U.S. Department of Labor

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

BRB No. 23-0360 BLA

KELLIS C. BARTON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	**NOT-PUBLISHED**
	)	
CLINCHFIELD COAL COMPANY	)	
	)	
Employer-Petitioner	)	DATE ISSUED: 09/30/2024
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order on Remand Awarding Benefits of Carrie Bland, Associate Chief Administrative Law Judge, United States Department of Labor.

Kendra Prince (Penn, Stuart, & Eskridge), Abingdon, Virginia, for Employer.

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

PER CURIAM:

Employer appeals Associate Chief Administrative Law Judge (ALJ) Carrie Bland's Decision and Order on Remand Awarding Benefits (2018-BLA-05152), rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a claim filed on January 20, 2017, and is before the Benefits Review Board for the second time.

In her initial Decision and Order Denying Benefits, the ALJ credited Claimant with 19.59 years of qualifying coal mine employment but found he did not establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant was unable to invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[1] As failure to establish total disability also precludes an award under 20 C.F.R. Part 718, the ALJ denied benefits.

In consideration of Claimant's appeal, the Board affirmed the ALJ's findings that Claimant established 19.59 years of qualifying coal mine employment and that the evidence was insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(i)-(iii). *Barton v. Clinchfield Coal Co.*, BRB No. 20-0566 BLA, slip op. at 2-4 (Jan. 31, 2022) (unpub.). However, the Board vacated her determination that the medical opinion evidence did not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv) as she did not adequately address whether the medical opinions demonstrated that Claimant was capable of performing his usual coal mine employment. *Id.* at 5-6. Thus, the Board also vacated the ALJ's finding that Claimant did not invoke the Section 411(c)(4) presumption and the denial of benefits and remanded the case for further consideration. *Id.* at 6-7.

On remand, the ALJ found Claimant established total disability and thus invoked the Section 411(c)(4) presumption. She further found Employer did not rebut the presumption and awarded benefits.

In the current appeal, Employer argues the ALJ erred in finding Claimant is totally disabled. Neither Claimant nor the Director, Office of Worker's Compensation Programs, has filed a response.

The 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.[2] 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 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] This case arises under the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in Virginia. *See*

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

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(i). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work.[3] *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function or arterial blood gas studies,[4] 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 the 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).

The ALJ found Claimant established total disability based on the medical opinion evidence and the evidence as a whole. Decision and Order on Remand at 4. She considered Drs. Raj's and Keene's opinions that Claimant is totally disabled from a respiratory or pulmonary impairment and Dr. Sargent's opinion that he is not. Decision and Order on Remand at 3-4. Employer argues the ALJ failed to adequately explain why she credited Drs. Raj's and Keene's opinions, as the Administrative Procedure Act (APA) requires.[5] Employer's Brief at 4. Specifically, it contends the ALJ erred in crediting their opinions because they relied solely on Claimant's work history and symptoms and failed to explain how Claimant is totally disabled in light of his later, non-qualifying test results. Employer's Brief at 6-10. It also contends Dr. Keene never stated that Claimant is totally

---

Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 33-34; Director's Exhibit 3.

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant's usual coal mine work as an electrician and repairman required heavy exertion. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order on Remand at 3.

[4] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B and C. A non-qualifying study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

[5] The APA requires that every adjudicatory decision include "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), as incorporated into the Act by 30 U.S.C. §932(a).

disabled from a pulmonary perspective and the ALJ "is not at liberty to infer" total disability. Employer's Brief at 8-10. We disagree.

Contrary to Employer's argument, a medical opinion may support a finding of total disability if it provides sufficient information from which the ALJ can reasonably infer that a miner is unable to do his last coal mine job. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995) (physical limitations described in doctor's report sufficient to establish total disability); *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 894 (7th Cir. 1990) ("[A]n ALJ must consider all relevant evidence on the issue of disability including medical opinions which are phrased in terms of total disability or provide a medical assessment of physical abilities or exertional limitations which lead to that conclusion."); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48, 1-51-52 (1986) (en banc) (ALJ may infer total disability by comparing physician's impairment rating and any physical limitations due to that impairment with the exertional requirements of the miner's usual coal mine work).

As the ALJ found, Dr. Keene examined Claimant regularly as his personal physician since 2016 and described Claimant as having "significant" shortness of breath which requires him to "rest frequently and limit his activities." Decision and Order on Remand at 3; Claimant's Exhibit 5. She also supported her opinion by explaining that the February 13, 2017 blood gas study showed decreased oxygenation. Decision and Order on Remand at 3; Claimant's Exhibit 5. Thus, while Dr. Keene did not explicitly state Claimant is totally disabled, the ALJ permissibly found she provided a reasoned medical opinion from which the ALJ could infer Claimant is unable to perform the heavy labor she found his usual coal mine employment required. *See Scott*, 60 F.3d at 1141; *Budash*, 9 BLR at 1-51-52; Decision and Order on Remand at 4.

Further, contrary to Employer's arguments, neither the ALJ nor Claimant's medical experts relied "only" on Claimant's own explanations regarding his symptoms.[6] Employer's Brief at 7. As discussed, Dr. Keene identified Claimant's decreased

[6] Employer is also incorrect to the extent its argument could be construed as suggesting that a physician cannot base a total disability diagnosis on a miner's symptoms. *See Scott v. Mason Coal Co.*, 60 F.3d 1138, 1141 (4th Cir. 1995) (an ALJ may not consider a physician's identification of symptoms "as being nothing more than mere notations of the patient's descriptions unless there is specific evidence for doing so in the report;" physician's identification of "shortness of breath," "acute shortness of breath," and "mild shortness of breath" with various activities constitutes a "reasoned medical opinion"); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 532 (4th Cir. 1998) (ALJs must consider "all of the relevant evidence," including the entirety of a physician's opinion).

oxygenation on resting blood gas testing and his shortness of breath with activity, which requires him to limit his activities and rest frequently. Claimant's Exhibit 5. Dr. Raj specifically opined Claimant cannot meet the exertional requirements of his last coal mine job based on the resting blood gas study he conducted demonstrating severe hypoxemia and indicating Claimant's "physical capacity is greatly diminished" due to his totally disabling pulmonary impairment. He also stated Claimant's impairment prevents him from walking "100-200 feet distance on level ground" without becoming short of breath. He concluded Claimant's pulmonary impairment prevents him from performing his usual coal mine work. Director's Exhibit 11 at 5; Decision and Order on Remand at 3-4.

Employer also generally argues Dr. Raj's opinion is unreasoned because the physician relied on Claimant's qualifying values on blood gas testing performed during Dr. Raj's examination, when later testing by Dr. Sargent demonstrated non-qualifying values. Yet, as Employer acknowledges, total disability can be established with a reasoned medical opinion even "[w]here total disability cannot be shown [by the objective studies identified] under paragraphs (b)(2)(i), (ii), or (iii), of this section . . . ." 20 C.F.R. §718.204(b)(2)(iv); *McMath v. Director, OWCP*, 12 BLR 1-6, 1-10 (1989); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 578 (6th Cir. 2000) (even a nonqualifying pulmonary function study reflecting a mild impairment may be totally disabling). Moreover, an ALJ need not discredit an opinion from a medical expert who did not review all of a miner's medical records if the ALJ finds the opinion is otherwise well-reasoned, documented, and based on the physician's own examination of the miner, objective test results, and exposure histories. *See Church v. E. Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-296 (1984).

Employer's argument that the ALJ should have discredited Dr. Raj's opinion amounts to a request to reweigh the evidence, which the Board may not do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). We therefore affirm the ALJ's permissible finding that Dr. Raj's opinion is well reasoned and documented. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Church*, 20 BLR at 1-13; Decision and Order on Remand at 3-4.

As the ALJ adequately explained why she credited Drs. Keene's and Raj's opinions, her decision complies with the requirements of the APA. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); Decision and Order on Remand at 3-4.

Regarding Dr. Sargent's contrary opinion, Employer generally argues that the ALJ did not review the other medical opinions as critically as she did his opinion. Employer's Brief at 6. We disagree.

The ALJ found Dr. Sargent focused solely on whether the objective testing was qualifying and did not address how the limitations the physician observed from Claimant's December 19, 2017 exercise blood gas study results would affect his ability to perform heavy labor, particularly given that the respiratory symptoms Claimant exhibited led to the premature termination of the study.[7] Decision and Order on Remand at 4; Employer's Exhibit 1 at 1, 25; Employer's Exhibit 6 at 10-11. As Employer has not challenged these determinations, we affirm the ALJ's finding that Dr. Sargent's opinion is worthy of no weight. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order on Remand at 4.

Thus, we affirm, as supported by substantial evidence, the ALJ's finding that the medical opinion evidence supports a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). *See Compton*, 211 F.3d at 207-08; *Hicks*, 138 F.3d at 528; Decision and Order on Remand at 4.

As Employer raises no further arguments, we further affirm the ALJ's finding that Claimant is totally disabled based on the evidence as a whole and, therefore, invoked the Section 411(c)(4) presumption. Decision and Order on Remand at 4; 20 C.F.R. §718.204(b)(2). Finally, we also affirm, as unchallenged, the ALJ's findings that Employer failed to rebut it. *See Skrack*, 6 BLR at 1-711; Decision and Order on Remand at 4, 7; 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305.

[7] During the December 19, 2017 exercise blood gas study, Claimant walked on a treadmill at a speed of one mile per hour, with exercise terminated after four minutes and forty-one seconds. Employer's Exhibit 1 at 1, 24. As the ALJ noted, Dr. Sargent observed that Claimant "almost immediately developed severe coughing and dyspnea and had to stop exercising." *Id.* at 1; *see also* Employer's Exhibit 6 at 12, 14; Decision and Order on Remand at 4.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge