

U.S. Department of Labor

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



BRB No. 20-0239 BLA

JAMES T. WELLMAN)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
BUFFALO MINING COMPANY)	
)	DATE ISSUED: 02/24/2021
Employer-Respondent)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	
)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Sean M. Ramaley,
Administrative Law Judge, United States Department of Labor.

Jonathan C. Masters (Masters Law Office PLLC), South Williamson,
Kentucky, for Claimant.

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for
Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge Sean M. Ramaley's Decision and Order Denying Benefits (2017-BLA-06276) 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 August 2, 2016.¹ 20 C.F.R. §725.309(c).

The administrative law judge credited Claimant with fewer than fifteen years of coal mine employment, and thus found he 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). The administrative law judge also determined that because Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2), he failed to establish a change in an applicable condition of entitlement at 20 C.F.R. §718.309, and therefore denied benefits.

On appeal, Claimant argues only that the administrative law judge erred in failing to address the x-ray evidence of complicated pneumoconiosis.³ Employer responds in support of the denial of benefits. The 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 administrative law judge'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

¹ Claimant filed four previous claims, each of which the district director denied. The district director denied Claimant's most recent prior claim for failure to establish total disability. Director's Exhibit 4.

² 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.

³ We affirm, as unchallenged on appeal, the administrative law judge's findings that Claimant established 9.5 years of coal mine employment, that he did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2), and that he did not invoke the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as Claimant's coal mine employment occurred in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Claimant's Employment History (Form CM-911).

by 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, he must establish “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’s most recent prior claim was denied because he did not establish total respiratory or pulmonary disability, he must establish this element of entitlement in order to obtain review of the merits of his current subsequent claim. 20 C.F.R. §725.309(c)(3), (4).

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 a claimant has invoked the irrebuttable presumption, the administrative law judge 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); *Compton v. Island Creek Coal Co.*, 211 F.3d 203, 211 (4th Cir. 2000); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

Claimant correctly contends the administrative law judge erred in failing to consider whether he established total disability through invocation of the Section 411(c)(3) presumption. Claimant’s Brief at 4-5. Dr. Crum interpreted Claimant’s June 5, 2017 x-ray as positive for complicated pneumoconiosis, Category A. Claimant’s Exhibit 6. Although the administrative law judge summarized the x-ray evidence, he did not address Dr. Crum’s positive x-ray interpretation for complicated pneumoconiosis or render any findings as to whether Claimant can invoke the irrebuttable presumption. *See* 20 C.F.R. §718.304; *Cox*, 602 F.3d at 283; *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder’s failure to discuss relevant evidence requires remand). Thus, we vacate the denial of benefits and remand the case for further consideration of this issue.

On remand, the administrative law judge must consider Dr. Crum’s x-ray reading and determine whether Claimant established complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a)-(c). In considering whether Claimant is entitled to the irrebuttable

presumption, the administrative law judge must examine all the evidence on this issue, i.e., evidence of simple and complicated pneumoconiosis, as well as evidence of no pneumoconiosis, resolve any conflicts, and make a finding of fact. *See Cox*, 602 F.3d at 283; *Compton*, 211 F.3d at 211; *Melnick*, 16 BLR at 1-33-34. If the administrative law judge finds Claimant established complicated pneumoconiosis at 20 C.F.R. §718.304, he must then address whether Claimant established that his complicated pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203. If Claimant invokes the irrebuttable presumption of total disability due to pneumoconiosis on remand, he necessarily establishes a change in an applicable condition of entitlement, and the administrative law judge must award benefits. 20 C.F.R. §§718.304, 725.309. However, if the administrative law judge finds Claimant is unable to invoke the irrebuttable presumption, he may reinstate his denial of the claim.

Accordingly, we affirm in part and vacate in part the administrative law judge's Decision and Order Denying Benefits and remand the case for further consideration consistent with this decision.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge