

U.S. Department of Labor

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



BRB No. 20-0135 BLA

RALPH W. FARRIS, JR.)	
)	
Claimant-Respondent)	
)	
v.)	
)	
VALLEY CAMP COAL COMPANY)	DATE ISSUED: 01/29/2021
)	
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 Awarding Benefits of Drew A. Swank,
Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick & Long),
Ebensburg, Pennsylvania, for Claimant.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge Drew A. Swank's Decision and Order
Awarding Benefits (2018-BLA-06301) rendered on a subsequent claim filed on January 3,

2017,¹ pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The administrative law judge credited Claimant with fifteen and a half years of underground coal mine employment and found he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.² 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305. He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer challenges the administrative law judge's findings that Claimant established total disability and thereby invoked the Section 411(c)(4) presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file a substantive response.³

The Benefits Review Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order 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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

¹ Claimant filed two prior claims, each of which were denied. Director's Exhibits 1-2. The district director denied Claimant's most recent prior claim because he failed to establish any element of entitlement. Director's Exhibit 2.

² Section 411(c)(4) provides a rebuttable presumption that Claimant 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 We affirm, as unchallenged on appeal, the administrative law judge's findings that Claimant established total disability and invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7, 21. Because Claimant invoked the presumption he also established a change in an applicable condition of entitlement. 20 C.F.R. §725.309.

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as Claimant's coal mine employment occurred in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5.

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish that he has neither legal nor clinical pneumoconiosis,⁵ or that “no part of [his] 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)(i), (ii). The administrative law judge found Employer failed to establish rebuttal by either method.

To disprove legal pneumoconiosis,⁶ 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) (Boggs, J., concurring and dissenting).

Dr. Jaworski opined Claimant has legal pneumoconiosis in the form of emphysema due to cigarette smoking and coal mine dust exposure. Director’s Exhibit 26. Drs. Basheda and Spagnolo opined Claimant has asthma unrelated to his coal mine dust exposure. Employer’s Exhibits 1-5. The administrative law judge found Dr. Jaworski’s opinion “much better reasoned and persuasive” than the opinions of Drs. Basheda and Spagnolo, “especially in light of the *Preamble’s* connecting [chronic obstructive pulmonary disease] to coal mine dust exposure.” Decision and Order at 14.

Employer contends the administrative law judge summarily rejected Drs. Basheda’s and Spagnolo’s opinions based on the preamble to the revised regulations and erred in failing to consider their specific explanations for why Claimant’s asthma is not legal pneumoconiosis.⁷ Employer’s Brief at 9-11. We agree.

The administrative law judge’s only rationale for discrediting Drs. Basheda’s and Spagnolo’s opinions is that the preamble “links [chronic obstructive pulmonary disease (CODP)] (including asthma and emphysema) to coal mine dust exposure.” Decision and

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 Employer disproved that Claimant has clinical pneumoconiosis. Decision and Order at 12.

⁷ Employer also asserts Dr. Jaworski’s opinion is not credible because he did not address Claimant’s history of asthma. Employer’s Brief at 7.

Order at 14, *citing* 65 Fed. Reg. 79,920, 79,939 (Dec. 20, 2000). The administrative law judge appears to conclude, erroneously, that COPD must be attributable to coal mine dust inhalation and therefore Claimant's asthma constitutes legal pneumoconiosis. Decision and Order at 14; Employer's Brief at 10. Contrary to the administrative law judge's finding, whether a particular miner's COPD or asthma is due to coal mine dust exposure must be determined on a case-by-case basis in light of his consideration of the evidence. *See* 65 Fed. Reg. at 79,938; *Nat'l Mining Ass'n v. Dep't of Labor*, 292 F.3d 849, 861 (D.C. Cir. 2002); *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 314-16 (4th Cir. 2012). The administrative law judge failed to properly determine, based on the specific facts of this case, whether Employer's experts provided reasoned and documented opinions establishing that coal mine dust exposure did not significantly contribute to, or substantially aggravate, Claimant's COPD/asthma, or whether there were other deficiencies in their opinions, beyond his reference to the preamble.⁸ *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Because the administrative law judge did not adequately address the physicians' specific rationales for their opinions on legal pneumoconiosis and explain the weight he accorded them, his findings do not satisfy the requirements of the Administrative Procedure Act (APA).⁹ *See Wojtowicz*, 12 BLR at 1-165; *see McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires

⁸ Dr. Basheda described "apico-bullous emphysematous changes" on CT scans consistent with "tobacco abuse" and opined Claimant has "intermittent asthma." Employer's Exhibit 1. He testified that "coal miners can suffer from asthma, and that is related to asthmatic symptoms that are aggravated by the environment in the coal mines, whether that's dust or temperature. . . ." Employer's Exhibit 4 at 16. He stated that with any coal dust induced or occupational asthma, the individual "cannot exist in that environment without missing work and having serious health consequences." *Id.* He opined Claimant's asthma is not related to coal mine dust exposure "because he did not miss work due to respiratory symptoms" while employed in coal mining. *Id.* at 16-17. Dr. Spagnolo opined Claimant's asthma is unrelated to coal mine dust exposure because he is on medication for bronchospasm and his obstructive impairment is at least partially reversible, while coal mine dust exposure causes a fixed impairment. Employer's Exhibits 2 at 10, 5.

⁹ The Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), requires the administrative law judge to set forth his "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A).

remand). We therefore vacate the administrative law judge's determination that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A).

The administrative law judge also found Employer failed to establish that no part of Claimant's respiratory or pulmonary disability was caused by pneumoconiosis.¹⁰ 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 21-23. The administrative law judge discredited Drs. Basheda's and Spagnolo's opinions on disability causation because they did not diagnose legal pneumoconiosis or total disability. Decision and Order at 23. Since we have vacated the administrative law judge's findings on legal pneumoconiosis, we also vacate his determination that Employer did not establish Claimant's respiratory disability is unrelated to pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). Thus, we vacate the award of benefits.

On remand, the administrative law judge must reconsider whether Employer disproved the existence of legal pneumoconiosis by affirmatively establishing 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*, 25 BLR at 1-155 n.8. In doing so, he must fully address Drs. Basheda's and Spagnolo's opinions for why Claimant's asthma/emphysema does not constitute legal pneumoconiosis.

If the administrative law judge finds Employer has disproved the existence of legal pneumoconiosis, Employer has rebutted the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(i), and he need not reach the issue of disability causation. However, if Employer fails to rebut the presumption at 20 C.F.R. §718.305(d)(1)(i), the administrative law judge must determine whether Employer has rebutted the presumed fact of disability causation at 20 C.F.R. §718.305(d)(1)(ii) with credible proof that "no part of [Claimant's] 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 evaluating the medical opinions on remand, the administrative law judge should address the physician's explanations for their diagnoses, the documentation underlying

¹⁰ The administrative law judge incorrectly stated Employer "must rule out the miner's coal mine employment as a contributing cause of the totally disabling respiratory or pulmonary impairment" Decision and Order at 22, *quoting* 77 Fed. Reg. 19,456, 19,463 (Mar. 30, 2012), and applied that erroneous standard in analyzing the evidence and reaching his conclusions. The correct standard is whether Employer disproved disability causation by showing that no part of Claimant's respiratory or pulmonary total disability was caused by *pneumoconiosis*. 20 C.F.R. §20 C.F.R. §718.305(d)(1)(ii).

their medical judgments, and the sophistication of, and bases for, their conclusions. *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441. Further, he must consider all the relevant evidence in reaching his determinations. *See McCune*, 6 BLR at 1-998; Director's Exhibit 26; Employer's Exhibits 1, 2, 4, 5. He must also set forth his findings in detail, including the underlying rationale for his decision as the APA requires. *See Wojtowicz*, 12 BLR at 1-165.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed in part, vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge