U.S. Department of Labor

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

BRB No. 22-0340 BLA

CARTER H. WILSON (deceased)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	
	)	DATE ISSUED: 03/08/2023
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 Carrie Bland, Associate Chief Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Employer appeals Associate Chief Administrative Law Judge (ALJ) Carrie Bland's Decision and Order Awarding Benefits (2020-BLA-05280) rendered on a claim filed

pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[1] This case involves a subsequent claim filed on October 18, 2018.[2]

The ALJ found Claimant established the Miner had 20.76 years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she 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),[3] and established a change in an applicable condition of entitlement. 20 C.F.R. §725.309.[4] She further found Employer did not rebut the presumption and awarded benefits.

[1] The Miner died on June 23, 2021. Claimant, his son, is pursuing the miner's claim on his father's behalf. July 2, 2021 Estate Statement of Intent Regarding Living Miner's Claim.

[2] The Miner filed five prior claims. He withdrew his previous claim. Director's Exhibit 4. A withdrawn claim is considered not to have been filed. *See* 20 C.F.R. §725.306. On September 25, 2006, the district director denied the Miner's next most recent claim. Director's Exhibit 5. The ALJ noted the records for this claim were moved to the Federal Records Center and subsequently destroyed. Decision and Order at 2. She thus assumed this claim was denied because the Miner failed to establish any element of entitlement. *Id*.

[3] 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 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] When a miner files a claim for benefits more than one year after the denial of a previous 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); *see 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 the ALJ assumed the Miner's prior claim was denied for failure to establish any element of entitlement, Claimant had to submit new evidence establishing at least one element in order to obtain review of the merits of the Miner's current claim. *Id*.; Decision and Order at 2.

On appeal, Employer argues the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption.[5] Neither Claimant nor the Director, Office of Workers' Compensation Programs, has 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 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).

Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[7] or that "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.[8]

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[5] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established 20.76 years of underground coal mine employment, total disability, a change in an applicable condition of entitlement, and invocation of the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§718.204(b)(2), 718.305(b), 725.309(c); Decision and Order at 5, 11-12.

[6] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because the Miner 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 3 n.3; Director's Exhibit 8; Hearing Tr. at 13.

[7] "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 that is 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).

[8] The ALJ found Employer disproved the existence of clinical pneumoconiosis. Decision and Order at 13.

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish the Miner did not have 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(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. Sargent and McSharry that the Miner did not have legal pneumoconiosis. Decision and Order at 13-17. Dr. Sargent opined the Miner had a disabling respiratory or pulmonary impairment unrelated to coal mine dust exposure. Employer's Exhibit 4 at 21-22. Dr. McSharry found no compelling evidence of an objective lung disease, and opined the Miner had hypoxemia unrelated to coal mine dust exposure. Director's Exhibit 24 at 4; Employer's Exhibit 3 at 36-37. The ALJ found the opinions of Drs. Sargent and McSharry not well-reasoned and thus found Employer failed to disprove the existence of legal pneumoconiosis. Employer asserts the ALJ erred in weighing their medical opinions. Employer's Brief at 5-14. We disagree.

Initially, we reject Employer's argument that the ALJ applied the wrong standard when addressing the issue of rebuttal of legal pneumoconiosis. Employer's Brief at 3-14. 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. 20 C.F.R. §§718.201(b)(2), (c), 718.305(d)(2)(i)(A); *see Minich*, 25 BLR at 1-155 n.8; Decision and Order at 12. Moreover, as discussed below, she did not discredit Drs. Sargent's and McSharry's opinions because they failed to meet a heightened legal standard; she found they are not reasoned and failed to explain their conclusions that any lung disease or impairment the Miner had was unrelated to coal mine dust exposure. Decision and Order at 15-17.

We also reject Employer's argument that the ALJ provided invalid reasons for finding the opinions of Drs. Sargent and McSharry not credible. Employer's Brief at 4-15.

Drs. Sargent and McSharry excluded coal mine dust exposure as a contributing cause of the Miner's hypoxemia and mild restriction. Director's Exhibit 24 at 3; Employer's Exhibit 4 at 21. They stated the possible causes of the Miner's arterial blood gas abnormalities were non-pulmonary in nature as the abnormalities could be related to his elevated hemidiaphragm or an undiagnosed neuromuscular disease. Director's Exhibit 24 (Dr. McSharry's Report at 4-5); Employer's Exhibits 2 (Dr. Sargent's Report at 2-3), 3 (Dr. McSharry's Deposition at 18, 20-25, 33-36), 4 (Dr. Sargent's Deposition at 17-23). She permissibly found neither doctor adequately explained why the Miner's two decades of coal mine dust exposure did not significantly contribute, along with his non-pulmonary

conditions, to his totally disabling blood gas impairment. Decision and Order at 15-17; *see Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 673-74 n.4 (4th Cir. 2017); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313-14 (4th Cir. 2012); 20 C.F.R. §718.201(a)(2), (b); 65 Fed. Reg. 79,920, 79,939-41 (Dec. 20, 2000); 20 C.F.R. §718.201(a)(2), (b).

Further, Dr. Sargent excluded legal pneumoconiosis in part because he believed the Miner's arterial blood gas abnormalities, if due to coal mine dust exposure, should be associated with "some degree of interstitial fibrosis that can be classified by ILO [International Labour Organization] 1980 standard films." Employer's Exhibit 2 at 2. The ALJ permissibly found Dr. Sargent's opinion inconsistent with the regulations that recognize legal pneumoconiosis can exist in the absence of a positive x-ray for clinical pneumoconiosis. *See Looney*, 678 F.3d at 313 (regulations "separate clinical and legal pneumoconiosis into two different diagnoses" and "provide that no claim for benefits shall be denied solely on the basis of a negative chest x-ray") (internal quotations omitted); 20 C.F.R. §§718.201, 718.202(a)(4), 718.202(b); Decision and Order at 15.

Employer generally asserts the opinions of Drs. Sargent and McSharry are well-reasoned and documented, and therefore sufficient to disprove the existence of legal pneumoconiosis. Employer's Brief at 5-14. Employer's argument is a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

Because the ALJ permissibly discredited the opinions of Drs. Sargent and McSharry,[9] the only medical opinions supportive of Employer's burden on rebuttal, we affirm her finding Employer failed to disprove the existence of legal pneumoconiosis. Decision and Order at 17. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did 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 17. She

[9] Because the ALJ provided valid reasons for discrediting the opinions of Drs. Sargent and McSharry, we need not address Employer's additional arguments regarding the weight she assigned to their opinions. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 3-15.

permissibly discredited the opinions of Drs. Sargent and McSharry on disability causation 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) (physician who fails to diagnose pneumoconiosis, contrary to the ALJ's finding, cannot be credited on rebuttal of disability causation absent specific and persuasive reasons); Decision and Order at 17. We therefore affirm the ALJ's finding that Employer failed to establish no part of the Miner's total respiratory disability was due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); *see Minich*, 25 BLR at 154-56.

We therefore affirm the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption and the award of benefits.

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