

BRB No. 13-0264 BLA

DONNA M. EDMONDS)
(o/b/o and as Widow of ROGER L.)
EDMONDS))
)
Claimant-Petitioner)
)
v.)
)
CLINCHFIELD COAL COMPANY) DATE ISSUED: 10/31/2013
)
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 Denying Benefits on Living Miner's Claim and Remanding Survivor's Claim to District Director for Processing and Adjudication of Stephen R. Henley, Administrative Law Judge, United States Department of Labor.

Donna M. Edmonds, Lebanon, Virginia, *pro se*.¹

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

¹ Ron Carson, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Mr. Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Claimant,² without the assistance of counsel, appeals the Decision and Order Denying Benefits on Living Miner's Claim and Remanding Survivor's Claim to District Director for Processing and Adjudication (2009-BLA-05395 and 2011-BLA-05233) of Administrative Law Judge Stephen R. Henley rendered on a miner's subsequent claim filed on May 10, 2007³ and a survivor's claim filed on May 3, 2010,⁴ pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (Supp. 2011)(the Act).

On March 23, 2010, Congress enacted amendments to the Act affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010. *See* Section 1556 of the Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148, §1556, 124 Stat. 119, 260 (2010). The amendments revive Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), which provides a rebuttable presumption that the miner is totally disabled due to pneumoconiosis if fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment, *see* 20 C.F.R. §718.204(b), are established. 30 U.S.C. §921(c)(4). The amendments also revive Section 422(l) of the Act, 30 U.S.C. §932(l), which provides that the survivor of a miner who was eligible to receive benefits at the time of his or her death is automatically entitled to survivor's benefits, without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l).

Based on employer's concessions that the miner had twenty-three years of underground coal mine employment and a totally disabling respiratory or pulmonary

² Claimant is the widow of the miner, who died on February 29, 2008. Director's Exhibits 28, 46.

³ The miner filed his initial claim for benefits on February 11, 1994, which was denied by Administrative Law Judge Edward Terhune Miller on December 12, 1995. Director's Exhibit 1. The miner filed his second claim on December 11, 2001, which was denied by the district director on October 2, 2002. Director's Exhibit 2. The miner took no further action until he filed his third, and current, claim on May 10, 2007. Director's Exhibit 4. The district director initially awarded benefits on the current claim, but the claim was subsequently denied by Administrative Law Judge Stephen R. Henley.

⁴ Benefits were initially awarded on the survivor's claim by the district director pursuant to Section 1556 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, §1556, 124 Stat. 119, 260 (2010), in light of the district director's award of benefits on the miner's claim. 30 U.S.C. §932(l). Employer requested a hearing before the administrative law judge on both claims, and the claims were consolidated.

impairment, the administrative law judge found that claimant was entitled to invocation of the amended Section 411(c)(4) rebuttable presumption of total disability due to pneumoconiosis, 30 U.S.C. §921(c)(4), in the miner's claim. However, the administrative law judge found that employer established that the miner did not have either clinical or legal pneumoconiosis and, therefore, found that employer rebutted the amended Section 411(c)(4) presumption. 30 U.S.C. §921(c)(4). Accordingly, the administrative law judge denied benefits on the miner's claim.

With regard to the survivor's claim, the administrative law judge found that the district director's award of benefits was based on the district director's award of benefits in the miner's claim pursuant to amended Section 422(l) of the Act, 30 U.S.C. §932(l). In light of the administrative law judge's denial of benefits in the miner's claim, the administrative law judge vacated the district director's automatic award of benefits on the survivor's claim, and remanded the survivor's claim to the district director for "processing and adjudication." Decision and Order at 17.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief in this appeal.⁵

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law.⁶ 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).

⁵ We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant established invocation of the rebuttable presumption set forth at amended Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4). See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

⁶ The Board will apply the law of the United States Court of Appeals for the Fourth Circuit, as the miner was last employed in the coal mining industry in Virginia. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(en banc); Director's Exhibits 1, 5.

Miner's Claim

The amended Section 411(c)(4) presumption is rebutted by establishing that the miner did not have pneumoconiosis, either clinical or legal, or that the miner's total disability is not due to pneumoconiosis. 30 U.S.C. §921(c)(4). In addressing the evidence relevant to the existence of clinical pneumoconiosis,⁷ the administrative law judge first considered the x-ray evidence, finding that the record contains eight interpretations of three x-ray films, dated June 12, 2007, July 9, 2007 and September 26, 2007. Decision and Order at 6-8; Director's Exhibits 12-16. Weighing the readings of these x-rays,⁸ the administrative law judge reasonably determined that all of the x-ray films were negative for pneumoconiosis, based on the weight of the negative readings by physicians with superior radiological qualifications. See *Chaffin v. Peter Cave Coal Co.*, 22 BLR 1-294, 1-302 (2003); *Worhach v. Director, OWCP*, 17 BLR 1-105, 1-108 (1993); *Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(en banc); Decision and Order at 8. Thus, the administrative law judge properly concluded that the x-ray evidence did not establish the presence of clinical pneumoconiosis. *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992); Decision and Order at 8.

Next, the administrative law judge considered the autopsy evidence. The administrative law judge found that both Dr. Emory, the autopsy prosector, and Dr. Caffrey, who reviewed the autopsy slides, opined that the miner did not suffer from clinical pneumoconiosis. Specifically, the administrative law judge found that Dr. Emory diagnosed mild anthracosis on gross examination, but concluded that "the findings are

⁷ "Clinical pneumoconiosis" consists of those diseases recognized by the medical community as pneumoconioses, i.e., the conditions characterized by permanent deposition of substantial amounts of particulate matter in the lungs and the fibrotic reaction of the lung to that deposition caused by dust exposure in coal mine employment. 20 C.F.R. §718.201(a)(1).

⁸ Dr. Alexander, a B reader and Board-certified radiologist, interpreted the June 6, 2007 x-ray as positive for pneumoconiosis, whereas Dr. Scatarige, a B reader and Board-certified radiologist, as well as an assistant professor of radiology, interpreted the x-ray as negative for pneumoconiosis. Director's Exhibits 14, 16. The July 9, 2007 x-ray was read by Dr. Alexander, as well as Dr. Forehand, a B reader, as positive for pneumoconiosis, but Dr. Scatarige and Dr. Scott, also a dually-qualified radiologist and an associate professor of radiology, read the film as negative for pneumoconiosis. Director's Exhibits 12-14, 16. The most recent film, dated September 26, 2007, was read as positive for pneumoconiosis by Dr. Ahmed, a B reader and Board-certified radiologist, but as negative for pneumoconiosis by Dr. Wheeler, also a dually-qualified radiologist and an associate professor of radiology. Director's Exhibits 13, 15.

felt to be non-diagnostic for coal miner's [sic] pneumoconiosis[.]” Employer’s Exhibit 1. The administrative law judge found that Dr. Caffrey, while noting the presence of a slight amount of mild anthracotic pigment, nonetheless, stated that the autopsy slides do not show evidence of coal workers’ pneumoconiosis. Decision and Order at 10; Employer’s Exhibits 1, 11, 13. Consequently, the administrative law judge, within a reasonable exercise of his discretion, found that the autopsy evidence did not establish the presence of clinical pneumoconiosis. *See Brown v. Director, OWCP*, 7 BLR 1-730, 733 (1985).

In addition, the administrative law judge considered the digital x-ray evidence, the CT scan evidence, and the hospital and treatment records. The administrative law judge found that the digital film dated February 17, 2008 was read by Dr. Hippensteel as showing neither simple nor complicated pneumoconiosis. Decision and Order at 10; Director’s Exhibit 13. Similarly, the administrative law judge found that Dr. Hippensteel interpreted the CT scan evidence⁹ as failing to show coal workers’ pneumoconiosis.¹⁰ Decision and Order at 11; Director’s Exhibit 13; Employer’s Exhibit 12. Consequently, the administrative law judge properly found that this evidence did not establish the presence of clinical pneumoconiosis. *See* 20 C.F.R. §718.107; *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *see also Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(en banc); Decision and Order at 10-12.

Considering the opinions of Drs. Forehand,¹¹ Hippensteel and Caffrey, the administrative law judge properly accorded greater weight to the opinions of Drs.

⁹ The record contains CT scans dated February 14, 2006, October 11, 2006, October 13, 2006, November 21, 2006, February 6, 2008 and February 17, 2008, taken during the miner’s hospitalizations. Director’s Exhibit 13; Employer’s Exhibit 12.

¹⁰ Regarding the miner’s hospitalization and treatment records, the administrative law judge found that they established neither the presence nor the absence of clinical or legal pneumoconiosis. Decision and Order at 12; Director’s Exhibit 13; Employer’s Exhibits 2-10.

¹¹ Dr. Forehand examined the miner on July 9, 2007. Based on a positive x-ray, work and medical histories, and a pulmonary function study, he diagnosed coal workers’ pneumoconiosis and “cigarette smokers’ lung disease.” Director’s Exhibit 12.

Hippensteel¹² and Caffrey,¹³ that the miner did not have clinical pneumoconiosis, as they were more consistent with the underlying objective evidence, namely, the negative x-ray, CT scan and autopsy evidence, and the treatment and hospitalization records than the opinion of Dr. Forehand. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000); *Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *Lucostic v. United States Steel Corp.*, 8 BLR 1-46, 1-47 (1985); Decision and Order at 16. The administrative law judge, therefore, properly concluded that the medical opinion evidence established that the miner did not have clinical pneumoconiosis. Based on all the relevant evidence, therefore, the administrative law judge properly found that employer established that the miner did not have clinical pneumoconiosis.

Regarding the issue of legal pneumoconiosis,¹⁴ the administrative law judge found that the opinions of Drs. Caffrey and Hippensteel,¹⁵ that the miner's severe emphysema

¹² Dr. Hippensteel examined the miner on September 26, 2007 and reviewed his medical records. Based on the weight of the negative x-ray evidence, the negative autopsy evidence, the pulmonary function study evidence, and the CT scan evidence, which did not show coal workers' pneumoconiosis, Dr. Hippensteel opined that the miner did not have coal workers' pneumoconiosis. Director's Exhibit 13; Employer's Exhibits 12, 14. Dr. Hippensteel also opined that the miner did not have a chronic dust disease of the lung related to, or aggravated by, the miner's coal dust exposure. He stated that the miner's emphysema was not related to the deposition of anthracotic pigment or to the development of coal workers' pneumoconiosis. *Id.*

¹³ Based on a review of the autopsy slides, and additional medical records, Dr. Caffrey opined that moderate to severe emphysema was present, but that cigarette smoke was most likely responsible for it. Employer's Exhibits 11, 13. Dr. Caffrey further stated that the small amount of coal dust that accumulated in the miner's lungs did not cause the miner any pulmonary disability or cause, or contribute to, his severe emphysema or carcinoma of the lung. *Id.*

¹⁴ "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).

¹⁵ In addition, the administrative law judge noted the qualifications of the physicians in weighing their opinions. Decision and Order at 15-16. Dr. Hippensteel is Board-certified in Internal Medicine and Pulmonary Diseases; Dr. Forehand is Board-certified in Pediatrics and in Allergy and Immunology; and Dr. Caffrey is Board-certified in anatomic and clinical pathology. Decision and Order at 15-16; Director's Exhibit 12; Employer's Exhibits 11, 14. The administrative law judge properly accorded greater

was not caused, or contributed to, by the miner's coal dust exposure, better reasoned than the opinion of Dr. Forehand, as they were based on a review of more extensive documentation and better supported by the underlying documentation.¹⁶ See *Underwood v. Elkay Mining, Inc.*, 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997); *Barber v. Director, OWCP*, 43 F.3d 899, 901, 19 BLR 2-61, 2-67 (4th Cir. 1995); *Clark*, 12 BLR at 1-155. The administrative law judge, therefore, reasonably found that the medical opinion evidence established that the miner did not have legal pneumoconiosis.

Consequently, the administrative law judge reasonably found that employer rebutted the amended Section 411(c)(4) presumption by disproving the existence of both clinical and legal pneumoconiosis. 30 U.S.C. §921(c)(4). Accordingly, the administrative law judge properly denied benefits on the miner's claim.¹⁷

Survivor's Claim

Finally, because the administrative law judge properly denied benefits on the miner's claim, he properly vacated the automatic award of benefits on the survivor's claim pursuant to Section 422(l) of the Act, and remanded the survivor's claim to the district director "for processing and adjudication." Decision and Order at 17.

weight to the opinions of Drs. Hippensteel and Caffrey because he found their qualifications to be superior. *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988).

¹⁶ Specifically, the administrative law judge concluded, in part, that Dr. Forehand's opinion was not well-reasoned because it was based on an inaccurate smoking history, namely, that the miner "smoked from 1976 to 2001, when the evidence indicates a smoking history of 1964 to 2005." Decision and Order at 6.

¹⁷ The administrative law judge's finding that employer has disproved the existence of both clinical and legal pneumoconiosis precludes a finding of entitlement in the miner's claim pursuant to 20 C.F.R. Part 718. See *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

Accordingly, the administrative law judge's Decision and Order Denying Benefits on Living Miner's Claim and Remanding Survivor's Claim to District Director for Processing and Adjudication is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge