U.S. Department of Labor

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

BRB No. 23-0254 BLA

GEORGE E. BEVINS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
TROJAN MINING & PROCESSING	)	
	)	
and	)	
	)	
TRAVELERS INDEMNITY COMPANY	)	DATE ISSUED: 06/13/2024
	)	
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 Jason A. Golden, Administrative Law Judge, United States Department of Labor.

James M. Kenney (Baird & Baird P.S.C.), Pikeville, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Jason A. Golden's Decision and Order Awarding Benefits (2017-BLA-05059) rendered on a claim filed on August 21, 2015, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulation that Claimant has more than fifteen years of qualifying coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, he found 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).[1] The ALJ concluded that Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established a totally disabling respiratory or pulmonary impairment.[2] Neither Claimant nor the Director, Office of Workers' Compensation Programs (the Director), has filed a response.

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.[3] 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).

Invocation of the Section 411(c)(4) Presumption — Total Disability

A miner is totally disabled if he has a pulmonary or respiratory impairment which, standing alone, prevents him from performing his usual coal mine work and comparable

[1] 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); *see* 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant has more than fifteen years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

[3] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3; 23 at 10.

gainful work.[4] *See* 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 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 his treatment records, the medical opinion evidence, and the evidence as a whole.[5] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 25-26.

Medical Opinions and Treatment Records

The ALJ considered Dr. Ajjarapu's opinion that Claimant is totally disabled from a pulmonary perspective and the opinions of Drs. Fino and Rosenberg that he is not. Decision and Order at 18-26; Director's Exhibits 9, 19, 21, 76, 79; Employer's Exhibits 2, 4, 10-12. The ALJ accorded probative weight to Dr. Ajjarapu's opinion and little weight to Drs. Fino's and Rosenberg's opinions and thus concluded that the preponderance of the medical opinion evidence supports a finding of total disability. Decision and Order at 25. Furthermore, he found Claimant's treatment records support a finding of total disability. Decision and Order at 18; Claimant's Exhibit 5; Employer's Exhibit 16. Thus, the ALJ found Claimant established total disability. Decision and Order at 25-26.

Employer argues the ALJ erred in relying on Dr. Ajjarapu's medical opinion and Claimant's treatment records to find him totally disabled. Specifically, it contends the ALJ erred in finding the qualifying September 16, 2015 resting blood gas study[6] Dr. Ajjarapu conducted as part of the Department of Labor-sponsored complete pulmonary evaluation

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant's usual coal mine work as a miner helper required heavy manual labor. *See Skrack*, 6 BLR at 1-711; Decision and Order at 5.

[5] The ALJ determined that the pulmonary function and arterial blood gas studies do not establish a totally disabling impairment 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 5, 12, 15.

[6] A "qualifying" blood gas study yields values that are equal to or less than the applicable table values listed in Appendix C of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(ii).

of Claimant is in substantial compliance with the quality standards, which in turn undermined the ALJ's weighing of the medical opinions. Employer's Brief at 5-8. Employer further contends the ALJ failed to adequately explain why he found Dr. Ajjarapu's opinion well-reasoned and documented even assuming the blood gas study she obtained is valid.[7] *Id.* at 8-9. Finally, it contends the ALJ did not consider the medical opinions that addressed Claimant's treatment records prior to determining that the treatment records support a finding of total disability. *Id.* at 4-5. We disagree.

Initially, Employer argues the ALJ selectively analyzed the evidence to find the qualifying September 16, 2015 resting blood gas study in substantial compliance with the regulatory quality standards. Employer's Brief at 5-8. If a study does not precisely conform to the quality standards, but is in substantial compliance, it "constitute[s] evidence of the fact for which it is proffered." 20 C.F.R. §718.101(b). The ALJ, as the factfinder, must determine the probative weight to assign the study. *Orek v. Director, OWCP*, 10 BLR 1-51, 1-54-55 (1987). The party challenging the validity of a study has the burden to establish the results are suspect or unreliable. *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984).[8]

The ALJ considered the conflicting opinions on the issue. Drs. Vuskovich and Fino invalidated the study because of an "excessively long" delay from when the blood sample was drawn until it was analyzed.[9] Decision and Order at 12-15; Director's Exhibits 16 at

[7] The ALJ considered two blood gas studies, dated September 16, 2015, with values obtained at rest and with exercise, and November 9, 2016, with values obtained at rest only. Decision and Order at 12; Director's Exhibit 9; Employer's Exhibit 2. The resting September 16, 2015 blood gas study, obtained in conjunction with Dr. Ajjarapu's examination, is the only blood gas study of record to qualify as disabling. Decision and Order at 12; Director's Exhibit 9.

[8] In *Vivian*, the Board explained that because "neither the Board nor the [ALJ] has the requisite medical expertise," a finding that a blood gas study is unreliable requires "medical evidence establishing such unreliability." *Vivian v. Director, OWCP*, 7 BLR 1-360, 1-361 (1984). Because the Director did not offer or identify medical evidence establishing the blood gas study was unreliable, the Board affirmed the ALJ's crediting of the study. *Id.*

[9] Dr. Vuskovich opined that the study was technically acceptable but invalid because the time between when the blood was drawn and then analyzed was "very long," which caused the oxygen to be artificially low and the carbon dioxide artificially high. Employer's Exhibit 15 at 12-13, 15-17. Dr. Fino invalidated the blood gas study because he indicated the blood gas should be measured within a maximum of five to ten minutes

2; 19 at 7; Employer's Exhibits 4 at 9-10; 12 at 1-2; 15 at 11. Dr. Ajjarapu disagreed, indicating the blood gas study is valid because it was analyzed within the "allowed time frame." Director's Exhibit 21. Similarly, Dr. Gaziano found the study is valid because less than one hour passed between the blood draw and the analysis. Director's Exhibits 14, 80.

The ALJ noted that while the regulations require a blood gas study report to include the time between when the blood sample is drawn and analyzed, they provide no guidance as to what an acceptable timeframe is. Decision and Order at 14-15; *see* 20 C.F.R. §718.105(c). He explained he did not find Drs. Vuskovich's and Fino's opinions that the oxygen in the blood sample would continue to decrease as it "sits around for a while" are necessarily incorrect, but rather, they did not convince him that the amount of time that passed before the blood sample was analyzed was sufficient to render the results unreliable. Decision and Order at 15 n.42. Specifically, he found that the doctors did not explain at what rate the oxygen levels fell given the time that passed, nor did they cite to any medical literature to support their opinions that the time period here rendered the results unreliable. *Id.* at 14-15. Further, the ALJ indicated that even if he discredited the contrary opinions of Drs. Ajjarapu and Gaziano that the study was valid, he would still find Employer's evidence insufficient to invalidate the study. *Id.* at 15; *see Vivian*, 7 BLR at 1-361.

Thus, contrary to Employer's contention, the ALJ considered the relevant evidence and permissibly found Drs. Vuskovich's and Fino's opinions do not credibly demonstrate that the September 16, 2015 resting blood gas study results are unreliable. *See Martin v. Ligon Preparation Co*., 400 F.3d 302, 305 (6th Cir. 2005); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 12-15. We therefore affirm the ALJ's determination that the September 16, 2015 blood gas study is in substantial compliance with the regulations and thus could be relied upon in making a disability determination.[10] *See Martin*, 400 F.3d at 305; Decision and Order at 15.

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after the blood is drawn because the blood continues to use oxygen, which "certainly could account for the reduction in [oxygen]." Director's Exhibit 19 at 7; Employer's Exhibit 4 at 9-10.

[10] Even if the ALJ had found the September 16, 2015 study was not in substantial compliance with the regulations, Employer has not explained how such a finding would necessarily undermine Dr. Ajjarapu's disability opinion. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"). As the ALJ found, Dr. Ajjarapu explained that in addition to "severe hypoxemia," Claimant's pulmonary function study demonstrated a moderate

Employer also contends the ALJ failed to consider an alleged internal inconsistency in Dr. Ajjarapu's opinion, namely, the doctor failed to explain how Claimant is totally disabled when the exercise blood gas study produced a normal oxygen value on the same day as the qualifying resting blood gas study. Employer's Brief at 8-9. Contrary to Employer's argument, the ALJ specifically addressed Dr. Ajjarapu's explanation that while Claimant's oxygen value improved with exercise, he retained carbon dioxide, and Dr. Ajjarapu's overall conclusion that his pulmonary impairment renders him disabled from performing his coal mining duties. Decision and Order at 24; Director's Exhibit 79 at 3. He further found Dr. Ajjarapu's opinion consistent with Claimant's treatment records demonstrating respiratory failure, Claimant's relevant medical and exposure histories, the evidence Dr. Ajjarapu considered, and the ALJ's finding regarding the heavy exertional requirements of Claimant's usual coal mine employment. Decision and Order at 24; Director's Exhibits 9, 21, 76, 79. Thus, the ALJ permissibly found Dr. Ajjarapu's opinion well-reasoned and documented and worthy of probative weight. *See Napier*, 301 F.3d at 713-14; *Peabody Coal Co. v. Groves*, 277 F.3d 829, 836 (6th Cir. 2002); Decision and Order at 24-25.

We also reject Employer's argument that, in concluding Claimant's treatment records support total disability, the ALJ failed to consider Drs. Fino's and Rosenberg's supplemental reports addressing those treatment records. Employer's Brief at 4-5; Employer's Exhibits 9, 10. The ALJ specifically addressed the treatment records as well as the physicians' discussion of the records. Decision and Order 15-18, 21-22. Further, contrary to Employer's implication, the testing contained in Claimant's treatment records need not be qualifying for the treatment records to support total disability. *See* 20 C.F.R. §718.204(b)(2)(iv); *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, 1-51-52 (1986) (en banc) (ALJ may find total disability by comparing the severity of impairment and related physical limitations that a physician diagnoses with the exertional requirements of the miner's usual coal mine work). We therefore reject Employer's arguments concerning Claimant's treatment records and accordingly affirm the ALJ's determination regarding them.

Employer's arguments amount to 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

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impairment and she found him incapable of performing heavy labor. Decision and Order at 24; Director's Exhibits 21, 76, 79. Further, contrary to Employer's suggestion, a finding of total disability may be established notwithstanding non-qualifying objective testing. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 577 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); Employer's Brief at 6.

(1989). We therefore affirm the ALJ's decision to accord probative weight to Dr. Ajjarapu's opinion that Claimant is totally disabled from his usual coal mine employment and the ALJ's finding that the medical opinion evidence supports total disability, as it is supported by substantial evidence.[11] 20 C.F.R. §718.204(b)(iv); *see Martin*, 400 F.3d at 305; *Director, OWCP v. Rowe*, 710 F.2d 251, 254-55 (6th Cir. 1983); Decision and Order at 24-25. As Employer raises no further arguments regarding the ALJ's weighing of the evidence, we further affirm his finding that Claimant established he is totally disabled by a preponderance of the evidence and thus invoked the Section 411(c)(4) presumption. 20 C.F.R. §§718.204(b)(2), 718.305; Decision and Order at 25-26.

Finally, as Employer otherwise raises no specific contentions of error in the ALJ's findings that it failed to rebut the Section 411(c)(4) presumption, we affirm them. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.305(d); Decision and Order at 33-34.

[11] Employer also generally argues the ALJ erred in discrediting its experts' opinions that Claimant is not totally disabled "for all these reasons," apparently referencing its earlier challenges to Dr Ajjarapu's blood gas study and medical opinion, which we have already addressed. Employer's Brief at 9. Because Employer does not further explain its argument with respect to its experts' opinions, we decline to address it. *See Jones Bros. v. Sec'y of Labor*, 898 F.3d 669, 677 (6th Cir. 2018); *Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); 20 C.F.R. §802.211(b). Moreover, we note that the ALJ found their opinions undermined because they did not address how Claimant could perform heavy labor, particularly given that Dr. Rosenberg acknowledged the pulmonary function testing demonstrated "mild to moderate restriction" and both doctors noted Claimant's physical limitations such as dyspnea when ascending one flight of stairs and difficulty performing activities of daily living. Decision and Order at 23-25. Employer has not contested these findings. *See Skrack*, 6 BLR at 1-711.

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