

U.S. Department of Labor

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



BRB No. 24-0268 BLA

GARY L. DORSEY

Claimant-Respondent

v.

BROOKS RUN MINING COMPANY, LLC  
c/o ANR INCORPORATED/ CONTURA  
ENERGY

and

ANR, INCORPORATED

Employer/Carrier-Petitioner

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

Party-in-Interest

**NOT-PUBLISHED**

DATE ISSUED: 07/31/2025

DECISION and ORDER

Appeal of the Decision and Order on Remand Awarding Benefits of Natalie  
A. Appetta, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Austin), Norton,  
Virginia, for Claimant.

Ann B. Rembrandt (Jackson Kelly PLLC), Charleston, West 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) Natalie A. Appetta's Decision and Order on Remand Awarding Benefits (2020-BLA-05915) rendered on a claim filed on April 9, 2019, pursuant the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case is before the Benefits Review Board for a second time.

In her initial Decision and Order Awarding Benefits, the ALJ credited Claimant with forty years of coal mine employment, at least thirty-four of which were underground. She further found that Claimant established the presence of 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); 20 C.F.R. §718.304. Finally, she found Claimant's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits. 20 C.F.R. §718.203.

Employer appealed, asserting that the ALJ erred in denying its request to submit a rebuttal interpretation of a computed tomography (CT) scan submitted by Claimant shortly before the hearing. The Board agreed and held that, pursuant to 20 C.F.R. §725.414(a)(3)(ii), Employer should have been granted the opportunity to submit rebuttal evidence. *Dorsey v. Brooks Run Mining Co.*, BRB No. 22-0290 BLA, slip op. at 3-4 (Aug. 4, 2023) (unpub.). Accordingly, the Board remanded the case for the ALJ to reopen the record for rebuttal and rehabilitative evidence, and for reconsideration of the CT scan evidence. *Id.* The Board instructed that if, upon reconsideration, the ALJ found the evidence failed to establish complicated pneumoconiosis, she must consider whether Claimant is entitled to benefits under Section 411(c)(4) of the Act. 30 U.S.C. §921(c)(4).<sup>1</sup> *Id.* at 4.

On remand, the ALJ accepted into evidence Dr. Danielle Seaman's rebuttal interpretation of the CT scan dated June 10, 2019.<sup>2</sup> The ALJ then reconsidered the CT scan

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<sup>1</sup> Section 411(c)(4) 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) (2018); *see* 20 C.F.R. §718.305.

<sup>2</sup> The ALJ provided Claimant an opportunity to address the rebuttal evidence through rehabilitative evidence, but Claimant did not submit any additional evidence.

evidence,<sup>3</sup> but she again found it establishes the existence of complicated pneumoconiosis. She further determined the “other” medical evidence and the evidence as a whole establishes Claimant suffers from complicated pneumoconiosis and that his complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §§718.203, 718.304. Therefore, she awarded benefits.

On appeal, Employer maintains that the ALJ erred in her reconsideration of the CT scan evidence and failed to fully comply with the Board’s instructions on remand. Claimant responds, urging affirmance of the award of benefits. The Acting Director, Office of Workers’ Compensation Programs, has not filed a response.

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.<sup>4</sup> 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, 362 (1965).

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

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). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

The United States Court of Appeals for the Fourth Circuit has held, “[b]ecause prong (A) sets out an entirely objective scientific standard’—i.e., an opacity on an x-ray greater than one centimeter—x-ray evidence provides the benchmark for determining what under prong (B) is a ‘massive lesion’ and what under prong (C) is an equivalent diagnostic result reached by other means.” *E. Assoc. Coal Corp. v. Director [Scarbro]*, 220 F.3d 250, 256 (4th Cir. 2000) (quoting *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243 (4th

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<sup>3</sup> The ALJ reaffirmed the finding in her original Decision and Order that the chest x-rays and medical opinion evidence were in equipoise as to the existence of complicated pneumoconiosis. Decision and Order on Remand at 6-7.

<sup>4</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 West Virginia. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 31, 47-48.

Cir. 1999)). Claimant bears the burden to establish the existence of complicated pneumoconiosis. See *Director, OWCP v. Greenwich Collieries* [Ondecko], 512 U.S. 267, 281 (1994). In determining whether 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); *Scarbro*, 220 F.3d at 255-56; *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ reiterated her prior finding that the x-ray evidence is in equipoise and therefore Claimant did not establish complicated pneumoconiosis at 20 C.F.R. §718.304(a).<sup>5</sup> Decision and Order on Remand at 6; Decision and Order at 12.

The ALJ then reconsidered the CT scan evidence at 20 C.F.R. §718.304(c). Decision and Order on Remand at 8-9. Claimant underwent a CT scan at Summerville Regional Medical Center on June 10, 2019, as part of his treatment for “other disorders of lung.” Employer’s Exhibit 4. Dr. Ramsay interpreted the CT scan as showing “no major interstitial pathology,” “no significant pulmonary fibrosis,” and “small bilateral pleural-based nodules” measuring less than one centimeter. *Id.* Dr. DePonte, a dually-qualified Board-certified radiologist and B reader, interpreted the scan as showing simple pneumoconiosis in the upper lung lobes with multiple large opacities consistent with complicated pneumoconiosis. Claimant’s Exhibit 4. Dr. Seaman, also dually qualified, interpreted the scan as showing simple pneumoconiosis with no large opacities and bilateral subpleural pseudoplaques. Employer’s Exhibit 13.<sup>6</sup>

The ALJ previously determined that Dr. Ramsay’s interpretation does not address the presence or absence of complicated pneumoconiosis. Decision and Order at 19. On remand, in considering the conflicting readings of Drs. DePonte and Seaman, she found the doctors equally qualified to offer interpretations of the CT scans. Decision and Order on Remand at 8. But she found Dr. DePonte’s interpretation more persuasive as it was more detailed and better explained. *Id.* at 8-9. Moreover, as Dr. DePonte provided the necessary equivalency determination, opining the large opacities would appear as greater than one centimeter on x-ray, the ALJ found the CT scan evidence establishes complicated pneumoconiosis. *Id.*

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<sup>5</sup> There is no biopsy or autopsy evidence and, therefore, Claimant did not establish complicated pneumoconiosis at 20 C.F.R. §718.304(b). Decision and Order at 7 n.7.

<sup>6</sup> Dr. Seaman’s x-ray was not submitted or admitted with an exhibit number. As Employer previously submitted Employer’s Exhibits 1 through 12, we will refer to it as Employer’s Exhibit 13 to avoid confusion.

Employer asserts that the ALJ violated the Administrative Procedure Act<sup>7</sup> by failing to provide an adequate basis for crediting Dr. DePonte's positive CT scan interpretation over Dr. Seaman's negative interpretation. Employer's Brief at 10-17. We disagree.

Dr. Seaman opined the CT scan showed evidence of simple coal workers' pneumoconiosis in the form of "upper zone predominant small centrilobular/perilymphatic nodules." Employer's Exhibit 13. She also opined that "[t]here are no large opacities. There is subpleural pseudoplaque formation bilaterally." Employer's Exhibit 13. Dr. DePonte also described small nodular interstitial opacities predominantly in the upper lungs, both centrally and peripherally in the lung parenchyma with the larger nodules in the periphery. Claimant's Exhibit 4 at 1. However, she also described:

Multiple larger peripheral opacities are present which exceed one centimeter in longest dimension. Several of these are at least 12-15 mm in longest dimension. These large opacities are mostly in the upper lobes corresponding with the most prevalent changes of simple coal workers' pneumoconiosis. Though the large opacities are peripheral, they are clearly within the lung parenchyma and do not represent pleural plaque or other pleural disease. The opacities are partially surrounded by aerated lung and most form acute angles with the overlying pleura. These opacities indicate the presence of complicated coal workers' pneumoconiosis.

*Id.* She further noted, "No pleural plaques or diffuse pleural thickening. Mild faintly calcified mediastinal and hilar adenopathy typical for adenopathy associated with coal workers' pneumoconiosis." *Id.*

The ALJ found that Dr. DePonte "provided detailed and specific findings," including not just the location, size and shape of the small and large opacities, but also of the surrounding lung tissue. Decision and Order on Remand at 8. She found this level of detail with close and careful observations rendered Dr. DePonte's opinion more persuasive than Dr. Seaman's "brief and cursory explanation of her findings." *Id.*

It is the ALJ's function to weigh the evidence, draw appropriate inferences, and determine credibility. *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); *Tackett v.*

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<sup>7</sup> The Administrative Procedure Act requires that every adjudicatory decision include a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

*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 her findings unless they are inherently unreasonable). The ALJ did not just rely on Dr. DePonte's findings regarding the size and location of the small and large opacities, as Employer suggests, but instead credited her overall attention to detail, including her description of the surrounding tissue. Decision and Order on Remand at 8; Employer's Brief at 10-17. Employer's arguments amount to a request to reweigh the evidence, which the Board may not do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Nor are we persuaded by Employer's argument that the ALJ erred by failing to follow the Board's instruction that she reconsider all evidence relevant to the existence of complicated pneumoconiosis. Employer's Brief at 29. Specifically, Employer contends that while the ALJ properly reassessed Drs. DePonte's and Seaman's interpretations of the June 10, 2019 CT scan, she erred in failing to weigh Dr. Ramsay's interpretation of that CT scan. *Id.*

As noted above, in her initial decision the ALJ considered Dr. Ramsay's interpretation of the June 10, 2019 CT scan, but she found that Dr. Ramsay's interpretation does not address the presence or absence of pneumoconiosis. See *Marra v. Consolidation Coal*, 7 BLR 1-216, 218-19 (1984) (ALJ not required to conclude treatment records silent as to the presence of pneumoconiosis are probative of its absence); Decision and Order at 19; Employer's Exhibit 4. Moreover, the ALJ noted that Dr. Ramsay's credentials are not in the record, whereas Dr. DePonte's radiological credentials are in the record and document her experience in assessing the presence or absence of complicated pneumoconiosis. 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."); Decision and Order at 19. Given the ALJ's broad discretion in making credibility determinations, we decline to disturb her finding as it is supported by substantial evidence.<sup>8</sup> See *Hicks*, 138 F.3d at 528; *Akers*, 131 F.3d at 441; *Tackett*, 12 BLR at 1-14.

Because substantial evidence supports the ALJ's findings that Dr. DePonte's interpretation of the June 10, 2019 CT scan is the most probative of record,<sup>9</sup> we affirm her

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<sup>8</sup> Moreover, while Employer is correct that Dr. Ramsay did not note a large opacity, he also did not note the bilateral pseudoplaques described by Dr. Seaman. Employer's Exhibit 4; Employer's Exhibit 13.

<sup>9</sup> Employer also argues the ALJ erred in finding the x-ray evidence supports a finding of complicated pneumoconiosis. Employer's Brief at 18-19. However, the ALJ explained that, in isolation, the x-ray evidence is in equipoise and cannot establish or refute the existence of complicated pneumoconiosis but does contain positive x-ray

finding that the CT scan evidence establishes complicated pneumoconiosis. Decision and Order on Remand at 9. As Employer raises no other challenges to the ALJ's findings, we further affirm her determination that the "other" medical evidence and the evidence as a whole establishes complicated pneumoconiosis, and that Claimant's complicated pneumoconiosis arose out of his coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§718.304, 718.203(b); Decision and Order on Remand at 9.

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

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge

GLENN E. ULMER  
Acting Administrative Appeals Judge

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interpretations showing large opacities consistent with Dr. DePonte's findings on the CT-scan. Decision and Order on Remand at 9. To the extent this is error, it is harmless because the ALJ gave permissible reasons for crediting Dr. DePonte's CT scan interpretation over those of Drs. Ramsay and Seaman. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (alleged error is harmless unless it "could have made [a] difference"); *see also Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).