U.S. Department of Labor

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

BRB No. 23-0060 BLA

LARRY W. HORTON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
DICKENSON-RUSSELL COAL COMPANY, LLC	)	
	)	
	)	DATE ISSUED: 9/18/2023
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 Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Awarding Benefits (2021-BLA-05036) rendered on a claim filed on December 6, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 12.81 years of coal mine employment. She also determined Claimant established complicated pneumoconiosis arising out of his coal mine employment and therefore invoked the irrebuttable presumption that he is totally disabled due to pneumoconiosis pursuant to Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). 20 C.F.R. §§718.203(b), 718.304. Therefore, the ALJ awarded benefits.

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

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, 362 (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;[3] 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);

[1] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 12.81 years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 9.

[2] The Board 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. *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 2 n.3; Hearing Transcript at 48, 51.

[3] The ALJ accurately observed there was no biopsy evidence for consideration. Decision and Order at 11.

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).

Employer contends the ALJ erred in finding Claimant established complicated pneumoconiosis based on the x-ray evidence and in consideration of the evidence as a whole. We disagree.

The ALJ considered eight interpretations of three x-rays, including a rehabilitative report by Dr. Adcock of the most recent x-ray.[4] 20 C.F.R. §718.304(a); Decision and Order at 11-12. She noted all the readers are Board-certified radiologists and B readers, and thus are "equally qualified" to render an opinion on the presence or absence of pneumoconiosis. Decision and Order at 12.

Drs. DePonte and Crum read the May 25, 2019 x-ray as showing coalescence of small opacities of simple pneumoconiosis; a Category A large opacity consistent with complicated pneumoconiosis; and either pleural thickening or pleural plaques. Director's Exhibits 17, 20. Dr. Adcock read the x-ray as negative for pneumoconiosis and observed no coalescence, but he noted a pleural-based nodule measuring 7 x 1.7 millimeters in the left mid-lung. Director's Exhibit 21. The ALJ found the May 25, 2019 x-ray positive for simple and complicated pneumoconiosis based on the preponderance of the positive readings by Drs. DePonte and Crum. Decision and Order at 13.

Dr. DePonte interpreted the June 19, 2020 x-ray as positive for a Category A large opacity and small opacities in all lung zones, while Dr. Adcock read the x-ray as negative for pneumoconiosis but observed a 1.5 centimeter, pleural-based nodule in the left mid-lung. Director's Exhibit 22; Claimant's Exhibit 1. The ALJ found the x-ray readings in equipoise and that they neither support nor refute the existence of complicated pneumoconiosis. Decision and Order at 13.

Dr. Crum read the August 11, 2021 x-ray as a positive for complicated pneumoconiosis with a Category A large opacity in the left mid-lung and small opacities in all lung zones. Claimant's Exhibit 2. Dr. Adcock interpreted the x-ray as negative for pneumoconiosis, but he identified a 1.5 centimeter nodule in the left mid-lung. Employer's Exhibit 3 at 16. After reviewing Dr. Crum's reading, Dr. Adcock indicated that he attributed the large mid-lung opacity to either an infection such as "a remote episode of pneumonia" or "[t]rauma, such as [a] steering wheel injury." Employer's Exhibit 8. Finding Dr. Adcock's opinion speculative as to the cause of Claimant's large opacity and

[4] Dr. Gaziano, a B reader, assessed the May 25, 2019 x-ray for film quality only. Director's Exhibit 19.

Dr. Crum's reading more persuasive, the ALJ concluded the August 11, 2021 x-ray is positive for complicated pneumoconiosis. Decision and Order at 14-15.

Because the ALJ found two x-rays positive for complicated pneumoconiosis and the readings of one in equipoise, she concluded that the x-ray evidence supported a finding of simple and complicated pneumoconiosis at 20 C.F.R. §718.304(a). Decision and Order at 15.

Contrary to Employer's argument, the ALJ did not simply "count heads" in finding Claimant established complicated pneumoconiosis based on the x-ray evidence. Employer's Brief at 5. Rather, she properly performed both a qualitative and quantitative analysis of the conflicting x-ray readings by the "equally qualified" readers. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992). Evaluating each x-ray individually, and taking into consideration the radiological qualifications of the physicians and the nature of their readings, she permissibly found the May 25, 2019 and August 11, 2021 x-rays are positive for complicated pneumoconiosis and the readings of the June 19, 2020 x-ray are in equipoise. *See Addison*, 831 F.3d at 256-57; *Adkins*, 958 F.2d at 52-53; Decision and Order at 13; *see also Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994).

Moreover, the ALJ adequately explained why she discredited Dr. Adcock's negative reading of the August 11, 2021 x-ray: she permissibly found Dr. Adcock's negative reading speculative because there is nothing in the record to show Claimant had suffered either an infection or a trauma to account for his large opacity. *See Cox*, 602 F.3d at 285-87; Decision and Order at 14-15; Claimant's Exhibit 2; Employer's Exhibits 3, 8; Employer's Brief at 7. The Fourth Circuit Court of Appeals has held that an ALJ has the discretion to discount negative x-ray readings for complicated pneumoconiosis as speculative and unsupported where there is no evidence in the record that a miner was ever diagnosed with, or treated for, any of the alternative diseases or conditions put forward by the physicians as possible diagnoses for large masses present on the x-rays. *See Cox*, 602 F.3d at 285-87.

Additionally, we also see no error in the ALJ's overall determination that Dr. Adcock's negative readings in this case are less credible because he did not identify any form of pneumoconiosis. *See Snorton v. Zeigler Coal Co.*, 9 BLR 1-106, 1-107 (1986) (ALJ may reasonably question the validity of a physician's opinion that varies significantly from the remaining medical opinions of record); *Hutchens v. Director, OWCP*, 8 BLR 1-16, 1-19 (1985) (ALJ must consider factors that tend to undermine the reliability of a physician's conclusions before accepting it); Decision and Order at 12-13.

Employer's arguments regarding the x-ray evidence are 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). Because it is supported by substantial evidence, we affirm the ALJ's conclusion that the x-ray evidence is positive for complicated pneumoconiosis at 20 C.F.R. §718.304(a).

As Employer raises no further arguments on appeal, we affirm the ALJ's finding that Claimant invoked the irrebuttable presumption at 20 C.F.R. §718.304.[5] Decision and Order at 22. We further affirm, as unchallenged on appeal, the ALJ's determination that Claimant's complicated pneumoconiosis arose out of his 12.81 years of coal mine employment. 20 C.F.R. §718.203(b); *see The Daniels Co. v. Director, OWCP* [*Mitchell*], 479 F.3d 321, 337 (4th Cir. 2007); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 22-23.

[5] The ALJ found Claimant's treatment records failed to address the presence of complicated pneumoconiosis. Decision and Order at 16; Claimant's Exhibit 3; Employer's Exhibits 1, 2. She also gave little weight to the opinions of Drs. Nader, Sargent, and Fino as to the existence of complicated pneumoconiosis. Decision and Order at 22; Director's Exhibits 17, 22; Employer's Exhibits 3, 5-7. We affirm these credibility findings as they are unchallenged on appeal. *Skrack*, 6 BLR at 1-711.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge