

BRB No. 23-0508 BLA

FREDDIE WAYNE SIMPSON  
Claimant-Petitioner

v.

BLACKJEWEL, LLC

and

ROCKWOOD CASUALTY INSURANCE  
COMPANY

Employer/Carrier-  
Respondents

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

Party-in-Interest

**NOT-PUBLISHED**

DATE ISSUED: 03/19/2025

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Steven D. Bell,  
Administrative Law Judge, Department of Labor.

Kenneth A. Buckle<sup>1</sup> (Law Office of Kenneth A. Buckle), Hyden, Kentucky,  
for Claimant.

Denise Hall Scarberry (Baird & Baird, P.S.C.), Pikeville, Kentucky, for  
Employer.

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<sup>1</sup> Claimant's brief was filed by Edmond Collett (of Edmund Collett, P.S.C., Hyden Kentucky), who died on December 15, 2023. Kenneth A. Buckle filed an entry of appearance as counsel for Claimant on February 6, 2024.

Before: GRESH, Chief Administrative Appeals Judge, BOGGS and BUZZARD, Administrative Appeals Judges.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Steven D. Bell's Decision and Order Denying Benefits (2021-BLA-05683) rendered on a subsequent claim<sup>2</sup> filed on October 30, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

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); *see* 20 C.F.R. §718.304. He accepted the parties' stipulation that Claimant has thirty-two years of qualifying coal mine employment but found Claimant did not establish a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Therefore, he found Claimant did not invoke the 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) (2018), or establish entitlement to benefits under 20 C.F.R. Part 718. Thus, he denied benefits.

On appeal, Claimant asserts the ALJ erred in finding he did not establish complicated pneumoconiosis. He further argues the ALJ erred in finding he failed to

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<sup>2</sup> This is Claimant's second claim for benefits. Director's Exhibit 1. The district director denied his first claim, filed on October 7, 2013, because he failed to establish a totally disabling respiratory or pulmonary impairment. *Id.* When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must also 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); *see 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 the district director denied Claimant's prior claim for failure to establish total disability, Claimant had to submit new evidence establishing total disability to obtain review of the merits of his claim. *See White*, 23 BLR at 1-3; Director's Exhibit 1.

<sup>3</sup> Section 411(c)(4) of the Act 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); 20 C.F.R. §718.305.

establish total disability. Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, did not submit a response brief.<sup>4</sup>

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.<sup>5</sup> 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).

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Statutory presumptions may assist claimants in establishing the elements of entitlement if certain conditions are met, but failure to establish any of them precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

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

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 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). 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 Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

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<sup>4</sup> We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established thirty-two years of coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

<sup>5</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because the Miner performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4; Hearing Transcript at 8.

The ALJ found the chest x-rays, computed tomography (CT) scans, and medical opinions do not support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a)-(c); Decision and Order at 14-15. Weighing all the evidence together, he concluded Claimant did not establish the disease. 20 C.F.R. §718.304; Decision and Order at 15. Claimant argues the ALJ erred in weighing the x-ray and medical opinion evidence.<sup>6</sup> Claimant's Brief at 4-6.

### **X-Ray Evidence**

The ALJ considered four interpretations of three chest x-rays dated December 10, 2019, January 7, 2020, and December 9, 2020. Decision and Order at 6. He noted all the interpreting physicians are dually qualified as B readers and Board-certified radiologists, except for Dr. Westerfield, who is a B reader but not a radiologist. *Id.*

Dr. Westerfield read the December 10, 2019 x-ray as negative for complicated pneumoconiosis. Director's Exhibit 21. Dr. Crum read the January 7, 2020 x-ray as positive for complicated pneumoconiosis, Category B, whereas Dr. Simone read it as negative for the disease.<sup>7</sup> Director's Exhibits 15 at 19; 24. Finally, Dr. Simone read the December 9, 2020 x-ray as negative for complicated pneumoconiosis. Director's Exhibit 25.

The ALJ permissibly found the readings of the January 7, 2020 x-ray inconclusive because an equal number of dually qualified physicians found this x-ray to be positive and negative for complicated pneumoconiosis. See *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 281 (1994); *Staton v. Norfolk & W. Ry. Co.*, 65 F.3d 55, 59 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993). In addition, the physicians who read the December 10, 2019 and December 9, 2020 x-rays found them negative for complicated pneumoconiosis, and there are no positive readings of these x-rays. Thus, the ALJ rationally found them negative for complicated pneumoconiosis. Decision and Order at 9, 14-15.

The ALJ properly conducted both a qualitative and quantitative analysis of the conflicting x-ray readings, taking into consideration the physicians' radiological qualifications. See *Staton*, 65 F.3d at 59; *Woodward*, 991 F.2d at 321; Decision and Order

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<sup>6</sup> Claimant does not contest the ALJ's finding that the CT scan evidence does not support a finding of complicated pneumoconiosis; therefore, we affirm it. See *Skrack*, 6 BLR at 1-711; 20 C.F.R. §718.304(c); Decision and Order at 15.

<sup>7</sup> The ALJ noted Dr. Lundberg read the January 7, 2020 x-ray for quality purposes only. Decision and Order at 6; Director's Exhibit 18.

at 7. Having found two x-rays negative for complicated pneumoconiosis and the readings of one inconclusive, the ALJ permissibly found the preponderance of the x-ray evidence does not support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a); *see Ondecko*, 512 U.S. at 281; *Staton*, 65 F.3d at 59; Decision and Order at 7. Claimant's assertion that Dr. Crum's reading is "sufficient" to establish complicated pneumoconiosis fails to acknowledge the contrary x-ray evidence of record and constitutes a request to reweigh the evidence, which we may not do.<sup>8</sup> *Anderson*, 12 BLR at 1-113. Thus, as it is rational and supported by substantial evidence, we affirm the ALJ's determination that the x-ray evidence does not support a finding of complicated pneumoconiosis.

### **Medical Opinion Evidence**

The ALJ considered the medical opinions of Drs. Majmudar, Alam, Westerfield, and Dahhan. Decision and Order at 15. Dr. Majmudar opined that Claimant has complicated pneumoconiosis, while Drs. Westerfield and Dahhan opined he does not. Director's Exhibits 15 at 5; 21 at 3-4, 6; 23 at 12-15. In addition, the ALJ recognized that Dr. Alam was silent as to the presence of complicated pneumoconiosis. *See* Director's Exhibits 21, 23. The ALJ found Dr. Majmudar's opinion is entitled to little weight and outweighed by the contrary opinions of Drs. Westerfield and Dahhan. Decision and Order at 15. Thus, he found the medical opinion evidence does not support a finding that Claimant has complicated pneumoconiosis. *Id.*

Claimant argues the ALJ erred in discrediting Drs. Alam's and Majmudar's opinions because "an ALJ may not discredit a report based on a positive x-ray merely because the record contains subsequent negative x-rays." Claimant's Brief at 4. We disagree.

Contrary to Claimant's contentions, the ALJ did not discredit Drs. Alam's and Majmudar's opinions merely because they are inconsistent with the negative December 9, 2020 x-ray. Rather, he permissibly discredited Dr. Alam's opinion on the issue of complicated pneumoconiosis because it is silent as to whether Claimant has the disease. *See Ondecko*, 512 U.S. at 281; *Staton*, 65 F.3d at 59; Decision and Order at 15. He

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<sup>8</sup> Claimant states "three B-[r]eaders all found the existence of [Category] A-size opacities" and thus asserts he has established complicated pneumoconiosis. Claimant's Brief at 8. Claimant's statement is factually incorrect. As noted above, of the three B-readers who read the x-rays submitted in connection with this claim, only Dr. Crum identified a large opacity. Director's Exhibits 15 at 19; 21; 24; 25. Likewise, Dr. Leef read the December 6, 2013 x-ray, the only x-ray reading from Claimant's prior claim, as negative for complicated pneumoconiosis. Director's Exhibit 1 at 41 (unpaginated).

permissibly discredited Dr. Majmudar's opinion because he based his complicated pneumoconiosis diagnosis solely on a single positive chest x-ray which the ALJ found inconclusive and did not review the other conflicting evidence of record which the ALJ found negative. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569 (6th Cir. 2000); *Furgerson v. Jericol Mining Inc.*, 22 BLR 1-216, 1-226 (2002) (en banc) (reliability of a physician's opinion may be "called into question" when the diagnostic tests upon which the physician based his diagnosis have been undermined); Decision and Order at 15. Claimant's arguments constitute a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113.

As it is supported by substantial evidence, we affirm the ALJ's finding that the medical opinion evidence does not support a finding of complicated pneumoconiosis. Decision and Order at 15. We also affirm his finding, based on his consideration of all the relevant evidence, that Claimant did not establish complicated pneumoconiosis based on the evidence as a whole. 20 C.F.R. §718.304; Decision and Order at 15.

#### **Invocation of the Section 411(c)(4) Presumption: Total Disability**

To invoke the Section 411(c)(4) presumption, a claimant must establish he has a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v.*

*Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc). The ALJ found that Claimant failed to establish total disability by any method.<sup>9</sup> Decision and Order at 15-17.

The ALJ considered the medical opinions of Drs. Majmudar, Alam, Westerfield, and Dahhan. Decision and Order at 16-17. Dr. Majmudar opined Claimant is totally disabled based on his diagnosis of complicated pneumoconiosis. Director's Exhibit 15 at 5. Dr. Alam opined Claimant is totally disabled due to chronic obstructive pulmonary disease, as demonstrated by an x-ray and a pulmonary function study.<sup>10</sup> Claimant's Exhibit 3 at 2-3. Dr. Westerfield opined Claimant is not totally disabled, as demonstrated by the December 10, 2019 pulmonary function study, and retains the pulmonary capacity to return to his previous coal mine job. Director's Exhibit 21 at 3-4. Dr. Dahhan opined Claimant has no functional pulmonary impairment, as demonstrated by the pulmonary function and arterial blood gas studies, and he could return to his previous coal mining job even if that job requires heavy manual labor. Director's Exhibits 22 at 4; 23 at 9-12.

The ALJ found Drs. Westerfield's and Dahhan's opinions are reasoned and documented whereas Drs. Majmudar's and Alam's opinions are entitled to little probative weight. Decision and Order at 16-17. Therefore, crediting Drs. Westerfield's and Dahhan's opinions over the opinions of Drs. Majmudar and Alam, the ALJ found the medical opinion evidence does not support a finding of total disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.*

Claimant argues the ALJ erred in discrediting Drs. Majmudar's and Alam's opinions and asserts they are "sufficient" to support a finding of total disability.<sup>11</sup> Claimant's brief at 5-6. We disagree.

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<sup>9</sup> We affirm, as unchallenged on appeal, the ALJ's finding that Claimant did not establish total disability at 20 C.F.R. §718.204(b)(2)(i)-(iii). *See Skrack*, 6 BLR at 711; Decision and Order at 15-16.

<sup>10</sup> The ALJ correctly observed that Dr. Alam did not specify which x-ray or pulmonary function study he was referencing. Decision and Order at 16 (citing Claimant's Exhibit 3 at 2-3).

<sup>11</sup> We affirm, as unchallenged, the ALJ's crediting of Drs. Westerfield's and Dahhan's opinions as reasoned and documented. *See Skrack*, 6 BLR at 711; Decision and Order at 16.

The ALJ permissibly discredited Dr. Majmudar's total disability opinion because it was based solely on his belief that the January 7, 2020 x-ray is positive for complicated pneumoconiosis, contrary to the ALJ's finding that the x-ray evidence and evidence as a whole does not support a finding of complicated pneumoconiosis. *See Eastover Mining Co. v. Williams*, 338 F.3d 501, 514 (6th Cir. 2003); *Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); Decision and Order at 16. With respect to Dr. Alam, the ALJ accurately stated he relied on an unspecified pulmonary function study and x-ray evidence and permissibly found his opinion unreasoned and undocumented.<sup>12</sup> *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983). Claimant's assertion that Drs. Majmudar's and Alam's opinions are sufficient to support a finding of total disability constitutes a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113.

Because it is supported by substantial evidence, we affirm the ALJ's finding that the medical opinion evidence does not support a finding of total disability. 20 C.F.R. §718.204(b)(2)(iv). We thus also affirm his finding that the evidence, when weighed together, does not establish total disability and thus Claimant did not invoke the Section 411(c)(4) presumption. *See Shedlock*, 9 BLR at 1-198; Decision and Order at 16-17. Finally, because Claimant did not establish total disability, a requisite element of entitlement under 20 C.F.R. Part 718, we affirm the denial of benefits.

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<sup>12</sup> Claimant also argues the ALJ erred in failing to determine the exertional requirements of his usual coal mine employment. Claimant's Brief at 5-6. Because the ALJ discredited Drs. Majmudar's and Alam's opinions for reasons unrelated to their understanding of the exertional requirements, the alleged error is harmless. *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).



Accordingly, we affirm the ALJ's Decision and Order Denying Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JUDITH S. BOGGS  
Administrative Appeals Judge

GREG J. BUZZARD  
Administrative Appeals Judge