U.S. Department of Labor

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

BRB No. 23-0218 BLA

GARY L. LANHAM	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
DONALDSON MINING COMPANY	)	
	)	
and	)	
	)	
Self-Insured Through VALLEY CAMP COAL COMPANY	)	DATE ISSUED: 03/15/2024
	)	
Employer/Carrier-Respondents	)	
	)	
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 Sean M. Ramaley, Administrative Law Judge, United States Department of Labor.

Leaonard Stayton, Inez, Kentucky, for Claimant.

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Denying Benefits (2020-BLA-05813) rendered on a claim filed April 15, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established 23.57 years of coal mine employment with 15.57 years underground or in conditions substantially similar to an underground coal mine, but the ALJ found Claimant does not have a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, the ALJ found Claimant could not invoke 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). The ALJ therefore denied benefits.

On appeal, Claimant argues the ALJ erred in finding his most recent work as a dispatcher constituted coal mine employment. Claimant further argues the ALJ erred in finding he did not establish a totally disabling respiratory or pulmonary impairment. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response unless specifically requested.

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.[2] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

Invocation of the Section 411(c)(4) Presumption – Coal Mine Employment

[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] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

To invoke the Section 411(c)(4) presumption, Claimant must establish he had at least fifteen years of underground or "substantially similar" surface coal mine employment. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(b)(1)(i).

At the formal hearing, Employer stipulated that Claimant had twenty-four years of qualifying coal mine employment, including work as a general mine laborer and surface utility man from 1969 to 1985, and as a dispatcher from 1985 until 1993. Hearing Transcript at 11. Claimant agreed with the stipulation concerning his work from 1969 to 1985, but disagreed concerning his work as a dispatcher, arguing it was not work as a miner and therefore did not qualify as coal mine employment. Hearing Transcript at 12. In post-hearing briefs, Claimant reiterated its argument and Employer argued Claimant's work as a dispatcher qualified as coal mine employment. Claimant's Post-Hearing Brief at 7-10; Employer's Post-Hearing Brief at 3-6.

The ALJ considered Claimant's hearing testimony and determined his work as a dispatcher constituted coal mine employment. Decision and Order at 6-8. On appeal, Claimant again argues his work as a dispatcher did not qualify as employment as a "miner" as this work satisfies neither the situs nor the function requirement. Claimant's Brief at 9-13.

Claimant has more than 15 years of qualifying coal mine employment even without considering his work as a dispatcher; however, because the Miner's usual coal mine work is relevant to the evaluation of the medical opinion evidence particularly in regard to total disability, an analysis of the Miner's sedentary work as a dispatcher is necessary for the resolution of the issues in this case.

A "miner" is "any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal." 30 U.S.C. §902(d). The Act's implementing regulations provide "a rebuttable presumption that any person working in or around a coal mine or coal preparation facility is a miner." 20 C.F.R. §725.202(a); *see also* 20 C.F.R. §725.101(a)(19).[3] The Fourth Circuit has held duties that meet situs

[3] The regulations define a "miner" as:

> [A]ny person who . . . worked in or around a coal mine or coal preparation facility in the extraction, preparation, or transportation of coal, and any person who . . . worked in coal mine construction or maintenance in or around a coal mine or coal preparation facility. There shall be a rebuttable presumption that any person working in or around a coal mine or coal preparation facility is a miner.

and function requirements constitute the work of a miner as defined in the Act. *See Director, OWCP v. Consolidation Coal Co.* [*Krushansky*], 923 F.2d 38, 41 (4th Cir. 1991); *Collins v. Director, OWCP*, 795 F.2d 368, 372-73 (4th Cir. 1986); *Amigo Smokeless Coal Co. v. Director, OWCP* [*Bower*], 642 F.2d 68, 70 (4th Cir. 1981). Under the situs requirement, the work must take place "in or around" a coal mine or coal preparation facility; under the function requirement, the work must be integral or necessary to the extraction or preparation of coal. *Krushansky*, 923 F.2d at 41-42.

Claimant argues his testimony establishes he performed his work as a dispatcher in a location that "was not part of the immediate mining facilities" and that was "a considerable distance away from any coal production or preparation facilities[,]" so it does not satisfy the situs requirement. Claimant's Brief at 11-12. Further, Claimant argues his dispatcher work was not involved in the preparation or extraction of coal, as it only required knowledge "of where the various equipment was that was used to shuttle men in and out of the mine[,]" and thus does not satisfy the function requirement *Id*. at 12. We disagree.

Claimant testified his work as a dispatcher took place in an office approximately 400 to 500 feet from the belt line. Hearing Transcript at 18. He testified the office had a window-unit air conditioner that filtered out dust from the outside, requiring him to clean the filter weekly. *Id*. at 19. Further, he testified the air filter became particularly dusty because miners were required to deposit mine lights next to the office and would sweep dust off of their clothing and the lights before storing them. *Id*. at 27. When Employer's counsel asked if he ever left the building, Claimant testified that he did so "when it was quitting time." *Id*.

Considering the situs requirement, the ALJ accurately noted Claimant's work site as a dispatcher was at most 500 feet from the belt line and was close enough to the active mining operations that miners deposited their mining lights adjacent to his office prior to

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20 C.F.R. §725.202(a). The regulations define the term "coal mine" as:

> [A]n area of land and all structures, facilities, machinery, tools, equipment, shafts, slopes, tunnels, excavations and other property, real or personal, placed upon, under or above the surface of such land by any person, used in, or to be used in, or resulting from, the work of extracting in such area bituminous coal, lignite or anthracite from its natural deposits in the earth by any means or method, and in the work of preparing the coal so extracted, and includes custom coal preparation facilities.

20 C.F.R. §725.101(a)(12).

cleaning off their clothing and equipment. Decision and Order at 7. Thus, the ALJ found his work satisfied the situs test. *Id.*

Claimant testified his work as a dispatcher included "control over all the rail equipment operating in the mines[,]" and that he had to know the location and operating status of various pieces of equipment used across different portions of the mine in case of emergencies. Hearing Transcript at 25. He also testified he had to clear paths for miners injured in the mines and managed replacing miners who called in sick. *Id.* Claimant agreed with Employer's counsel that the job was similar to "a traffic controller underground[,]" and that mines are legally mandated to have a dispatcher on-site. *Id.* at 26.

Considering the function requirement, the ALJ noted Claimant's job as a dispatcher included knowledge of—and control over—the miners and equipment directly responsible for the extraction of coal. Decision and Order at 7-8. Thus, the ALJ found Claimant's work as a dispatcher was necessary for the production of coal and satisfied the function test. *Id.*

Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant's testimony establishes his work as a dispatcher was performed "in or around" a coal mine and was integral to the extraction of coal. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Krushansky*, 923 F.2d at 41-42; Decision and Order at 8. We therefore affirm the ALJ's finding that Claimant's work as a dispatcher with Employer from 1985 to 1993 constituted work as a "miner" and therefore qualifies not only as coal mine employment but as the Miner's usual coal mine employment. Decision and Order at 8. Further, we determine that any error with respect to finding Claimant's work as a dispatcher did not constitute qualifying coal mine employment for purposes of the Section 411(c)(4) presumption is harmless, as the ALJ nonetheless found Claimant established at least fifteen years of qualifying coal mine employment based on other periods of Claimant's employment. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 10. Thus, we also affirm the ALJ's finding that Claimant established 23.57 years of coal mine employment, including more than 15 years underground or in conditions substantially similar to those of underground mines. *See* 20 C.F.R. §718.305(b)(1)(i); Decision and Order at 8-10.

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

A miner is totally disabled if their pulmonary or respiratory impairment, standing alone, prevents them from performing their usual coal mine work or comparable gainful work. *See* 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 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). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

The ALJ found the pulmonary function studies, arterial blood gas studies, and medical opinions do not support total disability.[4] 20 C.F.R. §718.204(b)(2)(i)-(ii), (iv); Decision and Order at 22-25. He therefore found Claimant did not establish total disability. 20 C.F.R. §718.204(b)(2); Decision and Order at 25. Claimant argues the ALJ erred in his consideration of the arterial blood gas study and medical opinion evidence.[5] Claimant's Brief at 14-19.

Arterial Blood Gas Studies

The ALJ considered two resting arterial blood gas studies conducted on May 15, 2019, and August 25, 2021, and an exercise blood gas study also conducted on May 15, 2019. Decision and Order at 23. Both resting studies produced non-qualifying values,[6] while the May 15, 2019 exercise study produced qualifying values. Director's Exhibit 18 at 11-13; Employer's Exhibit 1 at 10. The technician who conducted the exercise study noted the test was terminated after one minute and fifty-eight seconds as Claimant "became dizzy [and] near syncope at end of exercise." Director's Exhibit 18 at 11.

The ALJ then considered the opinions of Drs. Zaldivar and Spagnolo that the results of the exercise blood gas study were unreliable. Decision and Order at 23. Dr. Zaldivar opined the exercise blood gas study did not indicate disability standing alone. Employer's Exhibit 7 at 35-36. He noted the exercise study included less than two minutes of walking,

[4] The ALJ correctly noted the record contains no evidence Claimant suffers from cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 22.

[5] We affirm, as unchallenged on appeal, the ALJ's determination that the pulmonary function study evidence does not establish total disability at 20 C.F.R. §718.204(b)(2)(i). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 22-23.

[6] A "qualifying" blood gas study yields results equal to or less than the applicable table values contained in Appendix C of 20 C.F.R. Part 718. A "non-qualifying" study yields results exceeding those values. See 20 C.F.R. §718.204(b)(2)(ii).

and opined the qualifying results might be a transient phenomenon caused by deconditioning. *Id*. at 31-32. Specifically, he explained that with a deconditioned individual, PO2 values can instantaneously drop as their heart initially struggles to provide sufficient circulation to exercising muscles but could then increase to normal values as their heart rate increases. *Id*. He opined that in the absence of a second exercise study, it was impossible to confirm whether the qualifying results were due to the short duration of the test and deconditioning rather than a respiratory impairment. *Id*. at 35-36. Dr. Spagnolo noted Claimant's medical history included several incidents of collapsing, which he opined were acute vasovagal episodes or other cardiovascular events that result in acute drops in blood pressure and would also result in low blood oxygenation values. Employer's Exhibit 8 at 25-26. He noted Claimant's oxygen saturation values were 98% at rest and 99% after the first minute of the exercise study and opined these results indicated Claimant "hadn't yet desaturated, but he was about to collapse. So clearly his blood pressure was going down." *Id.* at 27. He thus stated he would ignore the exercise blood gas study results "due to the acute nature of that collapse." *Id*.

The ALJ found the opinions of Drs. Zaldivar and Spagnolo credible and well-reasoned, and he therefore assigned less weight to the results of the May 15, 2019 exercise blood gas study. Decision and Order at 23. Thus, the ALJ concluded the blood gas study evidence cannot establish total disability. *Id*.

Claimant argues the ALJ erred as he asserts that exercise blood gas studies generally are more accurate predictors of a miner's ability to handle the exertional demands of their coal mine employment. Claimant's Brief at 14-15. Thus, Claimant argues the ALJ should have found the exercise study entitled to dispositive weight, and therefore sufficient to establish total disability. *Id*.

Contrary to Claimant's argument, while an ALJ may assign more weight to a qualifying exercise blood gas test if it is more indicative of a miner's ability to perform his usual coal mine work, they are not required to do so. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-31-32 (1984). Because the ALJ permissibly determined the results of the May 15, 2019 exercise blood gas study were unreliable and entitled to less weight than the non-qualifying resting studies based on the testimony of Drs. Zaldivar and Spagnolo, we see no error in his determination that the blood gas studies do not establish total disability at 20 C.F.R. §718.204(b)(2)(ii). *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); Decision and Order at 23.

Medical Opinions

The ALJ considered the opinions of Drs. Werntz, Zaldivar, and Spagnolo concerning total disability. Decision and Order at 24-25.

In his initial report, Dr. Werntz opined Claimant had a pulmonary impairment caused by deconditioning secondary to a stroke and mild pneumoconiosis, but nonetheless retained the pulmonary capacity to perform his last coal mine employment as a dispatcher. Director's Exhibit 18 at 6-7. In his supplemental report, when told Claimant's last coal mine employment was instead as a surface utility man, Dr. Werntz opined Claimant was totally disabled due to a lack of exercise capacity based on the exercise arterial blood gas study. Director's Exhibit 20 at 1-2.

Dr. Zaldivar initially opined he could not be certain whether Claimant was totally disabled, as he could not determine whether Claimant had exercise hypoxemia without additional exercise blood gas study evidence. Employer's Exhibit 1 at 3. However, he opined Claimant would be able to return to his sedentary work as a dispatcher based on the results of the May 15, 2019 study standing alone. *Id*. Dr. Zaldivar reiterated his opinion in a deposition, opining Claimant retained the respiratory capacity to return to work as a dispatcher, despite his uncertainty concerning whether he could perform heavy exertion work based on the exercise blood gas results. Employer's Exhibit 7 at 36-37.

Dr. Spagnolo opined Claimant's medical records and objective testing results did not indicate a totally disabling respiratory impairment. Employer's Exhibit 2 at 9-10; Employer's Exhibit 8 at 27. He opined Claimant maintained the respiratory capacity to return to his work a dispatcher. Employer's Exhibit 8 at 27-28.

The ALJ found Dr. Spagnolo the best-qualified physician based on his Board-certifications and professorship. Decision and Order at 17-18, 24. Further, the ALJ assigned greater weight to his opinion as he found Dr. Spagnolo considered the full breadth of the medical records and provided clear explanations for his conclusions. *Id*. at 25. The ALJ assigned great weight to Dr. Werntz's initial opinion as he found it reasoned and documented, but little weight to his supplemental opinion because it was based on an employment history contrary to the ALJ's finding Claimant's last coal mine work was as a dispatcher. *Id*. Finally, the ALJ assigned less weight to Dr. Zaldivar's opinion because he did not explain why his level of certainty changed regarding whether Claimant could return to his coal mine work. *Id*. Because he found the opinions weighing against total disability entitled to greater weight, the ALJ concluded the medical opinion evidence did not support finding total disability. *Id*.

Claimant initially argues the ALJ erred in crediting Dr. Spagnolo's opinion, contending his opinion failed to consider the qualifying results of Claimant's May 15, 2019 exercise blood gas study or relate its results to Claimant's last coal mine employment. Claimant's Brief at 17-18. Contrary to Claimant's argument, Dr. Spagnolo acknowledged the qualifying result of the exercise blood gas study, but he opined the results were unreliable as they were caused by hypotension secondary to an acute cardiovascular event

and thus did not reflect Claimant's condition.[7] Employer's Exhibits 2 at 9; 8 at 25. Moreover, as noted above, the ALJ permissibly determined the results of the May 15, 2019 exercise blood gas study were unreliable.

Claimant also argues that to the extent Dr. Zaldivar opined Claimant might be unable to return to work requiring heavy exertion, the ALJ should have found his opinion supports a finding of total disability because Claimant's work as a surface utility man required heavy exertion. Claimant's Brief at 16-17. Because we have already affirmed the ALJ's determination that Claimant's last coal mine employment was his sedentary work as a dispatcher, rather than his work as a surface utility man, we reject Claimant's argument.

Claimant further argues Dr. Werntz's opinions are well reasoned and documented, and the ALJ should have found they are entitled to greater weight. Claimant's Brief at 15-16. Claimant's argument amounts to a request to reweigh the evidence, which we are not empowered to do. *See 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 the medical opinion evidence does not support finding total disability at 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 25. As Claimant raises no additional arguments, we further affirm the ALJ's finding the evidence when weighed together does not establish total disability, and Claimant therefore could not invoke the Section 411(c)(4) presumption. *See Shedlock*, 9 BLR at 1-198; Decision and Order at 25-26. Finally, because Claimant did not establish total disability, a requisite element of entitlement, we affirm the denial of benefits.

[7] We disagree with Claimant's alternative argument that Dr. Spagnolo's opinion was not credible because he conflated the issues of total disability and disability causation by opining Claimant's qualifying May 15, 2019 exercise blood gas study result was due to transient hypotension cause by a cardiovascular event. Claimant's Brief at 18. The ALJ properly considered this portion of Dr. Spagnolo's opinion in regard to the reliability of the exercise blood gas study results as an indicator of Claimant's respiratory capacity. Decision and Order at 23; *see* 20 C.F.R. §718.204(b)(2)(ii).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge