U.S. Department of Labor

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

BRB Nos. 22-0328 BLA
and 22-0328 BLA-A

JAMES ALLEN BRAHAM	)	
	)	
Claimant-Respondent Cross-Petitioner	)	
	)	
v.	)	
	)	
ICG TYGART VALLEY, LLC	)	
	)	
and	)	
	)	DATE ISSUED: 9/21/2023
ARCH COAL INCORPORATED	)	
	)	
Employer/Carrier- Petitioners Cross-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal and Cross-Appeal of the Decision and Order Awarding Benefits of Drew A. Swank, Administrative Law Judge, United States Department of Labor.

Leonard Stayton, Inez, Kentucky, for Claimant.

William S. Mattingly (Jackson Kelly PLLC), Lexington, Kentucky, for Employer.

Jessica E. Mathis (Seema Nanda, Solicitor of Labor; Barry H. Joyner, Associate Solicitor; Andrea J. Appel, Counsel for Administrative Appeals), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Employer appeals, and Claimant cross-appeals, Administrative Law Judge (ALJ) Drew A. Swank's Decision and Order Awarding Benefits (2020-BLA-05528) rendered on a claim filed on February 5, 2018, 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 and eleven months of underground coal mine employment. He found Claimant established complicated pneumoconiosis and therefore 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, he 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 excluding Dr. Kim's negative reading of a February 21, 2017 x-ray. It further argues the ALJ erred in finding Claimant established complicated pneumoconiosis. Claimant responds in support of the award of benefits. The Director, Office of Workers' Compensation Programs (the Director), has filed a limited response urging rejection of Employer's evidentiary argument. On cross-appeal, Claimant argues the ALJ erred by admitting Dr. Smith's negative interpretation of an October 1, 2013 computed tomography (CT) scan. Neither Employer nor the Director have filed a response to Claimant's cross-appeal.[1]

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

[1] We affirm, as unchallenged on appeal, the ALJ's finding Claimant established thirty-nine years and eleven months of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 5.

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, 361-62 (1965).

Evidentiary Issue

Employer argues the ALJ erred in excluding Dr. Kim's interpretation of a February 21, 2017 x-ray as being submitted in excess of the evidentiary limitations. Employer's Brief at 17-18.

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 the ALJ's action represented an abuse of discretion. *V.B.* [*Blake*] *v. Elm Grove Coal Co.*, 24 BLR 1-109, 1-113 (2009).

The regulations set limits on the amount of specific types of medical evidence the parties can submit into the record. 20 C.F.R. §725.414. In support of their affirmative cases, each party may submit no more than two chest x-ray interpretations and, in rebuttal of the case presented by the opposing party, no more than one interpretation of each x-ray submitted by the opposing party and the Director. 20 C.F.R. §725.414(a)(2), (3). Medical evidence submitted in excess of the limitations "shall not be admitted into the hearing record in the absence of good cause." 20 C.F.R. §725.456(b)(1). However, the regulations further provide that "[n]otwithstanding the limitations" set forth under 20 C.F.R. §725.414(a)(2), (3), "any record of a miner's hospitalization for a respiratory or pulmonary or related disease, or medical treatment for a respiratory or pulmonary or related disease, may be received into evidence." 20 C.F.R. §725.414(a)(4).

Employer designated Dr. Adcock's interpretation of an April 9, 2019 x-ray and Dr. Tarver's interpretation of a March 2, 2019 x-ray as its affirmative evidence. Employer's Evidence Summary Form. It further designated Director's Exhibit 22, which contains Dr. Kim's interpretation of a February 21, 2017 x-ray, as a treatment record under 20 C.F.R. §725.414(a)(4). *Id.* Because Claimant did not submit a reading of the February 21, 2017

[2] 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 Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

x-ray, Employer could not submit Dr. Kim's interpretation as rebuttal evidence.[3] 20 C.F.R. §725.414(a)(3)(ii); Claimant's Evidence Summary Form.

At the September 10, 2021 hearing, Claimant objected to the admission of Dr. Kim's February 21, 2017 x-ray reading because it was created for purposes of the litigation of Claimant's state workers' compensation claim and thus, he asserted, it is not a treatment record and is subject to the evidentiary limitations at 20 C.F.R. §725.414(a)(3). Hearing Tr. at 7. Because Employer had already designated its full complement of affirmative x-ray evidence and it could not designate the interpretation as rebuttal evidence, Claimant argued submitting the reading exceeds the evidentiary limitations. *Id.* at 7-8. In support of this argument, Claimant proffered an affidavit from Amy Livengood, Program Coordinator of the North Central West Virginia Black Lung Program, the organization that performed the x-ray. Claimant's Exhibit 4 at 1; Hearing Tr. at 7. She stated the x-ray was developed "for the purpose of litigating [Claimant's] state occupational disease claims, not for treatment purposes." *Id.* Employer acknowledged the evidence was initially developed as part of Claimant's state workers' compensation claim, but argued it nonetheless constitutes a treatment record because it was referenced in Claimant's other treatment records. Hearing Tr. at 9-10.

The ALJ sustained Claimant's objection and excluded Dr. Kim's x-ray interpretation because it is not a record of Claimant's hospitalization or medical treatment, but rather was prepared specifically for purposes of the litigation of his state claim. 20 C.F.R. §725.414(a)(4); Decision and Order at 2 n.2; Hearing Transcript at 11-12.

In challenging this ruling, Employer asserts the reading converted to a treatment record because it was later considered by other physicians in the course of Claimant's treatment. Employer's Brief at 17-18. We are not persuaded by Employer's argument and hold the ALJ did not abuse his discretion in finding Dr. Kim's x-ray interpretation is not a treatment record because Dr. Kim did not interpret the x-ray for the purpose of treating Claimant or during a hospitalization. *See Woodward v. Director, OWCP*, 991 F.2d 314, 321 (6th Cir. 1993); *Dempsey*, 23 BLR at 1-61 (pulmonary function and blood gas studies administered for purposes of litigation of a state claim "do not fall within the exception for hospitalization or treatment records"); 20 C.F.R. §725.414(a)(4); Director's Reply at 4.

Further, Employer does not dispute that it submitted its full complement of x-ray interpretations under 20 C.F.R. §725.414(a)(3) and does not allege good cause exists for

[3] Employer designated Dr. Tarver's reading of a May 15, 2018 x-ray in rebuttal of Dr. DePonte's reading of that x-ray from the Department of Labor-sponsored pulmonary evaluation of Claimant. Employer's Evidence Summary Form.

the admission of Dr. Kim's x-ray interpretation in excess of the evidentiary limitations. 20 C.F.R. §725.456(b)(1). Thus, we discern no abuse of discretion in the ALJ's decision to exclude Dr. Kim's x-ray interpretation. *See Blake*, 24 BLR at 1-113; *Dempsey*, 23 BLR at 1-61; Decision and Order at 2 n.2; Hearing Transcript at 11-12.

Complicated Pneumoconiosis

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 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-ray, CT scan, and medical opinion evidence supports a finding of complicated pneumoconiosis, and when weighed together the evidence establishes the disease.[4] 20 C.F.R. §718.304(a), (c); Decision and Order at 16, 18, 20-21.

20 C.F.R. §718.304(a) – X-Rays

The ALJ considered seven interpretations of three x-rays dated May 15, 2018, March 27, 2019, and April 9, 2019. Decision and Order at 12-16; Director's Exhibits 18, 20, 21, 23 at 126; Claimant's Exhibit 5; Employer's Exhibits 2, 6. He found all the physicians who interpreted the x-rays are dually-qualified as B readers and Board-certified radiologists. Decision and Order at 14.

Drs. DePonte and Alexander read the May 15, 2018 x-ray as positive for complicated pneumoconiosis with Category A large opacities, while Dr. Tarver read it as negative for the disease. Director's Exhibits 18, 21, 23 at 126. Dr. DePonte read the March 27, 2019 x-ray as positive for complicated pneumoconiosis with Category A large opacities, while Dr. Tarver read it as negative for the disease. Claimant's Exhibit 5; Employer's Exhibit 6. Dr. DePonte further read the April 9, 2019 x-ray as positive for

[4] The ALJ found there is no biopsy evidence of record. 20 C.F.R. §718.304(b); Decision and Order at 16.

complicated pneumoconiosis, Category A, while Dr. Adcock read it as negative for the disease. Director's Exhibit 20; Employer's Exhibit 2.

The ALJ found the May 15, 2018 x-ray positive for complicated pneumoconiosis because a greater number of dually-qualified radiologists read it as positive than negative. Decision and Order at 14. He further found the respective readings of March 27, 2019 and April 9, 2019 x-rays in equipoise because an equal number of dually-qualified radiologists read each x-ray as positive compared to negative for the disease. *Id.* Because one x-ray is positive for complicated pneumoconiosis and the readings of the remaining x-rays are in equipoise, he found the preponderance of the x-ray evidence supports a finding of complicated pneumoconiosis. *Id.* at 15.

Employer argues the ALJ erred in finding the May 15, 2018 x-ray positive for complicated pneumoconiosis because he performed a "head-count" to resolve the conflict in the evidence. Employer's Brief at 17. We disagree. The ALJ did not merely count heads, but conducted both a qualitative and quantitative analysis of each x-ray, taking into consideration the physicians' radiological qualifications. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256 (4th Cir. 2016); Decision and Order at 14. He then weighed all the x-rays together to conclude that a preponderance establishes complicated pneumoconiosis, as one is positive and the readings of two are in equipoise.[5] Decision and Order at 14.

Additionally, Employer argues the ALJ erred by failing to assign greater weight to Dr. Tarver's readings due to his academic credentials. Employer's Brief at 7-8. Contrary to Employer's contention, while an ALJ may rely on a physician's additional qualifications when considering their readings, the ALJ is not required to do so. *See Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-114 (2006) (en banc), *aff'd on recon.*, 24 BLR 1-13 (2007) (en banc); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993). The ALJ summarized the non-radiological qualifications of all the physicians and permissibly found they are equally qualified. *Worhach*, 17 BLR at 1-108; Decision and Order at 12-13.

Employer also challenges the ALJ's consideration of Claimant's treatment record x-rays. Employer's Brief at 8-13. The ALJ weighed Dr. Stover's readings of the February 21, 2017 and March 30, 2019 x-rays, Dr. Laplante's reading of the February 18, 2019 x-

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[5] Employer argues the ALJ erred by considering Dr. DePonte's supplemental report and CT scan reading in conjunction with her x-ray readings. Employer's Brief at 11-12. Because the ALJ found the x-rays establish complicated pneumoconiosis based on the physicians' qualifications, we need not address this argument. *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

ray, and Dr. Hirsch's reading of the March 27, 2019 x-ray. Decision and Order at 16. None contain a diagnosis of complicated pneumoconiosis. Director's Exhibits 23 at 123; 26 at 10, 45, 54. Contrary to Employer's argument, the ALJ permissibly[6] found these readings entitled to less weight[7] because "there is no indication in the record that the physicians reading these x-rays have any specific expertise in the interpretation of x-rays for the presence of simple or complicated pneumoconiosis."[8] Decision and Order at 16; *see Addison*, 831 F.3d at 256; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *Marra v.*

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[6] Because the ALJ provided a valid reason for giving less weight to Claimant's treatment record x-ray interpretations, we need not address Employer's remaining arguments regarding the weight accorded to this evidence. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 12-13. We note that the physicians who provided the treatment x-ray readings were radiologists while the physicians to whom the ALJ gave greater credit were dually-qualified (i.e., they were Board-certified radiologists and B-readers, so in addition to being radiologists, they had specific qualifications with respect to reading x-rays for pneumoconiosis). Employer's Brief at 11. Moreover, the ALJ did not find the interpretations in Claimant's treatment records were not credible; rather he gave them less weight than the dually-qualified physicians' interpretations. Decision and Order at 16.

[7] Contrary to Employer's argument, the ALJ was not required to credit the treatment record x-ray interpretations because the physicians who read the x-rays are Claimant's treating physicians. Employer's Brief at 13-14. An ALJ may assign controlling weight to a treating physician's opinion based on the nature and duration of the physician's relationship with the miner and the frequency and extent of the treatment. 20 C.F.R. §718.104(d); *see Soubik v. Director, OWCP*, 366 F.3d 226, 235 (3d Cir. 2004). The weight given to a treating physician's opinion, however, "shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence, and the record as a whole." 20 C.F.R. §718.104(d)(5); *see Eastover Mining Co. v. Williams*, 338 F.3d 501, 513 (6th Cir. 2002) (treating physicians get "the deference they deserve based on their power to persuade").

[8] It is unclear whether the ALJ took judicial notice of the treating physicians' credentials as radiologists. However, any error is harmless as, within his discretion, he permissibly gave greater weight to the *dually-qualified* readers specifically because they possessed greater relevant qualifications. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); *Larioni*, 6 BLR at 1-1278. This would remain the case whether or not he took specific notice that, as Employer contends, the treating physicians were Board-certified radiologists. Employer's Brief at 11.

Consolidation Coal Co., 7 BLR 1-216, 1-218-19 (1984) (ALJ has discretion to determine the weight to accord diagnostic testing that is silent on the existence of pneumoconiosis).

As Employer raises no further argument regarding the ALJ's weighing of the x-ray evidence and it is supported by substantial evidence, we affirm the ALJ's finding the x-ray evidence supports a finding of complicated pneumoconiosis.[9] 20 C.F.R. §718.304(a); Decision and Order at 16.

20 C.F.R. §718.304(c) – CT Scans

Employer also argues the ALJ erred in weighing the CT scan evidence. Employer's Brief at 14-17, 19-20.

An ALJ has the discretion to weigh the evidence and draw inferences therefrom. *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949 (4th Cir. 1997); *Maddaleni v. The Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135, 140 (1990). The Board cannot disturb factual findings that are supported by substantial evidence even if it might reach a different conclusion if it were reviewing the evidence de novo. *Consolidation Coal Co. v. Held*, 314 F.3d 184, 189 (4th Cir. 2002). The ALJ considered four readings of Claimant's October 1, 2013 CT scan. Decision and Order at 16-18. Dr. DePonte read the CT scan as positive for complicated pneumoconiosis, while Drs. Smith, Tarver, and Swart read it as negative for the disease. Director's Exhibit 22 at 17-19; Claimant's Exhibit 1; Employer's Exhibit 5. The ALJ found Drs. Smith and Tarver failed to adequately explain their findings and gave Dr. Swart's reading no weight because her credentials are not in the record. Decision and Order at 18. He credited Dr. DePonte's reading as reasoned and documented, and thus found the CT scan evidence supports a finding of complicated pneumoconiosis. *Id.*

Employer argues the ALJ erred in crediting Dr. DePonte's interpretation of the October 1, 2013 CT scan over Dr. Tarver's interpretation. Employer's Brief at 19-20. We disagree.

Dr. DePonte opined the CT scan shows a region of coalescence in the right upper lobe containing a seventeen-millimeter opacity consistent with a Category A large opacity of progressive massive fibrosis or complicated pneumoconiosis. Claimant's Exhibit 1. She also observed a large eleven-millimeter opacity more centrally in the right lung apex, as

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[9] Employer's argument that the ALJ should have found the treatment record x-rays bolster Dr. Tarver's x-ray readings is a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); Employer's Brief at 7-8.

well as a large fourteen-millimeter opacity in the left lung apex. *Id.* Specifically, she explained that the "apical posterior segment is the classic location of the most severe findings of coal workers' pneumoconiosis[, because of the] diminished lymph flow and therefore decreased clearance of dust particles in this segment of the lung." *Id.* She further opined there is no significant emphysema, and no pleural plaques, diffuse pleural thickening, mediastinal or hilar adenopathy. *Id.* Finally, she diagnosed progressive massive fibrosis indicating complicated pneumoconiosis and opined that the large opacities would measure similar in size and greater than one centimeter on a standard chest x-ray. *Id.*

Dr. Tarver opined the CT scan reveals one to two-millimeter nodules predominantly in the upper lobes, no large masses, and "minimal right apical scarring versus pseudoplaque." Employer's Exhibit 5. He opined the CT scan shows only simple pneumoconiosis. *Id.*

Dr. DePonte reviewed Dr. Tarver's interpretation of the October 1, 2013 CT scan and provided a rebuttal report. Claimant's Exhibit 3. She attached multiple images from the CT scan and March 27, 2019 x-ray illustrating the opacities she identified. *Id.* Addressing Dr. Tuteur's diagnosis of pseudoplaque she explained as follows:

> The course of the lymphatic channels is around the periphery of the pulmonary lobules, the functional unit of the lung, some of which rest along the pleura and therefore some of the large opacities form peripherally, as in this case, adjacent to the pleura. The term pseudoplaque has been applied to these opacities as a descriptive term however, these are parenchymal opacities like those that occur more centrally.

Id. Further, she explained that the opacities are clearly within the lung parenchyma and do not represent pleural plaques or non-specific pleural scarring, which occurs higher in the lung apices. *Id.* She stated the eleven-millimeter opacity is clearly separate from the pleura and within a region of coalescence, a classic location of progressive massive fibrosis, and reiterated her diagnosis of complicated pneumoconiosis. *Id.*

Dr. Tarver responded to Dr. DePonte's rebuttal report. Employer's Exhibit 7. He reiterated his opinion that the CT scan shows simple pneumoconiosis and minimal right apical scarring versus pseudoplaque. *Id.* He stated he disagrees with Dr. DePonte because the opacities in the right apex are small peripheral pseudoplaques, and he and Dr. DePonte "are in disagreement as to whether a pseudoplaque would qualify as a large opacity." *Id.*

In considering the CT scan interpretations of Drs. DePonte and Tarver, the ALJ included a summary of their initial interpretations and rebuttal reports. Decision and Order

at 17-18. He then found Dr. DePonte's reading to be more persuasive than Dr. Tarver's because she was "very specific and thorough." *Id.* at 18. He elaborated on his finding, stating:

> Dr. Tarver also failed to explain his finding of [pseudoplaques] in the right apex and the causes of this type of abnormality. Dr. DePonte explained that the large opacities she noted were visible on a background of coalescence and that her observation of the large opacities appeared in a location that is very typical for pulmonary massive fibrosis and specifically complicated pneumoconiosis. In her CT reading she also made an equivalency determination finding that the large opacities would appear similarly and over one centimeter on chest x-ray. The thoroughness of her findings and explanations is also bolstered by the fact that she had the opportunity to read all three of the offered x-rays and the October 1, 2013 CT scan and was able to specifically compare the CT scan with the March 27, 2019 x-ray.

Id. Thus, contrary to Employer's argument, the ALJ resolved the dispute between Drs. DePonte and Tarver by permissibly crediting Dr. DePonte's opinion over Dr. Tarver's opinion.[10] *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 18; Employer's Brief at 19-20.

Employer also argues the ALJ erred in discrediting Dr. Smith's CT scan interpretation. Employer's Brief at 14-15. We disagree.

Dr. Smith identified small nodules throughout the lung zones indicating simple pneumoconiosis but did not discuss any abnormalities in the apex of the right lung. Director's Exhibit 22 at 18. The ALJ observed the other radiologists that read the x-rays and CT scans all identified an abnormality in the right apex. Decision and Order at 18. He thus permissibly found Dr. Smith's CT scan interpretation is not persuasive because it is in

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[10] We further reject Employer's argument that the ALJ erred in crediting Dr. DePonte's interpretation of the October 1, 2013 CT scan over Dr. Swart's interpretation found in Claimant's treatment records. Employer's Brief at 14-16. The ALJ permissibly gave greater weight to Dr. DePonte's interpretation because Dr. Swart's qualifications are unknown. *See Adkins*, 958 F.2d at 51-52; *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); *see also Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256 (4th Cir. 2016); Decision and Order at 16.

the minority on the presence of an abnormality in the apical upper lobe of the right lung. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 18.

Thus, as it is supported by substantial evidence, 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 18. We further affirm, as unchallenged on appeal, the ALJ's finding that the medical opinion evidence supports a finding of complicated pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 20-21. 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 21. 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 22. Thus, we affirm the award of benefits.[11]

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

JONATHAN ROLFE
Administrative Appeals Judge

[11] In light of our affirmance of the ALJ's award of benefits, we need not address the arguments raised in Claimant's cross-appeal. *See Larioni*, 6 BLR at 1-1278.