U.S. Department of Labor

Benefits Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001

BRB Nos. 17-0637 BLA
and 17-0638 BLA

PATRICIA HAMLIN (Widow of and o/b/o RAY HAMLIN)	)	
Claimant-Petitioner	)	
v.	)	
SHAMROCK COAL COMPANY	)	DATE ISSUED: 10/23/2018
and	)	
Self-insured through SUNCOKE ENERGY, INCORPORATED	)	
Employer/Carrier-Respondents	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Amended Decision and Order Denying Benefits in Miner's Claim and Vacating and Remanding Widow's Claim of Peter B. Silvain, Jr., Administrative Law Judge, United States Department of Labor.

Patricia Hamlin, Pine Knot, Kentucky.

Ronald E. Gilbertson (Gilbertson Law, LLC), Columbia, Maryland, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Amended Decision and Order Denying Benefits in Miner's Claim and Vacating and Remanding Widow's Claim[1] (2012-BLA-05267; 2016-BLA-05161) of Administrative Law Judge Peter B. Silvain, Jr., rendered on claims filed pursuant to provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a miner's subsequent claim[2] filed on November 3, 2010, and a survivor's claim[3] filed on September 2, 2015.

The administrative law judge credited the miner with 9.75 years of coal mine employment and, therefore, found that claimant could not invoke the rebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012).[4] Additionally, the administrative law judge found that

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[1] An Amended Decision and Order was issued on August 14, 2017 to reflect the correct caption. Decision and Order at 1 n.1.

[2] The miner's first claim for benefits, filed on December 7, 1988, was denied by Administrative Law Judge Daniel Rokotenetz on November 27, 1991, because the miner did not establish total disability. Miner's Claim (MC) Director's Exhibit 1. The miner filed a second claim on February 1, 1995, which was deemed abandoned when the miner did not respond to the district director's Order to Show Cause Abandonment of Claim/Denial dated April 17, 1995. MC Director's Exhibit 2. A third claim was filed on September 13, 2002, which was denied by the district director in a Proposed Decision and Order issued on September 17, 2003, finding that the miner failed to establish any element of entitlement. MC Director's Exhibit 3. The miner filed his current claim on November 3, 2010. MC Director's Exhibit 4. It was pending when he died on August 2, 2015. Survivor's Claim (SC) Director's Exhibit 5.

[3] Claimant is the widow of the miner, and is pursuing the miner's claim on his behalf. SC Director's Exhibit 5. The survivor's claim was forwarded to the Office of Administrative Law Judges on November 20, 2015, and consolidated with the miner's claim for a hearing. SC Director's Exhibit 13.

[4] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner was totally disabled due to pneumoconiosis, or that his death was due to pneumoconiosis, in

the evidence did not establish the existence of complicated pneumoconiosis and, therefore, claimant could not invoke the irrebuttable presumption of total disability due to pneumoconiosis pursuant to Section 411(c)(3).[5] 30 U.S.C. §921(c)(3).

Addressing whether claimant established entitlement in the miner's claim without the statutory presumptions, the administrative law judge found that claimant established total disability pursuant to 20 C.F.R. §718.204(b) and, therefore, also established a change in an applicable condition of entitlement at 20 C.F.R. §725.309. The administrative law judge denied benefits, however, because he found that the evidence is insufficient to establish the existence of clinical or legal pneumoconiosis pursuant to 20 C.F.R. §718.202, which is an essential element of entitlement.

In the survivor's claim, the administrative law judge found that the district director awarded benefits based on the automatic entitlement provisions of Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2012),[6] and, therefore, did not develop evidence in her claim. In light of the denial of benefits in the miner's claim, upon which the survivor's automatic entitlement was based, the administrative law judge vacated the survivor's award, and remanded the claim to the district director for further evidentiary development.

On appeal, claimant generally challenges the denial of benefits in the miner's and survivor's claims.[7] Employer responds, urging affirmance of the denial of benefits in the

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cases where the claimant establishes fifteen or more years in underground coal mine employment or in conditions substantially similar to those in underground mines and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

[5] As the record contains no evidence of complicated pneumoconiosis, we affirm the administrative law judge's finding that claimant failed to invoke the irrebuttable presumption that the miner's total disability or death was due to pneumoconiosis pursuant to 20 C.F.R. §718.304. Decision and Order at 20.

[6] Under Section 422(*l*) of the Act, a survivor of a miner who was eligible to receive benefits at the time of his 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*) (2012).

[7] Claimant submitted a letter summarizing the miner's coal mine employment history and asserting that the administrative law judge erred in finding that he did not have pneumoconiosis.

miner's claim and seeking a denial of benefits in the widow's claim, rather than a remand to the district director. The Director, Office of Workers' Compensation Programs, has not filed a response brief in either of these appeals.

In an appeal filed by a claimant without the assistance of counsel, the issue is whether the Decision and Order below is supported by substantial evidence. *See Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86-87 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176, 1-177 (1989). 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.[8] 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). For the reasons that follow, we affirm the administrative law judge's denial of benefits in the miner's claim, and his decision to vacate benefits and remand the survivor's claim to the district director for further proceedings.

Invocation of the Section 411(c)(4) Presumption
Length of Coal Mine Employment

A claimant who establishes at least fifteen years of coal mine employment and a totally disabling respiratory impairment is entitled to a presumption that the miner is totally disabled due to pneumoconiosis. 30 U.S.C. §921(c)(4). Because the administrative law judge's determination that the miner had only 9.75 years of coal mine employment is relevant to whether claimant can invoke the Section 411(c)(4) presumption, we will review that finding.

Claimant bears the burden of establishing the length of the miner's coal mine employment. *See Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985); *Hunt v. Director, OWCP*, 7 BLR 1-709, 1-710 (1985). Because the Act and regulations provide only limited guidance for the computation of time spent in coal mine employment, the Board will uphold the administrative law judge's determination if it is based on a reasonable method and is supported by substantial evidence. *See Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-27 (2011); *Vickery v. Director, OWCP*, 8 BLR 1-430, 1-432 (1986); *Miller v. Director, OWCP*, 7 BLR 1-693, 1-694 (1983).

[8] This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner's coal mine employment was in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); MC Director's Exhibits 1, 3, 6; Employer's Exhibit 8; March 23, 2016 Hearing Transcript at 18.

In the miner's claim, the miner alleged fourteen years of coal mine employment on his claim form. Miner's Claim (MC) Director's Exhibit 5. The administrative law judge accurately noted, however, that the miner alleged only eleven years of coal mine employment in his initial application for benefits in 1988, and at the hearing in that claim testified to a 9.5-year history of coal mine employment. Decision and Order at 6; MC Director's Exhibits 1-345; 1-86. The administrative also accurately found that although claimant testified at the hearing regarding the miner's coal mine employment, "she was uncertain of exact dates." Decision and Order at 6. Noting that Administrative Law Judge Daniel Rokotenetz credited the miner with 9.75 years of coal mine employment in his 1991 Decision and Order denying benefits, the administrative law judge reviewed the miner's testimony and Social Security Administration (SSA) earnings records, and found that the record established 9.75 years of coal mine employment. Decision and Order at 6-7.

The administrative law judge did not explain his statement that the miner's SSA earnings records support a finding of 9.75 years of coal mine employment, and thus did not comply with the requirements of the Administrative Procedure Act (APA).[9] However, remand is not required in light of the fact that the miner and claimant have consistently alleged less than fifteen years of coal mine employment,[10] and the record does not contain evidence that would establish fifteen years of coal mine employment, even if fully

[9] The Administrative Procedure Act (APA), 5 U.S.C. §§500-591, provides that every adjudicatory decision must be accompanied by a statement of "findings and conclusions and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record." 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a); *see Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162, 1-165 (1989).

[10] As noted by the administrative law judge, the miner alleged eleven years on his 1988 claim form, but testified at the January 15, 1991 hearing in that claim that "actually it is about nine and a half." MC Director's Exhibits 1-345, 1-86. On his 1995 claim form, the miner alleged eleven years and three months of coal mine employment. MC Director's Exhibit 2-22. On his 2002 claim form, the miner alleged eleven years of coal mine employment. MC Director's Exhibit 3-136. On his current claim form, the miner alleged fourteen years of coal mine employment, but at the March 23, 2016 hearing, although claimant's lay representative initially stated the miner "worked 14 or at least more," claimant subsequently testified that she thought it was "about 13." MC Director's Exhibit 5-1; March 23, 2016 Hearing Transcript at 10, 13. In addition, in claimant's letter to the Board, she provides a history of the miner's coal mine employment which totals less than fifteen years. *See* Claimant's Letter at 2.

credited.[11] *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-92 (1988). Because substantial evidence supports the administrative law judge's ultimate finding of less than fifteen years of qualifying coal mine employment, we affirm his determination that claimant could not invoke the Section 411(c)(4) presumption of total disability due to pneumoconiosis. 20 C.F.R. §718.305(b); Decision and Order at 6-7, 17.

Entitlement Under 20 C.F.R. Part 718

Without the Section 411(c)(3) and Section 411(c)(4) presumptions, claimant has the burden to establish that the miner had pneumoconiosis, his pneumoconiosis arose out of coal mine employment, he had a totally disabling respiratory or pulmonary impairment, and the totally disabling respiratory or pulmonary impairment was 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 an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

Pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge initially considered the x-ray interpretations provided in the miner's prior claims, which include fourteen readings of six x-rays taken between 1989 and 1990, as well as two readings of one 2003 x-ray.[12] Decision and Order at 19, *see* MC Director's Exhibits 1, 3. According

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[11] None of the miner's Employment History forms allege fifteen years of coal mine employment. *See* MC Director's Exhibits 1-343, 2-20, 3-134, 6. Even if fully credited, the miner's Social Security Administration earnings record documents periods of coal mine employment totaling less than fifteen cumulative years. According to those records, claimant had sixteen quarters of work with Heritage Coal Company starting in 1969 and ending in 1973 (4 years); six quarters of employment with ABD, Inc. in 1974 and 1975 (1.5 years); and three quarters of employment with Stearns Mining Company in 1976 (.75 years). These records also reflect at least some periods of employment during 8 calendar years: Danny Boy Coal Co., Inc. in 1979; Loftis Coal Co., Inc. in 1979 and 1980; Greenwood Land & Mining Co. in 1980, 1981, and 1982; Shamrock Coal Co., Inc. in 1983 and 1984; Denario Mining, Inc. in 1987; and Nickel Dime Enterprises, Inc. in 1988. MC Director's Exhibit 8. Altogether, claimant's SSA records reflect, at most, up to 14.25 years of coal mine employment.

[12] The record also contains x-ray reports in the miner's treatment records, which the administrative law judge declined to consider because they are "not in accordance with the ILO classification standards." Decision and Order at 8 n.37, MC Director's Exhibit 11; Employer's Exhibit 7. Although the administrative law judge erred in applying the quality

greatest weight to the readings by physicians who are dually-qualified as B readers and Board-certified radiologists, the administrative law judge found that the January 6, 1989,[13] April 10, 1989,[14] June 8, 1990,[15] December 3, 1990,[16] December 18, 1990,[17] and February

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standards to x-ray interpretations contained in the miner's treatment records, the error is harmless because the x-ray interpretations contained in the miner's treatment records do not address the presence or absence of pneumoconiosis. 20 C.F.R. §718.101(b); *J.V.S.* [*Stowers*] *v. Arch of W. Va.*, 24 BLR 1-78, 1-89, 1-92 (2008); *Larioni v. Director, OWCP*, 6 BLR 1-1276, 1-1278 (1984).

[13] The January 6, 1989 x-ray was read as category 0/1 by Dr. Baker, a B reader, and as completely negative by Drs. Sargent and Gordonson, both dually-qualified radiologists. MC Director's Exhibits 1-309, 1-310, 1-316.

[14] The April 10, 1989 x-ray was read as negative by Drs. Broudy, Halbert, and Poulos, all dually-qualified radiologists. MC Director's Exhibits 1-253, 1-263, 1-265. While the record also contains additional negative readings from Drs. Cole, Wiot, and Thorley, also dually-qualified radiologists, the administrative law judge's failure to discuss these interpretations is harmless, as they support his determination that the April 10, 1989 x-ray is negative for the presence of pneumoconiosis. *See Larioni*, 6 BLR at 1-1278; MC Director's Exhibits 1-59, 1-246, 1-325.

[15] The June 8, 1990 x-ray was read as negative by Dr. Sargent, a dually-qualified radiologist. MC Director's Exhibit 1-179. The record also contains a positive reading by Dr. Baker, a B reader. MC Director's Exhibit 1-221. Although the administrative law judge did not discuss Dr. Baker's reading, any error is harmless, as the administrative law judge accorded the greatest weight to the x-ray interpretations by dually-qualified radiologists. *See Larioni*, 6 BLR at 1-1278; Decision and Order at 19.

[16] The December 3, 1990 x-ray was read as negative by Drs. Kim, Poulos, and Halbert, all dually-qualified radiologists. MC Director's Exhibits 1-43, 1-63, 1-67. The record also contains positive readings by Dr. Meyers, whose qualifications are unknown, and Dr. Ticich, a dually-qualified radiologist. MC Director's Exhibits 1-160, 1-166. Although the administrative law judge did not discuss the readings by Drs. Meyers and Ticich, any error is harmless, as the administrative law judge accorded the greatest weight to the x-ray interpretations by dually-qualified radiologists, the preponderance of which are negative. *See Larioni*, 6 BLR at 1-1278; Decision and Order at 19.

[17] The December 18, 1990 x-ray was read as negative by Drs. Broudy and Wiot, both dually-qualified radiologists. MC Director's Exhibits 1-38, 1-156. While the record

10, 2003[18] x-rays were negative for pneumoconiosis. Decision and Order at 19; MC Director's Exhibits 1, 3. In contrast, the administrative law judge found only one x-ray dated February 17, 1989 to be positive for pneumoconiosis.[19] *Id*.

With regard to the x-ray evidence submitted in the miner's current claim, the administrative law judge considered five interpretations of three x-rays. Decision and Order at 19. The administrative law judge found a November 22, 2010 x-ray inconclusive, as it was read positive for pneumoconiosis by Dr. Groten, a dually-qualified radiologist, but negative for pneumoconiosis by Dr. Scott, also a dually-qualified radiologist. Decision and Order at 19; MC Director's Exhibits 13-8, 15-2. The administrative law judge found a May 3, 2011 x-ray positive for pneumoconiosis, according greater weight to the positive reading by Dr. Ahmed, a dually-qualified radiologist, over the negative reading by Dr. Dahhan, a B reader. Decision and Order at 19; MC Director's Exhibits 14-16, 16-3. An August 9, 2012 x-ray was determined to be negative for pneumoconiosis, based on the uncontradicted reading by Dr. Jarboe, a B reader. Decision and Order at 19; Employer's Exhibit 1.

Considering the quality and quantity of the x-ray evidence as a whole, and according greater weight to the x-ray evidence submitted with the miner's current claim, the administrative law judge permissibly concluded that the weight of the x-ray evidence failed to establish that the miner had pneumoconiosis. The administrative law judge permissibly declined to give determinative weight to the positive May 3, 2011 x-ray in light of the other two most recent x-rays from November 22, 2010 and August 9, 2012, which were inconclusive and negative, respectively. Decision and Order at 18-19; *see* 20 C.F.R. §718.202(a)(1); *Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 280-81, 18 BLR 2A-1,

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also contains an additional negative reading from Dr. Thorley, also a dually-qualified radiologist, the administrative law judge's failure to mention this interpretation is harmless, as it supports his determination that the December 18, 1990 x-ray is negative for the presence of pneumoconiosis. *See Larioni*, 6 BLR at 1-1278; MC Director's Exhibit 1-58.

[18] The February 10, 2003 x-ray was read as positive by Dr. Kelly, who is neither a Board-certified radiologist, nor a B reader, and as negative by Dr. Wheeler, a dually-qualified radiologist. MC Director's Exhibits 3-57, 3-77.

[19] The February 17, 1989 x-ray was read by Dr. Whitley, whose qualifications are unknown, as showing diffuse interstitial markings, but he did not provide an ILO classification. MC Director's Exhibit 1-271. Dr. Bassali, a dually-qualified radiologist, read the February 17, 1989 x-ray as positive. MC Director's Exhibit 1-268.

2A-12 (1994); *Staton v. Norfolk & Western Railroad Co.*, 65 F.3d 55, 58-60, 19 BLR 2-271, 2-278-80 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 321, 17 BLR 2-77, 2-87 (6th Cir. 1993). Further, the administrative law judge permissibly gave greater weight to the negative August 9, 2012 x-ray interpretation by Dr. Jarboe, noting Dr. Jarboe's "persuasive" explanation that rather than pneumoconiosis, the miner's x-ray shows the "residuals of [the miner's] interstitial fibrosis" resulting from his adverse reaction to the drug amiodarone in 2010 while hospitalized for a coronary artery bypass graft.[20] Decision and Order at 18-19; Employer's Exhibit 1 at 16; *Tenn. Consol. Coal Co. v. Crisp*, 866 F.2d 179, 185, 12 BLR 2-121, 2-129 (6th Cir. 1989); *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983). Because it is based on substantial evidence, we affirm the administrative law judge's determination that the x-ray evidence is insufficient to establish the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1).

Likewise, we affirm the administrative law judge's finding that claimant cannot establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2), as there is no biopsy or autopsy evidence in the record. 20 C.F.R. §718.202(a)(2); Decision and Order at 20. In addition, claimant cannot establish the existence of pneumoconiosis under 20 C.F.R. §718.202(a)(3), based on the administrative law judge's correct determination that there is no evidence of complicated pneumoconiosis, and our affirmance of his finding that the Section 411(c)(4) presumption was not invoked. 20 C.F.R. §718.202(a)(3); Decision and Order at 20.

Relevant to 20 C.F.R. §718.107, the administrative law judge considered a May 25, 2006 computed tomography (CT) scan interpreted as negative for pneumoconiosis by Dr. Tarver, a dually-qualified radiologist.[21] Decision and Order at 11; Employer's Exhibit 4.

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[20] Dr. Jarboe stated that the miner's "chest radiograph is distinctly abnormal but the findings are those of interstitial pulmonary fibrosis and not coal workers' pneumoconiosis." Employer's Exhibit 1 at 16. He based his conclusion, in part, on his review of the miner's treatment records, including "the readings of [about 50] serial x-rays" done after the miner developed amiodarone toxicity in 2010, which "clearly showed the development of an interstitial process that failed to clear over time." *Id*.

[21] While Drs. Booth and Jarboe referenced computed tomography (CT) scans in their medical reports, neither scan is contained in the record. Claimant's Exhibit 3; Employer's Exhibit 1.

Therefore claimant is unable to establish the existence of pneumoconiosis by "other medical evidence." 20 C.F.R. §718.107.

The administrative law judge next considered whether the medical opinion evidence established the existence of clinical or legal pneumoconiosis,[22] pursuant to 20 C.F.R. §718.202(a)(4).[23] Relevant to the existence of clinical pneumoconiosis, the administrative law judge considered the medical opinions of Drs. Fernandes[24] and Booth,[25] both of whom

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[22] "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 tissue to that deposition caused by dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(1). "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).

[23] The administrative law judge considered the medical opinion evidence from the miner's prior claims, which includes reports from 1989, 1990, and 2003, and permissibly determined that the more recent evidence of record was more probative of the miner's condition. Decision and Order at 4, 20; *Crace v. Kentland-Elkhorn Coal Corp.*, 109 F.3d 1163, 1167, 21 BLR 2-73, 2-82 (6th Cir. 1997); *Parsons v. Wolf Creek Collieries*, 23 BLR 1-29, 1-35 (2004) (en banc).

[24] Dr. Fernandes conducted a black lung physical on April 25, 2007 and opined that is was "possible" that the miner had pneumoconiosis. MC Director's Exhibit 11. She later examined the miner on behalf of the Department of Labor on November 22, 2010, and diagnosed simple clinical pneumoconiosis based on Dr. Groten's positive reading of the November 22, 2010 x-ray. MC Director's Exhibit 13.

[25] Dr. Booth of the Gill Heart Institute provided a report dated October 6, 2014, wherein he noted "findings diagnostic of" coal workers' pneumoconiosis, including a CT scan from Lake Cumberland Hospital indicating interstitial lung disease consistent with coal workers' pneumoconiosis. Claimant's Exhibit 3. Dr. Booth also noted the results of the miner's October 6, 2014 EKG and echocardiogram, and a history of coronary heart disease, obstructive sleep apnea, hemoptysis, pulmonary hypertension, and shortness of breath. *Id*.

diagnosed clinical pneumoconiosis, and the opinions of Drs. Dahhan[26] and Jarboe,[27] that the miner did not suffer from clinical pneumoconiosis.[28] The administrative law judge permissibly found that the opinions of Drs. Fernandes and Booth were based on positive x-ray and CT scan readings which were contrary to his findings that the weight of the x-rays and CT scans is negative for pneumoconiosis. *See Dixie Fuel Co. v. Director, OWCP* [*Hensley*], 700 F.3d 878, 881, 25 BLR 2-213, 2-217-18 (6th Cir. 2012); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 514, 22 BLR 2-625, 2-648-49 (6th Cir. 2003); Decision and Order at 19, 21; MC Director's Exhibit 13; Claimant's Exhibit 3. Because the administrative law judge permissibly discredited the only medical opinions diagnosing clinical pneumoconiosis, we affirm his finding that the medical opinion evidence does not establish the existence of clinical pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).

[26] Dr. Dahhan examined the miner on May 3, 2011 and, based on his own interpretation of the May 3, 2011 x-ray film, opined that the miner did not have clinical pneumoconiosis. MC Director's Exhibit 14.

[27] Dr. Jarboe based his opinion on his August 9, 2012 examination of the miner, which included a negative x-ray and negative CT scan, and his review of medical records. Employer's Exhibits 1, 2, 11.

[28] In addition, the administrative law judge reviewed the miner's treatment records, which do not include a diagnosis of pneumoconiosis. Decision and Order at 15-16; MC Director's Exhibits 11, 12; Employer's Exhibits 5, 6, 7. The administrative law judge also reviewed the miner's death certificate, which states that the miner died on August 2, 2015 due to acute cardiac arrest due to coronary artery disease due to coal workers' pneumoconiosis. Decision and Order at 16, *citing* Claimant's Exhibit 4. Because the miner's death certificate was completed by a physician who provided no basis for his findings, the administrative law judge's failure to address the significance of the miner's death certificate relevant to the existence of pneumoconiosis is harmless. *See Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 192, 22 BLR 2-251, 2-262 (4th Cir. 2000) (reference on a death certificate to pneumoconiosis as a condition contributing to death, without further explanation, does not constitute a reasoned opinion); *Larioni*, 6 BLR at 1-1278.

Regarding the existence of legal pneumoconiosis, the administrative law judge considered the medical opinions of Drs. Fernandes[29] and Booth,[30] who diagnosed legal pneumoconiosis, and Drs. Jarboe[31] and Dahhan,[32] who attributed the miner's respiratory impairment to a combination of lung damage due to his reaction to amiodarone in 2010, called "amiodarone toxcitity," as well as cigarette smoking and asthma. MC Director's Exhibit 14; Employer's Exhibit 1 at 16, 21.

The administrative law judge noted that Dr. Jarboe provided a "detailed discussion" of the treatment records to support his opinion that the miner's respiratory impairment was due to the pulmonary interstitial fibrosis resulting from amiodarone toxicity, with significant contribution from the miner's history of smoking and bronchial asthma.[33]

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[29] Dr. Fernandes diagnosed obstructive and restrictive airways disease, and "pulmonary fibrosis (suspected) due to Amiodarone exposure." MC Director's Exhibit 13. She opined that these conditions were all contributed to, or substantially aggravated by, the miner's coal dust exposure, smoking history, and amiodarone exposure, though she could not identify "which one cause would most contribute to the damage and impairments." *Id*.

[30] Dr. Booth noted symptoms of dyspnea and diagnosed interstitial lung disease secondary to coal workers' pneumoconiosis. Claimant's Exhibit 3. He also noted, without elaborating, that the miner was allergic to amiodarone. *Id*.

[31] Dr. Jarboe opined that the miner did not suffer from legal pneumoconiosis but suffered from a complex ventilatory and gas exchange impairment caused by a "40+" pack year history of cigarette smoking and "severe injury to [the miner's] lung by amiodarone toxicity" and acute respiratory distress syndrome (ARDS). Employer's Exhibit 1 at 16, 21. He also attributed the miner's impairment to "an element of bronchial asthma," but stated that it was not caused, aggravated, or substantially contributed to by coal mine dust. *Id.* at 21.

[32] Dr. Dahhan diagnosed a moderate respiratory impairment, with an obstructive component due to cigarette smoking, and a restrictive component due to amiodarone toxicity, which Dr. Dahhan said was known to cause restrictive ventilatory impairment with pulmonary fibrosis. MC Director's Exhibit 14. He concluded that he saw no evidence of pulmonary impairment caused by, related to, or aggravated by, inhalation of coal mine dust. *Id*.

[33] Dr. Jarboe explained that the miner's treatment records indicated that in 2010 he underwent coronary bypass surgery, which was followed by a very complicated recovery course due to his adverse reaction to the drug amiodarone. Employer's Exhibit 1 at 13.

Decision and Order at 20-21; Employer's Exhibits 1, 2, 11. Further, Dr. Jarboe discussed "the pattern of pulmonary changes" observed following the miner's amiodarone toxicity, and supported his opinion with discussion of changes in the miner's x-rays and citations to the miner's medical records.[34] *Id*. Thus the administrative law judge found his opinion to be well-reasoned.

In contrast, the administrative law judge found that in attributing claimant's impairment in part to coal mine dust exposure, neither Dr. Fernandes nor Dr. Booth adequately addressed the "extensive medical treatment records" chronicling the miner's 2010 hospitalization for coronary artery bypass graft surgery, his post-surgery amiodarone toxicity, his acute respiratory distress syndrome (ARDS), and the "miner's pulmonary problems that followed" these events. Decision and Order at 20; MC Director's Exhibit 13; Claimant's Exhibit 3; Employer's Exhibits 5, 6, 7. Thus, the administrative law judge permissibly found their opinions to be unsupported and inadequately explained, and insufficient to establish legal pneumoconiosis. *See Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 522, 22 BLR 2-494, 2-512 (6th Cir. 2002); *Stark v. Director, OWCP*, 9 BLR 1-36, 1-37 (1986) (administrative law judge may assign less weight to physician's opinion which reflects an incomplete picture of miner's health); Decision and Order at 20-21.

The miner was hospitalized for approximately eighty-five days, and remained on supplemental oxygen for at least two years following his surgery. *Id*.

[34] Dr. Jarboe testified:

> I can say with the highest degree of medical certainty that the changes in his x-ray are the result of that reaction that he had to the drug and the subsequent respiratory distress syndrome. This is a common happening in pulmonary medicine; that is, a patient develops a drug reaction, has acute respiratory distress syndrome and is left with significant pulmonary fibrosis.
>
> . . . [T]here are about 50 x-rays taken during the course of his hospital stay – he evolved with this increased markings in his lungs. Dr. Feinberg, his cardiologist, commented on them in his follow-up examinations.

Employer's Exhibit 2 at 14-15. Dr. Jarboe additionally cited the medical report of Dr. Feinberg dated April 29, 2010, wherein Dr. Feinberg noted that the miner developed severe amiodarone toxicity and, as a result, developed very severe interstitial lung process with hypoxemia. *Id*. at 23, *referencing* Employer's Exhibit 6 at 6.

It is the province of the administrative law judge to evaluate the medical evidence, draw inferences, and assess probative value. *See Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 713-714, 22 BLR 2-537, 2-553 (6th Cir. 2002); *Crisp*, 866 F.2d at 185, 12 BLR at 2-129 (6th Cir. 1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-113 (1989); *Fagg v. Amax Coal Co.*, 12 BLR 1-77 (1988). Because the administrative law judge permissibly declined to credit the opinions of Drs. Fernandes and Booth, the only opinions supportive of a finding that the miner suffered from either clinical or legal pneumoconiosis, we affirm the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4).[35]

Based on the weight of all of the probative evidence, the administrative law judge rationally found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). *See Hensley*, 700 F.3d at 881, 25 BLR at 2-218. In light of our affirmance of the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), an essential element of entitlement in the miner's claim, we affirm the administrative law judge's denial of benefits in the miner's claim under 20 C.F.R. Part 718. *See Trent*, 11 BLR at 1-27.

Survivor's Claim

After concluding that claimant failed to establish entitlement to benefits in the miner's claim, the administrative law judge correctly determined that claimant did not meet the prerequisites for derivative entitlement to benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*). Decision and Order at 25. Because the administrative law judge found that the district director neither made findings regarding claimant's eligibility under 20 C.F.R. §718.205, nor developed an evidentiary record in the survivor's claim, the administrative law judge vacated the award of survivor's benefits, and ordered the claim remanded to the district director. *Id*.

In a survivor's claim, where the Section 411(c)(3) and Section 411(c)(4) presumptions are not invoked, claimant must establish by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment, and that the miner's death was due to pneumoconiosis. *See* 20 C.F.R. §§718.202(a), 718.203,

[35] The administrative law judge also discredited Dr. Dahhan's opinion that the miner did not have legal pneumoconiosis. Decision and Order at 20. His opinion, however, does not assist claimant in meeting her burden.

718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). Because the district director did not develop an evidentiary record in order to consider the merits of claimant's survivor's claim under 20 C.F.R. Part 718, the administrative law judge rationally determined that the survivor's claim must be remanded to the district director for the appropriate development of an evidentiary record. *See Dempsey v. Sewell Coal Corp.*, 23 BLR 1-47, 1-63 (2004) (en banc) (administrative law judge is given broad discretion in resolving procedural matters). We, therefore, affirm the administrative law judge's decision to vacate the district director's award of Section 422(*l*) derivative benefits to claimant, and remand the claim to the district director for further proceedings.

Accordingly, the administrative law judge's Amended Decision and Order Denying Benefits in Miner's Claim and Vacating and Remanding Widow's Claim is affirmed, and the survivor's claim is remanded to the district director for further proceedings.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge