



BRB No. 18-0604 BLA

BILLY LUCAS	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
J & V COAL COMPANY,	)	
INCORPORATED	)	
	)	DATE ISSUED: 12/18/2019
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 and Decision and Order Denying Motion for Reconsideration of Peter B. Silvain, Jr., Administrative Law Judge, United States Department of Labor.

Stephen A. Sanders (Appalachian Citizens' Law Center, Inc.), Whitesburg, Kentucky, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits and Decision and Order Denying Motion for Reconsideration (2016-BLA-05944) of Administrative Law Judge

Peter B. Silvain, Jr., rendered on a subsequent claim filed on May 8, 2015,<sup>1</sup> pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). The administrative law judge found that claimant established fewer than fifteen years of coal mine employment and thus could not invoke the rebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act.<sup>2</sup> 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §718.305. Considering claimant's entitlement under 20 C.F.R. Part 718, he determined that claimant established clinical pneumoconiosis arising out of coal mine employment but not legal pneumoconiosis,<sup>3</sup> total disability, and a change in an applicable condition of entitlement. 20 C.F.R. §§718.202(a)(1), 725.309, 718.204(b)(2). The administrative law judge further found, however, that claimant did not establish that he is totally disabled due to pneumoconiosis and denied benefits. 20 C.F.R. §718.204(c). The administrative law judge also denied claimant's motion for reconsideration.

On appeal, claimant argues the administrative law judge erred in calculating the length of his coal mine employment. Claimant specifically contends that the administrative law judge erred in discrediting Dr. Alam's opinion on legal pneumoconiosis and disability causation to the extent Dr. Alam overstated the length of claimant's coal mine employment as sixteen or eighteen years, when the administrative law judge found only 11.53 years established. Claimant asserts he has 14.55 years of coal mine employment "based on the regulatory standard that 125 days of employment establishes one year of credit."<sup>4</sup>

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<sup>1</sup> Claimant filed an initial claim on March 5, 1984, which the district director denied because he did not establish any element of entitlement. Director's Exhibit 1.

<sup>2</sup> Under Section 411(c)(4), claimant is entitled to a rebuttable presumption that he is totally disabled due to pneumoconiosis if he establishes 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); 20 C.F.R. §718.305(b).

<sup>3</sup> Legal pneumoconiosis includes "any chronic lung disease or impairment and its sequelae arising out of coal mine employment." 20 C.F.R. §718.201(a)(2). 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).

<sup>4</sup> Claimant does not allege at least fifteen years of coal mine employment in this appeal. We therefore affirm the administrative law judge's finding that he is unable to invoke the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(b). We also affirm, as unchallenged, the administrative law judge's findings that claimant did not establish complicated pneumoconiosis and thus is unable to invoke the irrebuttable

Claimant's Brief at 8. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, declined to file a substantive response brief.

The Board's scope of review is defined by statute. We must affirm the administrative law judge's Decision and Order Denying Benefits and Decision and Order Denying Motion for Reconsideration 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must establish he has pneumoconiosis, his pneumoconiosis arose out of coal mine employment, he has a totally disabling respiratory or pulmonary impairment, and his total disability is due to pneumoconiosis. 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. *See 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).

The administrative law judge found that claimant is totally disabled. 20 C.F.R. §718.204(b)(2). Claimant argues the administrative law judge erred in finding that he does not have legal pneumoconiosis and that his total disability is not due to legal pneumoconiosis.<sup>6</sup> 20 C.F.R. §§718.202(a)(4), 718.204(c).

To prove legal pneumoconiosis, claimant must establish that he has 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). Dr. Alam is the only physician to diagnose legal pneumoconiosis, in the form of chronic bronchitis due to smoking and coal dust exposure. Decision and Order at 23; Director's Exhibit 14 at 3. The

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presumption of total disability due to pneumoconiosis. *See* 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304; *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

<sup>5</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as claimant's coal mine employment occurred in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 4.

<sup>6</sup> The administrative law judge determined that claimant has clinical pneumoconiosis, but found he failed to establish that his total disability is due to clinical pneumoconiosis. 20 C.F.R. §718.204(c); Decision and Order at 32. We affirm the administrative law judge's finding as it is not challenged. *Skrack*, 6 BLR at 1-711.

administrative law judge gave little weight to Dr. Alam's opinion on legal pneumoconiosis because he found Dr. Alam did not have an accurate understanding of either claimant's length of coal mine employment or his smoking history.<sup>7</sup> Decision and Order at 23. Although claimant asserts the administrative law judge miscalculated his coal mine employment, he raises no error regarding the administrative law judge's calculation of his smoking history or his discrediting of Dr. Alam's opinion, based on an inaccurate smoking history. See *Bobick v. Saginaw Mining Co.*, 13 BLR 1-52, 1-54 (1988) (The effect of an inaccurate smoking history on the credibility of a medical opinion is for the administrative law judge to determine.). We therefore affirm the administrative law judge's finding. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Because the administrative law judge gave a valid reason for giving Dr. Alam's opinion little weight on legal pneumoconiosis, we need not address claimant's arguments regarding the length of his coal mine employment. See *Shinseki v. Sanders*, 556 U.S. 396, 413 (2009) (Appellant must explain how the "error to which [it] points could have made any difference."); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984); *Kozele v. Rochester & Pittsburgh Coal Co.*, 6 BLR 1-378, 1-382 n.4 (1983). We therefore affirm the administrative law judge's finding that claimant did not establish legal pneumoconiosis.<sup>8</sup> 20 C.F.R. §718.202(a)(4); Decision and Order at 24, 32.

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<sup>7</sup> Dr. Alam reported that claimant smoked from 1967 to 2000, at a rate of one half a pack a day or "16.5 pack years." Decision and Order at 23; see Director's Exhibit 10 at 34. The administrative law judge determined the record established that claimant smoked "a half a pack of cigarettes a day from 1967 until 2007 or 2008 for a total of about 20 to 20.5 pack years[.]" which is "7 to 8 years (albeit 3.5 to 4 pack years) longer than Dr. Alam's smoking history." Decision and Order at 23. Noting that Dr. Alam opined the "main cause" of claimant's respiratory impairment is smoking, the administrative law judge stated he was "unable to ascertain" whether Dr. Alam would still attribute claimant's respiratory impairment, in part, to coal dust exposure if he was aware of claimant's longer smoking history. *Id.* at 23.

<sup>8</sup> Because claimant did not establish legal pneumoconiosis, he cannot establish his respiratory disability is due to legal pneumoconiosis. 20 C.F.R. §718.204(c).

Accordingly, the administrative law judge's Decision and Order Denying Benefits and Decision and Order Denying Motion for Reconsideration are affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

DANIEL T. GRESH  
Administrative Appeals Judge