



BRB No. 17-0265 BLA

LORENE LEWIS COOTS)	
(Widow of BOBBY REX COOTS))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS’)	DATE ISSUED: 12/11/2017
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Richard M. Clark, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Asher, Kentucky, for claimant.

Rita Roppolo (Nicholas C. Geale, Acting Solicitor of Labor; Maia S. Fisher, 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 ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order Denying Benefits (2014-BLA-5914) of Administrative Law Judge Richard M. Clark (the administrative law judge) rendered on a

¹ Claimant is the widow of the miner, who died on December 24, 2010. Director’s Exhibit 12. The miner filed claims for benefits on November 13, 1995, January 31, 2002,

claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a survivor's claim filed on November 25, 2013.

The administrative law judge credited the miner with twenty-four years of underground coal mine employment based on the parties' stipulation, and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. Based on his determination that the evidence did not establish that the miner had a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2), the administrative law judge found that claimant could not invoke the rebuttable presumption of death due to pneumoconiosis pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).² Considering whether claimant could establish entitlement to benefits without the aid of the presumption, the administrative law judge accepted the concession of the Director, Office of Workers' Compensation Programs (the Director), that the miner had pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203, but found that she did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b).³ Accordingly, the administrative law judge denied benefits.

and April 1, 2008. All of the miner's claims were denied because the miner failed to establish total respiratory disability. Miner's Claims 1, 2, 3; *see Coots v. Leeco, Inc.*, BRB No. 10-0603 BLA (June 28, 2011) (unpub.). Because the miner was not "determined to be eligible to receive benefits" at the time of his death, claimant is not entitled to automatic receipt of survivor's benefits under Section 422(l) of the Act, 30 U.S.C. §932(l) (2012).

² Relevant to this claim, Section 411(c)(4) provides a rebuttable presumption that the miner's death was due to pneumoconiosis if claimant establishes that the miner worked fifteen or more years in underground coal mine employment, or in surface coal mine employment in conditions substantially similar to those in an underground mine, and suffered from a totally disabling respiratory or pulmonary impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

³ In a survivor's claim, where no statutory presumption applies, claimant must establish by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.205; *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 817, 17 BLR 2-135, 2-140 (6th Cir. 1993); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87 (1993). Failure to establish any one of the requisite elements precludes an award of benefits. *See Trumbo*, 17 BLR at 1-87-88.

On appeal, claimant argues that the administrative law judge erred in finding that the miner was not totally disabled and, therefore, that claimant could not invoke the Section 411(c)(4) presumption. Claimant also contends that the administrative law judge erred in finding that the miner's death was not due to pneumoconiosis.⁴ The Director responds in support of the denial of benefits.

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.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 (1965).

Invocation of the Section 411(c)(4) Presumption – Total Disability

Claimant challenges the administrative law judge's weighing of the medical opinion evidence and his finding that the evidence overall does not establish that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2).

Because there are no qualifying pulmonary function studies or qualifying arterial blood gas studies,⁶ the administrative law judge properly found that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (ii). Decision and Order at 4, 8; Director's Exhibits 19, 20; Claimant's Exhibits 1, 2. Furthermore, as there is no evidence in the record indicating that the miner suffered from cor pulmonale with right-

⁴ Claimant's counsel cites to 20 C.F.R. §718.205(c) as the applicable regulation for addressing whether claimant established death due to pneumoconiosis. Claimant's Brief at 4. The Department of Labor revised the regulation at 20 C.F.R. §718.205, effective October 25, 2013. The language previously found at 20 C.F.R. §718.205(c) is now set forth in 20 C.F.R. §718.205(b). 78 Fed. Reg. 59,102, 59,114 (Sept. 25, 2013).

⁵ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as the miner was last employed in the coal mining industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 1.

⁶ A "qualifying" pulmonary function study or blood gas study yields values that are equal to or less than the applicable table values listed in Appendices B and C of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

sided congestive heart failure, the administrative law judge properly found that total disability was not established at 20 C.F.R. §718.204(b)(2)(iii).⁷ Decision and Order at 8.

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge found that the miner's work as an electrician and as a shuttle car operator and a miner operator required heavy manual labor. Decision and Order at 2, 9. The administrative law judge then considered the medical opinions of Drs. Myers, Powell, Baker, and Rasmussen. Decision and Order at 5; Director's Exhibits 19, 20; Claimant's Exhibits 1, 2.

Dr. Myers examined the miner on May 5, 1995, and diagnosed a mild restrictive impairment. He opined that the miner was able to perform his usual coal mine employment, but recommended that he not have further exposure to coal mine dust. Director's Exhibit 20. Similarly, on March 15, 1996, Dr. Powell examined the miner and diagnosed a mild restrictive ventilatory defect and mild arterial hypoxemia. He concluded that the miner was able to do his usual coal mine work in a dust-free environment. Director's Exhibit 19. Dr. Baker examined the miner on February 8, 2003, and determined that the miner's pulmonary function study results were within normal limits and his blood gas study results indicated mild resting hypoxemia. Claimant's Exhibit 2. Lastly, on May 28, 2008, Dr. Rasmussen examined the miner and diagnosed a slight restrictive ventilatory impairment and a moderate impairment in oxygen transfer after exercise. He opined that the miner retained the pulmonary capacity to do moderate and heavy labor. Claimant's Exhibit 1.

The administrative law judge noted that Dr. Baker made no clear findings regarding the miner's pulmonary capacity to perform his coal mine employment, while Drs. Myers, Powell, and Rasmussen all concluded that the miner was able to perform his usual coal mine work. Decision and Order at 9. The administrative law judge therefore found that the medical opinion evidence does not support a finding of total respiratory or pulmonary disability at 20 C.F.R. §718.204(b)(2)(iv). *Id.*

Weighing all of the relevant evidence together, the administrative law judge determined that claimant failed to establish total disability under 20 C.F.R. §718.204(b)(2), and therefore could not invoke the Section 411(c)(4) presumption. *See* 20 C.F.R. §718.305(b), (c)(2).

Claimant contends that the administrative law judge erred, arguing that both Dr. Baker and Dr. Rasmussen provided well-reasoned opinions diagnosing the miner with coal workers' pneumoconiosis and a pulmonary impairment. Claimant asserts that it can

⁷ We affirm, as unchallenged on appeal, the administrative law judge's findings that the evidence is insufficient to establish total disability at 20 C.F.R. §718.204(b)(2)(i)-(iii). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

be “reasonabl[y] concluded” that the miner was suffering from a disabling pulmonary condition at the time of his death. Claimant’s Brief at 2-4.

Contrary to claimant’s assertions, the medical opinion evidence does not establish total disability. A miner is considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents or prevented him from performing his usual coal mine work. *See* 20 C.F.R. §718.204(b)(1). As each physician correctly identified the miner’s usual coal mine employment and none of the physicians opined that the miner was unable to return to that employment or perform comparable work, we affirm the administrative law judge’s finding that claimant failed to establish total disability. *See Peabody Coal Co. v. Groves*, 277 F.3d 829, 22 BLR 2-320 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); *Budash v. Bethlehem Mines Corp.*, 9 BLR 1-48 (1986) (en banc), *aff’d*, 9 BLR 1-104 (1986) (en banc); Decision and Order at 9; Director’s Exhibits 19, 20; Claimant’s Exhibits 1, 2.

Because the evidence does not establish that the miner had a totally disabling respiratory or pulmonary impairment, we affirm the administrative law judge’s finding that claimant failed to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv). Based on our affirmance of this finding, we further affirm the administrative law judge’s determination that claimant could not invoke the Section 411(c)(4) presumption that the miner’s death was due to pneumoconiosis. *See* 20 C.F.R. §718.305(b), (c)(2).

Death Due to Pneumoconiosis – 20 C.F.R. §718.205

In a survivor’s claim, where the claimant fails to invoke the Section 411(c)(4) presumption and the miner did not have complicated pneumoconiosis, claimant must establish that pneumoconiosis was a substantially contributing cause of the miner’s death. *See* 20 C.F.R. §718.205(b)(1), (2). Pneumoconiosis is a substantially contributing cause of a miner’s death if it hastens the miner’s death. 20 C.F.R. §718.205(b)(6). Pneumoconiosis may be found to have hastened the miner’s death, however, only if it does so “through a specifically defined process that reduces the miner’s life by an estimable time.” *Eastover Mining Co. v. Williams*, 338 F.3d 501, 518, 22 BLR 2-625, 2-655 (6th Cir. 2003). A physician who opines that pneumoconiosis hastened death through a “specifically defined process” must explain how and why it did so. *Conley v. Nat’l Mines Corp.*, 595 F.3d 297, 303-04, 24 BLR 2-257, 2-266 (6th Cir. 2010).

Claimant alleges that because the miner had pneumoconiosis and a respiratory impairment, the administrative law judge erred in finding that pneumoconiosis did not cause, contribute to, or hasten the miner’s death. Claimant further asserts that the administrative law judge “may have selectively analyzed” the medical evidence. Claimant’s Brief at 4-5. We disagree.

In finding that claimant did not prove that pneumoconiosis contributed to the miner's death, the administrative law judge considered the death certificate, the medical opinion evidence, and the miner's hospitalization records. Decision and Order at 5-6, 9-10; Director's Exhibits 12, 16-20; Claimant's Exhibits 1, 2. The death certificate listed the immediate cause of death as "multi-system organ failure" due to or as a consequence of "end-stage liver disease." Decision and Order at 6; Director's Exhibit 12. Dr. Caffrey, the only doctor to address the issue, reviewed the death certificate and concluded that coal dust exposure did not cause, contribute to, or hasten the miner's death. Decision and Order at 6; Director's Exhibit 16. Lastly, the administrative law judge noted that while there were no records of the miner's last hospitalization from the University of Cincinnati Hospital, the records from St. Joseph Hospital indicated that the miner was transferred to the University of Cincinnati Hospital for hepatic failure, sepsis, shock, kidney failure, and pneumonia. Decision and Order at 6; Director's Exhibit 17 at 25. Finding no evidence in the record to support a finding that the miner's death was due to pneumoconiosis, the administrative law judge properly found that claimant failed to establish death due to pneumoconiosis. 20 C.F.R. §718.205(b); *see Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005).

Furthermore, we reject claimant's assertion that the administrative law judge "may have" selectively analyzed the medical evidence, as claimant does not identify any specific errors in support of her assertion. Claimant's Brief at 4-5; *see Cox v. Benefits Review Board*, 791 F.2d 445, 446-47, 9 BLR 2-46, 2-47-48 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987). We thus affirm the administrative law judge's findings that claimant did not establish that the miner's death was due to pneumoconiosis and that claimant is not entitled to benefits, as those findings are supported by substantial evidence.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge