U.S. Department of Labor

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

BRB No. 200-0540 BLA

LEWIS A. SMITH	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
COASTAL COAL COMPANY, LLC	)	DATE ISSUED: 10/08/2021
	)	
Self-Insured 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 Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

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

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

William M. Bush (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Christian P. Barber, Acting Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Awarding Benefits (2018-BLA-05484) rendered on a claim filed on April 12, 2016, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ determined Claimant established at least twenty-four years of underground coal mine employment and accepted Employer's concession that Claimant has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Therefore, she 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). She further found Employer did not rebut the presumption and consequently awarded benefits.

On appeal, Employer challenges the constitutionality of the Section 411(c)(4) presumption. Employer further argues the ALJ 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 (the Director), has filed a limited response, urging rejection of Employer's constitutional challenge to the Section 411(c)(4) presumption.

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 Associates, Inc.*, 380 U.S. 359 (1965).

[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); 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the ALJ's determination 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 5.

[3] We 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); Hearing Transcript at 6.

Constitutionality of the Section 411(c)(4) Presumption

Citing *Texas v. United States*, 340 F. Supp. 3d 579, *decision stayed pending appeal*, 352 F. Supp. 3d 665, 690 (N.D. Tex. 2018), Employer contends the Affordable Care Act (ACA), which reinstated the Section 411(c)(4) presumption, Pub. L. No. 111-148, §1556 (2010), is unconstitutional. Employer's Brief at 16-19. Employer cites the district court's rationale in *Texas* that the ACA requirement for individuals to maintain health insurance is unconstitutional and the remainder of the law is not severable. *Id*. Employer's arguments with respect to the constitutionality of the ACA and the severability of its amendments to the Black Lung Benefits Act are now moot. *California v. Texas*, 593 U.S. , 141 S. Ct. 2104, 2120 (2021).

Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption, the burden of proof shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[4] 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 rebut the presumption by either method.[5]

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish Claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R.

[4] "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). "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).

[5] The ALJ found Employer rebutted the existence of clinical pneumoconiosis. Decision and Order at 12. However, Employer must also disprove legal pneumoconiosis to rebut the presumption under the first method at 20 C.F.R. §718.305(d)(1).

§§718.201(a)(2),(b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

The ALJ considered the medical opinions of Drs. Dahhan and Jarboe that Claimant's obstructive lung disease does not constitute legal pneumoconiosis.[6] Decision and Order at 12; Director's Exhibit 20; Employer's Exhibit 4. Dr. Dahhan opined it is solely due to cigarette smoking, Director's Exhibit 20; Dr. Jarboe opined it is exclusively due to cigarette smoking and bronchial asthma. Employer's Exhibit 4. The ALJ determined neither physician adequately explained why Claimant's twenty-four years of coal mine dust exposure was not a contributing or aggravating factor in his obstructive lung disease. Decision and Order at 12.

On appeal, Employer asserts the ALJ erroneously applied a "rule-out standard" in finding it did not rebut the existence of legal pneumoconiosis. Employer's Brief at 7-9, *citing Island Creek Coal Co., v. Young*, 947 F.3d 399 (6th Cir. 2020). We disagree.

The ALJ set forth the correct standard for rebuttal, explaining Employer must establish by a preponderance of the evidence that Claimant does not have a lung disease "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 11, *citing* 20 C.F.R. §718.201(b). She then rationally found neither physician met this standard because, while both explained why they believed cigarette smoking is a more likely cause of Claimant's obstructive disease, they did not explain why his twenty four years of coal mine dust exposure did not also contribute to or aggravate it. *See* 20 C.F.R. §718.201(a)(2), (b); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Lane v. Union Carbide Corp.*, 105 F.3d 166, 173 (4th Cir. 1997) (ALJ "may weigh the medical evidence and draw his own conclusions"); Decision and Order at 20.

Dr. Dahhan opined that, based on the average loss of lung function in miners and smokers, Claimant's impairment could not be wholly accounted for by his coal mine dust exposure, while his smoking history was "sufficient" to cause the impairment. Director's Exhibit 20. He further opined Claimant's coal mine dust exposure could not account for the reversible portion of his impairment. *Id.* He therefore attributed all of Claimant's partially reversible obstructive lung disease to his smoking history. *Id.* Similarly, Dr. Jarboe opined Claimant's FEV1, in comparison to his FVC, on his pulmonary function test was too reduced and his residual volume too severely elevated to be accounted for by his coal mine dust

[6] The ALJ also considered Dr. Silman's medical opinion, but accurately found it did not support Employer's burden to disprove the existence of legal pneumoconiosis. Decision and Order at 10; Director's Exhibits 12, 24.

exposure. Employer's Exhibit 4. He further opined coal mine dust exposure could not account for the reversible portion of Claimant's impairment, and generally opined cigarette smoking is more harmful than coal mine dust exposure. *Id*. Based on these factors, he opined all of Claimant's partially reversible obstructive lung disease is due to cigarette smoking and bronchial asthma. *Id*.

The ALJ accurately summarized the physicians' opinions and rationally found them insufficient because, other than dismissing Claimant's twenty four years of coal dust exposure entirely, they did not address the presumed significant effect it had on Claimant's obstructive impairment. Decision and Order at 11. They therefore did not meet the standard for rebuttal. 20 C.F.R. §§718.201(a)(2),(b), 718.305(d)(1)(i)(A); *see Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 n.4 (4th Cir. 2017) (ALJ permissibly discredited medical opinions that "solely focused on smoking" as a cause of obstruction and "nowhere addressed why coal dust could not have been an additional cause"); *Owens*, 724 F.3d at 558.

As the trier-of-fact, the ALJ's function is to weigh the evidence, draw appropriate inferences, and determine the credibility of the evidence. *Stallard*, 876 F.3d at 670. The Board cannot reweigh the evidence or substitute its inferences. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988). Because substantial evidence supports the ALJ's credibility determinations, we affirm her finding that the medical opinion evidence does not rebut the existence of legal pneumoconiosis.[7] 20 C.F.R. §718.305(d)(1)(i)(A). Thus, we affirm the ALJ's finding that Employer did not rebut the presumption by establishing Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i); Decision and Order at 11.

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 13. She permissibly discredited the opinions of Drs. Jarboe and Dahhan on disability causation because they were premised on the belief that Claimant does not have legal pneumoconiosis, contrary to her finding Employer did not disprove the existence of the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order at 13. We therefore affirm the ALJ's

[7] Because the ALJ permissibly found the medical opinions of Drs. Jarboe and Dahhan are not sufficient to rebut the presumption, we need not address Employer's additional arguments regarding the weighing of the medical opinion evidence. Employer's Brief at 9-16.

determination 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.

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge