U.S. Department of Labor

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

BRB No. 21-0592 BLA

FERREL F. BOYD	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CLINCHFIELD COAL COMPANY	)	
	)	
and	)	
	)	
Self-Insured Through PITTSTON COMPANY	)	DATE ISSUED: 04/07/2023
	)	
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 Susan Hoffman, Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Susan Hoffman's Decision and Order Awarding Benefits (2019-BLA-05245) rendered on a claim filed on June 19, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 39.13 years of coal mine employment and found he has complicated pneumoconiosis. 20 C.F.R. §718.304. She therefore found he 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). Further, she found his complicated pneumoconiosis arose out of his coal mine employment and awarded benefits. 20 C.F.R. §718.203(b).

On appeal, Employer asserts that the ALJ erred in finding complicated pneumoconiosis established.[1] Neither the Claimant nor the Director, Office of Workers' Compensation Programs, has filed a response.

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.[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 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 a 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); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found the x-ray and medical opinion evidence establishes complicated pneumoconiosis, 20 C.F.R. §718.304(a), (c), while the computed tomography (CT) scan

[1] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 39.13 years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5, 12.

[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. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 6, 7.

and treatment record evidence does not.[3] 20 C.F.R. §718.304(c); Decision and Order at 12-17. Weighing all of the evidence together, she concluded Claimant established complicated pneumoconiosis and thus invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 20 C.F.R. §718.304; Decision and Order at 17.

Employer contends the ALJ erred in finding Claimant established complicated pneumoconiosis based on the x-rays because it contends she simply "counted heads" and did not explain her basis for resolving the conflict in the evidence. Employer's Brief at 3-7. We disagree.

The ALJ considered seven interpretations of three x-rays dated May 26, 2017, November 9, 2017, and May 30, 2018. Decision and Order at 6-7, 14-16; Director's Exhibits 13, 16, 18; Employer's Exhibits 1, 4; Claimant's Exhibit 1-2. Drs. DePonte, Miller, Forehand, Crum, and Colella read these x-rays. *Id.* All the interpreting physicians are dually-qualified as Board-certified radiologists and B readers, except Dr. Forehand who is a B reader. *Id.*

Dr. DePonte read the May 26, 2017 x-ray as positive for complicated pneumoconiosis, Category B, based on her observation of an "at least [four centimeter] large opacity [in the] right upper lung zone and [one and one-half centimeter] opacity [in the] left upper lung zone with typical characteristics of" progressive massive fibrosis. Director's Exhibit 16 at 2. Dr. Colella interpreted this same x-ray as negative for complicated pneumoconiosis. Employer's Exhibit 1 at 2.

Dr. Forehand read the November 9, 2017 x-ray as positive for complicated pneumoconiosis, Category B, and Dr. Miller read it as positive for complicated pneumoconiosis, Category A, but Dr. Colella interpreted this x-ray as negative for the disease.[4] Director's Exhibits 13, 18; Claimant's Exhibit 2.

Dr. Crum interpreted the May 30, 2018 x-ray as positive for complicated pneumoconiosis, Category B, Claimant's Exhibit 1, but Dr. Colella again read it as negative. Employer's Exhibit 4.

[3] The record contains no biopsy evidence. 20 C.F.R. §718.304(b).

[4] Dr. Gaziano reviewed the November 9, 2017 x-ray only to assess its quality. Director's Exhibit 14.

In total, four different physicians each read the single x-ray they interpreted as positive for complicated pneumoconiosis, while Dr. Colella alone read all three of those x-rays as negative for the disease. No other physician read any of the x-rays as negative.

In resolving the conflict in the x-ray evidence, the ALJ found the three x-rays "were taken within about one year" of one another and, given their proximity, entitled to equal weight in terms of recency. Decision and Order at 14. She then resolved the conflict in the individual x-rays. She found the readings of the May 26, 2017 x-ray and the readings of the May 30, 2018 x-ray in equipoise because an equal number of dually-qualified radiologists read each as positive and negative for complicated pneumoconiosis. *Id*. at 14-15.

With respect to the November 9, 2017 x-ray, the ALJ noted Drs. Miller and Colella, dually-qualified radiologists, rendered conflicting readings. Decision and Order at 15. Although Dr. Forehand is only a B reader, the ALJ reviewed the remainder of his curriculum vitae and found his expertise and experience entitled his opinion to "equivalent weight as those of dually qualified physicians." *Id.* Thus, she found Dr. Miller's positive reading, as supported by Dr. Forehand's positive reading, outweighed Dr. Colella's negative reading and therefore found the November 9, 2017 x-ray is positive for complicated pneumoconiosis. *Id.* Employer identifies no specific error in this finding. Thus, we affirm it. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); 20 C.F.R. §802.211(b). Based on the physicians' qualifications, the ALJ rationally found the preponderance of the x-rays establish complicated pneumoconiosis as one x-ray is positive for complicated pneumoconiosis and the readings of two other x-rays are in equipoise. *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); Decision and Order at 14.

Independently, the ALJ also reasonably assigned "great weight" to Dr. DePonte's individual reading of the May 26, 2017 x-ray and found it outweighed Dr. Colella's negative readings of the May 26, 2017, November 9, 2017, and May 30, 2018 x-rays. Decision and Order at 15-16. She explained "Dr. DePonte provided actual measurements of the identified large opacities" and these "specific measurements contribute to the well-reasoned nature of Dr. DePonte's finding of complicated pneumoconiosis" on x-ray. *Id*.; *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). Employer does not specifically challenge this credibility finding, which we affirm. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Finally, as part of her analysis, the ALJ rationally rejected Employer's assertion that the conflicting observations of the size of the opacities by the four physicians rendered

their opinions inconsistent and inherently less reliable than Dr. Colella's consistent interpretations. Decision and Order at 15. She instead found "more problematic [the] inconsistency between four physicians finding large opacities and one physician finding no more than a coalescence of small opacities." *Id.* Rather than undermining four different physicians' readings of three separate x-rays, she logically reasoned the discrepancy under the totality of circumstances of this case instead "calls into question the quality and reliability of the one physician's readings." *Id*. at 15-16. In so doing, the ALJ did not just mechanically credit x-ray readings based solely on the number of physicians supporting the respective parties; she instead permissibly considered Dr. Colella's specific reasons for finding all three readings negative outweighed by both the number and substance of the conflicting readings. *Hicks*, 138 F.3d 533; *Akers*, 131 F.3d at 441.

Contrary to Employer's argument, the ALJ thus did not simply "count heads" but properly performed both a qualitative and quantitative analysis of the conflicting x-ray readings and explained her basis for resolving the conflict in the evidence. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins*, 958 F.2d at 52-53. As it is supported by substantial evidence, we affirm the ALJ's conclusion that the x-ray evidence establishes complicated pneumoconiosis. 20 C.F.R. §718.304(a).

The ALJ next found Dr. Forehand's medical opinion diagnosing Claimant with complicated pneumoconiosis is well-reasoned and documented. 20 C.F.R. §718.304(c); Decision and Order at 15-16; Director's Exhibit 13 at 6. As it is unchallenged, we affirm this finding. *See Skrack*, 6 BLR at 1-711. Thus we affirm her finding that the medical opinion evidence establishes complicated pneumoconiosis. 20 C.F.R. §718.304(c).

As Employer raises no further challenge to the ALJ's finding of complicated pneumoconiosis, we affirm her determination that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis. 30 U.S.C. §921(c)(3). We further affirm, as unchallenged on appeal, 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*, 6 BLR at 1-711; Decision and Order at 17.

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

JONATHAN ROLFE
Administrative Appeals Judge