U.S. Department of Labor

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

BRB No. 17-0412 BLA

EDDIE L. INGLE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	
	)	DATE ISSUED: 06/15/2018
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 Granting Benefits of William T. Barto, 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.

Kendra Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order Granting Benefits (2015-BLA-05664) 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). This case involves a miner's claim filed on April 30, 2013.

The administrative law judge credited claimant with at least fifteen years of underground coal mine employment,[1] based on employer's concession, and found that he is totally disabled pursuant to 20 C.F.R. §718.204(b)(2). He therefore found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[2] The administrative law judge further found that employer failed to rebut the presumption and awarded benefits accordingly.

On appeal, employer challenges the administrative law judge's finding that it failed to rebut the Section 411(c)(4) presumption. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, did not file a brief in this appeal.[3]

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).

[1] The administrative law judge found that claimant credibly testified that he worked for eighteen years in underground coal mine employment. Decision and Order at 3; Hearing Tr. at 18-19.

[2] 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 in underground coal mine employment or comparable surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[3] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant established at least fifteen years of qualifying coal mine employment, a totally disabling respiratory impairment at 20 C.F.R. §718.204(b), and invocation of the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[4] The record reflects that claimant's coal mine employment was in Virginia. Director's Exhibits 3, 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).

Rebuttal of the Section 411(c)(4) Presumption

Because claimant invoked the Section 411(c)(4) presumption, the burden shifted to employer to establish that claimant has neither legal nor clinical pneumoconiosis,[5] 20 C.F.R. §718.305(d)(1)(i), or 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). In order to rebut the presumed existence of legal pneumoconiosis,[6] employer must show that claimant does not suffer from 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).

Relevant to rebuttal of legal pneumoconiosis, the administrative law judge considered the opinions of Drs. McSharry and Fino.[7] Decision and Order at 12-13; Director's Exhibit 17; Employer's Exhibits 11, 13. Dr. McSharry opined that claimant does not have legal pneumoconiosis but suffers from a severe restrictive impairment that is due to his obesity. Employer's Exhibit 11. Dr. Fino also opined that claimant does not have legal pneumoconiosis but has a gas exchange impairment that is due to heart disease and obesity. Director's Exhibit 17; Employer's Exhibit 13. The administrative law judge found that both opinions are not well-reasoned and, therefore, do not rebut the presumed fact that claimant has legal pneumoconiosis. Decision and Order at 12-13.

We reject employer's contention that the administrative law judge failed to provide adequate reasons for discrediting the opinions of Drs. McSharry and Fino. Dr. McSharry examined claimant and performed a pulmonary function study and blood gas study which

[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 found that employer disproved the existence of clinical pneumoconiosis. Decision and Order at 5-8.

[7] The administrative law judge also considered the medical opinions of Drs. Gallai, Green, and Raj who each opined that claimant suffers from legal pneumoconiosis. Decision and Order at 8-9, 11-13; Director's Exhibit 11; Claimant's Exhibits 1, 2.

were qualifying for total disability.[8] He diagnosed a severe restrictive impairment with preserved diffusion. Dr. McSharry attributed claimant's impairment entirely to excess weight and stated that "there is no evidence of a chronic lung disease caused by or aggravated by coal dust exposure." Employer's Exhibit 11 at 2.

Contrary to employer's argument, the administrative law judge did not discredit Dr. McSharry's opinion because he failed to address claimant's eighteen year history of coal mine dust exposure. Employer's Brief at 10. Rather, the administrative law judge observed that Dr. McSharry did not address how *he* eliminated claimant's eighteen years of coal dust exposure as even a contributing or aggravating factor in his respiratory impairment, or explain how the medical evidence supports his conclusion. *See* 20 C.F.R. §718.201(b) (legal pneumoconiosis includes "any chronic . . . respiratory or pulmonary impairment significantly related to or substantially aggravated by, dust exposure in coal mine employment"); Decision and Order at 12; Employer's Exhibit 11. The administrative law judge therefore permissibly concluded that Dr. McSharry's opinion is "not well-reasoned" and is insufficient to rebut the presumed existence of legal pneumoconiosis. *Id*.; *see* 20 C.F.R. §718.305(d)(1)(i)(A); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558, 25 BLR 2-339, 2-353 (4th Cir. 2013); *Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 322-24, 25 BLR 2-255, 2-263 (4th Cir. 2013); *Minich v. Keystone Coal Mining Corp*., 25 BLR 1-149, 1-150 (2015) (Boggs, J., concurring and dissenting). As it is supported by substantial evidence, we affirm the administrative law judge's rejection of Dr. McSharry's opinion. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208, 22 BLR 2-162, 2-168 (4th Cir. 2000); Decision and Order at 12-13.

Employer next asserts that the administrative law judge mischaracterized Dr. Fino's reliance upon negative chest x-ray and computed tomography (CT) scan evidence in concluding that claimant does not have legal pneumoconiosis. Employer's Brief at 12-13. Employer contends that "Dr. Fino relied on much more than the x-ray and CT evidence in support of his opinion." *Id.* at 13.

Contrary to employer's argument, the administrative law judge acknowledged that Dr. Fino considered multiple factors in formulating his opinion. Decision and Order at 10-11. He correctly observed, however, that Dr. Fino relied "heavily" on the absence of

[8] Employer conceded that claimant established total disability based on the medical opinions and qualifying pulmonary function and blood gas studies. Decision and Order at 4. A "qualifying" pulmonary function study or arterial blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

positive x-ray or CT scan evidence to exclude a diagnosis of legal pneumoconiosis. Decision and Order at 10, 12; Director's Exhibit 17; Employer's Exhibits 12; 13 at 14-15, 19. In his initial report dated May 15, 2014, and his deposition testimony, Dr. Fino relied on the lack of fibrosis seen radiographically to conclude that claimant's impairment is not due to coal dust exposure. Director's Exhibit 17 at 9; Employer's Exhibit 13 at 35. In his report dated May 26, 2016, Dr. Fino noted that an August 14, 2015 high resolution CT scan did "not show changes consistent with coal workers' pneumoconiosis" because while it showed some abnormalities, there were "no discrete irregular or rounded opacities." Employer's Exhibit 12 at 1. Dr. Fino concluded, "[t]herefore, [claimant] does not have a coal mine dust-related condition . . . ." *Id.* at 2.

Clinical pneumoconiosis and legal pneumoconiosis are distinct diseases and, as the administrative law judge observed, the absence of clinical pneumoconiosis does not preclude the existence of legal pneumoconiosis. *See* 20 C.F.R. §§718.201(a)(1), (2); 718.202(a)(4); *Hobbs v. Clinchfield Coal Co.*, 45 F.3d 819, 821, 19 BLR 2-86, 2-91-92 (4th Cir. 1995); *Barber v. U.S. Steel Mining Co.*, 43 F.3d 899, 901, 19 BLR 2-61, 2-66 (4th Cir. 1995). Consequently, the administrative law judge permissibly concluded that to the extent Dr. Fino relied on the absence of positive radiographic evidence to exclude coal mine dust as a cause of claimant's impairment, his opinion is unpersuasive. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 311-12, 25 BLR 2-115, 2-125 (4th Cir. 2012); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); 65 Fed. Reg. 79,920, 79,971 (Dec. 20, 2000); Decision and Order at 12-13.

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 to assign those opinions appropriate weight. *See Cochran*, 718 F.3d at 321, 25 BLR at 2-260; *Looney*, 678 F.3d at 315-16, 25 BLR at 2-130. The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77, 1-79 (1988). Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. McSharry and Fino, the only opinions supportive of a finding that claimant does not suffer from legal pneumoconiosis,[9] we affirm his finding

[9] Because we affirm the administrative law judge's determination to discredit the opinions of Drs. McSharry and Fino for the reasons set forth above, we need not address employer's additional challenges to the administrative law judge's analysis of their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

that employer failed to disprove the existence of legal pneumoconiosis.[10] Employer's failure to disprove the existence of legal pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i). Accordingly, we affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption by establishing that claimant does not have pneumoconiosis.

Having found that employer failed to disprove the existence of legal pneumoconiosis, the administrative law judge addressed whether employer established the second method of rebuttal by showing that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 15. The administrative law judge noted that Drs. McSharry and Fino attributed claimant's disability entirely to obesity and/or heart disease, which they opined are not caused by coal dust exposure. Both doctors failed to establish, however, that obesity or heart disease are the only conditions from which claimant suffers, or explain why coal mine dust did not aggravate or contribute to claimant's respiratory disability. *Id.*

Thus, contrary to employer's argument, the administrative law judge permissibly found that the same reasons that he provided for discrediting their opinions on the issue of legal pneumoconiosis also undercut their opinions that no part of claimant's disabling impairment was caused by pneumoconiosis. 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 Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-452 (6th Cir. 2013) (an administrative law judge may permissibly discount the disability causation opinions of physicians who do not diagnose legal pneumoconiosis, contrary to the administrative law judge's finding on the issue); *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 15.

[10] Employer bears the burden of disproving the existence of pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i). We, therefore, need not address its arguments regarding the weight accorded to the contrary opinions of Drs. Green and Raj. *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (holding that the appellant must explain how the alleged "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

We therefore affirm the administrative law judge's finding that employer failed to establish 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.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge