U.S. Department of Labor

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

BRB No. 22-0036 BLA

DAVID L. BROWN	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
MINGO LOGAN COAL COMPANY	)	
	)	
and	)	
	)	
ARCH COAL, INC.	)	DATE ISSUED: 5/03/2023
	)	
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 Lystra A. Harris, Administrative Law Judge, United States Department of Labor.

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

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Lystra A. Harris's Decision and Order Awarding Benefits (2019-BLA-06306) rendered pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a subsequent claim filed on July 19, 2018.[1]

The ALJ credited Claimant with 27.50 years of coal mine employment. She found he established complicated pneumoconiosis and thus established a change in an applicable condition of entitlement and invoked the irrebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §§718.304, 725.309(c). Further, she found Claimant's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits. 20 C.F.R. §718.203.

On appeal, Employer asserts the ALJ erred in excluding evidence in excess of evidentiary limitations relevant to the issue of complicated pneumoconiosis. It also argues she erred in finding Claimant established complicated pneumoconiosis.[2] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), did not file 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

[1] On June 29, 2012, the district director denied Claimant's most recent non-withdrawn prior claim, filed on December 28, 2011, because he did not establish any element of entitlement. Director's Exhibit 2. Where a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless she finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Claimant was therefore required to establish at least one element of entitlement to obtain review of the merits of his current claim. *White*, 23 BLR at 1-3.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 27.50 years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5, 9.

accordance with applicable law.[3] 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).

Evidentiary Issue

Employer argues the ALJ erred in finding Dr. Boustani's deposition testimony and Dr. Ranavaya's interpretations of x-rays taken on March 10, 2009, January 11, 2012, and November 16, 2018 are inadmissible because they exceed the evidentiary limitations. Employer's Brief at 8-11; Employer's Exhibits 1, 6, 7, 9. We disagree.

ALJs are afforded significant discretion in rendering evidentiary orders. *Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc). Such orders may be overturned only if the party challenging them demonstrates the ALJ's action represented an abuse of discretion. *See V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009).

The regulations set limits on the number of specific types of medical evidence the parties can submit into the record. *See* 20 C.F.R. §§725.414, 725.456(b)(1). Each party may submit, in support of its affirmative case, no more than two chest x-ray interpretations, two pulmonary function studies, two arterial blood gas studies, one report of autopsy, one report of each biopsy, and two medical reports. 20 C.F.R. §725.414(a)(2)(i), (a)(3)(i). In rebuttal of the case presented by the opposing party, each party may submit "no more than one physician's interpretation of each chest [x]-ray, pulmonary function test, arterial blood gas study, autopsy or biopsy submitted by" the opposing party. 20 C.F.R. §725.414(a)(2)(ii), (a)(3)(ii). In a modification proceeding, each party is entitled to submit one additional x-ray interpretation, pulmonary function study, blood gas study, and medical report as its affirmative case evidence, "along with such rebuttal evidence and additional statements as are authorized by paragraphs (a)(2)(ii) and (a)(3)(ii) of §725.414." 20 C.F.R. §725.310(b). Medical evidence that exceeds those limitations "shall not be admitted into the hearing record in the absence of good cause." 20 C.F.R. §725.456(b)(1).

Employer does not dispute it submitted its full complement of x-ray and medical opinion evidence in this subsequent claim. Employer's Brief at 8-11. Rather, it argues the ALJ should have admitted Dr. Boustani's testimony as a medical report and Dr. Ranavaya's x-ray readings because it should be allowed to backfill unused evidentiary slots from prior closed claims. *Id*. Employer asks the Board to extend its holding in *Rose v. Buffalo Mining Co.*, 23 BLR 1-221, 1-226-28 (2007) to conclude that, in a subsequent claim, a party may

[3] 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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 15; Director's Exhibit 7.

backfill slots from a prior closed claim. Employer's Brief at 9-10. We decline to extend *Rose* in such a manner.

In *Rose* the Board held that 20 C.F.R. §§725.414 and 725.310(b) work in tandem to establish "combined evidentiary limits on modification." *Rose*, 23 BLR at 1-227. The Board explained that the evidentiary limitations set forth in 20 C.F.R. §725.414 "apply to all proceedings conducted with respect to a claim" except to the extent permitted by 20 C.F.R. §§725.456[4] and 725.310(b), and that 20 C.F.R. §725.310(b) allows each party to submit one "additional" piece of certain types of evidence on modification. *Id.* at 226-28; 20 C.F.R. §§725.414(d), 725.310(b). This "interpretation recognize[d] the unique nature of modification in reopening the underlying claim in the context of limitations on the evidence used to adjudicate the claim." *Rose*, 23 BLR at 1-227. Thus, Employer's argument that there is "no logical reason why a modification and a subsequent claim would be treated differently" is not persuasive. Employer's Brief at 9. Whereas modification preserves the underlying claim, a subsequent claim does not reopen a claimant's prior closed claims which have been finally adjudicated. 20 C.F.R. §725.309(b), (c). The ALJ properly found there is no regulatory authority to extend *Rose* to subsequent claims. August 20, 2021 Order at 3 n.8.

We also reject Employer's argument that it was "unfair" for the ALJ to accept its evidence at the hearing and later issue an order instructing the parties to clarify their evidentiary designations and address evidence that exceeds the evidentiary limitations. Employer's Brief at 8. The ALJ's actions satisfy the principles of fairness and administrative efficiency. *L.P.* [*Preston*] *v. Amherst Coal Co.*, 24 BLR 1-57, 1-63 (2008) (en banc).

Finally, to the extent Employer argues good cause exists to admit all its exhibits because Claimant did not object to them at the hearing, we disagree.[5] Employer's Brief at 2 n.5, 9. The ALJ is obligated to enforce the evidentiary limitations even if no party objects. *See Smith v. Martin Cnty. Coal Corp.*, 23 BLR 1-69, 1-74 (2004) (evidentiary limitations set forth in the regulations are mandatory and, as such, are not subject to

[4] Section 725.456 concerns the introduction of documentary evidence and is not specific to subsequent claims or modification proceedings. 20 C.F.R. §725.456.

[5] Employer also argues there is good cause to admit its excluded evidence because it is relevant to the adjudication of the claim. Employer's Brief at 10-11. Contrary to Employer's argument, relevancy alone is insufficient to establish good cause for admission of evidence in excess of the evidentiary limitations. *See Elm Grove Coal Co. v. Director, OWCP*, 480 F.3d 278, 297, n.18 (4th Cir. 2007).

waiver); July 6, 2021 Order at 2. Thus, we discern no abuse of discretion in the ALJ's decision to exclude Employer's Exhibits 1, 6, 7, and 9. *Blake*, 24 BLR at 1-113.

Complicated Pneumoconiosis

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[6] 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).

The ALJ found the x-ray evidence establishes complicated pneumoconiosis. 20 C.F.R. §718.304(a); Decision and Order at 15. She further found the computed tomography (CT) scan, medical opinion, and treatment record evidence, standing alone, does not establish complicated pneumoconiosis because it lacks the necessary equivalency determination under prong (c). 20 C.F.R. §718.304(c); Decision and Order at 24-29. She nevertheless concluded the CT scan, medical opinion, and treatment record evidence supports the x-ray interpretations of a large Category B opacity of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 24-29. Weighing all of the evidence, the ALJ found the contrary evidence of record does not undermine the x-ray evidence of complicated pneumoconiosis, thus entitling Claimant to 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 28-29.

Employer argues the ALJ erred in finding the x-rays are positive for complicated pneumoconiosis. Employer's Brief at 12-13. We disagree.

The ALJ considered twelve interpretations of four x-rays dated August 16, 2018, April 25, 2019, February 6, 2020, and March 2, 2020.[7] Director's Exhibits 16, 21, 23, 24;

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

[7] Employer asserts the ALJ failed to consider evidence developed in Claimant's prior claims. Employer's Brief at 7. We reject this argument. The ALJ considered the prior claim evidence but permissibly found it outweighed by the more recent evidence because it is a more accurate reflection of Claimant's condition given the progressive

Claimant's Exhibits 1-4; Employer's Exhibits 8, 10-12. Drs. DePonte, Crum, Ramakrishnan, Basheda, and Ranavaya read these x-rays. *Id*. Drs. DePonte, Crum, and Ramakrishnan are dually-qualified Board-certified radiologists and B readers, but Drs. Basheda and Ranavaya are only B readers.[8] *Id.* The ALJ permissibly assigned greater weight to the readings by dually-qualified radiologists. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); Decision and Order at 13-15.

Drs. DePonte, Crum, and Ramakrishnan read the August 16, 2018 x-ray as positive for simple and complicated pneumoconiosis, Category B, whereas Drs. Basheda and Ranavaya read it as negative for any form of pneumoconiosis. Director's Exhibits 16, 21, 24; Employer's Exhibit 8; Claimant's Exhibit 4. Based on the superior qualifications of Drs. DePonte, Crum, and Ramakrishnan, the ALJ found this x-ray positive for both simple and complicated pneumoconiosis. Decision and Order at 14.

Dr. Crum read the April 25, 2019 x-ray as positive for simple and complicated pneumoconiosis, Category B, and Drs. Basheda and Ranavaya read it as negative for any form of pneumoconiosis. Director's Exhibit 23; Employer's Exhibit 10; Claimant's Exhibit 1. Based on Dr. Crum's superior qualifications, the ALJ found this x-ray positive for both simple and complicated pneumoconiosis. Decision and Order at 14-15.

Dr. DePonte read the February 6, 2020, and March 2, 2020 x-rays as positive for simple and complicated pneumoconiosis, Category B, whereas Dr. Ranavaya read both x-rays as negative for any form of pneumoconiosis. Claimant's Exhibits 2, 3; Employer's Exhibits 11, 12. Based on Dr. DePonte's superior qualifications, the ALJ found this x-ray positive for simple and complicated pneumoconiosis. Decision and Order at 15. Thus the ALJ found all the x-rays are positive for simple and complicated pneumoconiosis. *Id*.

Employer argues the ALJ should have discredited Dr. DePonte's reading of the February 6, 2020 x-ray as equivocal because she indicated the x-ray should be compared

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nature of pneumoconiosis. *See Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987); *Thorn v. Itmann Coal Co.*, 3 F.3d 713, 719 (4th Cir. 1993); *Adkins v. Director, OWCP*, 958 F.2d 49, 51-52 (4th Cir. 1992); *Parsons v. Wolf Creek Collieries*, 23 BLR 1-29, 1-34-35 (2004) (en banc) (more recent medical evidence may be accorded greater probative value than that submitted with a prior claim because of the progressive nature of pneumoconiosis); Decision and Order at 29.

[8] In charting the x-ray readings, the ALJ incorrectly listed Dr. Ranavaya as a dually-qualified Board-certified radiologist and B reader. Decision and Order at 12-13. However, when actually weighing the physician's x-ray readings, she correctly found he is only a B reader. *Id*. at 13-15.

to prior x-rays to exclude malignancy as a cause of a five to six centimeter opacity in the right lung. Employer's Brief at 13-14; Claimant's Exhibit 3. Contrary to Employer's argument, the ALJ acknowledged this comment and permissibly found Dr. DePonte's reading is supportive of complicated pneumoconiosis based on the doctor's identification of a Category B opacity. *Melnick*, 16 BLR at 1-33; Decision and Order at 13-15. Nor has Employer explained how the error it alleges would make a difference in light of the fact that the ALJ found the August 16, 2018, April 25, 2019, and March 2, 2020 x-rays also establish complicated pneumoconiosis. *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

The ALJ 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 simple and complicated pneumoconiosis.[9] 20 C.F.R. §718.304(a); Decision and Order at 15.

Employer does not allege specific error in the ALJ's finding the CT scan and treatment record evidence supports the x-ray interpretations of a large Category B opacity of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 24-28. Thus we affirm this finding. *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).

Employer argues the ALJ erred in weighing the medical opinion evidence. Employer's Brief at 12, 14-19. We disagree. The ALJ weighed the opinions of Drs. Habre and Raj that Claimant has complicated pneumoconiosis and the opinions of Drs. Basheda and Ranavaya that he does not have the disease. Director's Exhibits 16, 23; Claimant's Exhibits 2, 3; Employer's Exhibits 2, 3.

Dr. Habre diagnosed complicated pneumoconiosis based on a positive chest x-ray and "the presence of a completely disabling lung disease with advanced fibrotic lung parenchymal interstitial change." Director's Exhibit 16. He also noted Claimant's arterial

[9] To the extent Employer argues the ALJ erred in finding the x-ray evidence establishes complicated pneumoconiosis because Claimant did not get "a serial interpretation of the x-rays" or "provide all of the clinical information to his pulmonary examiners," we disagree, as Section 718.304 contains no such requirement. 20 C.F.R. §718.304; Employer's Brief at 12, 17.

blood gas testing is abnormal and explained "[e]xertional hypoxemia is observed in miners with complicated coal worker's pneumoconiosis who present with or without airflow limitation." *Id*. Dr. Raj diagnosed complicated pneumoconiosis based on an abnormal chest x-ray that is "consistent with progressive massive fibrosis (small rounded opacities bilaterally in all lung zones with 1/1 profusion, carcinoma lung or pleura, calcification in small non-pneumoconiotic opacities, hilar enlargement, plate atelectasis, [and] [l]arge B opacity [measuring five to six centimeters] in the right lower lung zone[.)]" Claimant's Exhibit 3. He also based his diagnosis of complicated pneumoconiosis on Claimant's history "of exposure to respirable coal/rock dust for total of [thirty] years in coal mine employment." *Id*. The ALJ permissibly found the opinions of Drs. Habre and Raj that Claimant has complicated pneumoconiosis well-reasoned and documented, and therefore "lend[] strong support" to the finding of complicated pneumoconiosis on x-ray.[10] Decision and Order at 26, 28; *see Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 310 (4th Cir. 2012); *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 asserts the ALJ erred in discrediting the opinions of Drs. Basheda and Ranavaya that Claimant does not have complicated pneumoconiosis. Employer's Brief at 12-19. The ALJ discredited their opinions because they found the x-ray evidence of record is negative for simple pneumoconiosis, contrary to her finding that the x-ray evidence is positive for the disease based on the readings by the dually-qualified radiologists. *Id*. at 27-28. Employer does not challenge this credibility finding. Thus we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Further, Dr. Basheda opined Claimant is "limited" by rheumatoid arthritis with "[n]o evidence of upper airway or pulmonary involvement," and that he was treated with methotrexate which can cause fibrotic lung disease. Director's Exhibit 23 at 3, 11, 14; Employer's Exhibit 4 at 14. He also opined that when Claimant was taking methotrexate his chest examination was normal. Employer's Exhibit 4 at 17. Thus he opined the opacities present on x-ray are due to rheumatoid arthritis and not complicated pneumoconiosis. *Id*. Dr. Ranavaya noted that Claimant had been diagnosed with rheumatoid arthritis and was previously treated with methotrexate which can cause interstitial lung disease that mimics pneumoconiosis. Employer's Exhibit 3 at 6-9. He

[10] We reject Employer's contention the ALJ erred in considering the opinions of Drs. Habre and Raj as proof of complicated pneumoconiosis. Employer's Brief at 14 n.7. The ALJ found their opinions alone do not establish complicated pneumoconiosis under 20 C.F.R. §718.304(c) but permissibly determined they are "persuasive evidence supportive of" a finding of complicated pneumoconiosis based on the x-ray evidence. Decision and Order at 26-28.

opined the large opacity identified on x-ray by the other physicians actually represents parenchymal and pleural changes caused by rheumatoid arthritis. *Id.* at 9.

The ALJ observed that although a treatment record from September 2009 lists methotrexate as a current medication, the treatment records from 2010 do not list it as a current medication; the medical opinions of Drs. Habre, Basheda, and Raj from 2018 to 2020 do not list methotrexate as a current medication; none of the treating physicians expressed a concern the medication could be causing pulmonary side effects; and the record does not indicate how long Claimant took the medication. Decision and Order at 26-27, *citing* Director's Exhibit 22 at 35, 38; Employer's Exhibit 5 at 59-60. The ALJ thus reasonably found Drs. Basheda's and Ranavaya's opinions that the changes on x-ray are due to rheumatoid arthritis and methotrexate are not well-documented or persuasive.[11] *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 27.

Employer argues the opinions of Drs. Basheda and Ranavaya are more reasoned and documented than the opinions of Drs. Habre and Raj. Employer's Brief at 12-19. These arguments amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); Employer's Brief at 13-19. Because it is supported by substantial evidence, we affirm the ALJ's finding that the medical opinion evidence supports the x-ray interpretations of a large Category B opacity of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 28. We also affirm her finding that all the relevant evidence considered together establishes complicated pneumoconiosis. *Cox*, 602 F.3d at 283; 20 C.F.R. §718.304; Decision and Order at 28-29.

We further affirm, as unchallenged, 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 29.

[11] Because the ALJ provided valid reasons for discrediting the opinions of Drs. Basheda and Ranavaya, we need not address Employer's remaining arguments regarding the weight accorded to these opinions. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983)

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