U.S. Department of Labor

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

BRB No. 21-0332 BLA

WILLIAM C. SMITH	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	
	)	DATE ISSUED: 5/31/2022
Employer-Petitioner	)	
	)	
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 Carrie Bland, Administrative Law Judge, United States Department of Labor.

Kendra R. Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Carrie Bland's Decision and Order Awarding Benefits (2018-BLA-05339) rendered on a claim filed on September 14, 2015, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established thirty years of coal mine employment and a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). She therefore found Claimant invoked 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).[1] The ALJ further found Employer failed to rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding it did not rebut the Section 411(c)(4) presumption. Claimant did not file a response brief. The Director, Office of Workers' Compensation Programs, declined to file a response.[2]

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).

Rebuttal of the Section 411(c)(4) Presumption

Because Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,[4] or that "no part of [his] respiratory or pulmonary total

[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); 20 C.F.R. §718.305.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant invoked the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 11.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 19.

[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). 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 diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the

disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-150 (2015). The ALJ found Employer failed to establish rebuttal under either method.[5] Employer challenges the ALJ's findings that it did not disprove legal pneumoconiosis or disability causation.

Legal Pneumoconiosis

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*, 25 BLR at 1-159.

Employer relies upon the opinions of Drs. McSharry and Sargent to disprove legal pneumoconiosis. Decision and Order at 14-15. Employer argues the ALJ applied the wrong legal standard in discrediting their opinions because she improperly required them to "rule out" coal dust exposure as a potential cause of Claimant's respiratory impairment "contrary to the very definition of legal pneumoconiosis." Employer's Brief at 8, 11-12. We disagree.

The ALJ accurately stated the legal standard, noting Employer has the burden to establish Claimant does not have a respiratory or pulmonary impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." Decision and Order at 11-12; *see* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *Minich*, 25 BLR at 1-155 n.8. As explained below, the ALJ rejected the opinions of Employer's experts because she found them insufficiently reasoned and not because they failed to satisfy a particular legal standard.

Drs. McSharry and Sargent diagnosed Claimant with disabling hypoxemia, which they opined is unrelated to his coal mine dust exposure. Director's Exhibit 16; Employer's Exhibits 1, 2. Dr. McSharry attributed Claimant's blood gas impairment solely to "smoking-related emphysema" because he believed Claimant underreported his smoking history and continues to smoke.[6] Director's Exhibit 16 at 3; Employer's Exhibit 1 at 1. He

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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 ALJ found Employer did not disprove clinical or legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A), (B); Decision and Order at 13-17.

[6] Dr. McSharry observed Claimant had an elevated arterial carboxyhemoglobin level at the time of his June 2016 exam which "suggests that heavy tobacco smoking was

further explained that Claimant's clinical presentation is "frequently seen in smokers with no history of coal dust exposure." Director's Exhibit 16 at 2-3; *see* Employer's Exhibits 1 at 1; 9 at 8. The ALJ permissibly found Dr. McSharry's opinion not well-reasoned because he believed Claimant was an ongoing smoker, contrary to the ALJ's finding that Claimant smoked fifteen years ending in 2000. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997) (ALJ may discount opinion that contradicts his findings). She also permissibly found Dr. McSharry's rationale that Claimant presented with symptoms similar to smokers "does not preclude the possibility that coal dust exposure also substantially contributed to Claimant's disabling condition." Decision and Order at 15*; see Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013) (ALJ may discount physician's opinion for failure to adequately address whether coal dust played a role in the miner's impairment).

Dr. Sargent opined Claimant's arterial blood gas abnormality is "*probably* due to pulmonary vascular disease, namely pulmonary arterial hypertension of currently unknown cause." Employer's Exhibit 2 at 2 (emphasis added). He opined that it is "extremely *unlikely* that coal dust exposure has caused [Claimant's] arterial blood-gas abnormalities" because his mild obstruction and x-ray evidence of low-profusion simple pneumoconiosis are insufficient to "explain the degree of arterial oxygen desaturation especially with exertion." *Id.* (emphasis added); *see* Employer's Exhibit 8 at 19. Although Dr. Sargent stated Claimant's blood gas abnormality "*could possibly* be due to emphysema caused by cigarette smoking," he did not "have an opinion about [its] exact cause" because "the absence of severe obstructive impairment on spirometry argues against [emphysema as the cause]" and Claimant's pulmonary hypertension "has not been sufficiently worked up" for Dr. Sargent to opine on its etiology.[7] Employer's Exhibits 2 at 2 (emphasis added); 8 at 18.

The ALJ permissibly discounted Dr. Sargent's opinion because he "fail[ed] to provide a non-speculative [opinion as to the] etiology of Claimant's lung condition."

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ongoing at that time." Director's Exhibit 16 at 3. He therefore doubted Claimant's report that he smoked less than a quarter pack per day beginning in his teenage years and quit "many years ago." *Id.* at 5. Rather, Dr. McSharry suspected a "longer more intense" smoking history than Claimant stated, estimating Claimant smoked on a daily basis for ten pack-years, contrary to the ALJ's finding that while Claimant smoked fifteen years, he primarily smoked only on the weekends. *Id.* at 3; Employer's Exhibit 9 at 8.

[7] Dr. Sargent stated Claimant's mild obstruction is "consistent with smoking," but he did not address whether Claimant's coal dust exposure may be a causal factor. Employer's Exhibit 8 at 13.

Decision and Order at 15; *see U. S. Steel Mining Co., Inc. v. Director, OWCP* [*Jarrell*], 187 F.3d 384, 389 (4th Cir. 1999) (ALJ may not credit purely speculative opinion). She further permissibly discounted Drs. McSharry's and Sargent's opinions for failing to adequately explain why Claimant's significant history of coal mine dust exposure was not an additive factor for Claimant's emphysema or could not have also contributed to his blood gas impairment. *See Owens*, 724 F.3d at 558; Decision and Order at 16.

Employer's arguments are 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). Because the ALJ permissibly discredited the opinions of Drs. McSharry and Sargent, we affirm her determination that Employer failed to establish Claimant does not have legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i)(A); Decision and Order at 17. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis.[8] 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

In order to disprove disability causation, Employer must establish "no part of [Claimant'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). The ALJ found the opinions of Drs. McSharry and Sargent insufficient to satisfy Employer's burden because she "already discounted their opinions with regard to legal pneumoconiosis." Decision and Order at 17. We reject Employer's assertion that this determination is "contrary to law and irrational." Employer's Brief at 13; *see Hobet Mining, LLC v. Epling*, 783 F.3d 498, 505 (4th Cir. 2015) (causation opinion that erroneously fails to diagnose pneumoconiosis may not be credited at all absent "specific and persuasive reasons" that the doctor's judgment does not rest upon the misdiagnosis, in which case the opinion is entitled to at most "little weight"). Employer raises no other challenge to the ALJ's finding, apart from alleging Claimant does not have legal pneumoconiosis which we have rejected. We therefore affirm the ALJ's determination that Employer failed to establish no part of Claimant's respiratory disability is due to legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii); Decision and Order at 17.

[8] Consequently, we need not address Employer's challenge to the ALJ's finding that it also failed to establish Claimant does not have clinical pneumoconiosis. Employer's Brief at 3-6.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge