

BRB Nos. 12-0490 BLA  
and 12-0490 BLA-A

MINNIE RUTH LEWIS )  
(Widow of DANNY LEWIS) )  
 )  
 Claimant-Petitioner )  
 Cross-Respondent )  
 )  
 v. )  
 )  
 SHAMROCK COAL COMPANY )  
 )  
 and ) DATE ISSUED: 05/22/2013  
 )  
 SUN COAL COMPANY, INCORPORATED )  
 )  
 Employer/Carrier- )  
 Respondents )  
 Cross-Petitioners )  
 )  
 DIRECTOR, OFFICE OF WORKERS' )  
 COMPENSATION PROGRAMS, UNITED )  
 STATES DEPARTMENT OF LABOR )  
 )  
 Party-in-Interest ) DECISION and ORDER

Appeal and Cross-Appeal of the Decision and Order of John P. Sellers, III,  
Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Asher, Kentucky, for claimant.

Ronald E. Gilbertson (Husch Blackwell LLP), Washington D.C., for  
employer/carrier.

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

PER CURIAM:

Claimant<sup>1</sup> appeals, and employer/carrier (employer) cross-appeals, the Decision and Order (09-BLA-5646) of Administrative Law Judge John P. Sellers, III, denying benefits on a claim filed pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011) (the Act). This case involves a survivor's claim filed on July 7, 2008.

Congress enacted amendments to the Black Lung Benefits Act, which apply to claims filed after January 1, 2005, that were pending on or after March 23, 2010. Relevant to this case, amended Section 411(c)(4) provides a rebuttable presumption that the miner's death was due to pneumoconiosis if claimant establishes that the miner suffered from a totally disabling respiratory or pulmonary impairment and had at least fifteen years of underground coal mine employment, or coal mine employment in conditions substantially similar to those in an underground mine.<sup>2</sup> 30 U.S.C. §921(c)(4), *amended by* Pub. L. No. 111-148, §1556(a), 124 Stat. 119, 260 (2010).

The administrative law judge found that claimant worked for over fifteen years in a surface mine with dust conditions substantially similar to those in an underground mine.<sup>3</sup> However, the administrative law judge found that the evidence did not establish that the miner had a totally disabling respiratory impairment. Consequently, the administrative law judge found that claimant failed to invoke the Section 411(c)(4) presumption that the miner's death was due to pneumoconiosis. The administrative law judge further found that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The administrative law judge, therefore, found that claimant was not entitled to benefits under 20 C.F.R. Part 718.

On appeal, claimant argues that the administrative law judge erred in finding that the evidence did not establish that the miner had a totally disabling respiratory

---

<sup>1</sup> Claimant is the widow of the miner, who died on April 10, 2008. Director's Exhibit 7.

<sup>2</sup> Section 1556 of Public Law No. 111-148 also revived Section 422(l) of the Act, 30 U.S.C. §932(l), providing that a survivor is automatically entitled to benefits if the miner filed a successful claim and was receiving benefits at the time of his death. However, claimant cannot benefit from this provision, as the miner's claim for benefits was denied. Closed Miner's Claim.

<sup>3</sup> The record reflects that the miner's coal mine employment was in Kentucky. Director's Exhibit 2. 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).

impairment. Claimant also contends that the administrative law judge erred in finding that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), has not filed a response brief. In its cross-appeal, employer asserts that the administrative law judge erred in finding that the miner's surface coal mine employment occurred in conditions substantially similar to those in an underground mine. Neither claimant nor the Director has filed a brief in response to employer's cross-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 by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Benefits are payable on survivors' claims when the miner's death is due to pneumoconiosis. See 20 C.F.R. §§718.1, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). 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); *Conley v. Nat'l Mines Corp.*, 595 F.3d 297, 24 BLR 2-257 (6th Cir. 2010).

### **The Section 411(c)(4) Presumption**

Claimant initially argues that the administrative law judge erred in finding that the evidence did not establish that the miner had a totally disabling respiratory impairment. We disagree. Because claimant does not challenge the administrative law judge's findings that the medical evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i)-(iv), these findings are affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983). Moreover, we reject claimant's assertion that her testimony is sufficient to support a finding of total disability. Lay testimony on the issue of total disability may be sufficient to establish that the miner was totally disabled due to pneumoconiosis only if there is no medical evidence on the issue. See 20 C.F.R. §718.204(d)(3). Because claimant raises no other contentions of error, we affirm the administrative law judge's finding that the medical evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2).

In light of our affirmance of the administrative law judge's findings that the evidence did not establish total disability pursuant to 20 C.F.R. §718.204(b)(2), we affirm his finding that claimant did not invoke the Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4).

### **Section 718.205(c)**

Claimant also argues that the administrative law judge erred in finding that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). In regard to the cause of the miner's death, the administrative law judge considered the miner's death certificate, the miner's autopsy report, and the medical opinions of Drs. Oesterling, Tuteur, and Caffrey. Dr. Rauf completed the miner's death certificate. Although Dr. Rauf attributed the miner's death to a myocardial infarction, he listed "black lung" as a contributor to the miner's death. Director's Exhibit 7. Dr. Bella, the autopsy prosector, found changes compatible with pneumoconiosis, but did not address the cause of the miner's death. Director's Exhibit 8. Drs. Oesterling, Tuteur, and Caffrey each opined that the miner's death was not related to, caused by, or hastened by, coal workers' pneumoconiosis. Employer's Exhibits 1-4, 8.

The administrative law judge found that the miner's death certificate was insufficient to support a finding that the miner's death was due to pneumoconiosis, because Dr. Rauf failed to provide any explanation for his findings. Decision and Order at 17. The administrative law judge also accurately noted that Dr. Bella, the autopsy prosector, did not relate the miner's death to his pneumoconiosis. *Id.* Finally, the administrative law judge accurately noted that Drs. Oesterling, Tuteur and Caffrey ruled out a connection between the miner's death and his pneumoconiosis. *Id.* at 17-18. The administrative law judge, therefore, found that the evidence did not establish that miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).

We disagree with claimant's contention that the administrative law judge erred in finding that the evidence did not establish that the miner's death was due to pneumoconiosis. The administrative law judge permissibly determined that the miner's death certificate, the only evidence supportive of a finding that the miner's death was due to pneumoconiosis, was not sufficiently reasoned.<sup>4</sup> *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *see also Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000); *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); *see also Addison v. Director, OWCP*, 11 BLR 1-68 (1988). We, therefore, affirm the administrative law judge's finding that the medical

---

<sup>4</sup> The administrative law judge noted that Dr. Rauf provided no explanation for his findings on the miner's death certificate. Decision and Order at 17.

evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Consequently, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718.

In view of our affirmance of the administrative law judge's denial of benefits, we need not address the arguments raised in employer's cross-appeal. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

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

---

JUDITH S. BOGGS  
Administrative Appeals Judge