



BRB No. 23-0239 BLA

GARY L. SHORT)	
)	
Claimant-Respondent)	
)	
v.)	
)	
THE MARION COUNTY COAL)	
COMPANY)	
)	
and)	
)	DATE ISSUED: 11/17/2023
MURRAY ENERGY CORPORATION)	
TRUST)	
)	
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 Patricia J. Daum, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Donna E. Sonner (Wolfe Williams & Reynolds), Norton, Virginia, for Claimant.

Aimee M. Stern (Dinsmore & Shohl, LLP), Wheeling, West Virginia, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Patricia J. Daum's Decision and Order Awarding Benefits (2022-BLA-05654) rendered on a claim filed on October 1, 2020, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

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

On appeal, Employer argues the ALJ erred in finding Claimant established complicated pneumoconiosis.¹ Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has not filed a response brief.

The Benefits Review Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.² 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (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 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

¹ We affirm, as unchallenged on appeal, the ALJ's finding that Claimant established thirty-nine years of coal mine employment. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

² The Board will apply the law of the United States Court of Appeals for the Fourth Circuit because Claimant performed his last coal mine employment in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 4 n.3; Director's Exhibit 3; Hearing Tr. at 19.

(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 a 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 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 (1991) (en banc).

The ALJ found the x-rays and medical opinions support a finding of complicated pneumoconiosis.³ 20 C.F.R. §718.304(a), (c); Decision and Order at 6-8, 11-23. Weighing all the evidence together, she concluded Claimant established the disease. Decision and Order at 23.

20 C.F.R. §718.304(a) - X-rays

The ALJ considered six interpretations of two x-rays dated December 10, 2020, and August 31, 2021.⁴ Decision and Order at 6-8, 15-21; Director’s Exhibits 13, 22, 35; Employer’s Exhibits 1, 2. She found Drs. Crum, DePonte, and Seaman, the physicians who interpreted these x-rays, are all dually-qualified B readers and Board-certified radiologists.⁵ Decision and Order at 16-17. Fully summarizing the academic credentials of the three doctors, including their various publications, she found no basis to find one doctor more qualified than another and thus permissibly found them equally qualified based on their credentials. *Id.*; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-302 (2003) (an ALJ is not required to assign greater weight to one physician over another based on their academic appointments); Decision and Order at 16-17.

Drs. Crum and DePonte read the December 10, 2020 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Seaman read it as negative.

³ The ALJ found the record contains no biopsy evidence and no computed tomography scan evidence. 20 C.F.R. §718.304(b), (c); Decision and Order at 8-9.

⁴ The ALJ considered one treatment record x-ray dated July 22, 2020, but found it neither supports nor refutes a finding of complicated pneumoconiosis and assigned it “little probative value.” Decision and Order at 8, 20; Claimant’s Exhibit 1; Employer’s Exhibit 3 at 22. We affirm this finding as unchallenged. *Skrack*, 6 BLR at 1-711.

⁵ The record also contains Dr. Gaziano’s reading of the December 10, 2020 x-ray for quality purposes only. Director’s Exhibit 14.

Director's Exhibits 13 at 2, 22 at 8; Employer's Exhibit 1. Drs. Crum and DePonte also read the August 31, 2021 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Seaman read it as negative. Director's Exhibits 22 at 2, 35 at 2; Employer's Exhibit 2. The ALJ found both x-rays are positive for complicated pneumoconiosis because a greater number of dually-qualified radiologists read each as positive for the disease than as negative. *Adkins v. Director, OWCP*, 958 F.2d 49, 552 (4th Cir. 1992); Decision and Order at 18-19.

Employer argues the ALJ should have credited Dr. Seaman's readings because, it alleges, she is more qualified than Drs. Crum and DePonte. Employer's Brief at 7-8. But Employer's argument amounts to a request to reweigh the evidence, which the Board may not do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989).

Employer also asserts the ALJ merely counted the number of positive readings as opposed to negative readings in finding the x-rays are positive. Employer's Brief at 9. Contrary to Employer's argument, the ALJ properly performed both a qualitative and quantitative analysis of the x-ray evidence, taking into consideration the physicians' qualifications and the number of readings of each film. *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256 (4th Cir. 2016). Because it is supported by substantial evidence, we affirm the ALJ's finding that the x-ray evidence supports complicated pneumoconiosis. 20 C.F.R. §718.304(a); Decision and Order at 19-20.

20 C.F.R. §718.304(c) - Medical Opinions

Next, Employer contends the ALJ erred in weighing the medical opinion evidence. Employer's Brief at 8-9. The ALJ considered the opinions of Drs. Fino and Habre. Decision and Order at 11-13, 21-23; Director's Exhibit 13; Employer's Exhibit 3. Dr. Habre opined Claimant has complicated pneumoconiosis, while Dr. Fino opined he does not have the disease. Director's Exhibit 13; Employer's Exhibit 3. The ALJ found Dr. Habre's opinion is reasoned and documented. *Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 22-23. She discredited Dr. Fino's opinion because it is inadequately explained and because the doctor failed to address Dr. Crum's positive reading of the August 31, 2021 x-ray. *Id.* Thus she found the medical opinion evidence supports a finding of complicated pneumoconiosis. *Id.*

Employer argues the ALJ should have credited Dr. Fino over Dr. Habre because, it asserts, Dr. Fino's opinion is more reasoned and documented. Employer's Brief at 8-9. Again, Employer's argument is a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. Therefore we affirm her determination that the medical opinion evidence supports a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(c); Decision and Order at 23.

Because Employer raises no further argument, we affirm the ALJ's finding that all the relevant evidence considered together establishes complicated pneumoconiosis. *See Melnick*, 16 BLR at 1-33; 20 C.F.R. §718.304; Decision and Order at 23. We further affirm, as unchallenged, the ALJ's finding 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 23.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge