U.S. Department of Labor

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

BRB No. 19-0210 BLA

RICKY W. MURPHY	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	
	)	DATE ISSUED: 04/15/2020
and	)	
	)	
PITTSTON COMPANY	)	
	)	
Employer/Carrier-Petitioners	)	
	)	
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 Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

Kendra R. Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer/carrier.

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

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2017-BLA-06104) of Administrative Law Judge Jonathan C. Calianos on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a claim filed on February 22, 2016.[1]

After noting the parties stipulated that claimant has at least fifteen years of coal mine employment,[2] the administrative law judge found the evidence establishes that claimant has 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); 20 C.F.R. §718.304. Accordingly, he awarded benefits.

On appeal, employer argues the administrative law judge erred in finding that claimant has complicated pneumoconiosis. Neither claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.[3]

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order Awarding Benefits if it is rational, supported by substantial evidence, and in accordance with applicable law. 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, 362 (1965).

Complicated Pneumoconiosis

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and its implementing regulation at 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 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

[1] Claimant previously filed a claim, but he withdrew it. A withdrawn claim is 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, as claimant's coal mine employment occurred in Virginia and West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 12.

[3] We affirm, as unchallenged, the administrative law judge's finding of at least fifteen years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

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 a claimant has invoked the irrebuttable presumption, the administrative law judge must consider all of the evidence relevant to the presence or absence of complicated pneumoconiosis. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46 (4th Cir. 1993); *Gollie v. Elkay Mining Corp.*, 22 BLR 1-306, 1-311 (2003); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc). The administrative law judge considered the x-ray and CT scan evidence.[4] 20 C.F.R. §718.304(a), (c).

X-ray Evidence

The administrative law judge summarized ten interpretations of five x-rays, all rendered by physicians dually qualified as B-readers and Board-certified radiologists. Dr. DePonte interpreted an October 13, 2014 x-ray as positive for a Category A large opacity. Claimant's Exhibit 1. Dr. Colella, however, interpreted the x-ray as negative for complicated pneumoconiosis. Employer's Exhibit 5.

Drs. DePonte and Alexander interpreted a March 30, 2016 x-ray as positive for a Category A large opacity, Director's Exhibit 15; Claimant's Exhibit 5, while Dr. Seaman interpreted the x-ray as negative for complicated pneumoconiosis. Director's Exhibit 16.

Although Dr. Miller interpreted an April 4, 2017 x-ray as positive for a Category A large opacity, Claimant's Exhibit 2, and Dr. DePonte interpreted an April 19, 2017 x-ray as positive for a Category A large opacity, Claimant's Exhibit 3, Dr. Colella interpreted both x-rays as negative for complicated pneumoconiosis. Director's Exhibit 17; Employer's Exhibit 1.

Finally, although Dr. Miller identified a Category A large opacity on a March 2, 2018 x-ray, Dr. Colella interpreted the x-ray as negative for complicated pneumoconiosis. Employer's Exhibit 3.

[4] The record contains no biopsy evidence. 20 C.F.R. §718.304(b). Although Drs. Ajjarapu, Fino, and Sargent offered medical opinions regarding the existence of complicated pneumoconiosis under 20 C.F.R. §718.304(c), the administrative law judge found these doctors were not as qualified as the physicians who interpreted claimant's x-rays and CT scans. Decision and Order at 15 n.2. He therefore accorded their opinions little weight. *Id.* We affirm these findings as unchallenged on appeal. *See Skrack*, 6 BLR at 1-711.

CT Scan Evidence

The administrative law judge also considered interpretations of five CT scans taken on July 15, 2015, December 11, 2015, December 14, 2016, January 9, 2017, and April 17, 2017. Claimant's Exhibits 6-8; Employer's Exhibits 4-8. Dr. DePonte interpreted all of the CT scans as positive for complicated pneumoconiosis, and Dr. Ramakrishnan read all of the CT scans as negative for complicated pneumoconiosis. *Id.*

The Administrative Law Judge's Finding

The administrative law judge accorded more weight to the CT scan interpretations of Drs. DePonte and Ramakrishnan because they are the only physicians who reviewed all of claimant's CT scans which, the administrative law judge noted, can "reveal opacities not necessarily visible by x-ray."[5] Decision and Order at 15. The administrative law judge further found Dr. DePonte's CT scan interpretations entitled to more weight than those of Drs. Ramakrishnan because Dr. DePonte also "interpreted three of the five x-ray[s] . . . affording her a better understanding of the progression of [claimant's] condition overall." *Id.*

The administrative law judge additionally noted that three of the six experts who interpreted the chest x-rays and/or CT scans identified opacities exceeding one centimeter. Decision and Order at 15. The administrative law judge specifically noted that Drs. DePonte, Alexander and Miller identified a 1.2 centimeter opacity at different points in time. *Id.* at 16. He further noted that Dr. Ramakrishnan identified a 1.0 centimeter opacity, a finding the administrative law judge noted was "remarkably close to what is needed for a complicated pneumoconiosis finding." *Id.* He therefore found the weight of the evidence established that claimant has at least one large opacity greater than one centimeter. *Id.*

Discussion

Employer argues the administrative law judge's findings do not satisfy the Administrative Procedure Act (APA).[6] Employer's Brief at 9. Employer contends the

[5] Dr. DePonte explained that a CT scan "can be beneficial in recognizing complicated coal worker[s'] pneumoconiosis when it is not evident on the routine chest x-rays." Claimant's Exhibit 6 at 2. Dr. Sargent testified that CT scans are "much more sensitive than [a] plain radiograph in evaluating interstitial lung disease and also evaluating for lung nodules." Employer's Exhibit 10 at 10.

[6] The Administrative Procedure Act (APA) provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions and the reasons

administrative law judge failed to adequately explain his basis for crediting Dr. DePonte's interpretations of the CT scans over those of Dr. Ramakrishnan, and erred in not addressing evidence inconsistent with a finding of complicated pneumoconiosis. Employer's Brief at 13. We agree.

The administrative law judge failed to adequately explain why Dr. DePonte's interpretations of three x-rays (having been found by the administrative law judge to merit less weight than the CT scan evidence) afforded her opinion regarding the existence of complicated pneumoconiosis on the CT scans additional weight. As employer accurately notes, Drs. DePonte and Ramakrishnan "read the same CT scans." Employer's Brief at 3. Although the administrative law judge found Dr. DePonte's review of the x-rays "afford[ed] her a better understanding of the progression of [claimant's] condition overall," the administrative law judge did not adequately explain how this entitled her CT scan interpretations to more weight than those of Dr. Ramakrishnan.[7] *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992).

The administrative law judge also failed to explain the basis for his finding that the x-ray evidence demonstrated a progression of claimant's condition. *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Addison*, 831 F.3d at 256-57. The administrative law judge cited only evidence supportive of such a finding without explaining the weight he accorded the contrary x-ray evidence. *Addison*, 831 F.3d at 256-57. Further, the fact that claimant's condition may have progressed is not sufficient, in and of itself, to establish the existence of complicated pneumoconiosis. As employer notes, it is claimant's burden to demonstrate by a preponderance of the evidence that claimant's condition has progressed to the point of satisfying the definition of complicated pneumoconiosis. *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 282 (4th Cir. 2010) (claimant has the burden of proving complicated pneumoconiosis); Employer's Brief at 15.

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or basis therefor, on all the material issue of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

[7] Dr. DePonte did not indicate that her interpretation of the x-ray evidence provided her with an advantage in interpreting the CT scans. The administrative law judge also did not account for the fact that Dr. Ramakrishnan reviewed claimant's CT scans from July 15, 2015, to April 17, 2017, arguably allowing him to also account for any progression of claimant's lung disease.

The administrative law judge also based his finding of complicated pneumoconiosis on the fact that three of the six physicians dually-qualified as Board-certified radiologists and B-readers (Drs. DePonte, Alexander and Miller) identified opacities exceeding one centimeter. Decision and Order at 15-16. But the administrative law judge did not address the significance or weight of the contrary evidence, namely that three apparently equally qualified physicians (Drs. Ramakrishnan, Colella, and Seaman) did not identify any opacities over one centimeter.[8] Moreover, as employer accurately notes, the United States Court of Appeals for the Fourth Circuit has expressed disapproval of "counting heads" to resolve conflicting evidence. *Adkins*, 958 F.2d at 52 (stating that "counting heads" is a "hollow" way to resolve conflicts in the evidence); Employer's Brief at 4.

For the reasons set forth above, we vacate the administrative law judge's finding that the evidence establishes complicated pneumoconiosis, 20 C.F.R. §718.304, and remand the case for further consideration. On remand, the administrative law judge must consider the x-ray and CT scan interpretations, the readers' qualifications, the dates of the films, and the nature of the readings when resolving the conflicting x-ray and CT scan interpretations. *See Addison*, 831 F.3d at 256-57; *Adkins*, 958 F.2d at 52. The administrative law judge must also adequately explain his bases for resolving the conflicting evidence as the APA requires. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[8] Although Dr. Ramakrishnan did not interpret any of the x-rays in the record and the administrative law judge noted he is a Board-certified radiologist and B-reader, Decision and Order at 9, 15 n.2, the record only indicates Dr. Ramakrishnan's qualification as a Board-certified radiologist but does not indicate he is also a B-reader. *See* Employer's Exhibit 4 at 3. In addition, the administrative law judge noted that Dr. Ramakrishnan's identification of a 1.0 centimeter opacity on claimant's December 14, 2016 CT scan "is remarkably close to what is needed for a complicated pneumoconiosis finding." Decision and Order at 16. We agree with employer that the administrative law judge erred to the extent that he found this interpretation supported a finding of complicated pneumoconiosis. *See Handy v. Director, OWCP*, 16 BLR 1-73, 1-75-76 (1990) (a lesion diagnosed by x-ray must be classified as a large opacity "greater than" one centimeter in diameter; an x-ray interpretation noting the presence of a one-centimeter lesion is insufficient). Moreover, the record reflects that although Dr. Ramakrishnan identified a 1.0 centimeter nodule on claimant's December 14, 2016 CT scan, he identified a nodule measuring only 0.7 to 0.8 of a centimeter on claimant's most recent April 14, 2017 CT scan. Employer's Exhibit 8. The administrative law judge did not explain the weight accorded that reading. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016).

The administrative law judge should first address whether claimant can invoke the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(3) by establishing complicated pneumoconiosis. If the administrative law judge finds the evidence establishes complicated pneumoconiosis, he must address whether the evidence establishes that claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b); *Daniels Co. v. Mitchell*, 479 F.3d 321, 339 (4th Cir. 2007). If claimant cannot establish complicated pneumoconiosis, the administrative law judge should address whether claimant has established total disability. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305(b). If claimant establishes total disability, the administrative law judge must determine whether he invokes the Section 411(c)(4) presumption.[9] If so, the administrative law judge must then determine whether employer has rebutted the presumption. *See* 20 C.F.R. §718.305(d)(1)(i), (ii). If not, he must determine whether claimant has established entitlement pursuant to 20 C.F.R. Part 718 without benefit of the presumption.[10] If the administrative law judge finds claimant is not totally disabled, he must deny benefits. *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987). In rendering all of his credibility determinations on remand, the administrative law judge must explain his findings in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

[9] We have affirmed the administrative law judge's finding of at least fifteen years of coal mine employment. *See* p.2 n.3. We note that claimant has testified that all of his coal mine employment was underground. Hearing Transcript at 12. Under Section 411(c)(4) of the Act, a miner is presumed to be totally disabled due to pneumoconiosis if he has at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305.

[10] To be entitled to benefits under the Act, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment was due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed in part and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge