



BRB No. 23-0002 BLA

AMANDA MUMPOWER )  
(Widow of SHANE MUMPOWER) )

Claimant-Petitioner )

v. )

GUEST MOUNTAIN MINING )  
CORPORATION )

and )

DATE ISSUED: 02/09/2024

AIG ASSURANCE COMPANY )  
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 Steven B. Berlin,  
Administrative Law Judge, United States Department of Labor.

Amanda Mumpower, Appalachia, Virginia.

Sarah Y. M. Himmel and Joseph N. Stepp (Two Rivers Law Group P.C.),  
Christiansburg, Virginia, for Employer and its Carrier.

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

PER CURIAM:

Claimant<sup>1</sup> appeals, without representation,<sup>2</sup> Administrative Law Judge (ALJ) Steven B. Berlin's Decision and Order Denying Benefits (2019-BLA-05833) rendered on a survivor's claim filed on November 17, 2017, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).<sup>3</sup>

The ALJ accepted the parties' stipulation that the Miner had nine years of underground coal mine employment and therefore could not invoke the rebuttable presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act.<sup>4</sup> 30 U.S.C. §921(c)(4) (2018). Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant failed to establish the Miner had pneumoconiosis, an essential element of entitlement, and therefore denied benefits. 20 C.F.R. §718.202.

On appeal, Claimant generally challenges the denial of benefits. Employer and its Carrier (Employer) respond in support of the denial. The Director, Office of Workers' Compensation Programs, did not file a response brief.

In an appeal filed without representation, the Board addresses whether substantial evidence supports the Decision and Order below. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.<sup>5</sup> 33 U.S.C.

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<sup>1</sup> Claimant is the widow of the Miner, who died on October 1, 2017. Director's Exhibit 27.

<sup>2</sup> Robin Napier, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested the Benefits Review Board review Administrative Law Judge (ALJ) Steven B. Berlin's decision on Claimant's behalf, but Ms. Napier is not representing Claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co.*, 19 BLR 1-88 (1995).

<sup>3</sup> The Miner did not file a claim for benefits during his lifetime. Director's Exhibit 2. Thus, Claimant is not eligible for derivative survivor's benefits at Section 422(l) of the Act, 30 U.S.C. §932(l) (2018).

<sup>4</sup> Section 411(c)(4) provides a rebuttable presumption that a miner's death is 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); *see* 20 C.F.R. §718.305.

<sup>5</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because the Miner performed his coal mine employment in Virginia.

§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).

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

Without the benefit of the Section 411(c)(3)<sup>6</sup> or Section 411(c)(4)<sup>7</sup> 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). Death is considered due to pneumoconiosis if the evidence establishes pneumoconiosis caused or was a substantially contributing cause or factor leading to the miner’s death. 20 C.F.R. §718.205(b)(1), (2). Pneumoconiosis is a substantially contributing cause if it hastens the miner’s death. 20 C.F.R. §718.205(b)(6). 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 neither clinical nor legal pneumoconiosis.<sup>8</sup> 20 C.F.R. §718.202; Decision and Order at 13.

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*See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Transcript at 12.

<sup>6</sup> While the ALJ did not specifically address the issue of complicated pneumoconiosis, there is no evidence of large opacities or massive lesions to support such a finding. *See* Decision and Order at 10-12. Thus, Claimant cannot invoke the irrebuttable presumption of total disability due to pneumoconiosis at 20 C.F.R. §718.304. 30 U.S.C. §921(c)(3).

<sup>7</sup> The ALJ found Claimant could not invoke the Section 411(c)(4) presumption based on the parties’ stipulation of nine years of coal mine employment, which he found consistent with the record. Decision and Order at 2. Claimant did not allege the Miner worked for at least fifteen years in coal mine employment; rather, she testified he worked between nine and ten years. Hearing Transcript at 11; *see* Director’s Exhibit 8. Thus, the ALJ permissibly relied on the parties’ stipulation of nine years of coal mine employment. Decision and Order at 2; Hearing Transcript at 5-6. We therefore affirm the ALJ’s finding that Claimant could not invoke the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(b)(i); Decision and Order at 10.

<sup>8</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). This definition encompasses 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

## Clinical Pneumoconiosis

Dr. DePonte interpreted the only x-ray of record, dated August 15, 2017, as negative for pneumoconiosis. Decision and Order at 3, 10; Director's Exhibit 28 at 18. Thus, we affirm the ALJ's finding that the x-ray evidence is negative for pneumoconiosis. See *Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-08 (4th Cir. 2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528 (4th Cir. 1998); 20 C.F.R. §718.202(a)(1); Decision and Order at 10.

The ALJ next considered the medical opinion evidence, the Miner's treatment records, and his death certificate. Decision and Order at 3-9. Dr. Arnette, the Miner's treating physician, provided a letter opinion dated October 24, 2017,<sup>9</sup> and completed the Miner's death certificate. Director's Exhibits 16, 27. In his correspondence, Dr. Arnette noted Dr. DePonte's negative x-ray reading. Director's Exhibit 16. On the Miner's death certificate, he listed chronic obstructive pulmonary disease (COPD) and "possible coal miners [sic] pneumoconiosis" as the cause of death. Director's Exhibit 27 at 32-33. Also contained in the record are Dr. Arnette's treatment records for the Miner, spanning from December 31, 2007 to July 23, 2017, approximately three months before the Miner died. Employer's Exhibit 4. In addition, Drs. Rosenberg and Fino opined that there is no evidence of clinical pneumoconiosis. Employer's Exhibits 1, 2.

The ALJ noted that Dr. Arnette did not diagnose clinical pneumoconiosis at any point during the Miner's more than fifty visits to the doctor. Employer's Exhibit 4; Decision and Order at 11. Thus, as to Dr. Arnette's statements regarding potential pneumoconiosis<sup>10</sup> made after the Miner's death, the ALJ reasonably found that a diagnosis of clinical pneumoconiosis was not supported by the physician's "voluminous" treatment records; thus, we affirm the ALJ's finding that his opinion is insufficient to establish this disease. See *Compton*, 211 F.3d at 207-08; Decision and Order at 11-12.

Because the ALJ permissibly rejected Dr. Arnette's statements, the only medical opinion evidence to potentially support Claimant's burden, we affirm the ALJ's finding

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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).

<sup>9</sup> The record also contains a letter from Dr. Arnette dated October 26, 2017. Director's Exhibit 16 at 2. As Employer notes, this correspondence does not appear to be directed to the issues in this claim as it does not address pulmonary or respiratory impairment or disease. Employer's Response at 15-16; Director's Exhibit 16 at 2.

<sup>10</sup> Given Dr. Arnette's reference to Dr. DePonte's negative x-ray reading, it is unclear if his references to coal workers' pneumoconiosis concern clinical pneumoconiosis or solely legal pneumoconiosis. See Director's Exhibit 16.

that the medical opinion evidence does not support a finding of clinical pneumoconiosis. Decision and Order at 12-13. Therefore, we further affirm the ALJ's finding that the evidence, when weighed together, fails to establish clinical pneumoconiosis.<sup>11</sup> *Hicks*, 138 F.3d at 528; Decision and Order at 13.

### **Legal Pneumoconiosis**

To establish legal pneumoconiosis, Claimant must prove the Miner had a "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).

The ALJ considered the medical opinions of Drs. Arnette, Rosenberg, and Fino. During Dr. Arnette's treatment of the Miner, he diagnosed various respiratory infections, reactive airway disease, and mild COPD. Director's Exhibit 16; Employer's Exhibit 4; Decision and Order at 12. As addressed above, he also noted COPD on the Miner's death certificate. Director's Exhibit 27. In his October 24, 2017 correspondence, Dr. Arnette opined that "it seems like, that at [the Miner's] young age with . . . severe COPD and moderate restriction, that this would be secondary to coal dust exposure." Director's Exhibit 16 at 1. Dr. Rosenberg diagnosed the Miner with asthma unrelated to coal mine dust exposure. Employer's Exhibit 1. Dr. Fino opined the Miner likely had COPD, but there was insufficient data to find it was related to his coal mine dust exposure. Employer's Exhibit 2. The ALJ credited Dr. Fino's opinion over those of Drs. Arnette and Rosenberg. Decision and Order at 13.

The ALJ, within his discretion, rejected Dr. Arnette's opinion in his October 24, 2017 letter that the Miner's pulmonary and respiratory conditions were related to coal dust exposure as he never associated these conditions with coal mine employment during his treatment of the Miner. Director's Exhibit 16; Decision and Order at 12. The ALJ permissibly found it lacked reasoning, particularly given he made no such connection during his treatment of the Miner and did not address any other possible causes of the Miner's obstruction. *See Compton*, 211 F.3d at 207-08; *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (ALJ has exclusive power to make credibility determinations and resolve inconsistencies in the evidence); Decision and Order at 12. Therefore, the ALJ permissibly discredited Dr. Arnette's opinion as unreasoned.<sup>12</sup> *See Looney*, 678 F.3d at

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<sup>11</sup> The record contains no biopsy or autopsy evidence; therefore, Claimant could not establish clinical pneumoconiosis at 20 C.F.R. §718.202(a)(2). Decision and Order at 11.

<sup>12</sup> While the ALJ indicated Dr. Arnette's October 24, 2017 correspondence potentially relied on a pulmonary function study outside the record, it is evident that the doctor was referring to the August 15, 2017 pulmonary function study contained in the record as the results he provides match those in that study. Director's Exhibits 16, 28;

310; *Compton*, 211 F.3d at 211; *U.S. Steel Mining Co., Inc. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 389 (4th Cir. 1999); Decision and Order at 12; Director's Exhibit 16.

As the ALJ permissibly found Dr. Arnette's opinions insufficient to establish Claimant's burden and the other opinions do not support a finding of legal pneumoconiosis, we affirm his finding that Claimant failed to establish legal pneumoconiosis. 20 C.F.R. §718.202(a)(4); Decision and Order at 13.

Because Claimant did not establish pneumoconiosis, an essential element of entitlement, we further affirm the ALJ's determination that Claimant did not establish entitlement under 20 C.F.R. Part 718. *See Trumbo*, 17 BLR at 1-87-88; Decision and Order at 14.

Accordingly, we affirm the ALJ's Decision and Order Denying Benefits.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JUDITH S. BOGGS  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge

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Decision and Order at 12. Further, it is unclear why the ALJ discredited Dr. Arnette's opinion on legal pneumoconiosis for relying on the August 15, 2017 study, as the other experts also considered the study and agreed obstruction was present. Decision and Order at 12; Employer's Exhibits 1, 2. Even so, any error is harmless, as the ALJ permissibly discredited Dr. Arnette's opinion on other grounds. *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); Decision and Order at 12-13.