U.S. Department of Labor

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

BRB No. 20-0395 BLA

HAROLD DEWAIN LAMBERT	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY/ PITTSON	)	
	)	
	)	DATE ISSUED: 09/15/2021
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of Decision and Order Awarding Benefits on Remand of Larry W. Price, Administrative Law Judge, United States Department of Labor.

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

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Larry W. Price's Decision and Order Awarding Benefits on Remand[1] (2012-BLA-06105) rendered on a subsequent claim filed on April 11, 2011,[2] pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with twenty-eight and one-half years of surface coal mine employment in conditions substantially similar to an underground mine. He also found Claimant has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore determined Claimant established a change in an applicable condition of entitlement and invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[3] 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §725.309. He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer contends the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption.[4] 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

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[1] This case is before the Benefits Review Board for the third time. Pursuant to Employer's prior most recent appeal, the Board vacated ALJ Paul C. Johnson's Decision and Order Awarding Benefits and remanded the case to the Office of Administrative Law Judge for reassignment to a constitutionally appointed ALJ pursuant to *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044 (2018). *See Lambert v. Clinchfield Coal Company*, BRB No. 18-0242 BLA (Dec 17, 2018) (unpub. Order). On remand the claim was reassigned to ALJ Price. His Decision and Order Awarding Benefits on Remand is the subject of this appeal.

[2] Claimant filed four previous claims, all of which were finally denied. Director's Exhibits 1-4. The district director denied Claimant's most recent claim on February 10, 2010 because he failed to establish any element of entitlement. Director's Exhibit 4.

[3] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is 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.

[4] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§718.305, 725.309; Decision and Order at 24.

accordance with applicable law.[5] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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[6] 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.[8]

Legal Pneumoconiosis

Employer argues the ALJ erred in finding it failed to rebut the presumption of legal pneumoconiosis. Employer's Brief at 3-10. We disagree.

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),

[5] 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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 12.

[6] "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).

[7] "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).

[8] The ALJ found Employer disproved clinical pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(B); Decision and Order at 28.

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 Dr. Castle's opinion that Claimant has a moderate obstructive respiratory impairment due to cigarette smoking and bronchial asthma, and unrelated to coal mine dust exposure. Director's Exhibit 16. The ALJ found Dr. Castle's opinion inadequately reasoned and thus not credible. Decision and Order at 30-31.

We first reject Employer's argument that the ALJ applied an improper legal standard with respect to rebuttal of the presumption of legal pneumoconiosis. Employer's Brief at 3-6, 9-10. Insofar as Dr. Castle diagnosed Claimant with a lung impairment in the form of a moderate obstructive impairment, the ALJ correctly noted Dr. Castle must persuasively explain why that obstructive impairment is not significantly related to, or substantially aggravated by, dust exposure in coal mine employment. 20 C.F.R. §§718.201(b), 718.305(d)(1)(i); Decision and Order at 24-25, 28. Moreover, as discussed, the ALJ did not reject Dr. Castle's opinion based on failure to meet a heightened legal standard; he found the physician's opinion inadequately reasoned. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313-14 (4th Cir. 2012) (ALJ may accord less weight to a physician who fails to adequately explain why a miner's obstructive disease "was not due at least in part to his coal dust exposure").

We also reject Employer's argument that the ALJ discredited Dr. Castle's opinion based on invalid reasons. Employer's Brief at 6-10.

In excluding legal pneumoconiosis, Dr. Castle opined Claimant's pulmonary function testing demonstrates significant improvement in his obstructive impairment after the administration of bronchodilators. Director's Exhibit 16 at 13-14. He excluded legal pneumoconiosis because coal mine dust exposure does not cause a reversible obstructive impairment. *Id*. The ALJ noted, however, that Claimant's two most recent pulmonary function studies are qualifying for total disability both before and after the administration of a bronchodilator. Decision and Order at 22. The ALJ permissibly found Dr. Castle's reasoning unpersuasive because he failed to adequately explain why the irreversible portion of Claimant's obstructive impairment was not significantly related to, or substantially aggravated by, coal mine dust exposure. *See Looney*, 678 F.3d at 316; *Consol. Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); Decision and Order at 30.

Further, although Dr. Castle opined Claimant's objective testing and clinical picture is consistent with cigarette smoke-induced airway obstruction, the ALJ permissibly found the doctor failed to adequately explain why Claimant's twenty-eight and one-half years of

coal mine dust exposure did not significantly contribute, along with cigarette smoking, to his impairment. *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"); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); 20 C.F.R. §718.201(b); Decision and Order at 30.

Finally, we note the ALJ weighed the opinions of Drs. Gallai, Green, and Silman that coal mine dust exposure substantially aggravated Claimant's obstructive impairment, thus constituting legal pneumoconiosis. Director's Exhibit 14; Claimant's Exhibits 1, 5. The ALJ found these opinions well-reasoned and documented, and entitled to "significant weight." Decision and Order at 28-29. Employer does not challenge this finding, and therefore we affirm it. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Because it is supported by substantial evidence, we affirm the ALJ's finding that Employer failed to disprove Claimant has legal pneumoconiosis. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); Decision and Order at 30-31. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. Therefore, we affirm the ALJ's finding that Employer did not establish rebuttal at 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established no part of Claimant'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 31-32. The ALJ rationally discounted Dr. Castle's disability causation opinion because he failed to diagnose legal pneumoconiosis, contrary to his 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); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Decision and Order at 31-32; Employer's Brief at 10-11. Further, the ALJ found the opinions of Drs. Gallai, Green, and Silman that Claimant is totally disabled due to pneumoconiosis are well-reasoned and documented. Decision and Order at 32. As Employer does not challenge this finding, we affirm it. *Skrack*, 6 BLR at 1-711. We therefore affirm the ALJ's findings 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 on Remand is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge