U.S. Department of Labor

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

BRB No. 20-0317 BLA

JAMES R. LUCAS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PINNACLE MINING COMPANY, LLC	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND	)	DATE ISSUED: 05/27/2021
	)	
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 Scott R. Morris, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

Chris M. Green (Spilman Thomas & Battle, PLLC), Charleston, West Virginia, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge Scott R. Morris's Decision and Order Awarding Benefits (2018-BLA-05771) rendered on a claim filed on August 31, 2015, pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2018) (Act).

The administrative law judge credited Claimant with 32.05 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). He therefore determined Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018). He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer contends the administrative law judge erred in finding it did not rebut the Section 411(c)(4) presumption.[2] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a brief unless specifically requested to do so.

The Benefits Review Board's scope of review is defined by statute. We must affirm the administrative law judge'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 and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

[1] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is 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 administrative law judge's finding that Claimant invoked the Section 411(c)(4) presumption. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 10, 19.

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[4] or that "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(i), (ii). The administrative law judge found Employer did not establish rebuttal by either method.

Employer argues the administrative law judge erred in finding it failed to rebut the presumption of legal pneumoconiosis.[5] Employer's Brief at 15-26. We find Employer's arguments unpersuasive.

To disprove legal pneumoconiosis, Employer must establish Claimant does not have a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015). Employer relied on the medical opinions of Drs. Zaldivar and Spagnolo. Director's Exhibit 22; Employer's Exhibit 6.

Dr. Zaldivar diagnosed Claimant with a mild restrictive lung impairment, a moderate obstructive lung impairment, a severe diffusion capacity impairment, and resting hypoxemia. Director's Exhibit 22. He concluded Claimant's cigarette smoking history, not coal mine dust exposure, caused these impairments. *Id.* He opined there is "no evidence of legal pneumoconiosis" in this case, in part, because there is "no radiographic pneumoconiosis and clinically, there is no pulmonary impairment attributable to pneumoconiosis." Director's Exhibit 22 at 7; *see* Decision and Order at 16, 24. The

[4] 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). This definition encompasses 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 diseases recognized by the medical community as pneumoconiosis, *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).

[5] The administrative law judge found Employer disproved clinical pneumoconiosis. Decision and Order at 23-24. Notwithstanding, Employer asserts the administrative law judge erred in weighing the x-rays on clinical pneumoconiosis. Employer's Brief at 4 n.9. Employer does not explain how the error it alleges makes a difference. *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").

administrative law judge rationally found this reasoning unpersuasive because "the regulation recognizes a diagnosis of [legal] pneumoconiosis may be made, notwithstanding the absence of clinical pneumoconiosis on [x]-ray." Decision and Order at 24; *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012) (the regulations "separate clinical and legal pneumoconiosis into two different diagnoses" and "provide that no claim for benefits shall be denied solely on the basis of a negative chest x-ray") (internal quotations omitted); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 487 (6th Cir. 2012) (a miner can have legal pneumoconiosis, even in the absence of clinical pneumoconiosis); 20 C.F.R. §718.202(a)(4), (b).

Dr. Zaldivar also excluded legal pneumoconiosis because he opined Claimant's cigarette smoking history and the effect it had on his lungs fully explains Claimant's respiratory impairments. Director's Exhibit 22 at 5-8. He also cited studies to support the conclusion cigarette smoking damages the lungs far more severely than coal mine dust exposure. *Id*. at 5-7. The administrative law judge permissibly found Dr. Zaldivar's opinion unpersuasive as it is based on "generalities" and did not address whether Claimant's coal mine dust exposure "significantly contributed to either the obstructive or restrictive aspect of Claimant's disabling pulmonary impairment" along with smoking. Decision and Order at 24; *see Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 673 n.4 (4th Cir. 2017); *Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Knizer v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985).

Dr. Spagnolo diagnosed Claimant with "longstanding clinical asthma" based on partial reversibility of the FEV1 value on pulmonary function testing after administration of bronchodilators, along with a clinical history of asthma medication. Employer's Exhibit 6 at 16-17. He opined the asthma is "likely worsened by [Claimant's] severe and progressive heart disease." *Id*. at 17. He explained "[a]irflow obstruction in coal workers' pneumoconiosis causes a non-reversible obstruction and would not respond to inhaled bronchodilators" or similar medication. *Id*. at 16. He further explained "asthmatics such as [Claimant] after many years of symptoms may develop fixed airway obstruction due to lung remodeling if they do not obtain" adequate treatment. *Id*. at 17. He concluded there is "no objective evidence" Claimant's asthma has been "caused by, contributed to, or hastened by coal workers' pneumoconiosis or any chronic lung disease arising out of coal mine employment." *Id*.

The administrative law judge noted Claimant's obstructive impairment on Claimant's most recent pulmonary function testing, administered by Dr. Zaldivar, was qualifying for total disability both before and after the administration of a bronchodilator. Decision and Order at 25. Although Dr. Spagnolo indicated airway remodeling or Claimant's heart disease may explain the irreversible portion, the administrative law judge permissibly found he did not adequately explain why coal mine dust exposure did not

significantly contribute to or aggravate the irreversible portion of the obstructive impairment. *Owens*, 724 F.3d at 558; *Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 322-24 (4th Cir. 2013); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Consol. Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004); Decision and Order at 25. He also permissibly found Dr. Spagnolo failed to adequately explain why Claimant's coal mine dust exposure did not significantly contribute, along with heart disease, to his asthma.[6] *Owens*, 724 F.3d at 558; *Hicks*, 138 F.3d at 533; Decision and Order at 25.

Employer generally argues the administrative law judge should have found the opinions of Drs. Zaldivar and Spagnolo well-reasoned. Employer's Brief at 15-17. We consider Employer's argument to be a request that the Board reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989).

We also reject Employer's argument the administrative law judge failed to adequately consider Claimant's treatment records. Employer's Brief at 18-19. The administrative law judge adequately acknowledged the medical diagnoses contained in the treatment records. Decision and Order at 25, n.39-40. He permissibly found that, although they establish Claimant has a long history of cardiac issues, they are inadequate to establish the diagnosed lung diseases and impairments are not significantly related to, or substantially aggravated by, coal mine dust exposure. *See Stallard*, 876 F.3d at 673 n.4; *Owens*, 724 F.3d at 558; 20 C.F.R. §718.201(a)(2), (b).

Employer highlights that Claimant underwent treatment with Dr. Rahim, who diagnosed smoking-related chronic obstructive pulmonary disease (COPD). Employer's Brief at 18-19; Director's Exhibit 22. Dr. Rahim, however, did not affirmatively opine the COPD is not significantly related to, or substantially aggravated by, coal mine dust exposure. Director's Exhibit 22. Employer also notes that Claimant underwent a CT scan at the request of Dr. Lao. Employer's Exhibit 3. The interpreting radiologist identified "interstitial changes of the lung consistent with long-time smoking," and "no evidence of pneumoconiosis." *Id*. The radiologist, however, separately identified COPD on the CT scan but did not indicate whether it is related to coal mine dust exposure. *Id*. As neither Dr. Rahim, Dr. Lao, nor the radiologist stated Claimant's COPD is not significantly related to or substantially aggravated by his coal mine dust exposure, substantial evidence supports

[6] As the administrative law judge gave valid reasons for discrediting Dr. Spagnolo's opinion, we need not address Employer's other arguments pertaining to the weight he accorded the opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 20-22.

the administrative law judge's finding the treatment records do not rebut the presumption of legal pneumoconiosis. *Stallard*, 876 F.3d at 673 n.4; *Owens*, 724 F.3d at 557 (substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion); 20 C.F.R. §718.201(a)(2), (b); Decision and Order at 25, n.39-40.

Because the administrative law judge acted within his discretion in rejecting the opinions of Drs. Zaldivar and Spagnolo, the only opinions supportive of Employer's burden on rebuttal,[7] we affirm his finding Employer did not disprove legal pneumoconiosis. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

The administrative law judge next considered whether Employer established "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201." 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 28-30. He rationally discounted the disability causation opinions of Drs. Zaldivar and Spagnolo because neither doctor diagnosed legal pneumoconiosis, contrary to his finding that Employer failed to disprove the existence of the disease.[8] *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 28-30. We therefore affirm the administrative law judge's finding that Employer did not rebut the Section 411(c)(4) presumption at 20 C.F.R. §718.305(d)(1)(ii) and the award of benefits.

[7] As we have affirmed the administrative law judge's finding Employer did not disprove legal pneumoconiosis based on the opinions of Drs. Zaldivar and Spagnolo, we need not address Employer's arguments regarding the administrative law judge's consideration of Dr. Forehand's diagnosis of the disease. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); *see* Employer's Brief at 22-25.

[8] Neither physician offered an opinion on this subject independent of his reasoning relating to the existence of pneumoconiosis.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge