U.S. Department of Labor

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

BRB No. 19-0536 BLA

JEFFERY W. MEADE	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	DATE ISSUED: 10/21/2020
CLINCHFIELD COAL COMPANY	)	
	)	
and	)	
	)	
PITTSTON COMPANY	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits in an Initial Claim of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

Jeffery W. Meade, Pound, Virginia.

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

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

PER CURIAM:

Claimant, without the assistance of counsel,[1] appeals Administrative Law Judge Larry S. Merck's Decision and Order Denying Benefits in an Initial Claim (2017-BLA-05357) rendered on a claim 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 April 13, 2015.

After crediting Claimant with 15.86 years of qualifying coal mine employment, the administrative law judge found Claimant failed to establish he is totally disabled and therefore could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018), or establish entitlement under 20 C.F.R. Part 718. Accordingly, he denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Employer and its Carrier (Employer) respond in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[2]

As Claimant filed this appeal without the assistance of counsel, the Benefits Review Board considers whether substantial evidence supports the Decision and Order. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994). We must affirm the administrative law judge's findings of fact and conclusions of law if they are 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 Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements

[1] On Claimant's behalf, Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested the Benefits Review Board review the administrative law judge's decision, but Ms. Napier is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] We affirm, as unchallenged on appeal, the administrative law judge's finding that Claimant established 15.86 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

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

precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc). 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); *see* 20 C.F.R. §718.305.

A miner is totally disabled if he has a pulmonary or respiratory impairment which, 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). 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 administrative law judge must weigh all relevant supporting evidence against all relevant 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 record contains five pulmonary function studies dated March 23, 2015, July 22, 2015, May 11, 2016, February 13, 2018, and July 25, 2018.[5] Director's Exhibits 14, 17, 22; Claimant's Exhibit 3; Employer's Exhibit 3. The July 22, 2015 study produced qualifying results both before and after the administration of bronchodilators.[6] Director's Exhibit 14. The May 11, 2016 and February 13, 2018 studies produced non-qualifying results before and after the administration of bronchodilators. The March 23, 2015 and July 25, 2018 studies, administered without the use of bronchodilators,

[4] The administrative law judge accurately found no evidence of complicated pneumoconiosis in the record. Decision and Order at 11. Claimant, therefore, cannot invoke the irrebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

[5] The administrative law judge permissibly resolved the height discrepancy recorded on the pulmonary function studies, finding Claimant's average reported height was 70.6 inches, and stated he would use the closest table height of 70.9 inches for purposes of assessing the pulmonary function studies for total disability. *See Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 12-13.

[6] A "qualifying" pulmonary function study or 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. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

produced non-qualifying values. Without any indication that any of the tests were unreliable, the administrative law judge permissibly determined the four non-qualifying pulmonary function studies outweigh the single qualifying pulmonary function study. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550 (4th Cir. 2013); Decision and Order at 14. We therefore affirm his finding that the pulmonary function study evidence does not establish total disability at 20 C.F.R. §718.204(b)(2)(i).

The administrative law judge correctly found Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(ii), (iii), as none of the arterial blood gas studies[7] produced qualifying results and there is no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 15.

Before considering the medical opinions, the administrative law judge addressed the exertional requirements of Claimant's usual coal mine employment. He noted Claimant testified his last coal mine job with Indian Mountain Coal was as a bridge operator running the bridge to load coal. Decision and Order at 11; Transcript at 21. Claimant stated he spent most of his time crawling on his knees and "occasionally" lifted 40 to 50 pounds "by moving rocks and shoveling coal out from beneath him." Decision and Order at 11; Transcript at 16. The administrative law judge also noted Claimant described his last coal mine job to Dr. McSharry as a maintenance foreman and fire boss, which included repairing equipment, performing preventive maintenance, and supervising a group of eight mechanics. Decision and Order at 11; Director's Exhibit 22. Claimant estimated that "30% of the work was very strenuous labor and the rest was moderately strenuous." Director's Exhibit 22. The administrative law judge therefore determined Claimant's last coal mine job required at least medium work. Decision and Order at 12. Because it is supported by substantial evidence, we affirm the administrative law judge's determination of the exertional requirements of Claimant's usual coal mine employment.

The administrative law judge next considered the medical opinions of Drs. Ajjarapu, Sargent, and McSharry. Dr. Ajjarapu opined Claimant is totally disabled based on the July 22, 2015 pulmonary function study she conducted showing severe pulmonary impairment. Director's Exhibits 14, 25. Dr. Sargent opined Claimant has a mild obstructive impairment but is not totally disabled based on the non-qualifying February 13, 2018 pulmonary function study he conducted and his review of other pulmonary function studies. Employer's Exhibits 3, 4 at 19-21. Dr. McSharry opined Claimant is not totally disabled based on the non-qualifying results of the May 11, 2016 pulmonary function and blood gas

[7] The record contains three arterial blood gas studies conducted on July 22, 2015, May 11, 2016, and February 13, 2018.

studies he conducted and his review of other pulmonary function studies. Director's Exhibit 22; Employer's Exhibit 5 at 21.

The administrative law judge noted Dr. Ajjarapu stated she reviewed Dr. McSharry's testing and conclusion that Claimant is not totally disabled. He further determined, however, that Dr. Ajjarapu failed to address these subsequent studies in her supplemental opinion. Decision and Order at 18. Noting Dr. Ajjarapu did not discuss the basis for her disability opinion in light of the subsequent non-qualifying pulmonary function study results, the administrative law judge permissibly found it conclusory and thus entitled to little probative weight. Decision and Order at 18; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). As no other medical opinion supports a finding that Claimant has a totally disabling respiratory or pulmonary impairment, we affirm the administrative law judge's finding that the medical opinions do not establish total disability.[8] 20 C.F.R. §718.204(b)(2)(iv).

Because Claimant did not establish total disability under 20 C.F.R. §718.204(b)(2)(i)-(iv), we affirm the administrative law judge's determinations that Claimant did not invoke the Section 411(c)(4) presumption or establish entitlement under 20 C.F.R. Part 718. *See* 30 U.S.C. §921(c)(4); *Trent*, 11 BLR at 1-27.

[8] The administrative law judge also considered treatment records from St. Charles Breathing Center from December 21, 2016 to August 9, 2017. He properly found they do not contain a total disability assessment. Decision and Order at 26; Claimant's Exhibit 4.

Accordingly, the administrative law judge's Decision and Order Denying Benefits in an Initial Claim is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge