U.S. Department of Labor Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 23-0452 BLA

ROY C. KNOTTS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ROCKVILLE MINING COMPANY, INCORPORATED	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	DATE ISSUED: 08/22/2024
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Samuel B. Petsonk (Petsonk PLLC), Beckley, West Virginia, for Claimant.

Ashley M. Harman and Lucinda L. Fluharty (Jackson Kelly PLLC), Morgantown, West Virginia, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits (2021-BLA-05044) rendered on a subsequent claim filed on May 21, 2018,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established eleven years and nine months of coal mine employment and thus could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[2] Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established total disability due to clinical and legal pneumoconiosis[3] and a change in an applicable condition of entitlement.[4] 20 C.F.R. §§718.201(a)(1), (2), 718.202(a), 718.204(b), (c), 725.309. Thus, he awarded benefits.

---

[1] Claimant filed a prior claim on March 30, 2015, which the district director denied on August 19, 2015, because the evidence did not establish the existence of a totally disabling pulmonary or respiratory impairment. Director's Exhibit 2.

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled 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); 20 C.F.R. §718.305.

[3] "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). "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).

[4] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon

On appeal, Employer argues the ALJ erred in his consideration of Claimant's smoking history, and in finding Claimant established legal pneumoconiosis, total disability, and disability causation.[5] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not 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.[6] 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 (1965).

Part 718 Entitlement

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any element 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).

Total Disability

---

which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the district director denied the prior claim for failure to establish total disability, Claimant was required to submit new evidence establishing total disability to warrant a review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3; Director's Exhibit 2.

[5] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established clinical pneumoconiosis at 20 C.F.R. §718.202(a)(1). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 15.

[6] 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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 21; Director's Exhibit 6.

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,[7] evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). The ALJ found Claimant established total disability based on the medical opinion evidence and in consideration of the evidence as a whole.[8] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 20-23.

Employer argues that the ALJ erred in finding Claimant established total disability based on the medical opinions and the evidence as a whole. Employer's Brief at 12-15. We disagree.

The ALJ considered the opinions of Drs. Jin, Go, Zaldivar, and Rosenberg.[9] Decision and Order at 20-23. Dr. Jin conducted the Department of Labor (DOL) complete

---

[7] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[8] The ALJ found the one pulmonary function study and one blood gas study were non-qualifying and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 17-20.

[9] Employer correctly points out that the ALJ failed to make a specific finding regarding the exertional requirements of Claimant's usual coal mine employment. Employer's Brief at 13. However, the ALJ accurately noted that Drs. Jin, Go, Zaldivar, and Rosenberg each understood Claimant worked as a driller; Dr. Jin opined Claimant's work required moderate exertion; and Drs. Go, Zaldivar, and Rosenberg indicated it required him to lift or carry up to fifty pounds. Decision and Order at 6, 21-22; Director's Exhibit 17 at 1, 4; Claimant's Exhibit 3 at 1-2, 7; Employer's Exhibits 3 at 2; 5 at 1, 6; 7 at 8. As Employer concedes that all of the physicians had a similar understanding of the exertional requirements of Claimant's usual coal mine employment and it does not allege any specific physician misunderstood those requirements, we consider the ALJ's error to be harmless. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain

pulmonary evaluation of Claimant and diagnosed clinical pneumoconiosis by x-ray and chronic obstructive pulmonary disease (COPD) based on his non-qualifying pulmonary function study results. Director's Exhibit 17 at 3-6. In addition, he noted Claimant's shortness of breath when walking on flat surfaces and his inability to climb stairs. *Id.* at 3-4. He opined Claimant would be unable to meet the exertional requirements of his usual coal mine work due to the limitations caused by his pneumoconiosis and COPD. *Id.* at 4-5.

Dr. Go prepared a report based on his review of Claimant's medical records. Claimant's Exhibits 3, 4. Based on the pulmonary function study results, he diagnosed Claimant with a moderate obstructive defect and a moderate diffusion abnormality. Claimant's Exhibit 3 at 3, 7. He opined Claimant would be unable to perform his usual coal mine work based on his abnormal diffusion capacity and use of oxygen, which he explained are "incompatible with any coal mine employment." Claimant's Exhibits 3 at 7; 4 at 3-4.

Dr. Zaldivar prepared a report based on his review of Claimant's medical records. Employer's Exhibits 3, 7. He opined Claimant had "abnormal breathing tests with airway obstruction[,]" but is not totally disabled because his pulmonary function test and blood gas study results were "above the disability levels set forth by the [DOL]." Employer's Exhibit 3 at 9. At his deposition, Dr. Zaldivar reiterated that "from a pulmonary standpoint, using the parameters from the [DOL] and general parameters, [Claimant is] not disabled." Employer's Exhibit 7 at 30.

Dr. Rosenberg prepared a report based on his review of Claimant's medical records. Employer's Exhibits 5, 8. He determined Claimant has "a mild degree of airflow obstruction" that is not disabling and opined his "impairment is explained by his past smoking history, coupled with asthma and superimposed on the acute events of 2021 [a hospitalization] related to pneumonia and heart failure." Employer's Exhibit 5 at 7, 9. At his deposition, Dr. Rosenberg testified Claimant would be able to perform "almost any kind of manual labor." Employer's Exhibit 8 at 19-20.

The ALJ found Drs. Jin's and Go's opinions well-reasoned, Dr. Zaldivar's opinion "partially well-reasoned" and entitled to "limited weight[,]" and Dr. Rosenberg's opinion entitled to "some weight." Decision and Order at 23. The ALJ determined Drs. Jin's and Go's opinions outweigh Drs. Zaldivar's and Rosenberg's contrary opinions and thus support a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.* Weighing the

---

how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 13.

evidence as a whole, the ALJ found Claimant established a totally disabling respiratory or pulmonary impairment. *Id.*

Initially, we reject Employer's contention that the ALJ "selectively analyzed" the medical opinions regarding their understanding of the exertional requirements of Claimant's usual coal mine work. Employer's Brief at 13-14; *see* Decision and Order at 21-23; Director's Exhibit 17 at 1, 4; Claimant's Exhibit 3 at 1-2, 7; Employer's Exhibits 3 at 2; 5 at 1, 6; 7 at 8. As discussed below, the ALJ properly examined the reasoning of each physician to determine if their opinions were adequately explained. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); Decision and Order at 20-23.

In summarizing the medical opinions, the ALJ accurately noted Dr. Jin's opinion was based on his examination of Claimant and the objective testing results he obtained, and that Dr. Go based his opinion on his review of Claimant's objective testing results, treatment records, and medical reports. Decision and Order at 20-21, 23; Director's Exhibit 17; Claimant's Exhibits 3, 4. Additionally, the ALJ credited Drs. Jin's and Go's opinions based on their understanding and consideration of the exertional requirements of Claimant's usual coal mine work. Decision and Order at 23. Consequently, we see no error in the ALJ's finding that the opinions of Drs. Jin and Go are well-reasoned and sufficient to satisfy Claimant's burden of proof. *See Hicks*, 138 F.3d at 533; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

Additionally, we reject Employer's general contention that the ALJ provided "no rational explanation" for discrediting Dr. Zaldivar's opinion. Employer's Brief at 14. The ALJ explained that he gave Dr. Zaldivar's opinion "limited weight" because Dr. Zaldivar indicated Claimant had "abnormal breathing tests with airway obstruction" but did not adequately explain his conclusion that Claimant would be able to perform the exertional requirements of his usual coal mine work, outside of referencing that the objective tests were non-qualifying. Decision and Order at 22-23 (citing Employer's Exhibits 3 at 9; 7 at 30). The ALJ permissibly found Dr. Fino's mere reference to the regulatory standards for total disability is inadequately explained, as it ignores "the purpose of being able to determine a total pulmonary disability pursuant to 20 C.F.R. §718.204(b)(2)(iv)" regardless of whether the values from the objective tests are qualifying under 20 C.F.R. §718.204(b)(2)(i) and (ii). *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *Hicks*, 138 F.3d at 533; *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) ("even a 'mild' respiratory impairment may preclude the performance of the miner's usual duties"); Decision and Order at 23.

Regarding Dr. Rosenberg's opinion, Employer merely asserts the ALJ provided "no documentation" for giving his opinion only "some weight." Employer's Brief at 14-15.

However, after accurately summarizing Dr. Rosenberg's opinion that Claimant has an obstructive impairment that is not totally disabling, the ALJ explained it was unpersuasive to the extent Dr. Rosenberg focused "on the etiology of Claimant's pulmonary impairment more so than its severity." Decision and Order at 23 (citing Employer's Exhibits 5 at 7; 8 at 20); *see* 20 C.F.R. §718.204(b), (c); *see W. Va. CWP Fund v. Director, OWCP* [*Smith*], 880 F.3d 691, 698 (4th Cir. 2018); *Bosco v. Twin Pines Coal Co.*, 892 F.2d 1473, 1480-81 (10th Cir. 1989). As Employer identifies no specific error with the ALJ's characterization of Dr. Rosenberg's opinion, we affirm the ALJ's credibility finding. 20 C.F.R. §802.211(b); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983).

Because we have rejected Employer's assertions of error, we affirm the ALJ's determination, based on Drs. Jin's and Go's opinions, that the medical opinion evidence supports finding total disability at 20 C.F.R. §718.204(b)(2)(iv). *See Hicks*, 138 F.3d at 528; *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999) (Board must uphold decisions "that rest within the realm of rationality"); Decision and Order at 20-23. Additionally, as the ALJ specifically considered the pulmonary function and blood gas study evidence alongside the medical opinion evidence in concluding Claimant is totally disabled, we reject Employer's contention that the ALJ failed to consider the evidence as a whole. Decision and Order at 23; Employer's Brief at 15. Consequently, we affirm the ALJ's determination that Claimant is totally disabled, established an applicable change in condition, and invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §§718.204(b)(2), 725.309; Decision and Order at 23.

Disability Causation

To establish disability causation, Claimant must prove that pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause if it had "a material adverse effect on the miner's respiratory or pulmonary condition," or if it "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii).

The ALJ found Dr. Jin's opinion well-reasoned and documented and sufficient to support a finding that Claimant is totally disabled due to both legal and clinical pneumoconiosis. Decision and Order at 24-26. While Employer contends the ALJ erred in considering whether Claimant is totally disabled due to legal pneumoconiosis, Employer identifies no specific errors with respect to the ALJ's determination that Dr. Jin's opinion supports a finding of total disability due to clinical pneumoconiosis. *See* Employer's Brief

at 15-16; Decision and Order at 24-26.[10] We therefore affirm that determination. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Further, contrary to Employer's argument, the ALJ permissibly discredited the opinions of Drs. Zaldivar and Rosenberg regarding the cause of Claimant's disability because they failed to diagnose a totally disabling impairment when the ALJ found Claimant established he is totally disabled from a respiratory or pulmonary standpoint. *See Toler v. E. Assoc. Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995) (an ALJ who finds that the miner suffers from pneumoconiosis and is totally disabled "may not credit a medical opinion that the former did not cause the latter unless the ALJ can and does identify specific and persuasive reasons for concluding that the doctor's judgment on the question of disability causation does not rest upon [his] disagreement with the ALJ's finding as to either or both of the predicates in the causal chain."); Decision and Order at 25-26; Employer's Brief at 15-16. Because it is supported by substantial evidence, we therefore

---

[10] Dr. Jin attributed Claimant's disability "50%" to clinical pneumoconiosis (CWP) and "50%" to COPD. Director's Exhibit 17 at 5.

affirm the ALJ's finding that Claimant established total disability due to clinical pneumoconiosis.[11] 20 C.F.R. §718.204(c); Decision and Order at 26.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

---

[11] Because we have affirmed the ALJ's finding that Claimant has established total disability due to clinical pneumoconiosis based on Dr. Jin's opinion, we need not address Employer's arguments regarding Claimant's smoking history, legal pneumoconiosis, and whether Dr. Go's opinion supports a finding of total disability due to legal pneumoconiosis. *See Larioni*, 6 BLR at 1-1278; Employer's Brief at 3-12, 15-16.