

U.S. Department of Labor

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



BRB No. 25-0248 BLA

RICHARD E. CURRENCE

Claimant-Petitioner

v.

WOLF RUN MINING COMPANY

and

ARCH COAL INCORPORATED
c/o SMART CASUALTY CLAIMS

Employer/Carrier-
Respondents

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 08/28/2026

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Drew A. Swank,
Administrative Law Judge, United States Department of Labor.

Deanna Lyn Istik (Sinatra & Istik Law Office, PLLC), Cranberry Township,
Pennsylvania, for Claimant.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for
Employer.

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

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Denying Benefits (2024-BLA-05584) rendered on a claim filed on April 25, 2023, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ found Claimant has at least thirty-two years of underground coal mine employment and simple pneumoconiosis. He determined Claimant did not establish complicated pneumoconiosis and, thus, 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, he found Claimant failed to establish a totally disabling respiratory and pulmonary impairment, 20 C.F.R. §718.204(b)(2), and therefore did 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),¹ or establish a necessary element of entitlement under 20 C.F.R. Part 718. Consequently, the ALJ denied benefits.

On appeal, Claimant argues the ALJ erred in finding he did not establish complicated pneumoconiosis.² Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, declined to file a response brief.

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.³ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

¹ 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); *see* 20 C.F.R. §718.305.

² We affirm, as unchallenged on appeal, the ALJ's findings that Claimant failed to establish a totally disabling respiratory and pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2) and therefore did 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). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 7, 16-24.

³ 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 West Virginia. *See*

Invocation of the Section 411(c)(3) Presumption

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), 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 a claimant has invoked the irrebuttable presumption, the ALJ must weigh all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Assoc. Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 255-56 (4th Cir. 2000); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

The ALJ found the x-ray and medical opinion evidence does not support a finding of complicated pneumoconiosis, and, weighing all the evidence together, Claimant did not establish the existence of complicated pneumoconiosis.⁴ Decision and Order at 9-15. Claimant challenges the ALJ's weighing of the x-ray evidence. Claimant's Brief at 8-11.

The ALJ considered eight interpretations of two x-rays dated May 31, 2023, and October 24, 2023. Decision and Order at 9-11. Drs. DePonte and Alexander read the May 31, 2023 x-ray as positive for simple and complicated pneumoconiosis, Category A, while Dr. Seaman read the x-ray as positive for only simple pneumoconiosis. Director's Exhibits 16, 20, 22. Dr. DePonte also read the October 24, 2023 x-ray as positive for simple and complicated pneumoconiosis, Category A, while Drs. Basheda, Seaman, Alexander, and Meyer read it as positive for only simple pneumoconiosis. Director's Exhibits 21, 23; Claimant's Exhibit 5; Employer's Exhibits 1, 2. The ALJ noted all the interpreting physicians are dually-qualified Board-certified radiologists and B readers, except Dr. Basheda, who is a B reader. Decision and Order at 9-10.

The ALJ found the May 31, 2023 x-ray is positive for complicated pneumoconiosis because a greater number of dually-qualified radiologists read it as positive for the disease.

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

⁴ The ALJ accurately observed there is no biopsy or autopsy evidence in the record. 20 C.F.R. §718.304(b); Decision and Order at 12. We further affirm, as unchallenged on appeal, the ALJ's finding that the medical opinions do not support a finding of complicated pneumoconiosis. *See Skrack*, 6 BLR at 1-711; Decision and Order at 14-15.

Decision and Order at 11. Similarly, he found the October 24, 2023 x-ray is negative for complicated pneumoconiosis based on the greater number of negative readings. *Id.* Given all the x-ray readings are positive for simple pneumoconiosis, the ALJ found Claimant established clinical pneumoconiosis. *Id.* at 10-11. However, given one x-ray is positive for complicated pneumoconiosis and the other is negative for the disease, the ALJ concluded the x-ray evidence is in equipoise regarding the existence of complicated pneumoconiosis. *Id.* at 10.

Claimant argues the ALJ erred in finding Dr. Alexander's reading of the October 24, 2023 x-ray is negative for complicated pneumoconiosis. Claimant's Brief at 10-11. We disagree.

While Dr. Alexander diagnosed simple pneumoconiosis and recommended further evaluation of several "sub centimeter nodules in the peripheral right mid lung zone" by computed tomography scan, he clearly stated there are no large opacities consistent with pneumoconiosis on the x-ray form. Claimant's Exhibit 5 at 1-2. Further, in his narrative report, he opined there are "[n]o areas of coalescence or large pulmonary opacities" present. *Id.* at 1. Thus, we discern no error in the ALJ's conclusion that Dr. Alexander's x-ray reading is negative for complicated pneumoconiosis. 20 C.F.R. §718.304(a); Decision and Order at 10-11.

Claimant also contends the ALJ erred in considering all three readings of the October 24, 2023 x-ray that Employer submitted, as they exceed the applicable evidentiary limitations at 20 C.F.R. §725.414. Claimant's Brief at 9-10. Employer agrees the ALJ erred in considering Dr. Basheda's reading as it did not designate this reading on its Evidence Summary Form nor argue it should be considered, but argues the error is harmless. Employer's Brief at 10-12; *see* Employer's Evidence Summary Form at 2 (designating readings by Drs. Seaman and Meyer as Employer's two affirmative x-ray interpretations under 20 C.F.R. §725.414(a)(3)(i)). We agree with Employer's contention.

The ALJ specifically noted Dr. Basheda is a B reader while the other interpreting physicians are dually-qualified B readers and Board-certified radiologists. Decision and Order at 9. Weighing the October 24, 2023 x-ray, the ALJ noted one dually-qualified physician read it as positive for complicated pneumoconiosis while three dually-qualified physicians read it as negative for the disease, then found "these four experts have similar qualifications and [are] entitled to identical weight." *Id.* at 11. He further found the preponderance of the readings by "these four experts" is positive for simple and not complicated pneumoconiosis. *Id.* Then he separately noted the x-ray was also read as negative for complicated pneumoconiosis by a B reader, Dr. Basheda. *Id.* Because the ALJ relied on the readings of the dually-qualified physicians Drs. DePonte, Seaman, Alexander, and Meyer in finding the x-ray is negative for complicated pneumoconiosis,

any error in his considering Dr. Basheda's reading is harmless. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Finally, Claimant argues the ALJ erred in finding the two x-rays weighed together are in equipoise for the existence of complicated pneumoconiosis. Claimant Brief at 10-11. Claimant asserts the ALJ should have weighed all the x-ray readings together and found the preponderance of the readings is positive for complicated pneumoconiosis. *Id.* at 11. But Claimant essentially asks us to reweigh the evidence, which we are not authorized to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

As Claimant raises no further issues, we affirm the ALJ's finding that the x-ray evidence, and the evidence as a whole, does not establish complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 15.

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

SO ORDERED.

DANIEL T. GRESH
Administrative Appeals Judge

JONATHAN ROLFE, Acting Chief
Administrative Appeals Judge

GLENN E. ULMER
Administrative Appeals Judge