U.S. Department of Labor

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

BRB No. 18-0228 BLA

ROBERT K. HAWKINBERRY	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
THE MONONGALIA COUNTY COAL COMPANY	)	
	)	
and	)	DATE ISSUED: 03/26/2019
	)	
MURRAY ENERGY CORPORATION	)	
	)	
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 of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

Heath M. Long (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

David K. Liberati (Dinsmore & Shohl, LLP), Wheeling, West Virginia, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2017-BLA-05693) of Administrative Law Judge Natalie A. Appetta rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a claim filed on December 18, 2014.

After crediting claimant with sixteen years of underground coal mine employment, the administrative law judge found the evidence established that claimant is totally disabled pursuant to 20 C.F.R. §718.204(b)(2). She therefore found claimant invoked the rebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[1] The administrative law judge further found employer rebutted the presumption and denied benefits.

On appeal, claimant challenges the administrative law judge's finding that employer rebutted the presumption at Section 411(c)(4) by disproving the existence of legal pneumoconiosis. Claimant asserts the denial of benefits should be reversed and benefits awarded, or, alternatively, the case should be remanded for reconsideration. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, did not file a brief in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[2] 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).

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[1] Under Section 411(c)(4) of the Act, a miner is presumed to be totally disabled due to pneumoconiosis if he has at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305(b).

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as claimant's coal mine employment was in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 3 n.3; Hearing Transcript at 14.

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,[3] 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 administrative law judge found employer established claimant does not suffer from pneumoconiosis and thus rebutted the presumption by both methods.[4]

To establish claimant does not have legal pneumoconiosis, employer must demonstrate he 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) (Boggs, J., concurring and dissenting). The administrative law judge considered the medical opinions of Drs. Saludes, Ranavaya, and Scattaregia,[5] together with the physicians' qualifications.[6] Decision and Order at 11-14, 19-21; Director's Exhibits 11, 28, 32; Claimant's Exhibit 1; Employer's Exhibit 1.

Dr. Saludes diagnosed chronic obstructive pulmonary disease (COPD) attributable to smoking, but added because "[eighteen] years of coal dust exposure . . . can [also] be a

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[3] "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).

[4] The administrative law judge's finding that employer disproved the existence of clinical pneumoconiosis is affirmed as unchallenged on appeal. *See* 20 C.F.R. §718.305(d)(1)(i)(B); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 16-19.

[5] The administrative law judge also considered claimant's hospital and treatment records and accorded them little weight because no physician addressed the etiology of claimant's pulmonary conditions or explained their diagnoses. Decision and Order at 22-25; Director's Exhibit 27.

[6] The administrative law judge determined that Drs. Ranavaya and Saludes are equally qualified, based on their expertise and Board-certifications in pulmonary diseases. Decision and Order at 14, 19. Because Dr. Scattaregia practices in general internal medicine, she accorded his opinion "slightly less weight based on his credentials." *Id.*

significant contributing factor[,]" he would correlate this diagnosis with claimant's x-ray findings. Claimant's Exhibit 1. Dr. Ranavaya opined claimant does not have legal pneumoconiosis but suffers from lifelong bronchial asthma and cigarette smoking-induced COPD/emphysema. Director's Exhibit 28; Employer's Exhibit 1. Dr. Scattaregia initially diagnosed legal pneumoconiosis, but after reviewing additional evidence, concluded claimant's pulmonary impairment is "most likely" related to smoking.[7] Director's Exhibits 11, 32.

The administrative law judge determined that Dr. Saludes did not specifically diagnose legal pneumoconiosis because, while stating that coal dust "can" be a contributing factor, along with smoking, to COPD, he did not specifically opine whether coal dust "contributed *to this* [*c*]*laimant's* COPD." Decision and Order at 21. Finding that even if Dr. Saludes' opinion could be considered to be a diagnosis of legal pneumoconiosis, it is, at best, equivocal and inadequately explained, she permissibly accorded his opinion "little weight."[8] *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985) (holding that a physician's opinion based on generalities rather than claimant's specific condition may be discredited); Decision and Order at 20-21.

The administrative law judge found the opinions of Drs. Ranavaya and Scattaregia to be reasoned and documented in some respects, but she permissibly accorded "less weight" to their opinions because she found that in attributing claimant's COPD/emphysema to cigarette smoking, neither physician addressed whether claimant's years of coal mine dust exposure could have also contributed to, or aggravated, his chronic lung disease or impairment. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Barber v. Director, OWCP*, 43 F.3d 899, 901 (4th Cir. 1995); Decision and Order at 19-20; Director's Exhibits 11, 28, 32; Employer's Exhibit 1. She also accorded

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[7] On February 3, 2015, Dr. Scattaregia examined claimant on behalf of the Department of Labor and diagnosed bronchial asthma and chronic bronchitis due to a seasonal genetic predisposition, smoking, and rock dust exposure in coal mine employment. Director's Exhibit 11. On October 25, 2016, Dr. Scattaregia provided a supplemental opinion stating that he changed his opinion after further studying claimant's smoking history. Citing claimant's "significant 35-40 pack-year smoking history," he diagnosed a pulmonary impairment "most likely" related to smoking. Director's Exhibit 32.

[8] The administrative law judge noted that Dr. Saludes failed to explain the basis for his conclusion other than relying on claimant's history of coal dust exposure. Decision and Order at 21.

them less weight for failing to address the possible additive effects of claimant's coal mine dust exposure and smoking on his COPD/emphysema. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-74 (4th Cir. 2017); *Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 322-24 (4th Cir. 2013); *see also Energy West Mining Co. v. Estate of Blackburn*, 857 F.3d 817, 828-29 (10th Cir. 2017); Decision and Order at 20, *citing* 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000) (setting forth the Department of Labor's (DOL) acceptance of the view that smoking and coal mine dust exposure have additive effects on pulmonary and respiratory function). Finally, the administrative law judge permissibly accorded less weight to Dr. Scattaregia's opinion that smoking "most likely" caused claimant's respiratory impairment as both equivocal and inadequately explained.[9] *See Underwood*, 105 F.3d at 949; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 20. We affirm these findings as supported by substantial evidence. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000).

Considering all the physicians' opinions together, the administrative law judge concluded:

> For the reasons above, each physician's opinion was reduced in weight[;] however, despite the reductions in weight, I find the opinions by Dr. Ranavaya and Dr. Scattaregia to be more persuasive than Dr. Saludes' opinion and as a result, to outweigh Dr. Saludes' contrary opinion. I therefore find that the physician opinion evidence does not establish that [c]laimant suffers from legal pneumoconiosis.

Decision and Order at 21. Thus, the administrative law judge found employer rebutted the presumed existence of legal pneumoconiosis. *Id.* Consequently, she found their opinions also sufficient to establish legal pneumoconiosis played no part in claimant's total disability, pursuant to 20 C.F.R. §718.305(d)(1)(ii), and denied benefits. Decision and Order at 27.

Claimant contends that, having found that Drs. Ranavaya and Scattaregia did not adequately explain why his impairment is not significantly related to coal mine dust, the administrative law judge erred in concluding their opinions are sufficient to meet

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[9] Specifically, the administrative law judge found that Dr. Scattaregia did not explain why the increased smoking history of thirty-five to forty pack-years, rather than the approximately thirty-one pack-year history upon which he initially relied, was sufficient to cause him to change his opinion that claimant has legal pneumoconiosis. Decision and Order at 20.

employer's burden to rebut the presumed existence of legal pneumoconiosis. Claimant's Brief at 4-6. We agree. Because claimant invoked the Section 411(c)(4) presumption, it is presumed that he has legal pneumoconiosis. 20 C.F.R. §718.305(c)(1); *W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 699 (4th Cir. 2018). Thus, irrespective of the weight accorded to claimant's physicians, to establish claimant's impairment is not legal pneumoconiosis, employer must demonstrate it is more likely than not the impairment is not "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.305(d)(1)(i)(A), 718.201(a)(2), (b); *Smith*, 880 F.3d at 699. In examining whether the medical opinions persuasively "establish that [c]laimant suffers from legal pneumoconiosis," the administrative law judge applied an erroneous standard in her analysis of whether the medical opinion evidence met employer's burden on this issue.

Notwithstanding the administrative law judge's application of an incorrect legal standard, the facts of this case do not mandate a remand for application of the correct standard. While factual determinations are the province of the administrative law judge, reversal is warranted where no factual issues remain to be determined and no further factual development is necessary. *See Collins v. Pond Creek Mining Co*., 751 F.3d 180, 187 (4th Cir. 2014) (reversing denial, as no factual issue remained as to cause of death, with directions to award benefits without further administrative proceedings); *Adams v. Director, OWCP*, 886 F.2d 818, 826 (6th Cir. 1989) (same).

The administrative law judge rendered dispositive findings. She permissibly accorded less weight to the opinions of Drs. Ranavaya and Scattaregia that claimant's COPD does not constitute legal pneumoconiosis. Decision and Order at 20. She found they failed to adequately address whether claimant's sixteen years of coal mine dust exposure could have contributed to, or aggravated, his impairment, or otherwise address the additive effects of smoking and coal mine dust exposure, as recognized by the DOL. *See Owens*, 724 F.3d at 558; *Stallard*, 876 F.3d at 671-74; Decision and Order at 20. She further found Dr. Scattaregia's opinion equivocal. *See Underwood*, 105 F.3d at 949; Decision and Order at 20. Given these findings, employer cannot establish claimant does not have legal pneumoconiosis, which requires sufficiently addressing the role coal mine dust played in claimant's chronic lung disease or impairment. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich* 25 BLR at 1-155 n.8. Therefore, it cannot rebut the Section 411(c)(4) presumption by establishing that claimant does not have legal pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i).

Nor can employer rebut the presumed fact of disability causation by establishing legal pneumoconiosis played no part in claimant's disability. *See* 20 C.F.R. §718.305(d)(ii). The administrative law judge found, and all the physicians agree, COPD caused claimant's disability. Decision and Order at 15; Director's Exhibits 11, 28, 32;

Claimant's Exhibit 1; Employer's Exhibit 1. By virtue of employer's failure to rebut the presumption, claimant's COPD is legal pneumoconiosis. 20 C.F.R. §718.305(d)(i). Because no other respiratory condition contributes, legal pneumoconiosis is the sole cause of claimant's disability, precluding a rebuttal finding that no part of claimant's disability was caused by pneumoconiosis.[10] *See* 20 C.F.R. §718.204(c)(1) (pneumoconiosis must be a "substantially contributing cause" of the totally disabling respiratory impairment); *Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668-69 (6th Cir. 2015) ("no need for the [administrative law judge] to analyze the opinions a second time" at disability causation where the employer failed to establish that the impairment was not legal pneumoconiosis). Consequently, we agree with claimant that the facts of this case warrant reversal of the administrative law judge's denial of benefits.[11]

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[10] Moreover, we note that, because Drs. Ranavaya and Scattaregia did not diagnose claimant with legal pneumoconiosis, contrary to our determination that the administrative law judge's findings established the disease, the administrative law judge could accord their opinions, at most, little weight at disability causation. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015) (a doctor's opinion as to causation may not be credited unless there are "specific and persuasive reasons" for concluding her view on causation is independent of her mistaken belief that the miner did not have pneumoconiosis), *quoting Scott v. Mason Coal Co.*, 289 F.3d 262, 269-70 (4th Cir. 2002); *see also Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013). Neither Dr. Ranavaya nor Dr. Scattaregia indicated their opinions on the issue of disability causation are independent of their opinions that claimant does not have legal pneumoconiosis. *See Toler*, 43 F.3d at 116, 19 BLR at 2-83.

[11] We reject claimant's contention that the administrative law judge erred in weighing Dr. Saludes' opinion. Claimant's Brief at 5. Because Dr. Saludes did not definitively state coal dust exposure is a significant contributing factor to claimant's chronic obstructive pulmonary disease, we affirm her decision to accord little weight to his opinion on the existence of legal pneumoconiosis. *See* 20 C.F.R. §718.201(a)(2); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985). We note, however, that while Dr. Saludes did not definitively diagnose legal pneumoconiosis, he also did not posit the opposite view. Thus, the administrative law judge's determination to discredit his opinion does not alter our conclusion that employer has not rebutted the presumption by either method. *See W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 698-99 (4th Cir. 2018).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed in part and reversed in part, and this case is remanded for entry of an award of benefits.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge