

U.S. Department of Labor

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



BRB No. 23-0373 BLA

BELVRA CRIDER, JR.)	
)	
Claimant-Respondent)	
)	
v.)	
)	
PERRY COUNTY COAL CORPORATION)	
)	
and)	
)	
NEW HAMPSHIRE INSURANCE/AIG)	DATE ISSUED: 05/20/2024
)	
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 on Remand of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

Thomas W. Moak (Moak & Nunnery, PSC), Prestonsburg, Kentucky, for Claimant.

Daniel G. Murdock (Fogle Keller Walker, PLLC), Lexington, Kentucky, for Employer and its Carrier.

Before: BOGGS, BUZZARD, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) John P. Sellers, III's Decision and Order Awarding Benefits on Remand (2019-BLA-05570) rendered on a claim 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 July 20, 2018,¹ and is before the Benefits Review Board for the second time.²

In his initial Decision and Order Awarding Benefits dated October 28, 2020 (Decision and Order), the ALJ credited Claimant with twenty-nine years of underground coal mine employment. The ALJ also found Claimant established complicated pneumoconiosis and 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. Further, he found Claimant's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits. 20 C.F.R. §718.203(b).

In response to Employer's appeal, the Board affirmed the ALJ's finding that Claimant established twenty-nine years of underground coal mine employment and simple clinical pneumoconiosis. *Crider v. Perry County Coal Corp.*, BRB No. 21-0112 BLA, slip op. at 2 n.1 (Mar. 30, 2022) (unpub.). The Board also affirmed the ALJ's findings that the x-ray evidence does not establish complicated pneumoconiosis and there is no biopsy evidence in the record. *Id.* at 3 nn.3&4. However, the Board vacated the ALJ's finding that the computed tomography (CT) scan and medical opinion evidence supports a finding of complicated pneumoconiosis. *Id.* at 2-3 nn.3&4; 4. Thus, the Board vacated the ALJ's finding that Claimant invoked the Section 411(c)(3) presumption and remanded the case for the ALJ to resolve the conflict in the CT scan evidence and to reweigh all the evidence together as a whole. *Id.* at 4-5.

In his Decision and Order Awarding Benefits on Remand dated May 31, 2023 (Decision and Order on Remand), the ALJ again found that Claimant established complicated pneumoconiosis based on the CT scan evidence and the evidence as a whole and, therefore, invoked the Section 411(c)(3) presumption. 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304. He further found Claimant's complicated pneumoconiosis arose out of his coal mine employment, 20 C.F.R. §718.203(b), and awarded benefits.

¹ Claimant filed a prior claim and withdrew it. Director's Exhibit 1. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

² We incorporate the procedural history of this case as set forth in *Crider v. Perry County Coal Corp.*, BRB No. 21-0112 BLA (Mar. 30, 2022) (unpub.).

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, has not 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.³ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe 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 expected to yield a result equivalent to (a) or (b). 30 U.S.C. §921(c)(3); *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. Consol. Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found the CT scan evidence supports a finding of complicated pneumoconiosis, the medical opinion evidence does not support a finding of complicated pneumoconiosis, and Claimant's treatment record evidence neither proves nor disproves the existence of the disease. Decision and Order on Remand at 9, 13-15. Weighing all of the evidence together, the ALJ concluded Claimant established complicated pneumoconiosis and therefore invoked the irrebuttable presumption of total disability due to pneumoconiosis. *Id.* at 15.

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

Employer argues the ALJ erred in finding the CT scan evidence establishes complicated pneumoconiosis. Employer's Brief at 10-15 (unpaginated).

³ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4.

In his initial decision, the ALJ considered two interpretations of one CT scan taken on May 8, 2019. Decision and Order at 7-9. Dr. Crum interpreted the CT scan as positive for complicated for pneumoconiosis, while Dr. Tarver interpreted the CT scan as negative for the disease. Claimant's Exhibit 3; Employer's Exhibit 12. The ALJ noted Dr. Crum's statement that Claimant's right upper lobe has a "1.03 [centimeter] large opacity" and a "[three-centimeter] pseudo-plaque." Decision and Order at 9. He also noted that Dr. Crum "identified the exact CT scan images where he observed these large masses and stated that they were consistent with complicated black lung disease." *Id.* In addition, he stated Dr. Crum opined Claimant's opacities on CT scan measured more than one centimeter in size and would be consistent with category A large opacities seen on chest x-ray under the International Labour Organization (ILO) classification system. *Id.*

Further, the ALJ noted that while Dr. Tarver observed "multiple small areas of pseudoplaque in the pleural peripheral region of the lung," the doctor "did not provide a measurement to counter Dr. Crum's view that it measured three centimeters." Decision and Order at 9. He also stated Dr. Tarver "did not provide an alternative measurement for the 1.03-centimeter larger opacity that Dr. Crum observed," but "simply" stated there is no area "consistent with a large opacity." *Id.* He found Dr. Crum's interpretation entitled to more probative weight than Dr. Tarver's because Dr. Crum "provided exact measurement and opined that the opacities would be classified as category A on the ILO system." *Id.*

In its prior decision, the Board noted the ALJ's conclusion that Dr. Tarver "did not provide measurements to counter the 'exact' measurements provided by Dr. Crum." *Cridler*, BRB No. 21-0112 BLA, slip op. at 4. The Board further noted, however, that "Dr. Tarver specifically opined the CT scan report documented 'multiple scattered 2-3 mm nodules,' 'no masses or nodules larger than 1 cm,' and that 'there are no areas consistent with a large opacity' on images fifty or eighty-two." *Id.* Because Dr. Tarver provided measurements regarding the opacities he identified, the Board held the ALJ did not provide a valid basis for crediting Dr. Crum's opinion over that of Dr. Tarver. *Id.*

On remand, the ALJ again considered Drs. Crum's and Tarver's interpretations of the May 8, 2019 CT scan. Decision and Order on Remand at 4-9. He found Dr. Crum interpreted the CT scan as positive for complicated pneumoconiosis and Dr. Tarver interpreted the CT scan as negative for the disease. *Id.* at 5-6. Further, he found Dr. Crum's interpretation of the CT scan more reasoned, documented, and consistent with "Claimant's extensive coal dust exposure history" than Dr. Tarver's. *Id.* at 6-9. He thus concluded the weight of the CT scan evidence supports a finding of complicated pneumoconiosis based on Dr. Crum's interpretation. *Id.* at 9.

Employer argues the ALJ erred crediting Dr. Crum's interpretation of the May 8, 2019 CT scan over that of Dr. Tarver. Employer's Brief at 11-15 (unpaginated). We disagree.

In his initial report, Dr. Crum noted the May 8, 2019 CT scan shows "a 1.03 cm large opacity" within the right upper lobe on "image 50." Claimant's Exhibit 3 at 1. He also noted the CT scan shows "a 3 cm pseudo-plaque" on "image 82." *Id.* In his supplemental report, Dr. Crum clarified that the CT scan shows "abnormalities involving the chest with both small as well as large [opacities] consistent with progressive massive fibrosis." Claimant's Exhibit 4 at 1. He further opined the large opacities "seen on the CT scan measure over [one centimeter] in size" and "would be consistent with large [opacities] seen on [a] chest x-ray" as category A under the ILO classification system. *Id.*

In contrast, Dr. Tarver noted the May 8, 2019 CT scan shows "multiple scattered 2-3 mm nodules" but "no masses or nodules larger than [one centimeter]." Employer's Exhibit 12 at 1. He also noted the CT scan shows "multiple small areas of pseudoplaque in the pleural peripheral region of the lung," but "there are no areas of progressive massive fibrosis." *Id.* Further, he opined "there are no areas consistent with a large opacity" on "images #50 & #82." *Id.*

Contrary to Employer's argument, the ALJ permissibly found Dr. Crum's interpretation of the May 8, 2019 CT scan "more" reasoned, documented, and "consistent" with "Claimant's coal mine dust exposure history than Dr. Tarver's." Decision and Order on Remand at 6, 9; *see Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 712-14 (6th Cir. 2002); *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989). The ALJ noted "Dr. Crum provided very specific measurements and referenced the location of the lungs and the images on which he observed the large opacity and the pseudoplaque." Decision and Order on Remand at 6. He explained that the "exact measurements" Dr. Crum provided "for the areas of coalescence that he observed on images fifty and eighty-two bolsters his opinion." *Id.* at 6-7.

In contrast, he noted that although Dr. Tarver stated the CT scan "in general" did not show "masses or nodules larger than [one centimeter]," the doctor failed to "provide specific measurements of anything he observed on image fifty or eighty-two." *Id.* at 6. He also found Dr. Tarver's conclusion that there are "no areas consistent with a large opacity" ambiguous because the doctor did not "define what he meant by a 'large opacity'" and his "statement could either mean he did not see any abnormality or that he saw an abnormality (such as a pseudoplaque) but did not consider it consistent with a large opacity." *Id.*

The ALJ further noted that Dr. Tarver "did not state whether he observed a pseudoplaque greater than one centimeter on the CT scan generally or on image eighty-

two.” Decision and Order on Remand at 7. He explained that he had “no way of knowing whether [Dr. Tarver] equated the pseudoplaque with a mass or nodule.” *Id.* In addition, the ALJ stated that “given the ambiguity of [Dr. Tarver’s] language,” he did not “have any way to know whether [the doctor] saw anything larger than one centimeter on images fifty and eighty-two but dismissed them as not fitting within his definition [of] a large opacity consistent with complicated pneumoconiosis.” *Id.*

Further, the ALJ noted that while Dr. Crum “expressly” stated that he considered a pseudoplaque to be consistent with complicated pneumoconiosis, Dr. Tarver never “expressly” stated whether he considered a pseudoplaque to be consistent with complicated pneumoconiosis “in delineating his findings.” Decision and Order on Remand at 7. In addition, he noted that although Dr. Crum concluded the nodules on the CT scan are most consistent with pneumoconiosis based on Claimant’s “history of mining,” Dr. Tarver did not reference Claimant’s coal mine dust exposure history “in delineating his findings.”⁴ *Id.* at 8. Moreover, he noted that Dr. Crum provided an equivalency determination as he opined the findings on CT scan measured more than one centimeter in size and would be consistent with category A large opacities seen on a chest x-ray under the ILO classification system, while Dr. Tarver did not explain “how they would appear on x-ray.” *Id.*

As the trier of fact, it is the ALJ’s function to weigh the evidence, draw inferences, and determine credibility. *Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185; *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). The ALJ permissibly found Dr. Crum’s CT scan interpretation better reasoned and documented than Dr. Tarver’s. *Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185; Decision and Order on Remand at 6-9. Employer’s argument that the ALJ should have afforded Dr. Tarver’s interpretation greater weight because it is “more thorough” 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); Employer’s Brief at 14 (unpaginated).

As it is supported by substantial evidence, we affirm the ALJ’s determination that the CT scan evidence supports a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order on Remand at 9. We further affirm, as unchallenged on appeal, the ALJ’s findings that “no physician has provided a well-reasoned or well-documented [medical] opinion on complicated pneumoconiosis” and Claimant’s treatment records do not weigh “in favor” of or “against” a finding that he has the disease. Decision

⁴ The ALJ also noted Claimant’s testimony that “no physician had diagnosed him with tuberculosis, lung cancer, or histoplasmosis.” Decision and Order on Remand at 8 (citing Hearing Tr. at 21-22).

and Order on Remand at 13-14; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Additionally, there is no challenge to the ALJ's finding, based on the opinions of Drs. Tarver and Crum, that CT scans are superior to x-rays in detecting pneumoconiosis. Decision on Remand at 15; *see Skrack*, 6 BLR at 1-711. Because Employer raises no further argument, we affirm the ALJ's finding that all the relevant evidence weighed together establishes complicated pneumoconiosis. 20 C.F.R. §718.304; *see Melnick*, 16 BLR at 1-33; Decision and Order on Remand at 14-15.

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); *Skrack*, 6 BLR at 1-711; Decision and Order on Remand at 16. Consequently, we affirm the ALJ's conclusion that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis and is entitled to benefits. 20 C.F.R. §718.304; Decision and Order on Remand at 14-16.

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

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge