

BRB No. 14-0047 BLA

BARRY BOWER)
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 Claimant-Respondent)
)
 v.)
)
 MAPLE MEADOW MINING COMPANY)
)
 and)
)
 RAG AMERICAN COAL COMPANY) DATE ISSUED: 09/12/2014
)
 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 Theresa C. Timlin, Administrative Law Judge, United States Department of Labor.

William S. Mattingly and Jeffrey R. Soukup (Jackson Kelly PLLC), Morgantown, West Virginia, for employer/carrier.

Before: HALL, Acting Chief Administrative Appeals Judge, McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits (2011-BLA-05292) of Administrative Law Judge Theresa C. Timlin, awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). Claimant filed this claim on March 2, 2010. Director's Exhibit 2.

The administrative law judge credited claimant with twenty-four years of coal mine employment¹ and adjudicated this claim pursuant to the regulations in 20 C.F.R. Part 718.² The administrative law judge found the evidence sufficient to establish the existence of simple and complicated pneumoconiosis pursuant to 20 C.F.R. §§718.202(a) and 718.304, and that claimant's pneumoconiosis arose from his coal mine employment pursuant to 20 C.F.R. §718.203(b). Accordingly, the administrative law judge awarded benefits.

On appeal, employer asserts that the administrative law judge erred in finding the evidence sufficient to establish the existence of simple and complicated pneumoconiosis. Neither claimant, nor the Director, Office of Workers' Compensation Programs, has responded to this appeal.³

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that he suffers from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and its implementing regulation, 20 C.F.R. §718.304, there is an irrebuttable presumption that a miner is totally disabled due to

¹ The record indicates that claimant's coal mine employment was in West Virginia. Director's Exhibit 5; Hearing Tr. at 15-17. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

² Congress enacted amendments to the Black Lung Benefits Act with respect to the entitlement criteria for claims, such as this one, which were filed after January 1, 2005, and were pending on or after March 23, 2010. However, having found that claimant established entitlement to benefits pursuant to 20 C.F.R. §718.304, the administrative law judge did not address whether claimant could also establish entitlement under the amended criteria. Decision and Order at 6 n.7.

³ The administrative law judge's findings of twenty-four years of coal mine employment, and that claimant's pneumoconiosis arose out of his coal mine employment, pursuant to 20 C.F.R. §718.203(b), are not challenged on appeal. Therefore, these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

pneumoconiosis if the miner is suffering from a chronic dust disease of the lung which (A) when diagnosed by x-ray, yields an opacity 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 reveal a result equivalent to (A) or (B). See 20 C.F.R. §718.304; *E. Associated Coal Corp. v. Director, OWCP [Scarbro]*, 220 F.3d 250, 255, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-561-62 (4th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc). In determining whether a claimant has invoked the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304, the administrative law judge must weigh together all of the evidence relevant to the presence or absence of complicated pneumoconiosis. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (4th Cir. 1993); *Gollie v. Elkay Mining Corp.*, 22 BLR 1-306, 1-311 (2003); *Melnick*, 16 BLR at 1-33-34.

Existence of Pneumoconiosis

X-Ray Evidence

Pursuant to 20 C.F.R. §§718.202(a)(1) and 718.304(a), the administrative law judge noted that the most recent x-ray of record, dated August 19, 2010, was read as positive by Dr. Daniel, a Board-certified radiologist, who stated that “Complicated pneumoconiosis remains evident with conglomerate densities of both upper lung zones more pronounced on the right than the left side. An element of progressive massive fibrosis is suggested.” Claimant’s Exhibit 9. The administrative law judge noted that Dr. Daniel did not utilize the ILO x-ray classification format, and that there were no other interpretations of this x-ray. Decision and Order at 9.

The administrative law judge next considered six interpretations of an April 23, 2010 x-ray. Dr. Gaziano, a B reader, read this x-ray as positive for both simple pneumoconiosis and complicated pneumoconiosis, Category B. Claimant’s Exhibit 8. Dr. Rasmussen, a B reader, also read this x-ray as positive for both simple pneumoconiosis and complicated pneumoconiosis, Category B. Director’s Exhibit 13. Further, Dr. Alexander, who is dually qualified as a B reader and Board-certified radiologist, read this x-ray as positive for both simple pneumoconiosis and complicated pneumoconiosis, Category B. Claimant’s Exhibit 1. Dr. Groten, who is dually qualified, read this x-ray as both positive for simple pneumoconiosis and complicated pneumoconiosis, Category A. Claimant’s Exhibit 2. In contrast, Drs. Scott and Wheeler, both of whom are dually qualified, read this x-ray as negative for pneumoconiosis. Employer’s Exhibits 1, 2. Dr. Scott identified the presence of 4 cm and 2.5 cm masses in the right mid-lung, and an ill-defined 5 cm mass in the left mid-lung, but stated that “[t]hese are probably granulomatous” such as tuberculosis (TB), atypical TB,

histoplasmosis, or sarcoid. Employer's Exhibit 2. He stated that "[s]ilicosis [or coal workers' pneumoconiosis] large opacities cannot be excluded but there is no definite background of small opacities." Employer's Exhibit 2. Dr. Scott suggested a biopsy to confirm the diagnosis. *Id.* Dr. Wheeler identified the presence of a 6 cm mass in the lower right upper lung, a 2 cm mass in the lower lateral right mid-lung, and a 4 cm mass in the lower left upper lung, which he stated are "all compatible with conglomerate granulomatous disease: histoplasmosis or mycobacterium avium complex . . . more likely than TB." Employer's Exhibit 1. He stated "Check clinically because an exact diagnosis is needed for proper therapy." *Id.* Dr. Wheeler also stated:

Masses in this case are not large opacities of [coal workers' pneumoconiosis] because any background small nodules are very low profusion and he is quite young. NIOSH and MSHA became active controlling dust levels in mines in early 1970s mandated to prevent [coal workers' pneumoconiosis]. To have high unprotected dust exposure in recent decades would presumably be very rare and illegal. However, diagnosis should have been made with biopsy or microbiology when lung symptoms first developed or first abnormal x-ray was reported.

Id.

Analyzing the evidence regarding both simple and complicated pneumoconiosis, the administrative law judge found the August 19, 2010 x-ray to be positive for complicated pneumoconiosis, based on Dr. Daniel's uncontradicted reading, but of limited probative value "on its own" given Dr. Daniel's "nonconformance with the ILO-U/C classification format and limited description of the opacities." Decision and Order at 9. Turning to the April 23, 2010 x-ray, the administrative law judge accorded "less weight" to the negative interpretations by Drs. Scott and Wheeler because she found "the reasoning behind their negative findings," to be "equivocal" and "flawed." *Id.* at 10. Finding, in contrast, that the positive readings of the April 23, 2010 x-ray by Drs. Groten and Alexander, both dually qualified readers, were bolstered by the positive readings of this x-ray by Drs. Rasmussen and Gaziano, both B readers, the administrative law judge concluded that the April 23, 2010 x-ray was positive for pneumoconiosis. Decision and Order at 11. Weighing Dr. Daniel's positive interpretation of the August 19, 2010 x-ray, together with the April 23, 2010 positive x-ray, the administrative law judge found that claimant "established the presence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and the presence of complicated pneumoconiosis through chest X-ray evidence" pursuant to 20 C.F.R. §718.304(a). Decision and Order at 11.

Employer argues that the administrative law judge erred by disparately scrutinizing and selectively analyzing the x-ray evidence. We disagree. Contrary to employer's assertion, the administrative law judge permissibly found that the negative interpretations by Drs. Scott and Wheeler were called into question by the physicians'

narrative comments. Specifically, the administrative law judge permissibly found Dr. Scott's negative reading to be equivocal, given Dr. Scott's statements that the masses he observed are "probably granulomatous," but that large opacities of coal workers' pneumoconiosis "cannot be excluded," and unpersuasive when considered in light of the record, which contains no evidence of granulomatous disease. Employer's Exhibit 2; *see Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 285, 24 BLR 2-269, 2-284 (4th Cir. 2010); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997); Decision and Order at 10. Further, the administrative law judge rationally accorded less weight to Dr. Wheeler's interpretation, in part, because he "appears to have relied on generalized assumptions about dust exposure in the coal mine industry rather than specific information about the length of this Claimant's coal mine employment or the nature of this Claimant's work." Decision and Order at 10; *see Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274; *see also Consolidation Coal Co. v. Director, OWCP [Beeler]*, 521 F.3d 723, 24 BLR 2-97 (7th Cir. 2008); Employer's Exhibit 1. It was within the administrative law judge's discretion to determine that Dr. Wheeler's additional explanations did not mitigate the fact that he relied, in part, upon his belief that claimant did not have sufficient coal mine dust exposure to develop complicated pneumoconiosis, because he began working in the mines after rules mandating low dust levels went into effect. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274; Decision and Order at 10.

Moreover, the administrative law judge permissibly relied on the ILO classifications provided by Drs. Groten, Alexander, Rasmussen and Gaziano, without further analysis of their readings,⁴ as none of the physicians' comments called into question their positive interpretations for complicated pneumoconiosis. 20 C.F.R. §§718.102, 718.202(a)(1); Director's Exhibit 13; Claimant's Exhibits 1, 2, 8. Consequently, as the administrative law judge considered both the quality and the quantity of the x-ray evidence, and explained her determinations, we affirm the

⁴ The ILO classification form requires the physician interpreting the x-ray film to first determine whether there are "[a]ny [p]arenchymal [a]bnormalities [c]onsistent with [p]neumoconiosis." *See* Form CM-933, question 2A. If the physician answers in the affirmative, then he or she proceeds to the sections regarding the size of the opacities, i.e., small opacities or large opacities of size A, B, or C. *See* Form CM-933, question 2B and 2C. The back of the form indicates that large opacities are to be identified by size A, B, or C, based on the dimensions of the opacities. Category A opacities are those "[h]aving a greatest diameter exceeding about 10 mm and up to and including 50mm, or several opacities each greater than about 10mm, the sum of whose greatest diameters does not exceed 50 mm. Category B and C opacities are bigger than Category A opacities. *See* Form CM-933; *see also* 20 C.F.R. §718.304(a).

administrative law judge's finding that the x-ray evidence establishes the existence of both simple and complicated pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(1), 718.304(a).

Biopsy Evidence

Turning to the biopsy evidence of record, pursuant to 20 C.F.R. §§718.202(a)(2) and 718.304(b), the administrative law judge considered the pathology opinions of Drs. Koh and Oesterling. Dr. Koh examined the specimen obtained from a lung washing of the right upper zone, which was performed by claimant's treating physician on April 16, 2008. In his pathology report, Dr. Koh stated that the biopsy revealed: "Anthracotic – Silicotic Nodule, Small, 0.1 cm in diameter, [rule out] coal workers' pneumoconiosis, macular type. Chronic nonspecific bronchitis with increased goblet cell metaplasia. No evidence of atypical or neoplastic cell infiltration present." Claimant's Exhibit 6; Decision and Order at 11.

Dr. Oesterling reviewed Dr. Koh's report, together with a lung tissue slide, and claimant's work history. Decision and Order at 11; Employer's Exhibit 6. Regarding the results of the lung washing, Dr. Oesterling stated: "It is unfortunate that this biopsy method was obtained for this individual since these rarely are of any value in establishing a diagnosis of pneumoconiosis. Without sufficient interstitial tissue, no comments can be made concerning potential dust exposure and any disease resulting there from [sic]." Employer's Exhibit 6. Dr. Oesterling concluded that there was no evidence of coal workers' pneumoconiosis due to the limited material present. Decision and Order at 11; Employer's Exhibit 6.

The administrative law judge found that as neither Dr. Koh, nor Dr. Oesterling, definitively diagnosed any form of pneumoconiosis, claimant did not establish the existence of the disease through biopsy evidence. Decision and Order at 12.

Computerized Tomography (CT) Scan Evidence

Employer also challenges the administrative law judge's weighing of the CT scan evidence, pursuant to 20 C.F.R. §§718.202(a)(4) and 718.304(c). The administrative law judge correctly noted that the record contains one CT scan interpretation, by Dr. Wheeler, of a CT scan taken on September 29, 2008. Dr. Wheeler identified a 4.6 cm mass, a lobulated 2.8 cm mass, and a 3.1 cm mass, all of which he opined were not lesions of coal workers' pneumoconiosis, but were "compatible with conglomerate granulomatous disease: histoplasmosis or mycobacterium avium` complex more likely than TB." Employer's Exhibit 3. Dr. Wheeler also described "minimal small nodular infiltrates

scattered in [the] lower periphery” of claimant’s lower lung lobes, which were compatible with “histoplasmosis more likely than TB.”⁵ *Id.*

Contrary to employer’s contention, the administrative law judge permissibly found that Dr. Wheeler’s analysis of the CT scan was called into question, in part, by his reliance “on general assumptions about dust exposure in the coal mine industry, rather than specific information about the length of this Claimant’s coal mine employment or the nature of this Claimant’s work.” Decision and Order at 18; *see Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274; *see also Beeler*, 521 F.3d at 723, 24 BLR at 2-97. Because the administrative law judge permissibly found Dr. Wheeler’s CT scan interpretation to be not well-reasoned, we affirm the administrative law judge’s determination that the CT scan evidence “does not argue against” the other evidence of complicated pneumoconiosis. Decision and Order at 18; *see Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274.

Medical Opinion Evidence

Employer further contests the administrative law judge’s weighing of the medical opinion evidence, pursuant to 20 C.F.R. §§718.202(a)(4) and 718.304(c).⁶ The

⁵ In concluding that the masses he observed were not lesions of pneumoconiosis, Dr. Wheeler stated:

[N]o [coal workers’ pneumoconiosis] (CWP) which gives symmetrical small nodular infiltrates in central mid and upper lungs . . . upper lobe masses have no background nodules. Also he is young considering NIOSH and MSHA became active controlling dust levels in mines in early 1970s mandated to prevent CWP. However, diagnosis should have been made with biopsy or microbiology when lung symptoms first developed or first abnormal x-ray was reported.

Employer’s Exhibit 3.

⁶ The administrative law judge also considered the medical treatment records from Dr. Haddadin, claimant’s treating physician. Dr. Haddadin performed a bronchoscopic lung washing on April 16, 2008. In his post-operative report, Dr. Haddadin noted “[p]atient with coal workers’ pneumoconiosis, bilateral upper lung mass . . . rule out coal workers’ pneumoconiosis, rule out malignancy, rule out endobrachial lesion. No evidence of any endobrachial lesions or malignancy.” Dr. Haddadin’s treatment records also included a copy of Dr. Koh’s pathology report, and a portable chest x-ray interpretation reflecting that “[conglomerate pneumoconiosis densities remain evident in both upper lobes with interstitial pattern prominence throughout the remaining lung zones.” Claimant’s Exhibit 5. The administrative law judge concluded that Dr.

administrative law judge considered the opinions of Drs. Rasmussen and Gaziano, who diagnosed complicated pneumoconiosis,⁷ and Drs. Spagnolo and Ghio, who opined that claimant does not have pneumoconiosis.⁸ Decision and Order at 16. The administrative

Haddadin's treatment records "support a finding that claimant has coal workers' pneumoconiosis." Decision and Order at 18.

⁷ Dr. Rasmussen examined claimant and considered his exposure histories and the results of a chest x-ray and objective testing. Dr. Rasmussen diagnosed complicated pneumoconiosis, Category B. Director's Exhibit 13. Dr. Rasmussen reviewed additional medical evidence and stated that it did not change his opinion that claimant suffered from complicated pneumoconiosis. Claimant's Exhibit 7. Dr. Gaziano reviewed claimant's medical records and stated "there is no question" that claimant has complicated pneumoconiosis, based on claimant's x-rays, clinical history, physical findings, and the extreme dust exposure in his employment. Claimant's Exhibit 8. Dr. Gaziano disagreed with Dr. Wheeler's x-ray interpretation, stating that a diagnosis of a granulomatous process "was never a part [of claimant's] medical history and its consideration, in this case, would not be clinically tenable." Claimant's Exhibit 8. In addition, Dr. Gaziano stated that Dr. Wheeler was "in error" in stating that "large opacities require a significant background of small nodules." *Id.* Dr. Gaziano also noted that Dr. Ghio's April 23, 2010 letter did not consider the interpretations of Drs. Groten, Alexander and Daniel, diagnosing complicated pneumoconiosis. *Id.*

⁸ Dr. Spagnolo reviewed claimant's medical records and opined that none of claimant's "symptoms, complaints, or medical conditions is related to his coal dust exposure or coal [-] mine employment," Employer's Exhibit 8, and that there is insufficient evidence to justify a diagnosis of clinical or legal pneumoconiosis. Employer's Exhibits 5, 8, 10. In his deposition, Dr. Spagnolo opined that the opacities reported by Dr. Rasmussen could be granulomatous disease, which is what Drs. Wheeler and Scott diagnosed. Employer's Exhibit 9 at 27-31. Dr. Spagnolo also stated that he "put extra weight on readings from Dr. Wheeler and Dr. Scott because of their renowned reputation in this field." *Id.* at 35. Dr. Ghio reviewed claimant's medical records, and opined that they did not support a finding of medical or legal coal workers' pneumoconiosis. Employer's Exhibits 4, 7. In a subsequent opinion, Dr. Ghio noted the four x-ray interpretations diagnosing complicated pneumoconiosis and considered the negative interpretations of Drs. Wheeler and Scott, who are "recognized experts" and whose opinions "should be both welcomed and respected." Employer's Exhibit 11. Based on the "radiographic data provided by those physicians most expert in the field," Dr. Ghio diagnosed granulomatous disease, and stated that coal workers' pneumoconiosis could not be diagnosed. *Id.*

law judge credited the opinions of Dr. Rasmussen, the only physician to examine claimant, and Dr. Gaziano, and discredited the opinions of Drs. Spagnolo and Ghio, to conclude that the medical opinion evidence supports a finding of both simple and complicated pneumoconiosis. Decision and Order at 16-17.

Contrary to employer's arguments, the administrative law judge acted within her discretion in finding Dr. Rasmussen's opinion to be well-reasoned and documented, and persuasive. *Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); Decision and Order at 16. While the administrative law judge properly considered the qualifications of all of the physicians, *see* Decision and Order at 16, she was not required to accord weight to the opinions authored by the physicians with superior qualifications. *See Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(en banc); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). Moreover, as Dr. Rasmussen based his diagnosis of complicated pneumoconiosis on claimant's twenty-four years of coal mine dust exposure, his history of never having smoked, and the results of the physical examination, x-rays, and objective testing, the administrative law judge permissibly found that Dr. Rasmussen reached a reasoned medical opinion. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 212, 22 BLR 2-162, 2-176 (4th Cir. 2000); Decision and Order at 16. Further, we reject employer's assertion that Dr. Gaziano's opinion is not well reasoned and documented, in light of the comments by other physicians of record that the lesions seen in claimant's lungs likely represent granulomatous disease. Contrary to employer's contention, the administrative law judge noted the disagreement between Dr. Gaziano and Drs. Wheeler, Spagnolo, and Ghio. Decision and Order at 15-16. However, the administrative law judge acted within her discretion in crediting Dr. Gaziano's opinion because he considered the medical records, including the positive x-rays and the absence of evidence of granulomatous disease, together with claimant's occupational history and symptoms, and explained his conclusions in light of the contrary medical opinions. *See Cox*, 602 F.3d at 285, 24 BLR at 2-284; *Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274; Decision and Order at 15-16; Claimant's Exhibit 8.

We also reject employer's challenges to the administrative law judge's analysis of the opinions of Drs. Spagnolo and Ghio. The administrative law judge accurately noted that Drs. Spagnolo and Ghio based their opinions, in part, upon negative x-ray interpretations, contrary to her own finding that the x-ray evidence established the existence of both simple and complicated pneumoconiosis. Thus, the administrative law judge permissibly questioned the documentation underlying their medical opinions. *See Compton*, 211 F.3d at 213-15, 22 BLR at 2-177-80; *Arnoni v. Director, OWCP*, 6 BLR 1-423 (1983); Decision and Order at 16. Accordingly, we affirm the administrative law judge's finding that the medical opinion evidence is sufficient to establish the existence of simple and complicated pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(4) and 718.304(c).

Finally, employer asserts that the administrative law judge erred in failing to weigh “the x-ray evidence together with the biopsy, medical opinion [evidence], and [CT scan and medical treatment records]” in finding that claimant established the existence of simple and complicated pneumoconiosis. Employer’s Brief at 6-7. As discussed above, the administrative law judge permissibly found that the CT scan evidence was not credible, and found that the medical treatment records supported a finding of pneumoconiosis. Further, while the administrative law judge found that the biopsy evidence did not affirmatively establish the existence of pneumoconiosis, the regulations provide that “[a] negative biopsy is not conclusive evidence that the miner does not have pneumoconiosis.” 20 C.F.R. §718.106(c). As employer fails to explain how the CT scan, treatment records, and biopsy evidence would undermine the administrative law judge’s finding that claimant has established simple and complicated pneumoconiosis, based on the x-ray and medical opinion evidence, we reject employer’s allegation of error, and affirm the administrative law judge’s findings under 20 C.F.R. §§718.202(a) and 718.304. *See Compton*, 211 F.3d at 210, 22 BLR at 2-174.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge