U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0246 BLA

HENLEY ADKINS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 10/19/2016
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Respondent	)	DECISION and ORDER

Appeal of the Decision and Order of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

Henley Adkins, Branchland, West Virginia, *pro se*.

Rita Roppolo (M. Patricia Smith, Solicitor of Labor; Maia Fisher, Acting Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order (2012-BLA-5847) of Administrative Law Judge Natalie A. Appetta denying 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 December 12, 2011.

At claimant's request, the administrative law judge issued a decision on the record, after allowing both parties to submit evidence.[1] After crediting claimant with "at least thirty-one" years of qualifying coal mine employment,[2] Decision and Order at 3, the administrative law judge found that the evidence did not establish that claimant is totally disabled by a respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Because claimant failed to establish that he is totally disabled, the administrative law judge found that claimant did not invoke the rebuttable presumption of total disability due to pneumoconiosis provided at Section 411(c)(4) of the Act.[3] 30 U.S.C. §921(c)(4)(2012). The administrative law judge also found that claimant was not entitled to benefits under 20 C.F.R. Part 718. The administrative law judge, therefore, denied benefits.

On appeal, claimant generally challenges the denial of benefits. The Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's denial of benefits.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally

[1] By Order dated January 28, 2016, the administrative law judge granted the request of the Director, Office of Workers' Compensation Programs (the Director), to dismiss the responsible operator, designate the Black Lung Disability Trust Fund as the party liable for any benefits awarded, and to admit the medical evidence previously developed by the responsible operator as evidence submitted by the Director.

[2] Claimant's coal mine employment was in West Virginia. Director's Exhibit 2. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4)(2012); *see* 20 C.F.R. §718.305.

disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment is due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements 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 (1986) (en banc).

In considering whether the evidence established total disability, the administrative law judge correctly noted that the only pulmonary function study of record and the only arterial blood gas study of record, both of which were conducted on January 5, 2012, were non-qualifying.[4] Decision and Order at 14, Director's Exhibit 11. Consequently, we affirm the administrative law judge's findings that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i) and (ii).

Because there is no evidence of record indicating that claimant suffers from cor pulmonale with right-sided congestive heart failure, the administrative law judge properly found that claimant is precluded from establishing total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 14.

In considering 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 opinions of Drs. Gaziano and Zaldivar. Dr. Gaziano reported that claimant's pulmonary function study and arterial blood gas study were "normal," but opined that claimant suffers from a "moderate heart impairment," and is disabled due to heart disease. Director's Exhibit 11 at 4, 5. The regulations provide that if a nonpulmonary or nonrespiratory condition or disease, such as cardiac disease, causes a chronic respiratory or pulmonary impairment, that condition or disease shall be considered. 20 C.F.R. §718.204(a). However, in this case, the administrative law judge accurately noted that Dr. Gaziano did not opine that claimant's heart disease causes a chronic respiratory or pulmonary impairment. Decision and Order at 16. As the administrative law judge correctly found that Dr. Gaziano did not diagnose a respiratory or pulmonary impairment, we affirm her determination that Dr. Gaziano's opinion does not support a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv). *See* 20 C.F.R. §718.204(a). Additionally, the administrative law judge accurately noted that Dr. Zaldivar opined that claimant is not disabled from a pulmonary standpoint. Decision and Order at 16; Director's Exhibit 27. We, therefore, affirm the administrative law judge's finding that

[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 these values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

Because the medical evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718, and the administrative law judge's determination that claimant did not invoke the Section 411(c)(4) presumption.[5] 30 U.S.C. §921(c)(4); *see Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2; Decision and Order at 18.

[5] A review of the record reveals no evidence of complicated pneumoconiosis. Therefore, claimant cannot invoke the irrebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §§718.204(b)(1), 718.304.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge