

U.S. Department of Labor

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



BRB Nos. 23-0245 BLA  
and 23-0246 BLA

REGINA HARLESS )  
(o/b/o BARBARA J. PARSONS, )  
o/b/o and Widow of CECIL R. PARSONS) )

Claimant-Petitioner )

v. )

MILLERS COVE ENERGY COMPANY, )  
INCORPORATED )

DATE ISSUED: 05/03/2024

Employer-Respondent )

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 in Miner's Claim and Denying Benefits in Survivor's Claim of Jodeen M. Hobbs, Administrative Appeals Judge, United State Department of Labor.

Regina Harless, Bulls Gap, Tennessee.

John R. Sigmond (Penn, Stuart & Eskridge), Bristol, Virginia, for Employer.

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

PER CURIAM:

Claimant appeals, without representation,<sup>1</sup> Administrative Law Judge (ALJ) Jodeen M. Hobbs's Decision and Order Denying Benefits in Miner's Claim and Denying Benefits in Survivor's Claim (2019-BLA-05290 and 2020-BLA-05014) rendered on claims filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act). This case involves a miner's claim filed on September 14, 2017, and a survivor's claim filed on May 31, 2019.<sup>2</sup>

The ALJ credited the Miner with 13.95 years of underground coal mine employment based on the parties' stipulation and thus found Claimant could not invoke the rebuttable presumption of total disability or death due to pneumoconiosis at Section 411(c)(4) of the Act,<sup>3</sup> 30 U.S.C. §921(c)(4) (2018). She also found Claimant did not establish the Miner had complicated pneumoconiosis and therefore could not invoke the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304. Considering entitlement under 20 C.F.R. Part 718 in the miner's claim, she found Claimant established total disability, 20 C.F.R. §§718.204(b)(2), but did not establish the Miner had clinical pneumoconiosis or legal pneumoconiosis, a requisite element of entitlement, and denied benefits.

Addressing the merits of the survivor's claim, the ALJ determined that because the Miner was not entitled to benefits at the time of his death, Claimant is not automatically entitled to survivor's benefits under Section 422(l) of the Act, 30 U.S.C. §932(l)

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

<sup>2</sup> The Miner died on May 10, 2019, while his claim was pending before the district director. Survivor Director's Exhibit 4. His widow, Barbara Parsons, filed a survivor's claim but died on November 12, 2020. Decision and Order at 2. Claimant is their daughter, and she is pursuing the miner's and survivor's claims on behalf of their estates. ALJ's November 2, 2021 Order Consolidating Cases and Amending Caption at 1; Decision and Order at 2; Miner Director's Exhibit 46; Survivor Director's Exhibit 18.

<sup>3</sup> Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's total disability or 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. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

(2018).<sup>4</sup> In addition, because she found Claimant did not establish the Miner had clinical or legal pneumoconiosis, an essential element of entitlement, she denied benefits in the survivor's claim.

On appeal, Claimant generally challenges the denial of benefits in both the miner's and survivor's claims. Employer responds in support of the denials. The Director, Office of Workers' Compensation Programs, did not file a substantive response.

In an appeal a claimant files without representation, the Board considers whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the ALJ's findings of fact and conclusions of law if they are 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).

#### **Invocation of the Section 411(c)(4) Presumption – Length of Coal Mine Employment**

To invoke the Section 411(c)(4) presumption, Claimant must establish the Miner worked at least fifteen years in underground coal mines, or in "substantially similar" surface coal mine employment. 20 C.F.R. §718.305(b)(1)(i). Claimant bears the burden to establish the number of years the Miner worked in coal mine employment. *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710-11 (1985).

The ALJ found the Miner had 13.95 years of coal mine employment based on the parties' stipulation and because "it is consistent with the evidence of record." Decision and Order at 3; Hearing Transcript at 15. At the hearing, the ALJ stated that this number was "calculated, based upon the Social Security Administration records." Hearing Transcript at 15.

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<sup>4</sup> Under Section 422(l) of the Act, a survivor of a miner who was eligible to receive benefits at the time of his death is automatically entitled to survivor's benefits without having to establish the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l) (2018).

<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. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Miner Director's Exhibit 3.

The Miner alleged twenty years of coal mine employment on his claim form. Miner Director's Exhibit 2. On his Employment History form and Description of Coal Mine Work and Other Employment form, the Miner indicated he was self-employed hauling coal from 1966 to 1972, worked on the surface and underground at a mine from February 1972 until June 1980, and worked at a surface mine from July 1980 to October 1984. Miner Director's Exhibits 3, 4. The Miner also stated that he worked "trucking" and "engineering" at a coal mine from 1980 to 1985. Miner Director's Exhibit 4. The Miner's Social Security Administration earnings records reflect in relevant part that he was self-employed from 1968 to 1972 and worked for T&T Darby Coal Company, Inc. for one quarter in 1973, Dean Jones Coal Company, Inc. from 1972 to 1978, St. Charles Mining Company in 1978 to 1980, and Millers Cove Energy Company, Inc. from 1980 to 1985. Miner Director's Exhibits 5, 6.

In the September 28, 2018 Proposed Decision and Order in the miner's claim, the district director determined that "[t]he evidence establishes 13.65 years of coal mine employment from 1968 (based on Social Security earnings) to January 17, 1985 (based on the Miner's statement and supported by Social Security earnings)."<sup>6</sup> Miner Director's Exhibit 27 at 10.

At the hearing, Claimant through her lay representative stipulated to 13.95 years of coal mine employment. Stipulations of fact entered into freely and fairly are not to be set aside except to avoid manifest injustice. *Richardson v. Director, OWCP*, 94 F.3d 164, 167 (4th Cir. 1996); *Consolidation Coal Co. v. Director, OWCP [Burriss]*, 732 F.3d 723, 730 (7th Cir. 2013); *Fairway Constr. Co. v. Allstate Modernization, Inc.*, 495 F.2d 1077, 1079 (6th Cir. 1974); *Nippes v. Florence Mining Co.*, 12 BLR 1-108, 1-109 (1985). Moreover, as outlined above, there is no evidence in the record to support that the Miner worked at least fifteen years in qualifying coal mine employment, aside from his general assertion of twenty years on his initial claim form. Thus, we discern no error by the ALJ in accepting the parties' stipulation to less than fifteen years of coal mine employment. *See Richardson*, 94 F.3d at 167; *Fairway Constr. Co.*, 495 F.2d at 1079; *Nippes*, 12 BLR at 1-109. We therefore affirm the ALJ's finding that Claimant did not invoke the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305; Decision and Order at 6.

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<sup>6</sup> The district director's finding is consistent with the coal mine employment history the physicians relied on. Dr. Ajarapu contemplated approximately a fourteen-year employment history. Miner Director's Exhibit 10 at 2. Dr. McSharry noted a fourteen-year employment history with nine years above and below ground and five years above ground. Miner Director's Exhibit 13 at 3. Dr. Fino relied on a 13.65-year employment history. Employer's Exhibit 3 at 3.

## Entitlement under 20 C.F.R. Part 718 – Miner’s Claim

Without the Section 411(c)(4) presumption, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

### Clinical Pneumoconiosis

In considering whether Claimant established the Miner had simple<sup>7</sup> clinical pneumoconiosis,<sup>8</sup> the ALJ considered interpretations of three x-rays dated May 9, 2017, October 9, 2017, and June 12, 2018. Decision and Order at 17-20. The ALJ found all of the interpreting physicians are dually qualified as B readers and Board-certified radiologists, with the exception of Dr. Gaziano, who provided only a quality reading and is just a B reader. Decision and Order at 19.

Dr. DePonte offered the only interpretation of the May 9, 2017 x-ray; she read it as negative for pneumoconiosis. Miner Employer’s Exhibit 1. The ALJ noted Dr. DePonte

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<sup>7</sup> The ALJ determined “[t]here is no x-ray or other evidence associated with the claim that established complicated pneumoconiosis.” Decision and Order at 5, 17-20. As discussed in more detail herein, although some physicians identified calcified non-pneumoconiotic opacities on x-ray, and Dr. Miller described a faint 1.5 centimeter nodular opacity on the x-ray he read, Miner Claimant’s Exhibit 2, none opined that they would be classified as Category A, B, or C or were consistent with complicated pneumoconiosis. 30 U.S.C. §921(c)(3)(A); 20 C.F.R. §718.304(a). Consequently, we affirm the ALJ’s finding that Claimant is unable to invoke the irrebuttable presumption at Section 411(c)(3) that the Miner was totally disabled due to pneumoconiosis. *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 310 (4th Cir. 2012); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999).

<sup>8</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).

indicated the x-ray showed calcified non-pneumoconiotic opacities and emphysema. She found this x-ray negative for clinical pneumoconiosis based on Dr. DePonte's uncontradicted negative reading. Decision and Order at 19.

Drs. DePonte, Adcock, and Miller each interpreted the October 9, 2017 x-ray as negative for simple and complicated pneumoconiosis.<sup>9</sup> Miner Director's Exhibits 10 at 24, 12 at 1; Miner Claimant's Exhibit 2. Dr. DePonte again identified calcified non-pneumoconiotic opacities and emphysema. Miner Director's Exhibit 10 at 24. Dr. Adcock noted an 18-millimeter nodule in the upper right lung but did not identify any parenchymal abnormalities or large opacities consistent with pneumoconiosis. Miner Director's Exhibit 12 at 3. Dr. Miller noted small opacities in all lung zones with a profusion of 0/1<sup>10</sup> and a faint 1.5-centimeter opacity in the right upper lung, and he recommended additional testing to rule out malignancy. Miner Claimant's Exhibit 2. Based on the physicians' uncontradicted negative readings, the ALJ found the x-ray negative for clinical pneumoconiosis. Decision and Order at 19.

Finally, Dr. Adcock interpreted the June 12, 2018 x-ray as negative for pneumoconiosis while Dr. Alexander interpreted it as positive for simple pneumoconiosis in all zones. Miner Director's Exhibit 13 at 30; Miner Claimant's Exhibit 1. Dr. Alexander also identified "[s]mall 8 and 9mm nodular densities in the right lower lung zone" and indicated they could be granulomas. Miner Claimant's Exhibit 1 at 1. The ALJ found Dr. Alexander's identification of small opacities is consistent with the small opacities Dr. Miller identified on the October 9, 2017 x-ray, but the nodular densities Dr. Alexander identified are in a different section of the right lung than the faint nodular opacity Dr. Miller observed. Decision and Order at 19. Giving equal weight to the two conflicting readings by equally-qualified physicians (Drs. Adcock and Alexander), the ALJ found the readings of the June 12, 2018 x-ray neither support nor undermine a finding of clinical pneumoconiosis. *Id.*

Because the ALJ found two x-rays negative and the readings of one x-ray in equipoise, we affirm her finding that Claimant failed to establish clinical pneumoconiosis based on the x-ray evidence. 20 C.F.R. §718.202(a)(1); *see Ondecko*, 512 U.S. at 280-81;

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<sup>9</sup> Dr. Gaziano interpreted this x-ray for quality purposes only. Miner Director's Exhibit 10 at 1.

<sup>10</sup> The regulation at 20 C.F.R. §718.102(d)(3) specifically states that "[a] chest radiograph classified under any of the foregoing ILO classification systems as Category 0, including subcategories 0-, 0/0, or 0/1, does not constitute evidence of pneumoconiosis." 20 C.F.R. §718.102(d)(3); *see Preston v. Director, OWCP*, 6 BLR 1-1229, 1-1233 (1984).

*Addison*, 831 F.3d at 256-57; *Adkins*, 958 F.2d at 52; Decision and Order at 20. The ALJ also accurately found that the record contains no biopsy or autopsy evidence and none of the physicians who offered a medical opinion diagnosed clinical pneumoconiosis.<sup>11</sup> Decision and Order at 17, 20; *see* 20 C.F.R. §718.202(a)(2), (4); Miner Director’s Exhibits 10, 13; Miner Employer’s Exhibit 3.

Additionally, the ALJ further permissibly determined that although some of the Miner’s treatment records mention pneumoconiosis, they do not provide the basis for the diagnosis, while the computed tomography (CT) scan and chest x-ray interpretations contained in the treatment records were not performed for the purpose of diagnosing clinical pneumoconiosis and do not diagnose the disease.<sup>12</sup> *Looney*, 678 F.3d at 316-17; *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-22 (1987) (reasoned opinion is one supported by the underlying documentation); Decision and Order at 20; Miner Claimant’s

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<sup>11</sup> Dr. Ajjarapu indicated that the chest x-ray from her examination, i.e., the October 9, 2017 x-ray interpreted by Dr. DePonte, was negative for coal workers’ pneumoconiosis. Miner Director’s Exhibit 10 at 4, 24. Dr. McSharry also stated there was no evidence of clinical pneumoconiosis either during his examination or based on the records he reviewed. Miner Director’s Exhibit 10; Miner Employer’s Exhibit 2. Dr. Fino reviewed records and similarly found “insufficient objective medical evidence” to support a diagnosis of clinical pneumoconiosis. Miner Employer’s Exhibit 3 at 5; *see also* Miner Employer’s Exhibit 4.

<sup>12</sup> Cardiology office notes dated July 24, 2014 and January 31, 2018, identified coal workers’ pneumoconiosis under “Active Problems.” Miner Claimant’s Exhibit 3 at 1, 16. In addition, January 17, 2018 hospitalization records for pneumonia state a diagnosis of “acute exacerbation” of chronic obstructive pulmonary disease (COPD) and coal workers’ pneumoconiosis and include a chest x-ray showing “changes of COPD with mild chronic interstitial change in both lungs.” *Id.* at 8, 10. A March 19, 2018 office note listed coal workers’ pneumoconiosis as an active problem for which a treatment plan was developed. *Id.* at 21, 23. The plan indicated use of an inhaler and noted COPD with a history of coal workers’ pneumoconiosis without any explanation for how the diagnosis of coal workers’ pneumoconiosis was reached. *Id.* at 23. Coal workers’ pneumoconiosis also was listed as a diagnosis on a May 28, 2018 discharge summary. *Id.* at 27. An April 2, 2017 Wellmont CVA Cardiology office note details a chest CT scan report describing a 1.7 centimeter non-calcified nodular density in the right upper lobe which may represent neoplasm. Miner Claimant’s Exhibit 4 at 16. The CT scan also showed evidence of a bulla in the left apical region and calcified granuloma in the anterior right middle lobe. *Id.* In assessing the Miner’s condition after he fell during a syncope episode, Dr. DePonte interpreted a February 11, 2019 chest x-ray as showing chronic cardiomegaly but no acute cardiopulmonary disease. Employer’s Exhibit 8 at 1.

Exhibits 3, 4; Miner Employer's Exhibit 8. We therefore affirm the ALJ's conclusion that Claimant did not establish clinical pneumoconiosis at 20 C.F.R. §718.202(a). Decision and Order at 17-20.

### **Legal Pneumoconiosis**

To establish legal pneumoconiosis, Claimant must demonstrate the Miner had a chronic lung disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(2), (b).

The ALJ considered Dr. Ajjarapu's opinion diagnosing legal pneumoconiosis in the form of chronic bronchitis due to coal mine dust exposure and the contrary opinions of Drs. McSharry and Fino that the Miner did not have legal pneumoconiosis. Miner Director's Exhibits 10, 13; Miner Employer's Exhibits 2-4. The ALJ gave "little probative weight" to Dr. Ajjarapu's opinion because she found it was not well reasoned or well documented as it was based on conflicting facts and did not provide the basis for her diagnosis or cite to the records supporting her findings. Decision and Order at 21-22, 29. The ALJ also gave "limited probative weight" to Drs. McSharry's and Fino's opinions because they did not adequately explain why coal dust could not have contributed to the obstructive impairment they diagnosed. *Id.* at 22-26, 29. Thus, she determined Claimant is unable to establish the Miner had legal pneumoconiosis. *Id.* at 29.

We see no error in the ALJ's finding that Claimant did not satisfy her burden of proof to establish legal pneumoconiosis. Dr. Ajjarapu performed the Department of Labor's complete pulmonary evaluation of the Miner. She stated the Miner had a "Cardiopulmonary Diagnosis" of "[c]hronic bronchitis . . . based on the presence of symptoms of daily cough with sputum production," but she was "unsure" as to the date of its manifestation. Miner Director's Exhibit 10 at 3, 8. When explaining the "Etiology" of the cardiopulmonary diagnosis, she stated:

Chronic Bronchitis: diagnosis is based on the presence of respiratory symptoms. He did describe [the] presence of coughing and shortness of breath. Underlying etiology of his underlying chronic bronchitis is his work in the mines and tobacco smoke. Both cause airway inflammation leading to bronchospasm and cause excessive airway secretions and bronchitic symptoms. This is the basis for legal coal worker pneumoconiosis/chronic bronchitis.

*Id.* at 8. During her physical exam of the Miner, she noted "decreased breath sounds" in the lungs and "coarse & decreased upper & expiratory wheezing lower." *Id.* at 4, 8.



However, when detailing the Miner's "Chief complaints/symptoms[,]" Dr. Ajarapu marked "no" next to sputum, wheezing, and cough. *Id.* at 4.

The ALJ determined that, while Dr. Ajarapu diagnosed chronic bronchitis and linked the disease's etiology to coal mining and tobacco smoke, the symptoms upon which her diagnosis rested, specifically the Miner's daily cough and sputum production, were not reported by the Miner, and Dr. Ajarapu did not record them in her examination. Decision and Order at 21-22; *see also* Miner Director's Exhibit 10 at 3-4, 8-9. Further, the ALJ permissibly found that the Miner's treatment records provide "limited evidence to support the Miner experienced chronic cough or sputum production"<sup>13</sup> and the Miner reported no cough during Dr. McSharry's examination.<sup>14</sup> *Looney*, 678 F.3d at 316-17; Decision and Order at 22, 28-29; *see* Miner Director's Exhibit 13; Miner Claimant's Exhibits 3, 4;<sup>15</sup> Miner Employer's Exhibits 2, 14-16.

In addition, the ALJ permissibly credited Drs. McSharry's and Fino's statements that a diagnosis of chronic bronchitis depends on a history of chronic cough and sputum production, which was not present in this case. *Looney*, 678 F.3d at 316-17; Decision and Order at 28-29; Miner Employer's Exhibits 2 at 16; 4 at 13-14. She therefore permissibly concluded Dr. Ajarapu's chronic bronchitis diagnosis, and thus her opinion that the

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<sup>13</sup> The ALJ reviewed and summarized the Miner's treatment records relevant to the issue of legal pneumoconiosis. Decision and Order at 26-29; *see* Miner Claimant's Exhibits 3, 4; Miner Employer's Exhibits 14-16. She noted that the records document COPD and shortness of breath but do not indicate a regular cough or sputum production. Decision and Order at 28. While a March 19, 2018 record lists "acute bronchitis" as a diagnosis, it also notes a "nonproductive cough." Miner Claimant's Exhibit 3 at 22. In addition, while January 17 and 19, 2018 records state the Miner had a cough with very little gray sputum, it was attributed to "acute hypoxic respiratory failure secondary to acute exacerbation COPD" and "mycoplasma pneumonia." *Id.* at 10, 12, 15. Thus, while these records identify isolated incidences of a cough and one instance of very little sputum, they do not identify either symptom as a consistent or long-term issue.

<sup>14</sup> Dr. Fino only reviewed records. Miner Employer's Exhibits 3, 4.

<sup>15</sup> The ALJ cited to Claimant's Exhibits 5 and 6 when summarizing the Miner's treatment records. Decision and Order at 26-28. However, Claimant submitted only four exhibits in the miner's claim; the treatment records are in Miner Claimant's Exhibits 3 and 4. *See* Hearing Transcript at 3, 7-8.

Miner's chronic bronchitis constituted legal pneumoconiosis,<sup>16</sup> was not well documented or reasoned. See *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000); *Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096 (4th Cir. 1993); Decision and Order at 21-22.

Claimant has the burden to establish entitlement and bears the risk of non-persuasion if the evidence is found insufficient to establish a required element of entitlement. See *Ondecko*, 512 U.S. at 281; *Young v. Barnes & Tucker Co.*, 11 BLR 1-147, 1-150 (1988); *Oggero v. Director, OWCP*, 7 BLR 1-860, 1-865 (1985). As we have affirmed the ALJ's discrediting of the sole medical opinion supporting a finding of legal pneumoconiosis, we affirm the ALJ's determination that Claimant did not establish legal pneumoconiosis at 20 C.F.R. §718.202(a)(4). See *Rowe*, 710 F.2d at 255; Decision and Order at 20-21.

Consequently, having affirmed the ALJ's finding that Claimant did not establish the Miner had pneumoconiosis, an essential element of entitlement, we affirm the ALJ's denial of benefits in the miner's claim. *Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-271; Decision and Order at 29-30.

#### **Entitlement under 20 C.F.R. Part 718 – Survivor's Claim**

Without the benefit of the Section 411(c)(3) or Section 411(c)(4) presumptions,<sup>17</sup> Claimant must establish the Miner had pneumoconiosis arising out of coal mine employment and his death was due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.203, 718.205(a); see *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.

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<sup>16</sup> While the pulmonary function study conducted in conjunction with her examination notes a "[v]ery severe obstruction," Dr. Ajjarapu did not include or discuss an obstructive impairment in her report when providing the basis for her opinion on legal pneumoconiosis. Miner Director's Exhibit 10 at 8, 16.

<sup>17</sup> Given the ALJ's determination that Claimant failed to establish the Miner had at least fifteen years of qualifying coal mine employment or complicated pneumoconiosis, Claimant is unable to invoke the irrebuttable or rebuttable presumptions at Sections 411(c)(3) and (c)(4) of the Act. See 20 C.F.R. §718.205(b)(3), (4). The ALJ did not independently discuss complicated pneumoconiosis in the miner's and survivor's claims; however, as discussed below, she permissibly determined all of the x-rays were negative for pneumoconiosis in the survivor's claim, and there was no other evidence in the record diagnosing complicated pneumoconiosis.

§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 Collins v. Pond Creek Mining Co.*, 751 F.3d 180, 184 (4th Cir. 2014). Failure to establish any one of the required elements precludes entitlement. *See Trumbo*, 17 BLR at 1-87-88. The ALJ determined that Claimant did not establish the Miner had clinical or legal pneumoconiosis and therefore could not establish that his death was due to pneumoconiosis. Decision and Order at 35.

### **Clinical Pneumoconiosis**

In the survivor’s claim, the ALJ considered interpretations of two x-rays dated May 9, 2017, and June 12, 2018.<sup>18</sup> Decision and Order at 32-34. All of the physicians providing interpretations are dually qualified as B readers and Board-certified radiologists.

Consistent with her finding in the miner’s claim, the ALJ determined the May 9, 2017 x-ray is negative for clinical pneumoconiosis based on Dr. DePonte’s sole negative interpretation. Decision and Order at 33; Survivor Employer’s Exhibit 2.

Concerning the June 12, 2018 x-ray, Dr. Adcock interpreted it as negative for pneumoconiosis but identified calcified non-pneumoconiotic nodules and pulmonary venous hypertension. Survivor Employer’s Exhibit 1. Dr. Seaman also interpreted the x-ray as negative for pneumoconiosis and noted that it showed “calcified right basilar nodules” consistent with prior granulomatous infection and cardiac abnormalities. Survivor Employer’s Exhibit 3. Dr. Alexander interpreted the x-ray as positive for simple pneumoconiosis and also identified calcified non-pneumoconiotic nodules, specifically describing small eight-to-nine-millimeter nodules in the right lower lung that may be granulomas. Survivor Claimant’s Exhibit 1. Giving the three interpretations equal weight, the ALJ determined that the readings of the June 12, 2108 x-ray do not support a finding of clinical pneumoconiosis. Decision and Order at 33-34.

Thus, the ALJ permissibly found the preponderance of the x-ray evidence does not support a finding of clinical pneumoconiosis. 20 C.F.R. §718.202(a)(1); *see Ondecko*, 512 U.S. at 280-81; *see also Addison*, 831 F.3d at 256-57; *Adkins*, 958 F.2d at 52; Decision and Order at 34.

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<sup>18</sup> As the ALJ noted, the evidence submitted in the survivor’s claim is mostly identical to that submitted in the miner’s claim on the issue of clinical pneumoconiosis except for the following: no party designated interpretations of the October 9, 2017 x-ray, and Employer submitted Dr. Seaman’s interpretation of the June 12, 2018 x-ray. Decision and Order at 30 n.20.

Relying on her reasoning from the miner's claim, the ALJ again permissibly found that the medical opinions of Drs. Ajarapu, McSharry, and Fino do not include a diagnosis of clinical pneumoconiosis and that the Miner's treatment records are insufficient to support a finding of clinical pneumoconiosis. Decision and Order at 34-35; Survivor Claimant's Exhibit 4; Survivor Employer's Exhibits 1, 5-7.

Considering the Miner's death certificate, which identifies the Miner's immediate cause of death as congestive heart failure due to coronary artery disease with underlying causes of chronic obstructive pulmonary disease and right femur fracture, the ALJ permissibly found it did not support a diagnosis of clinical pneumoconiosis. *See Compton*, 211 F.3d at 207-08; Decision and Order at 35; Survivor Director's Exhibit at 4. Consequently, we affirm the ALJ's determination that Claimant did not establish the Miner had clinical pneumoconiosis in the survivor's claim. Decision and Order at 35.

### **Legal Pneumoconiosis**

Relying on her findings in the miner's claim, the ALJ determined Claimant also failed to establish the Miner had legal pneumoconiosis in the survivor's claim based on the medical opinions or the Miner's treatment records. Decision and Order at 34-35. The ALJ specifically noted the treatment records show the Miner was diagnosed with COPD in July 2015, was treated with albuterol and other breathing medications, and had an obstructive respiratory impairment until the time of his death. Survivor Director's Exhibit 4; Survivor Claimant's Exhibits 5, 6. However, as the ALJ permissibly determined, these records do not "include an explanation of the diagnosis or otherwise indicate that coal mine dust exposure played a role in the Miner's lung disease." Decision and Order at 35; *see Looney*, 678 F.3d at 316-17. While the ALJ did not specifically discuss the inclusion of COPD on the Miner's death certificate, that document does not discuss coal dust as a cause and we have affirmed the ALJ's finding that none of the other evidence in the record supports a link between the Miner's COPD and his coal dust exposure. *See supra*. Consequently, we affirm the ALJ's finding that Claimant did not establish the existence of legal pneumoconiosis in the survivor's claim. 20 C.F.R. §718.202(a); Decision and Order at 35.

As Claimant did not establish the existence of clinical or legal pneumoconiosis, an essential element of entitlement, we further affirm the ALJ's determination that Claimant is unable to establish the Miner's death was due to pneumoconiosis, and the denial of benefits in the survivor's claim. *Trumbo*, 17 BLR at 1-87-88; Decision and Order at 35.

Accordingly, the ALJ's Decision and Order Denying Benefits in Miner's Claim and Denying Benefits in Survivor's Claim is affirmed.

SO ORDERED.

DANIEL T. GRESH, Chief  
Administrative Appeals Judge

JUDITH S. BOGGS  
Administrative Appeals Judge

GREG J. BUZZARD  
Administrative Appeals Judge