U.S. Department of Labor

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

BRB No. 24-0047 BLA

DANNY K. CAMPBELL Claimant-Respondent v. MANALAPAN MINING COMPANY, INCORPORATED and KENTUCKY EMPLOYERS' MUTUAL INSURANCE Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 11/14/2024 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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

William A. Lyons (Lewis and Lewis Law Offices), Hazard, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Joseph E. Kane's Decision and Order Awarding Benefits (2021-BLA-05150) rendered on a claim[1] filed on May 3, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant's last coal mine job as a repairman required heavy manual labor, and that he established 32.64 years of qualifying coal mine employment and a totally disabling respiratory or pulmonary impairment. Decision and Order at 4-5; 20 C.F.R. §718.204(b)(2). Thus, he concluded Claimant invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[2] The ALJ further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established total disability, and thereby erred in finding Claimant invoked the Section 411(c)(4) presumption.[3] Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file 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

[1] Claimant filed a prior claim but withdrew it. Decision and Order at 2 n.5; Director's Exhibit 1. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he establishes 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.

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 32.64 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3-4.

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).

Invocation of the Section 411(c)(4) Presumption – Total Disability

To invoke the Section 411(c)(4) presumption of total disability due to pneumoconiosis, 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 his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work or comparable gainful work.[5] *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based upon qualifying pulmonary function studies or arterial blood gas studies,[6] 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 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).

[4] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4; Hearing Transcript at 15.

[5] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant's usual coal mine work as a repairman required heavy manual labor based on: Drs. Raj's and Green's descriptions that Claimant had to lift over fifty pounds, Dr. Raj's notation that Claimant's job required bending and duck walking, and Dr. Tuteur's description that Claimant stopped work when an 800 pound motor "got away" from him. *Skrack*, 6 BLR at 1-711; Decision and Order at 5; Director's Exhibit 15 at 2; Claimant's Exhibit 1 at 3, 7; Employer's Exhibit 4 at 2.

[6] 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).

Employer challenges the ALJ's finding that Claimant established total disability based on the medical opinion evidence and the evidence as a whole.[7] Employer's Brief at 21-28; Decision and Order at 4-8.

Medical Opinions

The ALJ considered four medical opinions. Drs. Green and Raj opined that Claimant's hypoxemia seen on blood gas testing would preclude him from performing his usual coal mine work. Director's Exhibits 15 at 4; 19; Claimant's Exhibit 1 at 3, 6-7. Dr. Raj also cited to Claimant's moderate obstructive ventilatory defect shown on pulmonary function testing as contributing to his respiratory disability. Claimant's Exhibit 1 at 3, 6-7.

Drs. Dahhan and Tuteur diagnosed a mild ventilatory defect on pulmonary function testing;[8] Dr. Tuteur also observed air trapping on that testing and Dr. Dahhan indicated Claimant had variable hypoxemia on blood gas study testing. Director's Exhibit 18 at 2-3; Employer's Exhibits 4 at 2-4; 5 at 3-4; 6 at 3-4. However, they both concluded Claimant is not totally disabled. Director's Exhibit 18 at 3; Employer's Exhibits 4 at 4-5; 5 at 4; 6 at 4.

The ALJ gave greatest weight to Dr. Raj's opinion, while also crediting Dr. Green's opinion, and found Claimant established total disability based on the medical opinion evidence. Decision and Order at 6-8. Employer argues the ALJ selectively analyzed the medical opinion evidence and improperly imposed a stricter standard on Employer's doctors to prove Claimant is not totally disabled. Employer's Brief at 21-28. Thus, Employer contends the ALJ's analysis fails to satisfy the Administrative Procedure Act (APA).[9] *Id*. We disagree.

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[7] The ALJ found all of the pulmonary function studies and a preponderance of the blood gas studies were non-qualifying and there was no record evidence of cor pulmonale with right-sided congestive heart failure or complicated pneumoconiosis. 20 C.F.R. §§718.204(b)(2)(i)-(iii), 718.304; Decision and Order at 4-6; Director's Exhibits 15, 18; Claimant's Exhibit 1; Employer's Exhibit 4.

[8] Dr. Dahhan diagnosed a mild obstructive impairment, while Dr. Tuteur diagnosed a mild restrictive abnormality. Director's Exhibit 18; Employer's Exhibits 4, 6. In his supplemental report Dr. Tuteur also found the two most recent pulmonary function studies suggested some air trapping, reflecting early airways obstruction. Employer's Exhibit 5.

[9] The Administrative Procedure Act provides that every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material

Contrary to Employer's argument, the ALJ applied the same level of scrutiny to all of the medical opinions and properly required all of the doctors to address Claimant's ability to perform the heavy manual labor required of his usual coal mine work as a repairman since all of the doctors observed an impairment in Claimant. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 172 (4th Cir. 1997) (miner's exertional requirements mandate careful consideration when the physician must determine whether an impairment prevents the miner from performing his usual coal mine work); *Walker v. Director, OWCP*, 927 F.2d 181, 184 (4th Cir. 1991) (physician who asserts a claimant is capable of performing assigned duties should state his knowledge of the physical efforts the duties required and relate them to the miner's impairment).

The ALJ permissibly gave greatest weight to Dr. Raj's opinion because Dr. Raj understood Claimant's usual coal mine work required heavy manual labor and he discussed Claimant's moderate obstructive defect and hypoxemia in relation to his job duties. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 8; Claimant's Exhibit 1 at 3, 6-7. Specifically, Dr. Raj stated:

> Although [Claimant's] resting [blood gas study] does not quite meet the Federal black lung standards for total disability[,] it still represents [a] significant level of pulmonary impairment. Considering [the] exertional requirement[s] of [Claimant's] last job (lifting 50-100 pounds at any given time several times daily, with top 50-60 inches, had to work bent over and duck walking) . . . [he] cannot perform the physical responsibilities of his last job and is totally disabled.

Claimant's Exhibit 1 at 7.

Similarly, we see no error in the ALJ's conclusion that Dr. Green's opinion is credible and supports Dr. Raj's opinion. The ALJ permissibly credited Dr. Green's opinion that Claimant is totally disabled:

> [Claimant] certainly could not perform underground heavy exertion as described in his last coal mine job given the fact that he has impaired gas exchange and hypoxemia. While [Claimant's] blood gases may not strictly meet the Federal guideline criteria for total pulmonary disability, [Claimant has] impaired gas exchange to the point that he could not perform heavy exertion underground.

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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).

Director's Exhibit 15 at 5; *see Rowe*, 710 F.2d at 255; Decision and Order at 6-7, 8. Dr. Green also discussed the heavy manual labor required of Claimant's usual coal mine job in his supplemental report:

> [Claimant] was hardly able to perform light exercise . . . and still showed impaired gas exchange and certainly could not be doing repair work underground in a coal mine. . . . [Claimant] is totally disabled from a pulmonary capacity standpoint on the basis of his associated shortness of breath and wheeze and the findings of impaired gas exchange with hypoxemia and the findings of air trapping and hyperinflation.

Director's Exhibit 19 at 2.

Additionally, although Employer points out that Dr. Raj based his opinion on non-qualifying objective studies and Dr. Green characterized the studies he administered as non-qualifying, a physician can conclude a miner is totally disabled despite non-qualifying objective testing. 20 C.F.R. §718.204(b)(2)(iv); *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); *Jonida Trucking, Inc. v. Hunt*, 124 F.3d 739, 744 (6th Cir. 1997) (non-qualifying pulmonary function tests demonstrating some impairment can form the basis, along with other evidence, for a reasonable medical opinion of total disability); *Carpenter v. GMS Mine & Repair Maint. Inc.*, 26 BLR 1-33, 1-40 (2023) (physician may conclude a miner is totally disabled even if the objective studies are non-qualifying); Employer's Brief at 19-20, 25-26.

Because the ALJ acted within his discretion in finding the opinions of Drs. Raj and Green are reasoned and documented, we affirm his conclusion that they support a finding that Claimant is totally disabled. *See Rowe*, 710 F.2d at 255; Decision and Order at 8.

Regarding Employer's experts, the ALJ permissibly gave less weight to Drs. Dahhan's and Tuteur's opinions that Claimant is not totally disabled because, unlike Drs. Raj and Green, neither physician specifically discussed whether Claimant could perform the heavy manual labor required of his usual coal mine work in light of his mild respiratory impairment, Dr. Dahhan's finding of variable hypoxemia, or Dr. Tuteur's finding of air trapping.[10] *See Rowe*, 710 F.2d at 255; Decision and Order at 7-8; Director's Exhibit 18;

[10] In their initial reports, neither Dr. Dahhan nor Dr. Tuteur acknowledged Claimant's usual coal mine work as a repairman or mechanic required heavy manual labor. Director's Exhibit 18 at 2-4; Employer's Exhibit 4 at 2, 4. In their supplemental reports, both Drs. Dahhan and Tuteur reviewed additional medical reports which set forth the exertional requirements of Claimant's usual coal mine work, but they did not discuss those

Employer's Exhibits 4-6. Thus, we reject Employer's contention that the ALJ failed to adequately explain his credibility determinations as the APA requires. 20 C.F.R. §718.204(b)(2)(iv); *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012); (APA's duty of explanation is satisfied if reviewing court can discern what the ALJ did and why he did it); Decision and Order at 6-8.

Employer's arguments on total disability 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). As it is supported by substantial evidence, we affirm the ALJ's conclusion that Claimant established total disability based on Drs. Raj's and Green's opinions at 20 C.F.R. §718.204(b)(2)(iv), and in consideration of the evidence as a whole. 20 C.F.R. §718.204(b)(2); *see Killman v. Director, OWCP*, 415 F.3d 716, 721 (7th Cir. 2005) (substantial evidence of the presence or absence of total disability depends on whether the physicians understood the miner's work requirements); Decision and Order at 8. Consequently, we affirm the ALJ's determination that Claimant invoked the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); Decision and Order at 8-9.

Because Employer does not challenge the ALJ's finding that it failed to rebut the Section 411(c)(4) presumption, we affirm it. *See* 30 U.S.C. §921(c)(4) (2018); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 8-15.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

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requirements in opining Claimant is not totally disabled. *See* Employer's Exhibits 5 at 2-4; 6 at 3-4.