U.S. Department of Labor

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

BRB No. 24-0138 BLA

JAMES E. WEBB Claimant-Respondent v. PARAMONT COAL COMPANY VIRGINIA, LLC and BRICKSTREET MUTUAL INSURANCE COMPANY, INCORPORATED Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 10/29/2024 DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Wes Addington (Appalachian Citizens' Law Center, Inc.), Whitesburg, Kentucky, for Claimant.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Joseph E. Kane's Decision and Order Granting Benefits (2021-BLA-05503) rendered on a claim filed on April 1, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[1]

The ALJ accepted the parties' stipulation that Claimant has thirty-four 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). *See* 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] Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, has not 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 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, 361-62 (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

[1] Claimant filed two prior claims but withdrew them. Director's Exhibits 1, 2. A withdrawn claim is considered not to have been filed. *See* 20 C.F.R. §725.306.

[2] We affirm, as unchallenged on appeal, the ALJ's finding Claimant established thirty-four years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3-4.

[3] 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); Director's Exhibit 4; Hearing Transcript at 16.

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;[4] 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 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).

The ALJ found the x-ray evidence supports a finding of complicated pneumoconiosis, while the computed tomography (CT) scans, medical opinions, and Claimant's treatment records neither support nor undermine a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a); Decision and Order at 9-10, 13. Weighing all the evidence together, he found Claimant established complicated pneumoconiosis based on the x-ray evidence. 20 C.F.R. §718.304(a); Decision and Order at 5-10.

Employer argues the ALJ erred in finding Claimant established complicated pneumoconiosis based on the x-rays because he "counted heads" and failed to explain his basis for resolving the conflicting the evidence.[5] Employer's Brief at 3-9. We disagree.

The ALJ considered eleven interpretations of three x-rays taken August 2, 2019, June 10, 2021, and January 24, 2022. Decision and Order at 5-8. He found all interpreting physicians are dually qualified Board-certified radiologists and B readers. *Id.* at 5-6.

Drs. DePonte and Crum read the August 2, 2019 x-ray as positive for simple and complicated pneumoconiosis, category A, while Dr. Seaman read the x-ray as positive for simple pneumoconiosis but negative for complicated pneumoconiosis. Director's Exhibits 13, 18, 22. Drs. DePonte and Crum read the June 10, 2021 x-ray as positive for simple and complicated pneumoconiosis, category A, while Dr. Kendall read the x-ray as positive for simple pneumoconiosis but negative for complicated pneumoconiosis, and Dr. Adcock read the x-ray as negative for both simple and complicated pneumoconiosis. Claimant's Exhibits 1, 2; Employer's Exhibits 1 at 35, 5. Drs. DePonte and Crum read the January 24, 2022 x-ray as positive for simple and complicated pneumoconiosis, category A, while Drs.

[4] The record contains no biopsy or autopsy evidence. 20 C.F.R. §718.304(b).

[5] We affirm, as unchallenged on appeal, the ALJ's finding that the CT scans, medical opinions, and Claimant's treatment records neither support nor undermine a finding of complicated pneumoconiosis. *Skrack*, 6 BLR at 1-711; Decision and Order at 8-10.

Adcock and Colella read the x-ray as negative for both simple and complicated pneumoconiosis. Claimant's Exhibits 3, 4; Employer's Exhibits 4 at 23, 8.

The ALJ first determined if the preponderance of the x-ray evidence establishes the presence of simple clinical pneumoconiosis. In resolving the conflict in the readings by dually qualified radiologists, the ALJ found the x-ray evidence is positive for simple pneumoconiosis. *Id*. at 8. 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 next determined if the preponderance of the x-ray evidence establishes complicated pneumoconiosis. The ALJ assigned diminished weight to all of Dr. Adcock's negative x-ray readings for complicated pneumoconiosis because all the other dually qualified radiologists, namely Drs. DePonte, Crum, Seaman, and Kendall, agreed on the presence of at least simple pneumoconiosis while Dr. Adcock failed to diagnose the disease on any x-ray. *Id*. The ALJ questioned the probative value of Dr. Adcock's x-ray readings because he failed to diagnose even simple pneumoconiosis on the June 10, 2021 and January 24, 2022 x-rays, contrary to the ALJ's finding that the radiographic evidence is positive for this disease. *Id*. Thus, the ALJ rationally discredited Dr. Adcock's negative x-ray readings for complicated pneumoconiosis.[6] *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 7-8.

The ALJ also discredited Dr. Colella's reading of the January 24, 2022 x-ray as negative for complicated pneumoconiosis. Decision and Order at 8. Dr. Colella excluded both simple and complicated pneumoconiosis but observed a "mass" in Claimant's right lung suggestive of lung cancer. Employer's Exhibit 8. Noting there is no evidence of lung cancer in the record to support such a diagnosis, the ALJ permissibly found Dr. Colella's reading less persuasive than the opinions of the two other dually qualified radiologists, Drs.

[6] Employer contends the ALJ erred in discrediting Dr. Adcock's negative reading of the January 24, 2022 x-ray because he also read "a CT scan and noted that the scan supports" his opinion that Claimant does not have complicated pneumoconiosis. Employer's Brief at 8. 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). Moreover, the ALJ weighed the CT scan evidence and found that even if he gave Dr. Adcock's CT scan interpretation full weight, it would be in equipoise with Dr. Crum's CT scan reading and, therefore, the CT scan evidence as a whole neither supports nor refutes a diagnosis of complicated pneumoconiosis. Decision and Order at 9. Employer does not challenge that finding. *Skrack*, 6 BLR at 1-711.

DePonte and Crum, who found complicated pneumoconiosis on the x-ray.[7] *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 8.

After discrediting the negative readings of Drs. Adcock and Colella, the ALJ addressed the conflicting x-ray evidence between the remaining credible readings by dually qualified radiologists – Drs. DePonte, Crum, Seaman, and Kendall. Decision and Order at 7-8. Drs. DePonte and Crum read all three x-rays as positive for complicated pneumoconiosis; Dr. Seaman read the August 2, 2019 x-ray as negative for complicated pneumoconiosis; and Dr. Kendall read the June 10, 2021 x-ray as negative for complicated pneumoconiosis. Director's Exhibits 13, 18, 22; Claimant's Exhibits 1-4; Employer's Exhibit 1 at 35. Because there are six x-ray readings that are positive for complicated pneumoconiosis from two doctors with equal credentials, in comparison to two x-ray readings that are negative for the disease from two doctors also with equal credentials, the ALJ rationally found the preponderance of the x-ray evidence establishes complicated pneumoconiosis.[8] *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); Decision and Order at 7-8. As the ALJ properly performed both a qualitative and quantitative analysis of the conflicting x-ray readings and explained his basis for resolving the conflict in the evidence, we reject Employer's argument that he simply counted heads. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins*, 958 F.2d at 52-53; Decision and Order at 7-8; Employer's Brief at 5-9.

Employer also asserts that the ALJ erred in crediting Drs. DePonte's and Crum's readings of the January 24, 2022 x-ray, while discrediting Dr. Colella's, when they too commented that a CT scan could exclude the possibility of cancer. Employer's Brief at 8. We disagree. Claimant is not required to rule out all possible causes of an opacity; his burden is to establish it is more likely than not that he suffers from complicated pneumoconiosis. *See Cox*, 602 F.3d at 282-83. In so doing, a physician's "refusal to express a diagnosis in categorical terms is candor, not equivocation." *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366 (4th Cir. 2006). Thus, although Drs. DePonte and Crum stated a CT scan could "exclude malignancy," their comments nevertheless do not support Dr. Colella's reading because they explicitly diagnosed a Category A large opacity of

[7] The ALJ also permissibly discredited Dr. Colella's reading because he failed to set forth his rationale or explain his reasoning for concluding that the mass he observed is cancer and not complicated pneumoconiosis. Decision and Order at 8.

[8] Based on his credibility findings, the ALJ found the three x-rays taken on August 2, 2019, June 10, 2021, and January 24, 2022, support a finding of complicated pneumoconiosis because a greater number of dually qualified radiologists read the x-rays as positive for the disease. Decision and Order at 7-8.

complicated pneumoconiosis and, as discussed, the ALJ found no other record evidence to support a cancer diagnosis. Director's Exhibits 13, 18. Therefore, the ALJ permissibly found Drs. DePonte's and Dr. Crum's opinions that the large opacity in Claimant's right lung is consistent with complicated pneumoconiosis are entitled to more weight than Dr. Colella's reading. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 8.

As the ALJ satisfied the Administrative Procedure Act (APA)[9] by setting forth the reasons he found the positive readings of Drs. DePonte and Crum entitled to greater weight, we affirm his finding that Claimant established complicated pneumoconiosis based on the x-ray evidence. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316 (4th Cir. 2012) (The APA does not "impose a duty of long-windedness on an ALJ;" to the contrary, "if a reviewing court can discern what the ALJ did and why [he] did it, the duty of explanation under the APA is satisfied.") (citations omitted); *Mingo Logan Coal Co v. Owens*, 724 F.3d 550, 557 (4th Cir. 2013) (duty of explanation under the APA is satisfied as long as the reviewing court can discern what the ALJ did and why he did it).

We further affirm the ALJ's 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 9-10. In addition, we affirm, as unchallenged, 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 10.

[9] The Administrative Procedure Act, 5 U.S.C. §§500-591, requires that every adjudicatory decision include a statement of "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); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge