U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0109 BLA

WAYNE A. YURICICH	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 12/21/2016
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

Helen M. Koschoff, Wilburton, Pennsylvania, for claimant.

Rita Roppolo (M. Patricia Smith, Solicitor of Labor; Maia Fisher, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2012-BLA-05784) of Administrative Law Judge Theresa C. Timlin, rendered on a subsequent claim filed on October 4, 2011, pursuant to the provisions of the Black Lung Benefits Act, as amended,

30 U.S.C. §§901-944 (2012) (the Act).[1] The administrative law judge credited claimant with 2.25 years of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Parts 718 and 725. The administrative law judge initially determined that the newly submitted evidence was sufficient to establish the existence of clinical pneumoconiosis under 20 C.F.R. §718.202(a), thereby establishing a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. However, the administrative law judge found that claimant failed to establish that his clinical pneumoconiosis arose out of coal mine employment at 20 C.F.R §718.203(b).[2] The administrative law judge also determined that claimant did not prove that he is totally disabled under 20 C.F.R. §718.204(b)(2), or that he is totally disabled due to pneumoconiosis under 20 C.F.R. §718.204(c). The administrative law judge denied benefits accordingly.

On appeal, claimant argues that the administrative law judge erred in determining that he failed to establish either the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4) or that his clinical pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203. Claimant also contends that the administrative law judge did not properly weigh the evidence relevant to total disability and total disability causation pursuant to 20 C.F.R. §718.204(b)(2)(iv), (c).[3] In response, the Director, Office of Workers' Compensation Programs (the Director), maintains that the administrative law judge correctly determined that the evidence was insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2). Thus, the Director urges affirmance of the denial of benefits.

[1] Claimant filed his initial claim for black lung benefits on June 9, 2005, which was denied by the district director on February 8, 2006, because claimant failed to establish any element of entitlement. Director's Exhibit 1. Claimant did not take any further action until he filed the subsequent claim that is the subject of this appeal.

[2] Contrary to claimant's contention, the Section 411(c)(4) presumption of total disability due to pneumoconiosis does not apply in this claim as the administrative law judge found less than fifteen years of coal mine employment. Decision and Order at 5, 17; Claimant's Brief at 6; *see* 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305.

[3] We affirm, as unchallenged on appeal, the administrative law judge's findings that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii), (iii). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 20.

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.[4] 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).

To be entitled to benefits under the Act, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

We will first address the issue of total disability based on the Director's assertion that the administrative law judge's denial of benefits can be affirmed because she properly found that claimant failed to establish this essential element of entitlement. Relevant to 20 C.F.R. §718.204(b)(2)(i), the record contains three pulmonary function studies obtained on September 8, 2005, February 23, 2012, and April 30, 2012. The administrative law judge determined that these studies produced non-qualifying values,[5] both before and after the administration of bronchodilators. Decision and Order at 18-19; Director's Exhibits 1, 11; Claimant's Exhibit 7. She concluded that the pulmonary function study evidence was insufficient to establish total disability. Decision and Order at 19. Claimant acknowledges that the studies were non-qualifying. Claimant's Brief at 25. We therefore affirm the administrative law judge's finding that claimant did not establish total disability under 20 C.F.R. §718.204(b)(2)(i). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

In considering whether the medical opinion evidence was sufficient to establish total disability under 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge weighed

[4] Claimant's coal mine employment was in Pennsylvania. Director's Exhibits 1, 4, 6. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[5] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i).

the medical opinions of Drs. Rashid, Talati, and Kraynak. Decision and Order at 20-23; Director's Exhibits 1, 11; Claimant's Exhibits 5, 10. Dr. Rashid, who is Board-certified in internal medicine, examined claimant on September 8, 2005, and diagnosed an obstructive and restrictive impairment, based on claimant's pulmonary function study. Director's Exhibit 1. Dr. Rashid indicated that claimant is disabled by a respiratory condition. *Id*. Dr. Talati, who is Board-certified in pulmonary medicine, examined claimant on February 23, 2012, at the request of the Department of Labor. Director's Exhibit 11. He reported that claimant's pulmonary function study revealed a mild restrictive impairment, and opined that claimant is capable of performing his usual coal mine employment as a general laborer. *Id*. Dr. Kraynak, who is Board-certified in family medicine, opined that claimant's pulmonary function study results establish that he has a severe restrictive impairment that would preclude claimant from performing his last coal mine employment. Claimant's Exhibits 5, 10 at 16-17.

The administrative law judge determined that Dr. Rashid's opinion was "unreasoned and entitled to no probative weight" because he failed to explain why claimant is totally disabled "despite non-qualifying test results." Decision and Order at 23. In contrast, the administrative law judge found that Dr. Talati's opinion that claimant has a mild, non-disabling respiratory or pulmonary impairment, was supported by the evidence, well-reasoned and entitled to "significant probative weight." *Id*. at 22. The administrative law judge also determined that Dr. Talati's opinion was entitled to greater weight than the opinions of Drs. Rashid and Kraynak, because Dr. Talati is Board-certified in pulmonary diseases. *Id*. Regarding Dr. Kraynak's opinion, the administrative law judge found that it was "entitled to little probative weight" because Dr. Kraynak did not "adequately explain why [c]laimant's non-qualifying pulmonary function test results show a severe impairment." *Id*. The administrative law judge concluded that claimant failed to establish total disability by the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv), and that he failed to establish total disability, by a preponderance of the evidence as a whole. *Id*.

Claimant argues that the administrative law judge erred in discrediting the medical opinions of Drs. Rashid and Kraynak under 20 C.F.R. §718.204(b)(2)(iv). The Director maintains that the administrative law judge properly weighed the medical opinion evidence on the issue of total disability. Upon review of the administrative law judge's findings and the parties' contentions, we hold that the administrative law judge's credibility determinations with respect to the medical opinion evidence are rational and supported by substantial evidence.

The administrative law judge permissibly determined that Dr. Rashid's opinion was "unreasoned and entitled to no probative weight," as Dr. Rashid did not specify the degree of impairment revealed by claimant's pulmonary function study and did not

explain how the non-qualifying study supported a diagnosis of a totally disabling respiratory or pulmonary impairment. Decision and Order at 23; *see Balsavage v. Director, OWCP*, 295 F.3d 390, 396, 22 BLR 2-386, 2-394-95 (3d Cir. 2002); Director's Exhibit 1. In addition, the administrative law judge acted within her discretion in finding that Dr. Kraynak's opinion that claimant is totally disabled was outweighed by Dr. Talati's contrary opinion, based on his superior qualifications as a Board-certified pulmonologist, and the fact that his opinion was better-supported by the objective evidence of record. *See Soubik v. Director, OWCP*, 366 F.3d 226, 236, 23 BLR 2-82, 2-101 (3d Cir. 2004); *Lango v. Director, OWCP*, 104 F.3d 573, 577, 21 BLR 2-12, 2-20-21 (3d Cir. 1997); Director's Exhibit 11; Claimant's Exhibits 5, 10.

We reject claimant's contention that the administrative law judge was required to give additional weight to Dr. Kraynak's opinion because he is claimant's treating physician. The administrative law judge considered Dr. Kraynak's status as a treating physician pursuant to the factors set forth in 20 C.F.R. §718.104(d).[6] The administrative law judge noted that claimant visited Dr. Kraynak three times, between April 30, 2012 and November 19, 2012, for treatment of his pulmonary condition, and that Dr. Kraynak "did not prescribe any medication or offer any other treatment." Decision and Order at 14. Based on this information, the administrative law judge rationally determined that Dr. Kraynak's role as a treating physician did not enhance the probative value of his opinion because he had a "limited, infrequent, and short relationship" with claimant. *Id*.; *see* 20 C.F.R. §718.104(d); *see Soubik*, 366 F.3d at 236, 23 BLR at 2-101.

In light of the foregoing, we therefore affirm the administrative law judge's finding that the medical opinions of Drs. Rashid and Kraynak were insufficient to establish total disability under 20 C.F.R. §718.204(b)(2)(iv). We also affirm the administrative law judge's determination that the weight of the evidence failed to establish total respiratory or pulmonary disability at 20 C.F.R. §718.204(b)(2). *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988). As claimant did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2), an essential element of entitlement, we must further affirm the denial of benefits. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

[6] The regulation at 20 C.F.R. §718.104(d) provides that "the adjudication officer shall take into consideration the following factors in weighing the opinion of the miner's treating physician: (1) nature of relationship . . . ; (2) duration of relationship . . . ; (3) frequency of treatment . . . ; and (4) extent of treatment[.]" 20 C.F.R. §718.104(d)(1)-(4).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge