

U.S. Department of Labor

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



BRB Nos. 21-0039 BLA and
21-0040 BLA

PHYLLIS J. MOORE)
(o/b/o and Widow of DELMUS K. MOORE))

Claimant-Respondent)

v.)

CLINCHFIELD COAL COMPANY)

and)

PITTSTON COMPANY)

Employer/Carrier-)
Petitioners)

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

Party-in-Interest)

DATE ISSUED: 09/24/2021

DECISION and ORDER

Appeals of the Decision and Order Awarding Benefits of Jonathan C. Calianos, Administrative Law Judge, United States Department of Labor.

Kendra Prince (Penn, Stuart & Eskridge), Abingdon, Virginia, for Employer.

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

PER CURIAM:

Employer appeals Administrative Law Judge (ALJ) Jonathan C. Calianos's Decision and Order Awarding Benefits (2018-BLA-05047, 2018-BLA-06297) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's subsequent claim filed on November 20, 2015,¹ and a survivor's claim filed on June 25, 2018.²

The ALJ credited the Miner with 29.3 years of underground coal mine employment and accepted the parties' stipulation that he had simple pneumoconiosis. Decision and Order at 4, 6-7. He then made alternative findings in the Miner's claim. The ALJ found the new evidence in the Miner's claim established the Miner had complicated pneumoconiosis, thereby enabling Claimant to establish a change in an applicable condition of entitlement and invoke 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; Decision and Order at 10-22. He further found all the evidence established the Miner had complicated pneumoconiosis and found it arose out of coal mine employment. 20 C.F.R. §718.203(b); Decision and Order at 27-42. Alternatively, the ALJ found the Miner had a totally disabling respiratory or pulmonary impairment, 20 C.F.R. §718.204(b)(2), and Claimant thus invoked the Section 411(c)(4) presumption that the Miner was totally disabled due to pneumoconiosis.³ 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305; Decision and Order at 43-45. The ALJ further found Employer failed to rebut the Section 411(c)(4) presumption. Decision and Order at 46-49. Therefore, the ALJ awarded benefits in the Miner's claim based on the Section 411(c)(3) and 411(c)(4) presumptions. *Id.* at 42, 49. Additionally, based on the award of benefits in the Miner's claim, he found Claimant automatically entitled to survivor's benefits under Section 422(l)

¹ The Miner filed six previous claims, all of which were denied, and those denials are final. Director's Exhibits 1-3, 5, 6, 40. An ALJ denied the Miner's most recent prior claim because he failed to establish complicated pneumoconiosis or otherwise establish his total disability was due to pneumoconiosis. Director's Exhibit 40. Upon review of the Miner's appeal, the Benefits Review Board affirmed the denial of benefits. *Moore v. Clinchfield Coal Co.*, BRB No. 13-0525 BLA (June 5, 2014) (unpub.).

² The Miner died on May 18, 2018. Claimant, the Miner's widow, is pursuing the Miner's claim on his behalf as well as her own survivor's claim. Decision and Order at 2 n.1.

³ Section 411(c)(4) provides a rebuttable presumption that a miner's total disability was due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

of the Act.⁴ Decision and Order at 49-50; 30 U.S.C. §932(l) (2018).

On appeal, Employer argues the ALJ erred in finding the Miner had complicated pneumoconiosis. Neither Claimant nor the Director, Office of Workers' Compensation Programs, has filed a response brief.

The 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.⁵ 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359, 362 (1965).

Miner's Claim

Employer contends the ALJ erred in his analysis of the evidence in finding the Miner had complicated pneumoconiosis. Employer's Brief at 3-14. We need not resolve these issues because Employer does not challenge the ALJ's alternate finding that Claimant established the Miner was entitled to benefits "even without a finding of complicated pneumoconiosis." Decision and Order at 49.

The ALJ found the Miner had 29.3 years of underground coal mine employment and was totally disabled. He therefore found Claimant invoked the Section 411(c)(4) presumption that the Miner was totally disabled due to pneumoconiosis. The ALJ further found Employer did not rebut the presumption because it failed to establish the Miner did not have pneumoconiosis, or that "no part of [his] respiratory or pulmonary total disability was caused by pneumoconiosis as defined in [20 C.F.R.] § 718.201." 20 C.F.R. §718.305(d)(1)(i), (ii); *see Hobet Mining, LLC v. Epling*, 783 F.3d 498, 504-06 (4th Cir. 2015); *W. Va. CWP Fund v. Bender*, 782 F.3d 129, 143-45 (4th Cir. 2015). Because Employer does not challenge any of these findings, we affirm them. *See* 20 C.F.R. §802.211(b); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). We therefore

⁴ Section 422(l) of the Act provides that the survivor of a miner who was eligible to receive benefits at the time of the miner's death is automatically entitled to survivor's benefits, without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l) (2018).

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the Miner performed his coal mine employment in Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 43, 46.

affirm the award of benefits in the Miner's claim based on the ALJ's unchallenged determination that Employer failed to rebut the Section 411(c)(4) presumption.

Survivor's Claim

Because we have affirmed the award of benefits in the Miner's claim and Employer raises no specific challenge to the survivor's claim, we affirm the ALJ's determination that Claimant is derivatively entitled to survivor's benefits. 30 U.S.C. §932(l); *see Thorne v. Eastover Mining Co.*, 25 BLR 1-121, 1-126 (2013).

Accordingly, we affirm the ALJ's Decision and Order Awarding Benefits in the Miner's and Survivor's claims.

SO ORDERED.

JUDITH S. BOGGS, Chief
Administrative Appeals Judge

DANIEL T. GRESH
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge