U.S. Department of Labor

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

BRB No. 21-0483 BLA

GUY H. McCONNELL	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
FOUNTAIN BAY MINING COMPANY	)	
	)	
and	)	
	)	DATE ISSUED: 03/10/2023
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

Guy H. McConnell, Coeburn, Virginia.

Michael A. Pusateri (Greenberg Traurig, LLP), Washington, D.C., for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Denying Benefits (2020-BLA-05035) rendered on a miner's 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 May 21, 2018.[2]

Based on the parties' stipulation of ten years of coal mine employment, the ALJ found Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[3] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant failed to establish the existence of pneumoconiosis, an essential element of entitlement, and therefore denied benefits.[4] 20 C.F.R. §718.202(a).

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[1] Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested the Benefits Review Board review the ALJ's decision on Claimant's behalf, but Ms. Napier is not representing Claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] Claimant filed a prior claim in 1998, which was closed because he "failed to pursue" it. Director's Exhibit 1. Employer states the prior claim was denied as abandoned and the file was later destroyed. Employer's Brief at 1. The notation at Director's Exhibit 1 suggests the prior claim was denied as abandoned, which is deemed a finding that Claimant did not establish any applicable condition of entitlement. *See* 20 C.F.R. §725.409(a)(3),(c).

When a claimant files a claim for benefits more than one year after the denial of a prior claim becomes final, the ALJ must also deny the subsequent claim unless she 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); *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 applicable condition of entitlement in his prior claim, he had to submit evidence establishing at least one element of entitlement to obtain review of the merits of his current claim. *Id.*

[3] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is 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.

[4] The ALJ found Claimant established he is totally disabled by a respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2); Decision and Order at 15. Claimant

On appeal, Claimant generally challenges the ALJ's denial of benefits. Employer responds in support of the denial.[5] The Director, Office of Workers' Compensation Programs, has not filed a response.

In an appeal filed without representation, the Board addresses whether substantial evidence supports the Decision and Order below. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[6] 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: Length of Coal Mine Employment

The ALJ found Claimant has ten years of coal mine employment based on the parties' stipulation. Decision and Order at 3, 5; Hearing Transcript at 12.

Claimant has never alleged he worked for fifteen or more years in coal mine employment. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(b)(i). On his application for benefits, he alleged ten years of coal mine employment and later testified to having anywhere from eleven to thirteen years. Director's Exhibits 4-5; 41 at 6. Considering the parties' stipulation, which is supported by substantial evidence, we affirm the ALJ's finding that Claimant could not invoke the Section 411(c)(4) presumption. *See Richardson v. Director, OWCP*, 94 F.3d 164, 167 (4th Cir. 1996); 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(b)(i); Decision and Order at 7.

Entitlement Under 20 C.F.R. Part 718

To be entitled to benefits under the Act without the benefit of a presumption, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal

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therefore also established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c).

[5] We affirm, as unchallenged by Employer, the ALJ's finding that Claimant has a totally disabling respiratory impairment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 15.

[6] 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 Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 12; Director's Exhibits 4, 6-7.

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. Failure to establish any element 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, 1-2 (1986) (en banc). The ALJ found Claimant failed to establish either clinical or legal pneumoconiosis.[7] 20 C.F.R. §718.202(a); Decision and Order at 21.

Clinical Pneumoconiosis

The ALJ considered five interpretations of three x-rays dated July 11, 2018, April 17, 2019, and January 20, 2020. Decision and Order at 16. All the interpreting physicians are dually-qualified as B readers and Board-certified radiologists. Decision and Order at 16; Director's Exhibits 13, 15-16. Dr. Ramakrishnan read the July 11, 2018 x-ray as positive for simple pneumoconiosis, while Drs. DePonte and Adcock read it as negative. Director's Exhibits 13 at 23; 15 at 2; 16 at 2. Dr. Seaman read the April 17, 2019 x-ray as negative for pneumoconiosis, and Dr. Tarver read the January 20, 2020 x-ray as negative for pneumoconiosis. Employer's Exhibits 1, 4.

The ALJ found the July 11, 2018 x-ray negative for pneumoconiosis because two of the three equally qualified physicians found it negative for the disease. Decision and Order at 16. She also found the April 17, 2019 and January 20, 2020 x-rays negative for pneumoconiosis based on the uncontradicted readings of Drs. Seaman and Tarver. *Id.* Having determined that all the x-rays are negative, the ALJ found the x-ray evidence does not establish the existence of clinical pneumoconiosis. We affirm these findings as supported by substantial evidence. *See Compton v. Island Creek Coal Co*., 211 F.3d 203, 207-08 (4th Cir. 2000); *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); 20 C.F.R. §718.202(a)(1); Decision and Order at 16.

[7] 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). 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).

The ALJ accurately noted the record contains no biopsy or autopsy evidence. Decision and Order at 15. Therefore, Claimant cannot establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(2). The ALJ did not make a finding regarding whether the irrebuttable presumption at 20 C.F.R. §718.304 applies. *See* 20 C.F.R. §718.202(a)(3). But because the record contains no evidence of complicated pneumoconiosis, Claimant cannot invoke the irrebuttable presumption that he is totally disabled due to pneumoconiosis as a matter of law. *See* 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

The ALJ next considered the medical opinion evidence. Because no physician diagnosed clinical pneumoconiosis, we affirm the ALJ's finding that the medical opinions do not establish the disease. 20 C.F.R. §718.202(a)(4); Decision and Order at 17; Director's Exhibits 13, 19; Employer's Exhibits 2, 6. Therefore, substantial evidence supports the ALJ's determination that Claimant failed to establish clinical pneumoconiosis. *See Compton*, 211 F.3d at 207-08; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); Decision and Order at 17.

Legal Pneumoconiosis

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 Dr. Ajjarapu's medical opinion that Claimant has legal pneumoconiosis, and those of Drs. Dahhan and Fino that he does not have the disease, but rather has chronic obstructive pulmonary disease (COPD) due to smoking and unrelated to coal mine dust exposure. Decision and Order at 17; Director's Exhibits 13, 19; Employer's Exhibits 2, 6. The ALJ found all the opinions poorly reasoned and accorded them little probative weight. Decision and Order at 17-21. Thus, she found Claimant failed to establish legal pneumoconiosis. *Id.* at 21.

Dr. Ajjarapu diagnosed Claimant with chronic bronchitis due to a combination of coal mine dust exposure and smoking. Director's Exhibit 13 at 11. In support of her opinion, she reasoned that while Claimant's twelve years of coal mining was less than his "heavy" forty pack-year smoking history, because he worked in the 1970s "before the dust regulations went into effect . . . perhaps he was exposed to voluminous coal dust at the face" in an underground coal mine. *Id.*

The ALJ reasonably accorded less probative weight to Dr. Ajjarapu's opinion as not well-reasoned, as she speculated on the dust conditions in which Claimant worked. *U.S. Steel Mining Co. v. Director, OWCP* [*Jarrell*], 187 F.3d 384, 389 (4th Cir. 1999) (ALJ may

not credit a purely speculative opinion); *Hicks*, 138 F.3d at 533; Decision and Order at 17-18. Further, substantial evidence supports the ALJ's rejection of Dr. Ajjarapu's opinion as flawed because the physician relied on an inaccurate coal mine employment history that presumed Claimant worked in an environment prior to the 1969 enactment of federal dust regulations. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012) (it is for the ALJ to evaluate the proper weight to accord medical opinions); *Hicks*, 138 F.3d at 533; Decision and Order at 17-18, 21. As the ALJ permissibly rejected Dr. Ajjarapu's opinion, the only medical opinion that supports a finding of legal pneumoconiosis, we affirm her finding that Claimant failed to establish pneumoconiosis at 20 C.F.R. §718.202(a)(4).

Because Claimant did not establish pneumoconiosis, a necessary element of entitlement, we affirm the ALJ's determination that Claimant did not establish entitlement to benefits under 20 C.F.R. Part 718. *See Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge