U.S. Department of Labor

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

BRB No. 24-0374 BLA

RALPH W. PRITT Claimant-Respondent v. CARBON FUEL COMPANY, SELF-INSURED THROUGH UNITED STATES STEEL CORPORATION Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 07/31/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Patricia J. Daum, Administrative Law Judge, United States Department of Labor.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

Deanna Lyn Istik (Sinatra & Istik Law Office, PLLC), Cranberry Township, Pennsylvania, for Claimant.

Jeffrey S. Goldberg (Jonathan Snare, Deputy Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Acting Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: ROLFE and JONES, Administrative Appeals Judges, ULMER, Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Patricia J. Daum's Decision and Order Awarding Benefits (2021-BLA-05583) rendered on a claim filed September 13, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Employer is the responsible operator. She credited Claimant with eight years of coal mine employment and found he established complicated pneumoconiosis arising out of coal mine employment and thereby 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). *See* 20 C.F.R. §§718.304, 718.203(c). Thus, she awarded benefits.

On appeal, Employer challenges its designation as the responsible operator. It further argues the ALJ erred in finding Claimant established complicated pneumoconiosis and invoked the Section 411(c)(3) presumption. Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs (the Director), has filed a limited response urging the Benefits Review Board to reject Employer's responsible operator arguments.

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.[1] 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, 362 (1965).

Responsible Operator

The responsible operator is the potentially liable operator that most recently employed the miner. 20 C.F.R. §725.495(a)(1). The district director is initially charged with identifying and notifying operators that may be liable for benefits and then identifying the potentially liable operator that is the responsible operator. 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b). Once the district director designates a responsible operator, that operator may be relieved of liability only if it proves either that it is financially

[1] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as Claimant performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5.

incapable of assuming liability for benefits or that another potentially liable operator that is financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R. §725.495(c)(2).

The ALJ found Employer is the potentially liable operator that most recently employed Claimant.[2] 20 C.F.R. §725.495(a)(1); Decision and Order at 5-6. Employer does not dispute it meets the regulatory definition of a potentially liable operator and is financially capable of assuming liability for benefits. *See* 20 C.F.R. §725.494(a)-(e). Therefore, Employer can avoid liability only by establishing another financially capable operator employed Claimant more recently for at least one year. *See* 20 C.F.R. §725.495(c)(1), (2).

Employer contends Lambert Coal Company (Lambert) or PBT Coal Company (PBT) are potentially liable operators that more recently employed Claimant and thus argues Lambert or PBT should have been named the responsible operator. Employer's Brief at 5-6. We disagree.

The ALJ considered Claimant's Social Security Administration (SSA) earnings record, hearing testimony, and the medical report of Dr. Celko to determine Claimant's employment history. Decision and Order at 3-6. Dr. Celko included Claimant's employment history as part of his medical opinion. Director's Exhibit 13 at 4-11. He noted coal mine employment with Employer in 1982, followed by Lambert "[f]rom approximately 1985 through 1986," and PBT "[f]rom approximately 1986 through 1987[.]" *Id.* at 8-10. At the hearing for this claim, Claimant initially testified his last coal mine employment was with Employer. Hearing Transcript at 12. He later stated after leaving work with Employer, he was employed by Lambert for "[p]robably a year and a half[,]" then PBT for "maybe five months." *Id.* at 21-23. On cross-examination, he reiterated he had worked for Lambert and PBT. *Id.* at 28-29. Contrarily, Claimant's SSA earnings record lists earnings from Employer in 1981 and 1982 but does not list any earnings from Lambert or PBT. Director's Exhibit 7 at 9-10.

The ALJ stated she had "no reason to doubt [Claimant's] testimony that he worked for Lambert and PBT[,]" but noted there is no evidence of record to verify the duration of

[2] The ALJ noted Big Valley Coal Corporation (Big Valley) more recently employed Claimant in 1989 but found Claimant's earnings for Big Valley indicated it employed him for only 23.52 days. Decision and Order at 4. We affirm this finding as unchallenged. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Because Big Valley did not employ Claimant for a cumulative period of at least one year, it does not meet the regulatory definition of a potentially liable operator. 20 C.F.R. §725.494(c).

Claimant's employment with Lambert or PBT, nor the amount of Claimant's earnings from either company. Decision and Order at 4-6. She further noted there "is no explanation for the complete lack of documentation" substantiating Claimant's employment for either company. *Id.* at 4-5. She therefore relied upon Claimant's SSA earnings record and found "Claimant's last work for at least one year was with [Employer]." *Id.* at 6.

Employer contends the ALJ failed to explain why Claimant's testimony does not credibly establish at least one year of employment for Lambert or PBT and thus argues her responsible operator finding does not satisfy the explanatory requirements of the Administrative Procedure Act,[3] 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a). Employer's Brief at 5-6. We disagree. While the ALJ found no reason to doubt Claimant's testimony,[4] she permissibly relied upon his SSA earnings record as the

[3] The Administrative Procedure Act requires that every adjudicatory decision include a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

[4] Moreover, because the district director must finally resolve the identification of the responsible operator or insurance carrier before a case is referred to the Office of Administrative Law Judges, the regulations require that, absent extraordinary circumstances, all liability evidence must be submitted to the district director. 20 C.F.R. §§725.407(d), 725.414(d), 725.456(b)(1); 65 Fed. Reg. 79,920, 79,989 (Dec. 20, 2000). Therefore, while the claim is before the district director, "all parties must notify the district director of the name and current address of any potential witness whose testimony pertains to the liability of a potentially liable operator or the designated responsible operator." 20 C.F.R. §725.414(c). In the absence of such notice, "the testimony of a witness relevant to the liability of a potentially liable operator or the designated responsible operator will not be admitted in any hearing conducted with respect to the claim unless the [ALJ] finds that the lack of notice should be excused due to extraordinary circumstances." *Id.* The ALJ is obligated to enforce these limitations even if no party objects to the evidence or testimony. *See Smith v. Martin Cnty. Coal Corp.*, 23 BLR 1-69, 1-74 (2004) (holding that the evidentiary limitations set forth in the regulations are mandatory and, as such, are not subject to waiver). Employer failed to identify Claimant as a liability witness before the district director. 20 C.F.R. §725.414(c). Furthermore, Employer does not argue extraordinary circumstances exist to excuse its failure to satisfy the regulatory requirement. Thus, as the Director correctly points out, regardless of her credibility determination, the ALJ was barred from relying on Claimant's testimony as evidence relevant to the liability of the designated responsible operator. 20 C.F.R. §725.414(c); Director's Brief at 5. Therefore, any alleged errors in the ALJ's credibility

most probative evidence because she found Claimant's testimony undermined by a lack of corroborating documentary evidence and insufficient to accurately determine the length of his employment with PBT or Lambert. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012) (explaining that if a reviewing court can discern what the ALJ did and why they did it, the duty of explanation is satisfied); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 n.10 (4th Cir. 1999); *Tackett v. Director, OWCP*, 6 BLR 1-839, 1-841 (1984) (ALJ may credit SSA earnings records over a miner's testimony and other sworn statements); Decision and Order at 6.

Because substantial evidence supports the ALJ's finding that Employer is the potentially liable operator that most recently employed Claimant for at least one year, we affirm it. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000). We therefore affirm her finding Employer is the properly designated responsible operator liable for payment of benefits in this claim. Decision and Order at 6.

Invocation of the 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 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 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); *E. Assoc. 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 (1991) (en banc).

The ALJ found the x-ray evidence supports a finding of complicated pneumoconiosis, and the computed tomography (CT) scan and medical opinion evidence neither supports nor refutes the existence of the disease.[5] Decision and Order at 19-22.

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determinations regarding Claimant's testimony are harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[5] The ALJ found there is no biopsy evidence in the record. 20 C.F.R. §718.304(b); Decision and Order at 15.

Weighing all the evidence together, she concluded Claimant established the existence of complicated pneumoconiosis based upon the x-ray evidence. *Id.*

Employer argues the ALJ erred when considering the x-ray evidence. Employer's Brief at 6-12. We disagree.

The ALJ considered five readings of two x-rays conducted October 23, 2019, and February 24, 2021.[6] Decision and Order at 15, 19-22. Drs. DePonte, Alexander, and Adcock marked the International Labour Organization (ILO) forms regarding the October 23, 2019 x-ray as positive for simple pneumoconiosis and identified Category A large opacities consistent with complicated pneumoconiosis in both upper lung lobes. Director's Exhibits 13, 15, 16. Dr. Zaldivar read the February 24, 2021 x-ray as negative for pneumoconiosis, Director's Exhibit 18 at 3-4, 30, while Dr. DePonte read it as positive for simple pneumoconiosis and identified Category A large opacities consistent with complicated pneumoconiosis in both upper lung lobes. Claimant's Exhibit 1.

The ALJ noted Drs. DePonte, Alexander, and Adcock are dually-qualified as B readers and Board-certified radiologists, while Dr. Zaldivar is neither Board-certified in radiology nor a B reader. Decision and Order at 20. She found the October 23, 2019 x-ray positive for complicated pneumoconiosis based upon the unanimous identification of Category A large opacities by Drs. DePonte, Alexander, and Adcock. Decision and Order at 20. Considering the February 24, 2021 x-ray, she found Dr. DePonte's reading more credible than that of Dr. Zaldivar based on Dr. DePonte's superior qualifications.[7] *Id.* at 20. She further found Dr. Zaldivar's reading entitled to no weight because his reading of the x-ray as negative for both simple and complicated pneumoconiosis was contrary to the readings of the dually-qualified physicians, who unanimously identified simple

[6] Dr. Gaziano read the October 23, 2019 x-ray for quality purposes only. Director's Exhibit 14.

[7] Employer notes Dr. DePonte indicated the presence of small opacities consistent with pneumoconiosis in all six lung zones on her reading of the October 23, 2019 x-ray, but in only four lung zones on her reading of the February 24, 2021 x-ray. Employer's Brief at 9-10. It contends the ALJ erred by failing to consider this aspect of Dr. DePonte's readings. *Id.* We disagree. Employer has not explained how these differing readings concerning the location of small opacities affect the credibility of Dr. DePonte's readings relevant to the existence of complicated pneumoconiosis, particularly given she consistently identified Category A large opacities in both upper lung lobes across both x-rays. *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").

pneumoconiosis and Category A large opacities, as well as her finding that Claimant established the existence of simple clinical pneumoconiosis. *Id.* at 15, 20.

The ALJ then considered whether the narrative comments accompanying the physicians' x-ray interpretations supported or refuted finding complicated pneumoconiosis. Decision and Order at 20-22.

On his interpretation of the October 23, 2019 x-ray, Dr. Adcock checked a box indicating a Category A large opacity consistent with complicated pneumoconiosis and noted "[b]ilateral upper lobe streaky fibrosis, right upper lobe volume loss, and calcified granulomas consistent with remote granulomatous disease." Director's Exhibit 16 at 2. In accompanying comments, he noted "opacities of the subapical upper lobes that may represent large opacities (A-type)" and opined that the findings were atypical and "may represent pleural thickening secondary either to [coal workers' pneumoconiosis] or old granulomatous disease[.]" *Id.* at 3. He concluded that "[a] conclusive diagnosis of complicated [coal workers' pneumoconiosis] may be established, but there remains the possibility that the changes are secondary to simple [pneumoconiosis] superimposed on remote granulomatous disease[,]" and stated that a CT scan "would likely clarify the nature of the [x-ray] findings." *Id.* at 3-4.

Dr. Alexander noted "[l]inear densities in the upper zones, right greater than left, which may represent areas of plate-atelectasis or large opacities of complicated Coal Workers Pneumoconiosis, category A[,]" in his interpretation of the October 23, 2019 x-ray. Director's Exhibit 15. In a narrative comment accompanying her reading of the February 24, 2021 x-ray, Dr. DePonte identified "[o]pacities in both upper lung zones that may represent Category A large opacities[,]" and recommended a CT scan "for confirmation or exclusion." Claimant's Exhibit 1. Dr. Zaldivar opined the opacities seen on Claimant's x-rays were due to prior granulomatous infection rather than pneumoconiosis, but he stated a biopsy or CT scan was necessary to determine the etiology of the opacities. Employer's Exhibit 1 at 11-12, 17-19.

The ALJ found the comments of Drs. Alexander and DePonte do not indicate the physicians questioned the existence of large opacities consistent with pneumoconiosis, based upon their notation of opacities on the ILO forms detailing their x-ray interpretations. Decision and Order at 21. She noted Dr. Adcock did not clearly explain why he opined his x-ray findings were abnormal or atypical and did not unequivocally opine whether Claimant does or does not have complicated pneumoconiosis. *Id.* She similarly noted Dr. Zaldivar opined he could not ultimately determine the cause of the opacities on Claimant's x-rays without a CT scan or biopsy, and although he opined the opacities were due to old granulomatous disease, there was no evidence of record indicating Claimant was diagnosed with or treated for such a condition. *Id.* at 21-22. She therefore permissibly discredited

the comments of Drs. Zaldivar and Alexander as equivocal and speculative.[8] *See Cox*, 602 F.3d at 290 (physicians' "equivocal and speculative" diagnoses for masses on x-ray do not "constitute affirmative evidence . . . that the opacities were not due to pneumoconiosis"); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 21-22.

The ALJ acknowledged the physicians' comments "suggest[] the possibility that the process in the Claimant's lungs is probably due to something other than pneumoconiosis[,]" but ultimately found the evidence of an alternative etiology undermined due to a lack of "consistent or corroborated medical evidence that the large opacities identified by Drs. Alexander, Dr. DePonte, and Dr. Adcock are not there, or [are not caused by pneumoconiosis.]" Decision and Order at 22. She therefore found Claimant established the existence of complicated pneumoconiosis based upon the x-ray evidence, and in consideration of the evidence as a whole. Decision and Order at 20, 22 (citing *E. Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 256 (4th Cir. 2000)) ("[I]f the x-ray evidence vividly displays [Category A opacities] . . . the x-ray evidence can lose force only if other evidence affirmatively shows that the opacities are not there or are not what they seem to be, perhaps because of an intervening pathology, some technical problem . . . , or incompetence of the reader.")

Employer argues the ALJ erred by failing to consider relevant evidence in finding the x-ray evidence establishes complicated pneumoconiosis. Employer's Brief at 9-12.

[8] Employer argues Drs. DePonte's and Alexander's comments are similarly equivocal and the ALJ erred by failing to apply equivalent scrutiny to their readings. Employer's Brief at 10-12. We disagree. Dr. Alexander identified linear densities which "may" indicate plate-atelectasis or Category A opacities in his reading of the October 23, 2019 x-ray, and Dr. DePonte stated the large opacities she identified in her reading of the February 24, 2021 x-ray "may" represent Category A large opacities. Director's Exhibit 15; Claimant's Exhibit 1. Contrary to Employer's argument, however, a physician's use of the word "may" does not necessarily render their opinion equivocal. *See Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366 (4th Cir. 2006) (in certain situations, "refusal to express a diagnosis in categorical terms is candor, not equivocation."); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 763 (4th Cir. 1999) (opinion that pneumoconiosis "could be" a complicated factor in miner's death was not equivocal). The ALJ further accurately noted that beyond simply using qualified language, Dr. Adcock's comments discussed abnormalities and possible alternative diagnoses without clearly opining on the presence or absence of complicated pneumoconiosis, and Dr. Zaldivar opined he could not make a diagnosis without further testing. Decision and Order at 21-22; *see* Director's Exhibit 16 at 3-4; Employer's Exhibit 1 at 17-19. Thus, we reject Employer's argument.

Initially, it argues the ALJ did not adequately consider Dr. Zaldivar's opinion that a CT scan was required to reach a diagnosis and Drs. DePonte's and Adcock's comments recommending a CT scan. *Id.* at 9. Contrary to its argument, however, the ALJ considered the physicians' comments but permissibly found they do not outweigh the findings of Category A large opacities consistent with complicated pneumoconiosis on their ILO x-ray forms. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; 20 C.F.R. §718.304(a); Decision and Order at 21-22.

Employer further argues the ALJ erred by failing to consider Claimant's treatment records from Summersville Family Medicine, and an August 1, 2019 decision of the State of West Virginia Workers' Compensation Office of Judges finding Claimant entitled to benefits for partial disability due to occupational pneumoconiosis. Employer's Brief at 9-10. Employer notes that Claimant's treatment records do not include a diagnosis of or treatment for complicated pneumoconiosis and that Claimant's state workers' compensation benefits determination noted the presence of simple pneumoconiosis and calcified granulomas on x-ray. Employer's Brief at 9-10, 11 n.11. We disagree.

While Claimant's treatment records do not explicitly mention "complicated pneumoconiosis" or "progressive massive fibrosis," they do include a diagnosis of "[c]oalworker's [sic] pneumoconiosis," a notation of a mass in Claimant's right lung, and a summary of a chest x-ray demonstrating "chronic changes and no acute cardiac or pulmonary or pleural disease." Director's Exhibit 7 at 2, 4, 35. The treatment records otherwise make no mention of Claimant's pulmonary condition. Employer has not identified how these treatment records—which it admits are at best silent concerning complicated pneumoconiosis—are relevant evidence concerning the existence of the disease or could weigh against the ALJ's finding that the x-ray evidence supports the existence of the disease. Similarly, Claimant's state workers' compensation determination summarizes x-ray readings from January 18, 2017 and February 13, 2018 that identified simple pneumoconiosis and calcified granulomas; however, neither reading was made part of the record, and the determination is wholly silent concerning the existence of complicated pneumoconiosis. Director's Exhibit 8 at 1-2.

Because Employer has not identified how either the treatment records or Claimant's state workers' compensation determination could serve as relevant evidence weighing against the ALJ's finding that the x-ray evidence establishes complicated pneumoconiosis,

any error in failing to consider these pieces of evidence is harmless.[9] *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

We therefore affirm, as supported by substantial evidence, the ALJ's finding that Claimant established the existence of complicated pneumoconiosis based upon the x-ray evidence and in consideration of the evidence as a whole. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Melnick*, 16 BLR at 1-33; 20 C.F.R. §718.304(a); Decision and Order at 22. We therefore affirm the ALJ's finding that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis, 20 C.F.R. §718.304, and the award of benefits.

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge

[9] Employer additionally contends the treatment records and state workers' compensation determination support Dr. Zaldivar's opinion that the opacities in Claimant's lungs are due to prior granulomatous disease and the ALJ therefore erred in discrediting his opinion as speculative without considering them. Employer's Brief at 10. We disagree. Any such error is harmless, as the ALJ also permissibly discredited Dr. Zaldivar's opinion as equivocal. *See Larioni*, 6 BLR at 1-1278; *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Decision and Order at 22.