BRB No. 12-0254 BLA

VIOLA BEALMEAR (Widow of JAMES L. BEALMEAR) Claimant-Petitioner v. ISLAND CREEK COAL COMPANY Employer-Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 02/07/2013 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Brent Yonts, Greenville, Kentucky, for claimant.

Allison B. Moreman (Jackson Kelly, PLLC), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant[1] appeals the Decision and Order Denying Benefits (08-BLA-5028) of Administrative Law Judge Joseph E. Kane rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp.

[1]Claimant is the widow of the miner, who died on September 5, 2006. Director's Exhibit 11. The miner's lifetime claims for benefits were finally denied. Director's Exhibit 1.

2011) (the Act). This case involves a survivor's claim filed on November 20, 2006. Director's Exhibit 2.

The administrative law judge credited the miner with eleven years of coal mine employment,[2] and found that he had a fifty pack-year smoking history. Because the evidence did not establish the existence of complicated pneumoconiosis, the administrative law judge initially found that claimant was not entitled to the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). Additionally, the administrative law judge found that, because the miner had fewer than fifteen years of coal mine employment, claimant could not invoke the rebuttable presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).[3] The administrative law judge next found that the x-ray and autopsy evidence established that the miner had simple clinical pneumoconiosis[4] pursuant to 20 C.F.R. §718.202(a)(1), (2), but that the medical opinion evidence did not establish that he had legal pneumoconiosis[5] pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge determined that claimant was entitled to the presumption that the miner's clinical pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(b). The administrative law judge, however, found that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

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[2] The miner's last coal mine employment was in Kentucky. Director's Exhibit 3. Accordingly, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

[3] The administrative law judge correctly found that, since the miner was not determined to be eligible to receive benefits at the time of his death, the automatic entitlement provision of Section 422(*l*) of the Act, 30 U.S.C. §932(*l*), does not apply to this case.

[4] Clinical pneumoconiosis is a disease "characterized by [the] permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

[5] 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). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

On appeal, claimant contends that the administrative law judge erred in finding that the autopsy evidence did not establish that the miner suffered from complicated pneumoconiosis, and in determining that the medical opinion evidence did not establish that the miner had legal pneumoconiosis. Claimant also argues that the administrative law judge erred in finding that the evidence did not establish that the miner's death was due to pneumoconiosis. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief. Claimant has filed a reply brief, reiterating her contentions on appeal.[6]

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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In this case, to establish entitlement to survivor's benefits, claimant must establish 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, 718.202, 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co*., 17 BLR 1-85, 1-87 (1993). A miner's death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Conley v. Nat'l Mines Corp.*, 595 F.3d 297, 302, 24 BLR 2-255, 2-264 (6th Cir. 2010); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 518, 22 BLR 2-625, 2-655 (6th Cir. 2003).

Complicated Pneumoconiosis

Claimant initially argues that the administrative law judge erred in finding that the miner did not have complicated pneumoconiosis and, therefore, erred in finding that claimant did not invoke the irrebuttable presumption of death due to pneumoconiosis set out at 20 C.F.R. §718.304.[7] Claimant specifically contends that the administrative law

[6] We affirm, as unchallenged on appeal, the administrative law judge's findings that the miner had eleven years of coal mine employment, and a smoking history of fifty pack-years, and that claimant did not invoke the presumption at 30 U.S.C. §921(c)(4). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

[7] Under Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), and its implementing

judge erred in finding that the autopsy evidence did not establish complicated pneumoconiosis pursuant to 20 C.F.R. §718.304(b).

The administrative law judge considered the autopsy reports of Drs. LeVaughn, Caffrey, and Couch. Dr. LeVaughn, the autopsy prosector, described "diffusely scattered black pigmented macules up to 1 cm. Some of the macules are fibrotic, the largest is 1.2 cm." Claimant's Exhibit 6 at 6. Dr. LeVaughn diagnosed the miner with "scarring and black pigment deposition consistent with Coal Workers[']s Pneumoconiosis." Claimant's Exhibit 6 at 1. Dr. Caffrey reviewed the miner's autopsy report and lung tissues slides, and opined that the slides were positive for "mild" simple pneumoconiosis, and he indicated that he did not detect any lesions measuring up to one centimeter in size. Employer's Exhibit 2. Dr. Crouch reviewed the autopsy report and slides, and found "mild coal dust deposition but not definitive coal workers' pneumoconiosis," noting that "the histologic changes do not indicate a significant pulmonary reaction to coal dust." Employer's Exhibit 1. In a supplemental report, Dr. Crouch stated that, "Although I found a few small macule-like lesions, [they] were very small and considered insufficient for a definitive diagnosis of coal workers' pneumoconiosis. If these changes were interpreted as secondary to coal dust . . . they would indicate no more than very mild simple coal workers' pneumoconiosis." Employer's Exhibit 13.

Based on the reports of Drs. LeVaughn and Caffrey, the administrative law judge found that the preponderance of the autopsy evidence established the existence of simple clinical pneumoconiosis. The administrative law judge further found, however, that Dr. LeVaughn's description of a macule measuring 1.2 centimeters in diameter did not support a finding of complicated pneumoconiosis, because Dr. LeVaughn did not characterize the macule as a "massive lesion," or opine that the lesion would produce an opacity greater than one centimeter if viewed on an x-ray.[8] Decision and Order at 24.

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regulation, 20 C.F.R. §718.304, there is an irrebuttable presumption that a miner's death was due to pneumoconiosis if the miner suffered from a chronic dust disease of the lung which (a) when diagnosed by x-ray, yields an opacity 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; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to reveal a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. The administrative law judge must consider all of the relevant evidence in determining whether invocation of the irrebuttable presumption has been established. *Gray v. SLC Coal Co.*, 176 F.3d 382, 389-90, 21 BLR 2-615, 2-628-29 (6th Cir. 1999).

[8] The record contains no x-ray readings that are positive for large opacities.

Claimant contends that the administrative law judge erred because Dr. LeVaughn's autopsy "finding [of] . . . fibrotic macules up to 1.2 centimeters," "clearly establishe[s] complicated pneumoconiosis." Claimant's Brief at 3, 7-8. Contrary to claimant's contention, "[t]he one-centimeter standard applicable to x-rays . . . does not apply to autopsy evidence." *Gray v. SLC Coal Co.*, 176 F.3d 382, 390, 21 BLR 2-615, 2-629 (6th Cir. 1999). Here, as the administrative law judge found, Dr. LeVaughn did not indicate that the macules constituted "massive lesions," or that they would appear as opacities of greater than one centimeter on an x-ray. *See Gray*, 176 F.3d at 390, 21 BLR at 2-628-29; Claimant's Exhibit 6. Because substantial evidence supports the administrative law judge's finding that the autopsy evidence did not establish the existence of complicated pneumoconiosis, the finding is affirmed. We, therefore, affirm the administrative law judge's determination that claimant did not invoke the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.304.

Legal Pneumoconiosis

Claimant contends that, because Drs. LeVaughn, Caffrey, and Couch diagnosed the miner with emphysema, the administrative law judge erred in failing to find that the autopsy evidence established the existence of legal pneumoconiosis. Claimant's Brief at 6, 8. Claimant's contention lacks merit. Only emphysema that is significantly related to, or substantially aggravated by, coal mine dust exposure constitutes legal pneumoconiosis. *See* 20 C.F.R. §718.201(b); *Williams*, 338 F.3d at 516, 22 BLR at 2-651. Review of the record reflects that Drs. LeVaughn, Caffrey, and Couch did not link the miner's emphysema to his coal mine dust exposure. Claimant's Exhibit 6; Employer's Exhibits 1, 2, 13. Therefore, the administrative law judge did not err in his analysis of the autopsy evidence under 20 C.F.R. §718.202(a)(2).

Claimant argues further that the administrative law judge erred in determining that the medical opinion evidence did not establish that the miner had legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge considered the medical opinions of Drs. Rasmussen, Houser, Hippensteel, and Jarboe. Dr. Rasmussen reviewed the medical evidence of record and opined that the miner had a "chronic lung disease, which was the consequence of smoking, possibly [due] to spray painting, and also to coal mine dust exposure, and . . . coal mine dust exposure represented at least a minimal contributing cause of his fatal chronic lung disease." Claimant's Exhibit 5 at 5. Dr. Houser, the miner's treating physician, diagnosed the miner with chronic obstructive pulmonary disease (COPD) due to both smoking and coal mine dust exposure. Claimant's Exhibit 7 at 36, 38. In contrast, Drs. Hippensteel and Jarboe reviewed the medical evidence of record and concluded that, although the miner had clinical pneumoconiosis, he did not have legal pneumoconiosis, but suffered from emphysema that was due to smoking. Employer's Exhibits 9-12.

The administrative law judge found that Dr. Rasmussen's opinion was not well-reasoned, because Dr. Rasmussen cited medical literature showing a relationship between coal dust inhalation and COPD, but did not adequately explain how "those studies supported his diagnosis of legal pneumoconiosis in the [m]iner's specific case." Decision and Order at 26. The administrative law judge further found that Dr. Houser did not "give specific reasons why he felt that the [m]iner's COPD was contributed to by coal dust. He appears to be saying that because the [m]iner had COPD, and worked in the coal mines, he must have had legal pneumoconiosis." Decision and Order at 27. Finding that Dr. Houser failed to demonstrate how the medical literature he cited supported his diagnosis of legal pneumoconiosis in the miner's specific case, the administrative law judge discounted Dr. Houser's opinion. *Id*. In contrast, the administrative law judge found that Drs. Hippensteel and Jarboe provided well-reasoned opinions that the miner did not have legal pneumoconiosis.[9]

Claimant contends that the administrative law judge erred in discounting the opinions of Drs. Rasmussen and Houser. Specifically, claimant argues that Drs. Rasmussen and Houser are well-qualified and gave adequate reasons for their opinions, and she contends that the administrative law judge ignored Dr. Houser's deposition testimony. Claimant's Brief at 3, 9-13, 15. Claimant's allegations of error lack merit.

The determination of whether a medical opinion is adequately reasoned is committed to the discretion of the administrative law judge. *See Director, OWCP v. Rowe*, 710 F. 2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). Contrary to claimant's contention, substantial evidence supports the administrative law judge's permissible determination that Dr. Rasmussen's opinion was based more on generalities than on the specifics of the miner's case.[10] *See Consolidation Coal Co. v. Director, OWCP* [*Beeler*], 521 F.3d 723, 726, 24 BLR 2-97, 2-103-04 (7th Cir. 2008); *Knizer v. Bethlehem Mines*

[9] In particular, the administrative law judge found that the opinions of Drs. Hippensteel and Jarboe were supported by the autopsy evidence, which, they explained, did not show coal dust deposition in the areas around the miner's emphysema. Employer's Exhibit 10 at 15; Employer's Exhibit 11 at 31.

[10] The administrative law judge noted that Dr. Rasmussen based his opinion, that both cigarette smoking and coal mine dust contributed to the miner's chronic lung disease, on medical literature supportive of the proposition that both cigarette smoking and coal mine dust are known to cause chronic obstructive pulmonary disease. Decision and Order at 26; Claimant's Exhibit 5 at 4-6. Dr. Rasmussen, did not explain how that medical literature related to the specific findings in the miner's case, in opining that coal mine dust exposure was at least "a minimal contributing cause" of the miner's chronic lung disease. Claimant's Exhibit 5 at 6.

Corp., 8 BLR 1-5, 1-7 (1985). Further, contrary to claimant's characterization of the administrative law judge's decision, the administrative law judge specifically considered Dr. Houser's deposition testimony. Decision and Order at 9-11, 27. The administrative law judge acted within his discretion in determining that Dr. Houser did not adequately explain the specific reasons for his opinion that coal mine dust contributed to the miner's COPD. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103. Further, substantial evidence supports the administrative law judge's discretionary determination that Drs. Hippensteel and Jarboe rendered well-reasoned opinions that the miner's emphysema was not related to eleven years of coal mine dust exposure, but was due to fifty years of smoking. *See Rowe*, 710 F.2d at 255, 5 BLR at 2-103; *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989). The Board is not empowered to reweigh the evidence. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). We, therefore, affirm, as supported by substantial evidence, the administrative law judge's determination that the medical opinion evidence did not establish that the miner had legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

Death Due to Pneumoconiosis

Finally, claimant challenges the administrative law judge's finding that she did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Claimant contends that the opinions of Drs. Rasmussen and Houser, that COPD due, in part, to coal mine dust exposure hastened the miner's death, are sufficient to establish that the miner's death was due to pneumoconiosis, and the administrative law judge did not provide valid reasons for discounting their opinions. Claimant's Brief at 15-18. Claimant's contention lacks merit. As the administrative law judge found, claimant did not establish that the miner's COPD constituted legal pneumoconiosis, pursuant to 20 C.F.R. §§718.201, 718.202(a)(4), and thus did not establish that legal pneumoconiosis hastened the miner's death. Decision and Order at 30-31, 33. Moreover, no physician of record opined that the miner's clinical pneumoconiosis caused or contributed to his death. Director's Exhibit 11; Claimant's Exhibits 5-7; Employer's Exhibits 9-12. Substantial evidence supports the administrative law judge's finding that claimant did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). That finding is, therefore, affirmed. Because claimant did not establish that the miner's death was due to pneumoconiosis, a necessary element of entitlement in a survivor's claim under 20 C.F.R. Part 718, we affirm the denial of benefits. *See Trumbo*, 17 BLR at 1-87.

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