U.S. Department of Labor

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

BRB No. 23-0405 BLA

EDDIE NOBLE	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
PARAMONT CONTURA, LLC	)	
	)	DATE ISSUED: 05/03/2024
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Dierdra M. Howard, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Dierdra M. Howard's Decision and Order Granting Benefits (2022-BLA-05280) on a miner's claim filed on January 19, 2021 pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with thirty years of coal mine employment and found he has complicated pneumoconiosis arising out of coal mine employment. She therefore found Claimant 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) (2018), and awarded benefits. 20 C.F.R. §§718.203(b), 718.304.

On appeal, Employer argues the ALJ erred in concluding Claimant established complicated pneumoconiosis.[1] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file a substantive 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, 362 (1965).

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

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.

The United States Court of Appeals for the Fourth Circuit has held that "'[b]ecause prong (A) sets out an entirely objective scientific standard' - i.e., an opacity on an x-ray greater than one centimeter - x-ray evidence provides the benchmark for determining what under prong (B) is a 'massive lesion' and what under prong (C) is an equivalent diagnostic result reached by other means." *E. Assoc. Coal Corp. v. Director* [*Scarbro*], 220 F.3d 250,

[1] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established thirty 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, 15.

[2] 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); Decision and Order at 3; Hearing Transcript at 10.

256 (4th Cir. 2000), *quoting Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243 (4th Cir. 1999). In determining whether 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); *Scarbro*, 220 F.3d at 255-56; *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found a preponderance of the x-rays support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a); Decision and Order at 5-7. Weighing all the evidence together, she concluded Claimant established the disease. Decision and Order at 14-15.

The ALJ considered nine interpretations of three x-rays dated February 18, 2021, May 12, 2021, and May 17, 2022. Decision and Order at 5-7. She found the February 18, 2021 x-ray positive for simple and complicated pneumoconiosis and the May 12, 2021 and May 17, 2022 x-rays in equipoise. *Id*. Thus, she determined a preponderance of the x-ray evidence establishes simple and complicated pneumoconiosis. *Id*. at 7.

Employer does not challenge the ALJ's findings that the May 12, 2021 and May 17, 2022 x-rays are in equipoise. Rather, it argues the February 18, 2021 x-ray is at best in equipoise and the ALJ erred in finding a preponderance of the readings positive for complicated pneumoconiosis by impermissibly "counting heads" in violation of *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256 (4th Cir. 2016). Employer's Brief at 6-7. We disagree.

Drs. DePonte and Crum read the February 18, 2021 x-ray as positive for simple and complicated pneumoconiosis, Category A. Director's Exhibits 13, 17, 18. Dr. DePonte observed an opacity measuring "[a]t least 14 mm [in the] right mid lung field consistent with a category A opacity," and Dr. Crum stated his "[f]indings [are] consistent with [progressive massive fibrosis]." Director's Exhibit 13 at 15, Director's Exhibit 17 at 3. Dr. Colella, on the other hand, interpreted the x-ray as negative for simple and complicated pneumoconiosis but checked the box on the ILO form for the presence of non-pneumoconiotic nodules. Director's Exhibit 18.

In weighing the x-ray evidence, the ALJ accurately observed that all the interpreting physicians are dually-qualified Board-certified radiologists and B readers. She determined, "[g]iven the physicians' similar qualifications," she could "discern no reason to give greater weight or lesser weight to any specific interpretation based solely on those qualifications." Decision and Order at 5; Director's Exhibits 13, 16-18; Claimant's Exhibit 1; Employer's Exhibits 1, 2. Thus, giving "equal weight to the physicians' readings" of the February 18, 2021 x-ray, the ALJ determined it supports a finding of simple and

complicated pneumoconiosis based on a preponderance of the positive interpretations. Decision and Order at 6.

Employer asserts that because there is nothing in the record indicating Drs. DePonte or Crum had more information concerning Claimant or any other reason to give their opinions greater weight, the ALJ erred in finding this x-ray positive for complicated pneumoconiosis. Employer's Brief at 6-7. Contrary to Employer's contentions, the ALJ properly performed both a qualitative and quantitative analysis of the conflicting x-ray readings, taking into consideration the physicians' opinions and their qualifications. *See Addison*, 831 F.3d at 256-57; *Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992); Decision and Order at 6-7. Having found a preponderance of the readings by equally-qualified physicians to be positive for complicated pneumoconiosis, she permissibly determined that the February 18, 2021 x-ray is positive for complicated pneumoconiosis. 20 C.F.R. §718.202(a)(1); Decision and Order at 6-7.

Moreover, because she found the February 18, 2021 x-ray positive for complicated pneumoconiosis and the May 12, 2021 and May 17, 2022 x-rays in equipoise,[3] the ALJ rationally found the x-ray evidence as a whole establishes the disease. Decision and Order at 7; *see* 20 C.F.R. §718.304(a). Thus, we affirm the ALJ's conclusion that the x-ray evidence establishes complicated pneumoconiosis at 20 C.F.R. §718.304(a). Decision and Order at 7.

As Employer raises no further challenges to the ALJ's determination that Claimant established complicated pneumoconiosis,[4] we affirm it and therefore also affirm her conclusion that Claimant invoked the irrebuttable presumption at Section 411(c)(3) of the Act. *See Skrack*, 6 BLR at 1-711; Decision and Order at 15. We further affirm, as

[3] X-ray interpretations found to be in equipoise neither support nor refute the presence of complicated pneumoconiosis. *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 280-81 (1994).

[4] The ALJ noted there is no biopsy evidence in the record to evaluate at 20 C.F.R. §718.304(b). Decision and Order at 7. She also found the medical opinion evidence does not provide any additional support for a diagnosis of simple or complicated pneumoconiosis. *Id*. at 7-11, 14. She further determined the treatment records "neither support nor negate a finding of complicated pneumoconiosis and merit limited probative value." *Id*. at 11-14. Weighing the evidence as a whole, the ALJ indicated that the "other evidence" of record does not detract from the affirmative x-ray evidence but, rather, the treatment x-rays, treatment notes, and CT scans "confirm a large opacity in the right mid lung field," which the ALJ found constitutes complicated pneumoconiosis. *Id*. at 14.

unchallenged on appeal, the ALJ's determination that Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b); *see Skrack*, 6 BLR at 1-711; Decision and Order at 15.

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

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge