U.S. Department of Labor

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

BRB No. 20-0242 BLA

JOANN HURLEY (Widow of J.B. HURLEY) Claimant-Petitioner v. MARANATHA MINING & LEASING, INCORPORATED Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 04/28/2021 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Carrie Bland, Administrative Law Judge, United States Department of Labor.

Joann Hurley, Hurley, Virginia.

Carl M. Brashear (Hoskins Law Offices, PLLC), Lexington, Kentucky, for Employer.

Before: BUZZARD, ROLFE, and GRESH, Administrative Appeals Judges.

ROLFE, Administrative Appeals Judge:

Claimant appeals, without the assistance of counsel,[1] Administrative Law Judge Carrie Bland's Decision and Order Denying Benefits (2018-BLA-05287) rendered on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a survivor's claim filed on November 14, 2016.[2]

The administrative law judge found Claimant did not establish the Miner had complicated pneumoconiosis and therefore could not invoke the irrebuttable presumption of death 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. Although the administrative law judge credited the Miner with eighteen years of underground coal mine employment, she found Claimant did not establish he had a totally disabling respiratory or pulmonary impairment. Therefore Claimant could not invoke the presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act.[3] 30 U.S.C. §921(c)(4) (2018). Considering Claimant's entitlement under 20 C.F.R. Part 718, the administrative law judge found Claimant established the Miner had clinical pneumoconiosis and legal pneumoconiosis in the form of centrilobular emphysema arising out of coal mine employment, but did not establish his death was due to pneumoconiosis. She therefore denied benefits.

[1] Vickie Combs, a benefits counselor with Stone Mountain Health Services of Vansant, Virginia, requested on Claimant's behalf that the Benefits Review Board review the administrative law judge's decision, but Ms. Combs is not representing Claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] Claimant is the widow of the Miner, who died on July 26, 2016. Director's Exhibit 14. The Miner filed six claims during his lifetime, all of which were denied. Director's Exhibits 1-6. On July 31, 2012, the district director finally denied his most recent claim, filed on October 18, 2010. Director's Exhibit 6. Thus Claimant is not entitled to benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), which provides that a survivor of a miner determined to be eligible to receive benefits at the time of his death is automatically entitled to receive survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. *See* 30 U.S.C. §932(*l*).

[3] Under Section 411(c)(4) of the Act, Claimant is entitled to a rebuttable presumption that the Miner's death was due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory impairment at the time of his death. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

On appeal, Claimant generally challenges the denial of benefits. Employer responds in support of the denial. The Director, Office of Workers' Compensation Programs, has not filed a response brief.[4]

In an appeal a claimant files without the assistance of counsel, the Benefits Review Board considers whether substantial evidence supports the Decision and Order below. *See Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the administrative law judge'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 Associates, 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's death was 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 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). 20 C.F.R. §718.304.

The United States Court of Appeals for the Fourth Circuit has held that because prong (a) sets out an entirely objective scientific standard for diagnosing complicated pneumoconiosis, that is, an x-ray opacity greater than one centimeter in diameter, the administrative law judge must determine whether a condition which is diagnosed by biopsy or autopsy under prong (b) or by any other means under prong (c) would show as an opacity greater than one centimeter if it were seen on a chest x-ray. *E. Assoc. Coal Corp. v. Director* [*Scarbro*], 220 F.3d 250, 256 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243 (4th Cir. 1999). In addition, the Fourth Circuit has

[4] We affirm, as unchallenged on appeal, the administrative law judge's findings that Claimant established the Miner had eighteen years of underground coal mine employment and clinical and legal pneumoconiosis arising out of coal mine employment. 20 C.F.R. §§718.202(a), 718.203(b). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4 n.3, 16.

[5] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the Miner performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 13.

recognized that a diagnosis of massive lesions, standing alone, can satisfy the "statutory ground" for invocation of the irrebuttable presumption. *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 365 (4th Cir. 2006). In determining whether Claimant has invoked the irrebuttable presumption, the administrative law judge must consider 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); *Scarbro*, 220 F.3d at 255-56; *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc).

Relevant to prong (a), the administrative law judge considered three readings of two x-rays dated January 7, 2013, and March 20, 2014.[6] Decision and Order at 10; Director's Exhibit 16; Employer's Exhibit 3. While she found the x-rays establish simple clinical pneumoconiosis, she correctly found that none of the physicians identified large opacities of pneumoconiosis. *Id.* Because it is supported by substantial evidence, we affirm her finding that the x-ray evidence, viewed on its own, establishes simple but not complicated pneumoconiosis.

Under prong (b), the administrative law judge considered the pathology opinions of Drs. Minami and Oesterling.[7] Dr. Minami examined right lung tissue removed at the Miner's autopsy in July 2016 and observed "foci of fibrosis approximately 1.8 [centimeter in] greatest dimension consistent with progressive massive fibrosis." Director's Exhibit 15. He also observed "hilar lymphadenopathy with nodal fibrosis and anthracotic pigmentation with scattered silicotic nodules" supportive of a diagnosis of complicated

[6] Dr. Alexander read the January 7, 2013 x-ray as positive for simple pneumoconiosis and negative for complicated pneumoconiosis while Dr. Meyer read this x-ray as negative for simple and complicated pneumoconiosis. Director's Exhibit 16; Employer's Exhibit 3. Dr. Miller read the March 20, 2014 x-ray as positive for simple pneumoconiosis and negative for complicated pneumoconiosis. Director's Exhibit 16. All of the physicians are dually-qualified as B readers and Board-certified radiologists. Director's Exhibit 16; Employer's Exhibit 3. The administrative law judge credited Dr. Alexander's and Dr. Miller's positive readings, but rejected Dr. Meyer's negative reading as "directly refuted by the pathology findings." Decision and Order at 16, n. 19.

[7] The administrative law judge noted the two pathology reports of Drs. Minami and Oesterling are based on "biopsy specimens removed from the Miner's right lung during an autopsy." Decision and Order at 10.

pneumoconiosis.[8] *Id*. Similarly, Dr. Oesterling reviewed the Miner's autopsy slides and observed micronodular coal workers' pneumoconiosis that had become confluent into a subpleural mass measuring 1.6 centimeter by approximately 0.8 centimeter, which he opined is sufficient to warrant a diagnosis of complicated pneumoconiosis. Employer's Exhibit 2.

The administrative law judge found the pathology opinions of Drs. Minami and Oesterling insufficient to establish the presence of complicated pneumoconiosis because he determined the doctors did not provide an equivalency determination. 20 C.F.R. §718.304(b); Decision and Order at 12. She also found neither Dr. Minami nor Dr. Oesterling diagnosed massive lesions, "which serves as a proxy equivalency finding." *Id*.

Contrary to the administrative law judge's finding, a diagnosis of progressive massive fibrosis has been held to be equivalent to a diagnosis of "massive lesions" under 20 C.F.R. §718.304(b). *See Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 7 (1976) ("Complicated pneumoconiosis . . . involves progressive massive fibrosis as a complex reaction to dust and other factors . . . ."); *Perry*, 469 F.3d at 364-365 (diagnosis of a "massive" opacity "becomes a proxy for the tissue mass characteristic of complicated pneumoconiosis" and satisfies the "statutory ground for application of the presumption"); *Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 1359 (4th Cir. 1996) (complicated pneumoconiosis is known "by its more dauntingly descriptive name, 'progressive massive fibrosis.'"). As both Dr. Minami and Dr. Oesterling explicitly diagnosed complicated pneumoconiosis – with Dr. Minami identifying a lesion of "progressive massive fibrosis" measuring 1.8 cm and Dr. Oesterling similarly identifying a "mass" of complicated pneumoconiosis measuring 1.6 cm – the administrative law judge erred in finding their opinions insufficient to invoke the irrebuttable presumption at 20 C.F.R. §718.304(b). Decision and Order at 11-12. We therefore vacate the administrative law judge's finding that Claimant did not establish complicated pneumoconiosis based on the autopsy evidence. 20 C.F.R. 718.304(b).

Finally, under prong (c), *see* 20 C.F.R. §718.304(c), the administrative law judge considered a computed tomography (CT) scan Dr. Waldman administered on February 4, 2008, along with Dr. Castle's medical report and supplemental report. Decision and Order at 12-13. Dr. Waldman diagnosed "multiple calcified[,] and a few noncalcified[,] pulmonary nodules in the upper lung zones which are probably part of [a] pneumoconiosis pattern . . . [and a] large cyst in the left upper lobe [measuring]" one centimeter. Director's

[8] Dr. Minami observed "a few black nodules" and noted that "[a]long the apical portions of the lung, the pleural surface is firm forming a superficial nodule approximately 3.5 [centimeters in] greatest dimension." Director's Exhibit 15.

Exhibits 17, 18; Employer's Exhibit 5. Dr. Castle diagnosed simple pneumoconiosis in his medical report but did not express an opinion on whether the Miner had complicated pneumoconiosis. Director's Exhibit 18. In his supplemental report, Dr. Castle stated it was possible there is pathologic evidence of complicated pneumoconiosis, but he did not change his opinion that the Miner only had simple pneumoconiosis. Employer's Exhibit 5.

The administrative law judge must weigh all relevant evidence on the issue of complicated pneumoconiosis together before determining whether Claimant invoked the Section 411(c)(3) presumption. *Cox*, 602 F.3d at 283; *Scarbro*, 220 F.3d at 255-56. Because we vacate the administrative law judge's finding that Claimant did not establish the Miner had complicated pneumoconiosis based on the autopsy evidence, 20 C.F.R. §718.304(b), and she must weigh the autopsy evidence in conjunction with the relevant x-ray, CT scan and medical opinion evidence under 20 C.F.R. §718.304, we therefore vacate his finding that Claimant did not establish complicated pneumoconiosis based on consideration of all the relevant evidence. 20 C.F.R. §718.304. We further vacate his finding that Claimant did not invoke the Section 411(c)(3) presumption, and the denial of benefits.

On remand the administrative law judge must reconsider Dr. Minami's and Dr. Oesterling's pathology reports. 20 C.F.R. §718.304(b). She must also weigh all relevant evidence on the issue of complicated pneumoconiosis together, interrelating the evidence from each category, before determining whether Claimant invoked the Section 411(c)(3) presumption. *Cox*, 602 F.3d at 283; *Scarbro*, 220 F.3d at 255-56. She should address the comparative credentials of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). She should adequately explain her findings in accordance with the Administrative Procedure Act (APA).[9] *See Wojtowicz v. Duquesne Light Co.*, 12 BLR 1, 162, 1-165 (1989).

In the interest of judicial economy, we will address the administrative law judge's findings that Claimant did not invoke the rebuttable presumption of death due to pneumoconiosis at Section 411(c)(4) or establish death causation at 20 C.F.R. §718.205(b).

[9] The Administrative Procedure Act provides 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." *See* 30 U.S.C. §923(b) (2018); 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

Section 411(c)(4) Presumption

To invoke the Section 411(c)(4) presumption that the Miner's death was due to pneumoconiosis, Claimant must establish the Miner "had at the time of his death, a totally disabling respiratory or pulmonary impairment." 20 C.F.R. §718.305(b)(1)(iii). A miner was totally disabled if his pulmonary or respiratory impairment, standing alone, prevented him from performing his usual coal mine work and comparable gainful work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

The administrative law judge correctly found Claimant did not establish total disability based on the pulmonary function testing as the record contains two studies dated January 7, 2013, and March 20, 2014, that produced non-qualifying results.[10] 20 C.F.R. §718.204(b)(2)(i); Decision and Order at 14-15; Employer's Exhibit 1. Further, she correctly found the record includes no arterial blood gas studies, nor does it include evidence of cor pulmonale with right-sided congestive heart failure. Decision and Order at 14-15. Thus Claimant cannot establish total disability based on this evidence. 20 C.F.R. §718.204(b)(2)(ii), (iii).

The administrative law judge next considered the medical opinions of Drs. Habre, Kabaria, and Castle, along with the Miner's treatment records. 20 C.F.R. §718.204(b)(2)(iv); Director's Exhibits 6, 17, 18; Employer's Exhibit 5. She accurately noted none of the physicians opined the Miner was totally disabled. Decision and Order at 15. Further, she accurately found the treatment records do not contain a diagnosis of total disability. Director's Exhibit 19; Claimant's Exhibit 1. Thus, because it is supported by substantial evidence, we affirm the administrative law judge's finding that Claimant did not establish the Miner was totally disabled. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 15.

[10] A "qualifying" pulmonary function study yields values equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" pulmonary function study yields values in excess of those values. 20 C.F.R. §718.204(b)(2)(i).

Based on our affirmance of the administrative law judge's finding that the Miner did not have a totally disabling respiratory or pulmonary impairment at the time of his death, we affirm her finding that Claimant did not invoke the Section 411(c)(4) presumption of death due to pneumoconiosis. *See* 20 C.F.R. §718.305(b)(1)(iii), (c)(2); Decision and Order at 15.

Death Due to Pneumoconiosis

In a survivor's claim where no statutory presumptions are invoked, the claimant must establish the miner had pneumoconiosis arising out of coal mine employment and his death was due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.203(b), 718.205(b)(1), (2). Death is considered due to pneumoconiosis if pneumoconiosis or complications of pneumoconiosis are direct causes of the miner's death, or if pneumoconiosis was a substantially contributing cause of his death. 20 C.F.R. §718.205(b)(1), (2). Pneumoconiosis is a substantially contributing cause of death if it hastens the miner's death. 20 C.F.R. §718.205(b)(6). The administrative law judge determined Claimant established the Miner had clinical and legal pneumoconiosis arising out of coal mine employment but found she did not establish the Miner's death was due to pneumoconiosis. Decision and Order at 16.

The administrative law judge considered the Miner's death certificate signed by Dr. Kabaria, the medical opinion of Dr. Castle, and the pathology opinion of Dr. Oesterling.[11] Decision and Order at 16-17. The Miner's death certificate identifies the immediate causes of his death as cardiopulmonary arrest, cardiac arrhythmia, anemia, and chronic atrial fibrillation.[12] Director's Exhibit 14. Dr. Castle opined that the Miner's cardiac arrhythmia due to his underlying severe cardiac disease caused his death, but his pneumoconiosis "played no role in causing, contributing to, or hastening" his death. Director's Exhibit 18 at 8. Thus the administrative law judge correctly found the death certificate and Dr. Castle's opinion insufficient to establish the Miner's death was due to pneumoconiosis.

Dr. Oesterling stated he could not determine the cause of the Miner's death based on the lung tissue alone, but opined that "clearly [coal workers' pneumoconiosis] did not

[11] The administrative law judge also considered Dr. Minami's autopsy report concerning the pathology slides from the Miner's right lung and accurately noted the doctor did not render an opinion on the cause of his death. Decision and Order at 17; Director's Exhibit 15.

[12] The administrative law judge correctly noted Dr. Kabaria did not discuss the cause of the Miner's death in a letter the doctor sent to the Office of Workers' Compensation Programs. Decision and Order at 16; Director's Exhibit 17.

by itself cause" the Miner's death. Employer's Exhibit 2 at 5. The administrative law judge permissibly found that while Dr. Oesterling's statement left open the possibility that the Miner's pneumoconiosis contributed to his death, it was too equivocal and speculative to meet Claimant's burden on its own. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; *Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); Decision and Order at 17.

Because there is no other evidence supportive of a finding that the Miner's death was due to pneumoconiosis, we affirm the administrative law judge's finding that Claimant did not establish the Miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(b).

Remand Instructions

On remand, the administrative law judge must reconsider Dr. Minami's and Dr. Oesterling's pathology reports. 20 C.F.R. §718.304(b). She must also weigh all relevant evidence on the issue of complicated pneumoconiosis together, interrelating the evidence from each category, before determining whether Claimant invoked the Section 411(c)(3) presumption. *Cox*, 602 F.3d at 283; *Scarbro*, 220 F.3d at 255-56. She should address the comparative credentials of the physicians, the explanations for their conclusions, the documentation underlying their medical judgments, and the sophistication of, and bases for, their diagnoses. *See Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997). She should adequately explain her findings in accordance with the APA. *See Wojtowicz*, 12 BLR at 1-165.

If Claimant establishes the Miner had complicated pneumoconiosis, she is entitled to the irrebuttable presumption of death due to pneumoconiosis at Section 411(c)(3). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The administrative law judge must determine whether the Miner's complicated pneumoconiosis arose out of his coal mine employment.[13] 20 C.F.R. §718.203. If Claimant establishes complicated pneumoconiosis arising out of coal mine employment, she is entitled to benefits. If the administrative law judge finds Claimant has not established the Miner had complicated pneumoconiosis, she may reinstate the denial of benefits.

[13] Based on the parties' stipulation that the Miner had eighteen years of coal mine employment, Claimant is entitled to a presumption that the Miner's pneumoconiosis arose out of his coal mine employment, with the burden shifting to Employer to rebut it. 20 C.F.R. §718.203(b).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed in part, vacated in part, and the case is remanded to the administrative law judge for further consideration consistent with this opinion.

SO ORDERED.

JONATHAN ROLFE
Administrative Appeals Judge

I concur.

DANIEL T. GRESH
Administrative Appeals Judge

BUZZARD, Administrative Appeals Judge, concurring and dissenting:

I concur in the majority opinion with the exception of its decision to remand the claim for the administrative law judge to reweigh the evidence on the existence of complicated pneumoconiosis. Because Claimant established complicated pneumoconiosis based on the unanimous pathology reports of Drs. Minami and Oesterling, and there is no contrary probative evidence undermining their findings, I would remand the claim with instructions to award benefits.

As the majority holds, Claimant's and Employer's pathologists agree the Miner had complicated pneumoconiosis as of his July 2016 autopsy. Based on tissue removed from the Miner's right lung, Dr. Minami identified a lesion of "progressive massive fibrosis" measuring 1.8 centimeters (cm) and Dr. Oesterling similarly identified a "mass" of complicated pneumoconiosis measuring 1.6 cm. Director's Exhibit 15; Employer's Exhibit 2; *see Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 264-365 (4th Cir. 2006) (diagnosis of a "massive" opacity "becomes a proxy for the tissue mass characteristic of complicated pneumoconiosis" and satisfies the "statutory ground for application of the presumption"); *Lisa Lee Mines v. Director, OWCP* [*Rutter*], 86 F.3d 1358, 1359 (4th Cir. 1996)

(complicated pneumoconiosis is known "by its more dauntingly descriptive name, 'progressive massive fibrosis.'").

The remaining credited evidence – Dr. Waldman's positive interpretation of the February 2008 CT scan, Dr. Alexander's positive reading of the January 2013 x-ray, Dr. Miller's positive reading of the March 2014 x-ray, and Dr. Castle's medical reports – merely confirms that the Miner had at least simple pneumoconiosis between two and eight years before his death.[14] Director's Exhibits 16, 17, 18; Employer's Exhibit 5. Given the progressive and irreversible nature of pneumoconiosis, *see* 20 C.F.R. §718.201(c), this evidence does not undermine the pathologists' "gold standard" diagnoses of complicated pneumoconiosis by autopsy years later. *See Perry*, 469 F.3d at 365-366 (reversing denial of benefits as autopsy prosector's uncontradicted diagnosis of progressive massive fibrosis "may only lead one to conclude that massive lesions were present in the upper part of the lungs sufficient to trigger the presumption"); *Adkins v. Director, Office of Workers' Compensation Programs*, 958 F.2d 49, 51 (4th Cir. 1992) (proper to give greater weight to more recent evidence if it "shows that the miner's condition has worsened").

As the uncontradicted, unanimous pathology reports establish the Miner had complicated pneumoconiosis, Claimant is entitled to the irrebuttable presumption that his death was due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). I therefore would reverse the denial of benefits and remand the claim with instructions to award benefits to Claimant.

GREG J. BUZZARD
Administrative Appeals Judge

[14] Dr. Castle's initial report concludes the Miner had simple pneumoconiosis. Director's Exhibit 18. His supplemental report also acknowledges, but does not refute, the "possibility" that the Miner "had pathologic evidence" of complicated pneumoconiosis. Employer's Exhibit 5.