U.S. Department of Labor

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

BRB No. 14-0411 BLA

ROBERT E. BARRETT, SR.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
SOUTHERN OHIO COAL COMPANY, Self-Insured Through GENERAL RECOVERY, INCORPORATED	)	
	)	
	)	
Employer/Carrier-Petitioners	)	DATE ISSUED: 07/30/2015
	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

Heath M. Long (Pawloski, Bilonick & Long), Ebensburg, Pennsylvania, for claimant.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for employer/carrier.

Helen H. Cox (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, 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, BUZZARD and GILLIGAN, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order (2008-BLA-05136) of Administrative Law Judge Larry S. Merck, awarding 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 subsequent claim filed on January 24, 2007.[1]

The administrative law judge credited claimant with fourteen years and six months of underground coal mine employment.[2] Decision and Order at 8. The administrative law judge further found, based on employer's concession, that claimant established the existence of a totally disabling pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2) and, thus, demonstrated a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Consequently, the administrative law judge considered claimant's 2007 claim on the merits. According greater weight to the more recent evidence submitted in the current claim, the administrative law judge found that the evidence, as a whole, established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge further found that the evidence established that claimant is totally disabled due to legal pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer asserts that the administrative law judge erred in his analysis of the medical opinion evidence in determining that claimant established the existence of

[1] Claimant's previous claim for benefits was filed on July 14, 1995, and was finally denied by reason of abandonment. Director's Exhibit 1. A denial by reason of abandonment shall be deemed a finding that the claimant has not established any applicable element of entitlement. 20 C.F.R. §725.309(c).

[2] The record indicates that claimant's coal mine employment was in Ohio. Director's Exhibit 12. 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). Because the administrative law judge credited claimant with fewer than fifteen years of coal mine employment, he properly determined that claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act. 30 U.S.C. §921(c)(4).). Unless otherwise indicated, the relevant version of all regulations cited in this Decision and Order may be found in 20 C.F.R. Parts 718, 725 (2013).

legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), and that he is totally disabled due to legal pneumoconiosis, pursuant to 20 C.F.R. §718.204(c). Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response brief, urging the Board to reject employer's assertion that the administrative law judge erred in discrediting the opinion of Dr. Rosenberg.[3]

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).

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must prove that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, that he is totally disabled, and that his total disability is due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

Legal Pneumoconiosis

Employer contends that the administrative law judge erred in finding that the medical opinion evidence established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge considered the medical opinions of Drs. Mavi, Begley, Grodner and Rosenberg.[4] Dr. Mavi diagnosed legal pneumoconiosis, in the form of chronic obstructive pulmonary disease (COPD) due to coal mine dust exposure and cigarette smoking. 20 C.F.R. §718.201(a)(2); Director's Exhibit 12; Claimant's Exhibit 4. Dr. Begley also diagnosed legal pneumoconiosis, in

[3] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant established total disability pursuant to 20 C.F.R. §718.204(b) and therefore, established a change in an applicable condition of entitlement, pursuant to 20 C.F.R. §725.309(c). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 10.

[4] The administrative law judge additionally considered the evidence submitted with the prior claim, but permissibly accorded this evidence little weight because "of [its] age . . . ." *See Cooley v. Island Creek Coal Co.*, 845 F.2d 622, 624, 11 BLR 2-147, 2-149 (6th Cir. 1988); *Parsons v. Wolf Creek Coal Co.*, 23 BLR 1-29, 1-35 (2004); Decision and Order at 23.

the form of severe COPD with chronic bronchitis, due to coal mine dust exposure. Claimant's Exhibit 2; Employer's Exhibit 10. Conversely, although Dr. Rosenberg diagnosed disabling COPD, he opined that the disease was due to the adverse effects of rheumatoid arthritis on the lungs, and was not related to coal mine dust exposure. Employer's Exhibits 4, 6, 14. Finally, Dr. Grodner similarly diagnosed severe obstructive airway disease, that he opined was "possibl[y]" related to rheumatoid arthritis. Director's Exhibit 13.

The administrative law judge found the opinions of Drs. Mavi and Begley, that claimant's COPD is due, at least in part, to coal mine dust exposure, to be reasoned and documented and entitled to full probative weight. Decision and Order at 15-16. In contrast, the administrative law judge discredited the opinion of Dr. Rosenberg, in part, because he found his opinion to be inadequately explained and not well-reasoned. The administrative law judge also discredited the opinion of Dr. Grodner, that claimant's disabling obstructive airways disease is "possibl[y]" due to rheumatoid arthritis, as inadequately explained and equivocal. The administrative law judge, therefore, found that the medical opinion evidence established the existence of legal pneumoconiosis, pursuant to 20 C.F.R. §718.202(a)(4).

Employer contends that the administrative law judge erred in relying on the medical opinions of Drs. Mavi and Begley to support a finding of legal pneumoconiosis. Employer specifically argues that the administrative law judge erred in finding that the diagnoses of legal pneumoconiosis made by Drs. Mavi and Begley were sufficiently reasoned. Employer's Brief at 10-17. We disagree. Drs. Mavi and Begley examined claimant, recorded his employment, smoking, and medical histories, and performed objective testing. Decision and Order at 13-16; Director's Exhibits 12, 17; Claimant's Exhibits 2-4; Employer's Exhibit 10. In finding Dr. Mavi's opinion to be well-reasoned and well-documented, the administrative law judge initially noted that Dr. Mavi is Board-certified in Internal, Pulmonary, and Sleep Medicine, and that he considered a coal mine employment history of fifteen years as a laborer, roof bolter, driller and pumper, and a smoking history of approximately four and one-half pack-years. Decision and Order at 13-15; Director's Exhibits 12, 17; Claimant's Exhibit 4. The administrative law judge also noted that Dr. Mavi explained that his opinion was based on claimant's exposure histories, the demonstrated airflow obstruction seen on pulmonary function testing, and claimant's symptoms of dyspnea. Decision and Order at 13-15; Director's Exhibits 12, 17; Claimant's Exhibit 4. Additionally, the administrative law judge noted that Dr. Mavi had considered whether claimant's symptoms could have been caused by rheumatoid arthritis, or treatment for rheumatoid arthritis, and explained why he thought that was not

the case.[5] Decision and Order at 14; Claimant's Exhibit 4 at 29-30, 35. Further, the administrative law judge acknowledged Dr. Mavi's explanation that, while impairments due to both smoking and coal mine dust can co-exist, and there is no test to differentiate between the two contributions, the fact that claimant's coal mine dust exposure history was significantly longer than his smoking history led him to conclude that the contribution by coal mine dust had been substantial. Decision and Order at 14; Claimant's Exhibit 4 at 31. Finding that Dr. Mavi's opinion "accounts for claimant's coal dust exposure, without ignoring his smoking history," the administrative law judge found that Dr. Mavi's conclusion, that claimant's COPD is substantially related to his coal mine dust exposure, supported a diagnosis of legal pneumoconiosis. Decision and Order at 15.

Contrary to employer's argument, the administrative law judge permissibly credited the opinion of Dr. Mavi as well-reasoned and well-documented because he found that Dr. Mavi adequately considered claimant's exposure histories, based his opinion on objective evidence demonstrating a severe obstructive impairment, and explained the basis for his conclusions. *See Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 n.6, 5 BLR 2-99, 2-103 n.6 (6th Cir. 1983); Decision and Order at 19-20. Moreover, because Dr. Mavi specifically opined that claimant's coal mine dust exposure was a substantial cause of his COPD, we affirm the administrative law judge's conclusion that

[5] Contrary to employer's contention, as the administrative law judge correctly found, Dr. Mavi specifically considered and addressed whether claimant's rheumatoid arthritis, or the medications he took for its treatment, could have caused claimant's pulmonary symptoms. Specifically, Dr. Mavi acknowledged that claimant had a history of rheumatoid arthritis, and of taking the drug Arava for its treatment, but explained why he thought it was a "stretch [of the] imagination" to attribute claimant's chronic obstructive pulmonary disease (COPD) to his arthritis:

> Because in rheumatoid arthritis there are common changes which happen in the lung, pleural diffusion, nodules, some scarring pattern, and we see neither of them in the x-ray findings. Bronchiolitis oblitrance [sic] . . . is . . . the third or fourth [or] fifth presentation of this disease process and I would only look at it when I have no other clear cut explanations. I do have very clear cut etiologies, explanations, deficiency on pulmonary function. It would be - probably peeling the skin off a hair if we go look into that direction.

Claimant's Exhibit 4 at 35.

Dr. Mavi's opinion is sufficient to satisfy claimant's burden of proof. *See* 20 C.F.R. §718.201(a)(2), (b); *Consolidation Coal Co. v. Williams*, 453 F.3d 609, 622, 23 BLR 2-345, 2-372 (4th Cir. 2006); *Cornett v. Benham Coal, Inc*., 227 F.3d 569, 576, 22 BLR 2-107, 2-121 (6th Cir. 2000).

In evaluating Dr. Begley's opinion, the administrative law judge noted that Dr. Begley is Board-certified in Internal, Pulmonary, and Critical Care Medicine, and had examined claimant, considered his fifteen-year history of coal mine employment as a laborer, roof bolter, driller and pumper, and his four and one-half pack-year smoking history. Decision and Order at 16. The administrative law judge further found that Dr. Begley had explained why he thought claimant's chronic bronchitis and disabling obstructive impairment were due to coal mine dust exposure.[6] Decision and Order at 16. Further, contrary to employer's contention, the administrative law judge correctly noted that Dr. Begley also explained why he did not attribute claimant's impairment to rheumatoid arthritis.[7] Decision and Order at 16; Employer's Exhibit 10 at 38-39;

[6] In attributing claimant's chronic bronchitis with obstructive impairment primarily to coal mine dust exposure, Dr. Begley explained that claimant quit smoking in the late 1960s, and subsequently, beginning in 1973, worked in the coal mine industry for fifteen years, in a significantly dusty environment. Claimant's Exhibit 2; Employer's Exhibit 10 at 35-36. Thus, Dr. Begley explained, "the only irritating or precipitating factor for the chronic bronchitis is the inhalation of coal dust." Employer's Exhibit 10 at 36. Dr. Begley stated that while his diagnosis of chronic bronchitis was primarily based on claimant's history of exposure to coal mine dust and lack of exposure to other damaging factors, his diagnosis was corroborated by the pulmonary function study and blood gas study results. Employer's Exhibit 10 at 42-43.

[7] As the administrative law judge correctly found, while Dr. Begley acknowledged that he did not obtain a history of rheumatoid arthritis from claimant, he nonetheless addressed the possible pulmonary effects of the disease and explained why he believed it did not contribute to claimant's impairment:

> In this gentleman's case . . . he had no radiographic changes that would be consistent with rheumatoid lung disease.
>
> . . . rheumatoid lung disease can present in a variety of different ways. One is you can have rheumatoid pleural effusion, which he did not have. It can cause pulmonary fibrosis, which he did not have. You can have large lung nodules, and in the setting of pneumoconiosis, you can have actually capitation of those nodules, which is called Caplan syndrome, which he did

Employer's Brief at 16. Noting that Dr. Begley's conclusions were "based on [claimant's] exposure to coal dust, reported symptoms, smoking history, [pulmonary function testing], and [arterial blood gas testing]," the administrative permissibly found that Dr. Begley's opinion, that claimant's obstructive impairment with chronic bronchitis is due to coal mine dust exposure, was a well-reasoned and well-documented diagnosis of legal pneumoconiosis, and entitled to full probative weight. *See Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F.2d at 255 n.6, 5 BLR at 2-103 n.6; Decision and Order at 16.

The determination of whether a medical opinion is sufficiently reasoned is a credibility determination for the administrative law judge to make. *See Rowe*, 710 F.2d at 255 n.6, 5 BLR at 2-103 n.6. The administrative law judge's decision reflects that he considered the quality of Dr. Mavi's and Dr. Begley's reasoning in light of the objective evidence of record, and explained why he credited their conclusions that claimant's disabling COPD is due, at least in part, to coal mine dust exposure. Moreover, substantial evidence supports the administrative law judge's determinations. *See Martin v. Ligon Preparation Co*., 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005). We, therefore, affirm the administrative law judge's permissible finding that the opinions of Drs. Mavi and Begley are reasoned and documented and sufficient to satisfy claimant's burden of proof to establish the existence of legal pneumoconiosis. *See* 20 C.F.R. §718.201(a)(2), (b); *Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 596-99, 25 BLR 2-615, 2-620-24 (6th Cir. 2014); *Crockett Colleries, Inc. v. Barrett*, 478 F.3d 350, 356, 23 BLR 2-472, 2-483 (6th Cir. 2007); *Cornett*, 227 F.3d at 576, 22 BLR at 2-121.

We reject employer's contention that the administrative law judge erred in according less weight to the opinions of Drs. Grodner and Rosenberg. Employer's Brief at 18-24. The administrative law judge correctly noted that when asked to address the cause of claimant's impairment, Dr. Grodner stated that he was "not certain why [claimant has] severe obstructive airway disease" but that "it is possible" that the obstructive airways disease was due in part, or completely, to the presence of bronchiolitis obliterans associated with rheumatoid arthritis. Decision and Order at 18; Director's Exhibit 13 at 5. Thus, contrary to employer's contention, substantial evidence supports the administrative law judge's permissible conclusion that Dr. Grodner's opinion is equivocal and entitled to little weight. *See Island Creek Coal Co. v. Holdman*,

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> not have. So . . . I didn't find anything that would be consistent with rheumatoid lung disease in this gentleman.

Employer's Exhibit 10 at 37-38.

202 F.3d 873, 882, 22 BLR 2-25, 2-42 (6th Cir. 2000); *Griffith v. Director, OWCP*, 49 F.3d 184, 186-87, 19 BLR 2-111, 2-117 (6th Cir. 1995); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); Decision and Order at 18.

The administrative law judge also correctly noted that Dr. Rosenberg eliminated coal mine dust exposure as a source of claimant's COPD, in part, because he found a significant reduction in claimant's FEV1/FVC ratio which, in his opinion, is inconsistent with obstruction due to coal mine dust exposure.[8] Decision and Order at 21; Employer's Exhibit 4 at 8. Contrary to employer's argument, as the Director asserts, the administrative law judge permissibly discredited Dr. Rosenberg's opinion because his reasoning for eliminating coal mine dust exposure as a source of claimant's COPD was in conflict with the medical science accepted by the Department of Labor recognizing that coal mine dust exposure can cause clinically significant obstructive disease, which can be shown by a reduction in the FEV1/FVC ratio. *See Central Ohio Coal Co. v. Director, OWCP* [*Sterling*], 762 F.3d 483, 491, 25 BLR 2-633, 2-645 (6th Cir. 2014); *A & E Coal Co. v. Adams*, 694 F.3d 798, 801-02, 25 BLR 2-203, 2-210-11 (6th Cir. 2012); *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 314-15, 25 BLR 2-115, 2-130 (4th Cir. 2012); Decision and Order at 21-22, *citing* 65 Fed. Reg. 79,920, 79,943 (Dec. 20, 2000); Employer's Brief at 19-24. Further, contrary to employer's contention, the administrative law judge recognized that Dr. Rosenberg provided additional reasons in support of his conclusions that coal mine dust exposure did not contribute to claimant's COPD, but permissibly discredited Dr. Rosenberg's opinion for the reason he gave. *See Big Branch Res., Inc. v. Ogle*, 737 F.3d 1063, 1074, 25 BLR 2-431, 2-451 (6th Cir. 2013); Decision and Order at 20-21; Employer's Brief at 24. We therefore affirm, as supported by substantial evidence, the administrative law judge's finding that the opinions of Drs. Grodner and Rosenberg were entitled to little weight. Consequently, we affirm the administrative law judge's conclusion that the medical opinion evidence established the existence of legal pneumoconiosis, in the form of COPD arising out of coal mine employment, pursuant to 20 C.F.R. 718.202(a)(4). *See Martin*, 400 F.3d at 305, 23 BLR at 2-283.

[8] In attributing claimant's COPD to rheumatoid arthritis instead of coal mine dust exposure, Dr. Rosenberg specifically opined that "with legal [coal workers' pneumoconiosis], the FEV1 and FVC decrease symmetrically such that the FEV1/FVC ratio is generally preserved . . . . Specific to Mr. Barrett's situation, he has developed a marked reduction of his FEV1 in association with a marked reduction of his FEV1/FVC ratio after he left the coal mines. This pattern of impairment, as outlined above, is inconsistent with the presence of legal [coal workers' pneumoconiosis]." Employer's Exhibit 4 at 8.

The administrative law judge also found that all of the evidence of record, when weighed together, established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *See Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 700 F.3d 878, 881, 25 BLR 2-213, 2-218 (6th Cir. 2012); Decision and Order at 23. Because it is supported by substantial evidence, this finding is affirmed.[9]

Total Disability Due to Pneumoconiosis

Employer next argues that the administrative law judge erred in finding that the evidence established that claimant's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Employer's Brief at 24-25. Employer's contention lacks merit. The administrative law judge rationally discounted the opinions of Drs. Grodner and Rosenberg because they did not diagnose legal pneumoconiosis, contrary to the administrative law judge's finding that the evidence established the presence of the disease. *See Island Creek Ky. Mining v. Ramage*, 737 F.3d 1050, 1062, 25 BLR 2-453, 2-473 (6th Cir. 2013); *Skukan v. Consolidated Coal Co.*, 993 F.2d 1228, 17 BLR 2-97 (6th Cir. 1993), *vacated sub nom., Consolidation Coal Co. v. Skukan*, 512 U.S. 1231 (1994), *rev'd on other grounds*, *Skukan v. Consolidated Coal Co.*, 46 F.3d 15, 19 BLR 2-44 (6th Cir. 1995); Decision and Order at 24. Moreover, we have held that the administrative law judge permissibly relied on the well-reasoned and well-documented opinions of Drs. Mavi and Begley to find that claimant established the existence of legal pneumoconiosis, in the form of a disabling obstructive impairment due, in part, to coal mine dust exposure. Therefore, contrary to employer's contention, the administrative law judge rationally found that the opinions of Drs. Mavi and Begley supported a finding that legal pneumoconiosis is a "substantially contributing cause" of claimant's total disability, pursuant to 20 C.F.R. §718.204(c). *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Gross v. Dominion Coal Corp.*, 23 BLR 1-8, 1-17-19 (2004); Decision and Order at 24. Consequently, we affirm the administrative law judge's finding that claimant is totally disabled due to pneumoconiosis. 20 C.F.R. §718.204(c).

Because we have affirmed the administrative law judge's findings that claimant established the existence of legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a), and

[9] Having found that the medical opinion evidence established the existence of legal pneumoconiosis, the administrative law judge properly found that he was not required to separately determine the cause of the pneumoconiosis at 20 C.F.R. §718.203(b), as his finding at 20 C.F.R. §718.202(a)(4) necessarily subsumed that inquiry. *Henley v. Cowan & Co.*, 21 BLR 1-147, 1-151 (1999); Decision and Order at 23.

total disability due to legal pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c), we affirm the administrative law judge's award of benefits.

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

SO ORDERED.

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BETTY JEAN HALL, Chief
Administrative Appeals Judge

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GREG J. BUZZARD
Administrative Appeals Judge

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RYAN GILLIGAN
Administrative Appeals Judge