U.S. Department of Labor

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

BRB Nos. 15-0520 BLA
and 15-0520 BLA-A

CONNIE DAMRON HATFIELD (Widow of BRYANT HATFIELD) Claimant-Petitioner Cross-Respondent v. LAUREL RUN MINING COMPANY Employer-Respondent Cross-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 09/13/2016 DECISION and ORDER

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

Leonard J. Stayton, Inez, Kentucky, for claimant.

Kathy L. Snyder and Andrea L. Berg (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Claimant[1] appeals, and employer cross-appeals, the Decision and Order (13-BLA-6010) of Administrative Law Judge Richard A. Morgan denying benefits on a claim filed pursuant to provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a survivor's claim filed on July 9, 2012.

After crediting the miner with more than fifteen years of underground coal mine employment,[2] the administrative law judge found that the evidence did not establish that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2). Because claimant failed to establish that the miner was totally disabled, the administrative law judge found that claimant did not invoke the rebuttable presumption of death due to pneumoconiosis provided at Section 411(c)(4) of the Act.[3] 30 U.S.C. §921(c)(4) (2012). Because there is no evidence of complicated pneumoconiosis in the record, the administrative law judge also found that the Section 718.304 presumption is inapplicable. 20 C.F.R. §718.304.

Turning to whether claimant could affirmatively establish her entitlement to survivor's benefits under 20 C.F.R. Part 718, the administrative law judge found that the medical opinion evidence did not establish the existence of legal pneumoconiosis[4] pursuant to 20 C.F.R. §718.202(a)(4). However, the administrative law judge found that the evidence established that the miner suffered from clinical pneumoconiosis[5] pursuant to 20 C.F.R. §718.202(a). The administrative law judge further found that claimant was

[1] Claimant is the widow of the miner, who died on January 5, 2011. Director's Exhibit 9.

[2] The record indicates that the miner's coal mine employment was in West Virginia. Director's Exhibit 5; Hearing Transcript at 15. 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's death was 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.

[4] "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).

[5] "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 to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

entitled to the presumption that the miner's clinical pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). However, the administrative law judge found that the evidence did not establish that the miner's death was due to clinical pneumoconiosis. 20 C.F.R. §718.205. Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that the pulmonary function study evidence and the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (iv). Claimant further contends that the administrative law judge erred in finding that the medical opinion evidence did not establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Employer responds in support of the administrative law judge's denial of benefits. In its cross-appeal, employer argues that the administrative law judge, in considering whether the medical opinion evidence established that the miner was totally disabled, erred in according less weight to the medical opinions of Drs. Castle, Crouch, and Tomashefski. Employer also asserts that the administrative law judge erred in his consideration of Dr. Couch's opinion regarding the issue of legal pneumoconiosis. In a reply brief, claimant reiterates her previous contentions. The Director, Office of Workers' Compensation Programs, has not filed a response brief to either claimant's appeal or employer's cross-appeal.

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

Claimant argues that the administrative law judge erred in finding that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2), and therefore erred in finding that she did not invoke the Section 411(c)(4) presumption. Claimant specifically argues that the administrative law judge erred in finding that the pulmonary function study evidence and the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (iv).[6]

[6] The administrative law judge found that the arterial blood gas study evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 17. Moreover, because there is no evidence of cor pulmonale with right-sided congestive heart failure, the administrative law judge found that claimant could not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). *Id.*

The record contains two pulmonary function studies conducted by Dr. Rasmussen on November 2, 2004 and March 16, 2010. The November 2, 2004 pulmonary function study produced non-qualifying values,[7] both before and after the administration of a bronchodilator. Claimant's Exhibit 1. The March 16, 2010 pulmonary function study produced qualifying values before the administration of a bronchodilator, but non-qualifying values after the administration of a bronchodilator. Claimant's Exhibit 2.

In addressing the conflicting pulmonary function study evidence, the administrative law judge accorded more weight to the results of the more recent pulmonary function study conducted on March 16, 2010. Decision and Order at 17. The administrative law judge, however, did not explicitly address whether the March 16, 2010 study supported a finding of total disability. Where a pulmonary function study, such as the March 16, 2010 study, contains both a pre-bronchodilator and post-bronchodilator result and one qualifies while the other does not, an administrative law judge must weigh the values and explain those results he finds more probative. *Keen v. Jewell Ridge Coal Corp.*, 6 BLR 1-454, 1-459 (1983). In this instance the administrative law judge did not reconcile the qualifying and non-qualifying results.[8] *Id.* at 17, 20. Because the administrative law judge failed to resolve the conflict between the pre-bronchodilator and post-bronchodilator test results, and explain which results he found more probative, his analysis of the pulmonary function study evidence does not comport with the requirements of the Administrative Procedure Act (APA), which provide that every adjudicatory decision must be accompanied by a statement of "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); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). We, therefore, remand the case for the administrative law judge to reconsider whether the pulmonary function study evidence establishes that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2)(i).

Claimant also contends that the administrative law judge erred in finding that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R.

[7] A "qualifying" pulmonary function study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendix B, for establishing total disability. *See* 20 C.F.R. §718.204(b)(2)(i). A "non-qualifying" study exceeds those values.

[8] Although the administrative law judge found that the miner's cooperation during the study was only noted as "fair," he did not cite any medical evidence that the miner's degree of cooperation undermined the reliability of the study.

§718.204(b)(2)(iv). The administrative law judge considered the medical opinions of Drs. Rasmussen, Crouch, Tomashefski, Spagnolo, and Castle. Dr. Rasmussen, a physician who examined the miner in 2004 and 2010, opined that the miner suffered from a totally disabling pulmonary impairment. Claimant's Exhibits 2 at 3, 8 at 19-20. Drs. Crouch and Tomashefski each opined that the miner's clinical pneumoconiosis was not of a sufficient severity to have caused any significant degree of respiratory impairment. Director's Exhibit 25; Employer's Exhibits 1, 8. Dr. Spagnolo similarly opined that the miner's "coal mine dust exposure did not play any role in any disability he may have had prior to his death." Employer's Exhibit 6 at 12. Finally, Dr. Castle, who examined the miner and reviewed the medical evidence of record, opined that the miner "did not have any respiratory impairment during life that was related to coal mine dust exposure or the coal workers' pneumoconiosis . . . found pathologically."[9] Employer's Exhibit 3 at 10.

In considering the medical opinion evidence, the administrative law judge accorded less weight to Dr. Castle's opinion on the issue of disability because he found that the doctor did not adequately explain the basis for his opinion that the miner "suffered no pulmonary impairment related to coal mine dust exposure." Decision and Order at 20. The administrative law judge also accorded less weight to the opinions of Drs. Crouch and Tomashefski because their opinions were based mostly on "post-death evidence," which the administrative law judge found to be "less persuasive than evidence arising when the miner was [alive]." *Id.* The administrative law judge found that Dr. Rasmussen's opinion, along with the qualifying pre-bronchodilator results from the March 16, 2010 pulmonary function study, was the only evidence supportive of a finding of "total pulmonary disability." *Id.* The administrative law judge, therefore, found that claimant failed to establish, by a preponderance of the evidence, that the miner was totally disabled.[10] *Id.*

[9] Dr. Dennis, the autopsy prosector, and Dr. Abraham, a reviewing pathologist, also submitted medical opinions, but did not address whether the miner was totally disabled from a pulmonary standpoint. Director's Exhibit 10; Claimant's Exhibits 5, 6.

[10] The administrative law judge noted that "Dr. Spagnolo opined that the miner would have been totally disabled from his last mining employment due to chronic progressive heart disease, which was not caused in whole or in part by pneumoconiosis." Decision and Order at 20. Although the administrative law judge found that Dr. Spagnolo's opinion was "well-documented and reasoned," he did not otherwise explain whether Dr. Spagnolo's opinion supported a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).

Claimant contends that the administrative law judge erred in finding that the medical opinion evidence was insufficient to establish that the miner suffered from a totally disabling pulmonary impairment. Claimant specifically argues that the administrative law judge erred in failing to address whether Dr. Rasmussen's opinion was sufficiently reasoned to support a finding of total disability. We agree. Dr. Rasmussen's opinion, if credited, is sufficient to support a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).[11] Consequently, the administrative law judge erred in not addressing whether Dr. Rasmussen's opinion, that the miner suffered from a totally disabling pulmonary impairment, was sufficient to establish that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2)(iv).

Claimant also argues that the administrative law judge erred in his consideration of the opinions of Drs. Castle, Crouch, Tomashefski and Spagnolo. We agree. Claimant accurately notes that the administrative law judge, in considering the opinions of these physicians, focused upon their assessments regarding the *cause* of the miner's pulmonary impairment, *i.e.*, whether pneumoconiosis contributed to the impairment. The cause of a miner's pulmonary impairment, however, is not relevant to the issue of whether a miner is totally disabled pursuant to 20 C.F.R. §718.204(b). Consequently, the administrative law judge is instructed, on remand, to limit his consideration of the opinions of Drs. Castle, Crouch, Tomashefski and Spagnolo at 20 C.F.R. §718.204(b)(2)(iv) to the issue of whether the miner suffered from a pulmonary impairment which prevented him from performing his usual coal mine work.[12] On remand, in reconsidering whether the medical opinion evidence establishes that that miner suffered from a totally disabling pulmonary impairment, the administrative law judge should take into consideration the comparative

[11] Dr. Rasmussen interpreted the results of the miner's March 16, 2010 pulmonary function study as revealing a moderate loss of lung function. Claimant's Exhibit 2 at 3. Based upon these results, Dr. Rasmussen opined that the miner did not retain the pulmonary capacity to perform his regular coal mine employment. *Id.* Dr. Rasmussen characterized the miner's regular coal mine employment as requiring heavy to very heavy manual labor. *Id.* at 2. The administrative law judge similarly characterized the miner's work as requiring "heavy labor." Decision and Order at 4.

[12] In its cross-appeal, employer contends that the administrative law judge erred in his consideration of the opinions of Drs. Castle, Crouch, and Tomashefski regarding the issue of total disability. However, as discussed *infra*, the administrative law judge has not addressed whether their opinions are relevant to the issue of whether the miner suffered from a pulmonary impairment which prevented him from performing his usual coal mine work. On remand, the administrative law judge is instructed to address whether the opinions of Drs. Castle, Crouch, and Tomashefski are relevant to this issue.

credentials of the physicians, the explanations for their conclusions, and the documentation underlying their medical judgments. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997).

On remand, should the administrative law judge find that the evidence establishes total disability pursuant to 20 C.F.R. §718.204(b)(2)(i) or (iv), the administrative law judge must weigh all the relevant evidence together, both like and unlike, to determine whether claimant has established that the miner suffered from a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b). *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 198 (1986), *aff'd on recon*. 9 BLR 1-236 (1987) (en banc).

If the administrative law judge finds that the evidence establishes total disability pursuant to 20 C.F.R. §718.204(b), claimant is entitled to invocation of the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis.[13] 30 U.S.C. §921(c)(4) (2012). If the presumption is invoked, the burden of proof shifts to employer to rebut the presumption by establishing that the miner did not have both legal and clinical pneumoconiosis, 20 C.F.R. §718.305(d)(2)(i), or by establishing that "no part of the miner's death was caused by pneumoconiosis as defined in [20 C.F.R.] §718.201."[14] 20 C.F.R. §718.305(d)(2)(ii); *Copley v. Buffalo Mining Co.*, 25 BLR 1-81, 1-89 (2012); *see also W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137 (4th Cir. 2015).

[13] The administrative law judge found that claimant established the requisite fifteen years of underground coal mine employment necessary to invoke the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); Decision and Order at 16. Because employer does not challenge this determination, it is affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[14] Claimant asserts that the evidence of record is insufficient to carry employer's burden of establishing rebuttal of the Section 411(c)(4) presumption. Claimant's Brief at 14-24. Because the administrative law judge has not addressed whether the evidence is sufficient to establish rebuttal of the Section 411(c)(4) presumption, we decline to address claimant's contention.

In the event that that the administrative law judge does not find that claimant is entitled to benefits pursuant to Section 411(c)(4), claimant must affirmatively establish that pneumoconiosis was the cause or was a substantially contributing cause of the miner's death. *See* 20 C.F.R. §§718.1, 718.205(b)(1), (2). Pneumoconiosis is a substantially contributing cause of death "if it hastens the miner's death." 20 C.F.R. §718.205(b)(6).

In considering whether claimant could affirmatively establish her entitlement to survivor's benefits under 20 C.F.R. Part 718, the administrative law judge found that the medical opinion evidence did not establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Claimant contends that the administrative law judge erred in finding that Dr. Rasmussen's opinion was insufficient to establish that the miner suffered from legal pneumoconiosis.[15] Dr. Rasmussen diagnosed legal pneumoconiosis, in the form of chronic obstructive pulmonary disease (COPD)/emphysema due to coal mine dust exposure and cigarette smoking. Claimant's Exhibits 2, 3 at 12-13. The administrative law judge, however, accorded less weight to Dr. Rasmussen's opinion on legal pneumoconiosis because the doctor failed to adequately discuss how the miner's cardiac disease might have affected the miner's objective test results. Decision and Order at 26.

Claimant contends that the administrative law judge mischaracterized Dr. Rasmussen's opinion. We agree. Contrary to the administrative law judge's finding, Dr. Rasmussen accounted for the miner's cardiac disease in assessing the cause of the miner's obstructive pulmonary impairment. Dr. Rasmussen testified that even though the miner's congestive heart failure could have caused some ventilatory impairment, it would not have caused airway obstruction in the absence of very extensive pleural effusion. Claimant's Exhibit 3 at 22. Dr. Rasmussen opined that the miner's obstructive impairment was not caused by his cardiac disease because the miner had "airway obstruction way back in the '90s," at a time before he suffered from heart failure. *Id.* at 24. Thus, contrary to the administrative law judge's characterization, Dr. Rasmussen provided an explanation for why he found that the miner's obstructive pulmonary impairment was not due to his heart disease. *Tackett v. Director, OWCP*, 7 BLR 1-703, 1-706 (1985). Because the administrative law judge failed to provide a valid basis for questioning Dr. Rasmussen's diagnosis of legal pneumoconiosis, we vacate his finding that the medical opinion evidence does not establish the existence of legal

[15] Because claimant does not challenge the administrative law judge's finding that the evidence did not establish that the miner's death was due to clinical pneumoconiosis, this finding is affirmed. *Skrack*, 6 BLR at 1-711.

pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[16] On remand, should the administrative judge determine that claimant is not entitled to benefits under Section 411(c)(4), he must reconsider whether claimant can affirmatively establish the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and, if so, whether claimant can establish that the miner's death was due to legal pneumoconiosis pursuant to 20 C.F.R. §718.205(b).

[16] We reject employer's contention raised in its cross-appeal that the administrative law judge erred in his consideration of Dr. Crouch's opinion regarding the existence of legal pneumoconiosis. Although Dr. Crouch identified areas of parenchymal fibrosis, she opined that the pattern did not suggest a dust-related etiology. Employer's Brief at 26; Employer's Exhibit 1. We initially note that Dr. Crouch's comments regarding the miner's autopsy slides focus on the issue of clinical pneumoconiosis, not legal pneumoconiosis. Second, the administrative law judge provided an affirmable basis for discrediting Dr. Crouch's opinion. The administrative law judge accorded less weight to the doctor's opinion because he found that she did not explain what pattern she would expect to see if the fibrosis had been related to coal mine dust exposure. Decision and Order on 25. Because employer does not challenge this basis for discrediting Dr. Crouch's opinion, we affirm the administrative law judge's determination that Dr. Crouch's opinion was "not probative as to the issue of legal pneumoconiosis." *Skrack*, 6 BLR at 1-711; Decision and Order at 25.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge