U.S. Department of Labor

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

BRB No. 21-0625 BLA

RANDALL S. FLETCHER	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
CAPITAL COAL CORPORATION	)	DATE ISSUED: 04/07/2023
	)	
	)	
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 Heather Leslie, 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 JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Heather C. Leslie's Decision and Order Awarding Benefits (2020-BLA-05363) rendered on a claim filed on January 29, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with thirty-five 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 Claimant established complicated pneumoconiosis.[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 Assoc., 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 and Claimant's treatment record evidence does not.[3] 20 C.F.R. §718.304(c); Decision and

[1] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established thirty-five years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

[2] We 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); Director's Exhibits 3, 7; Hearing Transcript at 19.

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

Order at 4-11. 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 11.

Employer contends the ALJ erred in finding Claimant established complicated pneumoconiosis based on the x-rays because it argues she simply "counted heads" and did not explain her basis for resolving the conflict in the evidence. Employer's Brief at 5-9 (unpaginated). We disagree.

The ALJ considered nine interpretations of four x-rays dated March 19, 2019, September 13, 2019, December 10, 2019, and December 16, 2020. Decision and Order at 5-7; Director's Exhibits 12, 17, 18, 19; Employer's Exhibits 2, 3; Claimant's Exhibit 1-3. She found all the interpreting physicians are dually qualified Board-certified radiologists and B readers. *Id.*

Drs. DePonte and Ramakrishnan read the March 19, 2019 x-ray as positive for simple pneumoconiosis and complicated pneumoconiosis, Category A, whereas Dr. Adcock read the same x-ray as negative for both simple and complicated pneumoconiosis. Director's Exhibits 12, 17, 18. Dr. Alexander read the September 13, 2019 x-ray as positive for simple pneumoconiosis but negative for complicated pneumoconiosis, and Dr. Adcock interpreted this x-ray as negative for both simple and complicated pneumoconiosis. Director's Exhibit 19; Claimant's Exhibit 2. Dr. DePonte read the December 10, 2019 x-ray as positive for simple pneumoconiosis and complicated pneumoconiosis, Category A, while Dr. Adcock read the same x-ray as negative for both simple and complicated pneumoconiosis. Claimant's Exhibit 1; Employer's Exhibit 3. Dr. Crum read the final x-ray taken December 16, 2020 as positive for simple pneumoconiosis and complicated pneumoconiosis, Category A, while Dr. Adcock interpreted the same film as positive for simple pneumoconiosis but negative for complicated pneumoconiosis. Claimant's Exhibit 3; Employer's Exhibit 2.

In resolving the conflict in the x-ray evidence, the ALJ found readings by dually-qualified radiologists entitled to the most weight. Decision and Order at 6 n.11. Based on the conflicting readings by dually-qualified radiologists, the ALJ found the x-ray evidence is positive for simple pneumoconiosis. *Id*. at 6-7. Employer does not challenge this finding. Thus we affirm it. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ then assigned diminished weight to all of Dr. Adcock's negative x-ray readings for complicated pneumoconiosis. Decision and Order at 6-7. She noted that all of the other dually-qualified radiologists, namely Drs. DePonte, Ramakrishnan, Alexander, and Crum, identified the presence of at least simple pneumoconiosis on the x-rays they

each read, while Dr. Adcock was the only doctor to exclude simple pneumoconiosis on any x-ray. *Id*. She specifically questioned the probative value of his x-ray readings because he failed to diagnose even simple pneumoconiosis on the March 19, 2019, September 13, 2019, and December 10, 2019 x-rays, contrary to her finding that the radiographic evidence is positive for this disease. *Id*. Thus, the ALJ also discredited all of Dr. Adcock's negative x-ray readings for complicated pneumoconiosis. *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).

After discrediting Dr. Adcock's readings, the ALJ addressed the conflict in the x-ray evidence between the remaining credible dually-qualified radiologists – Drs. DePonte, Ramakrishnan, Alexander, and Crum. Drs. Ramakrishnan and Crum each read the single x-ray they interpreted as positive for complicated pneumoconiosis, Dr. DePonte read the two x-rays she interpreted as positive for complicated pneumoconiosis, and Dr. Alexander alone read a single x-ray as negative for the disease. Director's Exhibits 12, 17, 18, 19; Employer's Exhibits 2, 3; Claimant's Exhibit 1-3. Because there are four x-ray readings that are positive for complicated pneumoconiosis from three doctors in comparison to a single x-ray reading that is negative for the disease from a single doctor, the ALJ rationally found the preponderance of the x-ray evidence establishes complicated pneumoconiosis.[4] *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); Decision and Order at 6-7.

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.

Employer also argues the ALJ should have found the readings from Drs. DePonte, Ramakrishnan, and Crum unpersuasive and the readings from Drs. Alexander and Adcock more credible. Employer's Brief at 5-9 (unpaginated). This argument amounts to a request to reweigh the evidence, which we are not empowered to do. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); Employer's Brief at 6-8 (unpaginated). As it

[4] Based on the ALJ's credibility findings, three x-rays taken on March 19, 2019, December 10, 2019, and December 16, 2020 were read as positive for complicated pneumoconiosis with no credited negative readings, while one x-ray taken on September 13, 2019 was read as negative for complicated pneumoconiosis with no positive readings.

is supported by substantial evidence, we affirm the ALJ's conclusion that the x-ray evidence establishes complicated pneumoconiosis.[5] 20 C.F.R. §718.304(a).

Employer also argues the ALJ erred in finding the medical opinion evidence establishes complicated pneumoconiosis. Employer's Brief at 10-11 (unpaginated). The ALJ considered the medical opinions of Drs. Harris, Sargent, and Fino. Director's Exhibits 12, 19; Employer's Exhibit 2, 4-5. The ALJ found Dr. Harris's diagnosis of complicated pneumoconiosis reasoned and documented but found Drs. Sargent's and Fino's exclusion of complicated pneumoconiosis unpersuasive. *Id*. at 8-10.

Employer argues the ALJ erred in crediting Dr. Harris's opinion because it contends the x-ray evidence is negative for complicated pneumoconiosis. Employer's Brief at 10-11 (unpaginated). As discussed above, we have rejected Employer's arguments with respect to the x-ray evidence. Because Employer does not raise any other argument in relation to Dr. Harris's opinion, we affirm the ALJ's finding that it is reasoned and documented. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 8. Employer also does not challenge the ALJ's discrediting of Drs. Sargent's and Fino's opinions. Thus we affirm this credibility finding. *See Skrack*, 6 BLR at 1-711; Decision and Order at 9-10. Consequently, we affirm the ALJ's 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 11.

[5] Employer further asserts the ALJ improperly shifted the burden of proof to Employer to rule out the presence of complicated pneumoconiosis. Employer's Brief at 9-10 (unpaginated). We disagree. The ALJ did not shift the burden of proof to Employer. Rather, she required Claimant to establish the presence of complicated pneumoconiosis by a preponderance of the evidence and recognized Claimant has the burden of proof in establishing the elements of entitlement. Decision and Order at 4-5.

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