

BRB Nos. 08-0235 BLA  
and 08-0864 BLA

N.B. (on behalf of and	)	
Widow of R.B.)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
VM & M MINING, INCORPORATED	)	
	)	
and	)	
	)	DATE ISSUED: 11/25/2008
EMPLOYERS INSURANCE OF WAUSAU	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS, UNITED	)	
STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the two Decisions and Orders Denying Benefits of Alice M. Craft, Administrative Law Judge, United States Department of Labor.

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

W. Barry Lewis (Lewis and Lewis Law Offices), Hazard, Kentucky, for employer.

Emily Goldberg-Kraft (Gregory F. Jacob, Solicitor of Labor; Rae Ellen Frank James, Acting 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: DOLDER, Chief Administrative Appeals Judge, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2005-BLA-05729) on a miner's claim and the Decision and Order Denying Benefits (2005-BLA-05041) on a survivor's claim of Administrative Law Judge Alice M. Craft rendered 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).<sup>1</sup> The administrative law judge credited the miner with thirty years of coal mine employment, based on a stipulation by the parties, and adjudicated both claims pursuant to 20 C.F.R. Part 718. With respect to the miner's claim, the administrative law judge found that claimant failed to establish that the miner had pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a) and 718.203(b) or that he was totally disabled due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). With respect to the survivor's claim, the administrative law judge determined that the evidence was insufficient to establish the existence of pneumoconiosis and, therefore, found that claimant was unable to prove 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 on both claims.

On appeal, claimant challenges the administrative law judge's findings pursuant to 20 C.F.R. §§718.202(a)(1), (4), 718.204(b)(2)(iv), and 718.205(c).<sup>2</sup> Claimant also argues that because the administrative law judge did not credit the opinion of Dr. Simpao<sup>3</sup> that

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<sup>1</sup> The miner filed a claim for benefits on October 3, 2001. Miner's Claim (MC) Director's Exhibit at 2. While his claim was pending, the miner died on August 12, 2003. Survivor's Claim (SC) Director's Exhibit 6. Claimant, the miner's widow, subsequently filed a survivor's claim for benefits on September 30, 2003. SC Director's Exhibit 2. These claims were consolidated for a formal hearing before the administrative law judge, who issued two separate decisions on October 31, 2007, denying benefits on both claims.

<sup>2</sup> Claimant asserts that the administrative law judge erred by not finding that the miner was totally disabled pursuant to 20 C.F.R. §718.204(c). Claimant's Brief at 6. Under the revised regulations, the provision pertaining to total disability, previously set out at 20 C.F.R. §718.204(c)(2000), is now found at 20 C.F.R. §718.204(b). The regulation pertaining to disability causation, previously set out at 20 C.F.R. §718.204(b)(2000), is now found at 20 C.F.R. §718.204(c).

<sup>3</sup> We affirm, as unchallenged by the parties on appeal, the administrative law judge's findings that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2)-(3) in either the miner's claim or the survivor's claim. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); MC Decision and Order at 12; SC Decision and Order at 13-14.

the miner had pneumoconiosis,<sup>4</sup> the Board must conclude that the Director, Office of Workers' Compensation Programs (the Director), failed to provide the miner with a complete and credible pulmonary evaluation. Employer responds, urging affirmance of the denial of benefits. The Director has filed a letter brief, asserting that he has fulfilled his statutory obligation to provide the miner with a complete pulmonary evaluation. The Director, however, takes no position with regard to the administrative law judge's findings on the merits of the claims.

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.<sup>5</sup> 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).

### *The Miner's Claim*

In order to establish entitlement to benefits in a living miner's claim pursuant to 20 C.F.R. Part 718, claimant must establish that the miner had pneumoconiosis, that his pneumoconiosis arose out of coal mine employment, that the miner was totally disabled, and that his total disability was due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.204; *Peabody Coal Co. v. Hill*, 123 F.3d 412, 21 BLR 2-192 (6th Cir. 1997); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). Failure to establish any one of these elements precludes entitlement. *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (*en banc*).

Claimant asserts that the administrative law judge erred in finding the x-ray evidence to be insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Claimant contends that the administrative law judge erred in relying on the qualifications of the physicians and in placing substantial weight on the numerical superiority of the negative x-ray interpretations. Claimant's Brief at 3. Claimant also suggests that the administrative law judge "may have selectively analyzed" the x-ray evidence. Claimant's Brief at 3-4. We reject claimant's assertions of error as they are without merit.

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<sup>4</sup> Dr. Simpao examined the miner on behalf of the Department of Labor on October 19, 2001. MC Director's Exhibit 13.

<sup>5</sup> Because claimant's coal mine employment was in Kentucky, 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*); MC Director's Exhibit 3.

The record in the miner's claim contains nine readings of four x-rays dated October 19, 2001, October 27, 2001, January 3, 2002 and October 24, 2002. Dr. Simpao, who possesses no radiological qualifications, read the October 19, 2001 x-ray as positive for pneumoconiosis while Dr. Wheeler, a Board-certified radiologist and B reader, read the same x-ray as negative for pneumoconiosis. Miner's Claim (MC) Director's Exhibit 13; Employer's Exhibit 1. Dr. Baker, an A reader, read the October 27, 2001 x-ray as positive for pneumoconiosis, while Dr. Wheeler read the same x-ray as negative for pneumoconiosis. MC Director's Exhibit 8; Employer's Exhibit 3. Dr. Alexander, who is dually qualified as a B reader and Board-certified radiologist, read the January 3, 2002 x-ray as positive for pneumoconiosis, while Dr. Wheeler and Dr. Dahhan, a B reader, read the x-ray as negative for pneumoconiosis. MC Director's Exhibits 11, 19, 27. Dr. Hays, who possesses no radiological credentials, read the October 24, 2002 x-ray as positive for pneumoconiosis, while Dr. Wheeler read the x-ray as negative for pneumoconiosis. MC Director's Exhibit 26; Employer's Exhibit 2.

Contrary to claimant's assertion, in weighing the conflicting x-ray readings at 20 C.F.R. §718.202(a)(1), the administrative law judge properly considered the qualifications of the physicians and gave controlling weight to the negative readings by Dr. Wheeler of the x-rays dated October 19, 2001, October 27, 2001, and October 24, 2002, based on Dr. Wheeler's superior credentials as a dually qualified radiologist. *See Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); MC Decision and Order at 13. The administrative law judge also properly found that the January 3, 2002 x-ray was in equipoise as to the presence or absence of pneumoconiosis, since that x-ray had one positive and one negative reading by a dually qualified radiologist. *Id.*; *see Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993); MC Decision and Order at 13. Thus, because the administrative law judge properly performed a qualitative and quantitative analysis of the x-ray evidence, we affirm, as supported by substantial evidence, her finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1994); MC Decision and Order at 13.

We also reject claimant's contention that the administrative law judge erred in failing to find the opinions of Drs. Simpao, Baker and Hays to be sufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).<sup>6</sup> Claimant's Brief at 4-7.

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<sup>6</sup> Dr. Simpao examined the miner on October 19, 2001 and diagnosed clinical pneumoconiosis with a mild respiratory impairment. MC Director's Exhibit 13. Dr. Baker examined the miner on October 27, 2001 and diagnosed clinical coal workers' pneumoconiosis by x-ray, mild hypoxemia based on an arterial blood gas study and chronic bronchitis. MC Director's Exhibit 8. In a report dated October 29, 2002, Dr.

Contrary to claimant's contention, the administrative law judge properly gave little weight to the diagnoses of clinical pneumoconiosis<sup>7</sup> by Drs. Simpao and Baker as she found that each relied on a positive x-ray, which was subsequently reread as negative for pneumoconiosis by a more qualified Board-certified radiologist and B reader. *Winters v. Director, OWCP*, 6 BLR 1-877, 1-881 n.4 (1984); *see also Trumbo*, 17 BLR at 1-88-89; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985).

As to the issue of legal pneumoconiosis,<sup>8</sup> the administrative law judge noted that Dr. Simpao diagnosed a small airway disease, which he attributed, in part, to coal dust exposure. Dr. Baker diagnosed the miner with mild chronic bronchitis and mild resting hypoxemia, which he also attributed to coal dust exposure. MC Decision and Order at 16. In contrast, Drs. Dahhan and Fino opined that the miner had no respiratory disease whatsoever. *Id.* In weighing these conflicting opinions, the administrative law judge had discretion to credit Dr. Dahhan's opinion, that the miner did not have legal pneumoconiosis, over the contrary opinions of Drs. Simpao and Baker, because she found that Dr. Dahhan was the only doctor who had the opportunity to both examine the miner and review all of the medical evidence of record. *See Clark*, 12 BLR at 1-155; MC Decision and Order at 16. The administrative law judge also permissibly found that Dr. Dahhan "better explained how all of the evidence that was developed and reviewed

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Hays diagnosed pneumoconiosis based on his own positive interpretation of the October 29, 2002 x-ray. MC Director's Exhibit 26. Dr. Hays further reported that the miner had chronic hypoxemia and was "only able to walk a short distance" without experiencing shortness of breath. *Id.*

<sup>7</sup> Pursuant to 20 C.F.R. §718.201(a)(1):

Clinical pneumoconiosis consists of those diseases recognized by the medical community as pneumoconiosis, *i.e.*, the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung tissue to that deposition caused by dust exposure in coal mine employment.

20 C.F.R. §718.201(a)(1).

<sup>8</sup> 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). For the purposes of the regulation, a disease "arising out of coal mine employment" means a disease that is "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

supported his conclusions” that the miner did not have a respiratory condition caused or aggravated by coal dust exposure, and that Dr. Dahhan’s report was better in accord with the medical evidence of record. *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); MC Decision and Order at 16. Moreover, the administrative law judge properly noted that Dr. Fino’s “corroborating analysis [as to why the miner did not have legal pneumoconiosis] lends substantial support to the opinion of Dr. Dahhan.” MC Decision and Order at 16. Thus, we affirm the administrative law judge’s decision to accord controlling weight to Dr. Dahhan’s opinion and less weight to the opinions of Drs. Simpao and Baker at Section 718.202(a)(4).

Furthermore, we specifically reject claimant’s argument that the administrative law judge erred in failing to credit Dr. Hays’ diagnosis of pneumoconiosis, based on his status as the miner’s treating physician. The regulation at 20 C.F.R. §718.104(d) requires the officer adjudicating the claim to give consideration to the relationship between the miner and any treating physician whose report is admitted into the record. 20 C.F.R. §718.104(d). Specifically, the pertinent regulation provides that the adjudication officer “shall take into consideration” the nature of the relationship, duration of the relationship, frequency of treatment, and the extent of treatment. 20 C.F.R. §718.104(d)(1)-(4). Although the treatment relationship may constitute substantial evidence in support of the adjudication officer’s decision to give that physician’s opinion controlling weight in appropriate cases, the weight given to a treating physician “shall also be based on the credibility of the physician’s opinion in light of its reasoning and documentation, as well as other relevant evidence and the record as a whole.” 20 C.F.R. §718.104(d)(5). Moreover, the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has recognized that “the opinions of treating physicians get the deference they deserve based on their power to persuade.” *Eastover Mining Co. v. Williams*, 338 F.3d 501, 513, 22 BLR 2-625, 2-647 (6th Cir. 2003).

In this case, the administrative law judge considered the factors at 20 C.F.R. §718.104(d) and determined that Dr. Hays did not provided a sufficiently reasoned and documented opinion to support a finding that the miner had legal pneumoconiosis. MC Decision and Order at 15. Although Dr. Hays diagnosed clinical pneumoconiosis by x-ray, severe emphysema and chronic hypoxemia, the administrative law judge properly found that Dr. Hays’ primary treatment of the miner was for non-respiratory conditions, and that Dr. Hays did not explain the basis for his diagnoses. *Clark*, 12 BLR at 1-155.; MC Decision and Order at 15. The administrative law judge also properly found that Dr. Hays did not indicate whether he had any knowledge as to the length of the miner’s coal dust exposure or discuss “whether the miner’s smoking history or other non-pulmonary conditions [such as his heart condition] caused or contributed to the [m]iner’s shortness of breath.” MC Decision and Order at 15; *see Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Furgerson v. Jericol Mining Inc.*, 22 BLR 1-216, 1-226 (2002) (*en banc*). Thus, we affirm the administrative law judge’s decision to

accord Dr. Hays' opinion less weight at Section 718.202(a)(4). *Williams*, 338 F.3d at 513, 22 BLR at 2-647.

The administrative law judge is empowered to weigh the medical evidence and to draw her own inferences therefrom, *see Maypray v. Island Creek Coal Co.*, 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *See Clark*, 12 BLR at 1-151. The administrative law judge has discretion to resolve the conflicting evidence and is given deference with regard to credibility determinations. *See Wolf Creek Collieries v. Director, OWCP [Stephens]*, 298 F.3d 511, 522, 22 BLR 2-494, 512 (6th Cir. 2002); *Rowe*, 710 F.2d at 255; 5 BLR at 2-103. Consequently, we affirm the administrative law judge's finding that claimant failed to establish that the miner suffered from either clinical or legal pneumoconiosis at 20 C.F.R. §718.202(a)(4), as it is supported by substantial evidence. Because claimant failed to establish the existence of pneumoconiosis, a requisite element of entitlement, we affirm the administrative law judge's denial of benefits in the miner's claim.<sup>9</sup> *See Trent*, 11 BLR at 1-27.

#### *The Survivor's Claim*

In order to establish her entitlement to survivor's benefits, claimant must prove that the miner suffered from pneumoconiosis, that his pneumoconiosis arose out of coal mine employment, and that the miner's 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, death will be considered 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)(5); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

Claimant contends that the administrative law judge erred in failing to find that the miner had pneumoconiosis and that his death was hastened by pneumoconiosis. We disagree. In her consideration of the survivor's claim, the administrative law judge first

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<sup>9</sup> Because we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis, we need not address claimant's assertion that the administrative law judge erred in failing to find that the miner was totally disabled under 20 C.F.R. §718.204(b)(2)(iv). *See Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

addressed whether the evidence was sufficient to establish the existence of pneumoconiosis. The administrative law judge applied her credibility findings with respect to the x-ray evidence and medical opinions, as determined in the miner's claim, to the same evidence that was submitted in the survivor's claim. Under 20 C.F.R. §718.202(a)(1), we affirm, as discussed *supra*, the administrative law judge's determination to credit the negative readings for pneumoconiosis by Dr. Wheeler of the x-rays dated October 19, 2001, October 27, 2001, and January 3, 2002. SC Decision and Order at 14-15. The administrative law judge also considered seven x-rays contained in the miner's treatment records, which had not been submitted in the miner's claim but were part of the record in the survivor's claim. Employer's Exhibit 7. The administrative law judge noted that these treatment x-rays showed abnormalities such as peri-bronchial thickening and chronic obstructive pulmonary disease" but made no specific mention of pneumoconiosis. SC Decision and Order at 14. Thus, because the administrative law judge found "all of the x-rays submitted in the survivor's claim were either negative for pneumoconiosis" or "silent" on the issue, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1). *Id.*

Under 20 C.F.R. §718.202(a)(4), the administrative law judge assigned less weight to the diagnoses of pneumoconiosis provided by Drs. Baker and Simpao and we affirm her credibility findings for the reasons previously given in this Decision and Order. *See supra* at 5-6. With respect to Dr. Hays, the administrative law judge noted that he signed the miner's death certificate and listed the immediate cause of the miner's death as cardiac arrhythmia. SC Director's Exhibit 6. Dr. Hays also listed severe sclerotic cardiovascular disease, severe pulmonary fibrosis, and coal mining activity as "significant conditions contributing to death." *Id.* The record also contains an additional report prepared by Dr. Hays on September 29, 2003, subsequent to the miner's death. WC Director's Exhibit 7. Dr. Hays answered questions posed by claimant's counsel, and indicated that he had examined the miner five times. *Id.* Dr. Hays stated that the miner suffered from a pulmonary disease causally related to coal dust exposure based on the miner's complaints of shortness of breath and the results of a chest x-ray, which showed "numerous fibrotic areas consistent with pneumoconiosis." *Id.*

Although Dr. Hays did not specify the date of the x-ray he relied upon to support his diagnosis of pneumoconiosis, the administrative law judge concluded that Dr. Hays was referencing his own positive reading of the October 24, 2002 x-ray, which was not submitted as evidence in the survivor's claim. WC Decision and Order at 10. The administrative law judge therefore gave less weight to Dr. Hays' opinion that the miner had pneumoconiosis because she found that it was based, in part, on evidence that was

not of record.<sup>10</sup> Furthermore, contrary to claimant's contention, the administrative law judge properly found that because Dr. Hays failed to explain how the objective evidence, including the pulmonary function and arterial blood gas studies, supported his diagnosis of either pneumoconiosis or emphysema, his opinion was not sufficiently reasoned to satisfy claimant's burden of proof at 20 C.F.R. §718.202(a)(4). See *Stephens*, 298 F.3d at 522; 22 BLR at 512; *Rowe*, 710 F.2d at 255; 5 BLR at 2-103; *Clark*, 12 BLR at 1-155.

Because the administrative law judge has discretion in rendering credibility determinations, we affirm her finding that the medical opinion evidence failed to establish that the miner suffered from either clinical or legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *Tennessee Consolidated Coal Co. v. Kirk*, 264 F.3d 602, 607, 22 BLR 2-288, 2-296 (6th Cir. 2001). Since claimant failed to establish the existence of pneumoconiosis, a requisite element of entitlement in the survivor's claim, we affirm the administrative law judge's finding that claimant failed to prove that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). We therefore affirm the administrative law judge's denial of benefits in the survivor's claim.

### *Complete Pulmonary Evaluation*

Claimant's final argument, applicable to both claims, is that the miner was not provided a complete, credible pulmonary evaluation<sup>11</sup> on the issue of pneumoconiosis because the administrative law judge rejected Dr. Simpao's diagnosis of pneumoconiosis as based "merely on an erroneous x-ray interpretation." Claimant's Brief at 11. Claimant's argument is without merit.

First, the administrative law judge did not characterize Dr. Simpao's x-ray interpretation as "erroneous" as suggested by claimant. Rather, the administrative law judge concluded that Dr. Simpao's positive reading of the October 19, 2001 x-ray was

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<sup>10</sup> The October 24, 2002 x-ray was not proffered as evidence by either party in the survivor's claim.

<sup>11</sup> The Act requires that "[e]ach miner who files a claim . . . be provided an opportunity to substantiate his or her claim by means of a complete pulmonary evaluation." 30 U.S.C. §923(b), implemented by 20 C.F.R. §§718.101(a), 725.406.

outweighed by the negative reading of that same film by a better qualified physician. *See Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000). Secondly, we agree with the Director that claimant received a complete pulmonary evaluation related to the issue of the existence of pneumoconiosis. As noted by the Director, “Dr. Simpao’s x-ray readings conformed to the regulations . . . [and] provided a reasonable basis upon which the physician could, and did [,] diagnose the miner with clinical pneumoconiosis.” Director’s Brief at 4; MC Director’s Exhibit 13; *see also* 20 C.F.R. §§718.101(a), 718.104, 725.406(a). The administrative law judge did not find, nor does claimant contend, that Dr. Simpao’s opinion was incomplete because it failed to address one of the essential elements of entitlement. Rather, claimant contends that the Director failed to provide a complete, credible pulmonary evaluation because the administrative law judge did not ultimately credit Dr. Simpao’s opinion regarding the existence of pneumoconiosis. Claimant’s Brief at 5. We reject claimant’s contentions.

In *Gallaher v. Bellaire Corp.*, No. 03-3066, 71 Fed. Appx. 528, 531, 2003 WL 21801463 (6th Cir. Aug. 4, 2003) (unpub.), the Sixth Circuit held that the Director had discharged his responsibility because the doctor’s report at issue addressed the essential elements of entitlement, even though the administrative law judge had discredited the doctor’s diagnosis of pneumoconiosis as unexplained and based on a questionable x-ray interpretation. In keeping with the reasoning of *Gallaher*, because Dr. Simpao addressed the existence of pneumoconiosis, the element of entitlement upon which the administrative law judge based her denial of benefits in both the miner’s claim and the survivor’s claim, we reject claimant’s argument that the Director failed to provide the miner with a full pulmonary evaluation.<sup>12</sup> *Cf. Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-93 (1994); *see Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

Accordingly, the Decision and Order Denying Benefits (2005-BLA-05729) in the miner’s claim and the Decision and Order Denying Benefits (2005-BLA-05041) in the survivor’s claim are affirmed.

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<sup>12</sup> The Director, Office of Workers’ Compensation Programs, concedes that Dr. Simpao’s opinion was not complete as to the issue of total disability because Dr. Simpao “failed to explain whether he considered the miner’s ‘mild respiratory impairment’ to be totally disabling.” Director’s Brief at 4 n.4. Notwithstanding, we agree with the Director that Dr. Simpao’s opinion on the issue of total disability is not prejudicial to claimant because the administrative law judge properly found that the miner did not have pneumoconiosis. *Id.*

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge