

U.S. Department of Labor

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



BRB No. 24-0177 BLA

LARRY D. HENSLEY

Claimant-Respondent

v.

ROCKHAMPTON ENERGY, LLC

and

ROCKWOOD CASUALTY INSURANCE
COMPANY

Employer/Carrier-
Petitioners

DIRECTOR, OFFICE OF WORKERS'
COMPENSATION PROGRAMS, UNITED
STATES DEPARTMENT OF LABOR

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 04/28/2025

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Theresa C. Timlin,
Administrative Law Judge, United States Department of Labor.

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

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

ROLFE and JONES, Administrative Appeals Judges:

Employer appeals Administrative Law Judge (ALJ) Theresa C. Timlin’s Decision and Order Awarding Benefits (2021-BLA-05344) rendered on a claim filed on October 1, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ 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. She further found Claimant established his complicated pneumoconiosis arose out of his thirty-nine years of coal mine employment at 20 C.F.R. §718.203(b), and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established he has complicated pneumoconiosis.¹ Claimant did not file a response brief. The Acting Director, Office of Workers’ Compensation Programs, declined to file 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.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 (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;³ 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

¹ The Benefits Review Board granted Employer’s Motion to Accept [Employer’s Brief] Out of Time and admitted its brief into the record. *Hensley v. Rockhampton Energy, LLC*, BRB No. 24-0177 BLA (Aug. 20, 2024) (Order) (unpub.).

² The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as Claimant performed his last coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director’s Exhibit 4.

³ As the ALJ correctly noted, the record contains no biopsy or autopsy evidence. *See* Decision and Order at 12, 22 n.14.

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).

Employer contends the ALJ erred in finding Claimant established complicated pneumoconiosis based on the weight of the x-ray, computed tomography (CT) scan, medical opinion, and treatment record evidence. 20 C.F.R. §718.304(a)-(c); Employer's Brief at 5-10. We disagree.

20 C.F.R. §718.304(a): X-rays

The ALJ considered eight interpretations of four x-rays dated November 19, 2019, August 12, 2020, August 27, 2020, and May 18, 2021, rendered by physicians who are all dually qualified as B readers and Board-certified radiologists.⁴ 20 C.F.R. §718.304(a); Decision and Order at 8-12.

Drs. Crum and DePonte interpreted the November 19, 2019 x-ray as positive for both simple and complicated pneumoconiosis, while Dr. Kendall read the x-ray as positive for simple but not complicated pneumoconiosis. Director's Exhibits 12 at 21; 15 at 1; 18 at 1. The ALJ found Drs. Crum's and DePonte's readings for the presence of complicated pneumoconiosis corroborated one another and that they outweighed Dr. Kendall's interpretation of only the simple form of the disease. Decision and Order at 10-11. Therefore, the ALJ found the November 19, 2019 x-ray is positive for simple and complicated pneumoconiosis. *Id.* at 11.

Dr. Simone interpreted the August 12, 2020 x-ray as negative for both simple and complicated pneumoconiosis. Director's Exhibit 24. As the only interpretation of this x-ray, the ALJ found it negative for both simple and complicated pneumoconiosis. Decision and Order at 11.

Dr. Simone interpreted the August 27, 2020 x-ray as negative for both simple and complicated pneumoconiosis, while Dr. DePonte interpreted it as positive for both simple and complicated pneumoconiosis. Director's Exhibit 23; Claimant's Exhibit 3. Because both physicians are dually qualified, the ALJ found no reason to favor one interpretation over the other and determined this x-ray is in equipoise. Decision and Order at 11.

Similarly, Dr. Simone interpreted the May 18, 2021 x-ray as negative for both simple and complicated pneumoconiosis, while Dr. Alexander interpreted it as positive for

⁴ Dr. Gaziano, a B reader, reviewed the November 19, 2019 x-ray for film quality only, as the ALJ noted. Decision and Order at 10 n.9; Director's Exhibit 13.

simple and complicated pneumoconiosis. Claimant's Exhibit 1; Employer's Exhibit 4. Considering the physicians to be equally qualified, the ALJ found this x-ray in equipoise as to whether Claimant has complicated pneumoconiosis. Decision and Order at 11.

Weighing the x-ray evidence, the ALJ found one x-ray is positive for complicated pneumoconiosis, one is negative for the disease, and the two most recent x-rays are in equipoise. Decision and Order at 11. In resolving the conflict between the November 19, 2019 x-ray, which she found positive for complicated pneumoconiosis, and the August 12, 2020 x-ray, which she found negative for complicated pneumoconiosis, the ALJ observed that overall at least two dually qualified physicians concluded Claimant has complicated pneumoconiosis in comparison to one who did not. *Id.* She also gave reduced weight to Dr. Simone's negative x-ray interpretations, in general, because he did not observe at least simple pneumoconiosis, unlike the other interpreting physicians. *Id.* Giving the most weight to the November 19, 2019 x-ray, the ALJ found the x-ray evidence as a whole established both simple and complicated pneumoconiosis. *Id.* at 12; *see* 20 C.F.R. §§718.202(a)(1), 718.304(a).

Employer argues the ALJ erred in relying on the November 19, 2019 x-ray simply because two readings corroborated each other and in not finding the x-ray evidence in equipoise. Employer's Brief at 5. It contends it was disadvantaged because the parties were each permitted to submit a reading of the November 19, 2019 x-ray obtained as part of the Department of Labor's complete pulmonary evaluation, resulting in more positive readings of the film. *Id.* Thus, Employer asserts the ALJ improperly credited the November 19, 2019 x-ray over the August 12, 2020 x-ray based on the numerical weight of these two x-rays. *Id.* at 5-6.

Initially, we are unpersuaded by Employer's arguments since the evidentiary regulations specifically provide that each party may submit a rebuttal x-ray reading of the Department of Labor's film if they so choose. 20 C.F.R. §§725.414(a)(2)(ii), 725.414(a)(3)(ii). How the parties allocate their affirmative and rebuttal evidence is a matter of litigation strategy and is not inherently biased.

Moreover, the ALJ permissibly found Dr. Simone's negative readings to be overall less credible because he did not identify at least simple pneumoconiosis, contrary to every other reading by the radiologists who interpreted the x-ray evidence in this case.⁵ *See*

⁵ Employer's assertion that the ALJ erred in not considering whether the readings for simple pneumoconiosis were consistent with each other as to the type of opacities and level of profusion, is a request for the Board to reweigh the evidence, which we are not

Snorton v. Zeigler Coal Co., 9 BLR 1-106, 1-107 (1986) (ALJ may reasonably question the validity of a physician’s opinion that varies significantly from the remaining medical opinions of record); *Hutchens v. Director, OWCP*, 8 BLR 1-16, 1-19 (1985) (ALJ must consider factors that tend to undermine the reliability of a physician’s conclusions before accepting it); Decision and Order at 11-12; Director’s Exhibits 12, 15, 18, 23, 24; Claimant’s Exhibits 1, 3; Employer’s Exhibit 4; Employer’s Brief at 7.

Because it is supported by substantial evidence, we affirm the ALJ’s finding that the x-ray evidence establishes complicated pneumoconiosis at 20 C.F.R. §718.304(a).

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

CT Scans

The ALJ considered two interpretations of one CT scan taken on January 13, 2021. Dr. DePonte read the CT scan as positive for simple and complicated pneumoconiosis, observing 1.5 to 1.9 centimeter large opacities in the lingula and right middle lobe consistent with complicated coal workers’ pneumoconiosis. Claimant’s Exhibit 4. Dr. Simone indicated that it was “very unlikely” that the masses that he observed are large opacities of coal workers’ pneumoconiosis because they lacked a background of rounded opacities, observing a 1.9 centimeter mass in the lingula suspicious for neoplasm and a 1.1 centimeter nodule in the right middle lobe with associated fibrosis. Employer’s Exhibit 5. The ALJ permissibly credited Dr. DePonte’s CT scan reading because it was supported by her x-ray readings and by other doctors whose readings corroborated those of Dr. DePonte. *See Dillon v. Peabody Coal Co.*, 11 BLR 1-113, 1-114 (1988) (ALJ acted within his discretion in according more weight to certain medical opinions in light of the other medical evidence of record); Decision and Order at 19; Claimant’s Exhibit 4.

In contrast, the ALJ permissibly gave Dr. Simone’s CT scan interpretation less weight to the extent he required a “background of rounded opacities” before diagnosing any form of pneumoconiosis when the regulations do not require such background. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); 20 C.F.R. §718.202(a)(1); *see also* Guidelines for the Use of the International Labour Organization (ILO) International Classification of Radiographs of Pneumoconioses, Revised edition 2022, p. 5 (ILO classification system specifically provides that small opacities of pneumoconiosis may be classified as round (p, q, r) or irregular (s, t, u)); Decision and Order at 19-20; Employer’s Exhibit 5.

empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); Employer’s Brief at 7.

Although Employer is correct that the ALJ did not discuss Dr. Harris's opinion in the context of whether Claimant has a neoplasm, as diagnosed by Dr. Simone, Employer fails to explain why this error requires remand. *See* Employer's Brief at 9. Dr. Harris specifically diagnosed complicated pneumoconiosis and only referenced the possibility of "concomitant" neoplasm. Claimant's Exhibit 9. Thus, Dr. Harris's opinion fails to corroborate Dr. Simone's opinion that Claimant does not have complicated pneumoconiosis based on the CT scan evidence. Consequently, as it is supported by substantial evidence, we affirm the ALJ's reliance on Dr. DePonte's opinion to conclude the CT scan evidence supports a finding of complicated pneumoconiosis.⁶ *See Gray*, 176 F.3d at 388-89; *Melnick*, 16 BLR at 1-33-34; 20 C.F.R. §718.304(c); Decision and Order at 19-20; Claimant's Exhibit 4.

Medical Opinions

The ALJ considered three medical opinions. Dr. Harris diagnosed complicated pneumoconiosis while Drs. Sargent and Dahhan did not. Director's Exhibits 12 at 8; 20 at 4; 22; Employer's Exhibits 1 at 4; 2 at 3; 3 at 5. Employer contends the ALJ erred in discrediting Dr. Dahhan's opinion. Employer's Brief at 8-9. We disagree.

Contrary to Employer's contention, Dr. Dahhan's opinion that Claimant has complicated pneumoconiosis is largely a restatement of the x-ray and CT scan evidence he reviewed. *See* Employer's Brief at 8-9. The ALJ permissibly found Dr. Dahhan's opinion lacked credibility because he opined the x-ray and CT scan evidence was negative or in equipoise, contrary to the ALJ's findings that the x-ray and CT scan evidence showed complicated pneumoconiosis; because we see no error in the ALJ's credibility finding, we affirm it. *See Rowe*, 710 F.2d at 255 (credibility matters are for the ALJ to decide); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc) (ALJ may reject a medical opinion where he finds the doctor failed to adequately explain his diagnosis); Decision and Order at 17-18; Director's Exhibit 22; Employer's Exhibits 1, 3. Thus, we affirm the ALJ's conclusion that the medical opinions are not probative for determining if Claimant has complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 21.

⁶ As the ALJ provided at least one valid reason for discrediting Dr. Simone's CT scan interpretation, we need not address Employer's remaining arguments that the ALJ failed to consider that Dr. Simone's CT scan reading was consistent with his x-ray and other x-ray readings which do not diagnose complicated pneumoconiosis. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 9-10.

Treatment Records

The ALJ noted Claimant's treating physicians diagnosed simple clinical and complicated pneumoconiosis. Decision and Order at 20-21; Director's Exhibit 17; Claimant's Exhibits 5-9. The ALJ found the treatment records did not merit weight individually because the physicians did not adequately explain the bases for their diagnoses of simple and complicated pneumoconiosis. Decision and Order at 21. Although Employer contends the ALJ failed to address a treatment note reporting "no cardiopulmonary abnormalities" and another treatment note from Dr. Harris recommending a repeat CT scan to exclude malignancy, the ALJ summarized those notes in her decision. *See* Decision and Order at 21 (chart); Employer's Brief at 10, *referencing* Director's Exhibit 17 and Claimant's Exhibit 9. We see no error in her permissible weighing of the treatment records as a whole.⁷ *See Rowe*, 710 F.2d at 255. We therefore affirm the ALJ's determination that the treatment records on their own do not establish complicated pneumoconiosis, but they tend to support the x-ray and CT scan evidence. 20 C.F.R. §718.304(c); Decision and Order at 21.

Conclusion

The ALJ weighed the evidence as a whole and found it supported a finding of complicated pneumoconiosis. Decision and Order at 21-22. Having rejected Employer's arguments regarding the ALJ's weighing of the x-evidence, and because it is supported by substantial evidence, we affirm the ALJ's conclusion that Claimant invoked the irrebuttable presumption. *See* 20 C.F.R. §718.304; *see also Gray*, 176 F.3d at 388-89; *Melnick*, 16 BLR at 1-33; *Skrack*, 6 BLR at 1-711; Decision and Order at 21-22. We further affirm, as unchallenged on appeal, the ALJ's finding that Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b); *see The Daniels Co. v. Director, OWCP [Mitchell]*, 479 F.3d 321, 337 (4th Cir. 2007); *Skrack*, 6 BLR at 1-711; Decision and Order at 22.

⁷ Employer fails to explain why a July 31, 2019 x-ray reading of no acute cardiopulmonary abnormalities undermines the ALJ's reliance on later x-rays as showing complicated pneumoconiosis. Director's Exhibit 17. Nor does Employer persuasively explain how Dr. Harris's note could change the ALJ's weighing of the evidence when the physician only recommended a CT scan for the "possibility of concomitant malignancy," as discussed *supra*. Claimant's Exhibit 9.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring:

I concur in the result.

JUDITH S. BOGGS
Administrative Appeals Judge