

BRB No. 06-0639 BLA

WILMA ELMS)
(Widow of NOVELL ELMS))
)
Claimant-Petitioner)
)
v.)
)
PEABODY COAL COMPANY)
)
and)
)
OLD REPUBLIC INSURANCE COMPANY) DATE ISSUED: 02/27/2007
)
Employer/Carrier-)
Respondents)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest)
) DECISION and ORDER

Appeal of the Decision and Order on Remand of Stephen L. Purcell,
Administrative Law Judge, United States Department of Labor.

Sandra M. Fogel (Culley & Wissore), Carbondale, Illinois, for claimant.

Laura Metcoff Klaus (Greenberg Traurig, LLP), Washington, D.C., for
employer.

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

PER CURIAM:

Claimant appeals the Decision and Order on Remand (94-BLA-1327) of
Administrative Law Judge Stephen L. Purcell denying benefits on 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 miner died on July 21, 1993, and claimant, his widow, filed her claim for survivor's benefits on August 25, 1993. Director's Exhibit 12. This case is before the Board for the fifth time.¹ In a Decision and Order on Remand issued on March 31, 2004, Administrative Law Judge Mollie W. Neal, applying the regulations at 20 C.F.R. Part 718, found that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Additionally, Judge Neal found that the medical evidence did not establish that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to 20 C.F.R. §718.205(c)(2). Accordingly, Judge Neal denied benefits.

Upon review of claimant's appeal, the Board vacated the administrative law judge's findings pursuant to Sections 718.202(a)(4) and 718.205(c)(2), and remanded the case for further consideration. *Elms v. Peabody Coal Co.*, BRB No. 04-0600 BLA (Apr. 29, 2005)(unpub.)(McGranery, J., concurring). Specifically, the Board revisited its 2002 holding that, under the decision of the United States Court of Appeals for the Seventh Circuit in *Peabody Coal Co. v. McCandless*, 255 F.3d 465, 22 BLR 2-311 (7th Cir. 2001),² Dr. Sloan's opinion, that pneumoconiosis contributed to the miner's death, did not qualify as a reasoned medical opinion. Upon further reflection, the Board stated that because "*McCandless* was issued after the administrative law judge's 2001 Decision and Order, it would have been more appropriate for the administrative law judge to have reconsidered Dr. Sloan's opinion in light of *McCandless*" *Elms*, slip op. at 5. The Board, therefore, modified its 2002 holding, and instructed the administrative law judge on remand to reconsider Dr. Sloan's opinion in light of *McCandless*, and in light of the Seventh Circuit court's later opinion in *Zeigler Coal Co. v. Director, OWCP [Villain]*, 312 F.3d 332, 22 BLR 2-584 (7th Cir. 2002).³ *Id.* at 6.

¹ The full procedural history of this case is outlined in the Board's previous decision, *Elms v. Peabody Coal Co.*, BRB No. 04-0600 BLA (Apr. 29, 2005)(unpub.)(McGranery, J., concurring), and need not be reiterated here.

² This case arises within the jurisdiction of the United States Court of Appeals for the Seventh Circuit because the miner's coal mine employment occurred in Illinois. Director's Exhibit 2; see *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*). In *Peabody Coal Co. v. McCandless*, 255 F.3d 465, 470, 22 BLR 2-311, 2-319 (7th Cir. 2001), the court held that a treating physician's "*beliefs* must be supported by medical *reasons* if they are to be given legal effect." (emphasis in original).

³ In *Zeigler Coal Co. v. Director, OWCP [Villain]*, 312 F.3d 332, 335-36, 22 BLR 2-584, 2-589 (7th Cir. 2002), the court held that a physician who "gives no reason" for his conclusions "supplies nothing of value to the judicial process." (internal quotation marks and citation omitted). The court further held that, although *McCandless* requires

On remand, Administrative Law Judge Stephen L. Purcell (the administrative law judge),⁴ found that Dr. Sloan's opinion was not well reasoned under the criteria of *McCandless* and *Villain* and, accordingly, did not establish the existence of pneumoconiosis. After considering the other opinions that supported a finding of pneumoconiosis, by Drs. Long, Jones, and Moore, the administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4). The administrative law judge further found that because claimant failed to establish the existence of pneumoconiosis, she was unable to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c)(2). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in his analysis of the medical opinion evidence pursuant to Section 718.202(a)(4). Claimant also asserts that the administrative law judge erred in failing to find that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to Section 718.205(c)(2). Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits, 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. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). Failure to establish any one of these elements precludes entitlement. See *Trumbo*, 17 BLR at 1-87-88; *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

that a treating physician's opinion be supported by medical reasoning, "the proposition that persons weakened by pneumoconiosis may expire quicker from other diseases is a medical point, with some empirical support," and was something that the miner's treating physician was in a position to observe. *Villain*, 312 F.3d at 335, 22 BLR at 2-588 (emphasis in original).

⁴ Because Administrative Law Judge Mollie W. Neal was unavailable, the case was reassigned on remand, without objection, to the present administrative law judge.

Pursuant to Section 718.202(a)(4), the administrative law judge considered the opinions of Drs. Sloan, Long, Jones, and Moore. Dr. Sloan, the miner's treating physician, opined that pneumoconiosis was a contributing cause of the miner's death. Director's Exhibit 17. The administrative law judge found that Dr. Sloan's opinion "was not well reasoned" and was "insufficient under both *McCandless* and *Zeigler*, to support a finding of pneumoconiosis." 2006 Decision and Order on Remand at 7, 10. Specifically, the administrative law judge found that in a "two-sentence letter," dated November 4, 1993, Dr. Sloan provided "[n]o explanation whatsoever . . . for his conclusion that pneumoconiosis was a contributing cause of the Miner's death," and did not provide any explanation "for his implicit conclusion that the Miner suffered from the disease in the first place. Dr. Sloan cites no clinical finding or objective test result to support either conclusion, and instead simply asserts, as fact, [that the miner] had the disease and died, in part, because of it." Decision and Order on Remand at 7-8. Additionally, the administrative law judge noted that Dr. Sloan's statement that the miner "had many years of Coal Mine work" did not support his diagnosis of pneumoconiosis. *Id.*, citing *Sahara Coal Co. v. Fitts*, 39 F.3d 781, 18 BLR 2-384 (7th Cir. 1994)(stating that "[o]ccupational exposure is not evidence of pneumoconiosis . . . but merely a reason to expect that evidence might be found."). Moreover, the administrative law judge did not find support for Dr. Sloan's opinion letter in the miner's treatment and hospitalization records, because "Dr. Sloan did not identify any medical tests or clinical observations supporting his conclusion, he gave no rationale for his diagnosis of pneumoconiosis, and he did not attribute the Miner's other respiratory conditions to his exposure to coal mine dust." 2006 Decision and Order at 8.

On a November 9, 1993 form, Dr. Long stated that the miner suffered from "arteriosclerotic heart disease as well as [chronic obstructive lung disease] which was due, at least in part, to pneumoconiosis caused by his coal mine employment." Director's Exhibit 23. Based upon a review of the evidence, Dr. Jones diagnosed coal workers' pneumoconiosis. Claimant's Exhibit 9. In a January 14, 1994 letter, Dr. Moore stated that the miner "had underlying COPD and apparently pneumoconiosis from Black Lung." Director's Exhibit 18. After independently reviewing these three physicians' opinions, the administrative law judge concurred in Judge Neal's credibility determinations regarding them. Specifically, the administrative law judge found that the opinions of Drs. Jones and Long were not "sufficiently reasoned or documented to support a finding of pneumoconiosis." 2006 Decision and Order on Remand at 10. Additionally, the administrative law judge concurred in Judge Neal's conclusion "that Dr. Moore's opinion of 'apparent[] pneumoconiosis'" was "'lacking in any documentation or support' and was insufficient to support a finding of pneumoconiosis." *Id.*, citing 2004 Decision and Order on Remand at 5. Accordingly, the administrative law judge concluded that claimant did not meet her burden of proof pursuant to Section 718.202(a)(4), because "there are no medical opinions of record which would adequately support a finding of pneumoconiosis" 2006 Decision and Order at 10.

Claimant asserts that the administrative law judge erred in failing to consider Dr. Sloan's opinion as a whole, instead isolating each of the reasons Dr. Sloan gave for his diagnosis, and rejecting each one as inadequate. Contrary to claimant's contention, the administrative law judge thoroughly considered Dr. Sloan's opinion and his treatment and hospitalization records, and permissibly found that Dr. Sloan failed to explain or support his conclusion that the miner suffered from pneumoconiosis. See *McCandless*, 255 F.2d at 470, 22 BLR at 2-319 (holding that a physician's "beliefs must be supported by medical reasons if they are to be given legal effect")(emphasis in original); *Migliorini v. Director, OWCP*, 898 F.2d 1292, 13 BLR 2-418 (7th Cir. 1990); *Markus v. Old Ben Coal Co.*, 712 F.2d 322, 5 BLR 2-130 (7th Cir. 1983)(holding that the administrative law judge is not bound to accept opinion or theory of any given medical officer, but weighs the evidence and draws inferences); *Collins v. J&T Steel*, 21 BLR 1-181, 1-189 (1999).

Additionally, claimant contends that the administrative law judge merely repeated the Board's 2004 summary of Judge Neal's findings regarding the opinions of Drs. Long, Jones, and Moore, and "did not provide any explanation [of his own] for discounting" these opinions. Claimant's Brief at 6, 7. There is no merit in claimant's contention. In his decision, the administrative law judge specifically stated that he conducted an independent review of the opinions of Drs. Long, Jones, and Moore. In doing so, the administrative law judge permissibly found the opinions of Drs. Long and Jones to be insufficiently reasoned and documented, because neither physician provided specific medical findings for his or her conclusions. See *Migliorini*, 898 F.2d at 1297, 13 BLR at 2-425-6; *Freeman United Coal Co. v. Cooper*, 965 F.2d 443, 16 BLR 2-74 (7th Cir. 1992); *Collins*, 21 BLR at 1-189. Similarly, the administrative law judge permissibly found Dr. Moore's opinion to be inadequately documented and his finding of pneumoconiosis to be equivocal. *Id.*; *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988). Therefore, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).⁵ See *Maddaleni v. Pittsburg & Midway Coal Mining Co.*, 14 BLR 1-135 (1990); *Kuchwara v. Director, OWCP*, 7 BLR 1-167 (1984).

Because we affirm the administrative law judge's finding that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), a necessary element of entitlement in a survivor's claim under Part 718, we affirm the administrative law judge's denial of benefits. See *Trumbo*, 17 BLR at 1-87-88; *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

⁵ It has already been determined that claimant did not establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1)-(3). *Elms*, slip op. at 2.

Accordingly, the administrative law judge's Decision and Order on Remand denying benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge