U.S. Department of Labor

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

BRB No. 17-0454 BLA

BETTY LEE HALL (Widow of WILLIAM HAROLD HALL) Claimant-Petitioner v. DAGS BRANCH COAL COMPANY, INCORPORATED and OLD REPUBLIC INSURANCE COMPANY Employer/Carrier-Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 05/21/2018 DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Monica Markley, Administrative Law Judge, United States Department of Labor.

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

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer/carrier.

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

PER CURIAM:

Claimant[1] appeals the Decision and Order Denying Benefits (2013-BLA-05316) of Administrative Law Judge Monica Markley rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a survivor's claim filed on April 24, 2012. [2]

Applying Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4) (2012),[3] the administrative law judge credited the miner with twenty-one years of underground coal mine employment, but found that the evidence failed to establish that the miner had a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b)(2). Therefore, the administrative law judge found that claimant could not invoke the rebuttable presumption of death due to pneumoconiosis at Section 411(c)(4). The administrative law judge also found that the evidence did not establish complicated pneumoconiosis under 20 C.F.R. §718.304, and thus claimant could not invoke the irrebuttable presumption of death due to pneumoconiosis at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3).

[1] Claimant is the widow of the miner, who died on June 4, 2011. Director's Exhibit 11.

[2] The record contains no evidence that the miner filed a claim for Federal Black Lung benefits during his lifetime. Accordingly, claimant cannot establish entitlement to benefits under Section 422(*l*) of the Act, 30 U.S.C. §932(*l*) (2012), which provides that a survivor of a miner determined to be eligible to receive benefits at the time of his death is automatically entitled to receive survivor's benefits without having to establish that the miner's death was due to pneumoconiosis.

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner's death was due to pneumoconiosis if claimant establishes that the miner worked fifteen or more years in underground coal mine employment, or in surface coal mine employment in conditions substantially similar to those in an underground mine, and suffered from a totally disabling respiratory or pulmonary impairment at the time of his death. 30 U.S.C. §921(c)(4) (2012); *see* 20 C.F.R. §718.305.

Turning to whether claimant could establish entitlement to benefits under 20 C.F.R. Part 718, the administrative law judge found that the evidence did not establish the existence of legal pneumoconiosis[4] pursuant to 20 C.F.R. §718.202(a)(4), but established the existence of clinical pneumoconiosis[5] arising out of coal mine employment, pursuant to 20 C.F.R. §§718.202(a)(2), 718.203(b). The administrative law judge further found, however, that the evidence did not establish that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205. Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's finding that she failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205. Employer/carrier responds in support of the denial of benefits. The Director, Office of Workers' Compensation Programs, did not file a response brief in this appeal.[6]

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.[7] 33 U.S.C. §921(b)(3), as incorporated by 30

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[4] "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).

[5] "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).

[6] We affirm, as unchallenged on appeal, the administrative law judge's finding that the evidence established twenty-one years of underground coal mine employment. *Skrack v. Director, OWCP*, 6 BLR 1-710, 1-711 (1983); Decision and Order at 6. We further affirm, as unchallenged, the administrative law judge's findings that claimant did not invoke the irrebuttable presumption of death due to pneumoconiosis at Section 411(c)(3) of the Act, or invoke the rebuttable presumption of death due to pneumoconiosis at Section 411(c)(4) of the Act. 30 U.S.C. §921(c)(3), (c)(4) (2012); *see* 20 C.F.R. §§718.304, 718.305; *Skrack*, 6 BLR at 1-711; Decision and Order at 9. Finally, we affirm as unchallenged, the administrative law judge's finding that claimant failed to establish that the miner suffered from legal pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). *Skrack*, 6 BLR at 1-711.

[7] Because the miner's last coal mine employment was in Kentucky, the Board will apply the law of the United States Court of Appeals for the Sixth Circuit. *See Shupe v.*

U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Death Due to Pneumoconiosis

For survivor's claims where the Section 411(c)(3) and 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, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). Death is considered due to pneumoconiosis if the evidence establishes that pneumoconiosis caused or was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(b)(1), (2). Pneumoconiosis is a substantially contributing cause of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(b)(6); *see Conley v. Nat'l Mines Corp.*, 595 F.3d 297, 303-304, 24 BLR 2-257, 2-266-267 (6th Cir. 2010). Failure to establish any one of these elements of entitlement precludes an award of benefits in the survivor's claim. *See Trumbo*, 17 BLR at 1-87-88.

Here, the administrative law judge found the evidence established the existence of simple clinical pneumoconiosis arising out of the miner's coal mine employment. 20 C.F.R. §§718.202(a)(2), 718.203(b); Decision and Order at 19-21, 23. Relevant to whether clinical pneumoconiosis caused the miner's death, the administrative law judge considered the miner's death certificate, the autopsy opinions of Drs. Dennis, Crouch, and Caffrey, and the medical opinions of Drs. Broudy and Vuskovich, together with the miner's treatment records. Decision and Order at 23-26. The miner's death certificate, signed by Deputy Coroner Denver Bailey, listed accidental drowning as the immediate cause of death and listed no contributing causes.[8] Decision and Order at 24; Director's Exhibit 11. Dr. Dennis opined that the miner suffered "a probable cardiac death" that was hastened by his simple coal workers' pneumoconiosis. Director's Exhibit 12. In contrast, Drs. Crouch, Caffrey, Broudy, and Vuskovich opined that the miner's mild pneumoconiosis did not

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Director, OWCP, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibits 3, 7; Hearing Transcript at 19.

[8] The administrative law judge noted that, consistent with the death certificate, the record contains a police report which states that the miner drowned while attempting to wade across a river. Decision and Order at 11; Employer's Exhibit 8. The administrative law judge further found, correctly, that none of the physicians opined that pneumoconiosis or complications of pneumoconiosis was the immediate cause of the miner's death. 20 C.F.R. §718.205(b)(1), (2); Decision and Order at 24.

hasten or contribute to his death. Employer's Exhibits 1-4. The administrative law judge found Dr. Dennis's opinion to be both inadequately explained and outweighed by the "well-reasoned and well-documented" opinions of Drs. Caffrey, Broudy, and Vuskovich,[9] and concluded that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205.[10] Decision and Order at 24-25.

Claimant contends that the administrative law judge erred in finding Dr. Dennis's opinion insufficient to establish that pneumoconiosis hastened the miner's death. Claimant's Brief at 3-4. We disagree. The United States Court of Appeals for the Sixth Circuit has held that pneumoconiosis may be found to have hastened the miner's death only if it does so "through a specifically defined process that reduces the miner's life by an estimable time." *Eastover Mining Co. v. Williams*, 338 F.3d 501, 518, 22 BLR 2-625, 2-655 (6th Cir. 2003). A physician who opines that pneumoconiosis hastened death through a "specifically defined process" must explain how and why it did so. *Conley*, 595 F.3d at 303-04, 24 BLR at 2-266. As the administrative law judge correctly observed, Dr. Dennis stated that "[s]imple coal workers' pneumoconiosis hastened [the miner's] death by the hypoxic changes resulting from the diffuse involvement of emphysema and coal workers[']pneumoconiosis." Decision and Order at 23, *citing* Director's Exhibit 12. The administrative law judge rationally found, however, that Dr. Dennis's opinion is not supported by any underlying documentation as there are no findings of hypoxic changes in the miner's treatment records. *See 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); Decision and Order at 25; Director's Exhibit 15. Moreover, the administrative law judge permissibly found that, even if hypoxic changes were present, Dr. Dennis failed to adequately explain how the hypoxic changes contributed to the miner's death. *See Williams*, 338 F.3d at 518, 22 BLR at 2-655; *Conley*, 595 F.3d at 303-04, 24 BLR at 2-266; *Crisp*, 866 F.2d at 185, 12 BLR at 2-129; *Rowe*, 710 F. 2d at 255, 5 BLR at 2-103; Decision and Order at 25.

Based on the foregoing, the administrative law judge permissibly determined that Dr. Dennis's opinion is too conclusory and unsupported to demonstrate that pneumoconiosis hastened the miner's death through a specifically defined process and by

[9] The administrative law judge discounted Dr. Crouch's opinion as unreasoned. Decision and Order at 25; Employer's Exhibit 3. We note that her opinion, however, does not aid claimant in establishing that the miner's death was due to pneumoconiosis.

[10] We affirm, as unchallenged, the administrative law judge's findings that the opinions of Drs. Caffrey, Broudy, and Vuskovich are "well-reasoned and well-documented." *Skrack*, 6 BLR at 1-711; Decision and Order at 24-25.

an estimable time. *See Conley*, 595 F.3d at 303-04, 24 BLR at 2-266; *Williams*, 338 F.3d at 518, 22 BLR at 2-655; Decision and Order at 25. Thus, we reject claimant's assertion that the administrative law judge erred in finding that Dr. Dennis's opinion is insufficient to outweigh the contrary medical opinions of record and establish that the miner's death was due to pneumoconiosis.

It is the province of the administrative law judge to assess the evidence of record and determine if a medical opinion is sufficiently documented and reasoned to satisfy a party's burden of proof. *Jericol Mining, Inc. v. Napier*, 301 F.3d 703, 22 BLR 2-537 (6th Cir. 2002); *Wolf Creek Collieries v. Director, OWCP* [*Stephens*], 298 F.3d 511, 22 BLR 2-495 (6th Cir. 2002); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (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); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988). As it is supported by substantial evidence, we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205. *See Martin v. Ligon Preparation Co.*, 400 F.3d 302, 305, 23 BLR 2-261, 2-283 (6th Cir. 2005).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge