

BRB Nos. 06-0411 BLA  
and 06-0411 BLA-A

LINDA GOINS )  
(Widow of EVERETT GOINS) )  
 )  
 Claimant-Petitioner )  
 )  
 v. )  
 ) DATE ISSUED: 12/20/2006  
 MANALAPAN MINING COMPANY )  
 )  
 and )  
 )  
 AMERICAN MINING INSURANCE )  
 COMPANY )  
 )  
 Employer/Carrier- )  
 Respondent )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

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

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

W. Stacy Huff (Huff Law Office), Harlan, Kentucky, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals and employer cross-appeals the Decision and Order and Decision and Order on Reconsideration (04-BLA-5544, 04-BLA-6040) of Administrative

Law Judge Joseph E. Kane rendered on a miner's claim and a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The administrative law judge credited the miner with twenty-five years of coal mine employment<sup>1</sup> and found that the existence of pneumoconiosis arising out of coal mine employment was established by autopsy evidence pursuant to 20 C.F.R. §§718.202(a)(2), 718.203(b). However, the administrative law judge found that the evidence did not establish that the miner was totally disabled due to pneumoconiosis, or that his death was due to pneumoconiosis, pursuant to 20 C.F.R. §§718.204, 718.205(c). Accordingly, the administrative law judge denied benefits on both claims.

On appeal, claimant contends that the administrative law judge erred in his analysis of the relevant medical evidence. Employer responds, urging affirmance of the denial of benefits, and has filed a cross-appeal challenging the administrative law judge's finding that the existence of pneumoconiosis was established. The Director, Office of Workers Compensation Programs has declined to file a substantive response to either appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits on the miner's claim under the Act, claimant must demonstrate by a preponderance of the evidence that the miner was totally disabled due to pneumoconiosis arising out of coal mine employment. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §718.205(a)(1)-(3); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). For survivor's claims filed on or after January 1, 1982, where pneumoconiosis is not the cause of death, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2), (4). Pneumoconiosis is a substantially contributing cause of a miner's

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<sup>1</sup> The record indicates that the miner's last coal mine employment occurred in Kentucky. Director's Exhibits 4, 5. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 817, 17 BLR 2-135, 2-140 (6th Cir. 1993). Failure to establish any one of these elements precludes entitlement. *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).

Pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered Dr. Baker's opinion diagnosing two impairments,<sup>2</sup> and Dr. Hussain's opinion stating that the miner was totally disabled by a moderate impairment. Director's Exhibits 12, 14. The administrative law judge also considered Dr. Dahhan's opinion that the miner had a mild, partially reversible impairment that was not totally disabling, and Dr. Branscomb's opinion that the miner had no impairment and was not totally disabled from performing his job as a foreman and repairman. Director's Exhibit 15; Employer's Exhibit 2. The administrative law judge found that Dr. Hussain did not adequately explain his conclusion that the miner was totally disabled, and that Dr. Baker did not opine that the miner was totally disabled. Decision and Order at 12. Further, the administrative law judge found that the opinions of Drs. Dahhan and Branscomb were "well-reasoned and well-documented," and he concluded that claimant did not establish total disability by a preponderance of the evidence. Decision and Order at 13.

Claimant asserts that in addressing the issue of total disability, the administrative law judge is required to consider the exertional requirements of the miner's usual coal mine work in conjunction with a physician's findings regarding the extent of any respiratory impairment. Claimant's Brief at 6, citing *Cornett v. Benham Coal*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Hvizdzak v. North Am. Coal Corp.*, 7 BLR 1-469 (1984); *Parsons v. Black Diamond Coal Co.*, 7 BLR 1-236 (1984). The only specific argument claimant sets forth, however, is that:

The deceased miner's usual coal mine work included being a foreman and repairman. It can be reasonably concluded that such duties involved the [miner] being exposed to heavy concentrations of dust on a daily basis. Taking into consideration the [miner's] condition against such duties, as well as the medical opinions of Drs. Baker and Hussain, it is rational to conclude that the [miner's] condition prevent[ed] him from engaging in his

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<sup>2</sup> Dr. Baker opined that the miner had a class II impairment, based on the FEV1 value of a pulmonary function study. Director's Exhibit 14 at 2. Dr. Baker stated further that the miner had "a second impairment" because "persons who develop pneumoconiosis should limit further exposure to the offending agent," which "would imply the [miner] is 100% occupationally disabled for work in the coal mining industry . . ." *Id.*

usual employment in that such employment occurred in a dusty environment and involved exposure to dust on a daily basis.

Claimant's Brief at 6. Claimant's argument is without merit. A statement that a miner should limit further exposure to coal dust is not equivalent to a finding of total disability. *Zimmerman v. Director, OWCP*, 871 F.2d 564, 567, 12 BLR 2-254, 2-258 (6th Cir. 1989); *Taylor v. Evans and Gambrel Co.*, 12 BLR 1-83, 1-88 (1988). Moreover, the administrative law judge permissibly accorded greater weight to the medical opinions he found to be better documented and reasoned, which stated that the miner was not totally disabled.<sup>3</sup> See *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 and n.4 (1993). Claimant's additional argument that the opinions of Drs. Baker and Hussain were well-reasoned asks us to reweigh the evidence, which we are not authorized to do. *Anderson*, 12 BLR at 1-113. Substantial evidence supports the administrative law judge's finding that total disability was not established pursuant to 20 C.F.R. §718.204(b)(2)(iv), which we therefore affirm.

Pursuant to 20 C.F.R. §718.205(c), the administrative law judge found that there was no evidence to support a finding that pneumoconiosis caused or hastened the miner's death. Decision and Order at 16; Decision and Order on Reconsideration at 2. Substantial evidence supports this finding. The record reflects that the miner's death certificate, the autopsy report, and the medical opinions by Drs. Dahhan and Branscomb attributed the miner's death to pneumonia, which occurred following surgery for lung cancer. Director's Exhibits 39, 40, 46; Employer's Exhibit 2. Since the administrative law judge correctly found that there was no evidence that pneumoconiosis caused or hastened the miner's death, claimant's argument that the administrative law judge "may have 'selectively analyzed'" the evidence lacks merit. Claimant's Brief at 7. We therefore affirm the administrative law judge's finding pursuant to 20 C.F.R. §718.205(c).

Because claimant failed to establish that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2), a necessary element of entitlement in the miner's claim, and did not establish that the miner's death was due to pneumoconiosis, a necessary element of entitlement in the survivor's claim, we affirm the denial of benefits on both claims. See *Anderson*, 12 BLR at 1-112. Therefore, we need not address employer's cross-appeal

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<sup>3</sup> A review of the record indicates that Dr. Branscomb discussed the physical requirements of the miner's job as a foreman when he opined that the miner had no impairment and was not totally disabled from performing his coal mine work. Employer's Exhibit 2 at 1, 6; Director's Exhibits 3, 35.

challenging the administrative law judge's finding that the existence of pneumoconiosis was established.

Accordingly, the administrative law judge's Decision and Order and Decision and Order on Reconsideration are affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge