

BRB Nos. 12-0310 BLA
and 12-0431 BLA

LINDA M. VINCENT)
(Widow of and o/b/o JAMES VINCENT))
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Claimant-Petitioner)
)
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v.)
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)
ARCH ON THE GREEN) DATE ISSUED: 03/14/2013
c/o MAGNUM COAL COMPANY)
)
)
and)
)
BITUMINOUS CASUALTY)
CORPORATION)
c/o OLD REPUBLIC INSURANCE)
COMPANY)
)
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 of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

Brent Yonts (Brent Yonts, PSC), Greenville, Kentucky, for claimant.

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

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (2009-BLA-5381 and 2009-BLA-5382) of Administrative Law Judge John P. Sellers, III, denying benefits on a miner's subsequent claim and a survivor's claim filed pursuant to the provisions of Title IV of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (Supp. 2011) (the Act). The administrative law judge credited the miner with 11 years of coal mine employment and adjudicated both claims pursuant to the regulations contained in 20 C.F.R. Part 718, as he found that Section 1556 of the Patient Protection and Affordable Care Act was not applicable in this case.² Regarding the miner's claim, the administrative law judge found that the new evidence did not establish either the existence of clinical or legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). However, the administrative law judge found that the new evidence established total respiratory disability pursuant to 20 C.F.R. §718.204(b). Consequently, the administrative law judge found that the new evidence established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309. On the merits, the administrative law judge found that the evidence did not establish the existence of clinical or legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found that the evidence did not establish total disability due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits in the miner's claim. With respect to the survivor's claim, the administrative law judge found that the evidence did

¹ Claimant is the widow of the miner. The miner filed his first claim on October 12, 2004. Director's Exhibit 1. It was finally denied by the district director on July 28, 2005, because the evidence did not establish any of the elements of entitlement. *Id.* The miner filed his second claim (a subsequent claim) on July 16, 2007. Director's Exhibit 3. However, he died on February 14, 2008, while his claim was pending before the district director. Director's Exhibit 63. On March 17, 2008, claimant advised the district director that she wished to pursue the miner's claim. Director's Exhibit 50. She also filed her survivor's claim on March 17, 2008. Director's Exhibit 57.

² On March 23, 2010, amendments to the Act, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010, were enacted. See Section 1556 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010)(codified at 30 U.S.C. §§921(c)(4) and 932(l)). The amendments, in pertinent part, reinstated Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), which provides a rebuttable presumption that the miner was totally disabled due to pneumoconiosis, that his death was due to pneumoconiosis, or that at the time of his death he was totally disabled due to pneumoconiosis, if 15 or more years of qualifying coal mine employment and a totally disabling respiratory impairment, *see* 20 C.F.R. §718.204(b), are established. Because the miner had less than 15 years of qualifying coal mine employment, the Section 411(c)(4) presumption does not apply in this case.

not establish either the existence of clinical or legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), or 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 finding that the evidence did not establish the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4) in both claims. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate 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.³ 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 benefits in a miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish that the miner was totally disabled due to pneumoconiosis arising out of coal mine employment. 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 Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

To establish entitlement to survivor's benefits, claimant must demonstrate 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. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993).

The Board's limited scope of review requires that a party challenging the Decision and Order below address that Decision and Order and demonstrate why substantial evidence does not support the result reached or why the Decision and Order is contrary to law. See 20 C.F.R. §§802.211(b), 802.301(a); *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); *Slinker v. Peabody Coal Co.*, 6 BLR 1-465 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Unless the party identifies errors and briefs its allegations

³ The record indicates that the miner was employed in the coal mining industry in Kentucky. Director's Exhibits 1, 4, 58. 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 (1989)(en banc).

in terms of the relevant law and evidence, the Board has no basis upon which to review the decision. *See Sarf*, 10 BLR at 1-120; *Fish*, 6 BLR at 1-109.

With regard to the miner's claim, claimant asserts that the administrative law judge erred in finding that the medical opinion evidence did not establish the existence of legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), but does not challenge the administrative law judge's disability causation finding at 20 C.F.R. §718.204(c). Thus, we affirm the administrative law judge's finding that the evidence did not establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c). *See Sarf*, 10 BLR at 1-120; *Fish*, 6 BLR at 1-109. Furthermore, in view of our affirmance of the administrative law judge's finding that the evidence did not establish total disability due to pneumoconiosis at 20 C.F.R. §718.204(c), an essential element of entitlement under 20 C.F.R. Part 718, we affirm the administrative law judge's denial of benefits in the miner's claim. *Anderson*, 12 BLR at 1-112.

Turning to the survivor's claim, in addition to finding that the evidence did not establish clinical or legal pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(4), the administrative law judge found that the evidence did not establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Because claimant does not assign specific error to the administrative law judge's death causation finding at 20 C.F.R. §718.205(c), it is affirmed. *See Sarf*, 10 BLR at 1-120; *Fish*, 6 BLR at 1-109. Thus, in light of our affirmance of the administrative law judge's finding that the evidence did not establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c), an essential element of entitlement in a survivor's claim, we affirm the administrative law judge's denial of survivor's benefits under 20 C.F.R. Part 718. *Trumbo*, 17 BLR at 1-88.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge