Shinseki*,

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19. She also found Dr. Raj's opinion entitled to "very little" weight because it is "highly equivocal and inconclusive." *Id.* at 20.

[10] The ALJ found Dr. Habre's opinion entitled to "reduced" weight because he did not have an opportunity to review "the most recent medical evidence of record (including the three blood gas tests from 2020)," and he did not have an adequate understanding of the exertional requirements of Claimant's usual coal mine work. Decision and Order at 18. She also found that while Dr. Green's opinion is entitled to "reduced" weight because he did not have an opportunity to review "the additional" medical evidence of record," his opinion is also entitled to "some" weight because he had an accurate understanding of the exertional requirements of Claimant's usual coal mine work, he relied on one of the most recent blood gas studies of record, and it is consistent with the finding that the blood gas study evidence supports total disability. *Id.* at 19. Further, she found Dr. Fino's opinion entitled to "reduced" weight because it is equivocal and inadequately explained. *Id.* at 18-19.

556 U.S. at 413; *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 15-16. Thus, any alleged error the ALJ made in considering Dr. Ranavaya's qualifications is harmless. *Larioni,* 6 BLR at 1-1278.

Employer raises no further error with respect to the ALJ's weighing of the medical opinions. Thus, as it is supported by substantial evidence, we affirm the ALJ's determination that the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 20.

Further, we affirm the ALJ's finding that Claimant established total disability based on the evidence as a whole. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 20-21. We therefore affirm her finding that Claimant invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §§718.305, 725.309; Decision and Order at 21.

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 nor clinical pneumoconiosis,[11] or "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 did not establish rebuttal by either method.[12]

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

[11] "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). "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).

[12] The ALJ found Employer disproved the existence of clinical pneumoconiosis. Decision and Order at 25.

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 medical opinions of Drs. Fino and Ranavaya.[13] Decision and Order at 26-29. Both doctors opined Claimant has hypoxemia due to obesity, and unrelated to coal mine dust exposure. Director's Exhibit 19; Employer's Exhibits 5, 7, 9, 11. The ALJ found their opinions "unpersuasive" and entitled to "little" weight. Decision and Order at 29. She thus concluded Employer failed to rebut the presumption that Claimant has legal pneumoconiosis. *Id.* at 29, 31-32.

We reject Employer's argument that the ALJ applied the wrong standard when addressing rebuttal of legal pneumoconiosis. Employer's Brief at 5-8. Contrary to Employer's argument, the ALJ applied the correct standard by requiring Employer to affirmatively disprove the existence of legal pneumoconiosis by a preponderance of the evidence.[14] 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i); *see Minich*, 25 BLR at 1-155 n.8; Decision and Order at 22, 26, 28 n.16. Moreover, as discussed below, she discredited Drs. Fino's and Ranavaya's opinions because they failed to adequately explain their own conclusions that any lung disease or impairment Claimant has is unrelated to coal mine dust exposure -- not because they failed to meet a particular legal standard. Decision and Order at 28-29.

We also reject Employer's argument that the ALJ provided invalid reasons for finding the opinions of Drs. Fino and Ranavaya not credible. Employer's Brief at 8-9, 12-13.

Dr. Fino found the variable results of the arterial blood gas study evidence indicate reversible low oxygen levels and that Claimant's disability is "not due to coal dust because coal dust doesn't get better and get worse over time." Employer's Exhibit 9 at 17, 19-21. He stated Claimant's normal lung volumes, normal diffusing capacity, and normal

[13] The ALJ also considered the opinions of Drs. Habre, Green, and Raj that Claimant has legal pneumoconiosis. Decision and Order at 26; Director's Exhibits 12, 22, 43; Claimant's Exhibits 1, 3; Employer's Exhibit 10.

[14] The ALJ stated she "recognize[d] that Employer need only prove that coal mine dust did not play a *significant* causal role in Claimant's lung disease and need not prove that coal mine dust played *no* causal role, but both Dr. Fino and Dr. Ranavaya did determine that coal mine dust played no causal role (*i.e.*, any impairment was 'not due to coal dust' (DX 9 at 17, 29) and obesity was the 'only cause' of his impairment (EX 5))." Decision and Order at 28 n.16 (emphasis in original).

spirometry rule out emphysema, pulmonary fibrosis, or a "primary pulmonary oxygen transfer abnormality." Director's Exhibit 19 at 8; Employer's Exhibit 9 at 18. In addition, he stated Claimant's oxygenation problem is due to "his hypoventilation, his lack of ability to be treated for . . . [sleep apnea with a] CPAP [machine] and he is overweight." Employer's Exhibit 9 at 22.

Dr. Ranavaya diagnosed Claimant with mild resting hypoxemia with obesity-related hypoventilation as "the most probable and the only cause." Employer's Exhibit 5 at 12. He stated the adverse effect of Claimant's morbid obesity on his testing, specifically the "expiratory reserve volume (ERV)" and "low peripheral oxygenation," are reversible. Employer's Exhibit 7 at 15. Along with his morbid obesity, Dr. Ranavaya noted Claimant's normal spirometry, normal lung volumes, and normal diffusion capacity indicate his impairment is unrelated to coal mine dust exposure. Employer's Exhibits 5, 7, 11.

The ALJ noted Drs. Fino and Ranavaya excluded coal mine dust exposure as a causative factor of Claimant's respiratory impairment because they believe obesity-induced hypoventilation can explain his resting hypoxemia. Decision and Order at 28-29. She permissibly found the doctors failed to adequately explain why Claimant's significant history of coal dust exposure is not a contributing or aggravating factor, along with his obesity, to his respiratory impairment. *Id*.; *see Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 n.4 (4th Cir. 2017); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441. Further, she found their reasoning unpersuasive because even if Claimant's low oxygen levels were reversible and his hypoxemia improved with exercise as the doctors opined, they failed to adequately explain why the irreversible portion of Claimant's impairment is not significantly related to, or substantially aggravated by, coal mine dust exposure. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012); *Consol. Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004); Decision and Order at 28-29.

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). Employer's argument is a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113.

Because the ALJ acted within her discretion in rejecting the opinions of Drs. Fino and Ranavaya,[15] the only medical opinions supportive of Employer's burden on rebuttal,

[15] Because the ALJ provided valid reasons for discrediting the opinions of Drs. Fino and Ranavaya, we need not address Employer's additional arguments regarding the weight

we affirm her finding that Employer did not disprove the existence of legal pneumoconiosis.[16] 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); Decision and Order at 29, 31-32. 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 next considered whether Employer established "no part of the miner'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 32-33. She discredited Drs. Fino's and Ranavaya's disability causation opinions because they did not diagnose legal pneumoconiosis, contrary to her finding that Employer did not disprove the existence of the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order at 32-33. As the ALJ's finding that Employer failed to prove that no part of Claimant's respiratory disability is due to legal pneumoconiosis is unchallenged, we affirm it. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 31-32.

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she assigned to their opinions. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 8-9, 12-13, 15-16.

[16] As Dr. Raj diagnosed legal pneumoconiosis, his opinion cannot support Employer's burden to disprove the disease; we therefore need not address Employer's contention regarding the ALJ's consideration of his opinion. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 13-14.

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

JONATHAN ROLFE
Administrative Appeals Judge