U.S. Department of Labor

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

BRB No. 22-0060 BLA

TEDDY G. MULLINS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CUMBERLAND RIVER COAL COMPANY	)	
	)	DATE ISSUED: 11/04/2022
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 William P. Farley, Administrative Law Judge, United States Department of Labor.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, 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 (2019-BLA-05231) rendered on a claim filed March 13, 2017 pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established 29.43 years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore determined Claimant invoked the

presumption of total disability due to pneumoconiosis at Section 411(c)(4)[1] of the Act, 30 U.S.C. §921(c)(4). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant is totally disabled and invoked the Section 411(c)(4) presumption. It also challenges the date the ALJ selected for commencement of the payment of benefits.[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, 362 (1965).

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

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.[4] *See* 20 C.F.R. §718.204(b)(1). 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.*

[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 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 29.43 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 14, 21.

[3] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 29 at 8-9.

[4] As it is unchallenged, we affirm the ALJ's finding that Claimant's usual coal mine employment "as a heavy equipment and load-out operator" required "medium to heavy exertional levels." Decision and Order at 14; *see Skrack*, 6 BLR at 1-711.

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.[5] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 28. Employer argues the ALJ erred in weighing the medical opinion evidence. Employer's Brief at 1-9. We disagree.

The ALJ considered the medical opinions of Drs. Ajjarapu, Forehand, Dahhan, and Rosenberg. Decision and Order at 23-28. Drs. Dahhan and Rosenberg opined Claimant is not totally disabled by a respiratory or pulmonary impairment, whereas Drs. Ajjarapu and Forehand opined he is. Director's Exhibits 15, 17, 20; Claimant's Exhibits 6, 7; Employer's Exhibits 1, 3, 4. The ALJ assigned reduced weight to Drs. Dahhan's and Rosenberg's opinions because they did not persuasively explain their positions, whereas he found Drs. Ajjarapu and Forehand rendered reasoned and documented opinions that are entitled to significant weight.[6] Decision and Order at 23-28. He thus found the medical opinion evidence establishes total disability. *Id.*

Initially, we reject Employer's argument that the ALJ did not explain his bases for finding the opinions of Drs. Ajjarapu and Forehand reasoned and documented. Employer's Brief at 2-5.

Dr. Ajjarapu noted Claimant demonstrates symptoms of daily sputum production, wheezing, dyspnea, and cough. Director's Exhibit 15 at 3. She opined he does not have the pulmonary capacity to perform his usual coal mine employment as a heavy equipment operator based on the qualifying[7] May 22, 2017 arterial blood gas study that demonstrates

[5] The ALJ found the pulmonary function and arterial blood gas studies do not establish total disability and there is no evidence Claimant has cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 22-23.

[6] The ALJ also considered treatment notes from a nurse practitioner that Claimant is totally disabled. Decision and Order at 28; Claimant's Exhibit 7. Although he found her opinion reasoned and documented, he assigned her opinion reduced weight based on her lack of qualifications. Decision and Order at 28. Employer argues the ALJ erred in giving any weight to the nurse practitioner's opinion. Employer's Brief at 5-6. Because the ALJ found Claimant established total disability based on the opinions of Drs. Ajjarapu and Forehand, any alleged error in weighing the nurse practitioner's opinion is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 28.

[7] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values in Appendices B and C of 20 C.F.R. Part 718,

severe hypoxemia at rest and with exercise. *Id*. at 1, 7. She also explained her May 22, 2017 exercise blood gas study, conducted on a treadmill, provides a better simulation of strenuous activity than Dr. Dahhan's non-qualifying December 20, 2017 exercise study conducted on a bicycle. Director's Exhibit 20. She further opined that, while the less strenuous December 20, 2017 exercise study is non-qualifying, it still demonstrates that Claimant suffers from moderate resting hypoxemia. *Id*. Thus, after reviewing the non-qualifying testing, she reiterated her opinion that Claimant is totally disabled. *Id.*

Contrary to Employer's argument, the ALJ was not required to discredit Dr. Ajjarapu's opinion as being in conflict with his finding that the overall weight of the blood gas studies was non-qualifying for total disability. Employer's Brief at 1-4. Total disability can be established with a reasoned medical opinion even in the absence of qualifying pulmonary function tests or arterial blood gas studies. 20 C.F.R. §718.204(b)(2)(iv); *see also 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). In this case, Dr. Ajjarapu maintained her opinion Claimant is totally disabled even after addressing the non-qualifying blood gas study conducted by Dr. Dahhan.[8] As such, we affirm the ALJ's permissible finding that Dr. Ajjarapu's total disability opinion is reasoned and documented because she adequately explained her conclusions in light of "Claimant's last coal mine employment, objective testing, and symptoms." Decision and Order at 23-24; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 530 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

We similarly reject Employer's assertion that the ALJ should have discredited Dr. Forehand's opinion as being in conflict with the non-qualifying blood gas studies. Dr. Forehand noted Claimant was short of breath after climbing one flight of stairs and his May 22, 2017, September 21, 2018, October 15, 2020, and November 23, 2020 exercise blood gas studies showed a significant and progressively worsening blood gas exchange impairment. Director's Exhibit 15; Employer's Exhibit 2; Claimant's Exhibits 5, 6. Based on this evidence, he opined Claimant is totally disabled from performing his usual coal

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respectively. A "non-qualifying" study yields results exceeding those values. See 20 C.F.R. §718.204(b)(2)(i), (ii).

[8] We thus reject Employer's meritless assertion that Dr. Ajjarapu relied solely on her qualifying blood gas study, and otherwise failed to support her opinion with "any medically acceptable clinical and laboratory diagnostic techniques." Employer's Brief at 4.

mine employment as a heavy equipment operator due to his gas exchange impairment.[9] *Id.* The ALJ permissibly found Dr. Forehand's opinion reasoned and documented because he "relied upon Claimant's symptomatology and clinical testing" and "adequately explained the correlation between Claimant's symptoms and objective testing with his conclusion that Claimant's impairment was disabling." Decision and Order at 24-25; *see Hicks*, 138 F.3d at 530; *Akers*, 131 F.3d at 441.

As the ALJ explained his bases for crediting the opinions of Drs. Ajjarapu and Forehand, his findings satisfy the explanatory requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).[10] *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 n.10 (4th Cir. 1999) ("If a reviewing court can discern what the ALJ did and why he did it, the duty of explanation is satisfied.").

Employer next argues the ALJ erred in discrediting Dr. Dahhan's opinion. Employer's Brief at 7-8. Initially, we note that in his second supplemental opinion, Dr. Dahhan opined that "Dr. Forehand concurs with my conclusion that [Claimant] has *disabling* exercise induced hypoxemia that has worsened over the preceding three years." Employer's Exhibit 4 (emphasis added). Thus Dr. Dahhan's opinion supports the conclusion that Claimant is totally disabled at 20 C.F.R. §718.204(b)(2)(iv).

Further, even if we were to assume Dr. Dahhan intended to say Claimant has "non-disabling" hypoxemia, substantial evidence supports the ALJ's decision to discredit his opinion. Dr. Dahhan initially opined Claimant has mild resting hypoxemia based on blood gas testing but retains the physiological capacity to return to his usual coal mine employment. Director's Exhibit 17. In a supplemental opinion he opined Claimant's exercise induced hypoxemia renders him unable to perform heavy manual labor, but that he was still able to perform his job "operating a dozer." Employer's Exhibit 1. As discussed above, the ALJ found Claimant's usual coal mine employment required "medium to heavy exertional levels." Decision and Order at 14, 27. He rationally found Dr. Dahhan did not explain his opinion that Claimant could operate a dozer considering

[9] We thus again reject Employer's assertion that Dr. Forehand (like Dr. Ajjarapu) relied only on qualifying blood gas studies and failed to support his opinion with "any medically acceptable clinical and laboratory diagnostic techniques." Employer's Brief at 5.

[10] The Administrative Procedure Act (APA) provides every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented. . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

the doctor's concession that Claimant "is unable to perform heavy manual jobs" as a result of his hypoxemia. Decision and Order at 27; *see Eagle v. Armco Inc.*, 943 F.2d 509, 512 n.4 (4th Cir. 1991) (in evaluating the exertional requirements of a miner's usual coal mine employment, an ALJ must determine the exertional requirements of the most difficult job the miner performed); *Hicks*, 138 F.3d at 530; *Akers*, 131 F.3d at 441. The ALJ also permissibly found Dr. Dahhan did not adequately address Claimant's "reported symptoms of dyspnea on exertion and a morning cough with yellowish sputum production" when opining Claimant is not totally disabled.[11] *Id.*

Finally, Employer asserts the ALJ erred in discrediting Dr. Rosenberg's opinion. Employer's Brief at 8-9. We disagree.

Dr. Rosenberg opined the pulmonary function and blood gas studies are invalid or not qualifying and thus Claimant is not totally disabled from a pulmonary perspective.[12] Employer's Exhibit 3. He stated Claimant has "respiratory symptoms" of shortness of breath with cough and sputum production, his blood gas studies reveal hypoventilation with a decrease in PO_2, and his pulmonary function testing reveals a reduction in lung volumes to the lower limit of normal. *Id.* The ALJ permissibly discredited Dr. Rosenberg's opinion because he did not explain why he concluded Claimant would be able to perform the specific exertional requirements of his usual coal mine employment despite the pulmonary limitations and respiratory symptoms he observed. *See Hicks*, 138 F.3d at 530; *Akers*, 131 F.3d at 441; *Cornett*, 227 F.3d at 587 ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"); Decision and Order at 28.

We thus affirm the ALJ's determination the medical opinion evidence supports a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 28. As Employer raises no further argument, we affirm his finding that all the relevant evidence, when weighed together, establishes total disability and Claimant invoked the Section 411(c)(4) presumption. *See Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 198; 20 C.F.R. §718.305; Decision and Order at 28. Because Employer raises no specific arguments

[11] Because the ALJ provided valid reasons for discrediting Dr. Dahhan's opinion, we need not address Employer's remaining arguments regarding the weight accorded to his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 7-8.

[12] We note this basis for Dr. Rosenberg's opinion is in conflict with the ALJ's finding that the May 22, 2017 blood gas study is valid and qualifying at rest and with exercise, and that the November 23, 2020 study is valid and qualifying with exercise. Decision and Order at 18, 22-23. The ALJ specifically rejected as "speculative" Dr. Rosenberg's opinion that the May 22, 2017 study is invalid. *Id.* at 22.

regarding the ALJ's finding it did not rebut the presumption, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 31, 33-34. We therefore affirm the award of benefits.

Commencement Date for Benefits

The date for the commencement of benefits is the month in which Claimant became totally disabled due to pneumoconiosis. 20 C.F.R. §725.503(b); *see Lykins v. Director, OWCP*, 12 BLR 1-181, 1-182 (1989). If the date is not ascertainable, benefits commence the month the claim was filed, unless evidence the ALJ credits establishes Claimant was not totally disabled due to pneumoconiosis at any subsequent time. 20 C.F.R. §725.503(b); *see Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Owens v. Jewell Smokeless Coal Corp.*, 14 BLR 1-47 (1990).

The ALJ found the record does not contain any medical evidence establishing when Claimant first became totally disabled due to pneumoconiosis and thus awarded benefits commencing March 2017, the month the claim was filed. Decision and Order at 35. Employer argues the non-qualifying blood gas studies conducted on December 20, 2017 and October 15, 2020[13] establish Claimant was not totally disabled after the filing of the claim. Employer's Brief at 9-10; Director's Exhibit 17; Employer's Exhibit 2. This argument is unpersuasive.

As discussed above, Claimant did not establish total disability based on the qualifying pulmonary function or arterial blood gas testing, but rather established he has a totally disabling respiratory or pulmonary impairment even in the absence of qualifying objective testing based on the reasoned medical opinions. Specifically, the ALJ credited Dr. Ajjarapu's and Dr. Forehand's opinions that Claimant is totally disabled by respiratory symptoms and hypoxemia even if his arterial blood gas studies are non-qualifying. Decision and Order at 28. Further, the onset date is not established by the first medical evidence of record indicating total disability, as such medical evidence only shows Claimant became totally disabled at an earlier time. *See Owens*, 14 BLR at 1-50; *Merashoff v. Consolidation Coal Co.*, 8 BLR 1-105, 1-109 (1985). As the ALJ found the medical evidence does not reflect the date Claimant became totally disabled due to pneumoconiosis, benefits are payable from the month in which he filed his claim. 20 C.F.R. §725.503(b). Therefore, we affirm the ALJ's conclusion that benefits commence March 2017. *Owens*, 14 BLR at 1-49; Decision and Order at 35.

[13] It appears Employer mistakenly referred to the October 15, 2020 blood gas study from Clinch Valley as a May 2020 blood gas study, as there is no May study in the record. Employer's Brief at 9; Employer's Exhibit 2.

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