

BRB Nos. 14-0011 BLA
and 14-0020 BLA

PATRICIA A. PADAGOMAS)
(o/b/o and Widow of EDWARD J.)
PADAGOMAS))
)
Claimant-Petitioner)
)
v.)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Respondent) DECISION and ORDER

Appeal of the Decision and Order on Remand of Adele H. Odegard,
Administrative Law Judge, United States Department of Labor.

George E. Mehalchick (Lenahan & Dempsey, P.C.), Scranton,
Pennsylvania, for claimant.

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, Acting Chief Administrative Appeals Judge, SMITH and
McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order on Remand (2009-BLA-5773 and 2009-
BLA-5774) of Administrative Law Judge Adele H. Odegard denying benefits on claims
filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012)

¹ Claimant is the surviving spouse of the miner, who died on October 16, 2008.
Director's Exhibit 13.

(the Act). This case, involving a miner's subsequent claim filed on September 2, 2008,² and a survivor's claim filed on November 3, 2008, is before the Board for the second time.

In the initial decision, the administrative law judge credited the miner with three years of coal mine employment,³ and found that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, the administrative law judge denied benefits in the miner's claim and the survivor's claim.

Pursuant to claimant's appeal, the Board affirmed the administrative law judge's determination that the miner had three years of coal mine employment.⁴ *Padagomas v. Director, OWCP*, BRB Nos. 11-0367 BLA and 11-0440 BLA (Feb. 23, 2012) (unpub.). However, the Board vacated the administrative law judge's findings that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), (4). The Board specifically held that the administrative law judge did not adequately explain her decision to discount the positive x-ray evidence. The Board instructed the administrative law judge, on remand, to provide an explanation for her credibility determinations regarding the x-ray evidence. The Board further instructed the administrative law judge to address whether Dr. Levinson's opinion was sufficient to establish the existence of legal pneumoconiosis. The Board, therefore, vacated the administrative law judge's denial of benefits in the miner's claim and the survivor's claim, and remanded the case for further consideration. *Id.*

On remand, the administrative law judge found that, while the new evidence did not establish the existence of legal pneumoconiosis,⁵ it established the existence of

² The miner's previous claim, filed on May 25, 2006, was finally denied by the district director because the miner failed to establish any element of entitlement. Director's Exhibit 1.

³ The miner's coal mine employment was in Pennsylvania. Director's Exhibit 4. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

⁴ In light of the Board's affirmance of the administrative law judge's finding of three years of coal mine employment, the Board also affirmed her determination that claimant was precluded from invoking the Section 411(c)(4) presumption in either the miner's claim or the survivor's claim. 30 U.S.C. §921(c)(4) (2012).

⁵ "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 pneumoconiosis⁶ pursuant to 20 C.F.R. §718.202(a). The administrative law judge determined therefore, that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309.⁷ Consequently, the administrative law judge considered the merits of the miner's 2008 claim. After finding that claimant established that the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(c), the administrative law judge found that the evidence did not establish that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b). Moreover, assuming that the miner suffered from a totally disabling pulmonary impairment, the administrative law judge found that the evidence did not establish that the miner's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). The administrative law judge, therefore, denied benefits in the miner's claim. In regard to the survivor's claim, the administrative law judge found that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁸ Accordingly, the administrative law judge denied benefits in the survivor's claim.

On appeal, claimant argues that the administrative law judge erred in finding that the evidence did not establish that the miner was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Claimant also contends that the administrative law judge erred in finding that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b). The Director, Office of Workers' Compensation Programs (the Director), responds in support of the administrative law judge's denial of benefits in both claims. In addition, the Director asserts that the administrative law judge erred in finding that the x-ray evidence established the existence of clinical pneumoconiosis. In a reply brief, claimant contends that the Director's argument, that the administrative law judge erred in finding that the x-

⁶ 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 to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1).

⁷ The Department of Labor has revised the regulation at 20 C.F.R. §725.309, effective October 25, 2013. The applicable language formerly set forth at 20 C.F.R. §725.309(d) is now set forth at 20 C.F.R. §725.309(c).

⁸ After the administrative law judge issued her Decision and Order on Remand, the Department of Labor revised the regulation at 20 C.F.R. §718.205, effective October 25, 2013. The provisions that were applied by the administrative law judge at 20 C.F.R. §718.205(c) are now set forth at 20 C.F.R. §718.205(b).

ray evidence established the existence of clinical pneumoconiosis, is not properly before the Board.

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).

The Miner's Claim

Claimant contends that the administrative law judge erred in finding that the evidence did not establish that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2)(iv).⁹ Claimant specifically argues that the administrative law judge erred in finding that Dr. Levinson's opinion was insufficient to establish that the miner suffered from a totally disabling pulmonary impairment.

Dr. Levinson opined that the miner suffered from a "significant pulmonary impairment as documented by his pulmonary function studies and measures of oxygenation." Claimant's Exhibit 1. Dr. Levinson explained that the pulmonary function study conducted by Dr. Talati on September 27, 2006 "reveal[ed] evidence of impaired pulmonary function." *Id.* Dr. Levinson further stated that the "study appear[ed] to indicate that there was a moderate restrictive ventilatory impairment." *Id.* Dr. Levinson also interpreted the miner's arterial blood gas study results as showing an "impairment in . . . oxygenation." Claimant's Exhibit 1 at 15.

In considering whether Dr. Levinson's opinion supported a finding of total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge noted that Dr. Spagnolo, a Board-certified pulmonologist, invalidated the September 27, 2006 pulmonary function study.¹⁰ Decision and Order on Remand at 7. Consequently, the

⁹ Because claimant does not challenge the administrative law judge's findings that the pulmonary function and arterial blood gas study evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i), (ii), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). Moreover, because there is no evidence of cor pulmonale with right-sided congestive heart failure, claimant is precluded from establishing total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii).

¹⁰ Dr. Spagnolo invalidated the September 27, 2006 pulmonary function study because the miner provided less than optimal effort, cooperation, and comprehension; and because the study was improperly performed. Director's Exhibit 1. Dr. Spagnolo

administrative law judge found that it was uncertain whether the results of the pulmonary function study relied upon by Dr. Levinson accurately reflected the miner's condition. *Id.* The administrative law judge noted that Dr. Levinson did not address the significance of the invalidation of the September 27, 2006 study. *Id.*

The administrative law judge also questioned the reliability of the arterial blood gas study evidence relied upon by Dr. Levinson to support his opinion regarding the extent of the miner's pulmonary impairment. Dr. Levinson noted that one of the miner's blood gas studies revealed a PO₂ of 59. Claimant's Exhibit 1. Dr. Levinson did not indicate the date of the study that produced this result, but the miner's treatment records include the results of qualifying blood gas studies conducted on August 28, 2006, February 13, 2006, and April 14, 2007. Director's Exhibit 30. Although each of those studies produced PO₂ values of 59 or lower, the administrative law judge noted that all of these studies "were administered when the [miner] was hospitalized for a pulmonary condition or exacerbation of congestive heart failure, or both." Decision and Order on Remand at 8. The administrative law judge observed that the August 28, 2006 study, which is the only study that produced a PO₂ of 59, was "administered in conjunction with the [m]iner's hospitalization for exacerbation of congestive heart failure." *Id.* Because the miner's qualifying blood gas studies were administered when the miner was "acutely ill," the administrative law judge found that they did "not reflect the [m]iner's usual pulmonary condition." *Id.* The administrative law judge noted that Dr. Levinson did not acknowledge or discuss the effect of the miner's hospitalization on the blood gas study results. *Id.* at 9.

Claimant does not challenge the administrative law judge's determination, that the results of the miner's September 27, 2006 pulmonary function study and August 28, 2006 arterial blood gas study are unreliable. These findings are, therefore, affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). Because Dr. Levinson relied on these studies to conclude that the miner was totally disabled, the administrative law judge permissibly discounted Dr. Levinson's opinion because it was based upon unreliable evidence. *See Director, OWCP v. Siwec*, 894 F.2d 635, 639, 13 BLR 2-259, 2-265 (3d Cir. 1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc); Decision and Order on Remand at 11. Because Dr. Levinson's opinion is the only medical opinion of record supportive of a finding of total disability, we affirm the

explained that the flow/volume loop revealed hesitation, coughing, and a closed glottis. *Id.* Dr. Spagnolo also noted that the study had only one MVV tracing. *Id.*

administrative law judge's finding that the medical opinion evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iv).¹¹

Claimant also contends that the administrative law judge erred in finding that, even assuming that the miner was totally disabled, the evidence did not establish that the miner's total disability was due to pneumoconiosis. We disagree. The administrative law judge permissibly determined that Dr. Levinson's opinion, the only evidence supportive of a finding that the miner's total disability was due to pneumoconiosis, was not sufficiently reasoned.¹² *See Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997). We, therefore, affirm the administrative law judge's finding that the medical evidence did not establish that the miner's total disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c).

In light of our affirmance of the administrative law judge's findings that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2) or total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c), essential elements of entitlement, we affirm the administrative law judge's denial of benefits in the miner's claim under 20 C.F.R. Part 718. *See Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

The Survivor's Claim

Benefits are payable on survivors' 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 (1988). A miner's death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, the presumption relating to complicated pneumoconiosis set forth at 20 C.F.R. §718.304, is applicable, or the Section 411(c)(4)

¹¹ We reject claimant's assertion that her testimony is sufficient to support a finding of total disability. Lay testimony on the issue of total disability may be sufficient to establish that the miner was totally disabled due to pneumoconiosis only if there is no medical evidence on the issue. *See* 20 C.F.R. §718.204(d)(3). Additionally, because claimant would be eligible for benefits if the claim were approved, a determination of total disability due to pneumoconiosis may not be based solely on her testimony. *Id.*

¹² The administrative law judge found that Dr. Levinson did "not adequately explain why or how the [m]iner's condition was exacerbated by pneumoconiosis – he just said his condition made it more difficult for the [m]iner to 'weather the storm' caused by heart problems." Decision and Order on Remand at 13.

presumption is invoked and not rebutted.¹³ 20 C.F.R. §718.205(b)(1)-(4). Pneumoconiosis is a “substantially contributing cause” of a miner’s death if it hastens the miner’s death. 20 C.F.R. §718.205(b)(6).

In addressing whether the miner’s death was due to pneumoconiosis, the administrative law judge considered the miner’s death certificate, and the medical opinions of Drs. Spagnolo and Levinson.

Dr. Desai completed the miner’s death certificate. Dr. Desai attributed the miner’s death to cardiac arrhythmia due to a myocardial infarction. Director’s Exhibit 13. Dr. Desai also listed pleural effusion, renal failure, congestive heart failure, and coronary artery disease as other significant conditions contributing to death. *Id.*

Dr. Spagnolo opined that the miner’s death was “caused by his ischemic cardiomyopathy resulting in diastolic heart failure complicate by long standing diabetes mellitus and diabetic nephropathy leading to end stage renal failure.” Director’s Exhibit 40. Noting that there was no evidence of clinical or legal pneumoconiosis, Dr. Spagnolo opined that there was no objective evidence to suggest that the miner’s pneumoconiosis contributed to his death. *Id.*

Dr. Levinson opined that the miner’s pneumoconiosis contributed to his death, stating that:

[W]hile [the miner’s] death was caused by ischemic cardiomyopathy resulting in heart failure with recurrent pleural effusion, renal failure, and underlying longstanding diabetes mellitus[,] I am also of the opinion that [his] pneumoconiosis was a significant contributing and aggravating factor in the occurrence of his death.

Claimant’s Exhibit 1. Dr. Levinson further stated that, if the miner “hadn’t had those coal dust accumulations, those speculated nodules in the upper lobes . . . he would have been able to somewhat better weather the storm caused by his heart disease.” Claimant’s Exhibit 1 at 18. Dr. Levinson also opined that the miner’s pneumoconiosis “was a

¹³ The administrative law judge found that, because there is no evidence of complicated pneumoconiosis, claimant is not entitled to the Section 411(c)(3) irrebuttable presumption that the miner’s death was due to pneumoconiosis. 30 U.S.C. §921(c)(3); Decision and Order on Remand at 13. Because this finding is not challenged on appeal, it is affirmed. *Skrack*, 6 BLR at 1-711. As noted, *supra*, the Board previously affirmed the administrative law judge’s determination that claimant did not invoke the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4).

contributing cause to [the miner's] cardiac arrhythmia and congestive heart failure.” *Id.* at 23.

The administrative law judge noted that the miner's death certificate did not list pneumoconiosis as a cause of death, and she accorded no weight to Dr. Spagnolo's opinion, because it was based upon an inaccurate assumption that the miner did not suffer from pneumoconiosis. Decision and Order on Remand at 14-15. The administrative law judge further found that Dr. Levinson's opinion was “quite conclusory,” noting that the doctor “did not explain at all what aspect of the miner's clinical [p]neumoconiosis played a role in bringing about, or hastening, the [m]iner's death.” *Id.* at 15. The administrative law judge, therefore, found that Dr. Levinson's opinion, that the miner's pneumoconiosis contributed to his death, was not well-reasoned. *Id.* Consequently, the administrative law judge found that the evidence did not establish that miner's death was due to pneumoconiosis.

We disagree with claimant's contention that the administrative law judge erred in finding that the evidence did not establish that the miner's death was due to pneumoconiosis. The administrative law judge permissibly determined that Dr. Levinson's opinion, the only evidence supportive of a finding that the miner's death was due to pneumoconiosis, was not sufficiently reasoned. *See Lango*, 104 F.3d at 577, 21 BLR at 2-20 (“The mere statement of a conclusion by a physician, without any explanation of the basis for that statement does not take the place of the required reasoning.”); *see also Addison v. Director, OWCP*, 11 BLR 1-68 (1988). We, therefore, affirm the administrative law judge's finding that the medical evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b). Consequently, we affirm the administrative law judge's denial of benefits in the survivor's claim under 20 C.F.R. Part 718.¹⁴

¹⁴ In light of our affirmance of the administrative law judge's denial of benefits in the miner's claim and the survivor's claim, we need not address the Director's contention that the administrative law judge erred in finding that the x-ray evidence established the existence of clinical pneumoconiosis. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

SO ORDERED.

BETTY JEAN HALL, Acting Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge