

U.S. Department of Labor

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



BRB No. 24-0059 BLA

DONNIE P. DALTON

Claimant-Petitioner

v.

ICG TYGART VALLEY, LLC c/o ARCH
COAL COMPANY

and

ARCH COAL COMPANY,
INCORPORATED c/o SMART CASUALTY
CLAIMS

Employer/Carrier-
Respondents

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 05/08/2025

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits on Remand of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Mathew A. Gribler (Pawloski, Bilonick, & Long), Ebensburg, Pennsylvania, 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:

Claimant appeals Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Denying Benefits on Remand (2020-BLA-05527), 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 claim filed on October 25, 2018, and is before the Benefits Review Board for the second time.

In his initial Decision and Order Denying Benefits, the ALJ credited Claimant with fourteen years of coal mine employment and thus found he could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,¹ 30 U.S.C. §921(c)(4) (2018). He further found Claimant did not establish the existence of complicated pneumoconiosis and thus could not invoke 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. Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established the existence of legal pneumoconiosis, but did not establish a totally disabling pulmonary or respiratory impairment. As Claimant failed to establish an essential element of entitlement under Part 718, the ALJ denied benefits.

In consideration of Claimant's first appeal, the Board affirmed the ALJ's findings that Claimant established fourteen years of coal mine employment and the existence of legal pneumoconiosis but that the evidence was insufficient to establish total disability. *Dalton v. ICG Tygart Valley LLC*, BRB No. 22-0011 BLA, slip op. at 2-3 (May 10, 2023) (unpub.). However, the Board vacated the ALJ's determination that the x-ray evidence, computed tomography (CT) scan evidence, and evidence as a whole did not establish complicated pneumoconiosis. *Id.* at 5-8.

On remand, the ALJ again found Claimant failed to establish complicated pneumoconiosis and therefore could not invoke the Section 411(c)(3) presumption. The ALJ also reaffirmed his prior finding that although Claimant established the existence of legal pneumoconiosis, he did not establish total disability. He therefore denied benefits.

¹ Section 411(c)(4) provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

On appeal, Claimant argues the ALJ erred in finding he did not establish the existence of complicated pneumoconiosis. Employer and its Carrier (Employer) respond, urging affirmance of the denial of benefits. The Acting Director, Office of Workers' Compensation Programs, has not filed a response.

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

Section 411(c)(3) of the Act 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 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. In determining whether 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 (1991) (en banc).

20 C.F.R. §718.304(a) – X-ray Evidence

The ALJ considered five readings of two x-rays dated December 18, 2018, and April 9, 2019. Decision and Order on Remand at 11-12.

Dr. Parker, a B reader, interpreted the December 18, 2018 x-ray as positive for Category "B" large opacities of complicated pneumoconiosis but noted "Dust Disease? Infection?" in his comments and marked tuberculosis under "other symbols." Director's Exhibit 12 at 4, 18. Drs. DePonte and Tarver, who are dually qualified as Board-certified radiologists and B readers, also interpreted the December 18, 2018 x-ray as positive for Category "B" large opacities of complicated pneumoconiosis. Director's Exhibit 15; Employer's Exhibit 2. On remand, the ALJ again found that the December 18, 2018 x-ray

² 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); Hearing Transcript at 32; Director's Exhibit 4.

is positive for complicated pneumoconiosis based upon the positive interpretations. Decision and Order on Remand at 11.

Dr. Tarver also interpreted the April 9, 2019 x-ray as positive for Category “B” large opacities of complicated pneumoconiosis. Employer’s Exhibit 5 at 3. However, he opined that while he “must” classify the findings as “possibly consistent with complicated coal workers’ pneumoconiosis,” they “may be due to old tuberculosis.” *Id.* Dr. Fino, a B reader, interpreted the April 9, 2019 x-ray as showing granulomatous disease in the upper lobes with no evidence of complicated pneumoconiosis. Director’s Exhibit 16. On remand,³ the ALJ found that Dr. Tarver’s interpretation of the April 9, 2019 x-ray was equivocal and thus assigned little weight to his interpretation of the x-ray. Decision and Order on Remand at 12. However, he again found the April 9, 2019 x-ray to be negative for pneumoconiosis based on Dr. Fino’s unequivocal interpretation. *Id.* Weighing the evidence together, he found the x-rays as a whole to be in equipoise as he found the December 18, 2018 x-ray positive for complicated pneumoconiosis and the April 9, 2019 x-ray negative for complicated pneumoconiosis. *Id.*

Claimant contends the ALJ should have given more weight to the positive December 18, 2018 x-ray over the negative April 9, 2019 x-ray based upon the superior qualifications of the physicians who provided interpretations of the December 18, 2018 x-ray. Claimant’s Brief at 9. We disagree.

The ALJ performed a proper qualitative and quantitative analysis of the x-ray evidence, taking into consideration the number of readings and the physicians’ credentials and permissibly finding the December 18, 2018 x-ray positive for complicated pneumoconiosis and the April 9, 2019 x-ray negative for complicated pneumoconiosis. *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 on Remand at 12. Having permissibly found one x-ray positive for complicated pneumoconiosis and one x-ray negative for the disease, the ALJ permissibly found the x-ray evidence as a whole in equipoise and insufficient to affirmatively establish the disease. *see Compton v. Island*

³ In his initial decision, the ALJ found the April 9, 2019 x-ray to be negative for complicated pneumoconiosis, without considering the conflict in Dr. Tarver’s International Labour Organization (ILO) x-ray classification and narrative interpretations. Decision and Order at 11. The Board vacated this finding as he failed “to critically analyze Dr. Tarver’s x-ray reading, render any findings as to the credibility of the doctor’s ILO classification or narrative comments, or otherwise explain why he found the doctor’s narrative comments more credible than the ILO classification.” *Dalton v. ICG Tygart Valley LLC*, BRB No. 22-0011 BLA, slip op. at 15 (May 10, 2023) (unpub.).

Creek Coal Co., 211 F.3d 203, 207-08 (4th Cir. 2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order on Remand at 12. Claimant’s argument amounts to a request to reweigh the evidence, which the Board may not do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). We therefore affirm the ALJ’s determination that the x-ray evidence does not establish complicated pneumoconiosis at 20 C.F.R. §718.202(a)(1). Decision and Order on Remand at 12.

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

The ALJ next considered the CT scan evidence and medical opinion evidence at 20 C.F.R. §718.304(c).⁴

The ALJ considered six interpretations of three CT scans dated June 5, 2018, December 1, 2020, and February 2, 2021. Dr. Fino read the June 5, 2018 CT scan as showing a 2.5 x 1 cm mass in the left upper lung with a 1.8 x 0.7 cm mass in the right upper lung, which he opined was “not complicated pneumoconiosis” but was instead “due to significant emphysema with the good possibility of granulomatous disease.” Employer’s Exhibit 1. Dr. Tarver also read the June 5, 2018 CT scan as negative for pneumoconiosis, noting severe emphysema and “biapical fibrosis likely due to old tuberculosis or histoplasmosis.” Director’s Exhibit 21.

Dr. DePonte read the December 1, 2020 and February 2, 2021 CT scans as showing three large opacities in the upper lungs consistent with complicated pneumoconiosis and which would measure as greater than one centimeter on an x-ray. Claimant’s Exhibit 1. Conversely, Dr. Tarver interpreted the December 1, 2020 and February 2, 2021 CT scans as showing no small nodules or large masses consistent with pneumoconiosis, noting severe emphysema and biapical fibronodular scarring “likely” due to granulomatous disease, such as tuberculosis or histoplasmosis. Director’s Exhibit 21; Employer’s Exhibits 6, 7.

On remand,⁵ the ALJ found that Drs. Tarver and DePonte are equally well-qualified and accorded full weight to all of their interpretations. Decision and Order on Remand at

⁴ As there is no biopsy or autopsy evidence, we affirm the ALJ’s finding that Claimant did not establish the existence of complicated pneumoconiosis at 20 C.F.R. §718.202(a)(2). Decision and Order on Remand at 14.

⁵ The ALJ initially credited the interpretations of Drs. Fino and Tarver but found Dr. DePonte’s interpretations to be equivocal. Decision and Order at 11. The Board vacated the ALJ’s finding that Dr. DePonte’s interpretations were equivocal. *Dalton*, BRB No. 22-0011 BLA, slip op. at 6-7. However, the Board rejected Claimant’s argument that

13. He therefore found that, at best, the CT scans are in equipoise based on the interpretations of Drs. Tarver and DePonte. *Id.* However, taking into consideration Dr. Fino's interpretation, he found the preponderance of the CT scan evidence is negative for complicated pneumoconiosis. *Id.*

Claimant contends the ALJ erred in analyzing Dr. Tarver's CT scan interpretations. Claimant's Brief at 9-10. We disagree.

Claimant primarily argues that the ALJ should have discredited Dr. Tarver's CT scan interpretations because the physician testified that he does not believe coal mine dust exposure causes emphysema, contrary to the recognition in the preamble to the revised 2001 regulations that coal mine dust exposure may cause chronic obstructive pulmonary disease/emphysema. Claimant's Brief at 10-12. However, no physician links Claimant's emphysema to complicated pneumoconiosis nor does Claimant point to any evidence or law that would suggest such a connection. Consequently, Claimant has not established how Dr. Tarver's opinion about emphysema would have any impact on his opinion that the large masses on Claimant's CT scans are not consistent with complicated pneumoconiosis. *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

We further reject Claimant's argument that Dr. Tarver's interpretation is equivocal as he never "expressly or credibly states what the CT actually shows." Claimant's Brief at 10. As we previously noted, Dr. Tarver unequivocally stated that the CT scans have no findings consistent with complicated pneumoconiosis, finding no evidence of simple pneumoconiosis but instead large masses that are consistent with old granulomatous disease. *Dalton*, BRB No. 22-0011 BLA, slip op. at 7 n.11; Director's Exhibit 21; Employer's Exhibits 4, 6, 7. Moreover, the ALJ permissibly found his opinion credible as it was based on the objective data and was consistent with Dr. Fino's interpretation. *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order on Remand at 13. Consequently, we affirm the ALJ's finding that the CT scan evidence is in equipoise. Decision and Order on Remand at 13.

Finally, the ALJ considered the medical opinions of Drs. Allen, Tarver, and Fino. Dr. Allen examined Claimant on December 18, 2018, and opined he has complicated pneumoconiosis based on Dr. Parker's interpretation of the December 18, 2018 x-ray. Director's Exhibit 12. Dr. Tarver opined Claimant did not have complicated

the ALJ should have found Dr. Tarver's interpretations to be equivocal as the physician specifically opined there are no findings consistent with complicated pneumoconiosis. *Id.* at 7 n.11.

pneumoconiosis but instead had old inflammatory disease such as tuberculosis or histoplasmosis, noting that the CT scans did not show evidence of simple pneumoconiosis and the changes in his lungs are consistent with old inflammatory disease. Employer's Exhibit 4 at 18-19. Similarly, Dr. Fino opined Claimant does not have complicated pneumoconiosis but instead has areas of dense fibrotic scarring with air sacs or bullae that are typical of old granulomatous disease and emphysema. Employer's Exhibit 3 at 10-11. The ALJ found that the opinions of Drs. Tarver and Fino are most consistent with the chest x-rays and CT scans and therefore accorded them more weight than Dr. Allen's opinion. Decision and Order on Remand at 17. As Claimant raises no challenges to these findings, they are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

We therefore affirm the ALJ's finding that the "other" medical evidence does not establish complicated pneumoconiosis and the evidence as a whole does not establish the disease. Decision and Order on Remand at 17. Consequently, we affirm his finding that Claimant did not invoke the Section 411(c)(3) presumption. *Id.* As Claimant raises no other challenges to the ALJ's findings, we affirm the ALJ's determination that he is not entitled to benefits under 20 C.F.R. Part 718. *Skrack*, 6 BLR at 1-711; Decision and Order on Remand at 17-24.

Accordingly, the ALJ's Decision and Order on Remand denying benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge