U.S. Department of Labor

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

BRB No. 24-0096 BLA

JAMES J. BUSH	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
YELLOW ROSE COAL, LLC	)	
	)	
and	)	
	)	
AIG PROPERTY & CASUALTY COMPANY	)	DATE ISSUED: 06/20/2024
	)	
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 Willow Eden Fort, Administrative Law Judge, United States Department of Labor.

Daniel G. Murdock (Fogle Keller Walker, PLLC), Lexington, Kentucky, for Employer.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

Before: BOGGS, BUZZARD, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Willow Eden Fort's Decision and Order Awarding Benefits (2021-BLA-05694) rendered on a subsequent claim[1] filed on August 14, 2019, 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 twenty-six 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). She therefore found Claimant established a change in an applicable condition of entitlement,[2] 20 C.F.R. §725.309(c), and invoked 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 Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability.[4] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file a response brief.

[1] Claimant filed three prior claims. Director's Exhibit 80. The district director denied his most recent claim, filed September 13, 2016, for failure to establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2); Sept. 13, 2016 Claim Director's Exhibit 32 at 2.

[2] 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 they find 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); *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 that element to obtain review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3; 20 C.F.R. §725.309(c).

[3] 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.

[4] We affirm as unchallenged on appeal the ALJ's finding that Claimant established twenty-six 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.

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.[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, 361-62 (1965).

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if their pulmonary or respiratory impairment, standing alone, prevents them from performing their usual coal mine work.[6] *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies and arterial blood gas studies,[7] 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 Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *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 upon the medical opinion evidence and in consideration of the evidence as a whole.[8] Decision and Order at 12-18. Employer argues the ALJ erred in weighing the medical opinion evidence. Employer's Brief at 10-13.

The ALJ considered the opinions of Drs. Sarodia, Raj, Dahhan, and Jarboe. Decision and Order at 12-17. Drs. Sarodia and Raj opined Claimant has a totally disabling respiratory impairment, while Drs. Dahhan and Jarboe opined he does not. Director's

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 21.

[6] The ALJ found Claimant's usual coal mine employment was as a foreman, which required heavy exertion. Decision and Order at 4-5. As no party challenges this finding, we affirm it. *See Skrack*, 6 BLR at 1-711.

[7] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained 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] The ALJ found the pulmonary function and arterial blood gas studies do not 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)(i)-(iii); Decision and Order at 6-12.

Exhibits 17, 24, 26; Claimant's Exhibits 1, 5; Employer's Exhibits 3, 4, 7, 10, 11. The ALJ found Dr. Sarodia's opinion reasoned and documented and entitled to probative weight, and Dr. Raj's entitled to slightly less weight because his opinion relied in part upon a pulmonary function study which the ALJ found invalid. Decision and Order at 14, 17. Conversely, she found Drs. Jarboe's and Dahhan's opinions are poorly documented and reasoned and entitled to little probative weight. *Id*. at 15-16. She thus concluded the opinions of Drs. Sarodia and Raj support total disability. *Id*. at 17.

Because Employer does not challenge the ALJ's weighing of Drs. Sarodia's and Raj's opinions we affirm her weighing of their opinions. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 14, 17.

Employer argues the ALJ erred in discrediting the opinions of Drs. Dahhan and Jarboe. Employer's Brief at 11-13. We disagree, as substantial evidence supports the ALJ's finding their opinions are inadequately reasoned. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005) (substantial evidence defined as relevant evidence that a reasonable mind might accept as adequate to support a conclusion).

Dr. Dahhan initially opined Claimant has a totally disabling obstructive ventilatory impairment based upon his pulmonary function study results. Director's Exhibit 26 at 4. In a supplemental report, he diagnosed Claimant with an obstructive ventilatory impairment and "mild alteration in his oxygenation," but opined Claimant is not totally disabled because the additional pulmonary function and blood gas studies he reviewed were not qualifying. Employer's Exhibits 7 at 3-4; 10 at 2. Dr. Jarboe opined Claimant has a mild restrictive ventilatory defect and a non-permanent disabling gas exchange impairment but also found he is not totally disabled because his pulmonary function and blood gas studies are not qualifying. Employer's Exhibits 3 at 7, 10-12; 4 at 33-35, 43-44; 11 at 4-5.

A physician's opinion may support total disability even if the objective studies are non-qualifying. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a mild impairment may be totally disabling depending on the exertional requirements of a miner's usual coal mine employment); *Carpenter v. GMS Mine & Repair Maint. Inc.*, BLR , BRB No. 22-0100 BLA, slip op. at 6-7 (Sept. 6, 2023); 20 C.F.R. §718.204(b)(2)(iv). Insofar as Drs. Dahhan and Jarboe cited the fact that Claimant's testing is non-qualifying as their basis for excluding total disability, the ALJ permissibly found they did not adequately explain whether the respiratory impairments they diagnosed would render Claimant unable to perform the heavy exertion required of his usual coal mine work. *See 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 15-16. Further, although Dr. Jarboe stated that Claimant was not totally disabled based on his objective testing "regardless of the [DOL] disability standards," the ALJ permissibly found the

physician failed to explain how, given Claimant's respiratory condition, he could return to his usual coal mine employment. Decision and Order at 16; Employer's Exhibit 11 at 4-5.

Employer argues both doctors adequately explained their conclusions. Employer's Brief at 12-13. Its argument amounts to a request to reweigh the evidence, which the Board may not do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

As it is supported by substantial evidence, we affirm the ALJ's finding the opinions of Drs. Sarodia and Raj support total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 17. Further, we affirm the ALJ's finding Claimant established total disability in consideration of the evidence as a whole. 20 C.F.R. §718.204(b)(2); *Rafferty*, 9 BLR at 1-232. As the ALJ found, Claimant thereby established a change in an applicable condition of entitlement, 20 C.F.R. §725.309(c), and invoked the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1); Decision and Order at 17-18. Because Employer raises no arguments concerning rebuttal, we also affirm the ALJ's finding that it did not rebut the presumption. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.305(d)(1); Decision and Order at 18-28. We therefore affirm the award of benefits.

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

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge