U.S. Department of Labor

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

BRB No. 15-0038 BLA

JAMES G. BELCHER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	
	)	DATE ISSUED: 10/20/2015
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 - Award of Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

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

Rebecca J. Fiebig (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order - Award of Benefits (12-BLA-5187) of Administrative Law Judge Richard T. Stansell-Gamm rendered on a claim filed pursuant to 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 August 16, 2010.

Applying Section 411(c)(4), 30 U.S.C. §921(c)(4),[1] the administrative law judge credited claimant with at least twenty-five years of underground coal mine employment,[2] as stipulated by the parties and supported by the record, 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 of total disability due to pneumoconiosis set forth at Section 411(c)(4). The administrative law judge further found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

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

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).

---

[1] As part of the Patient Protection and Affordable Care Act, Public Law No. 111-148, Congress enacted amendments to the Black Lung Benefits Act (the Act), which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, Congress reinstated Section 411(c)(4) of the Act, which provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where the miner worked at least fifteen years in underground coal mine employment, or in surface mine employment in conditions substantially similar to those of an underground mine, and where a totally disabling respiratory impairment is established. 30 U.S.C. §921(c)(4). The Department of Labor revised the regulations to implement the amendments to the Act. The revised regulations became effective on October 25, 2013, and are codified at 20 C.F.R. Parts 718, 725.

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

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

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 does not have either legal or clinical pneumoconiosis,[4] 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 §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 established that claimant does not have legal pneumoconiosis,[5] the administrative law judge considered the medical opinions of Drs. Castle and Basheda. Dr. Castle opined that claimant does not have legal pneumoconiosis, but suffers from severe airway obstruction with an asthmatic component, that is due to smoking and is unrelated to coal mine dust exposure. Director's Exhibit 14; Employer's Exhibit 6 at 36, 39, 42. Dr. Basheda similarly opined that claimant suffers from tobacco-induced chronic obstructive pulmonary disease (COPD), with an asthmatic component, that is unrelated to coal mine dust exposure. Employer's Exhibits 8-10. The administrative law judge discredited the opinions of Drs. Castle and Basheda because he found that each was not well-reasoned. Decision and Order at 21-23. The administrative law judge, therefore, found that employer failed to disprove the existence of legal pneumoconiosis. *Id.*

Employer argues that the administrative law judge failed to provide valid reasons for discrediting the opinions of Drs. Castle and Basheda. We disagree. The administrative law judge correctly noted that Dr. Castle eliminated coal mine dust

[4] "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). This definition encompasses any chronic respiratory or pulmonary disease or 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).

[5] The administrative law judge also considered the opinion of Dr. Forehand, that claimant suffers from legal pneumoconiosis, in the form of severe obstructive airways disease that is due to both smoking and coal mine dust exposure. Director's Exhibits 9, 15. The administrative law judge found that Dr. Forehand's opinion was reasoned and documented, and sufficient to establish the existence of legal pneumoconiosis. Decision and Order at 23.

exposure as a source of claimant's COPD, in part, because he found that claimant's FEV1/FVC ratio was severely reduced which, in Dr. Castle's view, is not characteristic of obstruction caused by coal mine dust exposure. Decision and Order at 21-22; Employer's Exhibit 6 at 29-30. As the Director asserts, the administrative law judge permissibly found that the reasoning Dr. Castle used to eliminate coal mine dust exposure as a source of claimant's COPD was inconsistent with the medical science accepted by the Department of Labor, recognizing that coal mine dust can cause clinically significant obstructive disease, which can be shown by a reduction in the FEV1/FVC ratio. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 323, 25 BLR 2-255, 2-264-65 (4th Cir. 2013) (Traxler, C.J., dissenting); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 314-15, 25 BLR 2-115, 2-130 (4th Cir. 2012); 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000); Decision and Order at 22; Director's Brief at 5. Thus, the administrative law judge permissibly found that Dr. Castle's opinion was not well reasoned, and is entitled to diminished weight.

The administrative law judge also correctly noted that both Drs. Castle and Basheda relied, in part, on the reversible nature of claimant's obstructive impairment to support their conclusions that claimant's impairment is due to smoking, and is not due to coal mine dust exposure.[6] Decision and Order at 21-23. Contrary to employer's contention, noting that claimant's pulmonary function studies demonstrated the existence of a totally disabling impairment, even after bronchodilator therapy, the administrative law judge permissibly concluded that neither Dr. Castle, nor Dr. Basheda, adequately explained why claimant's response to bronchodilators necessarily eliminated coal mine dust exposure as a cause of his remaining obstructive impairment, and the administrative law judge permissibly accorded their opinions less weight, in part, on that basis. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489, 25 BLR 2-135, 2-152-53 (6th Cir. 2012); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); *Consolidation Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004);

[6] Dr. Castle observed that when pneumoconiosis causes an impairment, it generally results in a "mixed, irreversible obstructive and restrictive ventilatory defect." Director's Exhibit 14 at 6-7. Dr. Castle concluded that claimant's pulmonary function testing, demonstrating significantly reversible airway obstruction without restriction, is "clearly indicative" and "typical" of tobacco smoke-induced airways disease, and is not the pattern of impairment seen with coal mine dust-related disease. Director's Exhibit 14 at 6-7; Employer's Exhibit 6 at 29, 42. Dr. Basheda stated that coal dust-induced chronic obstructive pulmonary disease (COPD) is an irreversible form of airway obstruction and does not respond to respiratory medications. Employer's Exhibit 8 at 13. Dr. Basheda concluded that the variable bronchoreversibility demonstrated on claimant's pulmonary function testing confirmed that his obstructive impairment is "tobacco-induced" and not due to coal mine dust exposure. Employer's Exhibits 8 at 14; 10 at 21, 23-24.

Clark v. Karst-Robbins Coal Co., 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 21-23; Director's Brief at 4-5.

The administrative law judge also correctly noted that, in concluding that claimant's obstructive impairment is tobacco-induced, and is unrelated to coal mine dust exposure, Dr. Basheda opined that claimant "may" be genetically predisposed to develop obstructive lung disease due to cigarette smoking because his mother had COPD and his sister had allergies.[7] Decision and Order at 22; Employer's Exhibits 8 at 15; 10 at 21-23. The administrative law judge permissibly found that such reasoning reflected that Dr. Basheda's opinion was based, in part, on speculation and generalities. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528, 21 BLR 2-323, 2-326 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-28 (4th Cir. 1997); Decision and Order at 22. As this finding is supported by substantial evidence, it is affirmed. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208, 22 BLR 2-162, 2-168 (4th Cir. 2000).

Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Castle and Basheda, the only opinions supportive of a finding that claimant does not suffer from legal pneumoconiosis, we affirm the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption by disproving the existence of legal pneumoconiosis.[8] Employer's failure to disprove the existence of legal pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis. *See Barber v. Director, OWCP*, 43 F.3d 899, 901, 19 BLR 2-61, 2-67 (4th Cir. 1995)*; Rose v. Clinchfield Coal Co.*, 614 F.2d 936, 939, 2 BLR 2-38, 2-43-44 (4th Cir. 1980); 20 C.F.R. §718.305(d)(1)(i).

The administrative law judge next addressed whether employer could establish rebuttal by showing that no part of claimant's respiratory or pulmonary disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). The administrative law judge reasonably found that the same reasons he provided for discrediting the opinions of Drs.

---

[7] As the administrative law judge noted, Dr. Basheda theorized that claimant "may be at risk for the development of tobacco-induced COPD/asthma" because his mother had COPD, and his sister had allergies, and "asthma and allergies are often genetically related." Decision and Order at 19; Employer's Exhibit 8 at 15; *see* Employer's Exhibit 10 at 21-23.

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

Castle and Basheda, that claimant does not suffer from legal pneumoconiosis, also undercut their opinions that claimant's disabling respiratory impairment was not caused by pneumoconiosis. *See Scott v. Mason Coal Co.*, 289 F.3d 263, 269, 22 BLR 2-372, 2-383-84 (4th Cir. 2002); *Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995); *see also Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062, 25 BLR 2-453, 2-473 (6th Cir. 2013) (holding than an administrative law judge may discredit a doctor's disability causation opinion because the doctor did not diagnose the miner with legal pneumoconiosis, contrary to the administrative law judge's finding that the evidence established the presence of the disease); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-452 (6th Cir. 2013) (holding that the administrative law judge permissibly discounted a doctor's disability causation opinion because the doctor did not diagnose the miner with legal pneumoconiosis, where the presumed fact of legal pneumoconiosis was not rebutted); Decision and Order at 23. Thus, we affirm the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption by establishing that no part of claimant's total disability was caused by pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(ii).

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, the administrative law judge's award of benefits is affirmed. 30 U.S.C. §921(c)(4).

Accordingly, the administrative law judge's Decision and Order - Award of Benefits is affirmed.

SO ORDERED.

_____
BETTY JEAN HALL, Chief
Administrative Appeals Judge

_____
GREG J. BUZZARD
Administrative Appeals Judge

_____
JONATHAN ROLFE
Administrative Appeals Judge