

BRB No. 24-0035 BLA

RONNIE F. HILEMAN, JR.

Claimant-Respondent

v.

PARAMONT COAL COMPANY  
VIRGINIA, LLC,

and

BRICKSTREET MUTUAL INSURANCE  
COMPANY

Employer/Carrier-Petitioners

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 Granting Benefits of Heather C. Leslie,  
Administrative Law Judge, United States Department of Labor.

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

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for  
Employer and its Carrier.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Heather C. Leslie's Decision and Order Granting Benefits (2021-BLA-05499) rendered on a claim filed on November 5, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

Initially, the ALJ credited Claimant with twenty-one years of coal mine employment based on the parties' stipulation. She determined Claimant established 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. Further, she found Claimant's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits. 20 C.F.R. §718.203(b).

On appeal, Employer asserts the ALJ erred in weighing the evidence to find Claimant established complicated pneumoconiosis.<sup>1</sup> Claimant responds in support of the award. The Acting Director, Office of Workers' Compensation Programs, declined to file a response brief.

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>2</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).

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

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. The ALJ must determine whether the evidence in each category tends to establish the existence of complicated pneumoconiosis and then must weigh together the evidence at subsections (a),

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<sup>1</sup> We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established twenty-one years of coal mine employment. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5.

<sup>2</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 Virginia. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 18, 21.

(b), and (c) before determining whether Claimant has invoked the irrebuttable presumption. 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. Consol. Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found the x-ray evidence and medical opinion evidence supports a finding of complicated pneumoconiosis.<sup>3</sup> 20 C.F.R. §718.304(a), (c); Decision and Order at 17, 21. She further found Claimant established complicated pneumoconiosis in consideration of the evidence as a whole. 20 C.F.R. §718.304; Decision and Order at 22.

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

The ALJ considered twelve interpretations of six x-rays dated November 4, 2014, May 21, 2016, January 7, 2019, April 8, 2019, October 19, 2019, and March 24, 2022. Decision and Order at 10-17. She found no reason to afford any of the physicians who read the x-rays greater weight based solely on their credentials, as all the readers were dually qualified as Board-certified radiologists and B readers. *Id.* at 14. However, she accorded Dr. Adcock's x-ray interpretations less weight, finding that while all the other physicians provided consistent readings, his readings were "inconsistent with one another." *Id.* at 16. Her specific findings with respect to each x-ray are as follows.

Dr. Wolfe interpreted the November 4, 2014 x-ray as entirely negative for both simple and complicated pneumoconiosis. Employer's Exhibit 5 at 52. His reading was the only interpretation of this x-ray; thus, the ALJ found it negative for pneumoconiosis. Decision and Order at 14, 16.

Dr. DePonte read the May 21, 2016 x-ray as positive for simple and complicated pneumoconiosis, Category A. Claimant's Exhibit 1. Dr. Wolfe interpreted the x-ray as negative for both simple and complicated pneumoconiosis. Employer's Exhibit 1. According the doctors' readings equal weight, the ALJ found the readings of the May 21, 2016 x-ray in equipoise for pneumoconiosis. Decision and Order at 14-16.

Drs. DePonte and Ramakrishnan each interpreted the January 7, 2019 x-ray as positive for simple and complicated pneumoconiosis, Category A. Director's Exhibit 21; Claimant's Exhibit 2. Dr. DePonte noted a fifteen-millimeter opacity in the left upper lung while Dr. Ramakrishnan noted a large opacity in the "anterior right anterior [fifth] space." Director's Exhibit 21; Claimant's Exhibit 2. Dr. Adcock indicated the x-ray was negative

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<sup>3</sup> The ALJ found the computed tomography (CT) scan evidence does not support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 18. There is no biopsy evidence of record. 20 C.F.R. §718.304(b); Decision and Order at 10.

for both simple and complicated pneumoconiosis. Director's Exhibit 52. As the ALJ accorded all of Dr. Adcock's x-ray interpretations less weight due to their inconsistency with one another, she found this x-ray positive for complicated pneumoconiosis. Decision and Order at 15-16.

Dr. DePonte read the April 8, 2019 x-ray as positive for complicated pneumoconiosis, Category A. Director's Exhibit 24. Dr. Adcock found it positive for simple pneumoconiosis, profusion 1/0, but negative for complicated pneumoconiosis. Director's Exhibits 24, 53. The ALJ determined the April 8, 2019 x-ray is positive for complicated pneumoconiosis based on the lesser weight she accorded Dr. Adcock's interpretations. Decision and Order at 15-16.

Dr. DePonte read the October 19, 2019 x-ray as positive for simple and complicated pneumoconiosis, Category A. Director's Exhibit 25. She noted a "subtle approximately [twelve-to-fifteen-millimeter] opacity in the right upper lung zone, likely large Category A opacity" and recommended a CT scan to "exclude malignancy." *Id.* Dr. Adcock interpreted the x-ray as negative for both simple and complicated pneumoconiosis. Director's Exhibit 51. The ALJ found this x-ray is positive for simple and complicated pneumoconiosis based on the lesser weight she accorded Dr. Adcock's interpretations. Decision and Order at 15-16.

Dr. DePonte interpreted the March 24, 2022 x-ray as positive for simple pneumoconiosis, but identified no large opacities consistent with complicated pneumoconiosis. Employer's Exhibit 6. Dr. Adcock interpreted the x-ray as negative for both simple and complicated pneumoconiosis. Employer's Exhibit 3 at 23. The ALJ found this x-ray is positive for simple pneumoconiosis but not complicated pneumoconiosis, again based on her decision to give Dr. Adcock's x-ray interpretations less weight. Decision and Order at 16.

Weighing the six x-rays together, the ALJ found the three x-rays positive for complicated pneumoconiosis outweigh the one x-ray whose readings she found were in equipoise and the two x-rays that she found were negative for the disease. Decision and Order at 16-17. Thus, the ALJ found the x-ray evidence establishes complicated pneumoconiosis at 20 C.F.R. §718.304(a). *Id.* at 17.

Employer initially argues the ALJ erred in finding Dr. Adcock's readings were inconsistent, as Employer asserts he consistently identified no large opacities. Employer's Brief at 4-5. Contrary to Employer's argument, the ALJ acknowledged that Dr. Adcock consistently identified no large opacities. Decision and Order at 16. However, as the ALJ noted, Dr. Adcock's readings appear to be inconsistent with one another as to the presence of simple pneumoconiosis over a short period of time. *Id.* Dr. Adcock found no evidence

of simple pneumoconiosis on Claimant's January 7, 2019 x-ray, found simple pneumoconiosis on the April 8, 2019 x-ray, and then again found the October 19, 2019 and March 24, 2022 x-rays to be negative for the disease.<sup>4</sup> Director's Exhibits 51-53; Employer's Exhibit 3 at 23. As the ALJ permissibly found Dr. Adcock's readings to be inconsistent for even simple pneumoconiosis,<sup>5</sup> it was within her discretion to accord his readings less weight on the issue of complicated pneumoconiosis. *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); Decision and Order at 16.

However, we agree with Employer that the ALJ failed to properly address other inconsistencies in the x-ray evidence that Employer raised before the ALJ. Employer's Brief at 5-7. While noting Dr. Adcock's inconsistent x-ray readings, the ALJ did not apply the same level of scrutiny to seemingly similar inconsistent findings in Dr. DePonte's x-ray readings. The ALJ found Dr. DePonte "consistently found both simple and complicated pneumoconiosis." Decision and Order at 16. However, while Dr. DePonte found simple pneumoconiosis in every x-ray she read, she did not identify a large opacity or complicated pneumoconiosis on the most recent x-ray.<sup>6</sup> Employer's Brief at 5-7; Director's Exhibits 21, 24, 25; Employer's Exhibit 6. Thus, we cannot affirm the ALJ's finding that Dr. DePonte "consistently" identified complicated pneumoconiosis. We note, moreover, that Employer raised this issue with the ALJ and argued that it undercut the probative value of Dr. DePonte's x-ray readings. Employer's Closing Brief at 6-7.

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<sup>4</sup> While the ALJ notes that Dr. Adcock found three x-rays positive for simple pneumoconiosis and one entirely negative, Decision and Order at 16, Dr. Adcock read only the April 18, 2019 x-ray as positive for simple pneumoconiosis, with a profusion of 1/0. Director's Exhibit 53. He found the January 7, 2019 x-ray completely negative for pneumoconiosis and his subsequent readings of the October 19, 2019 and March 24, 2022 x-rays noted a profusion of 0/1, which is a negative reading for pneumoconiosis. 20 C.F.R. §718.102(d)(3); Director's Exhibits 51, 52; Employer's Exhibit 3.

<sup>5</sup> Employer does not contest the presence of simple pneumoconiosis. Employer's Brief at 6.

<sup>6</sup> Claimant argues that Dr. DePonte's failure to identify the large opacity on the March 24, 2022 x-ray was likely due to the quality of the x-ray, as the doctor noted it was underexposed, there was improper position, and poor contrast. Claimant's Response at 8. However, as Claimant acknowledges, Dr. DePonte did not indicate that the x-ray was unreadable. *Id.*

In addition, as Employer notes, Dr. DePonte identified a Category A opacity in the *left* upper lung zone in the January 7, 2019 x-ray, but identified a Category A opacity in the *right* upper zone in the October 19, 2019 x-ray.<sup>7</sup> Employer's Brief at 5-6; Director's Exhibits 21, 25. Employer pointed out this potential discrepancy to the ALJ and argued that it detracted from the probative value of Dr. DePonte's readings. Employer's Closing Brief at 6. We also agree with Employer that the ALJ did not adequately explain her finding that Drs. Ramakrishnan's and DePonte's readings were consistent with each other.<sup>8</sup> Although both diagnosed complicated pneumoconiosis and identified coalescence and an atherosclerotic aorta on the January 7, 2019 x-ray, they actually identified large opacities in different areas of the lung. Employer's Brief at 5-6. Dr. DePonte identified a large opacity in the left lung while Dr. Ramakrishnan identified a large opacity in the right lung. Claimant's Exhibit 2 at 2; Director's Exhibit 21 at 28. The ALJ did not address any of these apparent inconsistencies when weighing the x-ray evidence.

An ALJ must consider all the relevant evidence and apply the same level of scrutiny in determining its credibility. 30 U.S.C. §923(b); *see Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-139-40 (1999) (en banc); *see also McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand). We therefore vacate her determination that the x-ray evidence supports a finding of complicated pneumoconiosis and remand the case for further consideration.

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

The ALJ next considered two medical opinions, Dr. Raj's opinion that Claimant has complicated pneumoconiosis and Dr. Sargent's opinion that he does not. Decision and Order at 18-22; Director's Exhibit 21 at 3; Employer's Exhibit 5 at 2. The ALJ accorded Dr. Raj's opinion probative weight as it is supported by the x-ray readings. Decision and Order at 20. She found Dr. Sargent's opinion worthy of no probative weight because it was inconsistent with the regulations and failed to discuss the exertional requirements of Claimant's usual coal mine employment. Decision and Order at 20-21.

Employer challenges the ALJ's crediting of Dr. Raj's opinion, arguing it is based solely on Dr. DePonte's x-ray reading obtained during Dr. Raj's examination of Claimant.

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<sup>7</sup> Dr. DePonte did not specify the location of the large opacity she identified in her other x-ray interpretations. *See* Claimant's Exhibit 1; Director's Exhibit 24.

<sup>8</sup> The ALJ also noted that Dr. Ramakrishnan "consistently" found both simple and complicated pneumoconiosis. Decision and Order at 16. But as Employer notes, Dr. Ramakrishnan provided only one x-ray interpretation. Employer's Brief at 6; Claimant's Exhibit 2.

Employer's Brief at 7-9. As the ALJ's credibility finding is dependent upon her weighing of the x-ray evidence, which we have vacated, we must also vacate her determination that Dr. Raj's opinion supports a finding of complicated pneumoconiosis. Decision and Order at 19.<sup>9</sup>

However, we will address Employer's argument that the ALJ erred in discrediting Dr. Sargent's opinion, which was not reliant on her finding that the x-ray evidence is positive for complicated pneumoconiosis. Employer's Brief at 8-9. Dr. Sargent opined there was no evidence of either simple or complicated pneumoconiosis, stating "[i]f there was no evidence of pneumoconiosis after [twenty-six] years of mining employment, it is unlikely that it has developed after cessation of mining employment." Employer's Exhibit 3 at 2. The ALJ rationally found Dr. Sargent's explanation inconsistent with the regulations which recognize pneumoconiosis is "a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." 20 C.F.R. §718.201(c); 65 Fed. Reg. 79,920, 79,937 (Dec. 20, 2000); *see Hobet Mining, LLC v. Epling*, 783 F.3d 498, 506 (4th Cir. 2015) (medical opinion not in accord with the accepted view that pneumoconiosis can be both latent and progressive may be discredited); Decision and Order at 21. Thus, we affirm the ALJ's finding that Dr. Sargent's opinion that Claimant does not have complicated pneumoconiosis is not well-reasoned.<sup>10</sup> Decision and Order at 21.

### **Remand Instructions**

On remand, the ALJ must reconsider the x-ray evidence. 20 C.F.R. §718.304(a). She must critically examine all the relevant x-ray evidence, resolve the conflicts in the readings, and explain her weighing of that evidence in accordance with the Administrative Procedure Act (APA).<sup>11</sup> 5 U.S.C. §557(c)(3)(A); *Wojtowicz v. Duquesne Light Co.*, 12

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<sup>9</sup> A physician's opinion that merely restates another physician's x-ray reading is not entitled to independent weight. *See Worhach v. Director, OWCP*, 17 BLR 1-105, 1-110 (1993); *see also Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576 (6th Cir. 2000).

<sup>10</sup> As the ALJ provided a valid reason for discrediting Dr. Sargent's opinion on the presence of pneumoconiosis, we need not address Employer's remaining arguments regarding his credibility. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 8-9.

<sup>11</sup> The Administrative Procedure Act, 5 U.S.C. §§500-591, requires that every adjudicatory decision include "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).

BLR 1-162, 1-165 (1989). She must also reassess Dr. Raj's medical opinion and then weigh all the categories of the relevant evidence together to determine if Claimant has met his burden to establish complicated pneumoconiosis by a preponderance of the evidence. *See Cox*, 602 F.3d at 283; *Scarbro*, 220 F.3d at 255-56; *Melnick*, 16 BLR at 1-33-34.

Employer has not challenged the ALJ's findings that Claimant invoked the presumption that his pneumoconiosis arose out of his coal mine employment and Employer failed to rebut it. 20 C.F.R. §718.203(b); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 22. Thus, if the ALJ again finds Claimant established complicated pneumoconiosis on remand, thus invoking the irrebuttable presumption of total disability due to pneumoconiosis, the ALJ may reinstate the award of benefits.

However, if the ALJ determines Claimant failed to establish complicated pneumoconiosis on remand, she must determine whether Claimant may establish entitlement to benefits under Section 411(c)(4) of the Act<sup>12</sup> or 20 C.F.R. Part 718, as she did not address the elements of entitlement under these provisions.

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<sup>12</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 coal mine employment 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.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Granting Benefits and remand the case for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JUDITH S. BOGGS  
Administrative Appeals Judge

GREG J. BUZZARD  
Administrative Appeals Judge