U.S. Department of Labor

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

BRB No. 16-0123 BLA

JOHN E. LUCAS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 11/29/2016
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

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

Rebecca J. Fiebig (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 (2013-BLA-05761) of Administrative Law Judge Adele Higgins Odegard denying 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 claim filed on January 27, 2012.

After crediting claimant with 14.39 years of coal mine employment,[1] the administrative law judge found that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in crediting him with less than fifteen years of coal mine employment. Claimant also argues that the administrative law judge erred in finding that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). The Director, Office of Workers' Compensation Programs (the Director), responds in support of the administrative law judge's denial of benefits.

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.[2] 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 (1986) (en banc).

---

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where claimant establishes fifteen or more years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. § 921(c)(4) (2012); *see* 20 C.F.R. §718.305. Because the administrative law judge credited claimant with less than fifteen years of coal mine employment, she found that claimant was not entitled to consideration under Section 411(c)(4). Decision and Order at 9. Therefore, the administrative law judge addressed whether claimant satisfied his burden to establish all of the elements of entitlement under 20 C.F.R. Part 718.

[2] The record indicates that claimant's coal mine employment was in Pennsylvania. Director's Exhibit 3. 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 (1989) (en banc).

Claimant contends that the administrative law judge erred in finding that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).[3] Before addressing whether the medical opinion evidence established total disability, the administrative law judge determined the exertional requirements of claimant's usual coal mine work. The administrative law judge found that claimant's usual coal mine work was as a hoist operator. Decision and Order at 15. The administrative law judge noted that although claimant testified that his job as a hoist operator required him to hoist coal out of the mine and to load timber, claimant did not describe the weight of the timber or indicate whether he had to physically hoist the coal. *Id.* at 15-16. Based upon claimant's description, the administrative law judge found that claimant's usual coal mine work as a hoist operator "likely entailed at least a moderate degree of manual labor." *Id.* at 16.

The administrative law judge then considered the medical opinions of Drs. Talati, Cali, and Kraynak.[4] In a report dated June 7, 2012, Dr. Talati diagnosed a "moderate pulmonary impairment that precludes [claimant from] performing [his] last coal mine job to prevent further exposure to coal dust." Director's Exhibit 9. Dr. Talati also opined that claimant is not totally disabled. *Id.* In a report dated May 8, 2013, Dr. Cali opined that claimant "cannot work in dust environments . . . due to shortness of breath and asthma." Employer's Exhibit 1. Dr. Cali, therefore, opined that claimant is "completely disabled due to pulmonary disease - and is not able to work in dusty workplaces due to his underlying condition of asthma." *Id.* In a report dated May 8, 2014, Dr. Kraynak

[3] The administrative law judge found that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii). Decision and Order at 10-12. Because these findings are unchallenged on appeal, they are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[4] The administrative law judge also considered Dr. Prince's review of a May 21, 2012 pulmonary function study. Dr. Prince interpreted the study as revealing a moderate obstructive ventilatory defect. Claimant's Exhibit 5. Dr. Prince also opined that claimant "does not have sufficient lung function to carry up to 100 pounds." *Id.* The administrative law judge did not consider Dr. Prince's opinion as a medical report because it is a written assessment of a single objective test. Decision and Order at 10 n.11. Moreover, the administrative law judge found that, even if she were to consider Dr. Prince's opinion as a medical report, it would be entitled to "minimal probative weight" because Dr. Prince did not review the more recent pulmonary function study evidence or indicate the basis for his presumption about the exertional requirements of claimant's coal mine work. *Id.* Because claimant does not challenge the administrative law judge's basis for discrediting Dr. Prince's opinion, it is affirmed. *Skrack*, 6 BLR at 1-711.

opined that claimant is totally disabled due to pneumoconiosis. Claimant's Exhibit 8. Dr. Kraynak noted that claimant "needs the ability to stand, lay and change positions as needed." *Id.* Dr. Kraynak further opined that claimant "cannot be further exposed to anthracite coal dust." *Id.* During a deposition taken on July 11, 2014, Dr. Kraynak opined that claimant "would not be able to do his last coal mine employment which was very physically arduous and dusty, requiring him to lift weights in excess of a hundred pounds." Claimant's Exhibit 8 at 14.

The administrative law judge initially found that the opinions of Drs. Talati and Cali that claimant should not be further exposed to coal dust did not constitute opinions that claimant has a totally disabling respiratory impairment. Decision and Order at 15-16. The administrative law judge further found that Dr. Kraynak's opinion was not well-reasoned because he mischaracterized the exertional requirements of claimant's usual coal mine job. *Id.* at 17. The administrative law judge further found that Dr. Kraynak did not adequately explain how the evidence supported his diagnosis of a totally disabling pulmonary impairment. *Id.* The administrative law judge, therefore, found that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *Id.* at 18.

Claimant contends that the administrative law judge erred in finding that the medical opinions of Drs. Talati, Cali, and Kraynak did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). We disagree. Based on their statements, the administrative law judge reasonably determined that Drs. Talati and Cali essentially opined that claimant is totally disabled because he must avoid further exposure to coal dust.[5] The administrative law judge, therefore, permissibly found that Drs. Talati and Cali did not offer reasoned diagnoses of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), because a prohibition on further dust exposure is not a diagnosis of a totally disabling respiratory or pulmonary impairment.[6] *See Migliorini v. Director,*

[5] An administrative law judge is granted broad discretion in his role as fact-finder to evaluate the medical opinion evidence and draw inferences therefrom. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). The administrative law judge's findings that Drs. Talati and Cali based their disability determinations on claimant's need to avoid additional coal dust exposure was a reasonable inference to draw from their statements.

[6] Neither Dr. Talati nor Dr. Cali opined that claimant suffers from a respiratory or pulmonary impairment that would prevent him from performing his usual coal mine employment, and neither physician diagnosed total disability independent of finding that claimant should avoid further coal dust exposure. Director's Exhibit 9; Employer's

OWCP, 898 F.2d 1292, 1296, 13 BLR 2-418, 2-425 (7th Cir. 1990); *Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989).

In challenging the administrative law judge's consideration of Dr. Kraynak's opinion, claimant initially contends that the administrative law judge erred in determining that claimant's usual coal mine work was that of a hoist operator. We disagree. The administrative law judge accurately noted that a miner's "usual coal mine work" is "the most recent job the miner performed regularly and over a substantial period of time." Decision and Order at 15, *quoting Shortridge v. Beatrice Pocahontas Coal Co.*, 4 BLR 1-534, 1-539 (1982). In this case, the administrative law judge noted that claimant's last coal mine work was as a hoist operator for S&M Coal Company. Decision and Order at 15. Claimant held this position for approximately sixteen non-consecutive months (six months in 2006, and from December of 2007 to October of 2008).[7] Director's Exhibit 3; Hearing Transcript at 29-30. Because substantial evidence supports the administrative law judge's determination that claimant's usual coal mine work was that of a hoist operator, this finding is affirmed.

The administrative law judge found that Dr. Kraynak's opinion that claimant is totally disabled was not well-reasoned because it was based upon an inaccurate understanding of the exertional requirements of claimant's usual coal mine work:

> Dr. Kraynak testified that the Claimant worked as a truck driver which required the Claimant to bend, stoop, crawl and lift over 100 hundred [sic] pounds. Dr. Kraynak characterized the job as "very physically arduous." There is no evidence in the record that the Claimant's last coal mine job as a hoist operator was as physically demanding as Dr. Kraynak presumed. The entire basis for Dr. Kraynak's opinion that the non-qualifying pulmonary function test results show a totally disabling respiratory impairment is his presumption that the Claimant performed very heavy manual labor. As there is no evidence that the Claimant performed equally heavy manual labor as a hoist operator, I give less weight to this argument.

Exhibit 1. Dr. Talati even opined that claimant is not totally disabled. Director's Exhibit 9.

[7] On a coal mine employment history (Form CM-911a), claimant indicated that he worked for S&M Coal Company as a hoister in 2006, and from 2007 to 2008. Director's Exhibit 3. Claimant testified that he worked for S&M Coal Company for six months in 2006, and from December of 2007 to October of 2008. Hearing Transcript at 29-30.

Decision and Order at 17 (citation omitted).

Because the administrative found that Dr. Kraynak relied upon an inaccurate understanding of the exertional requirements of claimant's usual coal mine employment,[8] she reasonably discounted his opinion that claimant is totally disabled.[9] *See Gonzales v. Director,* OWCP, 869 F.2d 776, 779, 12 BLR 2-192, 2-197 (3d Cir. 1989). Because it is supported by substantial evidence,[10] we affirm the administrative law judge's finding that the medical opinion evidence does not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

In light of our affirmance of the administrative law judge's finding that the evidence does not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2. In

[8] As the Director, Office of Workers' Compensation Programs, accurately notes, claimant did not estimate the weight of the timber that he loaded, but instead testified that he loaded boxes of dynamite weighing 50-60 pounds. Director's Brief at 5, *citing* Hearing Transcript at 30. In contrast, Dr. Kraynak characterized claimant's usual coal mine work as "that of a truck driver and laborer where he was expected to lift in excess of a hundred pounds throughout the workday and where there was frequent climbing, bending, stooping, and crawling." Claimant's Exhibit 8 (Deposition Transcript at 8).

[9] Because the administrative law judge provided a valid basis for according less weight to Dr. Kraynak's opinion, any error she may have made in according less weight to his opinion for other reasons would be harmless. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983). Therefore, we need not address claimant's remaining arguments regarding the weight accorded to Dr. Kraynak's opinion.

[10] Claimant argues that the administrative law judge should have accorded greater weight to Dr. Kraynak's opinion based upon his status as claimant's treating physician. An administrative law judge is not required to accord greater weight to the opinion of a treating physician, based on that status alone. *See* 20 C.F.R. §718.104(d)(5). Rather, the opinions of treating physicians get the deference they deserve based on their power to persuade. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 513, 22 BLR 2-625, 647 (6th Cir. 2002). The administrative law judge accorded less weight to Dr. Kraynak's opinion because she found that it was not well-reasoned. Decision and Order at 17. Consequently, we reject claimant's contention that the administrative law judge was required to accord Dr. Kraynak's opinion greater weight, based upon his status as claimant's treating physician.

light of that affirmance, we also affirm the administrative law judge's determination that claimant did not invoke the Section 411(c)(4) presumption.[11] 30 U.S.C. §921(c)(4) (2012); Decision and Order at 9.

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

[11] We, therefore, need not address claimant's contention that the administrative law judge erred in not crediting him with the requisite fifteen years of qualifying coal mine employment necessary to invoke the Section 411(c)(4) presumption. *See Larioni v. Director, OWCP*, 6 BLR 1-1284 (1984).