



BRB No. 25-0224 BLA

KENNETH D. REYNOLDS

Claimant-Petitioner

v.

PARAMONT COAL COMPANY
VIRGINIA, LLC

Employer-Respondent

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 08/26/2026

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of William P. Farley,
Administrative Law Judge, United States Department of Labor.

Kenneth D. Reynolds, Clintwood, Virginia.

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

PER CURIAM:

Claimant appeals, without representation,¹ Administrative Law Judge (ALJ)
William P. Farley's Decision and Order Denying Benefits (2022-BLA-05732) rendered on

¹ On Claimant's behalf, Vickie Combs, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested the Benefits Review Board review the

a claim filed on April 19, 2021,² pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

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. He credited Claimant with 30.55 years of qualifying coal mine employment but found Claimant failed to establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Therefore, he determined Claimant could not invoke the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4),³ or establish entitlement to benefits under 20 C.F.R. Part 718. Thus, the ALJ denied benefits.

On appeal, Claimant generally challenges the denial of benefits.⁴ Neither Employer nor the Director, Office of Workers' Compensation Programs, has filed a substantive response.

In an appeal filed without representation, the Board addresses whether substantial evidence supports the Decision and Order below. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.⁵ 33 U.S.C.

administrative law judge's (ALJ's) decision, but Ms. Combs is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

² Claimant filed three prior claims, which he withdrew. Director's Exhibits 37 at 5; 45. As Claimant withdrew his prior claims, they are considered not to have been filed. 20 C.F.R. §725.306(b).

³ Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if he establishes 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); *see* 20 C.F.R. §718.305.

⁴ We affirm, as unchallenged, the ALJ's finding that Claimant established 30.55 years of qualifying coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4-5.

⁵ 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*

§921(b)(3), as incorporated by 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Statutory presumptions may assist a claimant in establishing these elements when certain conditions are met, but failure to establish any element precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

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, medical opinions, and computed tomography (CT) scan do not establish complicated pneumoconiosis.⁶ 20 C.F.R. §718.304(a)-(c); Decision and Order at 15, 17, 18. Weighing all the evidence together, he concluded Claimant did not establish the disease. 20 C.F.R. §718.304; Decision and Order at 18.

v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 18; see Director’s Exhibit 3.

⁶ The record contains no biopsy evidence and, therefore, Claimant cannot establish complicated pneumoconiosis at 20 C.F.R. §718.304(b).

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

The ALJ considered seven interpretations of four x-rays dated February 12, 2020, February 24, 2021, November 1, 2021, and November 1, 2022. Decision and Order at 6, 15; Director’s Exhibit 18; Claimant’s Exhibits 1-3; Employer’s Exhibits 4, 6, 7. The ALJ found all the interpreting physicians are dually-qualified as B readers and Board-certified radiologists. Decision and Order at 15. Each x-ray was read as positive for simple pneumoconiosis and negative for complicated pneumoconiosis.⁷ Director’s Exhibit 18; Claimant’s Exhibits 1-3; Employer’s Exhibits 4, 6, 7.

The ALJ accorded “normal” weight to all four x-rays and accurately found each x-ray is positive for simple pneumoconiosis and negative for complicated pneumoconiosis. Decision and Order at 15; Director’s Exhibit 18; Claimant’s Exhibits 1-3; Employer’s Exhibits 4, 6, 7. Weighing the x-ray evidence together, the ALJ found it does not support a finding of complicated pneumoconiosis. Decision and Order at 18. Because complicated pneumoconiosis was not identified on any of the x-rays, we affirm, as supported by substantial evidence, the ALJ’s finding that the x-ray evidence does not support a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a). *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); 20 C.F.R. §718.304(a); Decision and Order at 18.

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

The ALJ next considered whether the other evidence, which consists of CT scans and medical opinions, supports a finding of complicated pneumoconiosis. Decision and Order at 16-18.

CT Scans

The ALJ considered two readings of the April 1, 2021 CT scan. Decision and Order at 17-18; Claimant’s Exhibit 4; Employer’s Exhibit 5. Dr. DePonte interpreted the CT scan

⁷ Dr. Crum interpreted the February 12, 2020 x-ray as positive for simple pneumoconiosis, but did not identify any large opacities. Claimant’s Exhibit 2. Drs. Crum and Adcock both interpreted the February 24, 2021 x-ray as positive for simple pneumoconiosis, but did not note a large opacity. Claimant’s Exhibit 1; Employer’s Exhibit 7. Drs. DePonte, Tarver, and Crum interpreted the November 1, 2021 x-ray as positive for simple pneumoconiosis, but did not identify a large opacity. Director’s Exhibit 18; Claimant’s Exhibit 3; Employer’s Exhibit 4. Dr. Adcock interpreted the most recent November 1, 2022 x-ray as positive for simple pneumoconiosis, but did not note any large opacities. Employer’s Exhibit 6.

as consistent with complicated pneumoconiosis, based on a coalescence in the right lower lobe with a bilobed large opacity measuring twelve by five millimeters. Claimant's Exhibit 4. Dr. Adcock's reading of the CT scan identified a coalescence of small opacities in the right lower lobe but no large opacities. Employer's Exhibit 5. The ALJ permissibly accorded less weight to Dr. DePonte's reading because her later interpretation of the November 12, 2021 x-ray failed to note any large opacities, which contradicted her reading of the April 1, 2021 CT scan. *See Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 316-17 (4th Cir. 2012); Decision and Order at 18. Because it is supported by substantial evidence, we affirm the ALJ's finding that the CT scan evidence does not support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c); *see Compton*, 211 F.3d at 207-08; *Hicks*, 138 F.3d at 528.

Medical Opinions

The ALJ also considered the opinions of Dr. Forehand and Dr. McSharry. Decision and Order at 16-17. Both physicians diagnosed simple pneumoconiosis based on the x-ray evidence but did not diagnose complicated pneumoconiosis.⁸ Director's Exhibit 18 at 5; Employer's Exhibits 6 at 2; 8 at 11-12. The ALJ correctly observed that neither physician diagnosed complicated pneumoconiosis. We therefore affirm, as supported by substantial evidence, the ALJ's finding that the negative medical opinion evidence "leans against" a finding of complicated pneumoconiosis. Decision and Order at 17; *see* 20 C.F.R. §718.304(c); *Hicks*, 138 F.3d at 533; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).

As the ALJ permissibly found Claimant did not establish complicated pneumoconiosis by any method, we affirm his determination that the preponderance of evidence does not establish the disease. 20 C.F.R. §718.304; Decision and Order at 18; *see Melnick*, 16 BLR at 1-33-34. Consequently, we affirm the ALJ's finding that Claimant

⁸ Dr. Forehand diagnosed coal workers' pneumoconiosis based on "[t]he appearance of [C]laimant's chest x-ray." Director's Exhibit 18 at 5. Dr. McSharry similarly diagnosed simple coal workers' pneumoconiosis based on the x-ray evidence he evaluated. Employer's Exhibit 6 at 2. At his deposition, Dr. McSharry stated that "[n]one of the seven routine B readings of the radiographs identified any large lesions of pneumoconiosis, although all saw simple pneumoconiosis." Employer's Exhibit 8 at 11. He also noted Dr. DePonte indicated "there may be a single lesion of pneumoconiosis" but since Dr. Adcock did not identify a lesion, complicated pneumoconiosis has not been "convincingly demonstrated." *Id.* at 11-12.

failed to invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3). 20 C.F.R. §718.304; Decision and Order at 18.

Invocation of the Section 411(c)(4) Presumption – Total Disability

To invoke the Section 411(c)(4) presumption, Claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work or comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). Claimant may establish total disability based on qualifying pulmonary function studies or arterial blood gas studies,⁹ evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

The ALJ found Claimant did not establish total disability based on any category of evidence. 20 C.F.R. §718.204(b)(2)(i)-(iv); Decision and Order at 22.

Pulmonary Function Studies

The ALJ considered two pulmonary function studies performed on November 1, 2021, and November 1, 2022,¹⁰ and three pulmonary function studies, included in Claimant's treatment records, performed on August 1, 2014, February 6, 2017, and August 16, 2017. Decision and Order at 7, 19; Director's Exhibit 18 at 7-9; Employer's Exhibits 1-3; 6 at 6-7. Because the studies reported different heights ranging from 69 to 71 inches, the ALJ permissibly averaged them to find Claimant is 70.5 inches tall and used this height in determining whether each study is qualifying. *See Carpenter v. GMS Mine & Repair Maint. Inc.*, 26 BLR 1-33, 1-38-39 (2023); *K.J.M. [Meade] v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-44 (2008); *Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983); Decision and Order at 7.

⁹ A "qualifying" pulmonary function study or arterial blood gas study yields results equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

¹⁰ Dr. McSharry noted that the November 1, 2022 values "were not formally valid and may underestimate best lung function." Employer's Exhibit 6 at 6.

The ALJ accurately found all the studies produced non-qualifying results.¹¹ Decision and Order at 7, 19; Director’s Exhibit 18 at 7-9; Employer’s Exhibits 1-3; 6 at 6-7. Thus, we affirm his finding that Claimant cannot establish total disability at 20 C.F.R. §718.204(b)(2)(i).

Arterial Blood Gas Studies

The ALJ considered two arterial blood gas studies performed on November 1, 2021 and November 1, 2022, and accurately found both studies produced non-qualifying results. Decision and Order at 8, 20; Director’s Exhibit 18 at 11-13; Employer’s Exhibit 6 at 20-21. We therefore affirm his finding that Claimant cannot establish total disability at 20 C.F.R. §718.204(b)(2)(ii).

Cor Pulmonale

The ALJ correctly found there is no evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 20. Thus, we affirm his determination that Claimant cannot establish total disability at 20 C.F.R. §718.204(b)(2)(iii).

Medical Opinions

In considering the medical opinion evidence, the ALJ found Claimant’s usual coal mine work as a miner operator required “at least heavy exertion.”¹² Decision and Order at 5. We affirm the ALJ’s finding as it is rational and supported by substantial evidence. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *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).

The ALJ next considered the opinions of Drs. Forehand and McSharry. Decision and Order at 9-10, 21. Dr. Forehand performed the Department of Labor-sponsored complete pulmonary evaluation of Claimant on November 1, 2021, and obtained a non-qualifying pulmonary function study and a non-qualifying blood gas study. Director’s

¹¹ The ALJ omitted Claimant’s non-qualifying November 1, 2021 MVV value of 68.4 from the results table. Decision and Order at 7; Director’s Exhibit 18 at 7. Because that value is non-qualifying, any error the ALJ may have made in this regard is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

¹² The ALJ relied on the definition of “Heavy Work” from the *Dictionary of Occupational Titles*. Decision and Order at 5 n.38.

Exhibit 18. He opined that Claimant has “[n]o measurable respiratory impairment” based on the pulmonary function study and blood gas study results. *Id.* at 5.

Dr. McSharry examined Claimant and obtained non-qualifying objective testing results. Employer’s Exhibit 6. He also reviewed Claimant’s medical records, including Dr. Forehand’s report and objective testing results. *Id.* at 1. He noted that Claimant may have a “trivial pulmonary impairment” but advised repeat testing to clarify the issue. Employer’s Exhibit 6 at 2. Dr. McSharry concluded there is no evidence of a totally disabling pulmonary or respiratory impairment and found Claimant has a high capacity for exercise tolerance based on his exercise blood gas studies. *Id.*; Employer’s Exhibit 8 at 14-16. He therefore concluded that Claimant has the pulmonary capacity to perform his last coal mine job. Employer’s Exhibits 6 at 2; 8 at 17-19.

Because both physicians opined that Claimant does not have a respiratory or pulmonary impairment that would preclude the performance of his usual coal mine work, the ALJ permissibly found Claimant did not establish total disability based on the medical opinion evidence at 20 C.F.R. §718.204(b)(2)(iv). *See Looney*, 678 F.3d at 316-17; *Compton*, 211 F.3d at 207-08; Decision and Order at 21.

Claimant has the burden of establishing entitlement to benefits and bears the risk of non-persuasion if the evidence is found insufficient to establish a required element of entitlement. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 281 (1994); *Young v. Barnes & Tucker Co.*, 11 BLR 1-147, 1-150 (1988); *Oggero v. Director, OWCP*, 7 BLR 1-860, 1-865 (1985). Because it is supported by substantial evidence, we affirm the ALJ’s finding that Claimant did not establish total disability based on the evidence as a whole and thus did not invoke the Section 411(c)(4) presumption. *See Rafferty*, 9 BLR at 1-232; *Shedlock*, 9 BLR at 198; Decision and Order at 22. As Claimant did not establish total disability, an essential element of entitlement, benefits are precluded under 20 C.F.R. Part 718. *See* 20 C.F.R. §718.204(b)(2); *Anderson*, 12 BLR at 1-112.

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

SO ORDERED.

JONATHAN ROLFE, Acting Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge