U.S. Department of Labor

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

BRB Nos. 22-0353 BLA
and 23-0001 BLA

WILLIAM L. SNYDER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
THE MARSHALL COUNTY COAL COMPANY	)	
	)	
and	)	
	)	
MURRAY ENERGY CORPORATION TRUST	)	DATE ISSUED: 10/23/2023
	)	
Employer/Carrier-Petitioners	)	
	)	
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 and Order Awarding Attorney Fees of Steven D. Bell, Administrative Law Judge, United States Department of Labor.

Samuel B. Petsonk, Oak Hill, West Virginia, for Claimant.

Aimee M. Stern (Dinsmore & Shohl, LLP), Wheeling, West Virginia, for Employer.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Steven D. Bell's Decision and Order Awarding Benefits and Order Awarding Attorney Fees (2020-BLA-05284) rendered on a claim filed on June 29, 2016, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (the Act).[1]

The ALJ accepted the parties' stipulation that Claimant had twenty-three years of coal mine employment, which the ALJ found was all underground. He further found that Claimant established a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2) and thus invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[2] *See* 20 C.F.R. §718.305. The ALJ further found Employer failed to rebut the presumption and therefore awarded benefits. The ALJ subsequently awarded Claimant's counsel's attorneys' fees.[3]

Employer argues the ALJ erred in finding Claimant established total disability and thus invoked the Section 411(c)(4) presumption. It also maintains the ALJ erred in finding that it failed to rebut the presumption.[4] Finally, in a separate appeal, it argues the attorneys' fee award must be vacated if the Board vacates the ALJ's Decision and Order awarding benefits. Claimant responds to Employer's appeal of the award of benefits,

[1] The Benefits Review Board consolidates these appeals for decision only.

[2] 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 or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[3] Counsel with the firm Ellis Legal, P.C., Chicago, Illinois, represented Claimant before the ALJ.

[4] We affirm, as unchallenged on appeal, that Claimant established twenty-three years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 12, 20.

urging affirmance.[5] The Director, Office of Workers' Compensation Programs, has declined to participate in either appeal.

The Board's scope of review is defined by statute. The ALJ's Decision and Orders must be affirmed if they are 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).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). 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.[7] 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 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. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

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[5] Claimant filed a Motion to Deny Appeal by Reason of Abandonment, arguing Employer failed to timely file its Petition for Review. The Board denied the motion, noting Employer's petition and brief were timely filed and the certificate of service demonstrated that Claimant's prior counsel was served. *Snyder v. The Marshall Cnty Coal Co.*, BRB No. 22-0353 BLA (Aug. 25, 2022) (order) (unpub.).

[6] We will apply the law of the United States Court of Appeals for the Fourth Circuit, as Claimant performed his last coal mine employment in West Virginia. *See Shupe* v. *Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 8, 23.

[7] Claimant indicated in his application that his last job was as a load operator, which among other duties, required lifting 75- to 100-pound cables several times per day. Director's Exhibit 4. Dr. Feicht noted his usual coal mine employment required walking two miles a day and lifting 50 pounds several times per day. Director's Exhibit 17. Dr. Fino noted Claimant lifted up to 100 pounds several times a day and indicated this work required "considerable heavy labor." Employer's Exhibit 1.

The ALJ found Claimant established total disability based on the arterial blood gas evidence, medical opinion evidence, and the evidence as a whole.[8] Decision and Order at 14. Employer does not challenge the ALJ's determination that the arterial blood gas study evidence supports a finding of total disability; thus, it is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 13. It challenges, however, the ALJ's finding that the medical opinion evidence supports total disability.

Medical Opinion Evidence

The ALJ considered the medical opinions of Drs. Feicht, Fino, and Ranavaya. Decision and Order at 7-11, 13-14. Dr. Feicht found Claimant totally disabled from performing his usual coal mine employment given the restriction demonstrated on pulmonary function testing and an abnormal blood gas study, which was disabling with exercise. Director's Exhibits 12, 17, 19, 51. While Dr. Fino opined that Claimant was totally disabled from performing his usual coal mine employment, he indicated it was not due to a "true pulmonary or respiratory impairment" but was rather due his elevated right diaphragm and obesity. Employer's Exhibit 1. Dr. Ranavaya opined there was no evidence of pulmonary impairment that could have arisen from coal mine dust exposure. Director's Exhibit 16.

The ALJ accorded Dr. Feicht's opinion "probative weight," as well-reasoned and supported by the objective testing and Claimant's symptoms. Decision and Order at 14. He found Dr. Fino's opinion unreasoned and contradictory and thus accorded his opinion little weight. *Id*. Finally, the ALJ found Dr. Ranavaya's opinion failed to specifically address the presence of total disability, rather opining only that any impairment was not due to coal mine dust exposure. *Id*. Thus, the ALJ found the medical opinion evidence supports a finding of total disability. *Id.*

Employer asserts the ALJ erred in discrediting Dr. Fino's opinion.[9] Employer's Brief at 10-11. Specifically, it argues the ALJ erred in finding Dr. Fino's opinion contradictory, as he failed to recognize Dr. Fino was making a distinction between a

[8] The ALJ found the pulmonary function study evidence does not support total disability and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii); Decision and Order at 12-13.

[9] Employer does not challenge the ALJ's findings that Dr. Feicht's opinion is entitled to probative weight and Dr. Ranavaya's opinion is unreasoned because he did not specifically address total disability; thus, we affirm these findings. *See Skrack*, 6 BLR at 1-711; Decision and Order at 14.

breathing problem due to a "mechanical problem" as opposed to a "pulmonary problem." *Id.* at 10-11. We disagree.

The relevant inquiry with respect to total disability at 20 C.F.R. §718.204(b)(2) is whether the miner has a totally disabling respiratory or pulmonary impairment. The cause of the impairment is addressed at 20 C.F.R. §718.204(c), or in consideration of rebuttal of the Section 411(c)(4) presumption at 20 C.F.R. §718.305. *See Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989). Thus, the ALJ permissibly found Dr. Fino's opinion contradictory given his acknowledgement that Claimant's lung function was not sufficient to allow him to perform his usual coal mining work, but nonetheless found Claimant was not disabled from a pulmonary or respiratory perspective. *See Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993) (ALJ has exclusive power to make credibility determinations and resolve inconsistencies in the evidence); *Mabe* v. *Bishop Coal Co.*, 9 BLR 1-67, 1-68 (1986); Employer's Exhibit 1.

As Employer raises no further challenges to the ALJ's consideration of the medical opinion evidence, we affirm his finding that it supports total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 14. Further, as Employer does not challenge the ALJ's weighing of the evidence together, we also affirm his finding that Claimant established total disability and thus invoked the Section 411(c)(4) presumption. 20 C.F.R. §§718.204(b)(2), 718.305; Decision and Order at 14-15.

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

[10] "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 failed to establish rebuttal by either method.[11]

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. §§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).

Employer relied on the opinions of Drs. Fino and Ranavaya that Claimant does not have legal pneumoconiosis. Both doctors opined his pulmonary and respiratory abnormalities were due to his elevated right diaphragm, likely due to diabetic phrenic nerve neuropathy, complicated by his obesity, all unrelated to his coal mine dust exposure. Director's Exhibit 16; Employer's Exhibit 1. The ALJ found both opinions inadequately explained and entitled to little probative weight. Decision and Order at 17-18. Thus, the ALJ found Employer failed to rebut the presumption of legal pneumoconiosis. *Id.*

Employer contests the ALJ's discrediting of Dr. Fino's opinion, arguing that, contrary to the ALJ's finding, Dr. Fino explained why an increased pCO2 on exertion in arterial blood gases is an unusual pattern for pneumoconiosis but is consistent with Claimant's obesity and elevated diaphragm. Employer's Brief at 12. It further argues that Dr. Feicht admitted the contribution of Claimant's elevated right diaphragm "cannot be excluded" as a cause of impairment.[12] *Id.* We find Employer's arguments unpersuasive.

The ALJ permissibly found that Dr. Fino failed to adequately explain why coal mine dust could not have contributed to Claimant's abnormalities, particularly given that Claimant's blood gases on exertion were qualifying for total disability and the premise underlying the regulations that coal mine dust may cause disabling blood gases. *Mingo*

[11] The ALJ found Employer disproved the existence of clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 17.

[12] We affirm, as unchallenged on appeal, the ALJ's finding that Dr. Ranavaya's opinion is not well-reasoned or documented and is entitled to little probative weight. *See Skrack*, 6 BLR at 1-711; Decision and Order at 18. We further affirm the ALJ's finding that Dr. Feicht's opinion does not aid Employer in rebutting the presumption, as he diagnosed legal pneumoconiosis. Decision and Order at 18; Director's Exhibits 12, 17, 19, 51. While Dr. Feicht acknowledged Claimant's elevated right diaphragm may have contributed to his impairment, a miner need not establish that coal mine dust exposure was the sole cause of his respiratory impairment. *Westmoreland Coal Co., Inc. v. Cochran*, 718 F.3d 319, 322-23 (4th Cir. 2013); Director's Exhibits 17, 19.

Logan Coal Co. v. Owens, 724 F.3d 550, 558 (4th Cir. 2013); Decision and Order at 18. Employer's argument is 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). Employer raises no further arguments on this issue; thus, we affirm the ALJ's finding that it failed to rebut legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 18.

As Employer has raised no specific arguments regarding the ALJ's finding it failed to rebut disability causation, we further affirm these findings. *See Skrack*, 6 BLR at 1-711; *see also Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015); *Toler v. E. Assoc. Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995); Decision and Order at 19-20. Consequently, we affirm the ALJ's finding that Employer failed to establish rebuttal pursuant to 20 C.F.R. §718.305(d)(1)(ii). Decision and Order at 20. We therefore affirm the award of benefits.

Attorney Fee Order

On June 21, 2022, counsel who represented Claimant before the ALJ, John C. Ellis, Esq., filed an itemized fee petition requesting $7,647.67 for legal services and expenses incurred before the Office of Administrative Law Judges. Claimant's Counsel's Fee Petition. Employer did not object to the fee petition. The ALJ found the requested fees and expenses to be reasonable and approved them in full. Order Awarding Attorney Fees.

Employer appeals the fee award solely to protect its right to seek reversal of the fee award in the event the Board vacates the ALJ's Decision and Order awarding benefits. Employer's Fee Brief. As we have affirmed the award of benefits and Employer does not contest the content of the fee order, the ALJ's award of a fees and expenses is affirmed and payable to Ellis Legal, P.C., subject to final adjudication of the claim. *Goodloe v. Peabody Coal Co.*, 19 BLR 1-91, 1-100 n.9 (1995) (attorney fee award does not become effective, and thus is not enforceable, until there is a successful prosecution of the claim); *Coleman v. Ramey Coal Co.*, 18 BLR 1-9, 1-17 (1993) (same).

Accordingly, the ALJ's Decision and Order Awarding Benefits and Order Awarding Attorney Fees are affirmed.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge