U.S. Department of Labor

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

BRB No. 23-0351 BLA

EDWARD B. REMINES	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DOSS FORK COAL COMPANY, INCORPORATED	)	DATE ISSUED: 04/18/2024
	)	
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 Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

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

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

Amanda Torres (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Awarding Benefits (2021-BLA-05930) rendered on a claim filed on May 22, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[1]

The ALJ credited Claimant with 15.7 years of underground coal mine employment. She also determined he established complicated pneumoconiosis arising out of his coal mine employment and therefore invoked the irrebuttable presumption that he is totally disabled due to pneumoconiosis pursuant to Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). 20 C.F.R. §§718.203(b), 718.304. Therefore, the ALJ awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established complicated pneumoconiosis and more than fifteen years of qualifying coal mine employment. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response, urging the Benefits Review Board to affirm the ALJ's finding of 15.7 years of coal mine employment. Employer replied to both briefs, reiterating its contentions.

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 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

[1] Claimant filed two prior claims on November 16, 2017, and November 2, 2018, but withdrew them on September 25, 2018, and August 13, 2019, respectively. Decision and Order at 3; Hearing Transcript at 15; Director's Exhibit 53 at 5. Withdrawn claims are considered "not to have been filed." 20 C.F.R. §725.306(b).

[2] 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 Virginia or West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 2 n.2; Hearing Transcript at 42, 46, 48; Director's Exhibits 3; 45 at 21.

or autopsy, yields massive lesions in the lung;[3] 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, 1-33-34 (1991) (en banc).

Employer contends the ALJ erred in finding Claimant established complicated pneumoconiosis based on the x-ray evidence and the evidence as a whole. We disagree.

The ALJ considered eleven readings of three x-rays, as well as Dr. Seaman's rehabilitative report of the most recent x-ray.[4] 20 C.F.R. §718.304(a); Decision and Order at 8-13. She noted all the readers are dually-qualified as Board-certified radiologists and B readers. Decision and Order at 10.

Drs. DePonte, Crum, and Miller interpreted the September 4, 2020 x-ray as positive for simple pneumoconiosis with a coalescence of small opacities and complicated pneumoconiosis, Category A. Director's Exhibits 13 at 30; 17; Claimant's Exhibit 3. Drs. Meyer and Simone read the x-ray as negative for simple and complicated pneumoconiosis, although Dr. Meyer noted pleural abnormalities and recommended a chest computed tomography (CT) scan. Director's Exhibit 22; Employer's Exhibit 9. The ALJ found the September 4, 2020 x-ray positive for simple and complicated pneumoconiosis based on the preponderance of the positive readings by Drs. DePonte, Crum, and Miller. Decision and Order at 10.

Drs. Crum and DePonte interpreted the April 8, 2021 x-ray as positive for simple pneumoconiosis and complicated pneumoconiosis, Category A, with Dr. DePonte finding an opacity in the right mid to lower lung zone measuring at least thirteen millimeters. Claimant's Exhibits 1, 2. Drs. Tarver and Seaman interpreted the April 8, 2021 x-ray as showing simple pneumoconiosis only. Employer's Exhibits 10, 11. The ALJ found the x-ray readings support a finding of simple pneumoconiosis but are in equipoise as to the presence of complicated pneumoconiosis and, therefore, do not support or refute the existence of the disease. Decision and Order at 11.

[3] The ALJ accurately observed there was no biopsy evidence in the record. Decision and Order at 7.

[4] Dr. Gaziano, a B reader, assessed the September 4, 2020 x-ray for film quality only. Director's Exhibit 15.

Dr. Crum interpreted the January 5, 2022 x-ray as positive for simple pneumoconiosis and complicated pneumoconiosis, Category A. Claimant's Exhibit 7. Dr. Seaman initially read the same x-ray as negative for both simple and complicated pneumoconiosis. In a subsequent report, she reiterated her opinion that the film is not consistent with coal workers' pneumoconiosis, but she noted there was right pleural thickening with a linear parenchymal band at the right lung base. Employer's Exhibits 1 at 32; 17. The ALJ noted that Dr. Seaman did not explain why she changed her opinion and no longer believes Claimant has pneumoconiosis, having identified pneumoconiosis in all lung zones on the April 8, 2021 x-ray, but then finding the January 5, 2022 x-ray completely negative for the disease. Decision and Order at 11-12. Ultimately, the ALJ found the readings of the January 5, 2022 x-ray in equipoise and thus that it neither supports nor refutes a finding of complicated or simple pneumoconiosis. *Id.*

Because the ALJ found one x-ray positive for complicated pneumoconiosis and the readings of two others in equipoise, she concluded that the x-ray evidence supported a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a). Decision and Order at 13.

Contrary to Employer's argument, the ALJ did not simply "count heads" in finding Claimant established complicated pneumoconiosis based on the x-ray evidence. Employer's Brief at 5-7. Rather, she properly performed both a qualitative and quantitative analysis of the conflicting x-ray readings by the "dually[-] qualified" readers. *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). Evaluating each x-ray individually, and taking into consideration the radiological qualifications of the physicians and the nature of their readings, she permissibly found the September 4, 2020 x-ray is positive for complicated pneumoconiosis and is not undermined by the readings of the April 8, 2021 and January 5, 2022 x-rays which she found in equipoise. *See Addison*, 831 F.3d at 256-57; *Adkins*, 958 F.2d at 52-53; Decision and Order at 13; *see also Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994).

We see no error in the ALJ's reliance on the readings of the September 4, 2020 x-ray by Drs. DePonte, Crum, and Miller because, as she observed, these dually-qualified readers consistently interpreted the x-rays as positive for both simple and complicated pneumoconiosis. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 12; Director's Exhibits 13 at 30; 17; Claimant's Exhibits 1-3, 7. Moreover, she permissibly found their positive readings for complicated pneumoconiosis outweighed the interpretations by the other dually-qualified readers, as two dually-qualified readers interpreted one x-ray as entirely negative, one dually-qualified reader interpreted one x-ray as positive for simple but negative for complicated pneumoconiosis, and one dually-

qualified reader contradictorily interpreted one x-ray as positive for simple pneumoconiosis and a second x-ray as entirely negative. Decision and Order at 12; Director's Exhibit 22; Employer's Exhibits 1 at 32; 9-11; 17.

Employer's arguments regarding the x-rays are a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Because it is supported by substantial evidence, we affirm the ALJ's conclusion that the preponderance of the x-ray evidence establishes complicated pneumoconiosis at 20 C.F.R. §718.304(a). *See Ondecko*, 512 U.S. at 281; Decision and Order at 13.

As Employer raises no further arguments regarding the ALJ's finding that Claimant established complicated pneumoconiosis, we affirm her finding that Claimant invoked the irrebuttable presumption at Section 411(c)(3).[5] *See Scarbro*, 220 F.3d at 258 ("the most objective measure of [complicated pneumoconiosis] is obtained through x-rays"); Decision and Order at 25. We further affirm, as unchallenged on appeal, the ALJ's determination that Claimant's complicated pneumoconiosis arose out of his coal mine employment.[6] 20 C.F.R. §718.203(b); *see The Daniels Co. v. Director, OWCP* [*Mitchell*], 479 F.3d 321, 337

[5] The ALJ found the CT scans, Dr. Jawad's treatment records, and the medical opinions of Drs. McSharry and Seaman neither support nor refute a finding of complicated pneumoconiosis; Dr. Raj's opinion "was of no probative value in assessing pneumoconiosis"; and the treatment pulmonary function studies "are not relevant to the existence of complicated pneumoconiosis." Decision and Order at 17, 25; Director's Exhibit 13; Claimant's Exhibits 4-6; Employer's Exhibits 1-8, 14-16. We affirm these findings as they are unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 13-25; Employer's Brief at 6 n.5.

[6] Based on our affirmance of the ALJ's finding that Claimant invoked the irrebuttable presumption, we need not address Employer's arguments that the ALJ erred in finding Claimant had at least fifteen years of qualifying employment to invoke the Section 411(c)(4) rebuttable presumption. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Employer's Brief at 7-11; Employer's Reply Brief at 2-5. Moreover, even if the ALJ should have found only 13.15 years of coal mine employment, as Employer contends, Claimant still has established the necessary ten years of coal mine employment to invoke the presumption of disease causation at 20 C.F.R. §718.203(b).

(4th Cir. 2007); *Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 25.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge