U.S. Department of Labor

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

BRB No. 23-0361 BLA

STEVIE CORNETT Claimant-Respondent v. BUCHANAN MINERALS, LLC c/o CORONADO GROUP, LLC and SUMMITPOINT INSURANCE COMPANY Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 08/28/2024 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Willow Eden Fort, Administrative Law Judge, United States Department of Labor.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer and its Carrier.

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

GRESH, Chief Administrative Appeals Judge, and JONES, Administrative Appeals Judge:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Willow Eden Fort's Decision and Order Awarding Benefits (2021-BLA-05387) rendered on a claim filed on October 9, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited Claimant with fifteen years of coal mine employment. She found he established complicated pneumoconiosis and thus 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). Further, she found his complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b). Thus she awarded benefits.

On appeal, Employer argues the ALJ erred in admitting three of Dr. Crum's computed tomography (CT) scan interpretations as Claimant's rebuttal evidence. It also argues she erred in finding Claimant established complicated pneumoconiosis. Neither Claimant nor the Director, Office of Workers' Compensation Programs (the Director), has 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.[1] 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).

Invocation of the Section 411(c)(3) Presumption – Complicated Pneumoconiosis

Section 411(c)(3) of the Act provides an irrebuttable presumption that a miner's total disability is 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. 30 U.S.C. §923(b); *see Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 283 (4th Cir. 2010); *E. Assoc. Coal Corp. v. Director, OWCP*

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[1] The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as Claimant performed his last coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4 at 1-2; Hearing Transcript at 16, 20.

[*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 establish complicated pneumoconiosis.[2] 20 C.F.R. §718.304(a), (c); Decision and Order at 6-25. She further found Claimant established complicated pneumoconiosis in consideration of the evidence as a whole. 20 C.F.R. §718.304; Decision and Order at 25. Employer argues the ALJ erred in finding Claimant established complicated pneumoconiosis. Employer's Brief at 10-18. We disagree.

20 C.F.R. §718.304(a) – Chest x-rays

The ALJ first considered ten interpretations of four x-rays dated September 25, 2018, January 6, 2020, January 29, 2020, and October 17, 2022. Decision and Order at 6-9. She permissibly assigned greater weight to the readings from physicians who are dually-qualified as Board-certified radiologists and B-readers. *See Adkins v. Director, OWCP*, 958 F.2d 49, 52 (4th Cir. 1992); Decision and Order at 7 n.7. As all of the interpreting physicians are dually-qualified, she noted they were equally qualified.[3] *Id.*

Dr. Crum read the September 25, 2018 x-ray as positive for complicated pneumoconiosis, Category A, while Dr. Seaman read it as negative for pneumoconiosis. Director's Exhibit 23 at 3; Claimant's Exhibit 1. Drs. Crum and Ropp each read the January 6, 2020 x-ray as positive for complicated pneumoconiosis, Category A, Dr. DePonte read it as positive for complicated pneumoconiosis, Category B, and Dr. Seaman read it as negative for the disease. Director's Exhibits 15 at 28; 22 at 33; Claimant's Exhibits 2, 5. Dr. Crum read the January 29, 2020 x-ray as positive for complicated pneumoconiosis, Category A, and Dr. Seaman read it as negative. Director's Exhibit 23 at 5; Claimant's Exhibit 3 at 1. Dr. DePonte read the October 17, 2022 x-ray as positive for complicated pneumoconiosis, Category B, while Dr. Seaman read it as negative for pneumoconiosis. Claimant's Exhibit 7 at 2; Employer's Exhibit 14 at 2.

[2] The ALJ found the biopsy evidence neither supports nor refutes the presence of complicated pneumoconiosis. 20 C.F.R. §718.304(b); Decision and Order at 11-12, 22. We affirm this finding as unchallenged. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[3] Dr. Gaziano, a B-reader, read the January 6, 2020 x-ray for quality purposes only. Director's Exhibit 18.

The ALJ found the readings of the September 25, 2018, January 29, 2020, and October 17, 2022 x-rays are in equipoise because an equal number of dually-qualified radiologists read each x-ray as positive and negative for complicated pneumoconiosis. Decision and Order at 7-9. She found the January 6, 2020 x-ray is positive for complicated pneumoconiosis because a greater number of dually-qualified radiologists read it as positive for the disease.[4] *Id.* Because she found one x-ray positive for complicated pneumoconiosis and the readings of the remaining three x-rays to be in equipoise, she found the x-ray evidence supports a finding of complicated pneumoconiosis. *Id.* at 9.

Employer argues the ALJ erroneously "counted heads" in finding the x-ray evidence supports a finding of complicated pneumoconiosis. Employer's Brief at 14-15. We disagree. Contrary to Employer's argument, the ALJ properly considered the number of x-ray interpretations along with the readers' qualifications and the findings set forth in their interpretations. *See Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 256-57 (4th Cir. 2016). Because she conducted both a qualitative and quantitative analysis of the x-ray evidence, we reject Employer's argument. *See Adkins*, 958 F.2d at 52; Decision and Order at 9. We therefore affirm the ALJ's finding that the x-ray evidence supports a finding of complicated pneumoconiosis. 20 C.F.R. §718.304(a); Decision and Order at 9.

20 C.F.R. §718.304(c) – CT scans

The ALJ next evaluated the readings of six CT scans dated April 25, 2018, May 18, 2018, July 6, 2018, October 3, 2018, February 12, 2020, and June 13, 2022 by Drs. Crum and Seaman. Decision and Order at 12-21.

Dr. Crum

Dr. Crum read the April 25, 2018, May 18, 2018, July 6, 2018, February 12, 2020, and June 13, 2022 CT scans. Claimant's Exhibits 4, 8, 9. With respect to his readings of the first three CT scans, he provided a single narrative report. Claimant's Exhibit 9. He identified a 1.3 to 1.4 centimeter large opacity in the upper right lung and an "approximately" 1.04 centimeter large opacity in the middle to lower right lung both consistent with Category A complicated pneumoconiosis. Claimant's Exhibit 9 at 1-2. In

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[4] Employer states the ALJ did not consider Dr. Tarver's reading of the January 6, 2020 x-ray. Employer's Brief at 14 n.5. To the extent Employer argues this was error, we disagree. Employer did not designate this x-ray reading as affirmative or rebuttal evidence on its evidence form, nor does it allege this reading is a treatment record. Employer's Evidence Summary. Thus we reject this argument.

addition, he identified a 4.6 centimeter large opacity in the right lung that could be due to "malignancy, infection, or progressive massive fibrosis." *Id.*

Dr. Crum next read the February 12, 2020 CT scan as revealing a "partially calcified cavity mass/large opacity" and an "adjacent mass" in the upper right lung. Claimant's Exhibit 4. He stated the masses could be "malignancy, infection, or progressive massive fibrosis." *Id.* Finally, Dr. Crum read the June 13, 2022 CT scan as consistent with a 4.2 centimeter large opacity in the upper right lung and a 1.2 centimeter large opacity in the middle to lower right lung. Claimant's Exhibit 8 at 1-2. Because the 4.2 centimeter opacity "slightly increased in size compared" to the February 12, 2020 CT scan, and because it no longer had a "cavity appearance," Dr. Crum "favored" a diagnosis of "progressive massive fibrosis or complicated black lung over infection or neoplasm." *Id.* In addition, he explained the 1.2 centimeter mass is consistent with Category A complicated pneumoconiosis because the "area of coalescence described on the 2020 CT scan now has formed a large opacity within the peripheral mid to lower right lung . . . ." *Id.*

The ALJ found Dr. Crum's reading of the February 12, 2020 CT scan inconclusive, but found his readings of the April 25, 2018, May 18, 2018, July 6, 2018, and June 13, 2022 CT scans reasoned and documented. Decision and Order at 16-21.

In challenging the ALJ's consideration of Dr. Crum's CT scan readings, Employer first argues the ALJ should have discredited the doctor's interpretations because he did not adequately indicate if Claimant's mycobacterium avium complex (MAC), as referenced in his treatment records, could have been the cause of the large opacities on his CT scans. Employer's Brief at 17-18. But the ALJ addressed Claimant's history of MAC in his treatment records. She noted that a number of Claimant's treating physicians "speculated that the mass in Claimant's right lung was caused by MAC." Decision and Order at 22. But she permissibly found the treatment records do not establish the mass was due to MAC because "[n]o pathologist attributed any of the biopsy or bronchoscopy findings to a [MAC] infection . . . ." Decision and Order at 22; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998). Thus, contrary to Employer's argument, the ALJ was not required to discredit Dr. Crum's CT scans based on Claimant's history of MAC.

Further, Employer's argument amounts to a request to reweigh the evidence, which the Board may not do, even if our conclusions might have been different. *See Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 764 (4th Cir. 1999); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Although our dissenting colleague asserts there is evidence that could support another possible etiology of the mass in Claimant's right lung, 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).

Employer also asserts the ALJ erred in admitting Claimant's Exhibit 9, containing Dr. Crum's readings of the April 25, 2018, May 18, 2018, and July 6, 2018 CT scans, as timely rebuttal evidence. Employer's Brief at 7-10. It argues Dr. Crum's readings of these scans constitute a medical opinion because he provided a single narrative report rather than an individual reading of each test. *Id.* Even if there were merit to Employer's argument, Claimant has still established the presence of complicated pneumoconiosis through Dr. Crum's credible reading of the June 13, 2022 CT scan.[5] Further, as discussed below, we affirm the ALJ's discrediting of the contrary CT scan evidence. Thus Employer has not explained how the error it alleges makes a difference. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

Dr. Seaman

Dr. Seaman read the April 25, 2018, May 18, 2018, July 6, 2018, October 3, 2018, February 12, 2020, and June 13, 2022 CT scans as negative for complicated pneumoconiosis. Director's Exhibit 25; Employer's Exhibit 15. She identified a mass in the right lung on each of the CT scans measuring between 4.1 and 4.6 centimeters in greatest diameter. *Id.*

Specific to the April 25, 2018, July 6, 2018, October 3, 2018, and February 12, 2020 CT scans, Dr. Seaman noted there are "small nodules" that are "adjacent" to the large mass. Director's Exhibit 25 at 2, 6, 8, 10. However, she excluded coal workers' pneumoconiosis as a cause of the large mass based on the absence of a background of small opacities. *Id.* The ALJ found Dr. Seaman's reading of these CT scans unpersuasive because the doctor did not reconcile her statement that the absence of background small opacities supports the exclusion of the presence of complicated pneumoconiosis with her identification of "adjacent smaller nodules" on the CT scans. Decision and Order at 13-21. Employer does

[5] Employer asserts the ALJ shifted the burden of proof when considering the October 3, 2018 CT scan. Employer's Brief at 11 n.4. Contrary to Employer's argument, the ALJ found Claimant met his burden of establishing the presence of complicated pneumoconiosis through the June 13, 2022 CT scan, and found the contrary readings of the October 3, 2018 CT scan did not undermine the credible CT scan readings that support Claimant's burden. Thus the ALJ properly placed the burden of proof on Claimant. *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281 (1994).

not specifically challenge the ALJ's finding. Thus we affirm it. *Hicks*, 138 F.3d at 528; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

With respect to the April 25, 2018, May 18, 2018, July 6, 2018, October 3, 2018, and February 12, 2020 CT scans, Dr. Seaman stated "[d]ifferential considerations include primary lung malignancy or infection to include tuberculosis" on each of the scans. Director's Exhibit 25. When interpretating the June 13, 2022 CT scan, she stated the mass "is compatible with sequelae of prior granulomatous infection." *Id.*

The ALJ found the record does not establish Claimant has tuberculosis, a malignant tumor, or granulomatous disease, and that his biopsies are not consistent with any malignancy. Decision and Order at 16-21. Thus, the ALJ permissibly discredited Dr. Seaman's readings of the April 25, 2018, May 18, 2018, July 6, 2018, October 3, 2018, February 12, 2020, and June 13, 2022 CT scans as speculative.[6] *Cox*, 602 F.3d at 287; Decision and Order at 16-21.

We affirm, as supported by substantial evidence,[7] the ALJ's finding that the CT

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[6] Employer asserts Dr. Seaman's CT scan readings are not speculative because the Claimant's treatment records reflect a history of MAC. Employer's Brief at 15-16 n.6. Employer has not explained how a history of MAC supports the conclusion that Claimant had tuberculosis, a malignant tumor, or granulomatous disease. *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, 109 (1983). Further, as discussed above, the ALJ found the treatment record evidence does not establish the large mass on Claimant's lungs can be attributed to MAC. Decision and Order at 22.

[7] The ALJ also considered Dr. Patel's April 25, 2018 CT scan reading, Dr. Winkler's July 6, 2018 CT scan reading, Dr. Ayos's October 3, 2018 CT scan reading, and Dr. Pampati's February 12, 2020 CT scan reading. Decision and Order at 16-21. All four doctors identified a mass in Claimant's right lung. Director's Exhibit 20 at 19-20; Employer's Exhibits 3, 8, 9. The ALJ found Drs. Patel and Winkler did not definitely identify the etiology of the mass they each diagnosed and thus their readings are not credible on the issue of complicated pneumoconiosis. Decision and Order at 16-17. In addition, the ALJ discredited the readings by Drs. Ayos and Pampati because their credentials are not in the record. *Id.* Employer does not challenge any of these findings. Thus we affirm them. *Skrack*, 6 BLR at 1-711.

scans support a finding of complicated pneumoconiosis.[8] 20 C.F.R. §718.304(c); Decision and Order at 21. Again, the Board cannot reweigh the evidence or 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. *Held*, 314 F.3d at 189; *Mays*, 176 F.3d at 764; *Anderson*, 12 BLR at 1-113.

20 C.F.R. §718.304(c) – Medical opinions

The ALJ weighed Dr. Green's opinion that Claimant has complicated pneumoconiosis and the opinions of Drs. Sargent and Seaman that he does not. Decision and Order at 22-25.

Dr. Green acknowledged Claimant was diagnosed with MAC in 2018. Director's Exhibit 15 at 2. Nonetheless he opined Claimant has complicated pneumoconiosis based on x-ray evidence of "pneumoconiotic opacities and [a] large B opacity consistent with progressive massive fibrosis." *Id.* at 4. In addition, he cited Claimant's history of coal mine dust exposure and symptoms of chronic coughing, wheezing, and shortness of breath to support his opinion. *Id.* The ALJ permissibly found Dr. Green's opinion credible because it is consistent with the x-rays the doctor reviewed and his consideration of Claimant's coal mine dust exposure history. *See Hicks*, 138 F.3d at 533; *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441 (4th Cir. 1997); Decision and Order at 23.

Dr. Sargent opined Claimant does not have complicated pneumoconiosis based on his review of Claimant's treatment records and his review of Dr. Seaman's negative x-ray

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[8] Employer argues the ALJ erred by failing to render an equivalency determination when considering Dr. Crum's CT scan readings. Employer's Brief at 10-11. We disagree. Dr. Crum indicated the 4.2 centimeter opacity he diagnosed is consistent with progressive massive fibrosis and the 1.2 centimeter opacity is consistent with Category A complicated pneumoconiosis. The ALJ accurately noted that a Category A large opacity refers to an opacity observed on a chest x-ray which measures greater than one but less than five centimeters in diameter. Decision and Order at 15-16; *see* 20 C.F.R. §§718.304(a), 718.102(d) (complicated pneumoconiosis may be established by chest x-ray yielding one or more large opacities, greater than one centimeter in diameter, classified as Category A, B, or C pursuant to the International Labour Office, Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses (2011) (ILO Guidelines); *see also* Form CM-933.

and CT scan readings. Director's Exhibit 24; Employer's Exhibit 13. He opined the masses found on Claimant's x-rays and CT scans are consistent with MAC. *Id.*

Dr. Seaman also opined the x-rays and CT scans she reviewed showed "no radiographic or CT findings consistent with coal workers' pneumoconiosis." Director's Exhibit 26 at 2. Instead, she determined the "cavitary right apical mass with adjacent small nodules" was "favored to represent infection," based on the stability of the mass's size across the CT scans. *Id.* She concluded the radiographic findings are consistent with MAC, and not pneumoconiosis, based on her opinion that MAC could present with "a cavitary mass with smaller nodular and tree-in-bud opacities[,]" and there was a "lack of background small nodules" that would be indicate pneumoconiosis. *Id.*

The ALJ permissibly discredited the opinions of Drs. Sargent and Seaman because they assumed Claimant's x-rays and CT scans are negative for complicated pneumoconiosis, contrary to her finding that this evidence supports a finding of complicated pneumoconiosis. *See Hicks*, 138 F.3d at 533; *Akers*, 131 F.3d at 441; Decision and Order at 23-25. The ALJ also permissibly discredited their opinions because they relied on Dr. Seaman's discredited CT scan readings to render their findings. *Id.*

Employer argues the ALJ should have discredited Dr. Green's opinion because the doctor did not adequately discuss the role MAC played in the development of opacities found on the x-rays and CT scans, and credited the opinions of Drs. Sargent and Seaman because they adequately explained why Claimant has MAC and not complicated pneumoconiosis. Employer's Brief at 12-13. But Employer's argument again amounts to a request to reweigh the evidence, which the Board may not do. *Anderson*, 12 BLR at 1-113.

Because it is supported by substantial evidence, we affirm the ALJ's finding that the medical opinion evidence supports a finding of complicated pneumoconiosis at 20 C.F.R. §718.304(c). Decision and Order at 25.

Employer next argues the ALJ erred by failing to weigh the treatment record, medical opinion, x-ray, and CT scan evidence together in determining whether the evidence as a whole establishes complicated pneumoconiosis. Employer's Brief at 12-13. It specifically argues that the ALJ failed to adequately consider "whether the evidence as a whole preponderates to establish[]" whether opacities identified on the x-rays and CT scans were "due to coal workers' pneumoconiosis or some other condition[,]" such as a MAC infection. *Id.* at 13. We disagree. The ALJ found the treatment record and biopsy evidence inconclusive, but she found the x-ray, CT scan, and medical opinion evidence all support a finding of complicated pneumoconiosis, as we have affirmed above. Decision

and Order at 9, 11-12, 16, 21-22. Further, the ALJ permissibly discredited the opinions of Drs. Sargent and Seaman, the only physicians who opined the opacities in Claimant's lungs were not due to pneumoconiosis. Decision and Order at 24-25. We therefore, contrary to our dissenting colleague's assertion, see no error in the ALJ's finding that the evidence weighed together establishes the presence of complicated pneumoconiosis. *See Scarbro*, 220 F.3d at 255-56; *Melnick*, 16 BLR at 1-33; Decision and Order at 25.

As it is supported by substantial evidence, we affirm the ALJ's finding of complicated pneumoconiosis. 20 C.F.R. §718.304; Decision and Order at 25. In addition, we 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 25-26.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

BOGGS, Administrative Appeals Judge, dissenting:

I respectfully dissent from the majority's decision to affirm the ALJ's finding that Claimant established the presence of complicated pneumoconiosis. 20 C.F.R. §718.304. As Employer argues, the ALJ failed to properly consider all of the relevant evidence as a whole before finding the evidence establishes the presence of complicated pneumoconiosis. Employer's Brief at 9-13.

The ALJ considered each of Dr. Crum's and Dr. Seaman's interpretations of six computed tomography (CT) scans dated April 25, 2018, May 18, 2018, July 6, 2018, October 3, 2018, February 12, 2020, and June 13, 2022. Decision and Order at 12-21.

While she found Dr. Crum's reading of the February 12, 2020 CT scan inconclusive, the ALJ found the doctor's readings of the April 25, 2018, May 18, 2018, July 6, 2018, October 3, 2018, and June 13, 2022 CT scans reasoned and documented, and thus sufficient to establish the presence of complicated pneumoconiosis. *Id.* at 16-21. In contrast, the ALJ found Dr. Seaman's negative readings of the April 25, 2018, May 18, 2018, July 6, 2018, October 3, 2018, February 12, 2020, and June 13, 2022 CT scans speculative. *Id.* She thus concluded the CT scans support a finding of complicated pneumoconiosis. *Id.* at 21.

The ALJ discredited Dr. Seaman's readings of the CT scans based in large part on her finding that there is "no evidence of record" that the mass in Claimant's right lung was caused by an infection such as tuberculosis (TB) or a malignancy. Decision and Order at 16-21. However, the ALJ does not adequately address Dr. Seaman's differential considerations of a prior infection as the cause of the right lung mass that she identified in each of the CT scans. Director's Exhibit 25; Employer's Exhibits 14; 15 at 1. Dr. Seaman consistently found that the presentation of the mass did not suggest coal workers' pneumoconiosis. Dr. Seaman's 2020 CT scan reading noted differential considerations, including primary lung malignancy or infection to include tuberculosis; her 2022 CT scan reading found that the mass likely was related to infection ("[c]alcified right upper lobe mass with adjacent smaller calcified nodules, compatible with sequelae of prior granulomatous infection"). Employer's Exhibit 15.[9]

Claimant's treatment records reflect a history of mycobacterium avium complex (MAC), which is an infectious disease that, like TB, may manifest as a granulomatous disease. Claimant's Exhibit 10 at 3-4. Further, Dr. Zhuang noted the presence of granulomas in a core biopsy of Claimant's right lung mass (although Dr. Lee noted no granulomas in a transbronchial biopsy of the mass). Director's Exhibit 20 at 11-14; Employer's Exhibit 3 at 3. The ALJ mischaracterized Dr. Seaman's CT scan interpretations by limiting the doctor's finding of an infectious disease to TB and by failing to recognize, in this part of her analysis, Claimant's treatment for MAC and the biopsy findings of granulomas. *See Tackett v. Director, OWCP*, 7 BLR 1-703 (1985). Consequently, the ALJ failed to reconcile her discrediting of Dr. Seaman's CT scan readings with Claimant's treatment record indicating a MAC infection and the pathology evidence indicating granulomas. Director's Exhibit 25; Employer's Exhibits 3 at 3; 4. Because the ALJ failed to consider all of the relevant evidence, she failed to adequately

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[9] In 2022, Dr. Seaman also noted that the mass had not changed and therefore read an x-ray as "likely infectious, to include tuberculosis or nontuberculous mycobacterial or fungal infection." Employer's Exhibit 14.

analyze and weigh Dr. Seaman's CT scan interpretations. *See* 30 U.S.C. §923(b); *Sea "B" Mining Co. v. Addison*, 831 F.3d 244, 253-54 (4th Cir. 2016).

Moreover, the ALJ's finding that "[n]o pathologist attributed any of the biopsy or bronchoscopy findings to a [MAC] infection" does not resolve this error. Decision and Order at 22. Dr. Seaman did not restrict her identification of the cause of the mass specifically to a MAC infection. Further, contrary to the point of the ALJ's finding, there is pathology evidence (in the form of the opinion finding granulomas) indicating an infectious disease had been present and thus is consistent with Dr. Seaman's CT scan interpretations.

In addition, as Employer argues, the ALJ did not apply the same level of scrutiny to Dr. Crum's CT scan interpretations that she applied to Dr. Seaman's. Employer's Brief at 17-18. The ALJ credited Dr. Crum's interpretation of the May 18, 2018 CT scan as "not contradicted by the treatment records," but discredited Dr. Seaman's CT scan interpretations as "unsupported by the medical evidence of record" when, to the contrary, the latter doctor's readings accord with Claimant's positive sputum test and treatment for a MAC infection. Decision and Order at 16. Similarly, while she discredited Dr. Seaman on the basis that pathologists did not specifically identify a MAC infection, and she did not consider that there is pathology evidence noting the presence of granulomas (which is consistent with infection as an etiology), she ignored the fact that no pathologist specifically identified pneumoconiosis. *Id.* at 11, 12, 16, 21, 25; Employer's Exhibits 3 at 3; 4 at 1. This was error. *See Hughes v. Clinchfield Coal Co.*, 21 BLR 1-134, 1-139-40 (1999) (en banc); *Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-219-19 (1984).

Because the record contains evidence that the ALJ failed to consider concerning the possible etiology of the mass in Claimant's right lung, and because she did not accurately characterize and apply equal scrutiny to the opinions of the experts, I would vacate the ALJ's finding that the CT scan evidence supports a finding of complicated pneumoconiosis. Since these errors also affected her analysis and weighing of the medical opinion evidence, I would vacate her findings and conclusions as to that evidence as well as her determinations as to the weighing of the evidence as a whole, *see Addison*, 831 F.3d at 253-54, and her conclusion that entitlement to benefits was established. 30 U.S.C. §923(b). For these reasons, I therefore dissent from the majority opinion to award benefits in this case.

JUDITH S. BOGGS
Administrative Appeals Judge