

U.S. Department of Labor

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



BRB No. 24-0335 BLA

JAMIE L. BILLITER

Claimant-Respondent

v.

PARAMONT CONTURA, LLC

Employer-Petitioner

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

Party-in-Interest

**NOT-PUBLISHED**

DATE ISSUED: 04/10/2025

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Carrie Bland,  
Associate Chief Administrative Law Judge, United States Department of  
Labor.

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

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

PER CURIAM:

Employer appeals Associate Chief Administrative Law Judge (ALJ) Carrie Bland's  
Decision and Order Awarding Benefits (2021-BLA-05058) rendered on a claim filed on  
July 15, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944  
(2018) (Act).

The ALJ accepted the parties' stipulation that Claimant worked for thirty-eight years in qualifying coal mine employment. She found he established complicated pneumoconiosis and thus 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, she found his complicated pneumoconiosis arose out of his coal mine employment, 20 C.F.R. §718.203(b), and awarded benefits.

On appeal, Employer asserts that the ALJ erred in finding Claimant established complicated pneumoconiosis.<sup>1</sup> Neither Claimant nor the Acting Director, Office of Workers' Compensation Programs, has 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.<sup>2</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).

### **Invocation of the Section 411(c)(3) Presumption – Complicated Pneumoconiosis**

Section 411(c)(3) of the Act provides an irrebuttable presumption that a miner's total disability is 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; 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). *See* 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. 30 U.S.C. §923(b); *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 (1991) (en banc).

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<sup>1</sup> We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established thirty-eight years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 2 n.2.

<sup>2</sup> 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 Tr. at 12.

The ALJ found the x-ray and medical opinion evidence support a finding of complicated pneumoconiosis.<sup>3</sup> 20 C.F.R. §718.304(a), (c); Decision and Order at 9. Weighing all of the evidence together, she gave more weight to the x-rays than the medical opinions and concluded Claimant established the presence of complicated pneumoconiosis. *Id.*

### **20 C.F.R. §718.304(a) – X-rays**

The ALJ considered nine interpretations of four x-rays dated April 10, 2019, October 26, 2019, August 11, 2020, and November 9, 2022. Decision and Order at 5-6. The ALJ noted all the interpreting physicians are dually qualified as B readers and Board-certified radiologists. *Id.* at 5. Dr. DePonte read the April 10, 2019 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Tarver read the x-ray as negative for the disease. Director’s Exhibits 17; 19. Drs. DePonte and Crum interpreted the October 26, 2019 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Adcock read it as negative. Director’s Exhibits 15 at 28; 18; Claimant’s Exhibit 3. Dr. Alexander interpreted the August 11, 2020 x-ray as positive for complicated pneumoconiosis, Category A, whereas Dr. Kendall read it as negative. Director’s Exhibit 20 at 25-26; Claimant’s Exhibit 2. Finally, Dr. Ahmed read the November 9, 2022 x-ray as positive for complicated pneumoconiosis, Category B, while Dr. Simone interpreted it as negative. Claimant’s Exhibit 1; Employer’s Exhibit 5.

The ALJ found the readings of the April 10, 2019, August 11, 2020, and November 9, 2022 x-rays are in equipoise because an equal number of dually-qualified radiologists read each x-ray as positive and negative for complicated pneumoconiosis. Decision and Order at 5-6. She found the October 26, 2019 x-ray positive for complicated pneumoconiosis because a greater number of dually-qualified radiologists read it as positive for the disease. *Id.* at 6. Because she found one x-ray positive for complicated pneumoconiosis and the readings of the remaining three x-rays to be in equipoise, she found the x-ray evidence supports a finding of complicated pneumoconiosis. *Id.*

Employer argues the ALJ erroneously “counted heads” in finding the x-ray evidence supports a finding of complicated pneumoconiosis. Employer’s Brief at 5-8. We disagree. Contrary to Employer’s contention, the ALJ properly considered the number of x-ray interpretations along with the readers’ qualifications and the findings set forth in their interpretations. *See Sea “B” Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016). Because she conducted both a qualitative and quantitative analysis of the x-ray evidence,

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<sup>3</sup> The ALJ found there is no biopsy evidence in the record. 20 C.F.R. §718.304(b); Decision and Order at 6.

we reject Employer's argument. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); Decision and Order at 6. We therefore affirm the ALJ's conclusion that the x-ray evidence supports a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a); Decision and Order at 6.

### **20 C.F.R. §718.304(c) – Medical Opinions**

The ALJ next considered Dr. Cordasco's opinion that Claimant has complicated pneumoconiosis and Dr. Tuteur's opinion that Claimant only has simple clinical pneumoconiosis. Decision and Order at 7-9. The ALJ accorded Dr. Cordasco's opinion some weight, finding it is well-reasoned and documented and consistent with the x-ray evidence. *Id.* at 8. She credited less weight to Dr. Tuteur's opinion because it relied on evidence outside the record. *Id.* She thus found the medical opinion evidence supports a finding of complicated pneumoconiosis. *Id.* at 9.

Employer contends the ALJ erred in crediting Dr. Cordasco's opinion as it relied only on one x-ray reading and did not consider other medical evidence in the record.<sup>4</sup> Employer's Brief at 8-10. We disagree.

Dr. Cordasco diagnosed complicated pneumoconiosis based on Dr. DePonte's reading of the October 26, 2019 x-ray as positive for complicated pneumoconiosis, Claimant's work history, and his "highly bronchitic respiratory symptoms" of "progressive exertional breathlessness, intermittent cough, [and] activity related wheeze." Director's Exhibit 15 at 3. Thus the ALJ permissibly found Dr. Cordasco's opinion credible because it is consistent with the x-ray evidence, and his consideration of Claimant's coal mine dust exposure and symptoms. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 8-9.

Moreover, contrary to Employer's contention that the ALJ failed to consider that Dr. Cordasco did not review all of the medical records, she specifically observed his opinion is based only on Dr. DePonte's reading of the October 26, 2019 x-ray and his examination of Claimant, but that it was reasoned and documented based on what he did

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<sup>4</sup> Employer also asserts the ALJ erred in giving "some weight to Dr. Tuteur when she notes the opinion is neither well-reasoned nor well-documented." Employer's Brief at 8. We need not address this argument as Employer has not shown how giving no weight to Dr. Tuteur's opinion that Claimant does not have complicated pneumoconiosis would have made any 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).

consider. *See Church v. Eastern Assoc. Coal Corp.*, 20 BLR 1-8, 1-13 (1996) (an ALJ is not required to discount a physician's opinion on the basis he did not review the most recent objective testing if they find it is otherwise reasoned and documented); Decision and Order at 8; Employer's Brief at 10.

Because it is supported by substantial evidence, we affirm the ALJ's finding that the medical opinion evidence supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(c). Decision and Order at 8-9. Therefore, we also affirm her finding that the x-ray evidence and medical opinion evidence weighed together establish the presence of complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 9. In addition, we affirm as unchallenged the ALJ's finding that Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 9.

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

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge