U.S. Department of Labor

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

BRB No. 23-0369 BLA

RANDALL R. McGLOTHLIN Claimant-Respondent v. J K & G COAL CORPORATION and SECURITY INSURANCE COMPANY OF HARTFORD Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 06/13/2024 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Jodeen M. Hobbs, Administrative Law Judge, United States Department of Labor.

James M. Poerio (Poerio & Walter, Inc.), Pittsburgh, Pennsylvania, for Employer and its Carrier.

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

GRESH, Chief Administrative Appeals Judge, and JONES, Administrative Appeals Judge:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Awarding Benefits (2021-BLA-05965) rendered on a claim filed on October 22, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 13.41 years of coal mine employment and found he has complicated pneumoconiosis. 20 C.F.R. §718.304. She therefore found he invoked the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). Further, she found his complicated pneumoconiosis arose out of his coal mine employment. Therefore she awarded benefits.

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

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 (1965).

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

Section 411(c)(3) of the Act 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 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). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. In determining whether a claimant has invoked the irrebuttable presumption, the ALJ must weigh all evidence relevant to the presence or absence of

[1] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 13.4 years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6.

[2] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 2 n.2; Director's Exhibit 3; Hearing Tr. at 35.

complicated pneumoconiosis. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found the x-ray evidence supports the presence of complicated pneumoconiosis, while the computed tomography (CT) scans, Claimant's treatment records, and medical opinions do not.[3] 20 C.F.R. §718.304(a), (c); Decision and Order at 12, 14, 17. Weighing the evidence together, she found Claimant established complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 17.

X-Rays - 20 C.F.R. §718.304(a)

Employer argues the ALJ erred in weighing the x-ray evidence. Employer's Brief at 2-5. We disagree.

As the trier-of-fact, the ALJ has broad discretion to assess the credibility of the medical opinions and assign them appropriate weight. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017).

The ALJ considered eight readings of three x-rays dated September 21, 2020, December 28, 2020,[4] and April 21, 2021. Decision and Order at 7-11. She noted that each of the interpreting physicians are dually-qualified B readers and Board-certified radiologists with the exception of Dr. Forehand, who is just a B reader. *Id*.

Dr. DePonte read the September 21, 2020 x-ray as positive for complicated pneumoconiosis because it revealed multiple Category B opacities, while Dr. Adcock interpreted the x-ray as negative for the disease. Director's Exhibit 14 at 2; Claimant's Exhibit 1. On the International Labour Organization (ILO) x-ray form, Dr. Adcock identified "[b]ilateral superolateral pleural pseudoplaques" as items "which may be of present clinical significance." Director's Exhibit 14 at 2.

Drs. Forehand and Crum read the December 28, 2020 x-ray as positive for complicated pneumoconiosis as each identified a Category A opacity, while Drs. Adcock and Seaman interpreted the x-ray as negative for the disease. Director's Exhibits 10 at 6, 13 at 2, 14 at 3; Claimant's Exhibit 3. Dr. Adcock noted the x-ray revealed a "[l]eft

[3] The ALJ found the record contains no biopsy evidence. 20 C.F.R. §718.304(b); Decision and Order at 12.

[4] Dr. Ranavaya, a B reader, read the December 28, 2020 x-ray for quality purposes only. *See* Director's Exhibit 11; Decision and Order at 8.

superolateral hemithoracic pleural pseudoplaque . . . which may be of present clinical significance" on the ILO x-ray form. Director's Exhibit 13.

Dr. DePonte read the April 21, 2021 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Adcock interpreted the x-ray as negative for the disease. Claimant's Exhibit 2; Employer's Exhibit 5. On the ILO x-ray form, Dr. Adcock stated the x-ray reveals "[b]ilateral superolateral pleural pseudoplaque . . . which may be of present clinical significance." Employer's Exhibit 5.

The ALJ permissibly gave greater weight to the readings by dually-qualified readers because they possessed greater relevant qualifications. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); Decision and Order at 9.

In resolving the conflict between the dually-qualified radiologists, the ALJ permissibly discredited Dr. Adcock's readings because he did not adequately explain why the pseudoplaques he identified on the September 21, 2020, December 28, 2020, and April 21, 2021 x-rays are clinically significant but not consistent with complicated pneumoconiosis, or indicate why their location in the pleura is a basis to exclude the disease. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *see also see Pittsburg & Midway Coal Mining Co. v. Director, OWCP* [*Cornelius*], 508 F.3d 975, 978-79 (11th Cir. 2007) (affirming an ALJ's finding of complicated pneumoconiosis based on a physician's observation of a lesion of 1.2 centimeters in the pleura); *Dagnan v. Black Diamond Coal Mining Co.*, 994 F.2d 1536, 1538 (11th Cir. 1993) (biopsy showing severe anthracosis and a benign subpleural anthracotic plaque sufficient to establish pneumoconiosis); Decision and Order at 9-12. The ALJ also permissibly discredited his x-ray readings because he did not identify the size of the pseudoplaques he diagnosed. *See Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; Decision and Order at 9-12.

Thus the ALJ found the September 21, 2020 and April 21, 2021 x-rays positive for complicated pneumoconiosis because a greater number of credible dually-qualified radiologists read the x-rays as positive for the disease. Decision and Order at 10. She also determined the credible readings of the December 28, 2020 x-ray are in equipoise[5] because

[5] Contrary to Employer's argument, the ALJ did not find Dr. Forehand is equally qualified as the dually-qualified radiologists when evaluating the December 28, 2020 x-ray. Employer's Brief at 3. After discrediting Dr. Adcock's x-ray reading, she found the readings from Drs. Crum and Seaman are in equipoise because Dr. Crum read the x-ray as positive for complicated pneumoconiosis, Dr. Seaman read it as negative, and both doctors

an equal number of dually-qualified physicians read the x-ray as positive and negative for complicated pneumoconiosis after disregarding Dr. Adcock's negative readings. *Id*. at 11. Weighing all the x-ray evidence together, she concluded the x-rays support a finding of complicated pneumoconiosis. *Id.*

Employer argues the ALJ erred in discrediting Dr. Adcock's x-ray interpretations because his readings are consistent and he provided sufficient explanations to exclude complicated pneumoconiosis on the ILO x-ray forms. Employer's Brief at 3-5. Employer's argument is 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 finding that Claimant established complicated pneumoconiosis based on the x-ray evidence. 20 C.F.R. §718.304(a); Decision and Order at 12.

CT Scans - 20 C.F.R. §718.304(c)

Although Claimant failed to establish complicated pneumoconiosis through CT scans, Employer argues the ALJ erred in finding this evidence insufficient to outweigh the positive x-ray evidence. Employer's Brief at 5-7. We again disagree.

Dr. Adcock read a May 14, 2019 CT scan as negative for pneumoconiosis. Employer's Exhibit 4. The ALJ discredited Dr. Adcock's negative reading because the doctor conceded the test he reviewed "included 'only limited portions of the lungs.'" Decision and Order at 13, *quoting* Employer's Exhibit 2 at 14. Specifically, because the CT scan evaluated "only [nine] centimeters of the lower thorax, [but] the large opacities discussed on Claimant's x-rays . . . are located in the upper lung zones," the ALJ assigned Dr. Adcock's negative CT scan reading no probative weight. *Id*. Employer does not challenge this finding. Thus we affirm it. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

The ALJ also weighed CT scans from Claimant's treatment records. Decision and Order at 12-14; Claimant's Exhibit 4 at 6, 12, 21; Employer's Exhibit 4. Dr. Ramakrishnan, Claimant's treating physician, read January 9, 2016 and February 15, 2018 CT scans as showing nodular fibrosis and being positive for pneumoconiosis, and he diagnosed Claimant with "[s]table nodular lung disease" in an August 19, 2019 CT scan. Claimant's Exhibit 4 at 6, 12, 21. Contrary to Employer's argument, the ALJ permissibly determined his readings neither support nor refute a complicated pneumoconiosis diagnosis

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are dually-qualified. Decision and Order at 10-11. She did not rely on Dr. Forehand's reading to reach this finding.

because Dr. Ramakrishnan did not provide any measurements of the nodular fibrosis and lung disease he diagnosed, nor did he mention complicated pneumoconiosis. *Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-218-19 (1984) (ALJ has discretion to determine the weight to accord diagnostic testing that is silent on the existence of pneumoconiosis); Decision and Order at 13-14.

Because it is supported by substantial evidence,[6] we affirm the ALJ's finding that the CT scans do not undermine the x-ray evidence.[7] 20 C.F.R. §718.304(c); Decision and Order at 14.

Medical Opinions - 20 C.F.R. §718.304(c)

Finally, we reject Employer's argument that the ALJ erred in evaluating the medical opinions. Employer's Brief at 7-8.

The ALJ considered the medical opinions of Drs. Forehand and Tuteur. Decision and Order at 14-17; Director's Exhibit 10; Employer's Exhibit 6. She found Dr. Forehand diagnosed complicated pneumoconiosis, whereas Dr. Tuteur did not "expressly offer an opinion on complicated pneumoconiosis but the lack of its existence is implied in his report." Decision and Order at 17. She determined both doctors' opinions are "insufficiently detailed" and thus inadequately reasoned. *Id.* at 17.

Employer asserts the ALJ erred to the extent she indicated Dr. Tuteur did not offer an opinion on complicated pneumoconiosis as it contends he did exclude the disease. Employer's Brief at 8-9. However, it does not challenge the ALJ's finding that his opinion is not credible because it is "insufficiently detailed." Decision and Order at 17. Because

[6] The ALJ also found there is no basis in the record to establish CT scan testing is medically acceptable and relevant to establishing or refuting Claimant's entitlement to benefits, and thus she also relied on this rationale in finding the CT scans do not outweigh the x-rays. 20 C.F.R. §718.107(b); Decision and Order at 12-13. Employer argues this was error. Employer's Brief at 5-7. Because we affirm the ALJ's credibility findings with respect to the CT scans, we need not address Employer's argument. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

[7] We reject Employer's argument that the ALJ erred by failing to weigh a CT scan reading from Dr. Tuteur. Employer's Brief at 6. Dr. Tuteur summarized Dr. Adcock's CT scan reading and the treatment record CT scans. Employer's Exhibit 6. Employer did not designate any independent CT scan reading by Dr. Tuteur, but rather it designated his opinion as a medical report. Employer's Evidence Form at 7. As discussed below, the ALJ weighed Dr. Tuteur's opinion as a medical report.

the ALJ discredited his opinion, Employer has not explained how the error it alleges makes a difference. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

As Employer raises no other challenges[8] to the ALJ's findings, we affirm the ALJ's finding that the medical opinion evidence does not undermine the x-ray evidence of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 17.

We further affirm his determination that Claimant established complicated pneumoconiosis based on the evidence as a whole and thus invoked the irrebuttable presumption of total disability due to pneumoconiosis. *Cox*, 602 F.3d at 283; 20 C.F.R. §718.304; Decision and Order at 17. In addition, we affirm, as unchallenged on appeal, the ALJ's finding that Claimant's complicated pneumoconiosis arose out of his coal mine employment. *See Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.203(b); Decision and Order at 18. Consequently, we affirm the ALJ's award of benefits.

[8] We affirm, as unchallenged, the ALJ's finding that Claimant's treatment records do not undermine the x-rays on the issue of complicated pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order at 14.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring.

I concur in result only.

JUDITH S. BOGGS
Administrative Appeals Judge