BRB No. 13-0558 BLA

PHILLIP W. CAUDILL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
LANCE COAL CORPORATION/ GOLDEN OAK	)	
	)	
and	)	
	)	DATE ISSUED: 08/27/2014
R & B FALCON CORPORATION	)	
	)	
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 of Peter B. Silvain, Jr., Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Kevin T. Gillen (Jackson Kelly PLLC), Morgantown, West Virginia, for employer/carrier.

Before: HALL, Acting Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order (11-BLA-05623) of Administrative Law Judge Peter B. Silvain, Jr. awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-

944 (2012) (the Act). This case involves a claim filed on February 16, 2010. Director's Exhibit 2.

Applying amended Section 411(c)(4), 30 U.S.C. §921(c)(4),[1] the administrative law judge credited claimant with at least fifteen years of qualifying coal mine employment,[2] and found that the evidence established that claimant has a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). The administrative law judge, therefore, found that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis set forth at Section 411(c)(4). Moreover, the administrative law judge found that employer did not rebut the presumption. Accordingly, the administrative law judge awarded benefits.

On appeal, employer argues that the administrative law judge erred in finding that the evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2) and, therefore, erred in finding that claimant invoked the Section 411(c)(4) presumption. Employer also argues that the administrative law judge erred in finding that employer did not rebut the Section 411(c)(4) presumption. Claimant responds in support of the administrative law judge's award of benefits. Employer reiterates its arguments in its reply brief. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.[3]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30

[1] Congress enacted amendments to the Black Lung Benefits Act, which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, Congress reinstated Section 411(c)(4) of the Act, which provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of underground coal mine employment, or employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4).

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as claimant's coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc); Director's Exhibit 6, Hearing Tr. at 25-26.

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established at least fifteen years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

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

Employer contends that the administrative law judge erred in finding that claimant invoked the Section 411(c)(4) presumption. Employer specifically argues that the administrative law judge erred in finding that the evidence established the existence of a totally disabling respiratory impairment.

After finding that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii), the administrative law judge considered whether the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). The administrative law judge considered the medical opinions of Drs. DeFore, Klayton, Fino, and Castle. Dr. DeFore noted that claimant, a life-long non-smoker, last worked as a heavy strip mine equipment mechanic. Based on the results of his physical examination and testing, Dr. DeFore opined that claimant is "totally disabled from a pulmonary standpoint" based on "a moderate restrictive defect on his pulmonary function test," and hypoxemia and an "abnormal physiological response to exercise," as demonstrated by his blood gas studies. Director's Exhibit 16; Decision and Order at 20.

The administrative law judge noted that Dr. Klayton similarly opined that claimant has a "severe" respiratory impairment that would preclude him from returning to his usual coal mine work. Dr. Klayton based his opinion on the results of his physical examination and objective testing, which he noted revealed dyspnea on mild exertion, moderate restrictive lung disease with decreased diffusing capacity, and mild hypoxemia on resting blood gas studies. Claimant's Exhibit 2.

In contrast, Dr. Fino opined that claimant does not have a disabling respiratory impairment. Dr. Fino stated that while claimant's blood gas studies revealed a gas exchange impairment, in the form of hypoxemia and hypercarbia, this was due to claimant's obesity, and not to any intrinsic lung abnormality. Director's Exhibit 18; Employer's Exhibit 3 at 14-15, 20-22. Moreover, Dr. Fino opined, the hypoxemia and hypercarbia would not prevent claimant from returning to his usual coal mine work. Director's Exhibit 18; Employer's Exhibit 3.

Dr. Castle also opined that claimant is not totally disabled from a respiratory standpoint. Dr. Castle stated that claimant's pulmonary function studies and blood gas studies demonstrated a mild restrictive pulmonary impairment and mild hypoxemia or hypercarbia. Like Dr. Fino, however, Dr. Castle opined that these impairments are not disabling, and are due to obesity, not lung disease. Employer's Exhibits 1, 2 at 23.

The administrative law judge found that the opinions of Drs. DeFore and Klayton, that claimant has a totally disabling respiratory impairment, were well-reasoned and supported by the results of the objective studies. Decision and Order at 20. The administrative law judge accorded less weight to the opinions of Drs. Fino and Castle, finding that neither doctor adequately explained how claimant retained the respiratory capacity to return to his previous coal mine employment, given the heavy exertional level of that position. Decision and Order at 20. The administrative law judge, therefore, found that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *Id.*

Employer initially asserts that the administrative law judge erred in finding the opinions of Drs. DeFore and Klayton to be well-reasoned. Employer's Brief at 10-18. Employer contends that the opinions are unexplained and unsupported by the majority of the non-qualifying pulmonary function and blood gas studies of record. *Id.* We disagree.

Drs. DeFore and Klayton based their opinions, that claimant is totally disabled, on the results of their physical examinations, and on the results of the pulmonary function studies and blood gas studies they performed, which revealed a moderate restrictive defect, reduced diffusing capacity, and hypoxemia. Further, both physicians explained that the level of impairment revealed by the objective testing would prevent claimant from performing the duties of his employment, which required heavy labor. Director's Exhibit 16; Claimant's Exhibit 2. Contrary to employer's argument, a claimant may establish total disability with reasoned medical opinion evidence, even "where 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). Thus, a doctor can offer a reasoned medical opinion diagnosing total disability, even though the objective studies are non-qualifying. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 587, 22 BLR 2-107, 2-124 (6th Cir. 2000); *see also Killman v. Director, OWCP*, 415 F.3d 716, 721-22, 23 BLR 2-250, 2-259 (7th Cir. 2005). Moreover, the determination of whether a physician's opinion is reasoned and documented is within the discretion of the administrative law judge, as trier of fact. *See Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F. 2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983).

Because the administrative law judge specifically found that Drs. DeFore and Klayton set forth the rationale for their findings, based on their interpretations of the medical evidence of record, and explained why they concluded that claimant is unable to perform the duties of his usual coal mine work, we affirm the administrative law judge's permissible finding that the opinions of Drs. DeFore and Klayton are well-reasoned and sufficient to satisfy claimant's burden of proof. *See Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

Employer next contends that the administrative law judge erred in discrediting the opinions of Drs. Fino and Castle, on the ground that neither physician adequately explained why he believed claimant retained the capacity to perform his usual coal mine work in light of the restrictive impairment and hypoxemia reflected on the objective testing. Employer specifically asserts that, as both "Drs. Fino and Castle concluded that any impairment present . . . was not intrinsically pulmonary or respiratory in nature . . . under the regulatory framework, their disability analysis necessarily ends there." Employer's Brief at 18-19. This contention lacks merit. The issue is not whether a respiratory or pulmonary impairment is due to an intrinsic, or extrinsic, disease process; the relevant inquiry at 20 C.F.R. §718.204(b)(2) is solely whether a totally disabling respiratory or pulmonary impairment is, or was, present. Thus, the administrative law judge acted within his discretion in finding that Drs. Fino and Castle did not adequately explain why the restrictive impairment and hypoxemia they diagnosed would not preclude claimant from performing his most recent coal mine employment as a heavy equipment mechanic, "given the heavy exertion level of that position." Decision and Order at 20; *see Cornett*, 227 F.3d at 587, 22 BLR at 2-124; *see also Killman*, 415 F.3d at 721-22, 23 BLR at 2-259; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255, 5 BLR at 2-103.

Because substantial evidence supports the administrative law judge's determination to accord greater weight to the opinions of Drs. DeFore and Klayton, than to the opinions of Drs. Fino and Castle, we affirm the administrative law judge's finding that the medical opinion evidence established total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). Moreover, as the administrative law judge properly considered the medical opinion evidence, in light of the pulmonary function and arterial blood gas study evidence, we affirm the administrative law judge's finding that claimant established total disability pursuant to 20 C.F.R. §718.204(b)(2). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc); Decision and Order at 19-20.

In light of our affirmance of the administrative law judge's findings that claimant established at least fifteen years of qualifying coal mine employment, and the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2), we affirm the administrative law judge's finding that claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4). 30 U.S.C. §921(c)(4).

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

Because the administrative law judge found that claimant invoked the presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(4), he properly noted that the burden of proof shifted to employer to establish rebuttal by disproving the

existence of pneumoconiosis, or by proving that claimant's pulmonary or respiratory impairment "did not arise out of, or in connection with," coal mine employment. 30 U.S.C. §921(c)(4); *see Big Branch Res., Inc. v. Ogle,* 737 F.3d 1063, 1069-70 (6th Cir. 2013); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 25 BLR 2-1 (6th Cir. 2011). Under the implementing regulation, employer may rebut the presumption by establishing that claimant does not have either clinical or legal pneumoconiosis,[4] 20 C.F.R. §718.305(d)(1)(i), or by establishing that "no part of the miner's respiratory or pulmonary total disability was caused by pneumoconiosis as defined in §718.201." 20 C.F.R. §718.305(d)(1)(ii). The administrative law judge found that employer failed to establish rebuttal by either method.

Employer contends that the administrative law judge erred in finding that employer failed to disprove the existence of legal pneumoconiosis. The administrative law judge considered the medical opinions of Drs. Fino and Castle. Dr. Fino opined that claimant does not suffer from legal pneumoconiosis, and that his mild resting hypoxemia and hypercarbia are due to obesity. Director's Exhibit 18; Employer's Exhibit 3. Dr. Castle similarly opined that claimant does not suffer from pneumoconiosis, and that his respiratory impairment, in the form of mild restrictive lung disease with mild hypoxemia and hypercarbia, is due to obesity. Employer's Exhibits 1, 2.

The administrative law judge found that the opinions of Drs. Fino and Castle were inconsistent with the regulations and inadequately explained. Decision and Order at 24-25. Therefore, the administrative law judge determined that their opinions were not sufficient to disprove the existence of legal pneumoconiosis. *Id.*

Employer argues that the administrative law judge erred in his consideration of the opinions of Drs. Fino and Castle. We disagree. As summarized by the administrative law judge, Dr. Fino excluded coal mine dust exposure as a cause of claimant's gas exchange impairment based, in part, on his opinion that the seventeen year gap between when claimant left the mines, and when his symptoms began, supported a non-coal mine dust-related etiology. Employer's Exhibit 3 at 12. The administrative law judge permissibly found that this reasoning was inconsistent with the regulations, which recognize that pneumoconiosis may be latent and progressive, and "may first become

[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).

detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151, 11 BLR 2-1, 2-9 (1987); *Peabody Coal Co. v. Odom*, 342 F.3d 486, 22 BLR 2-612 (6th Cir. 2003); Decision and Order 25.

Further, the administrative law judge permissibly questioned the opinions of Drs. Fino and Castle, regarding the cause of claimant's restrictive defect and gas exchange impairment, because neither doctor adequately explained how he eliminated claimant's coal mine dust exposure as a source of the impairment. *See Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); Decision and Order at 24-25. Specifically, the administrative law judge permissibly found that Drs. Fino and Castle did not adequately explain why claimant's more than seventeen years of coal mine dust exposure did not contribute, along with claimant's other conditions, to his restrictive or gas exchange impairment. *Id.* As the administrative law judge's basis for discrediting the opinions of Drs. Fino and Castle is rational and supported by substantial evidence, this finding is affirmed. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005).

Because the opinions of Drs. Fino and Castle are the only opinions supportive of a finding that claimant does not suffer from legal pneumoconiosis, we affirm the administrative law judge's finding that employer failed to disprove the existence of legal pneumoconiosis. Employer's failure to rule out legal pneumoconiosis precludes a rebuttal finding that claimant does not have pneumoconiosis. *See Morrison*, 644 F.3d at 480, 25 BLR at 2-9.

Employer next argues that the administrative law judge erred in finding that employer failed to establish that that no part of claimant's respiratory or pulmonary total disability was caused by pneumoconiosis. 20 C.F.R. §718.305(d)(1)(ii). Employer's argument lacks merit. The administrative law judge reasonably determined that the same reasons he provided for discrediting the opinions of Drs. Fino and Castle that claimant does not suffer from legal pneumoconiosis, also undercut their opinions that claimant's impairment is unrelated to pneumoconiosis. *See Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062 (6th Cir. 2013); *Ogle*, 737 F.3d at 1074; *see also Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116, 19 BLR 2-70, 2-83 (4th Cir. 1995). Because the administrative law judge provided valid reasons for discrediting the opinions of Drs. Fino and Castle, the only opinions supportive of a finding that no part of claimant's disabling impairment is due to pneumoconiosis, we affirm the administrative law judge's finding that employer failed to rebut the Section 411(c)(4) presumption by establishing that claimant's disabling impairment did not arise out of, or in connection with, coal mine employment. *See Ramage*, 737 F.3d at 1062; *Ogle*, 737 F.3d at 1074. Consequently, we affirm the administrative law judge's finding that employer did not satisfy its burden to establish rebuttal. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(d)(1).

Because claimant invoked the Section 411(c)(4) presumption that he is totally disabled due to pneumoconiosis, and employer did not rebut the presumption, we affirm the administrative law judge's award of benefits. *See Ogle*, 737 F.3d at 1063, 1069-70.

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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REGINA C. McGRANERY
Administrative Appeals Judge