

BRB No. 04-0804 BLA

VELMA G. BARR)	
(Widow of STANLEY E. BARR))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
KERRY COAL COMPANY)	DATE ISSUED: 06/13/2005
)	
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 of Stephen L. Purcell, Administrative Law Judge, United States Department of Labor.

John C. Barno (Lane, Alton & Horst LLC), Columbus, Ohio, for claimant.

Gregory J. Fischer and Sean B. Epstein (Pietragallo, Bosick & Gordon), Pittsburgh, Pennsylvania, for employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (03-BLA-0067) of Administrative Law

¹Claimant is the widow of the miner, Stanley E. Barr. The miner filed a claim for benefits on January 6, 1999. Director's Exhibit 1. This claim was denied by the district director on June 28, 1999 and April 5, 2000 because the miner failed to establish the existence of pneumoconiosis and total disability. Director's Exhibits 15, 30. The miner died on March 11, 2001. Director's Exhibits 31, 36, 38. Claimant filed a request for modification of the miner's claim on April 4, 2001. Director's Exhibit 31. Claimant also

Judge Stephen L. Purcell denying benefits on a miner's claim and a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).² The administrative law judge credited the miner with thirty-five years of coal mine employment and adjudicated both claims pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found the evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits on the miner's claim and the survivor's claim.

On appeal, claimant challenges the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4) with respect to the miner's claim and the survivor's claim. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Worker's Compensation Programs, has declined to participate in this appeal.³

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Initially, we will address claimant's contentions with regard to the miner's claim. In order to establish entitlement to benefits in a miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis was totally disabling. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish

filed a survivor's claim on September 4, 2001. Director's Exhibit 36.

²The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

³Since the administrative law judge's length of coal mine employment finding and his findings at 20 C.F.R. §718.202(a)(1)-(3) are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

any of these elements precludes entitlement. *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986)(*en banc*).

Claimant contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4) with respect to the miner's claim. The administrative law judge considered the opinions of Drs. Abrahams, Fino, Junagadhwalla, and Maas.⁴ Drs. Maas and Junagadhwalla opined that the miner suffered from coal workers' pneumoconiosis, Director's Exhibit 6; Claimant's Exhibit 10, while Drs. Abrahams and Fino opined that the miner did not suffer from pneumoconiosis, Director's Exhibits 7, 40. Although the administrative law judge gave special consideration to Dr. Junagadhwalla's opinion because Dr. Junagadhwalla was the miner's treating physician, he nonetheless concluded that the opinions of Drs. Abrahams and Fino are more persuasive than the contrary opinions of Drs. Maas and Junagadhwalla.

Claimant asserts that the administrative law judge erred in discounting the opinions of Drs. Maas and Junagadhwalla. Dr. Maas diagnosed severe restrictive lung disease caused by coal workers' pneumoconiosis. Director's Exhibit 6. Dr.

⁴In a November 9, 1999 letter, Dr. Wiot stated that "[t]he combination of findings in this patient is totally against coal worker's (sic) pneumoconiosis." Director's Exhibit 28. In a January 5, 2000 letter, Dr. Savoca found very severe interstitial fibrosis compatible with anthrosilicosis. Director's Exhibit 31. The administrative law judge indicated that the assessments of the miner's pulmonary condition by Drs. Savoca and Wiot are relevant medical opinions at 20 C.F.R. §718.202(a)(4). Decision and Order at 8. However, Dr. Savoca's assessment was based solely on a CT scan and Dr. Wiot's assessment was based solely on his review of three chest x-rays and two CT scans. Furthermore, even if Dr. Savoca's assessment was properly characterized as a medical opinion, it is insufficient to support claimant's burden of establishing the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4) because Dr. Savoca's finding that "very severe interstitial fibrosis [is] *compatible with* anthrosilicosis" does not constitute a diagnosis of pneumoconiosis. Director's Exhibit 31 (emphasis added); *see* 20 C.F.R. §718.201. Nonetheless, we hold that any error by the administrative law judge in characterizing the assessments of Drs. Savoca and Wiot as medical opinions at 20 C.F.R. §718.202(a)(4) is harmless, *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984), because, as discussed *infra*, the administrative law judge properly discounted the opinions of Drs. Maas and Junagadhwalla, the only opinions of record that would support claimant's burden at 20 C.F.R. §718.202(a)(4). *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984).

Junagadhwalla checked a box marked “Yes” to indicate that the miner suffered from pneumoconiosis. Claimant’s Exhibit 10. The administrative law judge properly discounted Dr. Maas’ opinion because it is not reasoned. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *Fuller v. Gibraltar Coal Corp.*, 6 BLR 1-1291 (1984). In considering Dr. Maas’ opinion, the administrative law judge determined that Dr. Maas did not adequately explain the basis for his diagnosis of pneumoconiosis. The administrative law judge specifically stated:

I place less weight on the opinion of Dr. Maas. Dr. Maas diagnosed severe restrictive disease based on the miner’s pulmonary function study and severe dyspnea on exertion. Dr. Maas simply listed coal workers’ pneumoconiosis as its etiology without further explanation.

Decision and Order at 7.

In addition, the administrative law judge properly discounted Dr. Junagadhwalla’s opinion because it is not reasoned and documented. *Clark*, 12 BLR at 1-155; *Fields*, 10 BLR at 1-21-22; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Fuller*, 6 BLR at 1-1294. In considering Dr. Junagadhwalla’s opinion, the administrative law judge stated:

Dr. Junagadhwalla provided no rationale beyond his conclusory statement that the chest x-ray and CT scan changes were consistent with black lung. The only documentation supporting Dr. Junagadhwalla’s statement is Dr. Savoca’s report. Dr. Savoca only stated that changes were “compatible with anthrosilicosis;” he did not include anthrosilicosis in his final impression.

Decision and Order at 7. Thus, we reject claimant’s assertion that the administrative law judge erred in discounting the opinions of Drs. Maas and Junagadhwalla. Furthermore, since it is supported by substantial evidence, we affirm the administrative law judge’s finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4) with respect to the miner’s claim.

Since claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement under 20 C.F.R. Part 718, we hold that the administrative law judge properly denied benefits in the miner’s claim.⁵ *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

⁵The administrative law judge stated that “[t]he threshold issue to be resolved in both the request for modification of the miner’s claim and the survivor’s claim is the

Next, we address claimant's contentions with regard to the survivor's claim. Benefits are payable on a survivor's claim filed on or after January 1, 1982 only when the miner's death was due to pneumoconiosis.⁶ See 20 C.F.R. §§718.1, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). However, before any finding of entitlement can be made in a survivor's claim, a claimant must establish the existence of pneumoconiosis. See 20 C.F.R. §718.202(a)(1)-(4); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). A claimant must also establish that the miner's pneumoconiosis arose out of coal mine employment. See 20 C.F.R. §718.203; *Boyd*, 11 BLR at 1-40-41.

Claimant contends that the administrative law judge erred in finding the medical opinion evidence insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4) with respect to the survivor's claim. The administrative law judge, however, considered the same medical opinion evidence in both the miner's and the

existence of pneumoconiosis." Decision and Order at 2. The administrative law judge also stated, "I do not find that the District Director made a mistake in a determination of fact in denying either the request for modification of the miner's claim or the survivor's claim." *Id.* at 8. However, the administrative law judge did not specifically address whether the newly submitted evidence is sufficient to establish a change in conditions at 20 C.F.R. §725.310 (2000) with respect to the miner's claim. Nonetheless, since the administrative law judge properly denied benefits in the miner's claim on the merits, we hold that any error by the administrative law judge with respect to the issue of a change in conditions at 20 C.F.R. §725.310 (2000) in the miner's claim is harmless. *Larioni*, 6 BLR at 1-1278.

⁶Section 718.205(c) provides, in pertinent part, that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or
- (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
- (3) Where the presumption set forth at §718.304 is applicable.
- ...
- (5) Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death.

20 C.F.R. §718.205(c).

survivor's claims, namely, the opinions of Drs. Abrahams, Fino, Junagadhwalla, and Maas. As discussed *supra*, Drs. Maas and Junagadhwalla opined that the miner suffered from coal workers' pneumoconiosis. Director's Exhibit 6; Claimant's Exhibit 10. In contrast, Drs. Abrahams and Fino opined that the miner did not suffer from pneumoconiosis. Director's Exhibits 7, 40. Moreover, as discussed *supra*, the administrative law judge properly discounted Dr. Maas' opinion because it is not reasoned. *Clark*, 12 BLR at 1-155; *Fields*, 10 BLR at 1-21-22; *Fuller*, 6 BLR at 1-1294. Further, the administrative law judge properly discounted Dr. Junagadhwalla's opinion because it is not reasoned and documented. *Clark*, 12 BLR at 1-155; *Fields*, 10 BLR at 1-21-22; *Lucostic*, 8 BLR at 1-47; *Fuller*, 6 BLR at 1-1294. Thus, we reject claimant's assertion that the administrative law judge erred in discounting the opinions of Drs. Maas and Junagadhwalla. Since the administrative law judge properly discounted the opinions of Drs. Maas and Junagadhwalla, the only opinions of record that could establish the existence of pneumoconiosis, we affirm the administrative law judge's finding that the medical opinion evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4) with respect to the survivor's claim.

In view of our affirmance of the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement under 20 C.F.R. Part 718 in the survivor's claim, *Trumbo*, 17 BLR at 1-87; *Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2, we affirm the administrative law judge's denial of benefits therein.

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

in the miner's claim and the survivor's claim is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge