U.S. Department of Labor

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

BRB No. 22-0536 BLA

DONALD G. POSTON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	
	)	DATE ISSUED: 12/19/2023
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 Theodore W. Annos, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

Kendra Prince (Penn, Stuart, & Eskridge), Abingdon, Virginia, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Theodore W. Annos's Decision and Order Awarding Benefits (2018-BLA-05702) rendered on a claim filed on April 22,

2015,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 20.53 years of coal mine employment. He found Claimant established complicated pneumoconiosis and therefore invoked the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §718.304. Further, he found Claimant's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits. 20 C.F.R. §718.203(b).

On appeal, Employer asserts the ALJ erred in finding Claimant established complicated pneumoconiosis.[2] Claimant responds in support of the award. The Director, Office of Workers' Compensation Programs, declined to file a brief unless requested.

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, 361-62 (1965).

Complicated Pneumoconiosis

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 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. In determining whether Claimant has invoked the irrebuttable presumption, the ALJ must weigh all

[1] Claimant filed four prior claims but withdrew them. Director's Exhibits 1-4. As a withdrawn claim is considered not to have been filed, the ALJ treated the current claim as an initial claim. 20 C.F.R. §725.306(b); Decision and Order at 2.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 20.53 years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6.

[3] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 23.

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. Associated 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 (1991) (en banc).

The ALJ found the x-rays and medical opinions support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a), (c); Decision and Order at 11, 23. He further found the results of the computed tomography (CT) scans are in equipoise when considered independently but support a finding of complicated pneumoconiosis when considered in conjunction with the medical opinions.[4] 20 C.F.R. §718.304(c); Decision and Order at 12.

Weighing all the evidence together, the ALJ concluded Claimant established complicated pneumoconiosis based on the x-rays and medical opinion evidence.[5] 20 C.F.R. §718.304(a), (c); Decision and Order at 25.

X-rays – 20 C.F.R. §718.304(a)

The ALJ considered eleven readings of five x-rays taken April 30, 2015, February 22, 2017, June 21, 2017, February 9, 2019, and April 12, 2019. Decision and Order at 8-11; Director's Exhibits 15 at 21, 18 at 24; Claimant's Exhibits 1, 3, 5, 7, 8; Employer's Exhibits 1-4. He found all the physicians that interpreted the x-rays are dually-qualified as B readers and Board-certified radiologists. Decision and Order at 9.

Drs. Crum and DePonte read the April 30, 2015 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Adcock read it as negative. Director's Exhibit 15 at 21; Claimant's Exhibit 1; Employer's Exhibit 3. Dr. DePonte also read the February 22, 2017, June 21, 2017, February 9, 2019, and April 12, 2019 x-rays as positive for complicated pneumoconiosis, Category A, while Dr. Adcock read them as negative. Director's Exhibit 18 at 24; Claimant's Exhibits 3, 5, 7, 8; Employer's Exhibits 1 at 33, 2, 4.

The ALJ found the April 30, 2015 x-ray positive for complicated pneumoconiosis because a greater number of dually-qualified radiologists read it as positive than as

[4] The ALJ found the record contains no biopsy or autopsy evidence. 20 C.F.R. §718.304(b); Decision and Order at 7.

[5] The ALJ considered Claimant's treatment records but found, other than the x-ray and CT scan readings from Dr. DePonte, they do not address the issue of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 25. We affirm this finding as unchallenged. *See Skrack*, 6 BLR at 1-711.

negative. Decision and Order at 9. He further found the readings of the February 22, 2017, June 21, 2017, February 9, 2019, and April 12, 2019 x-rays in equipoise because an equal number of dually-qualified radiologists read each x-ray as positive compared to negative for the disease.[6] *Id.* at 10. Because one x-ray is positive for complicated pneumoconiosis and the readings of the remaining x-rays are in equipoise, he found the preponderance of the x-ray evidence supports a finding of complicated pneumoconiosis. *Id.* at 10-11.

Employer argues the ALJ erred in finding the April 30, 2015 x-ray positive for complicated pneumoconiosis because he "counted heads" to resolve the conflict in the evidence. Employer's Brief at 4-7. Contrary to Employer's contention, the ALJ did not count heads, but performed both a qualitative and quantitative analysis of the conflicting x-ray readings, taking into consideration the physicians' radiological qualifications. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256 (4th Cir. 2016); Decision and Order at 7. Additionally, he permissibly found Dr. DePonte's positive x-ray readings are more persuasive than Dr. Adcock's negative readings because Dr. DePonte "consistently noted coalescence of small opacities, calcified granuloma, and hilar adenopathy alongside her finding of a [C]ategory A opacity," while Dr. Adcock's readings were inconsistent on whether a calcified granuloma was present. Decision and Order at 11; *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).

As Employer raises no further argument regarding the ALJ's weighing of the x-ray evidence, and it is supported by substantial evidence, we affirm the ALJ's finding the x-ray evidence supports a finding of complicated pneumoconiosis. *See* 20 C.F.R. §718.304(a); Decision and Order at 11.

Other Medical Evidence – 20 C.F.R. §718.304(c)

The ALJ also considered the medical opinions of Drs. Berro, Sargent, DePonte, and Adcock. Decision and Order at 13-23. Drs. Berro and DePonte opined Claimant has complicated pneumoconiosis while Drs. Sargent and Adcock opined he does not have the disease. Director's Exhibits 15, 19; Claimant's Exhibits 4, 9; Employer's Exhibits 1, 9, 10. The ALJ found the opinions of Drs. Berro and Sargent are entitled to no weight because they are based solely on x-ray readings. Decision and Order at 22. He discredited Dr. Adcock's opinion as not well-reasoned and found Dr. DePonte's opinion is entitled to

[6] We affirm as unchallenged the ALJ's finding the readings of the February 22, 2017, June 21, 2017, February 9, 2019, and April 12, 2019 x-rays are in equipoise. *See Skrack*, 6 BLR at 1-711; Employer's Brief at 6-7.

probative weight as it is reasoned and documented.[7] *Id.* at 22-23. Thus, he found the medical opinion evidence supports a finding of complicated pneumoconiosis. *Id.* at 23.

Employer argues the ALJ erred in discrediting Dr. Adcock's opinion. Employer's Brief at 8-13. However, the ALJ alternatively found that even if he had credited Dr. Adcock's opinion, the medical opinion evidence would be in equipoise and the x-ray evidence alone would suffice to establish complicated pneumoconiosis. *Id.* Considering we have affirmed the ALJ's weighing of the x-ray evidence, and Employer does not challenge the ALJ's alternate finding that the medical opinion evidence would be in equipoise even if Dr. Adcock's opinion were credited, we affirm the ALJ's finding that Claimant established complicated pneumoconiosis based on the x-ray evidence alone.[8] *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); Decision and Order at 25.

Moreover, contrary to Employer's contention, the ALJ permissibly found Dr. Adcock's opinion unpersuasive because he did not adequately explain his opinion that the pleural pseudoplaques, seen on the April 30, 2015 x-ray and on the CT scans, do not represent complicated pneumoconiosis. *See Cox*, 602 F.2d at 283-84; *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 9, 23. Specifically, Dr. Adcock concluded the pleural pseudoplaques cannot be complicated pneumoconiosis because "medical literature characterizes pleural pseudoplaques as a manifestation of simple [pneumoconiosis]" or "a phenomenon of subpleural coalescence in simple [pneumoconiosis]." Employer's Exhibit 10 at 12-13. Yet, as the ALJ observed, the statutorily-defined disease for invoking the Section 411(c)(3) presumption – commonly referred to as complicated pneumoconiosis – "is not limited to the 'purely medical

[7] We affirm, as unchallenged, the ALJ's finding that Dr. DePonte's opinion is credible and that the opinions of Drs. Berro and Sargent are entitled to no weight. *See Skrack*, 6 BLR at 1-711; Decision and Order 22-23.

[8] To the extent Employer argues the ALJ erred in discrediting Dr. Adcock's CT scan interpretations, we disagree. Employer's Brief at 12-13. The ALJ did not discredit Dr. Adcock's CT scan interpretations, but rather found Dr. Adcock's and Dr. DePonte's CT scan interpretations were equally credible and the interpretations of the CT scans are thus in equipoise. Decision and Order at 12.

definition.'" Decision and Order at 23 (quoting *Scarbro*, 220 F.3d at 257 ("[T]he statute betrays no intent to incorporate a purely medical definition.")).[9]

Because Employer raises no further argument, we affirm the ALJ's finding that all the relevant evidence considered together establishes complicated pneumoconiosis. *See Melnick*, 16 BLR at 1-33; 20 C.F.R. §718.304; Decision and Order at 25. We further affirm, as unchallenged, the ALJ's finding that Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 25-26. Thus, we affirm the award of benefits.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

[9] The *Scarbro* court noted that Section 411(c)(3) of the Act "does not refer to the triggering condition as 'complicated pneumoconiosis,' nor does it refer to a medical condition that doctors independently have called complicated pneumoconiosis. Rather, the presumption . . . is triggered by a congressionally defined condition, for which the statute gives no name but which, if found to be present, creates an irrebuttable presumption that disability or death was caused by pneumoconiosis." *E. Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 257 (4th Cir. 2000).