U.S. Department of Labor

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

BRB No. 22-0125 BLA

JOHNNY A. MULLINS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
BLACK CASTLE MINING COMPANY	)	
	)	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 Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

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

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Awarding Benefits (2020-BLA-05540) on a claim filed on October 10, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with thirty-nine years of underground coal mine employment or surface coal mine employment in conditions substantially similar to those in an underground mine and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). She therefore 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). Furthermore, she found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability and therefore invoked the Section 411(c)(4) presumption. It further argues she erred in finding it did not rebut the presumption.[2] 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.[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

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine 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 consider all relevant evidence and weigh the evidence supporting total

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability is due to pneumoconiosis if he had 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); 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established thirty-nine years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6-8.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because 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; Hearing Tr. at 36.

disability against the 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). The ALJ found Claimant established total disability based on the pulmonary function studies, arterial blood gas studies, medical opinions, and the evidence as a whole.[4] *See* 20 C.F.R. §718.204(b)(2)(i), (ii), (iv); Decision and Order at 13-14, 23.

Pulmonary Function Studies

Employer first argues the ALJ did not explain her basis for resolving the conflict in pulmonary function studies as required by the Administrative Procedure Act (APA).[5] Employer's Brief at 32-33. We disagree.

The ALJ considered three pulmonary function studies conducted on October 27, 2018, February 15, 2020, and July 2, 2020. Decision and Order at 12-13. The October 27, 2018 study produced non-qualifying[6] results both before and after the administration of bronchodilators, while the February 15, 2020 and July 2, 2020 studies produced qualifying results both before and after the administration of bronchodilators. Director's Exhibit 11; Claimant's Exhibits 1-2. The ALJ permissibly assigned more weight to the qualifying 2020 studies because Claimant performed them more recently than the 2018 study. *See Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992); Decision and Order at 13. Because we can discern the ALJ's rationale underlying her credibility finding, we are not persuaded by Employer's argument her pulmonary function study findings do not satisfy the APA. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012) (if a reviewing court can discern what the ALJ did and why she did it, the duty of explanation under the APA is satisfied). We thus affirm the ALJ's finding the

[4] The ALJ found there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 14.

[5] The Administrative Procedure Act provides that 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).

[6] 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).

pulmonary function study evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(i).

Arterial Blood Gas Studies

Employer next argues the ALJ erred in finding the blood gas study evidence establishes total disability. Employer's Brief at 33-34. We disagree.

The ALJ considered three blood gas studies dated October 27, 2018, February 15, 2020, and July 2, 2020. Decision and Order at 13-14. The February 15, 2020 study produced non-qualifying values both at rest and during exercise. Claimant's Exhibit 2. The October 27, 2018 and July 2, 2020 studies produced non-qualifying values at rest, but qualifying values during exercise. Director's Exhibit 11; Claimant's Exhibit 1. The ALJ permissibly found the exercise studies to be the more probative than those taken at rest because "they are more probative of Claimant's ability to perform coal mine work requiring physical exertion[.]"[7] Decision and Order at 14. She thus permissibly found the blood gas study evidence establishes total disability because the preponderance of studies taken during exercise are qualifying, including the most recent study Claimant performed in July 2020. *See Adkins*, 958 F.2d at 51-52; *Milburn Colliery v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Coen v. Director, OWCP*, 7 BLR 1-30, 1-31-32 (1984); Decision and Order at 14. Thus we affirm her finding the blood gas study evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 14.[8]

Medical Opinions

Employer next asserts the ALJ erred in weighing the medical opinion evidence. Employer's Brief at 12-16. We are not persuaded.

The ALJ considered the medical opinions of Drs. Agarwal and Spagnolo. Decision and Order at 15-23. Dr. Agarwal opined exercise blood gas testing demonstrates a severely

[7] The ALJ found claimant had to move overburden rock and engage in other activities requiring physical exertion. She concluded he engaged in light to medium physical labor. These determinations are not contested by Employer. Decision and Order at 7-8.

[8] Even if we were to agree with Employer that the time between the two most recent exercise blood gas studies is insufficient to justify giving greater weight to the most recent study, the two exercise studies would be in equipoise, and the pulmonary function testing would still support finding total disability.

reduced diffusing capacity and gas exchange impairment which renders Claimant unable to perform the moderate level of exertion required by his job as a dozer and truck driver. Director's Exhibit 11; Claimant's Exhibit 2. He further opined the severe restrictive ventilatory defect and severely reduced diffusing capacity seen on his pulmonary function testing also indicates Claimant does not retain the pulmonary capacity to perform his usual coal mine employment. Claimant's Exhibits 1, 2.

The ALJ found Dr. Agarwal's consideration of the objective testing "comports" with her own finding that the tests are qualifying. Decision and Order at 22. She also found "Dr. Agarwal considered Claimant's relevant histories and the findings of his reports as well as the results of the [arterial and pulmonary function testing] and explained how those considerations support his findings." *Id*. Contrary to Employer's argument, the ALJ permissibly credited Dr. Agarwal's opinion as reasoned and documented. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 22; Employer's Brief at 12.

Dr. Spagnolo acknowledged Claimant has abnormal pulmonary function and exercise blood gas studies but opined, from a pulmonary standpoint, Claimant can perform his usual coal mine employment. Employer's Exhibits 1 at 12-13, 2 at 24-26. He explained that Claimant's low pulmonary function and exercise blood gas study values in 2020 are a consequence of having part of his right lower lobe removed in the course of his cancer treatment. Employer's Exhibits 1 at 12, 2 at 25. He further explained Claimant's reduced exercise blood gas study values on October 27, 2018, were "likely caused by the cardiac arrhythmia during the exercise test that reduced [his] cardiac output thru the lung." Employer's Exhibit 1 at 12. Finally, he opined Claimant may have a weak or paralyzed diaphragm causing the abnormal pulmonary function and exercise blood gas study results because a weak diaphragm has a "major effect on how well somebody can move air in and out of the lung." Employer's Exhibits 1 at 12, 2 at 14.

The relevant inquiry at 20 C.F.R. §718.204(b)(2) is whether the miner has a totally disabling respiratory or pulmonary impairment; the cause of that impairment is addressed at 20 C.F.R. §§718.202(a)(4), 718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption pursuant to 20 C.F.R. §718.305. *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989). Thus, while Dr. Spagnolo provided several possible causes of Claimant's pulmonary and respiratory impairments, we discern no error in the ALJ's finding he did not adequately explain why Claimant is able to perform his

usual coal mine work despite the qualifying pulmonary function and blood gas studies.[9] *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 23.

We thus affirm the ALJ's finding the medical opinion evidence establishes total disability at 20 C.F.R. §718.204(b)(2)(iv).[10] Decision and Order at 23. As Employer raises no other challenges to the ALJ's weighing of the evidence, we affirm her determination that the evidence as a whole establishes total disability and Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §§718.204(b)(2), 718.305; Decision and Order at 23.

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,[11] or "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in

[9] Because the ALJ provided valid reasons for discrediting Dr. Spagnolo's opinion, we need not address Employer's additional arguments as to why the ALJ erred in weighing his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 14-16.

[10] The ALJ found Drs. Agarwal and Spagnolo are both "Board-certified in internal medicine with a subspecialty in pulmonary disease and well-experienced in the field of pulmonary medicine. On the basis of their credentials, the physicians will be given equivalent weight." Decision and Order at 22. Employer argues the ALJ should have given greater weight to Dr. Spagnolo's opinion because he is better qualified than Dr. Agarwal and his opinion is more thorough than Dr. Agarwal's. Employer's Brief at 13-14, 30-31. Its argument is a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp Coal of Utah, Inc*., 12 BLR 1-111, 1-113 (1989).

[11] "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).

[20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer did not establish rebuttal by either method.

Clinical Pneumoconiosis

To disprove clinical pneumoconiosis, Employer must establish Claimant does not have any of the 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. §§718.305(d)(1)(i)(B), 718.201(a)(1).

The ALJ found the x-ray, medical opinion, and treatment record evidence insufficient to rebut the presumed existence of clinical pneumoconiosis. Decision and Order at 25-28, 30-33. As an initial matter, Employer identifies no specific error in the ALJ's consideration of the x-ray evidence; thus we affirm her finding the x-ray evidence is insufficient to rebut the presumption Claimant has clinical pneumoconiosis. *See Cox v. Director*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 25-26.

Employer argues the ALJ erred in weighing the medical opinion evidence. Employer's Brief at 14-15, 17-23, 28. The ALJ considered Dr. Spagnolo's opinion that Claimant does not have clinical pneumoconiosis and discredited it as contrary to the weight of the x-ray evidence and not adequately reasoned.[12] Decision and Order at 27-28. She thus found his medical opinion does not rebut the presumption of clinical pneumoconiosis. *Id.* at 28.

Employer argues the ALJ erred in discrediting Dr. Spagnolo's opinion. Employer's Brief at 14-15, 18-23, 28. We disagree.

Dr. Spagnolo acknowledged that Drs. DePonte and Ramakrishnan interpreted the October 27, 2018 x-ray as positive for pneumoconiosis, and that Dr. DePonte interpreted

[12] The ALJ also considered Dr. Agarwal's opinion that Claimant has clinical pneumoconiosis. Decision and Order at 27-28. Because Dr. Agarwal's opinion does not aid Employer in rebutting the presumption of clinical pneumoconiosis, we need not address Employer's arguments regarding the ALJ's weighing of his opinion. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 17-18.

the July 2, 2020[13] chest x-ray as positive for pneumoconiosis. Employer's Exhibit 1 at 13. He further acknowledged Dr. Blake's August 30, 2018 computed tomography (CT) scan interpretation identified "mild peripheral reticular interstitial changes." Employer's Exhibits 1 at 13, 4 at 14; Director's Exhibits 11, 19; Claimant's Exhibit 1. He opined the changes described in the CT scan interpretation are most consistent with Claimant's history of rheumatoid arthritis and there is insufficient evidence to diagnose clinical pneumoconiosis by x-ray. Employer's Exhibit 1 at 13.

At his deposition, Dr. Spagnolo stated that Claimant has "had descriptions of heart failure, granulomatous disease, immunologic changes;" suffered from lung cancer and hemothorax; undergone two significant operations on his chest; and presented with evidence of bronchiectasis due to acid reflux and potential "hypersensitivity lung disease." Employer's Exhibit 2 at 21-23, 29-30, 35. He opined that "there have been so many things described on the x-ray that could mimic a pneumoconiosis" and, because of all these possibilities, he could not diagnose pneumoconiosis. *Id.* at 35.

The ALJ found that, while Dr. Spagnolo identified many potential causes for the changes seen on x-ray and CT scan, he failed to adequately consider clinical pneumoconiosis and explain why Claimant does not have the disease despite the positive x-ray interpretations. Decision and Order at 28. She further found not well-reasoned his reliance on the August 30, 2018 CT scan to attribute the changes seen on x-ray to rheumatoid arthritis, given the CT scan interpretation did not mention rheumatoid arthritis, but merely indicated the changes were non-specific, and that a chronic autoimmune disease "could be a consideration."[14] Employer's Exhibit 4 at 15; Decision and Order at 28. Contrary to Employer's argument, the ALJ permissibly found Dr. Spagnolo's opinion on clinical pneumoconiosis is not credible because it is contrary to the weight of the positive x-ray evidence for clinical pneumoconiosis and not adequately reasoned. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 28. Thus we affirm the ALJ's finding that Dr. Spagnolo's opinion is inadequate to rebut the presumption Claimant has clinical pneumoconiosis. Decision and Order at 28.

[13] Dr. Spagnolo referred to this x-ray as the July 20, 2020 x-ray, but it appears to be a scrivener's error. Employer's Exhibit 1 at 13. Earlier in his report he referred to it as the July 2, 2020 x-ray. *Id.* at 10.

[14] The August 30, 2018 CT scan report also stated chronic hypersensitivity pneumonitis and "UIP," or chronic autoimmune disease, could be considered as the cause of the "[n]onspecific peripheral reticular interstitial changes." Employer's Exhibit 4 at 18-19.

Employer argues Dr. Spagnolo took into consideration the entire body of evidence and sufficiently explained why Claimant does not have clinical pneumoconiosis. Employer's Brief at 14-15, 18-23, 28. Employer's arguments are a request to reweigh the evidence which we are not empowered to do. *See Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because the ALJ adequately explained her credibility findings in accordance with the APA, we affirm her determination that Employer did not disprove Claimant has clinical pneumoconiosis.[15] *See Looney*, 678 F.3d at 316-17; *Hicks*, 138 F.3d at 533; Decision and Order at 25-28, 30-33. Employer's failure to disprove clinical pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis.[16] 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established "no part of the miner'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); Decision and Order at 34-35. She permissibly discredited Dr. Spagnolo's disability causation opinion because he failed to diagnose pneumoconiosis, contrary to her finding that Employer failed to disprove Claimant has the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order at 34-35. We therefore affirm the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(ii) and the award of benefits.

[15] Employer argues the ALJ's weighing of the treatment record evidence requires remand. Employer's Brief at 34-35. The ALJ gave the treatment record evidence little weight but found it generally supports a finding of clinical pneumoconiosis. Decision and Order at 32-33. Employer asserts the treatment records show evidence of other disease processes, but it does not allege they establish Claimant does not have clinical pneumoconiosis. Employer's Brief at 34-35. Thus, we need not disturb the ALJ's finding the treatment record evidence does not aid Employer in rebutting the existence of clinical pneumoconiosis. *See Cox v. Director*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); Decision and Order at 33.

[16] Because the ALJ's determination that Employer did not disprove clinical pneumoconiosis precludes a finding that Claimant does not have pneumoconiosis, we need not address Employer's argument that she erred in finding it failed to disprove legal pneumoconiosis. *See Larioni*, 6 BLR at 1-1278; 20 C.F.R. §718.305(d)(1)(i); Employer's Brief at 22-28, 30-31, 34-35.

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

JONATHAN ROLFE
Administrative Appeals Judge