U.S. Department of Labor

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

BRB No. 20-0450 BLA

PHILLIP R. REYNOLDS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
ISLAND CREEK COAL COMPANY	)	
	)	DATE ISSUED: 07/19/2021
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 Paul R. Almanza, Administrative Law Judge, United States Department of Labor.

Catherine A. Karczmarczyk (Penn, Stuart & Eskridge) Bristol, Tennessee for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge Paul R. Almanza's Decision and Order Awarding Benefits (2016-BLA-05832) rendered on a claim filed on November 7, 2014, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The administrative law judge credited Claimant with 20.62 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.[1] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the administrative law judge 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.

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.[3] 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).

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 that "no part of

[1] Section 411(c)(4) of the Act 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); *see* 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the administrative law judge's findings that Claimant established 20.62 years of underground coal mine employment, total disability at 20 C.F.R. §718.204(b)(2), and invocation of the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 2, 17-18.

[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); Decision and Order at 3, 6; 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

[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); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-150 (2015). The administrative law judge found Employer rebutted the presumption that Claimant suffers from clinical pneumoconiosis, but did not rebut the presumption that he has legal pneumoconiosis or that no part of his total disability was caused by it. Decision and Order at 21.

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*, 25 BLR at 1-155 n.8.

Employer argues the administrative law judge erred in rejecting the opinions of Drs. McSharry and Sargent as inadequately reasoned. Employer's Brief at 4. We disagree.

The administrative law judge correctly noted Drs. McSharry and Sargent both opined Claimant's respiratory impairment is due solely to smoking. Decision and Order at 22. He also accurately observed that "both physicians pointed to the lack of radiographic evidence of pneumoconiosis as evidence that Claimant does not have legal pneumoconiosis."[5] *Id.* Contrary to Employer's contention, the administrative law judge permissibly found their rationales unpersuasive because the regulations differentiate between legal and clinical pneumoconiosis and do not require a positive x-ray for clinical pneumoconiosis in order to diagnose legal pneumoconiosis. *See* 20 C.F.R. §§718.202(a)(4), 718.202(b); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012) (regulations "separate clinical and legal pneumoconiosis into two different diagnoses" and "provide that no claim for benefits shall be denied solely on the

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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] Dr. McSharry opined the Claimant has emphysema, "common in long-time smokers such as the Claimant." Employer's Exhibit 3 at 2. Dr. McSharry stated that the Claimant's smoking history and "the lack of radiological evidence of injury to the lungs from coal causes me to believe to a reasonable degree of medical certainty that coal worker's pneumoconiosis is not present in its legal form." *Id.* Dr. Sargent also diagnosed emphysema, which he attributed to Claimant's long-time smoking history. Employer's Exhibit 1 at 2. Dr. Sargent explained that "in the absence of a positive chest x-ray, it is unlikely that coal dust exposure has resulted in the development of significant emphysema in this situation." *Id.*

basis of a negative chest x-ray") (internal quotations omitted); *Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 256-57 (3d Cir. 2011), *aff'g J.O.* [*Obush*] *v. Helen Mining Co.*, 24 BLR 1-117, 1-125-26 (2009) (affirming the discrediting of a physician's opinion because the administrative law judge "fairly read" it as requiring radiographic evidence of clinical evidence before he would diagnose legal pneumoconiosis). Additionally, the administrative law judge correctly noted that a diagnosis of legal pneumoconiosis is not precluded even if Dr. McSharry is correct that emphysema is common in smokers. Decision and Order at 22; Employer's Exhibit 3; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

Employer's arguments on legal pneumoconiosis are a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because the administrative law judge permissibly found the opinions of Drs. McSharry and Sargent inadequately reasoned, we affirm his finding that Employer did not disprove legal pneumoconiosis.[6] *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 672 (4th Cir. 2017); *Lewis Coal Co. v. Director, OWCP* [*McCoy*], 373 F.3d 570, 580 (4th Cir. 2004) (administrative law judge may reject medical findings that conflict with the regulations); Decision and Order at 15. Thus, we affirm the administrative law judge's determination that Employer did not rebut the presumption by establishing Claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

Employer may also rebut the presumption by establishing "no part of [Claimant's] 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)(ii). The administrative law judge found Drs. McSharry's and Sargent's opinions not credible to disprove disability causation because they did not diagnose legal pneumoconiosis. Decision and Order at 23, *citing Toler v. E. Associated Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995). Employer raises no specific allegations of error regarding the administrative law judge's findings on disability causation, other than its general contention that Claimant does not have legal pneumoconiosis, which we have rejected. We therefore affirm the administrative law judge's determination that Employer failed to establish no part of Claimant's respiratory

[6] Because Employer has the burden of proof on rebuttal and we have affirmed the administrative law judge's discrediting of Employer's experts, we need not address Employer's challenge to the weight that the administrative law judge assigned the opinion of Dr. Forehand diagnosing legal pneumoconiosis. Employer's Brief at 3.

disability was due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 17.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge