BRB No. 10-0407 BLA

WILLIAM L. CLARK	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
WESTMORELAND COAL COMPANY	)	DATE ISSUED: 04/15/2011
	)	
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 on Second Remand - Award of Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Douglas A. Smoot and William P. Margelis (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Barry H. Joyner (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and McGRANERY, Administrative Appeals Judges.

Employer appeals the Decision and Order on Second Remand - Award of Benefits (05-BLA-6260) of Administrative Law Judge Richard T. Stansell-Gamm on a claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30

U.S.C. §§921(c)(4) and 932(*l*)) (the Act).[1] This case involves a subsequent claim filed on July 29, 2004;[2] it is before the Board for the third time. The lengthy procedural history of the case is set forth by the administrative law judge in his Decision and Order on Second Remand.[3] In the decision now before us, the administrative law judge adjudicated this

---

[1] The recent amendments to the Black Lung Benefits Act, which became effective on March 23, 2010, do not apply to the instant claim, since it was filed prior to January 1, 2005.

[2] Claimant, William L. Clark, filed his first application for benefits on August 29, 1970, which the district director denied, based on claimant's failure to establish total disability due to pneumoconiosis. Director's Exhibit 1. Claimant filed a second application for benefits on March 15, 1994, which the district director denied, based on claimant's failure to establish total disability due to pneumoconiosis. *Id.* Claimant's third claim, filed on October 1, 1996, was denied by Administrative Law Judge Mollie W. Neal in a Decision and Order dated September 23, 1998, on the ground that the newly submitted evidence was insufficient to demonstrate a material change in conditions pursuant to 20 C.F.R. §725.309 (2000). Claimant's subsequent requests for modification were denied by the district director on September 29, 1999, November 21, 2000, and December 4, 2001. Claimant filed a fourth application for benefits on July 29, 2004, which is pending on appeal herein. Director's Exhibit 3.

[3] The most recent prior adjudication of this claim was rendered by Administrative Law Judge Linda S. Chapman pursuant to 20 C.F.R. Parts 718 and 725. By Decision and Order dated March 11, 2008, Judge Chapman credited claimant with forty-three years of qualifying coal mine employment, and found that the newly submitted evidence was sufficient to establish the existence of complicated pneumoconiosis and, consequently, that claimant was entitled to invocation of 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), as implemented by 20 C.F.R. §718.304. Based on her determination that claimant established complicated pneumoconiosis, Judge Chapman also found that claimant established a change in an applicable condition of entitlement since the denial of the prior claim pursuant to 20 C.F.R. §725.309. After considering the entire record, Judge Chapman determined that the weight of the evidence established the presence of complicated pneumoconiosis pursuant to Section 718.304, and that claimant was entitled to benefits. On appeal, the Board vacated Judge Chapman's finding that claimant established complicated pneumoconiosis at Section 718.304 on the ground that Judge Chapman shifted the burden of proof to employer to establish that the large opacities shown radiographically did not exist or that they were unrelated to coal mine dust exposure. In addition, the Board directed that the case be assigned to a new administrative law judge on remand for a "fresh look at the evidence." *W.L.C. v. Westmoreland Coal Co.*, BRB No. 08-0485 BLA, *slip op.* at 7 (Mar. 13, 2009) (unpub.).

claim pursuant to the provisions set forth in 20 C.F.R. Parts 718 and 725 and found that the newly submitted evidence established the presence of complicated pneumoconiosis pursuant to Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304, thereby establishing a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. Considering the entire record, the administrative law judge determined that the weight of the evidence was sufficient to establish the presence of complicated pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.304, 718.203(b), and that claimant was, therefore, entitled to invocation of the irrebuttable presumption of total disability due to pneumoconiosis. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that the evidence established the presence of complicated pneumoconiosis pursuant to Section 718.304. Claimant has not filed a response brief in this appeal. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the award of benefits. Employer has filed a reply brief, reiterating its arguments that the award should be vacated and the case remanded for further consideration.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[4] 33 U.S.C. §921(b)(3), as incorporated into the Act 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, as implemented by Section 718.304 of the regulations, provides an irrebuttable presumption of total disability due to pneumoconiosis if the miner 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 or autopsy, 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(a)-(c). Because prongs (a), (b), and (c) provide three different ways of diagnosing complicated pneumoconiosis, the United States Court of Appeals for the Fourth Circuit has held that the administrative law judge must perform an equivalency determination to make certain that, regardless of which diagnostic technique is used, the same underlying condition triggers the irrebuttable presumption. *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 22 BLR 2-554 (4th Cir. 1999). Because prong (a) sets out

[4] Because claimant's last coal mine employment occurred in Virginia, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 4.

an entirely objective scientific standard, it provides the mechanism for determining equivalencies under prong (b) or prong (c). Thus, for complicated pneumoconiosis to be established under prong (b) or prong (c), the condition diagnosed must, under those prongs, be a condition that would produce opacities of greater than one centimeter in diameter if it were viewed on an x-ray. Further, while Section 718.304 sets forth three different methods by which a claimant can invoke the irrebuttable presumption of total disability due to pneumoconiosis, the administrative law judge must, in every case, review all relevant evidence together before determining whether complicated pneumoconiosis is established. 30 U.S.C. §923(b); *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 11 BLR 2-1 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Eastern Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000); *Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (*en banc*).

Employer argues that the administrative law judge erred in finding that the computerized tomography (CT) scan evidence established the presence of complicated pneumoconiosis pursuant to Section 718.304(c). Specifically, employer asserts that the record is devoid of evidence demonstrating that the CT scan dated March 15, 2005, interpreted by Dr. Ramakrishnan,[5] constituted medically acceptable and reliable evidence in accordance with 20 C.F.R. §718.107. Citing to unpublished Board case law for the proposition that the party submitting a test or procedure must demonstrate that it is medically acceptable and relevant to establishing or refuting a claimant's entitlement to benefits, employer argues that, because Dr. Ramakrishnan did not render an assessment concerning the reliability and diagnostic quality of the March 15, 2005 CT scan, this CT scan is "legally insufficient to satisfy the Claimant's burden of proving complicated coal workers' pneumoconiosis." Employer's Brief at 8. Employer also maintains that the administrative law judge erred in crediting Dr. Hippensteel's deposition testimony, that CT scans are superior diagnostic tools to x-ray films, as the record contains no evidence demonstrating that the March 15, 2005 CT scan was either medically acceptable or superior to the x-ray and medical opinion evidence. We agree with the Director's contention that employer's arguments lack merit.

---

[5] On March 15, 2005, Dr. Ramakrishnan interpreted a chest CT scan as showing extensive nodularity of the interstitium of the lungs and "larger nodules at the apex of both lungs with a nodule on the right apex measuring 3.4 centimeters in long axis. . . these changes are typical of complicated [coal workers'] pneumoconiosis." Dr. Ramakrishnan concluded that "extensive nodularity of lungs on both sides with larger nodules at the apex of both lungs and lymphadenopathy of the hila and mediastinum as described above are noted suggestive of complicated coal [workers'] pneumoconiosis." Claimant's Exhibit 3.

Section 718.107 provides, in pertinent part, that "the results of any medically acceptable test or procedure reported by a physician and not addressed in this subpart, which tends to demonstrate the presence or absence of pneumoconiosis, the sequelae of pneumoconiosis or a respiratory or pulmonary impairment, may be submitted in connection with a claim and shall be given appropriate consideration." 20 C.F.R. §718.107(a). The Board has consistently held that, pursuant to Section 718.107(b), the administrative law judge must determine, on a case-by-case basis, whether the proponent of the "other medical evidence," *i.e.*, test or procedure, has established that it is "medically acceptable and relevant to entitlement." *Webber v. Peabody Coal Co.*, 23 BLR 1-123 (2006) (*en banc*) (Bogg, J., concurring), *aff'd on recon.*, 24 BLR 1-1 (2007) (*en banc*). In the present case, the administrative law judge reasonably relied on the March 14, 2006 deposition testimony of Dr. Hippensteel, that "more information could be obtained from a CT scan," based on its sensitivity and its "increased ability to make specific diagnoses of findings that are suggested by a chest x-ray," to support his finding that "CT scans are medically acceptable and relevant to the determination of [claimant's] entitlement." *Webber*, 24 BLR at 1-7-8; Decision and Order on Second Remand at 21 n.24; Employer's Exhibit 5 at 14-15. As Dr. Ramakrishnan, a dually-qualified physician, provided his specific observations about the CT scan process and his diagnostic findings, we reject employer's argument that the administrative law judge erred in finding the March 15, 2005 CT scan medically acceptable and relevant to establishing the presence of complicated pneumoconiosis in this case.

Employer additionally argues that the administrative law judge impermissibly concluded that the 3.4 centimeter mass shown on the CT scan would yield an opacity of greater than one centimeter as measured on a traditional chest x-ray and, in so doing, substituted his "untrained medical judgment" for that of the physician, Dr. Ramakrishnan, who failed to render this equivalency determination. Employer's Brief at 12. We disagree. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this cases arises, has consistently held that *the administrative law judge* must render the requisite equivalency determination, which must be supported by substantial evidence. *See Blankenship*, 177 F.3d at 244, 22 BLR at 2-561; *Scarbro*, 220 F.3d at 256, 22 BLR at 2-101; *see also Clinchfield Coal Co. v. Fultz*, No. 02-1107, *slip op.* at 3 (4th Cir. Apr. 2, 2003) (unpub.). After addressing all of the relevant evidence pursuant to Section 718.304(a)-(c),[6] and noting that Dr. Ramakrishnan concluded that the changes

---

[6] Pursuant to Section 718.304(a), the administrative law judge found that the chest x-ray evidence was insufficient to establish the presence of complicated pneumoconiosis by a preponderance of the evidence. Decision and Order on Second Remand at 11-13. Pursuant to Section 718.304(b), the administrative law judge found that the record contained no biopsy evidence and, therefore, the presence of complicated pneumoconiosis could not be established under this subsection. Decision and Order on Second Remand at 13. Pursuant to Section 718.304(c), while the administrative law

observed on CT scan were "typical of" and "suggestive of" complicated pneumoconiosis, Claimant's Exhibit 3, the administrative law judge acted within his discretion in finding that the pulmonary mass measuring 3.4 centimeters that Dr. Ramakrishnan observed would be equivalent to a "greater than one centimeter opacity" if seen on x-ray, and that Dr. Ramakrishnan's interpretation of the March 15, 2005 CT scan was sufficient to establish complicated pneumoconiosis. Decision and Order on Second Remand at 22-23; *see Scarbro*, 220 F.3d at 256, 22 BLR at 2-100. In so doing, the administrative law judge specifically found that the recent x-rays "were inconclusive for a large pulmonary mass consistent with pneumoconiosis, with some radiologists observing a Category A size mass measuring up to 3 [centimeters], and other radiologists not rendering such findings." Decision and Order on Second Remand at 23. In addition, the administrative law judge reviewed the digital chest x-rays and found that this evidence "was negative for such a large mass." *Id.* Notwithstanding these determinations, however, the administrative law judge was particularly persuaded by the comments of a dually-qualified physician, Dr. Alexander, that the mass seen on x-ray "was partially obscured by the clavicle;" the recommendations of several radiologists that a CT scan was necessary for further evaluation; and the observation of Dr. Hippensteel that "when markings are obscured… a CT scan can provide 'extra information'." *Id.*; Employer's Exhibit 5 at 15. The administrative law judge rationally concluded, therefore, that "the absence of definitive findings of a large mass greater than 1 [centimeter] in [claimant's] chest x-ray evidence" did not diminish the probative value of Dr. Ramakrishnan's interpretation of the March 15, 2005 CT scan and did not preclude a determination that the large mass in the right apex that Dr. Ramakrishnan observed would be equivalent to a "greater than one centimeter opacity" if seen on x-ray. *See Scarbro*, 220 F.3d at 256, 22 BLR at 2-100. Because the administrative law judge permissibly determined that the uncontradicted CT scan evidence of complicated pneumoconiosis outweighed the contrary evidence, the administrative law judge properly found that the evidence affirmatively established complicated pneumoconiosis pursuant to Section 718.304, and we affirm this finding, as supported by substantial evidence. *See Melnick*, 16 BLR at 1-34. Consequently, we affirm the administrative law judge's award of benefits.

---

judge found that the digital chest x-rays and the medical opinions were insufficient to establish the presence of complicated pneumoconiosis, he concluded that the CT scan evidence was more probative and affirmatively established the presence of a large pulmonary opacity consistent with complicated pneumoconiosis. Decision and Order on Second Remand at 13-14, 19-21, 22.

Accordingly, the Decision and Order on Second Remand - Awarding Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge