U.S. Department of Labor

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

BRB No. 21-0370 BLA

FLEM HALL, JR.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
APACHE MINING COMPANY a/k/a ENTERPRISE MINING COMPANY	)	
	)	
	)	DATE ISSUED: 11/16/2022
OLD REPUBLIC INSURANCE COMPANY	)	
	)	
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 Larry A. Temin, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

Michael A. Pusateri (Greenberg Traurig LLP), Washington, D.C., for Employer and its Carrier.

Ann Marie Scarpino (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: BUZZARD, ROLFE and GRESH, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Larry A. Temin's Decision and Order Awarding Benefits (2019-BLA-06233) rendered on a claim filed on February 25, 2016, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ found Apache Mining Company (Apache Mining) is the responsible operator. He credited Claimant with 7.46 years of coal mine employment and found he has complicated pneumoconiosis, thereby invoking the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3). He further found Claimant's complicated pneumoconiosis arose out of his coal mine employment and awarded benefits. 20 C.F.R. §718.203(c).

On appeal, Employer argues the ALJ lacked the authority to hear and decide the case because he was not appointed in a manner consistent with the Appointments Clause of the Constitution, Art. II § 2, cl. 2,[1] and the removal provisions applicable to the ALJ rendered his appointment unconstitutional. It also challenges Apache Mining's designation as the responsible operator. On the merits, Employer argues the ALJ erred in finding Claimant established complicated pneumoconiosis and that it arose out of his coal mine employment.

Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), filed a limited response, urging the Benefits Review Board to reject Employer's constitutional and responsible operator

[1] Article II, Section 2, Clause 2, sets forth the appointing powers:

> [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

U.S. Const. art. II, § 2, cl. 2.

arguments. Employer filed separate reply briefs to Claimant's and the Director's responses, reiterating its arguments.

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.[2] 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 (1965).

Appointments Clause

Employer requests the Board vacate the ALJ's Decision and Order and remand this case to be heard by a constitutionally appointed ALJ pursuant to *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044 (2018).[3] Employer's Brief at 11-14; Employer's Reply to the Director at 1-5. It acknowledges the Secretary of Labor (the Secretary) ratified the prior appointment of all sitting Department of Labor (DOL) ALJs on December 21, 2017,[4] but maintains the ratification was insufficient to cure the constitutional defect in the ALJ's prior appointment. *Id*. The Director argues the ALJ had the authority to decide this case because the

[2] 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 7; Hearing Tr. at 68-69.

[3] *Lucia* involved a challenge to the appointment of an ALJ at the Securities and Exchange Commission (SEC). The United States Supreme Court held that, similar to the Special Trial Judges at the United States Tax Court, SEC ALJs are "inferior officers" subject to the Appointments Clause. *Lucia v. SEC*, 585 U.S. , 138 S. Ct. 2044, 2055 (2018), *citing Freytag v. Comm'r*, 501 U.S. 868 (1991). The Department of Labor has conceded that the Supreme Court's holding applies to its ALJs. *Big Horn Coal Co. v. Sadler*, 10th Cir. No. 17-9558, Brief for the Fed. Resp. at 14 n.6.

[4] The Secretary issued a letter to the ALJ on December 21, 2017, stating:

> In my capacity as head of the Department of Labor, and after due consideration, I hereby ratify the Department's prior appointment of you as an Administrative Law Judge. This letter is intended to address any claim that administrative proceedings pending before, or presided over by, administrative law judges of the U.S. Department of Labor violate the Appointments Clause of the U.S. Constitution. This action is effective immediately.

Secretary's December 21, 2017 Letter to ALJ Temin.

Secretary's ratification brought his appointment into compliance. Director's Brief at 4-6. We agree with the Director's argument.

An appointment by the Secretary need only be "evidenced by an open, unequivocal act." *Id.* at 5, *quoting Marbury v. Madison*, 5 U.S. 137, 157 (1803). Ratification is permissible so long as the agency head: 1) had the authority to take the action to be ratified at the time of ratification; 2) had full knowledge of the decision to be ratified; and 3) made a detached and considered affirmation of the earlier decision. *Wilkes-Barre Hosp. Co. v. NLRB*, 857 F.3d 364, 372 (D.C. Cir. 2017); *Advanced Disposal Servs. E., Inc. v. NLRB*, 820 F.3d 592, 603 (3d Cir. 2016); *CFPB v. Gordon*, 819 F.3d 1179, 1191 (9th Cir. 2016). Under the "presumption of regularity," courts presume public officers have properly discharged their official duties, with the burden on the challenger to demonstrate the contrary." *Advanced Disposal*, 820 F.3d at 603, *citing Butler v. Principi*, 244 F.3d 1337, 1340 (Fed. Cir. 2001).

Congress has authorized the Secretary to appoint ALJs to hear and decide cases under the Act. 30 U.S.C. §932a; *see also* 5 U.S.C. §3105. Under the presumption of regularity, we therefore presume the Secretary had full knowledge of the decision to be ratified and made a detached and considered affirmation. *Advanced Disposal*, 820 F.3d at 603. Moreover, the Secretary did not generally ratify the appointment of all ALJs in a single letter. Rather, he specifically identified ALJ Temin and indicated he gave "due consideration" to his appointment. Secretary's December 21, 2017 Letter to ALJ Temin. The Secretary further stated he was acting in his "capacity as head of the Department of Labor" when ratifying the appointment of Judge Temin "as an Administrative Law Judge." *Id*.

Employer does not assert the Secretary had no "knowledge of all the material facts" but generally speculates he did not genuinely consider ALJ Temin's qualifications when he ratified his appointment. Employer's Brief at 14. It therefore has not overcome the presumption of regularity. *Advanced Disposal*, 820 F.3d at 603-04 (mere lack of detail in express ratification is not sufficient to overcome the presumption of regularity); *see also Butler*, 244 F.3d at 1340. The Secretary properly ratified the ALJ's appointment. *See Edmond v. United States*, 520 U.S. 651, 654-66 (1997) (appointment valid where the Secretary of Transportation issued a memorandum "adopting" assignments "as judicial appointments of [his] own"); *Advanced Disposal*, 820 F.3d at 604-05 (National Labor Relations Board's retroactive ratification of the appointment of a Regional Director with statement it "confirm[ed], adopt[ed], and ratif[ied] *nunc pro tunc*" all its earlier actions was proper).

Removal Provisions

Employer challenges the constitutionality of the removal protections afforded ALJs. Employer's Brief at 15-19; Employer's Reply Brief at 5-8. It generally argues the removal provisions for ALJs contained in the Administrative Procedure Act (APA), 5 U.S.C. §7521, are unconstitutional, citing Justice Breyer's separate opinion and the Solicitor General's argument in *Lucia*. Employer's Brief at 15-19. In addition, it relies on the United States Supreme Court's holdings in *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477 (2010), and *Seila Law v. CFPB*, 591 U.S. , 140 S. Ct. 2183 (2020), and the opinion of the United States Court of Appeals for the Federal Circuit in *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019), *vacated*, 594 U.S. , 141 S. Ct. 1970 (2021). Employer's Brief at 15-19; Employer's Reply Brief at 5-8. For the reasons set forth in *Howard v. Apogee Coal Co.*, BLR , BRB No. 20-0229 BLA, slip op. at 5-17 (Oct. 18, 2022), the Board rejects Employer's arguments.

Responsible Operator

The responsible operator is the potentially liable operator that most recently employed the miner.[5] 20 C.F.R. §725.495(a)(1). The district director is initially charged with identifying and notifying operators that may be liable for benefits, and then identifying the "potentially liable operator" that is the responsible operator. 20 C.F.R. §§725.407, 725.410(c), 725.495(a), (b). Once the district director designates a responsible operator, that operator may be relieved of liability only if it proves either it is financially incapable of assuming liability for benefits or another potentially liable operator that is financially capable of assuming liability more recently employed the miner for at least one year. 20 C.F.R. §725.495(c)(2).

Employer does not dispute that Apache Mining is a potentially liable operator, but argues the ALJ erred in finding Oakwood Mining is not a potentially liable operator that more recently employed Claimant. Employer's Brief at 19-20. It asserts the ALJ's opinion

[5] For a coal mine operator to meet the regulatory definition of a "potentially liable operator," each of the following conditions must be met: a) the miner's disability or death must have arisen at least in part out of employment with the operator; b) the operator or its successor must have been in business after June 30, 1973; c) the operator must have employed the miner for a cumulative period of not less than one year; d) at least one day of the employment must have occurred after December 31, 1969; and e) the operator must be financially capable of assuming liability for the payment of benefits, either through its own assets or through insurance. 20 C.F.R. §725.494(a)-(e).

is not compliant with the Administrative Procedure Act[6] because he failed to address Claimant's testimony with respect to his employment with Oakwood Mining. *Id.* We disagree.

The ALJ evaluates the credibility and weight of the evidence of record, including witness testimony. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983) (ALJ has broad discretion in evaluating the credibility of the evidence, including witness testimony); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Lafferty v. Cannelton Indus., Inc.*, 12 BLR 1-190, 1-192 (1989). The Board will not disturb an ALJ's credibility findings with respect to witness testimony unless they are inherently incredible or patently unreasonable. *See Tackett v. Cargo Mining Co.*, 12 BLR 1-11, 1-14 (1988) (en banc).

Contrary to Employer's contention, the ALJ considered Claimant's testimony and observed he "testified that he last worked for Oakwood Mining for about two years" but did not provide the starting and ending dates of that employment. Decision and Order at 3-8; *see* Director's Exhibit 30; Hearing Tr. at 45, 56. The ALJ noted Claimant's Social Security Administration (SSA) earnings records show earnings from Oakwood Mining in 1986 and 1987,[7] but that Claimant testified he "did not work a lot in the [1980s] because he had heart and breathing troubles." Decision and Order at 5-6. Furthermore, the ALJ noted Claimant testified he had a stroke in 2018 and has had memory problems since then. *Id*. at 4. Thus, the ALJ permissibly found Claimant's SSA earnings records are the most probative evidence for determining the length of his coal mine employment because they are more detailed than his employment history form and testimony. *Tackett*, 12 BLR at 1-14; Decision and Order at 5-6.

Employer does not challenge the ALJ's finding Claimant's SSA earning records do not establish one year of employment with Oakwood Mining.[8] *See Skrack v. Island Creek*

[6] The Administrative Procedure Act provides every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

[7] Employer argues the ALJ should not have relied on Claimant's SSA earnings records because he testified they contained errors, but the Director correctly points out that Claimant testified they accurately reflected his employment with Oakwood Mining. Employers Brief at 19; Director's Brief at 12; Director's Exhibit 30 at 8-17.

[8] The ALJ found Claimant earned $7,108.31 in 1986 and $4,069.38 in 1987. Decision and Order at 7. Applying the formula at 20 C.F.R. §725.101(a)(32)(iii), the ALJ

Coal Co., 6 BLR 1-710, 1-711 (1983); Decision and Order at 8. Thus, we affirm the ALJ's finding Apache Mining is the correctly designated responsible operator.

Entitlement to Benefits - 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; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. In determining whether Claimant has invoked the irrebuttable presumption, the ALJ must consider all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89 (6th Cir. 1999); *Melnick v. Consol. Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found the x-ray, computed tomography (CT) scan, and medical opinion evidence all support a finding of complicated pneumoconiosis.[9] Decision and Order at 18-22. Weighing all the evidence together, he concluded Claimant established complicated pneumoconiosis and thus invoked the irrebuttable presumption of total disability due to pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 22.

X-rays

Employer contends the ALJ erred in weighing the x-ray evidence. Employer's Brief at 20-23. The ALJ considered eleven interpretations of four x-rays dated December 19, 2016, November 8, 2018, August 16, 2019, and February 28, 2020. 20 C.F.R. §718.304(a); Decision and Order at 10-11, 18-20. He noted all of the interpreting physicians are dually qualified as Board-certified radiologists and B readers. Decision and Order at 10-11.

Drs. DePonte and Crum each interpreted the December 19, 2016 x-ray as positive for complicated pneumoconiosis, while Dr. Meyer read it as negative for the disease. Director's Exhibits 19 at 22, 25; Employer's Exhibit 6. Drs. DePonte and Crum each also interpreted the November 8, 2018 x-ray as positive for complicated pneumoconiosis, while Drs. Meyer and Adcock each read it as negative. Claimant's Exhibits 1, 5; Employer's

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determined these earnings correspond to 0.46 and 0.26 years of coal mine employment, respectively. *Id*.

[9] There is no biopsy evidence in the record. 20 C.F.R. §718.304(b).

Exhibits 4, 5. Dr. DePonte interpreted the August 16, 2019 x-ray as positive for complicated pneumoconiosis, while Dr. Meyer read it as negative for the disease. Claimant's Exhibit 2; Employer's Exhibit 1. Finally, Dr. DePonte interpreted the February 28, 2020 x-ray as positive for complicated pneumoconiosis, while Dr. Adcock read it as negative. Claimant's Exhibit 3; Employer's Exhibit 10.

The ALJ found the interpretations of the November 8, 2018, August 16, 2019 and February 28, 2020 x-rays in equipoise because an equal number of dually-qualified radiologists read each x-ray as positive and negative for complicated pneumoconiosis.[10] Decision and Order at 19-20. With respect to the December 19, 2016 x-ray, the ALJ found it positive for complicated pneumoconiosis because a preponderance of its interpretations by dually-qualified radiologists are positive. *Id.* at 18-19.

Employer argues the ALJ erred in finding the December 19, 2016 x-ray positive for complicated pneumoconiosis and the interpretations of the November 8, 2018 x-ray in equipoise because it asserts Dr. Crum's interpretations are equivocal. Employer's Brief at 20-23. We disagree.

Employer's assertion that the ALJ should have found Dr. Crum was equivocal when the doctor stated the December 19, 2016 x-ray is "consistent with" complicated pneumoconiosis is without merit. Employer's Brief at 22. The ALJ permissibly found Dr. Crum interpreted the x-ray as positive for complicated pneumoconiosis based on his identification of a Category A large opacity and his statement that these findings are consistent with complicated pneumoconiosis. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 712-14 (6th Cir. 2002); *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989); *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366 (4th Cir. 2006) ("refusal to express a diagnosis in categorical terms is candor, not equivocation"); Decision and Order at 18; Director's Exhibit 25.

With regard to the November 8, 2018 x-ray, the ALJ again observed Dr. Crum identified a Category A large opacity consistent with progressive massive fibrosis. Claimant's Exhibit 1. In the comments section of the ILO x-ray form, Dr. Crum also recommended a follow-up to exclude neoplasm. *Id*. The ALJ acknowledged this comment but permissibly found it did not reduce the credibility of Dr. Crum's interpretation because the doctor specifically noted the presence of a large A opacity and checked the

[10] Because Employer does not challenge the ALJ's finding the interpretations of the August 16, 2019 and February 28, 2020 x-rays in equipoise and therefore inconclusive, we affirm this finding. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

corresponding box on the ILO x-ray form. *See Napier*, 301 F.3d at 712-14; *Melnick v. Consol. Coal Co.*, 16 BLR 1-31, 1-33 (1991) (en banc); Decision and Order at 19.

Consequently, we affirm the ALJ's permissible finding that the x-ray evidence is positive for complicated pneumoconiosis.[11] *See Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 59 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993); 20 C.F.R. §718.304(a); Decision and Order at 18-20.

CT scans

Employer similarly argues Dr. DePonte's interpretations of the October 29, 2015 and September 18, 2017 CT scans are equivocal. Employer's Brief at 20, 22-23. Dr. DePonte opined both CT scans showed "the classic appearance of large opacities of progressive massive fibrosis," ruled out a malignant etiology for the opacities, and concluded they would correspond with Category B large opacities on x-ray. Claimant's Exhibit 5. The ALJ rationally concluded Dr. DePonte definitively stated the large opacities are complicated pneumoconiosis. *See Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185; *Perry*, 469 F.3d at 366; Decision and Order at 21. As Employer raises no further argument, we affirm the ALJ's finding the CT scan evidence supports a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 20-21.

Medical opinions

Employer argues the ALJ erred in weighing the medical opinion evidence. Employer's Brief at 20, 24-25. The ALJ considered the opinions of Drs. Raj and Green that Claimant has complicated pneumoconiosis, and Dr. Rosenberg's opinion that he does not have the disease. Decision and Order at 21-22. He credited the opinions of Drs. Raj and Green as well-reasoned and documented, and discredited Dr. Rosenberg's opinion as

[11] To the extent Employer argues the ALJ should have given greater weight to Dr. Meyer's interpretations than Dr. Crum's interpretations because of his alleged superior credentials, we disagree. Employer's Brief at 20, 23. Contrary to Employer's contention, credibility determinations are within the ALJ's discretion. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 712-14 (6th Cir. 2002). He was not required to give greater weight to Employer's experts based on qualifications such as professorships and publications, but instead permissibly assigned equal weight to readings by physicians dually qualified as radiologists and B readers. *Staton v. Norfolk & Western Ry. Co*., 65 F.3d 55, 59 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993); *Worach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993); Decision and Order at 18.

equivocal and inconsistent with the x-ray evidence. *Id.* at 22. He thus found the medical opinion evidence supports a finding of complicated pneumoconiosis. *Id.*

Employer contends the ALJ erred in crediting Dr. Raj's opinion because he "merely rubber-stamped Dr. DePonte's disputed reading." Employer's Brief at 20, 24. We disagree.

Dr. Raj noted Claimant had a left lung biopsy in 2001 which revealed black lung, a left lung CT scan in 2015 which showed a fifteen-millimeter upper lobe cavitary lesion along with multiple other bilateral nodules, and an x-ray which Dr. DePonte interpreted as showing a coalescence of small pneumoconiotic opacities and a large B opacity. Director's Exhibit 19 at 3-4. He also noted Claimant worked at the face of an underground mine where he had heavy coal mine dust exposure. *Id.* at 2. He diagnosed progressive massive fibrosis based on the abnormal chest x-ray findings consistent with complicated pneumoconiosis and Claimant's significant coal mine dust exposure. *Id.* at 5. The ALJ permissibly found Dr. Raj's opinion well-reasoned and documented. *See Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185; Decision and Order at 21-22.

Employer also asserts the ALJ mischaracterized Dr. Green's opinion because he never diagnosed complicated pneumoconiosis. Employer's Brief at 20, 24-25. We disagree. Dr. Green opined his diagnosis of "coal worker's pneumoconiosis is supported by the radiographic findings of small opacities in all lung zones with 1/1 profusion and *large B opacity consistent with progressive massive fibrosis*." Claimant's Exhibit 2 (emphasis added). Thus, contrary to Employer's argument, the ALJ did not err in concluding Dr. Green's opinion supports a finding of complicated pneumoconiosis. *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 . . . ."); *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'"); Decision and Order at 15-16, 21-22.

Finally, Employer argues the ALJ erred in discrediting Dr. Rosenberg's opinion. Employer's Brief at 20, 25-28. Dr. Rosenberg opined Claimant does not have complicated pneumoconiosis, but rather developed various inflammatory changes within his lungs likely related to infections, including pulmonary cavitation which has resulted in residual nodularity. Employer's Exhibit 7 at 6. He further opined Claimant does not have restriction and his gas exchange is generally preserved. *Id.*

The ALJ permissibly found Dr. Rosenberg's opinion not well-reasoned because he did not explain how he arrived at the conclusion that the changes in Claimant's lung are related to infections and inflammation. *See Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at

185; Decision and Order at 22. He further permissibly found Dr. Rosenberg's opinion that the x-rays do not show complicated pneumoconiosis is contrary to the ALJ's finding the x-ray evidence is positive for the disease. *Id.* Thus, the ALJ permissibly found Dr. Rosenberg's opinion not well-reasoned. Decision and Order at 22.

We thus affirm the ALJ's determination that the medical opinion evidence supports a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 21-22.

Employer next argues the ALJ failed to consider whether Claimant's treatment records weigh against a finding of complicated pneumoconiosis because they do not contain a pneumoconiosis diagnosis. Employer's Brief at 20, 25-27. We disagree. The ALJ considered Claimant's treatment records in detail and observed they contain several x-rays which note the presence of scarring, infiltrates, parenchymal changes, or nodularity in the upper lungs, but found "no report describes the size of the density or nodule." Decision and Order at 13, 20; *see* Employer's Exhibit 2. He thus permissibly concluded the records weigh neither in favor of nor against a finding of complicated pneumoconiosis. *See Napier*, 301 F.3d at 712-14; *Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-218-19 (1984); Decision and Order at 20.

As Employer raises no further challenge to the ALJ's finding of complicated pneumoconiosis, we affirm his determination that Claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304.

Disease Causation

The ALJ next found Claimant was not entitled to the presumption at 20 C.F.R. §718.203(b)[12] because he had less than ten years of coal mine employment, and thus bore the burden of establishing his complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(c); Decision and Order at 23. He then weighed the opinions of Drs. Raj and Green that Claimant's complicated pneumoconiosis arose out of his coal mine employment.[13] Decision and Order at 23. He noted Dr. Raj considered a

[12] A miner is entitled to a rebuttable presumption his pneumoconiosis arose out of his coal mine employment if he was "employed for ten years or more in one or more coal mines." 20 C.F.R. §718.203(b).

[13] Drs. Raj and Green are the only physicians of record who opined on the cause of Claimant's complicated pneumoconiosis. Dr. Rosenberg did not diagnose complicated

fourteen-year coal mine employment history, and Dr. Green considered a sixteen-year coal mine employment history. *Id.* at 13, 15; *see* Director's Exhibit 19; Claimant's Exhibit 1. Nonetheless he found their opinions credible and sufficient to establish Claimant met his burden at 20 C.F.R. §718.203(c). Decision and Order at 23.

Employer raises no specific error with regard to the ALJ's credibility findings on disease causation. *See Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); 20 C.F.R. §802.211(b) (petition for review must specifically state "the issues to be considered by the Board," and contain "an argument with respect to each issue presented" and "a short conclusion stating the precise result the petitioner seeks on each issue"); Employer's Brief at 20, 29. We therefore affirm the ALJ's finding Claimant established his complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(c). Thus, we affirm the ALJ's finding Claimant established entitlement to benefits.

pneumoconiosis. As previously discussed, the ALJ discredited his opinion that Claimant did not develop "a pneumoconiosis" and any changes in his lungs were due to infections .

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

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge