U.S. Department of Labor

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

BRB Nos. 25-0098 BLA
and 25-0099 BLA

REBA A. HALL (o/b/o and Widow of DANNY HALL) Claimant-Respondent v. BRANHAM & BAKER UNDERGROUND c/o QUAKER COAL COMPANY Employer-Petitioner 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 Decisions and Orders Awarding Benefits of Steven D. Bell, Administrative Law Judge, United States Department of Labor.

Wes Addington (Appalachian Citizens' Law Center), Whitesburg, Kentucky, for Claimant.

Sara May (Jones & Jones Law Office, PLLC), Pikesville, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Steven D. Bell's Decisions and Orders Awarding Benefits (2022-BLA-05421 and 2022-BLA-05364) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's subsequent claim[1] filed on April 28, 2020, and a survivor's claim filed on March 29, 2021.[2]

The ALJ accepted the parties' stipulation that the Miner had twenty-six years of underground coal mine employment. He further found Claimant established the Miner had complicated pneumoconiosis and thereby invoked the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(3) of the Act; thus, he found Claimant established a change in an applicable condition of entitlement.[3] 30 U.S.C. §921(c)(3); 20 C.F.R. §725.309(c). Furthermore, he determined the Miner's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits in the miner's claim. In a subsequent decision, he determined that, because the Miner was

[1] The Miner filed two prior claims. He filed a prior claim on July 11, 2006, which the district director denied by reason of abandonment. Miner's Claim (MC) Director's Exhibit 2. A denial by reason of abandonment is "deemed a finding the claimant has not established any applicable condition of entitlement." 20 C.F.R. §725.309(c). The Miner filed a subsequent claim on September 11, 2018, but withdrew it. MC Director's Exhibit 3. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

[2] Claimant is the widow of the Miner, who died on August 30, 2020. Survivor's Claim (SC) Director's Exhibit 14. She is pursuing the miner's claim on behalf of his estate and her own survivor's claim. MC Director's Exhibit 44; SC Director's Exhibit 9.

[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); *see 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 the district director denied the Miner's prior claim as abandoned, Claimant had to submit evidence establishing at least one element of entitlement to obtain review of the merits in the current claim. *See White*, 23 BLR at 1-3; 20 C.F.R. §725.309(c); MC Director's Exhibit 2.

entitled to benefits at the time of his death, Claimant is automatically entitled to derivative benefits under Section 422(*l*) of the Act.[4] 30 U.S.C. §932(*l*) (2018).

On appeal, Employer argues the ALJ erred in finding Claimant established the Miner had complicated pneumoconiosis.[5] Claimant responds, urging the Benefits Review Board to affirm the ALJ's decisions. The Acting Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decisions and Orders if they are rational, supported by substantial evidence, and in accordance with applicable law.[6] 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).

Miner's Claim

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 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 weigh all evidence relevant to the presence or absence of

[4] Section 422(*l*) of the Act provides that the survivor of a miner who was determined to be eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[5] We affirm, as unchallenged on appeal, the finding that the Miner had twenty-six 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.

[6] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because the Miner performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5; Hearing Transcript at 12.

complicated pneumoconiosis. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89 (6th Cir. 1999); *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 supports a finding of complicated pneumoconiosis.[7] 20 C.F.R. §718.304(a), (c); Decision and Order at 10-11. When weighing the evidence as a whole, the ALJ determined that Claimant met her burden of proof and established the Miner had complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 11.

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

The ALJ considered five interpretations of two x-rays dated December 12, 2018, and June 19, 2020. Decision and Order at 8. He found all the physicians who interpreted the x-rays are dually qualified as B readers and Board-certified radiologists. *Id.* at 9.

Dr. Crum read the December 12, 2018 x-ray as positive for simple pneumoconiosis but negative for complicated pneumoconiosis, while Dr. Simone read the x-ray as negative for both simple and complicated pneumoconiosis. Claimant's Exhibit 2 at 1; Employer's Exhibit 1 at 4. The ALJ found the December 12, 2018 x-ray is inconclusive for simple clinical pneumoconiosis because an equal number of dually-qualified physicians interpreted the x-ray as positive compared to negative for the disease.[8] Decision and Order at 9.

Drs. DePonte and Crum read the June 19, 2020 x-ray as positive for simple pneumoconiosis with Category B large opacities of complicated pneumoconiosis, while Dr. Simone read the x-ray as negative for both simple and complicated pneumoconiosis. MC Director's Exhibit 15 at 24; MC Director's Exhibit 18 at 2; MC Director's Exhibit 19 at 4. As two dually-qualified experts interpreted the June 19, 2020 x-ray as positive for complicated pneumoconiosis and one dually-qualified expert interpreted it as negative for

[7] The ALJ accurately noted the parties did not submit biopsy or autopsy evidence and therefore complicated pneumoconiosis cannot be established under 20 C.F.R. §718.304(b). Decision and Order at 7.

[8] The ALJ did not specifically determine whether the December 12, 2018 x-ray supports a finding of complicated pneumoconiosis. However, as he accurately noted that both interpretations of the film are negative for the disease and treated the film as negative when comparing the two films of record, any error is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 9.

the disease, the ALJ found the preponderance of the interpretations of the x-ray supports a finding of complicated pneumoconiosis. Decision and Order at 9.

Weighing the x-rays together, the ALJ explained that because pneumoconiosis is a progressive and irreversible disease, he accorded more weight to the June 19, 2020 x-ray because it is the "more recent evaluation of the Miner's pulmonary condition," as it was taken more than a year and a half after the earlier film Decision and Order at 9 (citing *Woodward v. Director, OWCP*, 991 F.2d 314, 319 (6th Cir. 1993)). Thus, the ALJ found the x-ray evidence "weighs in favor of finding that" the Miner had complicated pneumoconiosis. *Id.* at 10. We affirm the ALJ's finding as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 10.

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

The ALJ also considered medical opinions and computed tomography (CT) scan readings relevant to complicated pneumoconiosis. Decision and Order at 7-11.

Dr. Nader examined the Miner as part of his Department of Labor-sponsored complete pulmonary evaluation on June 19, 2020. Director's Exhibit 15. Specifically, Dr. Nader noted the Miner's occupational, smoking, and medical histories and conducted a physical examination, chest x-ray, resting arterial blood gas studies, and an EKG. *Id.* He diagnosed the Miner with simple pneumoconiosis and progressive massive fibrosis in the form of a Category B large opacity based on Dr. DePonte's interpretation of the June 19, 2020 chest x-ray and the Miner's history of coal mine employment. *Id.* The ALJ found Dr. Nader's opinion well-reasoned and consistent with the objective testing. Decision and Order at 11; Director's Exhibit 15 at 7. Thus, the ALJ found the medical opinion evidence supports a finding that the Miner had complicated pneumoconiosis. Decision and Order at 11. Because Employer does not challenge the ALJ's finding, we affirm it. *Skrack*, 6 BLR at 1-711.

Finally, the ALJ considered Dr. Crum's and Dr. Simone's interpretations of a CT scan dated February 22, 2019. Decision and Order at 10. Dr. Crum opined the scan showed "multiple bilateral subcentimeter pulmonary nodules which are both parenchymal as well as pleural-based consistent with simple pneumoconiosis" and "bilateral pleural effusions right greater than left with likely adjacent atelectatic or consolidative changes" but no "definitive evidence of [a] large opacity," as well as prominent emphysema. Claimant's Exhibit 1 at 1. Dr. Simone opined the scan had no evidence of opacities of simple or complicated pneumoconiosis but noted a right pleural effusion and mild bibasilar fibrosis. Employer's Exhibit 2 at 3. The ALJ concluded that the CT scan evidence is equivocal and therefore did not assist Claimant in establishing complicated pneumoconiosis. Decision and Order at 11.

Employer contends the ALJ "disregarded" and "ignored" this evidence. Employer's Brief at 5. Contrary to Employer's argument, the ALJ considered the CT scan evidence and found it inconclusive, a credibility finding Employer has not challenged.[9] *Skrack*, 6 BLR at 1-711.

Evidence as a Whole

Finally, the ALJ considered the x-rays, CT scan, and medical opinion evidence as a whole. Decision and Order at 11. The ALJ found the June 19, 2020 x-ray entitled to the most probative weight "because it is the most recent evaluation of [the] Miner's pulmonary condition." *Id.* Noting that the only medical opinion is positive for complicated pneumoconiosis and the CT scan evidence is equivocal, the ALJ found a preponderance of the evidence establishes the Miner suffered from complicated pneumoconiosis. *Id.*

Employer contends that CT scans are more sensitive than x-rays and therefore the ALJ should have credited this evidence over the positive x-ray interpretation. Employer's Brief at 5. However, Employer points to nothing in the regulations that requires the ALJ to credit CT scan evidence over x-ray evidence. Moreover, the ALJ permissibly found the June 19, 2020 x-ray, taken more than a year after the CT scan and the remaining x-ray of record, is the most probative evidence of record as it is the most recent objective testing of record. *See Woodward*, 991 F.2d at 19-20; Decision and Order at 11.

Consequently, as it is supported by substantial evidence, we affirm the ALJ's finding that Claimant established the Miner had complicated pneumoconiosis based on the preponderance of the evidence as a whole. *See Gray*, 176 F.3d at 388-89; *Melnick*, 16 BLR at 1-33; 20 C.F.R. §718.304; Decision and Order at 11. We further affirm, as unchallenged on appeal, the ALJ's finding that the Miner's complicated pneumoconiosis arose out of his coal mine employment. *Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.203(b); Decision and Order at 12. Therefore, we affirm the ALJ's finding that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis and established a change in an

[9] Employer states that the CT scan evidence "at best" establishes the existence of simple pneumoconiosis. Employer's Brief at 5. Even assuming this assertion can be interpreted to be a challenge to the ALJ's credibility finding and is adequately briefed, the ALJ permissibly found, as discussed below, that the June 19, 2020 x-ray is the most probative objective evidence of record. Decision and Order at 11. Consequently, Employer has failed to demonstrate why a finding that the CT scan evidence was negative for the disease would make any difference. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant may not just identify an alleged error without explaining how the "error to which [it] points could have made any difference").

applicable condition of entitlement since the denial of the Miner's prior claim.[10] 30 U.S.C. §921(c)(3); 20 C.F.R. §§718.304, 725.309(c); Decision and Order at 3-4, 12.

Survivor's Claim

Because we have affirmed the award of benefits in the miner's claim and Employer raises no specific challenge to the award of benefits in the survivor's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits. 30 U.S.C. 932(*l*); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013); Survivor's Claim Decision and Order at 4.

Accordingly, we affirm the ALJ's Decisions and Orders Awarding Benefits in the miner's claim and in the survivor's claim.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge

[10] Because the ALJ permissibly found Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis by establishing the Miner had complicated pneumoconiosis, we need not address Employer's assertion that the ALJ did not analyze "the remainder of the evidence" relevant to the elements of entitlement under 20 C.F.R. Part 718. *See* 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304; Employer's Brief at 6-8.