U.S. Department of Labor

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

BRB No. 23-0306 BLA

CARL E. LILLY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
GREENBRIER MINERALS LLC	)	
	)	
and	)	
	)	
SUMMITPOINT INSURANCE COMPANY	)	DATE ISSUED: 03/13/2024
	)	
Employer/Carrier-Petitioners	)	
	)	
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 of Lauren C. Boucher, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

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

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Lauren C. Boucher's Decision and Order Awarding Benefits (2021-BLA-05735) rendered on a claim filed on November 4, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with thirty-five years of underground coal mine employment. She found he established complicated pneumoconiosis and therefore 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. Further, she 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 Claimant established complicated pneumoconiosis.[1] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed 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.[2] 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).

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

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

[1] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established thirty-five years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5.

[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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 18-19.

expected to yield a result equivalent to (a) or (b). *See* 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 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, 1-33-34 (1991) (en banc).

The ALJ found the x-ray evidence supports a finding of complicated pneumoconiosis. Decision and Order at 9-10. She determined the computed tomography (CT) scan evidence is in equipoise, the medical opinions are entitled to little weight, and Claimant's treatment records are entitled to no weight. *Id.* at 10-20. Weighing all the evidence together, she concluded Claimant established the disease. *Id.* at 20.

20 C.F.R. §718.304(a) - X-rays

The ALJ considered eight interpretations of four x-rays dated November 19, 2019, January 7, 2021, January 27, 2022, and February 22, 2022. Decision and Order at 7-10; Director's Exhibits 15, 24, 26, 28; Claimant's Exhibits 1, 4, 6; Employer's Exhibit 9. All of the interpreting physicians are dually-qualified B readers and Board-certified radiologists, except Dr. Ranavaya, who is a B reader but not a Board-certified radiologist. Decision and Order at 9.

Drs. DePonte and Crum read the November 19, 2019 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Adcock read it as negative for complicated pneumoconiosis. Director's Exhibits 15, 24, 26. Giving "equal weight to each interpretation based on the physician's equivalent qualifications," the ALJ found the November 19, 2019 x-ray positive for complicated pneumoconiosis based on the greater overall weight of the positive readings of the x-ray. Decision and Order at 10.

Dr. Crum read the January 7, 2021 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Ranavaya read it as negative for complicated pneumoconiosis. Director's Exhibit 28; Claimant's Exhibit 6. Because the ALJ considered Dr. Crum to be better qualified, she found the January 7, 2021 x-ray positive for complicated pneumoconiosis. Decision and Order at 8 n.14, 10.

Dr. DePonte read the January 27, 2022 x-ray as positive for complicated pneumoconiosis, Category A. Claimant's Exhibit 1. As there are no other readings of this x-ray, the ALJ found it positive for complicated pneumoconiosis. Decision and Order at 10.

Dr. DePonte read the February 22, 2022 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Adcock read it as negative for complicated

pneumoconiosis. Claimant's Exhibit 4; Employer's Exhibit 9. The ALJ found the February 22, 2022 x-ray readings in equipoise because an equal number of dually-qualified radiologists read it as positive and negative for the disease. Decision and Order at 10.

Weighing all the x-rays together, the ALJ found three x-rays are positive for complicated pneumoconiosis and the readings of the other one in equipoise and therefore determined the x-ray evidence supports a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a); Decision and Order at 10.

Employer argues the ALJ improperly analyzed the x-ray evidence and appeared to "count heads" in reaching her finding. Employer's Brief at 5-6. Contrary to Employer's argument, the ALJ properly performed both a qualitative and quantitative analysis of the x-ray evidence, taking into consideration the physicians' qualifications 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 7-10.

Additionally, we reject Employer's contention that the ALJ failed to properly resolve the "inconsistencies" between Dr. Crum's identification of linear opacities and Drs. DePonte's and Adcock's identification of rounded opacities.[3] Employer's Brief at 6-8. The International Labour Organization (ILO) classification system specifically provides that small opacities of pneumoconiosis may be classified as round (p, q, r) or irregular (s, t, u). *Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses*, Revised edition 2011 (ILO Guidelines) at 5-6.[4] The regulations do not

[3] Dr. DePonte identified Category A large opacities, type q primary and type r secondary small opacities in all six lung zones with a profusion of 1/1 or 1/2, and atherosclerotic aorta (aa), coalescence of small opacities (ax), plate atelectasis (pa), and parenchymal bands (pb). Director's Exhibit 15; Claimant's Exhibits 1 at 26; 4 at 23. Dr. Crum identified Category A large opacities, type q or r primary and type t secondary small opacities in all six lung zones with a profusion of 2/2 or 2/3, and atherosclerotic aorta (aa), coalescence of small opacities (ax), pleural effusion (ef), fractured ribs (fr), enlargement of hilar or mediastinal lymph nodes (hi), and pleural thickening of the interlobular fissure (pi). Director's Exhibit 24; Claimant's Exhibit 6. Dr. Adcock identified type r primary and type r secondary small opacities in the upper four lung zones with a profusion of 2/1 or 2/2, and atherosclerotic aorta (aa) and coalescence of small opacities (ax) or abnormality of cardiac size or shape (co). Director's Exhibit 26; Employer's Exhibit 9.

[4] The ILO x-ray form allows a radiologist to identify any parenchymal abnormalities consistent with pneumoconiosis. 20 C.F.R. §718.102 (standards for x-rays), *incorporating by reference* ILO Guidelines. If the radiologist indicates there are such abnormalities, the

distinguish between the shapes of opacities that may qualify for simple or complicated pneumoconiosis. 20 C.F.R. §718.102.

Moreover, while Employer is correct that Drs DePonte, Crum, and Adcock marked different symbols for other radiological findings they saw on Claimant's x-rays, Employer fails to explain how the ALJ erred in not considering those symbols or why this alleged error undermines her reliance on Drs. Crum's and DePonte's positive identification of large opacities consistent with complicated pneumoconiosis. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); Employer's Brief at 6-8.

Additionally, Employer asserts before the Board, as it did before the ALJ, that Drs. DePonte's and Crum's positive readings should be discounted because they were unaware of Claimant's history of pulmonary embolism and his diagnosis of having asbestosis. Employer speculates that the physicians may have changed their readings if provided this additional information. Decision and Order at 10; *see* Employer's Brief at 7-8; Employer's Post-Hearing Brief at 7. However, the ALJ specifically addressed Employer's contention and rejected it, noting that "Dr. Adcock's CT scan and x-ray interpretations do not reflect any awareness of these conditions either." Decision and Order at 10. We see no error in the ALJ's conclusion that the record is "unclear what, if any, effect Claimant's past medical conditions may have had on his x-rays." *Id.* Thus, we affirm the ALJ's permissible reliance on Drs. DePonte's and Crum's readings to find Claimant established complicated pneumoconiosis based on the x-ray evidence at 20 C.F.R. §718.304(a). *See* 30 U.S.C. §921(c)(3).

20 C.F.R. §718.304(c)[5] – Other Medical Evidence

CT Scans

The ALJ considered three interpretations of a CT scan dated March 11, 2019. Decision and Order at 11-13; Director's Exhibits 22, 27; Employer's Exhibit 2. Dr. Crum, a Board-certified radiologist and B reader, interpreted the CT scan as showing large

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radiologist should identify the profusion, affected zones of the lung, shape (rounded or irregular), and size of any opacities. ILO Guidelines at 3-6. With respect to size and shape, a radiologist may mark small, rounded opacities via the three size ranges denoted by the letters p, q, and r representing increasing size, or small, irregular opacities denoted by the letters s, t, and u representing increasing size. *Id.* at 5-6.

[5] The ALJ noted there is no biopsy or autopsy evidence in the record. 20 C.F.R. §718.304(b); Decision and Order at 6 n.11.

opacities that were consistent with complicated pneumoconiosis, while Dr. Adcock, a Board-certified radiologist and B reader, interpreted the scan as positive for simple pneumoconiosis and did not identify any large opacities. Director's Exhibits 22 at 2; 27 at 2-3. Dr. Abramowitz, a Board-certified radiologist,[6] identified bilateral pulmonary nodules with upper lobe predominance that were "suggestive of occupational pneumoconiosis." Employer's Exhibit 2 at 15-16.

The ALJ noted all the readers of the CT scan agreed Claimant had simple pneumoconiosis. She gave no probative weigh to Dr. Abramowitz's interpretation because it was unclear whether he was a B reader and, since the reading was contained in Claimant's treatment records from a cancer center, it was unclear whether he considered complicated pneumoconiosis as a diagnosis. Decision and Order at 12-13. The ALJ concluded, based on the conflicting interpretations of Drs. Adcock and Crum, that the CT scan evidence is in equipoise. *Id.* at 13; Director's Exhibits 22, 27.

Employer contends it is irrelevant whether Dr. Abramowitz is a B reader because CT scans are not classified under the ILO system. Employer's Brief at 8. It also argues that the ALJ ignored that Dr. Abramowitz diagnosed simple pneumoconiosis but identified no large opacities consistent with complicated pneumoconiosis. *Id.* at 8-10. Thus, Employer contends the ALJ should have inferred the reading was negative for complicated pneumoconiosis, consistent with Dr. Adcock's reading. *Id.* at 8-10.

Even if we were to agree that Dr. Abramowitz's B reader status is non-determinative of his qualifications to interpret the CT scan, the ALJ gave a valid reason for giving no weight to his reading. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). The ALJ accurately noted Dr. Abramowitz found bilateral pulmonary nodules with upper lobe predominance and stated they were suggestive of *occupational pneumoconiosis*. Decision and Order at 12; Employer's Exhibit 2 at 15-16. Because Dr. Abramowitz's report did not specify whether the findings were suggestive of simple or complicated pneumoconiosis and he did not identify the size of the nodules, we see no error in the ALJ's determination that it was not clear whether Dr. Abramowitz considered if Claimant had complicated pneumoconiosis. *See Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-218-19 (1984) (ALJ has discretion to determine the weight to accord diagnostic testing that is silent on the existence of complicated pneumoconiosis); Decision and Order at 12-13.

[6] The ALJ noted Dr. Abramowitz's credentials are not in the record but determined he is a Board-certified radiologist based on an online review of an American Board of Radiology internet site, after giving the parties notice. Decision and Order at 11 n.20.

Employer also argues Dr. Crum's CT scan reading is not credible because he never explained why he saw a Category B opacity on the March 11, 2019 scan when he saw only Category A opacities on the November 19, 2019 and January 7, 2021 x-rays. Employer's Brief at 9-10. However, by Employer's own admission, x-rays and CT scans are separate diagnostic tests, and Employer has not explained how Dr. Crum's identification of Category A opacities on x-rays necessarily undermines his identification of even larger opacities by different diagnostic means. 20 C.F.R. §802.211(b); *see Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); Director's Exhibits 22 at 2; 24; Claimant's Exhibit 6. We see no error in the ALJ's finding that Dr. Crum's identification of 1.3-, 1.7-, and 3.3-centimeter opacities in Claimant's right lung, which he stated would correspond with Category B opacities, was sufficient to establish complicated pneumoconiosis. *See* 30 U.S.C. §921(c)(3); *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366 (4th Cir. 2006); *Scarbro*, 220 F.3d at 255-56; Decision and Order at 12-13, 12 n.21; Director's Exhibit 22 at 2.

Employer's arguments amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Consequently, we affirm the ALJ's finding that the CT scan evidence is in equipoise based on the two conflicting interpretations by dually-qualified radiologists.[7] 20 C.F.R. §718.304(c); *see Addison*, 831 F.3d at 256-57; *Adkins*, 958 F.2d at 52-53; Decision and Order at 13.

Medical Opinions

The ALJ also considered five medical opinions. Drs. Habre, Sarodia, and Shady diagnosed complicated pneumoconiosis, while Drs. Ranavaya and Farney opined Claimant does not have the disease. Decision and Order at 13-19; Director's Exhibits 15, 28, 31; Claimant's Exhibits 1, 4, 8; Employer's Exhibits 3-5. The ALJ found "the physician opinion evidence adds little to the analysis of complicated pneumoconiosis because each physician based their opinion primarily (if not entirely) on the x-ray evidence." Decision and Order at 17. She therefore concluded the medical opinions do not aid in establishing or refuting the presence of complicated pneumoconiosis. *Id.* at 19.

Contrary to Employer's contention, we see no error in the ALJ's rationale for rejecting the opinions of its medical experts based on her determinations regarding the x-

[7] There is no merit to Employer's assertion that the ALJ did not address Dr. Adcock's comment that CT scans are superior to x-rays. Employer's Brief at 7, 10. The ALJ acknowledged Dr. Adcock's comment but ultimately concluded the CT scan evidence is inconclusive. Decision and Order at 11 n.19, 13.

ray and CT scan evidence. Employer's Brief at 10-12. The ALJ accurately noted that both Drs. Ranavaya and Farney reviewed "substantial radiographic evidence" and that Dr. Ranavaya's opinion was based on his own reading of the January 7, 2021 x-ray, as well as Dr. Adcock's x-ray and CT scan readings. Decision and Order at 14-15, 18; Director's Exhibit 28 at 5, 9; Employer's Exhibit 5 at 27-29. In addition, the ALJ accurately noted Dr. Farney's opinion was based largely on Dr. Adcock's x-ray readings. Decision and Order at 15-16, 18-19; Employer's Exhibits 3 at 14-16; 4 at 34-35. The ALJ permissibly found their opinions contrary to her finding that a preponderance of the x-ray evidence is positive for complicated pneumoconiosis and the weight of the CT scan evidence is inconclusive for the disease, findings we have already affirmed. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 212 (4th Cir. 2000) (medical opinion based on a discredited x-ray is not probative evidence); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

Employer's arguments regarding these opinions amount to a request to reweigh the evidence, which we are not empowered to do. *See Anderson*, 12 BLR at 1-113. Because it is supported by substantial evidence, we affirm the ALJ's finding that the medical opinion evidence neither supports nor weighs against a finding of complicated pneumoconiosis.[8] 20 C.F.R. §718.304(c); Decision and Order at 19.

Because Employer raises no further arguments, we affirm the ALJ's finding that all the relevant evidence considered together establishes complicated pneumoconiosis. 20 C.F.R. §718.304; *see Melnick*, 16 BLR at 1-33-34; Decision and Order at 20. We further affirm, as unchallenged, the ALJ's finding that Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 20-21. We therefore affirm the ALJ's finding that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis.

[8] Employer argues the ALJ did not adequately consider Dr. Ranavaya's and Farney's opinions that also specifically discussed Claimant's history of asbestos exposure in concluding he did not have complicated pneumoconiosis. Employer's Brief at 10-12. Because the ALJ gave permissible reasons for rejecting Drs. Ranavaya's and Farney's opinions, we need not address Employer's additional challenges to the ALJ's evaluation of their opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Decision and Order at 18-19; *id.* at 10-12.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge