



BRB No. 24-0254 BLA

TINA URCONIS  
(o/b/o SHELIA HENSLEY, Widow of  
DAVID HENSLEY)

Claimant-Petitioner

v.

DIRECTOR, OFFICE OF WORKERS'  
COMPENSATION PROGRAMS, UNITED  
STATES DEPARTMENT OF LABOR

Respondent

**NOT-PUBLISHED**

DATE ISSUED: 04/11/2025

**DECISION and ORDER**

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

Jonathan C. Masters (Masters Law Office PLLC), South Williamson,  
Kentucky, for Claimant.

William M. Bush, Acting Counsel for Administrative Appeals (Jonathan  
Snare, Deputy Solicitor of Labor; Jennifer Feldman Jones, Acting Associate  
Solicitor), Washington, D.C., for the Acting Director, Office of Workers'  
Compensation Programs, United States Department of Labor.

Before: GRESH, Chief Administrative Appeals Judge, ROLFE and JONES,  
Administrative Appeals Judges.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Sean M. Ramaley's Decision  
and Order Denying Benefits (2022-BLA-05901) rendered on a survivor's claim filed on

November 5, 2021,<sup>1</sup> pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).<sup>2</sup>

The ALJ credited the Miner with 34.26 years of coal mine employment and found that he worked “at least” fifteen years underground. However, he found Claimant did not establish the Miner had a totally disabling respiratory or pulmonary impairment at the time of his death and therefore could not invoke the rebuttable presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act.<sup>3</sup> 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.204(b)(2). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established the Miner had clinical pneumoconiosis arising out of coal mine employment, but not legal pneumoconiosis,<sup>4</sup> and that she did not establish the Miner’s death was due to clinical pneumoconiosis. 20 C.F.R. §§718.202(a), 718.203, 718.205. Thus, he denied benefits.

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<sup>1</sup> Claimant is the daughter of the Miner and his widow, who died on September 6, 2021, and October 8, 2022, respectively. Director’s Exhibit 10; Claimant’s Motion to Substitute Parties. She is pursuing the survivor’s claim on her mother’s behalf. Claimant’s Motion to Substitute Parties.

<sup>2</sup> The Miner filed six claims, five of which were denied and one of which was withdrawn. Director’s Exhibits 1, 3. A withdrawn claim is considered “not to have been filed.” 20 C.F.R. §725.306(b). Because the Miner did not establish entitlement to benefits during his lifetime, Claimant is not eligible for derivative survivor’s benefits under Section 422(l) of the Act, 30 U.S.C. §932(l) (2018).

<sup>3</sup> Section 411(c)(4) of the Act provides a rebuttable presumption that a miner’s death was due to pneumoconiosis if he had at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory or pulmonary impairment at the time of his death. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

<sup>4</sup> 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). The definition includes “any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment.” 20 C.F.R. §718.201(b). 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 tissue to that deposition caused by dust exposure in coal mine employment.” 20 C.F.R. §718.201(a)(1).

On appeal, Claimant argues the ALJ erred in finding the Miner was not totally disabled at the time of his death and that she failed to establish the Miner's death was due to pneumoconiosis.<sup>5</sup> The Acting Director, Office of Workers' Compensation Programs (the Director), responds, urging the Benefits Review Board to affirm the denial of benefits.<sup>6</sup>

The Board's scope of review is defined by statute. We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.<sup>7</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

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

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner "had at the time of his death, a totally disabling respiratory or pulmonary impairment." 20 C.F.R. §718.305(b)(1)(iii). A miner was totally disabled if he had a pulmonary or respiratory impairment which, standing alone, prevented him from performing his usual coal mine work and comparable gainful work. 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The ALJ must weigh all relevant supporting evidence against all relevant contrary evidence. *See Defore v. Ala. By-Products Corp.*, 12 BLR 1-27, 1-28-29 (1988); *Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

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<sup>5</sup> We affirm, as unchallenged on appeal, the ALJ's finding that the Miner had 34.26 years of coal mine employment and that "at least" fifteen years of the Miner's coal mine work was underground. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4-7, 30.

<sup>6</sup> The district director determined there is no responsible operator that can be held liable in this case and the Black Lung Disability Trust Fund would be responsible for the payment of any benefits awarded. Director's Exhibits 14 at 2; 18; Decision and Order at 2 n.1.

<sup>7</sup> The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because the Miner performed his last coal mine employment Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 5.

The ALJ found Claimant did not establish total disability based on any category of evidence.<sup>8</sup> Decision and Order at 15-18. Although Claimant generally alleges the ALJ erred in his analysis of the medical opinions, she does not identify any specific error with respect to the ALJ's weighing of the medical opinions or the ALJ's determination that Claimant failed to establish total disability. Claimant's Brief at 2-3. We therefore affirm the ALJ's finding that Claimant failed to establish the Miner was totally disabled based on the medical opinions and the evidence as a whole. 20 C.F.R. §718.204(b)(2)(iv); *see Cox v. Benefits Review Board*, 791 F.2d 445, 446-47 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983); Decision and Order at 18.

Consequently, we also affirm the ALJ's finding that Claimant failed to invoke the Section 411(c)(4) presumption. Decision and Order at 18.

### **Entitlement Under 20 C.F.R. Part 718**

Without the benefit of the Section 411(c)(3) or Section 411(c)(4) statutory presumptions, Claimant must establish the Miner had pneumoconiosis arising out of coal mine employment and his 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). Failure to establish any one of the requisite elements of entitlement precludes an award of benefits. *See Trumbo*, 17 BLR at 1-87-88.

The ALJ found Claimant established the Miner had clinical pneumoconiosis arising out of his coal mine employment but failed to establish legal pneumoconiosis. 20 C.F.R. §§718.202, 718.203(b); Decision and Order at 18-27. We affirm these findings as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 18-27.

### **Death Due to Pneumoconiosis**

A miner's death will be considered due to pneumoconiosis if pneumoconiosis or complications of pneumoconiosis are the cause of his death or if pneumoconiosis was a substantially contributing cause of his death. 20 C.F.R. §718.205(b)(1), (2). Pneumoconiosis is a "substantially contributing cause" if it hastens the miner's

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<sup>8</sup> We affirm, as unchallenged on appeal, the ALJ's findings that the pulmonary function studies and arterial blood gas studies do not support a finding of total disability and that there is no evidence of complicated pneumoconiosis or cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i)-(iii); *see Skrack*, 6 BLR at 1-711; Decision and Order at 15-16, 19 n.16.

death. 20 C.F.R. §718.205(b)(6); *see Conley v. Nat'l Mines Corp.*, 595 F.3d 297, 302-03 (6th Cir. 2010); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 518 (6th Cir. 2003). The United States Court of Appeals for the Sixth Circuit has explained that pneumoconiosis may be found to have hastened a miner's death 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. 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.

Dr. Somasundaram, the Miner's attending physician during his hospitalization, completed and signed the Miner's death certificate; Dr. Somasundaram listed acute cardiorespiratory failure due to COVID-19 pneumonia as the cause of the Miner's death and listed hypertension, diabetes, and sepsis as significant conditions that contributed to the Miner's death but not the underlying cause. Decision and Order at 11-12; Director's Exhibit 10; Claimant's Exhibit 6. The ALJ found the death certificate entitled to little weight because the record did not include Dr. Somasundaram's qualifications and because the death certificate was inconsistent with the Miner's autopsy report. Decision and Order at 29 (citing *Addison v. Director, OWCP*, 11 BLR 1-68, 1-70 (1988)); Director's Exhibit 10; Claimant's Exhibit 6.

Dr. Bafakih performed the Miner's autopsy on September 8, 2021, and identified simple pneumoconiosis with "anthracosilicosis of bilateral perihilar lymph nodes" and "ephysematous [sic] changes in the upper lobes, bilateral." Director's Exhibit 11. He opined that the Miner's simple pneumoconiosis and work in coal mines contributed to his death. *Id.* The ALJ found the autopsy report supports a finding that pneumoconiosis contributed to the Miner's death but was insufficient to establish that pneumoconiosis was a "substantial factor." Decision and Order at 12, 28-30.

The Miner was hospitalized at Tug Valley ARH Regional Medical Center from August 21, 2021, until his death on September 6, 2021. Claimant's Exhibit 6. His death discharge summary listed thromboembolism of lower extremity artery, respiratory failure, pneumonia due to COVID-19 virus, sepsis, COVID-19, hypoxia, renal failure, and hepatic insufficiency as factors contributing to his death. *Id.* at 132. The ALJ assigned little weight to the Miner's hospitalization records because they do not include any information regarding the "history or impact" of the Miner's pneumoconiosis. Decision and Order at 13, 29.

As Claimant does not challenge the ALJ's credibility findings with respect to the Miner's death certificate, autopsy, and hospitalization records, we affirm them. *See Skrack*, 6 BLR at 1-711; Decision and Order at 29.

Dr. Ammisetty performed a Department of Labor sponsored complete pulmonary evaluation of the Miner in 2016, and later reviewed the Miner's hospitalization records and autopsy report. He opined that the Miner's death was due to COVID pneumonia and that pneumoconiosis hastened the Miner's death. Claimant's Exhibits 3; 8 at 2. The ALJ determined Dr. Ammisetty's opinion was poorly reasoned and documented because he failed to explain whether pneumoconiosis hastened the Miner's death through a "specific process" and erroneously listed August 30, 2021, as the date of the Miner's death. Decision and Order at 29. Thus, the ALJ accorded little weight to Dr. Ammisetty's opinion. *Id.*

Claimant contends the ALJ did not "rationally analyze" Dr. Ammisetty's opinion in finding it insufficient to establish that pneumoconiosis substantially contributed to the miner's death. Claimant's Brief at 4-7. We agree.

Although the ALJ summarily concluded Dr. Ammisetty's opinion fails to satisfy the standard for establishing that the Miner's death was hastened by pneumoconiosis, he did not summarize Dr. Ammisetty's full opinion in his decision or critically analyze it. While the Director sets forth in his response brief aspects of Dr. Ammisetty's opinion that are allegedly insufficient, we must base our review on the ALJ's actual findings, which are lacking. *See* Decision and Order at 9-11, 29; Director's Brief at 2-4. The ALJ did not specifically address what aspects of Dr. Ammisetty's opinion are inadequate or otherwise explain the bases for his conclusions; thus his decision fails to satisfy the Administrative Procedure Act (APA).<sup>9</sup> *See* 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *See "B" Mining Co. v. Addison*, 831 F.3d 244, 252-53, 255-56 (4th Cir. 2016) (ALJ must conduct an appropriate analysis of the evidence to support his conclusion and render necessary credibility findings); *McCune v. Cent. Appalachian Coal Co.*, 6 BLR 1-996, 1-998 (1984) (fact finder's failure to discuss relevant evidence requires remand); *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989); Decision and Order at 9-11, 29.

Additionally, we agree with Claimant that the ALJ may have mischaracterized, in part, Dr. Ammisetty's report as listing the incorrect date of death. Claimant's Brief at 5-6; Decision and Order at 29. Although Dr. Ammisetty described that the Miner died on August, 30, 2021, when summarizing the Miner's final hospitalization, he also stated "[the Miner's] death on 09/06/2021 was due to COVID pneumonia[.]" which is the date of death listed on the Miner's death certificate and in the same final hospitalization records Dr.

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<sup>9</sup> The APA provides that every adjudicatory decision must include "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented . . . ." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a).

Ammisetty reviewed. Claimant's Brief at 5 (quoting Claimant's Exhibit 8 at 2); *see* Claimant's Exhibit 6; Director's Exhibit 10; *see also Tackett v. Director, OWCP*, 7 BLR 1-703, 1-706 (1985) (if the ALJ misconstrues relevant evidence, the case must be remanded for reevaluation of the issue to which the evidence is relevant). The ALJ should address this issue on remand.

Because the ALJ did not fully address all of Dr. Ammisetty's opinion and did not explain his findings as the APA requires, we vacate his determination that Dr. Ammisetty's opinion is insufficient to establish the Miner's death was due to pneumoconiosis. *See Wojtowicz*, 12 BLR at 1-165; Decision and Order at 9-11, 29. Consequently, we vacate

the ALJ's finding that Claimant failed to establish death causation. 20 C.F.R. §718.205; Decision and Order at 29-30.

### **Remand Instructions**

On remand, the ALJ must reconsider whether Dr. Ammisetty's opinion is sufficient to establish the Miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(b); *see Conley*, 595 F.3d at 303-04; *Williams*, 338 F.3d at 518. In analyzing Dr. Ammisetty's opinion, the ALJ should address his credentials, the explanations for his conclusions, the documentation underlying his medical judgments, and the sophistication of, and bases for, his diagnoses. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983).

In reaching his conclusions on remand, the ALJ must critically analyze Dr. Ammisetty's opinion and explain the bases for his credibility determinations, findings of fact, and conclusions of law as the APA requires. 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz*, 12 BLR at 1-165.

Accordingly, we affirm in part and vacate in part the ALJ's Decision and Order Denying Benefits and remand this case to the ALJ for further consideration consistent with this opinion.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge