U.S. Department of Labor

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

BRB No. 22-0361 BLA

BILLY W. WHITED	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	
	)	
and	)	
	)	
SELF-INSURED THROUGH PITTSTON COMPANY	)	DATE ISSUED: 03/31/2023
	)	
Employer/Carrier-Petitioners	)	
	)	
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 William P. Farley, Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) William P. Farley's Decision and Order Awarding Benefits (2020-BLA-06133) rendered on a claim filed on November

2, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established 34.16 years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus he found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer asserts the ALJ erred in finding Claimant established total disability, thereby invoking the Section 411(c)(4) presumption.[2] 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.[3] 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).

A miner is totally disabled if he has a pulmonary or respiratory impairment that, standing alone, prevents him from performing his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). A miner may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

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[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled 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.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 34.16 years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 11.

[3] 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); Director's Exhibit 4.

The ALJ found Claimant established total disability based on the medical opinions and the evidence as a whole.[4] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 24. Employer argues the ALJ erred in finding the medical opinion evidence establishes total disability. 20 C.F.R. §718.204(b)(2)(iv); Employer's Brief at 6-13. We disagree.

The ALJ considered Dr. Forehand's opinion that Claimant is totally disabled by a respiratory or pulmonary impairment and Dr. McSharry's opinion that he is not totally disabled.[5] Decision and Order at 21-24; Director's Exhibits 15, 19, 25; Employer's Exhibits 1, 2. He found Dr. Forehand's opinion well-reasoned and documented and Dr. McSharry's opinion unpersuasive. Decision and Order at 21-24. He therefore found the medical opinion evidence establishes total disability. *Id.*; *see* 20 C.F.R. §718.204(b)(2)(iv).

Employer argues the ALJ did not explain his basis for crediting Dr. Forehand's opinion.[6] Employer's Brief at 7-13. We disagree.

Dr. Forehand opined a January 10, 2019 arterial blood gas study revealed exercise-induced arterial hypoxemia and observed Claimant experiences shortness of breath on exertion. Director's Exhibit 15. He noted Claimant worked as a roof bolt operator, ram car operator, scoop operator, shuttle car operator, and continuous miner operator and found the exertional requirements of these jobs were very high. *Id*. He concluded:

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[4] The ALJ found the pulmonary function and arterial blood gas studies do not establish total disability and there is no evidence that Claimant has cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 18-20.

[5] The ALJ found Claimant's usual coal mine employment as a ram car operator included transferring coal from the mine to the beltline and moving cables. Decision and Order at 11. After considering Claimant's testimony and the medical opinion evidence regarding his usual coal mine work, the ALJ found Claimant's work required medium to heavy exertional levels, which included "sitting for five hours, crawling one to two hundred feet for one to two hours, lifting fifty pounds of rock dust and carrying fifty pounds sixty feet five times a day." *Id*. at 11-12. As Employer does not challenge the ALJ's findings, we affirm them. *See Skrack*, 6 BLR at 1-711.

[6] Employer does not allege specific error in the ALJ's discrediting of Dr. McSharry's opinion on total disability. We therefore affirm it. *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, 1-109 (1983); 20 C.F.R. §802.211(b); Decision and Order at 23-24.

> A significant work-limiting respiratory impairment is present which would prevent claimant from additional coal mine employment. Insufficient residual gas exchange capacity remains to return to meet the physical demands of, or tolerate additional coal mine dust exposure at, claimant's last coal mining job. Unable to work. Totally and permanently disabled.

Id. at 4. After reviewing Dr. McSharry's October 2, 2019 arterial blood gas study,[7] Dr. Forehand explained the "disparities" between "the results of [the two] arterial blood gas studies are due to office exercise procedures and protocols — had [the] exercise arterial blood gas study in Dr. McSharry's office been conducted precisely the same as in my office, he would have found disabling exercise-induced arterial hypoxemia." Director's Exhibit 25 at 3. The ALJ permissibly found Dr. Forehand's opinion credible because he "sufficiently identifie[d] the data on which he based his disability opinion – i.e., symptoms, coal mine employment, and arterial blood gas study" and "adequately explain[ed] how that data supports his conclusion." Decision and Order at 21; *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

Employer argues Dr. Forehand did not adequately address the conflicting testing or his basis for diagnosing total disability. Employer's Brief at 7-13. Employer's argument amounts to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant established total disability based on the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv), and in consideration of the evidence as a whole. 20 C.F.R. §718.204(b)(2); Decision and Order at 24. We therefore affirm the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305. As Employer

[7] Dr. Forehand stated the results from Dr. McSharry's October 2, 2019 blood gas study were less "dependable" than the January 10, 2019 study he conducted because Dr. McSharry did not draw blood with an indwelling catheter. Director's Exhibit 25. Although the ALJ was not persuaded that this aspect of Dr. Forehand's opinion rendered Dr. McSharry's blood gas study invalid, the ALJ was not required to discredit Dr. Forehand's entire total disability opinion on this basis and permissibly found credible Dr. Forehand's reliance on the valid January 10, 2019 blood gas study he conducted. *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); Decision and Order at 20-21.

does not challenge the ALJ's finding that it did not rebut the presumption, we affirm it. *See Skrack*, 6 BLR at 711; Decision and Order at 24-31.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge