

U.S. Department of Labor

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



BRB No. 25-0097 BLA

BUSTER WOODS, JR.)
)
 Claimant-Respondent)
)
 v.)
)
 BLACKJEWEL, LLC)
)
 Employer-Petitioner)
 and)
)
 ROCKWOOD CASUALTY INSURANCE)
 COMPANY)
)
 Carrier)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Party-in-Interest)

NOT-PUBLISHED

DATE ISSUED: 01/09/2026

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Willow Eden Fort,
Administrative Law Judge, United States Department of Labor.

Denise Hall Scarberry (Baird & Baird PSC), Pikeville, Kentucky, for
Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Willow Eden Fort's Decision and Order Awarding Benefits (2021-BLA-05620) rendered on a claim filed on December 18, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulation that Claimant has forty-one years of underground coal mine employment and found he established complicated pneumoconiosis. Thus, she found he 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) (2018); 20 C.F.R. §718.304. She further found Claimant's complicated pneumoconiosis arose out of his coal mine employment, 20 C.F.R. §718.203, and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established complicated pneumoconiosis. Claimant and the Acting Director, Office of Workers' Compensation Programs, declined to file a response brief.¹

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.² 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).

Invocation of the Section 411(c)(3) Presumption: Complicated Pneumoconiosis

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 chest 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, 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

¹ Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, represented Claimant when this case was before the ALJ, but Ms. Napier is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order). Thus, Claimant is self-represented on appeal.

² This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because 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 3; Hearing Tr. at 15-16.

evidence relevant to the presence or absence of complicated pneumoconiosis. *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 the chest x-ray evidence, medical opinion evidence, and Claimant's treatment record evidence support a finding of complicated pneumoconiosis, while the computed tomography (CT) scans do not. 20 C.F.R. §718.304(a), (c); Decision and Order at 4-16. Weighing the evidence together, she found Claimant established he had the disease. Decision and Order at 16.

X-ray Evidence

The ALJ considered ten interpretations of four chest x-rays dated October 8, 2019, March 2, 2020, August 31, 2020, and December 17, 2020. All the physicians who interpreted the x-rays are Board-certified radiologists and B Readers. Dr. DePonte read the October 8, 2019 chest x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Simone read the x-ray as negative for the disease. Director's Exhibits 18, 25. Drs. DePonte and Crum read the March 2, 2020 chest x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Simone read the x-ray as negative for the disease. Director's Exhibits 14 at 18; 19 at 2; 23 at 1-2. Dr. Ramakrishnan read the August 31, 2020 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Simone twice read the x-ray as negative for the disease. Director's Exhibits 20, 24, 27. Dr. Crum read the December 17, 2020 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Kendall read the x-ray as positive for simple pneumoconiosis. Director's Exhibits 21, 28.

As all interpreting physicians are dually qualified, the ALJ found their relative qualifications do not provide a basis to assign more or less weight to any of the interpretations. Decision and Order at 6. She found the October 8, 2019 x-ray inconclusive for complicated pneumoconiosis because Drs. DePonte's and Simone's conflicting interpretations were entitled to equal weight. *Id.* She found the March 2, 2020 x-ray positive for complicated pneumoconiosis because, with all the physician's interpretations given equal weight, the preponderance of their readings supported a finding of complicated pneumoconiosis. *Id.* The ALJ found the August 31, 2020 x-ray inconclusive for complicated pneumoconiosis because Drs. Ramakrishnan's and Simone's interpretations were entitled to equal weight and Dr. Simone's rehabilitative statement was insufficient to add any additional weight to their original interpretation. *Id.* at 7-8. She found the December 17, 2020 x-ray inconclusive for complicated pneumoconiosis because Drs. Kendall's and Crum's interpretations were entitled to equal weight. *Id.* at 8-9. As one x-ray was positive for complicated pneumoconiosis and three were inconclusive, the ALJ

concluded that the overall weight of the x-ray evidence is positive for complicated pneumoconiosis. *Id.* at 9.

Employer argues the ALJ erred in crediting the interpretations of the October 8, 2019 and August 31, 2020 x-rays to find complicated pneumoconiosis because the physicians failed to specify the location of the large Category A opacities they identified. Employer's Brief at 6-7, 9-10 (unpaginated). We disagree.

The regulation at 20 C.F.R. §718.304(a) setting forth what constitutes a positive x-ray reading for complicated pneumoconiosis does not require that opacities appear in specific lung zones. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441. Thus, nothing in the statute or regulations required the physicians to specify the location of the opacities for the ALJ to credit their readings. And to the extent Employer implies the ALJ should have discredited the readings for the same reason as a matter of discretion, Employer's argument is 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).

Employer next argues the ALJ erred in weighing Dr. DePonte's interpretation of the March 2, 2020 x-ray by failing to consider her remarks noting "CT may reveal category B opacities in the form of pseudoplaques" which it alleges contradicted her checking of a box indicating she did not identify any pleural abnormalities consistent with pneumoconiosis. Employer's Brief at 8-10 (unpaginated). Employer's argument is unpersuasive as it fails to explain how the physician's allegedly contradictory remarks regarding the possible presence of Category B opacities due to pleural pseudoplaques in any way undermines her unequivocal identification of a Category A large opacity in the lung parenchyma. *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).

Employer also argues the ALJ erred in crediting Dr. Crum's interpretation of the December 17, 2020 x-ray contending the physician's remarks questioning the etiology of a right upper quadrant density undermines his identification of a Category A large opacity. Employer's Brief at 10-11 (unpaginated). We again disagree.

The ALJ permissibly found Dr. Crum interpreted the x-ray as positive for complicated pneumoconiosis based on his unequivocal identification of a Category A large opacity and his statement that these findings are consistent with complicated pneumoconiosis. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 712-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366 (4th Cir. 2006) ("refusal to express a diagnosis in categorical terms is candor, not equivocation"); Decision and Order at 8-9 & n.17; Director's Exhibit 21.

The ALJ thus permissibly found the October 8, 2019, August 31, 2020, and December 17, 2020 x-rays inconclusive for pneumoconiosis and the March 2, 2020 x-ray positive for complicated pneumoconiosis based on the radiological qualifications of the interpreting physicians, and she reasonably concluded the x-ray evidence is positive for complicated pneumoconiosis. Decision and Order at 6-9. Because the ALJ performed a qualitative and quantitative analysis of the x-rays, substantial evidence supports her decision. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); *Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-300 (2003). Thus, we affirm the ALJ's conclusion that the x-ray evidence supports a finding of complicated pneumoconiosis. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 281 (1994), *aff'g sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730 (3d Cir. 1993); 20 C.F.R. §718.304(a); Decision and Order at 4-9.

CT Scan Evidence

The ALJ considered Drs. Gilbert's and Simone's interpretations of a CT scan dated November 30, 2021. Decision and Order at 9-12; Claimant's Exhibit 1; Employer's Exhibit 3. Dr. Gilbert noted nonspecific reticulonodular abnormalities consistent with silicosis. Claimant's Exhibit 1 at 1. The physician noted the largest nodule, located in the right upper lobe, measured 0.7 by 1.9 centimeters and could be inflammatory and/or neoplastic. *Id.* Dr. Simone noted the scan showed a background of rounded opacities in low profusion and a calcified granuloma in the right upper lobe. Employer's Exhibit 3 at 1. He concluded there was no evidence of complicated pneumoconiosis. *Id.*

The ALJ accorded neither interpretation probative weight and found the CT scan evidence is not probative on the issue of complicated pneumoconiosis. Decision and Order at 9-12. Specifically, the ALJ found Dr. Gilbert's opinion that the largest nodule may be inflammatory and/or neoplastic to be speculative as there is no evidence of record showing Claimant suffered from cancer or an inflammatory disease. *Id.* at 11. Moreover, the ALJ noted that because Dr. Gilbert identified a nodule greater than one centimeter, the interpretation should not be considered as negative for complicated pneumoconiosis. *Id.* at 10.

The ALJ further noted Dr. Simone failed to provide any measurement or etiology of the calcified granuloma he identified in the same location where Dr. Gilbert identified a large opacity measuring 0.7 by 1.9 centimeters. Decision and Order at 12. Thus, the ALJ found Dr. Simone's interpretation not well documented and poorly reasoned and therefore accorded it no probative weight. *Id.*

Employer argues the ALJ erred in considering the CT scan evidence.³ Employer’s Brief at 12 (unpaginated). We disagree.

Employer argues the ALJ erred in finding Dr. Gilbert’s opinion could support a diagnosis of complicated pneumoconiosis because the nodule the physician identified would not be greater than one centimeter when diagnosed by x-ray. Employer’s Brief at 13 (unpaginated). In addition, Employer argues the ALJ erred in according the interpretation no probative weight. *Id.* At the outset, to the extent Employer implies the ALJ should have credited the reading as negative for the disease, Employer’s argument is a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. Employer’s other argument mischaracterizes the ALJ’s finding because the ALJ did not find the interpretation could support finding complicated pneumoconiosis. Decision and Order at 10. Rather, the ALJ found the interpretation should not be considered as negative for complicated pneumoconiosis because Dr. Gilbert identified a nodule greater than one centimeter. *Id.* Nevertheless, even if we accept that the ALJ erred by finding the interpretation should not be considered negative, Dr. Gilbert’s interpretation is inconclusive, at best, as it does not affirmatively show the large opacity is not there or not what it seems to be. Therefore, even if given probative weight, it would not reduce the probative force of the x-ray evidence showing opacities exceeding one centimeter. *E. Assoc. Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 256 (4th Cir. 2000) (x-ray

³ Employer variously argues the ALJ erred by determining the CT scan evidence established the presence of complicated pneumoconiosis, by determining the CT scan evidence is probative on the issue of complicated pneumoconiosis, and/or by concluding the CT scan evidence is inconclusive for the presence or absence of complicated pneumoconiosis. Employer’s Brief at 12, 14 (unpaginated) (Employer’s brief alternatively stating “[t]he Administrative Law Judge Erred In Determining That The CT-Scan Evidence Established The Presence Of Complicated Coal Workers Pneumoconiosis,” “[t]he Administrative law Judge erred in determining that the CT scan evidence is probative on the issue of complicated pneumoconiosis,” and “it was error for the Administrative law Judge to conclude that the CT scan evidence is inconclusive for the presence or absence of complicated pneumoconiosis.”). The ALJ did not conclude the CT scan evidence is inconclusive for the presence or absence of complicated pneumoconiosis. *See* Decision and Order at 9-12. Rather, the ALJ found the CT scan evidence did not establish the presence of complicated pneumoconiosis because both CT scan interpretations were *not* probative on the issue of complicated pneumoconiosis. *Id.* Nevertheless, as Employer challenges the ALJ’s weighing of both interpretations of the November 30, 2021 CT scan, we interpret Employer’s argument to be that the ALJ erred by not crediting both interpretations as negative for complicated pneumoconiosis and not finding the CT scan evidence probative for the absence of complicated pneumoconiosis.

evidence can lose force only if other evidence affirmatively shows the opacities are not there or are not what they seem to be).

Employer further argues the ALJ erred in discrediting Dr. Simone's CT scan interpretation because the physician did not state the level of profusion or note the size of the granuloma identified. Employer's Brief at 12 (unpaginated). At the outset, the ALJ's discrediting of Dr. Simone's interpretation due to the physician's failure to note a profusion is related to the presence of simple pneumoconiosis. *See* Decision and Order at 10. Thus, any error in this regard is not relevant to the ALJ's weighing of this interpretation on the issue of complicated pneumoconiosis. Employer's additional argument that the ALJ should not have discredited this reading amounts to 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 CT scan evidence is not probative on the issue of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 9-12.

Medical Opinion Evidence

The ALJ considered the medical opinions of Drs. Forehand, Dahhan, and Jarboe on the issue of complicated pneumoconiosis. Decision and Order at 12-16. Dr. Forehand determined Claimant has complicated pneumoconiosis, whereas Drs. Dahhan and Jarboe concluded he did not. Director's Exhibits 14, 20, 26, 28; Employer's Exhibits 1a, 2a. The ALJ found Dr. Forehand's opinion consistent with the evidence of record and entitled to probative weight. Decision and Order at 12-13. In contrast, the ALJ found the opinions of Drs. Dahhan and Jarboe to be entitled to little weight because their conclusions were unpersuasive when considering the x-ray evidence. *Id.* at 13-15. She thus determined the medical opinion evidence supported a finding of complicated pneumoconiosis. *Id.* at 15-16.

Employer argues the ALJ erred in discrediting Dr. Dahhan's opinion because "she misinterpreted and misstated his opinion." Employer's Brief at 14-15 (unpaginated). Further, Employer argues the ALJ erred in crediting Dr. Forehand's opinion over Dr. Dahhan's because Dr. Forehand had less impressive credentials. *Id.* at 14.⁴ We disagree.

Contrary to Employer's contention, the ALJ permissibly discredited Dr. Dahhan's opinion because it was not supported by the weight of the evidence of record and because the physician failed to explain what was wrong with the other better credentialed doctors'

⁴ As Employer does not challenge the ALJ's discrediting of Dr. Jarboe's medical opinion, we affirm it. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

readings. See *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th. Cir. 1997).

We also reject Employer's argument the ALJ erred in crediting Dr. Forehand over Dr. Dahhan because of Dr. Forehand's "lesser" qualifications. While an ALJ may give greater weight to a physician with "superior" qualifications, he is not required to do so. See *Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-114 (2006) (en banc), *aff'd on recon.*, 24 BLR 1-13 (2007) (en banc); *Bateman v. E. Assoc. Coal Corp.*, 22 BLR 1-255, 1-261 (2003); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993); see also *J.V.S. v. Arch of W. Va./Apogee Coal Co.*, 24 BLR 1-78, 1-90 n.13 (2008); *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-65 (2004) (en banc). We thus affirm the ALJ's finding that the medical opinion evidence establishes complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 12-16.

Claimant's Treatment Record Evidence

The ALJ considered Claimant's treatment records noting instances where he was diagnosed with complicated pneumoconiosis based on the identification of large nodules or opacities on x-rays or CT scans. Decision and Order at 16. The ALJ found Claimant's treatment records supported the x-ray readings, helping Claimant meet his burden of establishing the presence of complicated pneumoconiosis. *Id.*

Employer argues the ALJ erred in failing to consider "the medical evidence which specifically requested exclusion of malignancy, and the treating evidence which indicated absolutely no cardiopulmonary abnormalities." Employer's Brief at 16 (unpaginated) (citing Director's Exhibit 17, Claimant's Exhibit 9). But Employer has not explained how those comments could make a difference given the ALJ's findings that the chest x-ray evidence and medical opinion evidence establishes complicated pneumoconiosis, which we have affirmed. Decision and Order at 4-16; see *Shinseki*, 556 U.S. at 413; 20 C.F.R. §718.304(a), (c). As substantial evidence supports the ALJ's conclusions, we affirm her ruling that Claimant established complicated pneumoconiosis on the record as a whole. See *Gray*, 176 F.3d at 388-89; *Melnick*, 16 BLR at 1-33-34; Decision and Order at 16. We thus affirm the ALJ's conclusion that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis. 20 C.F.R. §718.304.

We further affirm, as unchallenged, the ALJ's determination that Claimant'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 17.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge