

U.S. Department of Labor

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



BRB No. 21-0481 BLA

DAVID A. WARD)	
)	
Claimant-Respondent)	
)	
v.)	
)	
PARAMONT COAL CORPORATION)	
)	DATE ISSUED: 03/17/2023
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 Granting Benefits in a Subsequent Claim of Christopher Larsen, Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Christopher Larsen's Decision and Order Granting Benefits in a Subsequent Claim (2017-BLA-05022) rendered on a

subsequent claim filed February 18, 2015,¹ pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 14.51 years of coal mine employment and therefore found he could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, he found Claimant established clinical pneumoconiosis and that he is totally disabled by legal pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204(b)(2), (c). He therefore found Claimant established a change in an applicable condition of entitlement,² 20 C.F.R. §725.309(c), and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant's total disability is due to legal pneumoconiosis.³ Neither Claimant nor the Director, Office of Workers' Compensation Programs, has filed a response.

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.⁴ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

¹ Claimant's previous claim for benefits, filed April 11, 2001, was denied for failure to establish any element of entitlement. ALJ Exhibit 1.

² 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 he finds that "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 any element of entitlement in his previous claim, he had to submit evidence establishing at least one element to obtain review of the merits of his current claim. *See id.*; ALJ Exhibit 1.

³ We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established the existence of clinical pneumoconiosis, thereby establishing a change in an applicable condition of entitlement, and the presence of a totally disabling respiratory or pulmonary impairment. *See Skrack v. Island Creek Coal Co.*, 6 BLR at 1-710, 1-711 (1983); Decision and Order at 31-32, 36; 20 C.F.R. §§718.202(a), 718.204(b)(2), 725.309.

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in Virginia. *See*

Entitlement Under 20 C.F.R. Part 718

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, 718.204. 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).

Employer challenges the ALJ's finding that Claimant established that his total disability is due to legal pneumoconiosis. Employer's Brief at 3-12. Because the issues of legal pneumoconiosis and disability causation in this case are related, we will summarize the ALJ's finding that Claimant established legal pneumoconiosis before addressing disability causation.

To establish legal pneumoconiosis, Claimant must prove he has a "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). The ALJ considered the medical opinions of Drs. Forehand, Fino, and Sargent. Decision and Order at 29-31. Dr. Forehand diagnosed legal pneumoconiosis in the form of disabling obstructive lung disease caused by a combination of smoking and coal mine dust exposure. Director's Exhibit 19 at 5. Drs. Fino and Sargent opined Claimant has disabling chronic obstructive lung disease caused by smoking cigarettes and unrelated to coal mine dust exposure.⁵ Decision and Order at 29-31; Director's Exhibits 23 at 11, 19; 68 at 81, 133, 173. The ALJ found Dr. Forehand's opinion was well-documented and reasoned whereas he found Drs. Fino's and Sargent's opinions well-documented but unreasoned. Decision and Order at 29-31. Thus, crediting Dr. Forehand's opinion over those of Drs. Fino and Sargent, the ALJ found Claimant established legal pneumoconiosis. *Id.* at 31.

While Employer initially states "the ALJ improperly found [C]laimant did in fact have pneumoconiosis," its specific arguments relate almost exclusively to its second

Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4; Hearing Tr. at 9.

⁵ Drs. Fino and Sargent both testified Claimant's obstructive impairment would prevent him from performing his last coal mining job as a roof bolter. Director's Exhibits 23 at 11, 19; 68 at 98-99, 140.

assertion that the ALJ erred in finding pneumoconiosis “caused or contributed to claimant’s totally disabling respiratory impairment.” Employer’s Brief at 3. To the extent a specific challenge to the ALJ’s legal pneumoconiosis findings can be gleaned from Employer’s brief, its arguments amount to a request for the Board to reweigh the evidence, which we may not do.⁶ *Anderson*, 12 BLR at 1-113. We reject Employer’s argument that the ALJ erred in finding Dr. Forehand’s opinion diagnosing legal pneumoconiosis to be reasoned and documented. Employer’s Brief at 5-8. As the ALJ summarized, Dr. Forehand based his opinion on a physical examination, objective testing, smoking history, and Claimant’s coal mine employment history, which Dr. Forehand found notable for “prolonged exposure to hazardous silica and coal dust.” Director’s Exhibit 19 at 5; Decision and Order at 16-17. The ALJ found Dr. Forehand’s explanation of the combined effects of Claimant’s smoking and coal mine dust exposure to be consistent with medical literature accepted by the Department of Labor in the preamble to the 2001 revised regulations. Decision and Order at 29. The ALJ determines the adequacy of the reasoning and explanation of a medical opinion.⁷ See *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997). We therefore reject Employer’s argument and affirm the ALJ’s finding that Claimant established legal pneumoconiosis. 20 C.F.R. §§718.201(a)(2), 718.202(a)(4).

Considering whether the evidence established that Claimant’s total disability is due to legal pneumoconiosis, the ALJ discredited the opinions of Drs. Fino and Sargent, in part, because they did not diagnose the disease. In contrast, he credited Dr. Forehand’s opinion

⁶ For example, in discussing the ALJ’s crediting of Dr. Forehand’s “assertions on causation,” Employer generally alleges Dr. Forehand did not explain how he concluded Claimant’s “impairment was caused by or contributed to by [sic] his coal dust exposure.” Employer’s Brief at 8. And while Employer alleges Dr. Forehand did not “make an accurate diagnosis of pneumoconiosis or disability causation” because he relied on an inaccurate coal mine employment history, this argument overlooks the ALJ’s finding that Dr. Forehand relied on a 14.5-year employment history, consistent with the ALJ’s finding of 14.51 years. *Id.*; Decision and Order at 10, 16.

⁷ The ALJ provided several reasons for discrediting the opinions of Drs. Fino and Sargent that Claimant does not have legal pneumoconiosis. Decision and Order at 29-31. Although Employer summarizes portions of their opinions, it does not allege any specific error in the ALJ’s credibility determinations. See *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, 109 (1983); 20 C.F.R. §802.211(b); Employer’s Brief at 8-12. We therefore affirm those findings.

to find that Claimant met his burden to establish disability causation. 20 C.F.R. §718.204(c); Decision and Order at 36.

Employer asserts the ALJ erred in discrediting the opinions of Drs. Fino and Sargent. We disagree. The ALJ rationally discredited the opinions of Drs. Fino and Sargent, in part, because they did not diagnose legal pneumoconiosis. See *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Toler v. E. Assoc. Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995) (physician’s opinion as to disability causation may not be credited unless there are “specific and persuasive reasons” for concluding doctor’s view on causation is independent of his mistaken belief the miner did not have pneumoconiosis); Decision and Order at 36.

Employer next argues the ALJ relied on an incorrect legal standard in finding Dr. Forehand’s opinion sufficient to satisfy Claimant’s burden to establish pneumoconiosis is a substantially contributing cause of his disability. Employer’s Brief at 7-8. It asserts Dr. Forehand’s opinion does not constitute substantial evidence to support the ALJ’s determination. *Id.* We disagree.

Prior to evaluating the medical opinions at 20 C.F.R. §718.204(c), the ALJ articulated the proper standard for establishing disability causation, i.e., Claimant must establish that pneumoconiosis is a “substantially contributing cause” of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1); see *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 37-38 (4th Cir. 1990); Decision and Order at 36.

Contrary to Employer’s arguments, Employer’s Brief at 7-8, the ALJ correctly applied this standard in finding Dr. Forehand’s opinion met Claimant’s burden on this issue. As set forth above, Dr. Forehand diagnosed legal pneumoconiosis in the form of obstructive lung disease due, in part, to coal mine dust exposure. Director’s Exhibit 19 at 5. Drs. Forehand, Fino, and Sargent all agree Claimant’s obstructive lung impairment is totally disabling, and Employer does not allege he is totally disabled by an impairment other than obstructive lung disease. Director’s Exhibits 19 at 5-6; 23 at 11, 19; 68 at 98-99, 140. Thus, the ALJ’s determination that Claimant’s obstructive lung disease constitutes legal pneumoconiosis necessarily encompassed a finding that Claimant is totally disabled due to legal pneumoconiosis. See *Energy W. Mining Co. v. Director, OWCP*, 49 F.4th 1362, 1369 (10th Cir. 2022); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013) (where all the medical experts agreed COPD caused the miner’s total disability, the legal pneumoconiosis inquiry “completed the causation chain from coal mine employment to legal pneumoconiosis which caused [the miner’s] pulmonary impairment that led to his disability”); *Hawkinberry v. Monongalia Cnty. Coal Co.*, 25 BLR 1-249, 255-56 (2019); see also *Collins v. Pond Creek Mining Co.*, 751 F.3d 180, 186-87 (4th Cir.

2014) (death causation satisfied where the court found the miner's COPD constituted legal pneumoconiosis and all medical experts agreed COPD contributed to the miner's death).

In the end, almost all of Employer's arguments boil down to a simple request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR 1-113. Instead, we affirm the ALJ's finding that Claimant established total disability due to pneumoconiosis through Dr. Forehand's opinion, as supported by substantial evidence. 20 C.F.R. §718.204(c); Decision and Order at 36. Consequently, we affirm the ALJ's finding that Claimant established entitlement under 20 C.F.R. Part 718 and affirm the award of benefits.

Accordingly, we affirm the ALJ's Decision and Order Granting Benefits in a Subsequent Claim.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge