

BRB No. 14-0239 BLA

STELLA CAMPBELL	)	
(Widow of FLOYD CAMPBELL)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
ADDINGTON, INCORPORATED	)	DATE ISSUED: 12/04/2014
	)	
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 of John P. Sellers, III,  
Administrative Law Judge, United States Department of Labor.

Stella Campbell, Jackson, Kentucky, *pro se*.

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for  
employer.

Before: HALL, Acting Chief Administrative Appeals Judge,  
McGRANERY and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of legal counsel, appeals the Decision and Order Denying Benefits (2011-BLA-5824) of Administrative Law Judge John P. Sellers, III, rendered on a survivor's claim filed on June 7, 2010,<sup>1</sup> pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012)(the Act).

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<sup>1</sup> Claimant is the widow of the miner, Floyd Campbell, who died on February 24, 2007. Director's Exhibit 10. There is no evidence in the record that the miner filed a claim during his lifetime.

Adjudicating the claim pursuant to 20 C.F.R. Part 718, the administrative law judge credited the miner with at least fifteen years of underground coal mine employment, based on employer's concession. Addressing the merits, the administrative law judge found the medical evidence insufficient to establish that the miner was totally disabled under 20 C.F.R. §718.204(b)(2) and, therefore, he found that the rebuttable presumption of death due to pneumoconiosis, set forth in amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305, does not apply.<sup>2</sup> The administrative law judge further found that claimant did not establish that the miner had either clinical or legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and, thus, did not establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205. Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has not filed a response.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). The Board must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with applicable law.<sup>3</sup> 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the Decision and Order of the administrative law

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<sup>2</sup> Congress enacted amendments to the Black Lung Benefits Act, which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, Congress reinstated Section 411(c)(4) of the Act, which provides a rebuttable presumption that a miner's death was due to pneumoconiosis in cases where fifteen or more years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine, and a totally disabling respiratory impairment are established. 30 U.S.C. §921(c)(4) (2012). The Department of Labor revised the regulations to implement the amendments to the Act. The revised regulations became effective on October 25, 2013, and are codified at 20 C.F.R. Parts 718, 725 (2014).

<sup>3</sup> The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as the miner's last coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (en banc); Director's Exhibit 3.

judge is supported by substantial evidence and contains no reversible error. The administrative law judge rationally found that claimant was unable to establish a totally disabling respiratory impairment pursuant to Section 718.204(b) and, therefore, was not entitled to invocation of the rebuttable presumption of death due to pneumoconiosis pursuant to Section 718.305. The administrative law judge also rationally found that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a) and, therefore, failed to establish entitlement under Part 718.

### **Section 718.305 Presumption**

The administrative law judge determined that claimant was unable to invoke the Section 718.305 presumption because the evidence failed to establish that the miner suffered a total respiratory or pulmonary disability. Pursuant to Section 718.204(b)(2)(i), the administrative law judge found that the miner's treatment records contained one pulmonary function study,<sup>4</sup> dated December 28, 2006, which did not yield qualifying values.<sup>5</sup> Director's Exhibit 14. Thus, the administrative law judge properly concluded that claimant did not establish total disability pursuant to Section 718.204(b)(2)(i). Decision and Order at 11.

Pursuant to Section 718.204(b)(2)(ii), the administrative law judge found that the record contains five arterial blood gas studies dated between January 27, 2007 and February 18, 2007, of which only the February 6, 2007 study yielded qualifying values. Decision and Order at 11; Director's Exhibits 14, 15. The administrative law judge found that the studies administered after the February 6, 2007 study yielded non-qualifying values, and that Drs. Castle and Rosenberg both opined that the qualifying study was administered during the miner's hospitalization and did not represent an accurate baseline study for the miner. Decision and Order at 11; Director's Exhibits 14, 15; Employer's Exhibits 3, 6. Consequently, the administrative law judge permissibly found that the weight of the arterial blood gas study evidence was non-qualifying and insufficient to establish total disability pursuant to Section 718.204(b)(2)(ii), and we affirm his finding, as supported by substantial evidence. *See Schetroma v. Director, OWCP*, 18 BLR 1-17 (1993); *McMath v. Director, OWCP*, 12 BLR 1-6 (1988); Decision and Order at 11. In addition, because the record does not contain any evidence of cor pulmonale with right-

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<sup>4</sup> The parties did not designate any pulmonary function studies as evidence pursuant to 20 C.F.R. §725.414(a).

<sup>5</sup> A "qualifying" pulmonary function study or blood gas study yields values that are 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 values that exceed those values. *See* 20 C.F.R. §718.204(b)(2)(i), (ii).

sided congestive heart failure, we affirm the administrative law judge's finding that total disability was not established pursuant to Section 718.204(b)(2)(iii). Decision and Order at 11.

Pursuant to Section 718.204(b)(2)(iv), the administrative law judge found that no physician of record opined that the miner was totally and permanently disabled from a respiratory impairment. Decision and Order at 11. Because a review of the record shows that the administrative law judge correctly found that none of the medical opinions stated that the miner was totally disabled from a respiratory standpoint, we affirm his finding that claimant failed to establish total disability at Section 718.204(b)(2)(iv). 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 11; Director's Exhibits 12, 13, 14A; Employer's Exhibits 3-8. We further affirm, as supported by substantial evidence, the administrative law judge's determination, based on his weighing of all of the evidence together, that the miner was not totally disabled. *See Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(en banc); Decision and Order at 11. As claimant failed to establish that the miner had a totally disabling respiratory or pulmonary impairment, we affirm the administrative law judge's finding that claimant is unable to invoke the presumption of death due to pneumoconiosis pursuant to Section 718.305.

### **Entitlement Under 20 C.F.R. Part 718**

In order to establish entitlement to survivor's benefits, without benefit of the amended Section 411(c)(4) presumption, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.202, 718.203, 718.205; *Conley v. Nat'l Mines Corp.*, 595 F.3d 297, 303, 24 BLR 2-255, 2-266-67 (6th Cir. 2010); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 518, 22 BLR 2-625, 2-655 (6th Cir. 2003); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87 (1993).

Pursuant to Section 718.202(a)(1), the administrative law judge considered the readings of two x-rays dated February 6, 2007 and February 7, 2007. Decision and Order at 4. As both x-rays were interpreted as negative for pneumoconiosis by Dr. Tarver, a dually-qualified Board-certified radiologist and B reader, we affirm the administrative law judge's finding that the x-ray evidence fails to establish the presence of clinical pneumoconiosis pursuant to Section 718.202(a)(1). Decision and Order at 13; Employer's Exhibits 1, 2; *see* 20 C.F.R. §718.202(a)(1); *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994).

With respect to Section 718.202(a)(2), the administrative law judge accurately determined that no biopsy or autopsy evidence was presented by the parties in this case. Decision and Order at 13. Additionally, pursuant to Section 718.202(a)(3), the

administrative law judge properly found that claimant is not eligible for any of the statutory presumptions available to establish that the miner had pneumoconiosis. *Id.* We, therefore, affirm his finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2) and (3). *See* 20 C.F.R. §718.202(a)(2)-(3); *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986).

Pursuant to Section 718.202(a)(4), the administrative law judge determined that neither clinical nor legal pneumoconiosis was established by a well-reasoned and documented medical opinion. The administrative law judge considered the medical opinions of Drs. Alam, Chaney, Castle and Rosenberg, and found that the diagnoses of coal workers' pneumoconiosis by Drs. Alam<sup>6</sup> and Chaney<sup>7</sup> were not persuasive. The administrative law judge, within a reasonable exercise of his discretion as fact-finder, concluded that Dr. Alam failed to adequately explain the basis for his diagnosis and, therefore, it was not clear whether Dr. Alam was rendering a diagnosis based on his own review of the evidence or was merely stating what was in the miner's medical history. Consequently, the administrative law judge permissibly found that Dr. Alam's opinion was not well-reasoned, and was entitled to little weight. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002); *Wolf Creek Collieries v. Director, OWCP [Stephens]*, 298 F.3d 511, 22 BLR 2-495 (6th Cir. 2002); *Clark*, 12 BLR at 1-155; Decision and Order at 13-14; Director's Exhibit 13. Likewise, the administrative law judge found that Dr. Chaney did not provide any specific bases for his diagnosis, other

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<sup>6</sup> In a consultative report while the miner was hospitalized in February 2007 for treatment of a sigmoid mass, Dr. Alam noted that the miner worked for seventeen years in coal mine employment and had a history of coal workers' pneumoconiosis. Director's Exhibit 13 at 32. Reviewing the objective evidence, Dr. Alam stated that the miner's chest x-ray was clear and that a blood gas study, on 2 liters of oxygen, resulted in a CO<sub>2</sub> of 34 and a PO<sub>2</sub> of 79. *Id.* at 33-34. Based on a review of the evidence from his examination, Dr. Alam diagnosed, *inter alia*, coal workers' pneumoconiosis, leukocytosis (rule out sepsis), dehydration, Azotemia, colonic mass, hypertension and tachycardia. *Id.* at 34.

<sup>7</sup> Dr. Chaney, the miner's treating physician from 1998 through 2007, provided a "To Whom It May Concern" letter on May 23, 2010, stating that "[t]his patient has coal workers' pneumoconiosis and prior to his death, his 'lung condition' had deteriorated." Director's Exhibit 12. In a follow-up questionnaire, Dr. Chaney checked a box indicating that the miner had clinical pneumoconiosis, based on an x-ray and his treatment of the miner. Director's Exhibit 14A. He further stated that the pneumoconiosis was related to the miner's coal dust exposure, as well as to his smoking. *Id.* Dr. Chaney further opined that pneumoconiosis contributed to, or hastened, the miner's death because "decreased lung function would make any condition more difficult to treat." *Id.*

than reference to an unidentified chest x-ray and his treatment of the miner. Consequently, while finding that Dr. Chaney was the miner's treating physician, the administrative law judge, nonetheless, found that Dr. Chaney's opinion was entitled to little weight because it was conclusory and not well-reasoned. *See Eastern Mining Co. v. Williams*, 338 F.3d 501, 512, 22 BLR 2-623, 2-647 (6th Cir. 2003); *Napier*, 301 F.3d 703, 22 BLR 2-537; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark*, 12 BLR at 1-155; Decision and Order at 14; Director's Exhibits 12, 14A. As the administrative law judge found that the remaining opinions of Drs. Castle<sup>8</sup> and Rosenberg,<sup>9</sup> that the miner did not have either clinical or legal pneumoconiosis, are not supportive of claimant's burden, Decision and Order at 14; Employer's Exhibits 3-8, we affirm his finding that claimant did not establish the existence of clinical or legal pneumoconiosis based on the medical opinion evidence pursuant to Section 718.202(a)(4). We also affirm the administrative law judge's determination that "considering all the medical evidence of record, I find that it fails to establish either clinical or legal pneumoconiosis [pursuant to Section 718.202(a)(1)-(4),]" as supported by substantial evidence. Decision and Order at 15; *see Dixie Fuel Co. v. Director, OWCP [Hensley]*, 700 F.3d 878, 881, 25 BLR 2-213, 2-218 (6th Cir. 2012).

As claimant has failed to establish that the miner had pneumoconiosis, a requisite element of entitlement under Part 718, we affirm the administrative law judge's finding that an award of survivor's benefits is precluded. *See* 20 C.F.R. §718.202(a); 718.205; *Conley*, 595 F.3d at 303, 24 BLR at 2-266-67; *Williams*, 338 F.3d at 518, 22 BLR at 2-655; *Trumbo*, 17 BLR at 1-87.

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<sup>8</sup> Based on a review of the evidence of record, Dr. Castle opined that the miner did not suffer from clinical or legal pneumoconiosis. Employer's Exhibit 3, 5, 7. Dr. Castle opined that there was no radiographic evidence of coal workers' pneumoconiosis, and that the miner did not demonstrate any disabling abnormality of ventilatory function from any cause, including coal dust exposure or coal workers' pneumoconiosis. *Id.* Additionally, Dr. Castle opined that the miner was not permanently and totally disabled due to any pulmonary disease, including coal workers' pneumoconiosis. *Id.*

<sup>9</sup> Based on his review of the medical evidence of record, Dr. Rosenberg opined that the miner did not have clinical or legal pneumoconiosis. Employer's Exhibits 4, 6, 8. Dr. Rosenberg opined that the miner did not have micronodularity related to his coal mine employment history, as shown by the negative x-ray readings. *Id.* Dr. Rosenberg further opined that the miner did not have obstruction or restriction and that, from a pulmonary perspective, the miner was not disabled. *Id.*

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

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BETTY JEAN HALL, Acting Chief  
Administrative Appeals Judge

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REGINA C. McGRANERY  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge