

U.S. Department of Labor

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



BRB Nos. 24-0306 BLA  
and 24-0385 BLA

JEAN VOLECK  
(o/b/o and Widow of MICHAEL R.  
VOLECK)

Claimant-Respondent

v.

THE HARRISON COUNTY COAL  
COMPANY c/o MURRAY ENERGY  
CORPORATION

and

MURRAY ENERGY CORPORATE TRUST  
c/o SMART CASUALTY CLAIMS

Employer/Carrier-  
Petitioners

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

Party-in-Interest

**NOT-PUBLISHED**

DATE ISSUED: 08/06/2025

**DECISION and ORDER**

Appeals of the Decisions and Orders Awarding Benefits of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

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

Aimee M. Stern (Dinsmore & Shohl, LLP), Wheeling, West Virginia, for Employer and its Carrier.

Ann Marie Scarpino (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: GRESH, Chief Administrative Appeals Judge, ROLFE, Administrative Appeals Judge, and ULMER, Acting Administrative Appeals Judge.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Natalie A. Appetta's Decisions and Orders Awarding Benefits (2023-BLA-05543 and 2024-BLA-05163) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on May 17, 2022, and a survivor's claim filed on April 17, 2023.<sup>1</sup>

The ALJ credited the Miner with forty-seven years of coal mine employment. She further found Claimant established the Miner had complicated pneumoconiosis and thereby invoked the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3). Furthermore, she determined his complicated pneumoconiosis arose out of his coal mine employment and awarded benefits in the miner's claim. In a subsequent decision, she determined that because the Miner was entitled to benefits at the time of his death, Claimant is automatically entitled to survivor's benefits under Section 422(l) of the Act.<sup>2</sup> 30 U.S.C. §932(l) (2018).

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<sup>1</sup> Claimant is the widow of the Miner, who died on October 8, 2022. Employer's Exhibit 3 at 87. Claimant is pursuing the miner's claim on her husband's behalf and her own survivor's claim. Employer's appeal in the miner's claim was assigned BRB No. 24-0306 BLA, and its appeal in the survivor's claim was assigned BRB No. 24-0385 BLA. The Benefits Review Board consolidates these appeals for purposes of decision only.

<sup>2</sup> Section 422(l) of the Act provides that the survivor of a miner who was determined to be eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l) (2018).

On appeal, Employer asserts that the ALJ erred in finding Claimant established the Miner had complicated pneumoconiosis.<sup>3</sup> Claimant responds, urging the Board to affirm the ALJ's decisions. The Acting Director, Office of Workers' Compensation Programs, filed a limited response in the survivor's claim, noting that Employer makes no separate arguments as to why the survivor's claim award should be overturned.

The Board's scope of review is defined by statute. We must affirm the ALJ's Decisions and Orders if they are 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).

### **Miner's Claim**

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. The United States Court of Appeals for the Fourth Circuit holds that because prong (a) sets out an entirely objective scientific standard for diagnosing complicated pneumoconiosis, that is, an x-ray opacity greater than one centimeter in diameter, the ALJ must determine whether a condition diagnosed by biopsy or autopsy under prong (b) or by any other means under prong (c) would show as an opacity greater than one centimeter if it were seen on a chest x-ray. *See E. Associated Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 256 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243 (4th Cir. 1999).

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<sup>3</sup> We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established the Miner had forty-seven years of coal mine employment, as well as simple clinical and legal pneumoconiosis. Decision and Order at 5, 22; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

<sup>4</sup> The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because the Miner performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 23; Decision and Order at 2 n.3.

The ALJ found the autopsy evidence sufficient to establish complicated pneumoconiosis.<sup>5</sup> 20 C.F.R. §718.304(b); Decision and Order at 10, 14, 22. When weighing the evidence as a whole, the ALJ determined that Claimant met her burden of proof and established the Miner had complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 22.

On October 12, 2022, Dr. El Jabbour performed the Miner's autopsy and opined he had "Coal worker's pneumoconiosis, favor complicated," marked fibrosis with numerous silicate particles, and anthracotic background of severe anthracosis with many fibrotic nodules in both lungs, some measuring up to two centimeters.<sup>6</sup> Claimant's Exhibit 1 at 1-2. Dr. Roggli subsequently reviewed the autopsy slides and diagnosed simple pneumoconiosis and bronchopneumonia in multiple sections of the lung tissue. Employer's Exhibit 4 at 1. He also identified coal dust macules and silicotic pleural nodules with numerous birefringent particulates and concluded that although "[t]he most

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<sup>5</sup> The ALJ found the single affirmative x-ray of record, conducted on August 4, 2022, did not establish complicated pneumoconiosis. Decision and Order at 10; Director's Exhibit 17. She further found the medical opinions of Drs. Posin and Fino, who did not diagnose complicated pneumoconiosis, do not support a finding of the disease. Decision and Order at 20; Director's Exhibit 17; Employer's Exhibit 1. The ALJ found the Miner's treatment records, including several x-rays and computed tomography scans, include diagnoses of lung nodules and other pulmonary conditions, but do not support a finding of pneumoconiosis as they do not provide an etiology for the included pulmonary diagnoses. Decision and Order at 21-22; Employer's Exhibit 3.

<sup>6</sup> Based on the autopsy, Dr. El Jabbour also diagnosed:

(b) Metastatic poorly differentiated esophageal adenocarcinoma for the pericardial sac, left lung (upper and lower lobes) and right lung (upper, middle and lower lobes). (c) Severe anthracosis, with extensive cobblestone appearance of pleural surfaces. (d) Acute lobar pneumonia involving multiple lung lobes (right upper and middle lobes and left lower lobe). (e) Thromboembolism, involving vasculature in right lower lobe. (f) Emphysematous changes. (g) Mediastinal lymph nodes with anthracosis and fibrosis, typical of changes seen in coal workers. (h) History of working in underground coal mines for 46 years.

Claimant's Exhibit 1 at 1-2. He further noted "[t]here are many palpable nodules measuring >1.0 cm [and] a 1.5 x 1.2 x .5 cm possible mass in the right lower lobe." *Id.* at 5.

extensive area of silicotic type fibrosis in histologic sections measures 1.8 cm linearly,” it was not an area of complicated pneumoconiosis as “this area is only a few mm in diameter.”<sup>7</sup> *Id.*

Initially, the ALJ noted that although Dr. El Jabbour’s credentials are unknown, she would weigh the opinions “most heavily [based] on the reasoning and documentation of the physicians, rather than solely their credentials.” Decision and Order at 13. The ALJ found Dr. El Jabbour’s well-documented and reasoned opinion was supported by his detailed observations and specific observations on microscopic and gross macroscopic review which outweigh his equivocal conclusion that the results “favor complicated” pneumoconiosis. *Id.* Further, the ALJ accorded reduced weight to Dr. Roggli’s opinion as unpersuasive for failing to adequately explain why a 1.8-centimeter-long nodule was insufficient to constitute complicated pneumoconiosis when the regulations do not require a large opacity to measure greater than one centimeter in multiple dimensions. *Id.* at 13-14. The ALJ concluded that Dr. El Jabbour’s diagnosis of large opacities measuring up to 2 cm, which are consistent with complicated pneumoconiosis, also establishes that the opacities would appear as greater than one centimeter on an x-ray. *Id.* at 14.

Initially, Employer contends the ALJ erroneously found complicated pneumoconiosis established when no physician opined the nodules would produce an opacity greater than one centimeter if viewed by x-ray or that the nodule constitutes a massive lesion. Employer’s Brief at 8 (unpaginated). We disagree.

The Fourth Circuit requires ALJs to perform equivalency determinations based on their evaluation of all the medical evidence of record. *Scarbro*, 220 F.3d at 255-56; *Blankenship*, 177 F.3d at 243-44. The absence of a specific statement of equivalency by a physician is not a bar to establishing complicated pneumoconiosis. *See Scarbro*, 220 F.3d at 258; *see also Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 7 (1976); *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 365 n.4 (4th Cir. 2006). In this case, the ALJ permissibly determined that Dr. El Jabbour’s diagnosis of “severe anthracosis with fibrotic nodules, some of which are up to 2 cm in size, consistent with changes seen in complicated coal worker’s pneumoconiosis,” was sufficient to make an equivalency determination under 20 C.F.R. §718.304(b). *See Perry*, 469 F.3d at 365-67 (finding that a physician’s opinion describing “multiple jet black nodules measuring up to 4 cm” may establish massive lesions

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<sup>7</sup> Dr. Roggli also noted, “A further complication of [the Miner’s] malignancy was the finding of multiple areas of acute bronchopneumonia.” Employer’s Exhibit 4 at 2. He further opined that the “autopsy indicate[s] that [the Miner’s] cause of death was due to metastatic esophageal cancer associated with a hypercoagulable state, which is often found in this malignancy.” *Id.*

and a diagnosis of “progressive massive fibrosis,” is sufficient to trigger the presumption); *Scarbro*, 220 F.3d at 258 (while a physician who identified a 1.7 centimeter lesion on biopsy did not provide an equivalency determination, there was “no reason to believe that nodules of 1.7 centimeters would not produce x-ray opacities greater than one centimeter”); Decision and Order at 13; Claimant’s Exhibit 1 at 2-3. We therefore affirm, as supported by substantial evidence, the ALJ’s determination that Dr. El Jabbour’s opinion was reasoned and documented, as well as the ALJ’s conclusion that the opacities identified on the autopsy would appear “greater than one [centimeter]<sup>8</sup> on x-ray.” Decision and Order at 13; see *Perry*, 469 F.3d at 365; *Scarbro*, 220 F.3d at 256, 258; *Blankenship*, 177 F.3d at 243; *Lane*, 105 F.2d at 174.

Nor are we persuaded by Employer’s argument that the ALJ erred in her weighing of the autopsy reports and finding they establish complicated pneumoconiosis. Employer’s Brief at 7-10 (unpaginated).

The ALJ had discretion to determine the weight to accord the physicians’ credentials and was required only to provide “some reasoned explanation” for her findings. See *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993). She considered the physicians’ credentials and recognized Dr. El Jabbour’s credentials are unknown.<sup>9</sup> Decision and Order at 13. However, she acted within her discretion by determining that the opinions should be weighed most heavily based on their reasoning and documentation. See *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). We therefore reject Employer’s argument that the ALJ was required to discredit Dr. El Jabbour’s opinion because his credentials were not in the record or automatically give more weight to Dr. Roggli’s opinion based on his qualifications. See *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; *Lane v. Union Carbide Corp.*, 105 F.3d 166 (4th Cir. 1997); Employer’s Brief at 10-11 (unpaginated).

Moreover, the ALJ reasonably credited Dr. El Jabbour’s autopsy report as well-documented and reasoned because he conducted the autopsy, performed a gross macroscopic and microscopic review, described his specific findings with detailed observations, and identified fibrotic nodules measuring up to two centimeters. See *Harman*

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<sup>8</sup> Although the ALJ stated “greater than one *inch*,” this appears to be a typographical error as she otherwise correctly recognizes that massive lesions are those that measure greater than one *centimeter* on an x-ray. Decision and Order at 11, 13 & n.16.

<sup>9</sup> Dr. El Jabbour’s credentials are not entirely unknown as his autopsy report specifies that he is a pathologist. Claimant’s Exhibit 1 at 1.

*Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 310 (4th Cir. 2012); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000); Decision and Order at 13; Claimant’s Exhibit 1 at 1-2. The ALJ acted within her discretion in finding Dr. El Jabbour’s cautious conclusion that the results “*favor* complicated [pneumoconiosis]” outweighed by his specific, unequivocal observations from his microscopic and macroscopic review of the autopsy. *See Perry*, 469 F.3d at 366 (physician’s use of cautious language does not necessarily reflect equivocation, and it is the function of the ALJ to evaluate the strength of the doctor’s opinion); *Pittsburg & Midway Coal Mining Co. v. Director, OWCP [Cornelius]*, 508 F.3d 975, 986-87 (11th Cir. 2007) (physician need not employ “magic words” – relevant question is whether the claimant met their burden to establish “a diagnosis of complicated pneumoconiosis under accepted medical standards”); Decision and Order at 13; Claimant’s Exhibit 1 at 1 (emphasis added).

We further affirm the ALJ’s determination that Dr. Roggli’s opinion was unpersuasive and inconsistent with the regulations because he failed to adequately explain why “extensive area[s] of silicotic type fibrosis in histologic sections measuring[ing] 1.8 cm linearly” is not indicative of complicated pneumoconiosis, when the regulations do not require that a lesion measure greater than one centimeter in all dimensions. 20 C.F.R. §718.304(a); *see also* 65 Fed. Reg. 79,920, 79,936 (Dec. 20, 2000) (declining to adopt diagnostic criteria requiring a lesion of 2.0 [centimeters] for a diagnosis of complicated pneumoconiosis because “the record does not substantiate the existence of a consensus among physicians for making diagnoses using these criteria”); *Scarbro*, 220 F.3d at 258; *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993); Decision and Order at 13-14.

Employer’s arguments amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). We therefore affirm the ALJ’s finding that the autopsy evidence establishes complicated pneumoconiosis in the form of large opacities that would appear as greater than one centimeter on an x-ray. 20 C.F.R. §718.304(b); Decision and Order at 13-14.

Weighing the evidence as a whole, the ALJ found the autopsy evidence establishes complicated pneumoconiosis and, therefore, Claimant invoked the irrebuttable presumption that the Miner was totally disabled due to pneumoconiosis at Section 411(c)(3) of the Act. 20 C.F.R. §718.304; Decision and Order at 22.

Employer contends that the ALJ erred in “concluding that the weight of the evidence supports a finding of complicated pneumoconiosis” because it asserts that Dr. El Jabbour’s autopsy diagnosis was “equivocal” and the other categories of evidence do not support a diagnosis of complicated pneumoconiosis. Employer’s Brief at 11-12 (unpaginated). Employer’s arguments once again amount to a request to reweigh the evidence, which we

cannot do. *Anderson*, 12 BLR at 1-113. Consequently, we affirm the ALJ's finding that Claimant established the Miner had complicated pneumoconiosis based on the evidence as a whole. Decision and Order at 22. We also affirm, as unchallenged, the ALJ's finding that the Miner'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 22. Consequently, we affirm the ALJ's finding that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis. 20 C.F.R. §718.304. We therefore affirm the award of benefits in the miner's claim.

### **Survivor's Claim**

Because we have affirmed the award of benefits in the miner's claim and Employer raises no specific challenge to the award of benefits in the survivor's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits. 30 U.S.C. 932(l); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013); Survivor's Decision and Order at 2.

Accordingly, we affirm the ALJ's Decisions and Orders Awarding Benefits in the Miner's claim and in the Survivor's claim.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

GLENN E. ULMER  
Acting Administrative Appeals Judge