U.S. Department of Labor

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

BRB No. 18-0599 BLA

CARL G. SIGLER	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
WINDSOR COAL COMPANY	)	DATE ISSUED: 12/30/2019
	)	
and	)	
	)	
WEST VIRGINIA CWP FUND	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Timothy J. McGrath, Administrative Law Judge, United States Department of Labor.

Austin P. Vowels (Vowels Law PLC) Henderson, Kentucky, for claimant.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2017-BLA-05182) of Administrative Law Judge Timothy J. McGrath on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's claim filed on December 21, 2015.

The administrative law judge accepted the parties' stipulation of at least twenty years of underground coal mine employment but determined claimant did not establish total disability. Thus, the administrative law judge found claimant did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4).[1] 30 U.S.C. §921(c)(4) (2012). He further found the evidence insufficient to establish complicated pneumoconiosis and, therefore, concluded claimant did not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. Consequently, the administrative law judge denied benefits.

On appeal, claimant argues the administrative law judge erred in finding he did not establish complicated pneumoconiosis. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, did not file a response brief.[2] Claimant reiterates his arguments in his reply brief.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order Denying Benefits if it is rational, supported

[1] Under Section 411(c)(4) of the Act, claimant is presumed totally disabled due to pneumoconiosis if he has at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305(b).

[2] We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant established at least twenty years of underground coal mine employment but did not establish total disability at 20 C.F.R. §718.204(b)(2) and, therefore, failed to invoke the Section 411(c)(4) presumption. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

by substantial evidence, and in 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 Associates, Inc.*, 380 U.S. 359 (1965).

Complicated Pneumoconiosis

Under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and its implementing regulation, 20 C.F.R. §718.304, there is 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 an opacity 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, would be a condition that could reasonably be expected to reveal a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. The administrative law judge must determine whether the evidence in each category tends to establish the existence of complicated pneumoconiosis, and then must weigh together the evidence at subsections (a), (b), and (c) before determining whether claimant has invoked the irrebuttable presumption. *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 (1991) (en banc).

The administrative law judge found the x-ray, computed tomography (CT) scan, and medical opinion evidence did not support a finding of complicated pneumoconiosis. Decision and Order at 8-17. Claimant's contention that the administrative law judge erred in his weighing of this evidence and denying benefits on this basis has merit.

The administrative law judge initially summarized six interpretations of two x-rays dated January 27, 2016 and June 8, 2017. Decision and Order at 9, 11. Drs. Crum and Alexander, both dually qualified as a B reader and Board-certified radiologist, interpreted the January 27, 2016 x-ray as positive for both simple pneumoconiosis and Category A large opacities, whereas Drs. Meyer and Adcock, also dually-qualified, interpreted it as negative for pneumoconiosis.[4] Director's Exhibit 11; Claimant's Exhibit 2; Employer's Exhibits 5, 16. Dr. Crum interpreted the June 8, 2017 x-ray as positive for both simple

[3] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as the miner's last coal mine employment occurred in West Virginia. *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc); Hearing Transcript at 30-31.

[4] Dr. DePonte reviewed the January 27, 2016 x-ray for quality purposes only. Director's Exhibit 12.

pneumoconiosis and Category A large opacities, whereas as Dr. Selby, a B reader, interpreted the x-ray as negative for pneumoconiosis. Claimant's Exhibit 4; Employer's Exhibit 13.

The administrative law judge next considered CT scans dated February 8, 2012, March 12, 2012, May 10, 2012, November 29, 2012, July 11, 2013, January 9, 2014, and July 24, 2014. Employer's Exhibits 1, 6-8. Readings of these scans contained in claimant's treatment records identified opacities ranging in size from 7 mm to 1.8 cm in diameter and noted changes in size over time, but were silent as to the presence of pneumoconiosis.[5] Employer's Exhibit 1. Employer submitted Dr. Adcock's interpretations of the scans dated May 10, 2012, November 29, 2012, and July 24, 2014. He identified various nodules but no small or large opacities of pneumoconiosis.[6] Employer Exhibits 6-8. Rather, he found old granulomatous disease or neoplasm. *Id*. Claimant submitted Dr. Crum's review of these three CT scans and comparison with the January 27, 2016 x-ray. He diagnosed twenty to thirty measurable nodules consistent with q and r nodules of pneumoconiosis under the ILO classification system.[7] Claimant's Exhibit 3. He identified a dominant nodule in the left upper lobe measuring 8 mm in 2012, but stated it increased to 1.6 cm in the 2016 x-ray. *Id*.

Having considered this evidence, the administrative law judge concluded:

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[5] The computed tomography (CT) scans in claimant's treatment records were compared with prior scans and any changes were noted. Claimant's treating physicians noted the nodules on the March 12, 2012 and May 10, 2012 scans were smaller in size than previously seen, the nodules on the November 29, 2012 and July 11, 2013 scans were either the same or minimally increased in sized, and the nodules on the January 9, 2014 and July 24, 2014 scans were unchanged. Employer's Exhibit 1.

[6] Dr. Adcock noted on the July 24, 2014 scan that one of the nodules had increased in size while the others had stayed the same. Employer's Exhibit 8.

[7] Under the ILO classification system, q nodules are defined as small opacities measuring between 1.5 and 3 millimeters, while r nodules are small opacities measuring between 3 and 10 millimeters. *Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses*, page 5, https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/publication/wcms_168260.pdf.

> In reviewing the imaging evidence, it is noted the January 27, 2016 x-ray was interpreted by Drs. Crum, Alexander, Meyer and Adcock, all of whom are [B]oard-certified radiologists and B readers. However, the qualifications of Dr. Adcock are superior in view of his greater experience, professional positions held and professional publications. Of all the physicians who reviewed the CT scans, Dr. Crum was the only one who opined that there were lesions consistent with pneumoconiosis.

Decision and Order at 11. The administrative law judge provided no further explanation for his ultimate determination that the x-ray and CT scan evidence does not support a finding of complicated pneumoconiosis. Decision and Order at 17.

We agree with claimant that the administrative law judge's analysis of the x-ray and CT scan evidence is inadequate. Claimant's Brief at 12-18. Because the statute sets forth three different ways to establish complicated pneumoconiosis (large opacities by x-ray, massive lesions by biopsy/autopsy, or an equivalent diagnosis by other means), a finding of statutory complicated pneumoconiosis "may be based on evidence presented under a single prong." *Scarbro*, 220 F.3d at 256. Thus, only x-ray evidence should be considered at 20 C.F.R. §718.304(a), while CT scans should be considered at 20 C.F.R. §718.304(c). *See Scarbro*, 220 F.3d 250, 255-56; *Melnick*, 16 BLR at 1-34. Only after determining whether complicated pneumoconiosis is established under each prong should the administrative law judge weigh the evidence together to determine whether a finding of complicated pneumoconiosis under one prong is diminished by "the probative force of [contrary relevant] evidence under another prong." *Scarbro*, 220 F.3d at 256.

In addition, as claimant alleges, in evaluating the x-ray evidence, the administrative law judge did not resolve the conflict in the interpretations by Drs. Crum and Selby of the June 8, 2017 x-ray. Moreover, claimant accurately observes that in evaluating the January 27, 2016 x-ray the administrative law judge did not adequately explain his rationale for according greater weight to Dr. Adcock's credentials. *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); Claimant's Brief at 17-18. While the administrative law judge stated Dr. Adcock has greater experience, has held professional positions, and has published professionally, he did not analyze the professional credentials of Drs. Crum or Alexander or otherwise explain how Dr. Adcock's credentials were "superior" to theirs.[8] 20 C.F.R. §718.202(a)(1) ("consideration shall be given to the radiological qualifications

[8] Claimant argues both Drs. Crum and Alexander "have served in numerous teaching roles." Claimant's Brief at 18; *see* Claimant's Exhibits 2-3. He also states Dr. Alexander "has been published numerous times in highly relevant areas of medicine" and that Dr. Crum has been a presenter for the Centers for Disease Control. *Id*.

of the physicians" whose x-ray interpretations are in conflict) ; *see generally* 65 Fed Reg. 79920, 79945 (Dec. 20, 2000) (adjudicator should consider any relevant factor in assessing a physician's credibility and each party may prove or refute the relevance of that factor), *citing Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993) (the administrative law judge may consider relevant academic qualifications such as whether a physician is a professor of radiology in weighing the x-ray evidence); *Wojtowicz*, 12 BLR at 1-165; Decision and Order at 11; Claimant's Exhibits 2-3.

There is also merit to claimant's contention that the administrative law judge failed to adequately consider the physicians' narrative reports or comments regarding what they saw on x-ray. *See* Claimant's Brief at 14; Claimant's Reply Brief at 2-9. When summarizing the x-ray evidence, the administrative law judge quoted portions of comments some of the physicians made on their x-ray classification forms, *see* Decision and Order at 9 n. 5-8, but we are unable to discern whether and to what extent he factored the comments into his evaluation of the x-rays and credibility of the interpretations. Decision and Order at 10-11; *Melnick*, 16 BLR at 1-37.

Further, as claimant alleges, the administrative law judge also erred in not considering all relevant CT scan evidence. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 208-11 (4th Cir. 2000); Claimant's Reply Brief at 16-17. Although the administrative law judge admitted Dr. Crum's interpretation of a CT scan dated June 8, 2017 into evidence, he did not consider it when analyzing the CT scan evidence of record.[9] *See* Decision and Order at 2, 10-11; Claimant's Exhibit 5.

Based on these errors, we must vacate the administrative law judge's findings that the x-ray and CT scan evidence does not support a finding of complicated pneumoconiosis. Decision and Order at 17. Additionally, because the administrative law judge relied on these findings when weighing the medical opinion evidence, we must also vacate his determination that the medical opinion evidence did not support a finding of complicated

[9] In discussing Dr. Selby's opinion, the administrative law judge noted he reviewed a 2017 CT scan Dr. Perkins read. Decision and Order at 15; *see* Employer's Exhibit 13. Claimant represents that this is the same June 8, 2017 CT scan Dr. Crum reviewed and, therefore, the administrative law judge should have resolved the conflict in the interpretations. Claimant's Reply Brief at 15-16.

pneumoconiosis.[10] Thus, we must further vacate his conclusion that the evidence as a whole did not establish complicated pneumoconiosis.

On remand, the administrative law judge must reconsider whether the x-ray evidence establishes complicated pneumoconiosis under 20 C.F.R. §718.304(a). He should consider all relevant evidence regarding the x-rays, including the physicians' comments. *See Melnick*, 16 BLR at 1-37. He should also adequately explain his credibility determinations in accordance with the Administrative Procedure Act (APA), 5 U.S.C. §7521. *See Wojtowicz*, 12 BLR at 1-165.

The administrative law judge must next consider all other relevant evidence at 20 C.F.R. §718.304(c), including the CT scans, treatment records, and medical opinions. He should address the comparative credentials of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). The administrative law judge must then weigh together the evidence at subsections (a)-(c) before determining whether claimant has invoked the irrebuttable presumption.[11] 20 C.F.R. §718.304; *see Cox*, 602 F.3d at 283; *Scarbro*, 220 F.3d at 255-56; *Melnick*, 16 BLR at 1-33.

[10] The administrative law judge considered Dr. Chavda's opinion diagnosing complicated pneumoconiosis, and the contrary opinions of Drs. Selby and Castle. Decision and Order at 11-16; Director's Exhibit 11; Employer's Exhibits 10-11, 13-15.

[11] There is no biopsy evidence in the record to be considered at 20 C.F.R. §718.304(b).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed in part, and vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge