



BRB No. 25-0162 BLA

LEARMON E. MOUNTS

Claimant-Respondent

v.

KINGSTON MINING, INCORPORATED

and

ANR INCORPORATED/CONTURA
ENERGY

Employer/Carrier-
Petitioners

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

Party-in-Interest

NOT-PUBLISHED

DATE ISSUED: 06/29/2026

DECISION and ORDER

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

Joseph E. Wolfe, Donna E. Sonner, and Cameron Blair (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 and JONES,
Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Awarding Benefits (2024-BLA-05165) rendered on a claim¹ filed on January 29, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Act).

The ALJ found Claimant established thirty-three years and 6.3 months of underground coal mine employment. She further found Claimant established complicated pneumoconiosis and thus 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), and that the disease arose out of his coal mine employment. 20 C.F.R. §718.203(b). Thus, she awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established complicated pneumoconiosis. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file 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.² 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 (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 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

¹ Claimant filed one prior claim that he withdrew. Director's Exhibit 1. Therefore, it is considered to not have been filed. 20 C.F.R. §725.306(b).

² 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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989); Hearing Transcript at 30.

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 evidence and medical opinion evidence establish the presence of complicated pneumoconiosis, while the computed tomography (CT) scans and Claimant's treatment records neither support nor refute the existence of the disease.³ 20 C.F.R. §718.304(a), (c); Decision and Order at 10-24. Weighing the evidence as a whole, she found Claimant established complicated pneumoconiosis. Decision and Order at 24.

20 C.F.R. §718.304(a) – X-rays

The ALJ considered eleven interpretations of four x-rays dated April 19, 2018, September 6, 2019, August 12, 2022, and April 15, 2024.⁴ Decision and Order at 11-14. She acknowledged all the physicians who interpreted the x-rays as dually-qualified B readers and Board-certified radiologists. *Id.* at 12-13.

Drs. Crum, DePonte, and Alexander read the April 19, 2018 x-ray as positive for complicated pneumoconiosis, Category A, while Drs. Meyer and Seaman read the x-ray as positive for simple pneumoconiosis, but negative for complicated pneumoconiosis. Director's Exhibits 12, 16; Claimant's Exhibit 5; Employer's Exhibits 2, 3. Dr. DePonte read the September 6, 2019 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Meyer read the x-ray as positive for simple pneumoconiosis, but negative for complicated pneumoconiosis. Claimant's Exhibit 6; Employer's Exhibit 2. Dr. DePonte read the August 12, 2022 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Seaman read the x-ray as positive for simple pneumoconiosis, but negative for complicated pneumoconiosis. Claimant's Exhibit 1; Employer's Exhibit 4. Dr. DePonte read the April 15, 2024 x-ray as positive for complicated pneumoconiosis, Category A,

³ 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 14-15.

⁴ Employer also argues the ALJ erred in failing to credit a treatment record x-ray from February 2020 read by Dr. Patel. Employer's Brief at 27. However, the ALJ permissibly found this x-ray reading to be less probative because it was not read for the purposes of determining the presence or absence of pneumoconiosis and Dr. Patel's credentials are not in the record. *See Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-218-19 (1984); Decision and Order at 23-24.

while Dr. Meyer read the x-ray as positive for simple pneumoconiosis, but negative for complicated pneumoconiosis. Claimant's Exhibit 7; Employer's Exhibit 9.

The ALJ found the September 6, 2019, August 12, 2022, and April 15, 2024 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 13-14. As three dually-qualified radiologists interpreted the April 19, 2018 x-ray as positive for complicated pneumoconiosis while two dually-qualified experts interpreted it as negative for the disease, the ALJ noted that the preponderance of the interpretations was positive. *Id.* She gave additional weight to the positive interpretations as they included Dr. DePonte's positive interpretation, who the ALJ noted had the opportunity to read all the x-rays and read them all as positive for complicated pneumoconiosis. *Id.* The ALJ rejected Employer's argument that Drs. DePonte's and Alexander's readings should be given less weight because they recommended a follow-up CT scan for further evaluation of their findings. *Id.* at 14. Thus, the ALJ found the April 19, 2018 x-ray supports a finding of complicated pneumoconiosis and therefore Claimant established complicated pneumoconiosis based on a preponderance of the x-ray evidence.

Employer argues the ALJ improperly "counted heads" in finding the April 19, 2018 x-ray positive for complicated pneumoconiosis. Employer's Brief at 9-12. We disagree.

The ALJ properly performed 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. *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) (ALJ properly considered the number of x-ray interpretations along with the readers' qualifications, including teaching experience and length of practice, and the findings set forth in their readings); *See Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 740 (6th Cir. 2014) (ALJ properly considered both the quantity of the positive and negative readings *and* the comparative credentials of the interpreting physicians); Decision and Order at 11-14.

Employer further argues the ALJ erred in crediting Dr. DePonte's interpretation of the April 19, 2018 x-ray as the physician's finding of pseudoplaques was not corroborated by the other interpretations. Employer's Brief at 13-18. The ALJ noted Drs. DePonte, Alexander, and Crum all determined the April 19, 2018 x-ray showed findings consistent with a Category A large opacity. Decision and Order at 14. She also recognized Dr. DePonte had reviewed each of the x-rays of record and had confirmed her finding of complicated pneumoconiosis on each one. *Id.* It is the province of the ALJ to evaluate the

physician's opinions. *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000). Employer's argument amounts to a request to reweigh the evidence, which the Board is not empowered to do. *Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

We also reject Employer's argument the ALJ erred in crediting the interpretations of the April 19, 2018 x-ray by Drs. DePonte, Crum, and Alexander because they used equivocal language. Employer's Brief at 15-18. Use of cautious language by a doctor does not necessarily reflect equivocation by the doctor, and it is the function of the ALJ to evaluate the strengths of the doctor's opinion. *See Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366 (4th Cir. 2006) ("A refusal to express a diagnosis in categorical terms is candor, not equivocation, and we are of opinion that it enhances rather than undermines [a physician's] credibility."); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 763 (4th Cir. 1999).

Employer also argues the ALJ erred in failing to explain why the "experience and expertise possessed by Drs. Meyer and Seaman due to their service to the American College of Radiology in directing and/or instructing at the NIOSH sponsored B-reader training course do not warrant greater weight being accorded to their opinions." Employer's Brief at 19. Although an ALJ may give greater weight to an expert with "superior" qualifications such as a professorship in radiology, she 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). While the ALJ is required to weigh the relevant evidence, she has the discretion to draw her own conclusions. *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997). Thus, we see no error in the ALJ's determination that the interpreting doctors' readings are entitled to equal weight.

Consequently, we affirm her finding that the April 19, 2018 x-ray is positive for complicated pneumoconiosis. Decision and Order at 11-14. We further affirm her finding that the x-ray evidence supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a). *See id.* at 14.

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

CT Scan Evidence

The ALJ considered one CT scan reading dated May 15, 2018. Decision and Order at 15-16. Dr. Crum interpreted the CT scan as demonstrating a 1.4 centimeter pseudoplaque and, within the left upper lobe, a somewhat ill-defined 1.3 centimeter likely

pseudoplaque, and concluded the findings were most representative of complicated black lung disease. Claimant's Exhibit 2. Dr. Meyer interpreted the CT scan as having small centrilobular and subpleural nodules bilaterally in the upper lobes and superior segments of the lower lobes consistent with simple, but not complicated, coal workers' pneumoconiosis. Employer's Exhibit 2. Weighing the CT scan evidence together, the ALJ found the interpretations to be entitled to equal weight and thus in equipoise on the issue of complicated pneumoconiosis. Decision and Order at 16.

Employer argues the ALJ erred in failing to consider Dr. Ito's interpretation of this CT scan, which would have "tip[ped] the balance" of the CT scan evidence to exclude the existence of complicated pneumoconiosis. Employer's Brief at 23-26. We disagree.

An ALJ's finding will be affirmed if it is supported by substantial evidence. *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998). Substantial evidence is more than a scintilla, but only such evidence that a reasonable mind could accept as adequate to support a conclusion. *Lane v. Union Carbide Corp.*, 105 F.2d 166, 174 (4th Cir. 1997). At the outset, contrary to Employer's contention, the ALJ noted and considered Dr. Ito's interpretation as part of Claimant's medical treatment record evidence. Decision and Order at 23.

The ALJ found the treatment record evidence, including Dr. Ito's interpretation of the May 15, 2018 scan, neither proves nor disproves complicated pneumoconiosis. Decision and Order at 23. She explicitly noted the x-rays and CT scan reports were not read specifically for identifying the presence of pneumoconiosis nor were the readers' qualifications in the record. *Id.* Thus, she rationally gave these readings less weight than the interpretations she considered at 20 C.F.R. § 718.304(a), (c), and reiterated she found the totality of the x-ray and CT scan evidence establishes the presence of complicated pneumoconiosis. *See Westmoreland Coal Co. v. Stallard*, 876 F.3d 663, 670 (4th Cir. 2017) (ALJ evaluates the credibility of the evidence of record); *Marra v. Consolidation Coal Co.*, 7 BLR 1-216 (1984) (ALJ has the discretion to determine whether the lack of discussion of pneumoconiosis supports a finding that it is not present); *see also Consolidation Coal Co. v. Director, OWCP*, 294 F.3d 885, 893-94 (7th Cir. 2002) (ALJ reasonably accorded less weight to the negative CT scan interpretation by a physician without any radiological qualifications in record); Decision and Order at 23.

Medical Opinion Evidence

The ALJ considered the medical opinions of Drs. Green, Werchowski, and Basheda. Decision and Order at 16-21. Drs. Green and Werchowski diagnosed Claimant with complicated pneumoconiosis, whereas Dr. Basheda concluded Claimant did not have

complicated pneumoconiosis. Director's Exhibit 16; Claimant's Exhibit 1; Employer's Exhibits 1, 8. Crediting the opinions of Drs. Green and Werchowski over Dr. Basheda's because she found their opinions to be well-reasoned and well-documented, the ALJ determined the medical opinion evidence supports a finding of complicated pneumoconiosis. Decision and Order at 21.

Employer argues the ALJ erred in finding the opinions of Drs. Green and Werchowski to be more probative than Dr. Basheda's, as Dr. Basheda reviewed more of the evidence. Employer's Brief at 29-31. Contrary to Employer's argument, an ALJ is not required to credit one physician's opinion over another because they have additional qualifications or considered more evidence.⁵ See *Harris*, 23 BLR at 1-114; *Worhach*, 17 BLR at 1-108.

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 24. We further affirm, as unchallenged, the ALJ's finding that Claimant's complicated pneumoconiosis arose out of his coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); see 20 C.F.R. §718.203(b); Decision and Order at 24. 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 25.

⁵ Employer's remaining arguments that the ALJ should have given more weight to Dr. Basheda's opinion amount to 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).

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

MELISSA LIN JONES
Administrative Appeals Judge