U.S. Department of Labor

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

BRB No. 21-0189 BLA

JACKIE R. BEGLEY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PIGEON CREEK PROCESSING	)	
	)	
and	)	
	)	
CHARTIS CASUALTY COMPANY/AIG	)	DATE ISSUED: 6/22/2022
	)	
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 Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

Catherine A. Karczmarczyk (Penn, Stuart & Eskridge) Bristol, Virginia, for Employer and its Carrier.

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

GRESH and JONES, Administrative Appeals Judges:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Jonathan C. Calianos's Decision and Order Awarding Benefits (2018-BLA-05620) 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 January 19, 2016.[1]

The ALJ credited Claimant with 12.8 years of coal mine employment. Thus, Claimant could not invoke the rebuttable 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 whether Claimant established entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established legal pneumoconiosis and a totally disabling respiratory or pulmonary impairment due to legal pneumoconiosis. 20 C.F.R. §§718.202, 718.204(b), (c). He therefore found Claimant established a change in an applicable condition of entitlement and awarded benefits.[3] 20 C.F.R. §725.309.

On appeal, Employer contends the ALJ erred in finding Claimant established legal pneumoconiosis and disability causation. Neither Claimant nor the Director, Office of the 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

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[1] Claimant filed a previous claim on August 28, 2013, which the district director denied because the evidence did not establish total disability. Director's Exhibit 1.

[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] 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 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 Claimant's prior claim for failure to establish total disability, Claimant needed 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 1.

accordance with applicable law.[4] 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, 362 (1965).

Entitlement Under 20 C.F.R. Part 718

Without the benefit of any presumption,[5] Claimant must establish disease (pneumoconiosis);[6] disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment);[7] 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 one of these elements 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, 1-2 (1986) (en banc).

Legal Pneumoconiosis

To establish legal pneumoconiosis,[8] Claimant must demonstrate he has a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine work in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 11; Director's Exhibits 4, 5.

[5] The ALJ noted Claimant is not entitled to any of the presumptions set forth at 20 C.F.R. §718.202(a)(3). Decision and Order at 32. *See* 30 U.S.C. §921(c)(3)-(4) (2018), as implemented by 20 C.F.R. §§718.304, 718.305.

[6] The ALJ found Claimant did not establish the existence of clinical pneumoconiosis. 20 C.F.R. §718.202(a)(1); Decision and Order at 32.

[7] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established total disability at 20 C.F.R. §718.204(b)(2). Decision and Order at 31, 37; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Therefore, we also affirm his finding that Claimant established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(c); Decision and Order at 31.

[8] "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

exposure in coal mine employment." 20 C.F.R. §718.201(b). The ALJ considered Dr. Wooten's opinion, submitted in conjunction with Claimant's initial claim; the new opinions of Drs. Ajjarapu, McSharry, and Sargent; and Claimant's treatment records submitted in his current and prior claims. In Claimant's prior claim, Dr. Wooten conducted the Department of Labor (DOL)-sponsored complete pulmonary evaluation on September 21, 2013 and diagnosed legal pneumoconiosis in the form of chronic obstructive pulmonary disease (COPD) due to Claimant's combined history of smoking[9] and coal mine dust exposure. Director's Exhibit 1 at 54 (unpaginated). Dr. Ajjarapu conducted the DOL-sponsored complete pulmonary evaluation in Claimant's current claim on March 2, 2016 and opined he has legal pneumoconiosis in the form of chronic bronchitis due to smoking and coal mine dust exposure. Director's Exhibit 13 at 17, 23 (unpaginated). Dr. McSharry attributed Claimant's respiratory symptoms, which included cough, sputum production and "very mild airflow obstruction," to his history of smoking and ongoing exposure to second-hand smoke.[10] Director's Exhibit 18 at 4 (unpaginated). Dr. Sargent similarly opined Claimant's mild obstructive respiratory impairment is consistent with smoking and asthma but not coal mine dust exposure. Director's Exhibit 19 at 3 (unpaginated); Employer's Exhibits 9 at 2, 13. The ALJ found Drs. Ajjarapu's and Wooten's opinions well-reasoned and discredited Drs. Sargent's and McSharry's opinions as inadequately reasoned. Decision and Order at 32-36.

Employer contends the ALJ improperly shifted the burden of proof by focusing on the reasons why the Employer's experts were neither well-reasoned nor well-documented to affirmatively disprove the existence of pneumoconiosis, instead of establishing why the Claimant's experts were sufficient to affirmatively prove the presence of pneumoconiosis. Because Employer maintains the ALJ did not equally scrutinize the evidence, it asserts the

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significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[9] The ALJ found Claimant smoked one pack of cigarettes per day for ten years. Decision and Order at 7. We affirm this finding as unchallenged. *Skrack*, 6 BLR at 1-711.

[10] Dr. McSharry opined "[C]laimant's symptoms and pulmonary function abnormalities can be entirely explained by his history of cigarette smoking," concluding Claimant's "mild impairment . . . in all likelihood" is not due to coal mine dust exposure. Decision and Order at 33-34, *quoting* Director's Exhibit 18 at 4 (unpaginated). The ALJ further noted Dr. Sargent concluded that Claimant's "impairment is entirely consistent with and explained by his history of cigarette smoking and narcotic use" and "no facet of [Claimant's] impairment . . . is exclusive to impairment caused by coal dust exposure." Decision and Order at 33-35, *citing* Director's Exhibit 19 at 3-4 (unpaginated).

ALJ's finding of legal pneumoconiosis does not satisfy the Administrative Procedure Act (APA).[11] Employer's Brief at 6-10; *see* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). We disagree.

Contrary to Employer's and our dissenting colleague's contentions, the ALJ did not shift the burden of proof to Employer; rather, he examined the reasoning of each physician to determine if his or her opinion was adequately explained. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); Decision and Order at 32-36. The ALJ correctly stated Claimant bears the burden of establishing legal pneumoconiosis and considered whether Drs. Wooten's and Ajjarapu's opinions are sufficient to establish legal pneumoconiosis. Decision and Order at 32-33; *see* 20 C.F.R. §718.201(b).

As the ALJ noted, Dr. Wooten examined Claimant and considered his smoking and work histories,[12] symptoms, medical history, and diagnostic testing. Dr. Wooten explained that he attributed Claimant's COPD to both smoking and coal mine dust exposure because "it is impossible to determine the relative contribution of either to his current symptoms." Director's Exhibit 1 at 54 (unpaginated). Similarly, Dr. Ajjarapu examined Claimant and considered his smoking and work histories,[13] symptoms, medical history, and diagnostic testing in opining that the underlying etiologies of Claimant's chronic bronchitis were his coal mine dust exposure and tobacco abuse. Director's Exhibit 13 at 23 (unpaginated).

As Drs. Wooten and Ajjarapu indicated that Claimant's obstructive impairment is significantly related to or substantially aggravated by coal dust exposure, we see no error in the ALJ's determination that their opinions are sufficient to establish legal

[11] 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).

[12] The ALJ noted Dr. Wooten relied on exaggerated coal mine employment and smoking histories but found they did not detract from her diagnosis of legal pneumoconiosis. Decision and Order 33 n.21; *see* Director's Exhibit 1 at 52-53 (unpaginated); *Looney*, 678 F.3d at 311 n.2.

[13] Consistent with the ALJ's findings, Dr. Ajjarapu considered a smoking history of one-half to one pack of cigarettes per day for eleven years. Decision and Order at 7; Director's Exhibit 13 at 18 (unpaginated); *see Looney*, 678 F.3d at 311 n.2. She also considered Claimant's employment history form, which is consistent with the ALJ's finding of 12.8 years of coal mine employment. Decision and Order at 18; Director's Exhibits 4, 13 at 17 (unpaginated).

pneumoconiosis. *See Westmoreland Coal Co., Inc. v. Cochran*, 718 F.3d 319, 322-23 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 311-12 (4th Cir. 2012) (physician's opinion that lung disease arose from "a combination of" coal mine dust exposure and smoking was sufficient to establish legal pneumoconiosis); *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-18-19 (2003) (physician need not specifically apportion extent to which various causal factors contribute to a respiratory or pulmonary impairment); Decision and Order at 32-33, 36. Further, it is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Looney*, 678 F.3d at 316-17; *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) ("The Board will not interfere with credibility determinations unless they are inherently incredible or patently unreasonable."). To the extent that Drs. Wooten's and Ajjarapu's opinions are supported by Claimant's relevant work and smoking histories, symptoms, physical findings, and the results of objective tests, we affirm the ALJ's determination that they are reasoned and documented. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 207-08, 211 (4th Cir. 2000); *Fields v. Island Creek Coal Co*., 10 BLR 1-19, 1-21-22 (1987) (reasoned opinion is one in which the ALJ finds the underlying documentation adequate to support the physician's conclusions); *Gross*, 23 BLR at 1-18-19; Decision and Order at 32-33, 36.

Regarding Employer's experts, the ALJ accurately noted Dr. McSharry excluded a diagnosis of legal pneumoconiosis, in part, because there was no radiographic evidence of clinical pneumoconiosis. Decision and Order at 34; Director's Exhibit 18 at 4 (unpaginated). The ALJ permissibly found Dr. McSharry's opinion inconsistent with the regulations, which do not require a positive x-ray in order to diagnose legal pneumoconiosis. 20 C.F.R. §718.202(a)(4), (b); *see also* 65 Fed. Reg. 79,920, 79,945 (Dec. 20, 2000); *Looney*, 678 F.3d at 313; Decision and Order at 34-35.

The ALJ also accurately noted Dr. Sargent opined Claimant "may have a mild reversible impairment consistent with asthma" and that he denied coal mine dust exposure can cause asthma apart from temporary aggravation that resolves after cessation of exposure. Decision and Order at 35; Employer's Exhibits 9 at 2, 13 at 25. The ALJ permissibly discounted Dr. Sargent's opinion because he expressed views inconsistent with the regulations, which recognize that pneumoconiosis can be a latent and progressive disease which first manifests itself long after the cessation of coal mine dust exposure. *See* 20 C.F.R. §718.201(c); *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be both latent and progressive may be discredited); Decision and Order at 35.

Additionally, the ALJ noted that while both Drs. McSharry and Sargent opined Claimant's respiratory condition is entirely explained by, or consistent with, his smoking history, neither physician adequately addressed the potentially additive effects of coal mine

dust exposure and smoking, and they failed to persuasively explain why coal mine dust exposure did not substantially aggravate Claimant's respiratory impairment, even if it was caused primarily by smoking.[14] *See* 65 Fed. Reg. at 79,940; *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 674 (4th Cir. 2017); Decision and Order at 33-36. Although Employer generally asserts the ALJ did not explain his findings as the APA requires, it does not identify any specific error in the reasons the ALJ gave for discrediting Drs. McSharry's and Sargent's opinions. 20 C.F.R. §802.211(b) (requirements for an issue to be adequately briefed); *see 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).

Employer's arguments amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. Because the ALJ sufficiently explained his credibility determinations in accordance with the APA, and his findings are supported by substantial evidence, we affirm his conclusion that Claimant established legal pneumoconiosis. *See* 20 C.F.R. §§718.201(a)(2), 718.202(a)(4); *Mingo Logan Coal Co v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (duty of explanation under the APA is satisfied as long as the reviewing court can discern what the ALJ did and why he did it); Decision and Order at 36.

Disability Causation

To establish disability causation, Claimant must prove 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 has "a material adverse effect on the miner's respiratory or pulmonary condition" or "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is

[14] The ALJ noted Drs. McSharry and Sargent concluded chronic opioid use also played a role in Claimant's respiratory impairment. Decision and Order at 33, 36. Dr. McSharry noted Claimant's elevated carbon dioxide levels, stated the "exertional rise . . . is not adequately explained by the degree of pulmonary function abnormalities seen in this [C]laimant," and "suspect[ed]" chronic narcotic use caused the reduced respiratory drive. Director's Exhibit 18 at 4 (unpaginated). Dr. Sargent explained that Claimant's mild resting hypercarbia, evident on his blood gas study results, is due to his chronic narcotic use and long-term opioid therapy. Director's Exhibit 19 at 3 (unpaginated); Employer's Exhibits 9 at 2; 13 at 11-13. As the ALJ permissibly determined, even if a portion of Claimant's respiratory impairment is due to opioid use, Drs. McSharry and Sargent did not adequately explain why coal dust did not have had an additive effect on Claimant's hypercarbia and obstructive impairment. *Stallard*, 876 F.3d at 674; Decision and Order at 36.

caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii); *see Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 37-38 (4th Cir. 1990).

Employer raises the same arguments on disability causation that it did regarding legal pneumoconiosis. Employer's Brief at 10. However, as discussed above, the ALJ permissibly relied on Dr. Ajjarapu's opinion in finding Claimant's respiratory impairment, which was determined to be totally disabling, constitutes legal pneumoconiosis.[15] *See Hicks*, 138 F.3d at 533; Decision and Order at 38. We therefore see no error in the ALJ's finding that her opinion is also sufficient to establish that Claimant's legal pneumoconiosis is a substantially contributing cause of his total disability. *See Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668-69 (6th Cir. 2015); *Hawkinberry v. Monongalia County Coal Co.*, 25 BLR 1-249, 1-255-57 (2019); Decision and Order at 38.

Additionally, the ALJ permissibly discounted the opinions of Drs. McSharry and Sargent on the cause of Claimant's respiratory disability because they did not diagnose legal pneumoconiosis, contrary to the ALJ's finding that legal pneumoconiosis was established.[16] *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995) (such an opinion "may not be credited at all" on disability causation absent "specific and persuasive reasons" for concluding the physician's view on disability causation is independent of his or her erroneous opinion on pneumoconiosis); Decision and Order at 38. As substantial evidence supports the ALJ's finding that Claimant is totally disabled due to legal pneumoconiosis, we affirm it. 20 C.F.R. §718.204(c).

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

SO ORDERED.

[15] We note the ALJ did not consider Dr. Wooten's opinion on disability causation.

[16] Drs. McSharry's and Sargent's opinions as to disability causation rested on their assumption that legal pneumoconiosis did not exist.

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Chief Administrative Appeals Judge, dissenting:

I respectfully dissent from the majority's decision to affirm the award of benefits because I agree with Employer that the ALJ failed to equally scrutinize the medical opinions – holding Employer's experts to a higher standard – and thus improperly shifted the burden of proof. See *Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-139-40 (1999) (en banc); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); Employer's Brief at 6-10. These errors require remand.

Employer correctly points out that the ALJ provided an extensive analysis of whether its experts adequately explained their rationales while summarily concluding the opinions of Claimant's experts were sufficient to establish legal pneumoconiosis. Employer's Brief at 7-8. In reference to the credibility of the opinions of Drs. Ajjarapu and Wooten,[17] the ALJ merely stated, "[t]he opinions of both the former physicians are both documented and reasoned. They each considered Claimant's coal mine employment and cigarette smoking history, symptoms and complaints, clinical testing, and medical history." Decision and Order at 32-33. Both Drs. Sargent and McSharry, Employer's experts, also considered these factors and came to a different conclusion. Director's Exhibits 18, 19. While the ALJ dissected the opinions of Drs. Sargent and McSharry, he simply accepted the conclusions of Drs. Ajjarapu and Wooten without any analysis or discussion of the reasoning of their opinions. The ALJ is entitled to weigh and draw inferences from the evidence, *see, e.g., Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); however, he also is required to provide a reasoned analysis and explanation for his findings, *see, e.g., Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *see also* 5 U.S.C. §557(c)(3)(A). As he did not do so here, *see* Decision

[17] Dr. Wooten conducted Claimant's Department of Labor (DOL) complete pulmonary evaluation in his prior claim and Dr. Ajjarapu conducted the DOL evaluation in his current claim. Director's Exhibits 1, 13.

and Order at 32-33, I would remand for him to reconsider whether Claimant established the existence of legal pneumoconiosis and provide appropriate explanations for his findings. Thus, I also agree with Employer that the ALJ erred in finding Claimant established total disability causation because his conclusions were based on his legal pneumoconiosis determination. *See* Employer's Brief at 10.

Accordingly, I would vacate the ALJ's findings that Claimant established legal pneumoconiosis and total disability due to legal pneumoconiosis based on the opinions of Drs. Ajjarapu and Wooten and remand for the ALJ to equally scrutinize the evidence and explain his findings in accordance with the Administrative Procedure Act. Therefore, I respectfully dissent.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge