



BRB No. 23-0019 BLA

RICHARD LEE ADDISON (o/b/o DONALD L. ADDISON))

Claimant-Respondent)

v.)

JEWELL RIDGE MINING CORPORATION)

Employer-Petitioner)

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)

Party-in-Interest)

DATE ISSUED: 01/22/2024

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits on Remand of Johnathan C. Calianos, Administrative Law Judge, United States Department of Labor.

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

Jeffrey S. Goldberg (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Johnathan C. Calianos's Decision and Order Awarding Benefits on Remand (2019-BLA-05265) rendered on a subsequent claim filed on September 11, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Benefits Review Board for the second time.¹

In a November 29, 2020 Decision and Order Denying Benefits, the ALJ found Claimant² did not establish complicated pneumoconiosis and therefore could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §718.304. The ALJ credited the Miner with at least 27.01 years of underground coal mine employment but found Claimant did not establish total disability. He therefore found Claimant did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,³ 30 U.S.C. §921(c)(4) (2018), or establish entitlement under 20 C.F.R. Part 718. Thus, he denied benefits.

Pursuant to Claimant's appeal, the Board affirmed the ALJ's finding the Miner had at least 27.01 years of underground coal mine employment but did not establish total disability. *Addison v. Jewell Ridge Mining Corp.*, BRB No. 21-0135 BLA, slip op. at 8 (Mar. 15, 2022) (unpub.). Thus, it affirmed his finding Claimant did not invoke the Section 411(c)(4) presumption or establish entitlement under 20 C.F.R. Part 718 without the presumption. However, the Board held he erred in finding the computed tomography (CT) scans insufficient to establish complicated pneumoconiosis because the interpreting physicians did not perform an equivalency determination, and also erred in discrediting all the CT scans of record because the interpreting physicians were not consistent regarding the size and location of the nodules they observed. *Id.* at 7-8. Thus, the Board vacated the denial of benefits and remanded the case for the ALJ to reconsider the CT scan evidence

¹ We incorporate the procedural history of this case as set forth in *Addison v. Jewell Ridge Mining Corp.*, BRB No. 21-0135 BLA (Mar. 15, 2020) (unpub.).

² The Miner died on May 6, 2022. ALJ Exhibit 1 at 54 (unpaginated). Claimant, the Miner's son and the administrator of his estate, is pursuing his claim on the estate's behalf. *Id.* at 57.

³ Section 411(c)(4) provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

and whether Claimant invoked the irrebuttable presumption at Section 411(c)(3). *Id.* at 10-11.

On remand, the ALJ found Claimant established complicated pneumoconiosis as the opacity seen on the CT scans would appear larger than one centimeter on x-ray and the interpreting physicians' descriptions of the opacity were sufficiently similar so as not to detract from their credibility. Therefore, the ALJ found Claimant invoked the irrebuttable presumption. 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304. He further found Claimant established the Miner's complicated pneumoconiosis arose out of his coal mine employment, 20 C.F.R. §718.203(b), and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established complicated pneumoconiosis. Claimant did not file a response brief. The Director, Office of Workers' Compensation Programs, responds, urging the Board to reject Employer's arguments as the Board's prior decision, rejecting the same arguments Employer raises in this appeal, is the law of the case.

The 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.⁴ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

Invocation of the Section 411(c)(3) Presumption

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 ALJ must weigh all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

As the Board previously noted, all three physicians who interpreted the Miner's CT scans, Drs. Ramakrishnan, Rao, and DePonte, "identified opacities exceeding one

⁴ The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because the Miner performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5.

centimeter in different zones of the right lung” and “unanimously opined the Miner’s opacities are consistent with ‘complicated pneumoconiosis,’” with “Dr. DePonte specifically referr[ing] to [the Miner’s 2.2 centimeter] opacity as ‘large.’” *Addison*, BRB No. 21-0135 BLA, slip op. at 7. On remand, the ALJ found the CT scan evidence and the evidence as a whole establishes complicated pneumoconiosis.⁵ Decision and Order on Remand 8-9.

Employer asserts the ALJ erred in finding Claimant invoked the irrebuttable presumption because no physician explicitly provided an equivalency statement to

⁵ The Board previously summarized the CT scan evidence in its original Decision and Order as follows:

The ALJ considered interpretations of five CT scans. Dr. Ramakrishnan, a Board-certified radiologist, interpreted the May 23, 2016 CT scan as showing “[s]table complicated coal worker’s pneumoconiosis” and “focal fibrotic lesions . . . along the right oblique fissure and left lower lobe posteromedially.” Director’s Exhibit 17 (unpaginated) at 3. Dr. Rao, a Board-certified radiologist, interpreted the November 3, 2016 CT scan as showing “[r]eticulonodular opacities and micronodules within both lungs,” “a stable 2.3 [centimeter] fibrotic nodule in the right middle lobe,” and “stable changes of complicated coal worker’s pneumoconiosis within the lungs.” *Id.* at 5-6. Dr. Ramakrishnan, interpreted the December 21, 2016 CT scan as showing “[s]table nodular changes of the lung fields bilaterally” and “[s]table calcified bilateral hilar and mediastinal lymph nodes” both consistent with pneumoconiosis. *Id.* at 7-8. He also interpreted the September 8, 2017 CT scan as showing a “stable stellate peripheral nodule . . . measuring 2 [centimeters],” “[s]table nodular fibrosis,” and “[n]ew increased interstitial markings bilateral lower lung zones suggesting interstitial edema.” *Id.* at 9-10. Dr. DePonte interpreted the April 23, 2019 CT scan as showing “classic findings of simple and complicated coal workers[’] pneumoconiosis.” Claimant’s Exhibit 1. She stated “[f]ine nodular interstitial opacities are noted primarily in the upper lobes and superior segments of the lower lobes with coalescence,” “[m]ild subpleural nodularity also with coalescence,” and “[i]n the right upper lobe laterally, adjacent to the major fissure is a large opacity at least 22 x 12 [millimeters] . . . likely a benign large opacity of coal workers pneumoconiosis, however malignancy should be excluded.” *Id.*

Addison, BRB No. 21-0135 BLA, slip op. at 5.

establish the opacity seen on the CT scans would appear larger than one centimeter on x-ray. Employer's Brief at 5-7 (unpaginated). We disagree. As the Board previously held, "[t]he Fourth Circuit requires the ALJ to perform equivalency determinations based on his evaluation of all the medical evidence of record," and specifically noted the absence of an explicit statement of equivalency by a physician is not a bar to a finding of complicated pneumoconiosis. *Addison*, BRB No. 21-0135 BLA, slip op. at 8 (citing *E. Assoc. Coal Corp. V. Director* [Scarbro], 220 F.3d 250, 258 (4th Cir. 2000)). The Board's holding remains the law of the case. See *Brinkley v. Peabody Coal Co.*, 14 BLR 1-147, 1-150-51 (1990); *Bridges v. Director*, OWCP, 6 BLR 1-988 (1984). Because Employer has not shown the Board's decision was clearly erroneous or set forth any other valid exception to the law of the case doctrine, we decline to disturb the Board's prior disposition. See *Brinkley*, 14 BLR at 1-150-51. We thus affirm the ALJ's rational findings that the record contains "sufficient medical evidence" to make an equivalency determination and that Drs. Ramakrishnan's, Rao's, and DePonte's opinions constitute diagnoses of complicated pneumoconiosis that support Claimant's burden of proof.

Employer further asserts the ALJ erred in crediting their CT scan interpretations because the opacities each physician identified were different sizes and in different locations in the lung. Employer's Brief at 6-8 (unpaginated). We disagree. The Board previously held that the ALJ did not adequately explain his finding all three physicians' opinions should be discredited on the basis that their diagnoses of opacities conflicted with each other and revealed no "consensus" about the location of the opacities. *Addison*, BRB No. 21-0135 BLA, slip op. at 6-7.⁶ On remand, the ALJ reconsidered whether any

⁶ The Board stated:

Contrary to the ALJ's analysis, although Drs. Ramakrishnan, Rao and DePonte identified opacities exceeding one centimeter in different zones of the right lung, they unanimously opined [the Miner's] opacities are consistent with "complicated pneumoconiosis," and Dr. DePonte specifically referred to [the Miner's] opacity as "large." Director's Exhibit 17 (unpaginated) at 5-6, 9-10; Claimant's Exhibit 1. Because Dr. Ramakrishnan did not specify the location of the two-centimeter nodule he saw on the 2017 CT scan, his reading does not necessarily contradict Dr. Rao's earlier identification of a stable 2.3 centimeter nodule in the middle lung zone in 2016. Moreover, the CT scan Dr. DePonte read was taken three years later in 2019 when she noted [the Miner] has multiple nodules with coalescence consistent with "classic" complicated pneumoconiosis, including a "large opacity" measuring at least 2.2 centimeters in the right upper lobe. Claimant's Exhibit 1.

Addison, BRB No. 21-0135 BLA, slip op. at 7.

contradiction in the physicians' opinions undermined their diagnoses. He specifically determined that although the physicians offered "differing descriptions of the location" of the opacity they observed, the CT scan interpretations as a whole consistently reflect a large opacity near a "fissure" in the right lung. Decision and Order on Remand at 7-8. Thus, he determined that "any slight discrepancies" in the physicians' opinions concerning the opacity's location is not "an adequate basis to discount [their] findings of large opacities consistent with complicated pneumoconiosis." *Id.* We see no error in that finding, as it is rational and supported by substantial evidence. See *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305 (4th Cir. 2012); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998). Employer's arguments amount to a request to reweigh the evidence, which the Board may not do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Employer also argues for the first time that the ALJ erred by not requiring the parties to submit proof that CT scan evidence was "medically acceptable" pursuant to 20 C.F.R. §718.107(b).⁷ Employer's Brief at 4-5 (unpaginated). But Employer has forfeited this argument by failing to raise it to the ALJ or the Board in its initial appeal. *Edd Potter Coal Co. v. Dir., OWCP [Salmons]*, 39 F.4th 202, 208 (4th Cir. 2022) (parties forfeit arguments before the Board not first raised to the ALJ).

As Employer raises no further challenge to the ALJ's determination that Claimant established complicated pneumoconiosis, we affirm that determination and his conclusion that Claimant invoked the irrebuttable presumption at Section 411(c)(4) of the Act. See 20 C.F.R. §718.304; Decision and Order on Remand at 9-10. We further affirm, as unchallenged on appeal, the ALJ's determination that the Miner'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 on Remand at 9-10.

⁷ Employer further asserts the ALJ improperly shifted the burden of proof. Employer's Brief at 4 (unpaginated). We disagree. The ALJ 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 on Remand at 3-4.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge