U.S. Department of Labor

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

BRB No. 25-0026 BLA

JOHN E. WOLVERTON Claimant-Petitioner v. BROOKS RUN MINING COMPANY, LLC and BRICKSTREET MUTUAL INSURANCE COMPANY, INCORPORATED Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 12/18/2025 DECISION and ORDER

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

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

Ann B. Rembrandt (Jackon Kelly PLLC), Charleston, West Virginia, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals ALJ (ALJ) Natalie A. Appetta's Decision and Order Denying Benefits (2023-BLA-06020) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim filed on March 2, 2022.[1]

The ALJ credited Claimant with 18.4 years of underground coal mine employment. She found Claimant does not have 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) (2018); *see* 20 C.F.R. §718.304. Further, she found Claimant did not establish a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b)(2), and thus could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[2] 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305, or establish a change in an applicable condition of entitlement, 20 C.F.R. §725.309.[3] Based on Claimant's failure to establish total disability, an essential element of entitlement under 20 C.F.R. Part 718, the ALJ denied benefits.

[1] Claimant filed five prior claims and withdrew four of the five claims. Director's Exhibits 2-5. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306(b). On March 3, 2014, the district director denied Claimant's most recent prior claim, filed on August 19, 2013, because he did not establish total disability due to pneumoconiosis. ALJ's Exhibit 1. Claimant did not further pursue that claim.

[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] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant failed to establish total disability or disability causation in his prior claim, Claimant had to submit new evidence establishing either element of entitlement to obtain review of the merits of his current claim. *Id.*

On appeal, Claimant argues the ALJ erred in finding he did not establish complicated pneumoconiosis. Employer and its Carrier respond in support of the denial of benefits.[4] The Acting Director, Office of Workers' Compensation Programs, has not filed a response brief.

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.[5] 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, 361-62 (1965).

Invocation of the Section 411(c)(3) Presumption – Complicated Pneumoconiosis

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), 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). *See* 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. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243-44 (4th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

The ALJ found the x-ray, computed tomography (CT) scan, and medical opinion evidence, considered independently, insufficient to establish complicated

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 18.4 years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5-8.

[5] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his most recent coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 38.

pneumoconiosis.[6] 20 C.F.R. §718.304(a), (c); Decision and Order at 20-23. She further found all the relevant evidence weighed together insufficient to establish complicated pneumoconiosis. Decision and Order at 23. Claimant challenges the ALJ's determinations that the x-ray and CT scan evidence do not establish complicated pneumoconiosis. Claimant's Brief at 7-11.

X-rays – 20 C.F.R. §718.304(a)

The ALJ considered seven readings of two x-rays dated March 14, 2022 and January 25, 2023 and found all of the readings positive for simple pneumoconiosis.[7] Decision and Order at 8-9, 21. The physicians who read the x-rays are Drs. DePonte, Alexander, Meyer, Seaman, and Smith, who are all dually-qualified Board-certified radiologists and B readers. Dr. DePonte read the March 14, 2022 x-ray as positive for complicated pneumoconiosis, Category A, while Drs. Alexander and Meyer read it as negative for complicated pneumoconiosis.[8] Director's Exhibits 22, 24, 26. Drs. DePonte and Smith read the January 25, 2023 x-ray as positive for complicated pneumoconiosis, Category A, while Drs. Meyer and Seaman read it as negative. Director's Exhibit 25; Claimant's Exhibit 1; Employer's Exhibits 2, 4.

The ALJ found the March 14, 2022 x-ray insufficient to establish the presence of complicated pneumoconiosis, noting the preponderance of the interpretations did not find large opacities and the positive reading stated the disease was "likely" present. Decision and Order at 21. Because an equal number of dually-qualified readers interpreted the January 25, 2023 x-ray as positive and negative, the ALJ found it in equipoise. Decision and Order at 21. Having found one x-ray negative for complicated pneumoconiosis and another in equipoise, the ALJ found the preponderance of the x-ray evidence does not support a finding of complicated pneumoconiosis. *Id.*

[6] Because there is no biopsy evidence of record, the ALJ found Claimant cannot establish complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(b). Decision and Order at 21.

[7] As this finding is unchallenged on appeal, we affirm it. *See Skrack*, 6 BLR at 1-711. Moreover, the ALJ found the January 25, 2023 reading was "at best" in equipoise for complicated pneumoconiosis. Decision and Order at 21. As this finding is also unchallenged, we affirm it. *See Skrack*, 6 BLR at 1-711.

[8] The ALJ noted Dr. Gaziano interpreted the March 14, 2022 x-ray for film quality only. Decision and Order at 8; Director's Exhibit 23.

Claimant argues the ALJ erred in finding Dr. Alexander read the March 14, 2022 x-ray as negative. Claimant's Brief at 8. We disagree.

Claimant concedes the ALJ properly considered Dr. Alexander's interpretation of the March 14, 2022 x-ray as a negative reading, but argues she failed to consider the physician's January 10, 2023 supplemental report when she examined the x-ray evidence. Claimant's Brief at 8. While the title of Dr. Alexander's January 10, 2023 narrative report is "Supplemental Report to the 3/14/2022 Pneumoconiosis Chest X-ray Interpretation," the exhibit contains his findings regarding his review of the October 6, 2021 CT scan and Dr. DePonte's July 8, 2022 report interpreting the same CT scan.[9] Director's Exhibit 24. Although Dr. Alexander noted a Category A opacity was visible on CT scan, he did not change his opinion that the x-ray was negative. *Id.* The ALJ weighed Dr. Alexander's positive CT scan reading under 20 C.F.R. §718.304(c), and thus we reject Claimant's argument that the ALJ erred in treating Dr. Alexander's x-ray reading as a negative interpretation. Decision and Order at 21-22.

Claimant next argues the ALJ erred in weighing the interpretations of the March 14, 2022 x-ray. Claimant's Brief at 7-8. We agree.

The ALJ noted both Drs. Alexander and Meyer interpreted the March 14, 2022 x-ray as negative for complicated pneumoconiosis. Decision and Order at 21. She noted Dr. DePonte indicated the x-ray likely reflected a Category A opacity and that a CT scan could confirm or exclude this finding. Decision and Order at 21; Director's Exhibit 22 at 26.

Noting "a preponderance of interpretations without designations of category A, B, or C opacities" and considering Dr. DePonte's use of "likely" in her interpretation, the ALJ summarily found this x-ray does not support a finding of complicated pneumoconiosis. Decision and Order at 21. Although the ALJ mentioned Dr. DePonte's use of "likely" and noted there was a preponderance of negative interpretations, she failed to explain her basis for preferring the negative readings over the positive and, thus, finding this x-ray does not support a finding of complicated pneumoconiosis.[10] *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992) (It is an abdication of rational decision-making to rely on the

[9] Dr. DePonte's July 8, 2022 interpretation of this CT scan is not contained in the record.

[10] We note the Fourth Circuit has held that "refusal to express a diagnosis in categorical terms is candor, not equivocation." *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366 (4th Cir. 2006); *see also Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 763 (4th Cir. 1999) (opinion that pneumoconiosis "could be" a complicating factor in the miner's death was not equivocal).

numerical superiority of the evidence); *Allen v. Union Carbide Corp.*, 8 BLR 1-393, 1-395 (1985) (preponderance of the evidence is evidence which is of greater weight or more credible and convincing than evidence offered in opposition to it, not necessarily evidence that is numerically superior); Decision and Order at 21. Thus, we are unable discern the ALJ's basis for resolving the conflict in the x-ray evidence. The ALJ has a duty to resolve any conflicts in the evidence and explain her basis for doing so.[11] *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 803 (4th Cir. 1998); *Gunderson v. U.S. Dep't of Lab.*, 601 F.3d 1013, 1024 (10th Cir. 2010); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). Because the ALJ's finding does not satisfy the explanatory requirements of the Administrative Procedure Act (APA), 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), we vacate her determination that the March 14, 2022 x-ray does not constitute an affirmative reading of complicated pneumoconiosis. *See Addison*, 831 F.3d at 252-53; *Wojtowicz.*, 12 BLR at 1-165. Consequently, we vacate the ALJ's finding the x-ray evidence does not establish the presence of complicated pneumoconiosis. 20 C.F.R. §718.304(a); Decision and Order at 21.

CT Scan Evidence – 20 C.F.R. §718.304(c)[12]

The record contains three interpretations of the October 6, 2021 CT scan. Dr. Ramas noted subpleural nodules with the largest measuring approximately 6.2 x 4.6 millimeters in the right upper lobe. Director's Exhibit 22 at 24. She also found tiny paraseptal nodules that are unremarkable and intrapulmonary lymph nodes in the right middle and lower lobes. She concluded the nodules "have the appearance of coal workers' pneumoconiosis" and "[d]ominant mass is not appreciated."[13] *Id.* at 25. Dr. Alexander diagnosed two large

[11] The Administrative Procedure Act, 5 U.S.C. §§500-591, 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 . . . ." 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).

[12] We affirm, as unchallenged, the ALJ's finding that Claimant cannot establish the presence of complicated pneumoconiosis based on biopsy evidence. 20 C.F.R. §718.304(b); *see Skrack*, 6 BLR at 1-711; Decision and Order at 21.

[13] While Claimant acknowledges Dr. Ramas's report reviewing the October 6, 2021 CT scan was included with the report of Dr. Celko, the physician who administered the complete pulmonary evaluation of Claimant on behalf of the Department of Labor, he asserts no party designated this CT scan report as evidence and the ALJ should not have considered it. Claimant's Brief at 10; *see* Director's Exhibit 22 at 24-25. Contrary to

opacities in the periphery of the lung parenchyma in the upper lobes measuring 15 millimeters in the right lung and 11 millimeters in the left lung, consistent with Category A large opacities of complicated coal workers' pneumoconiosis. Director's Exhibit 24 at 11. He opined "[t]hese large opacities are more clearly demonstrated on the CT scan than on the [March 14, 2022] x-ray" because their size and peripheral location in the upper lung zones "can be obscured by overlying adjacent ribs and the clavicles on the chest x-ray." *Id.* Dr. Meyer found "low profusion small perilymphatic nodules" with "no regions of conglomerate fibrosis." Director's Exhibit 26 at 1. He found further "subpleural pseudoplaque is present" and "calcified granuloma in the left upper lobe with calcified left hilar and mediastinal lymph nodes." *Id.* He concluded the CT scan findings are "consistent with simple coal workers' pneumoconiosis." *Id.*

The ALJ made no findings regarding Dr. Ramas's interpretation of the CT scan and found Drs. Alexander's and Meyer's opinions "thorough and detailed." Decision and Order at 22. Because they disagreed as to whether Claimant's CT scan showed large opacities consistent with complicated pneumoconiosis, she found their opinions "in equipoise." *Id.* The ALJ then concluded, "I find the CT scan evidence is equivocal at best, and not sufficient to satisfy the requirements of prong (c)." *Id.*

Claimant argues Dr. Meyer's interpretation is unexplained. Claimant's Brief at 10. Claimant's argument amounts to a request to reweigh the evidence which the Board is not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because it is supported by substantial evidence, we affirm the ALJ's finding that the CT scan evidence does not support a finding of complicated pneumoconiosis.[14] 20 C.F.R. §718.304(c); Decision and Order at 22.

Claimant's argument, however, Employer designated Dr. Ramas's report as a hospitalization and treatment report. *See* Employer's May 28, 2024 Evidence Summary Form at 6. Thus, the ALJ properly considered Dr. Ramas's report in her evaluation of the CT scan evidence. Decision and Order at 21.

[14] Claimant argues Dr. Ramas's opinion is entitled to less weight because her radiological expertise is unknown. Claimant's Brief at 10. Nevertheless, the ALJ appears to have not considered Dr. Ramas's negative interpretation when she found the interpretations were in equipoise and, thus, do not support a finding of complicated pneumoconiosis. Thus, Claimant has failed to explain how the error he alleges would make a difference. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

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

We agree with Claimant's argument that we must also vacate the ALJ's determination that the medical opinion evidence does not establish the presence of complicated pneumoconiosis. Claimant's Brief at 11.

The ALJ considered the opinions of Drs. Celko, Spagnolo, and Zaldivar. Dr. Celko diagnosed complicated pneumoconiosis, whereas Drs. Spagnolo and Zaldivar opined Claimant does not suffer from complicated pneumoconiosis. Director's Exhibits 22, 27; Employer's Exhibits 7-9. Based upon her credibility determinations regarding the x-ray and CT scan evidence, she concluded all three medical opinions are not persuasive. Because the ALJ's weighing of the x-ray evidence affected her findings of the relative probative value of the medical opinions at 20 C.F.R. §718.304(c), we cannot affirm her determination that the medical opinion evidence does not establish the presence of complicated pneumoconiosis. *See Wojtowicz*, 12 BLR at 1-165. Therefore, we vacate this determination.

Based on the foregoing errors, we vacate the ALJ's findings that the x-rays, medical opinions, and evidence considered as a whole do not establish the presence of complicated pneumoconiosis. 20 C.F.R. §718.304. Because we have vacated the ALJ's finding on complicated pneumoconiosis, we also vacate her finding Claimant cannot invoke the irrebuttable presumption that he is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(3). We further vacate her finding Claimant failed to establish a change in an applicable condition of entitlement, as well as the denial of benefits. 20 C.F.R. §725.309(c). Thus, we remand this case for further consideration of the issue of the presence of complicated pneumoconiosis.

Remand Instructions

On remand, the ALJ must first reconsider whether the x-ray evidence establishes complicated pneumoconiosis under 20 C.F.R. §718.304(a). She must consider all relevant evidence regarding the x-rays, including the comments sections of the x-ray reports. *See Melnick*, 16 BLR at 1-37. She should also explain her credibility determinations in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165. The ALJ must next reconsider all other relevant evidence at 20 C.F.R. §718.304(c), including medical opinions, the physicians' depositions, and treatment records at 20 C.F.R. §718.304(c). She must perform an equivalency determination in evaluating the relevant medical evidence under 20 C.F.R. §718.304(c). *See Scarbro*, 220 F.3d at 256; *Blankenship*, 177 F.3d at 243. Additionally, she should address the comparative credentials of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438,

441 (4th Cir. 1997). The ALJ must then weigh together the evidence at subsections (a) and (c) before determining whether Claimant has met his burden of proving he has complicated pneumoconiosis by a preponderance of the evidence. *See Scarbro*, 220 F.3d at 256; *Lester*, 993 F.2d at 1145-46; *Melnick*, 16 BLR at 1-33. If necessary, the ALJ must then consider whether Claimant's complicated pneumoconiosis arose out of his coal mine employment, applying the relevant rebuttable presumption. 20 C.F.R. §718.203(b).[15] If the ALJ determines Claimant has not established complicated pneumoconiosis, she may reinstate the denial of benefits.[16]

[15] As we affirm the ALJ's finding that Claimant has 18.4 years of coal mine employment, he is entitled to the rebuttable presumption his pneumoconiosis arose out of his coal mine employment. 30 U.S.C. §921(c)(1); 20 C.F.R. §718.203(b).

[16] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant did not establish total disability based on the pulmonary function studies, arterial blood gas studies, or medical opinions, and there is no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iv); *see Skrack*, 6 BLR at 1-711; Decision and Order at 17-20. Our affirmance of the ALJ's finding that Claimant did not establish total disability obviates the need to address Claimant's argument that "it should be found that [he] established that his total disability is due to pneumoconiosis." Claimant's Brief at 11.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Denying Benefits and remand the case to the ALJ for further proceedings consistent with this opinion.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge