U.S. Department of Labor

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

BRB No. 23-0322 BLA

TRACY R. EVANS, JR. Claimant-Petitioner v. PARAMONT COAL COMPANY VIRGINIA LLC and SUMMITPOINT INSURANCE COMPANY/ENCOVA INSURANCE COMPANY Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 06/12/2024 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of William P. Farley, Administrative Law Judge, United States Department of Labor.

Tracy R. Evans, Jr., Coeburn, Virginia.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) William P. Farley's Decision and Order Denying Benefits (2020-BLA-05932) rendered on a claim filed on August 10, 2016,[2] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ 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) (2018); 20 C.F.R. §718.304. Additionally, he credited Claimant with thirty-six years of underground coal mine employment but found Claimant did not establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b). The ALJ therefore found Claimant did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[3] Because Claimant failed to establish total disability, a requisite element of entitlement, the ALJ denied benefits.[4]

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[1] On Claimant's behalf, Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested the Benefits Review Board review the ALJ's decision, but Ms. Napier is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] The ALJ mistakenly relied on the date Claimant signed his claim form, August 5, 2016, rather than the date the office of the district director received it, August 10, 2016. *See* 20 C.F.R. §725.303(a)(1) ("A claim shall be considered filed on the day it is received by the office in which it is first filed."); Decision and Order at 2; Director's Exhibit 2.

[3] Section 411(c)(4) 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); 20 C.F.R. §718.305.

[4] Because the ALJ determined that Claimant did not establish entitlement, he declined to address whether Employer is the properly-named responsible operator. Decision and Order at 23.

On appeal, Claimant generally challenges the denial of benefits.[5] Employer and its Carrier (Employer) respond in support of the denial. The Director, Office of Workers' Compensation Programs, has not filed a response.

In an appeal a claimant files without representation, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and in accordance with applicable law.[6] 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).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Statutory presumptions may assist a claimant in establishing these elements when certain conditions are met, but failure to establish any element precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

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, is a condition that would yield results equivalent to (a) or (b). *See* 20 C.F.R. §718.304. The ALJ 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

[5] We affirm, as unchallenged, the ALJ's finding that Claimant established thirty-six years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3, 5.

[6] 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. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 11; Director's Exhibit 3.

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, 1-33-34 (1991) (en banc).

The ALJ found the x-rays, medical opinions, computed tomography (CT) scan, and treatment records do not support a finding of complicated pneumoconiosis.[7] 20 C.F.R. §718.304(a)-(c); Decision and Order at 16-19. Weighing all the evidence together, he determined Claimant did not establish the disease. 20 C.F.R. §718.304; Decision and Order at 19. We affirm the ALJ's findings.

20 C.F.R. §718.304(a) – X-ray Evidence

The ALJ considered eight readings of three x-rays dated May 16, 2016, August 24, 2016,[8] and February 23, 2017. Decision and Order at 5-7, 16-17. He correctly noted that all of the interpreting physicians are dually-qualified as Board-certified radiologists and B readers. *Id.* at 5-7; Director's Exhibit 14; Claimant's Exhibits 1, 3; Employer's Exhibit 1. Dr. DePonte read the May 16, 2016 x-ray as positive for complicated pneumoconiosis, while Dr. Colella read the x-ray as positive for simple pneumoconiosis but negative for complicated pneumoconiosis. Claimant's Exhibit 1; Employer's Exhibit 2. Dr. DePonte read the August 24, 2016 x-ray as positive for complicated pneumoconiosis, while Drs. Colella and Miller read the x-ray as positive for simple pneumoconiosis but negative for complicated pneumoconiosis.[9] Director's Exhibits 14, 22; Claimant's Exhibit 3. Dr.

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[7] The ALJ accurately found there is no biopsy or autopsy evidence of record. 20 C.F.R. §718.304(b); Decision and Order at 15.

[8] Dr. Gaziano read the August 24, 2016 x-ray for quality purposes only. Director's Exhibit 17.

[9] The ALJ accurately noted Dr. Miller's x-ray interpretation form indicates he read the February 23, 2017 x-ray, but his cover letter describing the x-ray and the cover letter for the exhibit indicate that he read the August 24, 2016 x-ray. Decision and Order at 6 n.34; Claimant's Exhibit 3. We see no error in the ALJ's reasonable conclusion that Dr. Miller read the August 24, 2016 x-ray based on the conflicting dates within Claimant's Exhibit 3. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012) (it is the ALJ's duty to resolve conflicts in the evidence); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999) (A reviewing court has no license to "set aside an inference merely because it finds the opposite conclusion more reasonable or because it questions the factual basis.") (citations omitted); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) ("The Board will not interfere with credibility determinations

DePonte read the February 23, 2017 x-ray as positive for complicated pneumoconiosis, while Dr. Colella read the x-ray as positive for simple pneumoconiosis but negative for complicated pneumoconiosis. Director's Exhibit 19; Employer's Exhibit 1.

The ALJ found the May 16, 2016 and February 23, 2017 x-rays to be in equipoise regarding whether Claimant has complicated pneumoconiosis because an equal number of dually-qualified radiologists read each x-ray as positive compared to negative for the disease. Decision and Order at 16-17. Relying on the preponderance of negative readings by dually-qualified radiologists, the ALJ found the August 24, 2016 x-ray to be unsupportive of a finding of complicated pneumoconiosis. *Id.* at 16-17. The ALJ thus found the x-ray evidence does not support a finding of complicated pneumoconiosis. *Id.* at 17.

We see no error in the ALJ's reasoning as he properly performed both a qualitative and quantitative analysis of the conflicting x-ray readings, taking into consideration the physicians' qualifications, their specific interpretations, and the number of readings of each film. *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); Decision and Order at 5-7, 16-17. Having found two x-rays are in equipoise and one x-ray weighs against a finding of complicated pneumoconiosis, the ALJ reasonably determined the x-ray evidence does not support a finding of complicated pneumoconiosis. Decision and Order at 16-17; *see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 280-81 (1994).

We therefore affirm the ALJ's determination that the x-ray evidence does not support a finding of complicated pneumoconiosis as it is supported by substantial evidence. 20 C.F.R. §718.304(a); Decision and Order at 16-17.

20 C.F.R. §718.304(c) – Other Medical Evidence

The ALJ next considered Dr. Rao's reading of the September 29, 2016 CT scan. Decision and Order at 17-18. Dr. Rao interpreted the CT scan as "highly suggestive of complicated coal worker's pneumoconiosis" and found "[e]xtensive reticulonodular opacities" within the lungs. Claimant's Exhibit 4. The ALJ found Dr. Rao's reading to be insufficient to establish complicated pneumoconiosis because the physician failed to discuss the measurements of the opacities he observed or provide sufficient information for the ALJ to conduct an equivalency determination (in other words, to determine that the

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unless they are inherently incredible or patently unreasonable.") (citation omitted); Decision and Order at 6 n.34.

opacities seen on CT scan would appear as greater than one centimeter on x-ray). Decision and Order at 18 (citing *Scarbro*, 220 F.3d at 258).

We see no error with the ALJ's finding. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this claim arises, requires ALJs to perform equivalency determinations based on their evaluation of all the medical evidence of record. *Scarbro*, 220 F.3d at 255-56; *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243-44 (4th Cir. 1999). As the ALJ explained, the absence of a specific statement of equivalency by a physician is not a bar to establishing complicated pneumoconiosis. Decision and Order at 18 (citing *Scarbro*, 220 F.3d at 258). However, he accurately noted that, in stating the CT scan was suggestive of complicated pneumoconiosis, Dr. Rao did not provide any measurements of the opacities other than describing them as "extensive." Decision and Order at 18; Claimant's Exhibit 4. The ALJ therefore reasonably concluded that Dr. Rao's reading did not contain "an adequate . . . description" of the opacities to support his diagnosis of complicated pneumoconiosis, nor did the physician provide sufficient information for the ALJ to make an equivalency determination. Decision and Order at 18; Claimant's Exhibit 4; *see Scarbro*, 220 F.3d at 255-56; *Blankenship*, 177 F.3d at 244.

The ALJ also considered two medical opinions. Decision and Order at 9-11, 19. Dr. Ajjarapu opined Claimant has complicated pneumoconiosis based solely on the August 24, 2016 x-ray, whereas Dr. Fino opined Claimant has simple but not complicated pneumoconiosis. *Id.* at 19; Director's Exhibits 14 at 2, 6, 23; 21 at 9-10. The ALJ permissibly found Dr. Ajjarapu's opinion entitled to little weight because it was contrary to his finding that the x-ray evidence as a whole does not support a finding of complicated pneumoconiosis.[10] *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 212 (4th Cir. 2000) (medical opinion based on a discredited x-ray is not probative evidence); *Sterling*

[10] The ALJ accurately noted that Claimant's treatment records included diagnoses of complicated and simple pneumoconiosis. Decision and Order at 12-13, 18-19; Claimant's Exhibits 5-8; Director's Exhibit 20. The ALJ concluded the treatment records were entitled to less weight than the x-rays because they do not include the physicians' qualifications or "an independent basis for a complicated pneumoconiosis diagnosis" and thus neither "support nor refute" a finding of complicated pneumoconiosis. Decision and Order at 18-19. Because the ALJ acted within his discretion in weighing Claimant's treatment records, we affirm his conclusion that the treatment records do not support or undermine a finding of complicated pneumoconiosis. *See Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997) (it is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility); *id.* at 19.

Smokeless Coal Co. v. Akers, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 19. Thus, we affirm the ALJ's determination that Claimant failed to establish complicated pneumoconiosis at 20 C.F.R. §718.304(c). *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); Decision and Order at 17-19.

As the ALJ permissibly found Claimant did not establish complicated pneumoconiosis by any method, we affirm his determination that, in weighing all of the evidence together, Claimant did not establish complicated pneumoconiosis at 20 C.F.R. §718.304. Decision and Order at 19; *see Melnick*, 16 BLR at 1-33-34. Consequently, we affirm the ALJ's finding Claimant failed to invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3).

Invocation of the Section 411(c)(4) Presumption – Total Disability

A miner is totally disabled if he has a pulmonary or respiratory impairment which, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,[11] evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). Qualifying evidence in any of the four categories establishes total disability when there is no "contrary probative evidence." 20 C.F.R. §718.204(b)(2).

The ALJ accurately found the two pulmonary function studies are non-qualifying for total disability; the two blood gas studies are also non-qualifying; and there is no evidence of cor pulmonale with right-sided congestive heart failure. *See* 20 C.F.R. §718.204(b)(2)(i)-(iii); Decision and Order at 7-9, 20-21; Director's Exhibits 14, 21. We therefore affirm the ALJ's findings that Claimant did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iii). Decision and Order at 7-9, 20-21.

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[11] A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

In considering the medical opinion evidence, the ALJ rationally found Claimant's usual coal mine job required "medium work."[12] Decision and Order at 4-5; *see Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc). Thus, we affirm that finding.

The ALJ considered Dr. Ajjarapu's opinion that Claimant is totally disabled and Dr. Fino's opinion that he is not.[13] Decision and Order at 9-11, 22; Director's Exhibits 14, 21. Dr. Ajjarapu conducted the Department of Labor's complete pulmonary evaluation of Claimant on August 24, 2016, and obtained non-qualifying pulmonary function and blood gas studies. Director's Exhibit 14. She opined the spirometry showed normal pulmonary function and the blood gas study showed no hypoxemia, but the August 24, 2016 x-ray was positive for complicated pneumoconiosis. *Id.* at 2, 6. She concluded Claimant is "totally and completely disabled due to [the] chest x-ray findings" and noted that "even if [Claimant] does have the pulmonary capacity to do his previous coal mine employment, he should not be allowed to do so." *Id.* at 2.

The ALJ permissibly discredited Dr. Ajjarapu's opinion because she opined Claimant was totally disabled based solely on a chest x-ray showing complicated pneumoconiosis, which was contrary to the ALJ's determination that the evidence as a whole does not support a finding of complicated pneumoconiosis. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 22. Additionally, the ALJ correctly determined Dr. Ajjarapu's recommendation against further dust exposure was not a diagnosis of a totally disabling respiratory or pulmonary impairment. *See Taylor v. Evans and Gambrel Co.*, 12 BLR 1-83, 1-88 (1988); Decision and Order at 22.

The record also contains treatment records relevant to total disability. Specifically, Dr. Raj diagnosed a moderate restrictive defect based, in part, on a pulmonary function study, noted shortness of breath with mild to moderate exertion, and opined Claimant would be unable to meet the exertional requirements of his coal mine work because of his pulmonary impairment. Claimant's Exhibit 6 at 1, 4, 6.

While the ALJ generally summarized the treatment records in a chart in his decision and discussed them in relation to whether Claimant has complicated pneumoconiosis, he did not address the treatment records relevant to whether Claimant is totally disabled

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[12] The ALJ relied on the Dictionary of Occupational Titles and Claimant's statements that his coal mine work required him to lift forty-to-fifty-pound bags of rock dust several times per day. Decision and Order 4-5; Hearing Transcript at 11-12.

[13] Dr. Fino opined Claimant's objective testing is "normal" and he has "no pulmonary disability." Director's Exhibit 21 at 6-9.

pursuant to 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 12-13, 18-19, 21-23. Consequently, we vacate the ALJ's finding that Claimant failed to establish total disability at 20 C.F.R. §718.204(b)(2)(iv) and in consideration of the evidence as a whole.[14] *See* 30 U.S.C. §923(b) (ALJ must address all relevant evidence); *Hicks*, 138 F.3d at 531-33; *McCune v. Central Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand); Decision and Order at 22-23; Claimant's Exhibits 5-8; Director's Exhibit 20. We therefore also vacate the ALJ's finding that Claimant did not invoke the Section 411(c)(4) presumption.

Remand Instructions

On remand, the ALJ must consider whether the treatment records support a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv). If he finds they do, he must weigh the evidence as a whole to determine whether Claimant is totally disabled by a respiratory or pulmonary impairment. *See* 20 C.F.R. §718.204(b)(2); *see also Shedlock*, 9 BLR at 1-198. If the ALJ again finds Claimant is not totally disabled, he may reinstate the denial of benefits. *See Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

If the ALJ finds Claimant is totally disabled, he will invoke the Section 411(c)(4) presumption, in which case the ALJ would have to consider whether Employer rebutted it.[15] 20 C.F.R. §718.305(d)(1). If he determines Claimant is entitled to benefits, the ALJ will need to determine whether Employer was correctly designated the responsible operator. 20 C.F.R. §725.495(c). In rendering all his findings on remand, the ALJ must comply with the Administrative Procedure Act.[16] 5 U.S.C. §557(c)(3)(A), as incorporated

[14] While we make no assessment of whether the treatment record evidence is credible and sufficient to establish total disability, we note that the ALJ's summary of this evidence did not fully describe Claimant's observed symptoms or lack thereof, any physical limitations or capabilities, or supported diagnoses that may be relevant to whether or not Claimant is totally disabled. 20 C.F.R. §718.204(b)(2)(iv); *see* Claimant's Exhibits 5-8; Director's Exhibit 20.

[15] The ALJ accurately noted that the parties stipulated Claimant has simple pneumoconiosis. Decision and Order at 15; Hearing Transcript at 6.

[16] The Administrative Procedure Act provides 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).

into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Denying Benefits and remand the case to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge