

U.S. Department of Labor

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



BRB No. 21-0477 BLA

ALLEN D. YATES)	
)	
Claimant-Respondent)	
)	
v.)	
)	
PARAMONT CONTURA, LLC)	DATE ISSUED: 7/29/2022
)	
Employer-Petitioner)	
)	
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 Stewart Alford,
Administrative Law Judge, United States Department of Labor.

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

Kendra Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Stewart Alford's Decision and Order Awarding Benefits (2019-BLA-06177) on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).¹

The ALJ credited Claimant with 34.30 years of coal mine employment and found he has complicated pneumoconiosis. He therefore found Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3) (2018). 20 C.F.R. §718.304. Further, he found Claimant's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits. 20 C.F.R. §718.203(b).

On appeal, Employer argues the ALJ erred in concluding Claimant established complicated pneumoconiosis and invoked the irrebuttable presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.²

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.³ 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, 362 (1965).

Complicated Pneumoconiosis

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

¹ The ALJ and Employer rely on February 28, 2018, as the date Claimant filed his claim. Decision and Order at 2; Employer's Brief at 1; Director's Exhibit 4.

² We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 34.30 years of coal mine employment. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

³ 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 Virginia. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 36-38.

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.

The United States Court of Appeals for the Fourth Circuit has held that “[b]ecause prong (A) sets out an entirely objective scientific standard’ - i.e., an opacity on an x-ray greater than one centimeter - x-ray evidence provides the benchmark for determining what under prong (B) is a ‘massive lesion’ and what under prong (C) is an equivalent diagnostic result reached by other means.” *E. Assoc. Coal Corp. v. Director [Scarbro]*, 220 F.3d 250, 256 (4th Cir. 2000), quoting *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243 (4th Cir. 1999). In determining whether Claimant has invoked the irrebuttable presumption, the ALJ must weigh 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); *Scarbro*, 220 F.3d at 255-56; *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

Employer contends the ALJ erred in finding Claimant established complicated pneumoconiosis based on the x-rays and computed tomography (CT) scans and in consideration of the evidence as a whole. 20 C.F.R. §718.304(a), (c); Decision and Order at 25. We disagree.

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

The ALJ considered nine interpretations of three x-rays. Decision and Order at 5, 22-23. All the interpreting physicians are dually qualified Board-certified radiologists and B readers. *Id.* at 22; Director’s Exhibits 11, 13, 15; Employer’s Exhibits 1, 3.

Drs. DePonte and Crum read the May 19, 2018⁴ x-ray as positive for complicated pneumoconiosis, Category A, and small opacities of pneumoconiosis, profusion 2/1 in all lung zones, with coalescence. Director’s Exhibits 9, 11; Claimant’s Exhibits 5, 6. Dr. Tarver read the same x-ray as positive for simple pneumoconiosis, profusion 1/1 in all lung zones, but negative for complicated pneumoconiosis. Employer’s Exhibit 1. The ALJ found Drs. DePonte’s and Crum’s readings “better-supported” and “more persuasive” because their descriptions of a coalescence of Claimant’s opacities are consistent with their interpretations of later x-rays, Dr. Adcock’s interpretation of the more recent July 1, 2020 x-ray, and the credited CT scan evidence, whereas Dr. Tarver’s reading included “no additional findings.” Decision and Order at 22. Thus, he found the May 19, 2018 x-ray positive for complicated pneumoconiosis. *Id.*

⁴ Dr. Ranavaya reviewed the May 19, 2018 x-ray for quality purposes only. Director’s Exhibit 10.

Drs. DePonte and Crum read the November 6, 2018 x-ray as positive for complicated pneumoconiosis, Category A, and small opacities of pneumoconiosis, profusion 2/2 in all lung zones, with coalescence. Director's Exhibits 12, 13; Claimant's Exhibits 5, 6. Drs. Seaman and Tarver each read the x-ray as positive for simple pneumoconiosis in all lung zones, but negative for complicated pneumoconiosis. Director's Exhibits 16, 17. The ALJ gave Drs. DePonte's and Crum's positive readings for complicated pneumoconiosis more weight because their identification of coalescence of small nodules, which they both testified occurs when pneumoconiosis progresses to complicated pneumoconiosis, is "better-supported" by the evidence of record showing coalescence of opacities. Decision and Order at 9, 12, 22; Claimant's Exhibit 5 at 15; Claimant's Exhibit 6 at 14-15. Thus, the ALJ found the November 6, 2018 x-ray positive for complicated pneumoconiosis. *Id.* at 22-23.

Finally, Dr. DePonte read the July 1, 2020 x-ray as positive for complicated pneumoconiosis, Category A, and identified small opacities of pneumoconiosis, profusion 2/2 in all lung zones, with coalescence. Claimant's Exhibits 5, 7. Dr. Adcock read the x-ray as positive for simple pneumoconiosis but negative for complicated pneumoconiosis and identified a 2/1 profusion of small opacities in all lung zones and coalescence. Employer's Exhibit 3. The ALJ acknowledged Drs. DePonte and Adcock are dually-qualified and both physicians identified coalescence of opacities. He credited Dr. DePonte's positive reading for complicated pneumoconiosis over Dr. Adcock's negative reading, however, because it was supported by Dr. Crum's "more detailed" reading of the August 17, 2016 and July 24, 2017 CT scans which "included findings of both coalescence and opacities of complicated pneumoconiosis."⁵ Decision and Order at 23. Having found the May 19, 2018, November 6, 2018, and July 1, 2020 x-rays positive for complicated pneumoconiosis, the ALJ determined the x-ray evidence as a whole establishes the disease. *Id.*; see 20 C.F.R. §718.304(a).

Employer asserts the ALJ erred in finding the May 19, 2018 x-ray positive for complicated pneumoconiosis by impermissibly "counting heads" and by discrediting Dr. Tarver's reading without adequate explanation. Employer's Brief at 4-9. Contrary to Employer's contention, the ALJ properly performed both a qualitative and quantitative

⁵ The ALJ also noted Dr. Sargent disagreed with Dr. DePonte's finding of complicated pneumoconiosis "based on his own review" of the July 1, 2020 x-ray. Decision and Order at 23. But the ALJ rejected Dr. Sargent's opinion, as he is neither a Board-certified radiologist nor B reader, and he "could not testify" about relevant information concerning his x-ray findings because "he did not do a standard ILO reading of the x-ray." *Id.* This credibility determination is affirmed as unchallenged on appeal. *Skrack*, 6 BLR at 1-711.

analysis of the conflicting x-ray readings, taking into consideration the physicians' opinions and their qualifications. *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 at 22. He permissibly found Drs. DePonte's and Crum's readings entitled to greater weight than Dr. Tarver's because they were consistent with and "better-supported" by the other evidence of record, including the coalescence of opacities that Dr. Crum identified on the "more detailed" August 17, 2016 and July 24, 2017 CT scans. *See Addison*, 831 F.3d at 256-57; *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); Decision and Order at 22. Having credited the positive interpretations of two of the three dually qualified radiologists, we affirm the ALJ's determination that the May 19, 2018 x-ray is positive for complicated pneumoconiosis. 20 C.F.R. §718.202(a)(1); Decision and Order at 22.

Employer further asserts that the readings of the November 6, 2018 and July 1, 2020 x-rays are at best in equipoise for complicated pneumoconiosis. Employer's Brief at 7. Even if true, Employer has not demonstrated why remand is required. X-ray interpretations found to be in equipoise neither support nor refute the presence of complicated pneumoconiosis. *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 280-81 (1994). Because the ALJ found the May 19, 2018 x-ray positive for complicated pneumoconiosis, a finding that we have affirmed, Claimant has still satisfied his burden of proof even if the remaining x-ray readings are in equipoise. *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"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Because it is supported by substantial evidence, we affirm the ALJ's conclusion that the x-ray evidence establishes complicated pneumoconiosis at 20 C.F.R. §718.304(a). Decision and Order at 22-23.

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

The ALJ considered four interpretations of two CT scans.⁶ Decision and Order at 24-25. Dr. Crum, a Board-certified radiologist and B reader, interpreted the August 17, 2016 and July 24, 2017 CT scans as showing bilateral pulmonary nodules consistent with pneumoconiosis and multiple large opacities consistent with complicated pneumoconiosis.

⁶ The ALJ did not consider the medical opinions of Drs. Nader and Sargent at 20 C.F.R. §718.304(c) because both physicians addressed the existence of complicated pneumoconiosis based largely on their review of the x-ray readings, which the ALJ found establish the presence of complicated pneumoconiosis. Decision and Order at 25; Director's Exhibit 9; Employer's Exhibits 3, 4.

Claimant's Exhibit 1. He stated the nodules are "primarily distributed within the upper and middle lung zones which is the classic configuration for pneumoconiosis" and also identified "bilateral areas of coalescence within both upper lobes." *Id.* Furthermore, he noted multiple large opacities in the left upper and middle lung zones on both CT scans and specifically identified three large opacities on the July 24, 2017 CT scan measuring 1.1 centimeters, 1.1 centimeters, and 1.7 centimeters that "are consistent with complicated pneumoconiosis or progressive massive fibrosis." *Id.* At his October 19, 2020 deposition, Dr. Crum testified that the opacities he identified on the CT scans would appear larger than one centimeter on a standard chest x-ray. Claimant's Exhibit 6 at 42.

Dr. Seaman, a Board-certified radiologist and B reader, interpreted the August 17, 2016 and July 24, 2017 CT scans as consistent with simple pneumoconiosis. Director's Exhibit 15. On both scans she identified "upper zone predominant centrilobular/perilymphatic nodules" but no large opacities of pneumoconiosis. *Id.* at 2-4. She identified the largest nodule as measuring 7 millimeters. *Id.* at 2.

The ALJ found Dr. Crum better qualified and determined he provided a more detailed description of what he saw on Claimant's CT scans. Thus, the ALJ concluded the CT scan evidence supports a finding of complicated pneumoconiosis. Decision and Order at 24-25. Employer generally contends the ALJ did not adequately explain his reliance on Dr. Crum's opinion, and that the interpretations of the CT scan evidence are, at most, in equipoise. Employer's Brief at 10.

Contrary to Employer's contention, the ALJ acknowledged that Drs. Crum and Seaman were both dually-qualified Board-certified radiologists and B readers. Decision and Order at 22. However, he also permissibly considered other factors making Dr. Crum's opinion more credible and entitled to additional weight, such as Dr. Crum's recent participation in a study with the National Institute for Occupational Safety and Health on the resurgence of progressive massive fibrosis in eastern Kentucky. *Id.* at 24; Claimant's Exhibit 6 at 9. Because Employer does not identify any error in the ALJ's rationale for giving Dr. Crum's opinion additional weight based on his credentials, we affirm it. *See Addison*, 831 F.3d at 256-57; *Underwood*, 105 F.3d at 949; *Adkins*, 958 F.2d at 52-53; *Skrack*, 6 BLR at 1-711; Decision and Order at 24-25. Additionally, we see no error in the ALJ's findings that Dr. Crum's readings were more detailed or that Dr. Crum provided sufficient information for the ALJ to make an equivalency determination. *Scarbro*, 220 F.3d at 256; *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000); Decision and Order at 24-25. We therefore affirm the ALJ's determination that the CT scan evidence establishes complicated pneumoconiosis. 20 C.F.R. §718.304(c).

As Employer raises no further challenge to the ALJ's determination that Claimant established complicated pneumoconiosis, we affirm it and therefore his conclusion that

Claimant invoked the irrebuttable presumption at 20 C.F.R. §718.304. *See Skrack*, 6 BLR at 1-711; Decision and Order at 25. We further affirm, as unchallenged on appeal, the ALJ's determination that Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b); *see Skrack*, 6 BLR at 1-711; Decision and Order at 25.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge