

BRB No. 07-0554 BLA

M.F.)
(Widow of B.F.))
)
Claimant-Petitioner)
)
v.)
)
SULLIVAN BROTHERS COAL) DATE ISSUED: 03/31/2008
COMPANY)
)
and)
)
KENTUCKY COAL PRODUCERS SELF-)
INSURANCE FUND)
)
Employer/Carrier-)
Respondents)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order Denying Living Miner's Benefits and Denying Survivor's Benefits of Janice K. Bullard, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts (William Lawrence Roberts, P.S.C.), Pikeville, Kentucky, for claimant.

John T. Chafin (Chafin Law Office, P.S.C.), Prestonsburg, Kentucky, for employer.

Before: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order Denying Living Miner's Benefits and Denying Survivor's Benefits (2004-BLA-06614) of Administrative Law Judge Janice K. Bullard rendered on claims 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). The administrative law judge credited the miner with twenty-eight years of qualifying coal mine employment and adjudicated both claims pursuant to the regulations contained in 20 C.F.R. Part 718.² With regard to the miner's subsequent claim,³ the administrative law judge found the newly submitted evidence insufficient to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c) and, thus, insufficient to establish a change in an applicable condition of entitlement that was adjudicated against the miner in his prior claim pursuant to 20 C.F.R. §725.309(d). Accordingly, the administrative law

¹ Claimant is the widow of the deceased miner.

² The Board will apply the law of the United States Court of Appeals for the Sixth Circuit as the miner was last employed in the coal mine industry in Kentucky. *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*); Director's Exhibit 4.

³ The miner filed his first claim for black lung benefits on April 8, 1980, which the district director denied. Decision and Order at 3. The miner filed a second claim on March 9, 1989, and was awarded benefits by Administrative Law Judge Lee J. Romero, Jr., in a Decision and Order issued on August 4, 1992. Director's Exhibits 1-598, 1-177. Employer appealed the award of benefits and in [*B.F.*] *v. Sullivan Brothers Coal Co.*, BRB No. 92-2400 BLA (Dec. 30, 1993)(unpub.), the Board vacated the award of benefits and remanded the case for further consideration. Director's Exhibit 1-84. Judge Romero denied benefits in a Decision and Order on Remand issued on August 31, 1994. Director's Exhibit 1-58. Judge Romero's denial was based on the miner's failure to establish total disability due to pneumoconiosis. *Id.* The miner appealed and in [*B.F.*] *v. Sullivan Brothers Coal Co.*, BRB No. 94-3967 BLA (May 23, 1995)(unpub.), the Board affirmed the denial of benefits. Director's Exhibit 1-4. On December 13, 2001, the miner filed his third claim for benefits. Director's Exhibit 3. However, while that claim was pending before the district director, the miner died on April 3, 2003. Director's Exhibit 9. On May 20, 2003, the district director determined that the miner was entitled to benefits on his claim, and employer requested a hearing before the Office of Administrative Law Judges. Director's Exhibits 35, 36. Claimant filed her survivor's claim on May 5, 2003. Director's Exhibit 41. The district director determined that claimant was entitled to benefits on her survivor's claim on April 20, 2004, and employer requested a hearing before the Office of Administrative Law Judges on that claim. Director's Exhibit 63. Thereafter, both the miner's claim and the survivor's claim were referred for hearings. Director's Exhibits 71, 72. The administrative law judge subsequently held a hearing on both claims in a single proceeding.

judge denied benefits in the miner's claim. Turning to the survivor's claim, the administrative law judge initially found that the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The administrative law judge further found, however, that although the medical opinion evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits in the survivor's claim.

On appeal, claimant challenges the administrative law judge's denial of benefits in both the miner's claim and the survivor's claim. Regarding the miner's claim, claimant challenges the administrative law judge's finding that the evidence is insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c). With regard to the survivor's claim, claimant challenges the administrative law judge's finding that the x-ray evidence was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) and that the medical opinion evidence was insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Employer responds, urging affirmance of the administrative law judge's denial of benefits in both the miner's claim and the survivor's claim. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response in this appeal.

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 into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d); *White v. New White Coal Co.*, 23 BLR 1-1 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2). The miner's prior claim was denied because he failed to establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c).⁴

⁴ In order to establish the miner's entitlement to benefits under the Act, claimant must demonstrate by a preponderance of the evidence that the miner suffered from pneumoconiosis arising out of coal mine employment, and that he was totally disabled 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 entitlement. *Anderson v. Valley*

Decision and Order at 16-17; *see* Director's Exhibit 1-58. Therefore, as a threshold issue, claimant was required to submit new evidence to establish that the miner was totally disabled due to pneumoconiosis in order to proceed on the merits of his subsequent claim. 20 C.F.R. §725.309(d); *White*, 23 BLR at 1-3.

In the miner's claim, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c). Specifically, claimant asserts that the administrative law judge erred by failing to find that the evidence established that the miner's pneumoconiosis contributed to his total disability, asserting that the administrative law judge improperly discredited the opinions of Drs. Siddiqui and Baker and improperly credited the opinions of Drs. Fino and Dahhan.⁵ Claimant's Brief at 10, 11. Drs. Siddiqui and Baker diagnosed a totally disabling respiratory impairment due to coal dust exposure and smoking, while Drs. Fino and Dahhan attributed the miner's impairment solely to smoking. Director's Exhibits 11, 26; Claimant's Exhibits 1-3, 5-6; Employer's Exhibits 2-9, 11.

The administrative law judge reviewed the relevant evidence submitted subsequent to the date of the prior denial, which included the medical opinions of Drs. Siddiqui, Baker, Fino and Dahhan, to determine whether the evidence established that the miner was totally disabled due to pneumoconiosis, the element of entitlement previously adjudicated against the miner. Decision and Order at 17. In considering Dr. Siddiqui's opinion, the administrative law judge stated, "Dr. Siddiqui's opinions on the effects of the [m]iner's coal dust exposure on his pulmonary condition are conclusory and not well-documented or reasoned." Decision and Order at 18. The administrative law judge noted that "Dr. Siddiqui provided answers in a questionnaire format without explanation." *Id.* Dr. Siddiqui's opinion consists of short answers to preprinted questions without comments or explanations as to the basis for his conclusions. Claimant's Exhibit 1. Because she rationally found Dr. Siddiqui's opinion did not constitute a well-documented or reasoned opinion, the administrative law judge reasonably declined to credit the doctor's opinion and permissibly found that the doctor's opinion was not entitled to greater weight simply because of his status as claimant's treating physician. 20 C.F.R.

Camp of Utah, Inc., 12 BLR 1-111 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

⁵ Claimant's assertion that the administrative law judge erred in according more weight to the opinions of Drs. Dahhan and Fino is misplaced. The administrative law judge considered the medical reports of Drs. Dahhan and Fino, attributing the miner's conditions solely to smoking at 20 C.F.R. §718.204(c), but found that they were not well-reasoned and were thus entitled to diminished weight. Decision and Order at 18.

§718.104(d); *see Eastover Mining Co. v. Williams*, 338 F.3d 501, 513, 22 BLR 2-625, 2-647 (6th Cir. 2003) (“[T]he opinions of treating physicians get the deference they deserve based on their power to persuade.”); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 22 BLR 2-320 (6th Cir. 2002); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994). Thus, we reject claimant’s assertion that the administrative law judge erred in discounting Dr. Siddiqui’s opinion.

Likewise, in reviewing Dr. Baker’s opinion, the administrative law judge, after discussing the diagnoses Dr. Baker listed in his report, noted that:

Dr. Baker further stated that the Miner’s “underlying lung disease.... is probably due to coal dust exposure, but primary [sic] due to his cigarette smoking....” Dr. Baker concluded his report by stating, “I cannot partition the effects of cigarette smoking and coal dust exposure in this case but I feel there has been a significant contribution to his obstructive airway disease from his coal dust exposure.”

Decision and Order at 9.

The administrative law judge determined that “although Dr. Baker also found that coal dust exposure contributed to the [m]iner’s totally disabling pulmonary condition, [Dr. Baker] provided little rationale to support his conclusion.” Decision and Order at 18. In light of Dr. Baker’s failure to provide a definitive rationale for his conclusion, the administrative law judge acted within her discretion in assigning his opinion less weight. Thus, we reject claimant’s assertion that the administrative law judge erred in discounting Dr. Baker’s opinion. The administrative law judge thus reasonably discounted the opinions of Drs. Siddiqui and Baker because she reasonably found that they were not well-documented or 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). Since the administrative law judge’s determination to discount the opinions of Drs. Siddiqui and Baker is supported by substantial evidence, we affirm her finding that the evidence is insufficient to establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c).

In light of claimant’s failure to establish total disability due to pneumoconiosis in the miner’s claim, we affirm the administrative law judge’s finding that claimant failed to establish a change in an applicable condition of entitlement pursuant to Section 725.309(d). Thus, we affirm the administrative law judge’s denial of benefits in the miner’s claim. *Clark*, 12 BLR at 1-155; *see generally Bobick v. Saginaw Mining Co.*, 13 BLR 1-52 (1988); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985).

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). A miner's death will be considered to be due to pneumoconiosis if the evidence is sufficient to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(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(c)(5); *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

Claimant contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Specifically, claimant contends that the administrative law judge erred in failing to conclude that the opinions of Drs. Siddiqui and Baker, when considered in conjunction with the miner's death certificate authored by Dr. Siddiqui, established death due to pneumoconiosis. We disagree. The relevant evidence of record in the survivor's claim consists of a death certificate signed by Dr. Siddiqui, and the opinions of Drs. Baker, Fino and Dahhan.⁷ In the death certificate, Dr. Siddiqui listed nine diagnoses with the primary cause of death listed as COPD and sepsis, and also included pneumoconiosis as a significant condition which contributed to death. Decision and Order at 13; Director's Exhibit 9.

⁶ Section 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).

⁷ Drs. Fino and Dahhan opined that coal mine employment did not play a role in the miner's death, but the administrative law judge discounted these opinions since she found that they were conclusory. Decision and Order at 15-16.

The administrative law judge stated that even though Dr. Siddiqui signed the death certificate with the notation that pneumoconiosis was a contributing cause of the miner's death, the doctor did not adequately explain his finding, thus rendering his opinion "conclusory and entitled to diminished weight." Decision and Order at 15. In addition, the administrative law judge noted that Dr. Siddiqui's opinion was "compromised by his failure to address the effect of [c]laimant's significant smoking history upon his condition," thus rendering his opinion on the issue "of little probative value." *Id.*

Likewise, in considering Dr. Baker's opinion, the administrative law judge stated that:

Dr. Baker wrote that he believed that the [m]iner's death was due to his underlying lung disease which "is probably due to coal dust exposure, but primary [sic] due to his cigarette smoking." Dr. Baker noted the [m]iner's status of post chemotherapy for lung cancer, which the doctor concluded predisposed him to sepsis. Dr. Baker affirmatively stated that coal dust exposure did not contribute to the [m]iner's lung cancer, but said that his death was hastened to some extent. I decline to accord substantial weight to Dr. Baker's opinion, as I find it conclusory and speculative, as it is based on inferences that are not well-explained or documented.

Decision and Order at 15.

Thus, the administrative law judge permissibly discounted the opinions of Drs. Siddiqui and Baker because she found that they were not well-reasoned or documented. *Director, OWCP v. Rowe*, 710 F.2d 251, 5 BLR 2-99 (6th Cir. 1983). Furthermore, since the administrative law judge properly discounted the only medical opinions of record that could support a finding that pneumoconiosis contributed to the miner's death, we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Consequently, the administrative law judge reasonably found that since there was no competent medical evidence that attributed the miner's death to pneumoconiosis, claimant failed to establish entitlement to survivor's benefits.⁸ *Williams*, 338 F.3d at 517-518, 19 BLR at 2-655; *Griffith*, 49 F.3d at 186, 19 BLR at 2-117; Decision and Order at 14-16.

⁸ Because we affirm the administrative law judge's finding that claimant failed to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), we need not reach claimant's arguments regarding the administrative law judge's weighing of the x-ray evidence pursuant to 20 C.F.R. §718.202(a)(1).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge