U.S. Department of Labor

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

BRB No. 19-0131 BLA

WILLIAM NORMAN WILSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DICKENSON – RUSSELL COAL COMPANY, LLC	)	DATE ISSUED: 03/23/2020
	)	
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 Carrie Bland, Administrative Law Judge, United States Department of Labor.

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

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

BUZZARD, Administrative Appeals Judge:

Employer appeals the Decision and Order Awarding Benefits (2016-BLA-05599) of Administrative Law Judge Carrie Bland rendered on a claim pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's claim filed on February 14, 2012.

The administrative law judge credited claimant with at least thirty-four years of qualifying coal mine employment and accepted employer's concession that he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). The administrative law judge 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).[1] The administrative law judge further determined employer did not rebut the presumption and awarded benefits.

On appeal, employer argues the administrative law judge erred in finding it did not rebut the Section 411(c)(4) presumption. Neither claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.[2]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed 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 and Grylls Associates, 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 that the miner had neither legal nor clinical pneumoconiosis,[4] or that

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if he had at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the administrative law judge's determinations that claimant established at least thirty-four years of qualifying coal mine employment, a totally disabling respiratory or pulmonary impairment, and invocation of the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 8, 23.

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

[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). This definition encompasses 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

"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 administrative law judge found employer did not establish rebuttal by either method.

A. Existence of Legal Pneumoconiosis

In addressing whether employer disproved the existence of legal pneumoconiosis, the administrative law judge considered the opinion of Dr. Habre[5] that claimant has legal pneumoconiosis and the contrary opinions of Drs. Castle[6] and Fino.[7] Director's Exhibits 11, 37; Employer's Exhibits 8, 11 at 15. She assigned "significant weight" to Dr. Habre's opinion because she found it well-reasoned and well-documented, and little probative weight to the opinions of Drs. Castle and Fino because they were inadequately explained and unreasoned. *Id.* Because she discounted the opinions of Drs. Castle and Fino, the administrative law judge found employer did not disprove the existence of legal pneumoconiosis.[8] Decision and Order 27-30.

Employer contends the administrative law judge improperly rejected the opinions of Drs. Castle and Fino that claimant's totally disabling respiratory impairment is due to

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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] In his March 2, 2012 and January 16, 2016 reports, Dr. Habre diagnosed obesity with a restrictive ventilatory defect and opined that claimant has disabling lung disease attributable to chronic bronchitis caused by coal dust exposure. Director's Exhibits 11, 39.

[6] In a report dated October 30, 2013, and at a May 12, 2017 deposition, Dr. Castle opined that claimant does not suffer from legal pneumoconiosis but suffers from disabling restrictive lung disease due to exogenous obesity. Director's Exhibit 37; Employer's Exhibit 6 at 31-33. Dr. Castle further opined that claimant "certainly had evidence of an elevated right hemidiaphragm which could be paralyzed," thereby contributing to his symptomatic problems. Director's Exhibit 37.

[7] In his November 8, 2012 report, and at a May 9, 2017 deposition, Dr. Fino opined that claimant does not have clinical or legal pneumoconiosis, but suffers from a totally disabling respiratory abnormality due to his obesity. Director's Exhibit 15; Employer's Exhibit 5 at 29-30. Dr. Fino added that even if he assumed claimant has coal workers' pneumoconiosis, it has not contributed to his respiratory disability. *Id.*

[8] The administrative law judge also found that the opinion of claimant's treating physician, Dr. Farrow, who diagnosed "significant coal workers' pneumoconiosis," Claimant's Exhibits 5, 9, "do[es] not assist the [e]mployer in establishing that the [c]laimant does not have pneumoconiosis." Decision and Order at 28.

his obesity, not his coal mine dust exposure, and contends she did not apply the correct standard in finding the relevant evidence insufficient to rebut legal pneumoconiosis. Employer's Brief at 10-20. We disagree.

Contrary to employer's contention, the administrative law judge applied the correct legal standard that to disprove legal pneumoconiosis, employer must demonstrate claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 24, 27, 28, 30; *see* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015) (Boggs, J., concurring and dissenting). The administrative law judge did not, as employer suggests, reject the opinions of Drs. Castle and Fino because they failed to rule out coal dust exposure as a causative factor for claimant's respiratory impairment. Rather, after fully considering the underlying rationale each doctor provided for why claimant did not have legal pneumoconiosis, she found their opinions not credible. *See generally Minich*, 25 BLR at 1-155 n.8; Decision and Order at 28-30.

The administrative law judge permissibly found the probative value of Dr. Castle's opinion undermined because his exclusion of coal mine dust exposure as a cause of claimant's impairment was based, in part, on the absence of x-ray findings of pneumoconiosis,[9] which the administrative law judge stated is contrary to the premise "that exposure to coal mine dust can result in disabling respiratory impairment, without findings of pneumoconiosis on x-ray." Decision and Order at 29; *see also Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305 (4th Cir. 2012); *Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 256-57 (3d Cir. 2011); *Midland Coal Co. v. Director, OWCP* [*Shores*], 358 F.3d 486, 490 (7th Cir. 2004). Similarly, she permissibly accorded diminished weight to Dr. Fino's opinion[10] because she found it predicated on Dr. Fino's

[9] Dr. Castle opined that claimant does not have legal pneumoconiosis because claimant's "findings of a mild to moderate degree of restrictive lung disease, and essential normal diffusing capacity are indicative of and typical for restriction due to exogenous obesity." Director's Exhibit 37; Decision and Order at 28. Dr. Castle explained that coal mine dust exposure can cause a restrictive disease, but typically only in the presence of "a very significant amount of pulmonary fibrosis" as demonstrated by linear irregular abnormalities on x-ray, which are absent in this case. Director's Exhibit 37; Decision and Order at 29.

[10] Dr. Fino opined that claimant's disabling respiratory abnormality is due to obesity. Director's Exhibit 15. He stated that in cases such as claimant's, where restriction is evident and the FVC and FEV1 values are significantly reduced, "you have got to see scarring and fibrosis" to attribute the lung disease to coal mine dust exposure. Employer's Exhibit 5 at 22. He concluded, therefore, "the minimal scarring that was discussed by Dr.

supposition that a showing of significant pneumoconiosis on x-ray is necessary to conclude that a respiratory restriction is due to coal mine dust, contrary "to the recognized concept that disability due to coal dust exposure can occur in the absence of any x-ray findings of clinical pneumoconiosis."[11] *Id.* The administrative law judge also rationally rejected the opinions of Drs. Castle and Fino because they did not adequately explain why claimant's thirty-four years of coal mine dust exposure was not a significantly contributing or substantially aggravating factor in his disabling respiratory impairment. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Looney*, 678 F.3d at 313-14; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 29-30. Thus, the administrative law judge rationally found their opinions entitled to little weight and insufficient to rebut the presumption that claimant suffers from legal pneumoconiosis.[12] *See Clark*, 12 BLR at 1-155; Decision and Order at 30.

As there are no other medical opinions supportive of employer's burden, we affirm the administrative law judge's finding that employer did not rebut the Section 411(c)(4) presumption by disproving the existence of legal pneumoconiosis. *Owens*, 724 F.3d at 558. Employer's failure to disprove legal pneumoconiosis precludes a finding that it established claimant does not have pneumoconiosis.[13] 20 C.F.R. §718.305(d)(1)(i).

DePonte on the one computed tomography scan, or the chest x-ray readings of 1/0, are not enough scarring and fibrosis to cause any abnormality at all." *Id.*

[11] We reject our dissenting colleague's and employer's assertion that the administrative law judge's finding is in error because she did not consider other reasons Drs. Castle and Fino may have provided for excluding coal dust as a cause of claimant's lung disease and impairments. Employer's Brief at 14-16. The administrative law judge fully considered their opinions, Decision and Order at 13-19, 28-29, and reasonably concluded that the invalid rationales provided by Drs. Castle and Fino for excluding coal dust as a causative factor detracted from the credibility of their entire opinions that claimant's impairment is due solely to obesity. *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).

[12] Because the administrative law judge provided valid reasons for discounting the opinions of Drs. Castle and Fino, we need not address employer's remaining arguments regarding the weight she accorded to their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-83 n.4 (1983); Employer's Brief at pp. 12-16, 18.

[13] We thus need not address employer's contentions regarding the administrative law judge's finding that employer did not disprove clinical pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

B. Disability Causation

The administrative law judge next considered whether employer rebutted the Section 411(c)(4) presumption by establishing that "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 30-31. She rationally discounted the opinions of Drs. Castle and Fino that claimant's disability is not due to pneumoconiosis, because neither doctor diagnosed legal pneumoconiosis, contrary to her finding that employer failed to disprove the existence of the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015) (a doctor who mistakenly believes that claimant does not have pneumoconiosis may not be credited on the issue of disability causation absent "specific and persuasive reasons"); *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, (4th Cir. 1995) (where physician failed to properly diagnose pneumoconiosis, an administrative law judge "may not credit" that physician's opinion on causation absent "specific and persuasive reasons," in which case the opinion is entitled to at most "little weight"); Decision and Order at 45. Therefore, we reject employer's contentions and affirm the administrative law judge's finding that employer failed to establish that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

In view of the foregoing, we affirm the administrative law judge's determinations that employer did not rebut the Section 411(c)(4) presumption and claimant is entitled to benefits. *See* 30 U.S.C. §921(c)(4).

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

I concur:

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Chief Administrative Appeals Judge, concurring in part and dissenting in part:

I respectfully dissent from the majority's decision to affirm the administrative law judge's finding that employer failed to disprove the existence of legal pneumoconiosis at 20 C.F.R. §718.305(d)(1)(i). I specifically dissent from the majority's decision to affirm the administrative law judge's determinations to discredit the medical opinions of Drs. Fino and Castle. As employer asserts, in discrediting their opinions as contrary to the premises underlying the Act that legal pneumoconiosis can occur in the absence of x-ray evidence of clinical pneumoconiosis, the administrative law judge selectively analyzed the evidence. 30 U.S.C. §923(b).

The regulations provide "[a] claim for benefits must not be denied solely on the basis of a negative chest X-ray." 20 C.F.R. §718.202(b). Here, Dr. Fino stated claimant's negative x-ray was only one factor he relied on in excluding coal mine dust as a cause of claimant's impairment. He explained that if coal dust exposure was causing claimant's impairment, in addition to x-ray evidence of scarring and fibrosis, he would expect a reduction in claimant's diffusion capacity, abnormal blood gases, abnormalities on the computed tomography scans and reduced lung volumes. Employer's Exhibit 5 at 20-22. Dr. Castle similarly relied on claimant's normal diffusion capacity, normal blood gases, preserved lung volumes and the overall pattern of impairment, in addition to the negative x-ray, to conclude claimant's impairment is not due to coal mine dust exposure.

Employer's Exhibit 6 at 27-30, 36. By focusing on only the portion of the physicians' opinions pertaining to the negative x-ray evidence, the administrative law judge engaged in an impermissible selective analysis. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295 (1984).

Nor would I affirm the administrative law judge's determination that Drs. Castle and Fino failed to adequately explain why claimant's thirty-four years of coal mine dust exposure was not a significantly contributing or substantially aggravating factor in his disabling respiratory impairment. Decision and Order at 29-30. As employer asserts, the administrative law judge has not explained the basis for this conclusory finding. Thus her analysis does not comport with the Administrative Procedure Act (APA), which requires that every adjudicatory decision be accompanied by a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

In light of the above-referenced errors, I would vacate the administrative law judge's determination that employer failed to disprove the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.305(d)(1)(i). I would instruct the administrative law judge to reconsider, on remand, whether the opinions of Drs. Fino and Castle are sufficient to establish claimant's lung disease is not "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b). In so doing, the administrative law judge should consider the entirety of their medical opinions and explain her findings.

In view of the foregoing, I would also vacate the administrative law judge's related finding that employer failed to establish that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). I concur in all other aspects of the decision.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge