U.S. Department of Labor

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

BRB No. 23-0319 BLA

CARTER LAWSON	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PARAMONT COAL COMPANY VIRGINIA, LLC	)	
	)	
and	)	
	)	
SUMMITPOINT INSURANCE COMPANY, INCORPORATED	)	DATE ISSUED: 05/03/2024
	)	
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 of William P. Farley, Administrative Law Judge, United States Department of Labor.

Kendra R. Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) William P. Farley's Decision and Order Awarding Benefits (2020-BLA-05901) rendered on a subsequent claim filed on July 30, 2019,[1] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 37.85 years of qualifying coal mine employment. He found Claimant established complicated pneumoconiosis and therefore invoked 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. 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.[2] Neither Claimant nor the Director, Office of Workers' Compensation Programs, 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] Claimant filed three prior claims and withdrew his most recent prior claim. Director's Exhibit 1-3. Withdrawn claims are considered not to have been filed. 20 C.F.R. §725.306(b). The district director denied the preceding prior claim on May 4, 2016, because the evidence did not establish total disability. Director's Exhibit 2. When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also deny the subsequent claim unless he finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because the district director denied Claimant's prior claim for failure to establish total disability, he needed to submit new evidence establishing this element to warrant a review of his subsequent claim on the merits. *See White*, 23 BLR at 1-3; Director's Exhibit 2

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 37.85 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5.

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 Assocs., Inc.*, 380 U.S. 359 (1965).

Invocation of the Section 411(c)(3) Presumption

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 x-ray, yields one or more 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 a claimant has invoked the irrebuttable presumption, the ALJ must weigh all evidence relevant to the presence or absence of complicated pneumoconiosis. *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).

Employer contends the ALJ erred in weighing the x-ray evidence and failed to properly consider the biopsy and computed tomography (CT) scan evidence relevant to whether Claimant has complicated pneumoconiosis. Employer's Brief at 4-22. We agree the ALJ's errors require that we vacate the award and remand the case for further consideration.

20 C.F.R. §718.304(a) – X-rays

The ALJ considered six interpretations of three x-rays dated October 22, 2019, February 18, 2020, and April 23, 2021. Decision and Order at 10-12. Dr. DePonte read the October 22, 2019 x-ray as positive for simple and complicated pneumoconiosis, Category B. Director's Exhibit 17 at 23. She wrote in the comments section of the International Labour Organization (ILO) x-ray form that there was "known chronic right middle lobe atelectasis resulting in 5.4 [centimeter] opacity." *Id.* Dr. Ramakrishnan read the October 22, 2019 x-ray as positive for simple and complicated pneumoconiosis, Category A. Director's Exhibit 21. He wrote in the comments section of the ILO form that there was a 3.5 centimeter right-sided, infrahilar mass and recommended a CT scan to rule out neoplasm. *Id.* Dr. Adcock read the same film as positive for simple

[3] 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); Hearing Transcript at 13; Director's Exhibit 6.

pneumoconiosis but negative for complicated pneumoconiosis, and he identified medial segmental right middle lobe atelectasis.[4] Director's Exhibit 28 at 3.

Dr. DePonte read the February 18, 2020 x-ray as positive for simple and complicated pneumoconiosis, Category B, and noted in the comments section of the ILO form that there was a "[l]arge opacity [in the] right lower lung zone." Claimant's Exhibit 1. Dr. Adcock read the x-ray as positive for simple pneumoconiosis but negative for complicated pneumoconiosis, and he identified medial segmental right middle lobe atelectasis. Director's Exhibit 28 at 38.

Dr. Adcock provided the sole reading of the April 23, 2021 x-ray as positive for simple pneumoconiosis but negative for complicated pneumoconiosis, and he identified medial segmental right middle lobe atelectasis. Employer's Exhibit 1 at 50.

The ALJ initially observed "[a]ll the experts here agree that [Claimant's] x-rays show an opacity greater than one centimeter" but that Dr. Adcock "disagrees on whether the opacities [are] characteristic of pneumoconiosis." Decision and Order at 10-11. He found the October 22, 2019 and February 18, 2020, x-rays "both reveal size A large opacities which meet the standards to invoke the § 718.304 irrebuttable presumption" and gave controlling weight to Dr. DePonte's readings because "[they] are the most consistent with the evidence of the opacities which all the readers found evidence of during their respective review." *Id.* at 10-12. He concluded the "clear preponderance" of x-ray evidence supports a finding of complicated pneumoconiosis. *Id.* at 10-12.

Employer argues the ALJ mischaracterized Dr. Adcock's readings and failed to explain why Dr. DePonte's readings are the most credible. Employer notes that Dr. DePonte's readings are not consistent with the other x-ray readings and are also contradicted by her subsequent review of the CT scan evidence. Employer's Brief at 8-11. We agree.

As Employer correctly points out, the ALJ erred in concluding there is a consensus among the readers that Claimant has an opacity greater than one centimeter on x-ray. Decision and Order at 11; Employer's Brief at 8-9. While Dr. Adcock identified medial segmental right middle lobe atelectasis on the ILO forms he completed for all three x-rays, he did not identify a large opacity or, contrary to the ALJ's characterization, include any measurements of Claimant's middle lobe atelectasis.[5] Director's Exhibit 28 at 3, 38;

[4] The ALJ noted "[a]telectasis is a respiratory disorder as the lung collapses or closes as there is no gas exchange." Decision and Order at 11.

[5] The ALJ states that Dr. Adcock found "there was an atelectasis that was greater than one centimeter" on Claimant's October 22, 2019 x-ray. Decision and Order at 10. Dr.

Employer's Exhibit 1 at 50. Given his mischaracterization of Dr. Adcock's readings, we are unable to affirm the ALJ's conclusion that "Dr. DePonte's readings are the most consistent with the evidence of the opacities which all the readers found . . . ." Decision and Order at 11.[6]

Because the ALJ mischaracterized the x-ray evidence and therefore failed to explain how he resolved the conflicts in the readings, his findings at 20 C.F.R. §718.304(a) do not satisfy the Administrative Procedure Act (APA).[7] Employer's Brief at 9-12; *see* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Tackett v. Director, OWCP*, 7 BLR 1-703, 1-706 (1985) (if the ALJ misconstrues relevant evidence, the case must be remanded for reevaluation of the issue to which the evidence is relevant); Decision and Order at 11. We therefore vacate the ALJ's finding that Claimant established complicated pneumoconiosis based on the x-ray evidence. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252-53 (4th Cir. 2016) (ALJ must conduct an appropriate analysis of the evidence to support his conclusion and render necessary credibility findings); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *McCune v. Cent. Appalachian Coal*

Adcock only identified medial segmental right middle lobe atelectasis on the ILO form he completed for all three x-rays; he did not include any measurements of Claimant's middle lobe atelectasis. Director's Exhibit 28 at 3, 38; Employer's Exhibit 1 at 50.

[6] Employer maintains Dr. DePonte's comments on the ILO form for the October 22, 2019 x-ray, Director's Exhibit 17 at 23, suggest her identification of a Category B opacity relates to Claimant's "known chronic right middle lobe atelectasis" and not complicated pneumoconiosis. Employer's Brief at 15. But the Fourth Circuit has noted that Section 411(c)(3) of the Act "does not refer to the triggering condition as 'complicated pneumoconiosis,' nor does it refer to a medical condition that doctors independently have called complicated pneumoconiosis. Rather, the presumption . . . is triggered by a congressionally defined condition, for which the statute gives no name but which, if found to be present, creates an irrebuttable presumption that disability or death was caused by pneumoconiosis." *Scarbro*, 220 F.3d at 257. The relevant issue is does Claimant suffer from a chronic dust disease of the lung which when diagnosed by x-ray would yield an opacity greater than one centimeter in diameter that would be classified as Category A, B, or C on x-ray. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

[7] The APA 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).

Co., 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand); Decision and Order at 10-12.

20 C.F.R. §718.304(b) – Biopsy

Employer correctly asserts the ALJ failed to consider Claimant's September 6, 2019 biopsy report, which he admitted into evidence at the hearing as Claimant's Exhibit 4.[8] *See* 30 U.S.C. §923(b) (ALJ must address all relevant evidence); *McCune*, 6 BLR at 1-998; Employer's Brief at 17-18; Decision and Order at 2; Hearing Transcript at 8-10; Claimant's Evidence Summary Form. Employer asserts the biopsy evidence supports a finding of simple pneumoconiosis but not complicated pneumoconiosis. Employer's Brief at 17-18; Claimant's Exhibit 4. We agree the ALJ failed to properly consider the biopsy evidence in determining whether Claimant has complicated pneumoconiosis.

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

CT scans

Employer also correctly contends the ALJ failed to adequately consider the CT scan evidence. Employer's Brief at 12-17. While the ALJ generally summarized the July 16, 2019 and March 9, 2020 CT scans, he did not determine whether they support a finding of complicated pneumoconiosis. Decision and Order at 12-14; Director's Exhibit 23 at 4-5; Employer's Exhibit 2; Claimant's Exhibit 10. Additionally, the ALJ failed to address Employer's argument that Dr. DePonte's reading of the March 9, 2020 CT scan as showing only simple pneumoconiosis conflicts with her readings of the October 22, 2019 and February 18, 2020 x-rays.[9] Employer's Closing Argument at 10-12; Employer's Brief at

[8] Dr. Nader conducted five needle biopsies on September 5, 2019: two in the right middle lobe and three in the right upper lobe. Claimant's Exhibit 4 at 6. Dr. Arze reviewed the biopsies on September 6, 2019, and found the biopsies of the right middle lobe were negative for granulomas and malignancy, and lung parenchyma was not present for evaluation. *Id.* at 1-2. She found anthracosis in the right upper lobe and noted the biopsies were negative for granulomas and malignancy, and lung parenchyma was not present for evaluation. *Id.* at 1-2. Further, she noted the clinical history and pre-operative diagnosis was black lung and mediastinal adenopathy and that the post-operative diagnosis was the "[s]ame." *Id.* at 1-2.

[9] Employer identified significant discrepancies in the sizes and locations of the opacities in Dr. DePonte's readings. Employer's Closing Argument at 10-13; Employer's Brief at 14-17; Director's Exhibit 17 at 23; Employer's Exhibit 2; Claimant's Exhibit 1. Employer states:

14-17; Director's Exhibit 17 at 23; Employer's Exhibit 2; Claimant's Exhibit 1. As the ALJ failed to adequately consider the CT scan evidence, his decision does not comply with the APA. *See Wojtowicz*, 12 BLR at 1-165; Decision and Order at 12-14.

Medical Opinions and Weighing the Evidence as a Whole

The ALJ credited Dr. Harris's opinion that Claimant has complicated pneumoconiosis over Dr. Fino's contrary opinion because the ALJ found Dr. Harris's opinion to be consistent with the overall weight of the evidence, namely Dr. DePonte's x-ray readings. Decision and Order at 12-14. Having vacated the ALJ's findings with regard to the x-ray evidence, which impacted his weighing of the medical opinions, we vacate his reliance on Dr. Harris's opinion to find that Claimant has complicated pneumoconiosis.[10]

Consequently, based on the ALJ's errors, we vacate his finding that Claimant established complicated pneumoconiosis at 20 C.F.R. §718.304(c) based on a consideration of the evidence as a whole. 20 C.F.R. §718.304; *see Melnick*, 16 BLR at 1-33-34; Decision and Order at 10-14. We therefore vacate the ALJ's finding that Claimant invoked the irrebuttable presumption, his determination that Claimant's complicated pneumoconiosis arose out of his coal mine employment, and the award of benefits. 20 C.F.R. §718.203(b); Decision and Order at 14-16.

Remand Instructions

> Dr. DePonte read the February 18, 2020 x-ray just three weeks before the March 9, 2020 [CT] scan and noted a "B" opacity, which under the ILO Classification System denotes a large opacity exceeding [fifty] millimeters or [five] centimeters. In the [CT] scan, the only abnormality she noted that exceeded one centimeter, was a [twelve] millimeter opacity in the **left lower lobe**. In her reading of the February 18, 2020 x-ray, she noted that the "large opacity" was in the **right lower lung zone**. In her reading of the October 22, 2019 x-ray, Dr. DePonte noted a 5.4 centimeter opacity which was "known chronic right middle lobe atelectasis." The [CT] scan by Dr. DePonte is at complete odds with and contradictory of her x-ray readings.

Employer's Brief at 15 (emphasis in original).

[10] Further, we note that a physician's opinion that merely restates an x-ray is not an independent medical opinion and cannot be credited as such. 20 C.F.R. §§718.202(a)(1), (4), 725.414(a); *see Eastover Mining Co. v. Williams*, 338 F.3d 501, 514 (6th Cir. 2003); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

On remand, the ALJ must reconsider whether Claimant has established complicated pneumoconiosis. In weighing the x-ray evidence, the ALJ must resolve the conflicts in the readings of each individual x-ray and then reach an overall finding as to whether the x-ray evidence supports a finding of complicated pneumoconiosis. 20 C.F.R. §718.202(a)(1). In assessing the credibility of the readings, the ALJ must consider the readers' qualifications, their comments on the ILO forms that tend to either support or undermine their readings, and resolve conflicts in the evidence, prior to reaching a conclusion as to whether the x-ray evidence supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a). *See Addison*, 831 F.3d at 256-57 (ALJ must perform both a qualitative and quantitative analysis of conflicting x-ray evidence).

He must also reconsider whether the biopsy, CT scans, medical opinions, and any other evidence support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(b), (c). Finally, he must weigh all the relevant evidence together to determine if the evidence as a whole establishes complicated pneumoconiosis. 20 C.F.R. §718.304; *see Melnick*, 16 BLR at 1-33-34.

If the ALJ determines Claimant has established the existence of complicated pneumoconiosis, thus invoking the Section 411(c)(3) presumption, Claimant will also have established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. The ALJ must then reconsider whether Claimant has established the disease arose out of his coal mine employment. 20 C.F.R. §718.203(b). If the ALJ finds Claimant has established his complicated pneumoconiosis arose out of his coal mine employment, he may reinstate the award of benefits.

If Claimant cannot establish complicated pneumoconiosis, the ALJ must address whether Claimant has established total disability and a change in an applicable condition of entitlement. 20 C.F.R. §§718.204(b), 718.305(b), 725.309. If Claimant establishes total disability, he will have invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[11] 30 U.S.C. §921(c)(4), and the ALJ must then determine whether Employer has rebutted the presumption. *See* 20 C.F.R. §718.305(d). If the ALJ finds Claimant is not totally disabled by a respiratory or pulmonary impairment, he must deny benefits, as Claimant will have failed to have established a necessary element of entitlement. *See Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987). In rendering all of

[11] 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); *see* 20 C.F.R. §718.305.

his findings on remand, the ALJ must comply with the APA. *See Wojtowicz*, 12 BLR at 1-165.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Awarding Benefits, and we remand the case 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