U.S. Department of Labor

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

BRB No. 24-0116 BLA

BILLY R. BELCHER Claimant-Respondent v. VECELLIO & GROGAN INCORPORATED and WEST VIRGINIA COAL WORKERS' PNEUMOCONIOSIS FUND Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 05/29/2025 DECISION and ORDER

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

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

Karin L. Weingart (Spilman Thomas & Battle, PLLC), Charleston, West Virginia, for Employer and its Carrier.

William M. Bush (Jonathan Snare, Deputy Solicitor of Labor; Jennifer Feldman Jones, Acting Associate Solicitor; William M. Bush, Acting Counsel for Administrative Appeals), Washington, D.C., for the Acting Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

GRESH, Chief Administrative Appeals Judge, and BOGGS, Administrative Appeals Judge:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order on Reconsideration[1] Awarding Benefits (2023-BLA-05152) rendered on a subsequent claim[2] filed on December 10, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with twenty-seven years of qualifying coal mine employment based on the parties' stipulation and found he established a change in an applicable condition of entitlement.[3] 20 C.F.R. §725.309(c). She further found Claimant

[1] The ALJ initially issued a Decision and Order Awarding Benefits on September 15, 2023. Employer timely sought reconsideration, arguing the ALJ erroneously considered Dr. Crum's reading of the February 8, 2022 x-ray, which was not designated and exceeded the evidentiary limitations. Employer's Motion for Reconsideration. The ALJ granted reconsideration, excluded Dr. Crum's reading of the February 8, 2022 x-ray, reassessed the evidence on the issue of complicated pneumoconiosis, and again awarded benefits. Decision and Order on Reconsideration. She reaffirmed her findings from her initial Decision and Order except as modified. *Id.*

[2] This is Claimant's fourth claim for benefits. Decision and Order Awarding Benefits at 2 n.3. The district director denied his most recent prior claim for failing to establish he was a miner under the Act. *Id.*

[3] When a miner files a claim for benefits more than one year after the denial of a previous claim becomes final, the ALJ must 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 Claimant did not establish he was a miner in his prior claim, he

established complicated pneumoconiosis arising out of his coal mine employment, therefore invoking 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. §§718.203(b), 718.304. Thus, she awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant has complicated pneumoconiosis.[4] Claimant responds, urging affirmance of the award. The Acting Director, Office of Workers' Compensation Programs (the Director), filed a response agreeing with Employer that the ALJ erred in weighing the x-ray evidence regarding complicated pneumoconiosis.

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.[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).

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 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, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. In determining whether a 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.*

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had to submit evidence establishing this condition of entitlement to obtain review of the current claim on the merits. *Id.*

[4] We affirm, as unchallenged on appeal, the ALJ's findings that Claimant established twenty-seven years of qualifying coal mine employment and a change in an applicable condition of entitlement. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order on Reconsideration at 2.

[5] 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 Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 46-47, 50-51; Director's Exhibit 13.

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 and medical opinion evidence supports a finding of complicated pneumoconiosis and Claimant's treatment records do not address the etiology of any pulmonary diagnoses.[6] Decision and Order on Reconsideration at 8-9. Weighing the evidence together, the ALJ found that Claimant established the presence of complicated pneumoconiosis. *Id.* at 9.

Employer contends the ALJ erred in her weighing of the evidence to find Claimant has complicated pneumoconiosis. Employer's Brief at 7-9. The Director agrees the ALJ erred in weighing the x-ray evidence, arguing she conflated the issues of complicated pneumoconiosis at 20 C.F.R. §718.304 and disease causation at 20 C.F.R. §718.203. Director's Brief at 2-4. We agree the ALJ erred in her evaluation of the evidence.

20 C.F.R. §718.304(a) – X-ray Evidence

The ALJ considered seven interpretations of three x-rays dated January 5, 2021, February 1, 2022, and December 13, 2022. Decision and Order on Reconsideration at 5-6. Drs. DePonte and Crum read the January 5, 2021 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Meyer identified no large opacities. Director's Exhibits 23, 29, 30. Dr. DePonte read the February 1, 2022 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Meyer identified no large opacities. Director's Exhibit 31; Employer's Exhibit 1. Finally, Dr. DePonte interpreted the December 31, 2022 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Meyer again found no large opacities. Claimant's Exhibit 1; Employer's Exhibit 2.

In all of Dr. Meyer's readings, he found small opacities present in all lung zones, which he reported as consistent with simple pneumoconiosis on the International Labour Organization (ILO) x-ray form, and he reported the absence of large opacities.[7] Director's Exhibit 29; Employer's Exhibits 1, 2. As the ALJ noted, Dr. Meyer observed basilar pulmonary fibrosis in a pattern characteristic of usual interstitial pneumonia and opined the "lower zone predominant linear" pattern is not typical of pneumoconiosis, but rather could

[6] There are no readings of computed tomography (CT) scans and there is no biopsy evidence of record. 20 C.F.R. §718.304(b), (c); Decision and Order on Reconsideration at 3 n.1; Claimant's Evidence Summary Form; Employer's Evidence Summary Form.

[7] In addition to checking the appropriate box on the ILO x-ray classification form, Dr. Meyer specified via notation in each x-ray report that he observed "no large opacities." Director's Exhibit 29; Employer's Exhibits 1, 2.

indicate idiopathic pulmonary fibrosis or fibrosis associated with connective tissue disease, collagen vascular disease, smoking-related lung disease, or drug toxicity. Director's Exhibit 29; Employer's Exhibits 1, 2.

In weighing the x-ray evidence together, the ALJ first indicated she would give equal weight to all the physicians who interpreted the x-rays as dually-qualified B readers and Board-certified radiologists unless there is a reason "discerned in the record" to give more or less weight to a specific interpretation. Decision and Order on Reconsideration at 7. She then found the record does not reflect Claimant has a history of smoking,[8] connective tissue disease, collagen vascular disease, or drug toxicity.[9] *Id.* at 7-8. Thus, she found Dr. Meyer's opinion poorly documented and equivocal as to the cause of the pulmonary fibrosis he observed and accorded his x-ray readings less weight. *Id.* at 8. Having discredited Dr. Meyer, the ALJ subsequently found all three x-rays positive for simple and complicated pneumoconiosis.[10] *Id.*

The United States Court of Appeals for the Fourth Circuit has held that "'[b]ecause prong (A) sets out an entirely objective scientific standard' - i.e., an opacity on an x-ray greater than one centimeter - x-ray evidence provides the benchmark for determining what under prong (B) is a 'massive lesion' and what under prong (C) is an equivalent diagnostic result reached by other means." *Scarbro*, 220 F.3d at 255; *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243-44 (4th Cir. 1999). If Claimant establishes the presence of such an opacity, then he must establish the complicated pneumoconiosis arose out of his coal mine employment.[11] 20 C.F.R. §718.203; *Daniels Co. v. Mitchell*, 479 F.3d 321, 337 (4th Cir. 2007).

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[8] The ALJ found Claimant never smoked. Decision and Order Awarding Benefits at 7. We affirm her finding as unchallenged on appeal. *See Skrack*, 6 BLR at 1-711.

[9] We note that Dr. Meyer indicated that the condition he observed is often idiopathic (i.e., of unknown origin). Director's Exhibit 29; Employer's Exhibit 2.

[10] Employer has not challenged the finding of simple clinical pneumoconiosis; thus, we affirm it. Employer's Brief at 7; Employer's Closing Brief at 2 n.2; Decision and Order on Reconsideration at 9; *see Skrack*, 6 BLR 1-711.

[11] The regulations provide a rebuttable presumption that the miner's complicated pneumoconiosis arose out of his coal mine employment if he established ten or more years of such employment. 20 C.F.R. §718.203(b). In this case, Claimant may invoke the rebuttable presumption if he establishes complicated pneumoconiosis as he established

In this case, Dr. Meyer indicated the opacities he observed are not due to coal mine dust exposure but also consistently opined there were no large opacities. To determine if a diagnosis of complicated pneumoconiosis may be established under 20 C.F.R. §718.304(a), a critical issue to be determined is whether any opacity exceeds one centimeter in diameter and would be classified as Category A, B, or C. *See Scarbro*, 220 F.3d at 255; *Mitchell*, 479 F.3d at 337; 20 C.F.R. §718.304(a). Dr. Meyer's opinion regarding the etiology of the opacities also should be considered under 20 C.F.R. §718.203. *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-5 (1999) (en banc) (expert's comments regarding the etiology of changes on an x-ray which is marked as consistent with pneumoconiosis pursuant the ILO classification system are to be considered under 20 C.F.R. §718.203). Because the ALJ did not consider and weigh Dr. Meyer's opinion as to the presence of large opacities under 20 C.F.R. §718.304(a) against the other x-ray evidence, we must vacate her findings that Dr. Meyer's readings of the January 5, 2021, February 1, 2022, and December 13, 2022 x-rays are entitled to less weight and thus that each x-ray is positive for complicated pneumoconiosis.[12] Decision and Order on Reconsideration at 8. Thus, we also vacate her finding that the evidence supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a); Decision and Order on Reconsideration at 8.

20 C.F.R. §718.304(c) - Medical Opinions and Treatment Records

The ALJ also considered Dr. Gaziano's medical opinions and various x-ray and CT scan reports contained in Claimant's treatment records. Decision and Order on Reconsideration at 9; Decision and Order Awarding Benefits at 17-18.

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greater than ten years of coal mine employment. *Id.*; Decision and Order on Reconsideration at 10.

[12] The ALJ's findings seemingly attempt to follow the Fourth Circuit's holding in *Westmoreland Coal Co. v. Cox*, where the court affirmed the discrediting of physicians' opinions that a large opacity was not complicated pneumoconiosis but rather due to another disease as speculative and equivocal because no such diseases were noted in the record. 602 F.3d 276, 285-87 (4th Cir. 2010). In *Cox*, however, there was no dispute that there were large opacities exceeding one centimeter on x-ray, while in this case, Dr. Meyer has consistently opined there are no large opacities. *Id.* at 284-85; *see also Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-37 (1991) (en banc) (remanding for consideration of whether a finding of Category A complicated pneumoconiosis with notations of possible cancer rendered opinion equivocal).

Dr. Gaziano provided two medical opinions diagnosing Claimant with complicated pneumoconiosis based on Dr. DePonte's readings of the January 5, 2021 and December 13, 2022 x-rays. Director's Exhibit 23; Claimant's Exhibit 1. The ALJ credited his opinions as consistent with her findings regarding the x-ray evidence. Decision and Order on Reconsideration at 9. Because the ALJ's findings regarding Dr. Gaziano's opinions depend on her findings regarding the x-ray evidence, which we have vacated, we must also vacate her credibility findings regarding Dr. Gaziano's opinions. *Id.*

As Employer notes, the ALJ stated in her initial Decision and Order Awarding Benefits that several radiographic readings in Claimant's treatment records are relevant to the issue and note the presence of pulmonary nodules.[13] Employer's Brief at 8-9; Decision and Order Awarding Benefits at 17-18. The ALJ also noted several CT scan reports, including those dated August 29, 2019, July 9, 2019, and May 22, 2019, that provide specific measurements of these pulmonary nodules. Director's Exhibit 22 at 10-13; Decision and Order Awarding Benefits 17-18. Thus, on remand, the ALJ must reconsider this evidence as it is relevant to 20 C.F.R. §718.304(c).[14]

In conclusion, we vacate the ALJ's findings that Claimant established complicated pneumoconiosis at 20 C.F.R. §718.304. Decision and Order on Reconsideration at 9. Given the ALJ's conflation of the issues, we also vacate her findings at 20 C.F.R. §718.203 that Employer failed to rebut the presumption that Claimant's pneumoconiosis arose out of his coal mine employment. *Id.* at 10.

[13] Thus, we disagree with our dissenting colleague that neither the Director nor the Employer contended the ALJ erred in her findings regarding Claimant's treatment records.

[14] Given the ALJ's finding that she would provide equal weight to the experts' readings unless there is a reason "discerned in the record" to give more or less weight to a specific interpretation, Decision and Order on Reconsideration at 7, we do not agree with our dissenting colleague that the ALJ's error in failing to address the difference in opinions regarding whether opacities exceeding one centimeter are present is harmless. *See E. Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56 (4th Cir. 2000) (ALJ must consider all relevant evidence on the issue). As the ALJ failed to address evidence which could potentially support or detract from the x-ray readers' conflicting opinions, remand is required for her to address and weigh this evidence in the first instance. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); Employer's Brief at 8-9.

Remand Instructions

On remand, the ALJ must reconsider whether Claimant has established complicated pneumoconiosis. The ALJ must resolve the conflicts in the readings of each individual x-ray and then reach an overall finding as to whether the x-ray evidence supports a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a). She must perform a qualitative and quantitative analysis of the conflicting x-ray readings to determine the relevant issue at 20 C.F.R. §718.304(a): whether the x-ray evidence demonstrates the presence of one or more large opacities greater than one centimeter in diameter. *See Scarbro*, 220 F.3d at 255; *Mitchell*, 479 F.3d at 337. In doing so, she must consider the readers' qualifications,[15] their comments on the ILO x-ray forms that tend to either support or undermine their readings, and resolve conflicts in the evidence, prior to reaching a conclusion as to whether the x-ray evidence supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a). *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 252-53 (4th Cir. 2016); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984).

The ALJ must also reconsider whether the medical opinions, or any "other evidence" from Claimant's treatment records, support or detract from a finding of complicated pneumoconiosis.[16] 20 C.F.R. §718.304(c). In evaluating Dr. Gaziano's

[15] The ALJ noted the physicians' credentials beyond their status as B readers and Board-certified radiologists, such as academic appointments and publications, but did not accord any physician additional weight on this basis. Decision and Order at 5 nn.8-9; 6 n.10; 7. Contrary to Employer's assertion, 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. *Adkins v. Director, OWCP*, 958 F.2d 49, 52-53 (4th Cir. 1992); *see Melnick*, 16 BLR at 1-36-37; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-154 (1989) (en banc); Employer's Brief at 7.

[16] Our colleague makes his own weighing of Claimant's treatment records and his own determinations as to what they might show or support. In doing so, he intrudes on the proper function of the ALJ to weigh the evidence and make findings of fact. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 316-17 (4th Cir. 2012) (it is the duty of the ALJ, not the responsibility of the courts, to make findings of fact and resolve conflicts in evidence); *Grizzle v. Picklands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993). Employer has set forth a plausible argument as to the treatment records and their import that is contrary to that set forth by our colleague; i.e., the nodules and opacities identified in the treatment records are smaller than one centimeter and therefore support Dr. Meyer's findings. We make no judgment as to the merits of the argument Employer

medical opinion, she must explain the weight she accords it based on her consideration of the physician's credentials, the explanations for his medical findings, the documentation underlying his medical judgments, and the sophistication of, and bases for, his conclusions. *See Hicks*, 138 F.3d at 537; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997).[17] Finally, she must weigh all the relevant evidence together to determine if the evidence as a whole establishes complicated pneumoconiosis. 20 C.F.R. §718.304; *see Melnick*, 16 BLR at 1-33-34.

If the ALJ finds the evidence when weighed together establishes complicated pneumoconiosis, she must then reconsider whether Employer has rebutted the presumption that Claimant's disease arose out of his coal mine employment. 20 C.F.R. §718.203(b). If the ALJ finds Claimant's complicated pneumoconiosis arose out of his coal mine employment, she may reinstate the award of benefits.

However, if the ALJ finds on remand that Claimant does not establish complicated pneumoconiosis, the ALJ must address whether Claimant has established total disability. 20 C.F.R. §§718.204(b), 718.305(b). If Claimant establishes total disability, he will have invoked the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act,[18] 30 U.S.C. §921(c)(4) (2018), and the ALJ must then determine whether Employer has rebutted the presumption. *See* 20 C.F.R. §718.305(d). If the ALJ finds Claimant is not totally disabled by a respiratory or pulmonary impairment, she must deny benefits, as Claimant will have failed to have established a necessary element of entitlement. *See Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

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makes (or that of our colleague). Rather, we remand for the ALJ to make the appropriate findings and conclusions as that is her proper role, and not the role of the members of the Board.

[17] We note that a physician's restatement of an x-ray reading is not a reasoned medical opinion. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 576 (6th Cir. 2000); *Anderson*, 12 BLR at 1-113.

[18] Section 411(c)(4) 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); *see* 20 C.F.R. §718.305. Employer does not contest that Claimant has established twenty-seven years of qualifying employment. Decision and Order Awarding Benefits at 5.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

ROLFE, Administrative Appeals Judge, dissenting

I respectfully dissent from my colleagues' decision to remand this case and would affirm the award of benefits. Independent of the allegation of error in the ALJ's discrediting of Dr. Meyer's readings as equivocal on the etiology of the opacities he identified, fully crediting his readings still results in an award given the ALJ's explicit finding on the quality of the readers' credentials and the quantity of their respective readings. The discrediting of Dr. Meyer's readings thus made no difference to the outcome of this case, and the alleged error my colleagues identify therefore 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"); *Island Creek Coal Co. v. Blankenship*, 123 F.4th 684, 696-97 (4th Cir. 2024) (in evaluating whether an error is harmless, court considers "the likelihood that the result would have been different"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Regardless, the ALJ did not err by partially discounting Dr. Meyer's x-ray readings for excluding coal mine dust as a causative factor of the fibrosis he identified where the ALJ found Claimant had twenty-seven years of coal mine employment and never smoked, and where she further found insufficient support in the record for Dr. Meyer's various alternative causes of that fibrosis. Decision and Order on Reconsideration at 8; *see Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 285 (4th Cir. 2010) (ALJ may reject, as speculative, the opinions of experts who exclude coal dust exposure as the cause for opacities seen on x-ray and attribute it to other conditions if they fail to point to evidence in the record indicating that the miner suffers from any of those diseases); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc) (comments in an x-ray reading may affect the proper characterization of a doctor's opinion regarding whether the

changes on x-ray are of a "chronic dust disease" or another disease process). Counter to the Director's position (adopted by my colleagues), a physician's opinion on the cause of opacities identified on an x-ray -- rather than solely that physician's opinion on their size -- is relevant under the Act and regulations in determining whether a claimant has invoked the irrebuttable presumption. *Id.* And giving Dr. Meyer's x-ray readings less weight because the record did not support his causation opinion was well within the ALJ's discretion under settled law.[19] *Cox*, 602 F.3d at 285.

First, the ALJ plainly determined that she would provide equal weight to the fully credited opinions of similarly qualified x-ray readers. In her Decision and Order on Reconsideration, the ALJ explained she gave "the most weight to the opinions of physicians who are dually qualified as Board-certified radiologists and B-readers[.]" Decision and Order on Reconsideration at 7. She then correctly noted that as "dually qualified physician[s] provided each reading" they would receive "equivalent weight on the basis of the readers' credentials" unless "there [was] a reason . . . to give greater or lesser weight to a specific x-ray interpretation."[20] *Id.*

Those permissible findings render any error in discrediting Dr. Meyer's x-ray readings harmless, because whether they are credited or not cannot affect the outcome of the x-ray evidence based on the readers' qualifications and the number of their readings. As my colleagues correctly summarize, of the three x-rays at issue, the majority of equally qualified readers read one x-ray as positive for complicated pneumoconiosis, while the other two x-ray readings were in equipoise. If all three readers are equally qualified *and fully credited*, then, as a matter of law, the quality and the quantity of their x-ray readings would invoke the irrebuttable presumption in the absence of relevant contrary evidence under any of the other prongs of 20 C.F.R. §718.304.[21] *See Sea "B" Mining Co. v. Addison*,

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[19] The Director argues that in considering invocation of the irrebuttable presumption under 20 C.F.R. §718.304 complicated pneumoconiosis is a "condition established only by the size of x-ray opacities," contending size is "all that matters for invocation." Director's Brief at 3.

[20] The ALJ's findings on reconsideration closely mirror her findings in her original decision in which she similarly found complicated pneumoconiosis established based on the majority of the x-ray interpretations read by equally qualified physicians. Decision and Order Awarding Benefits at 14-15. In her original decision, the ALJ likewise gave the most weight to the most highly qualified readers and "gave equal weight to all physicians who possess the same level of professional credentials." *Id.* at 14.

[21] Given the ALJ's findings on the quality and quantity of the x-ray readings, my colleagues' suggestion the ALJ did not reconcile the competing views regarding the size

831 F.3d 244, 256 (4th Cir. 2016); *Woodward v. Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993).

The ALJ indisputably used this rationale in reconciling the conflicting x-ray readings, both in her original decision and in reconsideration of it. And because settled law has long held it is a valid way to reconcile conflicting x-ray evidence, any error in further discrediting Dr. Meyer's readings as equivocal regarding the etiology of the fibrosis he identified is harmless -- and we need not, and should not, go further to affirm the award.[22, 23] *See Addison*, 831 F.3d at 256; *Larioni*, 6 BLR at 1-1278.

Second, the ALJ nevertheless did not, as the Director suggests, improperly discredit Dr. Meyer's opinion on the size of the pattern of fibrosis he diagnosed on x-ray based on

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of the opacities is demonstrably incorrect: she went with the majority of equally qualified readers -- and those readers uniformly identified a Category A opacity on each x-ray.

[22] Notably, the ALJ found no contrary evidence from the any of the other prongs of 20 C.F.R. §718.304 outweighs the x-ray readings. Dr. Gaziano's medical opinions diagnosing complicated pneumoconiosis, which the ALJ credited, in part, on his acceptance of the positive x-ray readings, are not affected under a rationale affirming those readings. Regardless, Dr. Gaziano's reports diagnosing the disease -- credited or not -- cannot weigh against the x-ray readings, no other medical opinions or biopsy results are in the record, and the ALJ reasonably found the treatment records did not weigh in favor or against a finding of complicated pneumoconiosis because they "do not provide a reasoned explanation of the cause of any of the pulmonary findings." Decision and Order on Reconsideration at 9. Neither the Employer nor the Director raise any specific error with these determinations.

[23] While both Employer and my colleagues argue the ALJ failed to discuss the presence of "pulmonary nodules" under one centimeter found on treatment record CT scans, it is difficult to see how they could change the outcome under 20 C.F.R. §718.304: even Employer admits the CT scans predate the x-ray readings and were not taken for the purpose of identifying complicated pneumoconiosis, Employer's Brief at 8, and every one of the x-ray readers also acknowledged the presence of opacities under one centimeter in all four lung zones. Their presence is not in dispute -- and they do nothing to resolve the relevant dispute. My colleagues nevertheless insist this recognition invades the ALJ's discretion in fact-finding while their view does not. But this simply is not accurate: we both have considered and weighed this evidence. The difference is they have concluded a reasonable factfinder could find the records are relevant to a conflict in evidence and their

his opinion of its cause; she instead gave his opinion on the cause of the fibrosis less weight because the record did not support any of the alternative diagnoses he suggested. Decision and Order on Reconsideration at 7-8. Dr. DePonte and Dr. Crum -- whose readings the ALJ fully credited -- consistently read all three x-rays as containing small opacities consistent with pneumoconiosis in all zones, with coalescing large Category A opacities present. Director's Exhibits 23, 30, 31; Claimant's Exhibit 1. While Dr. Meyer similarly recognized opacities consistent with pneumoconiosis in all zones, he did not recognize any coalescence of opacities, and he flatly denied any of the opacities were large enough on their own to satisfy the criteria for complicated pneumoconiosis. Instead, he contended the "lower zone predominant linear pattern" of fibrosis he observed on all three x-rays was not typical of pneumoconiosis while providing no opinion on the size of the pattern -- speculating it instead could indicate "smoking-related disease, connective tissue disease, collagen vascular disease, drug toxicity" or some other "idiopathic cause." Director's Exhibit 29; Employer's Exhibits 1, 2.

Crucially, the ALJ's decision to credit Drs. DePonte and Crum establishes the presence of Category A opacities on the x-rays (as noted above), satisfying the size requirement for establishing complicated pneumoconiosis under the Act and the regulations. 30 U.S.C. §921(c)(3) (providing that a miner who suffers from a "chronic dust disease of the lung" that when diagnosed by x-ray "yields one or more large opacities" classified "in category A, B, or C" in the ILO form is entitled to the irrebuttable presumption); 20 C.F.R. §718.304 (same). Therefore -- whether considered under the language of 20 C.F.R. §718.304 requiring that the opacities result from a "chronic dust disease of the lung" or under 20 C.F.R. §718.203's requirement that pneumoconiosis arose "at least in part out of coal mine employment" -- the opacities' etiology is the only remaining relevant issue for entitlement.[24]

And counter to the Director's central position, there is no indication the ALJ did anything other than take (and permissibly discredit) Dr. Meyer's causation opinion at face

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consideration could make a difference to the outcome of this case under the ALJ's rationale. And I haven't. *See Shinseki*, 556 U.S. at 413; *Blankenship*, 123 F.4th at 696-97.

[24] Two things matter to invoke the irrebuttable presumption of death or disability due to pneumoconiosis under the straightforward language of 20 C.F.R. §718.304: whether a miner suffers or suffered a "chronic dust disease of the lung" (i.e., the cause of the miner's opacities or lesions) and whether that disease is severe enough to produce opacities that would appear as greater than one centimeter on x-ray or as "massive lesions" diagnosed by biopsy or autopsy (i.e., the size of the opacity or lesions). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.203; *E. Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 256 (4th Cir. 2000). Since both size and cause are relevant to invocation, the ALJ did not err in

value rather than using it to undermine his view on the size of the pattern of fibrosis he identified. The ALJ straightforwardly acknowledged Dr. Meyer did not identify opacities of clinical pneumoconiosis that met the size requirements. Instead, with each individual x-ray -- and in all three Dr. Meyer identified the same non-linear pattern of fibrosis -- the ALJ methodically reasoned there was insufficient support for any of the other etiologies Dr. Meyer suggested for the pattern. Director's Exhibit 29; Employer's Exhibits 1, 2. Settled law puts that solidly within her discretion. *Cox*, 602 F.3d at 285.

Nor do the Director or my colleagues persuasively distinguish *Cox*. Both point out that this case differs because in *Cox* the physicians all agreed on the size of the opacities and here they ostensibly do not -- although again it is difficult to discern Dr. Meyer's view on the size of the pattern of fibrosis he identified because he chose not to provide it. *See supra* at 6 n.12. But that distinction makes no difference, as a matter of law and logic. As a matter of law, the *Cox* court dealt only with the identical language in 30 U.S.C. §921(c)(3) and 20 C.F.R §718.304 establishing the requirements for invocation of the irrebuttable presumption. It never once mentioned 20 C.F.R. §718.203 and never implied the cause of an opacity is only relevant under §718.203 as the Director suggests. And as a matter of logic, the court unambiguously held it was enough for an ALJ to discredit a physician's x-ray readings at invocation by providing a rational reason not to accept his opinion on the cause of a miner's opacities. *Cox*, 602 F.3d at 285. So too here: regardless of Dr. Meyer's opinion on the size of the pattern of fibrosis he identified, the ALJ was free to discredit his reading based on his explanation of its cause.[25]

Any error in discrediting Dr. Meyer's x-ray readings as equivocal is harmless because it cannot change the ALJ's findings based on the readers' credentials and the

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giving less credit to Dr. Meyer's x-ray readings because she did not accept his explanation on the possible alternative sources of the pattern of fibrosis he identified, regardless of his opinion (of lack of it) on the pattern's size. *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 285 (4th Cir. 2010). Similarly, to the extent the cause of a miner's pneumoconiosis is also relevant to 20 C.F.R. §718.203 (and not simply subsumed by §718.304), the ALJ's rationale carries the same force.

[25] Nor do *Daniels Co. v. Director, OWCP* [*Mitchell*], 479 F.3d 321 (4th Cir. 2007) or *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-5 (1999) compel a different result. In *Mitchell*, the court remanded the case, in part, to examine the miner's length of coal mine employment to determine whether he qualified for the 20 C.F.R. §718.203 presumption and to consider the medical evidence with an accurate view of the miner's dust exposure. 479 F.3d at 337-38. Here, Claimant's twenty-seven years of coal mine employment is undisputed for both purposes. And in *Cranor*, the Board held that where a physician diagnosed clinical pneumoconiosis on x-ray his comments on the etiology of it were

number of readings. Decision and Order on Reconsideration at 8; *see Larioni*, 6 BLR at 1-1278. Regardless, the ALJ did not err in discrediting Dr. Meyer's x-ray readings based on his opinion of the etiology of the pattern of fibrosis he identified. *See Cox*, 602 F.3d at 285. I therefore would affirm the award of benefits.

JONATHAN ROLFE
Administrative Appeals Judge

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properly considered under 20 C.F.R. §718.203, or the miner would be deprived of the benefit of the presumption it arose out of his coal mine employment. 22 BLR at 1-5. Here, the ALJ correctly determined Claimant qualified for the presumption and further permissibly concluded "no evidence establishes his disease was due to another cause." Decision and Order on Reconsideration at 10. Most importantly, neither case holds that an ALJ may not discredit an x-ray reading based on the physician's view of the cause of opacities in determining whether to invoke the irrebuttable presumption. Indeed, such a holding would plainly violate *Scarbro's* directive that in determining whether a "chronic dust disease of the lung" exists under 30 U.S.C. §921(c)(3) and 20 C.F.R §718.304, a factfinder "necessarily must look at all of the relevant evidence presented." *Scarbro*, 220 F.3d at 256.