



BRB Nos. 15-0118 BLA
and 15-0119 BLA

CHRISTINE COMBS, o/b/o and)	
Widow of RONALD LEE COMBS)	
)	
Claimant-Respondent)	
)	
v.)	
)	
COAL POWER CORPORATION)	
)	
and)	
)	
AMERICAN RESOURCES INSURANCE)	DATE ISSUED: 02/10/2016
COMPANY)	
)	
Employer/Carrier-)	
Petitioners)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order Awarding Benefits in Miner's and Survivor's Claims of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

H. Brett Stonecipher and Tighe A. Estes (Fogle Keller Purdy, PLLC), Lexington, Kentucky, for employer/carrier.

Helen H. Cox (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

Employer/carrier (employer) appeals the Decision and Order Awarding Benefits in Miner's and Survivor's Claims (2011-BLA-6161 and 2012-BLA-5230) of Administrative Law Judge John P. Sellers, III, rendered on a miner's claim¹ and a survivor's claim² filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012)(the Act). Adjudicating these claims pursuant to the regulations contained in 20 C.F.R. Part 718, the administrative law judge credited the parties' stipulation that the miner worked for seventeen years in surface coal mine employment, and found that the miner's surface coal mine employment occurred in conditions substantially similar to those in an underground coal mine. Noting that employer conceded that the miner had a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2), the administrative law judge found that claimant, the miner's surviving spouse, was entitled to invocation of the rebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012),³

¹ The miner filed his application for benefits on September 22, 2010. [Miner's claim] Director's Exhibit 2. The district director awarded benefits on June 10, 2011, and employer subsequently requested a formal hearing. The miner died on August 17, 2011, prior to the scheduling of the formal hearing, and claimant, the miner's widow, is pursuing the miner's claim on behalf of his estate. [Survivor's claim] Director's Exhibit 7.

² Claimant, Christine Combs, filed her survivor's claim on August 27, 2011. Director's Exhibit 5. That claim was consolidated with the miner's claim, and both claims were awarded by the district director on September 26, 2011. [Survivor's claim] Director's Exhibit 9.

³ 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, the amendments reinstated Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012), which provides a rebuttable presumption of total disability 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 or pulmonary impairment are established. 30 U.S.C. §921(c)(4). The amendments also revived Section 422(l) of the Act, 30 U.S.C. §932(l) (2012), which provides that a survivor of a miner who was eligible to receive benefits at the time of his or her death is automatically entitled to receive survivor's benefits, without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l).

and that employer failed to establish rebuttal of the presumption. Accordingly, the administrative law judge awarded benefits in the miner's claim. Because the administrative law judge found that the miner was entitled to benefits at the time of his death, he found that claimant was automatically entitled to survivor's benefits pursuant to Section 422(l) of the Act, 30 U.S.C. §932(l) (2012), without having to establish that the miner's death was due to pneumoconiosis.

On appeal, employer challenges the administrative law judge's determination that employer failed to rebut the Section 411(c)(4) presumption with proof that the miner did not suffer from legal pneumoconiosis and that his disabling respiratory impairment was not caused by pneumoconiosis. Claimant and the Director, Office of Workers' Compensation (the Director), respond, urging affirmance of the award of benefits in both claims.⁴

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.⁵ 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).

Employer contends that the administrative law judge erred in finding that employer failed to establish rebuttal of the Section 411(c)(4) presumption. Employer challenges the administrative law judge's determination that Dr. Broudy's opinion, that the miner did not have legal pneumoconiosis, was insufficient to establish rebuttal of the presumed fact of legal pneumoconiosis, and employer asserts that Dr. Broudy did not render an opinion that was contrary to the Act or regulations. Acknowledging that an administrative law judge may reject a physician's opinion that is "hostile-to-the-Act," employer argues that the administrative law judge failed to conduct a proper analysis of

⁴ We affirm, as unchallenged on appeal, the administrative law judge's determinations that claimant established that the miner worked for at least fifteen years in coal mine employment in dust conditions substantially similar to those found in underground mines, the presence of a totally disabling respiratory impairment at 20 C.F.R. §718.204(b), and invocation of the presumption of total disability due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); Decision and Order at 3 n.5, 8-10.

⁵ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner's coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc).

Dr. Broudy's opinion to determine whether the hostile components upon which Dr. Broudy relied affected his medical diagnosis and conclusions.

At the outset, we note that the administrative law judge may properly consider whether a medical opinion is based on premises that conflict with the definition of legal pneumoconiosis and the prevailing view of medical science underlying the current regulations, as determined by the Department of Labor (DOL) and set forth in the preamble to the revised regulations. *See A & E Coal Co. v. Adams*, 694 F.3d 798, 25 BLR 2-203 (6th Cir. 2012); *Harman Mining Co. v. Director, OWCP [Looney]*, 678 F.3d 305, 25 BLR 2-115 (4th Cir. 2012); *Helen Mining Co. v. Director, OWCP [Obush]*, 650 F.3d 248, 256-57, 24 BLR 2-369, 2-383 (3d Cir. 2011); *Midland Coal Co. v. Director, OWCP [Shores]*, 358 F.3d 486, 490, 23 BLR 2-18, 2-26 (7th Cir. 2004).

In reviewing the evidence relevant to rebuttal of the Section 411(c)(4) presumption, the administrative law judge provided a comprehensive discussion of the opinion of Dr. Broudy, employer's sole medical expert, and fully delineated Dr. Broudy's findings and the bases supporting his conclusion, that the miner did not suffer from legal pneumoconiosis and that his totally disabling respiratory impairment was unrelated to coal dust exposure. Decision and Order at 4-7; Employer's Exhibits 4, 5, 7. The administrative law judge initially accorded some deference to Dr. Broudy's opinion based on the physician's Board-certification in internal and pulmonary disease medicine. However, the administrative law judge found that Dr. Broudy predicated his opinion that the miner did not have *legal* pneumoconiosis on an absence of radiographic evidence of pneumoconiosis, in addition to his belief that "coal dust, once it causes impairment, ... it usually occurs with complicated disease as opposed to simple pneumoconiosis or people with negative x-rays," contrary to the express regulatory language that "no claim for benefits shall be denied solely on the basis of a negative chest X-ray," and the well-established principle that simple pneumoconiosis may be totally disabling. *See* 20 C.F.R. §718.202; *Penn Allegheny Coal Co. v. Mercatell*, 878 F.2d 106, 108, 12 BLR 2-305, 2-308-309 (3d Cir. 1989); Decision and Order at 12; Employer's Exhibit 7 at 23-24. The administrative law judge further found that Dr. Broudy's opinion was unpersuasive because the physician "exclude[d] coal dust exposure as a cause of any impairment since [the miner's] symptoms did not arise until well after he stopped work in the mines," contrary to the underlying premise of the regulations that pneumoconiosis is recognized as a latent and progressive disease that may first become detectable only after the cessation of coal mine exposure. *See* 20 C.F.R. §718.201(c); *Peabody Coal Co. v. Odom*, 342 F.3d 486, 491, 22 BLR 2-612, 2-621 (6th Cir. 2003); *accord Greene v. King James Coal Mining, Inc.*, 575 F.3d 628, 24 BLR 2-199 (6th Cir. 2009). Noting that "Dr. Broudy opined that coal dust did not contribute to the Miner's impairment because the pulmonary function study demonstrated an obstructive rather than a restrictive impairment," Decision and Order at 12, the administrative law judge correctly observed that Dr. Broudy's views are inconsistent with the regulatory provisions at 20 C.F.R. §718.201,

which recognize that coal dust may cause either a “chronic restrictive or obstructive pulmonary disease.” 20 C.F.R. §718.201; *see Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Tennessee Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989). Based on the foregoing, the administrative law judge reasonably found that Dr. Broudy’s opinion was inconsistent with the regulations and, hence, entitled to no weight. Decision and Order at 12-13; *see Consolidation Coal Co. v. Director, OWCP [Beeler]*, 521 F.3d 723, 726, 24 BLR 2-97, 2-103 (7th Cir. 2007). As the administrative law judge provided multiple valid reasons for discounting Dr. Broudy’s opinion, and substantial evidence supports his credibility determinations, we affirm his finding that employer failed to rebut the presumed fact of legal pneumoconiosis, and decline to address employer’s remaining arguments regarding the weight accorded to the opinion of Dr. Broudy.

Lastly, because Dr. Broudy did not diagnose legal pneumoconiosis, the administrative law judge acted within his discretion in finding that Dr. Broudy’s opinion was entitled to little weight on the issue of disability causation. Decision and Order on Remand at 13-14; *see Skukan v. Consolidation Coal Co.*, 993 F.2d 1228, 17 BLR 2-97 (6th Cir. 1993), *vac’d sub nom., Consolidated Coal Co. v. Skukan*, 114 S. Ct. 2732 (1994), *rev’d on other grounds, Skukan v. Consolidated Coal Co.*, 46 F.3d 15, 19 BLR 2-44 (6th Cir. 1995); *Trujillo v. Kaiser Steel Corp.*, 8 BLR 1-472 (1986); Decision and Order on Remand at 18. As substantial evidence supports the administrative law judge’s findings, we affirm his conclusion that the opinion of Dr. Broudy was insufficient to establish rebuttal of the presumed fact of disability causation, and that employer failed to establish rebuttal of the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(d)(1)(i), (ii); *Morrison v. Tenn. Consol. Coal Co.*, 644 F.3d 473, 25 BLR 2-1 (6th Cir. 2011). Consequently, we affirm the award of benefits in the miner’s claim.

Because the administrative law judge properly found that the miner was entitled to benefits at the time of his death, we also affirm the administrative law judge’s finding that claimant is derivatively entitled to survivor’s benefits. 30 U.S.C. §932(I).

Accordingly, the Decision and Order Awarding Benefits in Miner's and Survivor's Claims of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge