

U.S. Department of Labor

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



BRB No. 24-0422 BLA

RUSSELL LEE FLEMING

Claimant-Respondent

v.

INMET 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: 09/22/2025

DECISION and ORDER

Appeal of the Decision and Order Granting Benefits in an Initial Claim of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

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

Denise Hall Scarberry (Baird & Baird, PSC), Pikeville, Kentucky, for Employer.

Before: ROLFE and JONES, Administrative Appeals Judges, and ULMER,
Acting Administrative Appeals Judge.

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Joseph E. Kane's Decision and Order Granting Benefits in an Initial Claim (2022-BLA-05889) rendered on a claim filed on April 20, 2021, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Claimant established complicated pneumoconiosis and therefore invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act.¹ 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. Further, she found Claimant's complicated pneumoconiosis arose out of his coal mine employment, 20 C.F.R. §718.203(b), and awarded benefits.

On appeal, Employer argues the ALJ erred in finding Claimant established complicated pneumoconiosis.² Claimant responds in support of the award of benefits. The Acting Director, Office of Workers' Compensation Programs, declined to file a response brief.

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.³ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 361-62 (1965).

¹ The ALJ accepted the parties' stipulation that Claimant has thirty-five years of underground coal mine employment. Decision and Order at 3; Hearing Tr. at 13-14.

² We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established thirty-five years of qualifying coal mine employment. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3.

³ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4; Hearing Tr. at 16.

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, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung;⁴ or (c) when diagnosed by other means, is a condition that would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. In determining whether Claimant has invoked the irrebuttable presumption, the ALJ must weigh 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, 1-33-34 (1991) (en banc).

Employer contends the ALJ erred in finding Claimant established complicated pneumoconiosis based on the weight of the x-ray and medical opinion evidence. 20 C.F.R. §718.304(a), (c); Employer's Brief at 5-11 (unpaginated). We disagree.

20 C.F.R. §718.304(a): X-rays

The ALJ considered nine interpretations of four x-rays dated January 13, 2021, September 7, 2021, February 11, 2022, and April 28, 2022, rendered by physicians who are all dually qualified as B readers and Board-certified radiologists. Decision and Order at 6-9. Dr. Alexander read the January 13, 2021 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Simone read it as negative. Director's Exhibits 23, 29. Drs. DePonte, Crum, and Seaman read the September 7, 2021 x-ray as positive for complicated pneumoconiosis, while Dr. Simone read it as negative for the disease. Director's Exhibits 19 at 29; 22; 28; Claimant's Exhibit 1. Drs. DePonte and Crum identified Category B opacities, while Dr. Seaman identified Category A opacities. Dr. Crum read the February 11, 2022 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Simone read it as negative. Director's Exhibits 24, 27. Finally, Dr. Simone read the April 28, 2022 x-ray as negative for complicated pneumoconiosis. Employer's Exhibit 2.

The ALJ found the January 13, 2021 x-ray is in equipoise because an equal number of dually-qualified radiologists read it as positive and negative for complicated pneumoconiosis. Decision and Order at 8. He then discredited Dr. Simone's readings of the September 7, 2021, February 11, 2022, and April 28, 2022 x-rays as speculative and equivocal. *Id.* at 8-9. Thus he determined the September 7, 2021 x-ray is positive for

⁴ The record does not contain biopsy or autopsy evidence. 20 C.F.R. §718.304(b).

complicated pneumoconiosis based on the readings of Drs. DePonte, Crum, and Seaman,⁵ the February 11, 2022 x-ray is positive for complicated pneumoconiosis based on Dr. Crum's reading, and the April 28, 2022 x-ray is inconclusive. *Id.* at 9. He therefore concluded the x-ray evidence supports a finding of complicated pneumoconiosis. *Id.*

Employer argues the ALJ erred in discrediting Dr. Simone's readings of the February 11, 2022 and April 28, 2022 x-rays. Employer's Brief at 7-10 (unpaginated). Dr. Simone opined the February 11, 2022 x-ray showed chronic obstructive pulmonary disease (COPD) and scattered granulomas, but no sign of pneumoconiosis. Director's Exhibit 27. He opined the April 28, 2022 x-ray shows opacities in the upper four lung zones and an eight-millimeter granuloma in the left upper lobe, but no evidence of complicated pneumoconiosis. Employer's Exhibit 2.

The ALJ observed there is "no evidence in the record to suggest that Claimant has ever been diagnosed with or treated for granulomatous disease." Decision and Order at 8-9. He further noted that Dr. Simone's readings are outliers as he is the only one of the five interpreting physicians who did not identify any large opacities consistent with complicated pneumoconiosis. *Id.* at 8. Thus, contrary to Employer's argument, the ALJ provided permissible reasons for finding Dr. Simone's readings of the February 11, 2022 and April 28, 2022 x-rays not credible. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 712 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Snorton v. Zeigler Coal Co.*, 9 BLR 1-106, 1-107 (1986) (ALJ may reasonably question validity of a physician's opinion that varies significantly from the remaining medical opinions of record); Decision and Order at 8-9.

Thus, as it is supported by substantial evidence, we affirm the ALJ's finding that the x-ray evidence supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(a).

⁵ Employer asserts the ALJ erred in weighing Dr. Simone's reading of the September 7, 2021 x-ray. Employer's Brief at 5-7 (unpaginated). However, we need not address this argument as Employer asserts the ALJ should have found the x-ray is positive for complicated pneumoconiosis, regardless of the weight accorded to Dr. Simone's reading, "because the majority of the readers found this x-ray to be preponderantly positive for the presence of both simple and complicated pneumoconiosis." *Id.* at 5 (unpaginated); *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"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

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

Medical Opinions

The ALJ considered the medical opinions of Drs. Raj and Dahhan.⁶ Decision and Order at 10-12. Dr. Raj diagnosed complicated pneumoconiosis based on the x-rays and Claimant's lengthy coal mine employment history. Director's Exhibit 19 at 3-4. Dr. Dahhan opined Claimant does not have complicated pneumoconiosis based on the x-ray, pulmonary function study, and blood gas study evidence. Director's Exhibit 31; Employer's Exhibit 3. The ALJ found Dr. Raj's opinion is reasoned and documented, while Dr. Dahhan's opinion is neither sufficiently documented nor reasoned. Decision and Order at 10-12. He thus concluded the medical opinion evidence supports a finding of complicated pneumoconiosis based on Dr. Raj's opinion. *Id.*

Employer contends the ALJ erred in crediting Dr. Raj's opinion because it is "one of the earlier pieces of evidence that make up this evidentiary record" and his opinion cannot be considered reasoned and documented unless he considered the "totality of the medical evidence." Employer's Brief at 10 (unpaginated). Contrary to Employer's argument, an ALJ is not required to discredit a physician who did not review all of a miner's medical records when the opinion is otherwise well-reasoned, documented, and based on his own examination of the miner and objective test results. *See Smith v. Kelly's Creek Res.*, 26 BLR 1-15, 1-28 (2023); *Church v. E. Assoc. Coal Corp.*, 20 BLR 1-8, 1-13 (1996).

Finally, Employer argues the ALJ erred in discrediting Dr. Dahhan's opinion. Employer's Brief at 10-11 (unpaginated).

Dr. Dahhan opined most, if not all, cases of complicated pneumoconiosis will be associated with impairment on pulmonary function and blood gas studies, and that Claimant does not have complicated pneumoconiosis because his spirometry and blood gases do not demonstrate impairment. Director's Exhibit 31 at 15; Employer's Exhibit 3 at 16-17. He later testified that a diagnosis of complicated pneumoconiosis cannot be made based on the pulmonary function and blood gas studies and that it must be made based on the radiological evidence in this case. Employer's Exhibit 3 at 14-15, 21. He further

⁶ The ALJ also considered Dr. Broudy's opinion but found it does not provide a conclusive opinion on whether Claimant has complicated pneumoconiosis and thus found it neither supports nor refutes the existence of the disease. Decision and Order at 12; Director's Exhibits 25, 34. As this finding is unchallenged, we affirm it. *See Skrack*, 6 BLR at 1-711.

opined Claimant does not have complicated pneumoconiosis because half of the physicians read the x-rays as positive for complicated pneumoconiosis and half did not. *Id.* at 16.

The ALJ found Dr. Dahhan did not have an accurate understanding of the x-ray evidence as he stated it is in equipoise, but five of the nine readings are positive and the ALJ found the x-ray evidence overall is positive for complicated pneumoconiosis. Decision and Order at 12. He further discounted Dr. Dahhan's opinion because he opined a diagnosis of complicated pneumoconiosis would be inconsistent with Claimant's pulmonary function and blood gas studies, but then contradicted himself by opining complicated pneumoconiosis cannot be diagnosed by pulmonary function and blood gas studies. *Id.* Thus the ALJ permissibly found Dr. Dahhan's opinion is not persuasively reasoned. See *Crisp*, 866 F.2d at 185; *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983).

Because it is supported by substantial evidence, we affirm the ALJ's conclusion that the medical opinions support a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 12. Consequently, we affirm the ALJ's findings that the evidence weighed together establishes complicated pneumoconiosis and that Claimant invoked the irrebuttable presumption of total disability due to complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 13. We further affirm, as unchallenged, the ALJ's determination that Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b); see *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 13.

Accordingly, we affirm the ALJ's Decision and Order Granting Benefits in an Initial Claim.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge