U.S. Department of Labor

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

BRB No. 19-0301 BLA

HOWARD HAYS Claimant-Petitioner v. BEGWELL TRUCKING, INCORPORATED, and KENTUCKY EMPLOYERS MUTUAL INSURANCE Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 05/29/2020 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

Howard Hays, Jackson, Kentucky.

William A. Lyons (Lewis and Lewis Law Offices), Hazard, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant, without the assistance of counsel,[1] appeals the Decision and Order Denying Benefits (2017-BLA-05500) of Administrative Law Judge John P. Sellers, III, rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a claim filed on April 8, 2016.

After crediting claimant with twenty-six years of coal mine employment,[2] the administrative law judge found claimant failed to establish he is totally disabled and therefore could not invoke the rebuttable presumption of total disability due to pneumoconiosis, 30 U.S.C. §921(c)(4) (2012),[3] or establish entitlement under 20 C.F.R. Part 718. Accordingly, he denied benefits.

On appeal, claimant generally challenges the denial of benefits. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

As claimant filed this appeal without the assistance of counsel, the Board considers whether substantial evidence supports the Decision and Order Denying Benefits. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84 (1994). We must affirm the administrative law judge's findings of fact and conclusions of law if they are 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).

[1] On claimant's behalf Diane Jenkins, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested the Board review the administrative law judge's decision, but Ms. Jenkins is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] Claimant's coal mine employment occurred in Kentucky. Hearing Transcript at 13. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth 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 the claimant establishes at least fifteen years in underground coal mine employment, or in surface mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

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. 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).

A miner is totally disabled if he has a pulmonary or respiratory impairment which, standing alone, prevents him from performing his usual coal mine work and comparable gainful work.[4] *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

The record contains five pulmonary function studies conducted on February 4, 2016, April 25, 2016, January 13, 2017, January 16, 2017, and January 25, 2017. Director's Exhibit 14; Claimant's Exhibits 4, 5; Employer's Exhibits 12, 14. The administrative law judge noted that only the pre-bronchodilator portion of the April 25, 2016 pulmonary function study produced qualifying values.[5] Decision and Order at 11; Director's Exhibit 14. Based upon the preponderance of non-qualifying pulmonary function studies, including the most recent study, the administrative law judge found that the pulmonary function study evidence did not establish total disability. Decision and Order at 11-12. Because it is based upon substantial evidence, we affirm this finding. 20 C.F.R. §718.204(b)(2)(i); *see Martin v. Ligon Preparation Co*., 400 F.3d 302, 305 (6th Cir. 2005)

[4] The administrative law judge accurately found no evidence of complicated pneumoconiosis in the record. Decision and Order at 11. Claimant, therefore, 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); 20 C.F.R. §718.304.

[5] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

(substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion).

The administrative law judge accurately found the record contains no qualifying arterial blood gas studies[6] or evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 11-12. We therefore affirm his findings that claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(ii), (iii).

The administrative law judge considered the medical opinions of Drs. Ajjarapu, Dahhan, and Rosenberg. Dr. Ajjarapu opined claimant is totally disabled from a pulmonary impairment, Director's Exhibit 14, while Drs. Dahhan and Rosenberg opined claimant is not totally disabled from a pulmonary impairment. Employer's Exhibits 15, 18. The administrative law judge permissibly accorded greater weight to the opinions of Drs. Dahhan and Rosenberg that claimant is not totally disabled from a pulmonary standpoint because he found that they are better supported by the objective evidence of record. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); Decision and Order at 12. The administrative law judge also permissibly credited the opinions of Drs. Dahhan and Rosenberg based upon their superior qualifications.[7] *See Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990) (en banc recon.); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); Decision and Order at 12. Because it is based upon substantial evidence, we affirm the administrative law judge's finding that the medical opinions did not establish total disability. 20 C.F.R. §718.204(b)(2)(iv).

Because claimant did not establish total disability under 20 C.F.R. §718.204(b)(2)(i)-(iv), we affirm the administrative law judge's determinations that claimant did not invoke the Section 411(c)(4) presumption or establish entitlement under 20 C.F.R. Part 718. *See* 30 U.S.C. §921(c)(4); *Trent*, 11 BLR at 1-27; Decision and Order at 10, 13.

[6] The record contains three arterial blood gas studies conducted on April 25, 2016, January 13, 2017, and January 16, 2017. Director's Exhibit 14; Employer's Exhibits 12, 14. All of these studies produced non-qualifying values.

[7] The administrative law judge noted that while Drs. Dahhan and Rosenberg are Board-certified in internal medicine and pulmonary disease, Dr. Ajjarapu is Board-certified in family medicine. Decision and Order at 12; Director's Exhibit 19; Employer's Exhibits 12, 14.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge