U.S. Department of Labor

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

BRB No. 16-0563 BLA

JEFFREY C. HILL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	
	)	DATE ISSUED: 06/27/2017
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 Pamela J. Lakes, Administrative Law Judge, United States Department of Labor.

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

Christopher M. Green (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (2013-BLA-05551) of Administrative Law Judge Pamela J. Lakes awarding benefits 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 subsequent claim filed on April 17, 2012.[1]

The administrative law judge credited claimant with sixteen years of underground coal mine employment,[2] and found that claimant suffered from 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 Section 411(c)(4) presumption.[3] The administrative law judge further determined that employer failed to rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding that it did not rebut the Section 411(c)(4) presumption. Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[4]

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, the burden shifted to employer to rebut the presumption by establishing that claimant has neither legal nor

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[1] Claimant's previous claim, filed on February 22, 2001, was denied as abandoned on April 24, 2002. Director's Exhibit 1.

[2] The record reflects that claimant's coal mine employment was in Virginia. Hearing Transcript at 23. 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).

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where the claimant establishes fifteen or more 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 impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[4] Because employer does not challenge the administrative law judge's finding that claimant invoked the Section 411(c)(4) presumption, this finding is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

clinical pneumoconiosis,[5] 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.

In evaluating whether employer disproved the existence of legal pneumoconiosis, the administrative law judge considered the medical opinions of Drs. Fino and Castle.[6] The administrative law judge also considered a one-page letter from Dr. McSharry contained in claimant's treatment records. Drs. Fino and Castle opined that claimant suffers from totally disabling idiopathic pulmonary fibrosis. Employer's Exhibits 3-4, 6-8, 11-12. They further opined that idiopathic pulmonary fibrosis, while having no known cause, is not associated with coal mine dust exposure. *Id*. In a one-page letter addressed to claimant, Dr. McSharry also diagnosed idiopathic pulmonary fibrosis, and stated that the disease is not caused or worsened by coal mine dust exposure. Employer's Exhibit 3 at 13. The administrative law judge discredited the opinions of Drs. Fino and Castle because she found that the doctors failed to adequately explain how they eliminated claimant's sixteen years of coal mine dust exposure as a contributor to his idiopathic pulmonary fibrosis. Decision and Order at 19, 21, 22. Similarly, she discredited Dr. McSharry's opinion because the doctor did not provide support for his conclusion that coal mine dust exposure does not worsen idiopathic pulmonary fibrosis. *Id*. at 21. The administrative law judge, therefore, found that employer failed to establish that claimant does not suffer from legal pneumoconiosis.

Employer argues that the administrative law judge erred in her consideration of the medical opinions of Drs. Fino and Castle, and Dr. McSharry's treatment records. We disagree. The administrative law judge found Dr. Fino's reference to medical literature

[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). "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] The administrative law judge also considered the medical opinions of Drs. Habre and Green. Decision and Order at 19; Director's Exhibit 12; Claimant's Exhibit 1. Because these doctors opined that claimant suffers from legal pneumoconiosis, the administrative law judge noted that their opinions do not assist employer in establishing rebuttal of the presumption. *Id.*

unpersuasive to support his position that idiopathic pulmonary fibrosis is not associated with coal mine dust exposure. Decision and Order at 21. Specifically, Dr. Fino's opinion relied in part on a textbook titled *Pathology of Occupational Lung Disease*, which he acknowledged indicated that coal mine dust inhalation can "modify" pulmonary fibrosis. Employer's Exhibit 4 at 14. The administrative law judge determined that "Dr. Fino's attempt to use medical literature to support his finding[] falls short as it suggests that coal mine dust could be a contributing or aggravating factor as it may 'modify' usual interstitial pneumonitis." Decision and Order at 22. The administrative law judge further determined that the opinions of Drs. Castle and McSharry are deficient for a similar reason, i.e., the doctors did not provide any support for their opinions that idiopathic pulmonary fibrosis is not caused or worsened by coal mine dust exposure.[7] *Id.* at 21. The administrative law judge also noted that their opinions are "contradictory to the medical literature relied on by Dr. Fino [indicating that coal mine dust inhalation can 'modify' pulmonary fibrosis]."[8] *Id.* Thus, the administrative law judge permissibly found that Drs. Fino, Castle, and McSharry failed to adequately explain how they eliminated claimant's sixteen years of coal mine dust exposure as a contributor to his disabling idiopathic pulmonary fibrosis. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558, 25 BLR 2-339, 2-353 (4th Cir. 2013) (affirming an administrative law judge's discrediting of opinions which she determined provided inadequate and unconvincing reasons for eliminating coal mine dust exposure as a cause of a miner's interstitial fibrosis); *see also Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313-14, 25 BLR 2-115, 2-128 (4th Cir. 2012); Decision and Order at 19, 22. Because the administrative law judge permissibly discredited the opinions of Drs. Fino, Castle, and McSharry,[9] we affirm her finding that employer did not rebut the Section 411(c)(4)

[7] Although Dr. Castle stated that medical literature supported his opinion that coal mine dust exposure does not cause idiopathic pulmonary fibrosis, the doctor did not cite any literature in support of his assertion. Employer's Exhibit 7 at 23. Dr. McSharry also did not cite any medical literature in support of his position that idiopathic pulmonary fibrosis is not caused or worsened by coal dust exposure. Employer's Exhibit 3.

[8] Although employer argues that Dr. Fino cited medical literature in support of his opinion, employer does not challenge the administrative law judge's determination that the portions of the textbook Dr. Fino cited do not adequately support Dr. Fino's opinion. Employer's Brief at 23; *Skrack*, 6 BLR at 1-711.

[9] Because the administrative law judge provided valid bases for discrediting Drs. Fino, Castle, and McSharry, we need not address employer's remaining arguments regarding the weight she accorded to their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

presumption by establishing that claimant does not have legal pneumoconiosis.[10] See 20 C.F.R. §718.305(d)(1)(i).

The administrative law judge next addressed whether employer established rebuttal by proving 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 permissibly found that the same reasons for which she discredited the opinions of Drs. Fino and Castle that claimant does not suffer from legal pneumoconiosis also undercut the doctors' opinions that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis.[11] 20 C.F.R. §718.305(d)(1)(ii); *see Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05, 25 BLR 2-713, 2-721 (4th Cir. 2015) (a doctor who mistakenly believes that claimant does not have pneumoconiosis may not be credited on the issue of disability causation, absent "specific and persuasive reasons"); *see also Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668, 25 BLR 2-725, 2-741 (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); Decision and Order at 22. Therefore, we affirm the administrative law judge's determination that employer failed to prove that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(ii).

Because claimant invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis, and employer did not rebut the presumption, claimant has established his entitlement to benefits.

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

[11] The administrative law judge did not separately consider Dr. McSharry's treatment records on the issue of disability causation at 20 C.F.R. §718.305(d)(1)(ii). Employer does not challenge this aspect of the administrative law judge's decision. *See Skrack*, 6 BLR at 1-711.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge