

U.S. Department of Labor

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



BRB No. 22-0054 BLA

GLORIA F. SHAFFER, deceased)	
(Widow of CHARLES H. SHAFFER))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
HELEN MINING COMPANY)	
)	
and)	DATE ISSUED: 11/22/2022
)	
VALLEY CAMP COAL COMPANY)	
)	
Employer/Carrier-)	
Respondents)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick & Long), Ebensburg, Pennsylvania, for Claimant.

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Denying Benefits (2020-BLA-05579) rendered on a survivor's claim filed on March 19, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).¹

The ALJ found Claimant did not establish complicated pneumoconiosis and thus could not invoke the irrebuttable presumption that the Miner's death was 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, although the ALJ credited the Miner with 22.51 years of underground coal mine employment, she found Claimant did not establish the Miner had a totally disabling respiratory or pulmonary impairment at the time of his death. 20 C.F.R. §718.204(b)(2). Therefore, she found Claimant could not invoke the rebuttable presumption of death due to pneumoconiosis at Section 411(c)(4).² 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established the Miner had clinical pneumoconiosis but did not establish he had legal pneumoconiosis or that his death was due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.205(b). Thus she denied benefits.

¹ Gloria F. Shaffer was the widow of the Miner, who died on January 31, 2019. Director's Exhibits 9, 11. She died on August 10, 2021, and her son, Thomas Lindsley, Jr., is pursuing the survivor's claim on her behalf. October 11, 2021 Letter from Claimant's Counsel. Because the Miner never established entitlement to benefits during his lifetime, Claimant is not eligible for derivative survivor's benefits under Section 422(l) of the Act, 30 U.S.C. §932(l) (2018).

² Under Section 411(c)(4) of the Act, Claimant is entitled to a rebuttable presumption that the Miner's death was due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment at the time of his death. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305(b).

On appeal, Claimant argues the ALJ erred in finding the evidence did not establish complicated pneumoconiosis.³ Employer responds in support of the denial of benefits.⁴ 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.⁵ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman and 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's death was due to pneumoconiosis if he suffered from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yielded 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, yielded 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); 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. 30 U.S.C. §923(b); *see Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

³ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 22.51 years of underground coal mine employment but did not establish a totally disabling respiratory or pulmonary impairment and thus cannot invoke the rebuttable presumption of death due to pneumoconiosis at Section 411(c)(4). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.204(b)(2); Decision and Order at 2, 7, 20.

⁴ We note Employer objects to the application of 30 U.S.C. §921(c)(4) and 30 U.S.C. §923(l). Employer's Brief at 3. Because neither of these provisions applies in this case, we need not address Employer's objections. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009).

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because the Miner performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4.

The ALJ found the computed tomography (CT) scan evidence supports a finding of complicated pneumoconiosis⁶ whereas the Miner's autopsy report, the medical opinions, and the Miner's treatment record evidence do not support a finding of the disease.⁷ 20 C.F.R. §718.304(b), (c); Decision and Order at 9-17. Weighing all the evidence together, she found Claimant failed to establish complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 17.

20 C.F.R. §718.304(b) – Autopsy Reports

Claimant argues the ALJ erred in weighing the autopsy evidence to find she did not establish complicated pneumoconiosis. Claimant's Brief at 6-7.

The ALJ considered the autopsy reports of Drs. Huddle and Roggli and found neither physician diagnosed complicated pneumoconiosis. Decision and Order at 9-13. She stated "Dr. Huddle did note 1.3 cm nodules consistent with [coal workers' pneumoconiosis (CWP)]" in her initial autopsy report, but concluded the doctor "did not address whether it met criteria for complicated CWP, or whether it would appear as 1 cm or greater on x-ray." *Id.* at 12. In addition, she noted "Dr. Huddle addressed the microscopic evidence in her supplemental report" and observed "the 1.3 cm nodule had been dissected perpendicular to the longest dimension and consequently appeared smaller on the histologic slides." *Id.* She concluded "Dr. Huddle did not revisit her diagnosis of marked simple pneumoconiosis in her clarification report" and the doctor adequately explained "why she diagnosed simple pneumoconiosis." *Id.*

Additionally, the ALJ noted Dr. Roggli diagnosed simple pneumoconiosis, but stated "the autopsy report by Dr. Huddle did indeed show evidence of complicated pneumoconiosis, based on 'a single lesion in the right upper lobe (sic) measuring 1.3 centimeters in the greatest dimension.'" Decision and Order at 12. She also noted Dr. Roggli stated "he did not observe a lesion of this size microscopically and there is no evidence that these abnormalities would appear as 1.3 cm radiographically." *Id.* She found Dr. Roggli "inconsistently state[d] both that a 2 cm opacity is required to diagnose complicated pneumoconiosis and the autopsy findings of a 1.3 cm opacity is (sic) consistent with CWP." *Id.* at 12-13.

⁶ The ALJ correctly noted neither party designated any x-ray evidence. Decision and Order at 9.

⁷ We affirm, as unchallenged on appeal, the ALJ's finding that the medical opinion evidence and the Miner's treatment record evidence do not establish complicated pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order at 14, 16.

We agree with Claimant’s argument that the ALJ did not consider Dr. Huddle’s amended autopsy report. *See McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder’s failure to discuss relevant evidence requires remand); Claimant’s brief at 6-7. In her amended autopsy report, Dr. Huddle opined the Miner had complicated pneumoconiosis based, in part, on a 1.3 centimeter anthracotic nodule found in the right upper lobe of his lung. Claimant’s Exhibit 1 at 1. She explained she amended her report “to change the diagnosis of ‘Simple coal worker’s pneumoconiosis, marked’ to ‘Complicated coal worker’s pneumoconiosis’ and to clarify the findings under this diagnosis, located in the Final Anatomic Diagnoses (Page 1), as well as delete the word ‘simple’ from the second line of the Clinicopathological correlation (Page 2).” *Id.* at 7. We therefore vacate the ALJ’s finding that Claimant did not establish complicated pneumoconiosis based on the autopsy evidence and remand the case for further consideration of the evidence. *See* 20 C.F.R. §718.304(b); *Director, OWCP v. Rowe*, 710 F.2d 251, 254-55 (6th Cir. 1983) (ALJ has duty to consider all of the evidence and make findings of fact and conclusions of law which adequately set forth the factual and legal bases for her decision); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *McCune*, 6 BLR at 1-998; Decision and Order at 12-13.

20 C.F.R. §718.304 – Weighing of All the Evidence

Claimant next asserts the ALJ failed to explain how she weighed all the relevant evidence together and concluded Dr. Seaman’s “positive CT reading” does not establish complicated pneumoconiosis. Claimant’s Brief at 7-8.

The ALJ considered Dr. Seaman’s interpretation of a November 12, 2018 CT scan. Decision and Order at 15-16; Claimant’s Exhibit 4. Dr. Seaman identified “a large opacity in the right upper lobe measuring up to 1.2 cm” and opined it is consistent with complicated CWP. Claimant’s Exhibit 4. The ALJ stated Dr. Seaman’s CT scan reading is consistent with Dr. Huddle’s autopsy report in which the doctor identified a 1.3 centimeter nodule in the right upper lobe. Decision and Order at 16. She thus found Dr. Seaman’s CT scan interpretation supportive of a finding of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(c). *Id.* However, in weighing all the relevant evidence together, the ALJ concluded “Claimant has not established that the [M]iner suffered from complicated pneumoconiosis.” *Id.* at 17. We agree with Claimant’s position that the ALJ did not satisfy the explanatory requirements of the Administrative Procedure Act (APA)⁸ as she failed to

⁸ The Administrative Procedure Act, 5 U.S.C. §§500-591, provides that every adjudicatory decision must include “findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented” 5 U.S.C.

adequately explain how she resolved the conflicts in the evidence. *See Wojtowicz*, 12 BLR at 1-165. Because we are unable to discern the basis for the ALJ's determination that the evidence does not establish complicated pneumoconiosis, we vacate her finding and remand the case for further consideration of the evidence in accordance with the APA. *Id.*

Remand Instructions

On remand, the ALJ must initially reconsider whether the autopsy evidence is sufficient to establish complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(b). She should consider that autopsy evidence can support a finding of complicated pneumoconiosis where an evidentiary basis exists for her to make an equivalency determination between the autopsy findings and x-ray readings.⁹ *See* 20 C.F.R. §718.304; *Clites v. Jones & Laughlin Steel Corp.*, 663 F.2d 14, 16 (3d Cir. 1981).

The ALJ must then reweigh all of the relevant evidence on the issue of complicated pneumoconiosis together, interrelating the evidence from each category, and apply the correct standard for the burden of proof (i.e., whether the evidence establishes it is more likely than not that the Miner had a chronic dust disease of the lung meeting the diagnostic requirements of 20 C.F.R. §718.304). She must critically analyze the record and adequately explain her findings as the APA requires. *See Wojtowicz*, 12 BLR at 1-165.

If Claimant establishes the Miner had complicated pneumoconiosis, the ALJ must then determine whether it arose out of his coal mine employment. 20 C.F.R. §§718.203, 718.304. The ALJ should consider whether Claimant is entitled to the rebuttable presumption that the Miner's pneumoconiosis arose out of his coal mine employment as she found the Miner had over ten years of coal mine employment. 20 C.F.R. §718.203(b). If the ALJ finds Claimant has invoked the Section 411(c)(3) irrebuttable presumption, and the Miner's pneumoconiosis arose out of his coal mine employment, she must award benefits. Because Claimant does not allege entitlement to benefits independent of a finding that the Miner had complicated pneumoconiosis arising out of his coal mine employment, we affirm the ALJ's finding that the evidence is insufficient to establish the Miner's death was due to pneumoconiosis at 20 C.F.R. §718.205. *See Skrack*, 6 BLR at 1-711; Decision

§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).

⁹ While the ALJ discussed and applied the law of the United States Court of Appeals for the Fourth Circuit, Decision and Order at 8-9, 12, 19, she is not bound by it as this case arises within the jurisdiction of the Third Circuit. *See Shupe*, 12 BLR at 1-202; Director's Exhibit 4; Hearing Tr. at 13.

and Order at 21. If Claimant does not establish the Miner had complicated pneumoconiosis, the ALJ must reinstate the denial of benefits.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge