U.S. Department of Labor

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

BRB Nos. 25-0096 BLA
and 25-0096 BLA-A

EDGEL CHARLES DUDLESON Claimant-Petitioner Cross-Respondent v. VICA COAL COMPANY and WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND Employer/Carrier-Respondents Cross-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	**NOT-PUBLISHED** DATE ISSUED: 04/17/2026 DECISION and ORDER

Appeal and Cross-Appeal of the Decision and Order Denying Benefits of Francine L. Applewhite, Administrative Law Judge, United States Department of Labor.

Samuel B. Petsonk (Petsonk PLLC), Beckley, West Virginia, and Bren J. Pomponio (Mountain State Justice, Inc.), Charleston, West Virginia, for Claimant.

Wesley A. Shumway and Brady O'Saile (Spilman Thomas & Battle, PLLC), Charleston, West Virginia, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals, and Employer and its Carrier (Employer) cross-appeal, Administrative Law Judge (ALJ) Francine L. Applewhite's Decision and Order Denying Benefits (2020-BLA-06136),[1] rendered on a request for modification[2] of a claim filed on June 14, 2018,[3] pursuant the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).[4]

[1] Claimant filed a Motion to Reconsider Decision and Order Denying Benefits to the ALJ on November 3, 2024. On November 25, 2024, the ALJ issued an Order Denying Reconsideration summarily denying Claimant's motion.

[2] On March 27, 2019, the district director denied this claim because Claimant failed to establish a totally disabling respiratory impairment. Director's Exhibit 29. Claimant filed two subsequent requests for modification, both of which the district director denied. Director's Exhibits 34, 36, 38, 41. The district director granted Claimant's third request for modification on June 10, 2020. Director's Exhibits 43, 45. In cases involving a request for modification of a district director's decision, the ALJ proceeds de novo and "the modification finding is subsumed in the [ALJ's] findings on the issues of entitlement." *Kott v. Director, OWCP*, 17 BLR 1-9, 1-13 (1992); *Motichak v. BethEnergy Mines, Inc.*, 17 BLR 1-14, 1-19 (1992).

[3] On his application, Claimant indicated he filed a prior claim that was denied. Director's Exhibit 3. According to the district director's records, Claimant withdrew that claim. Director's Exhibit 1. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

[4] The case was transferred to the Office of Administrative Law Judges on September 23, 2020, pursuant to Employer's request for a hearing, Director's Exhibit 51, where it was assigned to the ALJ. However, on June 17, 2022, the ALJ remanded the case to the district director to locate a chest x-ray. Director's Exhibit 52. As the x-ray was never in the custody of the district director and was not associated with the Department of Labor-

The ALJ found Claimant did not establish complicated pneumoconiosis and therefore 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. Further, the ALJ credited Claimant with 20.98 years of underground coal mine employment but found he failed to establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Therefore, she determined Claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[5] 30 U.S.C. §921(c)(4), or establish entitlement to benefits under 20 C.F.R. Part 718. Thus, the ALJ denied benefits.

On appeal, Claimant argues the ALJ erred in finding he did not establish complicated pneumoconiosis.[6] Employer responds, urging the Benefits Review Board to affirm the denial of benefits. Claimant replies, reiterating his contentions. On cross-appeal, Employer contests the ALJ's weighing of the computed tomography (CT) scan and medical opinion evidence regarding complicated pneumoconiosis. Claimant responds to Employer's cross-appeal, reiterating his contentions from his appeal. The Director, Office of Workers' Compensation Programs, has not filed a response in either appeal.

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.[7] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc*., 380 U.S. 359 (1965).

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sponsored complete pulmonary evaluation, the district director transferred the case back to the ALJ on December 9, 2022. Director's Exhibit 54.

[5] 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.

[6] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant has 20.98 years of coal mine employment but failed to establish a totally disabling respiratory impairment at 20 C.F.R. §718.204(b)(2) and therefore cannot invoke the Section 411(c)(4) presumption or establish a necessary element of entitlement at 20 C.F.R. Part 718. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 15.

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit as Claimant performed his coal mine employment in West Virginia. *See*

Invocation of the 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 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 consider all evidence relevant to the presence or absence of complicated pneumoconiosis. 30 U.S.C. §923(b); *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); *see Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

The ALJ found the x-rays and other medical evidence do not support a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a), (c).[8] Decision and Order at 8-13. Thus, weighing all the evidence together, she concluded Claimant did not establish the disease. 20 C.F.R. §718.304; Decision and Order at 13. Claimant contends the ALJ erred in finding the CT scan evidence, and the evidence as a whole, does not establish complicated pneumoconiosis. Claimant's Brief at 9-19.

20 C.F.R. §718.304(a) – X-ray Evidence

As no physician diagnosed large opacities of complicated pneumoconiosis[9] on the chest x-rays, the ALJ found that Claimant could not establish complicated pneumoconiosis at 20 C.F.R. §718.304(a).[10] Decision and Order at 9. We affirm this finding as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5; Hearing Transcript at 12.

[8] There is no biopsy evidence, and Claimant therefore cannot establish complicated pneumoconiosis at 20 C.F.R. §718.304(b). Claimant's Evidence Summary Form.

[9] While no physician opined the x-rays demonstrated complicated pneumoconiosis, Dr. Crum interpreted the most recent x-ray, dated October 9, 2020, as showing "Extensive Nodularity, Bilateral Coalescence, Borderline A opacity." Claimant's Exhibit 1 at 2.

[10] The ALJ failed to consider seven x-rays contained in Claimant's treatment records, which were admitted into evidence. Employer's Exhibit 4. However, the parties

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

The ALJ next considered the CT scan evidence and medical opinion evidence. Decision and Order at 9-13.

CT Scan Evidence

The ALJ considered twelve interpretations of four CT scans dated November 30, 2018, June 14, 2019, August 13, 2020, and February 8, 2021. Decision and Order at 9-10.

As part of Claimant's medical treatment with Dr. Rao, he underwent a CT scan on November 30, 2018. Director's Exhibits 18, 34. Dr. Rao, whose credentials are not in the record, stated the scan showed reticulonodular opacities "within both lungs, predominantly within the upper and mid lung zones," and "[m]ild mediastinal adenopathy," which he opined were "likely from complicated pneumoconiosis." *Id.* Dr. Seaman, a Board-certified radiologist and B reader, also reviewed the November 30, 2018 CT scan. Employer's Exhibit 2. She noted "upper zone predominant centrilobular/perilymphatic nodules," opining that some of the nodules are calcified and may represent pneumoconiosis or prior granulomatous infection. *Id.* Further, she found no evidence of complicated pneumoconiosis, although she noted the CT scan was consistent with simple pneumoconiosis. *Id.* The ALJ found Dr. Rao's findings unpersuasive as he did not include measurements of the opacities in his findings. Decision and Order at 11. Thus, she found the November 30, 2018 CT scan refutes a finding of complicated pneumoconiosis. *Id.*

Dr. Cohen, Board-certified in internal medicine, pulmonary disease, and critical care and a B reader, and Dr. Seaman interpreted the June 14, 2019 CT scan. Claimant's Exhibit 6; Employer's Exhibit 3. Using an International Labour Organization (ILO) form for classifying chest x-rays to describe his reading of the CT scan, Dr. Cohen identified diffuse nodular opacities ranging in size from three to ten millimeters in diameter "equivalent to r/r and 2/3 size, shape, and profusion on the ILO classification scale." Claimant's Exhibit 6 at 2. He additionally identified a Category A large opacity in the left upper lobe measuring 1.39 x 0.58 centimeters. *Id.* Dr. Seaman read this scan as showing "upper zone predominant centrilobular/perilymphatic nodules" but "no large opacities of coal workers' pneumoconiosis." Employer's Exhibit 3. She again opined the results were consistent with simple pneumoconiosis only. *Id.* Subsequently, Dr. Cohen reviewed the

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do not challenge the ALJ's failure to consider this evidence, *Skrack*, 6 BLR at 1-711, and none of the x-rays contain diagnoses of pneumoconiosis or of opacities measuring greater than one centimeter. Employer's Exhibit 4. Consequently, any error in not considering those records would be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

film again, as well as his prior interpretation and Dr. Seaman's interpretation of the scan, as part of his March 1, 2022 medical opinion. Claimant's Exhibit 7. Dr. Cohen noted his prior findings and pointed out that Dr. Seaman did not make note of the large opacity that Dr. Cohen had found on the CT scan and that, while she did note "the presence of nodules," she "did not describe them or note any measurements." *Id.* The ALJ accorded Drs. Cohen's and Seaman's readings equal weight and therefore found the June 14, 2019 CT scan neither supports nor refutes the existence of complicated pneumoconiosis. Decision and Order at 11.

Drs. Crum, Seaman, and Meyer, all Board-certified radiologists and B readers, interpreted the August 13, 2020 CT scan. Claimant's Exhibit 5; Employer's Exhibits 5, 11. Dr. Crum read it as showing bilateral pulmonary nodules that were less than one centimeter that qualify as "Q, R, T, and U nodules" on an ILO x-ray. Claimant's Exhibit 5. He also noted multiple bilateral large opacities measuring greater than five centimeters, in the form of multiple pseudoplaques, which he identified as consistent with Category B large opacities of complicated pneumoconiosis. *Id.* Dr. Seaman read this scan as showing "upper zone predominant centrilobular/perilympatic nodules," which she opined may represent pneumoconiosis or prior granulomatous disease, but also noted "no large opacities of coal workers' pneumoconiosis." Employer's Exhibit 5. She again opined the study was consistent with simple pneumoconiosis only. *Id.* Dr. Meyer read the scan as showing perilymphatic nodules predominantly in the upper lobe, noting the presence of a pseudoplaque in the left apex and coalescent bronchovascular nodules in the left upper lobe measuring up to nine millimeters. Employer's Exhibit 11. But he nevertheless found "no regions of conglomerate fibrosis/large opacities." *Id.* The ALJ accorded equal weight to each interpretation and found the scan "refutes" a finding of complicated pneumoconiosis. Decision and Order at 11.

Drs. Cohen, Crum, Seaman, and Meyer each also interpreted the February 8, 2021 CT scan. Claimant's Exhibits 3, 4; Employer's Exhibits 10, 12. Dr. Cohen completed an ILO chest radiograph form diagnosing bilateral diffuse round opacities predominantly in the upper lobe "with a profusion equivalent to r/r 2/2 shape and size opacities on the ILO scale." Claimant's Exhibit 3 at 2. He furthered diagnosed Category A complicated pneumoconiosis, in the form of a conglomerate irregular opacity in the left upper lobe measuring 12.3 millimeters in diameter and two conglomerate scars "abutting the apical pleural" measuring 9.6 and 15.2 millimeters in diameter. *Id.* Dr. Crum read the scan as positive for complicated pneumoconiosis, Category B, in the form of multiple large opacities measuring 1.1, 1.4, and 1.6 centimeters, and two additional large opacities measuring 1.7 centimeters, noting the presence of "innumerable" bilateral pulmonary nodules and "multiple areas of coalescence" in the upper and middle lung zone "highly consistent with black lung disease." Claimant's Exhibit 4.

In contrast, Dr. Seaman read the February 8, 2021 scan as showing "upper zone predominant centrilobular/perilymphatic nodules" but "no large opacities of coal workers' pneumoconiosis." Employer's Exhibit 10. She further opined the study was consistent with simple pneumoconiosis only. *Id.* Dr. Meyer read the scan as showing "scattered and calcified" perilymphatic nodules predominantly in the upper lobe, noting the presence of the largest nodule in the left upper lobe measuring eight by nine millimeters as well as pseudoplaque with a "subpleural curvilinear line . . . in the left apex," but he found "no regions of conglomerate fibrosis/large opacities." Employer's Exhibit 12. The ALJ accorded equal weight to each interpretation, finding each of the physicians qualified to offer an opinion on the issue, and therefore found them in equipoise on the issue of complicated pneumoconiosis, neither supporting nor refuting a finding of complicated pneumoconiosis. Decision and Order at 11.

Weighing the CT scan evidence as a whole, the ALJ found it "refutes" a finding of complicated pneumoconiosis. Decision and Order at 11.

Claimant contends the ALJ erred in her weighing of the CT scan evidence, specifically erring in her analysis of the CT scan interpretations and in performing an improper headcount of the interpretations. Claimant's Brief at 14-19. We agree to an extent.

Initially, we reject Claimant's argument that the readers of CT scans are required to follow ILO guidelines for the classification of chest x-rays when assessing the presence or absence of complicated pneumoconiosis as those guidelines are "expressly incorporated" into 20 C.F.R. §718.304. Claimant's Brief at 12. The Board has explained that 20 C.F.R. §718.304(a) "clearly applies to the use of a conventional chest roentgenogram (x-ray) only, outlining in detail the method and machinery which may be utilized, and further requiring that the x-ray be properly classified according to the [ILO guidelines]," and while the regulations provide no specific guidance for the evaluation of CT scans, Section §718.304(c) allows the consideration of "any acceptable medical means of diagnosis." *Melnick*, 16 BLR at 1-34. Further, unlike the regulations relating to x-ray evidence, *see* 20 C.F.R. §§718.102 and 718.202(a), the regulation relating to CT scan evidence does not provide that CT scans must be classified according to the ILO classification system. 20 C.F.R. §718.107. Thus, the ALJ was not required to evaluate the CT scan evidence for consistency with ILO guidelines, nor were the physicians required to do so. *See Melnick*, 16 BLR at 1-34; 20 C.F.R. §718.304. Moreover, the Fourth Circuit requires the ALJ, not the physician, to perform equivalency determinations based on her evaluation of all the medical evidence of record. *See Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243 (4th Cir. 1999). Thus, a physician need not provide a specific statement of equivalency for the ALJ to consider whether the evidence meets the statutory criteria for complicated pneumoconiosis. *See Scarbro*, 220 F.3d at 258.

We agree with Claimant, however, that the ALJ did not adequately explain her weighing of the conflicting CT scan interpretations. Claimant's Brief at 18-19. Specifically, the ALJ discredited Dr. Rao's interpretation of the November 30, 2018 CT scan because he failed to provide measurements of the opacities he found were "likely from complicated coal workers' pneumoconiosis." Decision and Order at 11; Director's Exhibit 34 at 2. But the ALJ did not equally or consistently apply the same analysis to Dr. Seaman's interpretation of the same CT scan, as Dr. Seaman also did not specify the size of the opacities she found but which she indicated did not meet the definition of a large opacity. Decision and Order at 11; Employer's Exhibit 2; *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). The ALJ did not provide any further adequate explanation for why Dr. Seaman's interpretation nevertheless should be credited to find that the 2018 CT scan "refutes" a finding of complicated pneumoconiosis. Decision and Order at 11.

Nor did the ALJ apply the same analysis to any of the other physicians' CT scan interpretations of record who did not find complicated pneumoconiosis but also failed to provide measurements of the opacities or nodules they found. Notably, Dr. Cohen did provide measurements of the opacities he found consistent with complicated pneumoconiosis with his interpretation of the June 14, 2019 CT scan. Claimant's Exhibit 6 at 2. While the ALJ acknowledged Dr. Cohen's statements that Dr. Seaman failed, again, to describe the size of the nodules she saw on the same CT scan that she indicated did not meet the definition of a large opacity, Claimant's Exhibit 7, the ALJ nevertheless accorded equal weight to both physicians' interpretations without any further adequate explanation. Decision and Order at 11. Similarly, while Dr. Meyer gave measurements for most of his CT scan findings, he also noted the presence of a pseudoplaque on the February 8, 2021 CT scan but did not provide its measurements. Employer's Exhibit 12. Yet, the ALJ accorded his opinion full weight. Decision and Order at 11. Similarly, Dr. Seaman also did not specify the size of the opacities she found on the same CT scan that she indicated did not meet the definition of a large opacity, Employer's Exhibit 10, whereas Drs. Cohen, Claimant's Exhibit 3 at 2, and Crum, Claimant's Exhibit 4, did provide the measurements of the large opacities they found on the same CT scan that they indicated were consistent with complicated pneumoconiosis. But the ALJ again accorded equal weight to all of physicians who provided interpretations of the February 8, 2021 CT scan without further explanation. Decision and Order at 11. Consequently, the ALJ's findings do not satisfy the explanatory requirements of the Administrative Procedure Act (APA).[11] 5 U.S.C.

[11] The Administrative Procedure Act requires that every adjudicatory decision 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).

§557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 803 (4th Cir. 1998); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

Further, in weighing the August 13, 2020 CT scan, the ALJ gave no reasons for according equal weight to each of the interpretations. Decision and Order at 11. Consequently, we agree with Claimant that the ALJ appears to have relied on an improper headcount of the interpretations to resolve the conflicts in the evidence. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992) ("counting heads" is a "hollow" way to resolve conflicts in the evidence). An ALJ must explain their rationale for resolving the conflict in the evidence. *Lockhart*, 137 F.3d at 803; *Wojtowicz*, 12 BLR at 1-165. The mere fact that more physicians who interpreted the August 13, 2020 CT scan did not diagnose complicated pneumoconiosis does not authorize the ALJ to declare, without any further explanation, their opinions support finding that the scan does not establish complicated pneumoconiosis. *See Gunderson v. U.S. Dep't of Labor*, 601 F.3d 1013, 1024 (10th Cir. 2010) ("[ALJ] has a duty to explain, on scientific grounds, why a conclusion cannot be reached"); Claimant's Brief at 13-14.

Claimant next argues the ALJ erred by failing to properly weigh the CT scan readings of Drs. Rao and Imam as treating physicians under 20 C.F.R. §718.104(d). Claimant's Brief at 14-17; Claimant's Reply Brief at 6-7. Specifically, he asserts that if the ALJ had weighed Drs. Rao's and Imam's readings according to the factors set forth in 20 C.F.R. §718.104(d) to guide an ALJ's analysis of the opinion of a miner's treating physician, they would be in equipoise with Drs. Meyer's and Seaman's readings, which should have received reduced weight due to their "deviance from the ILO guidelines." Claimant's Brief at 14-16. While we do not agree the ALJ erred in the weight she accorded to the CT scan readings by Drs. Imam and Rao, we agree she otherwise erred with respect to CT scan readings contained in Claimant's treatment records.

As Claimant contends, an ALJ may assign controlling weight to a treating physician's opinion based on the nature and duration of the physician's relationship with the miner and the frequency and extent of the treatment. 20 C.F.R. §718.104(d). The weight given to a treating physician's opinion, however, "shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence, and the record as a whole." 20 C.F.R. §718.104(d)(5); *Hicks*, 138 F.3d at 533 (ALJ must consider the quality of a physician's reasoning); *see also Eastover Mining Co. v. Williams*, 338 F.3d 501, 513 (6th Cir. 2002) (treating physicians get "the deference they deserve based on their power to persuade"). The record reflects that the extent of Dr. Imam's treatment of Claimant was limited to having read an x-ray and two CT scans as part of Claimant's treatment for cancer in his kidneys, at which time Dr. Imam diagnosed 3-4 mm nodules of pneumoconiosis and not large opacities or complicated

pneumoconiosis. Employer's Exhibit 4 at 10-11, 16-17, 22-23. While Dr. Rao diagnosed complicated pneumoconiosis, the record reflects that his treatment of Claimant was limited to interpreting two CT scans related to Claimant's cancer treatment. Director's Exhibits 18, 34; Claimant's Exhibit 8. Considering the lack of a diagnosis of complicated pneumoconiosis by Dr. Imam and that Claimant does not explain how Dr. Rao's apparently limited scope of treatment would alter the weight of his readings under 20 C.F.R. §718.104(d), we conclude that the ALJ did not err in declining to accord additional weight to the CT scan readings from Claimant's treating physicians.

Regardless, Claimant's treatment records in this case include nine CT scans, none of which the ALJ considered despite their designation by the parties and admission into the record. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252-53 (4th Cir. 2016) (ALJ must consider all relevant evidence and must indicate explicitly that such evidence has been weighed and its weight); *Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 700 F.3d 878, 880 (6th Cir. 2012) ("[T]he Black Lung Benefits Act commands judges to consider 'all relevant evidence' in determining the validity of a given claim."); Claimant's Evidence Summary; Employer's Evidence Summary; Director's Exhibits 18, 34; Claimant's Exhibit 8; Employer's Exhibit 4. Notably, these records contain an additional reading of the August 13, 2020 CT scan from Dr. Rao, which is positive for complicated pneumoconiosis. Claimant's Exhibit 8.

As the ALJ failed to consider all relevant evidence and did not adequately explain her findings, we vacate her determination that the CT scan evidence refutes a finding of complicated pneumoconiosis. *Lockhart*, 137 F.3d at 803; *Wojtowicz*, 12 BLR at 1-165; Decision and Order at 11.

Medical Opinion Evidence

The ALJ next considered the medical opinions of Drs. Go, Ajjarapu, Zaldivar, and McSharry. Decision and Order at 11-13. Dr. Go opined that Claimant has complicated pneumoconiosis "[a]s the treating radiologists and the majority of consulting readers identified large opacities consistent with pneumoconiosis." Claimant's Exhibit 3 at 7. Dr. Ajjarapu opined Claimant has simple but not complicated pneumoconiosis based on Dr. DePonte's interpretations of the July 2, 2018 x-ray. Director's Exhibit 15. Dr. Zaldivar reviewed Claimant's medical records and concluded there is evidence to justify a diagnosis of simple coal workers' pneumoconiosis, but not complicated pneumoconiosis. Employer's Exhibit 7. Dr. McSharry initially opined Claimant has complicated pneumoconiosis based on Dr. Cohen's interpretation of the June 14, 2019 CT scan. Employer's Exhibit 1 at 2-3. After reviewing additional evidence, however, Dr. McSharry retracted his opinion and stated he is "not convinced that there is complicated pneumoconiosis based on the evidence" he reviewed. Employer's Exhibit 14 at 20.

The ALJ found all the physicians qualified and their opinions well-reasoned, but she accorded less weight to the opinions of Drs. Go and McSharry as they relied upon CT scan evidence that the ALJ found to be in equipoise. Decision and Order at 13. She afforded equal weight to the opinions of Drs. Ajjarapu and Zaldivar, finding the medical opinion evidence "overall" does not support a finding of complicated pneumoconiosis. *Id.*

As we have vacated the ALJ's weighing of the CT scan evidence, we must vacate her finding that the medical opinion evidence does not support a finding of complicated pneumoconiosis because her consideration of the CT scan evidence affected her weighing of the medical opinion evidence. Decision and Order at 11. Moreover, as Employer notes, the ALJ failed to consider Dr. Basheda's medical report and testimony. Employer's Brief at 28. Employer timely submitted this evidence and it was designated on Employer's evidence summary form, was admitted into evidence by the ALJ, and does not violate the evidentiary limitations. Employer's Brief at 28; Hearing Transcript at 13; Employer's Evidence Summary at 12; Employer's Exhibit 8, 16; *see* 20 C.F.R. §725.414(a)(3)(i),(c). Consequently, the ALJ erred in not considering it. *See Addison*, 831 F.3d at 252-53; *Hensley*, 700 F.3d at 880. Further, as Employer argues, the ALJ considered Dr. McSharry's initial opinion that Claimant has complicated pneumoconiosis, but she failed to consider his subsequent testimony that, upon review of additional evidence, Dr. McSharry retracted his opinion. *See Addison*, 831 F.3d at 252-53; *Hensley*, 700 F.3d at 880; Decision and Order at 12; Employer's Brief at 27-28.

Consequently, we vacate the ALJ's determination that the medical opinion evidence does not support a finding of complicated pneumoconiosis, the "other" medical evidence does not support a finding of complicated pneumoconiosis, and the evidence as a whole does not establish complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 13.

Remand Instructions

On remand, the ALJ must first reconsider whether the CT scan evidence established complicated pneumoconiosis under 20 C.F.R. §718.304(c),[12] including considering the CT scans from Claimant's treatment records. The ALJ should also explain her credibility determinations in accordance with the APA. *See Lockhart*, 137 F.3d at 803; *Wojtowicz*, 12 BLR at 1-165. The ALJ must then reconsider all the medical opinion evidence, including Dr. Basheda's opinion and Claimant's treatment records. Additionally, the ALJ should

[12] On remand, the ALJ should consider Employer's argument that Dr. Crum's CT scan interpretations are "outliers" and should therefore be accorded less weight. Employer's Brief at 26-27.

address the comparative credentials of the physicians,[13] the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Akers*, 131 F.3d at 441. The ALJ must then weigh together the evidence at subsections (a) and (c) before determining whether Claimant has met his burden of proving he has complicated pneumoconiosis by a preponderance of the evidence. *See Scarbro*, 220 F.3d at 256. If necessary, 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).[14] If the ALJ determines Claimant has not established complicated pneumoconiosis, she may reinstate the denial of benefits.

[13] On remand, the ALJ should consider Employer's argument that Drs. Meyer and Seaman are more qualified to offer an opinion than Dr. Cohen. Employer's Brief at 23-24.

[14] As we affirm the ALJ's finding that Claimant has 20.98 years of coal mine employment, he is entitled to the rebuttable presumption his pneumoconiosis arose out of his coal mine employment. 30 U.S.C. §921(c)(1); 20 C.F.R. §718.203(b).

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Denying Benefits and remand the case to the ALJ for further proceedings consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge