



BRB No. 21-0208 BLA

AL EDWARD BRANHAM (deceased))	
)	
Claimant-Respondent)	
)	
v.)	
)	
CLINCHFIELD COAL COMPANY)	DATE ISSUED: 3/15/2022
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order on Remand Awarding Benefits of Monica Markley, Administrative Law Judge, United States Department of Labor.

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

Before: ROLFE, GRESH, JONES, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Monica Markley's Decision and Order on Remand Awarding Benefits (2012-BLA-05607) rendered on a claim filed pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2018) (Act). This case

involves a miner's subsequent claim filed on September 24, 2010 and is before the Benefits Review Board for the second time.¹

The Board previously affirmed, as unchallenged, the ALJ's determination that Claimant established 25.9 years of underground coal mine employment and the existence of simple clinical pneumoconiosis.² *Branham v. Clinchfield Coal Co.*, BRB No. 17-0142 BLA, slip op. at 2 n.3 (Feb. 22, 2018) (unpub.). The Board held, however, that the ALJ erred in finding Claimant established complicated pneumoconiosis because she did not fully address the medical opinions and Claimant's treatment records relevant to the etiology of the large opacities identified on Claimant's x-rays. Thus, the Board vacated the ALJ's finding that 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), and vacated the award of benefits. *Id.* at 10. The Board remanded the case for the ALJ to reconsider the x-ray evidence at 20 C.F.R. §718.304(a), together with the computed tomography (CT) scans, medical opinions, and treatment records at 20 C.F.R. §718.304(c), to determine whether the evidence as a whole supports a finding of complicated pneumoconiosis.³ *Id.*

On remand, the ALJ found Claimant established the existence of complicated pneumoconiosis and invoked the irrebuttable presumption.⁴ She further found Claimant's

¹ We incorporate the procedural history of this case and the Board's prior holdings, as set forth in *Branham v. Clinchfield Coal Co.*, BRB No. 17-0142 BLA (Feb. 22, 2018) (unpub.).

² We affirm, as unchallenged on appeal, the ALJ's determination that Claimant established a change in in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309, based on the Board's affirmance of her finding of simple pneumoconiosis. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); *Branham*, slip op. at 2 n.3; Decision and Order on Remand at 4, 23.

³ There is no biopsy evidence in this case. *Branham*, slip op. at 3 n.5; 20 C.F.R. §718.304(b).

⁴ The ALJ alternatively found Claimant did not establish total disability and could not invoke the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §§718.305, 718.204(b); Decision and Order on Remand at 33-35. 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. *Id.*

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 concluding Claimant established complicated pneumoconiosis based on the x-ray evidence. Neither Claimant nor the Director, Office of Workers' Compensation Programs, 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.⁵ 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).

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 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 x-ray evidence supports a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a); Decision and Order on Remand at 5-10, 24-28. She determined the CT scan evidence is inconclusive,⁶ gave little weight to Claimant's treatment records because she found the diagnoses of complicated pneumoconiosis in them

⁵ The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3, 4.

⁶ The ALJ found the June 3, 2003 CT scan readings in equipoise; the January 23, 2013 CT scan of little probative value because it does not address complicated pneumoconiosis; and Dr. Hippensteel's reading of the July 13, 2014 CT scan as showing only histoplasmosis entitled to little weight, as he did not diagnose any pneumoconiosis, contrary to her finding that Claimant had simple pneumoconiosis "well before 2014." Decision and Order on Remand at 28.

were equivocal,⁷ and determined Employer's physicians' medical opinions were not well-reasoned as to the etiology of the large masses shown on Claimant's x-rays and CT scans.⁸ *Id.* at 28-33; *see* 20 C.F.R. §718.304(c). Weighing all of the categories of evidence together, the ALJ found none of the other evidence diminished the probative value of the x-ray evidence supportive of complicated pneumoconiosis. Thus, she concluded Claimant established complicated pneumoconiosis by a preponderance of the credible x-ray readings and therefore invoked the irrebuttable presumption. 20 C.F.R. §718.304; Decision and Order on Remand at 32-33.

Employer contends the ALJ erred in weighing the x-ray evidence. It asserts the x-ray readings are either in equipoise or negative for complicated pneumoconiosis, the ALJ did not adequately explain how she resolved the conflicts in the evidence, and she improperly shifted the burden of proof. We disagree.

⁷ The ALJ found a January 4, 2015 treatment x-ray equivocal and determined Dr. Smiddy's diagnoses of complicated pneumoconiosis were conclusory and not adequately explained in view of the objective evidence. Decision and Order on Remand at 29; Claimant's Exhibit 4; Employer's Exhibit 3. The ALJ noted Dr. Ratliffe's April 30, 2002 letter stating Claimant's April 6, 2002 tuberculin skin test was negative. Decision and Order on Remand at 24; Director's Exhibit 3.

⁸ In accordance with the Board's remand instruction, the ALJ reconsidered Employer's physicians' medical opinions and their explanations for why Claimant's large opacities were attributable to other diseases. The ALJ found the opinions of Drs. Castle, Hippensteel, Dahhan, and Fino were not credible because none believed Claimant had even simple pneumoconiosis, contrary to her finding that he did. Decision and Order on Remand at 29; Director's Exhibits 3, 4, 17; Employer's Exhibits 5, 7, 8. In addition, the ALJ found the opinions of Drs. Castle and Hippensteel that Claimant's x-ray findings are due to histoplasmosis were unpersuasive because they relied on generalities and did not adequately discuss why Claimant could not have histoplasmosis and complicated pneumoconiosis concurrently. Moreover, the ALJ noted they disagreed with each other as to whether Claimant's small or large opacities may be histoplasmosis. Decision and Order on Remand at 29-30. The ALJ also found insufficient evidence in the record to support their speculation that Claimant's x-ray findings are due to tuberculosis. *Id.* at 31. We affirm, as unchallenged, the ALJ's discrediting of Employer's physicians' opinions as unreasoned and her conclusion that their opinions do not undermine the credibility of the positive x-ray evidence for complicated pneumoconiosis. *See Skrack*, 6 BLR at 1-711.

The ALJ considered readings of four x-rays dated September 3, 2008, January 31, 2011, July 11, 2011, and August 2, 2011.⁹ 20 C.F.R. §718.304(a); Decision and Order on Remand at 5-10, 24-28. She noted that with the exception of Dr. Forehand, who is only a B reader, all the interpreting physicians are dually-qualified as Board-certified radiologists and B readers. Decision and Order on Remand at 5-10.

Dr. Miller interpreted the September 3, 2008 x-ray as positive for simple pneumoconiosis, profusion 2/2. Director's Exhibit 14. He did not identify any large opacities but noted right upper lobe scarring and right apical appearances that could be prior tuberculosis. *Id.* Dr. Scott interpreted the same x-ray as negative for simple and complicated pneumoconiosis but noted "[m]arked scarring right apex with pleural thickening and volume loss," which he attributed to healed tuberculosis or radiation therapy for cancer. Director's Exhibit 18. He also identified a 1.5 centimeter nodule and a few smaller nodules in the left upper lung that could be granulomata or metastasis but saw "[n]o background of small opacities to suggest silicosis/[coal workers' pneumoconiosis]." *Id.* The ALJ found the x-ray positive for simple pneumoconiosis but negative for complicated pneumoconiosis. Decision and Order on Remand at 27.

Drs. Alexander and Miller interpreted the January 31, 2011 x-ray as positive for simple and complicated pneumoconiosis with Category "A" large opacities.¹⁰ Director's Exhibits 13, 16. Dr. Alexander identified "post-surgical or past infectious changes in right apex[;] 12 x 6 mm large opacity in left upper lung zone – needs further evaluation." Director's Exhibit 13. Dr. Miller observed a "1 cm [left] apical nodule: complicated [coal workers' pneumoconiosis vs old [tuberculosis]." Director's Exhibit 16. In contrast, Drs. Tarver and Meyer did not identify any parenchymal abnormalities consistent with pneumoconiosis. Director's Exhibit 15; Employer's Exhibit 1. Dr. Tarver observed calcified non-pneumoconiotic opacities, post-surgical changes in the right upper lung, and upper lobe granulomas of old tuberculosis. Director's Exhibit 15. Dr. Meyer also identified calcified non-pneumoconiotic opacities and commented "? [right] apical opacity? post infectious vs. [] surgical" and "clustered [left upper lung] nodules [-]"

⁹ In her chart of the x-ray evidence, the ALJ included readings from Claimant's prior claim: Dr. Scott's negative readings for simple and complicated pneumoconiosis of the September 26, 2007 and July 2, 2007 x-rays, and Dr. Forehand's positive reading for simple and complicated pneumoconiosis of the July 2, 2007 x-ray. However, she found the x-rays submitted in 2011 were the most probative of Claimant's current condition. Decision and Order on Remand at 9; Director's Exhibit 4.

¹⁰ Dr. Barrett reviewed the January 31, 2011 x-ray for quality purposes only. Director's Exhibit 13.

nodularity likely granulomatous [not] [coal workers' pneumoconiosis]." Employer's Exhibit 1.

The ALJ gave less weight to Drs. Meyer's and Tarver's negative interpretations because they did not diagnose underlying simple pneumoconiosis, contrary to her finding that Claimant established simple pneumoconiosis, which the Board affirmed in its prior decision. Decision and Order on Remand at 27. Relying on Drs. Alexander's and Miller's readings, the ALJ found the January 31, 2011 x-ray positive for complicated pneumoconiosis. Decision and Order on Remand at 27.

Dr. Alexander interpreted the July 11, 2011 x-ray as positive for simple and complicated pneumoconiosis, Category A large opacities, while Dr. Wolfe interpreted it as positive for simple pneumoconiosis but negative for complicated pneumoconiosis. Claimant's Exhibit 1; Employer's Exhibit 6. The ALJ found this x-ray inconclusive for complicated pneumoconiosis based on the "equally probative" interpretations by the dually-qualified physicians. Decision and Order on Remand at 26-27; Claimant's Exhibit 1; Employer's Exhibit 6.

Finally, Dr. Alexander read the most recent x-ray, dated August 2, 2011, as positive for simple pneumoconiosis in the upper and middle lung zones and positive for Category A large opacities. Director's Exhibit 19. On the ILO x-ray form he noted other abnormalities, including: atherosclerotic aorta, marked distortion of the intrathoracic organs, definite emphysema, and "[tuberculosis]?". *Id.* He also commented: "Post-surgical infectious changes in right apex/upper lung zone - old [tuberculosis] is not excluded[;] [t]racheal deviation and hilar distortion[;] 12 x 6 mm large opacity in [left upper zone] - could be complicated [coal workers' pneumoconiosis], but [rule out] other disease." *Id.* Dr. Wolfe read the August 2, 2011 x-ray as negative for both simple and complicated pneumoconiosis, but identified a "[p]ossible nodule 1-2 cm left upper lung zone." Director's Exhibit 17. He commented on the ILO x-ray form that Claimant has "fibrocalcific changes upper and mid lung zones" and "prominent pleural thickening." *Id.* He advised a comparison to older x-rays to "confirm stability" and "exclude neoplasm." *Id.*

The ALJ found Dr. Alexander's interpretations of the July 11, 2011 and August 2, 2011 x-rays are consistent. Decision and Order on Remand at 26. Although she was "mindful" of Dr. Alexander's comments and his notation that the "12 x 6 mm" large opacity in the left upper zone "could be complicated CWP [coal workers' pneumoconiosis]" or another disease process, she found his comments do not "call into question" his identification of a Category A large opacity on the ILO x-ray form. *Id.* She further noted Dr. Alexander specifically observed parenchymal abnormalities consistent with pneumoconiosis, which lent support to her conclusions. *Id.* Thus, the ALJ credited Dr.

Alexander's reading as positive for complicated pneumoconiosis. Giving little weight to Dr. Wolfe's negative reading because he did not diagnose underlying simple pneumoconiosis, the ALJ concluded the August 2, 2011 x-ray was positive for complicated pneumoconiosis. *Id.*

Considering all of the x-rays together, including those from Claimant's prior claims, the ALJ noted Claimant's radiological changes were consistent with the progressive nature of pneumoconiosis. Relying on the most recent x-rays, she found there was one negative x-ray, one inconclusive x-ray and two positive x-rays for complicated pneumoconiosis. Thus, the ALJ concluded Claimant established complicated pneumoconiosis by a preponderance of the evidence at 20 C.F.R. §718.304.

Initially, we affirm, as unchallenged, the ALJ's determination to give full probative weight to Dr. Alexander's reading of the January 31, 2011 x-ray as positive for complicated pneumoconiosis. *Skrack*, 6 BLR at 1-711; Decision and Order on Remand at 26-27; Employer's Brief at 4-5 (unpaginated).

We also reject Employer's contention that the ALJ erred in discrediting Drs. Meyer's and Tarver's negative readings of the January 31, 2011 x-ray and Dr. Wolfe's negative interpretation of the August 2, 2011 x-rays because they did not diagnose underlying simple pneumoconiosis. Employer's Brief at 6-7 (unpaginated). Employer generally contends "[t]he determination of the presence or absence of simple pneumoconiosis is separate from a finding of complicated pneumoconiosis." *Id.* at 6. However, the ALJ has discretion to determine the credibility of the evidence and draw appropriate inferences. *See Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 316 (4th Cir. 2012). Moreover, in considering whether the evidence establishes the existence of complicated pneumoconiosis, an ALJ is required to examine all the evidence on the issue, namely, evidence of simple pneumoconiosis, complicated pneumoconiosis, and no pneumoconiosis, resolve the conflicts, and make a finding of fact. *See Melnick*, 16 BLR at 1-37; *Truitt v. N. Am. Coal Corp.*, 2 BLR 1-199 (1979), *aff'd sub nom. Director, OWCP v. N. Am. Coal Corp.*, 626 F.2d 1137, 2 BLR 2-45 (3d Cir. 1980). We see no error in the ALJ's permissible determination that Drs. Meyer's, Tarver's, and Wolfe's negative readings for complicated pneumoconiosis were less credible because they failed to identify any form of pneumoconiosis on Claimant's x-rays, contrary to the ALJ's finding that Claimant has simple pneumoconiosis.¹¹ *See Underwood v. Elkay Mining, Inc.*, 105 F.3d

¹¹ In support of her determination, the ALJ cited several unpublished Board decisions. Decision and Order on Remand at 25-27, *citing Wyatt v. Ranger Fuel Corp.*, BRB No. 13-0565 BLA, slip op. 6 (Jul. 30, 2014) (unpub.); *Johnson v. Peabody Western Coal Co.*, BRB No. 12-0653 BLA, slip op. at 6 (Jul. 17, 2013) (unpub.); *Miller v. Marfork*

946 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989). Thus, we affirm the ALJ's findings that the January 31, 2011 and August 2, 2011 x-rays are positive for complicated pneumoconiosis and reject Employer's assertions to the contrary. Decision and Order on Remand at 25, 27.

Because the ALJ performed both a qualitative and quantitative analysis of the conflicting x-ray readings and explained her findings, we affirm her determination that Claimant established complicated pneumoconiosis at 20 C.F.R. §718.304(a). *See Adkins*, 958 F.2d 49, 52 (4th Cir. 1992); Decision and Order on Remand at 24, 28. As Employer raises no other challenges on appeal, we affirm the ALJ's conclusion that the evidence as a whole establishes Claimant suffers from complicated pneumoconiosis. *See Cox*, 602 F.3d at 283; *Skrack*, 6 BLR at 1-711. We further affirm, as unchallenged, the ALJ's conclusion that Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §§718.203, 718.304; *see Daniels Co., Inc. v. Mitchell*, 479 F.3d 321, 337 (4th Cir. 2007); *Skrack*, 6 BLR at 1-711; Decision and Order on Remand at 33, 35. Thus, we affirm the ALJ's conclusion that Claimant invoked the irrebuttable presumption and is entitled to benefits.

Coal Co., BRB No. 06-0453 BLA, slip op. 5 (Apr. 30, 2007) (unpub.); *Blankenship v. Cannelton Industries, Inc.*, BRB No. 00-1110 BLA, slip op. 4 (Sep. 26, 2001) (unpub.).

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

SO ORDERED.

JONATHAN ROLFE

Administrative Appeals Judge

DANIEL T. GRESH

Administrative Appeals Judge

MELISSA LIN JONES

Administrative Appeals Judge