FILED
United States Court of Appeals
Tenth Circuit

July 10, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

CONSOLIDATION COAL COMPANY,

Petitioner,

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR; TRACY R. ADDLEY,

Respondents.

No. 22-9540
(No. 2021-0174-BLA)
(Benefits Review Board)

ORDER AND JUDGMENT[*]

Before **MORITZ**, **EID**, and **CARSON**, Circuit Judges.

Consolidation Coal Company (Consolidation) petitions for review of the Benefits Review Board's (Board) decision affirming an administrative law judge's (ALJ) award of benefits under the Black Lung Benefits Act (Act) to Tracy R. Addley, a retired coal miner. *See* 30 U.S.C. §§ 901-945. Exercising jurisdiction under 33 U.S.C. § 921(c), we deny Consolidation's petition.

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[*] After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

I. BACKGROUND

Mr. Addley worked for many years at Consolidation's coal mine in Utah. The ALJ credited him with at least fifteen years of underground coal mine work and further found that he had a totally disabling respiratory or pulmonary impairment, namely asthma. As a result, the ALJ determined that Mr. Addley was entitled to the rebuttable presumption of total disability due to pneumoconiosis. *See* 30 U.S.C. § 921(c)(4); 20 C.F.R. § 718.305(b)(1). The ALJ further found that Consolidation failed to rebut the presumption and awarded benefits to Mr. Addley.

On appeal, the Board affirmed, as unchallenged, the ALJ's determination that Mr. Addley was entitled to the presumption.[1] The Board also affirmed the ALJ's decision to award benefits as "rational, supported by substantial evidence, and in accordance with applicable law." R., Vol. I at 2. In particular, the Board rejected Consolidation's arguments that (1) the ALJ applied an improper, heightened standard in determining whether it successfully rebutted the presumption and (2) the decision was not supported by substantial evidence.

II. STANDARD OF REVIEW

"For questions of law, we review the . . . Board's decision de novo." *Antelope Coal Co./Rio Tinto Energy Am. v. Goodin*, 743 F.3d 1331, 1341 (10th Cir. 2014). "For questions of fact, we determine whether the . . . Board properly concluded that

[1] On appeal, Consolidation concedes that "[g]iven [Mr. Addley's] totally disabling pulmonary disease and more than 15-years of coal mine employment, [he] benefits from the powerful 15-year presumption." Pet'r's Opening Br. at 20.

the ALJ's decision was supported by substantial evidence." *Id.* (internal quotation marks omitted). "Although we are formally reviewing the . . . Board's decision, because the standard of review for questions of fact requires us to determine whether the ALJ's decision is supported by substantial evidence, we focus on the ALJ's decision and analysis." *Id.* at 1341 n.13.

"Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Id.* at 1341 (internal quotation marks omitted). "We do not reweigh the evidence, but instead ask if, based on the record as a whole, substantial evidence is present to support the ALJ's decision." *Id.*

III. LEGAL FRAMEWORK

A. The Agency Must Provide a Reasoned Decision

"[F]undamental principles of administrative law . . . require[] an agency's adjudicative decision to be accompanied by a clear and satisfactory explication of the basis on which it rests." *Gunderson v. U.S. Dep't of Lab.*, 601 F.3d 1013, 1022 (10th Cir. 2010) (internal quotation marks omitted). However, "this duty of explanation is not intended to be a mandate for administrative verbosity or pedantry. If a reviewing court can discern what the ALJ did and why he did it, the duty of explanation is satisfied." *Id.* (brackets and internal quotation marks omitted).

B. The Benefits Determination

"To obtain benefits under the Act, a miner must demonstrate that he satisfies three conditions: (1) he or she suffers from pneumoconiosis; (2) the pneumoconiosis arose out of coal mining employment; and (3) the pneumoconiosis is totally

disabling." *Blue Mountain Energy v. Dir., OWCP*, 805 F.3d 1254, 1256 (10th Cir. 2015) (internal quotation marks omitted).

i. *The 15-year presumption and rebuttal*

"The [Act] created a presumption that a miner is disabled due to pneumoconiosis when he or she was worked for 15 years in underground coal mines or substantially similar conditions and is totally disabled from a respiratory or pulmonary condition (the '15-year presumption')." *Antelope Coal*, 743 F.3d at 1335; *see* 30 U.S.C. § 921(c)(4). "In other words, a miner who proves 15 years of coal mine work and total disability is entitled to a presumption that the remaining elements of his claim are established." *Antelope Coal*, 743 F.3d at 1335; *see also Energy W. Mining Co. v. Est. of Blackburn*, 857 F.3d 817, 822 (10th Cir. 2017) (stating that a claimant's burden is "soften[ed]" when he has worked for at least 15 years as a miner and is totally disabled from a respiratory or pulmonary condition).

"The party opposing an award of benefits under the [Act] may rebut the 15-year presumption by establishing that (1) the claimant does not have pneumoconiosis or (2) pneumoconiosis did not cause any part of the miner's respiratory or pulmonary total disability." *Rockwood Cas. Ins. Co. v. Dir., OWCP*, 917 F.3d 1198, 1202 (10th Cir. 2019). "In other words, once a claimant establishes the 15-year presumption, the operator must rebut the existence of (1) the disease, or (2) the disease or disability causation." *Id.*

Putting a slightly finer point on the issue, we have explained

> there are two methods for rebutting the fifteen-year presumption. Under the first, an employer must demonstrate that the miner [does] not have either legal pneumoconiosis or clinical pneumoconiosis arising out of coal-mine employment. Under the second, an employer must establish that no part of the miner's [disability] [is] caused by pneumoconiosis.

Consolidation Coal Co. v. Dir., OWCP, 864 F.3d 1142, 1152 (10th Cir. 2017) (citation and internal quotation marks omitted). "Accordingly, an employer can rebut the presumption of legal pneumoconiosis under the [first] rebuttal method . . . by proving that the miner's lung disease [is] not significantly related to, or substantially aggravated by, dust exposure in coal mine employment," *id.* (internal quotation marks omitted), or under the second rebuttal method by demonstrating that no part of the miner's disability is caused by pneumoconiosis.[2]

ii. *Clinical and legal pneumoconiosis*

"The [Act] recognizes two types of pneumoconiosis: clinical and legal." *Antelope Coal*, 743 F.3d at 1335. The 15-year presumption applies to both classifications of the disease. *Consolidation Coal*, 864 F.3d at 1144.

"'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

[2] *Consolidation Coal* involved rebuttal of a claim for survivor's benefits under 20 C.F.R. § 718.305(d)(2), but essentially the same standards apply to the regulatory subsection concerning rebuttal of claims for disability benefits under 20 C.F.R. § 718.305(d)(1). *See Consolidation Coal*, 864 F.3d at 1152 (stating that "the two provisions are nearly identical and implement that same section" of the Act).

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 its impairment and its sequelae arising out of coal mine employment. This definition includes, but is not limited to, any chronic restrictive or obstructive pulmonary disease arising out of coal mine employment." *Id.* § 718.201(a)(2). "[A] disease 'arising out of coal mine employment' includes any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." *Id.* § 718.201(b).

IV. ANALYSIS

A. Overview

The ALJ found, and the parties agree, that Consolidation rebutted the presumption of clinical pneumoconiosis; however, Consolidation disagrees with the ALJ's determination that it failed to rebut the presumption of legal pneumoconiosis. First, Consolidation argues that the ALJ required its medical experts to rule out coal mine dust exposure as a causative factor for Mr. Addley's totally disabling asthma. *See* Pet'r's Opening Br. at 25 (arguing that the ALJ imposed "a harsher, more restrictive 'rule-out' standard"). Alternatively, Consolidation maintains that the decision is not supported by substantial evidence.

i. *The ALJ applied the proper standard*

Consolidation's first argument is based on two sentences plucked from the ALJ's comprehensive decision, which discussed in detail the relevant medical

evidence, including the reports and deposition testimony of Consolidation's medical experts, Drs. Tuteur and Farney. As part of his comprehensive review and analysis, the ALJ noted that (1) Dr. Tuteur "could not eliminate [the] possibility" that "coal mine dust played an additive role" in Mr. Addley's asthma during his deposition, R., Vol. II at 214, and (2) "Dr. Farney's deposition testimony did not foreclose the possibility of whether [Mr. Addley's] asthma was exacerbated by his coal mine dust exposure," *id.* at 217. These statements, however, are simply two observations, among many, made by the ALJ during his discussion of the evidence—not the standard he applied.

To the contrary, the ALJ recognized that Consolidation had the burden to prove that Mr. Addley did not have a chronic lung disease or impairment *significantly related to, or substantially aggravated by*, coal mine dust exposure—not that it was required to rule out coal mine dust exposure as a causative factor. *See, e.g.*, *id.* at 184-85; 194; 212 (recognizing that "[a]ll of the physicians agreed that [Mr. Addley] has asthma, and that his asthmatic condition is currently disabling. Where they disagree is whether, and to what extent, [his] coal mine dust exposure history contributed to his impairment. In sum, as to legal pneumoconiosis, the physicians are split in their opinions, with Dr. Gagon and Dr. Sood concluding that [Mr. Addley's] coal mine dust exposure history was a significant factor in [his] currently disabling pulmonary impairment, and Dr. Farney and Dr. Tuteur concluding that it was not" (footnotes omitted)).

More to the point, the ALJ discredited Drs. Tuteur's and Farney's opinions because they did not adequately explain why it is more likely than not that coal dust did not *substantially aggravate* Mr. Addley's asthma—not because they failed to "rule out" coal mine dust exposure as a causative factor for Mr. Addley's totally disabling asthma. *See, e.g.*, *id.* at 214; 215; 217; 218. In sum, the ALJ applied the proper standard.

ii. *The decision is supported by substantial evidence*[3]

Consolidation's remaining argument concerns whether the ALJ's determination that Drs. Tuteur's and Farney's opinions failed to rebut the presumption of legal pneumoconiosis is supported by substantial evidence. We have reviewed each of Consolidation's specific contentions and conclude that none of them compel us to vacate the agency's decision. In large part, Consolidation's argument is based on disagreements with the ALJ's assessment of the evidence. However, in deciding whether substantial evidence exists to support the ALJ's decision, we cannot reweigh the evidence; instead, we merely ask whether there is evidence in the record that "a reasonable mind might accept as adequate to support

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[3] Consolidation conflates two distinct arguments. Under the heading "*Substantial evidence does not support the [ALJ's] finding*," Pet'r's Opening Br. at 26, Consolidation also argues that "[t]he opinions of Drs. Gagon, Tuteur, and Farney are not adequately discussed to allow a reviewer of the decision to understand why the ALJ was not persuaded by testimony," *id.* at 26-27. This is separate from the issue of whether the decision is supported by substantial evidence. In any event, because we can easily discern what the ALJ did and why he did it, the ALJ satisfied his duty of explanation. *See Gunderson*, 601 F.3d at 1022.

[the ALJ's] conclusion." *Antelope Coal*, 743 F.3d at 1341 (internal quotation marks omitted). Under this standard, we must affirm.

As stated previously, the ALJ found that the physicians were split in their opinions as to legal pneumoconiosis, "with Dr. Gagon and Dr. Sood concluding that [Mr. Addley's] coal mine dust exposure history was a significant factor in [his] currently disabling pulmonary impairment, and [Consolidation's experts] Dr. Farney and Dr. Tuteur concluding that it was not." R., Vol. II at 212. However, because Mr. Addley was entitled to the presumption, the burden fell to Consolidation to prove that Mr. Addley's disabling asthma was not significantly related to, or substantially aggravated by, coal mine dust exposure. *See* 20 C.F.R. § 718.305(d)(1)(i)(A); *Consolidation Coal*, 864 F.3d at 1152. Setting aside the fact that both Drs. Gagon and Sood opined that Mr. Addley has legal pneumoconiosis, we agree with the ALJ that it was not necessary to address the merits of their opinions because even if he gave them "no weight, they do not assist in rebutting the presumed presence of legal pneumoconiosis." R., Vol. II at 219. Thus, the ALJ properly focused on whether the opinions of Drs. Tuteur and Farney rebutted the presumption of legal pneumoconiosis.

The Board provided a cogent summary of Drs. Tuteur's and Farney's opinions in its decision and order. "In their initial reports, [Drs. Tuteur and Farney] diagnosed a disabling obstructive respiratory impairment due to [Mr. Addley's] history of chronic 'triad asthma.' They explained this respiratory condition is unrelated to coal mine dust exposure." R., Vol. I at 3-4 (citation and footnote

omitted). Later, during his deposition, Dr. Tuteur changed his opinion to say that Mr. Addley's "disabling impairment was caused by asthma and occupational exposure to an epoxy resin called toluidine dye isocyanate (TDI)[,]" but reaffirmed that Mr. Addley "does not have a coal mine induced pulmonary process." *Id.* at 4 (internal quotation marks omitted).

The ALJ found, however, that "Dr. Tuteur's opinion does not adequately rebut the presumed presence of legal pneumoconiosis, because it fails to establish that [Mr. Addley's] asthma was not 'substantially aggravated by' his occupational coal mine dust exposure." R., Vol. II at 214. The ALJ reached this conclusion for several reasons.

The ALJ acknowledged Dr. Tuteur's statement that "there is no evidence [Mr. Addley] ever had an acute asthma attack while mining; [however,] assum[ing] this statement to be true, it relates only to the acute manifestation of [Mr. Addley's] asthma, and not to his daily condition, which is of itself disabling." *Id.* at 214-15. Additionally, the ALJ found that "Dr. Tuteur's comments regarding bronchoreversibility fail to address the issue of [Mr. Addley's] residual disabling impairment, after use of bronchodilators. It is well settled that a physician's opinion which cites bronchoreversibility but does not address a disabling residual impairment (impairment remaining after bronchodilator administration) can be given little weight." *Id.* at 215.

Next, the ALJ found that "Dr. Tuteur's opinion regarding TDI exposure also [failed to] rebut the presumed presence of legal pneumoconiosis" because he never

explained "whether . . . the TDI exposure was the genesis of [Mr. Addley's] asthma or merely a factor that aggravated a pre-existing condition. Nor did [he] explain whether such exposure would result in progression of [Mr. Addley's] asthma." *Id.* (footnote omitted). Further, Mr. Addley "stopped working in underground mining by 1990, and therefore any exposure to isocyanates present in rock bolting resins must also have ceased by that time. However, [his] respiratory condition did not become disabling until many years later; notably [he] continued to work in coal mine employment up until 2012." *Id.*

We agree with the Board that the ALJ "permissibly found Dr. Tuteur did not adequately explain whether TDI exposure would account for the progression of [Mr. Addley's] impairment," R., Vol. I at 6, which is another way of saying that the ALJ's finding is supported by substantial evidence.

Nonetheless, Consolidation maintains that it met its burden because Dr. Tuteur opined that

> asthma was present in Mr. Addley during high school, that multiple data points show a slowly progressive obstructive ventilatory defect that improves substantially following the administration of bronchodilators, . . . his parental family history revealed a genetically mediated asthmatic phenomenon, and the TDI exposure was likely the cause of the brocho-reactive lung condition.

Pet'r's Opening Br. at 29-30.

But this evidence concerns the undisputed fact that Mr. Addley has asthma—not whether his asthma was significantly related to, or substantially aggravated by, coal mine dust exposure. Further, Dr. Tuteur failed to explain why TDI exposure

was the likely cause of Mr. Addley's "broncho-reactive lung condition" given the lapse in time between his exposure in the early 90s and the onset of his disability several decades later. Importantly, he also failed to explain why the irreversible portion of Mr. Addley's impairment remaining after bronchodilation (whether caused by asthma or TDI exposure) was not significantly related to, or substantially aggravated by, coal mine dust exposure.

For his part, Dr. Farney opined that Mr. Addley's disabling impairment was caused by asthma, with his history of smoking as an exacerbating factor, and obesity a risk factor. The ALJ noted that "[a]t his deposition, Dr. Farney reiterated his conclusion regarding the etiology of [Mr. Addley's] asthma, that it was familial and related to allergies." R., Vol. II at 216. However, the ALJ found that "[n]otably, [and] to a degree he did not in his written report, [at his deposition] Dr. Farney accepted that [Mr. Addley's] level of occupational coal mine dust exposure was sufficient to cause pneumoconiosis if he were susceptible." *Id.* Specifically, the ALJ noted Dr. Farney's testimony

> that it was possible for exposure to coal mine dust to cause an acute exacerbation for someone with asthma, [and] it was conceivable that exposure to a dusty environment could "be a problem" for someone with asthma, and . . . that people with "sensitive lungs" are advised not to go outside when the air quality is bad.

Id. And the ALJ added that

> [o]n the issue of whether exposure to coal mine dust could lead to lung remodeling in an asthmatic, Dr. Farney stated that he could not find any evidence to support that notion, and remarked that the nature of the inflammation that results from coal dust was, in his view, different from the inflammation that develops with asthma or smoking.

Id. "However, [Dr. Farney] said[] he did not know, but he did not see any studies that could allow him to conclude that [coal mine dust could not lead to lung remodeling in an asthmatic.]" *Id.* "As for whether an asthmatic might be in a different position, from a respiratory perspective, had he not worked in the mines, Dr. Farney responded that he did not know, and he did not think there was 'any science to be able to answer that' and so it was speculative." *Id.* at 216-17.

The ALJ also cited Dr. Farney's testimony that Mr. Addley "could have both legal pneumoconiosis and asthma at the same time," that "people with disabling coal workers' pneumoconiosis generally do not have reversibility with administration of bronchodilators, and . . . it was possible that the reversible portion of an impairment could be due to asthma and the part that was not reversible might be due to pneumoconiosis." *Id.* at 217.

The ALJ found that neither Dr. Farney's report nor deposition testimony rebutted the presumption of legal pneumoconiosis. The ALJ found that although

> Dr. Farney stated it was unlikely for coal dust to cause asthma because it is an inert substance, he conceded that he knew of no study that resolved the issue. Further, and more importantly, Dr. Farney conceded that it was possible that a person could have both asthma and a coal-dust related impairment, with the former being responsive to bronchodilators and the latter not.

Id. "Dr. Farney's testimony underscores that it is not clear whether exposure to coal mine dust significantly aggravated [Mr. Addley's] asthma." *Id.* Therefore, "the presumed presence of legal pneumoconiosis is not rebutted." *Id.*

On appeal, Consolidation argues that the ALJ "failed to adequately consider" Dr. Farney's opinion "that Mr. Addley's disease was not related to an occupational exposure but was related to a genetic susceptibility to asthma." Pet'r's Opening Br. at 32. We disagree. The ALJ thoroughly considered Dr. Farney's report and deposition testimony and explained why they failed to rebut the presumption. More to the point, we cannot reweigh the evidence. The ALJ's findings are supported by substantial evidence and must be affirmed.

We also reject Consolidation's argument concerning Mr. Addley's treatment records. According to Consolidation, "[t]hese treatment records and their use to form the medical conclusions by Drs. Tuteur and Farney are not resolved so that the reviewer understands why the ALJ found as he did." Pet'r's Opening Br. at 33. We disagree.

Here, the ALJ fully summarized Mr. Addley's treatment records from the University of Utah, Castleview Hospital, and Emery Medical Center. *See* R., Vol. II at 221-24. The ALJ noted that "[a]ll of the medical treatment records indicate that [Mr. Addley] had been diagnosed with asthma, and was receiving treatment," but [o]f themselves, the [treatment] records neither establish nor refute that [Mr. Addley] had either clinical or legal pneumoconiosis" and "do not rebut the presumed presence of either clinical or legal pneumoconiosis." *Id.* at 224. Because we can discern what the ALJ did and why he did it, the ALJ satisfied his duty of explanation. *See Gunderson*, 601 F.3d at 1022.

Last, having failed to rebut the presumption of legal pneumoconiosis, Consolidation necessary failed to rebut the presumption that legal pneumoconiosis was a cause of Mr. Addley's totally disabling lung impairment.

V. CONCLUSION

The petition for review is denied.

Entered for the Court

Allison H. Eid
Circuit Judge