U.S. Department of Labor

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

BRB No. 21-0336 BLA

CHARLES E. GORDON, SR.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WARRIOR MET COAL, LLC/JIM WALTER RESOURCES, INCORPORATED	)	DATE ISSUED: 11/28/2022
	)	
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 Angela F. Donaldson, Administrative Law Judge, United States Department of Labor.

J. Thomas Walker (Maples, Tucker & Jacobs, LLC), Birmingham, Alabama, for Claimant.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Angela F. Donaldson's Decision and Order Awarding Benefits (2020-BLA-05251) pursuant to the Black Lung

Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim filed on May 31, 2018.[1]

The ALJ accepted the parties' stipulation that Claimant had twenty years of qualifying coal mine employment and found he established a totally disabling respiratory or pulmonary impairment.[2] Therefore, she found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018), and established a change in an applicable condition of entitlement.[4]

---

[1] This is Claimant's second claim for benefits. On July 12, 2012, the district director denied his first claim, filed on September 30, 2011, as abandoned. Director's Exhibit 1. A denial by reason of abandonment is "deemed a finding the claimant has not established any applicable condition of entitlement." 20 C.F.R. §725.409. The ALJ stated the record "does not include a copy" of Claimant's initial claim. Decision and Order at 2. She recognized "Employer's brief reflects that the Claimant's prior claim was denied on the basis of abandonment," but did not identify it as the basis for the prior denial. *Id*. at 2 n.4. Because she presumed Claimant's prior claim was denied because he did not establish any element of entitlement, any error the ALJ made in failing to identify abandonment as the basis for the prior denial is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 2.

[2] The ALJ found Claimant did not establish complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 18 n.36. Consequently, Claimant could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018).

[3] 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.

[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); *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 Claimant did not establish any element of entitlement in his prior claim, he had to submit evidence establishing at least one element of entitlement to obtain review of the merits of his current claim. *Id*.

20 C.F.R. §§718.204(b)(2), 725.309(c). She further found Employer did not rebut the presumption and thus awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and invoked the Section 411(c)(4) presumption.[5] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not 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 and 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 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 qualifying pulmonary function studies or arterial blood gas studies,[7] 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. Alabama By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987);

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

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit because Claimant performed his coal mine employment in Alabama. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 4, 5.

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

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 opinion evidence and in consideration of the evidence as a whole.[8] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 17.

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 4-7.

Before weighing the medical opinions, the ALJ addressed the exertional requirements of Claimant's usual coal mine work as a belt cleaner. Decision and Order at 5. She stated Employer's records indicate "Claimant worked in this position from 1995 until he stopped working in 2000." *Id.* Based on Claimant's hearing testimony and CM-913 Description of Coal Mine Work form dated May 16, 2018, the ALJ noted the duties of Claimant's last coal mine job as a belt cleaner required him "to lift weights of 50 to 70 pounds, 'as needed' during his work day" and "walk along the belt and shovel coal that had fallen off the belt." *Id.* (citing Director's Exhibits 6, 9; Hearing Tr. at 16-17). She specifically noted Claimant "testified that a shovel full of coal and coal dust weighed about 50 pounds." *Id.* Further, she noted Claimant "remarked that his job required him to walk two to three miles each shift, and that he had to wear a utility belt that weighed about 50 pounds." *Id.* at 3. Consequently, she found Claimant's usual coal mine work required "moderate to heavy labor." *Id.* at 5. 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. Barney's opinion that Claimant is totally disabled by a respiratory or pulmonary impairment and Drs. Goldstein's and Rosenberg's opinions that he is not. Decision and Order at 9-17; Director's Exhibits 19, 25, 29, 30; Employer's Exhibit 1. She stated "they are all pulmonary specialists, with relevant board certifications." Decision and Order at 14. Specifically, she found Dr. Barney's opinion well-reasoned and documented, and Drs. Goldstein's and Rosenberg's opinions inadequately explained and thus unpersuasive.[9] *Id.* at 14-17. Thus she found Claimant

[8] We affirm, as unchallenged, the ALJ's findings that the pulmonary function and arterial blood gas studies do not establish total disability and that there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); *see Skrack*, 6 BLR at 1-711; Decision and Order at 8, 9.

[9] Employer does not challenge the ALJ's discrediting of the opinions of Drs. Goldstein and Rosenberg that Claimant does not have a total respiratory disability. We

established a totally disabling respiratory or pulmonary impairment based on Dr. Barney's opinion.

Employer argues the ALJ erred in crediting Dr. Barney's opinion as reasoned because it contends it is ambiguous and not supported by objective evidence. Employer's Brief at 4-7. It asserts Dr. Barney's opinion is based primarily on Claimant's qualifying pulmonary function testing and the ALJ determined the preponderance of the pulmonary function study evidence failed to demonstrate total disability. *Id.* We disagree.

Contrary to Employer's assertion, even if total disability cannot be established 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). Further, a medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably infer that a miner is unable to do his last coal mine job. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1142 (4th Cir. 1995); *see also Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-9 (1988).

Dr. Barney performed the Department of Labor-sponsored complete pulmonary evaluation of Claimant consisting of a physical examination, work, medical and social histories, a chest x-ray, pulmonary function and arterial blood gas studies, and an EKG. Director's Exhibit 19. He recognized Claimant worked as a "belt cleaner" from July 1991 to 2000 at a "moderate" level of exertion based in part on his Form CM-913. *Id.* In addition, he noted Claimant reported symptoms of cough with production of white sputum, wheezing at night, dyspnea on inclines and stairs, orthopnea two to three times per week, and paroxysmal nocturnal dyspnea. *Id.* Further, he found "mild wheezing" on physical examination, "shortness of breath with minimal exertion," and "moderate airflow obstruction" based on the valid and qualifying pulmonary function study conducted on July 9, 2018.[10] *Id.* He thus opined Claimant "would be unable to do his previous coal mining work due to shortness of breath." *Id.*

Moreover, Dr. Barney stated in his supplemental reports that Claimant is dyspneic with moderate exertion and "has on repeated pulmonary function testing demonstrate[ed]

---

therefore affirm her weighing of their opinions. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 16-17.

[10] Dr. Gaziano reviewed the July 9, 2018 pulmonary function study for the Department of Labor and opined the "vents are acceptable." Director's Exhibit 23.

moderate airflow obstruction."[11] Director's Exhibits 29, 30. He thus reiterated his opinion that Claimant could not perform his coal mining work. *Id.*

The ALJ noted "Dr. Barney remarked that, although the Claimant's most recent pulmonary function test did not meet disability standards, [he] had multiple abnormal spirometry in the past and was short of breath to the point where he could not do coal mining work." Decision and Order at 11. She explained "Dr. Barney seems to have concluded that the pulmonary function test of [April 11, 2019] showed 'moderate' obstructive impairment, consistent with the results of the test he administered on [July 9, 2018], because in his supplemental report he commented that 'repeated pulmonary function testing' showed such impairment." *Id.* at 14-15. In addition, she found "Dr. Barney's opinion that the Claimant's respiratory condition precluded him from coal mine work took into consideration the exertional requirements of [his] coal mine work" and his "shortness of breath with activity." *Id.* at 15-16. Further, she determined Claimant's treatment records corroborated Dr. Barney's opinion that Claimant has a total respiratory disability because Dr. Wilson, Claimant's treating physician, found he has exertional dyspnea and prescribed an inhaler for him to use before engaging in physical activity. *Id.*

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 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). Because substantial evidence supports the ALJ's finding that Dr. Barney's opinion is well-reasoned and well-documented based on Claimant's symptoms, physical examination findings, qualifying pulmonary function study, and the exertional requirements of his usual coal mine work, we affirm her permissible finding that the medical opinion evidence, considered in isolation, establishes 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 16-17.

We also affirm, as supported by substantial evidence, the ALJ's finding that all of the relevant evidence, when weighed together, established total respiratory 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 16-17. Thus, we affirm her findings that Claimant invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement.

[11] Dr. Barney concluded "the aggregate pulmonary function testing would suggest he has a persisting airflow disease." Director's Exhibit 30.

30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §§718.305, 725.309. We further affirm, as unchallenged, her finding that Employer did not rebut the Section 411(c)(4) presumption. 20 C.F.R. §718.305(d)(1)(i), (ii); *see Skrack*, 6 BLR at 1-711; Decision and Order at 18-24. We therefore affirm the award of benefits.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge