U.S. Department of Labor

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

BRB No. 21-0609 BLA

BERNARD D. CANTRELL Claimant-Petitioner v. A & G COAL CORPORATION and PINNACLE POINT INSURANCE COMPANY Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 6/16/2023 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Susan Hoffman, Administrative Law Judge, Department of Labor.

Bernard D. Cantrell, Wise, Virginia.

Catherine S. Wright and William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer and its Carrier.

Sarah M. Hurley (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, BOGGS and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the benefit of representation,[1] Administrative Law Judge (ALJ) Susan Hoffman's Decision and Order Denying Benefits (2019-BLA-05714) rendered on a claim filed on March 16, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant did not establish complicated pneumoconiosis and therefore could not invoke 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. She further found Claimant established 28.81 years of surface coal mine employment but failed to establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b). Thus, the ALJ found Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[2] 30 U.S.C. §921(c)(4) (2018), or establish entitlement pursuant to 20 C.F.R. Part 718. Consequently, the ALJ denied benefits.

On appeal, Claimant generally challenges the ALJ's denial of benefits. Employer and its Carrier (Employer) respond in support of the denial. The Director, Office of Workers' Compensation Programs (Director), has filed a limited response urging the Benefits Review Board to vacate the ALJ's weighing of the evidence on complicated pneumoconiosis and remand the case for further consideration.

Because Claimant is unrepresented, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's Decision and Order if it is rational,

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[1] Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested the Benefits Review Board review the ALJ's decision, but Ms. Napier is not representing Claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

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'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Section 411(c)(3) Presumption – 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 an opacity 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 reveal a result equivalent to (a) or (b). *See* 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).

20 C.F.R. §718.304(a) – X-Ray Evidence

The ALJ considered ten interpretations of three x-rays dated April 18, 2018, September 19, 2018, and February 26, 2019. Decision and Order at 11-12, 23-24. All the readers are Board-certified radiologists and B readers. Decision and Order at 12; Director's Exhibits 13, 16, 19, 22; Claimant's Exhibits 1-3; Employer's Exhibits 1, 3, 6, 7.

Drs. DePonte, Crum, and Seaman each opined the April 18, 2018 x-ray was positive for both simple and complicated pneumoconiosis.[4] Director's Exhibits 13, 22; Claimant's

[3] We 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 17.

[4] Drs. DePonte indicated the x-ray showed a Category "A" large opacity of pneumoconiosis versus neoplasm versus right middle lobe atelectasis. Director's Exhibit

Exhibit 1. Conversely, Drs. Tarver and Adcock read the April 18, 2018 x-ray as negative for simple and complicated pneumoconiosis.[5] Director's Exhibit 19; Employer's Exhibit 6. The ALJ found the April 18, 2018 x-ray to be positive for simple and complicated pneumoconiosis based on the preponderance of the positive readings by the dually-qualified radiologists. Decision and Order at 23.

Dr. Crum interpreted the September 19, 2018 x-ray as positive for simple and complicated pneumoconiosis with a Category "B" large opacity.[6] Claimant's Exhibit 3. However, Drs. Tarver and Adcock read the September 19, 2018 x-ray as negative for simple and complicated pneumoconiosis.[7] Employer's Exhibits 1 at 3-4; 7. The ALJ found the September 19, 2018 x-ray to be negative for simple and complicated pneumoconiosis based on the preponderance of the negative readings by the dually-qualified radiologists. Decision and Order at 24.

Dr. DePonte opined the February 26, 2019 x-ray was positive for simple and complicated pneumoconiosis with a Category "A" large opacity. Claimant's Exhibit 2. But Dr. Adcock read the x-ray as negative for simple and complicated pneumoconiosis.[8] Employer's Exhibit 3 at 3. The ALJ found the readings of the February 26, 2019 x-ray to be in equipoise based on the equal number of conflicting readings by equally qualified physicians. Decision and Order at 24.

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13 at 22. Dr. Crum indicated the x-ray showed a Category "B" large opacity of pneumoconiosis but recommended follow-up to exclude neoplasm. Director's Exhibit 22. Dr. Seaman indicated the x-ray showed a Category "A" large opacity of pneumoconiosis. Claimant's Exhibit 1.

[5] Dr. Tarver noted stable right hilar adenopathy that is likely benign hilar lymphadenopathy and not cancer. Director's Exhibit 19. Dr. Adcock noted partial right middle lobe atelectasis with diffuse bronchiovascular prominence. Employer's Exhibit 6.

[6] Dr. Crum recommended a comparison to prior films and a follow-up to exclude neoplasm. Director's Exhibit 22.

[7] Dr. Tarver also diagnosed right hilar adenopathy versus cancer with a recommended follow-up for a CT scan. Director's Exhibit 19. Dr. Adcock noted partial right middle lobe atelectasis and changes consistent with poor inflation and chronic heart failure. Employer's Exhibit 7.

[8] Dr. Adcock again noted partial right middle lobe atelectasis and changes consistent with chronic recurrent congestive heart failure and poor inflation. Employer's Exhibit 3.

In resolving the conflict in the x-ray evidence, the ALJ found that all of the physicians are equally qualified, there is no difference in the quality of the films such that one x-ray is less reliable than the others, and the films were all taken within a year of each other. Decision and Order at 24. Because she could find no reason to credit or discredit any of the films, the ALJ found the x-ray evidence was not sufficient to establish the existence of simple or complicated pneumoconiosis. Decision and Order at 24.

20 C.F.R. §718.304(b) – Biopsy Evidence

The ALJ considered a biopsy conducted on September 17, 2014 of the right middle lung lobe. Decision and Order at 25. The biopsy was negative for malignant cells and the final diagnosis was "benign partly denuded bronchial mucosa with minimal chronic inflammation." Claimant's Exhibit 5. As the biopsy did not diagnose pneumoconiosis, the ALJ rationally found it does not establish complicated pneumoconiosis at 20 C.F.R. §718.304(b). Decision and Order at 25.

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

The ALJ considered a CT scan conducted on May 5, 2015, as part of Claimant's treatment records. Decision and Order at 25. Dr. DePonte opined the CT scan showed "fine interstitial nodularity involving all lung zones especially the upper lung zones consistent with coal workers' pneumoconiosis" and "stable partial right middle lobe atelectasis," but opined there were "[n]o large opacities." Claimant's Exhibit 7 at 12. The ALJ found the CT scan evidence does not support a finding of complicated pneumoconiosis as Dr. DePonte did not diagnose the disease and found no large opacities. Decision and Order at 25.

The ALJ further noted that, while Dr. Ajjarapu initially diagnosed complicated pneumoconiosis based on Dr. DePonte's interpretation of the April 18, 2018 x-ray, she later agreed it was "fair to say there's some doubt" as to whether the large mass is complicated pneumoconiosis, but opined Claimant has simple pneumoconiosis.[9] Decision and Order at 25; Director's Exhibit 13; Employer's Exhibit 2 at 17. Finally, the ALJ found Claimant's treatment records reflect findings of right middle lobe atelectasis and do not support a finding of complicated pneumoconiosis as there is no diagnosis of the disease. Decision and Order at 13-14, 25; Director's Exhibit 18; Claimant's Exhibits 6, 7. Consequently, she found the evidence did not establish complicated pneumoconiosis at 20 C.F.R. §718.304(c). Decision and Order at 25.

[9] While the ALJ did not consider the medical opinion of Dr. Basheda, the physician opined Claimant does not have complicated pneumoconiosis. Employer's Exhibit 4.

Weighing the evidence as a whole, the ALJ found the evidence is not sufficient to establish complicated pneumoconiosis but instead reflects that, "while Claimant has a process in his right lung, it is due to atelectasis." Decision and Order at 25.

On appeal, the Director asserts the uncontradicted CT scan supports the existence of simple pneumoconiosis and "casts doubt" on Dr. Tarver's and Dr. Adcock's negative x-ray readings for complicated pneumoconiosis since neither physician diagnosed simple pneumoconiosis on these subsequent films. *Id*. While Drs. Tarver and Adcock noted changes in the lungs which they attributed to different causes, Dr. Tarver recommended a follow-up CT scan to determine the actual cause of those changes and neither physician noted evidence of simple pneumoconiosis. Director's Exhibit 19; Employer's Exhibits 6, 7.

Determining the credibility of the evidence, the weight it should be given, and the inferences to be drawn from it, are all within the purview of the ALJ. However, in considering the evidence all together, the ALJ must consider whether any of the evidence of one kind has implications as to the credibility and weight to be given evidence of another kind. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 532 (4th. Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). In weighing the medical evidence, the ALJ must consider the credibility of the physicians' explanations, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses, and must explain his findings. *See Hicks*, 138 F.3d at 532; *Akers*, 131 F.3d at 441. In finding that the preponderance of the x-ray evidence does not establish the existence of complicated pneumoconiosis, the ALJ failed to fully consider the x-ray interpretations of Drs. Tarver and Adcock, that Claimant does not have simple or complicated pneumoconiosis, with the CT scan evidence which includes notations as to both simple pneumoconiosis and atelectasis. As the ALJ did not fully consider the two together, we vacate her finding that the x-ray evidence does not establish the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a). *See Hicks*, 138 F.3d at 532; *Akers*, 131 F.3d at 441. Consequently, we vacate the ALJ's determination that the evidence as a whole does not establish complicated pneumoconiosis. 20 C.F.R. §718.304.

On remand, the ALJ must reconsider whether Claimant has established complicated pneumoconiosis at 20 C.F.R. §718.304(a) based on the x-rays, considering whether the earlier CT scan evidence affects the credibility and weight to be given the x-ray interpretations. The ALJ must weigh all relevant evidence on the issue of complicated pneumoconiosis together, interrelating the evidence from each category, before determining whether Claimant has complicated pneumoconiosis. *See Cox*, 602 F.3d at 283; *Scarbro*, 220 F.3d at 255-56. In rendering all of her credibility determinations on remand, the ALJ must explain her rationale and conclusions as the Administrative

Procedure Act (APA) requires.[10] *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

If Claimant establishes complicated pneumoconiosis, the ALJ must also determine if it arose from his coal mine employment.[11] 20 C.F.R. §718.203.

Invocation of the Section 411(c)(4) Presumption —Total Disability

In the interest of judicial economy, we also consider the ALJ's determination that Claimant did not invoke the Section 411(c)(4) presumption.

A miner is totally disabled if he has a pulmonary or respiratory impairment which, standing alone, prevents him from performing his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must consider all relevant evidence and weigh the evidence supporting total disability against the contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp*., 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp*., 9 BLR 1-195, 1-198 (1986), *aff'd on recon*., 9 BLR 1-236 (1987) (en banc).

The ALJ considered six pulmonary function studies conducted on July 3, 2014, August 8, 2016, December 12, 2016, February 9, 2018, April 18, 2018, and September 19, 2018. Decision and Order at 6-7, 18-19. The July 3, 2014, August 8, 2016, December 12, 2016, and February 9, 2018 studies produced non-qualifying values[12] without the administration of bronchodilators. Director's Exhibits 18, 21; Employer's Exhibit 5. The April 18, 2018 study produced qualifying values before the administration of

[10] The APA provides that every adjudicatory decision must include "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).

[11] Based on the ALJ's finding that Claimant had 27.01 years of coal mine employment, he is entitled to a presumption that his pneumoconiosis arose out of his coal mine employment, with the burden shifting to Employer to rebut it. 20 C.F.R. §718.203(b).

[12] A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendices B and C. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

bronchodilators, and non-qualifying values after the administration of bronchodilators. Director's Exhibit 13. The September 19, 2018 study was non-qualifying before and after the administration of bronchodilators. Director's Exhibit 20. As a preponderance of the pulmonary function studies were non-qualifying, the ALJ rationally found Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(i).[13] *See Hicks*, 138 F.3d at 532; *Akers*, 131 F.3d at 441; Decision and Order at 19.

Because none of the arterial blood gas studies produced qualifying values, the ALJ rationally found Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(ii). Decision and Order at 7, 19.

Because there is no evidence Claimant suffers from cor pulmonale with right-sided congestive heart failure, the ALJ rationally found Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 19.

Turning to the medical opinion evidence, the ALJ considered Dr. Ajjarapu's opinion that Claimant is totally disabled from his usual coal mine employment and the contrary opinion of Dr. Basheda.[14] Decision and Order at 20-21; Director's Exhibits 13, 20; Employer's Exhibits 2, 4. Dr. Ajjarapu opined that Claimant's April 18, 2018 pulmonary function study indicated a severe pulmonary impairment, which would render Claimant unable to perform his usual coal mine employment. Director's Exhibit 13. She subsequently testified her opinion was based solely on the results of her examination of Claimant, and she would have to reconsider her opinion if subsequent testing showed "perfectly normal spirometry." Director's Exhibit 13, Employer's Exhibit 2 at 33. Dr. Basheda opined that Claimant does not have a totally disabling respiratory impairment. Director's Exhibit 20; Employer's Exhibit 4 at 9-16. He explained that the results of his pulmonary function study were "normal" and the results of the April 18, 2018 pulmonary function study, while disabling, were due to something triggering Claimant's asthma that has since resolved. Employer's Exhibit 4 at 9-16.

[13] The ALJ erroneously stated that the April 18, 2018 study was non-qualifying before the administration of bronchodilators, when both the FEV1 and MVV values are less than the values specified in the tables at 20 C.F.R. Part 718, Appendix B. Decision and Order at 6; Director's Exhibit 13. However, any error is harmless as a preponderance of the pulmonary function studies are still non-qualifying for total disability. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[14] Prior to considering the medical opinion evidence, the ALJ determined Claimant's usual coal mine employment was working as a drill operator and blaster and required moderate to heavy levels of exertion. Decision and Order at 17.

The ALJ permissibly found Dr. Ajjarapu's diagnosis of total disability unpersuasive considering her statement that she would have to reconsider her opinion if later spirometry was normal and the subsequent normal pulmonary function testing which she did not have the opportunity to consider. *See Hicks*, 138 F.3d at 532; *Akers*, 131 F.3d at 441; Decision and Order at 21. She further permissibly credited Dr. Basheda's opinion as he had a more complete picture of Claimant's medical history, and he provided a credible, consistent, and well-reasoned explanation for his findings. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); Decision and Order at 20-21. Consequently, we affirm the ALJ's determination that the medical opinion evidence does not establish total disability.[15] 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 21. We therefore affirm the ALJ's determination that the evidence as a whole does not establish total disability, 20 C.F.R. §718.204(b)(2), and Claimant did not invoke the Section 411(c)(4) presumption.[16] 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305; Decision and Order at 21.

[15] The ALJ did not address Claimant's treatment records that were relevant to total disability. Director's Exhibit 18; Claimant's Exhibits 6-8. While the record reflects two diagnoses of a moderate restrictive disease in 2015 and in 2019, the diagnoses are based on pulmonary function studies not in the record. Claimant's Exhibit 6 at 14; 7 at 7. Consequently, any error in not considering this evidence is harmless. *Larioni*, 6 BLR at 1-1278.

[16] Because we have affirmed the ALJ's determination that Claimant did not establish total disability and therefore cannot invoke the Section 411(c)(4) presumption, we need not address her finding that the evidence is not sufficient to establish that Claimant's 28.81 years of surface coal mine employment occurred in conditions substantially similar to those in an underground mine.

Consequently, the ALJ's Decision and Order Denying Benefits is affirmed in part and vacated in part, and the case is remanded to the ALJ for further proceedings consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge