U.S. Department of Labor

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

BRB No. 24-0224 BLA

GARY COCHRAN Claimant-Petitioner v. LONE MOUNTAIN PROCESSING, INCORPORATED and ROCKWOOD CASUALTY INSURANCE COMPANY Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 11/18/2024 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Steven D. Bell, Administrative Law Judge, United States Department of Labor.

Gary Cochran, Harlan, Kentucky.

Denise Hall Scarberry (Baird & Baird, PSC), Pikeville, Kentucky, for Employer.

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

PER CURIAM:

Claimant appeals, without representation,[1] Administrative Law Judge (ALJ) Steven D. Bell's Decision and Order Denying Benefits (2021-BLA-05924) rendered on a claim filed on October 30, 2019, 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 therefore 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); *see* 20 C.F.R. §718.304. He accepted the parties' stipulation that Claimant has forty-one years of qualifying coal mine employment but found Claimant does not have a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). He therefore found Claimant did not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[2] 30 U.S.C. §921(c)(4) (2018) or establish entitlement to benefits under 20 C.F.R. Part 718. Thus, he denied benefits.

On appeal, Claimant generally challenges the denial of benefits. Employer responds in support of the denial. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[3]

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

[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. Keene Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] 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); 20 C.F.R. §718.305.

[3] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant has at least forty-one years of qualifying coal mine employment. 20 C.F.R. §718.204(b); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

accordance with applicable law.[4] 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, 361-62 (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 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); *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. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89 (6th Cir. 1999); *Melnick v. Consol. Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found the x-rays and medical opinions do not support a finding of complicated pneumoconiosis.[5] 20 C.F.R. §718.304(a)-(c); Decision and Order at 4-9. Weighing all the evidence together, he determined Claimant did not establish the disease. 20 C.F.R. §718.304; Decision and Order at 9. We affirm the ALJ's findings.

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

The ALJ considered eight interpretations of three x-rays dated August 8, 2019, January 6, 2020, and September 15, 2020. Decision and Order at 5-7. He noted all interpreting physicians are dually-qualified Board-certified radiologists and B readers. *Id.*

Dr. DePonte read the August 8, 2019 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Meyer read it as negative for the disease. Director's Exhibit 20; Employer's Exhibit 4. Dr. DePonte read the January 6, 2020 x-ray as positive for complicated pneumoconiosis, Category A, while Drs. Ramakrishnan and

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Transcript at 10.

[5] Because there is no biopsy or autopsy evidence of record, Claimant cannot establish complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(b).

Meyer[6] read it as negative for the disease.[7] Director's Exhibit 15 at 18; Claimant's Exhibit 2; Employer's Exhibit 1. Drs. Ramakrishnan, Seaman, and Meyer all read the September 15, 2020 x-ray as negative for complicated pneumoconiosis. Claimant's Exhibit 1; Employer's Exhibits 2, 3.

The ALJ permissibly found the August 8, 2019 x-ray in equipoise because an equal number of dually-qualified physicians read it as positive and negative for complicated pneumoconiosis. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994); *Staton v. Norfolk & W. Ry. Co.*, 65 F.3d 55, 59 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993); Decision and Order at 6-7. He permissibly found the January 6, 2020 x-ray negative for complicated pneumoconiosis because a greater number of dually-qualified physicians read it as negative for the disease. *See Staton*, 65 F.3d at 59; *Woodward*, 991 F.2d at 321; Decision and Order at 6. He also rationally found the September 15, 2020 x-ray negative for the disease because all three dually-qualified physicians read the x-ray as negative for the disease. *See Ondecko*, 512 U.S. at 281; *Staton*, 65 F.3d at 59-60; Decision and Order at 7.

The ALJ properly conducted both a qualitative and quantitative analysis of the conflicting x-ray readings, taking into consideration the physicians' radiological qualifications. *See Staton*, 65 F.3d at 59; *Woodward*, 991 F.2d at 321; Decision and Order at 7. Having found two x-rays negative for complicated pneumoconiosis and one in equipoise, the ALJ permissibly found the preponderance of the x-ray evidence as read by equally qualified physicians does not support a finding of complicated pneumoconiosis.[8]

[6] The ALJ misstated that Dr. Adcock, not Dr. Meyer, read the January 6, 2020 x-ray and also incorrectly described it as a 1/2 reading; however, as the ALJ found Dr. Meyer equally qualified, and found the preponderance of the readings is positive for simple pneumoconiosis but negative for the complicated form of the disease, we consider these errors to be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 5-6; Employer's Exhibit 1.

[7] The ALJ noted Dr. Gaziano also read the January 6, 2020 x-ray for quality purposes only. Decision and Order at 5; Director's Exhibit 18.

[8] The ALJ acknowledged Claimant's treatment records contain interpretations of two x-rays dated November 1, 2018, and July 28, 2020. Decision and Order at 7; Employer's Exhibit 13 at 70-73. The ALJ found the interpreting physician, Dr. Patel, did not address the issue of pneumoconiosis, and his qualifications are not in the record. Decision and Order at 7. Thus, he permissibly assigned these readings little weight. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 513-14 (6th Cir. 2003) (ALJ permissibly

20 C.F.R. §718.304(a); *see Ondecko*, 512 U.S. at 281; *Staton*, 65 F.3d at 59; Decision and Order at 7. As it is rational and supported by substantial evidence, we affirm the ALJ's determination that the x-ray evidence does not establish complicated pneumoconiosis.

Other Evidence – 20 C.F.R. §718.204(c)

The ALJ considered the medical opinions of Drs. Forehand, Vuskovich, and Meyer. Decision and Order at 8-9. Dr. Forehand opined Claimant has complicated pneumoconiosis based on the January 6, 2020 x-ray. Director's Exhibit 16. Drs. Vuskovich and Meyer opined Claimant does not have complicated pneumoconiosis. Employer's Exhibits 5, 8.

Dr. Forehand conducted the Department of Labor-sponsored complete pulmonary examination on January 6, 2020. Director's Exhibit 15. He diagnosed complicated pneumoconiosis based on the January 6, 2020 x-ray. *Id.* at 3-5. Having found the January 6, 2020 x-ray and the x-ray evidence as a whole insufficient to established complicated pneumoconiosis, the ALJ permissibly assigned little weight to Dr. Forehand's opinion. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 514 (6th Cir. 2003) (ALJ may not rely on a doctor's opinion that a miner has medical pneumoconiosis when that opinion is based entirely on x-ray evidence that the ALJ has discredited); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order at 8.

The ALJ also considered medical treatment records that document Claimant's treatment for black lung disease, chronic cough, and shortness of breath from August 2, 2017, through July 27, 2020. Decision and Order at 11; Claimant's Exhibits 3, 4; Employer's Exhibit 13. The ALJ permissibly found the treatment records lack sufficient detail to support a finding of complicated pneumoconiosis. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 11.

As it is supported by substantial evidence, we affirm the ALJ's finding that the medical opinion evidence does not establish complicated pneumoconiosis. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 712-14 (6th Cir. 2002); *Rowe*, 710 F.2d at 255; Decision and Order at 9, 11. We also affirm the ALJ's finding, based on his consideration of all the relevant evidence, that Claimant failed to establish complicated pneumoconiosis at 20 C.F.R. §718.304. *See Gray*, 176 F.3d at 388-89; *Melnick*, 16 BLR at 1-33; Decision and Order at 9. Therefore, we affirm the ALJ's finding that Claimant did not invoke the irrebuttable presumption at Section 411(c)(3).

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considered the readers' respective qualifications and appropriately discounted the opinions of those not fully qualified); Decision and Order at 7.

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,[9] 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).

The ALJ determined the pulmonary function studies, arterial blood gas studies, and medical opinions do not support a finding of total disability.[10] Decision and Order at 9-13.

Pulmonary Function Studies

The ALJ considered two pulmonary function studies dated January 6, 2020, and September 15, 2020. Decision and Order at 9-10. He accurately noted both studies produced non-qualifying results, and thus found the pulmonary function study evidence does not support a finding of total disability. *Id.* at 10; Director's Exhibits 15 at 6, 23 at 11. Because none of the pulmonary function studies yielded qualifying values, we affirm the ALJ's determination that the pulmonary function study evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(i); *see Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005); *Winchester v. Director, OWCP*, 9 BLR 1-177, 1-178-79 (1986); Decision and Order at 10.

Arterial Blood Gas Studies

The ALJ correctly noted the two arterial blood gas studies dated January 6, 2020, and September 15, 2020, produced non-qualifying values. Director's Exhibits 15 at 13, 23

[9] 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).

[10] The ALJ accurately found the record contains no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 13. Thus we affirm his finding the evidence does not support total disability under this subsection. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 13.

at 5; Decision and Order at 10. Thus we affirm his finding the arterial blood gas study evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(ii); *see Martin*, 400 F.3d at 305; *Tucker v. Director, OWCP*, 10 BLR 1-35, 1-39-40 (1987); Decision and Order at 10.

Medical Opinions

The ALJ next considered the medical opinions of Drs. Forehand and Vuskovich. Decision and Order at 12-13. Dr. Forehand opined Claimant is totally disabled by complicated pneumoconiosis based on the January 6, 2020 x-ray. Director's Exhibit 15 at 4. Dr. Vuskovich opined Claimant is not totally disabled because his pulmonary function and arterial blood gas study results showed normal oxygen transfer and normal ventilatory capacity. Employer's Exhibits 5, 6. The ALJ discredited Dr. Forehand's opinion as contrary to his finding that the x-ray evidence does not support complicated pneumoconiosis, and he found Dr. Vuskovich's opinion reasoned and documented. Decision and Order at 12-13. Weighing the evidence together, the ALJ determined the medical opinions do not support a finding of total disability. *Id.* at 13.

The ALJ permissibly discredited Dr. Forehand's total disability opinion because it was based solely on his belief the January 6, 2020 x-ray was positive for complicated pneumoconiosis which the ALJ found contrary to his determination the evidence as a whole does not support a finding of complicated pneumoconiosis. *See Williams*, 338 F.3d at 514; *Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 12. The ALJ also permissibly determined Dr. Forehand's statement that Claimant must avoid additional coal dust exposure does not constitute a diagnosis of total disability. *See Zimmerman v. Director, OWCP*, 871 F.2d 564, 567 (6th Cir. 1989) (recommendation against further dust exposure is not a diagnosis of total respiratory or pulmonary disability disability); Decision and Order at 12.

The ALJ also accurately noted the treatment records document Claimant's treatment for cough, wheezing, and dyspnea, but lack sufficient support for a diagnosis of a totally disabling respiratory or pulmonary impairment. Decision and Order at 11; Claimant's Exhibits 3, 4; Employer's Exhibit 13. Thus, he rationally concluded the treatment record evidence is insufficient to establish total disability. *Crisp*, 866 F.2d at 185; *Marcum v. Director, OWCP*, 11 BLR 1-23, 1-24 (1987); Decision and Order at 11.

Because it is supported by substantial evidence, we affirm the ALJ's finding the medical opinion evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 13. Therefore, we affirm the ALJ's finding that the evidence, when weighed together, does not establish total disability, and thus Claimant did not invoke the Section 411(c)(4) presumption. *See Shedlock*, 9 BLR at 1-198; Decision

and Order at 13. Finally, because Claimant did not establish total disability, a requisite element of entitlement, we affirm the denial of benefits.

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

SO ORDERED.

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge