**U.S. Department of Labor**

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

BRB No. 15-0524 BLA

| | | |
|---|---|---|
| ROBERT J. PARKS | ) | |
| | ) | |
| Claimant-Respondent | ) | |
| | ) | |
| v. | ) | |
| | ) | |
| U.S. STEEL MINING COMPANY, LLC | ) | DATE ISSUED: 09/28/2016 |
| | ) | |
| 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 Granting Benefits of Pamela J. Lakes, Administrative Law Judge, United States Department of Labor.

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

Emily Goldberg-Kraft (M. Patricia Smith, Solicitor of Labor; Maia Fisher, Acting Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

HALL, Chief Administrative Appeals Judge:

Employer appeals the Decision and Order Granting Benefits (2012-BLA-6210) of Administrative Law Judge Pamela J. Lakes, rendered on a claim filed on December 7, 2011, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge credited claimant with at least

twenty-nine years of coal mine employment based on the parties' stipulation, and adjudicated this claim pursuant to the regulatory provisions at 20 C.F.R. Part 718.[1] The administrative law judge found that the evidence established the existence of complicated pneumoconiosis, pursuant to 20 C.F.R. §718.304, thereby entitling claimant to the irrebuttable presumption of total disability due to pneumoconiosis. Further, the administrative law judge found that the evidence established that the 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 challenges the administrative law judge's finding that the evidence, as a whole, established the existence of complicated pneumoconiosis at 20 C.F.R. §718.304. Claimant has not filed a response brief in this appeal. The Director, Office of Workers' Compensation Programs, has filed a response, urging affirmance of the administrative law judge's award of benefits.[2]

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.[3] 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc*., 380 U.S. 359 (1965).

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304, provides an irrebuttable presumption of total disability due to pneumoconiosis if the miner suffers from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yields one or more large opacities greater than one centimeter in diameter that

---

[1] Congress enacted amendments to the Black Lung Benefits Act that are applicable to claims, such as this one, that were filed after January 1, 2005, and were pending on or after March 23, 2010. *See* Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305. However, having found that claimant established entitlement to benefits pursuant to Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304, the administrative law judge did not address whether claimant could also establish entitlement under the amended Section 411(c)(4) criteria. Decision and Order at 2 n.3; 13.

[2] We affirm, as unchallenged on appeal, the administrative law judge's finding of at least twenty-nine years of coal mine employment. Decision and Order at 4; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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

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

The introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for the Section 411(c)(3) irrebuttable presumption. Thus, in determining whether the evidence establishes complicated pneumoconiosis, the administrative law judge must examine all of the evidence on the issue, *i.e.*, evidence of simple and complicated pneumoconiosis, as well as evidence that pneumoconiosis is not present, and resolve any conflicts in the evidence. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (4th Cir. 1993); *Gollie v. Elkay Mining Corp.*, 22 BLR 1-306, 1-311 (2003); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

At Section 718.304(a), the administrative law judge considered nine interpretations of four analog x-rays dated December 28, 2011, April 9, 2012, May 2, 2012, and April 24, 2014. The December 28, 2011 x-ray was read as positive for both simple and complicated pneumoconiosis, Category A, by Dr. Forehand, a B reader, and Dr. Alexander, who is dually qualified as a Board-certified radiologist and B reader.[4] Director's Exhibit 11; Claimant's Exhibit 5. In contrast, Dr. Meyer, a dually-qualified radiologist, read this x-ray as negative for pneumoconiosis. Employer's Exhibit 3. The April 9, 2012 x-ray was read as positive for simple and complicated pneumoconiosis, Category A, by Dr. Miller, a dually-qualified radiologist, while Dr. Willis, who is also a dually-qualified radiologist, found simple pneumoconiosis but no large opacities

[4] A "B reader" is a physician who has demonstrated proficiency in classifying x-rays according to the ILO-U/C standards by successful completion of an examination established by the National Institute for Occupational Safety and Health. *See* 20 C.F.R. §718.202(a)(1)(ii)(E); 42 C.F.R. §37.51; *Mullins Coal Co. of Va. v. Director, OWCP*, 484 U.S. 135, 145 n.16, 11 BLR 2-1, 2-6 n.16 (1987), *reh'g denied*, 484 U.S. 1047 (1988); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985). A "Board-certified radiologist" is a physician who has been certified by the American Board of Radiology as having particular expertise in the field of radiology.

consistent with complicated pneumoconiosis. Claimant's Exhibit 1; Employer's Exhibit 6. The May 2, 2012 x-ray was read as positive for simple and complicated pneumoconiosis, Category A, by Dr. Miller, and as negative for both simple and complicated pneumoconiosis by Dr. Zaldivar, a B reader. Claimant's Exhibit 3; Employer's Exhibit 1. Lastly, the April 24, 2014 x-ray was read as positive for simple and complicated pneumoconiosis, Category A, by Dr. DePonte, a dually-qualified radiologist, while Dr. Willis found simple pneumoconiosis but no large opacities. Claimant's Exhibit 2; Employer's Exhibit 7.

In weighing the analog x-ray evidence of record, the administrative law judge found the May 2, 2012 x-ray to be "positive" for complicated pneumoconiosis, based on Dr. Miller's superior qualifications as compared to Dr. Zaldivar. Decision and Order at 7-8. With respect to the December 28, 2011 x-ray, the administrative law judge found that, "although the two most qualified readers [Drs. Alexander and Meyer] disagreed" as to the existence of complicated pneumoconiosis, the x-ray "supports the existence of opacities consistent with complicated pneumoconiosis" because two of the three B readers, Drs. Alexander and Forehand, found the x-ray to be positive for the disease. *Id.* at 7. Further, the administrative law judge found that the April 9, 2012 and April 24, 2014 x-rays "neither support[] nor refute[] the existence of opacities consistent with complicated pneumoconiosis," as there were conflicting readings for each x-ray by two dually-qualified radiologists. *Id*. at 7-8. The administrative law judge therefore concluded that the preponderance of the analog x-ray evidence established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(a). *Id*. at 8.

Employer generally argues that the administrative law judge erred by "resort[ing] to a head count" of the positive and negative readings when weighing the analog x-ray evidence. Employer's Brief at 11-12. Contrary to employer's contention, the administrative law judge properly considered both the quantity of the positive and negative readings *and* the comparative credentials of the interpreting physicians. 20 C.F.R. §718.202(a)(1); *see Adkins v. Director, OWCP*, 958 F.2d 49, 52-53, 16 BLR 2-61, 2-65-66 (4th Cir. 1992); *Dempsey v. Sewell Coal Co.*, 23 BLR 1-47, 1-65 (2004) (en banc); *Chaffin v. Peter Cave Coal Co*., 22 BLR 1-294, 1-300 (2003); *Bateman v. E. Associated Coal Corp.*, 22 BLR 1-255, 1-261 (2003); Decision and Order at 6-8. Specifically, the administrative law judge permissibly found the May 2, 2012 x-ray to be positive for complicated pneumoconiosis based on Dr. Miller's superior qualifications. *See Adkins*, 958 F.2d at 52-53, 16 BLR at 2-65-66; *Cranor v. Peabody Coal Co.*, 22 BLR 1-1, 1-7 (1999) (en banc on recon.) (administrative law judge may accord greater weight to readings by physicians who are dually qualified as B readers and Board-certified radiologists); Decision and Order at 7-8. Additionally, the administrative law judge permissibly determined that the April 9, 2012 and April 24, 2014 x-rays "neither support nor refute" the existence of complicated pneumoconiosis based on the conflicting readings of each x-ray by two dually-qualified radiologists. Decision and Order at 7-8;

*see Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 280-81, 18 BLR 2A-1, 2A-6-9 (1994).

With respect to the December 28, 2011 x-ray, we note that the readings in this case bear a factual similarity to an x-ray that was considered in *Sea "B" Mining Co. v. Addison*, F.3d , 2016 WL 4056396 (4th Cir. July 29, 2016), issued subsequent to the administrative law judge's Decision and Order. In *Addison*, the administrative law judge found that the x-ray evidence established the existence of pneumoconiosis based on his determination that two x-rays were in equipoise, and one x-ray was positive for the disease. *Addison*, 2016 WL 4056396 at * 9. Regarding the sole positive x-ray, the Fourth Circuit considered whether the administrative law judge resolved the conflicting evidence by a "headcount of expert witnesses." *Id.* The court noted that the administrative law judge explained his conclusion as follows:

> There were three readings of the most recent x-ray, taken on May 20, 2011. Dr. Forehand and Dr. Miller interpreted it as positive for pneumoconiosis with a profusion category of 2/2 and 2/1, respectively, while Dr. Scott interpreted the same x-ray as negative for pneumoconiosis. Dr. Forehand is a B reader but not [B]oard[-]certified in radiology. Drs. Scott and Miller are both dually qualified as B[]readers and [B]oard-certified radiologists. Dr. Miller's opinion that the x-ray is positive for clinical pneumoconiosis is supported by Dr. Forehand's opinion. Consequently, I find that the May 20, 2011, chest x-ray is overall positive for clinical pneumoconiosis.

*Addison*, 2016 WL 4056396 at *8. The Fourth Circuit vacated the Board's affirmance of the administrative law judge's finding, stating that it "[could] not decipher from the [administrative law judge's] sparse explanation how, or if, he weighed the x-ray readings in light of the readers' qualifications." *Id. at *9.* Thus, the court instructed the administrative law judge, on remand, to explain how he weighed the evidence and "whether his conclusion was based on a numerical headcount of experts." *Id.*

Like the x-ray at issue in *Addison*, the December 28, 2011 x-ray was read as both positive and negative by dually-qualified radiologists, and positive by a B reader. Unlike in *Addison*, however, it is clear from the administrative law judge's decision in this case that she took into consideration the comparative credentials of the interpreting physicians.[5] Decision and Order at 6-8; *see* 20 C.F.R. §718.202(a)(1); *Adkins,* 958 F.2d

[5] Further, unlike in *Addison*, where the administrative law judge's finding of pneumoconiosis was tainted by his improper exclusion of the computed tomography (CT) scan evidence, the administrative law judge in this case, as explained below, properly considered all relevant evidence, including the CT scans, digital x-rays and x-rays contained in the treatment records. *Sea "B" Mining Co. v. Addison*, F.3d , 2016 WL

at 52-53, 16 BLR at 2-65-66; *Dempsey*, 23 BLR at 1-65; *Chaffin*, 22 BLR at 1-300; *Bateman*, 22 BLR at 1-261. After setting forth a detailed description of the x-ray readings, the administrative law judge accurately recognized that "the two most qualified readers," Drs. Alexander and Meyer, disagreed on the existence of complicated pneumoconiosis. Decision and Order at 7. Nevertheless, the administrative law judge declined to find that these conflicting interpretations rendered the x-ray inconclusive, and instead permissibly found that the x-ray "supports" a finding of opacities consistent with complicated pneumoconiosis because a preponderance of the readings by the three physicians, all of whom are B readers, found it to be positive for the disease. *See Dempsey*, 23 BLR at 1-65; Decision and Order at 7.

Further, unlike *Addison*, the administrative law judge's finding, that the analog x-ray evidence established the existence of complicated pneumoconiosis, is supported by more than just the December 28, 2011 x-ray. The administrative law judge specifically determined that the May 2, 2012 x-ray was "positive" for the disease, and that the December 28, 2011 x-ray "supports" such a diagnosis. Decision and Order at 7, 8. Weighing these x-rays together with the inconclusive April 9, 2012 and April 24, 2014 x-rays, the administrative law judge rationally determined that the analog x-ray evidence as a whole established the existence of complicated pneumoconiosis. *See Adkins,* 958 F.2d at 52-53, 16 BLR at 2-65-66; *Dempsey*, 23 BLR at 1-65; *Chaffin*, 22 BLR at 1-300; *Bateman*, 22 BLR at 1-261; Decision and Order at 8. Thus, even if we were to assume that the administrative law judge's evaluation of the December 28, 2011 x-ray is inconsistent with *Addison*, any error is harmless, as substantial evidence supports the administrative law judge's conclusion that "the x-ray evidence as a whole is positive" for complicated pneumoconiosis.[6] *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009)

---

4056396 at *7-8 (4th Cir. July 29, 2016); Decision and Order at 9-12. Additionally, in *Addison*, the administrative law judge "ignored the respective qualifications of [the] physicians," including that of Dr. Forehand, in his evaluation of the medical opinion evidence. *Addison*, 2016 WL 4056396 at *10. Conversely, as discussed below at n.17, the administrative law judge in this case acknowledged that Dr. Forehand is "not [B]oard[-]certified in internal medicine with a subspecialty in pulmonary disease," but permissibly declined to give his opinion less weight on that basis. *See Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-114 (2006) (en banc) (McGranery & Hall, JJ., concurring and dissenting), *aff'd on recon*., 24 BLR 1-13 (2007) (en banc) (McGranery & Hall, JJ., concurring and dissenting); Decision and Order at 10 n.13.

[6] We note that, because the administrative law judge stated that she gave the greatest weight to the views of dually-qualified readers, even if the interpretations of the December 28, 2011 x-ray were weighed in a light most favorable to employer (*i.e.*, Dr. Forehand's positive B reading was excluded), the x-ray interpretations would be, at best,

(holding that the appellant must explain how the "error to which [it] points could have made any difference"); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1278 (1984). We, therefore, affirm the administrative law judge's finding that the analog x-ray evidence established the existence of complicated pneumoconiosis at 20 C.F.R. 718.304(a). *See Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208, 22 BLR 2-162, 2-168 (4th Cir. 2000).

At Section 718.304(c),[7] the administrative law judge considered "other medical evidence," including a November 7, 2012 digital x-ray[8] taken during Dr. Castle's examination,[9] treatment records, two computed tomography (CT) scans taken in the course of claimant's treatment at Bluefield Regional Medical Center, and the opinions of Drs. Forehand, Zaldivar, and Castle.

Dr. DePonte read the November 7, 2012 digital x-ray as positive for simple pneumoconiosis and complicated pneumoconiosis, Category A, Claimant's Exhibit 4, while Dr. Meyer read this digital x-ray as consistent with simple pneumoconiosis but

---

in equipoise. Consequently, the December 28, 2011 x-ray would not support or refute the existence of complicated pneumoconiosis.

[7] The record does not contain any biopsy evidence under 20 C.F.R. § 718.304(b). Decision and Order at 8.

[8] Effective May 19, 2014, the Department of Labor revised the regulations governing the admission and weighing of chest x-rays to include digital x-ray readings. In claims, such as this one, that are filed before May 19, 2014, the revised regulations apply to digital x-ray readings performed on or after May 19, 2014. *See* Black Lung Benefits Act Bulletin Nos. 14-08, 14-11. Thus, because the November 7, 2012 digital x-ray was read by Dr. Meyer on September 25, 2014, and by Dr. DePonte on October 1, 2014, this x-ray should have been considered pursuant to 20 C.F.R. §718.304(a). Employer's Exhibit 8; Claimant's Exhibit 4. This error is harmless, however, as the administrative law judge specifically found that because the positive and negative readings of the November 7, 2012 digital x-ray are in equipoise, the "digital x-ray neither supports nor refutes the existence of parenchymal opacities consistent with complicated pneumoconiosis, whether the x-ray readings are considered along with the analog readings [pursuant to 20 C.F.R. §718.304(a)] or separately as 'other evidence[,]'" pursuant to 20 C.F.R. §§718.304(c), 718.107. Decision and Order at 9; *see Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[9] Employer substituted Dr. Meyer's interpretation of the digital x-ray for that of Dr. Castle. Hearing Transcript at 12-14; Decision and Order at 3.

found no large opacities. Employer's Exhibit 8. Noting that Drs. DePonte and Meyer are both dually-qualified radiologists, the administrative law judge found that the digital x-ray neither supported nor refuted the existence of a large opacity consistent with complicated pneumoconiosis. Decision and Order at 8-9; Claimant's Exhibit 4; Employer's Exhibit 8.

With regard to the two CT scans taken in the course of claimant's treatment, the October 24, 2011 CT scan was read by Dr. Khan, a physician of unknown credentials, as showing "findings compatible with chronic interstitial lung disease." Claimant's Exhibit 11. The June 25, 2012 CT scan was an abdominal scan read by an unknown physician as showing, in part, findings of "severe chronic interstitial lung disease with honeycombing and fibrosis" in the lung bases. Claimant's Exhibit 10. The administrative law judge determined that the CT scan readings neither established nor refuted the presence of complicated pneumoconiosis, as no party established the medical acceptability and relevance of the CT scan evidence pursuant to 20 C.F.R. §718.107, and the credentials of the radiologists are not of record. Decision and Order at 9-10.

Similarly, the administrative law judge determined that the remaining treatment records, consisting of x-ray readings,[10] clinical test results, treatment notes from Bluefield Regional Medical Center from 2007 through 2012, and an August 28, 2014 statement from Dr. Vasudevan[11] regarding claimant's condition did not support or refute the existence of complicated pneumoconiosis. Decision and Order at 10; Claimant's Exhibits 12, 13, 14, 15, 16, 17; Employer's Exhibits 4, 5. Specifically, the administrative law judge found that the x-ray readings in the treatment records were of limited use because they were not interpreted in accordance with the ILO classification system and "the qualifications of most of the readers are unknown." Decision and Order at 10. The

[10] The administrative law judge determined that two x-rays performed in 2007, one of which was read by Dr. Miller, were both "unremarkable," in that they indicated no radiographic evidence of acute disease. Decision and Order at 10 n.11; Employer's Exhibit 4. The administrative law judge noted that an x-ray dated May 20, 2009 was read by Dr. Raskin, whose credentials are not of record, as showing "small nodular interstitial lung disease." *Id*. The chest x-ray dated October 24, 2011 was read by Dr. Springer, whose credentials are not of record, as showing chronic interstitial lung disease. The film dated January 16, 2012 was read by Dr. Zelinka, whose credentials are not of record, as showing severe diffuse fibrotic change. Employer's Exhibit 4. Two x-rays dated June 25, 2012 were read by Dr. Salvatore, whose credentials are not of record, as showing chronic lung disease. Claimant's Exhibits 14, 15.

[11] Dr. Vasudevan provided a letter dated August 28, 2014, stating that "[claimant], a patient of mine, has severe interstitial pulmonary fibrosis and chronic respiratory failure mostly secondary to his occupational exposure to coal dust." Claimant's Exhibit 16.

administrative law judge further found that the tuberculosis screening of May 14, 2014 and clinical laboratory reports of May 8, 2012 and August 29, 2014 were "relevant to claimant's medical history, in that they tend to show that he does not suffer from tuberculosis, histoplasmosis, or sarcoidosis; however, standing alone, they do not establish or disprove the existence of complicated pneumoconiosis." Decision and Order at 10; Claimant's Exhibits 12, 13, 17. Lastly, the administrative law judge determined that claimant's treatment notes, while relevant to claimant's medical history, were lacking because the doctors did not provide reasoned bases for their opinions. Decision and Order at 10; Claimant's Exhibit 16; Employer's Exhibits 4, 5. The administrative law judge therefore determined that the treatment records did not support or refute the existence of complicated pneumoconiosis. Decision and Order at 10.

Employer asserts that the administrative law judge erred by "ignoring" the probative value of claimant's treatment records. Specifically, employer argues that the administrative law judge erred in "dismissing" the treatment x-ray and CT scan evidence because the doctors did not use the ILO classification system and their qualifications are not of record. Employer's Brief at 11-12. Contrary to employer's contention, the administrative law judge found that the digital x-ray evidence was in equipoise, and permissibly determined that the CT scan evidence was not entitled to significant weight, in part, because no party proffered evidence showing their medical acceptability and relevance, as required under Section 718.107(b).[12] Decision and Order at 8-10; *see Harris v. Old Ben Coal Co.*, 23 BLR 1-98, 1-112 (2006) (en banc) (McGranery & Hall, JJ., concurring and dissenting), *aff'd on recon.*, 24 BLR 1-13, 1-16 (2007) (en banc) (McGranery & Hall, JJ., concurring and dissenting); *Webber v. Peabody Coal Co.*, 23 BLR 1-123, 1-133 (2006) (en banc) (Boggs, J., concurring), *aff'd on recon.*, 24 BLR 1-1, 1-7-8 (2007) (en banc). Moreover, although the administrative law judge acknowledged that claimant's treatment records contained multiple x-rays that did not indicate findings of complicated pneumoconiosis, she permissibly declined to assign them significant weight because, with the exception of Dr. Miller, who read a 2007 x-ray as showing "no

[12] As set forth above, with respect to the digital x-ray, the administrative law judge permissibly found, based on the equal number of positive and negative readings by equally qualified readers, that the x-ray was inconclusive as to the existence of complicated pneumoconiosis. *Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 281, 18 BLR 2A-1, 2A-12 (1994); Decision and Order at 9. With respect to the computed tomography scans, the administrative law judge also found that the radiologists' credentials are not in the record, and that neither radiologist denied the presence of complicated pneumoconiosis or discussed how the findings would correlate with x-ray findings. Decision and Order at 9; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 536, 21 BLR 2-323, 2-335, 2-341 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275 (4th Cir. 1997).

radiographic evidence of acute disease," the record does not contain the qualifications of the interpreting physicians.[13] Decision and Order at 10 n.11; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 536, 21 BLR 2-323, 2-335, 2-341 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275 (4th Cir. 1997). We affirm, therefore, the administrative law judge's determination that the treatment record evidence neither established nor refuted the presence of complicated pneumoconiosis. Decision and Order 9-10.

Regarding the medical opinion evidence, Dr. Forehand opined that claimant has coal workers' pneumoconiosis,[14] whereas Drs. Zaldivar and Castle opined that claimant

---

[13] Employer is correct that the ILO classification standards do not apply to x-rays obtained in connection with a miner's hospitalization or medical treatment. *See* 20 C.F.R. §718.101(b); *J.V.S.* [*Stowers*]*v. Arch of W. Va./Apogee Coal Co.*, 24 BLR 1-78, 1-89 (2008). However, the administrative law judge permissibly found that the x-ray interpretations in the treatment notes, which, with the exception of a 2007 x-ray read by Dr. Miller, are by physicians whose qualifications are unknown, were "of limited use" to support or refute the existence of complicated pneumoconiosis. *See Hicks*, 138 F.3d at 536, 21 BLR at 2-335, 2-341; *Akers*, 131 F.3d at 441, 21 BLR at 2-275; *Stowers*, 24 BLR at 1-89; *Marra v. Consolidation Coal Co.*, 7 BLR 1-216, 1-218-19 (1984) (the significance of narrative x-ray readings that make no mention of pneumoconiosis is an issue to be resolved by the administrative law judge, in the exercise of his or her discretion as fact-finder); Decision and Order at 10. Because the administrative law judge provided a valid rationale for discounting the x-ray readings of physicians whose qualifications are not in the record, the administrative law judge's reference to the ILO classification standards is harmless. *See Kozele v. Rochester & Pittsburg Coal Co.*, 6 BLR 1-378 (1983); *see also Larioni*, 6 BLR at 1-1278. Further, the administrative law judge credited Dr. Miller's interpretation of the May 2, 2012 x-ray as positive for complicated pneumoconiosis. Decision and Order at 8. Thus, employer has not explained how Dr. Miller's earlier interpretation of a 2007 x-ray as showing "no radiographic evidence of acute disease" undermines the administrative law judge's finding that Dr. Miller's later x-ray interpretation supports the existence of complicated pneumoconiosis. *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (holding that the appellant must explain how the "error to which [it] points could have made any difference"); *Adkins v. Director, OWCP*, 958 F.2d 49, 51-52, 16 BLR 2-61, 2-64-65 (4th Cir. 1992); Employer's Exhibit 4.

[14] Dr. Forehand examined claimant on behalf of the Department of Labor on December 28, 2011, and considered claimant's exposure history and the results of a chest x-ray and objective testing. Dr. Forehand diagnosed coal workers' pneumoconiosis due to coal dust exposure. He noted a "vague density in the left upper lobe" and indicated that a pulmonary mass or malignancy should be ruled out. Director's Exhibit 11. Dr.

does not have pneumoconiosis, and that the abnormalities seen on claimant's x-rays represent usual interstitial pneumonitis, interstitial pulmonary fibrosis, or idiopathic pulmonary disease. The administrative law judge observed that, although Dr. Forehand did not explicitly diagnose complicated pneumoconiosis in his medical report, he clearly indicated on the ILO classification form that the x-ray, upon which his opinion was based, was positive for complicated pneumoconiosis, Category A, and stated in his medical report that the x-ray opacities were attributable to pneumoconiosis arising out of coal mine dust exposure. Decision and Order at 7, 12; Director's Exhibits 11, 31, 32. Thus, the administrative law judge found that Dr. Forehand's opinion "was tantamount to a finding of complicated pneumoconiosis." Decision and Order at 12. The administrative law judge concluded that Dr. Forehand's "reasoned discussion of the epidemiology" of interstitial lung disease "refutes the suggestion that the large opacit[y] represent[s] some other 'idiopathic' process," and that, "on balance, his opinion supports a finding of complicated pneumoconiosis." *Id*. The administrative law judge also considered the opinions of Drs. Zaldivar[15] and Castle,[16] that claimant does not have

---

Forehand reviewed additional medical evidence, including the x-ray interpretations and medical opinions of Drs. Castle, Zaldivar, and Meyer, and stated that it did not change his opinion that the appearance of the abnormalities seen on claimant's x-ray was consistent with coal workers' pneumoconiosis, and did not reflect radiographic abnormalities of some non-coal mine dust-related disease process. Director's Exhibits 31, 32, 33. Further, Dr. Forehand emphasized that the course of claimant's lung disease is completely incompatible with idiopathic pulmonary fibrosis. Director's Exhibit 32. Dr. Forehand explained that "usual interstitial pneumonia is synonymous with interstitial lung disease, of which coal workers' pneumoconiosis is one, and does not connote a single entity diagnosis or exclude coal workers' pneumoconiosis." *Id*.

[15] Dr. Zaldivar examined claimant on May 2, 2012, and reviewed claimant's medical records. He opined that there is no clear evidence of coal workers' pneumoconiosis or legal pneumoconiosis, and that claimant suffers from pulmonary fibrosis unrelated to his occupation. Employer's Exhibit 1. After reviewing additional medical documents, Dr. Zaldivar provided a report dated October 30, 2014, in which he stated that it did not change his opinion that claimant does not have pneumoconiosis, but suffers from pulmonary fibrosis, "the leading cause of which is idiopathic pulmonary fibrosis." Employer's Exhibit 9. While recognizing that pneumoconiosis can be a progressive disease, Dr. Zaldivar opined that since claimant stopped working in the mines in 1998, something would have been seen on claimant's x-ray by 2007 if he had any dust in the lungs that was causing a reaction, "but the radiographs were normal then." *Id*.

[16] Dr. Castle examined claimant on November 7, 2012, and considered claimant's medical history, occupational history, and the results of objective testing. He also

pneumoconiosis, but instead has pulmonary fibrosis unrelated to his coal dust exposure. *Id*. at 11-12. The administrative law judge discredited the opinions of Drs. Zaldivar and Castle as inconsistent with the regulations, which recognize pneumoconiosis as "a latent and progressive disease which may first become detectable only after the cessation of coal mine dust exposure." Decision and Order at 12, *citing* 20 C.F.R. §718.201(c).

Employer asserts that the administrative law judge erroneously discounted the opinions of Drs. Zaldivar and Castle by "ignoring" their pulmonary expertise, while crediting the opinion of Dr. Forehand, who, employer argues, did not diagnose complicated pneumoconiosis. Employer's Brief at 11, 13-21. Contrary to employer's argument, the administrative law judge did not ignore the pulmonary expertise of Drs. Zaldivar and Castle but, rather, permissibly found that Drs. Forehand, Zaldivar, and Castle were equally qualified to render an opinion based on their pulmonary expertise and experience.[17] Decision and Order at 10 n.13; *see Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76. The administrative law judge gave less weight to the opinions of Drs. Zaldivar and Castle because the doctors excluded a diagnosis of coal workers' pneumoconiosis, in part, because claimant had not been exposed to coal dust since 1998 and the radiographic images of his lungs were still normal in 2007. Decision and Order at 12; Employer's Exhibits 1, 2, 8, 9. In so doing, the administrative law judge permissibly found that the view held by Drs. Zaldivar and Castle is inconsistent with the regulations, recognizing that pneumoconiosis is a latent

---

reviewed the reports from Drs. Forehand and Zaldivar. He opined that there is insufficient objective evidence to diagnose pneumoconiosis and that claimant's disabling condition is a result of his usual interstitial pneumonitis or interstitial pulmonary fibrosis. Employer's Exhibit 2. After reviewing additional medical data, Dr. Castle provided an opinion dated October 30, 2014, stating that claimant did not have medical pneumoconiosis, legal pneumoconiosis, or complicated pneumoconiosis. Employer's Exhibit 10. Noting that claimant did not have coal dust exposure since 1998 and that claimant's x-rays from 2007 and 2009 were interpreted as "essentially normal," Dr. Castle opined that "it would be impossible for coal workers' pneumoconiosis to begin in 2009 and develop the extensive findings noted in 2011." Employer's Exhibit 10 at 8.

[17] The administrative law judge noted that Drs. Zaldivar and Castle are Board-certified in internal medicine with a subspecialty in pulmonary diseases, but Dr. Forehand is not. Nonetheless, the administrative law judge determined that "Dr. Forehand is well-qualified to express opinions on the medical issues in this case as he has been an examining physician with the Department of Labor black lung program for many years and has had a long and distinguished career treating miners for respiratory problems." Decision and Order at 10 n.13.

and progressive disease which may first become detectable only after the cessation of coal dust exposure.[18] Decision and Order at 12, *citing* 20 C.F.R. §718.201(c); *see* 65 Fed. Reg. 79,920, 79,970 (Dec. 20, 2000). We also see no error in the administrative law judge's finding that Dr. Forehand's opinion, "on balance, supports a finding of complicated pneumoconiosis," as his diagnosis of "pneumoconiosis" in his medical report did not suggest that he was questioning his x-ray diagnosis of the existence of large opacities, Category A, consistent with complicated pneumoconiosis. Decision and Order at 12; Director's Exhibit 11. For the foregoing reasons, the administrative law judge permissibly found that the medical opinion evidence supported a finding of complicated pneumoconiosis at Section 718.304(c). *See Hicks*, 138 F.3d at 536, 21 BLR at 2-341; *Akers*, 131 F.3d at 440-41, 21 BLR at 2-275-76. Further, based on all the relevant evidence weighed together, the administrative law judge properly found that claimant established the existence of complicated pneumoconiosis at Section 718.304. *See Westmoreland Coal Co. v. Cox*, 602 F.3d 276, 284-5, 24 BLR 2-269, 2-282-4 (4th Cir. 2010); *Perry v. Mynu Coals, Inc*., 469 F.3d 360, 365-6, 23 BLR 2-374, 2-385-6 (4th Cir. 2006); *Gray v. SLC Coal Co.*, 176 F.3d 382, 389, 21 BLR 2-615, 2-628 (6th Cir. 1999).

In conclusion, we affirm the administrative law judge's determination that claimant established the existence of complicated pneumoconiosis, pursuant to 20 C.F.R. §718.304. We also affirm the administrative law judge's unchallenged finding that claimant's complicated pneumoconiosis arose out of coal mine employment, pursuant to 20 C.F.R. §718.203(b). *See Skrack v. Island Creek Coal Co.*, 6 BLR at 1-710, 1-711 (1983); Decision and Order at 13. We, therefore, affirm the award of benefits.

---

[18] Moreover, as the Director asserts, the record does not conclusively establish that claimant's lungs were "normal" in 2007. Director's Brief at 7. While the 2007 x-rays, which are contained in the treatment records, were interpreted as reflecting no *acute* disease or changes, they do not address whether chronic changes are present. Employer's Exhibit 4.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

I concur:

GREG J. BUZZARD
Administrative Appeals Judge

GILLIGAN, Administrative Appeals Judge, concurring:

I concur in the majority's decision to affirm the award of benefits. However, I write separately to address the administrative law judge's weighing of the December 28, 2011 x-ray interpretations which I find plainly contrary to Fourth Circuit precedent. As the Fourth Circuit has held, "[t]o conduct appellate review, we must be able to identify that the [administrative law judge] 'has analyzed all evidence and has sufficiently explained the weight he has given to [the] exhibits.'" *Sea "B" Mining Co. v. Addison*, F.3d , 2016 WL 4056396 at *9 (4th Cir. July 29, 2016), *quoting Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 439, 21 BLR 2-269, 2-272 (4th Cir. 1997). When weighing the December 28, 2011 x-ray, the administrative law judge stated: "As two of three B-readers found the x-ray to have parenchymal opacities consistent with complicated pneumoconiosis, although the two most qualified readers disagreed, I find the December 28, 2011 x-ray supports the existence of opacities consistent with complicated pneumoconiosis." Decision and Order at 7. Having acknowledged that the two best qualified physicians disagreed as to the presence of complicated pneumoconiosis, the administrative law judge failed to explain why a lesser qualified

physician's interpretation of the x-ray was entitled to any weight. But, this error is harmless as the administrative law judge permissibly found an additional x-ray, dated May 2, 2012, to be positive; therefore, the administrative law judge's conclusion that the x-ray evidence established the existence of complicated pneumoconiosis does not rest on the December 28, 2011 x-ray.

RYAN GILLIGAN
Administrative Appeals Judge