

U.S. Department of Labor

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



BRB No. 19-0555 BLA

DILL E. ADAMS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
BENHAM COAL, INCORPORATED)	
SELF-INSURED THROUGH AVISTAR aka)	
INTERNATIONAL TRUCK & ENGINE)	
CORPORATION)	DATE ISSUED: 10/29/2020
)	
Employer-Petitioner)	
)	
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 Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge Joseph E. Kane’s Decision and Order – Awarding Benefits (2017-BLA-05977) 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 subsequent claim filed on February 27, 2014.¹

The administrative law judge credited Claimant with twenty and one-half years of underground coal mine employment based on Employer's concession and found he established the existence of complicated pneumoconiosis at 20 C.F.R. §718.304. He therefore found Claimant 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), and established a change in an applicable condition of entitlement at 20 C.F.R. §725.309. The administrative law judge also found Claimant established his complicated pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203(b) and awarded benefits.

On appeal, Employer asserts the administrative law judge erred in finding Claimant established he has complicated pneumoconiosis.² Neither Claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

The Board's scope of review is defined by statute. We must affirm the administrative law judge'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 Associates, Inc.*, 380 U.S. 359 (1965).

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and its implementing regulation, 20 C.F.R. §718.304, establish an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he is suffering or suffered from a chronic dust disease of the lung which: (a) when diagnosed by chest x-ray, yields one or more large opacities greater than

¹ Claimant has filed three claims for benefits. On October 30, 2004, Administrative Law Judge Joseph E. Kane issued a Decision and Order denying Claimant's most recent prior claim, filed on May 4, 2001, because he failed to establish total disability. Director's Exhibit 2. The Benefits Review Board affirmed the denial. *Adams v. Benham Coal Co.*, BRB No. 04-0275 (Oct. 29, 2004) (unpub.). Claimant took no further action until filing the present claim on February 27, 2014. Director's Exhibit 4.

² We need not address Employer's summary constitutional challenge to Section 411(c)(4), 30 U.S.C. §921(c)(4), as the administrative law judge did not apply this provision in this case.

³ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant's last coal mine employment occurred in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5.

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). 20 C.F.R. §718.304. The administrative law judge must determine whether the evidence in each category tends to establish the existence of complicated pneumoconiosis and then must weigh together the evidence at subsections (a), (b), and (c) before determining whether Claimant has invoked the irrebuttable presumption. 30 U.S.C. §923(b); *see Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

The administrative law judge found the x-ray evidence establishes Claimant has Category A complicated pneumoconiosis,⁴ 20 C.F.R. §718.304(a), while the computed tomography (CT) scans, treatment records, and medical opinions are either silent on the issue or insufficient to establish the disease's presence or absence. 20 C.F.R. §718.304(c).⁵ Weighing all the evidence, the administrative law judge gave greatest weight to the x-ray evidence of complicated pneumoconiosis and found it is not undermined by any contrary

⁴ The administrative law judge considered six interpretations of four chest x-rays dated May 7, 2014, August 23, 2016, September 19, 2016, and May 2, 2017. Decision and Order at 7-8. Drs. DePonte and Miller, dually-qualified B readers and Board-certified radiologists, read the May 7, 2014 x-ray as positive for simple pneumoconiosis. Director's Exhibits 11, 16. Dr. DePonte read the August 23, 2016 and May 2, 2017 x-rays as positive for complicated pneumoconiosis. Claimant's Exhibits 1, 2. Dr. Meyer, a dually-qualified radiologist, read the September 19, 2016 x-ray as positive for complicated pneumoconiosis while Dr. Dahhan, a B reader, read the same x-ray as negative. Director's Exhibit 13; Claimant's Exhibit 3. The administrative law judge noted Dr. DePonte found a category A opacity on the August 23, 2016 and May 2, 2017 x-rays, but stated the nodule could be a malignancy and recommended comparing previous films and obtaining computed tomography (CT) scan interpretations. Decision and Order at 8. He also noted Dr. Meyer unequivocally found complicated pneumoconiosis on the September 19, 2016 x-ray. *Id.* Determining Dr. Meyer's finding of complicated pneumoconiosis supports Dr. DePonte's findings of the disease, the administrative law judge found the three most recent x-rays establish complicated pneumoconiosis. *Id.*

⁵ The administrative law judge correctly noted there is no biopsy evidence. 20 C.F.R. §718.304(b); Decision and Order at 8.

evidence,⁶ thus entitling Claimant to the irrebuttable presumption of total disability due to pneumoconiosis.

Employer has not raised any specific allegations of error regarding the administrative law judge's weighing of the x-ray evidence. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983). We therefore affirm his finding that the weight of the x-ray evidence establishes the existence of complicated pneumoconiosis as supported by substantial evidence. 20 C.F.R. §718.304(a); Decision and Order at 8. Instead, Employer argues the administrative law judge erred in finding the CT scan evidence does not establish that the large opacities noted on the x-rays either did not exist or were due to some disease process other than complicated pneumoconiosis. Employer's Brief at 3-4. Employer's argument is without merit.

The administrative law judge considered interpretations of three CT scans taken on June 15, 2015, March 3, 2016, and June 5, 2017. Dr. Patel interpreted the June 15, 2015 scan as showing fibrotic changes in both upper lobes with nodular density in the right apex measuring 10 mm and a nodular density in the left upper lobe measuring 14 mm in size with surrounding fibrotic changes. Claimant's Exhibit 9. He also reported a nodular density in the left lung base measuring 8 mm in size with some fibrotic changes and a nodular density at the right lung base measuring 14 mm in size with fibrotic changes. *Id.* He opined the density and changes probably represent granulomatous disease with calcified granulomas in both hilar areas as well as calcified mediastinal lymph nodes in the precarinal area. *Id.*

Dr. Pampati interpreted the March 3, 2016 scan as showing multiple reticular nodular densities scattered in the lungs. Claimant's Exhibit 6. He reported a 1.8 mm density in the left mid lung and emphysematous bullae in both lungs with another density with atelectatic changes in the right middle lobe measuring about 1.5 cm in anteroposterior diameter. *Id.* He also reported a well-defined pleural-based nodular density in the left lung base measuring about 1 cm. He opined there is scarring and fibrotic changes in both lungs. *Id.*

Dr. Polsani interpreted the June 5, 2017 scan as showing linear subsegmental consolidative opacity in bilateral anterior lung bases and noted it correlates clinically with pneumonia. Claimant's Exhibit 9. The administrative law judge found the CT scans

⁶ Employer conceded Claimant has simple pneumoconiosis. *See* Decision and Order at 3.

support the presence of nodules, but are not sufficient to meet the regulatory requirements at 20 C.F.R. §718.304(c). Decision and Order at 9.

Employer argues the administrative law judge ignored the opinions of Drs. Patel and Polsani. Contrary to Employer's argument, the administrative law judge reviewed both Drs. Patel's and Polsani's interpretations of the CT scans and their suggestions of other diagnoses, but found their readings do not undermine the x-ray diagnoses for complicated pneumoconiosis because "there is no indication [Drs. Patel, Pampati, or Polsani] knew the Claimant's history of coal mine dust exposure" or are Board-certified radiologists or B-readers. Decision and Order at 8-9; see *Crockett Collieries, Inc. v. Barrett*, 478 F.3d 350, 356 (6th Cir. 2007); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983). Further, the administrative law judge noted the CT scans exclude the presence of malignancy and "lend strong support to the findings of Drs. DePonte and Meyer on chest x-ray reading that pulmonary nodules are present" in Claimant's lungs. Decision and Order at 10. Noting the CT scans do not affirmatively show the absence of opacities or that the opacities are not complicated pneumoconiosis, he permissibly found the CT scans do not contradict the x-ray interpretations of Drs. DePonte and Meyer that Claimant has complicated pneumoconiosis.⁷ See *Barrett*, 478 F.3d at 356; *Rowe*, 710 F.2d at 255. We therefore affirm as supported by substantial evidence the administrative law judge's finding that the CT scan evidence does not outweigh the x-ray evidence.

We further reject Employer's contention that the administrative law judge erred in failing to address the medical opinion evidence. He considered the opinions of Drs. Ajarapu and Dahhan and correctly determined they did not discuss either the presence or absence of complicated pneumoconiosis. *Id.* at 10. In addition, he correctly determined Claimant's treatment records also do not discuss the presence or absence of complicated pneumoconiosis. *Id.* As substantial evidence supports the administrative law judge's finding that the other evidence does not undermine the finding of complicated pneumoconiosis on x-ray, we affirm it.

We also reject Employer's assertion the administrative law judge failed to weigh all the medical evidence. Weighing the x-ray and CT scan evidence together, the

⁷ We reject Employer's contention that the administrative law judge erred in relying on the Fourth Circuit's decision in *Eastern Associated Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250 (4th Cir. 2000), in weighing the CT scan evidence, when this claim arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. Employer's Brief at 3-4. Employer fails to explain how the administrative law judge's finding is contrary to Sixth Circuit case law. See 20 C.F.R. §§802.211, 802.301; *Cox*, 791 F.2d at 446; *Sarf*, 10 BLR at 1-120-21.

administrative law judge found Claimant established the presence of complicated pneumoconiosis and thus invoked the irrebuttable presumption of total disability due to pneumoconiosis. Decision and Order at 10. He permissibly accorded greater weight to Dr. DePonte's and Dr. Meyer's x-ray readings showing complicated pneumoconiosis and found the CT scans do not undermine their readings. *See Barrett*, 478 F.3d at 356; *Rowe*, 710 F.2d at 255. We therefore affirm his finding that Claimant established complicated pneumoconiosis at 20 C.F.R. §718.304.

We also affirm, as unchallenged on appeal, the administrative law judge's finding that Claimant's complicated pneumoconiosis arose out of his coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). Consequently, we affirm the administrative law judge's finding Claimant invoked the irrebuttable presumption and the award of benefits. 20 C.F.R. §718.304.

Accordingly, we affirm the administrative law judge's Decision and Order – Awarding Benefits.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge