

U.S. Department of Labor

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



BRB No. 21-0145 BLA

RICKY W. MURPHY)	
)	
Claimant-Respondent)	
)	
v.)	
)	
CLINCHFIELD COAL COMPANY)	
)	DATE ISSUED: 3/15/2022
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits on Remand of Jonathan C. Calianos, District Chief Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Employer appeals District Chief Administrative Law Judge (ALJ) Jonathan C. Calianos's Decision and Order Awarding Benefits on Remand (2017-BLA-06104) rendered on a claim filed pursuant to the Black Lung Benefits Act (the Act), as amended,

30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on February 22, 2016 and is before the Benefits Review Board for the second time.¹

In a Decision and Order Awarding Benefits dated December 28, 2018, the ALJ credited Claimant with fifteen years of coal mine employment and found he has complicated pneumoconiosis. Thus Claimant 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); 20 C.F.R. §718.304. Therefore the ALJ awarded benefits.

Considering Employer's appeal, the Board affirmed the ALJ's finding that Claimant established at least fifteen years of coal mine employment. *Murphy v. Clinchfield Coal Co.*, BRB No. 19-0210 BLA, slip op. at 2 n.3, (Apr. 15, 2020) (unpub.). The Board also affirmed, as unchallenged, the ALJ's decision to assign reduced weight to the medical opinions of Drs. Ajarapu, Fino, and Sargent regarding the existence of complicated pneumoconiosis. *Id.* at 3 n.4. The Board vacated, however, the ALJ's findings that the x-ray and computed tomography (CT) scan evidence establish complicated pneumoconiosis because the ALJ failed to adequately explain his basis for resolving the conflict in the evidence. *Id.* at 5-6. Therefore, the Board vacated the ALJ's finding that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis and the award of benefits and remanded the case for further consideration. *Id.* at 6-7.

On remand, the ALJ again found Claimant established complicated pneumoconiosis. Consequently, he found Claimant 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). He further found Claimant's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits. 20 C.F.R. §718.203(b).

On appeal, Employer argues the ALJ erred in finding complicated pneumoconiosis. Neither Claimant nor the Director, Office of Workers' Compensation Programs, has 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.² 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman and Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

¹ Claimant previously filed a claim, but he withdrew it. Director's Exhibit 1. A withdrawn claim is considered not to have been filed. *See* 20 C.F.R. §725.306.

² This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in Virginia and

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;³ 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); *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-rays and CT scans establish complicated pneumoconiosis.⁴ 20 C.F.R. §718.304(a), (c); Decision and Order on Remand at 9, 13. Weighing all the evidence together, he concluded Claimant established complicated pneumoconiosis. Decision and Order on Remand at 13-14.

Employer argues the ALJ erred in weighing the x-ray evidence. 20 C.F.R. §718.304(a); Employer's Brief at 7-10. The ALJ weighed eleven interpretations of five x-rays dated October 13, 2014, March 30, 2016, April 4, 2017, April 19, 2017, and March 2, 2018. Decision and Order on Remand at 5-9; Director's Exhibits 15-17; Claimant's Exhibits 1-5; Employer's Exhibits 1-3. He noted all the physicians who read these x-rays are dually qualified as B readers and Board-certified radiologists. Decision and Order on Remand at 6.

Dr. DePonte read the October 13, 2014 and April 19, 2017 x-rays as positive for complicated pneumoconiosis, Category A, but Dr. Colella read them as negative for the disease. Claimant's Exhibits 1, 3; Employer's Exhibit 5; Director's Exhibit 17. Dr. Miller read the April 4, 2017 and March 2, 2018 x-rays as positive for complicated pneumoconiosis, Category A, while Dr. Colella read them as negative for the disease. Claimant's Exhibits 2, 4; Employer's Exhibits 3, 5. The ALJ found the readings of the

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

³ The record contains no biopsy evidence. 20 C.F.R. §718.304(b).

⁴ Contrary to Employer's argument, the ALJ on remand did not find Claimant established complicated pneumoconiosis based on Dr. Ajarapu's medical opinion. Employer's Brief at 6; Decision and Order on Remand at 13.

October 13, 2014, April 4, 2017, April 19, 2017, and March 2, 2018 x-rays in equipoise because an equal number of dually-qualified radiologists read each x-ray as positive and negative for complicated pneumoconiosis. Decision and Order on Remand at 7.

With respect to the March 30, 2016 x-ray, the ALJ noted Drs. DePonte and Alexander read it as positive for complicated pneumoconiosis, Category A, while Dr. Seaman read it as negative for the disease. Decision and Order on Remand at 5; Director's Exhibits 15, 16; Claimant's Exhibit 5. The ALJ found this x-ray positive based on the two positive readings by Drs. DePonte and Alexander as compared to the one reading by Dr. Seaman and on the number and qualifications of the readers. Decision and Order on Remand at 6-7.

Employer argues the ALJ did not adequately explain his rationale for crediting the March 30, 2016 x-ray interpretations of Drs. DePonte and Alexander over Dr. Seaman's interpretation, and therefore engaged in an improper "headcount." Employer's Brief at 7-10. We disagree.

In resolving the conflicting readings of the March 30, 2016 x-ray, the ALJ considered the physicians' credentials, including the length of their radiological experience, amount of clinical practice, and radiological teaching positions, in addition to their status as dually-qualified radiologists. Decision and Order on Remand at 6-7. He observed that with the exception of Dr. Seaman, the physicians "have similar years of relevant experience, dating back to either the mid-1980s or early-1990s." *Id.* In contrast, he noted Dr. Seaman had been in practice since 2011 and opined "it is unclear what, if any, clinical experience she has outside of academia." *Id.* at 7. In light of the totality of their qualifications, and the greater number of their positive readings, the ALJ found the x-ray to be positive. Although the ALJ did not explain why he believed their greater clinical practice experience was relevant, any error in this regard is harmless as he considered both the number of positive and negative readings in conjunction with the physicians' qualifications, and had he merely considered the fact that the physicians are dually qualified, as Employer suggests, the results would have been the same. *See Adkins v. Directors, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992). Moreover, he was not compelled to give greater weight to Dr. Seaman's reading because of her position at a university, as Employer suggests. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988).

Because the ALJ conducted both a qualitative and quantitative analysis of the x-ray evidence, we affirm his reliance on Drs. DePonte's and Alexander's readings to find the March 30, 2016 x-ray positive for complicated pneumoconiosis. *See Adkins*, 958 F.2d at 52; Decision and Order on Remand at 7-8. We therefore affirm the ALJ's finding Claimant

established complicated pneumoconiosis based on the x-ray evidence. 20 C.F.R. §718.304(a); Decision and Order on Remand at 8.

Employer next argues the ALJ erred in weighing the CT scan evidence. 20 C.F.R. §718.304(c); Employer's Brief at 10-13. The ALJ considered ten interpretations of five CT scans dated July 15, 2015, December 11, 2015, December 14, 2016, January 9, 2017, and April 17, 2017. Claimant's Exhibits 6-8; Employer's Exhibits 4-8. Dr. DePonte interpreted all five CT scans as positive for complicated pneumoconiosis, while Dr. Ramakrishnan interpreted all five as negative for complicated pneumoconiosis. *Id.* The ALJ found Dr. DePonte more qualified than Dr. Ramakrishnan and credited her positive interpretations over his negative interpretations. Decision and Order on Remand at 12-13. Thus he concluded the CT scan evidence supports a finding of complicated pneumoconiosis. *Id.*

Employer asserts the ALJ erred in crediting Dr. DePonte's interpretations of the CT scans over Dr. Ramakrishnan's interpretations. Employer's Brief at 10, 12-13. In weighing the conflicting evidence, the ALJ observed both physicians are Board-certified radiologists, but Dr. DePonte is also a B-reader. Decision and Order at 12. He noted Dr. DePonte has been in private practice since 1985 and holds an Adjunct Faculty position at DeBusk College of Osteopathic Medicine. *Id.* at 12-13. Thus he found Dr. DePonte highly qualified. *Id.* He stated that while Dr. Ramakrishnan's letterhead indicates he was employed with Clinch Valley Medical Center, because Dr. Ramakrishnan's curriculum vitae is not in the record he was unable to assess Dr. Ramakrishnan's other credentials. *Id.* at 13. Given his finding Dr. DePonte to be highly credentialed and Dr. Ramakrishnan's credentials "largely unknown," the ALJ permissibly accorded greater weight to Dr. DePonte's positive interpretations of the CT scan evidence. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins*, 958 F.2d at 52-53; Decision and Order on Remand at 13. We therefore affirm the ALJ's determination that the CT scan evidence establishes complicated pneumoconiosis. 20 C.F.R. §718.304(c).

As Employer raises no further challenge to the ALJ's determination that Claimant established complicated pneumoconiosis, we affirm that determination and his conclusion that Claimant invoked the irrebuttable presumption at 20 C.F.R. §718.304. Decision and Order 13-14. We further affirm, as unchallenged on appeal, the ALJ's determination that Claimant's complicated pneumoconiosis arose out of his coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.203(b); Decision and Order at 13.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge