U.S. Department of Labor

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

BRB No. 21-0084 BLA

TEDDY E. WILSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
TERRY EAGLE LIMITED PARTNERSHIP	)	DATE ISSUED: 11/29/2021
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNUEMOCONIOSIS FUND	)	
	)	
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 Sean M. Ramaley, Administrative Law Judge, United States Department of Labor.

Lynda D. Glagola (Lungs at Work) McMurray, Pennsylvania, for Claimant.

Jeffrey R. Soukup (Jackson Kelly PLLC) Lexington, Kentucky, for Employer and its Carrier.

Sarah M. Hurley (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Christian P. Barber, Acting Counsel for Administrative

Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Awarding Benefits (2019-BLA-05414) rendered on a claim filed on December 28, 2016, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[1]

The ALJ found Claimant established twenty-one years of underground coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore 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).[2] He further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer challenges the constitutionality of the Section 411(c)(4) presumption. Alternatively, Employer argues the ALJ erred in finding it did not rebut the presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, filed a limited response urging the Benefits Review Board to reject Employer's constitutional argument.[3]

The 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

[1] Claimant filed two previous claims for benefits, both of which were withdrawn. Director's Exhibits 1, 2. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

[2] 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 impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

[3] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established twenty-one years of underground coal mine employment and a totally disabling respiratory impairment, and therefore invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5, 17.

with applicable law.[4] 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).

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

Citing *Texas v. United States*, 340 F. Supp. 3d 579, *decision stayed pending appeal*, 352 F. Supp. 3d 665, 690 (N.D. Tex. 2018), Employer contends the Affordable Care Act (ACA), which reinstated the Section 411(c)(4) presumption, Pub. L. No. 111-148, §1556 (2010), is unconstitutional. Employer's Brief at 26-29. Employer cites the district court's rationale in *Texas* that the ACA requirement for individuals to maintain health insurance is unconstitutional and the remainder of the law is not severable. *Id.* Employer's arguments with respect to the constitutionality of the ACA and the severability of its amendments to the Black Lung Benefits Act are now moot. *California v. Texas*, 593 U.S. , 141 S. Ct. 2104, 2120 (2021).

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[5] 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); *Minich v. Keystone Coal Mining*

[4] The record reflects that Claimant performed his most recent coal mine employment in West Virginia. Decision and Order at 4; Director's Exhibit 6; Hearing Transcript at 22. Accordingly, the Board will apply the law of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[5] "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 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).

Corp., 25 BLR 1-149, 1-150 (2015). Employer challenges the ALJ's findings that it did not disprove legal pneumoconiosis or disability causation.[6]

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish Claimant does 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*, 25 BLR at 155 n.8.

Employer relies upon the opinions of Drs. Spagnolo and Basheda to disprove legal pneumoconiosis and argues the ALJ erred in finding them not adequately reasoned and insufficient to rebut the presumption. Employer's Brief at 13-26. We disagree.

Dr. Spagnolo opined that Claimant suffers from chronic persistent asthma unrelated to coal mine dust exposure, which is complicated by his chronic obstructive sleep apnea, severe obesity, and severe heart disease. Employer's Exhibits 1 at 12; 5 at 36. Dr. Basheda opined Claimant has tobacco-induced chronic obstructive pulmonary disease (COPD) with an asthmatic component. Director's Exhibit 22 at 25; Employer's Exhibit 4 at 28. As the ALJ correctly noted, both Dr. Spagnolo and Dr. Basheda relied, in part, on Claimant's bronchodilator response on pulmonary function testing as a basis for eliminating coal dust exposure as a causative factor for Claimant's impairment because pneumoconiosis causes an irreversible and fixed impairment. Director's Exhibit 22; Employer's Exhibits 1; 4 at 30; 5 at 32-34, 36.

Contrary to Employer's contention, the ALJ permissibly found neither physician explained his opinion in view of the objective evidence. Decision and Order at 25-26; *see* Employer's Brief at 24-26. The ALJ relied on two pulmonary function studies to find Claimant totally disabled at 20 C.F.R. §718.204(b)(2)(i), which Employer has not challenged.[7] Dr. Celko administered the March 7, 2017 pulmonary function study, which had qualifying values pre-bronchodilator and non-qualifying values post-bronchodilator. Director's Exhibit 15. Dr. Fino conducted the December 27, 2017 pulmonary function

[6] The ALJ found that Employer rebutted the presumed existence of clinical pneumoconiosis. Decision and Order at 25.

[7] The ALJ also considered Dr. Basheda's April 26, 2018 pulmonary function study, which had qualifying values pre- and post-bronchodilator but gave it no weight because it was not accompanied by three tracings as required by the regulatory quality standards. Decision and Order at 7, 15; 20 C.F.R. §718.103(b).

study, which had non-qualifying values pre-bronchodilator and qualifying values post-bronchodilator. Claimant's Exhibit 3. Decision and Order at 7, 15.

Dr. Fino observed that the results of the December 27, 2017 pulmonary function study exhibited no reversibility from bronchodilators to suggest asthma.[8] Decision and Order at 25; Claimant's Exhibit 3. Drs. Basheda and Spagnolo reviewed Dr. Fino's report prior to their depositions but did not specifically address his conflicting opinion on the qualifying post-bronchodilator values Dr. Fino conducted, which the ALJ credited as evidence of total disability. Employer's Exhibit 5 at 10-11. While Dr. Basheda acknowledged Claimant is totally disabled and demonstrated no bronchodilator response on the pulmonary function testing he conducted, he excluded coal dust exposure as a cause of Claimant's impairment in part because some of Claimant's pulmonary function studies did reflect a bronchodilator response. Director's Exhibit 22 at 21-25; Employer's Exhibit 4 at 17-19. Dr. Spagnolo stated Claimant has "an element of fixed airway problems" but similarly excluded coal dust as a cause in part because of Claimant's "past" bronchodilator response. Employer's Exhibit 5 at 21-23, 35-37. We see no error in the ALJ's findings that the opinions of Drs. Spagnolo and Basheda are not persuasive because they did not explain why coal mine dust exposure did not significantly or substantially contribute to the fixed portion of Claimant's respiratory impairment.[9] *See Consol. Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007);

[8] Employer initially solicited Dr. Fino's opinion, but the ALJ admitted it into evidence in response to Claimant's request. *See* Claimant's Exhibit 3.

[9] Because the ALJ provided a valid reason for discrediting the opinions of Drs. Spagnolo and Basheda, we need not address Employer's remaining arguments that they credibly explained their opinions in view of the variability of Claimant's respiratory impairment. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); *see* Employer's Brief at 13-26. However, we note that the ALJ correctly observed that the treatment records show a steady decline from 2010 to 2017, consistent with the progressive nature of pneumoconiosis, undermining Employer's position that Claimant's impairment is "variable" and thus inconsistent with pneumoconiosis. Employer concedes Claimant's condition declined between Dr. Celko's qualifying March 7, 2017 study and Dr. Fino's qualifying December 27, 2017 study; to support its assertion of a subsequent "improvement," it unpersuasively points to Dr. Basheda's qualifying April 26, 2018 study, which the ALJ discredited as an invalid measure of Claimant's impairment. Employer's Brief at 25-26. Moreover, as Employer has the burden of proof, we need not address Employer's arguments regarding the weight the ALJ accorded Claimant's experts who diagnosed legal pneumoconiosis. *See* Employer's Brief at 5-12.

Decision and Order at 25-26. Because it is supported by substantial evidence we affirm the ALJ's finding that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A).

Disability Causation

In order to disprove disability causation, Employer must establish "no part of [Claimant'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); *see Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015); *see also Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, (4th Cir. 1995) (where physician failed to properly diagnose pneumoconiosis, an ALJ "may not credit" that physician's opinion on causation absent "specific and persuasive reasons," in which case the opinion is entitled to at most "little weight"). The ALJ found the opinions of Drs. Spagnolo and Basheda not credible as to the cause of Claimant's respiratory disability because neither physician diagnosed legal pneumoconiosis. Decision and Order at 28. Employer raises no specific allegations of error regarding the ALJ's findings on disability causation, other than its general contention that Claimant does not have legal pneumoconiosis, which we have rejected. We therefore affirm the ALJ's determination that Employer failed to establish no part of Claimant's respiratory disability was due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 28.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge