U.S. Department of Labor

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

BRB No. 23-0281 BLA

DONALD SEABOLT	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	**NOT-PUBLISHED**
ICG EASTERN, LLC	)	
	)	
and	)	DATE ISSUED: 09/13/2024
	)	
ARCH COAL COMPANY, INCORPORATED	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of Decision and Order Awarding Benefits of Sean M. Ramaley, 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 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) Sean M. Ramaley's Decision and Order Awarding Benefits (2021-BLA-05273) rendered on a claim filed on September 20, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ initially determined this claim was timely filed. He further credited Claimant with 25.74 years of coal mine employment in conditions substantially similar to those in an underground mine, and found Claimant established a totally disabling respiratory or pulmonary impairment. Thus, he 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] He further found Employer did not rebut the presumption and awarded benefits.

On appeal, Employer argues the ALJ erred in finding the claim timely filed. Alternatively, it contends the ALJ erred in finding that it did not rebut the Section 411(c)(4) presumption.[2] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response.

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).

[1] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is 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 finding that Claimant invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 23.

[3] 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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 15.

Timeliness of the Claim

"Any claim for benefits by a miner . . . shall be filed within three years after . . . a medical determination of total disability due to pneumoconiosis . . . ." 30 U.S.C. §932(f). The medical determination must have been "communicated to the miner or a person responsible for the care of the miner." 20 C.F.R. §725.308(a). A miner's claim is presumed to be timely filed. 20 C.F.R. §725.308(b). To rebut the presumption, Employer must show the claim was filed more than three years after a medical determination of total disability due to pneumoconiosis was communicated to the miner. 30 U.S.C. §932(f); 20 C.F.R. §725.308(a). The United States Court of Appeals for the Fourth Circuit has held that an oral communication of a medical determination of total disability due to pneumoconiosis is sufficient to trigger the statute of limitations. *Island Creek Coal Co. v. Henline*, 456 F.3d 421, 426-27 (4th Cir. 2006); *see also Peabody Coal Co. v. Director, OWCP* [*Brigance*], 718 F.3d 590, 595-96 (6th Cir. 2013).

Employer argues the ALJ erred in finding the claim timely filed because Claimant testified to the following at the hearing and in his answers to interrogatories: Dr. Jeffers informed him, at the Rainelle Medical Center in 2012 or 2013, that he was totally disabled due to pneumoconiosis, and in 2016 other doctors so informed him again. Employer's Brief at 5. We are not persuaded by Employer's argument.

The ALJ found Claimant's testimony and interrogatory answers unclear regarding when he was informed he was totally disabled due to pneumoconiosis, "what information was conveyed to [him], and who conveyed this information to [him];" therefore, the ALJ concluded Employer did not rebut the presumption that the claim was timely filed. Decision and Order at 6. The ALJ acknowledged that Claimant stated the following when asked on cross examination at the hearing if Dr. Jeffers told him he was disabled due to black lung around 2012 or 2013: "that's about right." Decision and Order at 5; Hearing Transcript at 31. However, the ALJ also accurately noted that immediately before being asked the question, he testified that "[t]hey all told me due to my lungs that I should file for disability," but then clarified that "I never talked to the doctors" and instead he was told by the nurses that he should file for federal black lungs because "your lungs are so bad." Decision and Order at 5; Hearing Transcript at 31.

Claimant also provided three sets of answers to interrogatories on February 11, 2021, June 29, 2021, and July 21, 2021. Employer's Exhibits 3, 10, 11. He was initially unable to state when he first reported his breathing problems, but he subsequently stated it was on January 24, 2013, to Dr. Jeffers. *Id.* When asked to identify the name of any physician who had informed him of a diagnosis of totally disabling coal workers' pneumoconiosis and the date it was communicated to him, he answered, "Rainelle Medical Center" and "Occupational Lung Center" without giving a date when it occurred.

Employer's Exhibit 3 at 10. He then listed Drs. Kinder, Henry, and Willis at Boone Memorial Hospital as having communicated such a diagnosis to him on "6/16," and Drs. Ajjarapu and Ranavaya as having done so in 2019 and 2020, respectively. *Id.* He subsequently stated he received the diagnoses from Drs. Jeffers, Leacock, Martin, and Ajjarapu, but gave no dates. Employer's Exhibits 10 at 11; 11 at 11. Although there is no evidence of complicated pneumoconiosis in this case, he stated he was diagnosed with that form of the disease on "1/24/13 Rainelle Medical Center, Inc.," Employer's Exhibit 3 at 11, and then further stated the following: "15% black lung – 6/4/13 – Brickstreet, (Rainelle Medical Center) Brickstreet," and "Dr. Esther Ajjarapu, Boone Memorial, 100% black lung 11/15/19," Employer's Exhibit 10 at 11, as well as "15% black lung – 6/4/2013 Brickstreet Rainelle Medical Center – Dr. Jeffers – Brickstreet – Boone Memorial – 11/15/2019 100% black lung," Employer's Exhibit 11 at 11.

Whether evidence sufficiently rebuts the presumption of timeliness involves factual findings and credibility determinations by the ALJ. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-152 (1989) (en banc). The ALJ found Claimant's testimony inconsistent and not credible as to whether Dr. Jeffers told him he was totally disabled due to pneumoconiosis. Decision and Order at 4. Similarly, he found Claimant's varied responses to the requests for interrogatories unclear. *Id.* The Board is not empowered to reweigh the evidence or render its own credibility determinations. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017) (ALJ evaluates the credibility of the evidence of record, including witness testimony); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). We conclude that the ALJ acted within his discretion in finding Claimant's contradictory testimony and his answers to interrogatories to be unclear regarding "what information was conveyed to [him], and who conveyed this information to [him]." *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997) (ALJ must evaluate the evidence, weigh it, and draw his own conclusions); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); Decision and Order at 6. Consequently, we affirm the ALJ's determination that, "although the evidence supports Employer's contention that someone may have told claimant he had pneumoconiosis and/or a disability in 2013," the evidence is not sufficient to establish a physician informed him he was totally disabled due to pneumoconiosis; thus Employer did not rebut the timely filing presumption.[4] *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir.

[4] Because we affirm the ALJ's finding that the evidence is insufficient to meet Employer's burden of proof, we need not address Employer's additional arguments challenging the ALJ's alternative reasons for determining Employer did not rebut the presumption that the claim was timely filed. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 13-14.

2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Lane v. Union Carbide Corp.*, 105 F.2d 166, 174 (4th Cir 1997).

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

Because Claimant invoked the Section 411(c)(4) presumption,[5] the burden shifted to Employer to establish he has neither legal nor clinical pneumoconiosis,[6] or "no part of [his] respiratory or pulmonary total disability is 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 did not 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), 718.305(d)(1)(i)(A); *see Minich v. Keystone Coal Mining Corp.*, 25 BLR 1-149, 1-155 n.8 (2015).

Employer relies on the opinions of Drs. Ranavaya and Zaldivar that Claimant does not have legal pneumoconiosis to rebut the presumption. Employer's Brief at 15. Dr. Ranavaya opined Claimant has bronchial asthma unrelated to coal mine dust exposure.

[5] The ALJ found Claimant had 25.74 years of coal mine employment in conditions substantially similar to those of an underground mine and is totally disabled due to a respiratory or pulmonary condition. Decision and Oder at 8, 23. He therefore determined Claimant invoked the Section 411(c)(4) presumption. *Id.* at 23. This finding and determination are unchallenged on appeal. *See Skrack*, 6 BLR at 1-711.

[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 rebutted the existence of clinical pneumoconiosis. Decision and Order at 29.

Director's Exhibit 20 at 41. Dr. Zaldivar diagnosed Claimant with asthma and smoking-induced bullous emphysema unrelated to coal mine dust exposure. Employer's Exhibit 5 at 9. The ALJ found their opinions not well-reasoned and documented, and thus found Employer did not rebut the existence of legal pneumoconiosis. Decision and Order at 33.

Employer contends the ALJ erred in his weighing of the medical opinion evidence. Employer's Brief at 14-25. We disagree.

Dr. Ranavaya diagnosed Claimant with a reversible airflow obstruction due to adult-onset bronchial asthma aggravated by a heavy smoking history. Director's Exhibit 20. The doctor excluded legal pneumoconiosis as contributing to the impairment based, in part, on the partial reversibility of Claimant's impairment in response to bronchodilators seen on his pulmonary function testing. Director's Exhibit 20 at 41-44. The ALJ permissibly found this reasoning unpersuasive because he found Dr. Ranavaya failed to adequately explain why the irreversible portion[8] 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); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); Decision and Order at 33. Dr. Ranavaya further excluded a diagnosis of legal pneumoconiosis based on his opinion that coal mine dust induced obstructions present with a reduced FEV1 and a preserved FEV1/FVC ratio on pulmonary function testing whereas smoking-related obstructions cause a reduction in the FEV1/FVC ratio. Director's Exhibit 20 at 10. Contrary to Employer's arguments, the ALJ permissibly discredited his opinion as inconsistent with the Department of Labor's recognition that coal dust exposure may cause obstruction with associated decrements in the FEV1/FVC ratio. *See Stallard*, 876 F.3d at 671-72; 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000); Decision and Order at 33; Employer's Brief at 16.

Dr. Zaldivar diagnosed Claimant with a mild restriction and severe obstruction with a severe diffusion impairment, all of which he attributed to asthma and emphysema due to smoking. Employer's Exhibits 5, 6. Dr. Zaldivar excluded a diagnosis of legal

[8] The ALJ found Claimant established a totally disabling respiratory impairment based on the pulmonary function testing, as all of Claimant's pulmonary function studies were qualifying both before and after the administration of bronchodilators, and based on the majority of the relevant medical opinion evidence. Decision and Order at 11, 21-24; Director's Exhibits 15, 20; Claimant's Exhibits 1, 2; Employer's Exhibit 5. A "qualifying" pulmonary function study yields results equal to or less than the applicable table values contained in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i).

pneumoconiosis based on his opinion that the chest x-rays and computed tomography (CT) scans demonstrate Claimant has bullous emphysema which is caused by smoking and not coal mine dust exposure, whereas coal mine dust exposure causes centriacinar emphysema. Employer's Exhibit 6 at 26, 30. However, the ALJ accurately noted that Dr. Zaldivar's diagnosis of bullous emphysema was based on a CT scan read by Dr. Meyer which is not in the record, while the interpretations of the CT scans that are in evidence reported only centrilobular and paraseptal emphysema. Decision and Order at 33; Director's Exhibit 22; Claimant's Exhibit 6; Employer's Exhibit 6 at 24. Thus, the ALJ permissibly found Dr. Zaldivar's opinion, that Claimant's emphysema is unrelated to coal mine dust exposure, entitled to less weight as he relied on evidence not in the record and failed to address relevant contrary evidence that he did review. *Hicks*, 138 F.3d at 528; *Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-108 (2006) (en banc); *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-67 (2004).

Moreover, Dr. Zaldivar opined that Claimant's asthma is unrelated to coal mine dust exposure as occupational asthma is a form of legal pneumoconiosis caused by "inhalation of a great deal of toxic anything, fumes from diesel fuel, from burning material, whatever," while, in Claimant's case, "[nothing] happen[ed] in the mine to him to produce any inhalation injury." Employer's Exhibit 6 at 31-32. The ALJ permissibly found Dr. Zaldivar's opinion not well-reasoned because he did not sufficiently explain why Claimant's coal mine dust exposure did not contribute to or aggravate his smoking related asthma. *See Owens*, 724 F.3d at 557-58; Decision and Order at 33.

Because the ALJ provided valid reasons for discrediting the opinions of Drs. Zaldivar and Rosenberg, the only medical opinions supportive of Employer's burden, we affirm his finding that Employer failed to disprove legal pneumoconiosis. *See Minich*, 25 BLR at 1-155 n.8. Therefore, we affirm his finding that Employer failed to rebut the Section 411(c)(4) presumption by establishing Claimant does not have pneumoconiosis. *See* 20 C.F.R. §718.305(d)(1)(i); Decision and Order at 33. Employer's failure to disprove legal pneumoconiosis precludes a rebuttal finding that Claimant does not have pneumoconiosis. 20 C.F.R. §718.305(d)(1)(i).

Disability Causation

The ALJ next considered whether Employer established "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); Decision and Order at 36. He permissibly discredited the opinions of Drs. Ranavaya and Zaldivar on disability causation because they did not diagnose legal pneumoconiosis and Dr. Ranavaya failed to diagnose

total disability, contrary to the ALJ's findings.[9] *See Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-05 (4th Cir. 2015); Decision and Order at 16. We therefore affirm the ALJ's finding that Employer failed to establish no part of Claimant's total disability was caused by legal pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii).

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

[9] The physicians did not offer an explanation other than the absence of pneumoconiosis.