



BRB No. 17-0269 BLA

MILDRED R. RAINWATER )  
(Widow of FRANKLIN B. RAINWATER) )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 )  
JARCOAL MINING, LLC )  
 )  
 and )  
 )  
AMERICAN BUSINESS & MERCANTILE ) DATE ISSUED: 03/13/2018  
INSURANCE MUTUAL )  
 )  
 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 Denying Benefits of John P. Sellers, III,  
Administrative Law Judge, United States Department of Labor.

Frank K. Newman (Cole, Cole, Anderson & Newman, PSC), Barbourville,  
Kentucky, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for  
employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order Denying Benefits (2014-BLA-5648) of Administrative Law Judge John P. Sellers, III, rendered on a 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 June 6, 2013.

Applying Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012),<sup>2</sup> the administrative law judge credited the miner with 19.75 years of underground coal mine employment, but found that the evidence failed to establish that the miner had a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Therefore, the administrative law judge found that claimant was unable to invoke the Section 411(c)(4) rebuttable presumption of death due to pneumoconiosis. Considering whether claimant could establish entitlement without the aid of the presumption, the administrative law judge found that, assuming the existence of pneumoconiosis, the evidence failed to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205.<sup>3</sup> Accordingly, the administrative law judge denied benefits.

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<sup>1</sup> Claimant is the widow of the miner, who died on July 17, 2012. Director's Exhibit 15. The miner filed three claims during his lifetime, all of which were finally denied. Living Miner Closed Claims 1, 2. Accordingly, claimant cannot establish entitlement to benefits under Section 422(l) of the Act, 30 U.S.C. §932(l) (2012), which provides that a survivor of a miner determined to be eligible to receive benefits at the time of his death is automatically entitled to receive survivor's benefits without having to establish that the miner's death was due to pneumoconiosis.

<sup>2</sup> Section 411(c)(4) of the Act provides a rebuttable presumption that a 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 at the time of his death. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

<sup>3</sup> The administrative law judge stated "[e]ven assuming for the sake of argument that [the miner] had both clinical and/or legal pneumoconiosis, the record lacks competence [sic] evidence that either of these forms of the disease was a substantially contributing factor to his death." Decision and Order at 22.

On appeal, claimant generally argues that the administrative law judge erred in failing to invoke the Section 411(c)(4) presumption of death due to pneumoconiosis and further erred in finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205. Employer/carrier responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, did not file a response brief in this appeal.<sup>4</sup>

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.<sup>5</sup> 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).

Initially, claimant asserts that in finding that claimant did not invoke the Section 411(c)(4) presumption, the administrative law judge failed to consider the lay testimony claimant and her son provided regarding limitations the miner exhibited in performing his usual coal mine employment duties and daily tasks. Claimant's Brief at 9-10. The regulations provide that, in certain cases, lay evidence may be used to establish total disability "if no medical or other relevant evidence exists which addresses the miner's pulmonary or respiratory condition." 20 C.F.R. §718.204(d)(3). Here, because the record contains pulmonary function studies, blood gas studies, and medical opinions that address the miner's pulmonary or respiratory condition, the administrative law judge could not have found that the lay testimony alone establishes total disability. *Id.* Thus, any error by the administrative law judge in not specifically considering the lay testimony relevant to total disability is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984). Moreover, claimant has not raised any allegations of error regarding the

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<sup>4</sup> We affirm, as unchallenged on appeal, the administrative law judge's finding that the miner had 19.75 years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 3. We further affirm, as unchallenged, the administrative law judge's finding that there is no evidence of complicated pneumoconiosis, and therefore claimant did not invoke the irrebuttable presumption of death due to pneumoconiosis under Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304; *Skrack*, 6 BLR at 1-711; Decision and Order at 22.

<sup>5</sup> The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as claimant was last employed in the coal mining industry in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 13-14, 20, 31, 34.

administrative law judge's determinations that the medical evidence as a whole is insufficient to establish total respiratory or pulmonary disability under 20 C.F.R. §718.204(b)(2). *See* 20 C.F.R. §§802.211(b), 802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983); Decision and Order at 20-21. Accordingly, we affirm the administrative law judge's findings and further affirm the administrative law judge's determination that claimant did not invoke the rebuttable presumption of death due to pneumoconiosis at Section 411(c)(4). *See* 20 C.F.R. §718.305; Decision and Order at 21.

For survivor's claims where the Section 411(c)(3) and 411(c)(4) presumptions are not invoked, claimant must establish by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment, and that the miner's death was due to pneumoconiosis. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). Death is considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause of the miner's death. 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); *see Conley v. Nat'l Mines Corp.*, 595 F.3d 297, 303-304, 24 BLR 2-257, 2-266-267 (6th Cir. 2010). Failure to establish any one of these elements of entitlement precludes an award of benefits in the survivor's claim. *See Trumbo*, 17 BLR at 1-87-88.

In this case, the administrative law judge assumed the existence of pneumoconiosis and turned to weighing the evidence relevant to the cause of the miner's death. The administrative law judge considered the miner's death certificate, signed by Dr. Reddy, as well as the opinions of Drs. Baker, Rosenberg, and Tuteur. Decision and Order at 22. Dr. Reddy listed acute respiratory failure, aspiration, stroke, and atrial fibrillation as the immediate causes of the miner's death on the miner's death certificate, and listed congestive heart failure, pneumoconiosis, and chronic obstructive pulmonary disease as significant contributing causes. Director's Exhibit 15. Dr. Baker reviewed the miner's records and opined that pneumoconiosis contributed in a "substantial fashion" to the miner's death, but also stated that he could not "categorically blame [the miner's] death on his pneumoconiosis as it was simple at best and his pulmonary function and arterial blood gases were not severe enough to strongly account for his death." Claimant's Exhibit 6 at 3, 4. By contrast, Drs. Rosenberg<sup>6</sup> and Tuteur<sup>7</sup> opined that there

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<sup>6</sup> Dr. Rosenberg diagnosed left-sided heart failure and opined that the miner's stroke during his final hospitalization complicated his course. Employer's Exhibit 1 at 6. Dr. Rosenberg stated that the miner's "death in relationship to his heart failure causing respiratory failure and pneumonia with a stroke bore no relationship in whole or in part to past coal mine dust exposure." *Id.*

is no medical data demonstrating that pneumoconiosis contributed to the miner's death. Director's Exhibit 23; Employer's Exhibits 1, 11, 12. The administrative law judge discredited the opinions of Drs. Reddy and Baker as "unexplained" and "speculative and equivocal," respectively, in contrast to the "well-reasoned and supported" opinions of Drs. Rosenberg and Tuteur, in finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205. Decision and Order at 22-23.

Claimant contends that the administrative law judge erred in failing to credit the death certificate completed by Dr. Reddy. We disagree. The administrative law judge noted that the death certificate listed "black lung" disease as a significant condition contributing to death, but found that Dr. Reddy "did not provide any explanation" for listing pneumoconiosis as a significant factor in the miner's death. Decision and Order at 22. Therefore, the administrative law judge permissibly found Dr. Reddy's opinion insufficient to establish that the miner's death was due to pneumoconiosis, despite his status as claimant's treating physician.<sup>8</sup> See *Eastover Mining Co. v. Williams*, 338 F.3d 501, 518, 22 BLR 2-625, 2-655 (6th Cir. 2003) ("the opinions of treating physicians get the deference they deserve based on their power to persuade."); Decision and Order at 22-23.

Claimant also argues that the administrative law judge erred in finding Dr. Baker's opinion insufficient to establish that pneumoconiosis caused, contributed to, or hastened

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<sup>7</sup> Dr. Tuteur opined that the miner "died with and because of a multiplicity of disease processes including hypertension and its sequelae, small vessel coronary obstruction resulting in myocardial ischemia and dysrhythmias, as well as eventually congestive heart failure due to diastolic and systolic left ventricular failure, renal functional insufficiency, and stroke." Director's Exhibit 23 at 9.

<sup>8</sup> Claimant also contends that the administrative law judge erred in stating that Dr. Reddy's treatment records "do not include any notations that [the miner] had black lung disease." Claimant's Brief at 5, *quoting* Decision and Order at 22. Claimant cites two letters sent by Dr. Reddy to Dr. Chavez-Ramones, which note a medical history of black lung. Claimant's Brief at 5, *citing* Director's Exhibit 17 at 27, 29. However, because the administrative law judge provided a valid alternate basis for discrediting Dr. Reddy's opinion, we hold that any error in the administrative law judge's additional statement regarding Dr. Reddy's opinion is harmless. See *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983).

the miner's death.<sup>9</sup> The United States Court of Appeals for the Sixth Circuit has held that pneumoconiosis may be found to have hastened the miner's death only if it does so "through a specifically defined process that reduces the miner's life by an estimable time." *Williams*, 338 F.3d at 518, 22 BLR at 2-655. A physician who opines that pneumoconiosis hastened death through a "specifically defined process" must explain how and why it did so. *Conley*, 595 F.3d at 303-04, 24 BLR at 2-266.

The administrative law judge correctly observed that, during his deposition, Dr. Baker admitted that it was "difficult to say one hundred percent for sure" whether pneumoconiosis contributed to the miner's death, but that "it did to some extent, a very small extent perhaps." Decision and Order at 22, *citing* Employer's Exhibit 14 at 31. In answering the question whether the miner's death was related to or aggravated by pneumoconiosis, Dr. Baker replied that the miner had obstructive airway disease, caused at least in part by his pneumoconiosis. Decision and Order at 22, *citing* Employer's Exhibit 14 at 37. Thus, Dr. Baker stated, the miner's lungs could not function properly, which "could add" to his cardiovascular disease and cause him to have difficulty surviving. *Id.* Dr. Baker also stated that "it's very difficult to say" that pneumoconiosis contributed to or hastened the miner's death, and that "[i]t wasn't a great deal, but it was some because of the mild obstructive airway disease and any time one organ system doesn't function to its optimal capability I think that can lead to worsening of a patient's general medical condition or in this case death." Decision and Order at 22, *citing* Employer's Exhibit 14 at 38-39.

Based on the foregoing, the administrative law judge permissibly determined that Dr. Baker's opinion is too "speculative and equivocal" to demonstrate that pneumoconiosis hastened the miner's death through a specifically defined process and for an estimable time. Decision and Order at 23; *see Williams*, 338 F.3d at 518, 22 BLR at 2-

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<sup>9</sup> Claimant's brief contains a heading that states "[t]he administrative law judge failed to properly consider the medical opinions and reports of Drs. Baker, Myers, Clark and Marino," but claimant's brief only contains discussion and argument pertaining to the administrative law judge's treatment of Dr. Baker's opinion. *See* Claimant's Brief at 6. It is unclear from the record whether the reports of Drs. Myers, Clark, and Marino were admitted into evidence and thus should have been considered by the administrative law judge. As none of these physicians offered an opinion on whether the miner's death was due to pneumoconiosis, however, claimant has not explained how the administrative law judge's error, if any, in failing to consider these opinions undermines his assessment of the evidence at 20 C.F.R. §718.205(c). *See Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (holding that the appellant must explain how the "error to which [it] points could have made any difference"); *see* Claimant's Brief at 6-8.

655; *Conley*, 595 F.3d at 303-04, 24 BLR at 2-266. Thus, we reject claimant's assertion that the administrative law judge erred in finding that Dr. Baker's opinion is insufficient to establish that the miner's death was due to pneumoconiosis.

It is the province of the administrative law judge to assess the evidence of record and determine if a medical opinion is sufficiently documented and reasoned to satisfy a party's burden of proof. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002); *Wolf Creek Collieries v. Director, OWCP [Stephens]*, 298 F.3d 511, 22 BLR 2-495 (6th Cir. 2002); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc). The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988); *Worley v. Blue Diamond Coal Co.*,

12 BLR 1-20 (1988). As claimant raises no additional allegations of error with respect to the weight accorded the evidence relevant to death causation, we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205, as supported by substantial evidence.<sup>10</sup>

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

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

RYAN GILLIGAN  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

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<sup>10</sup> Claimant's failure to establish death due to pneumoconiosis precludes an award of benefits. 20 C.F.R §718.205. Therefore, we need not address claimant's contentions of error regarding the administrative law judge's consideration of the evidence relevant to the existence of pneumoconiosis or the "impact" of the miner's 19.75 years of coal mine employment. Claimant's Brief at 9-10; *see Larioni*, 6 BLR at 1-1278.