U.S. Department of Labor

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

BRB No. 17-0568 BLA

LARRY L. FIELDS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	DATE ISSUED: 07/31/2018
	)	
Employer-Respondent	)	
	)	
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 William T. Barto, Administrative Law Judge, United States Department of Labor.

Larry L. Fields, Dante, Virginia.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Benefits (2015-BLA-5598) of Administrative Law Judge William T. Barto, 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).[1] This case involves a miner's subsequent claim filed on March 18, 2014.[2] The administrative law judge credited claimant with 18.5 years of underground coal mine employment, but found that claimant did not establish a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge therefore found that claimant failed to establish an essential element of entitlement and denied benefits accordingly.

On appeal, claimant generally challenges the denial of benefits. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a response brief in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the issue is whether the findings of fact and conclusions of law rendered in the administrative law judge's Decision and Order are rational, supported by substantial evidence, and in accordance with law.[3] *See Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86-87 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176, 1-177 (1989). If the administrative law judge's Decision and Order satisfies these criteria, it must be affirmed. 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] Robin Napier, a lay representative with Stone Mountain Health Services of St. Charles, Virginia, filed a letter requesting, on behalf of claimant, that the Board review the administrative law judge's decision, but she is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co*., 19 BLR 1-88 (1995) (Order). In the letter, Ms. Napier stated, "[w]e feel that the medical evidence in the file will prove that [claimant] did have [p]neumoconiosis and was totally disabled from a respiratory impairment from this disease" and "we hope that the Board will grant a favorable decision in this matter." Letter dated July 20, 2017 at 1 (unpaginated).

[2] Claimant filed his first claim for benefits on January 10, 1995, which was denied by the district director on February 2, 1996, because claimant did not establish any element of entitlement. Director's Exhibit 1. Claimant filed a second claim on March 12, 2001, which was denied by the district director on March 12, 2002, because claimant did not establish any element of entitlement. Director's Exhibit 2. Claimant took no action until he filed this current subsequent claim. Director's Exhibit 3.

[3] The record indicates that claimant's coal mine employment was in Virginia. Director's Exhibits 1, 2, 5, 7. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

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.[4] 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.[5] *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).

A miner is considered to be totally disabled if he has a respiratory or pulmonary impairment which, standing alone, prevents him from performing his usual coal mine work. 20 C.F.R. §718.204(b)(1). Total disability is established by pulmonary function studies, blood gas studies, evidence of cor pulmonale with right-sided congestive heart failure, or medical opinion evidence. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must consider all of the relevant evidence and weigh the evidence supporting a finding of total disability against the contrary evidence. *See 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).

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered six newly submitted pulmonary function studies of record, dated January 25, 2007, March 17, 2009, February 16, 2010, April 2, 2014, September 18, 2014 and May 16, 2016. Decision and Order at 7-8; Director's Exhibits 13, 14; Employer's Exhibit 2. The administrative law judge correctly found that claimant was unable to establish total disability at 20 C.F.R. §718.204(b)(2)(i), as there are no qualifying[6] pulmonary function

[4] As the record contains no evidence of complicated pneumoconiosis, claimant cannot establish entitlement by invocation of the irrebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2012); 20 C.F.R. §718.304; Decision and Order at 7.

[5] In this subsequent claim, claimant was also required to establish a change in an applicable condition of entitlement, i.e., one of the elements of entitlement decided against him in the prior denial. 20 C.F.R. §725.309(d)(2); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). Claimant's prior claim was denied because he failed to establish that he had pneumoconiosis or a totally disabling respiratory or pulmonary impairment. Director's Exhibit 2.

[6] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the appropriate table values listed in Appendices B and C to 20 C.F.R.

studies of record. Decision and Order at 7-8; Director's Exhibits 13, 14; Employer's Exhibit 2. We affirm therefore the administrative law judge's finding that the newly submitted pulmonary function study evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i).

Under 20 C.F.R. §718.204(b)(2)(ii), the administrative law judge weighed the results of four newly submitted blood gas studies conducted on April 2, 2014, September 18, 2014, May 16, 2016 and August 1, 2016. Decision and Order at 8-9. The April 2, 2014 study administered by Dr. Ajjarapu yielded qualifying values at rest, while the exercise values were non-qualifying. Director's Exhibit 13. The blood gas studies dated September 18, 2014, May 16, 2016 and August 1, 2016, administered by Drs. Sargent, McSharry and Coe, respectively, yielded non-qualifying values both at rest and during exercise. Director's Exhibit 14; Claimant's Exhibit 3; Employer's Exhibit 2. The administrative law judge permissibly found that the non-qualifying September 18, 2014, May 16, 2016 and August 1, 2016 blood gas studies were more probative of claimant's current condition than the qualifying April 2, 2014, resting blood gas study because they were the most recent studies of record. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 530 (4th Cir. 1998); *Schetroma v. Director, OWCP*, 18 BLR 1-17, 1-22 (1993); Decision and Order at 8-9. Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the newly submitted blood gas study evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii).

Pursuant to 20 C.F.R. §718.204(b)(2)(iii), the administrative law judge correctly determined that there is no evidence in the record that claimant has cor pulmonale with right-sided congestive heart failure. Decision and Order at 7. Consequently, we affirm his finding that claimant is unable to establish total disability by this method.

Relevant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered Dr. Ajjarapu's opinion that claimant has a totally disabling respiratory or pulmonary impairment, and the contrary opinions of Drs. Sargent and McSharry.[7] Decision and Order

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Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

[7] The administrative law judge noted that Dr. Ajjarapu is Board-certified in family medicine "and has worked in a black lung clinic since 2010." Decision and Order at 9; Director's Exhibit 13. With respect to the qualifications of Drs. Sargent and McSharry, the administrative law judge indicated that they are both Board-certified pulmonologists. Decision and Order at 9; Director's Exhibit 14; Employer's Exhibit 2. He determined that the physicians "have comparable qualifications." Decision and Order at 12.

at 9. Dr. Ajjarapu examined claimant on April 2, 2014, at the request of the Department of Labor, and obtained a pulmonary function study that was non-qualifying, and a blood gas study that was qualifying at rest and non-qualifying after exercise. Director's Exhibit 13. Dr. Ajjarapu stated:

> [C]laimant has severe hypoxemia evident in his resting arterial blood gas result. While he was ambulating, his oxygen saturation dropped down to 87%. Even though he is a current smoker, he has positive chest x-ray evidence showing simple pneumoconiosis, [and a] moderate impairment on spirometry. I believe his impairment is in part due to his employment in the mining industry. Therefore, I believe he is totally and completely disabled due in part to his employment in underground mining.

Id. Dr. Ajjarapu also submitted a supplemental report after reviewing the contrary opinion of Dr. Sargent and the results of the diagnostic testing he conducted. Director's Exhibits 14, 33; Employer's Exhibit 2. She stated that "whatever the reason for improvement" in claimant's blood gases, she had "no explanation." Director's Exhibit 33. She added, "[s]ometimes, patients report good days and bad days with respect to their symptoms and it all depends on weather, prior preparation, prior medication use, etc." *Id*.

Dr. Sargent examined claimant on September 18, 2014, and also reviewed the results of Dr. Ajjarapu's examination. Director's Exhibit 14. He obtained a non-qualifying pulmonary function study, and non-qualifying resting and exercise blood gas studies. *Id*. Dr. Sargent described the results of his pulmonary function study and blood gas studies as "essentially normal" and "normal," respectively. *Id*. He determined that claimant "has the respiratory capacity to do his last job as a shuttle car operator as he described this to me." *Id*. Dr. Sargent acknowledged the qualifying resting blood gas study performed by Dr. Ajjarapu on April 2, 2014, was "markedly abnormal," and noted that claimant's "blood gases improved markedly after exercise." *Id*. He further explained: "[A]ny arterial blood gas abnormalities in April . . . were likely due to some ventilation perfusion abnormalities related to [claimant's] chronic bronchitis due to his ongoing cigarette smoking. Since these abnormalities have subsequently resolved, they are not disabling." *Id*. In a subsequent deposition, Dr. Sargent testified that because claimant's exercise blood gas study values were normal, there was "no intrinsic lung disease," and that "mucus plugging or bronchial spasm can result in a transient abnormal blood gas [result]." Employer's Exhibit 3 at 11.

Dr. McSharry examined claimant on May 16, 2016, and reviewed numerous medical records, including the reports by Drs. Ajjarapu and Sargent. Dr. McSharry performed a pulmonary function study and resting and exercise blood gas studies which produced results that were all non-qualifying. Employer's Exhibit 2. He noted that the

pulmonary function study was "normal," while the resting blood gas study showed "mild hypoxemia for age." *Id*. Dr. McSharry concluded:

> The severe shortness of breath, cough, and wheezing are not associated with evidence of lung abnormality in terms of airflow limitation, restrictive lung disease, diffusion abnormalities, or significant abnormalities on blood gas testing.
>
> ….
>
> I find no evidence of respiratory impairment in this claimant. Pulmonary function testing is normal and arterial blood gas measurements show only mild hypoxemia for age, well outside the disability standard. These objective tests refute the presence of significant lung disease.

Id. Dr. McSharry reiterated these conclusions in a subsequent deposition. Employer's Exhibit 4 at 7, 10, 13.

As the trier-of-fact, the administrative law judge has discretion to assess the credibility of the medical opinions based on the explanations given by the experts for their diagnoses and the extent to which their diagnoses are supported by the underlying evidence. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 323 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 315-16 (4th Cir. 2012). The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson*, 12 BLR at 1-113; *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988).

The administrative law judge acted within his discretion in finding that the opinion of Dr. Sargent that claimant does not have a totally disabling respiratory or pulmonary impairment is entitled to greatest weight. *See Hicks*, 138 F.3d at 530; Decision and Order at 11. The administrative law judge rationally determined that Dr. Sargent gave a persuasive explanation for the qualifying resting blood gas value obtained by Dr. Ajjarapu, i.e., that variable blood gas results are typically seen in heavy smokers, and that the non-qualifying exercise values and non-qualifying pulmonary function studies establish that claimant is not totally disabled. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 12. The administrative law judge also permissibly accorded "significant weight" to Dr. McSharry's opinion, as "Dr. McSharry evaluated [c]laimant's exam results and medical history and explained how [c]laimant's condition did not align with a total respiratory disability." Decision and Order at 12; *see Cochran*, 718 F.3d at 323.

Furthermore, the administrative law judge rationally found that Dr. Ajjarapu's opinion is entitled to "little weight" because she "equivocated on possible reasons for the discrepancies" in claimant's blood gas study results.[8] Decision and Order at 12; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Director's Exhibit 33. As previously indicated, the administrative law judge permissibly accorded greater weight to the opinions of Drs. Sargent and McSharry that claimant's objective studies, including the pulmonary function studies, do not support a diagnosis of total respiratory or pulmonary disability. Decision and Order at 12.

Because the administrative law judge provided valid bases for his credibility determinations, we affirm his finding that the newly submitted medical opinion evidence is insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See Looney*, 678 F.3d at 315-16. We also affirm, as supported by substantial evidence, the administrative law judge's finding that the preponderance of the newly submitted evidence, like and unlike, does not support a finding of total respiratory or pulmonary disability pursuant to 20 C.F.R. §718.204(b)(2). *See Shedlock*, 9 BLR at 1-198; Decision and Order at 13. Lastly, we affirm, on the same ground, the administrative law judge's determination that claimant cannot establish total disability on the merits, as the records from claimant's prior claims do not contain evidence of total disability.[9] Decision and Order at 13; Director's Exhibits 1, 2.

Based on the administrative law judge's appropriate determination that claimant did not demonstrate that he has a totally disabling respiratory or pulmonary impairment, invocation of the Section 411(c)(4) presumption was precluded in this claim.[10] 30 U.S.C.

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[8] The administrative law judge stated erroneously that Dr. Ajjarapu reviewed the results of the blood gas study obtained by Dr. McSharry, in addition to the results of Dr. Sargent's blood gas study. Decision and Order at 11, 12. This error is harmless, however, as it is not relevant to the administrative law judge's permissible determination that Dr. Ajjarapu equivocated when addressing the variability in claimant's blood gas study values. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[9] Because the administrative law judge denied benefits on the ground that the evidence of record, both new and old, was insufficient to establish total disability, he did not reach the issue of whether claimant could establish a change in an applicable condition of entitlement by establishing the existence of pneumoconiosis. Decision and Order at 13 n.90.

[10] Section 411(c)(4) of the Act provides a rebuttable presumption of total disability due to pneumoconiosis if claimant establishes at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in

§921(c)(4) (2012); 20 C.F.R. §718.305(b)(1)(iii). Moreover, the administrative law judge properly found that by failing to prove total respiratory or pulmonary disability under 20 C.F.R. §718.204(b)(2), claimant has not established an essential element of entitlement pursuant to 20 C.F.R. Part 718. *See Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27; Decision and Order at 13. We therefore affirm the denial of benefits.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305.