

U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



BRB No. 25-0260 BLA

DEBRA D. CRESS
(Widow of GARY CRESS)

Claimant-Petitioner

v.

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

Respondent

NOT-PUBLISHED

DATE ISSUED: 07/23/2026

DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Joseph E. Kane,
Administrative Law Judge, United States Department of Labor.

Ronald C. Cox, Harlan, Kentucky, for Claimant.

David Casserly (Jonathan Berry, Solicitor of Labor; Jennifer Feldman Jones,
Acting Associate Solicitor; Olgamaris Fernandez, Acting Deputy Associate
Solicitor; William M. Bush, Acting Counsel for Administrative Appeals),
Washington, D.C., for the 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:

Claimant¹ appeals Administrative Law Judge (ALJ) Joseph E. Kane's Decision and Order Denying Benefits (2021-BLA-05777) rendered on a survivor's claim filed on September 20, 2019, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The ALJ accepted the parties' stipulation that the Miner worked at least fifteen years in underground coal mine employment and had pneumoconiosis, but he found the Miner did not have a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Therefore, he found Claimant could not invoke the presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act,² 30 U.S.C. §921(c)(4). Thus, the ALJ denied survivor's benefits.

On appeal, Claimant challenges the ALJ's finding that the Miner was not totally disabled. The Director, Office of Workers' Compensation Programs, on behalf of the Black Lung Disability Trust Fund, responds in support of the denial.

The Benefits Review Board's scope of review is defined by statute. We must affirm the Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable law.³ 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).

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

¹ Claimant is the widow of the Miner, who died on August 23, 2019. Director's Exhibit 11. Because the Miner never established 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).

² Under Section 411(c)(4) of the Act, Claimant is entitled to a rebuttable presumption that the 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); 20 C.F.R. §718.305(b).

³ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit because the Miner performed his coal mine employment in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 2.

C.F.R. §718.305(b)(1)(iii). A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on qualifying pulmonary function or arterial blood gas studies,⁴ 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.⁵ *See 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).

The ALJ considered the Miner's autopsy and found it insufficient to establish total disability because it does not discuss whether the Miner was totally disabled. Decision and Order at 5; Director's Exhibit 12. While Claimant generally alleges the ALJ erred in his weighing of the autopsy evidence, Claimant does not argue with any specificity why the ALJ's consideration of the autopsy evidence was improper. *See Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120 (1987) (unless the party identifies errors and briefs its allegations of error in terms of the relevant law and evidence, the Board has no basis for review). Claimant's argument amounts to a request to reweigh the evidence, which the Board is not empowered to do. *Anderson v. Valley Camp Coal of Utah, Inc.*, 12 BLR 1-111, 1-113 (1989). Thus, we affirm the ALJ's finding that the autopsy evidence does not establish total disability.

The ALJ also considered the Miner's treatment records. Decision and Order at 4-5; Director's Exhibits 11, 13. The ALJ determined the Miner's treatment records do not support a finding of total disability. Decision and Order at 4-5. He acknowledged the treatment record's references to the Miner's decreased breath sounds, shortness of breath, sedentary lifestyle, and dizziness when standing demonstrate the Miner was totally disabled and unable to perform coal mine employment. *Id.* The ALJ noted the treatment records also document a long history of congestive heart failure and other cardiac issues as

⁴ A "qualifying" pulmonary function study or blood gas study yields results equal to or less than the applicable table values contained in Appendices B and C of 20 C.F.R. Part 718, respectively. A "non-qualifying" study yields results exceeding those values. 20 C.F.R. §718.204(b)(2)(i), (ii).

⁵ There are no pulmonary function studies or medical opinions of record, and there is no evidence of cor pulmonale. Claimant does not challenge the ALJ's finding that the arterial blood gas studies do not support a finding of total disability; therefore, we affirm this finding. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 4.

well as cerebrovascular disease. *Id.* He further noted that, while the records mentioned black lung, chronic obstructive pulmonary disease (COPD), emphysema, and some pulmonary symptoms, there were no further details and no discussion of whether the Miner was totally disabled by any of the listed respiratory or pulmonary conditions nor did the records link the Miner's physical limitations to any of his pulmonary or respiratory ailments or symptoms. *Id.*

Claimant generally argues the treatment records establish that the Miner is totally disabled due to a pulmonary or respiratory condition based on the various references in the treatment notes to pneumoconiosis and COPD. Claimant's Brief at 4-5 (unpaginated). Nevertheless, because the ALJ explained the mere mention of the Miner's respiratory conditions and symptoms in the treatment notes absent any discussion linking them to the Miner's physical limitations is insufficient to establish total disability due to a respiratory or pulmonary condition, the ALJ's finding that the treatment records are insufficient to establish total disability is supported by substantial evidence. *Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305 (6th Cir. 2005) (substantial evidence is defined as relevant evidence that a reasonable mind might accept as adequate to support a conclusion); Decision and Order at 4-5. Moreover, Claimant's argument amounts to a request to reweigh the evidence, which the Board is not empowered to do. *Anderson*, 12 BLR at 1-113. Consequently, we affirm the ALJ's findings that the Miner's treatment records do not establish total disability, that the record as a whole does not establish total disability, and that Claimant was not entitled to the presumption of death due to pneumoconiosis. 20 C.F.R. §718.305(b)(1)(iii); Decision and Order at 5.

Death Causation

In addressing the cause of the Miner's death, the ALJ considered the Miner's death certificate, the autopsy evidence, and the Miner's treatment notes. Director's Exhibits 11-13. The Miner's death certificate identified the cause of death as subarachnoid hemorrhage, subclavian and vertebral artery stenting, and severe peripheral vascular disease. Director's Exhibit 11. The death certificate also noted COPD and pneumoconiosis as "other significant conditions contributing to death but not resulting in the underlying cause." *Id.* The treatment notes list the causes of the Miner's death as massive subarachnoid hemorrhage, artery and left vertebral stenting, coronary artery disease, ischemic cardiomyopathy with ejection fraction of 35%, prior Medtronic implantation, and COPD/black lung. Director's Exhibit 13. The autopsy report noted findings of pneumoconiosis and emphysema but did not discuss whether the conditions contributed to the Miner's death. Director's Exhibit 12. Weighing all the evidence together, the ALJ found it insufficient to establish death causation for "while the record establishes that the Miner had pneumoconiosis, there is no evidence other than a single notation, that it related to the Miner's death." Decision and Order at 5-6.

While Claimant generally argues the evidence was sufficient to establish the causal connection between the miner's total disability and death due to his coal dust exposure, Claimant does not argue with any specificity why the ALJ's consideration of the evidence was improper. *See Sarf*, 10 BLR at 1-120; Claimant's Brief at 4-5 (unpaginated). Claimant's arguments are a request to reweigh the evidence, which we are not empowered to do. *Anderson*, 12 BLR at 1-113. Thus, we affirm the ALJ's finding that the evidence is insufficient to establish the Miner's death was due to pneumoconiosis. Decision and Order at 5-6.

Because Claimant did not establish the Miner's death was due to pneumoconiosis, an essential element of entitlement in a survivor's claim, we affirm the ALJ's denial of benefits. *See* 20 C.F.R. §718.205; *see also Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993); Decision and Order at 6.

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge