

BRB No. 12-0396 BLA

NANCY VAUGHN )  
(o/b/o GLENN VAUGHN, deceased) )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
 GREEN RIVER COAL COMPANY )  
 )  
 and )  
 ) DATE ISSUED: 04/25/2013  
 EMPLOYERS INSURANCE OF WAUSAU )  
 )  
 Employer/Carrier- )  
 Respondents )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal of the Decision and Order of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Thomas E. Springer, III (Springer Law Firm, PLLC), Madisonville, Kentucky, for claimant.

William A. Lyons (Lewis and Lewis Law Offices), Hazard, Kentucky, for employer/carrier.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order (07-BLA-5791) of Administrative Law Judge Alice M. Craft denying benefits on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act). This case involves a subsequent claim filed on August 14, 2006.<sup>2</sup>

Congress enacted amendments to the Act, which apply to claims filed after January 1, 2005 that were pending on or after March 23, 2010. Relevant to this living miner's claim, Congress reinstated Section 411(c)(4) of the Act, which provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556(a), 124 Stat. 119, 260 (2010). If the presumption is invoked, the burden of proof shifts to employer to disprove the existence of pneumoconiosis, or to establish that the miner's pulmonary or respiratory impairment "did not arise out of, or in connection with," coal mine employment. 30 U.S.C. §921(c)(4).

Applying amended Section 411(c)(4), the administrative law judge credited the miner with thirty-seven years of underground coal mine employment,<sup>3</sup> and found that the evidence established the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2).<sup>4</sup> The administrative law judge, therefore, found that the miner invoked the rebuttable Section 411(c)(4) presumption. However, the administrative law judge found that employer rebutted the presumption, by establishing that the miner did not have pneumoconiosis. Accordingly, the administrative law judge denied benefits.

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<sup>1</sup> The miner died on September 13, 2007. Director's Exhibit 30. Claimant, the miner's surviving spouse, is pursuing the miner's claim.

<sup>2</sup> The miner's previous claim, filed on September 12, 1994, was finally denied because he failed to establish any element of entitlement. Director's Exhibit 1.

<sup>3</sup> The miner's last coal mine employment was in Illinois. Director's Exhibit 4; Hearing Transcript at 18-19. Accordingly, the Board will apply the law of the United States Court of Appeals for the Seventh Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

<sup>4</sup> Having found that the new evidence established the existence of a totally disabling respiratory impairment pursuant to 20 C.F.R. §718.204(b)(2), the administrative law judge found that the miner established a change in an applicable condition of entitlement. 20 C.F.R. §725.309(d); Decision and Order at 17.

On appeal, claimant contends that the administrative law judge erred in finding that employer established rebuttal of the Section 411(c)(4) presumption. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

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. 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 (1965).

### **Rebuttal of the Section 411(c)(4) Presumption**

Because the miner invoked the presumption that he was totally disabled due to pneumoconiosis pursuant to amended Section 411(c)(4), the administrative law judge properly noted that the burden of proof shifted to employer to establish rebuttal. Decision and Order at 18. The administrative law judge accurately noted that employer could rebut the presumption by disproving the existence of both clinical and legal pneumoconiosis.<sup>5</sup> 30 U.S.C. §921(c)(4).

### **Clinical Pneumoconiosis**

Claimant argues that the administrative law judge erred in finding that employer disproved the existence of clinical pneumoconiosis. In considering whether employer disproved the existence of clinical pneumoconiosis, the administrative law judge initially considered the x-ray evidence. The record contains interpretations of four x-rays taken on November 8, 1994, August 29, 2006, October 11, 2006, and July 16, 2007. The administrative law judge accurately noted that all of these x-rays were uniformly interpreted as negative for pneumoconiosis.<sup>6</sup> Decision and Order at 19. Because it is

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<sup>5</sup> "Clinical pneumoconiosis" consists of "those diseases recognized by the medical community as pneumoconioses, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). Legal pneumoconiosis "includes any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2).

<sup>6</sup> Dr. Traugher, a B reader, and Dr. Sargent, a B reader and Board-certified radiologist, interpreted the November 8, 1994 x-ray as negative for pneumoconiosis. Director's Exhibit 1. Dr. Westerfield, a B reader, and Dr. Wheeler, a B reader and Board-certified radiologist, interpreted the August 29, 2006 x-ray as negative for pneumoconiosis. Director's Exhibits 14, 30. Dr. Powell, a B reader, interpreted the

based on substantial evidence, we affirm the administrative law judge's finding that the x-ray evidence established that the miner did not suffer from clinical pneumoconiosis. 20 C.F.R. §718.202(a)(1).

The administrative law judge also considered whether the medical opinion evidence disproved the existence of clinical pneumoconiosis. The administrative law judge considered the medical opinions of Drs. Amundson, Simpao, Powell, and Broudy. While Drs. Amundson and Simpao diagnosed clinical pneumoconiosis, Director's Exhibit 14; Claimant's Exhibit 1, Drs. Powell and Broudy opined that the miner did not suffer from the disease. Director's Exhibits 16, 30; Employer's Exhibit 1. In weighing the conflicting medical opinion evidence, the administrative law judge permissibly credited the opinions of Drs. Powell and Broudy, that the miner did not suffer from clinical pneumoconiosis, over the contrary opinions of Drs. Amundson and Simpao, because he found that they were better reasoned and consistent with the x-ray evidence. *See Consolidation Coal Co. v. Director, OWCP [Stein]*, 294 F.3d 885, 895, 22 BLR 2-409, 2-426 (7th Cir. 2002); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); *Lucostic v. U.S. Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 19. Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence established that the miner did not suffer from clinical pneumoconiosis. 20 C.F.R. §718.202(a)(4).

### **Legal Pneumoconiosis**

Claimant also argues that the administrative law judge erred in finding that the medical opinion evidence established that the miner did not suffer from legal pneumoconiosis. Although Dr. Powell diagnosed a moderate restrictive ventilatory defect, the doctor attributed the defect to cardiomegaly and a paralyzed right hemidiaphragm. Director's Exhibit 16. Dr. Broudy also opined that the miner suffered from a restrictive defect, attributing it to obesity, chronic elevation of the right hemidiaphragm, and chronic congestive heart failure. Director's Exhibit 30; Employer's Exhibit 1. Dr. Broudy opined that the miner had no lung disease or impairment related to his coal mine dust exposure. *Id.* The administrative law judge permissibly found that the opinions of Drs. Powell and Broudy, regarding the etiology of the miner's restrictive defect, were well reasoned. *See Stalcup v. Peabody Coal Co.*, 477 F.3d 482, 484, 22 BLR 2-35, 2-37 (7th Cir. 2007); *Clark*, 12 BLR at 1-155; *Lucostic*, 8 BLR at 1-47; Decision and Order at 19. The administrative law judge also found that the opinions of Drs. Powell and Broudy were entitled to greater weight than the opinions of Drs.

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October 11, 2006 x-ray as negative for pneumoconiosis. Director's Exhibit 16. Dr. Broudy, a B reader, interpreted the July 16, 2007 x-ray as negative for pneumoconiosis. Director's Exhibit 30.

Amundson and Simpao,<sup>7</sup> based upon their superior qualifications.<sup>8</sup> *Amax Coal Co. v. Burns*, 855 F.2d 499 (7th Cir. 1988); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); Decision and Order at 19. Because it is based upon substantial evidence, we affirm the administrative law judge's finding that the opinions of Drs. Powell and Broudy are well-reasoned and documented, and sufficient to carry employer's burden to demonstrate that the miner did not have legal pneumoconiosis. *Burns*, 855 F.2d at 502.

In light of our affirmance of the administrative law judge's findings that employer disproved the existence of clinical and legal pneumoconiosis, we affirm the administrative law judge's finding that employer rebutted the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4).

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<sup>7</sup> There is no medical opinion evidence attributing the miner's lung disease to his coal mine dust exposure. Although Dr. Amundson indicated, on a 2008 questionnaire, that the miner suffered from clinical pneumoconiosis, the doctor did not diagnose legal pneumoconiosis. Claimant's Exhibit 1. Further, although Dr. Amundson treated the miner for obstructive lung disease, as the administrative law judge noted, the doctor failed to provide any support for his diagnosis. Decision and Order at 19. While Dr. Simpao indicated that the miner's pulmonary function study revealed restrictive and obstructive airway disease, as the administrative law judge noted, no other physician interpreted the miner's pulmonary function studies as revealing obstructive lung disease. *Id.*; Director's Exhibit 14. Moreover, Dr. Simpao did not address whether the miner's restrictive and obstructive lung disease was due to his coal mine dust exposure.

<sup>8</sup> The administrative law judge noted that while Drs. Powell and Broudy are Board-certified in Internal Medicine and Pulmonary Disease, Drs. Amundson and Simpao are not Board-certified in any medical specialty. Decision and Order at 11, 14-15, 19.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge