U.S. Department of Labor

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

BRB No. 21-0281 BLA

ERIC J. GILLIAM	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
STILLHOUSE MINING, LLC, c/o ARN INCORPORATED	)	
	)	
and	)	
	)	DATE ISSUED: 9/28/2022
AIG PROPERTY & CASUALTY COMPANY	)	
	)	
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 of Scott R. Morris, Administrative Law Judge, United States Department of Labor.

John Earl Hunt, Allen, Kentucky, for Claimant.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Scott R. Morris's Decision and Order Awarding Benefits (2019-BLA-06097) rendered on a claim filed on September 7, 2018,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulation that Claimant has twenty-one years of qualifying coal mine employment and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant 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] Further, he found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding it did not rebut the presumption.[3] 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 accordance with applicable law.[4] 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).

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[1] Claimant withdrew his prior claim; therefore, it is considered not to have been filed. 20 C.F.R. §725.306(b); Director's Exhibit 1.

[2] Section 411(c)(4) of the Act 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 impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 710, 1-711 (1983); Decision and Order at 17.

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 19.

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,[5] 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.

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). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, requires Employer to establish Claimant's "coal mine employment did not contribute, in part, to his alleged pneumoconiosis." *Island Creek Coal Co. v. Young*, 947 F.3d 399, 405 (6th Cir. 2020). "An employer may prevail under the not 'in part' standard by showing that coal dust exposure had no more than a *de minimis* impact on the miner's lung impairment." *Id*. at 407 (citing *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 600 (6th Cir. 2014)).

Employer relies on the medical opinions of Drs. McSharry and Sargent, both of whom diagnosed an obstructive impairment due to asthma. Director's Exhibit 40 at 3; Employer's Exhibits 1 at 3; 3 at 1; 4 at 2. Both physicians conceded, however, that Claimant may have legal pneumoconiosis.[6]. Director's Exhibit 40 at 3; Employer's Exhibit

[5] "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).

[6] Dr. McSharry opined "it is possible, but not likely, that legal coal workers' pneumoconiosis is present." Director's Exhibit 40 at 3. Likewise, Dr. Sargent noted that he "cannot exclude the possibility that part of this obstructive impairment is related to coal dust exposure." Employer's Exhibit 4 at 2.

4 at 2. The ALJ found their opinions unpersuasive and insufficient to satisfy Employer's burden of proof. Decision and Order at 25-27.

Employer argues the ALJ applied an incorrect legal standard because he required Drs. McSharry and Sargent to effectively "rule out" coal mine dust exposure to disprove legal pneumoconiosis. Employer's Brief at 9. We disagree.

As the ALJ correctly observed, because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to rebut the presumed existence of legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i); Decision and Order 17-18. He correctly noted that this requires Employer to prove Claimant's impairment is not "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 5 (citing 20 C.F.R. §718.201(b)); *see Young*, 947 F.3d at 405; *Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 667 (6th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1071 (6th Cir. 2013); 20 C.F.R. §718.201(a)(2).

Contrary to Employer's argument, the ALJ did not discredit Drs. McSharry's and Sargent's opinions based on an incorrect standard. Rather, he permissibly determined their opinions are insufficient to meet Employer's burden to disprove legal pneumoconiosis because, "though they credibly explained why Claimant's impairment is consistent with asthma," Decision and Order at 27, neither sufficiently explained why Claimant's history of coal mine dust exposure did not significantly contribute to or aggravate his asthma. *See Huscoal, Inc. v. Director, OWCP* [*Clemons*], F.4th , No. 21-3937, 2022 WL 4089682 at *5 (6th Cir. Sept. 7, 2022); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); Decision and Order at 26. The ALJ further permissibly found that, to the extent Dr. McSharry relied on the absence of clinical pneumoconiosis on x-ray to find Claimant does not have legal pneumoconiosis, his opinion is inconsistent with the regulations that provide legal pneumoconiosis may be present even in the absence of clinical pneumoconiosis. *See Clemons*, F.4th , No. 21-3937, 2022 WL 4089682 at *8; *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012): 20 C.F.R. §718.202(a)(4), (b); 65 Fed. Reg. 79,920, 79,945 (Dec. 20, 2000); Decision and Order at 26. He further permissibly discredited Dr. McSharry's opinion because he did not adequately explain why Claimant's response to bronchodilators on pulmonary function testing demonstrates his impairment is unrelated to coal mine dust exposure. *See Clemons*, F.4th , No. 21-3937, 2022 WL 4089682 at *8; *Banks*, 690 F.3d at 489; *Barrett*, 478 F.3d at 356; *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 27.

Though Employer argues the ALJ erred in finding Drs. McSharry and Sargent did not adequately explain their opinions when it asserts they are "well-reasoned, well-documented, and supported by the evidence of record," Employer's Brief at 10, its arguments amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-11, 1-113 (1989). Because the ALJ provided valid reasons for discrediting Drs. McSharry's and Sargent's opinions, the only opinions supportive of Employer's burden on rebuttal, we affirm his finding that Employer failed to establish that Claimant does not have legal pneumoconiosis.[7] *Ogle*, 737 F.3d at 1072-73; *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002). We therefore affirm the ALJ's determination that Employer failed to rebut the Section 411(c)(4) presumption by establishing Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1).

The ALJ also found Employer did not rebut the presumption by establishing that "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 28. Contrary to Employer's arguments, the ALJ rationally found Drs. McSharry's and Sargent's opinions on disability causation unpersuasive because they did not diagnose legal pneumoconiosis, contrary to his finding that Employer failed to disprove Claimant has the disease. *See Ogle*, 737 F.3d at 1074; *Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); Director's Exhibit 40 at 3; Employer's Exhibit 4 at 2; Decision and Order at 28. Therefore, we affirm his determination that Employer failed to prove no part of Claimant's respiratory or pulmonary disability was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

[7] Because we affirm the ALJ's finding that Employer failed to disprove legal pneumoconiosis, we need not address Employer's challenges to his finding it also failed to disprove clinical pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 27; Employer's Brief at 2-7.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge