U.S. Department of Labor

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

BRB No. 23-0448 BLA

JERRY R. STOCKDILL Claimant-Petitioner v. CARPENTERTOWN COAL & COKE COMPANY and BIRMINGHAM FIRE INSURANCE/AIG Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 09/30/2024 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick and Long), Ebensburg, Pennsylvania, for Claimant.

Sean B. Epstein (Thomas, Thomas & Hafer, LLP), Pittsburgh, Pennsylvania, for Employer.

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

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

Claimant appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Denying Benefits (2021-BLA-05598) rendered on a claim filed on June 30, 2020, 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 thus did 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); 20 C.F.R. §718.304. Next, she credited Claimant with eighteen years of underground coal mine employment based on the parties' stipulation but found he did not establish a totally disabling pulmonary or respiratory impairment. 20 C.F.R. §718.204(b)(2). Thus, she found Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2018).[1] Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant did not establish clinical or legal pneumoconiosis or total disability due to pneumoconiosis. Because the evidence was insufficient to establish the requisite elements of entitlement, the ALJ denied benefits.

On appeal, Claimant argues the ALJ erred in finding he did not establish complicated pneumoconiosis.[2] Employer responds in support of the denial 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

[1] 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.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant did not establish total disability and thus could not invoke the Section 411(c)(4) presumption. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7 n.5, 12, 26.

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).

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 Claimant has invoked the irrebuttable presumption, the ALJ must consider all evidence relevant to the presence or absence of complicated pneumoconiosis. 30 U.S.C. §923(b); *Truitt v. North Am. Coal Corp*., 2 BLR 1-199 (1979), *aff'd sub nom. Director, OWCP v. North Am. Coal Corp*., 626 F.2d 1137 (3d Cir. 1980); *see Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33 (1991) (en banc).

The ALJ found Claimant failed to establish complicated pneumoconiosis by any method. 20 C.F.R. §718.304(a)-(c); Decision and Order at 19. Claimant contends the ALJ erred in finding he did not establish complicated pneumoconiosis based on the computed tomography (CT) scans at 20 C.F.R. §718.304(c) or when weighing the evidence as a whole.[4] Claimant's Brief at 7-12. Thus, Claimant asserts the ALJ erred in determining he did not invoke the irrebuttable presumption of total disability due to pneumoconiosis. *Id*.

[3] The Board will apply the law of the United States Court of Appeals for the Third Circuit because Claimant performed his last coal mine employment in Pennsylvania. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3; Hearing Transcript at 26.

[4] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant failed to establish complicated pneumoconiosis based on the x-ray evidence under 20 C.F.R. §718.304(a). *See Skrack*, 6 BLR at 1-711; Decision and Order at 15, 16. Aside from generally stating that "the ALJ's conclusion regarding the . . . biopsy evidence . . . is in error as it is not rational, supported by substantial evidence, or in accordance with applicable law," Claimant does not specifically challenge the ALJ's finding that the biopsy evidence does not support a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(b), and we therefore affirm it. Claimant's Brief at 12; *see* 20 C.F.R. §802.211(b); *see also Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983). However, as outlined below, we agree with Claimant that in weighing the evidence as a whole, the ALJ does not explain her decision to give

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

CT Scan Evidence

The ALJ considered Drs. DePonte's and Seaman's interpretations of a CT scan dated September 28, 2020, and Dr. DePonte's interpretation of one dated February 16, 2022.[5] Decision and Oder at 18-19. Both physicians are dually qualified as Board-certified radiologists and B readers. The ALJ found their reports establish that CT scans are medically acceptable and relevant to establishing or refuting entitlement as 20 C.F.R. §718.107(b) requires.[6] Decision and Order at 18.

Dr. DePonte read the September 28, 2020 CT scan as positive for complicated pneumoconiosis with a large opacity "in the posterior segment of the right upper lobe measuring approximately 1.2 by 1.0 cm by 2.4 cm . . . in the typical location of a large opacity of coal workers' pneumoconiosis." Director's Exhibit 14 at 2. She opined that the stability of the large nodule for over a year supports a benign diagnosis. *Id*. In addition, she stated that Claimant's October 19, 2018 transbronchial biopsy of this nodule revealed no malignancy but rather "polarizable foreign material and abundant anthracotic pigment" consistent with pneumoconiosis. *Id.*; *see* Claimant's Exhibit 2. Dr. DePonte concluded

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greatest weight to the biopsy evidence as undermining a finding of complicated pneumoconiosis, given her crediting of Dr. DePonte's diagnosis of complicated pneumoconiosis, which was based, in part, on the biopsy findings. Decision and Order at 18; Claimant's Brief at 11-12; Director's Exhibit 14.

[5] Dr. DePonte prepared a report, dated August 5, 2022, discussing her findings based on a review of the February 16, 2022 CT scan. Claimant's Exhibit 1. Thus, we attribute the ALJ's and Claimant's reference to Dr. DePonte's reading of an August 5, 2022 CT scan on February 16, 2022 to a scrivener's error. *See* Decision and Order at 19; Claimant's Brief at 4, 11.

[6] Dr. DePonte indicated in her reports that CT scans are medically acceptable for the evaluation of pulmonary diseases, are beneficial in confirming or denying the presence of simple coal workers' pneumoconiosis, and can be beneficial in recognizing simple and complicated coal workers' pneumoconiosis when it is not evident on routine chest x-rays. Director's Exhibit 14; Claimant's Exhibit 1. Dr. Seaman similarly stated that CT scans are "more sensitive than chest x[-]ray for detection and characterization for pulmonary parenchymal abnormalities," and can be helpful to confirm or deny the presence of simple pneumoconiosis and document the presence of complicated pneumoconiosis when not evident on x-ray. Employer's Exhibit 3.

that the large opacity she identified "would measure similar in size and greater than one centimeter" on x-ray. Director's Exhibit 14 at 3.

In contrast, Dr. Seaman read the same CT scan as negative for simple and complicated pneumoconiosis. Employer's Exhibit 3 at 1. She opined the "1.2 [centimeter] right upper lobe nodule . . . is likely post-infections/inflammatory." *Id.* Specifically, she explained that "[g]iven the absence of a background of small nodules, this is not consistent with a large opacity of coal workers' pneumoconiosis." *Id.*

Dr. DePonte provided the sole reading of the February 16, 2022 CT scan, finding it positive for progressive massive fibrosis and complicated pneumoconiosis. Claimant's Exhibit 1 at 1. She identified "[c]oalescence . . . in the posterior segment of the right upper lobe, a typical location for the most severe changes of coal workers' pneumoconiosis," and a "large opacity . . . measuring 1.3 x 1.0 x 2.8 [centimeters]." *Id.* Again, she opined that the large opacity she identified would appear as greater than one centimeter on x-ray. *Id.*

The ALJ found the readings of the September 28, 2020 CT scan to be in equipoise as to the presence or absence of simple and complicated pneumoconiosis based on the comparable qualifications of Drs. DePonte and Seaman. Because there were no contrary readings of the February 16, 2022 CT scan, the ALJ found it positive for simple and complicated pneumoconiosis. Decision and Order at 19. However, when reaching her overall conclusion on the CT scans, the ALJ mischaracterized her findings by stating "[t]here is one x-ray[7] that is positive for simple and complicated [pneumoconiosis] and one that i[s] negative; I find that the CT scan evidence is in equipoise." *Id.*

Claimant asserts that given the ALJ's findings that the readings of the September 28, 2020 CT scan are in equipoise and the February 16, 2022 CT scan is positive, she erred in determining that the CT scan evidence as a whole is in equipoise. Claimant's Brief at 11-12. We agree.

When readings of an x-ray or CT scan are in equipoise, their weight neither supports nor refutes the presence of complicated pneumoconiosis. *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 280-81 (1994); *see Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 820 F.3d 833, 843 (6th Cir. 2016). Because the ALJ found that the readings of one CT scan are in equipoise and the reading of the other is positive for complicated pneumoconiosis, her own findings demonstrate that the CT scan evidence as a whole is preponderantly positive for the disease. We therefore reverse the ALJ's determination and

[7] We construe the ALJ's use of the term "x-rays" here to be a scrivener's error, as the context of this statement makes clear she is discussing the CT scans.

hold Claimant established that the CT scan evidence supports a finding complicated pneumoconiosis.[8] Decision and Order at 19.

Weighing the Categories of Evidence Together

The ALJ concluded that the x-ray evidence is positive for simple pneumoconiosis, the biopsy evidence is negative for simple and complicated pneumoconiosis, the CT scan evidence is in equipoise, and the medical opinions do not support a finding of simple clinical, legal, or complicated pneumoconiosis. Decision and Order at 19.

When weighing the biopsy evidence, the ALJ considered Drs. Armstrong's and Roggli's reports of the October 19, 2018 bronchoscopy.[9] Decision and Order at 15; Claimant's Exhibit 2; Employer's Exhibit 2. Dr. Armstrong determined the right upper lobe of the right lung shows no malignancy and diagnosed anthracosis in the macrophages and lymph nodes, as well as inflammatory cells in a lymph node and the right lung lobe. Claimant's Exhibit 2. The ALJ noted, however, that Dr. Armstrong did not specifically diagnose pneumoconiosis. Decision and Order at 16. Dr. Roggli identified considerable occupational dust exposure but concluded "these pathologic materials are not diagnostic for any pneumoconiosis." Employer's Exhibit 2. *Id.* He stated, "the presence of necrotic material is highly suspicious for mycobacterial infection" and concluded that "[c]orrelation with imaging studies and clinical findings is required." *Id.*

Weighing all the evidence together, the ALJ gave controlling weight to the biopsy evidence because the physicians "observe[d] actual samples of the Claimant's lungs and any opacities identified." Decision and Order at 19. She thus found Claimant failed to establish complicated pneumoconiosis and invoke the irrebuttable presumption. *Id.*

[8] As outlined, the ALJ was clear in her findings that one CT scan was positive for complicated pneumoconiosis and the readings of one CT scan are in equipoise. Therefore, contrary to our dissenting colleague's view, we see no need to remand on this issue. Because we have reversed on these grounds, we need not address Claimant's additional argument that the ALJ did not adequately explain, in compliance with the Administrative Procedure Act (APA), how she determined that the readings of the September 28, 2020 CT scan are in equipoise. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); Claimant's Brief at 10-11.

[9] The ALJ indicated that Dr. Roggli did not provide the biopsy date in his report but presumed it was based on a review of the October 19, 2018 biopsy slides as it was performed at the same hospital. Decision and Order at 15.

We agree with Claimant that in weighing the evidence all together, the ALJ failed to adequately consider whether evidence from one category supported or detracted from the credibility of another. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 208-11 (4th Cir. 2000); Decision and Order at 19. Further, there is merit to Claimant's assertion that the ALJ's decision to give greatest weight to the biopsy evidence as disproving the disease is not adequately explained in light of her finding that Dr. DePonte credibly diagnosed the disease based in part on the biopsy findings. *See* Decision and Order at 16, 18-19; Claimant's Brief at 11-12. In light of these errors, and our holding that the ALJ's findings demonstrate that the CT scan evidence supports a finding of complicated pneumoconiosis, we vacate the ALJ's weighing of the evidence together at 20 C.F.R. §718.304. Thus, we vacate the ALJ's determination that Claimant failed to invoke the irrebuttable presumption, and we vacate the denial of benefits.

Remand Instructions

On remand, the ALJ must weigh all relevant evidence together in determining whether Claimant invoked the Section 411(c)(3) presumption, interrelating the evidence from each category and applying the correct standard for the burden of proof (i.e., whether the evidence establishes it is more likely than not Claimant has a chronic dust disease of the lung meeting the diagnostic requirements of 20 C.F.R. §718.304). 30 U.S.C. §923(b); 20 C.F.R, §718.304; *see Truitt*, 2 BLR at 1-203; *see also Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *Melnick*, 16 BLR at 1-33. Specifically, she must consider the explanations of the physicians' conclusions, the documentation underlying their medical judgment, and the sophistication of, and bases for, their diagnoses. *See Lango v. Director, OWCP*, 104 F.3d 573, 578 (3d Cir. 1997).

If the ALJ finds Claimant has met his burden to establish complicated pneumoconiosis, Claimant will have invoked the irrebuttable presumption of total disability due to pneumoconiosis. 20 C.F.R. §718.304. The ALJ must then consider whether Claimant's complicated pneumoconiosis arose out of his coal mine employment, applying the relevant rebuttable presumption. 20 C.F.R. §718.203(b). If the ALJ finds Claimant has invoked the Section 411(c)(3) irrebuttable presumption, and the Claimant's pneumoconiosis arose out of his coal mine employment, she should award benefits.

If the ALJ finds Claimant is unable to invoke the irrebuttable presumption, she may reinstate the denial of benefits in light of Claimant's failure to establish total disability, a requisite element of entitlement under 20 C.F.R. Part 718. *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Accordingly, the ALJ's Decision and Order Denying Benefits is affirmed in part, reversed in part, and vacated in part, and the case is remanded to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring and dissenting:

I respectfully dissent from the majority's decision to reverse the ALJ's finding and hold that the CT scan evidence supports a finding of complicated pneumoconiosis. Instead, I would remand for the ALJ to reconsider the CT scan evidence and explain her determination, as it is unclear how, given her findings as to the weighing of the individual CT scans, she found that the overall CT scan evidence is in equipoise. *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a);[10] *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989) (APA requires adequate explanation for ALJ's

[10] The Administrative Procedure Act 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).

findings). Weighing of the evidence is a matter within the province of the ALJ and not the Board. *Sun Shipbuilding & Dry Dock Co. v. McCabe*, 593 F.2d 234, 237 (3d Cir. 1979).

I otherwise concur with the majority in all other respects.

JUDITH S. BOGGS
Administrative Appeals Judge