

U.S. Department of Labor

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



BRB No. 25-0070 BLA

GARY DALTON

Claimant-Respondent

v.

PARAMONT COAL COMPANY  
VIRGINIA, LLC

Employer-Petitioner

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

Party-in-Interest

**NOT-PUBLISHED**

DATE ISSUED: 12/09/2025

DECISION and ORDER

Appeal of the Decision and Order Granting Benefits of Heather C. Leslie,  
Administrative Law Judge, United States Department of Labor.

Kendra R. Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for  
Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Heather C. Leslie's Decision  
and Order Granting Benefits (2022-BLA-05788) rendered on a subsequent claim filed on

August 9, 2021,<sup>1</sup> pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with 24.07 years of qualifying coal mine employment based on the parties' stipulation. She found Claimant established complicated pneumoconiosis and therefore invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). *See* 20 C.F.R. §718.304. Further, she found Claimant's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits. 20 C.F.R. §718.203(b).

On appeal, Employer argues the ALJ erred in finding Claimant established complicated pneumoconiosis. Neither Claimant nor the Acting Director, Office of Workers' Compensation Programs, filed a response.

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.<sup>2</sup> 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 (1965).

### **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 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. In determining whether Claimant has invoked the irrebuttable

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<sup>1</sup> According to the district director, Claimant filed a prior claim on November 30, 2018, which was finally denied on November 16, 2019. Director's Exhibit 38 at 7. However, the record of Claimant's prior denied claim is not contained in the record of this claim. Thus, the record does not reflect the basis for the prior claim's denial. The ALJ reviewed this claim on the merits as if it were an initial claim, and Employer does not challenge that aspect of the ALJ's decision. Therefore, we do not address the subsequent claim issue further.

<sup>2</sup> 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 v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 6; Director's Exhibit 3.

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, 1-33-34 (1991) (en banc).

The ALJ found the chest x-ray and medical opinion evidence supports a finding of complicated pneumoconiosis, while the computed tomography (CT) scans and Claimant's treatment records neither support nor refute the existence of the disease.<sup>3</sup> 20 C.F.R. §718.304(a), (c); Decision and Order at 16-19. Weighing the evidence as a whole, she found Claimant established complicated pneumoconiosis. Decision and Order at 20.

### **20 C.F.R. §718.304(a) – X-rays**

The ALJ considered seven interpretations of three x-rays dated September 24, 2018, December 10, 2019, and January 3, 2022. Decision and Order at 10-15. She found all the physicians who interpreted the x-rays are dually qualified as B readers and Board-certified radiologists. *Id.* at 14. Dr. DePonte read the September 24, 2018 x-ray as positive for complicated pneumoconiosis, Category B, while Dr. Adcock read the x-ray as negative for the disease. *Id.* at 11-12, 14; Claimant's Exhibit 1. Dr. DePonte read the December 10, 2019 x-ray as positive for complicated pneumoconiosis, Category B, while Dr. Adcock read the x-ray as negative for the disease. Director's Exhibit 17; Employer's Exhibit 1. Drs. DePonte and Miller read the January 3, 2022 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Adcock read the x-ray as negative for the disease. Director's Exhibits 12, 18; Claimant's Exhibit 2.

The ALJ found the September 24, 2018 and December 10, 2019 x-ray readings in equipoise as to the presence of complicated pneumoconiosis because an equal number of dually-qualified physicians read each x-ray as positive compared to negative for the disease. Decision and Order at 15. As two dually-qualified experts interpreted the January 3, 2022 x-ray as positive for complicated pneumoconiosis and one dually-qualified expert interpreted it as negative for the disease, the ALJ found the x-ray supports a finding of complicated pneumoconiosis. *Id.* Thus, she found Claimant established complicated pneumoconiosis based on the x-ray evidence because "the record contains one positive x-ray and two in equipoise." *Id.*

Employer argues the ALJ improperly "counted heads" in finding the January 3, 2022 x-ray positive for complicated pneumoconiosis. Employer's Brief at 5-8. We disagree. The ALJ properly performed both a qualitative and quantitative analysis of the

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<sup>3</sup> The ALJ found there is no biopsy evidence in the record to evaluate under 20 C.F.R. §718.304(b). Decision and Order at 15.

conflicting x-ray readings, taking into consideration the physicians' qualifications, their specific interpretations, and the number of readings of each film. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992) ("A primary method of evaluating the reliability of an expert's opinion is of course his expertise, and the regulations command that physicians' radiological qualifications be considered."); *See "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); Decision and Order at 15. Consequently, we affirm her finding that the January 3, 2022 x-ray is positive for complicated pneumoconiosis. Decision and Order at 14-15. We therefore further affirm her finding that the x-ray evidence supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a).<sup>4</sup> *See* Decision and Order at 15.

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

### **CT Scan Evidence**

The ALJ indicated that she considered CT scan readings dated November 14, 2018, August 23, 2021, and October 8, 2021. Decision and Order at 16. She found that Dr. Ramakrishnan interpreted the November 14, 2018 CT scan as showing (1) diffuse moderate reticulonodular interstitial changes of the lungs; (2) no large pulmonary mass; (3) enlarged right hilar nodes and mediastinal nodes suggestive of stable granulomatous process; and (4) no pleural or pericardial effusion. *Id.* at 16-17; Claimant's Exhibit 6 at 7. She noted Dr. Spillett read the August 23, 2021 CT scan as indicating "[s]table mediastinal and

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<sup>4</sup> Employer argues the ALJ failed to address that Dr. DePonte noted a 5.5-centimeter mass seen on the September 24, 2018 x-ray she indicated was likely a malignancy. Employer's Brief at 7. In completing Part 2 of the International Labour Organization (ILO) x-ray form, Dr. DePonte checked a box indicating there are "parenchymal abnormalities consistent with pneumoconiosis" and another box indicating the presence of a Category B large opacity. Claimant's Exhibit 1. In completing Part 4 of the ILO x-ray form, she checked a box indicating the presence of "other abnormalities" and only there mentioned the 5.5-centimeter mass under the "other comments" section. *Id.* Employer does not explain how the mass Dr. DePonte described in the Part 4 "other abnormalities" section of the ILO x-ray form constitutes an alternative diagnosis to the Category B opacity she noted in the Part 2 "parenchymal abnormalities consistent with pneumoconiosis" section of the form. *See id.* Regardless, any error would be harmless as Employer does not assert that the September 24, 2018 x-ray should have been found to be negative for the disease, but rather that it is "at the very best in equipoise," which is what the ALJ concluded. Employer's Brief at 7; *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).

bilateral hilar lymphadenopathy,” finding the “X-ray abnormality likely is secondary to right hilar lymphadenopathy.” Decision and Order at 17; Claimant’s Exhibit 6 at 5. The ALJ also stated that Dr. DePonte interpreted an October 8, 2021 CT scan as showing “classic findings of simple and complicated coal workers’ pneumoconiosis similar to previous.” Decision and Order at 17. Finally, the ALJ noted that Dr. Adcock submitted two reports reviewing the Miner’s CT scans<sup>5</sup> and finding “no small or large opacities of coal workers’ pneumoconiosis.” *Id.*; Employer’s Exhibits 5, 6.

Weighing the CT scan evidence together, the ALJ found “it does not contain explicit findings of complicated pneumoconiosis” and that, “at best, the sets of reports filed by both parties are in equipoise.” Decision and Order at 17. Consequently, she found the CT scan evidence does not support a finding of complicated pneumoconiosis. *Id.*

Employer accurately asserts the ALJ erred in finding that Dr. DePonte read an October 8, 2021 CT scan as positive for simple and complicated pneumoconiosis, as this reading is not in the record.<sup>6</sup> Employer’s Brief at 9-10. But any error in the ALJ’s consideration of this CT scan is harmless because Employer’s ultimate argument that “the CT scan evidence does not support a finding of complicated pneumoconiosis” is consistent with the ALJ’s conclusion that the CT scan evidence is at best in equipoise and therefore does not establish complicated pneumoconiosis. Employer’s Brief at 9; *see Shinseki v. Sanders*, 556 U.S. 396, 413 (2009); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 17.

### **Medical Opinion Evidence**

The ALJ next considered the medical opinions of Drs. Forehand and Adcock. Decision and Order at 18-19. Dr. Forehand conducted the Department of Labor’s complete pulmonary evaluation of Claimant and diagnosed complicated pneumoconiosis with progressive massive fibrosis based on “[t]he appearance of [Claimant’s January 3, 2022]

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<sup>5</sup> Dr. Adcock’s interpretations state they are from examinations dated January 15, 2021, and August 23, 2021, at Wellmont Lonesome Pine Hospital. Employer’s Exhibits 5, 6.

<sup>6</sup> The ALJ states that Dr. DePonte’s October 8, 2021 CT scan interpretation was submitted as Claimant’s Exhibit 5. Decision and Order at 17 n.73. However, that exhibit contains treatment notes from Claimant’s visit to Stone Mountain Health Services on November 19, 2018. Claimant’s Exhibit 5. There is also no record of this CT scan interpretation on Claimant’s evidence summary form or elsewhere in the record. *See* ALJ Exhibit 2.

x-ray.” Director’s Exhibit 12 at 4. Conversely, Dr. Adcock concluded that Claimant’s radiographic changes are consistent with his past histoplasmosis, not pneumoconiosis, and attributed the large mass that Drs. Miller and DePonte observed in their x-ray readings to be the enlargement of nodes. Employer’s Exhibit 7 at 4. Crediting Dr. Forehand’s opinion over Dr. Adcock’s because she found it well-reasoned, the ALJ determined the medical opinion evidence supports a finding of complicated pneumoconiosis. Decision and Order at 19-20.

Employer does not challenge the ALJ’s finding that Dr. Adcock’s opinion is not well-reasoned, and we therefore affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 19. Rather, Employer contends the ALJ erred in giving any weight to Dr. Forehand’s opinion because it is based solely on an x-ray reading. Employer’s Brief at 10-11.

Notwithstanding Employer’s argument concerning Dr. Forehand’s opinion, remand is not required. Even if we were to agree with Employer that Dr. Forehand’s opinion is entitled to no weight, there would be no credible medical opinions on the issue of complicated pneumoconiosis. In the absence of credible contrary probative evidence, Employer has failed to explain how this error would undermine the ALJ’s weighing of the x-ray evidence at 20 C.F.R. §718.304(a). *See Shinseki*, 556 U.S. at 413; Decision and Order at 19-20.

Thus, we affirm the ALJ’s finding that the evidence when weighed as a whole establishes complicated pneumoconiosis. *Cox*, 602 F.3d at 283; *Scarbro*, 220 F.3d at 255-56; *Melnick*, 16 BLR at 1-33-34; Decision and Order at 20. We further affirm, as unchallenged, the ALJ’s finding that Claimant’s complicated pneumoconiosis arose out of his coal mine employment. *Skrack*, 6 BLR at 1-711; *see* 20 C.F.R. §718.203(b); Decision and Order at 20. 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; Decision and Order at 20-21.

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

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

GLENN E. ULMER  
Acting Administrative Appeals Judge