



BRB No. 21-0225 BLA

LORETTA J. McCOY )  
(Widow of GERARD C. McCOY) )  
 )  
 Claimant-Petitioner )

v. )

TANOMA MINING COMPANY )  
 )  
 and )

DATE ISSUED: 01/24/2022

STATE WORKERS' INSURANCE FUND )  
(PA) )  
 )  
 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 Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

Heath M. Long and Matthew A. Gribler (Pawlowski, Bilonick, & Long), Edensburg, Pennsylvania, for Claimant.

David M. McQuiston and William James Rogers (Thomson, Rhodes & Cowie, P.C.), Pittsburgh, Pennsylvania, for Employer.

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

PER CURIAM:

Claimant<sup>1</sup> appeals Administrative Law Judge (ALJ) Natalie A. Appetta's Decision and Order Denying Benefits (2019-BLA-05925) rendered on a survivor's claim filed on January 16, 2018, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ credited the Miner with twenty-six and one-half years of underground coal mine employment, but found Claimant did not invoke the Section 411(c)(4) presumption of death due to pneumoconiosis because she failed to establish he had a totally disabling respiratory or pulmonary impairment at the time of his death.<sup>2</sup> 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305. Considering entitlement under 20 C.F.R. Part 718, the ALJ found Claimant established clinical pneumoconiosis arising out of coal mine employment, but not legal pneumoconiosis.<sup>3</sup> 20 C.F.R. §§718.202(a), 718.203. She further found Claimant failed to establish the Miner's death was due to pneumoconiosis and denied benefits. 20 C.F.R. §718.205.

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<sup>1</sup> Claimant is the widow of the Miner, who died on October 9, 2017. Director's Exhibits 1, 12. The Miner did not file a claim for benefits. Employer's Exhibit 4 at 17. Therefore, Section 422(l) of the Act, 30 U.S.C. §932(l) (2018), which provides that a survivor of a miner who was determined to be eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits, is not applicable in this case.

<sup>2</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 impairment. 30 U.S.C. §921(c)(4) (2018); 20 C.F.R. §718.305.

<sup>3</sup> "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). "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).

On appeal, Claimant argues the ALJ erred in finding the Miner's death was not caused by his clinical pneumoconiosis.<sup>4</sup> Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response.

The Benefits Review 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>5</sup> 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Assocs., Inc.*, 380 U.S. 359 (1965).

In a survivor's claim where no statutory presumptions are invoked,<sup>6</sup> a claimant must establish by a preponderance of the evidence that 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(b); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). Failure to establish any one of these elements precludes an award of benefits. *Trumbo*, 17 BLR at 1-87-88.

A miner's death will be considered due to pneumoconiosis if pneumoconiosis or complications of pneumoconiosis are direct causes of death or if pneumoconiosis was a substantially contributing cause of 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); see *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 1006 (3d Cir. 1989).

The ALJ considered a death certificate signed by Dr. Huang and two autopsy reports from Drs. Goldblatt and Swedarsky. Director's Exhibits 12, 13; Employer's Exhibits 1, 3. The death certificate listed septic shock, respiratory failure, pneumonia, and chronic lymphocytic leukemia as the immediate causes of the Miner's death. Director's Exhibit 12. Dr. Goldblatt opined the Miner died as a result of organizing pneumonia, contributed

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<sup>4</sup> We affirm, as unchallenged on appeal, the ALJ's findings the Miner had twenty-six and one-half years of underground coal mine employment and that Claimant did not establish total disability or legal pneumoconiosis. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§718.202(a), 718.204(b)(2); Decision and Order at 9-10, 14, 17.

<sup>5</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit because the Miner performed his coal mine employment in Pennsylvania. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 2; Employer's Exhibit 4 at 34-35.

<sup>6</sup> There is no evidence of complicated pneumoconiosis; thus, the irrebuttable presumption of death due to pneumoconiosis at 20 C.F.R. §718.304 does not apply.

to by “hypertensive cardiovascular disease, simple coal workers’ pneumoconiosis, and pulmonary emphysema.” Director’s Exhibit 13. Dr. Swedarsky opined the Miner died from sepsis and septic shock which was “a consequence of his high risk of infection due to [his] terminal chronic lymphocytic leukemia.” Employer’s Exhibit 1 at 33. Although he opined the Miner had minimal coal workers’ pneumoconiosis, he concluded it did not contribute to or hasten the Miner’s death. Employer’s Exhibit 1 at 33.

The ALJ found the death certificate is of “little probative value” because it does not indicate the cause of the Miner’s respiratory failure. Decision and Order at 19. She further found the autopsy reports of Drs. Goldblatt and Swedarsky are not credible because they are not well-reasoned. *Id.* She thus concluded Claimant failed to establish the Miner’s death was due to his clinical pneumoconiosis. *Id.*

Claimant contends the ALJ erred in discrediting Dr. Goldblatt’s opinion.<sup>7</sup> Claimant’s Brief at 5-6. We disagree.

The ALJ observed Dr. Goldblatt considered the Miner’s coal mine employment history; set forth diagnoses of hypertensive cardiovascular disease, pulmonary congestion with edema, “organizing” pneumonia with intra-alveolar fibrin deposition, simple coal workers’ pneumoconiosis, and pulmonary emphysema; and identified simple coal workers’ pneumoconiosis as a contributing cause of death. Decision and Order at 18; Director’s Exhibit 13. However, she found that while Dr. Goldblatt’s opinion was documented, the doctor failed to “expand on or explain how the findings of [clinical pneumoconiosis] contributed to the Miner’s death.” *Id.* She thus permissibly found Dr. Goldblatt’s opinion inadequately reasoned and insufficient to establish the Miner’s clinical pneumoconiosis substantially contributed to his death. *See Mancina v. Director, OWCP, 130 F.3d 579, 589 (3d Cir. 1987)* (ALJ may reject a medical opinion that does not adequately explain the basis for its conclusion); *Kertesz v. Director, OWCP, 788 F.2d 158, 163 (3d Cir. 1986)*; Decision and Order at 19.

Although Claimant generally argues Dr. Goldblatt’s opinion is sufficient to establish the Miner’s death was due to pneumoconiosis, Claimant’s argument is a request to reweigh the evidence, which we are not empowered to do.<sup>8</sup> *Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111, 1-113 (1989)*; Claimant’s Brief at 5-6.

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<sup>7</sup> We affirm the ALJ’s finding the Miner’s death certificate is of “little probative value” as Claimant does not challenge this finding. Decision and Order at 19; *see Skrack, 6 BLR at 1-711.*

<sup>8</sup> The entirety of Claimant’s argument is: “The ALJ’s finding that Dr. Goldblatt failed to explain how [coal workers’ pneumoconiosis] contributed to death is at odds with Dr. Goldblatt’s report that indicates that simple pneumoconiosis and emphysema were two

We therefore affirm the ALJ's finding Claimant did not establish the Miner's death was due to pneumoconiosis. 20 C.F.R §718.205. Because Claimant did not establish that the Miner's death was due to pneumoconiosis, an essential element of entitlement in a survivor's claim under 20 C.F.R. Part 718, we affirm the ALJ's denial of benefits. *See* 20 C.F.R. §718.205; *Trumbo*, 17 BLR at 1-87-88.

Accordingly, the ALJ's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief  
Administrative Appeals Judge

GREG J. BUZZARD  
Administrative Appeals Judge

MELISSA LIN JONES  
Administrative Appeals Judge

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diseases which contributed to respiratory failure.” Claimant’s Brief at 5-6. But the ALJ did not ignore Dr. Goldblatt’s opinion that the Miner died of “organizing” pneumonia with clinical pneumoconiosis as a contributing cause. She concluded he “did not expand on or explain how the findings of [coal workers’ pneumoconiosis]” contributed to the Miner’s death. Claimant points to nothing in Dr. Goldblatt’s opinion undermining that finding. Further, while Dr. Goldblatt identified emphysema as a contributing cause of death, Director’s Exhibit 13, Claimant does not challenge the ALJ’s finding that he did not address its etiology and therefore is not probative as to whether the Miner had legal pneumoconiosis when he died.