U.S. Department of Labor

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

BRB No. 21-0108 BLA

DAVID L. BRYSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MOTIVATION COAL COMPANY	)	
	)	
and	)	
	)	
HEALTHSMART CASUALTY	)	DATE ISSUED: 12/14/2021
	)	
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 Paul R. Almanza, Associate Chief Administrative Law Judge, United States Department of Labor.

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

Before: BUZZARD, ROLFE, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Associate Chief Administrative Law Judge (ALJ) Paul R. Almanza's Decision and Order Awarding Benefits (2018-BLA-06046) 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 May 12, 2017.

The ALJ found Claimant established 25.17 years of coal mine employment and the existence of complicated pneumoconiosis. 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). He further found Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203. Thus he awarded benefits.

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

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 Associates, Inc.*, 380 U.S. 359 (1965).

Section 411(c)(3) of the Act provides an irrebuttable presumption 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 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); *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] We affirm, as unchallenged on appeal, the ALJ's finding of 25.17 years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4-5.

[2] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as 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, 4.

The ALJ found the x-ray evidence establishes complicated pneumoconiosis.[3] 20 C.F.R. §718.304(a); Decision and Order at 5-7. Therefore, he found Claimant invoked the irrebuttable presumption. *Id.* at 7.

Employer contends the ALJ erred in weighing the x-ray evidence. Employer's Brief at 3-8. We disagree.

The ALJ considered eleven interpretations of five x-rays dated February 10, 2017, August 14, 2017, December 14, 2017, April 20, 2018, and July 5, 2019. 20 C.F.R. §718.304(a); Decision and Order at 6-7. He noted all of the interpreting physicians are dually-qualified as Board-certified radiologists and B readers. Decision and Order at 5-6. Dr. DePonte interpreted the February 10, 2017 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Colella read it as negative for complicated pneumoconiosis. Director's Exhibits 15, 17. Drs. DePonte and Miller each interpreted the August 14, 2017 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Colella read it as negative for complicated pneumoconiosis. Director's Exhibits 14, 16; Claimant's Exhibit 4. Dr. Crum interpreted the December 14, 2017 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Colella read it as negative for complicated pneumoconiosis. Claimant's Exhibit 2; Director's Exhibit 16. Dr. Alexander interpreted the April 20, 2018 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Adcock read it as negative for complicated pneumoconiosis. Claimant's Exhibit 1; Employer's Exhibit 2. Dr. DePonte interpreted the July 5, 2019 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Adcock read it as negative for complicated pneumoconiosis. Claimant's Exhibit 3; Employer's Exhibit 3.

The ALJ found the February 10, 2017, December 14, 2017, April 20, 2018, and July 5, 2019 x-rays in equipoise because an equal number of dually-qualified radiologists read each x-ray as positive and negative for complicated pneumoconiosis. Decision and Order at 6. He found the August 14, 2017 x-ray is positive for complicated pneumoconiosis because a greater number of dually-qualified radiologists read this x-ray as positive for complicated pneumoconiosis compared to those who read it as negative. *Id.* Weighing the x-ray evidence as a whole, the ALJ found Claimant established complicated pneumoconiosis because the record contains four x-rays in equipoise and one positive x-ray. *Id.*

[3] The record contains no biopsy evidence or other evidence relevant to the presence or absence of complicated pneumoconiosis. 20 C.F.R. §718.304(b), (c); Decision and Order at 3 n.2; Director's Exhibits 14-17; Claimant's Exhibit 5; Employer's Exhibits 1, 3-5.

Employer asserts the ALJ impermissibly "count[ed] heads," in determining that the August 14, 2017 x-ray is positive for complicated pneumoconiosis. Employer's Brief at 6, *quoting Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992). Employer's allegation of error is without merit.

Contrary to Employer's argument, the ALJ properly performed both a qualitative and quantitative analysis of the conflicting x-ray readings, taking into consideration the qualifications of the physicians and stating he would assign greater weight to those physicians who are dually-qualified radiologists. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993); 20 C.F.R. §718.202(a)(1); Decision and Order at 5. As two of the three equally-credentialed radiologists diagnosed complicated pneumoconiosis on the August 14, 2017 x-ray, the ALJ permissibly found it positive for the disease. *Id*. Because it is supported by substantial evidence, we affirm the ALJ's finding Claimant established complicated pneumoconiosis based on the x-ray evidence. 20 C.F.R. §718.304(a).

Employer further asserts the ALJ improperly shifted the burden of proof to Employer to rule out the presence of complicated pneumoconiosis. Employer argues "Dr. Colella had to 'rule out' complicated pneumoconiosis as a cause of the mass Drs. DePonte and [] Miller observed." Employer's Brief at 9-10. We disagree.

The ALJ did not shift the burden of proof to Employer. Rather, he 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 7.

As Employer raises no further challenge to the ALJ's finding of complicated pneumoconiosis, we affirm his finding that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis. 20 C.F.R. §718.304. We further affirm, as unchallenged on appeal, the ALJ's finding that Claimant's complicated pneumoconiosis arose out of his coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.203(b); Decision and Order at 7.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge