U.S. Department of Labor

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

BRB No. 24-0075 BLA

MONROE F. COTTRELL

Claimant-Petitioner

v.

DUNKARD MINING COMPANY

and

STATE WORKERS' INSURANCE FUND (PENNSYLVANIA)

Employer/Carrier-Respondents

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR

Party-in-Interest

DATE ISSUED: 06/20/2024

DECISION and ORDER

Appeal of the Decision and Order Denying Modification and Denying Benefits of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick, & Long), Ebensburg, Pennsylvania, for Claimant.

Sean Bradley Epstein (Thomas, Thomas & Hafer, LLP), Pittsburgh, Pennsylvania, for Employer and its Carrier.

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

PER CURIAM:

Claimant[1] appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Denying Modification and Denying Benefits (2022-BLA-05458) 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 request for modification of a claim filed on April 3, 2019.

In a Decision and Order Denying Benefits issued May 6, 2021, the ALJ found the Miner did not establish a totally disabling respiratory or pulmonary impairment, nor the existence of pneumoconiosis. ALJ Exhibit 17. As he failed to establish an essential element of entitlement, she denied benefits. *Id.* The Miner timely requested modification of that denial on November 10, 2021, Director's Exhibit 39, and submitted a medical opinion from Dr. Al-Jaroushi in support of his request.[2] Director's Exhibits 41, 42.

In her Decision and Order Denying Modification and Denying Benefits dated November 7, 2023, the subject of the current appeal, the ALJ accepted the parties' stipulation that the Miner had thirty-two years of underground coal mine employment, but found Claimant did not establish total disability. 20 C.F.R. §718.204(b). Thus, she found Claimant could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[3] 30 U.S.C. §921(c)(4) (2018). She further found Claimant could not establish complicated pneumoconiosis, and therefore could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of

---

[1] Claimant is the widow of the Miner, who passed away on February 28, 2023, while this claim was pending. Claimant's Exhibit 2. She is pursuing this claim on behalf of the Miner's estate.

[2] Section 22 of the Longshore and Harbor Workers' Compensation Act (the Longshore Act), 33 U.S.C. §922, which is incorporated into the Act by 30 U.S.C. §932(a) and implemented by 20 C.F.R. §725.310, authorizes modification of an award or denial of benefits based on a change in conditions or a mistake in a determination of fact.

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if they had 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.

the Act, 30 U.S.C. §921(c)(3). Consequently, she found Claimant did not establish a mistake in a determination of fact or a change in conditions, 20 C.F.R. §725.310, and denied benefits.

On appeal, Claimant argues the ALJ erred in finding she did not establish the Miner had complicated pneumoconiosis and thus did not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not 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 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 (1965).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); 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. Statutory presumptions may assist claimants in establishing the elements of entitlement if certain conditions are met, but failure to establish any of them 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 (1986) (en banc).

Section 411(c)(3) of the Act provides an irrebuttable presumption that a miner was totally disabled due to pneumoconiosis if he suffered from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more large opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, is a condition that would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. In determining whether Claimant has invoked the irrebuttable presumption, the ALJ must weigh all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

---

[4] The Board will apply the law of the United States Court of Appeals for the Third Circuit, as the Miner performed his last coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3 at 1.

The ALJ found Claimant could not establish the existence of complicated pneumoconiosis based upon the x-rays, biopsies, medical opinions, computed tomography (CT) scans, or the Miner's treatment records. Decision and Order at 14-21. Claimant argues the ALJ erred in not giving controlling weight to Dr. Al-Jaroushi's medical opinion that the Miner suffered from complicated pneumoconiosis and was totally disabled as a result of his pneumoconiosis.[5] Claimant's Brief at 5-7 (unpaginated). We disagree.

Dr. Al-Jaroushi opined the Miner developed complicated pneumoconiosis in the left upper lobe of his lung, and the disease "was proven by biopsy." Claimant's Exhibit 1 at 1. The ALJ found the physician's opinion poorly documented and reasoned and entitled to little weight. Decision and Order at 17.

Claimant argues the ALJ's discrediting of Dr. Al-Jaroushi's opinion does not satisfy the explanatory requirements of the Administrative Procedure Act (APA).[6] Claimant's Brief at 6-7 (unpaginated); *see* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). We disagree.

The ALJ noted that, although Dr. Al-Jaroushi asserted the Miner had complicated pneumoconiosis proven by biopsy, he did not explain which biopsy supported his conclusion. Decision and Order at 17. She further noted the only biopsy evidence of record, a March 16, 2020 biopsy conducted on tissue removed from the left upper lobe of the Miner's lung, indicated squamous cell carcinoma and a lymph node with signs of anthracosis, but did not mention complicated pneumoconiosis. *Id.* at 17; *see* ALJ Exhibit 8 at 1. Because she found Dr. Al-Jaroushi based his opinion upon either the March 16, 2020 biopsy, which did not indicate complicated pneumoconiosis, or an unidentified biopsy report not made part of the record, she permissibly found his opinion poorly reasoned and documented. *See Balsavage v. Director, OWCP*, 295 F.3d 390, 396-97 (3d Cir. 2002); *Kertesz v. Director, OWCP*, 788 F.2d 158, 163 (3d Cir. 1986); Decision and Order at 17. Because the ALJ explained the grounds on which she discredited Dr. Al-

---

[5] We affirm as unchallenged the ALJ's findings that the x-ray, biopsy, CT scan, and treatment record evidence do not establish complicated pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.304(a)-(c); Decision and Order at 15-16, 18-21.

[6] The Administrative Procedure Act 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).

Jaroushi's opinion, we reject Claimant's argument that her finding did not satisfy the explanatory requirements of the APA.[7] *See Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 354 (3d Cir. 1997); *Wojtowicz*, 12 BLR at 1-165.

Claimant also argues the ALJ erred in not giving greater weight to Dr. Al-Jaroushi's opinion because he was the Miner's treating physician. Claimant's Brief at 4-5 (unpaginated). We disagree.

An ALJ may assign controlling weight to a treating physician's opinion based on the nature and duration of the physician's relationship with the miner and the frequency and extent of the treatment. 20 C.F.R. §718.104(d); *see Soubik v. Director, OWCP*, 366 F.3d 226, 235 (3d Cir. 2004). The weight given to a treating physician's opinion, however, "shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence, and the record as a whole." 20 C.F.R. §718.104(d)(5); *see Eastover Mining Co. v. Williams*, 338 F.3d 501, 513 (6th Cir. 2002) (treating physicians get "the deference they deserve based on their power to persuade"). In this case, as explained above, the ALJ found Dr. Al-Jaroushi's opinion poorly reasoned and documented and, thus, not credible. Decision and Order at 17. Because the ALJ found Dr. Al-Jaroushi's opinion unpersuasive, she was not required to assign his opinion controlling weight based on his status as a treating physician. *Williams*, 338 F.3d at 513.

We therefore affirm the ALJ's finding that the medical opinion evidence does not establish complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 18. Further, we affirm her finding that Claimant did not establish complicated pneumoconiosis in consideration of all of the relevant evidence weighed together, *see Melnick*, 16 BLR at 1-33, and thus did not invoke the Section 411(c)(3) presumption.[8] Decision and Order at

---

[7] To the extent Claimant argues the ALJ erred by not giving controlling weight to Dr. Al-Jaroushi's opinion because it was uncontroverted or by not crediting it over Dr. Celko's opinion, Claimant's arguments constitute 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); Claimant's Brief at 4-5 (unpaginated). Dr. Celko provided the Department of Labor's sponsored complete pulmonary evaluation of the Miner prior to his request for modification, but, contrary to Dr. Al-Jaroushi's opinion, Dr. Celko did not diagnose complicated pneumoconiosis. Director's Exhibit 11.

[8] We also affirm, as unchallenged, the ALJ's finding that Claimant failed to establish a totally disabling respiratory or pulmonary impairment at 20 C.F.R. §718.204(b)(2)(i)-(iv), and therefore did not invoke the Section 411(c)(4) presumption of total disability due to pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order at 7-13.

21. Because Claimant failed to establish total disability, an essential element of entitlement, we further affirm the ALJ's finding Claimant did not establish grounds for modification, 20 C.F.R. §725.310, and the denial of benefits. *Trent*, 11 BLR at 1-27.

Accordingly, the ALJ's Decision and Order Denying Modification and Denying Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge