U.S. Department of Labor

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

BRB No. 23-0250 BLA

HAROLD BAISDEN, JR.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	**NOT-PUBLISHED**
WOLF RUN MINING COMPANY	)	
	)	
and	)	DATE ISSUED: 10/30/2024
	)	
ARCH COAL, INCORPORATED	)	
	)	
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 Patricia J. Daum, Administrative Law Judge, United States Department of Labor.

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

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

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

GRESH, Chief Administrative Appeals Judge, and BUZZARD, Administrative Appeals Judge:

Employer appeals Administrative Law Judge Patricia J. Daum's (the ALJ) Decision and Order Awarding Benefits (2019-BLA-05926) rendered on a subsequent claim filed on November 23, 2017,[1] pursuant to the Black Lung Benefits Act, as amended 30 U.S.C. §§901-944 (2012) (Act).

The ALJ credited Claimant with twenty-seven years of underground coal mine employment and found he established a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found he established a change in an applicable condition of entitlement[2] 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 failed to rebut the presumption and awarded benefits.

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

[1] This is Claimant's second claim for benefits. On June 25, 2015, the district director denied his prior claim, filed on February 10, 2014, for failure to establish a totally disabling respiratory or pulmonary impairment. Director's Exhibit 1 at 5-6; ALJ's Exhibit 1 at 7-9.

[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 she finds 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 this element to obtain review of the merits of his current claim. *Id.*; *see White*, 23 BLR at 1-3; Decision and Order at 21.

[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 impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established twenty-seven years of coal mine employment, total disability, a change in an applicable condition of entitlement, and invocation of the Section 411(c)(4) presumption. *See Skrack*

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).

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

Because Claimant invoked the Section 411(c)(4) presumption, the burden shifted to Employer to establish Claimant has neither legal nor clinical pneumoconiosis,[6] 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 ALJ found Employer failed to establish rebuttal by either method.[7]

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),

v. Island Creek Coal Co., 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§718.204(b)(2), 718.305, 725.309(c); Decision and Order at 7-8, 20-21.

[5] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 23; Director's Exhibit 8.

[6] "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 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).

[7] The ALJ found Employer disproved the existence of clinical pneumoconiosis. Decision and Order at 24.

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. Jarboe and Ranavaya to establish rebuttal. Employer's Exhibits 1, 8, 11. Dr. Jarboe diagnosed chronic obstructive pulmonary disease (COPD) and asthmatic bronchitis caused by cigarette smoking and unrelated to coal mine dust exposure. Employer's Exhibits 1 at 7-10; 8 at 39-43. Dr. Ranavaya diagnosed adult-onset asthma exacerbated by cigarette smoking and unrelated to coal mine dust exposure. Employer's Exhibit 11 at 5-11. The ALJ found their opinions are not well-reasoned and insufficient to support Employer's burden to rebut legal pneumoconiosis. Decision and Order at 28-19.

Employer contends the ALJ erred in discrediting Drs. Jarboe's and Ranavaya's opinions.[8] Employer's Brief at 7-19. We disagree.

Dr. Jarboe excluded coal mine dust exposure as a contributing factor in Claimant's lung disease because his significant reduction in the FEV1/FVC ratio on his pulmonary function study is inconsistent with COPD due to coal mine dust which, he opined, is demonstrated by parallel reductions of the FEV1 and FVC values. Employer's Exhibits 1 at 8-10; 8 at 31-32, 36. Contrary to Employer's contention, Employer's Brief at 10-16, the ALJ permissibly discredited this rationale as inconsistent with the scientific studies that the Department of Labor (DOL) credited in the preamble to the 2001 regulatory revisions that coal dust exposure may cause COPD with associated decrements in the FEV1 value and the FEV1/FVC ratio. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 671-72 (4th Cir. 2017); 65 Fed. Reg. 79,940, 79,943 (Dec. 20, 2000); Decision and Order at 27; *see also Wilgar Land Co. v. Director, OWCP* [*Adams*], 85 F.4th 828, 840 (6th Cir. 2023) ("a judge may find the preamble more persuasive than an expert's opinion on this FEV1/FVC ratio issue"); *Central Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491 (6th

[8] As Drs. Green's and Werchowski's opinions do not aid Employer in rebutting the Section 411(c)(4) presumption, we decline to address Employer's arguments regarding the ALJ's weighing of their opinions. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 29; Employer's Brief at 19-23. Contrary to Employer's contention, Dr. Werchowski expressly opined he was unable to exclude coal mine dust as a contributor to Claimant's impairment. Director's Exhibits 24 at 8; 37 at 34, 41. His opinion thus does not aid Employer in satisfying its burden to affirmatively disprove legal pneumoconiosis. *See* 20 C.F.R. §§718.201(a)(2), (b), 718.305(d)(1)(i)(A); *Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

Cir. 2014) (decreased-ratio analysis "plainly contradicts the DOL's position that [legal pneumoconiosis] . . . may be associated with decrements in the FEV1/FVC ratio").

Dr. Jarboe also excluded legal pneumoconiosis based, in part, on the partial reversibility of Claimant's impairment in response to bronchodilators seen on his pulmonary function testing. Employer's Exhibits 1 at 9; 8 at 30-33. The ALJ permissibly found this rationale unpersuasive because Dr. Jarboe failed to adequately explain why the irreversible portion of Claimant's pulmonary impairment was not significantly related to, or substantially aggravated by, coal mine dust exposure. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012); *Consol. Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004).

The ALJ further permissibly discredited Dr. Jarboe's opinion because, while he explained why he attributed Claimant's impairment to smoking, he failed to adequately explain why coal mine dust exposure did not contribute to Claimant's impairment, particularly in light of the DOL's recognition, in the preamble, that the effects of coal mine dust and cigarette smoke exposure may be additive. *See Mingo Logan Coal Co. v. Owens*, 724 F.3d 550, 558 (4th Cir. 2013); *Looney*, 678 F.3d at 313-14 (ALJ may accord less weight to a physician who fails to adequately explain why a miner's chronic lung disease "was not due at least in part to his coal dust exposure"); *Crockett Colleries, Inc. v. Director, OWCP* [*Barrett*], 478 F.3d 350, 356 (6th Cir. 2007) (ALJ may accord less weight to a physician who fails to adequately explain why a miner's response to bronchodilators on pulmonary function testing necessarily eliminated coal dust exposure as a cause of his obstructive lung disease).

We further reject Employer's contention that, in discrediting Dr. Jarboe's opinion, the ALJ erroneously applied the preamble as a binding rule of law. Employer's Brief at 7-10. The preamble sets forth how the DOL has resolved questions of scientific fact. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013). The ALJ, as part of the deliberative process, may rely on the preamble as a guide in assessing the credibility of the medical evidence and in determining whether a physician has based his opinion on a principle that is antithetical to the preamble. *E. Associated Coal Corp. v. Director, OWCP* [*Toler*], 805 F.3d 502, 512-13 (4th Cir. 2015); *Cochran*, 718 F.3d at 324; *Looney*, 678 F.3d at 313. Here, the ALJ permissibly found Dr. Jarboe's opinion both inadequately explained and inconsistent, in part, with the science credited by the DOL in the preamble. *See Stallard*, 876 F.3d at 671-72; *Toler*, 805 F.3d at 512-13; *Owens*, 724 F.3d at 558; *Toler*, 805 F.3d at 512-13.

Dr. Ranavaya excluded a diagnosis of legal pneumoconiosis because the declining reversibility of Claimant's impairment with bronchodilators seen in pulmonary function studies demonstrates his impairment is due to asthma and not COPD. Employer's Exhibit

11 at 5-9. The ALJ permissibly discredited Dr. Ranavaya's opinion because he did not adequately explain why coal mine dust exposure could not have contributed to or exacerbated Claimant's asthma.[9] *See Stallard*, 876 F.3d at 671-72; *Owens*, 724 F.3d at 558; *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); Decision and Order at 28-29.

Because the ALJ permissibly discredited the only medical opinions supportive of Employer's burden on rebuttal, we affirm her finding that Employer did not disprove legal pneumoconiosis. 20 C.F.R. §718.305(d)(2)(i)(A); Decision and Order at 29. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant did not have pneumoconiosis. 20 C.F.R. §718.305(d)(2)(i).

Disability Causation

The ALJ next addressed 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). She rationally discounted Drs. Jarboe's and Ranavaya's disability causation opinions because neither doctor diagnosed legal pneumoconiosis, contrary to her finding that Employer failed to disprove Claimant has the disease. *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2017); *Toler v. E. Associated Coal Co.*, 43 F.3d 109, 116 (4th Cir. 1995); *Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074 (6th Cir. 2013); Decision and Order at 29-30. We therefore affirm the ALJ'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.

[9] Because the ALJ provided valid reasons for discrediting Dr. Ranavaya's opinion on legal pneumoconiosis, we need not address Employer's remaining arguments regarding the weight assigned to his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 16-19.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

I concur in the result only.

JUDITH S. BOGGS
Administrative Appeals Judge