



BRB No. 18-0605 BLA

CLORA JEAN MAHON	)	
(Widow of ROBERT MAHON)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
PIKEVILLE COAL COMPANY	)	
	)	DATE ISSUED: 10/17/2019
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 of Natalie A. Appetta, Administrative Law Judge, United States Department of Labor.

Dennis James Keenan (Hinkle & Keenan P.S.C.), South Williamson, Kentucky, for claimant.

Paul E. Frampton and Fazal A. Shere (Bowles Rice LLP), Charleston, West Virginia, for employer.

Before: BOGGS, Chief Administrative Appeals Judge, ROLFE and GRESH, Administrative Appeals Judges.

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order Denying Benefits (2017-BLA-05477) of Administrative Law Judge Natalie A. Appetta rendered on a survivor's claim filed on October 23, 2014, pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act).

After crediting the miner with twenty-nine years of underground coal mine employment,<sup>2</sup> the administrative law judge found claimant failed to establish total disability and thus did not invoke the presumption that the miner's death was due to pneumoconiosis at Section 411(c)(4) of the Act.<sup>3</sup> 30 U.S.C. §921(c)(4) (2012); 20 C.F.R. §§718.204(b)(2), 718.305(b)(1)(iii). She also found the evidence insufficient to establish the miner had pneumoconiosis or his death was due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.205(a). She therefore denied benefits.

On appeal, claimant contends the administrative law judge erred in finding she did not establish total disability.<sup>4</sup> Employer responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, declined to file a substantive response brief.

---

<sup>1</sup> Claimant is the widow of the miner, who died on December 10, 2013. Director's Exhibit 7. Because the miner was not determined to be eligible to receive benefits at the time of his death, claimant is not entitled to survivor's benefits under Section 422(l) of the Act, 30 U.S.C. §932(l) (2012). Director's Exhibit 1.

<sup>2</sup> The record reflects that the miner's last coal mine employment was in Kentucky. Director's Exhibit 3. Accordingly, the Board will apply the law 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).

<sup>3</sup> Section 411(c)(4) of the Act provides a rebuttable presumption of death due to pneumoconiosis where claimant establishes at least fifteen years of underground or substantially similar coal mine employment, and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2012), as implemented by 20 C.F.R. §718.305. The administrative law judge also found there is no evidence of complicated pneumoconiosis to invoke the irrebuttable presumption of death due to pneumoconiosis at Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3).

<sup>4</sup> We affirm, as unchallenged on appeal, the administrative law judge's finding that claimant failed to establish complicated pneumoconiosis. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 11 n.10.

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).

### **Invocation of the Section 411(c)(4) presumption – Total Disability**

In order to invoke the Section 411(c)(4) presumption, claimant must establish the miner worked at least fifteen years in qualifying coal mine employment and “had at the time of his death a totally disabling respiratory or pulmonary impairment.” 20 C.F.R. §725.305(b)(1).

A miner is totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). A claimant may establish total disability based on pulmonary function studies, arterial blood gas studies, evidence of pneumoconiosis and cor pulmonale with right-sided congestive heart failure, or medical opinions. 20 C.F.R. §718.204(b)(2)(i)-(iv). The administrative law judge must weigh all relevant supporting evidence against all relevant contrary evidence. *See Rafferty v. Jones & Laughlin Steel Corp.*, 9 BLR 1-231, 1-232 (1987); *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195, 1-198 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc).

The administrative law judge found there are no pulmonary function or arterial blood gas studies of record to establish total disability. 20 C.F.R. §718.204(b)(2)(i)-(ii); Decision and Order at 7. She found the record contains no evidence of cor pulmonale with right-sided congestive heart failure. 20 C.F.R. §718.204(b)(2)(iii); Decision and Order at 7 n.8. She also found the record contains no medical opinion diagnosing a totally disabling respiratory or pulmonary impairment, but does include the medical opinions of Drs. Tuteur and Zaldivar that the miner was not totally disabled. 20 C.F.R. §718.204(b)(2)(iv); Decision and Order at 8-10. Thus she found claimant failed to establish total disability. 20 C.F.R. §718.204(b)(2); Decision and Order at 10.

Claimant argues the administrative law judge erred by failing to find that hospital and medical treatment records contained in Director's Exhibit 8 establish total disability because claimant asserts they show the miner's “deteriorating health conditions” from 2006 to 2013. Claimant's Brief at 3. The Board must limit its review, however, to contentions of error the parties specifically raise. *See* 20 C.F.R. §§802.211, 802.301; *Cox v. Benefits Review Board*, 791 F.2d 445, 446 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119, 1-120-21 (1987); *Fish v. Director, OWCP*, 6 BLR 1-107, 1-109 (1983). The hospital and medical treatment records claimant submitted do not contain any pulmonary function or arterial blood gas studies, any evidence of cor pulmonale with right-sided congestive heart

failure, or any medical opinion diagnosing a totally disabling respiratory or pulmonary impairment. Director's Exhibit 8. Because claimant does not identify any error in the administrative law judge's specific findings or consideration of the record, we affirm the finding that claimant did not establish total disability under the Act. 20 C.F.R. §718.204(b)(2)(i)-(iv); *see Sarf*, 10 BLR at 1-120-21; Decision and Order at 7-10. Because we have affirmed the administrative law judge's determination that claimant did not establish total disability under 20 C.F.R. §718.204(b)(2)(i)-(iv), we affirm her finding that the evidence as a whole does not establish total disability. 20 C.F.R. §718.204(b)(2). We also affirm her finding that claimant is unable to invoke the Section 411(c)(4) presumption. 20 C.F.R. §718.305(b)(1)(iii).

### **Part 718 Entitlement – Death Due to Pneumoconiosis**

If claimant is unable to invoke the Section 411(c)(4) presumption she must establish by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and the miner's death was due to pneumoconiosis. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). Failure to establish any one of the elements of entitlement precludes an award of benefits in the survivor's claim. *See Trumbo*, 17 BLR at 1-87-88. Because it is unchallenged on appeal, we affirm the administrative law judge's finding that claimant failed to establish the miner had pneumoconiosis or his death was due to pneumoconiosis. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983); 20 C.F.R. §§718.202(a), 718.205(a); Decision and Order at 10-17.

Because claimant did not invoke the Section 411(c)(3) or Section 411(c)(4) presumptions and did not establish that the miner had pneumoconiosis or his death was due to pneumoconiosis, essential elements of entitlement in a survivor's claim under 20 C.F.R. Part 718, we affirm the administrative law judge's denial of survivor's benefits. *See Trumbo*, 17 BLR at 1-87-88; 20 C.F.R. §§718.202(a), 718.205(a).

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

JUDITH S. BOGGS, Chief  
Administrative Appeals Judge

JONATHAN ROLFE  
Administrative Appeals Judge

DANIEL T. GRESH  
Administrative Appeals Judge