U.S. Department of Labor

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

BRB Nos. 24-0475 BLA
and 24-0476 BLA

KATHERINE SMITH
(o/b/o and Widow of JOHN SMITH)

Claimant-Respondent

v.

MOUNTAIN LAUREL RESOURCES COMPANY

and

WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND

Employer/Carrier-Petitioners

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 06/20/2025

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Lystra A. Harris, Administrative Law Judge, United States Department of Labor.

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

Chris M. Green and Wesley A. Shumway (Spilman Thomas & Battle, PLLC), Charleston, West Virginia, 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) Lystra A. Harris's Decision and Order Awarding Benefits (2020-BLA-05720 and 2020-BLA-05728) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on February 12, 2019, and a survivor's claim filed on February 24, 2020.[1]

The ALJ found Claimant established the Miner had 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); *see* 20 C.F.R. §718.304. She further found the Miner's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits in the miner's claim. 20 C.F.R. §718.203(b). Based on the award of benefits in the miner's claim, the ALJ found Claimant derivatively entitled to survivor's benefits pursuant to Section 422(*l*) of the Act,[2] 30 U.S.C. §932(*l*) (2018).

On appeal, Employer asserts 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 brief unless requested.

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

[1] Claimant is the widow of the Miner, who died on February 3, 2020. Survivor's Claim (SC) Director's Exhibit 6. Claimant is pursuing the miner's claim on her husband's behalf and her own survivor's claim.

[2] Section 422(*l*) of the Act provides that the survivor of a miner who was eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits, without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the Miner performed his coal mine employment in West

Miner's Claim

Invocation of the Section 411(c)(3) Presumption

Section 411(c)(3) of the Act provides an irrebuttable presumption that a miner's death was due to pneumoconiosis if he suffered 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 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 ALJ must determine whether the evidence in each category tends to establish the existence of complicated pneumoconiosis and then must weigh the evidence together at subsections (a), (b), and (c) before determining whether Claimant has invoked the irrebuttable presumption. *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56 (4th Cir. 2000); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc). Claimant bears the burden of proof to establish the existence of complicated pneumoconiosis. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994).

The ALJ found that the x-ray evidence supports a finding of complicated pneumoconiosis and that the Miner's computed tomography (CT) scans, medical opinion evidence, and treatment records neither support nor refute complicated pneumoconiosis. Decision and Order at 12-27. Weighing the evidence together, the ALJ found it established the Miner had complicated pneumoconiosis. *Id.* at 26-27.

X-rays – 20 C.F.R. §718.304(a)

The ALJ considered six interpretations of two x-rays, dated March 14, 2019, and September 4, 2019, which were both interpreted by physicians dually qualified as Board-certified radiologists and B readers. Decision and Order at 13-16. Drs. DePonte and Adcock interpreted the March 14, 2019 x-ray as positive for both simple and complicated pneumoconiosis, identifying a large Category A opacity. Miner's Claim (MC) Director's Exhibit 12; Claimant's Exhibit 2. Dr. Meyer found the March 14, 2019 x-ray negative for simple and complicated pneumoconiosis, identifying a nodule in the right upper lobe measuring 1.2 x 2.1 centimeters that he opined may be inflammatory or neoplastic. MC Director's Exhibit 16 at 4-5.

Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 17.

Drs. DePonte and Crum interpreted the September 4, 2019 x-ray as positive for both simple and complicated pneumoconiosis, identifying a large Category A opacity. MC Director's Exhibits 14, 15. Dr. Meyer found the x-ray negative for simple and complicated pneumoconiosis, noting an enlarging nodule in the right upper zone measuring 1.9 x 3 cm suspicious for primary lung cancer. MC Director's Exhibit 16 at 2-3.

Weighing the x-rays together, the ALJ concluded Claimant established the Miner had simple and complicated pneumoconiosis. 20 C.F.R. §§718.201, 718.304(a); Decision and Order at 15-16. Regarding the March 14, 2019 x-ray, the ALJ found a preponderance of its readings establish simple and complicated pneumoconiosis because Drs. DePonte's and Adcock's readings are corroborative, whereas Dr. Meyer was the only physician to opine the x-ray did not show pneumoconiosis. Decision and Order at 16. Regarding the September 4, 2019 x-ray, the ALJ again noted Dr. Meyer was the only radiologist to opine there was no evidence of pneumoconiosis, whereas Drs. DePonte and Crum both found simple and complicated pneumoconiosis. *Id*. Thus, she gave Drs. DePonte's and Crum's readings more probative weight than the contrary opinion of Dr. Meyer. *Id.*

Employer asserts the ALJ erred in finding the x-ray evidence supports a finding of complicated pneumoconiosis when only "one of six B readings unequivocally diagnoses the disease." Employer's Brief at 15-22. We disagree.

Contrary to Employer's argument, the ALJ did not shift the burden to Employer to rule out complicated pneumoconiosis. Employer's Brief at 16-17. The ALJ properly acknowledged Claimant bears the burden of proof and ultimately concluded she met her burden of establishing the Miner had complicated pneumoconiosis. Decision and Order at 12-13, 26-27. Moreover, Claimant is not required to rule out all possible causes of an opacity; her burden is to establish it is more likely than not that the Miner suffered from complicated pneumoconiosis. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 282-83 (4th Cir. 2010). In doing so, a physician's "refusal to express a diagnosis in categorical terms is candor, not equivocation." *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366 (4th Cir. 2006). Thus, although Drs. DePonte and Crum recommended a CT scan to exclude other causes for the opacity, such as malignancy or neoplasm, their comments do not undermine their conclusions because they explicitly diagnosed a Category A large opacity of complicated pneumoconiosis on their International Labour Organization x-ray forms. MC Director's Exhibits 12, 14, 15. Therefore, the ALJ permissibly found Drs. DePonte's and Crum's opinions are supportive of a finding of complicated pneumoconiosis. *See 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 15-16.

Because the ALJ found that Dr. Meyer's readings were the only ones not supportive of a finding of complicated pneumoconiosis, she rationally found the x-ray evidence as a

whole supports a finding of the disease. Decision and Order at 16; *see* 20 C.F.R. §718.304(a). Thus, we affirm the ALJ's conclusion that the x-ray evidence supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a). Decision and Order at 16.

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

The ALJ next considered the "other medical evidence," including the CT scans, medical opinions, and the Miner's treatment notes. Decision and Order at 17-26.

CT Scans

The ALJ considered six readings of three CT scans, dated April 26, 2019, October 3, 2019, and January 21, 2020. Decision and Order at 17-19. Dr. Meyer reviewed each CT scan and opined they show a right upper lobe mass consistent with primary lung cancer and do not show clinical pneumoconiosis. Employer's Exhibits 4-6. Dr. DePonte also reviewed each CT scan and opined the right upper lobe opacity constituted complicated pneumoconiosis. Claimant's Exhibit 1. The ALJ found that, as each CT scan was interpreted by two dually-qualified physicians, the readings of the CT scans are overall in equipoise. Decision and Order at 19.

We disagree with Employer's argument that the ALJ erred in not finding Dr. DePonte's interpretations equivocal. Employer's Brief at 18-21. As discussed *supra*, Claimant's burden merely is to establish it is "more likely than not" that he suffers from complicated pneumoconiosis. *Lane v. Union Carbide Corp.*, 105 F.2d 166, 174 (4th Cir 1997). The ALJ acknowledged Dr. DePonte's note that cancer and complicated pneumoconiosis can only be excluded with a biopsy or autopsy but that the Miner's large opacity displayed "interval growth" in the typical location of the most severe changes of coal workers' pneumoconiosis, including progressive massive fibrosis. Decision and Order at 18; Claimant's Exhibit at 1. She therefore permissibly found both physicians' interpretations in equipoise. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 18.

Medical Opinions

The ALJ considered the medical opinions of Drs. Werntz, Spagnolo, and Meyer. Decision and Order at 20-25. Dr. Werntz opined the Miner had progressive massive fibrosis based on his chest x-ray. MC Director's Exhibit 12 at 6. Dr. Spagnolo opined the Miner did not have pneumoconiosis and that he "consider[s] the lesion to be a malignancy until proven otherwise[,]" noting the Miner had normal lung function on his arterial blood gas studies. Employer's Exhibit 7 at 6. Dr. Meyer also opined the Miner had lung cancer rather than complicated pneumoconiosis. Employer's Exhibit 9. The ALJ gave little

weight to each physician's opinion and found the medical opinions neither support nor weigh against a finding of complicated pneumoconiosis. Decision and Order at 24.

Employer argues the ALJ erred in failing to compare Drs. Meyer's and Spagnolo's credentials to those of Dr. Werntz. Employer's Brief at 22-28. We disagree. An ALJ may, in his or her discretion, assign more weight to a physician's report based on that physician's superior qualifications, *Scott v. Mason Coal Co.*, 14 BLR 1-37 (1990) (en banc recon.), but is not required to do so, *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc).

Employer also argues the ALJ erred in discrediting Dr. Spagnolo's opinion because he did not substantively consider Dr. DePonte's CT scan readings. *Id*. at 28-29. We disagree.

The ALJ noted Dr. Meyer was the only radiologist to also provide a medical opinion report in this case. Decision and Order at 25. She permissibly found his opinion that the Miner did not have complicated pneumoconiosis unpersuasive because the doctor relied on x-ray readings he opined do not support a finding of simple or complicated pneumoconiosis, contrary to her finding that the x-ray evidence as a whole supports a finding of both the simple and complicated forms of the disease. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211-12 (4th Cir. 2000) (ALJ erred in relying on a doctor's opinion of simple clinical pneumoconiosis because it was based on a positive x-ray which the ALJ had discredited); *Furgerson v. Jericol Mining Inc.*, 22 BLR 1-216, 1-226 (2002) (en banc) (reliability of a physician's opinion may be "called into question" when the diagnostic tests upon which the physician based his diagnosis have been undermined); *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984); Decision and Order at 25. Regarding Dr. Spagnolo, the ALJ permissibly discredited his opinion because he adopted Dr. Meyer's opinion and findings without fully considering Drs. Adcock's and DePonte's contrasting opinions. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 24.

As the ALJ permissibly discredited all three physicians' opinions, we affirm her finding that the medical opinion evidence neither supports nor weighs against a finding of complicated pneumoconiosis.[4] Decision and Order at 24.

[4] The ALJ also weighed the Miner's hospitalization and treatment notes, gave them little probative weight, and thus found they do not support Claimant's burden to establish complicated pneumoconiosis. Decision and Order at 26.

As Employer raises no further argument, we affirm the ALJ's findings that all the relevant evidence considered together establishes complicated pneumoconiosis. 20 C.F.R. §718.304.

We further affirm, as unchallenged on appeal, the ALJ's determination that the Miner's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 27-28. We therefore affirm the ALJ's conclusion that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis and, therefore, the award of benefits in the miner's claim. 20 C.F.R. §718.304; Decision and Order at 28.

Survivor's Claim

The ALJ determined Claimant established all the necessary elements for automatic entitlement to survivor's benefits. 30 U.S.C. §932(*l*); Decision and Order at 28-29. Because we have affirmed the award of benefits in the miner's claim and Employer raises no specific challenge to the award of benefits in the survivor's claim,[5] we affirm it. 30 U.S.C. §932(*l*); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

[5] As we affirm the ALJ's finding that Claimant established all elements for automatic entitlement to survivor's benefits, we need not address Employer's argument regarding whether the ALJ relied upon evidence in excess of the evidentiary limitations in considering the survivor's claim. Employer's Brief at 29-30.

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