U.S. Department of Labor

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

BRB No. 23-0209 BLA

HERSHELL L. ROBBINS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WARRIOR MET COAL MINING, LLC	)	
	)	
and	)	
	)	
WALTER ENERGY, INCORPORATED	)	DATE ISSUED: 03/22/2024
	)	
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 Granting Benefits of Heather C. Leslie, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

John C. Webb, V, and Aaron D. Ashcraft (Lloyd, Gray, Whitehead & Monroe, P.C.), Birmingham, Alabama, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Heather C. Leslie's Decision and Order Granting Benefits (2021-BLA-05170) rendered on a claim filed on October 27, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found that Claimant established 30.9 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.[1] 30 U.S.C. §921(c)(4) (2018). She further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption.[2] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file a response brief. Employer filed a reply brief, reiterating its contentions on appeal.

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).

Invocation of the Section 411(c)(4) Presumption – Total Disability

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A

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[1] Section 411(c)(4) 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 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 30.9 years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5.

[3] The Board will apply the law of the United States Court of Appeals for the Eleventh Circuit because Claimant performed his last coal mine employment in Alabama. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 22.

miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. 20 C.F.R. §718.204(b)(1). A claimant 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 Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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).

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 6-13. Employer contends the ALJ erred in finding Claimant established a totally disabling respiratory or pulmonary impairment based on the medical opinion evidence. Employer's Brief at 5-11. We disagree.

Before weighing the medical opinions, the ALJ addressed the exertional requirements of Claimant's last coal mine work as a shuttle car operator. Based on Claimant's hearing testimony, she found Claimant's last coal mine job required lifting "25 pounds all the time, 50 pounds regularly, and 100 pounds occasionally." Decision and Order at 6; Hearing Tr. at 19. Taking official notice of the *Dictionary of Occupational Titles*,[5] the ALJ found the job duties Claimant described required "a heavy level of exertion." Decision and Order at 6; Hearing Tr. at 17-19. As no party challenges this finding, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ then considered Dr. Green's opinion that Claimant is totally disabled by a respiratory or pulmonary impairment and the opinions of Drs. Raj and McSharry that he is not. Decision and Order at 11-13; Director's Exhibits 16, 24; Employer's Exhibits 2, 3. She found Dr. Green's opinion well-reasoned and documented, while she found Drs. Raj's and McSharry's opinions inadequately explained and therefore unpersuasive. Decision

[4] The ALJ found Claimant did not establish total disability based on the pulmonary function studies, arterial blood gas studies, or evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 6-11.

[5] The ALJ stated none of the parties objected when she informed them she may take official notice of the *Dictionary of Occupational Titles*. Decision and Order at 6 n.37.

and Order at 11-12. Thus, she found Claimant established a totally disabling respiratory or pulmonary impairment based on Dr. Green's opinion.

Dr. Green opined Claimant is totally disabled based on the April 4, 2018 arterial blood gas study results. Director's Exhibit 16 at 7. He noted Claimant demonstrated hypoxemia both at rest and during exercise. *Id.* at 8. Although Dr. Green specifically noted that the blood sample drawn during the first minute of exercise reflected significant hypoxemia and hypercarbia, he explained the samples "drawn throughout the exercise intervals demonstrated consistent findings of hypoxemia." *Id.* Therefore, based on this demonstrated hypoxemia with activity, he concluded Claimant would be unable to perform his previous coal mine employment "operating machinery, rock dusting, and lifting 50-75 pounds at any given time." *Id.* In a supplemental report, Dr. Green reiterated his opinion that Claimant would be unable to perform the duties of his last coal mine job involving moderate to heavy labor because of the demonstrated gas exchange impairment shown on the arterial blood gas study. *See* Director's Exhibit 24 at 1.

The ALJ afforded dispositive weight to Dr. Green's opinion that Claimant's demonstrated hypoxemia would prevent him from returning to his usual coal mine employment because she found it was the only opinion to adequately assess the relationship between Claimant's impairment and his ability to perform his last coal mine job. *See* Decision and Order at 12-13.

Employer argues the ALJ should have discredited Dr. Green's opinion based on Dr. McSharry's criticism that his conclusion relied on values from a sample drawn during the first minute of exercise rather than one taken at peak exercise. Employer's Brief at 6-8. We disagree.

Dr. McSharry criticized Dr. Green's conclusion as it was based on a blood draw during the first minute of exercise,[6] opining that although the draw demonstrated hypoxemia, it was not an accurate indicator of Claimant's pulmonary and respiratory capability because the results of the draw taken at peak exercise improved. Employer's Exhibit 2 at 3-4. While noting the arterial blood gas results showed hypoxemia at rest, Dr. McSharry opined they showed "no significant impairment" and no desaturation during exercise. *Id.*

We are not persuaded by Employer's argument that Dr. McSharry's criticism undermines the ALJ's crediting Dr. Green's opinion. As noted above, Dr. Green concluded

[6] We note the regulations do not mandate a specific time when blood samples must be drawn. Rather, the regulations require only that "blood shall be drawn during exercise." 20 C.F.R. §718.105(b).

Claimant demonstrated hypoxemia both at rest and during exercise; he also explained the blood samples "drawn throughout the exercise interval" consistently demonstrated hypoxemia. Director's Exhibit 16 at 8. Thus, although Dr. Green emphasized the qualifying values[7] of the sample drawn during the first minute, his conclusion that Claimant is totally disabled was based on more than that single draw; it was based on Claimant's overall presentation of hypoxemia and his determination such hypoxemia would prevent Claimant from performing his coal mining job. *See Killman v. Director, OWCP*, 415 F.3d 716, 721-22 (7th Cir. 2005) (claimant can establish total disability despite non-qualifying objective tests); *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000) ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"). Dr. McSharry's criticism does not address Dr. Green's observation that the blood samples "drawn throughout the exercise interval" consistently demonstrated hypoxemia,[8] and he agrees with Dr. Green's observation that Claimant was hypoxemic at rest. Director's Exhibit 16 at 8; Employer's Exhibit 2 at 4. Thus, we see no error in the ALJ's crediting of Dr. Green's opinion that Claimant is totally disabled because he lacked the respiratory capacity to perform his last coal mine job based on the results of the April 4, 2018 arterial blood gas study results.

We also disagree with Employer's argument that the ALJ did not adequately explain why the opinions of Drs. Raj and McSharry are not credible on the issue of total disability. Employer's Brief at 6-11.

Dr. Raj observed Claimant's last coal mine job required him to lift and carry fifty to seventy-five pounds several times per day, which the physician characterized as requiring a "heavy level of exertion." Employer's Exhibit 3 at 2 (unpaginated). After performing a physical examination and administering objective tests, Dr. Raj diagnosed Claimant with a pulmonary impairment based on abnormal chest x-ray findings and an arterial blood gas study demonstrating a gas exchange abnormality. Employer's Exhibit 3

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[7] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[8] We note that because Dr. McSharry agrees that Claimant's resting arterial blood gas values demonstrate hypoxemia, his observation that the blood draw obtained at peak exercise remained "essentially unchanged from his actual resting [blood gas study]," Employer's Exhibit 2 at 2, 4, does not support a conclusion that Claimant was not hypoxemic during exertion. Rather, it supports a conclusion that Claimant remained, or desaturated and improved to, baseline hypoxemic during exercise.

at 4 (unpaginated). He stated only that Claimant's "pulmonary impairment does not meet Federal black lung standards for total disability." *Id.*

Initially, we reject Employer's argument that the ALJ erred by discrediting Dr. Raj's opinion because he failed to consider the exertional requirements of Claimant's last coal mine job. Employer's Brief at 9-10. Contrary to Employer's assertion, the ALJ did not discredit Dr. Raj's opinion regarding total disability for this reason. Rather, when considering his opinion on total disability, she acknowledged Dr. Raj's familiarity with the exertional requirements of Claimant's last coal mine job, correctly noting, "Dr. Raj did acknowledge [Claimant's] high exertional work history." Decision and Order at 11.

Further, we see no error in the ALJ's finding that Dr. Raj failed to render a definitive opinion as to whether Claimant is totally disabled. Employer's Brief at 10-11. She explained that while Dr. Raj acknowledged that Claimant's "pulmonary impairment does not meet Federal black lung standards for total disability," he failed to definitively opine whether the pulmonary impairment he diagnosed precludes Claimant from performing the heavy rigors of his last coal mine work.[9] *Id.* at 11-12; Employer's Exhibit 3 at 4 (unpaginated). Thus, due to its lack of specificity on this issue, she permissibly accorded Dr. Raj's opinion "little weight." *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990) ("[A]n ALJ must consider all relevant evidence on the issue of disability including medical opinions which are phrased in terms of total disability or provide a medical assessment of physical abilities or exertional limitations which lead to that conclusion."); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); *Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 744 (6th Cir. 1997); *Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995) (physical limitations described in doctor's report sufficient to establish total disability); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, 1-51-52 (1986) (en banc); Decision and Order at 12.

We likewise reject Employer's argument that the ALJ erred in discounting Dr. McSharry's opinion. Employer's Brief at 6-10. Dr. McSharry stated Claimant's last coal mine job as "a ram and diesel car operator" required him to transport coal between the

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[9] It is well established that the presence of objective studies that do not qualify for total disability under the regulatory criteria does not preclude a physician from diagnosing total disability. Even if total disability cannot be established with qualifying pulmonary function tests at 20 C.F.R. §718.204(b)(2)(i), "total disability may nevertheless be found if a physician exercising reasoned medical judgment, based on medically acceptable clinical and laboratory diagnostic techniques, concludes that a miner's respiratory or pulmonary condition prevents" him from performing his usual coal mine employment. 20 C.F.R. §718.204(b)(2)(iv).

continuous miner and the belt line and to lift cables, shovel coal, hang cables, and move equipment which, according to Claimant's assessment, constituted "very heavy exertion" for two to three hours each day. Employer's Exhibit 2 at 5 (unpaginated). Dr. McSharry opined that Claimant's pulmonary function testing revealed "at best" a mild impairment, which may have been attributed to poor effort during the testing. *Id.* at 3. He therefore concluded Claimant has "the pulmonary capacity to perform his last job in coal mining *as that job was described to me*." *Id.* at 4 (emphasis added).

The ALJ permissibly determined Dr. McSharry, similar to Dr. Raj, did not sufficiently weigh the heavy exertional requirements of Claimant's job duties against his respiratory/pulmonary condition. *See Cornett,* 227 F.3d at 578; Decision and Order at 12. It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See U.S. Steel Mining Co. v. Director, OWCP* [*Jones*], 386 F.3d 977, 992 (11th Cir. 2004); *Jordan v. Benefits Review Board*, 876 F.2d 1455, 1460 (11th Cir. 1989) ("The question of whether [a] medical report is sufficiently documented and reasoned is one of credibility for the fact finder."). Employer's arguments regarding the ALJ's weighing of the medical opinions amount to a request to reweigh the evidence, which the Board may not do. *See Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989).

We therefore affirm the ALJ's findings that the opinions of Drs. Raj and McSharry are not credible on the issue of total disability. Moreover, because substantial evidence supports the ALJ's finding that Dr. Green's opinion is well-reasoned and well-documented, we affirm her finding that the preponderance of the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); *see Jones*, 386 F.3d at 992; *Jordan*, 876 F.2d at 1460; Decision and Order at 12.

We note Employer asserts, and Claimant agrees, the ALJ erred in her consideration of the arterial blood gas study evidence. Employer's Brief at 6 n.1; Claimant's Response Brief at 10. In her summary of the arterial blood gas study evidence, the ALJ listed only the January 13, 2020 non-qualifying blood gas study, which Dr. Forehand administered, and thus found the record contains no qualifying results. 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 10; Director's Exhibit 22. In her summary she did not list the April 4, 2018 blood gas study, which Dr. Green administered and yielded qualifying values. Director's Exhibit 16. However, she acknowledged the qualifying results of the April 4, 2018 blood gas study in her discussion of Dr. Green's report, noting this test demonstrates "the presence of hypoxemia" and would "further complicat[e] [Claimant] resuming [his] previous coal mine employment." Decision and Order at 12.

We conclude any error by the ALJ in failing to list the results of the April 4, 2018 test in her summary of the blood gas studies is harmless. Not only did the ALJ's error in this regard not affect her finding of total disability based on the medical opinion evidence,

the omitted qualifying test result supports rather than undermines her overall determination that Claimant is totally disabled. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 12; Director's Exhibit 16.

Thus, we affirm the ALJ's finding that all of the relevant evidence, weighed together, establishes total disability. 20 C.F.R. §718.204(b)(2); *see Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 1-198; Decision and Order at 12-13. We therefore affirm her finding that Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305. We also affirm, as unchallenged, her finding that Employer did not rebut the presumption. 20 C.F.R. §718.305(d)(1)(i), (ii); *see Skrack*, 6 BLR at 1-711; Decision and Order at 13-19.

Accordingly, the ALJ’s Decision and Order Granting Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge