

U.S. Department of Labor

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



BRB No. 24-0109 BLA

JOHN COPE)
)
 Claimant-Petitioner)
)
 v.)
)
 PEABODY INDIANA SERVICE)
)
 and)
)
 PEABODY ENERGY CORPORATION)
)
 Employer/Carrier-)
 Respondents)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 10/29/2024

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Steven D. Bell, Administrative Law Judge, United States Department of Labor.

Joseph E. Allman (Allman Law LLC), Indianapolis, Indiana, for Claimant.

Paul E. Frampton (Bowles Rice LLP), Charleston, West Virginia, for Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Steven D. Bell's Decision and Order Denying Benefits (2020-BLA-05807) rendered on a claim filed on February 22, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulation that Claimant had ten years of underground coal mine employment, and thus found he could not invoke 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). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant failed to establish pneumoconiosis. Because Claimant failed to establish an essential element of entitlement, the ALJ denied benefits.

On appeal, Claimant argues the ALJ erred in finding he did not establish pneumoconiosis and he does not have a totally disabling respiratory or pulmonary impairment due to pneumoconiosis.² Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, declined to file a reply 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 accordance with applicable law.³ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

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); *see* 20 C.F.R. §718.305.

² We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established ten years in coal mine employment and thus could not invoke the presumption of disability due to pneumoconiosis at Section 411(c)(4) of the Act. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.305(b)(1)(i); Decision and Order at 27 (unpaginated); Hearing Tr. at 10-11.

³ This case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit because Claimant performed his coal mine employment in Indiana. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 12.

Entitlement under 20 C.F.R. Part 718

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 them 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). The ALJ found Claimant did not establish the existence of clinical or legal pneumoconiosis.⁴

Clinical Pneumoconiosis

The ALJ considered eight interpretations of six x-rays dated April 5, 2018, April 19, 2018, October 18, 2018, December 27, 2018, April 18, 2019, and March 4, 2021. Decision and Order at 5-6, 29-30 (unpaginated). The April 19, 2018 and December 27, 2018 x-rays read by Dr. Barron and the October 18, 2018 and April 18, 2019 x-rays read by Dr. King are part of Claimant's treatment and do not address the presence or absence of pneumoconiosis. Employer's Exhibit 4 at 1-4. Drs. Meyer and DePonte interpreted the April 5, 2018 x-ray as negative for pneumoconiosis, whereas Dr. Miller interpreted it as positive for pneumoconiosis. Director's Exhibits 16; 21 at 6; 48. Dr. Seaman read the March 4, 2021 x-ray as negative for pneumoconiosis. Employer's Exhibit 1. The ALJ noted Drs. Meyer, DePonte, Miller, and Seaman are all dually qualified as Board-certified radiologists and B readers. Decision and Order at 29-30 (unpaginated); *see* 20 C.F.R. §718.202(a)(1); Director's Exhibits 16; 21; 48; Employer's Exhibit 1.

The ALJ found the April 19, 2018, October 18, 2018, December 27, 2018, and April 18, 2019 treatment record x-rays do not establish or disprove pneumoconiosis because they do not address its presence or absence. Decision and Order at 5 (unpaginated). He further found the April 5, 2018 x-ray is negative because a greater number of dually-qualified radiologists read it as negative for pneumoconiosis. *Id.* at 30. Finally, he found the March

⁴ "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).

4, 2021 x-ray is negative for pneumoconiosis based on Dr. Seaman's sole negative interpretation. *Id.* Thus he concluded the preponderance of the x-ray evidence insufficient to establish clinical pneumoconiosis. 20 C.F.R. §718.202(a)(1); Decision and Order at 30 (unpaginated).

Claimant summarizes the interpretations of the April 5, 2018 and March 4, 2021 x-rays and asserts they establish clinical pneumoconiosis.⁵ Claimant's Brief at 5-6. As Claimant has failed to specifically identify any error in the ALJ's credibility findings, we affirm them. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); Decision and Order at 29-30 (unpaginated). Moreover, the ALJ conducted a qualitative and quantitative analysis of the x-ray evidence and permissibly found the sole positive x-ray reading, Dr. Miller's reading of the April 5, 2018 x-ray, is outweighed by the two negative readings from equally qualified physicians. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256 (4th Cir. 2016); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59 (6th Cir. 1995); Decision and Order at 5-6, 30 (unpaginated).

Consequently, we affirm the ALJ's finding that Claimant did not establish clinical pneumoconiosis by a preponderance of the x-ray evidence. 20 C.F.R. §718.202(a)(1); Decision and Order at 30 (unpaginated). We further affirm, as unchallenged on appeal, the ALJ's finding that the medical opinion evidence is insufficient to establish clinical pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.202(a)(4); Decision and Order at 30-31 (unpaginated). We thus affirm the ALJ's finding Claimant did not establish clinical pneumoconiosis. Decision and Order at 31 (unpaginated).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must demonstrate 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(b). The ALJ found the medical

⁵ Claimant also notes readings of the April 5, 2018 x-ray by Dr. Nay and of the March 4, 2021 x-ray by Dr. Tuteur. Claimant's Brief at 5; Director's Exhibit 22 at 12; Employer's Exhibit 2 at 3. Dr. Nay's reading was admitted as part of the Department of Labor-sponsored examination of Claimant, but it does not address pneumoconiosis. Director' Exhibit 12 at 22. Dr. Tuteur notes in his report that he read the x-ray as positive for clinical pneumoconiosis, but the reading was not designated as an x-ray reading by any party and the ALJ considered it as a part of Dr. Tuteur's medical opinion only. Decision and Order at 12-13, 30 (unpaginated).

opinion evidence and Claimant's treatment record evidence insufficient to establish legal pneumoconiosis. Decision and Order at 31-34 (unpaginated).

The ALJ considered the medical opinions of Drs. Murthy, Cohen, Rosenberg, and Tuteur. Decision and Order at 8-26, 31-34 (unpaginated). Drs. Murthy and Cohen opined Claimant has chronic obstructive pulmonary disease (COPD) in the form of chronic bronchitis caused by his coal mine dust exposure and smoking. Director's Exhibits 12; 49; Claimant's Exhibit 1. Drs. Rosenberg and Tuteur opined he has COPD caused entirely by smoking and unrelated to coal mine dust exposure. Employer's Exhibits 2; 3; 6; 7. The ALJ found the opinions of Drs. Murthy and Cohen are not reasoned and documented and thus found the medical opinion evidence insufficient to establish legal pneumoconiosis. Decision and Order at 31-34 (unpaginated).

Claimant contends the ALJ erred in weighing the opinions of Drs. Murthy and Cohen.⁶ Claimant's Brief at 7-12. We disagree.

Dr. Murthy diagnosed COPD in the form of chronic bronchitis "based on [Claimant's] history and by spirometric testing." Director's Exhibit 12 at 5. He opined the etiology of Claimant's COPD is "exposure to coal dust, rock dust and chronic cigarette smoking." *Id.*

Dr. Cohen also diagnosed COPD in the form of chronic bronchitis as well as emphysema based on Claimant's "history of [ten] years of coal mining experience with significant coal mine dust exposure." Claimant's Exhibit 1 at 11-12. He stated there are "numerous findings of modern medical and scientific studies that confirm the link between occupational exposure to coal dust" and COPD, that the effects of smoking are additive to the effects of coal mine dust exposure, and that it is not possible to distinguish emphysema due to smoking from that caused by coal mine dust exposure. *Id.* Disagreeing with the contrary opinions of Drs. Rosenberg and Tuteur, Dr. Cohen discussed the flaws in the various medical studies they relied on to opine Claimant does not have legal pneumoconiosis. *Id.* at 4-10.

The ALJ found the opinions of Drs. Murthy and Cohen are not credible because they did not point to any findings specific to Claimant's case to explain how they

⁶ Because the opinions of Drs. Rosenberg and Tuteur do not aid Claimant in establishing the existence of legal pneumoconiosis, we need not address Claimant's argument that they are not credible. See *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Claimant's Brief at 13-22.

determined his COPD was caused by coal mine dust exposure. Decision and Order at 31, 33-34 (unpaginated).

An ALJ has the discretion to weigh the evidence and draw inferences therefrom. *See Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 893 (7th Cir. 1990); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135, 140 (1990). The Board cannot disturb factual findings that are supported by substantial evidence even if it might reach a different conclusion if it were reviewing the evidence de novo. *See Poole*, 897 F.2d at 893.

Claimant's argument that the opinions of Drs. Murthy and Cohen are sufficient to establish legal pneumoconiosis amounts to a request to reweigh the evidence, which we are not empowered to do. *See Anderson*, 12 BLR at 1-113. Contrary to Claimant's contention, the ALJ accurately summarized the opinions of Drs. Murthy and Cohen and permissibly found their statements that coal mine dust can cause COPD, and that Claimant had sufficient exposure to cause COPD, do not persuasively establish his impairment was significantly related to, or substantially aggravated by, coal mine dust exposure in this specific case. *See Consolidation Coal Co. v. Director, OWCP [Beeler]*, 521 F.3d 723, 726-27 (7th Cir. 2008); *Poole*, 897 F.2d at 893; *Knizner v. Bethlehem Mines Corp.*, 8 BLR 1-5, 1-7 (1985); Decision and Order at 31-34 (unpaginated).

Claimant also argues the ALJ erred in finding Claimant's treatment records do not support a finding of legal pneumoconiosis because they document a history of COPD and shortness of breath. Claimant's Brief at 6-7. We disagree. The ALJ correctly observed the treatment records do not address whether Claimant's COPD was caused by coal mine dust exposure and thus permissibly found they do not support a finding of legal pneumoconiosis. *See Poole*, 897 F.2d at 893; *Underwood*, 105 F.3d at 949; Decision and Order at 31 (unpaginated).

Thus, as it is supported by substantial evidence, we affirm the ALJ's finding that the medical opinion evidence and Claimant's treatment record evidence do not establish pneumoconiosis.⁷ 20 C.F.R. §718.202. Because Claimant failed to establish pneumoconiosis, an essential element of entitlement, we affirm the denial of benefits. *Trent*, 11 BLR at 1-27.

⁷ We reject Claimant's argument he is entitled to the rebuttable presumption at 20 C.F.R. §718.203(b) that his pneumoconiosis arose out of his coal mine employment because he failed to establish pneumoconiosis. Claimant's Brief at 12.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge