



BRB No. 15-0509 BLA

GLENN A. Y. WILSON)	
(Widow of ROBERT F. WILSON))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
RANGER FUEL CORPORATION)	DATE ISSUED: 07/12/2016
)	
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 Survivor's Benefits of Adele H. Odegard, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith, Charleston, West Virginia, for claimant.

Christopher M. Green (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order Denying Survivor's Benefits (2012-BLA-5924) of Administrative Law Judge Adele H. Odegard (the administrative law

¹ Claimant is the widow of the miner, who died on July 1, 2011. Director's Exhibit 8. The miner's claim, filed on August 1, 2007, was denied by Administrative

judge) on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).² The administrative law judge determined that claimant is an eligible survivor of the miner, and adjudicated the claim, filed on September 27, 2011, pursuant to the regulatory provisions at 20 C.F.R. Part 718. Based on her determination that the miner worked twelve and one-half years in coal mine employment, the administrative law judge found that claimant was unable to invoke the rebuttable presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4).³ The administrative law judge further found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(1)-(4), 718.107. Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's weighing of the medical opinions of record at 20 C.F.R. §718.202(a)(4), and contends that the administrative law judge erred in failing to weigh the totality of the evidence together in determining whether the existence of pneumoconiosis was established at 20 C.F.R. §§718.202(a), 718.107. Employer responds, urging affirmance of the denial of

Law Judge Daniel L. Leland, and the Board affirmed the denial of benefits. *Wilson v. Ranger Fuel Corp.*, BRB No. 09-0357 BLA (Feb. 18, 2010) (unpub.); Director's Exhibit 58 (miner's claim). The miner's request for modification, filed on April 26, 2010, was denied by Administrative Law Judge Thomas M. Burke, and the Board affirmed his decision. *Wilson v. Ranger Fuel Corp.*, BRB No. 12-0589 BLA (Aug. 13, 2013)(unpub.). Accordingly, claimant is not entitled to benefits under Section 422(l) of the Act, 30 U.S.C. §932(l) (2012), which provides that a survivor of a miner determined to be eligible to receive benefits at the time of his death is automatically entitled to receive survivor's benefits without having to establish that the miner's death was due to pneumoconiosis.

² The parties agreed to cancel the hearing and requested a decision on the record. Decision and Order at 2.

³ Relevant to this claim, Section 411(c)(4) provides a rebuttable presumption that the miner's death was due to pneumoconiosis if claimant establishes that the miner worked fifteen or more years in underground coal mine employment, or in surface coal mine employment in conditions substantially similar to those of an underground mine, and a totally disabling respiratory or pulmonary impairment. *See* 30 U.S.C. §921(c)(4); 20 C.F.R. §718.305.

benefits. The Director, Office of Workers' Compensation Programs, has declined to file a substantive brief in this case.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).

In order to establish entitlement to survivor's benefits under 20 C.F.R. Part 718 without benefit of the presumption at Section 411(c)(4), 30 U.S.C. §921(c)(4), claimant must establish 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. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 718.304; *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85, 1-86 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39, 1-40-41 (1988). Failure to establish any one of these elements precludes entitlement. *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).

Claimant specifically contends that the administrative law judge erred in finding the medical opinions of Drs. Zaldivar and Basheda to be well-reasoned at Section 718.202(a)(4). Claimant further maintains that the administrative law judge failed to properly weigh all relevant evidence together, consistent with the holding of the United States Court of Appeals for the Fourth Circuit in *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000), in determining that claimant did not establish the existence of pneumoconiosis pursuant to Sections 718.202(a) and 718.107. Claimant's Brief at 4-6. Claimant's arguments lack merit.

⁴ We affirm, as unchallenged on appeal, the administrative law judge's findings that claimant is an eligible survivor of the miner, that the miner had less than fifteen years of qualifying coal mine employment, and that claimant is, therefore, unable to invoke the presumption at Section 411(c)(4) that the miner's death was due to pneumoconiosis. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

⁵ The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as the miner was last employed in the coal mining industry in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc); Director's Exhibit 58 (miner's claim); Decision and Order at 6 n.5.

After finding that pneumoconiosis was not established at Section 718.202(a)(1)-(3),⁶ the administrative law judge considered the two medical opinions of record at Section 718.202(a)(4), and determined that Drs. Zaldivar and Basheda both opined that the miner did not have either clinical or legal pneumoconiosis.⁷ The administrative law judge further determined that Drs. Zaldivar and Basheda reviewed the miner's coal mine employment history and the medical evidence of record, and provided thorough explanations for their conclusion that the miner suffered a pulmonary impairment caused by fibrosis, secondary to sarcoidosis, that was unrelated to coal dust exposure. Decision and Order at 11-14, 18-19; Employer's Exhibits 5, 6, 7, 8.

Finding that Drs. Zaldivar and Basheda possessed superior qualifications as pulmonary experts, and that their reports were well-reasoned and comprehensive, the administrative law judge acted within her discretion in concluding that the opinions of Drs. Zaldivar and Basheda were entitled to significant weight. Decision and Order at 19; *see Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003), *citing Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(en banc); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-21 (1987). Since there are no contrary medical opinions of record diagnosing pneumoconiosis, the administrative law judge properly found that the medical opinion evidence does not establish the existence of pneumoconiosis at Section 718.202(a)(4), and we affirm her findings, as supported by substantial evidence.

Next, pursuant to 20 C.F.R. §718.107,⁸ the administrative law judge reviewed the miner's hospitalization and treatment notes, including x-ray and CT scan interpretations obtained as part of the miner's treatment. The administrative law judge determined that

⁶ We affirm, as unchallenged on appeal, the administrative law judge's finding that the evidence does not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(3). *See Skrack*, 6 BLR at 1-711.

⁷ "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). "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).

⁸ Claimant may establish the existence of pneumoconiosis based on other evidence not specifically provided for in 20 C.F.R. §718.202(a). *See* 20 C.F.R. §718.107.

none of the x-ray or CT scan interpretations diagnosed pneumoconiosis, and that the hospitalization and treatment notes supported the opinions of Drs. Zaldivar and Basheda that the miner's pulmonary fibrosis resulted from sarcoidosis, rather than pneumoconiosis. Decision and Order at 14-20; Director's Exhibit 10.

Specifically, the administrative law judge determined that Dr. Kahler noted extensive pulmonary fibrosis and interstitial lung disease on the May 20, 2011 CT scan, but did not attribute the conditions to pneumoconiosis or coal dust exposure. Similarly, the administrative law judge concluded that, while "a few records" referenced a medical history of pneumoconiosis or indicated that the miner's right lung transplant was necessitated by both pneumoconiosis and sarcoidosis, it was "unclear how this information was obtained and whether the physician who authored the report actually made a diagnosis of pneumoconiosis."⁹ Decision and Order at 19; Director's Exhibit 10. As claimant has not identified any errors made by the administrative law judge in her evaluation of the additional medical evidence of record, other than asserting that the medical treatment records demonstrate objective evidence sufficient to establish the existence of legal pneumoconiosis, *see* Claimant's Brief at 6, we affirm the administrative law judge's finding that the medical evidence at Section 718.107 is insufficient to establish the existence of pneumoconiosis. *See* 20 C.F.R. §802.211(b); *Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *aff'g* 7 BLR 1-610 (1984); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *see also Skrack*, 6 BLR at 1-710.

Lastly, "considering the record as a whole," the administrative law judge determined that claimant failed to establish by a preponderance of the evidence that the miner suffered from pneumoconiosis. Decision and Order at 20. As substantial evidence supports the administrative law judge's finding that the weight of all probative evidence is insufficient to establish the existence of pneumoconiosis at Sections 718.202(a)(1)-(4) and 718.107, we affirm her finding as consistent with *Compton*.

As claimant failed to establish the existence of pneumoconiosis, an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Anderson*, 12 BLR at 1-112; *Trent*, 11 BLR at 1-27.

⁹ The administrative law judge considered hospitalization records, treatment notes, and x-ray and CT scan interpretations by Drs. Boustani, Daniel, Barghouthi, Bembalkar, Lintala, Reesman, Maramba, Ramas, Setliff, Nazer, Popovich, and Kahler from 2007 to 2011. Director's Exhibit 10.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge