U.S. Department of Labor

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

BRB No. 23-0423 BLA

LEONARD MARTIN	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
WARRIOR MET COAL MINING, LLC	)	
	)	
and	)	
	)	
Self-Insured through WARRIOR MET COAL MINING, LLC c/o SMART CASUALTY CLAIMS	)	DATE ISSUED: 06/05/2024
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Lystra A. Harris, Administrative Law Judge, United States Department of Labor.

John R. Jacobs and J. Thomas Walker (Maples Tucker & Jacobs, LLC), Birmingham, Alabama, for Claimant.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Lystra A. Harris's Decision and Order Denying Benefits (2021-BLA-05106) rendered on a subsequent claim filed on August 14, 2019,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with twenty-four years of underground coal mine employment, as stipulated by the parties at the hearing. However, she found he did not establish a totally disabling respiratory or pulmonary impairment and, therefore, 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] or establish a change in the applicable condition of entitlement.[3] 20 C.F.R. §§718.204(b)(2), 725.309(c). Consequently, she denied benefits.

On appeal, Claimant argues the ALJ erred in finding he did not establish total disability and, therefore, erred in finding he did not invoke the Section 411(c)(4) presumption. Employer filed a Motion to Waive [Its] Brief, informing the Benefits Review

[1] Claimant filed two prior claims. Director's Exhibits 1, 2. On April 15, 2014, the district director denied his more recent prior claim filed on September 11, 2013, for failure to establish total disability. Director's Exhibit 2.

[2] 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. §92l(c)(4) (2018); 20 C.F.R. §718.305(b).

[3] When a miner files a claim for benefits more than one year after the final denial of a previous claim, the ALJ must also deny the subsequent claim unless she finds "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(d); *see 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 Claimant failed to establish total disability in his prior claim, he had to submit new evidence establishing this element to obtain a review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3; 20 C.F.R. §725.309(c); Decision and Order at 2, 4; Director's Exhibit 2.

Board that it will not be filing a response brief. The Director, Office of Workers' Compensation Programs, also declined to file a response brief.[4]

The 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.[5] 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

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305. A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work[6] and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies, qualifying arterial blood gas studies,[7] evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions.[8] 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant

[4] We affirm, as unchallenged on appeal, the ALJ's crediting of Claimant with twenty-four years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit because Claimant performed his coal mine employment in Alabama. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 4 n.5; Director's Exhibits 5, 7.

[6] The ALJ found Claimant's usual coal mine work as a long wall operator required moderate exertion. Decision and Order at 5.

[7] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[8] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant did not establish total disability based upon the arterial blood gas studies and that there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(ii), (iii); *see Skrack*, 6 BLR at 1-711; Decision and Order at 6 n.6; 8-9; Director's Exhibit 12; Employer's Exhibit 3.

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). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

The ALJ found that a preponderance of the pulmonary function study evidence supports a finding of total disability. However, considering the blood gas studies, the medical opinions, and the evidence as a whole, the ALJ concluded Claimant did not have a totally disabling respiratory or pulmonary impairment.[9] Decision and Order at 6-12.

We agree with Claimant that the ALJ erred in finding he did not establish total disability. Claimant's Brief at 3-8. Before the ALJ, Employer conceded "the pulmonary function studies in evidence, *as well as the medical opinion reports*, establish the existence of a totally disabling pulmonary impairment." Employer's Post-hearing Brief at 7 (emphasis added). Concessions bind those that make them. *Consolidation Coal Co. v. Director, OWCP* [*Burris*], 732 F.3d 723, 730 (7th Cir. 2013) (Employer bound by its concession of total disability); *see also Nippes v. Florence Mining Co.*, 12 BLR 1-108, 1-109 (1985) (stipulation of fact made by a party is binding upon the parties and upon the trier-of-fact). Because Employer conceded the pulmonary function studies and medical opinions establish total disability, the ALJ erred in finding otherwise. *See Burris*, 732 F.3d at 730 (employer "bound by its concession below that [claimant] is totally disabled and has met his burden of demonstrating a change in one of the conditions of entitlement"); *see also Kott v. Director, OWCP*, 17 BLR 1-9, 1-13-14 (1992); *Perry v. Director, OWCP*, 5 BLR 1-527, 1-529 (1982) (ALJ errs if she addresses an issue that is not disputed).

Moreover, even had the ALJ permissibly found none of the medical opinions was sufficiently reasoned to independently establish total disability at 20 C.F.R. §718.204(b)(2)(iv), those opinions do not constitute contrary probative evidence to

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[9] In concluding that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2), the ALJ stated:

> The pulmonary function tests support a finding of total disability. The arterial blood gas tests do not support a finding of total disability. The physician[s'] opinions of record do not support a finding of total disability. Therefore, upon consideration of the evidence as a whole, I conclude Claimant has not established, by a preponderance of the evidence, that he is totally disabled due to a pulmonary or respiratory impairment.

Decision and Order at 12.

undermine the qualifying pulmonary function studies as no physician opined Claimant is not totally disabled.[10] 20 C.F.R. §718.204(b)(2) ("In the absence of contrary probative evidence, evidence which meets the standards of either paragraphs (b)(2)(i), (ii), (iii), or (iv) of this section shall establish a miner's total disability"); *see* Claimant's Brief at 8. Further, as the ALJ accurately noted, the non-qualifying blood gas studies also do not refute that Claimant is totally disabled based on the pulmonary function study evidence because the tests measure different types of impairment. *See Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 1040-41 (6th Cir. 1993); *Sheranko v. Jones & Laughlin Steel Corp.*, 6 BLR 1-797, 1-798 (1984); Decision and Order at 11-12.

Thus, in light of Employer's concession, we reverse the ALJ's finding that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2). Because the parties further stipulated to at least fifteen years of underground coal mine employment, Claimant invoked the Section 411(c)(4) presumption and established a change in the applicable condition of entitlement at 20 C.F.R. §725.309(c). *See E. Associated Coal Corp. v. Director, OWCP* [*Toler*], 805 F.3d 512, 511-14 (4th Cir. 2015) (fifteen-year presumption can be used to show a change in an applicable condition of entitlement); *see also Burris*, 732 F.3d at 730-31 (same). Consequently, we vacate the denial of benefits and remand the case for further consideration.

Remand Instructions

On remand, the ALJ must consider whether Employer can rebut the Section 411(c)(4) presumption by establishing Claimant has neither legal nor clinical pneumoconiosis,[11] or that "no part of [his] respiratory or pulmonary total disability was

[10] Drs. Barney and Rosenberg opined Claimant is totally disabled from a pulmonary standpoint. Director's Exhibit 12; Employer's Exhibit 2. Dr. Goldstein opined Claimant has "significant respiratory limitations" and an "impairment," while Dr. Connolly diagnosed Claimant with moderate to severe chronic obstructive pulmonary disease and resting hypoxemia. Aside from Dr. Connolly's statement that Claimant's resting hypoxemia "does not meet disability criteria," neither physician squarely addressed whether the conditions they diagnosed would prevent Claimant from performing his usual coal mine work. Claimant's Exhibit 2; Employer's Exhibit 3. The ALJ found the opinions of Drs. Barney and Rosenberg are not well reasoned. Decision and Order at 9-11.

[11] "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

caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1), (ii); *Oak Grove Res., LLC v. Director, OWCP* [*Ferguson*], 920 F.3d 1283, 1287-88 (11th Cir. 2019). In rendering her credibility findings, the ALJ must consider the comparative credentials of the physicians, the explanations for their conclusions, and the documentation underlying their medical judgments. *U.S. Steel Mining Co. v. Director, OWCP* [*Jones*], 386 F.3d 977, 992 (11th Cir. 2004). In reaching her conclusions on remand, the ALJ must explain the bases for her credibility determinations, findings of fact, and conclusions of law as the Administrative Procedure Act requires. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1985).

Accordingly, we affirm in part and reverse in part the ALJ's Decision and Order Denying Benefits, and we remand this case to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

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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).