BRB No. 12-0143 BLA

RICKY CAMPBELL	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
LONE MOUNTAIN PROCESSING, INCORPORATED	)	DATE ISSUED: 12/19/2012
	)	
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 Stephen M. Reilly, Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

Ronald E. Gilbertson (Husch Blackwell LLP), Washington, D.C., for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order Awarding Benefits (2010-BLA-05586) of Administrative Law Judge Stephen M. Reilly rendered on a miner's claim filed on July 7, 2009, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011)(the Act). The administrative law judge found that claimant had twenty-nine years of underground coal mine employment, and adjudicated this claim pursuant to the regulations at 20 C.F.R. Part 718. The administrative law judge found that claimant established the existence of complicated pneumoconiosis arising out of coal mine employment and was, therefore, entitled to the irrebuttable presumption of totally disabling pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3),

as implemented by 20 C.F.R. §718.304. Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that claimant has complicated pneumoconiosis and is entitled to the Section 411(c)(3) irrebuttable presumption of totally disabling pneumoconiosis. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a substantive brief in response to employer's appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, rational, and in accordance with applicable law.[1] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304 of the regulations, provides that there is an irrebuttable presumption of totally disabling pneumoconiosis if the miner suffers from a chronic dust disease of the lung which, (a) when diagnosed by chest x-ray, yields one or more large opacities (greater than one centimeter in diameter) classified as Category A, B, or C; (b) when diagnosed by biopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, is a condition which would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The introduction of legally sufficient evidence of complicated pneumoconiosis does not, however, automatically invoke the irrebuttable presumption found at 20 C.F.R. §718.304. Rather, the evidence must establish that claimant has a "chronic dust disease of the lung" commonly known as complicated pneumoconiosis. To make such a determination, the administrative law judge must examine all the evidence on the issue, i.e., evidence of simple and complicated pneumoconiosis, as well as evidence that pneumoconiosis is not present, resolve any conflicts in the evidence, and make a finding of fact. *See Director, OWCP v. Eastern Coal Corp.* [*Scarbro*], 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000); *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (4th Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991)(en banc); *Truitt v. North American Coal Corp.*, 2 BLR 1-199 (1979).

After consideration of the arguments on appeal, the administrative law judge's Decision and Order, and the evidence of record, we conclude that the administrative law judge's Decision and Order is rational, supported by substantial evidence, and in

[1] Because claimant's last coal mine employment was in Kentucky, we will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(en banc).

accordance with law. The administrative law judge found the existence of complicated pneumoconiosis established based on the "overwhelming x-ray evidence demonstrating that [claimant] has complicated pneumoconiosis as compared to the minimal evidence that detracts from that…." Decision and Order at 10. In so finding, the administrative law judge determined that the five readings of the three x-rays of record established the existence of complicated pneumoconiosis. Specifically, the administrative law judge found that the July 25, 2009 x-ray was interpreted by both Dr. Baker, a B reader, and Dr. Alexander, a B reader and Board-certified radiologist, as showing complicated pneumoconiosis (3/3 with C large opacities, and 3/2 with B large opacities, respectively). Further, the administrative law judge found that the April 14, 2011 x-ray was also interpreted by Dr. Alexander as positive for complicated pneumoconiosis (2/2 with C large opacities) and as positive for complicated pneumoconiosis (2/2 with C large opacities) by Dr. Miller, a B reader and Board-certified radiologist. Regarding the April 28, 2011 x-ray, the administrative law judge noted that Dr. Alexander also read it as showing complicated pneumoconiosis (2/1 with C large opacities).

Contrary to employer's arguments, the administrative law judge properly accorded less weight to the rereadings of those x-rays by Dr. Wheeler, a B reader and Board-certified radiologist, who interpreted the x-rays as not showing complicated pneumoconiosis. The administrative law judge properly accorded little weight to Dr. Wheeler's interpretations dismissing complicated pneumoconiosis because he found them to be inadequate. Specifically, the administrative law judge found that there was no evidence in the record, nor did Dr. Wheeler point to any, that supported the doctor's finding that the large masses seen on claimant's x-rays were due to other causes, and not complicated pneumoconiosis. The administrative law judge, therefore, properly accorded little weight to Dr. Wheeler's x-ray readings. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 285, 24 BLR 2-269, 2-284 (4th Cir. 2010); *Gray v. SLC Coal Co.*, 176 F.3d 382, 21 BLR 2-615 (6th Cir. 1999); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(en banc). Additionally, the administrative law judge properly accorded less weight to Dr. Wheeler's finding that the masses seen on x-ray could not be complicated pneumoconiosis because they did not develop until after claimant's December 1, 2004 CT scan (claimant left coal mine employment on July 9, 2005). The administrative law judge properly determined that the basis of Dr. Wheeler's finding was inconsistent with the amended regulations, which recognize that pneumoconiosis may be latent and progressive, and "may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); *see A & E Coal Co. v. Adams*, 694 F.3d 798, BLR (6th Cir. 2012); *Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 488, BLR (6th Cir. 2012); *Peabody Coal Co. v. Odom*, 342 F.3d 486, 22 BLR 2-612 (6th Cir. 2003). The administrative law judge has, therefore, given two valid reasons for according minimal weight to the x-ray readings of Dr. Wheeler. *See Kozele v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382-83 n.4 (1983). Accordingly, the administrative law judge reasonably found that Dr. Wheeler's interpretations of the x-ray evidence, as

not showing complicated pneumoconiosis, were insufficient to overcome the other x-ray interpretations finding complicated pneumoconiosis. *See Scarbro*, 220 F.3d at 256, 22 BLR at 2-103; *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756, 21 BLR 2-587, 2-607 (4th Cir. 1999); *Kozele*, 6 BLR at 1-382-83.

Further, contrary to employer's argument, the administrative law judge did consider the other relevant evidence of record. That evidence consists of the reading of the April 14, 2011 x-ray by Dr. Scott, a B reader and Board-certified radiologist, who found "abnormalities consistent with pneumoconiosis," but did not diagnose the existence of complicated pneumoconiosis; the January 13, 2005 lung biopsy diagnosing the existence of coal workers' pneumoconiosis; the medical report of Dr. Jarboe, finding no evidence of a respiratory impairment due to coal mine employment; and Dr. Wheeler's report of the December 1, 2004 and July 11, 2006 CT scans, which he found showed no pneumoconiosis, but masses and infiltrates "compatible with granulomata." Employer's Exhibit 4. Contrary to employer's contention, the administrative law judge properly found that this evidence did not overcome the findings of complicated pneumoconiosis on claimant's x-rays. *See Cox*, 602 F.3d at 285, 24 BLR at 2-284; *Scarbro*, 220 F.3d at 256, 22 BLR at 2-103; *Gray*, 176 F.3d at 389, 21 BLR at 2-629; *Piney*, 176 F.3d at 756, 21 BLR at 2-607. Consequently, we affirm the administrative law judge's finding that, having considered all the relevant evidence, the existence of complicated pneumoconiosis was established and claimant was entitled to the irrebuttable presumption of totally disabling pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3).

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
BETTY JEAN HALL
Administrative Appeals Judge