



BRB No. 20-0126 BLA

DREMA YOUNG)
(Widow of EUGENE YOUNG))

Claimant-Respondent)

v.)

CAM MINING, INCORPORATED)

and)

ROCKWOOD CASUALTY INSURANCE)
COMPANY)

Employer/Carrier-)
Petitioners)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest)

DATE ISSUED: 06/30/2021

DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits of Monica Markley,
Administrative Law Judge, United States Department of Labor.

Joseph E. Wolfe and Brad A. Austin (Wolfe Williams & Reynolds), Norton,
Virginia, for Claimant.

Paul E. Jones and Denise Hall Scarberry (Jones & Walters, PLLC), Pikeville,
Kentucky, for Employer and its Carrier.

Before: BUZZARD, GRESH, and JONES, Administrative Appeals Judges.

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge Monica Markley's Decision and Order Awarding Benefits (2011-BLA-06286) rendered on a survivor's claim filed on December 10, 2010, pursuant to the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2018) (Act).

The administrative law judge credited the Miner with thirty-six years of underground coal mine employment and found Claimant¹ established the Miner had complicated pneumoconiosis, thereby invoking the irrebuttable presumption of death due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). She further found the Miner's complicated pneumoconiosis arose out of his coal mine employment, 20 C.F.R. §718.203(b), and awarded benefits.

On appeal, Employer argues the administrative law judge erred in finding complicated pneumoconiosis.² Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, did not file a response brief.

The Benefits Review Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.³ 33 U.S.C. §921(b)(3), as incorporated

¹ Claimant is the widow of the Miner, who died on October 21, 2010. Director's Exhibit 6. The Miner never successfully established a claim for benefits during his lifetime. Thus Claimant is not entitled to benefits under Section 422(l) of the Act, 30 U.S.C. §932(l), which provides that a survivor of a miner determined to be eligible to receive benefits at the time of his death is automatically entitled to receive survivor's benefits without having to establish the miner's death was due to pneumoconiosis. *See* 30 U.S.C. §932(l).

² We affirm, as unchallenged on appeal, the administrative law judge's finding that the Miner had thirty-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 19.

³ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because the Miner performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3-5.

by 30 U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), provides an irrebuttable presumption that a miner’s death was due to pneumoconiosis if he suffered 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 administrative law judge must consider all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991) (en banc).

The administrative law judge found the autopsy and medical opinion evidence establishes the Miner had complicated pneumoconiosis, 20 C.F.R. §718.304(b), (c), while the x-ray and computed tomography (CT) scan evidence does not. 20 C.F.R. §718.304(a), (c); Decision and Order at 21-28. Weighing all the evidence, the administrative law judge found the contrary evidence of record does not undermine the autopsy and medical opinion evidence of complicated pneumoconiosis, thus entitling Claimant to the irrebuttable presumption of death due to pneumoconiosis. Decision and Order at 27-28.

Employer argues the administrative law judge erred in weighing the autopsy and medical opinion evidence. 20 C.F.R. §718.304(b), (c); Employer’s Brief at 5-16 (unpaginated). We disagree.

The record includes an autopsy report from the autopsy prosector, Dr. Dennis, and one from Dr. Oesterling, who reviewed Dr. Dennis’s report and the associated autopsy slides. Director’s Exhibit 19; Employer’s Exhibit 5. It also includes the opinions of Drs. Perper and Caffrey based on their respective reviews of Dr. Dennis’s autopsy report, the autopsy slides, and other medical records.⁴ Director’s Exhibit 41; Employer’s Exhibits 1, 8. Finally, it includes Dr. Vuskovich’s medical opinion based solely on his medical records review. Director’s Exhibit 18. Drs. Dennis and Perper diagnosed progressive massive

⁴ The opinions of Drs. Perper and Caffrey are both medical reports and autopsy reports because each physician performed an autopsy slide review and prepared a written opinion of the Miner’s pulmonary condition based on a review of the medical records. *See Keener v. Peerless Eagle Coal Co.*, 23 BLR 1-229 (2007) (en banc); Director’s Exhibit 41; Employer’s Exhibit 1.

fibrosis, whereas Drs. Oesterling, Caffrey, and Vuskovich opined the Miner did not have the disease. Director's Exhibits 18, 19; Employer's Exhibits 1, 5, 8.

The administrative law judge found the opinions of Drs. Dennis and Perper reasoned and documented, and entitled to significant weight. Decision and Order at 22-28. She also assigned additional weight to Dr. Dennis's findings based on his status as the autopsy prosector. *Id.* at 22. She found the contrary opinions of Drs. Oesterling, Caffrey, and Vuskovich not reasoned or documented. *Id.* at 23-28. Employer argues the administrative law judge erred in weighing the opinions of Drs. Dennis, Perper, Oesterling, and Caffrey.⁵ Employer's Brief at 5-16 (unpaginated). We disagree.

Dr. Dennis

Dr. Dennis performed an autopsy of the Miner's lungs. Director's Exhibit 19. On gross examination of the right lung, he reported "a macular development measuring greater than [two centimeters in] diameter" located "within the substance of the pulmonary tissue." *Id.* at 1. He reported the presence of macular development in the left lung "measuring 0.3-0.5" centimeters with "[s]ome of the macules coalesce[ing] up to [one and one-half centimeters] in diameter." *Id.* In his microscopic examination, Dr. Dennis noted the presence of anthracosilicosis with "marked to severe progressive massive fibrosis scattered throughout the lung." *Id.* at 2. He observed macules in the right lung that measured greater than two centimeters in diameter and macules in the left lung that measured up to one-and-one-half centimeters in diameter. *Id.* Based on these observations, Dr. Dennis diagnosed moderate to severe anthracosilicosis with progressive massive fibrosis.⁶ *Id.*

We first reject Employer's argument that the administrative law judge erred by not discrediting Dr. Dennis's opinion because he was the subject of disciplinary proceedings.⁷

⁵ As it is not challenged, we affirm the administrative law judge's finding that Dr. Vuskovich's medical opinion is not reasoned or documented. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 26.

⁶ Dr. Dennis created ten slides labeled A through J from the Miner's autopsy. Director's Exhibit 19.

⁷ The administrative law judge recognized the Kentucky Board of Medical Licensure suspended Dr. Dennis's license to practice medicine on August 17, 2012, and Dr. Dennis agreed to surrender his medical license on January 17, 2013. Decision and Order at 7 n.6. The Agreed Order to Surrender indicates Dr. Dennis improperly prescribed controlled substances to one or more patients and engaged in inappropriate conduct with one of those patients. Employer's Exhibit 4. Dr. Dennis agreed not to engage in the

Employer's Brief at 6-7 (unpaginated). She noted Dr. Dennis performed the Miner's autopsy on October 21, 2010, while the conduct resulting in his discipline took place from March 2011 to May 2012. Decision and Order at 7 n.6, 22. She permissibly found his misconduct did not undermine his opinion because it occurred "well after" he performed the autopsy,⁸ was not "related to Dr. Dennis's competency in performing autopsies or expertise in pathology," and "was not related to acts or dishonesty in the Black Lung program." *Id.*; see *Peabody Coal Co. v. Groves*, 277 F.3d 829, 835-36 (6th Cir. 2002); *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 712-14 (6th Cir. 2002); *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185 (6th Cir. 1989).

Moreover, the administrative law judge found Dr. Dennis supported his diagnosis of progressive massive fibrosis with his observations of a large macule over two centimeters in diameter in the Miner's right lung, and extensive macule formation and fibrosis in his lungs on both gross and microscopic examinations of lung tissue. Decision and Order at 22. She permissibly found Dr. Dennis's diagnosis of progressive massive fibrosis reasoned, documented, and sufficient to establish complicated pneumoconiosis.⁹ See *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 7 (1976) ("Complicated pneumoconiosis . . . involves progressive massive fibrosis as a complex reaction to dust and other factors"); *Gray*, 176 F.3d at 390; *Napier*, 301 F.3d at 712-14 (the determination as to whether a physician's report is sufficiently reasoned and documented is a credibility matter and one for the administrative law judge to decide); *Crisp*, 866 F.2d

practice of medicine until he files a petition for reinstatement and the petition is approved. *Id.*

⁸ We find no merit in Employer's assertion that "it can only be assumed [Dr. Dennis's] report was prepared after the acts occurred" between March 2011 and May 2012 because the autopsy report was undated. Employer's Brief at 7 (unpaginated). Contrary to Employer's assertion, Dr. Dennis's autopsy report contains a statement that the "[a]utopsy [was] performed on [October 21, 2010] at Phelps Funeral Service, Phelps, [Kentucky]." Director's Exhibit 19.

⁹ The administrative law judge noted Dr. Dennis "did not record his observation of [the Miner's] adenocarcinoma in his initial report, and (according to Dr. Oesterling) added that description and diagnoses of bronchopneumonia and adenocarcinoma at a later date." Decision and Order at 24, *citing* Employer's Exhibit 5. She permissibly found this "initial omission" does not undermine the probative value of his documented findings of large macules, severe anthracosilicosis, and progressive massive fibrosis in the Miner's lungs. Decision and Order at 24; see *Peabody Coal Co. v. Groves*, 277 F.3d 829, 835-36 (6th Cir. 2002).

at 185 (whether a physician's report is sufficiently documented and reasoned is a credibility matter left to the trier-of-fact).

Having found Dr. Dennis's opinion reasoned and documented, the administrative law judge also permissibly found his conclusion entitled to significant probative weight because, as the autopsy prosector, he was able to record measurements based on his gross examination of the Miner's lungs. *See Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366 (4th Cir. 2006) (the autopsy prosector's ability to assess the size of nodules in gross and under microscope gave him an additional perspective); *Urgolites v. BethEnergy Mines*, 17 BLR 1-20, 1-23 (1992); *Gruller v. BethEnergy Mines, Inc.*, 16 BLR 1-3 (1991); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987); Decision and Order at 22.

Dr. Perper

Dr. Perper reviewed the ten histological slides from the Miner's autopsy, Dr. Dennis's autopsy report, and Dr. Caffrey's autopsy slide review and medical opinion (discussed below). Claimant's Exhibit 2. He also reviewed the Miner's medical records and objective testing. *Id.* He opined autopsy slide I reveals "compact fibro-anthracosis" with "three adjacent hyaline anthracosilicotic nodules[.]" *Id.* at 21. Upon magnification, he noted the "irregular lateral end" of the mass shows "no bordering recognizable lung tissue, indicating that [it] has been cut through, and only partially sampled." *Id.* at 22. He concluded the "pulmonary fibro-anthracotic mass" exceeds one centimeter and "is consistent with complicated coal workers' pneumoconiosis (Progressive Massive Fibrosis)." *Id.* at 23. He explained this mass is present "on the background of severe interstitial fibro-anthracosis, pneumoconiotic macules, and pneumoconiotic nodules." *Id.* at 23.

Addressing the size of the mass, Dr. Perper stated, "[i]n the past pathologists [have] arbitrarily chose[n] a [two-centimeter] or larger anthraco-fibro-hyaline mass in order to diagnose complicated coal workers' pneumoconiosis," but he disagreed with this diagnostic method. Claimant's Exhibit 2 at 23-25; *see Pittsburg & Midway Coal Mining Co. v. Director, OWCP [Cornelius]*, 508 F.3d 975, 986 (11th Cir. 2007); *see also* 65 Fed. Reg. 79,920, 79,936 (Dec. 20, 2000) (declining to adopt diagnostic criteria requiring a lesion of 2.0 [centimeters] for a diagnosis of complicated pneumoconiosis set forth in 20 C.F.R. §718.106 because "the record does not substantiate the existence of a consensus among physicians for making diagnoses using these criteria . . ."). He explained medical studies indicate this method is "arbitrary" and the "current criteria" for diagnosing the disease is "an actual pathological lesion" measuring one centimeter or larger. Claimant's Exhibit 2 at 24. He further explained "a pathological lesion" of one-centimeter "is equivalent to a radiological lesion" measuring one-centimeter. *Id.*

Contrary to Employer's argument, the administrative law judge permissibly found Dr. Perper's opinion well-reasoned and documented because "he set forth in detail his observations and conclusions," his "diagnoses are supported by the underlying data, and he provided explanations for his reasoning and conclusions."¹⁰ Decision and Order at 25; see *Groves*, 277 F.3d at 833; *Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185; Employer's Brief at 13-14 (unpaginated). Thus we affirm the administrative law judge's finding that Dr. Perper's opinion is entitled to significant weight and sufficient to establish complicated pneumoconiosis.¹¹ Decision and Order at 25.

Dr. Oesterling

Dr. Oesterling prepared a report based on his review of Dr. Dennis's autopsy report and the accompanying slides labeled A-J. Employer's Exhibit 5 at 3. He questioned the quality of the slides, noting they had not been "inflated with formalin," thus resulting in tissue collapse that gives "a false impression as to density." *Id.* He also noted the tissue sections do not exceed two centimeters "in greatest dimension" and are usually less than one centimeter in width. *Id.* at 4. He concluded there are no "solid lesions" measuring one centimeter in width on the slides, though he acknowledged Slide I revealed "the largest area of pigmentation . . . on any of the tissue sections." *Id.* He opined this pigmentation

¹⁰ The administrative law judge noted Dr. Perper's diagnosis of complicated pneumoconiosis was based on his review of multiple records: the Miner's medical and employment histories; two interpretations of the Miner's July 21, 2008 x-ray; the Miner's death certificate; the autopsy slides; the medical reports of Drs. Dennis, Vuskovich, and Caffrey; and the Miner's treatment and hospital records. Decision and Order at 25; Claimant's Exhibit 2.

¹¹ We also reject Employer's contention that Claimant is required to establish the lesions Dr. Perper observed would appear on x-ray as an opacity greater than one centimeter in diameter. Employer's Brief at 14-15 (unpaginated). A diagnosis of progressive massive fibrosis equates to a diagnosis of massive lesions at 20 C.F.R. §718.304(b) and the United States Court of Appeals for the Sixth Circuit does not require an administrative law judge to make an "equivalency" determination when massive lesions are diagnosed. See *Gray v. SLC Coal Co.*, 176 F.3d 382, 389-90 (6th Cir. 1999). Even though not required, Dr. Perper did make an equivalency determination because he both observed a lesion of progressive massive fibrosis exceeding one centimeter and explained that "a pathological lesion" of one centimeter "is equivalent to a radiological lesion" measuring one centimeter. See *E. Assoc. Coal Corp. v. Director [Scarbro]*, 220 F.3d 250, 256 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, 243 (4th Cir. 1999); see also *Clites v. Jones & Laughlin Steel Corp.*, 663 F.2d 14, 16 (3d Cir. 1981).

is linear and measures one and one-half centimeter in length, but “no more than several millimeters” in width. *Id.*

On microscopic examination, Dr. Oesterling noted micronodules of coal workers’ pneumoconiosis, coal dust, and black pigment. He identified two small nodules within the pigmentation of Slide I. Employer’s Exhibit 5 at 3-4. Based on their structure and distribution, he opined they represent “early micronodules of coal workers’ pneumoconiosis” and are “subpleurally based.” *Id.* He explained “this is a typical distribution for coal dust that has been inhaled and does not indicate the presence of progressive massive fibrosis.” *Id.* at 6. He also explained this “relatively modest collection of coal dust would indicate little dust inhalation.” *Id.* at 4. On Slides C, D, and F, Dr. Oesterling identified, to varying degrees, “minute,” “modest,” or “minimal” black pigment, indicating minimal dust inhalation. Employer’s Exhibit 5 at 4-5. He did not identify any pigmentation or pneumoconiosis on Slide A, B, G, or H, nor did he indicate what he found on Slides E or J. *Id.* at 4-6. In contrast, he indicated seven of the ten histological slides showed evidence of a tumor. *Id.*

Based on the foregoing, Dr. Oesterling diagnosed “a mild predominately pleural based coal workers’ pneumoconiosis with only early micronodular change in the subpleura.” Employer’s Exhibit 5 at 6-7. He disagreed with Dr. Dennis’s diagnosis of progressive massive fibrosis. *Id.* He explained the slides do not reveal lesions of complicated pneumoconiosis measuring one centimeter in diameter. *Id.* at 4, 6. Although Dr. Oesterling found one area of the pleural surface approximates that length, he stated it is not a lesion of fibrosis but a zone of pigmentation in the subpleura of the lung. *Id.* at 4. He further diagnosed mild centrilobular emphysema, but opined “there is no legal pneumoconiosis.” *Id.* at 7. He concluded there is carcinomatosis involving both lungs.¹² *Id.*

In weighing Dr. Oesterling’s opinion, the administrative law judge identified defects in the doctor’s findings that undermined the credibility of his overall conclusions. Decision and Order at 23. She noted Dr. Oesterling opined the Miner had “little dust inhalation” based on the “relatively modest collection of coal dust” present on his autopsy slides. Decision and Order at 8, 23, *quoting* Employer’s Exhibit 5. She permissibly found this observation not credible as inconsistent with the Miner’s occupational history. *Groves*,

¹² After reviewing Dr. Perper’s opinion, Dr. Oesterling reiterated his opinion that the Miner had “mild pleural based coal workers’ pneumoconiosis.” Employer’s Exhibit 8. He explained Dr. Perper magnified the extent of coal workers’ pneumoconiosis on the Miner’s histological slides and identified changes in the interstitium that were not present. *Id.*

277 F.3d at 833; *Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185; Decision and Order at 23. Specifically, she explained the Miner “worked in underground coal mine employment for [thirty-six] years, with most of his time spent working at the face” and also worked “for many years as a roof bolter and cut machine operator [which] carried an increased exposure to coal dust.” Decision and Order at 23.

In addition, the administrative law judge concluded “Dr. Oesterling minimized the extent of pigment” present on the Miner’s autopsy slides by characterizing the pigmentation as “minimal,” “very minimal,” “very minute,” and “very modest.” Decision and Order at 23, *quoting* Director’s Exhibit 19. She noted, however, that Drs. Dennis and Perper identified progressive massive fibrosis on the autopsy slides, and Employer’s other expert, Dr. Caffrey, “also reviewed the autopsy slides at Employer’s request [and] stated that all of the slides showed a moderate amount of anthracotic pigment.”¹³ Decision and Order at 23; *see* Employer’s Exhibit 1 at 3. In stating the black pigment was “not easily identified” and observing only “minimal pigmentation,” the administrative law judge rationally found Dr. Oesterling’s opinion “not supported by the other evidence of record, including the opinion of Employer’s other expert.” Decision and Order at 23; *see Groves*, 277 F.3d at 833; *Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185.

Further, the administrative law judge noted that while Dr. Oesterling reported that the tissue sections of the autopsy slides “do not exceed 2 [centimeters] in their greatest dimension” and were usually less than “1 [centimeter] in width,” the autopsy slides “did not provide a full picture of the size of the lesions found in [the Miner’s] lungs.” Decision and Order at 23 n.15. She noted Dr. Perper indicated “the lesion on Slide I was not bordered by lung tissue on its lateral edges, meaning the lesion extended farther than the sample on the slide.”¹⁴ *Id.*, *see* Director’s Exhibit 41. Dr. Perper’s diagnosis of a large lesion, measuring 1.1 centimeters on the slide but larger in fact because the mass extended beyond the section preserved on the slide, is consistent with Dr. Dennis’s diagnosis of a large mass greater than 2 centimeters in diameter based on his examination of the Miner’s entire respiratory system. Director’s Exhibit 41. The administrative law judge therefore permissibly found Dr. Oesterling did not adequately explain why a “1.5 cm area of black pigmentation” in the Miner’s lung tissue would be a “relatively modest” collection of coal

¹³ Specifically, Dr. Caffrey reviewed the Miner’s autopsy slides and stated they all showed a “moderate” amount of emphysema and anthracotic pigment. Employer’s Exhibit 1 at 3.

¹⁴ While Dr. Caffrey agreed Slide I showed lesions of pneumoconiosis, he contended there were three discrete micronodules rather than one large lesion. Employer’s Exhibit 1 at 4.

dust. Decision and Order at 22, 23; *see Groves*, 277 F.3d at 833; *Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185.

In challenging the administrative law judge's credibility findings, Employer argues her bases for discrediting Dr. Oesterling's opinion are irrelevant to his overall opinion that the Miner did not have progressive massive fibrosis. Employer's Brief at 8-13 (unpaginated). It argues she failed to take into account the totality of his rationale for excluding the disease. *Id.* As the United States Court of Appeals for the Sixth Circuit has repeatedly stated, the determination as to whether a physician's report is sufficiently reasoned and documented is a credibility matter for the administrative law judge to decide. *Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185. A reviewing court cannot reverse an administrative law judge's conclusions that are supported by substantial evidence, "even if the facts permit an alternative conclusion." *Groves*, 277 F.3d at 833. In this case, the administrative law judge identified aspects of Dr. Oesterling's opinion that undermine the credibility of his review of the autopsy slides. Her findings are supported by substantial evidence, and it was well within her discretion to conclude these defects undermined the overall credibility of Dr. Oesterling's opinion. *See Groves*, 277 F.3d at 833; *Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185. Because the administrative law judge is tasked with rendering credibility findings, and reasonably rendered such findings with respect to Dr. Oesterling's opinion, we decline to disturb them.¹⁵ *Id.*

Dr. Caffrey

Dr. Caffrey reviewed Dr. Dennis's autopsy report.¹⁶ Employer's Exhibit 3. He also reviewed the Miner's autopsy slides and stated they all showed "moderate" amounts of emphysema and anthracotic pigment.¹⁷ Employer's Exhibit 1 at 3. He concluded the

¹⁵ Because the administrative law judge provided valid reasons for discrediting Dr. Oesterling's opinion, we need not address Employer's other arguments pertaining to the weight she accorded his opinion. *See Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983); Employer's Brief at 8-13 (unpaginated).

¹⁶ Prior to reviewing the autopsy evidence, Dr. Caffrey issued an initial report and opined that there is no evidence of coal workers' pneumoconiosis or any occupational lung disease based on his review of the Miner's x-rays, CT scans, death certificate and treatment records. Director's Exhibit 18.

¹⁷ Dr. Dennis identified two lesions of simple pneumoconiosis on Slides A, B, C, and D. Employer's Exhibit 1 at 3-5. He identified six lesions of simple pneumoconiosis on Slide F, three lesions of the disease on Slides G and I, and four lesions of the disease on Slide J. *Id.*

autopsy slides reveal no evidence of complicated pneumoconiosis or progressive massive fibrosis, but are consistent with simple pneumoconiosis and diffuse adenocarcinoma. *Id.* He explained there is no gross description on Dr. Dennis’s autopsy report consistent with progressive massive fibrosis, and the autopsy slides do not show “macronodules or any lesions of complicated pneumoconiosis (progressive massive fibrosis).” *Id.* He also excluded complicated pneumoconiosis because x-ray and CT scan readings did not identify coal workers’ pneumoconiosis, even in its simple form.¹⁸ *Id.* In a supplemental report, Dr. Caffrey reviewed Dr. Perper’s report and, while he reiterated his opinion that the Miner had simple pneumoconiosis, he again found no evidence of complicated pneumoconiosis. Employer’s Exhibit 7.

The administrative law judge found Dr. Caffrey’s statement that there is no gross description of progressive massive fibrosis on Dr. Dennis’s autopsy report is not correct. Decision and Order at 26. She accurately noted Dr. Dennis observed under “gross observation” the presence of “moderate to severe anthracosilicosis with progressive massive fibrosis, pulmonary congestion and moderate to severe edema, and apical emphysema.” Director’s Exhibit 19; *see* Decision and Order at 26. Contrary to Employer’s argument, the administrative law judge permissibly discredited Dr. Caffrey’s findings because he “inaccurately described Dr. Dennis’s autopsy report.” Decision and Order at 26; *see Groves*, 277 F.3d at 833; *Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185. The administrative law judge also rationally found Dr. Caffrey’s reliance on the Miner’s x-rays and CT scans that did not reveal the presence of simple pneumoconiosis unpersuasive because all the pathologists in this case universally agree that the Miner’s autopsy findings are consistent with at least simple pneumoconiosis, thus undermining the value of the x-rays and CT scans. *See Groves*, 277 F.3d at 833; *Napier*, 301 F.3d at 712-14; *Crisp*, 866 F.2d at 185; Decision and Order at 26. We therefore affirm the administrative law judge’s rejection of Dr. Caffrey’s opinion.¹⁹

Based on the foregoing, we affirm the administrative law judge’s finding that the autopsy and medical opinion evidence establishes the Miner had complicated

¹⁸ Dr. Caffrey reviewed x-rays dated July 21, 2008, April 2, 2010, April 14, 2010, May 5, 2010, and June 9, 2010, and CT scans dated May 7, 2010, and May 9, 2010. He reported all were interpreted as negative for pneumoconiosis. Director’s Exhibit 18. None of these x-rays and CT scans are contained in the evidence of record.

¹⁹ Because the administrative law judge provided valid reasons for discrediting Dr. Caffrey’s opinion, we need not address Employer’s other arguments pertaining to the weight she accorded his opinion. *See Kozele*, 6 BLR at 1-382 n.4; Employer’s Brief at 14-15 (unpaginated).

pneumoconiosis as supported by substantial evidence. 20 C.F.R. §718.304(b), (c); Decision and Order at 27.

Finally, we reject Employer's argument that the administrative law judge failed to weigh all relevant evidence. Employer's Brief at 4-5 (unpaginated). The administrative law judge noted the ILO-classified x-rays in this case date from 1995, fifteen years before the Miner's death and fourteen years before he left coal mine employment. Decision and Order at 21, 28. Although these x-ray readings do not establish complicated pneumoconiosis at 20 C.F.R. §718.304(a), she rationally found they are of "limited probative value," based on their age, as to whether the Miner had complicated pneumoconiosis at the time of his death in 2010. Decision and Order at 21, 28; *see Groves*, 277 F.3d at 833; *Woodward v. Director, OWCP*, 991 F.2d 314, 319-20 (6th Cir. 1983).

The administrative law judge also permissibly discredited the Miner's x-rays and CT scans in his 2010 treatment records because they did not identify simple pneumoconiosis, while the pathologists universally agree the Miner had the disease. Decision and Order at 27-28. Finally, she assigned the most weight to the autopsy evidence because it is "the most reliable evidence of the existence of pneumoconiosis" and "allows for a more complete examination of the lungs." *Id.* Employer does not specifically challenge these findings; therefore, we affirm them. *See Gray*, 176 F.3d at 388; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 27-28. Because it is supported by substantial evidence, we affirm her finding that all of the relevant evidence, when weighed together, establishes complicated pneumoconiosis. 20 C.F.R. §718.304; *see Gray*, 176 F.3d at 389; *Melnick*, 16 BLR at 1-33-34; Decision and Order at 29.

We also affirm her unchallenged finding that the Miner's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b); *see Skrack*, 6 BLR at 1-711 (1983); Decision and Order at 29. Consequently, we affirm her finding that Claimant invoked the irrebuttable presumption of death due to pneumoconiosis and the award of benefits.

Accordingly, the administrative law judge's Decision and Order Awarding Benefits is affirmed.

SO ORDERED.

GREG J. BUZZARD
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge