



BRB Nos. 22-0377 BLA
and 22-0378 BLA

VERNA K. COMBS)
(o/b/o and Widow of JOE COMBS))

Claimant-Respondent)

v.)

CUMBERLAND RIVER COAL)
COMPANY, c/o ARCH COAL)

and)

Self-Insured through ARCH COAL)
INCORPORATED, c/o UNDERWRITERS)
SAFETY AND CLAIMS)

DATE ISSUED: 10/16/2023

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 Jason A. Golden,
Administrative Law Judge, United States Department of Labor.

Wes Addington (Appalachian Citizens' Law Center), Whitesburg, Kentucky,
for Claimant.

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

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Jason A. Golden's Decision and Order Awarding Benefits (2020-BLA-05171 and 2020-BLA-06005) rendered pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on January 29, 2019,¹ and a survivor's claim filed on May 26, 2020.²

The ALJ credited the Miner with 38.38 years of coal mine employment. He found Claimant established complicated pneumoconiosis and therefore invoked the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. Further, he found the Miner's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits in the miner's claim. 20 C.F.R. §718.203(b). Because the Miner was entitled to benefits at the time of his death, the ALJ concluded Claimant is automatically entitled to survivor's benefits under Section 422(l) of the Act, 30 U.S.C. §932(l).

On appeal, Employer asserts the ALJ erred in finding Claimant established complicated pneumoconiosis.³ Claimant responds in support of the award. The Director, Office of Workers' Compensation Programs, declined to file a brief unless requested.

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.⁴ 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).

¹ The Miner filed a prior claim that he withdrew. Miner's Claim (MC) Director's Exhibit 1. A withdrawn claim is considered not to have been filed. 20 C.F.R. §725.306(b).

² Claimant is the widow of the Miner, who died on March 28, 2020. Survivor's Claim (SC) Director's Exhibit 4. Claimant is pursuing the miner's claim on behalf of his estate and her survivor's claim.

³ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established 38.38 years of coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 8.

⁴ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because the Miner performed his coal mine employment in Kentucky.

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), provides an irrebuttable presumption that a miner was totally disabled due to pneumoconiosis if he suffered 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;⁵ 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 Claimant has invoked the irrebuttable presumption, the ALJ must consider all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89 (6th Cir. 1999); *Melnick v. Consol. Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

The ALJ found the x-ray evidence supports a finding of complicated pneumoconiosis, 20 C.F.R. §718.304(a), while the medical opinion evidence is entitled to little weight and thus does not undermine the x-ray evidence of the disease.⁶ 20 C.F.R. §718.304(c); Decision and Order at 11-15. Weighing all the evidence together, he concluded Claimant established complicated pneumoconiosis based on the x-ray evidence. 20 C.F.R. §718.304; Decision and Order at 15.

Employer argues the ALJ erred in considering the x-ray evidence. Employer's Brief at 4-13. We disagree.

The ALJ considered eight interpretations of two x-rays dated February 26, 2019, and August 16, 2019. Decision and Order at 11-14. He found all the interpreting physicians are dually qualified as Board-certified radiologists and B readers.⁷ *Id.* at 12; MC Director's Exhibits 13 at 27, 15; Claimant's Exhibits 1-3; Employer's Exhibits 1-3.

See Shupe v. Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director's Exhibit 29 at 8.

⁵ The ALJ found the record contains no biopsy or autopsy evidence. 20 C.F.R. §718.304(b); Decision and Order at 15.

⁶ The ALJ considered the opinions of Drs. Green and Dahhan. Decision and Order at 14-15. He found Dr. Green's opinion that the Miner had complicated pneumoconiosis is based solely on Dr. DePonte's reading of the February 26, 2019 x-ray and thus "adds little to the analysis," and that Dr. Dahhan did not opine on whether the Miner had complicated pneumoconiosis. *Id.* Thus, he gave little weight to the medical opinion evidence. *Id.* at 15.

⁷ Employer's general argument that the ALJ erred by failing to consider the other academic and radiologic qualifications of the experts amounts to a request to reweigh the

Drs. DePonte, Seaman, and Crum read the February 26, 2019 x-ray as positive for complicated pneumoconiosis. Miner's Claim (MC) Director's Exhibits 13 at 27, 15; Claimant's Exhibit 1. Drs. DePonte and Seaman identified a Category B opacity while Dr. Crum identified a Category A opacity. *Id.* Dr. Meyer read the x-ray as negative for complicated pneumoconiosis. Employer's Exhibit 3. Drs. DePonte and Crum read the August 16, 2019 x-ray as positive for complicated pneumoconiosis, Category A, while Drs. Meyer and Tarver read the x-ray as negative. Claimant's Exhibits 1, 2; Employer's Exhibits 1, 2.

The ALJ gave equal weight to all of the x-ray readings except Dr. Meyer's reading of the August 16, 2019 x-ray, which he found unpersuasive. Decision and Order at 13-14. Because the ALJ found a greater number of credible dually-qualified radiologists read each x-ray as positive for complicated pneumoconiosis, he found both x-rays are positive for the disease. *Id.* Alternatively, the ALJ found that even if he had not discredited Dr. Meyer's August 16, 2019 x-ray reading, he would have found the readings of the August 16, 2019 x-ray in equipoise because an equal number of dually-qualified radiologists read the x-ray as positive and negative for complicated pneumoconiosis. *Id.* at 14 n.41. Thus the x-ray evidence would still support the finding of complicated pneumoconiosis because one x-ray would be positive for the disease and the readings of one x-ray would be inconclusive. *Id.*

Employer argues the ALJ erred in weighing the x-ray readings of Drs. DePonte and Crum⁸ because, it asserts, he did not fully consider the comments, and symbols representing other diseases or abnormalities, they included on the International Labour Organization (ILO) x-ray form.⁹ Employer's Brief at 4-12.

evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); Employer's Brief at 13. While an ALJ may rely on a physician's additional qualifications when considering their readings, they are 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); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993). Moreover, Employer does not attempt to explain why, or even whether, its experts' opinions would be entitled to greater weight based on additional credentials they may or may not have.

⁸ We affirm, as unchallenged on appeal, the ALJ's crediting of Dr. Seaman's positive interpretation of the February 26, 2019 x-ray. *See Skrack*, 6 BLR at 1-711; Decision and Order at 12-13.

⁹ The ILO x-ray form allows a radiologist to identify if there are any parenchymal abnormalities consistent with pneumoconiosis. 20 C.F.R. §718.102 (standards for x-rays), *incorporating by reference Guidelines for the Use of the ILO International Classification*

Regarding the February 26, 2019 x-ray, Dr. DePonte indicated the existence of large Category B opacities. She also marked the symbols for atherosclerotic aorta, cancer – thoracic malignances excluding mesothelioma, emphysema, and plate atelectasis. MC Director’s Exhibit 13 at 27. She further stated there is an unusual “c” shaped opacity in the right upper lung zone measuring at least 5.3 centimeters that is consistent with complicated pneumoconiosis, but a computed tomography (CT) scan is recommended to aid in excluding a malignancy. *Id.* Dr. Crum identified Category A large opacities and also marked the symbols for atherosclerotic aorta, calcification in small pneumoconiotic opacities, and enlargement of non-calcified hilar or mediastinal lymph nodes. Claimant’s Exhibit 3. He further stated there is perihilar and right upper lung infiltrate, that the suspected A opacity on the August 16, 2019 x-ray may represent scarring from infiltrate or underlying progressive massive fibrosis, and that it would be helpful to have an x-ray dating from before the infiltrate. *Id.*

With regard to the August 16, 2019 x-ray, Dr. DePonte identified a Category A large opacity. Claimant’s Exhibit 2. She also marked the symbols for atherosclerotic aorta and plate atelectasis. *Id.* She opined the right upper lobe opacities “may represent category A large opacities,” and that a CT scan would aid in further evaluation. *Id.* Dr. Crum identified a Category A large opacity, and also marked the symbols for calcification in small pneumoconiotic opacities and enlargement of non-calcified hilar or mediastinal lymph nodes. Claimant’s Exhibit 1. In the comments section, he wrote that his findings suggest progressive massive fibrosis and a likely Category A opacity in the right upper lung, as well as bilateral nodularity and hilar prominence. *Id.*

In discussing the February 26, 2019 x-ray, the ALJ considered Dr. DePonte’s statement that a CT scan is recommended to exclude malignancy such as cancer and that Dr. Crum noted an x-ray would be helpful in determining if the suspected Category A opacity represents scarring from infiltrates or underlying progressive massive fibrosis. Decision and Order at 12-13. In addition, in considering the August 16, 2019 x-ray, the ALJ noted Dr. DePonte’s statement that the Category A large opacity “may represent” complicated pneumoconiosis, and that Dr. Crum commented the x-ray is “suggesting” progressive massive fibrosis and a Category A large opacity is “likely.” Claimant’s Exhibits 1, 2; Decision and Order at 13.

of Radiographs of Pneumoconioses, Revised edition 2011 (ILO Guidelines). Pneumoconiosis may be established with a chest x-ray “classified as Category 1, 2, 3, A, B, or C, according to the ILO classification system[.]” 20 C.F.R. §718.102(d); *see* 30 U.S.C. §921(c)(3). Categories 1, 2, and 3 indicate simple pneumoconiosis while categories A, B, and C indicate complicated pneumoconiosis. 20 C.F.R. §718.304.

The ALJ found that, because Drs. DePonte and Crum specifically identified the presence of a Category A or B opacity and checked the corresponding box on the ILO x-ray form, their additional comments do not reduce the credibility of their diagnoses. Decision and Order at 13-14. Thus, contrary to Employer's contention, the ALJ adequately considered all portions of Drs. DePonte's and Crum's x-ray readings and permissibly found them credible in diagnosing complicated pneumoconiosis. See *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 712 (6th Cir. 2002); *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366 (4th Cir. 2006) ("refusal to express a diagnosis in categorical terms is candor, not equivocation"); Decision and Order at 13; Employer's Brief at 4-12.

Employer also asserts the ALJ's alternate finding that the readings of the August 16, 2019 x-ray would be, at best, in equipoise if he had not discredited Dr. Meyer's reading is irrational. Employer's Brief at 12. We disagree. In resolving the conflict in the August 16, 2019 x-ray readings, the ALJ permissibly credited the readings by dually-qualified radiologists. Decision and Order at 13-14. Because an equal number of dually-qualified physicians read the x-ray as positive and negative for complicated pneumoconiosis, the ALJ permissibly found the readings are, at best, inconclusive.¹⁰ *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 272-76 (1994); *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59 (6th Cir. 1995); Decision and Order at 14 n.14.

Finally, we reject Employer's argument that the ALJ erred in "counting heads" to resolve the conflicts in the x-ray evidence. Employer's Brief at 10. The ALJ did not merely engage in a headcount when resolving the conflicting x-ray readings; instead, he properly performed both a qualitative and quantitative analysis of the x-ray evidence, taking into consideration the physicians' qualifications, their specific interpretations, and the number of readings of each film. See *Staton*, 65 F.3d at 59; *Woodward v. Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993); Decision and Order at 11-14.

As Employer raises no additional arguments, we affirm the ALJ's finding that the x-ray evidence supports a finding of complicated pneumoconiosis, and that all the relevant evidence considered together establishes complicated pneumoconiosis. See *Melnick*, 16 BLR at 1-33; 20 C.F.R. §718.304; Decision and Order at 14-15. We further affirm, as unchallenged on appeal, the ALJ's finding that the Miner's complicated pneumoconiosis arose out of his coal mine employment. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-

¹⁰ Because the ALJ permissibly found crediting Dr. Meyer's opinion would not change his conclusions, we need not address Employer's additional challenges to the ALJ's weighing of his opinion. See *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); Decision and Order at 12-14; 14 n.41; Employer's Brief at 10-11.

710, 1-711 (1983); 20 C.F.R. §718.203(b); Decision and Order at 15-16. We therefore affirm the award of benefits in the miner's claim.

Survivor's Claim

Because we have affirmed the award of benefits in the miner's claim and Employer raises no specific challenge to the award in the survivor's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits pursuant to Section 422(l). 30 U.S.C. §932(l) (2018); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013); Decision and Order at 17.

Accordingly, the ALJ's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge