U.S. Department of Labor

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

BRB No. 23-0302 BLA

DONALD A. HUNTER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SOUTHERN OHIO COAL COMPANY	)	
	)	
and	)	
	)	
CONSOL ENERGY, INCORPORATED	)	DATE ISSUED: 04/16/2024
	)	
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 Steven D. Bell, Administrative Law Judge, United States Department of Labor.

Toni J. Williams (SutterWilliams, LLC), Pittsburgh, Pennsylvania, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Steven D. Bell's Decision and Order Awarding Benefits (2021-BLA-05324) rendered on a claim filed on February 27, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with eleven to twelve years of underground coal mine employment. Thus, he found Claimant could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[1] 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, the ALJ determined Claimant established he is totally disabled due to legal pneumoconiosis and awarded benefits. 20 C.F.R. §§718.202(a)(4), 718.204(b), (c).

On appeal, Employer argues the ALJ erred in finding Claimant established legal pneumoconiosis and disability causation.[2] Neither Claimant nor the Director, Office of Workers' Compensation Programs, has filed a response.

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 accordance with applicable law.[3] 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).

Entitlement under 20 C.F.R. Part 718

[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] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established a totally disabling respiratory or pulmonary impairment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 14.

[3] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit as Claimant performed his last coal mine employment in Ohio. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 9.

Without the benefit of the Section 411(c)(3) and (c)(4) presumptions,[4] Claimant must establish disease (pneumoconiosis);[5] 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. 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).

Legal Pneumoconiosis

To establish legal pneumoconiosis, Claimant must demonstrate he has a "chronic pulmonary disease or respiratory or pulmonary 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 Sixth Circuit has held that a miner can establish a lung impairment is significantly related to coal mine dust exposure "by showing that his disease was caused 'in part' by coal mine employment." *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 598-99 (6th Cir. 2014); *see also Island Creek Coal Co. v. Young*, 947 F.3d 399, 407 (6th Cir. 2020) ("[I]n [*Groves*] we defined 'in part' to mean 'more than a *de minimis* contribution' and instead 'a contributing cause of some discernible consequence.'").

The ALJ considered the medical opinions of Drs. Feicht, Manaker, and Rosenberg. Decision and Order at 17-22. Dr. Feicht conducted the Department of Labor's (DOL) complete pulmonary evaluation of Claimant on April 11, 2019. He diagnosed Claimant with severe chronic obstructive pulmonary disease (COPD) due to a combination of

[4] The ALJ found no evidence of complicated pneumoconiosis; therefore, Claimant is unable to invoke the irrebuttable presumption of total disability due to pneumoconiosis. 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304; Decision and Order at 6.

[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 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). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

smoking and coal dust exposure. Director's Exhibit 13 at 6. Dr. Manaker prepared a consultative report and opined Claimant has a transient non-disabling obstructive respiratory impairment related to smoking and other medical conditions but not coal mine dust exposure. Employer's Exhibits 3 at 7-8; 5 at 44-46. Dr. Rosenberg prepared a consultative report and opined Claimant has a disabling obstructive respiratory impairment/COPD due entirely to smoking. Employer's Exhibits 4 at 13; 6 at 28, 32-36. The ALJ credited Dr. Feicht's opinion over the contrary opinions of Drs. Manaker and Rosenberg. Decision and Order at 17-22.

Initially, we reject Employer's assertion that the ALJ erred in relying on the preamble to the revised 2001 regulations as a basis for weighing the medical opinions. Employer's Brief at 1, 17-18, 23-24. Federal circuit courts have consistently held that an ALJ may evaluate expert opinions in conjunction with the preamble, as it sets forth the DOL's resolution of questions of scientific fact relevant to the elements of entitlement. *See Wilgar Land Co. v. Director, OWCP* [*Adams*], 85 F.4th 828, 838-39 (6th Cir. 2023) (holding ALJs may rely upon the scientific evidence the DOL found credible in the preamble as guidance or to resolve evidentiary disputes, as long as it is not treated as binding); *Cent. Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491 (6th Cir. 2014); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02 (6th Cir. 2012); *see also Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 313 (4th Cir. 2012); *Helen Mining Co. v. Director, OWCP* [*Obush*], 650 F.3d 248, 257 (3d Cir. 2011); *Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726 (7th Cir. 2008). As discussed below, the ALJ accurately characterized the scientific evidence that the DOL relied upon when it revised the definition of legal pneumoconiosis to include obstructive impairments arising out of coal mine employment, and he permissibly evaluated the medical opinions of record given the DOL's interpretation of those studies. Decision and Order at 17-22.

Employer next asserts Dr. Feicht's opinion is conclusory and not sufficiently documented and reasoned to support Claimant's burden of proof because he did not review all of the evidence Employer's experts considered in rendering their opinions. Employer's Brief at 24-25. Contrary to Employer's contention, a medical opinion can be reasoned and documented based on the expert's examination of the miner and review of the objective testing obtained in the examination. 20 C.F.R. §718.202(a)(4); *see Church v. E. Associated Coal Corp.*, 20 BLR 1-8, 1-13 (1996); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21-22 (1987) (reasoned opinion is one in which the ALJ finds the underlying documentation adequate to support the physician's conclusion).

Here, the ALJ permissibly found that Dr. Feicht's opinion was well-documented and well-reasoned because it was supported by Claimant's smoking history, coal mine dust

exposure history,[6] and objective testing results. *See Moseley v. Peabody Coal Co.*, 769 F.2d 357, 360 (6th Cir. 1985) ("Determinations of whether a physician's report is sufficiently documented and reasoned is a credibility matter left to the trier of fact."); *Fields*, 10 BLR at 1-21-22; Decision and Order at 17, 22; Director's Exhibit 13. The ALJ further explained Dr. Feicht's opinion is consistent with the scientific evidence the DOL relied on when drafting the preamble; specifically, the risks of smoking and coal mine dust exposure can be additive. *See* 65 Fed. Reg. 79,920, 79,939-41 (Dec. 20, 2000); *Sterling*, 762 F.3d at 491; *Adams*, 694 F.3d at 801-02; Decision and Order at 17. Because it is supported by substantial evidence, we affirm the ALJ's finding that Dr. Feicht's opinion is reasoned and documented and is sufficient to establish that Claimant has legal pneumoconiosis. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 17, 22; Director's Exhibit 13.

Employer also contends the ALJ mischaracterized and failed to adequately assess the opinions of Drs. Manaker and Rosenberg. Employer's Brief at 17-24. We disagree.

While Employer does not directly challenge the ALJ's finding that Claimant established total disability, it asserts the ALJ erred in discrediting Dr. Manaker's opinion that Claimant does not have legal pneumoconiosis, in part, because Claimant was "acutely ill" when Dr. Feicht conducted the qualifying April 11, 2019 pulmonary function study.[7]

[6] We reject Employer's contention that the ALJ erred in relying on Dr. Feicht's opinion because the physician had an inadequate understanding of Claimant's smoking history. Employer's Brief at 24-25. The ALJ concluded Claimant has a "significant" smoking history that was between 50 and 150 pack-years. Decision and Order at 5-6. As Dr. Feicht reported Claimant had a seventy-eight-pack-year smoking history, the ALJ permissibly found Dr. Feicht considered an "accurate" smoking history because it was "within the range" he found. *Id.* at 17; Director's Exhibit 13 at 2; *see Huscoal, Inc., v. Director, OWCP* [*Clemons*], 48 F.4th 480, 490-91 (6th Cir. 2022).

[7] 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).

The April 11, 2019 study is the only study the parties designated. Decision and Order at 7. Claimant's treatment records describe other pulmonary function testing as showing a severe respiratory impairment in 2018. *Id.* at 14. Noting that the full results of the treatment pulmonary function studies were not contained in the record, the ALJ did not consider them at 20 C.F.R. §718.204(b)(2)(i); however, he found those studies supported

Employer's Brief at 7, 19 (citing Employer's Exhibits 3 at 8; 7); *see* 20 C.F.R. Part 718, App. B (2)(i).[8] However, the ALJ considered Dr. Manaker's opinion, Claimant's April 16, 2019 treatment records cited by Employer which include a diagnosis of acute bronchitis, Dr. Feicht's April 11, 2019 report and objective testing results, and Dr. Gaziano's independent validation of the April 11, 2019 study. Decision and Order at 7-10, 12; Director's Exhibits 13 at 10-12, 16; 15; Employer's Exhibits 3 at 8; 5 at 41-42; 7 at 39-40 (unpaginated). The ALJ noted that Dr. Feicht did not diagnose an "acute illness" but rather COPD at the time of the study and that Claimant's treatment records describing an acute illness post-dated Dr. Feicht's examination. Decision and Order at 10. He determined that Dr. Manaker's opinion was entitled to "no probative weight" and the April 11, 2019 study was valid and reliable. *Id.* As the ALJ considered all of the relevant evidence cited by Employer and sufficiently explained why he rejected this aspect of Dr. Manaker's opinion, we reject Employer's argument. *See Anderson*, 12 BLR at 1-113 (Board is not empowered to reweigh the evidence).

The ALJ accurately noted that Dr. Manaker excluded coal mine dust exposure as a cause of Claimant's impairment, in part, because his impairment improved with the use of bronchodilators, which Dr. Manaker explained is inconsistent with an irreversible impairment caused by coal mine dust exposure. Decision and Order at 19; Employer's Exhibit 5 at 44-46. However, the ALJ accurately noted the April 11, 2019 pulmonary function study showed only partial reversibility post-bronchodilator.[9] He therefore permissibly discredited Dr. Manaker's opinion because he failed to adequately explain why the fixed portion of Claimant's pulmonary impairment was not significantly related to, or substantially aggravated by, coal mine dust exposure. *See Crockett Colleries, Inc. v.*

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a finding that Claimant is totally disabled. *Id.* at 7, 13-14; Director's Exhibit 13 at 10-12, 16.

[8] The regulations provide that "[pulmonary function studies] shall not be performed *during or soon after* an acute respiratory illness." 20 C.F.R. Part 718, App. B (2)(i) (emphasis added).

[9] The ALJ accurately found Claimant's April 11, 2019 pulmonary function study results were qualifying pre- and post-bronchodilator. Decision and Order at 7; Director's Exhibit 13 at 10-12, 16. He pointed out that Employer mistakenly stated the April 11, 2019 post-bronchodilator results were not qualifying in its Post-Hearing Brief. Decision and Order at 7 n.50; Employer's Closing Brief at 3. While Employer repeats this error on appeal, it does not challenge the ALJ's determination that the April 11, 2019 pulmonary function study is qualifying pre- and post-bronchodilator. *See* Employer's Brief at 5. Thus, we affirm those determinations. *See Skrack*, 6 BLR at 1-711; Decision and Order at 7.

Barrett, 478 F.3d 350, 356 (6th Cir. 2007) (ALJ may accord less weight to a physician who fails to adequately explain why a miner's response to bronchodilators necessarily eliminated coal dust exposure as a cause of his obstructive lung disease); Decision and Order at 19.

The ALJ also correctly observed that Dr. Rosenberg opined Claimant's impairment was due solely to smoking based, in part, on the reduction in Claimant's FEV1/FVC ratio on pulmonary function testing. Decision and Order at 21; Employer's Exhibit 4 at 6-8. The ALJ permissibly discredited Dr. Rosenberg's opinion as inconsistent with medical science the DOL credited in the preamble indicating that coal mine dust exposure can cause clinically significant obstructive disease, which can be shown by a reduction in the FEV1/FVC ratio. *See* 65 Fed. Reg. at 79,943; *Sterling*, 762 F.3d at 491; Decision and Order at 21.

Finally, the ALJ permissibly found that although Drs. Manaker and Rosenberg opined Claimant's respiratory impairment is entirely consistent with his smoking history, they did not adequately explain why his history of underground coal mine dust exposure did not also aggravate his disabling pulmonary impairment, even if it was caused primarily by smoking. *See Barrett*, 478 F.3d at 356 (ALJ permissibly rejected physician's opinion where physician failed to adequately explain why coal dust exposure did not exacerbate a miner's smoking-related impairments); Decision and Order at 20, 22.

Employer's arguments on legal pneumoconiosis are a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. Because it is supported by substantial evidence, we affirm the ALJ's finding that Claimant established legal pneumoconiosis based on the medical opinions and the evidence as a whole.[10] *See* 20 C.F.R. §§718.201(a)(2), 718.202(a)(4); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) ("The Board will not interfere with credibility determinations unless they are inherently incredible or patently unreasonable."); Decision and Order at 17-22.

Disability Causation

To establish disability causation, Claimant must prove that 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 of a miner's totally disabling impairment if it has "a material adverse effect on the

[10] Because the ALJ gave valid reasons for discrediting Drs. Rosenberg's and Manaker's opinions on legal pneumoconiosis, we need not address Employer's remaining arguments regarding the weight accorded to their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 17-24.

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).

Because we have affirmed the ALJ's finding that Claimant's totally disabling respiratory or pulmonary impairment constitutes legal pneumoconiosis, Claimant has necessarily established he is totally disabled due to legal pneumoconiosis.[11] 20 C.F.R. §718.204(c); *see Brandywine Explosives & Supply v. Director, OWCP* [*Kennard*], 790 F.3d 657, 668-69 (6th Cir. 2015) ("no need for the ALJ to analyze the opinions a second time" at disability causation when Employer failed to establish that the totally disabling impairment was not legal pneumoconiosis); *Hawkinberry v. Monongalia Cnty. Coal Co.*, 25 BLR 1-249, 1-255-56 (2019); Decision and Order at 22-23.

[11] Employer contends the ALJ erred in relying on Dr. Feicht's opinion to establish disability causation because he failed to demonstrate an understanding of the exertional requirements of Claimant's last coal mine job in concluding Claimant is totally disabled. Employer's Brief at 25-27. However, Dr. Feicht indicated that he reviewed Claimant's CM-911a Employment History Form as a part of his examination and also relied on the qualifying April 11, 2019 pulmonary function study to conclude Claimant is totally disabled. Director's Exhibit 13 at 1, 4-6. We see no error in the ALJ's determination that his opinion is sufficient to support a finding of total disability and disability causation. Decision and Order at 7, 23; *see Crisp*, 866 F.2d at 185; *Rowe*, 710 F.2d at 255; 20 C.F.R. §718.204(b)(2)(i), (iv), (c).

As Employer raises no specific challenges to the ALJ's discrediting of Drs. Rosenberg's and Manaker's opinions on the cause of Claimant's disability, we affirm those determinations. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 23. Consequently, we affirm the ALJ's finding that Claimant established disability causation at 20 C.F.R. §718.204(c). Decision and Order at 23-25.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge