U.S. Department of Labor

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

BRB No. 24-0477 BLA

CLARENCE NAPIER Claimant-Respondent v. J & G HOLDINGS, INCORPORATED and KENTUCKY EMPLOYERS' MUTUAL INSURANCE Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 07/15/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Willow Eden Fort, Administrative Law Judge, United States Department of Labor.

Kenneth A. Buckle (Law Office of Kenneth A. Buckle, PLLC), Hyden, Kentucky, for Claimant.

W. Barry Lewis (Lewis and Lewis Law Offices), Hazard, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Willow Eden Fort's Decision and Order Awarding Benefits (2021-BLA-05711) rendered on a subsequent claim filed on June 3, 2019,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established complicated pneumoconiosis.[2] 20 C.F.R. §718.304. Thus, she found Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act and established a change in an applicable condition of entitlement.[3] 30 U.S.C. §921(c)(3); 20 C.F.R. §§718.304, 725.309(c). Further, she found Claimant's complicated pneumoconiosis arose out of his coal mine employment, 20 C.F.R. §718.203(b), and awarded benefits.

On appeal, Employer asserts the ALJ erred in excluding Dr. Simone's computed tomography (CT) scan interpretation from consideration. On the merits, it contends the ALJ erred in finding Claimant established complicated pneumoconiosis. Claimant responds in support of the award. The Acting Director, Office of Workers' Compensation Programs, declined to file a response brief.

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.[4] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C.

[1] Claimant filed an initial claim on November 17, 2016, which the district director denied on July 5, 2017, because Claimant failed to establish total disability. Director's Exhibit 1.

[2] The ALJ accepted the parties' stipulation that Claimant has at least twenty years of surface coal mine employment. Decision and Order at 4.

[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 she 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 Claimant's prior claim for failure to establish total disability, Claimant had to submit new evidence establishing this element to obtain review of his current claim on the merits. *White*, 23 BLR at 1-3.

[4] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant performed his last coal mine employment in Kentucky. *See*

§932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc*., 380 U.S. 359, 361-62 (1965).

Evidentiary Limitations

ALJs exercise broad discretion in resolving procedural and evidentiary matters. *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc). A party seeking to overturn the disposition of an evidentiary issue must establish the ALJ abused her discretion. *V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009).

Claimant initially sought to admit, as affirmative evidence, two interpretations of the April 3, 2023 CT scan – one from Dr. Crum, dated June 21, 2023, and one from Dr. Seaman, dated August 25, 2023. Hearing Transcript at 14-15, 26-32; Claimant's Exhibits 2, 5. Employer sought to admit two rebuttal interpretations of the same CT scan – one from Dr. Simone, dated September 26, 2023, and one from Dr. Adcock, dated October 12, 2023. Hearing Transcript at 25-32; Employer's Supplemental Exhibit Index at 2 (unpaginated); Employer's Exhibits 6, 7. After the hearing, the ALJ issued multiple evidentiary orders directing the parties to comply with the evidentiary limitations at 20 C.F.R. §§725.414 and 718.107(b), which allow a party to submit only one interpretation of a CT scan as affirmative or rebuttal evidence.

On July 30, 2024, the ALJ issued an "Order on Evidence; Order Requiring Parties to Designate Evidence; Order Permitting Supplemental Briefs" instructing Claimant to: 1) designate either Dr. Crum's or Dr. Seaman's reading of the April 3, 2023 CT scan as affirmative evidence; 2) accurately list Dr. Crum's deposition testimony as a medical report under 20 C.F.R. §725.414(a)(2)(ii), rather than as a hospitalization or treatment record; and 3) report Dr. DePonte's interpretation of the March 14, 2019 x-ray as part of his affirmative x-ray evidence under 20 C.F.R. §725.414(a)(2)(i). July 30, 2024 Order at 2-3. The ALJ additionally stated she was excluding Dr. Simone's CT scan interpretation from the record as it was inextricably intertwined with his consideration of inadmissible evidence;[5] she therefore instructed Employer to designate only Dr. Adcock's interpretation of the April 3, 2023 CT scan as rebuttal evidence under 20 C.F.R. §725.414(a)(3)(ii). *Id.* She gave the

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Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 4, 5.

[5] The ALJ noted Dr. Simone's report included a review of the April 3, 2023 CT scan, Dr. Crum's and Dr. Seaman's interpretations of the same CT scan, and Dr. Crum's deposition testimony. July 30, 2024 Order at 2. She found "it is impossible to consider [Dr. Simone's CT scan] interpretation without also considering [his] review of Drs. Crum and Seaman's April 3, 2023 CT scan interpretations and Dr. Crum's testimony." *Id.*

parties seven days, until August 6, 2024, to submit revised Evidence Summary Forms. *Id.* at 3.

The parties submitted revised Evidence Summary Forms on August 1, 2024; however, neither party designated the CT scan evidence as directed in the ALJ's July 30, 2024 Order. Therefore, on August 6, 2024, the ALJ issued an Order on Evidence directing the parties to submit written statements indicating the CT scan readings that they intended to rely on. Aug. 6, 2024 Order.

Claimant and Employer submitted their revised evidence summaries on August 13, 2024. As directed, Claimant designated Dr. Seaman's interpretation of the April 3, 2023 CT scan as affirmative evidence and Dr. Crum's deposition testimony as a medical opinion, while Employer designated Dr. Adcock's interpretation as rebuttal evidence. Claimant's Evidence Summary Form at 7; Employer's Evidence Summary Form at 7. Employer also submitted a Motion for Extension of Time requesting a twenty-day extension to obtain a rebuttal report to Dr. Crum's medical opinion. Employer's Aug. 13, 2024 Motion. On August 14, 2024, the ALJ denied Employer's Motion, explaining Claimant clearly established his intention to rely on Dr. Crum's deposition testimony as a medical report at the formal hearing, and Employer failed to request an extension at that time.[6] Aug. 14, 2024 Order at 2. Although the ALJ admitted Dr. Crum's deposition as a medical opinion, she explicitly excluded his interpretation of the April 3, 2023 CT scan as exceeding the evidentiary limitations and declined to consider his deposition statements concerning that CT scan. Decision and Order at 15; Aug. 14, 2024 Order at 2 n.1.

Employer argues the ALJ erred in excluding Dr. Simone's interpretation of the April 3, 2023 CT scan, while simultaneously admitting Dr. Crum's deposition testimony as a medical opinion. Employer's Brief at 25. It contends the ALJ's exclusion of Dr. Simone's CT interpretation prejudiced its ability to defend against the claim because Dr. Crum's deposition functioned as a second affirmative interpretation of the April 3, 2023 CT scan that Employer was not allowed to rebut. *Id.* at 24-26. We reject Employer's assertion of error.

The regulations at 20 C.F.R. §725.414, in conjunction with 20 C.F.R. §725.456(b)(1), set limits on the amount of specific types of medical evidence the parties can submit into the record. Medical evidence that exceeds those limitations "shall not be

[6] The ALJ explained that Claimant's original Evidence Summary Form, dated September 1, 2023, designated Dr. Crum's deposition testimony as a medical report, and Claimant indicated his continued intent to rely on Dr. Crum's deposition testimony at the hearing, clarifying that his failure to designate it as a medical report on his September 27, 2023 Evidence Summary Form was an error. Aug. 14, 2024 Order at 2.

admitted into the hearing record in the absence of good cause." 20 C.F.R. §725.456(b)(1). CT scan interpretations constitute "other medical evidence" under 20 C.F.R. §718.107 and, therefore, each party is limited to one affirmative *or* rebuttal reading of each CT scan. *Webber v. Peabody Coal Co.*, 23 BLR 1-123, 1-135 (2006) (en banc); 20 C.F.R. §§718.107, 725.414(a)(3)(ii). Contrary to Employer's assertion, the ALJ consistently applied this standard to both Claimant's and Employer's evidence in admitting and considering only Dr. Seaman's affirmative, and Dr. Adcock's rebuttal, readings of the April 3, 2023 CT scan. Although the ALJ admitted Dr. Crum's deposition testimony as an affirmative medical opinion pursuant to 20 C.F.R. §725.414(a)(2)(i), she explicitly found his statements interpreting the April 3, 2023 CT scan exceed the evidentiary limitations and permissibly declined to consider them. Decision and Order at 15; *see Webber*, 23 BLR at 1-135; *Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229, 1-242 n.15 (2007) (en banc); 20 C.F.R. §718.107. As the ALJ excluded from consideration Dr. Crum's affirmative interpretation of the April 3, 2023 CT scan, Employer has not demonstrated that it was prejudiced by the ALJ's denying it an opportunity to rebut this excluded evidence. *Shinseki v. Sanders*, 556 U.S. 396, 409 (2009).

Moreover, to the extent Employer asserts it should have been permitted to elect between Dr. Simone's and Dr. Adcock's interpretations of the April 3, 2023 CT scan before the ALJ excluded one of them, we find no abuse of discretion. The ALJ found Dr. Simone's interpretation inextricably intertwined with inadmissible evidence, including Dr. Crum's interpretation of the April 3, 2023 CT scan. July 30, 2024 Order at 2. Thus, even if Employer had selected Dr. Simone's interpretation, the ALJ would have acted within her discretion in excluding it. *Keener*, 23 BLR at 1-242 n.15.

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). 30 U.S.C. §921(c)(3); 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 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 CT scan evidence supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(c), while the x-rays, medical opinions, and

Claimant's treatment records do not aid him in establishing the disease.[7] Decision and Order at 5-16. Weighing all the evidence together, she found Claimant established complicated pneumoconiosis and thus invoked the irrebuttable presumption. *Id*. at 16.

Employer argues the ALJ erred in weighing the CT scan evidence and the evidence as a whole. Employer's Brief at 26-36. We disagree.

CT Scans - 20 C.F.R. §718.304(c)

The ALJ weighed two interpretations of one CT scan dated April 3, 2023. Decision and Order at 10. Dr. Seaman observed solid upper-zone predominant centrilobular/perilymphatic nodules that she opined "may represent calcified pneumoconiotic nodules or sequelae of prior granulomatous infection." Claimant's Exhibit 5 at 1. She further identified a large opacity measuring up to 1.2 centimeters in the periphery of the right upper lobe and diagnosed complicated pneumoconiosis. *Id*. By contrast, Dr. Adcock noted scattered densely calcified granulomata with focal fibrosis in the right upper lobe and diagnosed remote granulomatous infection, more likely tuberculosis than histoplasmosis. Employer's Exhibit 7 at 1-2. He provided no measurements for the right upper lobe fibrosis, stated there was no evidence of complicated pneumoconiosis, and did not diagnose simple pneumoconiosis. *Id.*

The ALJ found Dr. Seaman's interpretation more persuasive than Dr. Adcock's. She explained that Dr. Seaman's finding of a 1.2 centimeter opacity on CT scan is equivalent to a Category A x-ray opacity and her diagnosis of simple and complicated pneumoconiosis is consistent with, and supported by: the x-ray evidence of simple pneumoconiosis, her specified measurements for the identified large opacity, and Claimant's twenty-year history of coal mine employment.[8] Decision and Order at 13. Conversely, the ALJ noted Dr. Adcock did not provide a measurement for the focal fibrosis he observed and found his opinion poorly explained and speculative, particularly given Claimant's twenty-year coal mine employment history and lack of a reported history of tuberculosis or histoplasmosis. *Id*. at 12 (citing Director's Exhibit 23 at 2). She additionally found Dr. Adcock's diagnosis inconsistent with her finding that the x-ray

[7] The parties did not designate any biopsy evidence for consideration at 20 C.F.R. §718.304(b). Claimant's Evidence Summary Form at 6; Employer's Evidence Summary Form at 6.

[8] Noting pneumoconiosis is a progressive disease, the ALJ found Dr. Seaman necessarily diagnosed simple pneumoconiosis in diagnosing the large opacity as complicated pneumoconiosis. Decision and Order at 11.

evidence establishes simple pneumoconiosis. *Id.* Consequently, she concluded the CT scan evidence weighs in favor of a finding of complicated pneumoconiosis. *Id*. at 13.

We reject Employer's assertion that the ALJ selectively analyzed the CT scan interpretations and failed to provide a valid reason for preferring Dr. Seaman's interpretation over Dr. Adcock's. Employer's Brief at 26-30. Contrary to Employer's assertion, the ALJ applied the same level of scrutiny to both physicians in finding Dr. Seaman's reading consistent with, and Dr. Adcock's reading inconsistent with, the x-ray evidence establishing simple pneumoconiosis; Claimant's lengthy history of exposure to coal mine dust; and Claimant's having reported no history of tuberculosis or histoplasmosis infection. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); Decision and Order at 12-13. Further, as Employer identifies no error in the ALJ's finding Dr. Seaman more persuasive because her diagnosis is consistent with the x-ray evidence of simple pneumoconiosis and Claimant's lengthy coal mine employment history, we affirm the ALJ's credibility determination.[9] *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002) (it is within the purview of the ALJ to weigh the evidence, draw inferences, and determine credibility); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983) (ALJ need only state one valid reason for credibility determination); Decision and Order at 12.

Because it is supported by substantial evidence, we affirm the ALJ's finding that the CT scans support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 10-13.

Evidence as a Whole

We also reject Employer's assertion that the ALJ did not adequately explain her conclusion that Claimant established complicated pneumoconiosis on the record as a whole

[9] We reject Employer's assertion that the ALJ erred in finding Dr. Adcock's diagnosis inadequately explained and less persuasive because the record contains "no evidence of granulomatous disease." Decision and Order at 12; Employer's Brief at 29-30. Although Employer identifies x-ray interpretations noting calcified granuloma in Claimant's lungs, Employer fails to explain the significance of its assertion given that the ALJ found Claimant reported no history of tuberculosis or histoplasmosis and the record contains no evidence that Claimant was diagnosed with or treated for either disease. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); Decision and Order at 12; Employer's Brief at 27-30.

and invoked the irrebuttable presumption as the Administrative Procedure Act requires her to do.[10] Employer's Brief at 31-37.

Contrary to Employer's assertion, the ALJ explained she found the x-ray evidence negative for complicated pneumoconiosis, the CT scan evidence positive for complicated pneumoconiosis, none of the medical opinions entitled to probative weight, and Claimant's treatment records insufficient to establish the presence or absence of complicated pneumoconiosis. Decision and Order at 10-16. In weighing all categories of evidence together, the ALJ further explained she found the positive CT scan evidence entitled to greater weight than the negative x-ray evidence because both Drs. Seaman and Adcock opined CT scans are more sensitive than chest x-rays and are superior for diagnosing the presence or absence of pneumoconiosis. *Id.* at 16 (citing Claimant's Exhibit 2 at 1; Employer's Exhibit 7 at 2). She thus found, and adequately explained her finding that, Claimant established complicated pneumoconiosis on the record as a whole. *Id.*; *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989). As the ALJ considered all relevant evidence and substantial evidence supports her determination to credit the positive CT scan evidence over the negative x-ray evidence, we affirm her conclusion that Claimant established complicated pneumoconiosis on the record as a whole.[11] *See Gray*, 176 F.3d at 388-89; *Melnick*, 16 BLR at 1-33-34; Decision and Order at 16. We thus affirm the ALJ's conclusion that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis and therefore established a change in the applicable condition of entitlement. 30 U.S.C. §921(c)(3); 20 C.F.R. §§718.304, 725.309(c)(3).

We further affirm, as unchallenged, the ALJ's determination that Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R.

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

[11] As Employer identifies no specific error in the ALJ's weighing of the medical opinion or Claimant's treatment record evidence, we reject its assertions that the ALJ failed to reconcile these categories of evidence with the CT scan evidence in weighing the record evidence as a whole. *Jones Bros. v. Sec'y of Labor*, 898 F.3d 669, 677 (6th Cir. 2018) (party forfeits any allegations that lack developed argument); Employer's Brief at 34. As the ALJ found neither the medical opinion nor Claimant's treatment record evidence negative for complicated pneumoconiosis, there was no conflict between these categories of evidence and the positive CT scan evidence that the ALJ needed to reconcile.

§718.203(b); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 16-17.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge