

U.S. Department of Labor

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



BRB No. 21-0494 BLA

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| RALPH H. LOCKARD |) | |
| |) | |
| Claimant-Respondent |) | |
| |) | |
| v. |) | |
| |) | |
| ARACOMA COAL COMPANY, |) | |
| INCORPORATED, ANR INCORPORATED |) | |
| c/o CONTURA ENERGY |) | |
| |) | |
| and |) | |
| |) | |
| Self-Insured Through ANR |) | DATE ISSUED: 11/30/2022 |
| INCORPORATED c/o HEALTHSMART |) | |
| |) | |
| Employer/Carrier- |) | |
| Petitioners |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Party-in-Interest |) | DECISION and ORDER |

Appeal of the Decision and Order Awarding Benefits of Larry A. Temin,
Administrative Law Judge, United States Department of Labor.

Jonathan C. Masters (Masters Law Office PLLC), South Williamson,
Kentucky, for Claimant.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for
Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Larry A. Temin's Decision and Order Awarding Benefits (2019-BLA-06205) rendered on a claim filed on July 20, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with at least nineteen years of underground coal mine employment and found he has complicated pneumoconiosis. He therefore determined Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §718.304. He further found Claimant's complicated pneumoconiosis arose out of his coal mine employment, 20 C.F.R. §718.203(b), and awarded benefits.

On appeal, Employer contends the ALJ erred in finding Claimant established complicated pneumoconiosis and invoked the irrebuttable presumption at Section 411(c)(3).¹ Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs, declined to file a substantive response.

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.² 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 (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 opacities greater than one centimeter in diameter that would be classified as Category A,

¹ We affirm, as unchallenged, the ALJ's finding that Claimant established at least nineteen years of underground coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4; Hearing Transcript at 18-19.

² The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as Claimant performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 26, 43.

B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung;³ 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. 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. *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); *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46 (4th Cir. 1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

Employer contends the ALJ erred in finding Claimant established complicated pneumoconiosis based on the x-rays and medical opinions, and in consideration of the evidence as a whole. 20 C.F.R. §718.304; Decision and Order at 11-16. We disagree.

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

The ALJ considered four interpretations of two x-rays taken on September 24, 2018 and May 23, 2019. Decision and Order at 4-5, 12-13; Director’s Exhibit 20 at 7; Claimant’s Exhibits 3, 5; Employer’s Exhibit 2. All the interpreting physicians are dually-qualified, Board-certified radiologists and B readers, except Dr. Forehand, who is a B reader only. *Id.* Dr. Forehand read the September 24, 2018 x-ray as negative for complicated pneumoconiosis, while Dr. Meyer read the same x-ray as positive for complicated pneumoconiosis. Director’s Exhibit 20 at 7; Claimant’s Exhibit 5. Employer does not challenge, and we therefore affirm, the ALJ’s finding that the September 24, 2018 x-ray is positive for complicated pneumoconiosis based on Dr. Meyer’s superior radiological qualifications. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 12; Director’s Exhibit 20 at 7; Claimant’s Exhibit 5; *see also 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).

Concerning the May 23, 2019 x-ray, Dr. Seaman read it as positive for a Category “A” large opacity consistent with complicated pneumoconiosis. Claimant’s Exhibit 3 at 2. Dr. Tarver read the same x-ray as consistent with coal workers’ pneumoconiosis and checked the box on the International Labour Organization x-ray form indicating he observed a Category A large opacity. Employer’s Exhibit 2 at 3. He also noted the area he identified in Claimant’s right-mid lung “may be a large opacity or an area of

³ There is no biopsy or autopsy evidence for consideration at 20 C.F.R. 718.304(b). Decision and Order at 12.

atelectasis/scarring as seen on the [computed tomography (CT)] 12-12-18.” Employer’s Exhibit 2 at 2. The ALJ found the x-ray positive for complicated pneumoconiosis because both physicians identified a Category A large opacity. Decision and Order at 13.

Employer does not specifically challenge the ALJ’s finding that the May 23, 2019 x-ray is positive for complicated pneumoconiosis. Rather, as discussed more fully below, Employer contends there is “[a] split of opinion” concerning the etiology of what was found in Claimant’s right mid-lung and that the ALJ erred in finding Claimant established complicated pneumoconiosis based on a weighing of the evidence as a whole. The ALJ considered Dr. Tarver’s interpretation in full and, in his discretion, permissibly found the doctor’s comment about a possible alternate etiology did not outweigh his identification of a Category A opacity; therefore, we see no error in the ALJ’s determination that the May 23, 2019 x-ray, and the x-ray evidence as a whole, is positive for complicated pneumoconiosis. 30 U.S.C. §921(c)(3); 20 C.F.R. §§718.102(d), 718.304; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Skrack*, 6 BLR at 1-711; Decision and Order at 13; Employer’s Exhibit 2 at 2.⁴

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

CT Scans

There are two CT scans of record dated December 12, 2018, and October 28, 2019. On both scans, Dr. Tarver identified several larger nodules in the lower left lobe, a large nodule in the right mid lung, and a band of atelectasis or scarring in the lateral segment of the right middle lobe.⁵ Employer’s Exhibits 1, 3. He interpreted both CT scans as positive for simple coal workers’ pneumoconiosis and noted there was a lateral segment of atelectasis in the right middle lobe. *Id.* Dr. Crum interpreted the October 28, 2019 CT

⁴ We note that even had the ALJ found Dr. Tarver’s reading equivocal, the readings of the second x-ray would not have been wholly negative for the existence of pneumoconiosis, and his conclusion that the x-ray evidence was positive for finding complicated pneumoconiosis would remain affirmable.

⁵ On the December 12, 2018 CT scan, Dr. Tarver observed “multiple 1-2 mm nodules scattered throughout both lungs,” “several larger 5-6mm nodules” in the lower left lobe, and a 5 mm nodule in the right mid lung. Employer’s Exhibit 3. On the October 28, 2019 CT scan, he observed “multiple 2-3 mm nodules scattered throughout both lungs” and “larger 8mm nodules and several 5-6 mm nodules.” Employer’s Exhibit 1.

scan as positive for complicated pneumoconiosis.⁶ Claimant's Exhibit 9. The ALJ found the December 12, 2018 CT scan does not support a finding of complicated pneumoconiosis based on Dr. Tarver's interpretation.⁷ Decision and Order at 14; Employer's Exhibit 3. The ALJ concluded, based on the conflicting interpretations by Drs. Tarver and Crum, equally qualified readers, the weight of the October 28, 2019 CT scan evidence is inconclusive. Decision and Order at 14; Employer's Exhibits 1, 3; Claimant's Exhibit 9. Thus, he determined the overall weight of the CT scan evidence is insufficient to support a finding of complicated pneumoconiosis. Decision and Order at 14.

Employer asserts the ALJ should have given more weight to Dr. Tarver's CT scan interpretations because he "was able to compare and contrast [the two scans] and consider the patterns shown on different occasions." Employer's Brief at 10. We disagree.

Contrary to Employer's contention, the ALJ was not required to credit Dr. Tarver's CT scan readings over Dr. Crum's reading because he interpreted more CT scans. *J.V.S. [Stowers] v. Arch of West Virginia/Apogee Coal Co.*, 24 BLR 1-78, 1-89 n.13 (2008) ("no requirement that an [ALJ] credit the readings of a doctor because he or she reviewed multiple x-rays"). In addition, there is no evidence that Dr. Tarver compared, contrasted, and considered the patterns shown on both CT scans in rendering his findings; his impression of both CT scans was identical (simple coal workers' pneumoconiosis and lateral segment right middle lobe atelectasis). Employer's Exhibits 1 at 2; 3 at 2. We therefore affirm the ALJ's permissible determination that the October 28, 2019 CT scan is inconclusive based on conflicting interpretations by dually-qualified radiologists. See *Adkins*, 958 F.2d at 52-53; *Addison*, 831 F.3d at 256; Decision and Order at 14.

⁶ Dr. Crum identified several large opacities in the right and left lungs that he classified as Category B complicated pneumoconiosis. Claimant's Exhibit 9. He also observed "a greater than 7 cm large opacity noted within the right mid lung evaluation of the adjacent bronchus" and opined it "may represent a large opacity secondary to [progressive massive fibrosis] and or Atelectasis." *Id.*

⁷ The ALJ also considered Dr. Ammisetty's note that the December 12, 2018 CT scan showed pulmonary nodularity and conglomerate opacities due to coal workers' pneumoconiosis. Decision and Order at 14; Claimant's Exhibit 7. However, he found Dr. Ammisetty's use of the term "conglomerate opacities" to be "too vague" to support a finding of complicated pneumoconiosis, especially as the physician did not discuss the size of this conglomerate. Decision and Order at 14.

Medical Opinions and Treatment Notes

The ALJ also considered Dr. Forehand's, Spagnolo's, Go's, and Rosenberg's medical opinions and Dr. Ammisetty's treatment notes. Decision and Order 14-16.

The ALJ found neither Dr. Forehand nor Dr. Ammisetty diagnosed or discussed whether Claimant has complicated pneumoconiosis or progressive massive fibrosis and therefore gave their opinions little weight. Decision and Order at 14; Director's Exhibit 20; Claimant's Exhibit 7. Employer asserts their opinions, contrary to the ALJ's characterization of them, actually support the conclusion that Claimant does not have complicated pneumoconiosis. Employer's Brief at 6-7. Further, Employer contends the ALJ's conclusory findings are not in compliance with the Administrative Procedure Act (APA), 5 U.S.C. §500 *et seq.*, as incorporated into the Act by 30 U.S.C. §932(a).⁸ We disagree.

Employer's argument generally posits evidence silent to the existence of complicated pneumoconiosis inherently supports a finding that it does not exist. Employer's Brief at 6. But an ALJ may find such silence neither supports nor undercuts the existence of the disease. *See Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-218-19 (1984); *Sacolick v. Rushton Mining Co.*, 6 BLR 1-930 (1984). Further, because the Board can discern why the ALJ permissibly discredited these opinions, he satisfied his duty of explanation under the APA. *See Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 316-17 (4th Cir. 2012); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 762 n.10 (4th Cir. 1999) (duty of explanation under the APA "is not intended to be a mandate for administrative verbosity or pedantry;" if a reviewing court can discern "what the ALJ did and why he did it," the duty is satisfied). We therefore affirm the ALJ's finding that Drs. Forehand's and Ammisetty's opinions are entitled to little weight on the issue of complicated pneumoconiosis. Decision and Order at 14.⁹

⁸ The APA provides that every adjudicatory decision must include a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

⁹ Employer also suggests that the various medical opinions do not warrant separate consideration as they depend entirely on the x-ray interpretations they reviewed. Under those circumstances, the opinions of Drs. Forehand and Ammisetty also would not weigh against finding complicated pneumoconiosis.

The ALJ also gave less weight to Dr. Spagnolo's opinion attributing the large densities in Claimant's lungs to sarcoidosis and not complicated pneumoconiosis based on a lack of obstructive or restrictive lung disease. Decision and Order at 15-16; Employer's Exhibits 5 at 8-9; 7. Employer challenges this finding. Employer's Brief at 8-9. Contrary to Employer's assertion, the ALJ permissibly found Dr. Spagnolo did not adequately explain or provide any evidence to support his opinion that the absence of a respiratory impairment excluded a complicated pneumoconiosis diagnosis, particularly as the regulations do not require such evidence to establish entitlement at 20 C.F.R. §718.304. *See Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 7 n.4 (1976) (complicated pneumoconiosis "is sometimes exhibited with 'mild pulmonary function changes and little or no disability'"); *Scarbro*, 220 F.3d at 257-58; Decision and Order at 15-16; Employer's Exhibit 5 at 8-9. Thus, the ALJ permissibly found Dr. Spagnolo's opinion not well-reasoned or documented and entitled to less weight.¹⁰ *Looney*, 678 F.3d at 316-17; Decision and Order at 16.

The ALJ also found Dr. Rosenberg's opinion that Claimant "potentially" has complicated pneumoconiosis is equivocal and vague, and thus not well-reasoned or well-documented¹¹ and entitled to less weight. *See U.S. Steel Mining Co. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 391 (4th Cir. 1999); *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); *Skrack*, 6 BLR at 1-711; Decision and Order at 15; Claimant's Exhibit 1 at 3. Employer does not challenge this finding.

In contrast, the ALJ gave "probative weight" to Dr. Go's diagnosis of complicated pneumoconiosis, finding it well-reasoned and well-documented. Decision and Order at 15; Claimant's Exhibit 12 at 6. Employer argues the ALJ erred in crediting Dr. Go's opinion without explaining how it was not based solely on the x-ray interpretations. Employer's

¹⁰ Employer contends the ALJ's discrediting of Dr. Spagnolo for not adequately explaining his diagnosis of sarcoidosis contradicts his later conclusion, when weighing the evidence as a whole, that "Dr. Spagnolo did not provide any reasons for not attributing the large opacities to complicated pneumoconiosis." Employer's Brief at 8. Contrary to Employer's assertion, the ALJ consistently stated, when discussing the evidence as a whole, that "Dr. Spagnolo could not provide a satisfactory reason why the large densities in the Claimant's lungs were not complicated pneumoconiosis." Decision and Order at 16. We therefore reject Employer's argument.

¹¹ The ALJ noted Dr. Rosenberg relied on evidence not in the record, including Dr. DePonte's interpretation of a March 18, 2019 x-ray, Dr. Kendall's interpretation of the May 23, 2019 x-ray, and "possibly" his interpretation of the May 23, 2019 x-ray. Decision and Order at 15; Claimant's Exhibit 1.

Brief at 9. Contrary to Employer's assertion, the ALJ permissibly determined Dr. Go based his opinion on "a thorough understanding of the Claimant's personal, work, and medical histories," including Claimant's length of coal mine employment, radiographic evidence consistent with complicated pneumoconiosis,¹² evidence of obstructive defect in Claimant's pulmonary function testing, a review of other medical opinions, and the lack of other exposures such as smoking.¹³ See *Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208 (4th Cir. 2000); *Looney*, 678 F.3d at 316-17; Decision and Order at 15; Claimant's Exhibit 12 at 6. Thus, we affirm the ALJ's crediting of Dr. Go's opinion and his determination that the medical opinions support a finding of complicated pneumoconiosis. Decision and Order at 15-16.

Weighing the Evidence as a Whole

In weighing the evidence as a whole, the ALJ reiterated he found the x-ray evidence positive for complicated pneumoconiosis and the CT scan evidence insufficient to support such a diagnosis. Decision and Order at 16. However, he observed that "when all the radiographic evidence is looked at together, I find it probative that three different dually-qualified readers, Drs. Meyer[], Seaman, and Crum, identified large opacities consistent with complicated pneumoconiosis, while only one dually-qualified reader, Dr. Tarver, did not." *Id.* The ALJ then noted his finding is supported by Dr. Go's well-reasoned and well-documented medical opinion. *Id.* He concluded there was no sufficient evidence in the record to establish the large opacities identified in Claimant's lungs "do not exist or are attributable to some other condition." *Id.*

Employer asserts that in weighing all of the radiographic evidence, the ALJ failed to address the "split of opinion" regarding the May 23, 2019 x-ray, specifically Dr. Tarver's

¹² In addition to x-ray interpretations, Dr. Go considered the interpretations of the December 18, 2018 and October 28, 2019 CT scans. Claimant's Exhibit 12. He opined that Dr. Crum's interpretation of the October 28, 2019 CT scan "is more likely to be accurate" than Dr. Tarver's interpretation because his report was more detailed. *Id.* However, Dr. Go stated that even assuming the readings of the October 28, 2019 x-ray were in equipoise, he would still diagnose complicated pneumoconiosis. *Id.* While Employer correctly notes Dr. Go's CT scan findings are inconsistent with the ALJ's finding that the CT scan evidence is insufficient to establish complicated pneumoconiosis, Dr. Go's diagnosis of complicated pneumoconiosis is consistent with the ALJ's overall finding that the weight of the evidence was positive for complicated pneumoconiosis. *Larioni*, 6 BLR at 1-1278; Decision and Order at 15-16; Employer's Brief at 9.

¹³ The record reflects Claimant never smoked. Claimant's Exhibit 7 at 6, 8, 12.

notation that an area in Claimant's right mid-lung may be a large opacity or an area of atelectasis or scarring. Employer's Brief at 9-10. Employer contends that because Dr. Tarver, unlike the other physicians, also considered two CT scans, his opinion has "more breadth and credibility" and is therefore "more persuasive" than the other dually-qualified physicians. Employer's assertions are without merit.

As discussed above, the ALJ permissibly found the x-ray evidence supports a finding of complicated pneumoconiosis. He also addressed the entirety of the CT scan evidence, including Dr. Tarver's consideration of two CT scans and his diagnosis of atelectasis in Claimant's right mid-lung. Moreover, in weighing the evidence together, he found there was nothing that established the opacities seen on x-ray were not there or were caused by something other than coal dust. Decision and Order at 16. Employer has not identified any error in those findings and its argument that the ALJ should have given more weight to Dr. Tarver's CT scan interpretations, Employer Brief at 9-11, is a simple request to re-weigh evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Because the ALJ weighed all the relevant evidence and his credibility findings are supported by substantial evidence, we affirm the ALJ's conclusion that Claimant has complicated pneumoconiosis and therefore invoked the irrebuttable presumption. 30 U.S.C. §921(c)(3) (2018); 20 C.F.R. §718.304; *Cox*, 602 F.3d at 283; *Melnick*, 16 BLR at 1-33-34; Decision and Order at 16. We further affirm, as unchallenged, the ALJ's finding that Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b); *see Daniels Co., Inc., v. Mitchell*, 479 F.3d 321, 337 (4th Cir. 2007); *Skrack*, 6 BLR at 1-711; Decision and Order at 16.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge