

U.S. Department of Labor

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



BRB No. 16-0605 BLA

LINDA S. HALL)	
(Widow of ROLAND S. HALL))	
)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED: 07/18/2017
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Dennis James Keenan (Hinkle & Keenan P.S.C.), South Williamson, Kentucky, for claimant.

Rebecca J. Fiebig (Nicholas C. Geale, Acting Solicitor of Labor; Maia Fisher, 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, BOGGS and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2014-BLA-05931) of Administrative Law Judge Richard A. Morgan, rendered on a survivor's claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-

944 (2012) (the Act).¹ After crediting the miner with at least twenty-seven years of underground coal mine employment, the administrative law judge found that the evidence was insufficient to establish that the miner was totally disabled pursuant to 20 C.F.R. §718.204(b)(2). Because claimant failed to establish that the miner was totally disabled, the administrative law judge found that claimant did not invoke the rebuttable presumption of death due to pneumoconiosis provided at Section 411(c)(4) of the Act.² 30 U.S.C. §921(c)(4) (2012). Based on the absence of evidence of complicated pneumoconiosis in the record, the administrative law judge also found that the irrebuttable presumption of death due to pneumoconiosis set forth in Section 411(c)(3) of the Act was not applicable. 30 U.S.C. §921(c)(3) (2012).

Upon considering whether claimant could affirmatively establish entitlement to survivor's benefits under 20 C.F.R. Part 718, the administrative law judge found that although the medical opinion evidence was insufficient to establish the existence of legal pneumoconiosis,³ the autopsy report of Dr. Dennis was sufficient to establish that the miner suffered from clinical pneumoconiosis⁴ pursuant to 20 C.F.R. §718.202(a). The administrative law judge also determined that claimant invoked the presumption at 20 C.F.R. §718.203(b) that the miner's clinical pneumoconiosis arose out of coal mine employment and that the record did not contain contrary evidence that the disease arose from any alternative causes. The administrative law judge further found, however, that

¹ The record reflects that the miner filed a claim for black lung benefits during his lifetime, which was denied. Miner's Closed Claim. The miner died on January 4, 2012. Director's Exhibit 12. Claimant, the widow of the miner, filed her survivor's claim on March 3, 2014. Director's Exhibit 2.

² Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's death was due to pneumoconiosis in cases where the miner had at least fifteen 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. 30 U.S.C. § 921(c)(4) (2012); *see* 20 C.F.R. §718.305.

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

the evidence was insufficient to establish that the miner's death was due to clinical pneumoconiosis under 20 C.F.R. §718.205(b). Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that the administrative law judge erred in failing to accord determinative weight to Dr. Dennis's autopsy report pursuant to 20 C.F.R. §718.205(b). The Director, Office of Workers' Compensation Programs,⁵ responds in support of the administrative law judge's denial of benefits.⁶

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.⁷ 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).

To establish entitlement to survivor's benefits, claimant must demonstrate that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.205; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). For survivor's claims filed on or after January 1, 1982, where the statutory presumptions in Section 411(c)(3) and (c)(4) are not applicable, death will be considered due to pneumoconiosis if claimant establishes, by a preponderance of the evidence, that pneumoconiosis caused the miner's death, or was a

⁵ The Director, Office of Workers' Compensation Programs (the Director), has determined that there is no responsible operator that can be held liable in this case and that the Black Lung Disability Trust Fund would be responsible for payment of any benefits awarded. Director's Exhibit 19; Decision and Order at 4.

⁶ On appeal, the Director acknowledges that the miner had twenty-seven years of coal mine employment, at least fifteen of which were in underground mines. Director's Letter Brief at 1. We therefore affirm the administrative law judge's finding that the miner had "fifteen years or more" of underground coal mine employment. Decision and Order at 4; *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). We further affirm, as unchallenged on appeal, the administrative law judge's findings that claimant did not establish total disability under 20 C.F.R. §718.204(b)(2) and, therefore, did not establish invocation of the Section 411(c)(4) presumption. *See Skrack*, 6 BLR at 1-711; Decision and Order at 12-13.

⁷ The Board will apply the law of the United States Court of Appeals for the Sixth Circuit, as the miner's last coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

substantially contributing cause or factor leading to the miner's death, or that death was caused by complications of pneumoconiosis. 20 C.F.R. §718.205(b)(1)-(2). 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); see *Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-647-49 (6th Cir. 2003); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 817, 17 BLR 2-135, 2-140 (6th Cir. 1993).

Pursuant to 20 C.F.R. §718.205(b), the administrative law judge considered the death certificate, the miner's treatment records, and the autopsy report of Dr. Dennis. Decision and Order at 20-21; Director's Exhibits 12-14. The administrative law judge determined that the death certificate, prepared by Dr. Hanna, was not supportive of claimant's burden, as there was no indication in the record that Dr. Hanna had "any relevant qualifications or personal knowledge of the miner upon which to assess the cause of death."⁸ Decision and Order at 20; Director's Exhibit 12. The administrative law judge found that the treatment records did not support a finding that "clinical pneumoconiosis was a contributor to the significant medical problems that preceded the miner's death" because they documented conditions unrelated to clinical pneumoconiosis.⁹ Decision and Order at 20; Director's Exhibit 14. The administrative law judge observed that Dr. Dennis diagnosed emphysema and simple coal workers' pneumoconiosis in his autopsy report and included a handwritten notation stating, "[t]hese features hastened [the miner's] death." Decision and Order at 20-21, quoting Director's Exhibit 13. The administrative law judge found that Dr. Dennis's handwritten addition to his autopsy report did not constitute a credible opinion establishing that pneumoconiosis was a substantially contributing cause of the miner's death. Decision and Order at 21. The administrative law judge therefore concluded that claimant did not meet her burden of establishing that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(b). *Id.*

Claimant contends that the administrative law judge was required to accord determinative weight to Dr. Dennis's opinion because the record does not contain any contrary evidence. We disagree. The fact that a medical opinion is uncontradicted does not compel an administrative law judge to accord it probative weight. Rather, an administrative law judge, in his or her role as fact-finder, must first determine whether the medical opinion is reasoned and documented. See *Peabody Coal Co. v. Groves*, 277

⁸ Dr. Hanna identified the causes of the miner's death as acute respiratory failure, cardiogenic shock, anoxic encephalopathy, and acute renal failure. Director's Exhibit 12.

⁹ The miner's treatment records reflect diagnoses of cardiac disease, diabetes, and chronic renal insufficiency. Director's Exhibit 14.

F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that an administrative law judge has broad discretion to determine the credibility of a medical opinion based on the rationale provided by the physician. *See Peabody Coal Co. v. Odom*, 342 F.3d 486, 492, 22 BLR 2-612, 2-622 (6th Cir. 2003); *Griffith v. Director, OWCP*, 49 F.3d 184, 186, 19 BLR 2-111, 2-117 (6th Cir. 1995).

In this case, the administrative law judge acted within his discretion in finding that Dr. Dennis's autopsy report did not "constitute a well-reasoned or documented opinion" that pneumoconiosis hastened the miner's death because:

Dr. Dennis gives no clarification as to which of his diagnoses or observed conditions hastened or contributed to the miner's death, nor does he give any explanation as to how the diagnoses may have contributed to, or hastened the miner's death. Specifically, he gives no basis for a conclusion that his findings of minimal clinical pneumoconiosis contributed to, or hastened the miner's death.

Decision and Order at 20; *see Groves*, 277 F.3d at 836, 22 BLR at 2-330. In light of the administrative law judge's permissible discrediting of Dr. Dennis's opinion on death causation, we affirm the administrative law judge's determination that claimant failed to satisfy her burden of proving that the miner's death was due to pneumoconiosis under 20 C.F.R. §718.205(b). *See Odom*, 342 F.3d at 492, 22 BLR at 2-622; *Williams*, 338 F.3d at 518, 22 BLR at 2-655; Decision and Order at 20.

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge