U.S. Department of Labor

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

BRB No. 24-0404 BLA

DONNIE R. CROUCH Claimant-Respondent v. AEP KY COAL, LLC and AEP KY COAL, LLC C/O EAST COAST RISK MANAGEMENT Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 08/21/2025 DECISION and ORDER

Appeal of the Amended Decision and Order Awarding Benefits 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.

Sara May (Jones & Jones Law Office, PLLC), Pikeville, Kentucky, for Employer and its Carrier.

Sarah M. Hurley (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: ROLFE and JONES, Administrative Appeals Judges, and ULMER, Acting Administrative Appeals Judge.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Jason A. Golden's Amended Decision and Order Awarding Benefits (2022-BLA-05080)[1] rendered on a claim filed on March 24, 2020,[2] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Employer is the responsible operator. He credited Claimant with at least ten years of coal mine employment, based on the parties' stipulation, and found Claimant established complicated pneumoconiosis, thereby invoking 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 further found Claimant's complicated pneumoconiosis arose out of his coal mine employment, 20 C.F.R. §718.203(b), and awarded benefits.

On appeal, Employer challenges its designation as the responsible operator as well as the ALJ's exclusion from the record of Dr. Simone's interpretation of the July 29, 2013 computed tomography (CT) scan. On the merits of entitlement, it argues the ALJ erred in

[1] The ALJ originally issued a Decision and Order Awarding Benefits on May 7, 2024, in which he found benefits should commence in March 2020. Claimant timely moved for reconsideration, asserting the commencement date for benefits should be July 2013. The ALJ agreed and, on July 11, 2024, issued his Amended Decision and Order Awarding Benefits to reflect the correct commencement date of July 2013. In all other respects, the Decision and Orders are the same. Decision and Order at 1 n.1.

[2] Claimant filed a prior claim on September 12, 2005, but withdrew it. Director's Exhibit 1. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

finding Claimant established complicated pneumoconiosis.[3] Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs (the Director), responds, urging the Benefits Review Board to reject Employer's responsible operator argument.

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.[4] 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).

Responsible Operator

The responsible operator is the "potentially liable operator, as determined in accordance with [20 C.F.R.] §725.494, that most recently employed the miner" for at least one year.[5] 20 C.F.R. §§725.494(c), 725.495(a)(1). The district director is initially charged with identifying and notifying operators that may be liable for benefits and then identifying the "potentially liable operator" that is the responsible operator. 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b). Once the district director designates a responsible operator, that operator may be relieved of liability only if it proves either that it is financially incapable of assuming liability for benefits or that another operator financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R. §725.495(c).

[3] We affirm, as unchallenged on appeal, the ALJ's determination that Claimant established at least ten years of coal mine employment. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 21.

[4] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4; Hearing Transcript at 24.

[5] For a coal mine operator to meet the regulatory definition of a "potentially liable operator," each of the following conditions must be met: a) the miner's disability or death must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

The ALJ found Employer meets the regulatory definition of a potentially liable operator, and Employer does not allege it is financially incapable of assuming liability for benefits. 20 C.F.R. §725.494(a)-(e); Decision and Order at 11. We affirm this finding as unchallenged on appeal. *Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983). Consequently, Employer can avoid liability only by establishing that another financially capable operator employed Claimant more recently for at least one year.

Before the ALJ, Employer challenged its responsible operator designation by asserting that CAM-Kentucky, LLC (CAM) more recently employed Claimant for at least one year. 20 C.F.R. §725.495(a)(1); Employer's Post-Hearing Brief at 4 (unpaginated). While it acknowledged Claimant only worked from April 2004 through July 25, 2004, when he was injured in an accident, it asserted he remained on CAM's payroll while receiving temporary total disability benefits until July 2005, and that CAM thus employed Claimant for at least one year. Employer's Post Hearing Brief at 4 (unpaginated) (referencing Hearing Transcript at 35-37). Alternatively, it asserted Claimant's testimony establishes CAM was a successor operator to Employer, and that Claimant's time spent working for Employer and CAM should thus be aggregated to establish at least one year of employment with CAM. *Id.* at 5 (unpaginated) (referencing Hearing Transcript at 34). Neither argument persuaded the ALJ, as he found that Claimant's time drawing disability pay did not constitute coal mine work, thus CAM employed Claimant as a miner for only seventy-eight days through July 25, 2004, and that Claimant's testimony is insufficient to establish a successor operator relationship. Decision and Order at 6-11. Thus, the ALJ found Employer is the properly designated responsible operator. *Id.* at 11.

Employer argues the ALJ erred in finding CAM did not employ Claimant for at least one year. Employer's Brief at 4 (unpaginated). The Director responds that Claimant's employment after his July 25, 2004 injury did not constitute "working days" as defined by the regulations, and CAM thus did not employ Claimant for at least one year. We agree with the Director's position.

The regulations define a "year" as "one calendar year . . . or partial periods totaling one year, during which the miner worked in or around a coal mine or mines for at least 125 'working days.'" 20 C.F.R. §725.101(a)(32); *see Shepherd v. Incoal, Inc.*, 915 F.3d 392, 401 (6th Cir. 2019). As the Director asserts, the regulations further define a "working day" as "any day or part of a day for which a miner received pay for work as a miner, but shall not include any day for which the miner received pay while on an approved absence, such as vacation or sick leave."[6] Director's Response Brief at 4 (quoting 20 C.F.R.

[6] Approved absences may be counted as part of the calendar year only. 20 C.F.R. §725.101(a)(32). Where the evidence establishes a calendar year of employment but the miner worked "fewer than 125 working days in [the] year, he or she has worked a fractional

§725.101(a)(32)); *see also* 65 Fed. Reg. 79,920, 79,959 (Dec. 20, 2000) (In defining a "year of coal mine employment, the regulation contemplates an employment relationship totaling 365 days, within which 125 days were spent working and being exposed to coal mine dust, as opposed to being on vacation or sick leave."). Employer does not specifically argue CAM employed Claimant for any "working days" as a miner after he suffered his July 25, 2004 injury, nor does it argue CAM employed Claimant for at least 125 days prior to his injury.[7] Thus, we affirm the ALJ's finding that Claimant did not work for CAM for at least one year following the termination of his employment with Employer. Decision and Order at 6.

Employer next argues the ALJ erred in finding a successor operator relationship did not exist between it and CAM. We are not persuaded.

A "successor operator" is "[a]ny person who, on or after January 1, 1970, acquired a mine or mines, or substantially all of the assets thereof, from a prior operator, or acquired the coal mining business of such prior operator, or substantially all of the assets thereof[.]" 20 C.F.R. §725.492(a). Successor liability also is created when an operator ceases to exist due to a reorganization, a liquidation into a parent or successor corporation, a sale of substantially all its assets, or as a result of merger, consolidation, or division. 20 C.F.R. §725.492(b)(1)-(3). When an operator is considered a successor operator, any employment with a prior operator "is deemed to be employment with the successor." 20 C.F.R. §725.493(b)(1). If the successor operator independently employed the miner after the transaction that gave rise to the successor operator's liability, it is primarily liable for the payment of benefits. *Id.*

The ALJ considered Claimant's deposition testimony, hearing testimony, responses to Employer's interrogatories, Social Security Administration earnings records, Form CM-11a Employment History, and 2003 and 2004 Form W-2 Wage and Tax Statement. Decision and Order at 5; Hearing Transcript at 34; Director's Exhibits 4; 6; 8; 29 at 5; 30 at 10-16; 70. Claimant reported he worked for Employer from 2001 to 2004 until CAM "bought them out," Director's Exhibit 29 at 5, but that he continued to work with the same people at the same place with the same equipment as an employee of CAM. Hearing Transcript at 34; Director's Exhibit 30 at 11-12. The ALJ also considered records from the

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year based on the ratio of the actual number of days worked to 125." 20 C.F.R. §725.101(a)(32)(i).

[7] We affirm, as unchallenged, the ALJ's finding that Claimant worked for seventy-eight days between the date on which Claimant began working for CAM and the date on which he suffered his injury. *See Skrack*, 6 BLR at 1-711; Decision and Order at 6 n.18.

Kentucky Secretary of State, which document that Employer was registered with the Commonwealth of Kentucky in November 2002 and remained an ongoing concern as of June 2021, whereas CAM registered in January 2004 but was no longer licensed to conduct business in Kentucky as of November 2009. Decision and Order at 8; Director's Exhibit 70 at 2-3, 7, 9. He further observed those records show the companies were based in different states and used different registered agents in Kentucky. Decision and Order at 8; Director's Exhibit 70 at 2-3, 7, 9.

The ALJ permissibly discredited Claimant's testimony on the responsible operator issue because he found there was "an inadequate evidentiary foundation to demonstrate Claimant had personal knowledge of the contractual relationship or undertakings of either company." Decision and Order at 8; *see Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012); *Tackett v. Cargo Mining Co*., 12 BLR 1-11, 1-14 (1988) (en banc) (ALJ has discretion to assess witness credibility, and the Board will not disturb his findings unless they are inherently unreasonable). In addition, he found that, even if credited, Claimant's testimony did not clearly support the existence of a successor operator relationship and could just as likely support the existence of an alternative business arrangement, such as a lease, that would not satisfy the regulatory requirements to establish a successor operator relationship. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983) (Board may not reweigh evidence but rather is limited to reviewing ALJ's legal determinations and determining whether the factual findings are supported by substantial evidence.); Decision and Order at 10-11. He further permissibly found the Kentucky Secretary of State records do not constitute proof of a successor operator relationship. *See Banks*, 690 F.3d 489; *Rowe*, 710 F.2d at 255; Decision and Order at 8-9.

It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *See Banks*, 690 F.3d at 489; *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Rowe*, 710 F.2d at 255. The Board cannot substitute its inferences for those of the ALJ. *Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). We therefore affirm the ALJ's finding that the Employer failed to establish the existence of a successor operator relationship between Employer and CAM. Decision and Order at 11. As Employer raises no further challenges, we further affirm the ALJ's finding that Employer is the properly designated responsible operator. *Id.*

Evidentiary Challenge

At the March 15, 2023 hearing, the ALJ granted Employer thirty days for post-hearing evidentiary development responsive to Dr. DePonte's interpretations of the July 29, 2013 and July 17, 2017 CT scans. Hearing Transcript at 19-20; Post-Hearing Scheduling Order (Mar. 16, 2023 Order); *see* Claimant's Exhibit 9. The ALJ instructed the parties that they could request an extension of the deadline "by timely written motion."

March 16, 2023 Order at 2. Employer moved for an extension of the deadline on April 25, 2023, explaining that there had been confusion about the date of the July 17, 2017 CT scan which caused Employer to be unable to obtain the CT scan in a timely fashion. Employer's Apr. 25, 2023 Motion for Extension of Time to File Post-Hearing Evidence. On May 19, 2023, Employer submitted Dr. Simone's readings of the July 29, 2013 and July 17, 2017 CT scans along with another motion to extend the deadline. Employer's May 19, 2023 Motion for Leave to File Medical Reports of Frank J. Simone, M.D., As Evidence; Employer's Exhibits 7, 8. In both motions, Employer acknowledged the deadline for submission was April 14, 2013. Employer's May 19, 2023 Motion for Leave to File Medical Reports of Frank J. Simone, M.D., As Evidence; Employer's Apr. 25, 2023 Motion for Extension of Time to File Post-Hearing Evidence. By Order dated June 7, 2023, the ALJ granted Employer's motion to admit Dr. Simone's reading of the July 17, 2017 CT scan but denied its motion to admit the doctor's reading of the July 29, 2013 CT scan, explaining that Employer had demonstrated excusable neglect for the untimely filing of the former but not the latter. Order on Employer's Motions for Extension of Time and for Leave to File Medical Reports, at 3 (June 7, 2023 Order).

Employer asserts the ALJ erred in finding it did not establish excusable neglect for not timely submitting its motion to admit Dr. Simone's reading of the July 29, 2013 CT scan. Employer's Brief at 7 (unpaginated). We are not persuaded.

The Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (OALJ Rules) apply in proceedings under the Act to the extent they are not inconsistent with either the Act itself or the Act's regulations. 29 C.F.R. §18.10(a). The OALJ Rules in turn adopt the Federal Rules of Civil Procedure "excusable neglect" standard for determining whether an untimely pleading should be entertained. *See* 29 C.F.R. §18.32(b); *accord* Fed. R. Civ. P. 6(b)(1)(B). Specifically, when an act "must be done within a specified time," the ALJ "may, for good cause, extend the time . . . if the party failed to act because of *excusable neglect*." 29 C.F.R. §18.32(b) (emphasis added). This is a strict standard under which judges must have "good reasons for permitting litigants to exceed deadlines." *Robinson v. City of Harvey, Ill.*, 617 F.3d 915, 918-19 (7th Cir. 2010) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1996)). Further, the moving party bears the burden of proving that its delay is excusable. *Drippe v. Tobelinski*, 604 F.3d 778, 784 (3d Cir. 2010) (citing *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 896 n.5 (1990)).

The United States Supreme Court has outlined four factors to consider when determining if "excusable neglect" exists: (1) prejudice to the opposing party; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. *Pioneer Inv. Servs. Co.*, 507 U.S. at 395. As the Court

explained, "the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Id*.

We see no error in the ALJ's denial of Employer's motion to accept Dr. Simone's reading of the July 29, 2013 CT scan out of time. Although the ALJ did not specifically outline the *Pioneer* factors for determining excusable neglect, *see Pioneer Inv. Servs. Co.*, 507 U.S. at 395, his determination that Employer failed to establish excusable neglect is nevertheless rationally based on the relevant factors. The ALJ found Employer was aware of Dr. DePonte's reading of the July 29, 2013 CT scan as early as December 2022. June 7, 2023 Order at 3. He noted Employer did not assert it was mistaken as to the date of the CT scan and that it received Dr. Simone's reading of the scan on April 19, 2023, but waited until May 22, 2023, to submit it and that Employer did not provide an adequate explanation for the delay. *Id.* While he found Claimant would not be prejudiced by the late admission of Dr. Simone's reading, he further found the failure to timely submit the evidence was within Employer's sole control and that Employer failed to demonstrate it acted in good faith. Thus, he permissibly determined that, under the circumstances, Employer failed to demonstrate excusable neglect for the late submission of Dr. Simone's reading of the July 29, 2013 CT scan and its accompanying motion to admit it out of time. *See Pioneer Inv. Servs. Co.*, 507 U.S. at 395.

An ALJ exercises broad discretion in resolving procedural and evidentiary matters. *See Dempsey v. Sewell Coal Corp*., 23 BLR 1-47, 1-63 (2004) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc). Thus, a party seeking to overturn the disposition of a procedural or evidentiary issue must establish an abuse of discretion. *See V.B.* [*Blake*] *v. Elm Grove Coal Co*., 24 BLR 1-109, 1-113 (2009); *Smith v. Martin Cnty. Coal Corp*., 23 BLR 1-69, 1-74 (2004). Here, Employer has failed to establish the ALJ abused his discretion in denying its request for an extension of time and excluding of Dr. Simone's reading of the July 29, 2013 CT scan. We therefore affirm the ALJ's exclusion of Dr. Simone's reading of the July 29, 2013 CT scan.

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 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 which 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 together all evidence relevant to the presence or absence of complicated pneumoconiosis. 30 U.S.C. §923(b); *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 Claimant established complicated pneumoconiosis based on the x-rays, CT scans, treatment records, medical opinion evidence, and the preponderance of the evidence as a whole.[8] 20 C.F.R. §718.304; Decision and Order at 14, 17, 19, 20-21.

Employer contends the ALJ erred in finding Claimant has complicated pneumoconiosis based on the x-ray and medical opinion evidence.[9] Employer's Brief at 6-7 (unpaginated). We disagree.

X-Ray Evidence: 20 C.F.R. §718.304(a)

The ALJ considered eleven interpretations of five x-rays, dated March 19, 2021, September 23, 2021, November 18, 2021, March 15, 2022, and May 10, 2022. Decision and Order at 13-14; Director's Exhibits 14 at 24; 19 at 2; 23 at 3-4; Claimant's Exhibits 1 at 23; 4 at 20; 7 at 3; 10 at 1; Employer's Exhibits 2 at 4; 3 at 5; 5 at 4; 6 at 4. He found all the interpreting physicians are dually qualified as B readers and Board-certified radiologists and that their readings are thus entitled to equal weight on the basis of their credentials. Decision and Order at 14.

Drs. DePonte and Crum read the March 19, 2021 x-ray as positive for simple and complicated pneumoconiosis, Category B. Director's Exhibits 14 at 24; 19 at 2. Dr. DePonte also read the September 23, 2021, March 15, 2022, and May 10, 2022 x-rays as positive for simple and complicated pneumoconiosis, Category B. Claimant's Exhibits 4 at 18; 10 at 1, 21. Dr. Kendall likewise read the November 18, 2021 x-ray as positive for simple and complicated pneumoconiosis, Category B. Claimant's Exhibit 7 at 2-3. In contrast, Dr. Simone read all five x-rays as negative for both diseases. Director's Exhibit 23 at 3-4; Employer's Exhibits 2 at 3-4; 3 at 3-4; 5 at 3-4; 6 at 3-4.

The ALJ noted Drs. DePonte, Crum, and Kendall each read at least one of the x-rays as positive for both simple and complicated pneumoconiosis, whereas Dr. Simone read all of the x-rays as negative for both diseases. Decision and Order at 14. Thus, "[i]n the face of overwhelming opposition to [Dr. Simone's] opinions," the ALJ found his x-ray readings entitled to little credibility or weight. *Id.* Consequently, crediting the positive

[8] The ALJ accorded controlling weight to the x-ray and CT scan evidence. Decision and Order at 21.

[9] We affirm, as unchallenged, the ALJ's findings that Claimant's treatment records support a finding of complicated pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order at 19.

readings of Drs. DePonte, Crum, and Kendall over the contrary readings of Dr. Simone, the ALJ found the x-ray evidence supports a finding of complicated pneumoconiosis. *Id.*

We affirm, as unchallenged on appeal, the ALJ's finding that Dr. Simone's x-ray readings are entitled to little weight. *See Skrack*, 6 BLR at 1-711; Decision and Order at 14. Thus, as the only credited x-ray readings diagnosed complicated pneumoconiosis, we affirm, as supported by substantial evidence, the ALJ's finding that the x-ray evidence supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a).

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

The ALJ considered the medical opinions of Drs. Raj, Davidson, Dahhan, and Broudy. Decision and Order at 20-21. Dr. Raj diagnosed complicated pneumoconiosis based on Dr. DePonte's reading of the March 19, 2021 x-ray, and Dr. Davidson diagnosed complicated pneumoconiosis based on Dr. DePonte's reading of the May 10, 2022 x-ray. Director's Exhibit 14 at 4; Claimant's Exhibit 4 at 4. Drs. Dahhan and Broudy did not specifically opine as to whether Claimant has pneumoconiosis. Director's Exhibit 24 at 3; Employer's Exhibit 1 at 5. The ALJ permissibly discredited Drs. Raj's and Davidson's opinions because their diagnoses are wholly reliant on another physician's x-ray reading. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576 (6th Cir. 2000); Decision and Order at 20. The ALJ further permissibly concluded Drs. Dahhan and Broudy did not specifically opine as to the presence or absence of complicated pneumoconiosis. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-14 (6th Cir. 2002); Decision and Order at 20. Thus, the ALJ found the medical opinion evidence neither supports nor weighs against a finding of complicated pneumoconiosis. Decision and Order at 20.

The ALJ found that the opinions of Drs. Raj and Davidson add nothing to the pneumoconiosis analysis as they are both based solely on x-ray evidence. Decision and Order at 20. Thus, the ALJ accorded little weight to the opinions of Drs. Raj and Davidson and accurately concluded that the opinions of Drs. Dahhan and Broudy do not address whether Claimant has complicated pneumoconiosis. *Id.* He therefore concluded that the medical opinions do not negate a finding of complicated pneumoconiosis.[10] *Id.*

Employer raises no specific argument challenging the ALJ's finding beyond its general assertion that the preponderance of the medical opinion evidence demonstrates Claimant does not have complicated pneumoconiosis. Employer's Brief at 7

[10] Later in his decision, the ALJ concluded that the preponderance of the medical opinion evidence supports a finding of complicated pneumoconiosis because he also considered Dr. DePonte's positive readings of the July 2013 and July 2017 CT scans as a medical report. Decision and Order at 20-21.

(unpaginated). We regard Employer's argument as a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. We therefore affirm the ALJ's finding that the medical opinion evidence neither supports nor weighs against a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c).

As Employer raises no additional challenge to the ALJ's findings,[11] we affirm, as supported by substantial evidence, the ALJ's finding that Claimant has established complicated pneumoconiosis based on the preponderance of the evidence as a whole. Decision and Order at 21; *see Martin v. Ligon Preparation Coal Co.*, 400 F.3d 302, 305 (6th Cir. 2005). We also 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*, 6 BLR at 1-711; Decision and Order at 21. 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.

[11] Employer also contends the ALJ should have found the CT scan evidence in equipoise. Employer's Brief at 7 (unpaginated). However, its sole argument is that the ALJ erred by declining to admit Dr. Simone's reading of the July 29, 2013 CT scan into evidence. *Id.* As we have affirmed the ALJ's exclusion of this evidence, we reject Employer's argument and thus affirm the ALJ's finding that the CT scan evidence supports a finding of complicated pneumoconiosis. Decision and Order at 17.

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

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge