U.S. Department of Labor

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

BRB No. 20-0306 BLA

LOIS M. BOWMAN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	
	)	DATE ISSUED: 06/28/2021
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 Granting Benefits of Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

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

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

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

PER CURIAM:

Employer appeals Administrative Law Judge Francine L. Applewhite's Decision and Order Granting Benefits (2018-BLA-06067) 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 April 19, 2017.[1]

The administrative law judge credited Claimant with eight years of coal mine employment and thus found she could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[2] Considering entitlement under 20 C.F.R. Part 718, she found Claimant did not establish clinical pneumoconiosis, but established legal pneumoconiosis and a totally disabling respiratory or pulmonary impairment due to pneumoconiosis. 20 C.F.R. §§718.202(a)(4), 718.204(b), (c). Thus, she awarded benefits.

On appeal, Employer argues the administrative law judge erred in finding Claimant established legal pneumoconiosis and total disability due to pneumoconiosis.[3] Claimant responds in support 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 administrative law judge'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 Associates, Inc.*, 380 U.S. 359 (1965).

---

[1] This is Claimant's third claim for benefits. The district director denied Claimant's most recent claim, filed on March 2, 2005, because she did not establish any element of entitlement. Decision and Order at 2; Director's Exhibit 2.

[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.

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that Claimant established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed her coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 8, 19.

To be entitled to benefits under the Act,[5] 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. Statutory presumptions may assist claimants in establishing the elements of entitlement if certain conditions are met, but failure to establish any element precludes an award of benefits. *See 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).

Legal Pneumoconiosis

Employer argues the administrative law judge erred in finding Claimant established legal pneumoconiosis.[6] To establish legal pneumoconiosis, Claimant must demonstrate she has 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(b).

The administrative law judge considered the medical opinions of Drs. Green, Fino, and Raj. Decision and Order at 8-12. Dr. Green diagnosed legal pneumoconiosis in the form of disabling chronic obstructive pulmonary disease (COPD) and chronic respiratory failure with hypoxemia caused by a combination of coal mine dust exposure and cigarette smoking. Director's Exhibit 12. Dr. Fino opined Claimant does not have legal pneumoconiosis but an obstructive respiratory impairment on pulmonary function testing caused by severe emphysema due to cigarette smoking. Director's Exhibit 25; Employer's Exhibit 3. Dr. Raj diagnosed COPD arising out of coal mine dust exposure. Claimant's Exhibits 1, 2. The administrative law judge found Dr. Green's opinion well-reasoned and documented and entitled to "greater weight." Decision and Order at 11. She discredited Dr. Fino's opinion as inadequately explained and assigned Dr. Raj's opinion "only some

---

[5] Although Employer argues the administrative law judge erred in finding it did not rebut the Section 411(c)(4) presumption by disproving clinical and legal pneumoconiosis, as discussed above Claimant did not invoke the rebuttable presumption in this case and the administrative law judge did not require Employer to establish rebuttal. Decision and Order at 4.

[6] "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).

weight" because although he "considered a variety of factors" in diagnosing legal pneumoconiosis, his diagnosis of clinical pneumoconiosis was contrary to the administrative law judge's finding. *Id.*

Employer argues the administrative law judge erred in crediting Dr. Green's opinion. Employer's Brief at 14-16. We disagree.

The administrative law judge noted Dr. Green relied on pulmonary function and arterial blood gas testing to diagnose "very severe chronic airflow obstruction" and "chronic respiratory failure." Decision and Order at 8, *quoting* Director's Exhibit 12. She found the doctor cited Claimant's "history of chronic cough, wheez[ing], shortness of breath, and mucous expectoration" to support his diagnoses. *Id.* She also found he relied on a "detailed social history, occupational history, and medical history," and "elicited relevant facts regarding [Claimant's] smoking history, including when she had quit and began smoking again." Decision and Order at 10-11. The administrative law judge also noted Dr. Green recorded that Claimant "had heavy coal and dust exposure within her [eight] years of underground coal mining." *Id.*

The administrative law judge found Dr. Green "assessed that both cigarette smoke and coal and rock dust contributed to the Claimant's chronic airflow obstruction" and "discussed how 'it is not possible to distinguish' the relative contribution of the Claimant's smoking history versus her coal/rock dust exposure" to her disabling respiratory impairments. Decision and Order at 10-11, *quoting* Director's Exhibit 12. Contrary to Employer's argument, the administrative law judge permissibly found Dr. Green's opinion is documented and well-reasoned, as he addressed Claimant's smoking history and occupational history in explaining "how both cigarette smoke and coal and rock dust are factors in the etiology of the Claimant's diagnosis . . . ." Decision and Order at 11; *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 contends the administrative law judge should have discredited Dr. Green's opinion because he did not review all of the evidence of record and based his diagnoses on only his own examination of Claimant. Employer's Brief at 15-16. An administrative law judge is not required to discredit a physician who did not review all of a miner's medical records when the opinion is otherwise well-reasoned, documented, and based on his own examination of the miner, objective test results, and exposure histories. *See Church v. Eastern Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996). We consider Employer's argument to be a request that the Board reweigh the evidence, which we are

not empowered to do.[7] *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).

Employer next argues the administrative law judge erred in discrediting Dr. Fino's medical opinion. Employer's Brief at 8-13. This argument also has no merit.

The administrative law judge found Dr. Fino "focused primarily on Claimant's smoking history" in addressing the cause of her respiratory impairment. Decision and Order at 11, *quoting* Director's Exhibit 25, Employer Exhibit 3. Specifically, the administrative law judge found Dr. Fino "unequivocally stated that this is 'clearly' a smoking-related problem" and "reiterates his conclusion in his deposition by stating 'I believe this is unequivocally a smoking-related case . . . I do not believe that coal dust played any role in her impairment or disability.'" *Id*. Contrary to Employer's argument, the administrative law judge permissibly discredited Dr. Fino's opinion because he "does not address the potential additive effects of both coal mining and a significant smoking history."[8] Decision and Order at 11; *see Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 n.4 (4th Cir. 2017) (administrative law judge permissibly discredited medical opinions that "solely focused on smoking" as a cause of obstruction and "nowhere addressed why coal dust could not have been an additional cause"); *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. The administrative law judge also permissibly rejected Dr. Fino's opinion because,

---

[7] We reject Employer's assertion that the administrative law judge erred in failing to explain how the qualifications of Drs. Green and Raj impacted her decision. Employer's Brief at 15, 16. While the administrative law judge acknowledged the qualifications of all of the physicians, *see* Decision and Order at 8-10, she was not required to assign greater weight to a medical opinion based the physician's qualifications. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). The administrative law judge acted within her discretion in finding Dr. Green's opinion to be the most credible in light of the rationale he provided for his medical conclusions. *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); Decision and Order at 11.

[8] We reject Employer's argument that the administrative law judge did not apply the proper standard for legal pneumoconiosis when weighing Dr. Fino's opinion. Employer's Brief at 7. The administrative law judge correctly evaluated whether Dr. Fino credibly explained why Claimant's respiratory impairments are not significantly related to, or substantially aggravated by, coal mine dust exposure. 20 C.F.R. §718.201(a)(2), (b); Decision and Order at 9-12.

unlike Dr. Green, he "did not discuss whether the Claimant was subjected to heavy coal and dust exposure." Decision and Order at 11; *Hicks* 138 F.3d at 533; *Akers*, 131 F.3d at 441.

Because it is supported by substantial evidence, we affirm the administrative law judge's determination that Claimant established legal pneumoconiosis based on Dr. Green's medical opinion.[9] 20 C.F.R. §718.202(a); Decision and Order at 11-13.

Disability Causation

Employer argues the administrative law judge erred in finding Claimant's total disability was due to legal pneumoconiosis. Employer's Brief at 17-18. We disagree. To establish disability causation, Claimant must prove pneumoconiosis was a "substantially contributing cause" of her totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause of a miner's totally disabling impairment if it has "a material adverse effect on the miner's respiratory or pulmonary condition" or "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii).

Dr. Green opined Claimant is totally disabled by legal pneumoconiosis in the form of COPD and "chronic respiratory failure." Director's Exhibit 12. The administrative law judge found Dr. Green's opinion reasoned and documented. Decision and Order at 12. Employer does not challenge this finding. Thus we affirm it. *Hawkinberry v. Monongalia County Coal Co.*, 25 BLR 1-249, 1-255-57 (2019); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 12.

Similarly, having already rejected Dr. Fino's opinion on whether Claimant's totally disabling respiratory impairment constitutes legal pneumoconiosis, the administrative law judge rationally rejected his opinion that legal pneumoconiosis did not cause Claimant's disability as neither well-reasoned nor documented. *Hicks* 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 10-13. Further, Dr. Fino opined Claimant's disability is unrelated to legal pneumoconiosis because she does not have the disease, rendering his opinion not credible on causation. *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015), *citing Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995) (Where a physician erroneously fails to diagnose pneumoconiosis, his opinion on causation

---

[9] Because the administrative law judge rationally found Claimant established legal pneumoconiosis based on Dr. Green's opinion, we need not address Employer's argument that she erred in weighing Dr. Raj's opinion that Claimant has the disease. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 14-16.

"may not be credited at all" absent "specific and persuasive reasons" for concluding it is independent of the mistaken belief the miner did not have the disease.); Director's Exhibit 25; Employer's Exhibits 3.

As substantial evidence supports the administrative law judge's finding that Dr. Green's opinion is well-reasoned, and because it establishes legal pneumoconiosis substantially contributes to Claimant's disability, we affirm her finding that Claimant established disability causation pursuant to 20 C.F.R. §718.204(c). We therefore affirm the award of benefits.

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge