U.S. Department of Labor

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

BRB No. 24-0415 BLA

ROBERT E. HAMILTON Claimant-Petitioner v. HAMILTON BROTHERS COAL, INCORPORATED 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: 08/20/2025 DECISION and ORDER

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

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick, & Long), Ebensburg, Pennsylvania, for Claimant.

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

Before: GRESH, Chief Administrative Appeals Judge, JONES, Administrative Appeals Judge, and ULMER, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Denying Benefits (2023-BLA-05920) rendered on a claim filed on June 9, 2022,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant did not establish complicated pneumoconiosis, and thus did 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); 20 C.F.R. §718.304. Further, the ALJ credited Claimant with 16.5 years of qualifying coal mine employment; however, she found he did not have a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Consequently, she determined Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4) (2018). Because Claimant did not establish total disability, an essential element of entitlement, the ALJ also found he did not establish entitlement to benefits under 20 C.F.R. Part 718 and therefore denied benefits.

On appeal, Claimant argues the ALJ erred in finding the evidence did not establish complicated pneumoconiosis.[3] Employer responds in support of the denial of benefits. The Acting Director, Office of Workers' Compensation Programs, has not filed a response brief.

[1] Claimant filed a prior claim for benefits on May 16, 2013, that he subsequently withdrew. Director's Exhibits 2, 32. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

[2] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability is 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.

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 16.5 years of qualifying coal mine employment but did not establish total disability and thus cannot invoke the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.204(b)(2); Decision and Order at 9, 16; *see Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983).

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).

Section 411(c)(3) Irrebuttable Presumption – Complicated Pneumoconiosis

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 large 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, is a condition that would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. In determining whether Claimant has invoked the irrebuttable presumption, the ALJ must consider all evidence relevant to the presence or absence of complicated pneumoconiosis. 30 U.S.C. §923(b); *Truitt v. N. Am. Coal Corp*., 2 BLR 1-199 (1979), *aff'd sub nom. Director, OWCP v. N. Am. Coal Corp*., 626 F.2d 1137 (3d Cir. 1980); *see Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33 (1991) (en banc).

The ALJ found the x-ray evidence is negative for complicated pneumoconiosis, the computed tomography (CT) scan readings are in equipoise, and no other evidence diagnoses the disease.[5] 20 C.F.R. §718.304(a)-(c); Decision and Order at 22. Weighing the evidence together, she concluded Claimant did not establish complicated pneumoconiosis. 20 C.F.R. §718.304(a)-(c); Decision and Order at 22.

Claimant argues the ALJ erred in finding the evidence does not establish complicated pneumoconiosis because he asserts she did not provide adequate analysis and

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

[5] The ALJ found the record contains no biopsy evidence. 20 C.F.R. §718.304(b); Decision and Order at 17 n.15. In addition, neither of the expert physicians providing medical opinions diagnosed complicated pneumoconiosis. Director's Exhibit 12; Employer's Exhibits 1, 6; Decision and Order at 14-15.

explanation as the Administrative Procedure Act (APA) requires.[6] Claimant's Brief at 6 (unpaginated).

X-ray Evidence – 20 C.F.R. §718.304(a)

The ALJ considered five interpretations of two x-rays dated July 15, 2022, and June 27, 2023. Decision and Order at 19-20. The ALJ noted that all interpreting physicians, except Dr. Basheda,[7] are dually-qualified Board-certified radiologists and B readers. *Id.* at 20. In weighing the x-ray evidence, the ALJ indicated that "[u]nless there is a reason . . . to give greater or lesser weight to a specific x-ray interpretation," she would accord equal weight to the opinions of all dually-qualified Board-certified radiologists and B readers. *Id.*

Dr. DePonte read the July 15, 2022 x-ray as positive for complicated pneumoconiosis, Category A, while both Drs. Ahmed and Simone read it as negative for the disease.[8] Director's Exhibit 12 at 8-9; Claimant's Exhibit 1; Employer's Exhibit 4. The ALJ found the x-ray was negative for complicated pneumoconiosis because the majority of "highly qualified" readers interpreted it as negative. Decision and Order at 20. Drs. Simone and Basheda read the June 27, 2023 x-ray as negative for both simple and complicated pneumoconiosis. Employer's Exhibits 1, 3. There are no other readings of the June 27, 2023 x-ray; thus, the ALJ found the x-ray negative for the disease. Decision and Order at 20.

Claimant does not challenge the ALJ's determination that the June 27, 2023 x-ray is negative for complicated pneumoconiosis. We therefore affirm this finding. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 20. However, Claimant argues the ALJ erred in weighing the July 15, 2022 x-ray by not considering Dr.

[6] The Administrative Procedure Act, requires that every adjudicatory decision include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co*., 12 BLR 1-162, 1-165 (1989).

[7] Dr. Basheda is a B reader, but is not a Board-certified radiologist. Employer's Exhibit 2. The ALJ accorded his reading less weight based on his credentials. Decision and Order at 20.

[8] Dr. Ahmed read the July 15, 2022 x-ray as positive for simple pneumoconiosis. Director's Exhibit 12 at 8-9. Dr. Simone found no evidence of pneumoconiosis, but noted fibrosis in the left lower lung. Employer's Exhibit 4.

DePonte to be better qualified[9] than the other readers and merely "counted heads" without considering the reasoning of the conflicting readings. Claimant's Brief at 6-8 (unpaginated).

Contrary to Claimant's argument, the ALJ properly performed both a qualitative and quantitative analysis of the conflicting x-ray readings, taking into consideration the physicians' qualifications, their interpretations, and the number of readings of the July 15, 2022 x-ray. 20 C.F.R. §718.304(a); Decision and Order at 20; *see Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 211 (3d Cir. 2002); *Kertesz v. Director, OWCP*, 788 F.2d 158, 163 (3d Cir. 1986); *see also Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256 (4th Cir. 2016).

The ALJ also set forth the physicians' additional credentials[10] in the record beyond their status as dually-qualified radiologists and accorded their readings equal weight as "highly qualified" readers of the July 15, 2022 x-ray. Decision and Order at 19-20. She explained they all possessed the same level of professional credentials and that she would not give greater or lesser weight to an x-ray interpretation unless she found a specific reason to do so. Decision and Order at 20; *see Staton v. Norfolk & W. Ry. Co*., 65 F.3d 55, 59 (6th Cir. 1995) (ALJ may accord greatest weight to x-ray readings by physicians who are dually-qualified as both Board-certified radiologists and B readers); *Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-114 (2006) (en banc) , *aff'd on recon*., 24 BLR 1-13 (2007) (en banc) (an ALJ may rely on a reader's additional relevant qualifications to accord greater weight to that physician's reading, but is not required to do so); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993) (same).

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[9] Claimant asserts the ALJ should afford greater weight to Dr. DePonte's reading because, in addition to being dually-qualified as a Board-certified radiologist and B reader, she "completed her residency in Diagnostic Radiology, and maintains an active private practice consisting of diagnostic imaging review and interpretation with a focus on coal mine induced lung disease." Claimant's Brief at 8 (unpaginated); Claimant's Post-Hearing Brief at 11.

[10] The ALJ considered that Dr. DePonte is a National Institute of Occupational Safety and Health (NIOSH) Coal Workers' Health Surveillance Program reader, works in private practice with Diagnostic Imaging Associates, and serves as adjunct clinical faculty with the DeBusk College of Osteopathic Medicine. Decision and Order at 19 n.22; Claimant's Exhibit 2. She also noted that Dr. Simone is on the active staff at Diagnostic Imaging Services in Indiana Hospital. Decision and Order at 19 n. 23; Employer's Exhibit 5.

Claimant's contention that Dr. DePonte is "better qualified" and her reading should be credited over those of Drs. Ahmed and Simone amounts to a request that the Board reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989); *Worley v. Blue Diamond Coal Co*., 12 BLR 1-20, 1-23 (1988); Claimant's Brief at 8 (unpaginated). We therefore affirm the ALJ's determination to accord equal weight to the three "highly qualified" physicians who read the July 15, 2022 x-ray. Decision and Order at 19-20; *see Kertesz*, 788 F.2d at 163; *Harris*, 23 BLR at 1-114; *Worhach*, 17 BLR at 1-108.

We therefore affirm, as supported by substantial evidence, the ALJ's conclusion that the July 15, 2022 x-ray is negative for complicated pneumoconiosis. Decision and Order at 19-20; *see Soubik v. Director, OWCP*, 366 F.3d 226, 234 (3d Cir. 2004); *Mancia v. Director, OWCP*, 130 F.3d 579, 584 (3d Cir. 1997); *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149, 1-155 (1989) (en banc). Thus, we also affirm the ALJ's conclusion that the x-ray evidence is negative for complicated pneumoconiosis. 20 C.F.R. §718.304(a); Decision and Order at 22.

Other Medical Evidence – 20 C.F.R. §718.304(c)

CT Scan Evidence

The ALJ next considered two interpretations of a CT scan dated August 8, 2022. 20 C.F.R. §718.304(c); Decision and Order at 21-22. The ALJ found Dr. DePonte's report establishes that CT scans are medically acceptable and relevant to establishing or refuting the presence of pneumoconiosis, as 20 C.F.R. §718.107(b) requires. *Id.* at 21.

Dr. DePonte interpreted the August 8, 2022 CT scan as showing a 12 x 5 x 6 millimeter opacity in Claimant's left upper lobe periphery, consistent with a Category A large opacity. Claimant's Exhibit 3. Further, Dr. DePonte indicated the findings were typical of interstitial fibrosis, but she excluded idiopathic pulmonary fibrosis because Claimant's occupational exposure was the likely etiology of his radiographic abnormalities. *Id.* at 2. Thus, Dr. DePonte diagnosed dust-related diffuse fibrosis, a form of pneumoconiosis, and determined that the CT scan is positive for complicated pneumoconiosis as the 12-millimeter opacity in Claimant's left upper lobe "would measure similar in size and greater than one centimeter" on x-ray. *Id.*

In contrast, Dr. Simone read the August 8, 2022 CT scan as negative for both simple and complicated pneumoconiosis with no large opacities or evidence of pneumoconiosis. Employer's Exhibit 7. He noted centrilobular emphysema with "subpleural fibrosis." *Id.*

In weighing the CT scan evidence, the ALJ noted both Dr. DePonte and Dr. Simone are dually-qualified as Board-certified radiologists and B readers. Decision and Order at

22; Claimant's Exhibit 2; Employer's Exhibit 5. After according "equivalent" weight to Drs. DePonte's and Simone's readings based on their comparable qualifications, the ALJ concluded that the readings of the August 8, 2022 CT scan are in equipoise as to the presence or absence of complicated pneumoconiosis. Decision and Order at 22.

Claimant asserts the ALJ violated the APA given Claimant's contention that Dr. DePonte's opinion was better documented and reasoned and the ALJ failed to weigh the substance of each doctor's reading. Claimant's Brief at 8-10 (unpaginated). We disagree.

Contrary to Claimant's argument, the ALJ acknowledged Dr. DePonte's diagnosis of dust related diffuse fibrosis but exclusion of idiopathic pulmonary fibrosis, as well as her affirmative diagnosis of complicated pneumoconiosis. Decision and Order at 21; Claimant's Brief at 8-10 (unpaginated); Claimant's Exhibit 3 at 1-2. The ALJ also noted Dr. Simone's diagnoses and contrary finding of no large opacities. Decision and Order at 21; Employer's Exhibit 7. Although Claimant generally argues Dr. DePonte's opinion is better documented and reasoned and based on a consideration of a broad range of evidence,[11] this argument amounts to a request to reweigh the evidence, which the Board is not empowered to do. *Anderson*, 12 BLR at 1-113; *see also Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc) (Board will not interfere with credibility determinations unless they are inherently incredible or patently unreasonable); Claimant's Brief at 8-10 (unpaginated).

We hold the ALJ's explanation for her weighing of the CT scan readings is adequate to comply with the APA. *See Barren Creek Coal Co. v. Witmer*, 111 F.3d 352, 354 (3d Cir. 1997); *see also Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756, (4th Cir. 1999) (APA does not demand perfection; if we understand what the ALJ did and why she did it, the APA is satisfied); *Poole v. Freeman United Coal Mining Co.*, 897 F.2d 888, 893 (7th Cir. 1990) (Board cannot disturb findings supported by substantial evidence even if it might reach a different conclusion if it were reviewing the evidence de novo). We therefore affirm the ALJ's determination that the readings of the August 8, 2022 CT scan are in equipoise and thus do not weigh in favor of Claimant's burden. Decision and Order at 22; *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994); *Soubik*, 366 F.3d at 234; *Mancia*, 130 F.3d at 584; *Clark*, 12 BLR at 1-155.

Thus, we also affirm the ALJ's finding, based on her consideration of all the relevant evidence, that Claimant failed to establish complicated pneumoconiosis by a preponderance of the evidence. *Melnick*, 16 BLR at 1-33; Decision and Order at 22.

[11] It is unclear what other evidence, if any, Claimant contends Dr. DePonte relies upon that Dr. Simone did not.

Consequently, we affirm the ALJ's finding that Claimant did not invoke the Section 411(c)(3) presumption. Decision and Order at 17 n.16, 22. As we have also affirmed that Claimant did not establish a totally disabling respiratory or pulmonary impairment, an essential element of entitlement, we affirm that he cannot establish entitlement to benefits. 20 C.F.R. §718.204(b)(2); *see Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); Decision and Order at 16, 22.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge