

U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601



BRB No. 17-0181 BLA

MISTY D. TRENT)
(Widow of DANNY L. TRENT))
)
Claimant-Respondent)
)
v.)
)
MAPLE COAL COMPANY) DATE ISSUED: 01/18/2018
)
and)
)
ROCKWOOD CASUALTY INSURANCE)
COMPANY)
)
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 Denying Benefits of Theresa C. Timlin,
Administrative Law Judge, United States Department of Labor.

Misty D. Trent, Gauley Bridge, West Virginia.

Howard G. Salisbury, Jr. (Kay Casto & Chaney PLLC), Charleston, West
Virginia, for employer.

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

PER CURIAM:

Claimant¹ appeals, without the assistance of counsel, the Decision and Order Denying Benefits (2013-BLA-05889) of Administrative Law Judge Theresa C. Timlin, rendered on a survivor's claim filed on August 28, 2012, pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (the Act). After crediting the miner with over thirty-five years of underground coal mine employment,² the administrative law judge found that claimant could not invoke the rebuttable presumption of death due to pneumoconiosis provided at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012), because the evidence does not establish that the miner was totally disabled. Because there is no evidence that would satisfy the regulatory criteria for establishing the existence of complicated pneumoconiosis, the administrative law judge also found that the Section 411(c)(3) irrebuttable presumption is inapplicable.

Turning to whether claimant could establish her entitlement to survivor's benefits under 20 C.F.R. Part 718, the administrative law judge found that the medical opinion evidence did not establish the existence of legal pneumoconiosis³ pursuant to 20 C.F.R. §718.202(a)(4). The administrative law judge found, however, that the autopsy and medical opinion evidence established that the miner had clinical pneumoconiosis⁴ arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), but that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to

¹ Claimant is the surviving spouse of the miner, who died on July 7, 2012. Director's Exhibit 9.

² The record indicates that the miner's last coal mine employment was in West Virginia. Director's Exhibit 3. Accordingly, we will apply the law of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

³ "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).

⁴ "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).

20 C.F.R. §718.205(b).⁵ Accordingly, the administrative law judge denied survivor's benefits.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the administrative law judge's findings and the denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response, unless specifically requested to do so by the Board.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *See Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176, 1-177 (1989). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational and consistent 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). Benefits are payable on survivor's claims when the miner's death is due to pneumoconiosis. *See* 20 C.F.R. §§718.1, 718.205; *Neeley v. Director, OWCP*, 11 BLR 1-85, 1-86 (1988).

The Section 411(c)(4) Presumption

Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), provides a rebuttable presumption that pneumoconiosis caused a miner's death when a claimant establishes fifteen years of qualifying coal mine employment and a totally disabling respiratory impairment. Pursuant to 20 C.F.R. §718.204(b)(2), a totally disabling respiratory impairment is established by:

- (i) pulmonary function studies showing values equal to or less than those listed in Appendix B to 20 C.F.R Part 718;
- (ii) arterial blood gas studies showing values equal to or less than those listed in Appendix C to 20 C.F.R. Part 718;
- (iii) medical evidence showing that the miner has pneumoconiosis and cor pulmonale with right-sided congestive heart

⁵ Section 422(l) of the Act, 30 U.S.C. §932 (l), provides that a survivor of a miner who was determined to be 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). Claimant cannot benefit from this provision, as there is no indication in the record that the miner was awarded benefits during his lifetime.

failure; or (iv) the opinion of a physician who, exercising reasoned medical judgment, concludes that a miner's respiratory or pulmonary condition is totally disabling, based on medically acceptable clinical and laboratory diagnostic techniques.

20 C.F.R. §718.204(b)(2)(i)-(iv).

As the administrative law judge determined, claimant cannot establish that the miner was disabled by any of these methods. Neither party submitted any pulmonary function studies or evidence that the miner suffered from cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(i), (iii). The administrative law judge correctly found that the blood gas studies administered on July 1 and 4, 2012, during the miner's final hospitalization, produced non-qualifying results.⁶ 20 C.F.R. §718.204(b)(2)(ii); Decision and Order at 9; Director's Exhibit 11. Finally, the administrative law judge also correctly found that neither the autopsy report by the prosector, Dr. Cinco, nor the medical report by Dr. Bush, "expressed an opinion on the extent of any respiratory or pulmonary impairment [the miner] may have had prior to his death." Decision and Order at 8 n.8; 20 C.F.R. §718.204(b)(2)(iv); Director's Exhibit 10; Employer's Exhibit 1. We therefore affirm the administrative law judge's finding that the evidence does not establish total disability under 20 C.F.R. §718.204(b)(2) and that claimant therefore cannot invoke the presumption of death due to pneumoconiosis. 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305(b); *see W. Va. CWP Fund v. Bender*, 782 F.3d 129, 137, 25 BLR 2-689, 2-698 (4th Cir. 2015).

The Section 411(c)(3) Presumption – Complicated Pneumoconiosis

Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), provides an irrebuttable presumption that pneumoconiosis caused a miner's death if the miner was suffering from a chronic dust disease of the lung that: (a) when diagnosed by x-ray, yields one or more opacities greater than one centimeter in diameter that would be classified as Category A, B, or C; (b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or (c) when diagnosed by other means, would be a condition that could reasonably be expected to yield a result equivalent to (a) or (b). *See* 20 C.F.R. §718.304. The introduction of legally sufficient evidence of complicated pneumoconiosis under one category, however, does not automatically invoke the presumption. Instead, the administrative law judge must weigh the evidence of the subsections together before

⁶ A "qualifying" blood gas study yields values that are equal to or less than the values specified in the tables at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study exceeds these values. *See* 20 C.F.R. §718.204(b)(2)(ii).

determining whether it has been invoked. *Lester v. Director, OWCP*, 993 F.2d 1143, 1145-46, 17 BLR 2-114, 2-117-18 (4th Cir. 1993); *Gollie v. Elkay Mining Corp.*, 22 BLR 1-306, 1-311 (2003); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31, 1-33-34 (1991) (en banc).

The record contains four x-rays, all from the miner's treatment records. The administrative law judge correctly determined that they do not mention pneumoconiosis. Decision and Order at 10. Similarly, the autopsy evidence, CT scans, and medical opinion evidence did not contain a diagnosis of complicated pneumoconiosis.⁷ 20 C.F.R. §718.304(b), (c); Decision and Order at 10, 12-14; Director's Exhibits 10-11; Employer's Exhibit 2.

Because the administrative law judge rationally found the evidence as a whole insufficient to establish complicated pneumoconiosis, Decision and Order at 12, we affirm her determination as supported by substantial evidence. *Perry v. MYNU Coals, Inc.*, 469 F.3d 360, 365, 23 BLR 2-374, 2-384 (4th Cir. 2006).

Part 718 Entitlement

When the Section 411(c)(3) and 411(c)(4) presumptions are not invoked, claimant must establish that pneumoconiosis substantially contributed to the miner's death. See 20 C.F.R. §§718.1, 718.205(b)(1), (2). Pneumoconiosis is a "substantially contributing cause" of death if it hastens the miner's death. 20 C.F.R. §718.205(b)(6); *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 190, 22 BLR 2-251, 2-259 (4th Cir. 2000), citing *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 979-80, 16 BLR 2-90, 2-93 (4th Cir. 1992).

The administrative law judge correctly determined that there is no evidence that pneumoconiosis played any role in the miner's death. She noted that the death certificate listed the miner's single cause of death as end-stage esophageal carcinoma. Decision and Order at 16; Director's Exhibit 9. She further noted that while Dr. Cinco diagnosed both simple pneumoconiosis and emphysema in his autopsy report, he did not offer an opinion as to the extent to which either caused, contributed to, or hastened the miner's death. Decision and Order at 16; Director's Exhibit 10. The administrative law judge further found that Dr. Bush reported the miner died of complications from carcinoma of the

⁷ While Dr. Cinco diagnosed simple, clinical pneumoconiosis and described large anthracotic peribronchial lymph nodes measuring 1.5 centimeters on the right lung and 1 centimeter on the left lung in his autopsy report, he did not classify them as pneumoconiosis and instead specifically stated that there was "no evidence of [the] complicated or progressive" form of the disease. Director's Exhibit 10.

esophagus unrelated to coal dust exposure and that the miner's mild degree of simple pneumoconiosis did not cause, contribute to or hasten the miner's death. Decision and Order at 16-17; Employer's Exhibit 1.

As the administrative law judge rationally found that the evidence failed to link the miner's death to pneumoconiosis, Decision and Order at 12, 17, we further affirm her denial of benefits under 20 C.F.R. Part 718. *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge