



BRB No. 24-0204 BLA

FRED F. WILLIAMS, JR.

Claimant-Respondent

v.

SIDNEY COAL COMPANY  
INCORPORATED c/o ANR  
INCORPORATED

Employer-Petitioner

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

Party-in-Interest

**NOT-PUBLISHED**

DATE ISSUED: 04/30/2025

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits on Remand of Jason A. Golden, Administrative Law Judge, United States Department of Labor.

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

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

Simon Jacobs (Jonathan Snare, Deputy Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Acting Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

ROLFE and JONES, Administrative Appeals Judges:

Employer appeals Administrative Law Judge (ALJ) Jason A. Golden's Decision and Order Awarding Benefits on Remand (2020-BLA-05213) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves Claimant's request for modification of a claim filed on March 22, 2016, and is before the Benefits Review Board for the second time.

In his February 25, 2019 Decision and Order Denying Benefits, ALJ Larry A. Temin found the evidence insufficient to establish complicated pneumoconiosis and thus concluded Claimant 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); 20 C.F.R. §718.304. The ALJ credited Claimant with twenty years of underground coal mine employment, but found he did not establish a totally disabling respiratory or pulmonary impairment and thus could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.<sup>1</sup> 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.204(b)(2). Based on Claimant's failure to establish total disability, an essential element of entitlement, ALJ Temin denied benefits.

Claimant timely requested modification, and the case was assigned to ALJ Golden (the ALJ). In his May 26, 2021 Decision and Order Awarding Benefits, the ALJ credited Claimant with twenty years of coal mine employment and found he established complicated pneumoconiosis, thereby invoking the irrebuttable presumption of total disability due to pneumoconiosis and establishing a mistake in a determination of fact. 20 C.F.R. §§718.304, 725.310(a). The ALJ further found Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203. He determined granting modification would render justice under the Act and awarded benefits.

Pursuant to Employer's appeal, the Board vacated the ALJ's finding Claimant established complicated pneumoconiosis because he relied on Dr. Crum's deposition testimony, which the ALJ admitted in excess of the evidentiary limitations. *Williams v. Sidney Coal Co., Inc.*, BRB No. 21-0484 BLA, slip op. at 3-5 (May 30, 2023) (unpub.). A majority of the Board's three-member panel remanded the case for the ALJ to reconsider

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<sup>1</sup> 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); *see* 20 C.F.R. §718.305.

whether Claimant established complicated pneumoconiosis without considering Dr. Crum's testimony.<sup>2</sup> *Id.* at 3-5.

In his Decision and Order Awarding Benefits on Remand (Decision and Order), the subject of this appeal, the ALJ again found Claimant established complicated pneumoconiosis and invoked the irrebuttable presumption of total disability due to pneumoconiosis. 20 C.F.R. §718.304. Further, he found Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b). He determined granting modification would render justice under the Act and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established complicated pneumoconiosis. Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs (the Director), has filed a limited response urging affirmance of the ALJ's articulated basis for discounting Dr. Meyer's medical opinion regarding complicated pneumoconiosis.<sup>3</sup> Employer filed a reply brief reiterating its contentions.

The 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.<sup>4</sup> 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).

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 opacities greater than one

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<sup>2</sup> Administrative Appeals Judge Greg J. Buzzard would have remanded the case with instructions for the ALJ to provide the parties with an opportunity to address the admissibility and probative value of Dr. Crum's testimony consistent with *L.P. [Preston] v. Amherst Coal Co.*, 24 BLR 1-55 (2008) (en banc). See *Williams v. Sidney Coal Co., Inc.*, BRB No. 21-0484 BLA, slip op. at 7-8 (May 30, 2023) (unpub.) (Buzzard, J., concurring and dissenting).

<sup>3</sup> We affirm, as unchallenged on appeal, the ALJ's finding Claimant established twenty years of qualifying coal mine employment. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 18.

<sup>4</sup> The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because 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 15; June 19, 2018 Hearing Tr. at 31; Dec. 9, 2020 Hearing Tr. at 52.

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, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). 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. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

The ALJ found the x-ray, medical opinion, and treatment record evidence does not support or undermine a finding of complicated pneumoconiosis, and the computed tomography (CT) scan evidence supports a finding of complicated pneumoconiosis.<sup>5</sup> 20 C.F.R. §718.304(a), (c); Decision and Order at 5-18. Weighing the evidence together, the ALJ concluded Claimant established complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 18.

Employer argues the ALJ erred in weighing the CT scan evidence. Employer's Brief at 15-21; Employer's Reply at 3-6. We disagree.

The ALJ considered five readings of two CT scans dated December 18, 2015 and January 30, 2017. Decision and Order at 10-15. Dr. Patel read the December 18, 2015 CT scan as positive for pneumoconiosis, and Dr. Meyer read it as positive for simple pneumoconiosis but negative for complicated pneumoconiosis.<sup>6</sup> Employer's Exhibits 1 at 3; 3 at 4. Dr. Ayos read the January 30, 2017 CT scan as positive for pneumoconiosis, Dr. Meyer read it as positive for simple pneumoconiosis only, and Dr. Crum read it as positive for simple and complicated pneumoconiosis, Category A. Director's Exhibit 27 at 2-3; Employer's Exhibits 2 at 3; 3 at 6-7.

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<sup>5</sup> The ALJ found the record contains no biopsy evidence. 20 C.F.R. §718.304(b); Decision and Order at 18.

<sup>6</sup> The ALJ acknowledged Employer also designated a second interpretation of the December 18, 2015 CT scan by Dr. Crum, who read it as positive for simple pneumoconiosis but negative for complicated pneumoconiosis. Decision and Order at 10; Employer's Exhibit 11 at 3. The ALJ found Employer's designation of Dr. Crum's interpretation exceeds the evidentiary limitations and struck it from the record. Decision and Order at 10 n.15, *citing* 20 C.F.R. §§725.414, 725.310(b).

The ALJ found the December 18, 2015 CT scan is negative for complicated pneumoconiosis based on Dr. Meyer's negative reading.<sup>7</sup> Decision and Order at 10. Because Dr. Ayos did not specify whether the January 30, 2017 CT scan shows simple or complicated pneumoconiosis, the ALJ considered that reading to be a diagnosis of simple pneumoconiosis only, but found it does not weigh against a finding of complicated pneumoconiosis.<sup>8</sup> He found Dr. Meyer's reading is not reasoned or documented and Dr.

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<sup>7</sup> Employer argues the ALJ erred in striking Dr. Crum's reading of the December 18, 2015 CT scan from the record and in finding Dr. Patel's reading does not weigh against a finding of complicated pneumoconiosis. Employer's Brief at 12-17; Employer's Reply at 3. The Board has held the evidentiary limitations are self-executing; hence they apply regardless of whether they are raised by a party. *See Smith v. Martin Cnty. Coal Corp.*, 23 BLR 1-69, 1-74 (2004) (ALJ is obligated to enforce the evidentiary limitations even if no party objects). Consequently, Claimant's failure to raise the limitation issue earlier did not foreclose the ALJ from recognizing that including all the CT scan readings Employer submitted would result in a violation of the regulatory limits. Employer does not argue the evidentiary limits were not exceeded by the inclusion of Dr. Crum's reading of the December 18, 2015 CT scan. Rather, it argues it was error for the ALJ to revise the evidentiary record. We agree it was error for the ALJ to strike Dr. Crum's December 18, 2015 CT scan reading rather than allowing Employer to choose which of its CT scan readings to strike; however, the ALJ advised the parties of how he would proceed before he did so and Employer made no objection. *See L.P. [Preston] v. Amherst Coal Co.*, 24 BLR 1-57, 1-63 (2008) (en banc). As Employer failed to properly preserve the issue below, it is foreclosed from doing so now. *See Jan. 31, 2024 Order Striking Evidence*. Moreover, the ALJ found the December 18, 2015 CT scan is negative for complicated pneumoconiosis, and Employer has not explained how including Dr. Crum's reading or finding Dr. Patel's reading weighs against a finding of complicated pneumoconiosis would have made a difference. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

<sup>8</sup> Employer argues the ALJ erred in finding Dr. Ayos's reading does not weigh against a finding of complicated pneumoconiosis. Employer's Brief at 16-17; Employer's Reply at 3. The ALJ observed the record identifies Dr. Ayos as a radiologist but there is no additional information regarding her qualifications. Decision and Order at 9; Employer's Exhibit 2 at 3. Because he could not determine her qualifications in comparison to Dr. Crum, who is a Board-certified radiologist and B reader, he permissibly found Dr. Crum's credible interpretation is entitled to more weight. *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59 (6th Cir. 1995); *Worach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993); Decision and Order at 9. Because the ALJ provided a valid reason for giving Dr. Ayos's interpretation less weight than Dr. Crum's interpretation, we need

Crum's reading is credible and thus found the January 30, 2017 CT scan is positive for simple and complicated pneumoconiosis. *Id.* at 11-15. He further afforded more weight to the January 30, 2017 CT scan than the December 18, 2015 CT scan based on its recency, and therefore found the CT scan evidence supports a finding of complicated pneumoconiosis. *Id.* at 15.

Employer argues the ALJ erred in discrediting Dr. Meyer's interpretation of the January 30, 2017 CT scan. Employer's Brief at 17-21; Employer's Reply at 4-6. We disagree.

Dr. Meyer opined the January 30, 2017 CT scan shows simple pneumoconiosis and small nodules that have coalesced in the upper lung, but they are pseudo-plaques and not complicated pneumoconiosis. Employer's Exhibits 3 at 6; 10 at 30-33, 37, 50-51. He did not disagree with Dr. Crum's measurement of a greater than one centimeter opacity, but opined it is coal macules "stacked in [the] subpleural lymphatics [causing a] linear density against the chest wall" which does not have the "same pathologic significance" and is not the "same type of lesion" as complicated pneumoconiosis. Employer's Exhibit 10 at 32-33, 48. He further opined pneumoconiosis "can cause linear opacities in terms of fibrotic irregular opacities in association with small nodules," but the linear opacity caused by coal macules in Claimant's case is not complicated pneumoconiosis because it is on the pleural surface rather than the parenchyma. *Id.* at 33-34; 49.

Neither the regulations that set forth what constitutes positive and negative x-ray readings for simple and complicated pneumoconiosis, nor the ILO Guidelines, require opacities be rounded or appear in specific lung zones to meet the requirements of 20 C.F.R. §718.304. *See* 20 C.F.R. §§718.102, 718.202(a)(1), 718.304(a); *Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconiosis*, Revised Edition 2011 (ILO Guidelines). Additionally, as the Director correctly notes, the ILO Guidelines indicate large opacities are identified based on the length of their longest dimension. *See* ILO Guidelines at 6 ("A large opacity is defined as an opacity having the longest dimension exceeding 10 mm."); Director's Response Brief at 2 (unpaginated).

The ALJ found Dr. Meyer "provided no citations to medical literature to support his opinions that complicated pneumoconiosis or a massive lesion must be a specific shape, cannot be located in the pleural surface, or must be located in the lung parenchyma." Decision and Order at 14. Contrary to Employer's argument, the ALJ rationally discredited Dr. Meyer's opinion – that the coalescence of nodules seen on the January 30, 2017 CT

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not address Employer's argument. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

scan is not complicated pneumoconiosis because it is linear rather than rounded, and subpleural rather than parenchymal – as inconsistent with the regulations.<sup>9</sup> 20 C.F.R. §§718.102, 718.202(a)(1), 718.304(a); *see Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); Decision and Order at 12-15.

Because Employer does not raise any additional arguments, and as it is rational and supported by substantial evidence, we affirm the ALJ’s crediting of Dr. Crum’s interpretation of the January 30, 2017 CT scan and his finding it supports complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 15. Further, we affirm the ALJ’s finding the weight of the CT scan evidence supports a finding of complicated pneumoconiosis, and the evidence weighed together establishes complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 15, 18.

We therefore affirm the ALJ’s finding Claimant invoked the irrebuttable presumption of total disability due to complicated pneumoconiosis. 20 C.F.R. §718.304. We further affirm, as unchallenged on appeal, the ALJ’s finding Claimant’s complicated pneumoconiosis arose out of his coal mine employment and granting modification renders justice under the Act. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§718.203(b), 725.310(a); Decision and Order at 18-19.

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<sup>9</sup> We reject Employer’s assertion Dr. Meyer supported his complicated pneumoconiosis opinion with citations to medical literature by referencing “the findings of the Fleischner Society *Glossary of Terms for C[T] Scans of the Lungs*, as published in the journal *Radiology* in 1996 at page 329.” Employer’s Brief at 18; Employer’s Reply at 4. As the Director correctly states, Dr. Meyer cited this reference to support his description of a “pseudo-plaque,” not his opinion regarding the shape and location of opacities required to establish complicated pneumoconiosis. Employer’s Exhibit 10 at 28; *see* Director’s Reply at 2 (unpaginated).

Accordingly, the ALJ's Decision and Order Awarding Benefits on Remand is affirmed.

SO ORDERED.

JONATHAN ROLFE  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, concurring:

I concur in the result only.

JUDITH S. BOGGS  
Administrative Appeals Judge