U.S. Department of Labor

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

BRB No. 15-0416 BLA

NORMAN G. PETERS (deceased)	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
GOALS COAL COMPANY	)	
	)	DATE ISSUED: 06/09/2016
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Lystra A. Harris, Administrative Law Judge, United States Department of Labor.

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

Ashley M. Harman (Jackson Kelly, PLLC), Morgantown, West Virginia, for employer.

Michelle S. Gerdano (M. Patricia Smith, Solicitor of Labor; Maia Fisher, Acting 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, BOGGS and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (11-BLA-5543) of Administrative Law Judge Lystra A. Harris awarding benefits on a claim filed pursuant to provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent claim filed on May 24, 2010.[1]

Applying Section 411(c)(4), 30 U.S.C. §921(c)(4),[2] the administrative law judge credited claimant[3] with at least twenty-five years of qualifying coal mine employment,[4] and found that the evidence established that claimant has 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 invoked the rebuttable presumption set forth at Section 411(c)(4).[5] The administrative law judge also found that employer did not rebut the Section 411(c)(4) presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erred in finding that it did not rebut the Section 411(c)(4) presumption. Claimant and the Director, Office of

[1] Claimant's initial claim, filed on March 25, 1996, was denied by the district director on November 14, 1996 for failure to establish any of the elements of entitlement. Director's Exhibit 1.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. § 921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[3] Claimant died on April 20, 2015, while his claim was pending before the administrative law judge. Employer's Brief at 1.

[4] The record reflects that claimant's last coal mine employment was in West Virginia. Director's Exhibit 1; Hearing Transcript at 15. Accordingly, the Board will apply the law 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).

[5] Because claimant invoked the Section 411(c)(4) presumption, the administrative law judge found that claimant established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c).

Workers' Compensation Programs, respond in support of the administrative law judge's award of benefits. In a reply brief, employer reiterates its previous contentions.[6]

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. 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).

Because claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to employer to rebut the presumption by establishing that claimant had neither legal nor clinical pneumoconiosis,[7] 20 C.F.R. §718.305(d)(1)(i), or by establishing that "no part of the miner'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). The administrative law judge found that employer failed to establish rebuttal by either method.

Employer contends that the administrative law judge erred in finding that it failed to disprove the existence of legal pneumoconiosis. In evaluating whether employer disproved the existence of legal pneumoconiosis, the administrative law judge considered the medical opinions of Drs. Zaldivar and Castle. Drs. Zaldivar and Castle opined that claimant's disabling obstructive pulmonary impairment was due to emphysema caused by cigarette smoking and asthma, and not by coal mine dust exposure. Employer's Exhibits 4, 5, 7, 8. The administrative law judge discredited the opinions of Drs. Zaldivar and

[6] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant invoked the Section 411(c)(4) presumption, and that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[7] "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). A "disease 'arising out of coal mine employment' 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).

Castle because the physicians did not adequately explain how they determined that claimant's coal mine dust exposure did not contribute to his disabling obstructive pulmonary impairment. Decision and Order at 22-23.

We reject employer's contention that the administrative law judge erred in her consideration of the opinions of Drs. Zaldivar and Castle. The administrative law judge permissibly questioned the opinions of Drs. Zaldivar and Castle that claimant's disabling obstructive pulmonary impairment was due solely to smoking and asthma because she found that the physicians failed to adequately explain how they eliminated claimant's coal dust exposure as a source of his disabling obstructive impairment.[8] *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668, BLR (6th Cir. 2015). Because the regulations defining pneumoconiosis provide that legal pneumoconiosis encompasses respiratory and pulmonary diseases and impairments significantly related to, or substantially aggravated by, dust exposure in a coal mine, it was within the discretion of the administrative law judge to determine whether the doctors had adequately addressed whether coal mine dust had substantially aggravated claimant's respiratory or pulmonary impairment. The administrative law judge, therefore, acted within her discretion in discounting the opinions of Drs. Zaldivar and Castle.[9] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997). *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc).

[8] The administrative law judge found that while Dr. Zaldivar "opined that smoking and asthma are sufficient to account for . . . [c]laimant's impairment, he does not explain how he excluded coal mine employment as a cause or substantial aggravator of . . . [c]laimant's chronic lung impairment." Decision and Order at 22. The administrative law judge found that Dr. Castle "does not explain how . . . [c]laimant's [twenty-five] years of coal dust exposure can be excluded as a cause or aggravator of the emphysema when dust induced emphysema and smoke induced emphysema occur through similar mechanisms." *Id.* at 23.

[9] Because the administrative law judge provided a valid basis for according less weight to the opinions of Drs. Zaldivar and Castle, the administrative law judge's error, if any, in according less weight to their opinions for other reasons, constitutes harmless error. *See Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983). Therefore, we need not address employer's remaining arguments regarding the weight accorded to the opinions of Drs. Zaldivar and Castle.

Because the administrative law judge permissibly discredited the opinions of Drs. Zaldivar and Castle,[10] we affirm her finding that employer failed to establish that claimant did not have legal pneumoconiosis. Accordingly, we affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption by establishing that claimant did not have pneumoconiosis.[11] *See* 20 C.F.R. §718.305(d)(1)(i).

Employer contends that the administrative law judge did not adequately address whether employer was able to rebut the presumed fact of total disability causation, by establishing that no part of claimant's totally disabling pulmonary impairment was caused by pneumoconiosis. Employer's Brief at 19-21. We disagree.

As previously discussed, in addressing the issue of legal pneumoconiosis, the administrative law judge permissibly discredited the opinions of Drs. Zaldivar and Castle that claimant's disabling obstructive pulmonary impairment was due solely to cigarette smoking and asthma. Given this finding, the administrative law judge could only conclude that employer also failed to establish that no part of claimant's pulmonary total disability was caused by pneumoconiosis. Drs. Zaldivar and Castle agreed that claimant's totally disabling obstructive pulmonary impairment was due to his smoking-induced emphysema and asthma. Employer's Exhibits 4, 5, 7, 8. Therefore, their opinions regarding the cause of claimant's disability reiterated their opinions regarding the presence of legal pneumoconiosis. Thus, the failure of Drs. Zaldivar and Castle to credibly disprove legal pneumoconiosis (that claimant's disabling obstructive pulmonary impairment was not attributable to his coal mine dust exposure) necessarily rendered their opinions inadequate to disprove disability causation (that claimant's pulmonary disability

[10] We reject employer's contention that the administrative law judge improperly required employer to rule out claimant's coal mine dust exposure as a cause of his obstructive pulmonary impairment. Employer's Brief at 11-12. There is no indication that the administrative law judge applied such a standard. Rather, she found that the opinions of Drs. Zaldivar and Castle on the existence of legal pneumoconiosis were not credible, because they did not adequately explain their opinions. Decision and Order at 22-23.

[11] Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that the miner did not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i). Thus, we need not address employer's contentions of error regarding the administrative law judge's finding that employer also failed to disprove clinical pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

was not caused by pneumoconiosis as defined in 20 C.F.R. §718.201).[12] Under the facts of this case, there was no need for the administrative law judge to analyze their opinions a second time. *See Kennard*, 790 F.3d at 668; *Big Branch Resources, Inc. v. Ogle*, 737 F.3d 1063, 1070, 25 BLR 2-431, 2-446 (6th Cir. 2013).

Because claimant established invocation of the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis, and employer did not rebut the presumption, we affirm the administrative law judge's award of benefits.

[12] Because Drs. Zaldivar and Castle failed to diagnose legal pneumoconiosis, and the administrative law judge found the existence of legal pneumoconiosis, the doctors' opinions as to causation could not have been credited at all unless there were "specific and persuasive reasons" for concluding that the doctors' views on causation were independent of their mistaken belief that claimant did not have legal pneumoconiosis, in which case they could be assigned, at most, "little weight." *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505, BLR (4th Cir. Apr. 17, 2015) (quoting *Scott v. Mason Coal Co.*, 289 F.3d 262, 269-70, 22 BLR 2-373, 2-384 (4th Cir. 2002); *see also Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995) (recognizing that a doctor's judgment as to whether pneumoconiosis is a cause of a miner's disability is necessarily influenced by the accuracy of his underlying diagnosis).

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge