U.S. Department of Labor

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

BRB No. 25-0022 BLA

CECIL R. MARCUM Claimant-Respondent v. SEA "B" MINING COMPANY Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 07/21/2025 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of William P. Farley, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Austin), Norton, Virginia, for Claimant.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) William P. Farley's Decision and Order Awarding Benefits (2021-BLA-05660) 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 December 4, 2019.[1]

The ALJ noted Employer conceded that Claimant worked for twenty-six years in underground coal mine employment and that Claimant has simple clinical pneumoconiosis. 20 C.F.R. §718.202(a). He also found Claimant established the presence of 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); *see* 20 C.F.R. §718.304, and established a change in an applicable condition of entitlement. 20 C.F.R. §725.309.[2] Further, he found Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203. Thus, he awarded benefits.

[1] Claimant filed two prior claims. Claimant filed his first claim on June 23, 1995, and, in a Decision and Order dated February 13, 1997, ALJ Robert G. Mahony denied benefits because Claimant did not establish total disability. Director's Exhibit 1 at 54-62. Claimant appealed, and the Benefits Review Board affirmed ALJ Mahony's decision denying benefits. *Marcum v. Sea "B" Mining Co.*, BRB No. 97-0810 BLA (Jan. 20, 1998) (unpub.); Director's Exhibit 1 at 36-39. He subsequently filed a timely request for modification, which the district director denied on February 24, 1999, because Claimant failed to demonstrate a change in conditions or mistake in a determination of fact. 20 C.F.R. §725.310; Director's Exhibit 1 at 10, 22-30, 34. On March 10, 1999, Claimant requested reconsideration, which the district director denied on May 11, 1999, finding that Claimant failed to demonstrate a material change in conditions. Director's Exhibit 1 at 3-6. Claimant did not further pursue his 1995 claim.

Claimant filed a second claim on June 20, 2017, but subsequently withdrew it. Director's Exhibit 2. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306.

[2] 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 he finds "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)(1); *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 prior claim was denied for failure to establish total disability, Claimant had to submit evidence establishing this element to obtain review of the merits of his current claim. *Id*.

On appeal, Employer argues the ALJ erred in finding Claimant established the presence of complicated pneumoconiosis and thus invoked the Section 411(c)(3) presumption.[3] Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, has not filed a response brief.

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.[4] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

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 Claimant has invoked the irrebuttable presumption, the ALJ 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); *Eastern Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243-44 (4th Cir. 1999); *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, while the medical opinion evidence does not.[5] 20 C.F.R. §718.304(a),

[3] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established twenty-six years of underground coal mine employment and the existence of simple clinical pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5-6, 15.

[4] 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); Director's Exhibit 5; Hearing Tr. at 22.

[5] The record does not contain biopsy or computed tomography scan evidence or treatment records. *See* 20 C.F.R. §718.304(b), (c).

(c); Decision and Order at 16-20. Weighing all of the evidence together, he concluded Claimant established the presence of complicated pneumoconiosis and thus invoked the irrebuttable presumption at Section 411(c)(3) of the Act. Decision and Order at 20-21.

Employer contends the ALJ erred in finding Claimant established complicated pneumoconiosis based on the x-rays and in consideration of the evidence as a whole. 20 C.F.R. §718.304(a); Decision and Order at 16-21; Employer's Brief at 3-11 (unpaginated). We are not persuaded.

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

The ALJ considered fourteen interpretations of four chest x-rays dated March 14, 2020, August 21, 2020, February 8, 2022, and February 24, 2022. All the physicians who interpreted the x-rays are Board-certified radiologists and B readers. Drs. DePonte, Crum, and Alexander each read the March 14, 2020 x-ray as positive for complicated pneumoconiosis, Category A, while Drs. Seaman and Tarver read the x-ray as negative for the disease. Director's Exhibits 21, 24, 27; Claimant's Exhibit 2; Employer's Exhibits 1, 4. Dr. Crum read the August 21, 2020 x-ray as positive for complicated pneumoconiosis, Category A, whereas Dr. Seaman read the x-ray as negative for the disease. Director's Exhibits 26, 28; Claimant's Exhibit 4. Dr. Crum read the February 8, 2022 x-ray as positive for complicated pneumoconiosis, Category A, whereas Dr. Seaman read the x-ray as negative for the disease. Claimant's Exhibit 3; Employer's Exhibits 3, 6. Finally, Dr. DePonte read the February 24, 2022 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Tarver read the x-ray as negative for the disease. Claimant's Exhibit 1; Employer's Exhibit 5.

As all interpreting physicians are dually qualified, the ALJ found their relative qualifications do not provide a basis to assign more or less weight to any of the interpretations. Decision and Order at 16. Further finding all of the physicians, except Dr. Tarver, consistently noted "atherosclerotic aorta," "coalescence of small opacities," and "enlargement of non-calcified hilar or mediastinal lymph nodes" as "other" abnormalities on the International Labour Organization x-ray form they completed, the ALJ found Dr. Tarver's x-ray readings to be "outlier[s]" that merit reduced weight.[6] *Id.* at 16-17. As three dually-qualified experts interpreted the March 14, 2020 x-ray as positive for complicated

[6] The ALJ accurately observed Dr. Tarver's interpretation of the March 14, 2020 x-ray indicated he saw no other abnormalities, while his interpretation of the February 24, 2022 x-ray noted Claimant's atherosclerotic aorta but not any coalescence of small opacities or enlarged lymph nodes. Decision and Order at 16-17; Director's Exhibit 27 at 2; Employer's Exhibit 5 at 1.

pneumoconiosis and two dually-qualified experts, including Dr. Tarver, interpreted it as negative for the disease, the ALJ found the x-ray supports a finding of complicated pneumoconiosis. *Id.* at 17. Further finding Dr. Crum's positive interpretation and Dr. Seaman's negative interpretation of the August 21, 2020 and February 8, 2022 x-rays are in equipoise, the ALJ found these x-rays neither support nor refute the existence of complicated pneumoconiosis. *Id.* at 17. Finally, finding Dr. DePonte's positive interpretation of the February 24, 2022 x-ray merits regular weight while Dr. Tarver's negative interpretation merits reduced weight for failing to note coalescence of small opacities and enlarged lymph nodes, the ALJ found this x-ray positive for complicated pneumoconiosis. *Id.* As the ALJ found two x-rays positive for complicated pneumoconiosis and the interpretations of two x-rays in equipoise, the ALJ found Claimant established complicated pneumoconiosis based on the x-ray evidence. *Id*. Employer challenges this finding.

Employer contends the ALJ impermissibly shifted the burden to Employer to disprove complicated pneumoconiosis. Employer's Brief at 9-10 (unpaginated). It additionally asserts the ALJ engaged in an impermissible headcount of the x-ray evidence, failed to properly weigh the interpreting physicians' radiological qualifications, and erroneously discounted Dr. Tarver's negative interpretations of the March 14, 2020 and February 24, 2022 x-rays. *Id.* at 6-10. We disagree.

Under 20 C.F.R. §718.304, Claimant bears the burden to establish, by a preponderance of evidence, the existence of complicated pneumoconiosis. *See Cox*, 602 F.3d at 283; *Scarbro*, 220 F.3d at 255-56. Contrary to Employer's assertion, the ALJ correctly identified and applied this standard, stating that "Claimant bears the burden of establishing complicated pneumoconiosis." Decision and Order at 20. We also see no error in the ALJ's finding that the x-ray evidence met this threshold.

Contrary to Employer's argument, the ALJ properly performed both a qualitative and quantitative analysis of the conflicting x-ray readings, taking into consideration the physicians' qualifications, their specific interpretations, and the number of readings of each film. *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 16-17. Substantial evidence thus supports his finding that their relative qualifications do not provide a basis to assign more or less weight to any x-ray interpretation.[7] *See Addison*, 831

[7] We reject Employer's assertion that the ALJ should have found Drs. Tarver and Seaman possess superior radiological credentials as they are both radiology professors and Dr. Tarver has authored publications on radiology. Employer's Brief at 6-7 (unpaginated). While an ALJ may give greater weight to an expert with "superior" qualifications, such as a professorship in radiology, he is not required to do so. *See Harris v. Old Ben Coal Co.*,

F.3d at 256-57; *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); Decision and Order at 16. The ALJ further permissibly discounted Dr. Tarver's negative interpretations of the March 14, 2020 and February 24, 2022 x-rays as outliers that merit reduced weight because he deviated from the other radiologists' findings of "coalescence of small opacities" and "enlargement of non-calcified hilar or mediastinal lymph nodes" on every x-ray of record.[8] *See Adkins*, 958 F.2d at 52-53; *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); *Snorton v. Zeigler Coal Co.*, 9 BLR 1-106 (1986) (ALJ may reasonably question validity of a physician's opinion that varies significantly from the remaining medical opinions of record); Decision and Order at 16-17.

As the ALJ considered both the quantity and quality of interpretations with regard to each x-ray, we reject Employer's assertion that the ALJ impermissibly counted heads and affirm his findings. *See Addison*, 831 F.3d at 256-57; *Adkins*, 958 F.2d at 52-53; Decision and Order at 17. We therefore affirm his finding that Claimant established complicated pneumoconiosis by a preponderance of x-ray evidence at 20 C.F.R. §718.304(a). *See* 20 C.F.R. §718.304(a); *see also Compton v Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); Decision and Order at 17.

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

The ALJ next considered the medical opinions of Drs. Green, Habre, and McSharry. Decision and Order at 18-20. Drs. Green and Habre opined Claimant has complicated pneumoconiosis while Dr. McSharry opined he does not. Director's Exhibit 21; Claimant's Exhibit 1; Employer's Exhibit 3. The ALJ found the opinions of Drs. Green and Habre entitled to no weight as their opinions were merely restatements of x-ray interpretations. Decision and Order at 20. He further found Dr. McSharry's opinion based on a limited review of the x-ray evidence of record and does "not assist in determining whether large opacities are present or whether those opacities, if present, constitute complicated

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23 BLR 1-98, 1-114 (2006) (en banc), *aff'd on recon.*, 24 BLR 1-13 (2007) (en banc); *Bateman v. Eastern Associated Coal Corp.*, 22 BLR 1-255, 1-261 (2003); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993); *see also J.V.S. v. Arch of West Virginia/Apogee Coal Co.*, 24 BLR 1-78, 1-90 n.13 (2008); *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-65 (2004) (en banc).

[8] In doing so, the ALJ correctly summarized and considered Dr. Tarver's x-ray interpretations as negative for complicated pneumoconiosis. Decision and Order at 16-17. Contrary to Employer's assertions, the ALJ did not find Dr. Tarver's interpretations equivocal or discount them for failing to explain abnormalities noted by other interpreting physicians. *Id.* at 17; Employer's Brief at 8-10 (unpaginated).

pneumoconiosis." *Id*. Thus he found the medical opinion evidence does not support a finding of complicated pneumoconiosis. *Id*.

Employer argues the ALJ erred in crediting Dr. Green's opinion to find Claimant established the presence of complicated pneumoconiosis under 20 C.F.R. §718.304(c). Employer's Brief at 11 (unpaginated). We reject this assertion as a mischaracterization of the ALJ's findings. 20 C.F.R. §718.304(c); Decision and Order at 20.

As Employer raises no further argument, we affirm the ALJ's determinations that all the relevant evidence weighed together establishes complicated pneumoconiosis. *See Melnick*, 16 BLR at 1-33; 20 C.F.R. §718.304; Decision and Order at 20-21. 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 an applicable condition of entitlement. 30 U.S.C. §921(c)(3); 20 C.F.R. §§718.304, 725.309(c)(3); Decision and Order at 20-21. We further affirm, as unchallenged, the ALJ's finding that Claimant's complicated pneumoconiosis arose out of his coal mine employment. *See* 20 C.F.R. §718.203(b); *see also Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 21. Consequently, we affirm the ALJ's award of benefits.

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