U.S. Department of Labor

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

BRB Nos. 23-0053 BLA
and 23-0054 BLA

JUDY C. GRIFFITH (o/b/o and Widow of RICHARD L. GRIFFITH)	)	
Claimant-Respondent	)	
v.	)	
CLINCHFIELD COAL COMPANY	)	DATE ISSUED: 11/17/2023
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 in Miner's and Survivor's Claims Awarding Benefits of Carrie Bland, Associate Chief Administrative Law Judge, United States Department of Labor.

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

Kendra R. Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

Before: BOGGS, ROLFE, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Associate Chief Administrative Law Judge (ALJ) Carrie Bland's Decision and Order in Miner's and Survivor's Claims Awarding Benefits (2019-BLA-05820 and 2019-BLA-06196) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on February 13, 2017,[1] and a survivor's claim filed on April 24, 2019.[2]

In considering the miner's claim, the ALJ accepted the parties' stipulation of at least twenty years of coal mine employment. She found all of the Miner's work was performed on the surface in conditions substantially similar to those found in underground mines and that he had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant invoked the presumption that the Miner's total disability was due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[3] The ALJ further found Employer did not rebut the presumption and awarded benefits in the miner's claim. Because the Miner was entitled to benefits at the time of his death, the ALJ found Claimant automatically entitled to survivor's benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2018).[4]

[1] We note the ALJ mistakenly relied on the dates the miner's and survivor's claims were signed, February 7, 2017 and March 12, 2019, rather than the dates the claims were received by the office of the district director, February 13, 2017 and April 24, 2019, to determine when the claims were filed. *See* 20 C.F.R. §725.303(a)(1) ("A claim shall be considered filed on the day it is received by the office in which it is first filed."); Decision and Order at 2; Miner's Claim (MC) Director's Exhibit 2; Survivor's Claim (SC) Director's Exhibit 1.

[2] Claimant is the widow of the Miner, who died on January 10, 2019. SC Director's Exhibit 7. She is pursuing the miner's claim on his behalf, along with her own survivor's claim. SC Director's Exhibits 1, 2.

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled 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. §92l(c)(4) (2018); 20 C.F.R. §718.305(b).

[4] Section 422(*l*) of the Act provides that the survivor of a miner who was determined to be eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

On appeal, Employer argues the ALJ erred in finding it failed to rebut the Section 411(c)(4) presumption. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), did not file a substantive response.[5]

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 & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Miner's Claim - Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish the Miner had neither legal nor clinical pneumoconiosis,[7] 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). The ALJ found Employer failed to establish rebuttal by either method.

Legal Pneumoconiosis

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[5] We affirm, as unchallenged on appeal, the ALJ's findings that the Miner had twenty years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment and that Claimant 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 7-8, 16.

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the Miner performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 26.

[7] "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).

To disprove legal pneumoconiosis, Employer must establish the Miner did not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on Drs. Sargent's and Rosenberg's opinions that the Miner did not have legal pneumoconiosis.[8] Decision and Order at 23-27; MC Director's Exhibit 20; MC Employer's Exhibits 7-9. Dr. Sargent diagnosed severe resting hypoxemia due to congestive heart failure and sleep apnea and a restrictive impairment due to obesity, and he explained both were unrelated to coal mine dust exposure. MC Director's Exhibit 20 at 3; MC Employer's Exhibit 9 at 20, 28-29. Dr. Rosenberg opined the etiology of the Miner's respiratory impairments were "multifactorial" but unrelated to coal dust exposure. MC Employer's Exhibits 7 at 6-7; 8 at 6. The ALJ found their opinions not well-reasoned and, therefore, insufficient to satisfy Employer's burden of proof. Decision and Order at 25-27.

Employer contends the ALJ applied the wrong legal standard and failed to adequately consider Drs. Sargent's and Rosenberg's specific explanations for concluding the Miner did not have legal pneumoconiosis. Employer's Brief at 8-16. We disagree.

Initially, we reject Employer's contention that the ALJ applied the wrong legal standard in requiring its experts to "rule out" coal mine dust exposure as a "contributing or aggravating" factor for Claimant's respiratory impairment.[9] Employer's Brief at 8-12. The ALJ accurately noted that in order to disprove legal pneumoconiosis, Employer must establish that the Miner's impairment was not "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 23; *see* 20

[8] The ALJ also considered the opinions of Drs. Green and Sood, who both diagnosed legal pneumoconiosis. Decision and Order at 23-24; MC Director's Exhibits 16; 21 at 5; MC Claimant's Exhibit 6 at 11-12. As their opinions do not aid Employer on rebuttal, we need not address Employer's argument that the ALJ failed to adequately explain her reliance on them. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 13-15.

[9] We reject Employer's assertion that the ALJ erred in shifting the burden on rebuttal. Employer's Brief at 3, 15. As we have already affirmed the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption, it is Employer's burden to rebut the presumption of legal pneumoconiosis, as the ALJ correctly observed. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); Decision and Order at 16, 22-23.

C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A). Moreover, as explained below, the ALJ discredited Drs. Sargent's and Rosenberg's opinions because she found they were not well-reasoned, not because they failed to meet a heightened legal standard. Decision and Order at 26-27.

The ALJ accurately noted that in concluding the Miner did not have legal pneumoconiosis, Dr. Sargent explained that coal dust exposure causes hypoxemia and restrictive impairments only if a miner has advanced simple or complicated pneumoconiosis. Decision and Order at 25-26; MC Director's Exhibit 20 at 3; MC Employer's Exhibit 9 at 22. Thus, the ALJ permissibly found Dr. Sargent's opinion unpersuasive because he excluded a diagnosis of legal pneumoconiosis based, in part, on the absence of radiographic evidence of pneumoconiosis. *See* 20 C.F.R. §718.202(a)(4) ("A determination of the existence of pneumoconiosis may . . . be made if a physician, exercising sound medical judgment, notwithstanding a negative x-ray, finds that the miner suffers or suffered from pneumoconiosis . . . ."), (b); 65 Fed. Reg. 79,920, 79,945 (Dec. 20, 2000); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012); Decision and Order at 25-27.

The ALJ noted that Dr. Rosenberg attributed the Miner's respiratory impairments to a combination of hypertension, heart failure, obesity, and sleep apnea. Decision and Order at 26-27. The ALJ permissibly discredited Dr. Rosenberg's opinion regarding the etiology of the Miner's respiratory impairment as "unpersuasive and not well-reasoned" because his conclusions were unsupported by "clinical findings, observations, or other data." Decision and Order at 27; *see Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013) (as the trier-of-fact, the ALJ has discretion to assess the credibility of the medical opinions based on the experts' explanations for their diagnoses and assign those opinions appropriate weight).

Additionally, the ALJ permissibly found that although Drs. Sargent and Rosenberg discussed other causes of the Miner's respiratory impairment, they did not adequately explain why the Miner's significant history of coal mine dust exposure did not also significantly contribute to, or aggravate, his restrictive impairment or severe hypoxemia. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Looney*, 678 F.3d at 313-14; Decision and Order at 27.

We consider Employer's arguments on legal pneumoconiosis to be a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because the ALJ's credibility findings are supported by substantial evidence, we affirm her determination that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 27.

Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the Miner did not have pneumoconiosis.[10] 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established "no part of the [M]iner'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 28-29. Contrary to Employer's argument, the ALJ permissibly discounted the opinions of Drs. Sargent and Rosenberg regarding the cause of the Miner's respiratory or pulmonary disability because they did not diagnose legal pneumoconiosis, contrary to her determination.[11] *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 28-29; Employer's Brief at 16-17. We therefore affirm the ALJ's finding that Employer failed to establish no part of the Miner's respiratory or pulmonary disability was caused by legal pneumoconiosis, 20 C.F.R. §718.305(d)(1)(ii), and the award of benefits in the miner's claim. Decision and Order at 29.

Survivor's Claim

Because we have affirmed the award of benefits in the miner's claim and Employer raises no specific challenge to the survivor's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits. 30 U.S.C. §932(*l*); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013); Decision and Order at 29.

[10] Consequently, we need not address Employer's arguments that the ALJ erred in concluding it failed to disprove clinical pneumoconiosis. *See Larioni*, 6 BLR at 1-1278; 20 C.F.R. §718.305(d)(1)(i); Employer's Brief at 3-8.

[11] Drs. Sargent and Rosenberg did not address whether legal pneumoconiosis caused the Miner's respiratory or pulmonary disability independent of their conclusions that he did not have the disease.

Accordingly, the ALJ's Decision and Order in Miner's and Survivor's Claims Awarding Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge