

BRB No. 07-0374 BLA

C.B.)	
(Widow of J.B.))	
)	
Claimant-Respondent)	
)	
v.)	
)	
U.S. STEEL MINING COMPANY LLC)	
)	DATE ISSUED: 01/18/2008
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 Awarding Benefits of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

Patrick K. Nakamura (Nakamura, Quinn & Walls LLP), Birmingham, Alabama, for claimant.

James N. Nolan (Walston Wells & Birchall, LLP), Birmingham, Alabama, for employer.

Before: SMITH, McGRANERY, and HALL, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order (04-BLA-6543) of Administrative Law Judge Alice M. Craft awarding benefits on a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The miner died on May 24, 2003, and claimant filed her application for survivor's benefits on June 30, 2003. Director's Exhibits 3, 10. In a decision dated December 22, 2006, the administrative law judge

credited the miner with thirty-six years of coal mine employment¹ and found that the evidence established the existence of simple pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), (4). The administrative law judge further found that the evidence established that the miner had complicated pneumoconiosis, and concluded that as a consequence, claimant was entitled to the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §§718.304, 718.205(c)(3), and, therefore claimant was entitled to benefits. Finally, the administrative law judge determined that, assuming that the miner had had only simple pneumoconiosis, claimant had also established entitlement to benefits under the independent criteria set forth at 20 C.F.R. §718.205(c)(2), (5), because the evidence also established that pneumoconiosis was a substantially contributing cause of the miner's death. Accordingly, the administrative law judge awarded benefits.

On appeal, employer contends that the administrative law judge erred in her analysis of the medical opinion evidence in finding that pneumoconiosis hastened the miner's death, and, therefore, that it was a substantially contributing cause of the miner's death pursuant to 20 C.F.R. §718.205(c)(2), (5). Employer does not challenge the administrative law judge's additional finding that claimant also established entitlement to benefits through invocation of the irrebuttable presumption that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.304. In fact, nowhere in its brief does employer acknowledge that the administrative law judge found complicated pneumoconiosis established pursuant to 20 C.F.R. §718.304, and, as a result, that claimant had proved the miner's death was due to pneumoconiosis. Decision and Order at 28. Claimant responds in support of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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 order to establish entitlement to survivor's benefits pursuant to 20 C.F.R. Part 718, claimant must demonstrate 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. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading*

¹ The record indicates that the miner's coal mine employment occurred in Alabama. Director's Exhibit 5. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Eleventh Circuit. *See Slatick v. Director, OWCP*, 698 F.2d 433, 1 BLR 2-49 (11th Cir. 1983); *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

Anthracite Co., 17 BLR 1-85, 1-87-88 (1993). For survivors' claims filed on or after January 1, 1982, 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)-(4). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. See 20 C.F.R. §718.205(c)(5); *Pittsburg & Midway Coal Mining Co. v. Director, OWCP [Cornelius]*, 508 F.3d 975 (11th Cir. 2007); *Bradberry v. Director, OWCP*, 117 F.3d 1361, 21 BLR 2-166 (11th Cir. 1997).

Under Section 411(c)(3) of the Act and its implementing regulation, 20 C.F.R. §718.304, there is an irrebuttable presumption that a miner's death was due to pneumoconiosis if (a) an x-ray of the miner's lungs shows a large opacity greater than one centimeter in diameter, that would be classified as Category A, B, or C; (b) a biopsy or autopsy shows massive lesions in the lung; or (c) when diagnosed by other means, the condition could reasonably be expected to reveal a result equivalent to (a) or (b). 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304(a)-(c); *Cornelius*, 508 F.3d at 977. The introduction of legally sufficient evidence of complicated pneumoconiosis does not automatically qualify a claimant for the irrebuttable presumption found at 20 C.F.R. §718.304. The administrative law judge must examine all the evidence on this issue, *i.e.*, evidence of simple and complicated pneumoconiosis, as well as evidence of no pneumoconiosis, resolve the conflicts, and make a finding of fact. See *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991) (*en banc*); *Truitt v. North American Coal Corp.*, 2 BLR 1-199 (1979), *aff'd sub nom. Director, OWCP v. North American Coal Corp.*, 626 F.2d 1137, 2 BLR 2-45 (3d Cir. 1980).

Considering the relevant evidence of record, the administrative law judge found that Dr. Carcelen's opinion² diagnosing complicated pneumoconiosis due to coal dust

² In a deposition taken on August 19, 2004, Dr. Carcelen testified that his diagnosis of complicated pneumoconiosis was based on the presence of a large, dominant mass in the miner's right upper lobe, measuring approximately four centimeters on the most recent computerized tomography (CT) scan, which was shown on biopsy to be anthracosilicosis. Claimant's Exhibit 10 at 14-15. The physician further testified that he was using the term "mass" to describe an extremely large opacity, representative of progressive massive fibrosis. Claimant's Exhibit 10 at 15. Dr. Carcelen acknowledged that the miner had a history of tuberculosis, but the doctor explained that multiple tests, including the most recent bronchoscopy, had confirmed a diagnosis of anthracosilicosis, and had ruled out the presence of both active tuberculosis and cancer. Claimant's Exhibit 10 at 15, 18-19.

exposure, the x-ray evidence of large masses or progressive massive fibrosis in the miner's right upper lobe,³ and the computerized tomography scan evidence of progressive massive fibrosis,⁴ established the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. Claimant's Exhibit 10; Employer's Exhibits 3, 4; Decision and Order at 26-28. It is within the purview of the administrative law judge to weigh the evidence, draw inferences and determine credibility, and, in this case, substantial evidence supports the administrative law judge's finding that the medical evidence established complicated pneumoconiosis. *See Cornelius*, 508 F.3d at 987-989; *U.S. Steel Mining Company, LLC v. Director, OWCP*, 386 F.3d 977, 992 (11th Cir. 2004); *See Jordan v. Benefits Review Board*, 876 F.2d 1455, 1460, 12 BLR 2-371, 2-375 (11th Cir. 1989); *Taylor v. Ala By-Products Corp.*, 862 F.2d 1529, 1531 n.1, 12 BLR 2-110, 2-112 n.1 (11th Cir. 1989). Moreover, as noted above, the administrative law judge's finding of complicated pneumoconiosis is unchallenged on appeal. *See Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). We, therefore, affirm the administrative law judge's finding that claimant established the existence of complicated pneumoconiosis at 20 C.F.R. §718.304.

The United States Court of Appeals for the Eleventh Circuit has held that "once a claimant has established that the requirements of §411(c)(3) are met, the irrebuttable presumption operates to establish conclusively that the miner died 'due to' pneumoconiosis, and the claimant's obligation to prove causation is therefore satisfied." *Cornelius*, 508 F.2d at 988-989; *see Gruller v. Bethenergy Mines, Inc.*, 16 BLR 1-3, 1-5 (1991). Therefore, we further affirm the administrative law judge's conclusion that claimant established entitlement to benefits through invocation of the irrebuttable

³ The administrative law judge noted, correctly, that the record contains numerous x-rays that were read by physicians as consistent with conglomerate masses or progressive massive fibrosis, measuring up to six by eight centimeters. Employer's Exhibits 3, 4; Decision and Order at 26.

⁴ The administrative law judge found that the record contains the results of eight CT scans, taken between 1993 and 2003 in conjunction with the miner's medical treatment, that track the development of multiple masses in the miner's right upper lung. Employer's Exhibits 3, 4; Decision and Order at 10. A January 3, 1996 CT scan report described the lung mass as "most consistent with progressive massive fibrosis secondary to pneumoconiosis," and an April 21, 1997 CT scan report described the mass as a "conglomerate mass in a patient with pneumoconiosis." Employer's Exhibits 3, 4; Decision and Order at 10, 27. Moreover, all of the CT scans were read as showing a large mass in the miner's right upper lobe, and none of the readers diagnosed the absence of the condition, or attributed the masses to another specific cause.

presumption that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §§718.304, 718.205(c)(3). *See* 30 U.S.C §921(c)(3); 20 C.F.R. §§718.304; 718.205(c)(3); *Cornelius*, 508 F.3d at 988-989; *Gruller*, 16 BLR at 1-5. Consequently, we need not address employer's challenge to the administrative law judge's alternative finding that the evidence also established that the miner's death was hastened by simple pneumoconiosis, pursuant to 20 C.F.R. 718.205(c)(2), (5).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge