U.S. Department of Labor

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

BRB No. 24-0416 BLA

VIRGINIA A. RAMSEY (Widow of PAUL F. RAMSEY) Claimant-Petitioner v. DONALDSON MINING COMPANY and VALLEY CAMP COAL Employer/Carrier- Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	**NOT-PUBLISHED** DATE ISSUED: 09/23/2025 DECISION and ORDER

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

Samuel B. Petsonk (Petsonk PLLC), Beckley, West Virginia, and Bren J. Pomponio (Mountain State Justice, Inc.), Charleston, West Virginia, for Claimant.

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for Employer.

Before: GRESH, Chief Administrative Appeals Judge, JONES, Administrative Appeals Judge, and ULMER, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant appeals Administrative Law Judge (ALJ) Sean M. Ramaley's Decision and Order Denying Benefits (2022-BLA-05513) rendered on a survivor's claim filed on June 1, 2015, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).[1]

The ALJ 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) (2018); *see* 20 C.F.R. §718.304. The ALJ credited the Miner with 16.90 years of qualifying coal mine employment and found he had a totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(b)(2). Consequently, the ALJ determined that Claimant invoked the presumption that the Miner's death was due to pneumoconiosis at Section 411(c)(4) of the Act.[2] 30 U.S.C. §921(c)(4). However, he found Employer rebutted the presumption by ruling out pneumoconiosis as a cause or contributor to the Miner's death. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(d)(2)(ii). Thus, the ALJ concluded Claimant was also unable to establish the Miner's death was due to pneumoconiosis under 20 C.F.R. Part 718 and denied benefits. 20 C.F.R. §718.205(b).

On appeal, Claimant argues the ALJ erred in finding the autopsy evidence does not establish complicated pneumoconiosis.[3] Employer responds, urging affirmance of the

[1] Claimant is the widow of the Miner, who died on November 30, 2014. Director's Exhibit 9. 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*) (2018); Director's Exhibit 19.

[2] 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); *see* 20 C.F.R. §718.305.

[3] We affirm, as unchallenged on appeal, the ALJ's determination that Employer rebutted the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 25.

denial of benefits. The Acting 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.[4] 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).

In a survivor's claim, 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). A claimant may establish death causation through the invocation of the statutory presumptions at Section 411(c)(3) or Section 411(c)(4). 30 U.S.C. §921(c)(3), (4). When no presumption is invoked, the claimant bears the burden of establishing that pneumoconiosis caused or was a substantially contributing cause 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 either requisite element of entitlement (pneumoconiosis or death causation) precludes an award of benefits. *See Trumbo*, 17 BLR at 1-87-88.

Section 411(c)(3) of the Act provides an irrebuttable presumption that a miner's death was due to pneumoconiosis if he suffered from a chronic dust disease of the lung which: (a) when diagnosed by x-ray, yielded one or more large opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yielded massive lesions in the lung; or (c) when diagnosed by other means is a condition that could reasonably be expected to yield a result equivalent to (a) or (b). 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304.

The United States Court of Appeals for the Fourth Circuit holds that because prong (a) sets out an entirely objective scientific standard for diagnosing complicated pneumoconiosis, specifically an x-ray opacity greater than one centimeter in diameter, the ALJ must determine whether a condition which is diagnosed by biopsy or autopsy under prong (b) or by any other means under prong (c) would appear as an opacity greater than one centimeter if it were seen on a chest x-ray. *See E. Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 256 (4th Cir. 2000); *Double B Mining, Inc. v.*

[4] 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 West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Hearing Tr. at 15-16; Director's Exhibit 4.

Blankenship, 177 F.3d 240, 243 (4th Cir. 1999). In determining whether Claimant has established invocation of the irrebuttable presumption of death due to pneumoconiosis pursuant to 20 C.F.R. §718.304, the ALJ must weigh together all the evidence relevant to the presence or absence of complicated pneumoconiosis. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46 (4th Cir. 1993); *Gollie v. Elkay Mining Corp*., 22 BLR 1-306, 1-311 (2003); *Melnick v. Consolidation Coal Co*., 16 BLR 1-31, 1-33-34 (1991) (en banc).

The ALJ found the relevant evidence insufficient to establish complicated pneumoconiosis when weighed separately or when weighed together at 20 C.F.R. §718.304(a)-(c). Decision and Order at 26-30. Claimant contends the ALJ erred in finding the autopsy evidence did not establish complicated pneumoconiosis at 20 C.F.R. §718.304(b).[5] Claimant's Brief at 4-8 (unpaginated). We disagree.

The ALJ considered the autopsy reports of Drs. Sawyer, Cool, Oesterling, and Vey. Decision and Order at 6-10, 26-28. Both Dr. Sawyer and Dr. Cool diagnosed the Miner with complicated pneumoconiosis, while Dr. Oesterling and Dr. Vey determined he did not have the disease. Director's Exhibit 11 at 1-2; Claimant's Exhibit 5 at 4; Employer's Exhibits 3 at 6; 9 at 3-4. Dr. Sawyer opined the Miner had areas of complicated pneumoconiosis in the form of multiple fibrotic foci with anthracotic pigment and silica-like crystals, two lesions of which measured 1.1 and 1.2 centimeters in the left and right upper lobes. Director's Exhibit 11 at 2. Dr. Cool disagreed with Dr. Sawyer's diagnosis of complicated pneumoconiosis in the left upper lung but agreed the Miner had progressive massive fibrosis in his right upper lobe with the largest lesion measuring 1.14 centimeters. Claimant's Exhibit 5 at 5. Dr. Oesterling opined there was no area of complicated pneumoconiosis, noting that the most prevalent confluent coal dust-caused lesion he saw was in the right upper lung and was composed of two distinct small foci that do not amount to a confluent one-centimeter lesion. Employer's Exhibit 3 at 2. Similarly, Dr. Vey found no nodules in the left upper lung and found the nodules in the right upper lung measured no more than seven millimeters maximally and there were no pneumoconiosis lesions that exceed one centimeter. Employer's Exhibit 9 at 3. The ALJ accorded little weight to the reports of Drs. Sawyer and Cool and found the opinions of Drs. Oesterling and Vey persuasive. Decision and Order at 27-28.

Initially, we reject Claimant's argument that the ALJ "simply ignored Dr. Cool's pathology report" and "failed to discuss it anywhere." Claimant's Brief at 4-5 (unpaginated). Rather, the ALJ considered Dr. Cool's report but permissibly found her

[5] We affirm, as unchallenged on appeal, the ALJ's finding that the x-ray evidence and other medical evidence does not establish complicated pneumoconiosis at 20 C.F.R. §718.304(a), (c). *See Skrack*, 6 BLR at 1-711; Decision and Order at 26.

credibility was adversely affected by her review of and reliance on the reports of Dr. Abraham and Dr. Swedarsky, which were not part of the record. *See Harman Mining Co. v. Director, OWCP* [*Looney*], 678 F.3d 305, 310 (4th Cir. 2012); *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211 (4th Cir. 2000); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 756 (4th Cir. 1999); Decision and Order at 27. Consequently, the ALJ considered and rejected Dr. Cool's opinion.

The ALJ also found that, even if he credited the opinions of Drs. Cool and Sawyer, he would not find complicated pneumoconiosis established by the autopsy evidence. Decision and Order at 27-28. Specifically, the ALJ noted that the physicians did not state whether the large opacities would appear as greater than one centimeter on an x-ray, the uncontradicted x-ray evidence is negative for the disease, the uncontradicted CT scan evidence does not show large opacities, and the size of the opacities described are not so great as to clearly equate to a one-centimeter opacity on x-ray. *See Scarbro*, 220 F.3d at 256; *Blankenship*, 177 F.3d at 243; *Mays*, 176 F.3d at 756; *Lane Hollow Coal Co. v. Director, OWCP* [*Lockhart*], 137 F.3d 799, 802-03 (4th Cir. 1998); Decision and Order at 27-28. As Claimant does not challenge these findings, they are affirmed. *See Skrack v. Island Creek Coal Co*., 6 BLR 1-710, 1-711 (1983).

We further reject Claimant's argument that the ALJ should have credited the opinions of Dr. Sawyer and Dr. Cool over the contrary opinions of Dr. Oesterling and Dr. Vey because Dr. Sawyer and Dr. Cool described their findings in compliance with the International Labour Organization classification system for x-rays, while Drs. Oesterling and Vey did not describe the size, shape, placement and etiology of the opacities they observed. Claimant's Brief at 5-7 (unpaginated).

Initially, we note that nothing in the regulations requires that an autopsy be interpreted in accordance with a classification system created for interpreting x-ray evidence. Moreover, the physicians described the size, shape, and placement of the opacities they found. Dr. Oesterling described the largest opacity he identified as having two small peripheral attachments or tail-like areas in the right upper lung. Employer's Exhibit 3 at 2. Dr. Vey noted coal dust macules in the left upper lung that he described as "scattered variably densely clustered geographic aggregates of anthracotic pigment laden macrophages embedded in a generally loose fibrous matrix," measuring up to 3mm, and coal macules measuring no more than 7mm in the left upper lung described as "coalescent dense and generally acellular focus of hyalinized fibrosis containing entrapped anthracotic pigment and pigment laden macrophages." Employer's Exhibit 9 at 3. Moreover, the ALJ permissibly credited the autopsy reports of Drs. Oesterling and Vey because they considered all the admissible evidence of record, noted the presence of simple pneumoconiosis, and concluded there were no opacities greater than one centimeter in any dimension, findings Claimant has not challenged. *See Looney*, 678 F.3d at 310; *Milburn*

Colliery Co. v. Hicks, 138 F.3d 524, 528 (4th Cir. 1998); *see Skrack*, 6 BLR at 1-711; Decision and Order at 28. We therefore affirm the ALJ's weighing of Drs. Oesterling's and Vey's opinions.

Claimant's arguments amount to a request to reweigh the evidence, which we are not empowered to do. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989). Consequently, because it is supported by substantial evidence, we also affirm the ALJ's determination that Claimant failed to establish complicated pneumoconiosis based on the autopsy evidence. 20 C.F.R. §718.304(b); *see Compton*, 211 F.3d at 207-08; *Hicks*, 138 F.3d at 528; Decision and Order at 28.

As Claimant raises no further challenges,[6] we affirm the ALJ's conclusion that Claimant did not establish complicated pneumoconiosis based on the evidence as a whole and therefore did not invoke the irrebuttable presumption of total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.304. 30 U.S.C. §921(c)(3); *see Skrack*, 6 BLR at 1-711; Decision and Order at 30. We therefore affirm the denial of benefits.

[6] Although Claimant argues the ALJ erred in crediting Dr. Zaldivar's medical opinion and discrediting Dr. Werntz's medical opinion, neither opinion was admitted into evidence and therefore the ALJ did not consider them. Claimant's Brief at 4 (unpaginated). Claimant also states that the ALJ erred "by failing to consider or credit any of the Miner's lay testimony regarding pulmonary impairment." Claimant's Brief at 4 (unpaginated). However, the ALJ found total disability established by the objective evidence, and Claimant provides no further argument as to how the ALJ erred; we therefore decline to address the argument as not adequately raised. *See Jones Bros. v. Sec'y of Labor*, 898 F.3d 669, 677 (6th Cir. 2018) (party forfeits argument when it "cho[oses] to identify the issue but not to press it"); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983); *see also Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (appellant must explain how the "error to which [it] points could have made any difference").

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

SO ORDERED.

DANIEL T. GRESH, Chief
Administrative Appeals Judge

MELISSA LIN JONES
Administrative Appeals Judge

GLENN E. ULMER
Acting Administrative Appeals Judge