U.S. Department of Labor

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

BRB No. 23-0424 BLA

WILLIS EUGENE HUNT Claimant-Respondent v. CHEYENNE ELKHORN COAL COMPANY, INCORPORATED and KENTUCKY EMPLOYERS' MUTUAL INSURANCE Employer/Carrier-Petitioners DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 10/30/2024 DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits in an Initial Claim of Larry S. Merck, Administrative Law Judge, United States Department of Labor.

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

Joseph D. Halbert and Jarrod R. Portwood (Shelton, Branham, & Halbert PLLC), Lexington, Kentucky, for Employer and its Carrier.

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

PER CURIAM:

Employer and its Carrier (Employer) appeal Administrative Law Judge (ALJ) Larry S. Merck's Decision and Order Awarding Benefits in an Initial Claim (2021-BLA-05011) rendered on a claim filed on October 31, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[1]

The ALJ found Claimant has complicated pneumoconiosis, and therefore invoked the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. He further found Claimant established his complicated pneumoconiosis arose out of his 22.62 years of coal mine employment and awarded benefits.[2] 20 C.F.R. §718.203(b).

On appeal, Employer argues the ALJ erred in finding Claimant established he has complicated pneumoconiosis. Claimant responds in support of the award. The Director, Office of Workers' Compensation Programs, declined to file 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.[3] 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).

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[1] Claimant previously filed a claim on January 18, 2017, but withdrew it on May 30, 2018. Director's Exhibit 37 at 7. A withdrawn claim is considered "not to have been filed." 20 C.F.R. §725.306(b).

[2] The ALJ initially awarded benefits commencing September 1, 2018, the month in which he determined Claimant signed his claim for benefits but modified the date on reconsideration to October 1, 2018, to accurately reflect the month in which the claim was filed with the district director. Order Granting Director's Motion for Reconsideration and Amending the Decision and Order dated August 1, 2023.

[3] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because Claimant performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 3; Director's Exhibit 4; Hearing Transcript at 17.

Invocation of the Section 411(c)(3) Presumption

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), provides an irrebuttable presumption that a miner is totally disabled due to pneumoconiosis if he suffers from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more 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;[4] or (c) when diagnosed by other means is a condition that would yield results equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304. In determining whether Claimant has invoked the irrebuttable presumption, the ALJ must weigh all evidence relevant to the presence or absence of complicated pneumoconiosis. *See Gray v. SLC Coal Co.*, 176 F.3d 382, 388-89 (6th Cir. 1999); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

Employer contends the ALJ erred in finding Claimant established complicated pneumoconiosis based on the weight of the computed tomography (CT) scans, x-rays, and medical opinion evidence. 20 C.F.R. §718.304(a), (c); Decision and Order at 8-20; Employer's Brief at 8-17. We disagree.

CT Scans

The ALJ first considered four interpretations of three CT scans and one interpretation of a positron emission tomography (PET)/CT scan. Decision and Order at 8-11. The CT and PET/CT scans were obtained in the course of Claimant's treatment. *Id.* at 8. The ALJ noted that of the physicians who interpreted the CT scans, Drs. Wells and Sherman are Board-certified radiologists, while Drs. Kendall and Simone are Board-certified radiologists and B readers. *Id.* at 8, 10.

On the October 24, 2018 CT scan, Dr. Kendall observed pulmonary nodules measuring up to 1.2 centimeters (cm) in size and ordered a PET/CT scan. Claimant's Exhibit 5 at 2. Dr. Sherman interpreted the subsequent October 25, 2018 PET/CT scan as reflecting scattered nodularity in both lungs with subpleural distribution. *Id.* at 3. He observed that the largest subpleural nodule "is at the peripheral aspect of the right lung base and measures up to approximately 1.2 cm" and a "parenchymal nodule within the right lower lobe that measures approximately 8 [millimeters (mm)] in size." *Id.* Dr. Sherman opined that "[w]hen correlated with previous chest CT imaging dating back to

[4] The parties did not designate any biopsy evidence for the ALJ to consider. Claimant's Evidence Summary Form dated April 14, 2022 at 8; Employer's Evidence Summary Form dated April 25, 2022 at 6.

2/3/2010, these findings are most suspicious for a chronic granulomatous type process that has progressed over the interval." *Id*. at 4.

Dr. Wells interpreted the November 13, 2019 CT scan as showing "[m]ultiple bilateral scattered pulmonary nodules" that are "most compatible with changes of occupational exposure such as coal worker[s'] pneumoconiosis/silicosis." Claimant's Exhibit 8 at 6. He also observed: "[t]he nodules are unchanged in size, number and distribution. No acute air space disease/pneumonia. No pneumothorax or significant effusion." *Id*. He reported that there was "[n]o definite new nodule or mass." *Id.* at 7.

Dr. Wells also read the June 1, 2021 CT scan and noted that the "majority of the prior identified pulmonary nodules have slightly increased in size." Claimant's Exhibit 7 at 1. Specifically, he observed one nodule measuring up to 5.4 cm had previously been two to three separate nodules, indicating Claimant's condition had "worsened" since the last CT scan. *Id.* at 1-2. Dr. Simone read the same CT scan as showing the presence of "[s]cattered granulomas . . . *as well as* a 4.3 cm by 1.8 cm pleural bases mass in the right lower lobe." Employer's Exhibit 3 (emphasis added). He also observed "a 2.1 cm by 1.3 cm pleural bases density in the right lower lobe." *Id.* He opined there is "no background of rounded opacities that would suggest the presence of coal workers['] pneumoconiosis" but did not assign an etiology to the pleural bases mass or density he identified in the right lower lobe. *Id*.

The ALJ initially found that CT scans are medically acceptable for diagnosing complicated pneumoconiosis, a finding we affirm as supported by substantial evidence. 20 C.F.R. §718.107(b); Decision and Order at 8; *see* Employer's Exhibit 3 (Dr. Simone stating "[t]he CT scan is a medically acceptable test that tends to demonstrate the presence or absence of pneumoconiosis"). Moreover, the ALJ made an equivalency determination and found that the large opacities seen on the CT scans that measured over one cm and "up to 5.4 cm would most likely be equivalent to a large [Category] "A" or "B" opacity."[5] Decision and Order at 11; s*ee E. Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 258 (4th Cir. 2000) (affirming ALJ's determination that nodules of 1.7 cm on autopsy would produce x-ray opacities of more than one cm on x-ray); *Perry v. Mynu Coals, Inc.*, 469 F.3d 360, 366 n.5 (4th Cir. 2006) (affirming ALJ's conclusion that

[5] Ultimately, the ALJ found a preponderance of the CT scan evidence established complicated pneumoconiosis based on CT scan interpretations showing large opacities in the right lower lung. *See* Decision and Order at 11. We note that Dr. DePonte's reading of the May 21, 2021 x-ray, observed opacities exceeding one centimeter (4.5 cm and 3 cm opacities) in the same location as the large opacities seen on the CT scans, the right lower lung. *See* Decision and Order at 11; Claimant's Exhibit 4.

opacities measuring four and six cm by autopsy would show as greater than one cm on x-ray); Employer's Brief at 12-13.[6]

In weighing the conflicting CT scan interpretations, the ALJ credited Dr. Wells's positive readings for complicated pneumoconiosis over Dr. Simone's negative reading for complicated pneumoconiosis and found the CT scan evidence supports a finding of complicated pneumoconiosis. Decision and Order at 8-11.

Employer argues the ALJ improperly shifted the burden of proof by requiring Dr. Simone to explain why Claimant does not have complicated pneumoconiosis. Employer's Brief at 9. We disagree with Employer's characterization of the ALJ's credibility findings. The ALJ weighed the relevant evidence as he is required to do and explained why he found Dr. Simone's opinion lacked credibility.

Dr. Simone appeared to eliminate a diagnosis of complicated pneumoconiosis because he saw "no background of rounded opacities that would suggest the presence of coal workers' pneumoconiosis." Decision and Order at 10 (quoting Employer's Exhibit 3 at 1). The ALJ permissibly found Dr. Simone's opinion diminished in credibility and therefore unpersuasive because it was unclear whether Dr. Simone required the presence of rounded opacities before he would identify the large opacities he saw as being consistent with pneumoconiosis, contrary to the regulations, which do not require clinical pneumoconiosis to appear radiographically as rounded opacities. *See* 20 C.F.R. §718.202(a)(1); *Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *see also* Guidelines for the Use of the International Labour Organization (ILO) International Classification of Radiographs of Pneumoconioses, Revised edition 2022, p. 5 (ILO classification system specifically provides that small opacities of pneumoconiosis may be classified as round (p, q, r) or irregular (s, t, u) and states: "Two kinds of shape are recognized: rounded and irregular").

Employer argues that Dr. Simone's opinion clearly states that there are no opacities consistent with pneumoconiosis; however, the making of inferences is a matter within the ALJ's discretion. While Dr. Simone's report could possibly be read as Employer suggests,

[6] Employer argues the ALJ failed to make an equivalency determination; however, he did so as noted above. Employer's Brief at 12. Employer raised no argument below as to the reliability of the CT scan evidence submitted. Thus, to the extent Employer now raises an issue as to the reliability of the CT scan evidence of record, we will not consider it. *See* Employer's Post-hearing Brief at 6 (unpaginated) ("[A] CT scan is an accepted method of identifying and diagnosing coal worker[s'] pneumoconiosis of either the simple or complicated form.").

it cannot be said that no reasonable factfinder could construe the report as the ALJ did—as requiring a background of rounded opacities in order to diagnose the large opacities as pneumoconiosis. Decision and Order at 10. Because the Board is not empowered to consider findings of fact de novo or substitute its inferences for the ALJ's, we must affirm the ALJ's finding, and thus affirm his credibility determination with regard to Dr. Simone's opinion. *See Cumberland River Coal Co. v. Banks*, 690 F.3d 477, 489 (6th Cir. 2012) (ALJ's function is to weigh the evidence, draw appropriate inferences, and determine credibility); *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-112, 1-113 (1989) (Board cannot substitute its inferences for those of the ALJ and is not empowered to reweigh the evidence).

Conversely, the ALJ credited Dr. Wells's opinion that the pulmonary nodules seen on the most recent November 13, 2019 and June 1, 2021 CT scans are complicated pneumoconiosis. Decision and Order at 11. The ALJ noted that Dr. Wells explained the size of Claimant's pulmonary nodules progressed over time, consistent with the Department of Labor's recognition of pneumoconiosis as a progressive disease, and his diagnosis of complicated pneumoconiosis is supported by a treatment record relating Claimant's radiographic changes to his history of coal mine employment. 20 C.F.R. §718.201(c); *Mullins Coal Co., Inc. of Va. v. Director, OWCP*, 484 U.S. 135, 151 (1987) (recognizing pneumoconiosis as a progressive and irreversible disease); *Sunny Ridge Mining Co. v. Keathley*, 773 F.3d 734, 738-40 (6th Cir. 2014) (same); Decision and Order at 9-11; Claimant's Exhibits 7; 8 at 6-7.

Employer argues that Dr. Wells's opinion, that there was an increase in the size of the nodules he identified and there was coalescence of two nodules, is no more credible than the evidence to the contrary. However, it points to no evidence to support its contention other than Dr. Simone's opinion (that the large opacities are not pneumoconiosis) which the ALJ permissibly discredited.[7] Employer's Brief at 10-13. Accordingly, Employer has identified no creditable evidence contrary to Dr. Wells's opinion.

Moreover, as to Claimant's treatment records, the ALJ observed that in progress notes dated December 6, 2018, Claimant's pulmonary physician, Dr. Rogers, discussed Claimant's October 25, 2018 CT scan in relation to his symptoms and coal mine dust exposure history. He attributed Claimant's radiographic findings to "coal workers'

[7] We note that Dr. Simone offered no opinion as to whether there was an increase in the size of the scattered granulomas or the mass and density in Claimant's right lower lung lobe that he observed in 2021, as compared to their size in 2019. Employer's Exhibit 3.

pneumoconiosis and silicosis secondary to his occupational work, which was for greater than 25 years." Decision and Order at 9 (quoting Claimant's Exhibit 8 at 8, 10). Employer does not raise any issue with the ALJ's crediting of Dr. Wells's opinion as supported by this treatment record opinion.

Because we have found that the ALJ permissibly rejected Dr. Simone's negative reading, and we have rejected Employer's other arguments relating to the weighing of Dr. Wells's opinion, we affirm the ALJ's conclusion that Dr. Wells's positive readings for complicated pneumoconiosis on the two most recent CT scans reflected Claimant's current condition and deserve the most weight.[8] *See Woodward v. Director, OWCP*, 991 F.2d 314, 319 (6th Cir. 1993); Decision and Order at 11; Employer's Brief at 10; Claimant's Exhibits 7, 8; Employer's Exhibit 3. Thus, we affirm the ALJ's finding that the preponderant weight of the CT scan evidence supports a finding that Claimant has complicated pneumoconiosis.

X-rays

The ALJ next considered eight interpretations of four x-rays.[9] Decision and Order at 11-15. All of the readers are dually-qualified as Board-certified radiologists and B readers.

Dr. DePonte interpreted the December 1, 2018 x-ray as positive for simple pneumoconiosis with small opacities in all lung zones. Director's Exhibit 14 at 24. She reported no large opacities consistent with pneumoconiosis but identified an "[i]rregular 10 mm opacity right costophrenic angle" and recommended a CT scan to rule out malignancy. *Id.* Dr. Adcock interpreted this x-ray as negative for simple and complicated pneumoconiosis but identified a "[s]mall, irregular" pleural plaque in the "right CP sulcus region." Director's Exhibit 20. Dr. Crum read the x-ray as positive for simple pneumoconiosis and identified a Category A large opacity consistent with complicated

[8] Although Employer repeatedly raises Dr. Simone's opinion as contrary evidence which should have been given credence, it does not otherwise contend that the ALJ erred in weighing Dr. Wells's opinion. Employer's Brief at 8-13. We note Employer also does not raise any objection to the ALJ's characterization of the opinions of Drs. Kendall and Sherman as finding large opacities and Claimant's treatment records as including coal workers' pneumoconiosis as a possible etiology for the changes in Claimant's lungs. *Id.*

[9] Dr. Gaziano, a B reader, reviewed the December 1, 2018 x-ray for film quality only. Director's Exhibit 15. Claimant's treatment records contain an additional x-ray taken by Dr. Moore on October 22, 2018. Claimant's Exhibit 5 at 1. The ALJ noted that while Dr. Moore saw a 12 mm opacity, he did not comment on whether the opacity reflected simple or complicated pneumoconiosis. Decision and Order at 15.

pneumoconiosis. Claimant's Exhibit 3. The ALJ found the December 1, 2018 x-ray is positive for simple pneumoconiosis but inconclusive for complicated pneumoconiosis. Decision and Order at 13-14.

Dr. DePonte interpreted the April 5, 2019 x-ray as positive for simple pneumoconiosis with opacities in all lung zones (1/2, p/p) and a large Category A opacity. Director's Exhibit 18. She also marked an "x" in the block for "cg" (calcified non-pneumoconiotic nodules [e.g. granuloma] or nodes but did not indicate the possibility of cancer on this x-ray. *Id.* Dr. Adcock found no evidence of either simple or complicated pneumoconiosis but identified a "[s]mall, isolated, non-calcified pleural plaque in the lateral aspect of the intercostal space of the posterior right [eighth] rib." Director's Exhibit 22. The ALJ gave less weight to Dr. Adcock's interpretation and found the April 5, 2019 x-ray positive for simple and complicated pneumoconiosis based on Dr. DePonte's interpretation. Decision and Order at 14.

Dr. DePonte interpreted the May 21, 2021 x-ray as showing a 1/2 profusion of q/p shaped small opacities in all lung zones consistent with simple pneumoconiosis and Category B large opacities which she described as "4.5 cm and 3 cm opacities right lower lung zone, 11 mm opacity right upper lung zone, 13 mm opacity left upper zone" consistent with pneumoconiosis. Claimant's Exhibit 4. On the ILO x-ray classification form, she noted "other abnormalities," including "ax" (coalescence of small opacities); "ca" (cancer, thoracic malignancies excluding mesothelioma); and "hi" (enlargement of non-calcified hilar or mediastinal lymph nodes). *Id.* She indicated that Claimant should see his personal physician and explained that "malignancy should be excluded in the larger opacities." *Id.*

The ALJ found this x-ray is positive for both simple and complicated pneumoconiosis. Decision and Order at 14. He explained that "[a]lthough Dr. DePonte's comment could constitute an alternative diagnosis that could call into question her diagnosis of complicated pneumoconiosis, I find that it does not do so here because she identified large 'B' opacities on the x-ray." Decision and Order at 14 & n.35.

On the September 22, 2021 x-ray, Dr. DePonte again observed the presence of both simple and complicated pneumoconiosis (Category B large opacities). Claimant's Exhibit 9. She also marked other symbols on the ILO form including "ax" (coalescence of small opacities) and "hi" (enlargement of non-calcified hilar or mediastinal lymph nodes).[10] *Id.* Dr. Simone read the same film as completely negative for any radiographic abnormalities. Employer's Exhibit 2. He observed "no background of rounded opacities that would

[10] Unlike her prior reading of the May 21, 2021 x-ray, Dr. DePonte did not identify "ca" (cancer) or recommend further testing. Claimant's Exhibit 9.

suggest the presence of coal workers['] pneumoconiosis" and no large opacities consistent with pneumoconiosis. *Id.* The ALJ gave less weight to Dr. Simone's interpretation and found the September 22, 2021 x-ray positive for simple and complicated pneumoconiosis based on Dr. DePonte's interpretation. Decision and Order at 14-15.

Weighing all of the x-ray evidence together, the ALJ found that three x-rays are positive for both simple and complicated pneumoconiosis, while one x-ray is positive for simple pneumoconiosis but inconclusive as to complicated pneumoconiosis. *Id.* at 15. Consequently, he found the preponderance of the x-ray evidence establishes the presence of both simple and complicated pneumoconiosis. *Id.*

Employer first argues the ALJ erred in discrediting Dr. Adcock's reading of the April 5, 2019[11] x-ray. It alleges that it was "unfair" for the ALJ to find Dr. Adcock's reading inconsistent with the readings by Drs. DePonte and Crum, and the readings by Drs. Moore, Kendall, and Sherman of the October 22, 2018 x-ray, October 24, 2018 CT scan, and the October 25, 2018 PET/CT scan, when Dr. Adcock's reading was consistent with Dr. Simone's reading.[12] Employer's Brief at 13-14. We are not persuaded by Employer's argument.

The ALJ found that Dr. Adcock's reading was inconsistent with Dr. DePonte's and the "three interpreting physicians at the Pikeville Medical Center." Decision and Order at 14. But the ALJ made no mention of Dr. Crum's opinion in relation to the interpretation of this x-ray. *Id.* Therefore, Employer is mistaken, in part, as to the specific consistency that the ALJ found and on which he based his favorable treatment of Dr. DePonte's opinion. Thus, Employer's argument ultimately is that the ALJ erred because he failed to consider that Dr. Adcock's opinion was consistent with Dr. Simone's.

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").*See Woodward*, 991 F.2d at 319.

[11] Employer references an April 15, 2019 x-ray; however, the only April 2019 x-ray interpretations in evidence relate to an x-ray dated April 5, 2019. *See* Employer's Brief at 13; Director's Exhibits 18, 22. We therefore assume Employer is referencing the ALJ's findings with respect to the interpretations of the April 5, 2019 x-ray.

[12] It is unclear whether Employer is referencing Dr. Simone's interpretation of the September 22, 2021 x-ray or Dr. Simone's reading of the June 1, 2021 CT scan, as Employer references the CT scan reading in its argument. Employer's Brief at 14.

Employer next argues the ALJ erred in finding the May 21, 2021 x-ray positive for complicated pneumoconiosis without considering that Dr. DePonte could not rule out other causes for the large opacities she saw. Employer's Brief at 14-15. However, the ALJ specifically considered whether Dr. DePonte's comments constitute an alternate diagnosis and permissibly found her statements did not detract from the credibility of her positive reading for complicated pneumoconiosis. *See Cox*, 602 F.3d at 283-84; Decision and Order at 14; Claimant's Exhibit 4. More specifically, Dr. DePonte indicated that the x-ray met the ILO standards for a diagnosis of complicated pneumoconiosis and, in fact, she diagnosed the disease. Thus, the ALJ permissibly considered her x-ray reading positive for complicated pneumoconiosis. 30 U.S.C. §921(c)(3); 20 C.F.R. §§718.102(d), 718.304; *Clark*, 12 BLR at 1-155; Decision and Order at 14; Claimant's Exhibit 4. The ALJ permissibly found Dr. DePonte's concern that Claimant's "larger opacities" might include cancer does not alter her reading of the x-ray as being positive for complicated pneumoconiosis. *Id*. Employer's argument[13] requests that the Board substitute our judgment for the ALJ's, which we cannot do. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Thus, we affirm the ALJ's permissible finding that the May 21, 2021 x-ray is positive for complicated pneumoconiosis.

Consequently, because we have rejected Employer's arguments that the ALJ erred in making his findings and determinations, we affirm the ALJ's conclusion that the

[13] Employer argues that Dr. DePonte's comments constitute a clear alternative diagnosis; however, she stated "malignancy should be excluded in the larger opacities." Employer's Brief at 15; Claimant's Exhibit 4. This could be understood to be a joint diagnosis of malignancy and large opacities or that a malignancy explains the entirety of the larger opacities and constitutes a complete alternative diagnosis. The ALJ chose to interpret her remarks as the former, and as not detracting from (i.e., compatible with) her diagnosis of a Category B opacity. Even if we would have found differently, fact finding (including the drawing of inferences) rests within the authority of the ALJ, not the Board. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-112, 1-113 (1989). We cannot say that no reasonable person could make the determination he made. Consequently his finding is within his discretion. *Cumberland River Coal Co. v. Banks*, 690 f.3d 477, 489 (6th Cir. 2012).

[14] The ALJ found that Dr. Simone's interpretation is "inconsistent with the equally-qualified Dr. DePonte's interpretation, and all three physicians from Pikeville Medical Center referenced above, in addition to Dr. Bradley Wells . . . ." Decision and Order at 15. Thus, except for adding Dr. Wells, his rationale for giving less credit to Dr. Simone's

preponderance of the x-ray evidence supports a finding that Claimant has complicated pneumoconiosis. 20 C.F.R. §718.304(a); Decision and Order at 15.

Medical Opinions and Evidence as a Whole

The ALJ considered four medical opinions regarding whether Claimant has complicated pneumoconiosis. Decision and Order at 16-20. The ALJ credited Drs. Green's and Raj's opinions that Claimant has complicated pneumoconiosis and found Drs. Broudy and Dahhan did not specifically address whether Claimant has the disease.[15] *Id*. Employer challenges the ALJ's reliance on Drs. Green's and Raj's opinions, reiterating its arguments with respect to the ALJ's weighing of the x-ray evidence. Employer's Brief at 16-17. However, even assuming the ALJ erred in crediting Drs. Green's and Raj's opinions, remand is not required as any error would be harmless because we have affirmed the ALJ's finding that Claimant established complicated pneumoconiosis based on the CT scans and x-rays, and there is no contrary medical opinion evidence to refute that evidence. *See Shinseki*, 556 U.S. at 413.

Consequently, as it is supported by substantial evidence, we affirm the ALJ's determination that Claimant invoked the irrebuttable presumption. *See* 20 C.F.R. §718.304; *see also Gray*, 176 F.3d at 388-89; *Melnick*, 16 BLR at 1-33; *Skrack*, 6 BLR at 1-711; Decision and Order at 20. We further affirm, as unchallenged on appeal, the ALJ's finding that Claimant's complicated pneumoconiosis arose out of his coal mine employment. 20 C.F.R. §718.203(b); *see The Daniels Co. v. Director, OWCP* [*Mitchell*], 479 F.3d 321, 337 (4th Cir. 2007); *Skrack*, 6 BLR at 1-711; Decision and Order at 20 & nn.36 & 37.

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interpretation was identical to the rationale he gave with respect to the weight he assigned Dr. Adcock's interpretation. *See* Decision and Order at 14.

[15] Dr. Green opined Claimant has complicated pneumoconiosis based on Drs. DePonte's and Crum's readings of the April 5, 2019 x-ray. Director's Exhibit 17 at 4-5. Dr. Raj reported on May 21, 2021, that Claimant has complicated pneumoconiosis based on "[a]bnormal chest x-ray findings [of Dr. DePonte of the May 21, 2021 x-ray] showing progressive massive fibrosis." Claimant's Exhibit 4 at 5. Employer does not dispute that neither Dr. Broudy nor Dr. Dahhan opined as to whether Claimant has complicated pneumoconiosis. *See* Director's Exhibit 21; Employer's Exhibit 21.

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits in an Initial Claim.

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge