U.S. Department of Labor

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

BRB No. 20-0344 BLA

DANNIE D. FULLER Claimant-Respondent v. GLAMORGAN COAL CORPORATION and Self-insured through SMARTCASUALTYCLAIMS, TPA Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 06/28/2021 DECISION and ORDER

Appeal of Decision and Order Awarding Benefits of Paul R. Almanza, Associate Chief Administrative Law Judge, United States Department of Labor.

Catherine A. Karczmarczyk (Penn, Stuart & Eskridge), Johnson City, Tennessee, for Employer and its Carrier.

Before: BUZZARD, ROLFE and GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Associate Chief Administrative Law Judge Paul R. Almanza's Decision and Order Awarding Benefits (2016-BLA-05797) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim filed on April 15, 2014.[1]

The administrative law judge credited Claimant with twenty-seven and one-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 determined Claimant invoked 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] and therefore established a change in an applicable condition of entitlement. 20 C.F.R. §725.309. He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer asserts the administrative law judge erred in finding Claimant established total disability and invoked the Section 411(c)(4) presumption.[3] Neither Claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

The Benefit 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

[1] Claimant filed a previous claim on April 12, 2001. The district director denied it because the evidence did not establish any element of entitlement. Director's Exhibit 1 at 342-43.

[2] Section 411(c)(4) 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); *see* 20 C.F.R. §718.305.

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that Claimant established twenty-seven and one-half years of underground coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7, 32.

[4] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 11, 12.

by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, 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 administrative law judge 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 administrative law judge found the pulmonary function studies establish total disability. 20 C.F.R. §718.204(b)(2)(i).[5] He weighed four studies the parties submitted dated May 7, 2014, September 8, 2015, June 6, 2017, and June 27, 2017, and eight studies contained in Claimant's treatment records dated June 2, 2009, April 6, 2010, March 8, 2011, February 28, 2012, February 5, 2013, January 28, 2014, January 26, 2015, and June 8, 2017. Decision and Order at 10-11; Director's Exhibits 13, 14; Employer's Exhibits 1, 6; Claimant's Exhibit 6. He found the May 7, 2014 and June 27, 2017 studies produced qualifying values for total disability pre-bronchodilator, whereas the remaining studies produced non-qualifying values pre-bronchodilator.[6] Decision and Order at 10-11. None of the studies produced qualifying values post-bronchodilator. *Id*.

The administrative law judge gave determinative weight to the pre-bronchodilator studies. Decision and Order at 11-12. He also gave greatest weight to the qualifying June 27, 2017 study because it was taken most recently, no physician invalidated it, and its results are consistent with the other pulmonary function studies taken within the same time-frame that, while not "qualifying for disability, also reflect a significant pulmonary

[5] The administrative law judge found the arterial blood gas study and medical opinion evidence insufficient to establish total disability, and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii)-(iv); Decision and Order at 23-26.

[6] A "qualifying" pulmonary function study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendix B, for establishing total disability. 20 C.F.R. §718.204(b)(2)(i). A "non-qualifying" study exceeds those values.

impairment." *Id*. Thus he found Claimant established total disability based on the qualifying June 27, 2017 pre-bronchodilator study. *Id*.

Employer generally asserts the administrative law judge "erred by finding that the pulmonary function testing preponderated in favor of a finding of total disability." Employer's Brief at 3-4 (unpaginated). It points to no specific error, however, in the administrative law judge finding the qualifying June 27, 2017 pre-bronchodilator study entitled to controlling weight.[7] *Id*.; *see Parsons v. Wolf Creek Collieries*, 23 BLR 1-29, 1-35 (2004); *Workman v. E. Assoc. Coal Corp.*, 23 BLR 1-22, 1-27 (2004). As the Board must limit its review to contentions of error the parties specifically raise, and Employer raises no specific error in the administrative law judge's decision to give greatest weight to the most recent qualifying test, *see* 20 C.F.R. §§802.211, 802.301; *Cox v. Benefits Review Board*, 791 F.2d 445, 446 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987), we affirm the administrative law judge's determination that the pulmonary function study evidence establishes total disability. 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 12. We also affirm his finding that the evidence overall establishes total disability. *See Shedlock*, 9 BLR at 1-198; 20 C.F.R. §718.204(b)(2).

Consequently, we affirm the administrative law judge's determinations that Claimant invoked the Section 411(c)(4) presumption and established a change in an applicable condition of entitlement. 20 C.F.R. §§718.305(b)(1), 725.309(c); Decision and Order at 23-24. We further affirm, as unchallenged, the administrative law judge's finding that Employer did not rebut the Section 411(c)(4) presumption. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.305(d)(1).

[7] Employer states the administrative law judge should not have found total disability because ten of the twelve studies are not qualifying and Dr. Ajjarapu, who performed the qualifying studies, has "no specialized training in the field of pulmonary medicine." Employer's Brief at 3-4 (unpaginated). This argument is a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Moreover, Employer does not allege error in the administrative law judge's finding that the blood gas studies and medical opinions do not undermine a finding of total disability based on the pulmonary function studies. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.204(b)(2) (qualifying evidence under any category "shall establish a miner's total disability" absent "contrary probative evidence"); Decision and Order at 23.

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge