

U.S. Department of Labor

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



BRB No. 20-0292 BLA

DENNIS L. HOUCHINS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
CLINCHFIELD COAL COMPANY)	
)	DATE ISSUED: 04/30/2021
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 Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

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

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

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

PER CURIAM:

Employer appeals Administrative Law Judge Jonathan C. Calianos's Decision and Order Awarding Benefits (2017-BLA-06035) rendered on a claim filed pursuant to the

Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on February 25, 2016.

The administrative law judge found Claimant established at least 28.49 years of underground coal mine employment and the existence of complicated pneumoconiosis. He further found Claimant's complicated pneumoconiosis arose out of coal mine employment. Consequently, he found Claimant invoked 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 awarded benefits.

On appeal, Employer asserts the administrative law judge erred in finding the existence of complicated pneumoconiosis established. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Benefits Review Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.¹ 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 (1965).

Section 411(c)(3) of the Act 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 large 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, 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 administrative law judge 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).

¹ Claimant performed his coal mine employment in Virginia. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

The administrative law judge found the x-ray evidence establishes Category A complicated pneumoconiosis, 20 C.F.R. §718.304(a), while the computed tomography (CT) scans and medical opinions are in equipoise, 20 C.F.R. §718.304(c).² Weighing all of the evidence together, the administrative law judge found Claimant established complicated pneumoconiosis, thus entitling him to the irrebuttable presumption of total disability due to pneumoconiosis. Decision and Order at 8, 14-15. Employer contends the administrative law judge erred in weighing the June 11, 2016 x-ray and finding complicated pneumoconiosis established. We disagree.

The administrative law judge considered five x-rays. Decision and Order at 6-7. He noted that all the readers are dually qualified as Board-certified radiologists and B readers. Decision and Order at 6-7. He further noted that all the physicians found, and Employer concedes, Claimant has clinical pneumoconiosis. *Id.* at 7. Drs. Crum and DePonte read the June 11, 2016 x-ray positive for complicated pneumoconiosis, Category A, while Dr. Wolfe read it negative for complicated pneumoconiosis.³ Director's Exhibits 15, 16, 17. The administrative law judge found the June 11, 2016 x-ray positive for complicated pneumoconiosis based on the preponderance of the readings by the dually-qualified physicians. Decision and Order at 8-9. He found the four remaining x-rays dated February 20, 2017, May 25, 2018, June 1, 2018, and June 14, 2018, in equipoise because dually-qualified physicians read each as positive and negative for complicated pneumoconiosis. *Id.*

Employer argues the administrative law judge merely counted heads and did not give a rational reason for rejecting Dr. Wolfe's negative reading of the June 11, 2016 x-ray. Employer's Brief at 5, *citing Sea "B" Mining Company v. Addison*, 831 F.3d 244 (4th Cir. 2016). We disagree. The administrative law judge permissibly found Drs. DePonte, Crum and Wolfe equally qualified as Board-certified radiologists and B readers. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438 (4th Cir. 1997). In addition, he noted Drs. DePonte and Wolfe "have similar experience, having been in practice since the early to mid-1980s." Decision and Order at 7. He found that although "[Dr.] Crum has less years of experience, he has been in practice for over a decade" and is also "a faculty member at two medical schools and a lecturer for the Tennessee Academy of Physicians Assistants." *Id.*

The administrative law judge properly considered the number of x-ray interpretations along with the readers' qualifications, teaching experience, length of

² There is no biopsy evidence for consideration at 20 C.F.R. §718.304(b).

³ Dr. Gaziano read this film for quality purposes only. Director's Exhibit 15.

practice, and findings set forth in their readings. *See Addison*, 831 F.3d at 256-57. Because the administrative law judge conducted both a qualitative and quantitative analysis of the x-ray evidence, we affirm his reliance on Drs. DePonte's and Crum's readings to find the June 11, 2016 x-ray positive for complicated pneumoconiosis.⁴ *See Id.*; *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); Decision and Order at 7-8. We therefore affirm the administrative law judge's finding that Claimant established complicated pneumoconiosis based on the x-ray evidence. 20 C.F.R. §718.304(a); Decision and Order at 9.

As Employer raises no challenge to the administrative law judge's weighing of the CT scans, medical opinions, or the evidence as a whole, we affirm his finding that Claimant established complicated pneumoconiosis. *See* 20 C.F.R. §718.304; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 15. We further affirm, as unchallenged, the administrative law judge's finding that Claimant's complicated pneumoconiosis arose out of his coal mine employment. *See* 20 C.F.R. §718.203(b); *Skrack*, 6 BLR at 1-711; Decision and Order at 12. Thus, we affirm the administrative law judge's determination that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis and is entitled to benefits. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304; *Cox*, 602 F.3d at 283.

⁴ We affirm, as unchallenged, the administrative law judge's finding that the readings of the February 20, 2017, May 25, 2018, June 1, 2018, and June 14, 2018 x-rays, are in equipoise. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge