



BRB No. 16-0602 BLA

MARY SUE BRADLEY)
(o/b/o LEO BRADLEY, deceased))
))
Claimant-Petitioner)
))
v.)
))
COBRA COALS, INCORPORATED)
))
and)
))
AMERICAN BUSINESS & MERCANTILE)
INSURANCE MUTUAL, INCORPORATED)
))
Employer/Carrier-)
Respondents)
))
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
))
Party-in-Interest)

DATE ISSUED: 07/25/2017

DECISION and ORDER

Appeal of the Decision and Order of Steven D. Bell, Administrative Law Judge, United States Department of Labor.

John C. Collins (Law Office of John C. Collins), Salyersville, Kentucky, for claimant.

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

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

PER CURIAM:

Claimant appeals the Decision and Order (2010-BLA-05582) of Administrative Law Judge Steven D. Bell (the administrative law judge), denying benefits on a miner's subsequent claim filed on August 26, 2009¹ pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). Claimant is pursuing this claim on behalf of the miner, who died on September 3, 2012. Director's Exhibits 55, 65.

The administrative law judge credited the miner with thirteen years of coal mine employment² and determined that claimant could not invoke the presumption at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012), that the miner was totally disabled due to pneumoconiosis.³ Therefore, the administrative law judge considered whether claimant could establish entitlement to benefits under 20 C.F.R. Part 718. After finding that claimant failed to establish that the miner had pneumoconiosis, the administrative law judge denied benefits.

¹ The miner filed his previous claim on December 11, 1985. Director's Exhibit 1. Administrative Law Judge Michael O'Neill denied the claim because the evidence did not establish that the miner had pneumoconiosis or a totally disabling respiratory or pulmonary impairment. *Id.* The Board affirmed the denial of benefits. *Bradley v. Cobra Coals, Inc.*, BRB No. 93-2173 BLA (Mar. 29, 1995) (unpub.). The miner filed a timely request for modification, but Administrative Law Judge Joseph E. Kane denied benefits, finding that the miner failed to establish a change in conditions since the previous denial, or a mistake in a determination of fact. Director's Exhibit 1. The Board affirmed the denial of benefits. *Bradley v. Cobra Coals, Inc.*, BRB No. 02-0390 BLA (Oct. 29, 2002) (unpub.). The Board then received a request for modification from the miner, Director's Exhibit 1, and forwarded the record to the District Director, so that the miner could proceed with his request. However, the record reflects that the miner took no further action.

² The miner's coal mine employment was in Kentucky. Director's Exhibit 1. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc).

³ Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis when the miner has fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

On appeal, claimant argues that the administrative law judge erred in finding that the miner had less than fifteen years of coal mine employment, and therefore erred in finding that claimant could not invoke the Section 411(c)(4) presumption. Claimant also argues that the administrative law judge erred in finding that the medical opinion evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Length of Coal Mine Employment

Claimant contends that the administrative law judge erred in crediting the miner with only thirteen years of coal mine employment, and argues that employer should have been bound by a stipulation of fifteen years of coal mine employment accepted by Administrative Law Judge Joseph E. Kane in 2001, in the miner's prior claim. Claimant's Brief at 8-11; *see Bradley v. Cobra Coal Inc.*, 2001-BLA-0691, slip op. at 4 (Dec. 27, 2001). This argument lacks merit.

The administrative law judge recognized that because of the change in law resulting from the reinstatement of the Section 411(c)(4) presumption in 2010 by the Affordable Care Act (ACA), Public Law No. 111-148, employer was not bound by its stipulation in 2001. *See Styka v. Jeddo-Highland Coal Co.*, 25 BLR 1-61, 1-64-65 (2012); Decision and Order at 21. Claimant contends that employer should have been held to the stipulation because both parties entered into it fairly.

That argument misreads the administrative law judge's decision. The administrative law judge did not determine that the stipulation was invalid, but cited the fundamental fairness and due process concerns recognized in *Styka*, and correctly determined that "it would be inappropriate to hold the parties to such a stipulation made before [the ACA's] enactment" altered the legal significance of the stipulation. Decision and Order at 21. The Board held in *Styka*, 25 BLR at 1-64-65, that whether the parties previously entered fairly into a formal stipulation was irrelevant, because "fundamental fairness and due process would require relief from even a formal stipulation made prior to the change in law effectuated by the passage of [the ACA.]"

Claimant raises no other arguments regarding the length of the miner's coal mine employment. Therefore, we affirm the administrative law judge's finding that the miner had thirteen years of coal mine employment. Consequently, we also affirm the

administrative law judge's determination that claimant cannot invoke the Section 411(c)(4) presumption.

The Existence of Pneumoconiosis

Because claimant cannot invoke the Section 411(c)(4) presumption and there is no evidence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304, she can only establish entitlement to benefits under 20 C.F.R. Part 718 by establishing that the miner had pneumoconiosis, that it arose out of his coal mine employment, that he had a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory or pulmonary impairment was due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *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); *Perry v. Director, OWCP*, 9 BLR 1-1, 1-2 (1986) (en banc).

Claimant argues that the administrative law judge erred in weighing the medical opinion evidence regarding the existence of legal pneumoconiosis⁴ pursuant to 20 C.F.R. §718.202(a)(4).⁵ Claimant's Brief at 13-17. The administrative law judge considered the opinions of Drs. Ammisetty, Jarboe, and Rosenberg, but only Dr. Ammisetty concluded that the miner had legal pneumoconiosis. Decision and Order at 25; Claimant's Exhibit 1 at 2; Employer's Exhibits 1, 2. Specifically, Dr. Ammisetty diagnosed the miner with bronchial asthma and chronic obstructive pulmonary disease due to coal mine dust exposure and smoking. Director's Exhibits 15 at 25, 49 at 118. The administrative law judge determined that Dr. Ammisetty's opinion was "inadequately explained and internally inconsistent," and therefore insufficient to establish that the miner had an impairment caused at least in part by his coal mine dust exposure.⁶ Decision and Order at

⁴ "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).

⁵ We affirm the administrative law judge's unchallenged findings that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(2), and failed to establish the existence of clinical pneumoconiosis based on the medical opinion evidence pursuant to 20 C.F.R. §718.202(a)(4). See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 22-24.

⁶ Dr. Ammisetty assumed in his report that the miner had twenty-eight years of coal mine employment, and based his conclusion that coal dust exacerbated the miner's impairment on that work history. Director's Exhibit 15 at 26; Director's Exhibit 49 at 109, 117. The administrative law judge noted that Dr. Ammisetty had originally considered a "significantly inaccurate mining history." See *Worhach v. Director, OWCP*,

26-28. Accordingly, the administrative law judge found that claimant failed to establish that the miner had legal pneumoconiosis. *Id.* at 28.

Claimant contends that Dr. Ammisetty's opinion is well-reasoned and that the administrative law judge "failed to properly analyze" it, but points to no specific errors in the administrative law judge's credibility determination. Claimant's Brief at 13-17. Claimant essentially asks the Board to reweigh the evidence, which it is not empowered to do. *See Anderson*, 12 BLR at 1-113. The Board must limit its review to contentions of error specifically raised by the parties. *See* 20 C.F.R. §§802.211, 802.301; *Cox v. Benefits Review Board*, 791 F.2d 445, 446, 9 BLR 2-46, 2-47-48 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987). Consequently, we affirm the administrative law judge's determination that Dr. Ammisetty's opinion was insufficiently reasoned to establish the existence of legal pneumoconiosis. We therefore affirm the administrative law judge's determination that the medical opinion evidence did not establish legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

In light of our affirmance of the administrative law judge's findings that claimant cannot invoke the Section 411(c)(4) presumption or establish that the miner had pneumoconiosis, an essential element of entitlement, we affirm the administrative law judge's denial of benefits. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

17 BLR 1-105, 1-110 (1993). After being told in his deposition that the district director determined that the miner had only thirteen years of coal mine employment, Dr. Ammisetty testified that thirteen years was a "significant change" from what the miner had told him, and said his opinion would change to "[s]ome degree" if that was the length of the miner's coal mine employment. Decision and Order at 26; Director's Exhibits 15, 49 at 110, 117-18. The administrative law judge determined, however, that Dr. Ammisetty's opinion "seemingly remained unchanged" during the deposition, and thus further discredited Dr. Ammisetty for failing to demonstrate "actual reconsideration of the evidence following an admittedly significant change in the relevant exposure history." Decision and Order at 26. The administrative law judge also discounted Dr. Ammisetty's opinion as inconsistent, because Dr. Ammisetty testified that the miner's 50-pack-year smoking history could account completely for his obstructive lung disease, but then testified that coal mine dust exposure contributed to the miner's impairment because his decrease in FEV1 was greater than someone with the miner's smoking history would usually show. Decision and Order at 12, 26-27; Director's Exhibit 49 at 115, 118-19.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge