U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB No. 24-0390 BLA

CONRAD LESTER Claimant-Respondent v. BLACKHAWK MINING LLC and ROCKWOOD CASUALTY INSURANCE COMPANY Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 03/19/2026 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Patricia J. Daum, Administrative Law Judge, United States Department of Labor.

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

Joseph D. Halbert and Jason H. Halbert (Halbert Legal PLLC), Lexington, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Patricia J. Daum's Decision and Order Awarding Benefits (2021-BLA-05624) rendered on an initial claim filed on August 10, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulation that Claimant had twenty-seven years of underground coal mine employment. She found Claimant established complicated pneumoconiosis and thereby 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). *See* 20 C.F.R. §718.304. Further, she determined Claimant's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits.[1] 20 C.F.R. §718.203(b).

On appeal, Employer argues the ALJ erred in finding Claimant established complicated pneumoconiosis.[2] Claimant responds in support of the award. 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.[3] 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).

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[1] On January 21, 2025, the Benefits Review Board acknowledged the appeals in this case, as well as BRB Nos. 24-0222 and 24-0201, and consolidated them for briefing related to the holding in *Harrow v. Department of Defense*, 601 U.S. 480 (2024), and its implications regarding the time specified for filing an appeal with the Board pursuant to 33 U.S.C. §921(a). *See Dominguez v. Bethlehem Steel Corp. et al*., BLR , BRB Nos. 24-0222, 24-0201, and 24-0390 BLA (Jan. 21, 2025) (Order). By Order dated September 25, 2025, the Board determined Employer's Notice of Appeal in this case was timely filed within the thirty-day appeal period that began running when Employer "actual[ly]" received the ALJ's Decision and Order Awarding Benefits. *Dominguez*, BRB Nos. 24-0222, 24-0201, and 24-0390 BLA, slip op. at 7 (citing 20 C.F.R. §725.479(d)). Claimant does not raise a timeliness issue.

[2] We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established twenty-seven years of underground coal mine employment. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983); Decision and Order at 8.

[3] 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 West Virginia. *See*

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 chest 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). *See* 30 U.S.C. §921(c)(3); 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), (b), and (c) before determining whether Claimant has invoked the irrebuttable presumption.[4] *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 preponderance of the x-ray and computed tomography (CT) scan evidence supports a finding of complicated pneumoconiosis. Decision and Order at 21-22. Weighing the evidence as a whole, she concluded Claimant established complicated pneumoconiosis. *Id*. at 23.

20 C.F.R. §718.304(a): X-ray Evidence

The ALJ considered eight interpretations of two x-rays dated November 14, 2020, and January 5, 2021. Decision and Order at 10-11, 20-21. She noted all the physicians who read the x-rays are dually qualified as B readers and Board-certified radiologists.[5] *Id.* at 9. Therefore, she generally accorded equal weight to the readings of the physicians because they possess the same level of credentials. *Id*.

Drs. DePonte and Crum interpreted the November 14, 2020 x-ray as positive for simple and complicated pneumoconiosis, whereas Drs. Tarver and Seaman read it as

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Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 26-27; Director's Exhibit 4 at 1-2.

[4] The ALJ accurately noted the parties did not submit biopsy or autopsy evidence and therefore complicated pneumoconiosis cannot be established under 20 C.F.R. §718.304(b). Decision and Order at 19.

[5] Dr. Gaziano, a B reader, read the November 14, 2020 x-ray for quality purposes only. Director's Exhibit 16.

positive for simple pneumoconiosis but negative for complicated pneumoconiosis. Director's Exhibits 15 at 8; 22 at 3-4; 24 at 5, 8; Employer's Exhibit 8 at 1. The ALJ found the interpretations of Drs. DePonte and Seaman are entitled to greater weight than those of Drs. Crum and Tarver as they provided more detailed accounts of their findings. Decision and Order at 21. As the more credible findings were in conflict and the physicians were equally qualified, the ALJ found the interpretations of Drs. DePonte and Seaman to be in equipoise. *Id.* Further, as Drs. Crum and Tarver offered conflicting interpretations but were equally qualified, the ALJ found their interpretations to be in equipoise. *Id.* Thus, the ALJ concluded the readings of the November 14, 2020 x-ray are inconclusive with respect to complicated pneumoconiosis and demonstrate neither the presence nor absence of the disease. *Id*.

Drs. DePonte and Crum interpreted the January 5, 2021 x-ray as positive for simple and complicated pneumoconiosis, whereas Drs. Adcock and Tarver read it as positive for simple pneumoconiosis but negative for complicated pneumoconiosis. Director's Exhibit 24 at 2, 6-7; Employer's Exhibits 1 at 1-2; 2 at 1. The ALJ discredited the readings of Drs. Adcock and Tarver as their interpretations were outliers, different from all other readings of the two x-rays, and therefore found the January 5, 2021 x-ray is positive for complicated pneumoconiosis. Decision and Order at 21. Thus, she concluded the preponderance of x-ray evidence supports a finding of complicated pneumoconiosis. *Id.*

Employer argues the ALJ should have credited the readings of Drs. Adcock, Seaman, and Tarver over those of Drs. DePonte and Crum based on their qualifications. Employer's Brief at 2, 4-5. We disagree.

Although an ALJ may give greater weight to an expert with "superior" qualifications such as professorships or publications, 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); *Gross v. Dominion Coal Corp*., 23 BLR 1-8, 1-18-19 (2003) (qualifications alone do not provide a basis for giving greater weight to a particular physician's opinion; that opinion must also be adequately reasoned and documented); *Trumbo v. Reading Anthracite Co*., 17 BLR 1-85, 1-88-89 (1993) (ALJ is not required to defer to the physicians with superior qualifications). Thus, we see no error in the ALJ's determination that Drs. Adcock, Seaman, Tarver, DePonte, and Crum are "all substantially equally qualified" or in her decision to give more weight to the opinions of Drs. DePonte and Crum. Decision and Order at 20.

Employer also contends the ALJ substituted her own judgment for the medical determinations of the expert radiologists, arguing the ALJ apparently tried to find a trend based on a "very, very small sample size" of x-ray readings to discredit Dr. Adcock's and

Dr. Tarver's interpretations of the January 5, 2021 chest x-ray. Employer's Brief at 2, 5. We disagree.

First, the ALJ permissibly discredited Dr. Adcock's January 5, 2021 x-ray reading as "strikingly different" from all the other interpretations. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); Decision and Order at 21. Specifically, Dr. Adcock identified opacities in *only* the upper lung zones and the right middle zone, whereas all the other readings of both x-rays described opacities in all lung zones. Employer's Exhibit 2 at 1; *see* Director's Exhibits 15 at 8; 22 at 3; 24 at 2, 5, 6; Employer's Exhibits 1 at 1; 8 at 2. Similarly, the ALJ permissibly discredited Dr. Tarver's interpretation of the January 5, 2021 x-ray because he is the only physician who did not find the coalescence of small opacities. *See Looney*, 678 F.3d at 316-17; Decision and Order at 21; Employer's Exhibit 1 at 1-2. Thus, contrary to Employer's argument, the ALJ reasonably discredited the interpretations of Drs. Adcock and Tarver because they significantly differ from the other x-ray readings. *Looney*, 678 F.3d at 316-17; *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); Decision and Order at 21; Employer's Brief at 5.

The ALJ properly conducted both a qualitative and quantitative analysis of the conflicting x-ray readings, taking into consideration the physicians' radiological qualifications. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016); *Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992); Decision and Order at 21. Having found one x-ray positive for complicated pneumoconiosis and the readings of one x-ray in equipoise, the ALJ permissibly found the preponderance of the x-ray evidence supports a finding of complicated pneumoconiosis. *See Addison*, 831 F.3d at 256-57; *Adkins*, 958 F.2d at 52-53; 20 C.F.R. §718.304(a); Decision and Order at 21. We therefore affirm the ALJ's determination that the preponderance of the x-ray evidence supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a). Decision and Order at 21.

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

The ALJ also considered medical opinion evidence, CT scans, and Claimant's treatment records and determined the weight of the other medical evidence supports a finding of complicated pneumoconiosis. Decision and Order at 22-23. Employer contends the ALJ erred in finding the CT scan evidence supports a finding of complicated pneumoconiosis.[6] Employer's Brief at 6-7.

[6] The ALJ also considered the medical opinions of Dr. Werchowski and Dr. Vuskovich. Decision and Order at 16-18; Director's Exhibit 15; Employer's Exhibit 6.

The ALJ considered four interpretations of two CT scans dated March 3, 2020, and August 6, 2021. Decision and Order at 13-14, 22. Claimant underwent the March 3, 2020 CT scan as part of his medical treatment. Employer's Exhibit 5. Dr. Akers, who conducted the March 3, 2020 CT scan, identified multiple small nodules measuring up to eight millimeters, which he opined were "probably" due to pneumoconiosis. *Id*. Dr. DePonte interpreted the CT scan as showing simple pneumoconiosis as well as several large nodules in the upper lungs measuring fifteen to twenty millimeters that correspond with Category A large opacities of complicated pneumoconiosis. Claimant's Exhibit 2. Dr. Tarver also read the CT scan and identified simple pneumoconiosis measuring two to five millimeters, as well as multiple pleural pseudoplaques in Claimant's upper lung lobes. Employer's Exhibit 3 at 1. The ALJ accorded greater weight to Dr. DePonte's interpretation as it was more detailed than Dr. Tarver's reading and accorded no weight to Dr. Akers's reading as his qualifications were unknown. Decision and Order at 22. She therefore concluded the March 3, 2020 CT scan supports a finding of complicated pneumoconiosis. *Id*.

Claimant also underwent an August 6, 2021 CT scan as part of his medical treatment. Claimant's Exhibit 1. Dr. Petty interpreted the CT scan as showing bilateral, micronodular pattern consistent with pneumoconiosis. *Id.* at 7-8. Because Dr. Petty did not reference any large opacities or consolidation of small opacities and his credentials are unknown, the ALJ found the August 6, 2021 CT scan entitled to no weight. Decision and Order at 22.

Employer initially contends the ALJ should have taken official notice of the credentials of Dr. Akers and Dr. Petty. Employer's Brief at 6. But the decision to take official notice of a fact is a procedural issue committed to the ALJ's discretion. *See Troup v. Reading Anthracite Coal Co*., 22 BLR 1-14, 1-21 (1999) (en banc); *Clark v. Karst-Robbins Coal Co*., 12 BLR 1-149, 1-153 (1989) (en banc). While the ALJ could have taken official notice of the credentials of Dr. Akers and Dr. Petty of her own accord, she is not required to do so. *See Maddaleni v. The Pittsburg & Midway Coal Mining Co*., 14 BLR 1-135 (1990); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989). And, more fundamentally, Employer had the opportunity to ask the ALJ to take official notice of the qualifications of Drs. Akers and Petty but did not.[7] *See Edd Potter Coal Co. v. Dir., OWCP* [*Salmons*], 39

We affirm, as unchallenged on appeal, the ALJ's finding that Dr. Werchowski's well-documented and well-reasoned opinion supports a diagnosis of complicated pneumoconiosis and the ALJ's determination to accord no probative weight to Dr. Vuskovich's contrary opinion. *See Skrack*, 6 BLR at 1-711; Decision and Order at 17, 23; Director's Exhibit 15 at 7; Employer's Exhibit 6 at 12.

[7] In her August 2, 2021 prehearing order, the ALJ informed the parties she may take official notice of historical and current B reader lists available on the Centers for Disease

F.4th 202, 208 (4th Cir. 2022) (parties forfeit arguments before the Board not first raised to the ALJ). Nor did Employer submit the physicians' credentials. Consequently, we affirm the ALJ's determination to accord no weight to Dr. Akers's reading of the March 3, 2020 CT scan and Dr. Petty's interpretation of the August 6, 2021 CT scan because their qualifications are not in the record. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Adkins*, 958 F.2d at 52 ("A primary method of evaluating the reliability of an expert's opinion is of course his expertise."); Decision and Order at 22.

Nor are we persuaded by Employer's argument that the CT scans from Claimant's treatment records are "likely the most reliable" and should have been found to corroborate the opinions of Employer's experts. Employer's Brief at 5-6. Contrary to Employer's contention, treatment records are not inherently more reliable than the other evidence in the record. *See Melnick*, 16 BLR at 1-35-36 (no logic in inference that evidence prepared for trial is less reliable than other evidence); Employer's Brief at 6. Rather, the credibility of the witnesses and the weight to be accorded the evidence are matters within the sound discretion of the ALJ. S*ee Mabe v. Bishop Coal Co.*, 9 BLR 1-167 (1986). As discussed above, the ALJ permissibly found the interpretations from Drs. Akers and Petty entitled to little weight as their qualifications are not in the record. *See Akers*, 131 F.3d at 441; *Adkins*, 958 F.2d at 52-53; Decision and Order at 22.

Furthermore, the ALJ permissibly discredited Dr. Tarver's reading of the March 3, 2020 CT scan because he failed to specify the size of the pseudoplaques in Claimant's upper lung zones or explain how they do not meet the definition of a large opacity. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Akers*, 131 F.3d 438, 441; Decision and Order at 22; Employer's Exhibit 3 at 1. Moreover, the ALJ permissibly credited Dr. DePonte's interpretation of the March 3, 2020 CT scan as more persuasive than Dr. Tuteur's because Dr. DePonte's reading is more detailed.[8] *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Underwood*, 105 F.3d at 949; Decision and Order at 22. We therefore affirm, as supported by substantial evidence, the

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Control and Department of Labor websites. Notice of Hearing at 3-4 (citing 29 C.F.R. §18.84); *see* Decision and Order at 2. Employer was therefore aware of what information the ALJ noted she may take official notice of but did not act on that information.

[8] Nor are the interpretations of Drs. Petty and Akers necessarily corroborative of Dr. Tarver's CT scan reading. Dr. Tarver found 2-5 mm small nodules of pneumoconiosis and "multiple pleural pseudoplaques." Employer's Exhibit 3. While Dr. Petty found "micronodular" pneumoconiosis, he provided no measurements and he did not diagnose pseudoplaques. Claimant's Exhibit 1. Dr. Akers noted small nodules but stated they measured up to 8 mm, and he also did not note pseudoplaques. Employer's Exhibit 5.

ALJ's conclusion that the March 3, 2020 CT scan supports a finding of complicated pneumoconiosis and that the August 6, 2021 CT scan is not probative on the issue.[9] *See Compton*, 211 F.3d at 207-208; *Hicks*, 138 F.3d at 528; Decision and Order at 22.

Employer's argument amounts 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). As Employer raises no further challenges to the ALJ's findings, we affirm her determination that the "other" medical evidence establishes complicated pneumoconiosis, and the evidence as a whole establishes Claimant has complicated pneumoconiosis. Decision and Order at 23. We further affirm, as unchallenged on appeal, her conclusion that Claimant's complicated pneumoconiosis arose out of his coal mine employment. *Id.* at 24; *Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983).

[9] Additionally, the ALJ permissibly discredited Dr. Petty's reading of the August 6, 2021 CT scan because the physician did not mention a large opacity or consolidation, when consolidating or coalescing small opacities had been noted on most of the other readings. *Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012); Decision and Order at 22; Director's Exhibit 24 at 2, 6; Claimant's Exhibit 1 at 7; Employer's Exhibit 2 at 1.

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