U.S. Department of Labor

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

BRB No. 24-0289 BLA

DANA R. PASSMORE Claimant-Petitioner v. ROSEBUD MINING COMPANY and ROCKWOOD CASUALTY INSURANCE COMPANY Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 08/15/2025 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Deanna Lyn Istik (Sinatra & Istik Law Office, PLLC), Cranberry Township, Pennsylvania, for Claimant.

Christopher Pierson (Burns White LLC), Pittsburgh, Pennsylvania, for Employer.

Before: ROLFE and JONES, Administrative Appeals Judges, ULMER, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Denying Benefits (2023-BLA-05848) rendered on a claim filed on July 18, 2022, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found the evidence insufficient to establish complicated pneumoconiosis, and thus Claimant could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §718.304. The ALJ further found Claimant had at least thirty-nine years of qualifying coal mine employment, but did not establish total disability; thus, he found Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[1] 30 U.S.C. §921(c)(4) (2018), or establish the necessary element of entitlement under 20 C.F.R. Part 718. Additionally, the ALJ found Claimant failed to establish legal pneumoconiosis[2] and denied benefits. 20 C.F.R. §718.202.

On appeal, Claimant challenges the ALJ's finding that he did not establish complicated pneumoconiosis, or total disability through invocation of the irrebuttable presumption.[3] Employer responds in support of the denial. The Acting Director, Office of Workers' Compensation Programs, has not filed a response brief.

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[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is 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] "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). The ALJ found that Claimant established simple clinical pneumoconiosis. "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).

[3] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant failed to establish total disability under 20 C.F.R. §718.204(b)(2)(i)-(iv), Claimant failed to invoke the Section 411(c)(4) presumption, and Claimant failed to establish legal pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 11-14.

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.[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).

Invocation of the Section 411(c)(3) Presumption

Section 411(c)(3) of the Act provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The ALJ must determine whether the evidence in each category tends to establish the existence of complicated pneumoconiosis, and then must weigh together the evidence at subsections (a), (b), and (c) before determining whether Claimant has invoked the irrebuttable presumption. *See Truitt v. N. Am. Coal Corp*., 2 BLR 1-99 (1979), *aff'd sub nom. Director, OWCP v. N. Am. Coal Corp*., 626 F.2d 1137 (3d Cir. 1980); *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 287 (4th Cir. 2010); *Gollie v. Elkay Mining Corp*., 22 BLR 1-306, 1-311 (2003); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found the x-ray and medical opinion evidence does not establish complicated pneumoconiosis.[5] 20 C.F.R. §718.304(a), (c); Decision and Order at 6-14. Claimant on appeal solely argues the ALJ erred in failing to find the chest x-ray evidence establishes complicated pneumoconiosis.[6] Claimant's Brief at 4-6. We affirm the ALJ's finding.

The ALJ considered seven interpretations of two chest x-rays dated August 23, 2022 and January 30, 2023, rendered by physicians who are all dually-qualified as B readers and

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because Claimant performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3, 5, 6.

[5] The record does not contain biopsy, computed tomography scan, or treatment record evidence. *See* 20 C.F.R. §718.304(b), (c).

[6] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant failed to establish complicated pneumoconiosis under 20 C.F.R. §718.304(b) or (c). *See Skrack*, 6 BLR at 1-711; Decision and Order at 11-14.

Board-certified radiologists, with the exception of Dr. Fino, who is a B reader and Board-certified pulmonologist. Decision and Order at 8-11; Director's Exhibits 12, 14, 16; Claimant's Exhibits 1, 2; Employer's Exhibits 1, 3.

Drs. DePonte and Alexander read the August 23, 2022 x-ray as positive for complicated pneumoconiosis, Category A, whereas Dr. Simone read it as negative for the disease. Director's Exhibits 12, 14, 16. Because the ALJ found a greater number of dually-qualified radiologists read this x-ray as positive for complicated pneumoconiosis, he found it positive for the disease. Decision and Order at 10-11.

Dr. DePonte read the January 30, 2023 x-ray as positive for complicated pneumoconiosis, Category A, whereas Drs. Fino and Alexander read it positive for simple, but not complicated pneumoconiosis, and Dr. Simone read it as negative for the disease. Employer's Exhibits 1, 3; Claimant's Exhibits 1, 2. Because the ALJ found a greater number of dually-qualified radiologists read this x-ray as positive for simple pneumoconiosis, he found the x-ray positive for simple pneumoconiosis, but not complicated pneumoconiosis. Decision and Order at 11.

Having found the August 23, 2022 x-ray positive for complicated pneumoconiosis and the January 30, 2023 x-ray negative for complicated pneumoconiosis, the ALJ found the x-ray evidence as a whole to be in equipoise. Therefore, he found Claimant did not carry his burden of proof to establish complicated pneumoconiosis. Decision and Order at 11.

Claimant asserts the ALJ erred in failing to rely on the numerical superiority of the positive readings for complicated pneumoconiosis.[7] Claimant's Brief at 6. We disagree.

Qualitatively, the ALJ permissibly found the August 23, 2022 x-ray positive for complicated pneumoconiosis and the January 30, 2023 x-ray negative based on the radiological qualifications of the interpreting physicians. Quantitatively, he found the two x-rays in equipoise. Having done an adequate qualitative and quantitative analysis of the x-rays, substantial evidence supports his decision. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); *Chaffin v. Peter Cave Coal Co*., 22 BLR 1-294, 1-300 (2003). Thus, we affirm the ALJ's conclusion that the x-ray evidence does not support a finding of complicated pneumoconiosis. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994), *aff'g sub nom*. *Greenwich Collieries v. Director, OWCP*, 990 F.2d 730 (3d Cir. 1993); 20 C.F.R. §718.304(a); Decision and Order at 8-11. As we have

[7] Claimant states that there were three positive readings for "Category A" large opacities and two readings that were positive for simple pneumoconiosis only. Claimant's Brief at 6. He does not address the other two readings that were negative for any form of pneumoconiosis. Director's Exhibit 16; Employer's Exhibit 3.

affirmed the ALJ's findings at 20 C.F.R. §718.304(a)-(c), we affirm his overall conclusion that Claimant did not establish complicated pneumoconiosis and therefore did not invoke the irrebuttable presumption of total disability due to pneumoconiosis. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

Further, we affirm the ALJ's finding that Claimant failed to establish total disability, as Claimant's argument at total disability relates solely to the ALJ's finding that he did not invoke the Section 411(c)(3) presumption. 20 C.F.R. §§718.204, 718.304. As Claimant failed to establish a necessary element of entitlement, we affirm the ALJ's denial 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).

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge