

U.S. Department of Labor

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



BRB No. 23-0261 BLA

PAUL L. JONES)	
)	
Claimant-Respondent)	
)	
v.)	
)	
GATEWAY EAGLE MINING, LLC)	
)	
and)	
)	
ROCKWOOD CASUALTY INSURANCE)	DATE ISSUED: 02/15/2024
COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

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

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton,
Virginia, for Claimant.

T. Jonathan Cook (Cipriani & Werner, PC), Charleston, West Virginia, for
Employer and its Carrier.

Amanda Torres (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Awarding Benefits (2021-BLA-05543) rendered on a claim filed on September 23, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established complicated pneumoconiosis and thus invoked 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. He further found Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b). Additionally, the ALJ held Gateway Eagle Mining, LLC (Gateway) and Rockwood Casualty Insurance Company (Rockwood) liable for benefits. He specifically found there was insufficient evidence to determine when Claimant developed complicated pneumoconiosis, thus rejecting Gateway's assertion that Claimant developed complicated pneumoconiosis in September 2016, prior to Gateway's insurance coverage with Rockwood. Based on that finding, he also determined benefits commence in September 2019, the month in which Claimant filed his claim.

On appeal, Employer argues the ALJ erred in weighing the computed tomography (CT) scan evidence relevant to the onset date of Claimant's complicated pneumoconiosis and thus erred in holding Employer liable for benefits.¹ Claimant responds in support of the award and, while taking no position on Employer's liability, argues he is entitled to benefits as of September 2016, relying on the same CT evidence Employer cites. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the

¹ We affirm, as unchallenged on appeal, the ALJ's determinations that Claimant has complicated pneumoconiosis; he invoked the Section 411(c)(3) irrebuttable presumption of total disability due to pneumoconiosis; and he is entitled to benefits. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 18, 24-26.

Benefits Review Board to affirm the ALJ's determination that Rockwood is the responsible carrier.

The 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.² 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Responsible Carrier

The insurance carrier on the risk when complicated pneumoconiosis is proven is responsible for the payment of benefits. *See Swanson v. R.G. Johnson Co.*, 15 BLR 1-49, 1-51 (1991). In addressing Rockwood's contention that it is not the responsible carrier, the ALJ considered x-rays, CT scans, and Claimant's treatment records relevant to the onset date of his complicated pneumoconiosis. Decision and Order at 6-7, 18-19, 23-24; Director's Exhibits 15, 37, 38, 41, 42; Claimant's Exhibits 1-3; Employer's Exhibit 1.

He found the earliest credible evidence of Claimant's complicated pneumoconiosis was Drs. DePonte's and Crum's uncontradicted, positive readings of the November 15, 2019 x-ray, but found no specific onset date for Claimant's complicated pneumoconiosis in the record. Decision and Order at 6-8, 18, 25-26; Director's Exhibit 15; Claimant's Exhibit 1. Because Gateway's insurance policy with Rockwood began in October 2016, and the ALJ found Claimant's total disability due to complicated pneumoconiosis arose during Rockwood's risk coverage period, the ALJ concluded that Rockwood was properly designated as the responsible carrier. Decision and Order at 6-7, 25-26.

Employer contends the ALJ did not adequately explain his consideration of the CT scan evidence, specifically Dr. Alexander's credentials and Dr. Grey's treatment report.³

² The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 25; Director's Exhibit 3.

³ While Claimant agrees with a number of Employer's arguments regarding the weighing of the medical evidence and asserts the ALJ's errors "necessarily [require] altering [the] onset date" of Claimant's complicated pneumoconiosis, Claimant did not file a cross-appeal on the issue of the onset date. Claimant's Brief at 3-7. As Claimant did not file a cross-appeal, and as his arguments regarding the onset date are not offered in support of the decision below, we decline to disturb the ALJ's onset date finding. *See King v. Tenn. Consolidation Coal Co.*, 6 BLR 1-87, 1-91 (1983). Moreover, as explained in our decision, we are not persuaded by Employer's arguments as to when Claimant developed

Employer's Brief at 6-10. The Director responds that the ALJ acted within his discretion in weighing the CT scans and Claimant's treatment records, and thus properly determined Rockwood is the responsible carrier. Director's Brief at 2-4. We agree with the Director's contention.

After considering the x-ray evidence, the ALJ considered Dr. Anton's reading of the May 6, 2016 CT scan, Drs. Conner's and Alexander's readings of the September 14, 2016 CT scan, and Claimant's treatment records. Decision and Order at 6-7, 11-13, 18-19, 23-24; Director's Exhibits 37, 38, 41, 42; Employer's Exhibit 1.

Dr. Anton read the May 6, 2016 CT scan as questionable for "occupational pneumoconiosis," and noted bilateral nodular densities in both lungs and an enlarged subcarinal lymph node. Director's Exhibit 41 at 13. Dr. Conner read the September 14, 2016 scan as having "stable chronic findings consistent with occupational pneumoconiosis" and no new parenchymal abnormalities. *Id.* at 10. Dr. Alexander read the September 14, 2016 scan as positive for complicated pneumoconiosis and identified large opacities slightly greater than 10.0 mm in the left upper lung zone and right mid lung zone. Employer's Exhibit 1 at 2.

The ALJ noted Dr. Alexander was the only doctor of those who provided CT scan readings whose credentials (as a B-reader and Board-certified in radiology, nuclear radiology, and nuclear medicine, as well as an assistant professor of radiology) are in the record, and thus gave Dr. Alexander's reading "more weight based on his credentials." Decision and Order at 18-19; Employer's Exhibit 1. Nevertheless, the ALJ found Dr. Alexander's reading insufficient to establish Claimant had complicated pneumoconiosis in 2016, when "contrasted by the two other reports" from Drs. Anton and Conner. Decision and Order at 19.

In addition, the ALJ also considered Claimant's treatment records, including Dr. Grey's treatment report which diagnosed complicated pneumoconiosis. Decision and Order at 12-13, 23-24; Director's Exhibits 37, 38, 41, 42. The ALJ noted the records did not include any of the treating physicians' qualifications and found their reports were "too conclusory to demonstrate well-reasoned conclusions, or [be] given any weight." Decision and Order at 12-13, 23-24. Considering all of the evidence together, the ALJ found the "CT scan[s] and Dr. Grey's medical report do[] not sufficiently establish that Claimant had complicated pneumoconiosis as of [May 6 or September 14, 2016]." *Id.* at 6, 18-19, 23-24.

complicated pneumoconiosis, which are essentially the same arguments underpinning Claimant's allegations of error with respect to the onset date.

Contrary to Employer's contention, the ALJ acknowledged Dr. Alexander's credentials and accorded his reading additional weight, but also provided multiple explanations for determining that the CT scan evidence as a whole did not support a finding of complicated pneumoconiosis. Decision and Order at 19; Employer's Brief at 7-9. The ALJ accurately noted that Dr. Conner did not identify complicated pneumoconiosis on the September 14, 2016 CT scan.⁴ Decision and Order at 19; Director's Exhibit 41 at 10. Further, the ALJ explained that because Dr. Anton did not identify nodular densities sufficient to establish complicated pneumoconiosis on the May 6, 2016 CT scan, and Dr. Conner determined that the "chronic findings were stable" in his reading of the September 14, 2016 CT scan,⁵ it was "unlikely" that Claimant's pneumoconiosis had progressed into complicated pneumoconiosis in such a short time given the CT scans' "temporal proximity." Decision and Order at 19.

Considering the evidence as a whole, the ALJ noted the conflicting readings of the September 14, 2016 CT scan and determined that Dr. Alexander's reading, when "contrasted" with Drs. Anton's and Conner's readings, was insufficient to establish complicated pneumoconiosis. Decision and Order at 19. Because the ALJ acted within his discretion in weighing the CT scan evidence, we affirm his determination. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017) (ALJ evaluates the credibility of the evidence of record); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 209, 211 (4th Cir. 2000); *see also Mingo Logan Coal Co v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (duty of explanation under the Administrative Procedure Act is satisfied if the reviewing court can discern what the ALJ did and why he did it); *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).

We also reject Employer's general assertion that Dr. Alexander's reading was "corroborated" by Dr. Grey's treatment records. Employer's Brief at 8. While Dr. Grey diagnosed complicated pneumoconiosis based on his review of the CT scan evidence, the

⁴ We reject Employer's assertion that Dr. Conner's "general diagnosis" of pneumoconiosis does "does not mean [complicated pneumoconiosis] was not present." Employer's Brief at 9. Contrary to Employer's assertion, the ALJ specifically determined Dr. Conner's reading of the CT scan was insufficient to establish complicated pneumoconiosis. Decision and Order at 19. As Employer does not identify any errors in the ALJ's finding, we affirm it. 20 C.F.R. §802.211(b); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983).

⁵ Dr. Conner's CT scan reading noted "Comparison: May 6, 2016," which is the date of the CT scan Dr. Anton interpreted. Director's Exhibit 41 at 10, 12-13.

ALJ gave little weight to Claimant's treatment records as a whole because the reports were "too conclusory to demonstrate well-reasoned conclusions, or [be] given any weight," and they did not include the physicians' credentials. Decision and Order at 31-34. Because Employer identifies no error in the ALJ's specific rationale for discrediting Dr. Grey's treatment report and the treatment records as a whole, we affirm the ALJ's determination. 20 C.F.R. §802.211(b); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983).

As the trier-of-fact, the ALJ has discretion to assess the credibility of the medical opinions based on the experts' explanations for their diagnoses and assign those opinions appropriate weight. *See Westmoreland Coal Co. v. Cochran*, 718 F.3d 319, 324 (4th Cir. 2013). Employer's arguments amount to a request to reweigh the evidence, which we are not empowered to do. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because the ALJ acted within his discretion in weighing the CT scan evidence and Claimant's treatment records, we affirm his finding that neither established the onset date of Claimant's complicated pneumoconiosis. Decision and Order at 6-7.

As there was no other evidence of complicated pneumoconiosis predating Rockwood's coverage period, and the x-ray readings, unanimously positive for complicated pneumoconiosis, were obtained during Rockwood's coverage, we affirm the ALJ's determination that Claimant's total disability due to complicated pneumoconiosis arose during Rockwood's coverage of Gateway. *See Swanson*, 15 BLR at 1-51; Decision and Order at 6-7. We thus affirm the ALJ's designation of Rockwood as the liable carrier. Decision and Order at 6-7.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge