U.S. Department of Labor

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

BRB No. 23-0336 BLA

MICHAEL H. STANLEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	
	)	DATE ISSUED: 08/27/2024
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 Heather C. Leslie, Administrative Law Judge, United States Department of Labor.

Jason A. Mullins (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

Before: GRESH, Chief Administrative Appeals Judge, BOGGS and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Heather C. Leslie's Decision and Order Granting Benefits (2021-BLA-05283) rendered on a claim filed on September 9, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with twenty-five years of qualifying coal mine employment and found he established a totally disabling respiratory or pulmonary

impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[1] 30 U.S.C. §921(c)(4) (2018). She further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption.[2] Neither Claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.[3] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[4] or "no part of [his]

[1] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the ALJ'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).

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

[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). The definition 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).

respiratory or pulmonary total disability is caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The ALJ found Employer did not establish Claimant does not have legal pneumoconiosis.[5]

Legal Pneumoconiosis

To disprove legal pneumoconiosis, Employer must establish Claimant does not have 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); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relied on the medical opinions of Drs. McSharry and Fino to rebut legal pneumoconiosis. Employer's Exhibits 1, 10, 11. Dr. McSharry opined Claimant likely has asthma unrelated to coal mine dust exposure based on his respiratory symptoms, improved lung function with bronchodilators and the remoteness since he last worked in coal mine employment, and he asserted that "[a]sthma is not caused by or significantly worsened by coal dust exposure." Employer's Exhibit 11 at 3-4. Dr. Fino diagnosed Claimant with a partially irreversible obstructive impairment with emphysema but opined he "cannot rule out legal pneumoconiosis." Employer's Exhibits 1 at 9; 10 at 10-11. The ALJ discounted their opinions and found them insufficient to disprove legal pneumoconiosis because "they [did] not consider the exertional requirements of [Claimant's] job in relation to [his] pulmonary incapacity." Decision and Order at 20-21.

Employer argues the ALJ erred in discrediting Drs. McSharry and Fino. Employer's Brief at 9 (unpaginated). We agree, in part.

Employer has the burden to disprove the existence of legal pneumoconiosis. 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(2)(i)(A); *see Minich*, 25 BLR at 1-155 n.8. Dr. Fino conceded in his initial report that he "cannot rule out legal pneumoconiosis," Employer's Exhibit 1 at 9, and later testified that coal mine dust exposure is "the only cause [he] could come up with" for Claimant's impairment. Employer's Exhibit 10 at 11. Dr. Fino's opinion thus cannot aid Employer in meeting its burden to disprove legal pneumoconiosis, and we therefore decline to address Employer's arguments regarding the ALJ's weighing of the doctor's opinion on this issue. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have

[5] The ALJ found the x-rays and Claimant's treatment records do not establish clinical pneumoconiosis. Decision and Order at 17, 22.

made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 19-21; Employer's Brief at 8-9 (unpaginated).

We agree, however, that the ALJ erred with respect to Dr. McSharry's opinion. Employer's Brief at 8-9 (unpaginated). A physician's understanding of the exertional requirements of a miner's usual coal mine work is relevant in assessing the credibility of that physician's opinion regarding whether the miner is totally disabled. *See* 20 C.F.R. §718.204(b)(2)(iv) (total disability may be established based on a physician's reasoned opinion that a miner cannot perform his usual coal mine employment); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment). The cause of that impairment or disability, however, is a separate inquiry and is the relevant consideration in determining whether Employer can rebut the Section 411(c)(4) presumption by establishing that Claimant does not have legal pneumoconiosis, i.e., a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment," or that "no part of [the claimant's] respiratory or pulmonary total disability is caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A), (ii); *see Minich*, 25 BLR at 1-155 n.8.

As Employer correctly contends, Employer's Brief at 8-9 (unpaginated), in discrediting Dr. McSharry's rebuttal opinion, the ALJ failed to explain why his understanding of the exertional requirements of Claimant's usual coal mine work is relevant to the credibility of his opinion that Claimant does not have legal pneumoconiosis, as the Administrative Procedure Act (APA) requires.[6] *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252-53, 255-57 (4th Cir. 2016) (ALJ must conduct an appropriate analysis of the evidence to support her conclusion and render necessary credibility findings); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); 20 C.F.R. §§718.201(a)(2), 718.202(a)(4), 718.305(d)(i)(A); Decision and Order at 20-21. Consequently, we must vacate the ALJ's weighing of Dr. McSharry's medical opinion. We further vacate the ALJ's finding that Employer did not rebut the Section 411(c)(4) presumption by disproving legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

[6] The APA provides that every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

In addition, the ALJ did not address whether Employer established "no part of [Claimant's] respiratory or pulmonary total disability is caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201."

Remand Instructions

On remand, the ALJ must reconsider whether Employer has rebutted the Section 411(c)(4) presumption by disproving legal pneumoconiosis. In reconsidering Dr. McSharry's opinion on remand, the ALJ must consider the physician's qualifications, explanations for his conclusions, the documentation underlying his medical judgments and the sophistication of, and bases for, his diagnoses and medical conclusions. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 530 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439 (4th Cir. 1997). In so doing, she must set forth her findings in detail, including the underlying rationale. 5 U.S.C. §557(c)(3)(A); *see Addison*, 831 F.3d at 255-57; *Wojtowicz*, 12 BLR at 1-165. The ALJ must determine whether Employer has affirmatively established Claimant's chronic lung disease or impairment is not "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); *see Minich*, 25 BLR at 1-155 n.8.

If the ALJ determines Employer has established Claimant does not have legal pneumoconiosis, Employer will have rebutted the Section 411(c)(4) presumption by establishing the absence of pneumoconiosis and the ALJ need not reach the issue of disability causation. If she finds Employer has not disproven legal pneumoconiosis, she must consider the relevant evidence, including the medical opinions of Drs. Fino and McSharry, regarding whether Employer has established that no part of Claimant's total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

In reaching her conclusions on remand, the ALJ must explain the bases for her credibility determinations, findings of fact, and conclusions of law as required by the APA. 5 U.S.C. §557(c)(3)(A); *see Addison*, 831 F.3d at 255-57; *Wojtowicz*, 12 BLR at 1-165.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Awarding Benefits and remand the case to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge