U.S. Department of Labor

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

BRB No. 24-0182 BLA

HAROLD K. HORNBECK	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
INDUSTRIAL CONTRACTING OF FAIRMONT, INCORPORATED	)	
	)	DATE ISSUED: 11/21/2024
Employer-Respondent	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

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

Mary Lou Smith (Howe, Anderson & Smith, P.C.), Washington, DC, for Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Denying Benefits (2023-BLA-05188) rendered on a claim filed on May 5, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with fourteen years of coal mine employment and thus found he could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[1] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant has a totally disabling respiratory impairment but has neither clinical pneumoconiosis nor legal pneumoconiosis.[2] 20 C.F.R. §§718.202(a), 718.204(b). Thus, he denied benefits.

On appeal, Claimant argues the ALJ erred in finding he did not establish legal pneumoconiosis.[3] Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a statement that he declines to file a brief in this appeal, but he agrees with Claimant that the ALJ erred in failing to find legal pneumoconiosis established.

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

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[1] Section 411(c)(4) 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.

[2] "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 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). "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).

[3] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant failed to establish clinical pneumoconiosis and worked less than fifteen years in coal mine employment, and therefore, did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act. 20 C.F.R. §718.305; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4, 10-11.

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 (pneumoconiosis 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 one of these elements 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, 1-2 (1986) (en banc).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must prove he has 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).

The ALJ considered the medical opinions of Drs. Cahill and Fino. 20 C.F.R. §718.202(a)(4); Decision and Order at 13-16. Dr. Cahill opined Claimant has legal pneumoconiosis, whereas Dr. Fino concluded he does not. Director's Exhibits 10, 17; Employer's Exhibit 1. The ALJ found the opinions of Drs. Cahill and Fino inadequately reasoned, as he believed neither physician adequately explained the connection, or lack thereof, between Claimant's coal dust exposure and his pulmonary impairment. Decision and Order at 13-16. Thus, he concluded Claimant did not establish legal pneumoconiosis. 20 C.F.R. §718.202(a)(4); Decision and Order at 15-16.

Claimant contends the ALJ erred in summarily dismissing and discrediting Dr. Cahill's opinion. Claimant's Brief at pp.5-7 (unpaginated). Claimant's argument has some merit.

Acknowledging that the preamble to the 2001 regulatory revisions sets forth how the Department of Labor (DOL) has resolved questions of scientific fact, the ALJ observed the DOL, as well as various circuit courts and the Board, have recognized that the effects of smoking and coal dust exposure can be additive. Decision and Order at 15;

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[4] 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 Virginia and West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 20-21.

Westmoreland Coal Co. v. Stallard, 876 F.3d 663, 674 (4th Cir. 2017); 65 Fed. Reg. 79,920, 79,940 (Dec. 20, 2000). He observed, "Dr. Cahill's opinion, as to the etiology of Claimant's pulmonary impairment, . . . asserts that, due to the additive nature of smoking and coal mine dust exposure, both played a *significant* role in his developing COPD [chronic obstructive pulmonary disease]." Decision and Order at 15. Concluding Dr. Cahill opined each factor was significant simply because they were additive, the ALJ found Dr. Cahill's opinion conclusory and attributed no weight to her opinion. Decision and Order at 15 [emphasis in original].

The ALJ mischaracterized Dr. Cahill's opinion and ignored her consideration of Claimant's exposure histories when determining the existence of legal pneumoconiosis. Decision and Order at 15-16. Dr. Cahill performed a complete pulmonary evaluation of Claimant on behalf of the DOL. Based on Claimant's medical and work histories, a physical examination, chest x-ray, computed tomography (CT) scan, and pulmonary function and arterial blood gas studies, she diagnosed Claimant with "severe COPD." Director's Exhibit 10. In considering the factors she believed contributed to Claimant's COPD, she noted his long history of significant coal dust exposure and his substantial smoking history. *Id.* at 26. Dr. Cahill then opined, based on her consideration of the length of Claimant's exposure history, that both cigarette smoking and coal dust exposure "*substantially contributed*" to the pulmonary disease. *Id.* (emphasis added). In her supplemental report, she reiterated her original opinion, explaining that Claimant's coal dust exposure and cigarette smoking history "each played *a significant role* in his developing severe COPD." Director's Exhibit 17 at 1-2 (emphasis added). While Dr. Cahill did note the factors "acted in an additive manner," this did not form the basis of her conclusion that coal dust exposure significantly contributed to Claimant's COPD. *Id.* Consequently, because the ALJ mischaracterized Dr. Cahill's opinion and failed to consider her opinion in its entirety, we vacate his finding that it is conclusory and entitled to no weight.[5] *See McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984).

We therefore vacate the ALJ's finding that legal pneumoconiosis was not established and remand this case for him to reconsider the medical opinion evidence, maintaining the burden of proof on Claimant to establish the existence of legal pneumoconiosis, i.e., that his obstructive lung disease is "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R.

[5] Because the ALJ discredited Dr. Cahill's opinion on the belief it was based solely on the factors being additive, we decline to address Employer's argument relating to Dr. Cahill's consideration of allegedly incorrect exposure histories. Employer's Response Brief at 5-6.

§718.201(b); *see* 20 C.F.R. §§718.201(a)(2), 718.204(a)(4); *see also Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986).

On remand, the ALJ must reconsider whether the medical opinion evidence establishes the existence of legal pneumoconiosis. 20 C.F.R. §718.202(a)(4). He should address the comparative credentials of the respective physicians, the explanations for their conclusions, the accuracy of their understandings of the miner's exposure to coal dust, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See 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). Moreover, he must weigh all of the relevant evidence together to determine whether Claimant suffers from legal pneumoconiosis. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 208-09 (4th Cir. 2000). The ALJ must set forth his findings in detail, including the underlying rationales, in accordance with the Administrative Procedure Act.[6] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

As the ALJ's determination that Claimant established total disability is unchallenged on appeal, we affirm this finding.[7] 20 C.F.R. §718.204(b); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 16-22. Therefore, if Claimant establishes legal pneumoconiosis on remand, the ALJ must consider whether it substantially contributed to his totally disabling respiratory or pulmonary impairment. If the ALJ finds legal pneumoconiosis is not established, Claimant will have failed to establish an essential element of entitlement. *See Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27.

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[6] The Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), requires the ALJ to set forth his "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A).

[7] The ALJ found the pulmonary function study evidence, arterial blood gas evidence, and medical opinion evidence all support finding total disability. 20 C.F.R. §718.204(b)(2)(i)-(iv); Decision and Order at 18-22. He also found the evidence, when weighed together as a whole, established total disability. Decision and Order at 22. Employer has not raised any arguments challenging these findings in its response brief, nor has it filed a cross-appeal.

Accordingly, the ALJ's Decision and Order Denying Benefits is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge