U.S. Department of Labor

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

BRB No. 23-0476 BLA

WILMER P. WYLIE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
AMFIRE MINING COMPANY, LLC, c/o ALPHA METALLURGICAL RESOURCES	)	
	)	
and	)	DATE ISSUED: 07/17/2024
	)	
SUMMITPOINT INSURANCE COMPANY	)	
	)	
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 on Reconsideration of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Sean B. Epstein (Thomas, Thomas & Hafer, LLP), Pittsburgh, Pennsylvania, for Employer and its Carrier.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick and Long), Ebensburg, Pennsylvania, for Claimant.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits on Reconsideration (2023-BLA-05052) rendered on a claim filed on March 7, 2022, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

Initially, in a Decision and Order Denying Benefits dated July 14, 2023, the ALJ found Claimant established thirty-six years of underground coal mine employment but did not establish the existence of a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b). Thus, he found Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[1] 30 U.S.C. §921(c)(4) (2018). He also found Claimant did not establish complicated pneumoconiosis, and thus 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); 20 C.F.R. §718.304. Thus, he denied benefits.

Claimant timely moved for reconsideration. Claimant's August 7, 2023 Motion for Reconsideration. In his Decision and Order Awarding Benefits on Reconsideration dated August 30, 2023, the subject of the current appeal, the ALJ again found Claimant established thirty-six years of underground coal mine employment. He found Claimant established the existence of complicated pneumoconiosis and thus invoked the Section 411(c)(3) presumption. 30 U.S.C. §921(c)(3). Further, he found Claimant's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits. 20 C.F.R. §718.203(b).

On appeal, Employer argues the ALJ erred in finding Claimant established complicated pneumoconiosis and thus invoked the Section 411(c)(3) presumption. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not 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

[1] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he has 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.

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 (1965).

Invocation of the Section 411(c)(3) Presumption – Complicated Pneumoconiosis

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), 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 chest 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, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. In determining whether Claimant has invoked the irrebuttable presumption, the ALJ must consider all evidence relevant to the presence or absence of complicated pneumoconiosis. 30 U.S.C. §923(b); *see Truitt v. North Am. Coal Corp.*, 2 BLR 1-199 (1979), *aff'd sub nom. Director, OWCP v. North Am. Coal Corp.*, 626 F.2d 1137 (3d Cir. 1980); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

The ALJ found the computed tomography (CT) scan evidence supports a finding of complicated pneumoconiosis, while the x-ray and medical opinions do not, and that there is no biopsy evidence. 20 C.F.R. §718.304(a)-(c); Decision and Order on Reconsideration at 12-18. Weighing all of the evidence together, he concluded Claimant established complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order on Reconsideration at 18.

Employer argues the ALJ erred in making these findings. Employer's Brief at 4-8 (unpaginated).

The ALJ considered Dr. DePonte's interpretation of a June 28, 2022 CT scan and the medical opinions of Drs. Zlupko, Fino, and Basheda. Decision and Order at 15-17. He found that Dr. DePonte's reading of the CT scan as showing complicated coal workers'

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because Claimant performed his coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

pneumoconiosis, Category A, with several peripheral large opacities[3] is unrebutted.[4] *Id.* at 15. Further, he found that the medical opinions are "silent" on the issue of complicated pneumoconiosis and thus they are entitled to no weight. *Id.* at 18. He thus concluded Claimant established the existence of complicated pneumoconiosis based on Dr. DePonte's CT scan interpretation.

Employer argues the ALJ erred by failing to consider Dr. Fino's medical opinion, which contains the doctor's review of CT scans. Employer's Brief at 4-8 (unpaginated). We agree.

As Employer argues, review of the ALJ's decision demonstrates that in finding complicated pneumoconiosis established, he failed to address all the relevant evidence as required. *See* 30 U.S.C. §923(b) (fact-finder must address all relevant evidence); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (ALJ's failure to consider all relevant evidence requires remand). Employer designated Dr. Fino's April 6, 2023 medical report as an affirmative medical opinion in support of its case. Employer's Evidence Summary Form at 5. In his report, Dr. Fino reviewed both the June 28, 2022 CT scan and a December 13, 2022 CT scan, and he opined they showed "no parenchymal changes consistent with an occupational pneumoconiosis" and "there were some scattered, small (less than [one centimeter]), pleural-based nodules bilaterally" that "are not coal workers' pneumoconiosis." Employer's Exhibit 3 at 4-5. Dr. Fino ultimately concluded "[t]he pleural-based nodules on the CT scans are not coal workers' pneumoconiosis." *Id.* at 10. The ALJ erred in failing to address this evidence. *See Melnick*, 16 BLR at 1-33; *Truitt*, 2 BLR at 1-203. Thus, we vacate the ALJ's finding that Claimant established complicated pneumoconiosis and remand the case for consideration of all of the relevant evidence.

We therefore vacate the ALJ's finding that Claimant invoked the Section 411(c)(3) presumption and the award of benefits.

Remand Instructions

On remand, the ALJ must consider Dr. Fino's medical opinion, including the doctor's review of CT scans. He must critically examine all of the relevant medical evidence, resolve the conflicts in the evidence, and explain his weighing of the evidence in

[3] In her CT scan interpretation, Dr. DePonte identified large opacities in the left upper lobe measuring twelve and one-half millimeters, eleven and one-half millimeters, and fourteen millimeters. Claimant's Exhibit 2 at 1-2.

[4] The ALJ stated "Employer did not submit an interpretation of this CT scan." Decision and Order at 15.

accordance with the Administrative Procedure Act. 5 U.S.C. §557(c)(3)(A); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).[5] In considering the medical opinions, the ALJ must consider the relative qualifications of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Balsavage v. Director, OWCP*, 295 F.3d 390, 396-97 (3d Cir. 2002); *Kertesz v. Director, OWCP*, 788 F.2d 158, 163 (3d Cir. 1986).

If Claimant establishes complicated pneumoconiosis on remand, the ALJ may reinstate the award of benefits as Employer does not challenge his finding that Claimant's complicated pneumoconiosis arose out of his coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §718.203; Decision and Order on Reconsideration at 18. If the ALJ finds Claimant has not established complicated pneumoconiosis, he may deny benefits as the ALJ found the evidence insufficient to establish total disability absent a finding of complicated pneumoconiosis. *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); 20 C.F.R. §718.204(b); Decision and Order on Reconsideration at 28.

[5] The Administrative Procedure Act provides that every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

Accordingly, the ALJ's Decision and Order Awarding Benefits on Reconsideration is affirmed in part and vacated in part, and the case is remanded to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge