U.S. Department of Labor

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

BRB No. 23-0148 BLA

RICHARD R. ESTUDILLO	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CENTRAL APPALACHIAN COAL COMPANY	)	
	)	
and	)	
	)	
AMERICAN ELECTRIC POWER CORPORATION, c/o EAST COAST RISK MANAGEMENT	)	DATE ISSUED: 04/09/2024
	)	
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 Awarding Benefits of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

Mark J. Grigoraci (Robinson & McElwee PLLC), Charleston, West Virginia, for Employer and its Carrier.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Awarding Benefits (2022-BLA-05296) rendered pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on November 16, 2020.[1]

Accepting the parties' stipulation of at least 11.9 years but less than fifteen years of coal mine employment, the ALJ found Claimant could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, she found Claimant established legal pneumoconiosis and a totally disabling respiratory or pulmonary impairment due to legal pneumoconiosis. 20 C.F.R. §§718.202(a), 718.204(b)(2), (c). Thus she awarded benefits.

On appeal, Employer asserts the ALJ erred in finding Claimant has legal pneumoconiosis and his total disability is due to pneumoconiosis.[3] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has declined to file a brief, unless requested. Employer filed a reply brief reiterating its arguments.

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

[1] Claimant filed two prior claims but withdrew them. Decision and Order at 2 n.4. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

[2] Section 411(c)(4) of the Act 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 impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established at least 11.9 years of coal mine employment and total disability at 20 C.F.R. §718.204(b)(2). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5, 21.

accordance with applicable law.[4] 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).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Statutory presumptions may assist claimants in establishing the elements of entitlement if certain conditions are met, but failure to establish any element 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).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must demonstrate he has 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(b). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held a miner can establish legal pneumoconiosis by showing coal dust exposure contributed "in part" to his respiratory or pulmonary impairment. *See Westmoreland Coal Co., Inc. v. Cochran*, 718 F.3d 319, 322-23 (4th Cir. 2013); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 311 (4th Cir. 2012); *see also Arch on the Green v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014) (A miner can establish legal pneumoconiosis "by showing that his disease was caused 'in part' by coal mine employment.").

The ALJ considered the medical opinions of Drs. Habre, Green, Zaldivar, and Basheda. Decision and Order at 11-19, 23-28. Dr. Habre diagnosed Claimant with totally disabling chronic bronchitis and opined it is significantly related to, or substantially aggravated by, coal mine dust exposure. Director's Exhibit 13. Dr. Green diagnosed a totally disabling obstructive impairment and opined it is significantly related to, or substantially aggravated by, coal mine dust exposure. Claimant's Exhibit 1. In contrast, Drs. Zaldivar and Basheda opined Claimant has asthma that is unrelated to his coal mine dust exposure. Employer's Exhibits 1, 4.

The ALJ found the opinions of Drs. Habre and Green are reasoned and documented. Decision and Order at 24-25, 27-28. Conversely, she determined the opinions of Drs.

[4] 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 21.

Zaldivar and Basheda are inadequately reasoned and contrary to the regulations. *Id*. at 25-28. Therefore, she concluded the medical opinion evidence establishes legal pneumoconiosis. *Id*. at 28.

Employer contends the ALJ erred in finding the opinions of Drs. Habre and Green reasoned and documented. Employer's Brief at 13-17. We disagree.

After summarizing the results of a January 12, 2021 pulmonary function study, Dr. Habre diagnosed Claimant with chronic bronchitis. Director's Exhibit 13 at 2. He cited Claimant's twenty-year history of shortness of breath and coughing to support his diagnosis. *Id*. at 2-3. Further, he cited Claimant's symptoms of exertional dyspnea, the presence of yellowish phlegm and cough with wheezing," and a "bibasilar inspiratory crackle which did not clear with the cough." *Id.* at 5. He noted Claimant has a fourteen-year history of coal mine dust exposure and is a non-smoker. *Id*. at 2-3. Specifically, he explained that coal mine dust exposure "is a well-established risk factor for chronic bronchitis that can lead to presence of chronic respiratory symptoms and loss of pulmonary reserve." *Id*. He further explained this "diagnosis can be present even if the chest x-ray showed no radiographic signs of clinical coal worker's pneumoconiosis or fibrotic parenchymal lesions." *Id*. Based on the foregoing, he diagnosed Claimant with legal pneumoconiosis. *Id*. Moreover, he determined Claimant's chronic lung disease is totally disabling because his pulmonary function testing is qualifying.[5] *Id*. He stated the reduced FEV1 and FVC values on the studies "are at least in part attributed to [Claimant's] coal mining history which is correlated with loss of lung function." *Id*.

The ALJ found Dr. Habre relied on "Claimant's testing, symptoms, occupational history and social history," and that he "explained how those factors support his diagnosis." Decision and Order at 24-25. Thus the ALJ permissibly found his opinion is reasoned and documented.[6] *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling*

[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).

[6] Employer argues the ALJ did not apply the same level of scrutiny to the conflicting medical opinions because she discredited Dr. Zaldivar's opinion for diagnosing asthma even though Claimant had no history of the disease, but credited Dr. Habre's opinion despite the absence of a diagnosis of chronic bronchitis in Claimant's medical history. Employer's Brief at 7-8. Contrary to Employer's argument, insofar as Dr. Habre cited Claimant's twenty-year history of symptoms to support his opinion, the ALJ permissibly found his opinion supported by Claimant's medical history. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 24-25. Further, while the ALJ questioned

Smokeless Coal Co. v. Akers, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 24-25.

Dr. Green noted Claimant worked as an underground miner in a forty-six inch "top mine" where he was exposed to high dust concentrations for 11.9 years. Claimant's Exhibit 1 at 3-7. In addition, he noted Claimant's pulmonary function studies repeatedly evidenced a severe totally disabling obstructive impairment over an extended period. *Id*. He cited the presence of air trapping and hyperinflation as also being associated with severe airflow obstruction. *Id*. Although the obstructive impairment was partially reversible with bronchodilator medication, Dr. Green opined Clamant continued to exhibit a severe obstructive impairment post-bronchodilator. *Id*. Thus he determined a portion of the impairment is not reversible. *Id*. He further noted Claimant is a non-smoker, consistent with his carboxyhemoglobin testing. *Id*. Citing medical literature, Dr. Green stated that the presence of an asthmatic component based on partial broncho-reversibility of the impairment "in no way excludes the diagnosis of chronic obstructive pulmonary disease." *Id*. Based on the foregoing, he opined Claimant's "occupational history . . . with exposure to respirable coal and rock dust contributed substantially" to his totally disabling obstructive impairment. *Id*.

The ALJ found Dr. Green "relied upon the diagnostic testing, including specific test results, as well as [] Claimant's work and social history and explained how those findings support his finding of legal pneumoconiosis." Decision and Order at 25. Thus she permissibly found Dr. Green's opinion is reasoned and documented. *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 25, 27-28.

Employer next contends the ALJ erred in discrediting the opinions of Drs. Zaldivar and Basheda. Employer's Brief at 6-13. We disagree.

As the ALJ noted, both doctors excluded legal pneumoconiosis based, in part, on the partial reversibility of Claimant's obstructive impairment in response to bronchodilators seen on his pulmonary function testing. Employer's Exhibit 1 at 2-3; Employer's Exhibit 4 at 4. The ALJ permissibly found this reasoning unpersuasive because the doctors failed to adequately explain why the irreversible portion of Claimant's impairment was not significantly related to, or substantially aggravated by, coal mine dust exposure. *See Consol. Coal Co. v. Swiger*, 98 F. App'x 227, 237 (4th Cir. 2004);

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whether Dr. Zaldivar's diagnosis of asthma was supported by Claimant's medical history, she nevertheless fully considered whether Dr. Zaldivar persuasively explained why the disease he diagnosed (asthma) and resulting obstructive impairment was unrelated to coal mine dust exposure. Decision and Order at 25.

Cumberland River Coal Co. v. Banks, 690 F.3d 477, 489 (6th Cir. 2012); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); Decision and Order at 24-27.

In addition, both doctors diagnosed Claimant with asthma and stated that because he did not experience asthma during the course of his coal mining career, the disease causing his obstructive impairment was not caused by coal mine dust exposure. Employer's Exhibit 1 at 4; Employer's Exhibit 4 at 9. The ALJ permissibly discredited their opinions because they failed to explain why, even if asthma can explain Claimant's obstructive impairment, his asthma and resulting impairment are not significantly related to, or substantially aggravated by, coal mine dust exposure.[7] *Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 673-74 n.4 (4th Cir. 2017) (ALJ permissibly discredited medical opinions that "solely focused on smoking" as a cause of obstruction and "nowhere addressed why coal dust could not have been an additional cause"); Decision and Order at 26-27.

It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); *Underwood v. Elkay Mining, Inc*., 105 F.3d 946, 949 (4th Cir. 1997). Employer's arguments that the ALJ should have found the opinions of Drs. Habre and Green unpersuasive, while finding the opinions of Drs. Zaldivar and Basheda well-reasoned and documented, are a request that the Board reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113; Employer's Brief at 5-17; Employer's Reply Brief 2-3.

Because it is supported by substantial evidence, we affirm the ALJ's determination that the opinions of Drs. Habre and Green establish legal pneumoconiosis.[8] 20 C.F.R. §718.202(a)(4).

[7] Because the ALJ provided valid reasons for discrediting the opinions of Drs. Zaldivar and Basheda, we need not address Employer's additional arguments regarding the weight she assigned them. *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 7-8, 11.

[8] Consequently, we reject Employer's argument that Claimant failed to establish disease causation at 20 C.F.R. §718.203, as a determination of legal pneumoconiosis subsumes the inquiry as to whether a miner's disease arose from coal mine employment. *See* 20 C.F.R. §718.203; *Kiser v. L & J Equipment Co.*, 23 BLR 1-246, 1-259 n.18 (2006); *Henley v. Cowan & Co., Inc.*, 21 BLR 1-147, 1-151 (1999); Employer's Brief at 17-18.

Disability Causation

To establish disability causation, Claimant must prove his legal pneumoconiosis is a "substantially contributing cause" of his totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause if it has "a material adverse effect on the miner's respiratory or pulmonary condition," or if it "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii); *see Robinson v. Pickands Mather and Co.*, 914 F.2d 35, 37-38 (4th Cir. 1990).

The ALJ found the opinions of Drs. Habre and Green reasoned and documented and thus sufficient to establish Claimant's legal pneumoconiosis is a substantially contributing cause of his totally disabling respiratory or pulmonary impairment. Decision and Order at 30. In challenging this finding, Employer reiterates its argument that their opinions are not credible on the issue of legal pneumoconiosis. Employer's Brief at 18-19. Because we have rejected Employer's arguments on legal pneumoconiosis, we affirm the ALJ's finding that the opinions of Drs. Habre and Green are reasoned and documented on total disability causation. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 30.

Next, the ALJ permissibly discredited the opinions of Drs. Zaldivar and Basheda on the cause of Claimant's respiratory or pulmonary disability because they did not diagnose legal pneumoconiosis, contrary to her finding Claimant has the disease. *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 116 (4th Cir. 1995) (physician's opinion on disability causation may not be credited unless there are "specific and persuasive reasons" for concluding it is independent of their mistaken belief the miner did not have pneumoconiosis); Decision and Order at 29-30. As substantial evidence supports the ALJ's finding that Claimant is totally disabled due to legal pneumoconiosis, we affirm it. 20 C.F.R. §718.204(c).

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge