

BRB No. 12-0339 BLA

HARRY F. MITCHEM	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
U.S. STEEL MINING COMPANY	)	
	)	DATE ISSUED: 03/26/2013
Employer-Petitioner	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order of William S. Cowell, Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe (Wolfe Williams Rutherford & Reynolds), Norton, Virginia, for claimant.

Howard G. Salisbury, Jr. (Kay Casto & Chaney PLLC), Charleston, West Virginia, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (10-BLA-5352) of Administrative Law Judge William S. Cowell awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act). This case involves a claim filed on May 6, 2009.

After crediting claimant with twenty-eight years of coal mine employment,<sup>1</sup> the

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<sup>1</sup> Claimant's coal mine employment was in West Virginia. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals

administrative law judge found that the evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, thereby establishing invocation of the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304. The administrative law judge further found that claimant was entitled to the presumption that his complicated pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in finding that the evidence established the existence of complicated pneumoconiosis. Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

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. 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).

In order to establish entitlement to benefits under 20 C.F.R. Part 718 in a miner's claim, a claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is totally disabling. 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

### **Complicated Pneumoconiosis**

Employer argues that the administrative law judge erred in finding that the evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. Under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and its implementing regulation, 20 C.F.R. §718.304, there is an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if the miner is suffering from a chronic dust disease of the lung which (A) when diagnosed by x-ray, yields an opacity 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 reveal a result equivalent to (A) or (B). *See* 20 C.F.R. §718.304.

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for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

The United States Court of Appeals for the Fourth Circuit has held that, “[b]ecause 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 that is diagnosed by biopsy or autopsy under prong (B) or by other means under prong (C) would show as a greater-than-one-centimeter opacity if it were seen on a chest x-ray. *Eastern Associated Coal Corp. v. Director, OWCP* [Scarbro], 220 F.3d 250, 255, 22 BLR 2-93, 2-100 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243, 22 BLR 2-554, 2-561-62 (4th Cir. 1999). In determining whether claimant has established invocation of the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 718.304, the administrative law judge must weigh together all of the evidence relevant to the presence or absence of complicated pneumoconiosis. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-1143, 2-1145-46 (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).

### **Section 718.304(a)**

Relevant to 20 C.F.R. §718.304(a), the administrative law judge considered four interpretations of four x-rays dated May 20, 2009, September 3, 2009, December 16, 2009, and February 25, 2011. Dr. Forehand, a B reader, interpreted the May 20, 2009 x-ray as positive for complicated pneumoconiosis, identifying a size A opacity in claimant’s right upper lung. Director’s Exhibit 11. Although the other three x-rays were interpreted as negative for complicated pneumoconiosis, the administrative law judge noted that the physicians interpreting these films also identified a mass in claimant’s right upper lung.<sup>2</sup> Decision and Order at 9. The administrative law judge found that the x-ray evidence, as a whole, did not establish the existence of complicated pneumoconiosis at 20 C.F.R. §718.304(a). *Id.*

### **Section 718.204(c)**

The record also contains a range of other diagnostic evidence under Section 718.304(c), including a digital chest x-ray reading, CT scan readings, and medical

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<sup>2</sup> In interpreting the September 3, 2009 x-ray, Dr. Smith noted a “nodular density in the right upper lobe region.” Employer’s Exhibit 3. Dr. Gaziano also identified a mass on the December 16, 2009 x-ray, noting that it could represent a tumor or a granulomatous disease. Employer’s Exhibit 1. In rendering her interpretation of the February 25, 2011 x-ray, Dr. DePonte measured the right lung mass at 15 mm., but opined that it represented a calcified granuloma rather than complicated pneumoconiosis. Claimant’s Exhibit 3.

opinion evidence.<sup>3</sup> Dr. Castle, a B-reader, interpreted a July 20, 2010 digital x-ray as negative for complicated pneumoconiosis. Employer's Exhibit 2. Because there are no other interpretations of this x-ray, the administrative law judge found that the digital x-ray evidence did not support a finding of complicated pneumoconiosis. Decision and Order at 9-10.

The record also contains three CT scans taken on December 19, 2009, March 12, 2010, and July 20, 2010. Dr. Muto, a Board-certified radiologist, interpreted the December 19, 2009 CT scan as revealing biapical conglomerate masses, with a left apical mass measuring 3 x 1.8 cm., and a right apical mass measuring 3.3 x 1.4 cm. Employer's Exhibit 1. Dr. Muto also identified a "background of satellite subcentimeter nodules in the upper lung zones." *Id.* Dr. Muto opined that the "biapical pulmonary masses with satellite nodular interstitial densities [were] consistent with the given history of pneumoconiosis." *Id.*

Dr. Groten, a B reader and Board-certified radiologist, interpreted the March 12, 2010 CT scan as revealing findings consistent with, and most likely due to, complicated pneumoconiosis. Claimant's Exhibit 1. Dr. Groten specifically found "[m]ultiple small mediastinal lymph nodes," the largest of which measured approximately 1 cm. in diameter. *Id.* Dr. Castle, a B reader, also reviewed the March 12, 2010 CT scan, and found a nodular density in the right upper lobe "with probable eccentric calcification." Employer's Exhibit 2. Dr. Castle found a "small calcified nodule consistent with [a] granuloma in the right posterior chest," as well as a "smaller apical lesion in the left upper lobe." *Id.* Dr. Castle noted that he "did not detect any small, round regular lesions consistent with simple coal workers' pneumoconiosis." *Id.* Dr. Castle opined that the changes were most likely due to granulomatous disease, rather than coal workers' pneumoconiosis. *Id.* Dr. Castle also reviewed the July 20, 2010 CT scan, and again found that the changes were most likely due to granulomatous disease, rather than coal workers' pneumoconiosis. Employer's Exhibit 2.

The record also contains the medical opinions of Drs. Forehand, Zaldivar, Castle, Klayton, and Patel. Dr. Forehand examined claimant on May 20, 2009. Dr. Forehand diagnosed complicated pneumoconiosis. Employer's Exhibit 5 at 9-10. Dr. Forehand explained that claimant's symptoms and x-ray findings were not consistent with tuberculosis or cancer. *Id.* at 10. Dr. Forehand also explained that the fact that claimant's large mass first occurred in the upper lung zone was consistent with his diagnosis of complicated pneumoconiosis. *Id.* at 19.

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<sup>3</sup> Because there is no biopsy evidence in the record, there was no evidence to consider pursuant to 20 C.F.R. §718.304(b).

Dr. Zaldivar examined claimant on December 16, 2009. After noting that Dr. Muto appeared to have found more than one mass on claimant's CT scan, Dr. Zaldivar acknowledged that:

If there is another mass in the CT scan on the left lung together with nodular densities compatible with pneumoconiosis one has to conclude that the bilateral masses and nodular densities are most likely the result of complicated and simple pneumoconiosis.

Employer's Exhibit 1.

Dr. Castle examined claimant on September 14, 2010. Dr. Castle found no evidence of simple or complicated pneumoconiosis. Employer's Exhibit 4 at 7. Dr. Castle opined that the changes on the CT scan were most likely due to granulomatous disease. *Id.* at 8. Dr. Castle explained that his opinion was based on the location of the lesions, the partial calcification, and the absence of small, regular nodularity consistent with simple coal workers' pneumoconiosis. Employer's Exhibit 2.

Dr. Klayton examined claimant on February 25, 2011. Dr. Klayton noted that Dr. DePonte interpreted claimant's February 25, 2011 x-ray as revealing "[n]o large opacities consistent with pneumoconiosis." Claimant's Exhibit 3. The record also contains treatment records from Dr. Patel from March 2, 2010 to March 16, 2010. Claimant's Exhibit 1. Dr. Patel noted a left upper lung mass on x-ray that he opined was "probably secondary to complicated pneumoconiosis." *Id.*

### **The Administrative Law Judge's Finding**

In analyzing whether claimant established the existence of complicated pneumoconiosis, the administrative law judge initially found that the x-ray and CT scan evidence established that claimant has a mass in his right upper lung that would appear as larger than one centimeter on x-ray. Decision and Order at 23-24. Therefore, the administrative law judge focused his analysis on the etiology of the large opacity identified on the x-rays and CT scans.

In weighing the conflicting CT scan evidence, the administrative law judge discussed the qualifications of Drs. Muto, Groten, and Castle,<sup>4</sup> and found that Dr. Muto's diagnosis of complicated pneumoconiosis was well-reasoned, and was entitled to the most weight. The administrative law judge found that Dr. Muto provided a highly-

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<sup>4</sup> The administrative law judge noted that while Dr. Castle is a B reader, Drs. Muto and Groten are Board-certified radiologists. Decision and Order at 26-27.

detailed description of multiple CT scan images. Decision and Order at 27. The administrative law judge further found that Dr. Muto's diagnosis of complicated pneumoconiosis was supported by Dr. Groten's CT scan interpretation. *Id.*

Conversely, the administrative law judge found that Dr. Castle's CT scan interpretations lacked sufficient detail, and contained only generalized reasons for attributing claimant's lung abnormalities to granulomatous disease. *Id.* at 26. The administrative law judge specifically found that Dr. Castle's opinion was called into question by Dr. Forehand's opinion. The administrative law judge found that Dr. Forehand "offered persuasive reasons" for attributing the right upper lung mass to pneumoconiosis, rather than cancer, tuberculosis, or some other granulomatous disease. *Id.* The administrative law judge further found that the CT scan evidence was more probative than the x-ray evidence, noting Dr. Castle's testimony that CT scans are more sensitive tests for lung pathology than x-rays. Employer's Exhibit 4 at 13; Decision and Order at 27. The administrative law judge, therefore, found that the "highly probative" CT scan evidence outweighed the contrary x-ray evidence.<sup>5</sup> Decision and Order at 22. Consequently, the administrative law judge found that claimant was entitled to the irrebuttable presumption of total disability due to pneumoconiosis under 20 C.F.R. §718.304.

## **Discussion**

Employer argues that the administrative law judge erred in his consideration of Dr. Castle's CT scan interpretations. We disagree. Dr. Castle attributed the mass in claimant's right upper lung to granulomatous disease, rather than complicated pneumoconiosis, citing the location of the masses in claimant's lungs, a lack of smaller nodules consistent with pneumoconiosis, and the "partial calcification" of the masses. Employer's Exhibit 2 at 3, 10. The administrative law judge found that Dr. Castle's opinion was insufficiently reasoned because of "the lack of detail in his CT-scan reports and his generalized reasons for attributing the lung abnormalities to granulomatous diseases." Decision and Order at 26. The administrative law judge noted that Dr. Castle offered "no explanation" for his assertion that the location of claimant's lesions supported a diagnosis of granulomatous disease. *Id.* After noting that it was undisputed that claimant has lesions in his upper lung zones, the administrative law judge noted that Dr. Castle did not dispute Dr. Forehand's assertion that pneumoconiosis begins in the upper lung zones. *Id.*

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<sup>5</sup> The administrative law judge discounted Dr. Klayton's opinion that claimant does not have complicated pneumoconiosis because it was based upon a negative x-ray interpretation, evidence which the administrative law judge found outweighed by the more probative CT scan evidence. Decision and Order at 27.

The administrative law judge also discounted Dr. Castle's opinion that a lack of smaller nodules supported a diagnosis of granulomatous disease, rather than complicated pneumoconiosis, because Dr. Castle did not "provide any detailed observations of the CT-scans he reviewed." *Id.* On the other hand, the administrative law judge noted that Dr. Muto, in his detailed report, observed "satellite subcentimeter nodules in the upper lung zones" and "scattered nodule interstitial opacities." Employer's Exhibit 1 at 7-8; Decision and Order at 26. The administrative law judge also questioned Dr. Castle's reliance on the "partial calcification" of the lesions as a basis for diagnosing granulomatous disease, noting that the doctor failed to explain the significance of the "calcification" in his diagnosis and, if the calcification was "partial," failed to adequately address the cause or causes of the non-calcified parts of claimant's lesions.<sup>6</sup> Decision and Order at 26.

In this case, the administrative law judge permissibly discounted Dr. Castle's opinion for a lack of detail, and for inadequately explaining his conclusions. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

Employer also generally contends that the evidence does not support a finding of complicated pneumoconiosis, and that the administrative law judge "arbitrarily favor[ed] less probative evidence over better reasoned and supported evidence." Employer's Brief at 9-10. Employer's statements do not raise any substantive issue or identify any specific error on the part of the administrative law judge in determining that the evidence

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<sup>6</sup> Unlike Dr. Castle, the administrative found that Dr. Forehand offered "persuasive reasons" for his opinion that the right upper lung mass represented complicated pneumoconiosis, as opposed to cancer, tuberculosis, or some other granulomatous disease:

Dr. Forehand noted that cancer and tuberculosis are "wasting diseases" and, given that [claimant] was overweight, he did not exhibit symptoms typical of such conditions. Moreover, [claimant] did not have other symptoms typical of tuberculosis or cancer such as fever, chills, night sweats, or coughing up blood, and [claimant] did not have any known exposure to tuberculosis. Further, Dr. Forehand asserted that, with tuberculosis, the masses typically "cavitate" or "hollow out" and there were no such findings in this claim. Moreover, with regard to "calcification" of the masses, Dr. Forehand reported that he did not "see a lot of the calcification that you might see with sarcoid or more with histoplasmosis."

Decision and Order at 26-27.

established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). We, therefore, affirm the administrative law judge's finding that all of the relevant evidence, when considered together, established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, thereby enabling claimant to establish entitlement based on the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304. *See Lester*, 993 F.2d at 1145-46, 17 BLR at 2-117-18; *Melnick*, 16 BLR at 1-33-34.

Finally, because it is unchallenged on appeal, we affirm the administrative law judge's finding that employer did not rebut the presumption that claimant's complicated pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). *Skrack v. Island Creek Coal Co.*, 6 BLR at 1-710 (1983).

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge