U.S. Department of Labor

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

BRB No. 25-0049 BLA

THOMAS L. DUNCAN, JR. Claimant-Respondent v. ROCKWELL MINING, LLC and ROCKWOOD CASUALTY INSURANCE COMPANY Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 12/17/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits on Reconsideration of Natalie A. Appetta, Administrative Law Judge, Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

T. Jonathan Cook (Cipriana & Werner, PC), Charleston, West Virginia, for Employer.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Awarding Benefits on Reconsideration (2022-BLA-05390) rendered on a claim filed on December 10, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

In an August 9, 2024 Decision and Order Denying Benefits (Decision and Order), the ALJ found Claimant could not establish the presence of complicated pneumoconiosis and therefore 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. Further, although the ALJ credited Claimant with at least twenty-seven years of coal mine employment, she found he did not establish a totally disabling respiratory or pulmonary impairment and thus 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). Because Claimant failed to establish total disability, an essential element of entitlement under 20 C.F.R. Part 718, the ALJ denied benefits.

On October 10, 2024, the ALJ found Claimant's Request for Reconsideration warranted and issued a Decision and Order Awarding Benefits on Reconsideration (Decision and Order on Reconsideration) amending her findings and determining Claimant established complicated pneumoconiosis. Consequently, she awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established complicated pneumoconiosis.[2] Claimant responds in support of the award. The Acting Director, Office of Workers' Compensation Programs, declined to file a substantive response.

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

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally 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] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established at least twenty-seven years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4; Decision and Order on Reconsideration at 6.

accordance with applicable law.[3] 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 (1965).

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 chest 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). *See* 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. *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56 (4th Cir. 2000); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found the x-ray and computed tomography (CT) scan evidence supports a finding of complicated pneumoconiosis. Decision and Order on Reconsideration at 5. Weighing all the evidence as a whole, she concluded Claimant established the existence of complicated pneumoconiosis. *Id.* at 6.

20 C.F.R. §718.304(a): X-ray Evidence

The ALJ considered ten interpretations of two x-rays dated March 14, 2021, and January 31, 2023. Decision and Order on Reconsideration at 4-5. She noted all the physicians who read the x-rays are dually qualified as B readers and Board-certified radiologists and, therefore, stated their readings would be given equal weight on the basis of their credentials.[4] *Id.* at 4.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Transcript at 26-27.

[4] Dr. Gaziano, a B reader, read the March 14, 2021 x-ray for quality purposes only. Director's Exhibit 11.

Drs. DePonte, Crum, and Alexander interpreted the March 14, 2021 x-ray as positive for simple and complicated pneumoconiosis, whereas Drs. Meyer and Seaman read this x-ray as positive for simple pneumoconiosis but negative for complicated pneumoconiosis, and Dr. Adcock read it as negative for simple and complicated pneumoconiosis. Director's Exhibits 10 at 9; 12 at 2; 13 at 2; Claimant's Exhibit 4 at 2-3 (unpaginated); Employer's Exhibits 1, 2. The ALJ discredited Dr. Adcock's opinion that this x-ray is negative for complicated pneumoconiosis because he also read it as negative for simple pneumoconiosis, whereas every other physician who interpreted this x-ray agreed it is positive for simple pneumoconiosis. Decision and Order on Reconsideration at 4-5. As the ALJ credited the readings of three dually-qualified experts who interpreted the March 14, 2021 x-ray as positive for complicated pneumoconiosis and two who interpreted it as negative for the disease, the ALJ found this x-ray supports a finding of complicated pneumoconiosis. Decision and Order on Reconsideration at 5. We affirm this finding as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Drs. DePonte and Crum interpreted the January 31, 2023 x-ray as positive for simple and complicated pneumoconiosis, while Drs. Meyer and Seaman interpreted the x-ray as positive for simple pneumoconiosis but negative for complicated pneumoconiosis. Claimant's Exhibits 1 at 2; 2 at 2-3; Employer's Exhibits 3, 4. Because an equal number of dually-qualified physicians interpreted this x-ray as positive and negative for complicated pneumoconiosis, the ALJ found the readings of the x-ray are in equipoise. Decision and Order on Reconsideration at 5. As the ALJ found one x-ray positive for complicated pneumoconiosis and the readings of one x-ray in equipoise, the ALJ found the x-ray evidence supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a). *Id.*

Employer first argues "[t]he January 31, 2023, x-ray was found to be in equipoise . . . [and t]he ALJ incorrectly resolved this equipoise in favor of the Claimant." Employer's Brief at 4-5. Employer's argument mischaracterizes the ALJ's findings. She did not find the January 2023 x-ray individually weighed in in Claimant's favor. Rather, having found the readings of the January 31, 2023 x-ray in equipoise, she permissibly weighed it with the positive March 14, 2021 x-ray and found the x-ray evidence *as a whole* supported a finding of complicated pneumoconiosis. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992); Decision and Order on Reconsideration at 5.

Employer next argues the ALJ should have credited the readings of Drs. Meyer and Seaman over those of Drs. DePonte, Crum, and Alexander on the basis of Drs. Meyer's and Seman's "superior credentials." Employer's Brief at 6. We disagree.

Although an ALJ may give greater weight to an expert with "superior" qualifications such as a professorship in radiology, she is not required to do so. *See 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); *Bateman v. Eastern Associated Coal Corp.*, 22 BLR 1-255, 1-261 (2003); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993). While the ALJ is required to weigh the relevant evidence, she has the discretion to draw her own conclusions. *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997). Thus, we see no error in the ALJ's determination that the interpreting doctors' readings are entitled to equal weight.

Employer finally contends the ALJ erred by failing to apply the "later evidence rule," asserting the later x-ray demonstrates Claimant does not have complicated pneumoconiosis. Employer's Brief at 7. Contrary to Employer's contention, the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held it is irrational to credit a later x-ray solely on the basis of recency if that x-ray shows the miner's condition has improved. *Adkins*, 958 F.2d at 51-52; *Kincaid v. Island Creek Coal Co.*, 26 BLR 1-43, 1-50 (2023); *see also Thorn v. Itmann Coal Co.*, 3 F.3d 713, 719 (4th Cir. 1993) ("A bare appeal to recency" in evaluating medical evidence "is an abdication of rational decisionmaking."). Thus, we affirm the ALJ's finding that the x-ray evidence supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a).

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

The ALJ considered four interpretations of two CT scans dated April 20, 2023, and July 12, 2023. Decision and Order on Reconsideration at 5. Dr. DePonte read these CT scans and identified opacities measuring thirteen, fourteen, and fifteen millimeters in diameter in the left upper lung and an opacity measuring fourteen millimeters in diameter in the upper right lung, as well as a number of smaller opacities. Claimant's Exhibit 5 at 1. She noted that some of these large opacities were not visible on x-ray "due to their position relative to the x-ray beam" and diagnosed both simple and complicated pneumoconiosis. *Id.* at 1-2. Dr. Adcock read the same CT scans and identified moderate centrilobular and perilymphatic small opacities, as well as mild pseudoplaque formation, and diagnosed simple pneumoconiosis, old granulomatous disease, and remote posterior right lower lobe insult such as infection or infarction. Employer's Exhibits 7 at 1-2; 8 at 1-2. The ALJ found Dr. DePonte's CT scan readings are entitled to more weight than Dr. Adcock's and, thus, found the CT scan evidence supports a finding of complicated pneumoconiosis. Decision and Order on Reconsideration at 5.

Employer argues the ALJ erred in discrediting Dr. Adcock's CT scan readings "simply because they conflicted with Dr. DePonte's" interpretations. Employer's Brief at 7. Contrary to Employer's contention, the ALJ did not discredit Dr. Adcock's CT scan

interpretations solely because they conflicted with Dr. DePonte's readings but, rather, permissibly discredited them because they are also inconsistent with the x-ray evidence, which the ALJ found supports a finding of complicated pneumoconiosis.[5] *See Scarbro*, 220 F.3d at 256, 258; Decision and Order on Reconsideration at 5-6. Thus, we affirm the ALJ's finding that the CT scan evidence supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(c).

Weighing the evidence as a whole, the ALJ found the x-ray and CT scan evidence establishes complicated pneumoconiosis[6] and, therefore, that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3). 20 C.F.R. §718.304; Decision and Order on Reconsideration at 6.

Employer contends the ALJ erred in finding the evidence as a whole establishes complicated pneumoconiosis because the "CT scan evidence, which is a superior diagnostic tool, directly contradicts the x-ray evidence." Employer's Brief at 6. Contrary to Employer's contention, the ALJ found, and we have affirmed, that the CT scan evidence supports a finding of complicated pneumoconiosis. Decision and Order on Reconsideration at 5-6. Thus, the CT scan evidence does not contradict the x-ray evidence. As Employer raises no further challenges to the ALJ's findings, we affirm her determinations that the evidence as a whole establishes complicated pneumoconiosis and that Claimant's complicated pneumoconiosis arose out of his coal mine employment. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §§718.203(b), 718.304; Decision and Order on Reconsideration at 6.

[5] The ALJ stated, "Dr. Adcock diagnosed simple [pneumoconiosis,] and his opinion has been reduced in weight as contrary to the x-ray evidence, which shows complicated pneumoconiosis." Decision and Order on Reconsideration at 6.

[6] The ALJ also considered Dr. Werchowski's medical opinion that Claimant has complicated pneumoconiosis, Dr. Zaldivar's medical opinion that he does not, and Claimant's treatment records, which include a report of a March 2020 fine needle aspiration biopsy, bronchoscopy, and lavage that diagnosed simple pneumoconiosis. Decision and Order on Reconsideration at 6; Director's Exhibit 10 at 7-8; Claimant's Exhibit 3 at 3; Employer's Exhibit 6 at 41.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge