U.S. Department of Labor

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

BRB No. 24-0144 BLA

DANNY R. DICKENS	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	**NOT-PUBLISHED**
MARFORK COAL COMPANY	)	
	)	
Employer-Petitioner	)	
	)	DATE ISSUED: 03/23/2026
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 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.

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West Virginia, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Lystra A. Harris's Decision and Order Awarding Benefits (2021-BLA-05435) rendered on a claim filed on July 31, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted Employer's concession that Claimant worked for at least 23.8 years in underground coal mine employment and found he established complicated pneumoconiosis. Thus, she found he 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); 20 C.F.R. §718.304. She further found Claimant's complicated pneumoconiosis arose out of his coal mine employment, 20 C.F.R. §718.203, and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established complicated pneumoconiosis. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file 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.[1] 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, 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 chest 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, 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 Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

[1] 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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 8, 9; Hearing Tr. at 24.

The ALJ found the interpretations of the chest x-ray evidence and computed tomography (CT) scans were in equipoise.[2] 20 C.F.R. §718.304(a), (c); Decision and Order at 12, 14. She found the medical opinion evidence supports a finding of complicated pneumoconiosis, while Claimant's treatment record evidence does not. Decision and Order at 19. Weighing the evidence together, she found Claimant established he had complicated pneumoconiosis. *Id.* at 20.

X-ray Evidence

The ALJ considered ten interpretations of four chest x-rays dated September 5, 2019, October 28, 2020, June 4, 2021, and July 11, 2021. All the physicians who interpreted the x-rays are Board-certified radiologists and B readers. Drs. DePonte and Crum read the September 5, 2019 chest x-ray as positive for complicated pneumoconiosis, Category A, while Drs. Seaman and Meyer read the x-ray as negative for the disease. Director's Exhibits 18, 22; Employer's Exhibits 3, 4. Dr. Crum read the October 28, 2020 chest x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Seaman read the x-ray as negative for the disease. Claimant's Exhibit 9; Employer's Exhibit 2. Dr. DePonte read the June 4, 2021 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Seaman read the x-ray as negative for the disease. Claimant's Exhibit 1; Employer's Exhibit 5. Dr. DePonte read the July 11, 2021 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Seaman read the x-ray as negative for the disease. Claimant's Exhibit 4; Employer's Exhibit 6.

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 11. The ALJ found the readings of the September 5, 2019, October 28, 2020, June 4, 2021, and July 11, 2021 x-rays in equipoise because an equal number of dually-qualified physicians found these x-rays to be positive and negative for pneumoconiosis. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994); *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27-28 (1987); *Dixon v. N. Camp Coal Co*., 8 BLR 1-344, 1-345 (1985). Having found the interpretations of all four x-rays inconclusive for complicated pneumoconiosis, the ALJ found the preponderance of the x-ray evidence neither supports nor refutes a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a); *see Ondecko*, 512 U.S. at 281; Decision and Order at 12.

---

[2] We affirm as unchallenged on appeal the ALJ's findings regarding the CT scan and Claimant's medical treatment records evidence. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Employer argues the ALJ erred in crediting Dr. Crum's interpretation of the October 28, 2020 x-ray to find complicated pneumoconiosis because the physician failed to specify the size or location of the large Category A opacity he identified and because he used qualifying language in his comments. Employer's Brief at 24-25. We disagree.

At the outset, contrary to Employer's argument, by indicating the x-ray showed a Category A large opacity on the International Labour Office (ILO) x-ray form, Dr. Crum did specify the size of the opacity.[3] *See* 20 C.F.R. §718.102(d)(1)(i). Moreover, the regulation at 20 C.F.R. §718.304(a) setting forth what constitutes a positive x-ray reading for complicated pneumoconiosis does not require that opacities appear in specific lung zones. *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). Thus, nothing in the statute or regulations required the physicians to specify the location of the opacities for the ALJ to credit their readings. And to the extent Employer implies the ALJ should have discredited the readings for the same reason as a matter of discretion, Employer's argument is 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).

Finally, a physician's use of the word "likely" does not necessarily render their opinion equivocal. *See Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366 (4th Cir. 2006) (In certain situations, "refusal to express a diagnosis in categorical terms is candor, not equivocation."). Although Dr. Crum used qualifying language, he clearly checked the box indicating he identified a Category A large opacity. Claimant's Exhibit 9. Given the design of the ILO x-ray form and the Act's statutory and regulatory requirements, that check -- barring a clear indication it was made in error -- permits an ALJ to conclude a physician read the x-ray as positive for complicated pneumoconiosis. 30 U.S.C. §921(c)(3); 20 C.F.R. §§718.102(d), 718.304. Thus, we reject Employer's argument.[4]

---

[3] For more than fifty years, the ILO has published guidelines for the classification of chest x-rays of pneumoconiosis. The classification system seeks to codify x-ray abnormalities of pneumoconioses in a simple, reproducible manner. *See* INTERNATIONAL LABOUR OFFICE, GUIDELINES FOR THE USE OF THE ILO INTERNATIONAL CLASSIFICATION OF RADIOGRAPHS OF PNEUMOCONIOSES (2000) at 1. In claims for black lung benefits, pneumoconiosis may be established with a chest x-ray "classified as Category 1, 2, 3, A, B, or C, according to the ILO classification system[.]" 20 C.F.R. §718.102(d). Categories 1, 2, and 3 indicate simple pneumoconiosis; categories A, B, and C indicate complicated pneumoconiosis. 20 C.F.R. §718.304.

[4] Employer also argues the ALJ failed to resolve a conflict regarding the image quality of the October 28, 2020 x-ray because Drs. Crum and Zaldivar graded the quality

Medical Opinion Evidence

The ALJ considered the medical opinions of Drs. Green, Agarwal, Werchowski, Seaman, and Zaldivar on the issue of complicated pneumoconiosis. Decision and Order at 14-19. Drs. Green, Agarwal, and Werchowski determined Claimant has complicated pneumoconiosis, whereas Drs. Seaman and Zaldivar concluded he did not. Director's Exhibit 18; Claimant's Exhibits 1, 4; Employer's Exhibits 1, 7, 8, 11, 13. The ALJ found Drs. Green's and Agarwal's opinions diagnosing complicated pneumoconiosis, and Dr. Seaman's contrary opinion, are well-reasoned and well-documented and entitled to probative weight. Decision and Order at 17-18. In contrast, the ALJ found the opinion of Drs. Werchowski to be entitled to little weight because it was based on a single chest x-ray interpretation and only restated the x-ray result. *Id.* at 17. She further found Dr. Zaldivar's opinion not well-reasoned or well-documented and gave it little probative weight. *Id.* at 17-18. Thus, she determined the preponderance of the medical opinion evidence supported a finding of complicated pneumoconiosis. *Id.* at 15-16.

Employer argues the ALJ erred in determining the credibility of the medical opinion evidence regarding complicated pneumoconiosis. Employer's Brief at 12-21. We disagree.

Dr. Green opined Claimant has complicated pneumoconiosis based on x-ray evidence of "small opacities in all lung zones with 2/2 profusion and [a] large A opacity consistent with progressive massive fibrosis." Director's Exhibit 18 at 3. In addition, he cited Claimant's history of coal mine dust exposure and symptoms of chronic coughing,

---

of the x-ray a two while Dr. Seaman graded it a one. Claimant's Exhibit 9; Employer's Exhibits 2; 13 at 9-10; Employer's Brief at 24-25. Employer identifies, at most, a harmless error. The regulations do not require x-ray readings to be of optimal quality; they only need to "be of suitable quality for proper classification of pneumoconiosis." 20 C.F.R. §718.102(a); *Wheatley v. Peabody Coal Co.*, 6 BLR 1-1214, 1-1215-16 (1984). A grade one rating indicates the image is "[g]ood" and a grade two quality rating indicates the image is "[a]cceptable, with no technical defect likely to impair classification of the radiograph for pneumoconiosis." INTERNATIONAL LABOUR OFFICE, GUIDELINES FOR THE USE OF THE ILO INTERNATIONAL CLASSIFICATION OF RADIOGRAPHS OF PNEUMOCONIOSES (rev. ed. 2011) at 3. Because no physician opined the October 28, 2020 x-ray is unreadable or unsuitable for classification of pneumoconiosis, and because the ALJ did not assign either interpretation more or less weight based on its quality, Employer has not explained how the error it alleges makes a difference. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the alleged "error to which [it] points could have made any difference").

wheezing, shortness of breath, and mucus expectoration to support his opinion. *Id.* The ALJ found Dr. Green's opinion credible because it is consistent with the x-rays the doctor reviewed and due to his consideration of Claimant's coal mine dust exposure history. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 18.

Dr. Agarwal opined Claimant has complicated pneumoconiosis based on x-ray evidence showing the presence of a Category A large opacity with background changes of simple coal workers' pneumoconiosis. Claimant's Exhibit 1 at 4. In addition, he noted lung cancer would have to be a "major differential diagnosis" regarding the large opacity given Claimant's thirty-pack-year smoking history. *Id.* at 5. Nevertheless, Dr. Agarwal concluded the large opacity is more likely complicated pneumoconiosis given Claimant's forty years of coal dust exposure and the absence of symptoms, such as hemoptysis, loss of appetite, or loss of weight, which are indicative of cancer. *Id.* The ALJ found Dr. Agarwal's opinion credible because it ruled out cancer due to the lack of associated symptoms and was consistent with the physician's consideration of Claimant's coal mine dust exposure history. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 18.

Employer argues the ALJ erred in finding Drs. Green's and Agarwal's opinions well-reasoned and documented and giving them normal probative weight. We disagree. Employer's general argument that the ALJ should have given the opinion of Dr. Seaman greater weight than Drs. Green's and Agarwal's opinions because they reviewed less evidence is a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. Contrary to Employer's argument, an ALJ is not required to credit one physician's opinion over another because they have additional qualifications or considered more evidence. *See Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-114 (2006) (en banc), *aff'd on recon.*, 24 BLR 1-13 (2007) (en banc); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993); Employer's Brief at 13-14. Thus we affirm the ALJ's finding that Drs. Green's and Agarwal's opinions are entitled to normal probative weight because they are well-documented and well-reasoned.[5]

Dr. Zaldivar opined Claimant does not have complicated pneumoconiosis. Employer's Exhibits 1; 8 at 36-39; 13 at 19. Dr. Zaldivar reviewed the x-ray and CT scan evidence regarding the presence of complicated pneumoconiosis, ultimately concluding that the negative readings by Drs. Seaman and Meyer were more convincing than the positive readings by Drs. DePonte and Crum because, in his opinion,

[5] We also affirm as unchallenged on appeal the ALJ's finding that Dr. Seaman's opinion is entitled to normal probative weight because it is well-documented and well-reasoned. *See Skrack*, 6 BLR at 1-711.

Dr. DePonte had erroneously classified pseudoplaques as complicated pneumoconiosis. Employer's Exhibit 8 at 39. Moreover, Dr. Zaldivar indicated he found the negative readings more convincing because he thought Drs. Seaman and Meyer were more proficient and better qualified radiological readers, and therefore believed their interpretations were more accurate than those of the other readers. *Id.*, Employer's Exhibit 13 at 9.

The ALJ found Dr. Zaldivar's opinion is not well-reasoned or well-documented and is entitled to little probative weight because his assertion that pseudoplaques are not complicated pneumoconiosis is contrary the regulatory definition of complicated pneumoconiosis as opacities measuring greater than one centimeter in diameter on a standard chest x-ray; the definition does not differentiate between pseudoplaques and other lesions. *See* 20 C.F.R. §718.304(a); Decision and Order at 18. Moreover, she found Dr. Zaldivar failed to adequately explain his unsubstantiated and "vague" reasoning for his assertion regarding the relative superiority of Drs. Seaman's and Meyer's negative readings. Decision and Order at 18.

Employer argues the ALJ erred in discrediting Dr. Zaldivar's opinion. We disagree. Employer's arguments again amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. Therefore, we affirm the ALJ's finding that Dr. Zaldivar's opinion is not well-reasoned or well-documented and, thus, is entitled to little probative weight.

After discrediting the opinions of Drs. Werchowski and Zaldivar while finding the opinions of Drs. Green, Agarwal, and Seaman all worthy of normal probative weight, the ALJ noted there were two opinions diagnosing complicated pneumoconiosis and one contrary opinion. Thus, she found the preponderance of the well-reasoned and well-documented medical opinions supported a finding of complicated pneumoconiosis.

Employer argues the ALJ erred by counting heads and failing to provide any valid rationale for crediting the two positive opinions over the single contrary opinion other than numerical superiority. Employer's Brief at 21. We agree.

The ALJ erred by failing to resolve the conflict in the medical opinion evidence and explain her findings as the Administrative Procedure Act (APA) requires. *See Wojtowicz*, 12 BLR at 1-165. While the ALJ found each of the three opinions are entitled to probative weight, her apparent reliance on a head count of opinions is an insufficient basis to find the medical opinions support finding complicated pneumoconiosis established. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992) ("counting heads" is a "hollow" way to resolve conflicts in the evidence); Decision and Order at 19. An ALJ must explain her rationale for resolving the conflict in the evidence. 5 U.S.C. §557(c)(3)(A), as incorporated

into the Act by 30 U.S.C. §932(a). The mere fact that more doctors diagnosed complicated pneumoconiosis does not authorize the ALJ to declare the medical opinions support finding complicated pneumoconiosis. *Id.*

It is the ALJ's duty to evaluate conflicting evidence, draw appropriate inferences, and assess probative value. *See Hicks*, 138 F.3d at 533; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). Because the ALJ did not properly resolve the conflict in the medical opinions or adequately explain her finding, we vacate her determination that the medical opinion evidence supports a finding of complicated pneumoconiosis. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 25.

We therefore also vacate the ALJ's finding that the evidence, when weighed together, establishes complicated pneumoconiosis and that Claimant therefore invoked the Section 411(c)(3) presumption. 20 C.F.R. §718.304(a), (c). As a result, we also vacate the ALJ's finding the evidence establishes Claimant's complicated pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b), Decision and Order at 14, and the award of benefits.

Remand Instructions

On remand, the ALJ must reconsider whether Claimant has established complicated pneumoconiosis. The ALJ must reconsider whether the medical opinion evidence establishes the disease. 20 C.F.R. §718.304(a). She should specifically resolve the conflict in the opinions of Drs. Green, Agarwal, and Seaman and explain her weighing of the evidence in accordance with the APA. 5 U.S.C. §557(c)(3)(A); *Wojtowicz*, 12 BLR at 1-165. Then she must weigh all the relevant evidence together to determine if the evidence as a whole establishes complicated pneumoconiosis.[7] *Gray*, 176 F.3d at 388-89; 20 C.F.R. §718.304. If she determines Claimant has established the existence of complicated pneumoconiosis, and thus invoked the Section 411(c)(3) presumption, she must then reconsider whether Claimant has established the disease arose out of his coal mine employment. 20 C.F.R. §718.203(b). If the ALJ finds Claimant has established his complicated pneumoconiosis arose out of his coal mine employment, she may reinstate the award of benefits.

If the ALJ instead finds Claimant did not establish complicated pneumoconiosis, she should determine whether Claimant can establish total disability and the other requisite elements of entitlement independent of a finding of complicated pneumoconiosis. *Trent*, 11 BLR at 1-27. She must critically analyze the evidence of record and adequately explain all her findings in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed in part and vacated in part, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge