U.S. Department of Labor

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

BRB No. 24-0265 BLA

FRED W. FORD, JR. Claimant-Respondent v. KINGSTON MINING COMPANY c/o ALPHA METALLURGICAL RESOURCES Employer-Petitioner DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 05/29/2025 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.

Joseph D. Halbert (Halbert Legal, PLLC) Lexington, Kentucky, for Employer.

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

JONES, Administrative Appeals Judge:

Employer appeals Administrative Law Judge (ALJ) Lystra A. Harris's Decision and Order Awarding Benefits (2022-BLA-05008) rendered on a claim filed on December 30, 2019,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with thirty-eight years of qualifying coal mine employment, based on the parties' stipulation. She found Claimant established the existence of 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 determined 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 the existence of complicated pneumoconiosis and invoked the irrebuttable presumption.[2] Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, declined to file a substantive response.

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.[3] 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).

[1] The record reflects that Claimant filed a prior claim which he withdrew. Director's Exhibit 1. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established thirty-eight years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

[3] 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); Director's Exhibit 4.

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 chest 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). *See* 20 C.F.R. §718.304.

The United States Court of Appeals for the Fourth Circuit has held that "'[b]ecause prong (A) sets out an entirely objective scientific standard'—i.e., an opacity on an x-ray greater than one centimeter—x-ray evidence provides the benchmark for determining what under prong (B) is a 'massive lesion' and what under prong (C) is an equivalent diagnostic result reached by other means." *E. Assoc. Coal Corp. v. Director* [*Scarbro*], 220 F.3d 250, 256 (4th Cir. 2000) (quoting *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243 (4th Cir. 1999)). Claimant bears the burden to establish the existence of complicated pneumoconiosis. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994). 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); *Scarbro*, 220 F.3d at 255-56; *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found the x-ray evidence in equipoise regarding the existence of complicated pneumoconiosis, the medical opinion evidence supports a finding of complicated pneumoconiosis, and Claimant's treatment records are silent regarding complicated pneumoconiosis and therefore are of little value. 20 C.F.R. §718.304(a), (c); Decision and Order at 10, 13, 14. Weighing the evidence together, she found Claimant established the existence of complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 15.

Employer contends the ALJ erred in finding the medical opinion evidence supports a finding of complicated pneumoconiosis. Employer's Brief at 3-6. We agree.

The ALJ considered the medical opinions of Drs. Nader, Habre, and Vuskovich. Decision and Order at 11-13. She noted that Drs. Nader and Habre are Board-certified pulmonologists while Dr. Vuskovich is Board-certified in occupational medicine. *Id*. at 12; *see* Director's Exhibit 14; Claimant's Exhibits 1, 2; Employer's Exhibit 10. Thus, she found "that Drs. Nader and Habre are more qualified to opine on whether Claimant suffers from complicated pneumoconiosis than Dr. Vuskovich." Decision and Order at 12.

Dr. Nader conducted the Department of Labor (DOL)'s complete pulmonary evaluation of Claimant and opined that he has simple and complicated pneumoconiosis based on "radiographic finding[s] of small opacities in upper lung zones with 1/1 Profusion, Large 'A' Opacity with progressive massive fibrosis." Director's Exhibit 14 at 3. The ALJ gave his opinion little probative value because she found Dr. Nader relied solely on Dr. DePonte's positive reading of the August 6, 2020 x-ray to support his complicated pneumoconiosis diagnosis. Decision and Order at 11.

Dr. Habre examined Claimant on November 9, 2021 and diagnosed complicated pneumoconiosis after reviewing Dr. DePonte's positive interpretation of the November 9, 2021 x-ray. Claimant's Exhibit 1. He noted Claimant's thirty-eight-year coal mine employment history and explained that coal dust exposure "stimulate[s] the macrophages and the alveolar cells which secrete cytokines and release inflammatory mediators." *Id*. at 2. Further, he indicated that "[t]his process causes the recruitment of collagen fibers and leads to hyalinization and to the formation of small fibrotic lesions" which "can coalesce and form larger nodules." *Id*. Dr. Habre conducted another examination on December 16, 2021, and reviewed Dr. DePonte's positive interpretation of the December 16, 2021 x-ray. Claimant's Exhibit 2. He again diagnosed Claimant with complicated pneumoconiosis, explaining that Claimant's "substantial exposure to coal dust" caused the bilateral diffuse opacities and the large category A opacity on the x-ray. *Id*. at 2. Dr. Habre stated that "inhaled dust . . . trigger[s] the inflammatory cascade and lead[s] to the formation of fibrotic parenchymal lung disease[,]" which starts as smaller lesions that coalesce to form larger nodules, "underscor[ing] a high lung dust burden with susceptibility to progression." *Id*. The ALJ found Dr. Habre's opinion entitled to "significant probative weight" as it is "well-documented, well-reasoned, and consistent with the premises of the Act." Decision and Order at 12.

In contrast, Dr. Vuskovich concluded that Claimant did not suffer from complicated pneumoconiosis based on a review of medical records, including Drs. DePonte's, Adcock's, and Seaman's interpretations of the August 6, 2020 x-ray; Dr. DePonte's interpretations of the November 9, 2021 and December 16, 2021 x-rays; and Dr. Adcock's interpretation of a February 23, 2021 x-ray. Employer's Exhibit 10 at 10-15. Dr. Vuskovich opined that "[p]seudoplaques are not manifestations of complicated pneumoconiosis," noted Drs. Adcock and Seaman did not report finding pseudoplaques or complicated pneumoconiosis, and explained that Dr. DePonte "was not certain of what she was observing because she recommended chest CT image to confirm whether [Claimant] had pseudoplaques." *Id.* at 12-14. The ALJ gave Dr. Vuskovich's opinion "little weight" because he is not a pulmonologist and because she found his opinion is not sufficiently explained and is contrary to the Act and its regulations, as the statutorily-defined disease for invoking the Section 411(c)(3) presumption – commonly referred to as complicated

pneumoconiosis – is not limited to a "*medical* definition."[4] Decision and Order at 13; *see Scarbro*, 220 F.3d at 257 ("[T]he statute betrays no intent to incorporate a purely medical definition.").

Employer contends that in crediting Dr. Habre's opinion, the ALJ treated his opinion and Dr. Nader's opinion inconsistently. Employer's Brief at 4-5 (unpaginated). It states that the ALJ correctly gave less weight to Dr. Nader's opinion because it was based on Dr. DePonte's August 6, 2020 x-ray interpretation, contending that "[i]f the underlying imaging study is found to be insufficient to establish complicated [pneumoconiosis], the medical opinion that relies upon that study to find complicated must also be insufficient." *Id*. at 5; *see Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989) (mere restatement of an x-ray reading is not a reasoned medical opinion). Employer argues that because Dr. Habre's opinion is also based upon Dr. DePonte's x-ray interpretations, and there is no evidence that he relied on other evidence to reach his conclusions, Dr. Habre's opinion must also be discredited. Employer's Brief at 5.

There is merit to Employer's contention that the ALJ did not explain, as the Administrative Procedure Act (APA) requires,[5] her decision to discredit Dr. Nader's opinion for relying exclusively on the x-ray evidence, but not similarly discrediting Dr. Habre's opinion. *See* Decision and Order at 12-13. Dr. Habre examined Claimant twice, on November 9, 2021 and December 16, 2021, and reviewed Dr. DePonte's positive x-ray interpretations that were conducted as part of those exams. Claimant's Exhibits 1, 2. Although, as discussed *supra*, Dr. Habre noted Claimant's coal mine employment history and explained how coal dust causes the formation of large opacities, he, like Dr. Nader, relied primarily on Dr. DePonte's x-ray interpretations to make a finding of complicated pneumoconiosis. *See* Claimant's Exhibits 1, 2. As the ALJ did not sufficiently explain her findings, we must vacate her crediting of Dr. Habre's opinion concerning complicated pneumoconiosis. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Wojtowicz v. Duquesne Light Co*., 12 BLR 1-162, 1-165 (1989). Thus, we also vacate her determinations that the medical opinion evidence, and the evidence as a whole, supports a

[4] As Employer does not challenge the ALJ's decision to give little weight to Dr. Vuskovich's opinion, we affirm it. *See Skrack*, 6 BLR at 1-711; Decision and Order at 13.

[5] The Administrative Procedure Act requires that every adjudicatory decision include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

finding of complicated pneumoconiosis. 20 C.F.R. §718.304. Consequently, we also vacate her finding that Claimant invoked the irrebuttable presumption at Section 411(c)(3).

Remand Instructions

On remand, the ALJ must reconsider whether Claimant has established complicated pneumoconiosis. 20 C.F.R. §718.304. In weighing Dr. Habre's opinion at 20 C.F.R. §718.304(c), the ALJ must consider the relative qualifications of the physician, the explanations for his conclusions, the documentation underlying his medical judgments, and the sophistication of, and bases for, his diagnoses. *See Hicks*, 138 F.3d at 533; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). Then the ALJ must again weigh all evidence together as a whole,[6] providing adequate explanations for her findings. 20 C.F.R. §718.304; *Melnick*, 16 BLR at 1-33; *Wojtowicz*, 12 BLR at 1-165.

If the ALJ finds on remand that the weight of the overall medical evidence is sufficient to establish complicated pneumoconiosis, she may reinstate the award of benefits. *Scarbro*, 220 F.3d at 255-56; *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46 (4th Cir. 1993); *Melnick*, 16 BLR at 1-33-34.

If the ALJ finds that Claimant is unable to invoke the irrebuttable presumption, she must consider whether Claimant has established that he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2)(i)-(iv). Because we have affirmed that Claimant has thirty-eight years of qualifying coal mine employment, if the ALJ finds he has established a totally disabling respiratory or pulmonary impairment, he will have invoked the Section 411(c)(4) presumption of total disability due to pneumoconiosis, 30 U.S.C. §921(c)(4) (2018),[7] and the ALJ must then consider whether Employer has rebutted it. 20 C.F.R. §718.305(d)(1).

[6] I disagree with my concurring colleague's addressing arguments Employer does not raise on appeal. *See* 20 C.F.R. §802.211.

[7] Section 411(c)(4) of the Act 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.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Awarding Benefits and remand the case to the ALJ for further proceedings consistent with this opinion.

SO ORDERED.

MELISSA LIN JONES
Administrative Appeals Judge

GRESH, Chief Administrative Appeals Judge, concurring:

I agree remand is required for the ALJ to reconsider her weighing of the medical opinion evidence at 20 C.F.R. §718.304(c). However, although Employer does not specifically challenge the ALJ's weighing of the x-ray evidence, I would also vacate and remand her findings at 20 C.F.R. §718.304(a), as she failed to consider all relevant evidence and the x-ray evidence affects her weighing of the medical opinions.

In evaluating whether the x-ray evidence supports a finding of complicated pneumoconiosis, the ALJ considered six interpretations of three x-rays dated August 6, 2020, November 9, 2021, and December 16, 2021. Decision and Order at 7-10. Dr. DePonte, who is dually-qualified as a B reader and Board-certified radiologist, read each of the x-rays as positive for simple and complicated pneumoconiosis.[8] Director's Exhibit 14 at 25; Claimant's Exhibits 1 at 9, 2 at 10. Dr. Adcock, who is also dually-qualified, interpreted each of the x-rays as positive for simple pneumoconiosis but negative for complicated pneumoconiosis. Director's Exhibit 19 at 3; Employer's Exhibits 12 at 1, 13 at 1. The ALJ found the readings of each x-ray support a finding of simple pneumoconiosis but are in equipoise as to the presence of complicated pneumoconiosis because there are

[8] The ALJ noted Dr. DePonte's comment regarding the August 6, 2020 x-ray that the large opacity she observed could be pseudoplaques and recommended a follow-up CT scan to confirm. Decision and Order at 10 n.8. However, the ALJ determined this recommendation did not "diminish or negate" Dr. DePonte's diagnosis of complicated pneumoconiosis because she identified size A large opacities "regardless of her comments seeking clarity on the nature of the identified opacities." *Id.*; *see* Director's Exhibit 14 at 25.

conflicting interpretations by dually-qualified physicians.[9] Decision and Order at 9-10. Thus, the ALJ found the overall weight of the x-ray evidence supports a finding of simple pneumoconiosis but "does not support a finding [] of complicated pneumoconiosis." *Id.* at 10.

However, it is apparent that the ALJ did not consider all the readings that were submitted of the August 6, 2020 x-ray. In both its initial evidence summary form, dated August 23, 2022, and its subsequent December 5, 2022 evidence summary form, Employer submitted Dr. Adcock's interpretation of the August 6, 2020 x-ray as initial evidence and designated Dr. Seaman's interpretation of the August 6, 2020 x-ray as rebuttal of the DOL-sponsored chest x-ray. *See* Director's Exhibit 19; Employer's Exhibit 3. As the ALJ accurately noted, both Dr. Adcock's and Dr. Seaman's interpretations were admitted as evidence at the hearing. Decision and Order at 4; Hearing Transcript at 32-36.

In weighing the x-ray evidence at 20 C.F.R. §718.304(a), though, the ALJ did not consider Dr. Seaman's negative interpretation of the August 6, 2020 x-ray. *See* 30 U.S.C. §923(b) (fact-finder must address all relevant evidence); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (ALJ's failure to consider all relevant evidence requires remand); *see* Decision and Order at 7-10. As Dr. Seaman is also a dually-qualified physician, her interpretation could have affected the ALJ's weighing of the August 6, 2020 x-ray and her weighing of the x-ray evidence as a whole at 20 C.F.R. §718.304(a). Further, as explained below, since the ALJ's pseudoplaque analysis as it relates to the medical opinions hinges on Dr. DePonte's August 6, 2006 x-ray interpretation, the ALJ's x-ray findings could also affect her weighing of the medical opinions at 20 C.F.R. §718.304(c). Thus, I would vacate the ALJ's findings concerning the August 6, 2020 x-ray and her weighing of the x-ray evidence as a whole at Section 718.304(a).

Further, in weighing the medical opinion evidence at 20 C.F.R. §718.304(c), in giving "significant probative weight" to Dr. Habre's opinion, the ALJ mischaracterized both Dr. Habre's and Dr. Vuskovich's opinions as to the presence of pseudoplaques. Decision and Order at 13. The ALJ stated that:

> Dr. Habre took care to note that these abnormalities would qualify as complicated pneumoconiosis under the legal definition set forth in the regulations, and—in contrast to Dr. Vuskovich—did not attempt to discredit

[9] The ALJ stated she did not consider Dr. Gaziano's interpretation of the August 6, 2020 x-ray because he interpreted it for quality purposes only. Decision and Order at 9; Director's Exhibit 15.

Dr. DePonte's opinion on the basis that otherwise qualifying pseudoplaques could not medically be complicated pneumoconiosis.

Decision and Order at 13. However, the only x-ray on which Dr. DePonte noted the possibility of pseudoplaques is the August 6, 2020 x-ray, which Dr. Habre did not review, and Dr. Habre did not discuss pseudoplaques in either of his reports. *See* Director's Exhibit 14; Claimant's Exhibits 1, 2. In addition, although the ALJ stated "Dr. Vuskovich acknowledged the presence of pseudoplaques measuring greater than one centimeter in diameter on Dr. DePonte's [x]-rays," that is not accurate. Decision and Order at 13. Dr. Vuskovich summarized Dr. DePonte's interpretation that Claimant's chest x-ray showed pseudoplaques. Employer's Exhibit 10 at 12. Next, he discussed how pseudoplaques could be mistaken for progressive massive fibrosis or neoplasm and explained that "[p]seudoplaques are not manifestations of complicated pneumoconiosis." *Id*. at 12-14. He indicated that Dr. DePonte could not confirm her interpretation because she recommended a CT scan to determine whether Claimant had pseudoplaques. *Id*. at 14. Further, he noted that Drs. Adcock and Seaman did not observe pseudoplaques or complicated pneumoconiosis. *Id*. Rather than confirming the presence of pseudoplaques, as the ALJ found, Dr. Vuskovich specifically stated "[w]hether or not [Claimant] truly had pseudoplaques was in equipoise." *Id*. at 15. Consequently, on remand, the ALJ must accurately characterize the physicians' opinions, including the evidence they relied on. I concur in all other aspects of the decision.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring and dissenting:

I agree remand is required for the ALJ to consider whether Claimant has established that he has a totally disabling respiratory or pulmonary impairment without the irrebuttable presumption at 20 C.F.R. §718.304. 20 C.F.R. §718.204(b)(2)(i)-(iv). However, I would reverse the ALJ's finding at 20 C.F.R. §718.304, as Claimant is unable, based on the evidence of record, to establish complicated pneumoconiosis as a matter of law. *See Collins v. Pond Creek Mining Co.*, 751 F.3d 180, 187 (4th Cir. 2014) (reversing a denial, with directions to award benefits without further administrative proceedings); *Scott v. Mason Coal Co.*, 289 F.3d 263, 269-70 (4th Cir. 2002) (denial of benefits reversed where "only one factual conclusion is possible"). The ALJ determined the x-ray evidence is in

equipoise and there is no biopsy evidence or CT scan evidence diagnosing complicated pneumoconiosis. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 280-81 (1994) (X-ray interpretations found to be in equipoise neither support nor refute the presence of complicated pneumoconiosis.); Decision and Order at 7-10, 14-15. As my colleague points out, the ALJ did not consider all relevant x-ray evidence, *see supra*, but even if she did, Dr. Seaman's negative interpretation of the August 6, 2020 x-ray would not support Claimant's burden of proof at Section 718.304(a). Further, while the ALJ found Dr. Habre's opinion supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(c), his opinion is based on the x-ray interpretations. *See Anderson*, 12 BLR at 1-113 (mere restatement of an x-ray reading is not a reasoned medical opinion); Decision and Order at 12-13. In addition, as my colleague notes, the ALJ's crediting of Dr. Habre's opinion is based on a mischaracterization of Dr. Vuskovich's and Habre's reports concerning pseudoplaques. *See supra*. Contrary to the ALJ's determination that Dr. Vuskovich's opinion confirmed pseudoplaques that are greater than one centimeter in diameter on Dr. DePonte's x-ray interpretations, he found the existence of pseudoplaques in equipoise. Decision and Order at 13; Employer's Exhibit 10 at 12-15. Thus, his opinion is not supportive of Dr. DePonte's. As there are no credible medical opinions supporting a finding of complicated pneumoconiosis and there is no other evidence in the record sufficient to meet Claimant's burden, I would hold Claimant cannot establish complicated pneumoconiosis at 20 C.F.R. §718.304. *See Scott*, 289 F.3d at 269-70.

JUDITH S. BOGGS
Administrative Appeals Judge