



BRB No. 25-0190 BLA

ANDY F. YATES

Claimant-Petitioner

v.

CLINCHFIELD COAL COMPANY

Employer-Respondent

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

Party-in-Interest

**NOT-PUBLISHED**

DATE ISSUED: 07/27/2026

DECISION and ORDER

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

Andy F. Yates, Haysi, Virginia.

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

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

PER CURIAM:

Claimant appeals, without representation,<sup>1</sup> Administrative Law Judge (ALJ) Heather C. Leslie's Decision and Order on Remand Denying Benefits (2020-BLA-06043)

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

rendered on a subsequent claim filed on October 28, 2019,<sup>2</sup> pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act). This case is before the Board for a second time.

In her initial 2022 Decision and Order Awarding Benefits, 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. She credited Claimant with 22.84 years of underground coal mine employment based on the parties' stipulation and determined he established a totally disabling respiratory or pulmonary impairment. Thus, she found Claimant invoked the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,<sup>3</sup> 30 U.S.C. §921(c)(4), and established a change in an applicable condition of entitlement.<sup>4</sup> The ALJ further found Employer did not rebut the presumption and thus awarded benefits.

Pursuant to Employer's appeal, the Board affirmed the ALJ's finding that Claimant established 22.84 years of qualifying coal mine employment. *Yates v. Clinchfield Coal*

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

<sup>2</sup> This Claimant's fifth claim for benefits. On May 29, 2018, the district director denied Claimant's most recent prior claim, filed on June 28, 2017, because Claimant failed to establish total disability. Director's Exhibit 4 (Prior Denied Claim Director's Exhibit 22 at 2-3).

<sup>3</sup> Section 411(c)(4) provides a rebuttable presumption that a miner's total disability is 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.

<sup>4</sup> When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must deny the subsequent claim unless she finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Because Claimant failed to establish total disability in his prior claim, he had to submit new evidence establishing that element in order to obtain review of the merits of his current claim. *See White*, 23 BLR at 1-3; Director's Exhibit 4 (Prior Denied Claim Director's Exhibit 22 at 2-3).

Co., BRB No. 22-0406 BLA, slip op. at 2 n.3 (Nov. 21, 2023) (unpub.). However, the Board held the ALJ erred in weighing Dr. Forehand's medical opinion with regard to total disability. *Id.* at 4-5. Thus, the Board vacated the ALJ's finding that Claimant established total disability and invoked the Section 411(c)(4) presumption, and remanded the case for further consideration. *Id.* at 5-6. The Board did not address the ALJ's finding that Claimant failed to establish complicated pneumoconiosis.

On remand, the ALJ again found Claimant did not establish complicated pneumoconiosis. She further found he did not establish a totally disabling respiratory or pulmonary impairment and, therefore, failed to establish an essential element of entitlement. Thus, she denied benefits.

On appeal, Claimant generally challenges the ALJ's denial of benefits. Neither Employer nor the Director, Office of Workers' Compensation Programs, has filed a response brief.<sup>5</sup>

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.<sup>6</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, 361-62 (1965).

### **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

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<sup>5</sup> Employer's counsel filed a Notice of Appearance and a Motion for Extension of time to file a response brief. Mar. 11, 2025 Notice of Appearance; Apr. 9, 2025 Employer's Motion for Extension. On April 21, 2025, the Board granted Employer an extension of time to file a response brief until May 5, 2025, but no response was received. Apr. 21, 2025 Order.

<sup>6</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 11; Director's Exhibit 7.

means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). 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. 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).

In both her initial 2022 Decision and Order and her Decision and Order on Remand, the ALJ found Claimant failed to establish complicated pneumoconiosis by any method. 20 C.F.R. §718.304(a)-(c); 2022 Decision and Order at 8; Decision and Order on Remand at 12.

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

The ALJ considered seven interpretations of three x-rays dated August 26, 2019, January 13, 2020, and May 17, 2021. Decision and Order on Remand at 8-10. She noted all the interpreting physicians are dually qualified Board-certified radiologists and B readers. *Id.* at 9. Dr. Ramakrishnan read the August 26, 2019 x-ray as positive for both simple and complicated pneumoconiosis, Category A, while Dr. Colella read the x-ray as negative for both simple and complicated pneumoconiosis. Director's Exhibit 23 at 2; Employer's Exhibit 3. Drs. DePonte and Crum read the January 13, 2020 x-ray as positive for simple and complicated pneumoconiosis, Category A, while Dr. Adcock read the x-ray as positive for simple pneumoconiosis but negative for complicated pneumoconiosis. Director's Exhibits 18 at 18; 23 at 4-5; 24 at 2. Dr. DePonte read the May 17, 2021 x-ray as positive for simple and complicated pneumoconiosis, Category A, while Dr. Simone read the x-ray as negative for simple and complicated pneumoconiosis. Claimant's Exhibit 1; Employer's Exhibit 4.

The ALJ found the interpretations of the August 26, 2019 and May 17, 2021 x-rays in equipoise on the existence of both simple and complicated pneumoconiosis due to the equal number of positive and negative readings by dually-qualified readers of each x-ray. Decision and Order on Remand at 9-10. She further found the January 13, 2020 x-ray positive for simple pneumoconiosis because all three physicians read it as positive for the disease, but she found the interpretations of the x-ray in equipoise on the issue of complicated pneumoconiosis as the objective evidence does not favor one interpretation over the other. *Id.* at 9. Thus the ALJ found the x-ray evidence is positive for simple pneumoconiosis but does not support a finding of complicated pneumoconiosis. *Id.* at 10. We are unable to affirm this finding.

While factual determinations are the province of the ALJ, reversal is warranted where no factual issues remain to be determined and no further factual development is necessary. *See Collins v. Pond Creek Mining Co.*, 751 F.3d 180, 187 (4th Cir. 2014). Although the ALJ correctly stated she may not rely *solely* on a numerical “headcount” of the positive and negative readings in resolving the conflict in the evidence, she may rely on the preponderance of the evidence where she has conducted both a qualitative and quantitative assessment of the evidence. *See Sea “B” Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016) (ALJ must perform both a qualitative *and* quantitative analysis of the conflicting x-ray readings, taking into consideration the physicians’ qualifications, their specific interpretations, and the number of readings of each film); *Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); Decision and Order on Remand at 10. In fact, she permissibly did so in finding the interpretations of the August 26, 2019 and May 17, 2021 x-rays are in equipoise due to the equal number of positive and negative readings by equally-qualified physicians. *See Addison*, 831 F.3d at 256-57; *Adkins*, 958 F.2d at 52; Decision and Order on Remand at 9-10.

Thus, the ALJ erred in concluding she could not find the January 13, 2020 x-ray positive for complicated pneumoconiosis based on the preponderance of the readings by equally-qualified physicians being positive for complicated pneumoconiosis. Applying the same logic the ALJ used in weighing the August 26, 2019 and May 17, 2021 x-rays to the January 13, 2020 x-ray, we reverse the ALJ’s finding the January 13, 2020 x-ray is negative for complicated pneumoconiosis. *See Collins*, 751 F.3d at 187; Decision and Order on Remand at 9-10. Consequently, as the interpretations of two of the x-rays are in equipoise and one is positive for complicated pneumoconiosis, we further reverse the ALJ’s finding the x-ray evidence overall does not support a finding of complicated pneumoconiosis. *See Collins*, 751 F.3d at 187; 20 C.F.R. §718.304(a); Decision and Order on Remand at 10.

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

#### **Computed Tomography (CT) Scan Evidence**

The ALJ considered two readings of two CT scans dated October 2, 2019, and January 8, 2020. Decision and Order on Remand at 10-11. Dr. DePonte read the October 2, 2019 scan as showing “interstitial nodularity in the upper lobes with coalescence into large opacities consistent with simple and complicated pneumoconiosis,” specifically identifying a right upper lobe large opacity measuring thirty-nine by twenty-four millimeters with the “classic appearance of progressive massive fibrosis with surrounding coalescence,” as well as a fifteen-millimeter large opacity in the left upper lobe and mild emphysematous change in the remaining lung fields. Director’s Exhibit 23 at 6-7. Dr. Rao read the January 8, 2020 scan as showing a fibrotic right lung apex mass measuring 4.5 centimeters as well as fibrotic nodules and scarring in the left lung apex, and stated the

scan is “suggestive of progressive massive fibrosis from complicated coal workers’ pneumoconiosis.” *Id.* at 8.

The ALJ found the “equivalency standard” was not met because Drs. DePonte and Rao did not explain whether the opacities they identified would measure greater than one centimeter on x-ray. Decision and Order on Remand at 11. She thus concluded the CT scan evidence does not support a finding of complicated pneumoconiosis. *Id.* We are also unable to affirm these findings.

The ALJ erred in finding the interpretations of Drs. DePonte and Rao do not establish complicated pneumoconiosis because they did not explicitly state whether the large opacities they identified would appear as one centimeter or larger on x-ray. Decision and Order on Remand at 11. Contrary to the ALJ’s finding, the Fourth Circuit requires the ALJ to perform equivalency determinations based on her evaluation of all the medical evidence of record. *See Scarbro*, 220 F.3d at 255; *Double B Mining v. Blankenship*, 177 F.3d 240, 243 (4th Cir. 1999). Thus, the absence of a specific statement of equivalency by a physician is not a bar to establishing complicated pneumoconiosis. *See Scarbro*, 220 F.3d at 258 (while a physician who identified a 1.7 cm lesion on biopsy did not provide an equivalency determination, there was “no reason to believe that nodules of 1.7 centimeters would not produce x-ray opacities greater than one centimeter”); *see also Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 364-65 (4th Cir. 2006) (diagnosis of a “massive” opacity “becomes a proxy for the tissue mass characteristic of complicated pneumoconiosis” and satisfies the “statutory ground for application of the presumption”).

More importantly, both Drs. DePonte and Rao opined the CT scans show large opacities consistent with complicated coal workers’ pneumoconiosis and progressive massive fibrosis. Director’s Exhibit 23 at 6-8. A diagnosis of progressive massive fibrosis is equivalent to a diagnosis of “massive lesions” resulting from pneumoconiosis under 20 C.F.R. §718.304(b). *See Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 7 (1976) (“Complicated pneumoconiosis . . . involves progressive massive fibrosis as a complex reaction to dust and other factors . . . .”); *Perry*, 469 F.3d at 365 n.4 (clinical-pathological summary of “[c]oal worker type pneumoconiosis, complicated type, with progressive massive fibrosis”). Because both CT scan readings are positive for complicated pneumoconiosis and there is no contrary probative evidence, we reverse the ALJ’s finding the CT scan evidence does not support a finding of complicated pneumoconiosis.<sup>7</sup> *See Collins*, 751 F.3d at 187; *Usery*, 428 U.S. at 7; Decision and Order on Remand at 11.

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<sup>7</sup> To the extent the ALJ found Claimant failed to establish CT scans are medically acceptable evidence, we also reverse this finding as Claimant has satisfied his burden as the proponent of the evidence. 20 C.F.R. §718.107(b); Decision and Order on Remand at

## Medical Opinion Evidence

The ALJ considered Dr. Forehand's medical opinion that Claimant has complicated pneumoconiosis with progressive massive fibrosis. Director's Exhibit 18 at 4. She found it reasoned and documented but does not support a finding of complicated pneumoconiosis. Decision and Order on Remand at 12.

Dr. Forehand opined Claimant has complicated pneumoconiosis with progressive massive fibrosis, based on his history of coal mine dust exposure and chest x-ray findings, and stated his "exposure to freshly fractured, fibrogenic silica and coal dust on a regular basis for [twenty-three] years working at the face of underground coal mines as a roof bolt operator triggered a fibrotic reaction in his lungs" and substantially contributed to his disease. Director's Exhibit 18 at 4. The ALJ found Dr. Forehand's opinion credible because it is "based upon objective medical tests as well as his examination of [Claimant]," but then made a contradictory conclusion that it is based solely on the x-ray evidence. Decision and Order on Remand at 12.

The ALJ erred in finding Dr. Forehand relied solely on the x-ray evidence. As the ALJ noted, the record reflects Dr. Forehand's opinion is based on Claimant's twenty-three-year history of regular exposure to silica and coal mine dust at the face of the underground mines where he worked, in addition to the x-ray evidence and objective medical tests, which corroborate his diagnosis. Decision and Order on Remand at 11-12; Director's Exhibit 18 at 4. Despite the ALJ's error, it is not necessary to remand this case for further consideration of whether Dr. Forehand's opinion supports a finding of complicated pneumoconiosis. The ALJ found his opinion credible, and there is no contrary evidence in the record as we have reversed the ALJ's finding that the x-ray evidence does not support a finding of complicated pneumoconiosis. *See* Decision and Order on Remand at 12. Thus, we reverse the ALJ's finding that Dr. Forehand's opinion, and the medical opinion

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11. The ALJ found Drs. DePonte and Rao are "qualified to opine as to whether the CT scan evidence shows a diagnosis of clinical pneumoconiosis, either simple or complicated." Decision and Order on Remand at 11. Both Drs. DePonte and Rao relied on the CT scan evidence to diagnose and treat pneumoconiosis, and Drs. DePonte, Ramakrishnan, Crum, and Jawwad indicated CT scans are medically acceptable by recommending on their x-ray readings that Claimant undergo a CT scan to confirm their diagnoses or rule out malignancies. *Id.*; Director's Exhibits 18 at 18; 23 at 3, 5-8; Claimant's Exhibit 2 at 2. Because the record evidence demonstrates CT scans are medically acceptable and there is no contrary evidence, the ALJ's finding CT scans are not medically acceptable is reversed. *See Collins v. Pond Creek Mining Co.*, 751 F.3d 180, 187 (4th Cir. 2014); 20 C.F.R. §718.107(b).

evidence as a whole, does not support a finding of complicated pneumoconiosis. *See Collins*, 751 F.3d at 187; 20 C.F.R. §718.304(c).

Because we have reversed the ALJ's findings that the x-rays, CT scans, and medical opinions do not support a finding of complicated pneumoconiosis, we reverse her finding that Claimant did not establish complicated pneumoconiosis considering the record as a whole.<sup>8</sup> *See Collins*, 751 F.3d at 187; *Melnick*, 16 BLR at 1-33-34; Decision and Order on Remand at 12. We thus reverse the ALJ's conclusion that Claimant did not invoke the irrebuttable presumption of total disability due to pneumoconiosis and did not establish a change in an applicable condition of entitlement. 30 U.S.C. §921(c)(3); 20 C.F.R. §§718.304, 725.309(c)(3).

Further, as we affirmed the ALJ's finding that Claimant has 22.84 years of coal mine employment, Claimant's pneumoconiosis is presumed to have arisen out of such employment, and there is no evidence to the contrary. *See Yates*, BRB No. 22-0406 BLA, slip op. at 2 n.3; 20 C.F.R. §718.203(b). We therefore reverse the ALJ's denial of benefits. *See Scott v. Mason Coal Co.*, 289 F.3d 263, 269-70 (4th Cir. 2002) (denial of benefits reversed where "only one factual conclusion is possible"); *Collins*, 751 F.3d at 187. Because Claimant 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, he is entitled to benefits.

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<sup>8</sup> The ALJ failed to consider treatment records that Claimant submitted from Dr. Jawwad at Richlands Pulmonology Breathing Center dated December 11, 2019. Claimant's Exhibit 2. Dr. Jawwad examined Claimant and diagnosed coal workers' pneumoconiosis with progressive massive fibrosis based on the October 2, 2019 CT scan and Claimant's previous coal mine dust exposure. *Id.* at 1-2. Dr. Jawwad also diagnosed shortness of breath and chronic cough "[m]ost likely secondary to underlying progressive massive fibrosis." *Id.* Once again, the ALJ's error does not necessitate remand as Dr. Jawwad's opinion supports a finding of complicated pneumoconiosis.

Accordingly, we affirm in part and reverse in part the ALJ's Decision and Order on Remand Denying Benefits and remand this case for entry of an award of benefits.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge