U.S. Department of Labor

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

BRB No. 21-0151 BLA

EDWIN W. BROWN	)	
Claimant-Respondent	)	
v.	)	
EASTERN ASSOCIATED COAL COMPANY	)	
and	)	DATE ISSUED: 8/31/2022
PEABODY ENERGY CORPORATION	)	
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 Lystra A. Harris, Administrative Law Judge, United States Department of Labor.

Paul E. Frampton and Fazal A. Shere (Bowles Rice LLP), Charleston, West Virginia, for Employer and its Carrier.

Jeffrey S. Goldberg (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Lystra A. Harris's Decision and Order Awarding Benefits[1] (2018-BLA-05682) on a claim filed on October 24, 2016, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Eastern Associated Coal Company (Eastern) is the responsible operator and Peabody Energy Corporation (Peabody Energy) is the responsible carrier. Based on the parties' stipulations, she credited Claimant with at least fifteen years of qualifying coal mine employment. She further determined that Claimant suffers from complicated pneumoconiosis arising out of that employment. 20 C.F.R. §§718.304, 718.203. Thus, the ALJ found Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act and awarded benefits. 30 U.S.C. §921(c)(3) (2018).

On appeal, Employer argues the ALJ erred in finding Peabody Energy is the liable carrier. On the merits, Employer argues the ALJ erred in concluding Claimant established complicated pneumoconiosis. Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), responds urging the Benefits Review Board to affirm the ALJ's determination that Eastern is the responsible operator and Peabody Energy is liable for the payment of benefits.[2]

The 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'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359, 362 (1965).

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[1] The ALJ issued an order granting Employer's Motion to Re-Issue Decision and Order on October 30, 2020, because Employer and Claimant did not receive the ALJ's May 20, 2020 Decision and Order Awarding Benefits. October 30, 2020 Order Granting Employer's Motion to Re-Issue Decision and Order.

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

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because Claimant performed his coal mine employment in West

Responsible Insurance Carrier

Claimant last worked in coal mine employment from December 8, 1965 to May 20, 1998 for Eastern, a subsidiary of Peabody Energy. Director's Exhibits 4, 8. On November 1, 2007, Peabody Energy sold Eastern to Patriot Coal Corporation (Patriot). In 2011, the Department of Labor (DOL) authorized Patriot to self-insure for black lung liabilities relating to the Peabody Energy subsidiaries it purchased, including Eastern, retroactive to July 1, 1973. Employer's Brief at 1; Employer's Closing Argument at 2, 8-10. This authorization required Patriot to make an initial deposit of negotiable securities in the amount of $15 million. Employer's Closing Argument at 10, 20-21. In 2015, Patriot went bankrupt. Employer's Brief at 10; Employer's Closing Argument at 20-21.

Employer does not directly challenge its designation as the responsible operator.[4] However, it contests Peabody Energy's liability as the responsible carrier. Employer's Brief at 9-11. Employer maintains Patriot is the responsible carrier because Patriot last insured Eastern's black lung liabilities and the DOL acknowledged Patriot was the insurer. *Id.* at 9-11. The Director counters that neither Patriot's self-insurance authorization nor any other agreement relieved Peabody Energy of liability for benefits of miners whose last day of employment with Eastern was covered by Peabody Energy's self-insurance. Director's Brief at 2, 12-13.

District Director Proceedings

After Claimant filed his claim on October 24, 2016, the district director identified Eastern, self-insured through Peabody Energy, as the "potentially liable operator" in a November 10, 2016 Notice of Claim. Director's Exhibit 28. This notice gave Employer ninety days to submit evidence disputing its designation as a potentially liable operator or carrier. *Id.* In response, Employer denied liability, asserting Patriot is the responsible

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Virginia. *See Shupe v. Director, OWCP,* 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 17.

[4] Eastern qualifies as a potentially liable operator because it is undisputed that: (1) Claimant's disability arose at least in part out of employment with Eastern; (2) Eastern operated a mine after June 30, 1973; (3) Eastern employed Claimant for a cumulative period of at least one year; (4) Claimant's employment included at least one working day after December 31, 1969; and (5) Eastern is capable of assuming liability for the payment of benefits through Peabody Energy's self-insurance coverage. 20 C.F.R. §725.494(a)-(e). Because Eastern was the last potentially liable operator to employ Claimant, the ALJ designated Eastern as the responsible operator and Peabody Energy as the responsible carrier. Decision and Order at 18-19, 23.

carrier and requesting that the district director dismiss Peabody Energy as the liable carrier. Director's Exhibit 32.

On April 3, 2017, the district director issued a Schedule for the Submission of Additional Evidence (SSAE), identifying Eastern as the responsible operator and Peabody Energy as its insurer. Director's Exhibit 36. The district director informed Eastern and Peabody Energy that they had until June 2, 2017, to submit additional documentary evidence relevant to liability and identify any liability witnesses they intended to rely on if the case was referred to the Office of Administrative Law Judges (OALJ). *Id.* The district director advised that, "[a]bsent a showing of extraordinary circumstances, no documentary evidence relevant to liability, or testimony of a witness not identified at this stage of the proceedings, may be admitted into the record once a case is referred to the [OALJ]." *Id.* at 3 (citing 20 C.F.R. §725.456(b)(1)).

Employer responded to the SSAE on April 24, 2017 and contested liability. Director's Exhibit 37. Thereafter, it requested two extensions of time to submit evidence. Director's Exhibits 38, 40. The district director gave Employer until December 1, 2017, to submit evidence. Director's Exhibits 36, 41. It did not submit additional evidence to the district director to support its controversion of liability or identify any liability witnesses by that deadline.

The district director issued a Proposed Decision and Order (PDO) on March 13, 2018, awarding benefits and designating Eastern as the responsible operator and Peabody Energy as the responsible carrier. Director's Exhibit 42. On April 11, 2018, Employer requested reconsideration or in the alternative a hearing regarding Peabody Energy's liability and Claimant's entitlement to benefits. It also submitted additional liability evidence. Director's Exhibit 51.[5]

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[5] Employer submitted the following documents which the district director later marked as Director's Exhibit 51: (1) a 2007 Separation Agreement between Peabody Energy and Patriot; (2) a November 23, 2010 letter from the Division of Coal Mine Workers' Compensation (DCMWC) to Patriot requiring $22.5 million for authorization to self-insure; (3) a March 4, 2011 letter from the DCMWC granting Patriot authorization to self-insure retroactive to July 1, 1973, and releasing Peabody Energy's $13 million letter of credit; (4) a March 4, 2011 indemnity agreement between DOL and Bank of America; (5) an undated letter from Michael Chance, the Director of the DCMWC, regarding Patriot's self-insurance reauthorization audit; (6) documentation dated November 16 to 19, 2015, showing authorization to transfer, and the transfer of, $15 million from Patriot to the Trust Fund; and (7) Peabody Energy's April 29, 2013 indemnity bond. Director's Exhibit

The district director issued an April 17, 2018 Initial Determination restating the March 13, 2018 PDO findings and transferred the claim to the OALJ for a formal hearing on April 18, 2018. Director's Exhibit 50.

ALJ Proceedings

The ALJ held a hearing on December 19, 2018. On March 28, 2019, Employer submitted the December 6, 2018 deposition transcript and Ex Parte In Camera testimony of DOL employee Steven Breeskin and duplicates of the liability evidence it submitted to the district director contained in Director's Exhibit 51. Employer's March 28, 2019 Letters. On March 29, 2019, Employer submitted the December 4, 2018 deposition transcript and Ex Parte In Camera testimony of another DOL employee (David Benedict) along with deposition exhibits.[6] Employer's March 29, 2019 Letter. Employer conducted these depositions as part of other black lung claims, but it had not previously submitted the transcripts or some of the deposition exhibits not already contained in Director's Exhibit 51 to the district director in this claim. The Director responded, opposing the admission of these additional documents not contained in Director's Exhibit 51, asserting they are privileged material, they are irrelevant to Employer's liability, and they were not timely submitted to the district director. Director's Objection to Admission of Depositions of David Benedict and Steven Breeskin and Motion to Strike. The ALJ concluded Employer failed to identify Messrs. Benedict and Breeskin as liability witnesses in accordance with the district director's SSAE, failed to timely submit the exhibits not contained in Director's Exhibit 51, and did not establish extraordinary circumstances for failing to do either. 20 C.F.R. §§725.456(b)(1), 725.457(c)(1); October 24, 2019 Order at 4. Therefore, she excluded all of Employer's liability evidence that had not been submitted before the district director. October 24, 2019 Order at 4.

In her Decision and Order, the ALJ found Claimant entitled to benefits. Considering the evidence contained at Director's Exhibit 51, she determined Eastern satisfies the responsible operator criteria at 20 C.F.R. §725.494 and did not show its self-insurer,

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51. The district director inadvertently left out Director's Exhibit 51 when he transferred the record to OALJ, and the ALJ admitted it in her Decision and Order "[f]inding that no party will be prejudiced by the admission of this exhibit." Decision and Order at 4; Director's June 5, 2019 Letter to ALJ; Director's Exhibit 51.

[6] The ALJ noted that none of Employer's post-hearing submissions were accompanied by motions explaining their relevance. October 24, 2019 Order Addressing Employer's Submission of Deposition Testimony and Deposition Exhibits (October 24, 2019 Order) at 2.

Peabody Energy, was incapable of paying benefits pursuant to 20 C.F.R. §§ 725.494(e) and 725.495(b). Decision and Order at 18-19. Specifically, she rejected Employer's argument that the Director had released Peabody Energy from liability by authorizing Patriot to self-insure and releasing Peabody Energy's surety bond. *Id.* at 19-20. She found Employer incorrectly relied on 20 C.F.R. §726.203(c)(2) as a basis for shifting liability because the regulation applies only to commercial insurance, not self-insurance. *Id.* at 20. The ALJ also rejected Employer's arguments that the Director was estopped from imposing liability on it and that the Director committed affirmative misconduct or misrepresentation. *Id.* at 21. She disagreed that DOL's authorization for Patriot to self-insure relieved Peabody Energy of liability, and she considered the status of Patriot's surety bond to be irrelevant to the responsible carrier analysis. *Id.* at 21-23. Thus, the ALJ rejected Employer's argument that Patriot is the liable carrier and concluded Eastern and Peabody Energy were correctly designated the responsible operator and carrier, respectively. *Id.* at 23.

Issues on Appeal

Exclusion of Employer's Liability Evidence

Employer contends the ALJ erred in excluding the deposition transcripts of Messrs. Benedict and Breeskin and the additional documents attached thereto. Employer's Brief at 9. We disagree.

It is Employer's responsibility, not the Director's, to submit evidence relevant to its disputed liability by the deadline set forth in the SSAE. 20 C.F.R. §§725.410, 725.412(a), 725.456(b)(1). Absent extraordinary circumstances, liability evidence pertaining to the responsible operator or carrier must be timely submitted to the district director. 20 C.F.R. §§725.414(d), 725.456(b)(1) ("Documentary evidence pertaining to the liability of a potentially liable operator and/or the identification of a responsible operator which was not submitted to the district director shall not be admitted into the hearing record in the absence of extraordinary circumstances."). An employer must also designate to the district director potential liability witnesses "[i]n accordance with the schedule issued by the district director" and such testimony may not be admitted at the ALJ hearing unless "the lack of notice should be excused due to extraordinary circumstances." 20 C.F.R. §725.414(c).

The district director's SSAE informed Employer that it had until June 2, 2017, to submit its liability evidence and designate any potential liability witnesses. Director's Exhibit 36 at 3. Employer waited until the case was transferred to the ALJ to submit the deposition transcripts of Messrs. Benedict and Breeskin, neither of whom Employer designated as a liability witness while the case was pending before the district director. Employer's March 28, 2019 and March 29, 2019 Letters. In excluding the evidence, the ALJ correctly found Employer did not argue extraordinary circumstances exist for failing

to identify Messrs. Benedict and Breeskin as liability witnesses before the district director. Nor did it argue extraordinary circumstances excuse its failure to submit to the district director the additional documentary evidence attached to the deposition transcripts that had not already been admitted in Director's Exhibit 51. October 24, 2019 Order at 4.[7] As Employer does not challenge these findings, we affirm them. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

An ALJ exercises broad discretion in resolving procedural and evidentiary matters. *See Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-153 (1989) (en banc). Thus, a party seeking to overturn an ALJ's disposition of a procedural or evidentiary issue must establish that the ALJ's action represented an abuse of discretion. *See V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009). Apart from its bare assertion that the ALJ erred, Employer does not raise any further arguments as to why the excluded evidence is admissible. Employer's Brief at 9-11. Because the ALJ acted within her discretion in rendering her evidentiary rulings, we affirm them. 20 C.F.R. §725.414(b)-(d); *see Clark*, 12 BLR at 1-153; October 24, 2019 Order at 4-5; Decision and Order at 16 n.11. Consequently, we affirm the ALJ's exclusion of Employer's liability evidence. *Blake*, 24 BLR at 1-113.

Liability under 20 C.F.R. §725.495(a)(4)

Employer asserts that Patriot, not Peabody Energy, is liable for payment of benefits. Employer's Brief at 9-11. It contends the ALJ erred in "refusing to consider or hold the [DOL] responsible and accountable in making [Patriot] the [self-]insurer of this very claim." *Id.* at 9. Employer argues Peabody Energy may not be held liable for this claim because the DOL released it from liability and "for years confirmed that Patriot Coal was [made retroactively liable as] the insurer for claims made by prior employees of its subsidiaries." *Id.* at 9-10. Employer further contends the regulations place liability on the Black Lung Disability Trust Fund, rather than Employer, because both Eastern and Patriot are bankrupt and the Director failed to present evidence showing Peabody Energy self-

[7] Following the ALJ's October 24, 2019 Order excluding its evidence, Employer asserted extraordinary circumstances in its November 22, 2019 closing argument brief. Employer's Closing Argument at 8, 26-27. The ALJ noted that she excluded the evidence in her October 24, 2019 Order and stated she "will not readdress the issue here." Decision and Order at 16 n.11. We see no error in the ALJ's determination that Employer did not timely argue that extraordinary circumstances warrant admission of its liability evidence. Further, Employer does not allege on appeal that extraordinary circumstances existed or otherwise explain why the ALJ erred in finding that Employer did not show extraordinary circumstances. Employer's Brief at 9-11.

insured Eastern's liabilities after the DOL released Peabody Energy's surety and authorized Patriot to self-insure. *Id*. We reject these arguments for the reasons stated in *Graham v. E. Assoc. Coal Co.*, __ BLR __, BRB No. 20-0221 BLA, slip op. at 8-10 (June 23, 2022).[8]

For the above reasons, we conclude the ALJ properly excluded the deposition transcripts and Employer's liability evidence that was not otherwise contained in Director's Exhibit 51; properly found Eastern is the responsible operator, 20 C.F.R. §§725.494(e), 725.495(a)(1); and properly determined that Peabody Energy is the responsible carrier.[9] Thus, we affirm the ALJ's finding that Eastern as self-insured by Peabody Energy is liable for benefits.

Section 411(c)(3) Presumption – Complicated Pneumoconiosis

Section 411(c)(3) of the Act 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 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, 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 Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th

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[8] Employer contends the Director failed to alert the Black Lung Disability Trust Fund of this claim. Employer's Brief at 10. However, as Employer fails to explain the significance of this assertion, we reject it. 20 C.F.R. §802.211(b); *see Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983).

[9] We affirm, as unchallenged, the ALJ's findings that Eastern satisfies the definition of a responsible operator under the Act and that Eastern has not shown its carrier, Peabody Energy, is financially incapable of assuming liability. 20 C.F.R. §§725.494(e), 725.495(a)(3); *see* 20 C.F.R. §802.211(b); *Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf*, 10 BLR at 1-120-21 (1987). Although Peabody Energy disputes it was authorized to self-insure Eastern's obligations on Claimant's last date of coal mine employment in August 2007, that contention is based solely on its theory that it was absolved of liability when DOL authorized Patriot to self-insure claims of Eastern miners retroactively. Peabody Energy neither disputes it was Eastern's self-insurer on the miner's last day of employment nor denies it is financially capable of paying benefits; instead, it only contends it should not be required to self-insure claims of Eastern miners.

Cir. 2010); *E. Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 255-56 (4th Cir. 2000); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found the x-ray evidence supports a finding of complicated pneumoconiosis and that the medical opinions do not.[10] 20 C.F.R. §718.304(a), (c); Decision and Order at 13. Weighing all of the evidence together, the ALJ found the medical opinions do not outweigh the x-ray evidence of complicated pneumoconiosis. Thus, she concluded Claimant established complicated pneumoconiosis and therefore invoked the irrebuttable presumption of total disability due to pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 13. Employer challenges the ALJ's consideration of the x-ray evidence and her weighing of the evidence as a whole. Employer's Brief at 3-8.

X-ray Evidence at 20 C.F.R. §718.304(a)

The ALJ considered four interpretations of two x-rays. Decision and Order at 7-10. All the interpreting physicians are dually qualified Board-certified radiologists and B readers and each identified either Category A or B large opacities on the ILO forms they completed.[11] Decision and Order at 9; Director's Exhibits 18, 21; Claimant's Exhibit 2. Thus, the ALJ found the x-ray evidence establishes complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a). Decision and Order at 9-10.

Employer asserts the radiologists did not render "definitive" diagnoses of complicated pneumoconiosis because they merely noted findings "consistent with" complicated pneumoconiosis. Employer's Brief at 4-5. We disagree. "Complicated pneumoconiosis" is established by the application of statutorily defined criteria. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. "Complicated pneumoconiosis" is a chronic dust disease of the lung which, when diagnosed by chest x-ray, "yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the International Classification of Radiographs of the Pneumoconioses by the International Labour Organization" (ILO System). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304; *see Scarbro*, 220 F.3d at 255-58. Because the ILO System classifies x-ray opacities as "consistent with" pneumoconiosis, the ALJ permissibly concluded that each of the four ILO classified x-ray readings identifying either Category A or B large opacities support a

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[10] The ALJ correctly noted the record contains no biopsy evidence. 20 C.F.R. §718.304(b); Decision and Order at 6 n.6.

[11] Drs. DePonte and Miller read the January 10, 2017 x-ray as positive for simple and complicated pneumoconiosis. Director's Exhibit 18 at 18; Claimant's Exhibit 2. Drs. DePonte and Crum each read the April 22, 2017 x-ray as positive for simple and complicated pneumoconiosis, Category B. Director's Exhibit 21 at 2-3, 8.

finding that Claimant has complicated pneumoconiosis, a chronic lung disease as defined by the Act. *See* 30 U.S.C. §921(c)(3); 20 C.F.R §§718.201, 718.304(c); *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366 (4th Cir. 2006); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243 (4th Cir. 1999). As Employer raises no other challenges to the ALJ's consideration of the x-ray evidence, we affirm her finding that it establishes complicated pneumoconiosis. 20 C.F.R. §718.304(a); *see Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); Decision and Order at 9-10.

Medical Opinions at 20 C.F.R. §718.304(c) and Evidence as a Whole

The ALJ considered the medical reports of Drs. Zaldivar and Nader, neither of whom diagnosed complicated pneumoconiosis. She therefore concluded Claimant did not establish complicated pneumoconiosis at 20 C.F.R. §718.304(c). Weighing the evidence as a whole, the ALJ found the unanimous positive x-ray findings of complicated pneumoconiosis "particularly compelling" and establish complicated pneumoconiosis "when considered alone or along with the physician opinion evidence [.]" Decision and Order at 13. Thus, the ALJ found Claimant invoked the irrebuttable presumption. *Id.*

Employer contends the ALJ failed to consider whether the opacities seen on Claimant's x-rays could have been caused by diseases other than complicated pneumoconiosis. Employer's Brief at 4-8. Contrary to Employer's contention, the ALJ specifically discussed the alternative diseases that Drs. Zaldivar and Nader suggest may explain Claimant's radiographic findings. The ALJ permissibly found Dr. Zaldivar's opinion equivocal[12] because he said the opacities "may be due to pneumoconiosis or they may be rheumatoid nodules," and Dr. Nader's opinion unpersuasive because he did not clearly state whether he believed the large opacities seen on Claimant's x-rays were due to complicated pneumoconiosis or were a manifestation of Caplan's syndrome.[13] *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 532 n.9 (4th Cir. 1998); Decision and Order at 12-13.

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[12] In his November 22, 2017 report, Dr. Zaldivar opined the pulmonary nodules that Dr. DePonte identified as simple and complicated pneumoconiosis "may be due to pneumoconiosis or they may be rheumatoid nodules." Director's Exhibit 22 at 4 (unpaginated).

[13] Dr. Nader's initial January 10, 2017 report diagnosed Claimant with "coal worker pneumoconiosis" and rheumatoid arthritis and further noted rheumatoid arthritis causes "pulmonary nodules and abnormal radiologic findings." Director's Exhibit 18 at 2-3 (unpaginated). However, upon reviewing Dr. Zaldivar's report, Dr. Nader issued a February 28, 2018 supplemental opinion diagnosing Claimant with Caplan's syndrome.

Because the ALJ's finding that Claimant established complicated pneumoconiosis is supported by substantial evidence, we affirm it. 20 C.F.R. §718.304; Decision and Order at 13. We further affirm, as unchallenged on appeal, 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*, 6 BLR at 1-711; Decision and Order at 14. We therefore affirm the ALJ's finding that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis.

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

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

Director's Exhibit 24 at 5. He explained Caplan's syndrome is a "combination of rheumatoid arthritis and pneumoconiosis that manifests as intrapulmonary nodules, which appear homogeneous and well-defined on chest x-rays." *Id.*