U.S. Department of Labor

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

BRB Nos. 23-0014 BLA
and 23-0286 BLA

GRACIE RITCHIE (o/b/o and Widow of BRYAN RITCHIE)	)	
Claimant-Respondent	)	
v.	)	
FAITH COAL SALES, INCORPORATED	)	
	)	DATE ISSUED: 04/05/2024
and	)	
AMERICAN INTERNATIONAL SOUTH/CHARTIS	)	
Employer/Carrier-Petitioners	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeals of the Decision and Orders Awarding Benefits in a Subsequent Claim on Modification and Decision and Order Awarding Continuing Benefits Under the Automatic Entitlement Provision of the Black Lung Benefits Act of Jason A. Golden, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia for Claimant.

Kyle L. Johnson (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) Jason A. Golden's Decision and Order Awarding Benefits in a Subsequent Claim on Modification and Decision and Order Awarding Continuing Benefits Under the Automatic Entitlement Provision of the Black Lung Benefits Act (2020-BLA-05891 & 2023-BLA-05299) rendered on claims pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[1] This case involves a request for modification of a subsequent miner's claim filed on March 22, 2016 and a survivor's claim filed on October 28, 2022.[2]

The ALJ accepted the parties' stipulation that the Miner had thirty-one years of coal mine employment. He determined Claimant established the Miner had complicated pneumoconiosis, thereby invoking 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 establishing a change in an applicable condition of entitlement and modification.[3] 20 C.F.R. §§718.304,

[1] Employer's appeal in the miner's claim was assigned BRB No. 23-0014 BLA, and its appeal in the survivor's claim was assigned BRB No. 23-0286 BLA. The Benefits Review Board consolidates these appeals for decision only.

[2] This case involves the Miner's second claim for benefits. The district director denied his first claim for failing to establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b); Director's Exhibit 1 at 2. The Miner died on April 16, 2016, while this second claim was pending. Director's Exhibit 8. Claimant, the Miner's widow, is pursuing the miner's claim on his behalf as well as her own survivor's claim. Director's Exhibit 8; SC Director's Exhibit 3.

[3] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the Miner did not establish total disability in his prior claim, Claimant had to submit new evidence establishing that element of entitlement to obtain

725.309(c), 725.310. He further concluded modification rendered justice under the Act. 20 C.F.R. §725.310. Therefore, the ALJ awarded benefits in the miner's claim. Because he awarded benefits in the miner's claim, he further found Claimant is automatically entitled to survivor's benefits under Section 422(*l*) of the Act.[4] 30 U.S.C. §932(*l*) (2018).

On appeal, Employer argues the ALJ erred in granting modification based on a finding of complicated pneumoconiosis and in determining the onset date for payment of benefits.[5] Because it alleges error in the award of benefits in the miner's claim, Employer also contends the ALJ erred in awarding automatic benefits in the survivor's claim. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, did not file 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.[6] 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).

The sole basis on which an ALJ may grant modification in a deceased miner's claim is that a mistake in a determination of fact was made in the prior decision. 20 C.F.R. §725.310(a); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-164 (1989). The ALJ has broad discretion to correct mistakes of fact, including the ultimate fact of entitlement. *Consolidation Coal Co. v. Worrell*, 27 F.3d 227, 230 (6th Cir. 1994); *Natalon*i

---

review of the claim on the merits. *See* 20 C.F.R. §725.309(c)(3); *White*, 23 BLR at 1-3; Director's Exhibit 1.

[4] Section 422(*l*) of the Act provides that the survivor of a miner who was determined to be eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(*l*) (2018).

[5] We affirm, as unchallenged on appeal, the ALJ's finding that the Miner had thirty-one years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 12.

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

v. Director, OWCP, 17 BLR 1-82, 1-84 (1993). Thus, the ALJ is authorized "to correct mistakes of fact, whether demonstrated by wholly new evidence, cumulative evidence, or merely further reflection on the evidence initially submitted." *O'Keeffe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254, 256 (1971).

The Miner's Claim

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 large opacities (greater than one centimeter in diameter) classified as Category A, B, or C; (b) when diagnosed by biopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, is a condition which would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. 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. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found Claimant established complicated pneumoconiosis based on the computed tomography (CT) scan evidence.[7] 20 C.F.R. §718.304(c); Decision and Order at 12.

CT Scan and Medical Opinion Evidence

The ALJ considered three interpretations of the March 9, 2016 CT scan and Dr. Adcock's medical opinion in the form of deposition testimony addressing the interpretations. Decision and Order at 5-6, 8-12; Director's Exhibits 29, 38; Employer's Exhibits 1, 2. As part of the Miner's treatment, Dr. Westerfield interpreted the CT scan and found multiple "small nodules bilaterally, right greater than left, which measure up to 8 mm in the right perihilar region." Employer's Exhibit 1. Dr. Crum interpreted the CT scan as consistent with complicated pneumoconiosis, finding a large opacity among a background of multiple small opacities and coalescence, the largest opacity measuring 2.7 centimeters. Director's Exhibit 29. Finally, Dr. Adcock opined the CT scan demonstrated no large opacities consistent with complicated pneumoconiosis. Director's Exhibit 38; Employer's Exhibit 2.

[7] There was no chest x-ray, biopsy, or autopsy evidence of record. 20 C.F.R. §718.304(a), (b); Decision and Order at 8.

The ALJ first determined Dr. Westerfield's interpretation of the CT scan neither supported nor refuted a finding of complicated pneumoconiosis. Decision and Order at 9. The ALJ then weighed Dr. Crum's interpretation against Dr. Adcock's conflicting interpretation and opinion. He found Dr. Adcock's opinion worthy of little weight based on multiple factors thereby rendering his opinion unreasoned and undocumented. *Id.* at 9-12. The ALJ found Dr. Crum's opinion was supported by the Miner's history of coal dust exposure and better-reasoned as he provided the specific location and size of the large opacity he identified and noted the background setting of small opacites; thus, he accorded Dr. Crum's interpretation the most probative weight.[8] *Id.* at 11-12. The ALJ therefore determined that the CT scan evidence established complicated pneumoconiosis. *Id.* at 12.

On appeal Employer first contends the ALJ erred in finding Dr. Westerfield's interpretation as neither supporting nor refuting the presence of pneumoconiosis because the physician specified the largest opacity he observed was eight millimeters, which refutes a finding of complicated pneumoconiosis. Employer's Brief at 11-12. The ALJ, however, acted within his discretion in finding Dr. Westerfield's treating interpretation, which did not mention pneumoconiosis, neither supported nor refuted a finding of pneumoconiosis. *See Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-218-19 (1984) (whether the ALJ could infer from the treatment records' silence on the presence of pneumoconiosis that the disease is absent is a question of fact to be resolved by the ALJ). Further, the ALJ noted, given Dr. Adcock's explanation that there is an "interobserver error" of approximately two or three millimeters, another reader may have found the same opacity observed by Dr. Westerfield to be one centimeter in diameter. Decision and Order at 11. Thus, contrary to Employer's contention, the ALJ was not required to find Dr. Westerfield's interpretation directly refutes a finding of complicated pneumoconiosis. *Director, OWCP v. Rowe*, 710 F.2d 251, 254-55 (6th Cir. 1983); *Marra*, 7 BLR at 1-218-19.

Next, Employer contends the ALJ erred in discrediting Dr. Adcock's opinion and interpretation of the CT scan, listing multiple contentions of error. We find Employer's arguments unpersuasive.

Dr. Adcock's interpretation of the CT scan acknowledged the presence of nodules consistent with interstitial disease and noted the "extensive" differential diagnoses could

[8] The ALJ found Dr. Crum's explanation that CT scans are "more sensitive and specific" than x-rays for detecting pneumoconiosis is sufficient to establish CT scans are medically acceptable and relevant to determining pneumoconiosis. 20 C.F.R. §718.107(b); Decision and Order at 9; Director's Exhibit 29. We affirm this finding as unchallenged. *Skrack*, 6 BLR at 1-711.

include simple coal workers' pneumoconiosis. Director's Exhibit 38. He further explained in his deposition that other differential diagnoses would include old granulomatous disease in the form of histoplasmosis, tuberculosis, or other fungal disease. Employer's Exhibit 2 at 19. His interpretation also noted "[f]oci of non-mass-like fibrotic stranding, extend to the pleura in the lateral left upper lobe, the inferolateral right upper lobe, and the inferolateral lower lobes bilaterally." Director's Exhibit 38.

As the ALJ found, the record lacked evidence regarding a history or diagnoses of histoplasmosis, tuberculosis, or fungal infection, in contrast to the Miner's lengthy history of coal mine dust exposure. Decision and Order at 9-10. Dr. Adcock acknowledged he was unaware of the length of the Miner's coal mine employment when interpreting the CT scan; however, when advised the Miner was a coal miner for approximately thirty-one years, the physician indicated this history would not change his opinion. Decision and Order at 9-10; Employer's Exhibit 2 at 23-24, 34-35. Thus, we affirm the ALJ's finding that Dr. Adcock's findings were speculative and equivocal, and we reject Employer's arguments that the ALJ erred in finding Dr. Adcock did not adequately address the Miner's coal mine employment history and the ALJ ignored the physician's explanation regarding the other differential diagnoses. *See Rowe*, 710 F.2d at 255; *see also Westmoreland v. Cox*, 602 F.3d 276, 286-87 (4th Cir. 2010) (affirming the ALJ's discrediting of employer's experts' opinions because they "consisted of speculative alternative diagnoses that were not based on evidence that [the miner] suffered from any of the diseases suggested"); Decision and Order at 10; Employer's Brief at 6-7.

As it is the ALJ's function to weigh the credibility of the evidence, we find he permissibly analyzed Dr. Adcock's opinion to find it inadequately reasoned.[9] *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); *Hutchens v. Director, OWCP*, 8 BLR 1-16, 1-19 (1985) (ALJ must consider factors that tend to undermine the reliability of a physician's conclusions before accepting the medical opinion). Employer's arguments amount to a request to reweigh the evidence, which the Board may not do. *See Director, OWCP v. Rowe*, 710 F.2d 251, 254-55 (6th Cir. 1983) (the Board is not empowered to engage in a *de novo* review but rather is limited to reviewing the ALJ's decision for errors of law and to determine whether the factual findings are supported by substantial evidence in the record viewed as a whole); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

[9] As the ALJ provided permissible bases for finding Dr. Adcock's opinion undermined, we need not address Employer's other contentions of error with respect to the ALJ's findings regarding his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 4-10.

Moreover, as Employer does not raise contentions of error regarding the ALJ's decision to accord Dr. Crum's opinion probative weight, we affirm his finding that Dr. Crum's opinion is sufficient to establish the presence of complicated pneumoconiosis. Decision and Order at 11-12.

Therefore, we affirm the ALJ's finding that Claimant established complicated pneumoconiosis based on the CT scan evidence, invoked the Section 411(c)(3) presumption,[10] and thus established a mistake in fact in the district director's denial. 20 C.F.R. §§718.304(c), 725.309; Decision and Order at 12-15. Thus, we affirm the award of benefits in the miner's claim.

Onset Date

Employer argues the ALJ erred in concluding benefits in the miner's claim should begin as of March 2016, the date the claim was filed. Employer's Brief at 13.

The commencement date for benefits is the month in which the miner became totally disabled due to pneumoconiosis. 20 C.F.R. §725.503(b), (d); *see Lykins v. Director, OWCP*, 12 BLR 1-181, 1-182 (1989). If the ALJ finds the Miner is entitled to the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3), the ALJ must determine whether the evidence establishes the onset date of complicated pneumoconiosis. *See Williams v. Director, OWCP*, 13 BLR 1-28, 1-30 (1989). If not, the commencement date is the month in which the claim was filed, unless the evidence establishes the miner had only simple pneumoconiosis for any period subsequent to the date of filing. In that case, the date for the commencement of benefits follows the period when the miner had only simple pneumoconiosis. *Williams*, 13 BLR at 1-30.

The ALJ found the onset date to be March 2016, as this is the date the Miner filed his claim and is also the date of the CT scan establishing complicated pneumoconiosis. Decision and Order at 15. He also noted no evidence that the Miner did not have complicated pneumoconiosis at any point after he filed his claim. *Id.*

Employer argues this modification is based on a change in condition—not a mistake in fact—therefore, benefits should not begin until the month and year Claimant's request

[10] Because Claimant established more than ten years of coal mine employment, the rebuttable presumption that the Miner's pneumoconiosis arose out of his coal mine employment applies. 20 C.F.R. §718.203; Decision and Order at 12. The ALJ's finding that Employer failed to rebut the presumption is affirmed as unchallenged on appeal. *See Skrack*, 6 BLR at 1-711; Decision and Order at 12-13.

for modification was filed or at least no later than the district director's denial, which became final in October 2019. Employer's Brief at 13, 15. We disagree.

Contrary to Employer's argument, modification here could not be based on a change in condition, as the Miner was deceased at the time of the district director's denial. 20 C.F.R. §725.310(a); *Wojtowicz*, 12 BLR at 1-164; Director's Exhibits 19, 24, 29, 31. Thus, the ALJ correctly determined modification was based on a mistake in fact and that the onset date for benefits is March 2016. 20 C.F.R. §725.503(d)(1); *see Williams*, 13 BLR at 1-30.

Survivor's Claim

Based on the award of benefits in the miner's claim, the ALJ found Claimant established automatic entitlement under Section 422(*l*) of the Act. 30 U.S.C. §932(*l*); Survivor's Claim Decision and Order at 3. Employer challenges the award solely on the alleged errors in the underlying miner's claim. Because we have affirmed the award of benefits in the miner's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits. 30 U.S.C. §932(*l*); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits in a Subsequent Claim on Modification in the Miner's Claim and Decision and Order Awarding Continuing Benefits Under the Automatic Entitlement Provision of the Black Lung Benefits Act in the Survivor's Claim.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge