U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 17-0111 BLA

WILLIAM E. BOYD Claimant-Respondent v. CLINCHFIELD COAL CORPORATION c/o HEALTHSMART CASUALTY CLAIM and self-insured through PITTSTON COMPANY, c/o HEALTHSMART CASUALTY CLAIM Employer/Carrier- Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 12/26/2017 DECISION and ORDER

Appeal of the Decision and Order of Larry W. Price, Administrative Law Judge, United States Department of Labor.

John S. Honeycutt (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer/carrier (employer) appeals the Decision and Order (2014-BLA-05676) of Administrative Law Judge Larry W. Price awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent claim filed on June 20, 2013.[1]

The administrative law judge credited claimant with at least twenty-six years of underground coal mine employment, as stipulated by the parties, and found that the new evidence established the existence of complicated pneumoconiosis. The administrative law judge therefore found that claimant invoked the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304 and established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c).[2] The administrative law judge also found that the evidence established that claimant's complicated pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that the new evidence established the existence of complicated pneumoconiosis at 20 C.F.R.

[1] Claimant's first claim for benefits, filed on August 22, 2008, was denied by the district director on April 16, 2009 because claimant failed to establish total respiratory disability. Director's Exhibit 1. Claimant filed a request for modification of the denial on December 9, 2009. On June 11, 2012, Administrative Law Judge Richard T. Stansell-Gamm denied modification because claimant failed to establish either a mistake in a determination of fact or a change in conditions pursuant to 20 C.F.R. §725.310. Director's Exhibit 1. Claimant took no further action until he filed the instant claim on June 20, 2013. Director's Exhibit 3.

[2] When a miner files an application for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Claimant's prior claim was denied because he did not establish a totally disabling respiratory or pulmonary impairment. Director's Exhibit 2. Consequently, to obtain review on the merits of his current claim, claimant had to submit new evidence establishing total respiratory disability. *See* 20 C.F.R. §725.309(c)(3).

§718.304. Neither claimant nor the Director, Office of Workers' Compensation Programs, filed a brief in this appeal.[3]

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law.[4] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Existence of Complicated Pneumoconiosis – 20 C.F.R. §718.304

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304, provides an irrebuttable presumption of total disability due to pneumoconiosis if the miner 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 which would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. The United States Court of Appeals for the Fourth Circuit has held that, because prong (a) sets out an entirely objective scientific standard for diagnosing complicated pneumoconiosis, that is, an x-ray opacity greater than one centimeter in diameter, the administrative law judge must determine whether a condition which is diagnosed by biopsy or autopsy under prong (b) or by any other means under prong (c) would show as an opacity greater than one centimeter if it were seen on a chest x-ray. *E. Assoc. Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 256, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-561 (4th Cir. 1999).

The introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for the Section 411(c)(3) irrebuttable presumption. Thus, in determining whether the evidence establishes complicated pneumoconiosis, the administrative law judge must examine all of the evidence on the

[3] We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established at least twenty-six years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 2, 13.

[4] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as claimant was last employed in the coal mining industry in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 21.

issue, *i.e.*, evidence of simple and complicated pneumoconiosis, as well as evidence that pneumoconiosis is not present, and resolve any conflicts. *Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 287, 24 BLR 2-269, 2-286 (4th Cir. 2010); *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (4th Cir. 1993); *Gollie v. Elkay Mining Corp.*, 22 BLR 1-306, 1-311 (2003); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc). Claimant bears the burden of proof to establish the existence of complicated pneumoconiosis. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281, 18 BLR 2A-1, 2A-12 (1994).

The evidence relating to the existence of complicated pneumoconiosis consists of x-rays, relevant to 20 C.F.R. §718.304(a), and computed tomography (CT) scans, medical opinions, and treatment notes, relevant to 20 C.F.R. §718.304(c).[5] Under Section 718.304(a), the administrative law judge found that the weight of the x-ray evidence supports a finding of complicated pneumoconiosis. Alternatively, the administrative law judge found that "at the very least" the x-ray evidence is in equipoise for the disease, and that the CT scan evidence, at Section 718.304(c), "shifts that balance in claimant's favor." Decision and Order at 6-7. The administrative law judge further found that the medical opinion evidence and treatment records did not establish the presence or absence of complicated pneumoconiosis. Weighing the evidence as a whole, the administrative law judge found that claimant satisfied his burden of proof to establish that he suffers from complicated pneumoconiosis at 20 C.F.R. §718.304 and that he is entitled to the irrebuttable presumption of total disability due to pneumoconiosis. Decision and Order at 13.

Employer asserts that the administrative law judge erred in finding that the x-ray evidence supports a finding of complicated pneumoconiosis at Section 718.304(a). Employer's Brief at 2-4. The administrative law judge considered eight interpretations of four x-rays dated January 10, 2011, March 4, 2013, August 5, 2013,[6] and July 22, 2014.

Dr. Miller, who is dually-qualified as a B reader and a Board-certified radiologist, read the January 10, 2011 x-ray as positive for complicated pneumoconiosis. Director's Exhibit 16. Because it was "unchallenged," the administrative law judge found that the

[5] The administrative law judge correctly found that because there is no new biopsy evidence in the record relevant to the existence of complicated pneumoconiosis, there was no new evidence to consider pursuant to 20 C.F.R. §718.304(b). Decision and Order at 7.

[6] Dr. Gaziano interpreted the August 5, 2013 x-ray film for quality only. Director's Exhibit 12.

January 10, 2011 x-ray weighs in favor of a finding of complicated pneumoconiosis. Decision and Order at 6.

Dr. Alexander, a dually-qualified radiologist, read the March 4, 2013 x-ray as positive for complicated pneumoconiosis, while Dr. Wolfe, who is also a dually-qualified radiologist, read this x-ray as positive for simple pneumoconiosis only. Director's Exhibits 16, 17. Because this film was interpreted as both positive and negative for complicated pneumoconiosis by equally qualified readers, the administrative law judge found that the March 4, 2013 x-ray is in equipoise for complicated pneumoconiosis. Decision and Order at 6.

Dr. DePonte, a dually-qualified radiologist, read the August 5, 2013 x-ray as positive for complicated pneumoconiosis, while Dr. Wolfe and Dr. Forehand, a B reader, read this x-ray as positive for simple pneumoconiosis, but negative for large opacities of complicated pneumoconiosis. Claimant's Exhibit 3; Director's Exhibit 12; Employer's Exhibit 1. The administrative law judge found this x-ray to be positive for simple pneumoconiosis only. Decision and Order at 6.

Finally, Dr. DePonte read the July 22, 2014 x-ray as positive for complicated pneumoconiosis, while Dr. Wolfe read this x-ray as positive for simple pneumoconiosis, but negative for large opacities of complicated pneumoconiosis. Claimant's Exhibit 1; Employer's Exhibit 3. Based on the readers' equal radiological qualifications, the administrative law judge found that this x-ray is in equipoise for complicated pneumoconiosis. Decision and Order at 6.

Because all four x-rays were read as positive for complicated pneumoconiosis by a dually-qualified reader, but only three of the positive readings were challenged by an equally-qualified reader, the administrative law judge noted that the weight of the x-ray evidence supports a finding of complicated pneumoconiosis. Decision and Order at 6. The administrative law judge concluded, however, that "[a]t the very least" the x-ray evidence is in equipoise for the existence of complicated pneumoconiosis. *Id*. at 6-7.

Employer argues that the administrative law judge committed reversible error to the extent he relied on Dr. Miller's positive reading of the January 10, 2011 x-ray. Employer's Brief at 4. Employer avers that because this x-ray reading was submitted in claimant's prior claim, it should not have been considered by the administrative law judge in determining whether the new evidence established a change in an applicable condition of entitlement in the current claim. Employer's Brief at 3. Further, employer asserts, the administrative law judge erred in finding that Dr. Miller's reading of the January 10, 2011 x-ray is "unchallenged." Rather, employer argues that in the prior claim, Dr. Scott, who is equally-qualified, read this x-ray as negative for complicated

pneumoconiosis and, based on these conflicting readings, Administrative Law Judge Richard T. Stansell-Gamm found it to be "inconclusive." Employer's Brief at 3-4. Asserting that Judge Stansell-Gamm's prior finding is law of the case, employer asserts that the administrative law judge erred in finding the January 10, 2011 x-ray to be positive, and in finding that the x-ray evidence overall supports a finding of complicated pneumoconiosis. Employer's Brief at 3-4.

Employer correctly asserts that the administrative law judge erred in considering Dr. Miller's reading of the January 10, 2011 x-ray, as it is not new evidence. *See* 20 C.F.R. §725.309(c). We hold that in light of the administrative law judge's ultimate conclusion that "[a]t the very least" the x-ray evidence is "in equipoise," however, employer has not shown how the administrative law judge's consideration of the January 10, 2011 x-ray could have made any difference. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009). Thus, the administrative law judge's characterization of the January 10, 2011 x-ray as unchallenged, rather than inconclusive, is also harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). Moreover, employer has not challenged the administrative law judge's weighing of the March 4, 2013, August 5, 2013 and July 22, 2014 x-rays. We therefore reject employer's assertion that the administrative law judge's evaluation of the x-ray evidence at 20 C.F.R. §718.304(a) constitutes reversible error.

Employer also contends that the administrative law judge erred in finding that the new CT scan evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. § 718.304(c). The record contains six interpretations of two CT scans taken on September 23, 2013 and May 19, 2014. Director's Exhibit 13; Claimant's Exhibits 2, 7; Employer's Exhibits 3, 6, 9. Each CT scan was interpreted as both positive and negative for the existence of complicated pneumoconiosis. Decision and Order at 7-8.

Dr. DePonte, who is dually qualified as a B reader and a Board-certified radiologist, interpreted the September 23, 2013 CT scan as showing a large opacity in the right upper lobe. Claimant's Exhibit 7. Based on its appearance, location, contours and characteristics, Dr. DePonte concluded that it was consistent with complicated coal workers' pneumoconiosis, Category B.[7] *Id.* Dr. Patel, whose credentials are unknown,

[7] Dr. DePonte described the lung parenchyma as showing innumerable fine nodular interstitial opacities predominating in the upper lung zones Dr. DePonte noted that most of the nodular opacities are approximately 3 millimeters in size, but there are several larger nodules that are 4 or 5 millimeters in size. Claimant's Exhibit 7. Dr. DePonte found that the nodules coalesced into larger opacities, with a large opacity in the right upper lung zone measuring 27 millimeters transversely, or 12 millimeters in

also interpreted this CT scan as positive for complicated pneumoconiosis, based on a large density in the right upper lobe, and noted that the lesion had progressed since 2008.[8] Director's Exhibit 13. In contrast, Dr. Castle, a B reader, interpreted this CT scan as negative for complicated pneumoconiosis. Based on its location and appearance, Dr. Castle concluded that the large lesion in the right upper lobe was not consistent with a large opacity, but was most consistent with old, healed granulomatous disease.[9] Employer's Exhibit 3.

Dr. DePonte also interpreted the May 19, 2014 CT scan as positive for complicated pneumoconiosis. Claimant's Exhibit 2. Dr. DePonte noted that due to the positioning of the CT scan, the upper lung zones were excluded from view, which is also the most common location for complicated pneumoconiosis and where the large opacity was seen on the September 23, 2013 CT scan. *Id.* Dr. DePonte further noted, however, that the May 19, 2014 scan nonetheless showed pseudoplaque formation with opacities measuring up to 15 millimeters, consistent with coal worker's pneumoconiosis, Category A.[10] Dr. Fino, a B reader, disagreed with Dr. DePonte and interpreted this scan as consistent with simple pneumoconiosis, but negative for complicated coal workers' pneumoconiosis. Employer's Exhibits 6, 9. In his medical report, Dr. Castle also reviewed Dr. DePonte's interpretation of the May 19, 2014 scan and stated that he disagreed with her conclusions. Employer's Exhibit 8.

The administrative law judge accorded the greatest weight to Dr. DePonte's interpretations of the September 23, 2013 and May 19, 2014 CT scans, based on her

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anterior-posterior dimension. *Id*. Dr. DePonte additionally found that the longest axis of the opacity on the coronal images measured nearly 6 centimeters. *Id*.

[8] Dr. Patel found "[m]inimal progression of the complicated pneumoconiosis changes in the chest" and "[e]nlargement of the [progressive massive fibrosis] formation in the right upper lobe which can be a normal progression since 2008." Director's Exhibit 13.

[9] Dr. Castle described a linear, horizontal mass-like density with multiple pleural attachments laterally, posteriorly, and medially in the right upper lobe. Employer's Exhibit 3. Dr. Castle noted that multiple calcifications within this area were associated with calcifications in hilar lymph nodes. *Id*.

[10] Dr. DePonte explained that a "pseudoplaque" is a pulmonary opacity contiguous with visceral pleura formed by coalescent small nodules and is typical for coal workers' pneumoconiosis. It is also common in silicosis and sarcoidosis. Claimant's Exhibit 2.

superior radiological qualifications. Decision and Order at 8-9. The administrative law judge also discounted the interpretations of the other physicians for other reasons: he discounted Dr. Patel's interpretation of the September 23, 2013 CT scan because he did not provide an equivalency determination; Dr. Fino's interpretation of the May 19, 2014 CT scan as less comprehensive than Dr. DePonte's; and Dr. Castle's interpretations of both CT scans as speculative and inadequately reasoned. Decision and Order at 8. Having accorded Dr. DePonte's interpretations the greatest weight, and noting further that she provided the requisite equivalency determinations for her interpretations of both scans,[11] the administrative law judge found that the new CT scan evidence established the existence of complicated pneumoconiosis. *Id*. at 9.

Employer argues that the administrative law judge erred in crediting Dr. DePonte's CT scan interpretations over those of Drs. Fino and Castle based upon Dr. DePonte's superior qualifications.[12] Employer's assertion lacks merit. The Department of Labor (DOL) has not issued guidelines for administrative law judges to follow when assessing the reliability of a physician's interpretation of a CT scan. In the absence of controlling statutory language or guidance from the DOL, an administrative law judge's weighing of CT scan evidence may be accorded deference, unless it is found to be irrational or unlawful. *See Consolidation Coal Co. v. Director, OWCP* [*Stein*], 294 F.3d 885, 893-94, 22 BLR 2-409, 2-422-24 (7th Cir. 2002).

Moreover, as the court observed in *Stein*, "CT scans are typically read by radiologists (some of whom may in addition be classified as B-readers) who have specialized knowledge and have developed a certain expertise through the years of training and experience interpreting this particular test." *Stein*, 294 F.3d at 893-94, 22 BLR at 2-422-23. Notably, in this case, the administrative law judge did not find that Drs. Fino and Castle are not qualified to interpret CT scans.[13] Rather, the administrative

[11] Dr. DePonte explicitly stated that the large opacities she observed on the September 23, 2013 and May 19, 2014 CT scans would measure over one centimeter in size on a standard chest film. Decision and Order at 8; Claimant's Exhibits 2, 7.

[12] In regard to Dr. Castle's qualifications, employer notes that part of Dr. Castle's training as a pulmonary physician included the interpretation of CT scans, that he was tested on reading CT scans during his Board certification, and that he read CT scans almost daily during his thirty years of practice. Employer's Brief at 6-7.

[13] The administrative law judge noted that in addition to being B readers, Drs. Castle and Fino are Board-certified in internal medicine and pulmonary diseases. Decision and Order at 7-8.

law judge found that Dr. DePonte's dual qualifications as a B reader *and* a Board-certified radiologist entitled her interpretations of the CT scans to the greatest weight. Decision and Order at 8. Because the administrative law judge's weighing of the respective radiological qualifications of Drs. DePonte, Fino, and Castle was rational and within his discretion, we hold that the administrative law judge permissibly accorded the greatest weight to Dr. DePonte's CT scan interpretations based on her superior qualifications. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 2-162, 2-175 (4th Cir. 2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997); *see also Stein*, 294 F.3d at 893-94, 22 BLR at 2-422-23.

Moreover, contrary to employer's assertion, the administrative law judge's additional reasons for discounting the opinions of Drs. Fino and Castle were also permissible. The administrative law judge permissibly accorded less weight to Dr. Fino's interpretation of the May 19, 2014 CT scan than to Dr. DePonte's interpretation because "[Dr. DePonte's] reading was considerably more comprehensive than Dr. Fino's initial and rehabilitation readings." Decision and Order at 8; *see Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274. Moreover there is no merit to employer's contention that the administrative law judge evaluated the length, rather than the quality, of the opinions.[14] Employer's Brief at 7-8.

The administrative law judge also addressed Dr. Castle's opinion, expressed in his CT scan reading, his medical reports, and his deposition testimony, that the right upper lobe lesion shown on the September 23, 2013 CT scan represented healed granulomatous disease such as histoplasmosis. Decision and Order at 8-9. The administrative law judge permissibly found that Dr. Castle's attribution of the right upper lobe masses to alternative etiologies was called into question by the fact that claimant tested negative in 2011 for tuberculosis, histoplasmosis, and other granulomatous diseases.[15] *See Cox*, 602

[14] Dr. Fino's initial report simply concluded, without explanation, that the changes he observed on the May 19, 2014 CT scan are consistent with simple, but not complicated, pneumoconiosis. Employer's Exhibit 6. In his supplemental report, Dr. Fino stated that he had reviewed, and disagreed with, Dr. DePonte's interpretation of this scan, but he did not provide the basis for his disagreement. Employer's Exhibit 9.

[15] In a report dated February 7, 2011, Dr. Forehand noted that a tuberculosis skin test was negative for the disease and blood test results were negative for granulomatous lung diseases, hypersensitive pneumonitis, cancer, histoplasmosis, or sarcoidosis. Claimant's Exhibit 5. Dr. Forehand opined that claimant has clinical evidence of

F.3d at 287, 24 BLR at 2-287 (holding that it is permissible to discredit a radiological interpretation that is negative for complicated pneumoconiosis and presents "alternative etiologies" for any large opacities if the record contains no evidence of the suggested alternatives); *see also Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); Decision and Order at 9. Further, the administrative law judge found that Dr. Castle's explanation that negative test results do not exclude prior granulomatous disease because patients may test negative when their disease has healed and is inactive was undermined by Dr. Patel's notation that the right upper lobe mass had progressed between 2008 and 2013.[16] Decision and Order at 8.

Additionally, the administrative law judge found that even if the right upper lobe lesion seen on the September 23, 2013 CT scan represented healed granulomatous disease, Dr. DePonte's opinion that the May 19, 2014 CT scan showed additional masses of complicated pneumoconiosis remained unchallenged. Decision and Order at 9. Dr. Castle did not personally interpret the May 19, 2014 CT scan but reviewed Dr. DePonte's description of the lesions. Employer's Exhibit 8. Contrary to employer's argument, however, and as the administrative law judge observed, Dr. Castle did not address Dr. DePonte's findings. Decision and Order at 9; Employer's Brief at 9-10. Rather, Dr. Castle reiterated his disagreements with Dr. DePonte regarding the appearance and location of the lesion seen on the September 23, 2013 CT scan. Employer's Exhibits 7 at 13-16; 8.

It is within the administrative law judge's discretion as fact-finder to weigh the credibility of the experts, and to determine the persuasiveness of their opinions. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 2-162, 2-175 (4th Cir. 2000); *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 949, 21 BLR 2-23, 2-31 (4th Cir. 1997). As substantial supports the administrative law judge's determination to accord greater weight to the CT scan interpretations of Dr. DePonte than to the contrary readings by Drs. Fino and Castle, we affirm the administrative law judge's finding that the new CT scan evidence established the existence of complicated pneumoconiosis at 20 C.F.R. §718.304(c).

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complicated pneumoconiosis with progressive massive fibrosis, and not any alternative diseases or conditions. *Id*.

[16] Dr. Castle summarized Dr. Patel's interpretation but did not discuss his findings. Employer's Exhibit 3 at 8-9.

Finally, the administrative law judge considered the new medical opinions of Drs. Forehand, Sutherland and Castle.[17] Drs. Forehand and Sutherland opined that claimant suffers from complicated pneumoconiosis, while Dr. Castle opined that claimant does not suffer from complicated pneumoconiosis. Director's Exhibits 12, 13; Claimant's Exhibit 4; Employer's Exhibits 3, 8. The administrative law judge found that the new medical opinion evidence did not establish either the existence or absence of complicated pneumoconiosis. *Id*.

Employer challenges this determination, asserting that Dr. Castle "has the most complete view of claimant's x-rays and CT scans" and that his "detailed and rational explanation for his findings . . . demonstrates that claimant does not have complicated [coal workers' pneumoconiosis]. Employer's Brief at 11, 13. We disagree. The administrative law judge correctly observed that Dr. Castle's opinion rests, in part, on his interpretations of the CT scans of record; they were fully considered in conjunction with the CT scan evidence and found not credible. Decision and Order at 11-13. Thus, the administrative law judge permissibly found that Dr. Castle's medical opinion "carries little probative weight on the issue of whether [c]laimant has complicated pneumoconiosis." Decision and Order at 12; *see Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Akers*, 131 F.3d at 441, 21 BLR at 2-274.

[17] The administrative law judge also considered claimant's treatment records from Oakwood Respiratory Clinic, Appalachia Family Health, and Pikeville Medical Center. Decision and Order at 12-13. Finding the treatment notes to be conclusory, the administrative law judge accorded them little weight. *Id.* at 13.

Employer has not raised any other allegations of error concerning the administrative law judge's findings on the issue of complicated pneumoconiosis. We therefore affirm the administrative law judge's findings, based on the evidence as a whole, that claimant established the existence of complicated pneumoconiosis at 20 C.F.R. §718.304 and a change in an applicable condition of entitlement at 20 C.F.R. §725.309. We also affirm the administrative law judge's unchallenged finding that claimant's complicated pneumoconiosis arose out of coal mine employment at 20 C.F.R. §718.203(b). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Accordingly, the administrative law judge's Decision and Order awarding benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge