**U.S. Department of Labor**

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

BRB No. 19-0480 BLA

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| DEBORAH A. GAYHEART<br><br>Claimant-Petitioner<br><br>v.<br><br>ARCH ON THE NORTH FORK, INCORPORATED<br><br>and<br><br>ARCH COAL, INCORPORATED C/O UNDERWRITERS SAFETY & CLAIMS, OLD REPUBLIC INSURANCE COMPANY<br><br>Employer/Carrier-Respondents<br><br>DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR<br><br>Party-in-Interest | ) | DATE ISSUED: 09/23/2020<br><br>DECISION and ORDER |

Appeal of the Decision and Order Denying Benefits of Jason A. Golden, Administrative Law Judge, United States Department of Labor.

Deborah A. Gayheart, Topmost, Kentucky.

Ronald E. Gilbertson (Gilbertson Law, LLC), Columbia, Maryland, for Employer and its Carrier.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel,[1] Administrative Law Judge Jason A. Golden's Decision and Order Denying Benefits (2018-BLA-05922) rendered on a subsequent claim filed on November 3, 2016,[2] pursuant to the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2018) (Act).

The administrative law judge credited Claimant with ten years, four months, and nineteen days of coal mine employment. Because Claimant did not have at least fifteen years of coal mine employment, the administrative law judge found she could not invoke the rebuttable presumption of total disability due to pneumoconiosis under Section 411(c)(4) of the Act.[3] 30 U.S.C. §921(c)(4) (2018). He also found the record lacks evidence of complicated pneumoconiosis, and the irrebuttable presumption of total disability due to pneumoconiosis at Section 411(c)(3) of the Act is thus inapplicable. 30 U.S.C. §921(c)(3); *see* 20 C.F.R. §718.304. Turning to whether Claimant is entitled to benefits under 20 C.F.R. Part 718, the administrative law judge found she established clinical and legal pneumoconiosis,[4] as well as a total disability, and therefore demonstrated

[1] Diane Jenkins, a benefits counselor with Stone Mountain Health Services of St. Charles, Virginia, requested on Claimant's behalf that the Benefits Review Board review the administrative law judge's decision, but Ms. Jenkins is not representing Claimant on appeal. *See Shelton v. Claude v. Keen Trucking Co*., 19 BLR 1-88 (1995) (Order).

[2] Claimant filed one previous claim for benefits, which the district director denied by reason of abandonment on August 2, 2010. Decision and Order at 2.

[3] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis if she has at least fifteen years of underground or substantially similar surface coal mine employment and a totally disabling respiratory impairment. 30 U.S.C. §921(c)(4) (2018); *see* 20 C.F.R. §718.305.

[4] "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

a change in an applicable condition of entitlement.[5] 20 C.F.R. §§718.202(a)(2), (4), 718.203, 718.204(b)(2), 725.309. Finally, he found Claimant did not establish that her total disability is due to pneumoconiosis, and he therefore denied benefits. 20 C.F.R. §718.204(c).

On appeal, Claimant generally challenges the denial of benefits. Employer responds, urging affirmance of the denial. The Director, Office of Workers' Compensation Programs, has declined to file a response brief in this appeal.

As Claimant filed this appeal without the assistance of counsel, the Benefits Review Board considers whether substantial evidence supports the Decision and Order Denying Benefits. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-84, 1-86 (1994). We must affirm the administrative law judge's Decision and Order if it is rational, supported by substantial evidence, and in accordance with applicable 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).

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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). The definition includes "any chronic pulmonary disease or respiratory or pulmonary impairment significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(b).

[5] When a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(d); *see White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(d)(2). Because Claimant's prior claim was denied by reason of abandonment, she was considered to have failed to establish any element of entitlement. 20 C.F.R. §725.409(c). Decision and Order at 2. Consequently, to obtain review of the merits of her claim, Claimant had to establish any one element of entitlement.

[6] The Board will apply the law of the United States Court of Appeals for the Sixth Circuit because Claimant's coal mine employment occurred in Kentucky. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Decision and Order at 4; Director's Exhibit 4.

**The Section 411(c)(3) Presumption – Complicated Pneumoconiosis**

The record contains no evidence that Claimant has complicated pneumoconiosis. We therefore affirm the administrative law judge's finding that Claimant failed to invoke the irrebuttable presumption of total disability due to pneumoconiosis. *See* 30 U.S.C. §921(c)(3); 20 C.F.R. §718.304; Decision and Order at 8, 20.

**The Section 411(c)(4) Presumption – Length of Coal Mine Employment**

To invoke the Section 411(c)(4) presumption, Claimant must establish she worked at least fifteen years in underground coal mines or surface coal mines in conditions "substantially similar to conditions in an underground mine." 30 U.S.C. §921(c)(4) (2018); *Muncy v. Elkay Mining Co.*, 25 BLR 1-21, 1-29 (2011). Claimant bears the burden to establish the number of years she worked in coal mine employment. *Mills v. Director, OWCP*, 348 F.3d 133, 136 (6th Cir. 2003); *Kephart v. Director, OWCP*, 8 BLR 1-185, 1-186 (1985). The Board will uphold an administrative law judge's determination based on a reasonable method of calculation that is supported by substantial evidence. *Muncy*, 25 BLR at 1-27.

The administrative law judge noted Claimant alleged sixteen years of coal mine employment in her application for benefits and reported having worked as a miner from April 1973 through 1989 on her Employment History form. Decision and Order at 5; Director's Exhibits 3, 4. He further noted Claimant's Social Security earnings records showed continuous employment with Employer from the second quarter of 1973 until 1991. Decision and Order at 5; Director's Exhibits 11, 12. He also noted that Employer reported that it employed Claimant from April 2, 1973 to November 8, 1990. Decision and Order at 5; Director's Exhibit 8 at 3. However, in reviewing Claimant's employment record, the administrative law judge concluded she did not work as a "miner" for part of her time with Employer.

A "miner" is "any individual who works or has worked in or around a coal mine or coal preparation facility in the extraction or preparation of coal." 30 U.S.C. §902(d); *see* 20 C.F.R. §§725.101(a)(19), 725.202(a). The definition of a "miner" includes a "situs" requirement (i.e., that she worked in or around a coal mine or coal preparation facility) and a "function" requirement (i.e., that she worked in the extraction or preparation of coal). *Navistar, Inc. v. Forester*, 767 F.3d 638, 641 (6th Cir. 2014); *Director, OWCP v. Consolidation Coal Co.* [*Petracca*], 884 F.2d 926, 929-30 (6th Cir. 1989). Whether an individual satisfies the definition of a miner is a factual determination for the administrative law judge. *See Amigo Smokeless Coal Co. v. Director, OWCP* [*Bower*], 642 F.2d 68, 69-71 (4th Cir. 1981); *Etzweiler v. Cleveland Bros. Equip. Co.*, 16 BLR 1-38, 1-40-41 (1992) (en banc).

The administrative law judge first found Claimant's job as a clerical worker from April 2, 1973 through February 26, 1978 did not qualify as the work of a miner. Decision and Order at 5. Claimant reported performing desk work inside an office in the purchasing department. Director's Exhibits 23; 43 at 13-14. Substantial evidence supports the administrative law judge's conclusion that this work did not involve the extraction or preparation of coal and therefore did not satisfy the function test. Decision and Order at 5; *see Falcon Coal Co. v. Clemons*, 873 F.2d 916, 921 (6th Cir. 1989). We therefore affirm the administrative law judge's determination that Claimant was not employed as a miner for this period of just over four years and nine months. Deducting this period from Claimant's alleged sixteen years of coal mine employment precludes her from establishing fifteen years. We therefore affirm the administrative law judge's finding Claimant did not invoke the Section 411(c)(4) presumption. Decision and Order at 7, 8; *Muncy*, 25 BLR at 1-29.

**Part 718 Entitlement**

To be entitled to benefits under the Act, Claimant must establish disease (pneumoconiosis); disease causation (it arose out of coal mine employment); disability (a totally disabling respiratory or pulmonary impairment); and disability causation (pneumoconiosis substantially contributed to the disability). 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any 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).

The administrative law judge determined that Claimant established clinical pneumoconiosis arising out of coal mine employment based on a biopsy,[7] and legal pneumoconiosis based on a physician's diagnosis of chronic bronchitis due to coal mine dust exposure.[8] Decision and Order at 13, 17-19; 20 C.F.R. §§718.202(a)(2), (4), 718.203(b). However, the administrative law judge credited the opinions of Drs. Dahhan

[7] The administrative law judge considered the reports of the August 23, 1994 biopsies of upper and lower lobe wedges of Claimant's left lung, which documented mild anthracosis in the pleura, and concluded these findings were consistent with a finding of clinical pneumoconiosis. Decision and Order at 13-14; Director's Exhibit 23.

[8] The administrative law judge credited Dr. Ajjarapu's diagnosis of chronic bronchitis due to coal mine dust exposure. Director's Exhibit 15 at 7; Decision and Order at 16-17.

and Jarboe that Claimant's cystic lung disease, lymphangioleiomyomatosis (LAM),[9] is unrelated to coal mine dust exposure. *Id*. at 18. Review of the record reveals no medical evidence linking Claimant's LAM to coal mine dust exposure. We therefore affirm the administrative law judge's determination that it does not constitute legal pneumoconiosis. *See* 20 C.F.R. §718.201(b).

After finding Claimant totally disabled,[10] the administrative law judge considered disability causation. To establish her total disability is due to pneumoconiosis, Claimant must establish that pneumoconiosis is a "substantially contributing cause" of her totally disabling respiratory or pulmonary impairment. 20 C.F.R. §718.204(c)(1). Pneumoconiosis is a substantially contributing cause of a miner's disability if it has "a material adverse effect on the miner's respiratory or pulmonary condition," or if it "[m]aterially worsens a totally disabling respiratory or pulmonary impairment which is caused by a disease or exposure unrelated to coal mine employment." 20 C.F.R. §718.204(c)(1)(i), (ii); *see Arch on the Green, Inc. v. Groves*, 761 F.3d 594, 599-601 (6th Cir. 2014). The "cause or causes of a miner's total disability shall be established by means of a physician's documented and reasoned medical opinion." 20 C.F.R. §718.204(c)(2).

The administrative law judge reviewed the opinion of Dr. Ajjarapu, who indicated that Claimant's disabling blood gas "impairment is due in part to her work in the mines," and he found her opinion neither well-documented nor well-reasoned. Director's Exhibit 15 at 7; Decision and Order at 23. Substantial evidence supports the administrative law judge's credibility determination. As the administrative law judge found, Dr. Ajjarapu did not explain how Claimant's clinical pneumoconiosis causes or contributes to her totally disabling respiratory impairment, or how Claimant's chronic bronchitis contributes to or worsens her totally disabling impairment. Director's Exhibit 15. Dr. Ajjarapu opined that Claimant is totally disabled because of hypoxemia detected on her arterial blood gas studies, but as the administrative law judge found, Dr. Ajjarapu did not specifically

[9] Dr. Jarboe noted that lymphangioleiomyomatosis (LAM) is a rare, diffuse cystic lung disease, and he opined that it is unrelated to Claimant's coal mine dust exposure. Employer's Exhibit 2 at 5, 11-12. Dr. Dahhan opined that LAM is a disease of the general public, unrelated to coal mine dust exposure. Director's Exhibit 27 at 3-4. The record reflects Claimant's treatment for LAM. Director's Exhibits 23, 24; Claimant's Exhibit 6; Employer's Exhibit 1. Both physicians opined that LAM causes disabling abnormalities in Claimant's blood gas exchange mechanism. Director's Exhibit 27 at 3-4; Employer's Exhibit 2 at 11.

[10] The administrative law judge found total disability established based on blood gas studies and medical opinions. Decision and Order at 21-23; 20 C.F.R. §718.204(b)(2).

attribute the hypoxemia to Claimant's pneumoconiosis. *Id.* Moreover, as the administrative law judge noted, Claimant has a history of treatment for cystic lung disease secondary to LAM, but Dr. Ajjarapu did not explain how Claimant's clinical or legal pneumoconiosis materially worsens any disabling respiratory or pulmonary impairment caused by this condition. *Id.*

The determination of whether a medical opinion is adequately reasoned is committed to the administrative law judge. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255 (6th Cir. 1983); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989) (en banc). The administrative law judge specifically found Dr. Ajjarapu did not sufficiently set forth the rationale for her disability causation opinion. Substantial evidence supports the administrative law judge's permissible credibility determination, *see Rowe*, 710 F.2d at 255, and we therefore affirm the administrative law judge's finding that Dr. Ajjarapu's opinion did not establish that pneumoconiosis is a substantially contributing cause of Claimant's total disability.[11] 20 C.F.R. §718.204(c)(1); *see Groves*, 761 F.3d at 599-601; *Rowe*, 710 F.2d at 255.

Because Claimant failed to establish disability causation, an essential element of entitlement under 20 C.F.R. Part 718, we affirm the denial of benefits. *See Trent*, 11 BLR at 1-27; *Perry*, 9 BLR at 1-2.

[11] The administrative law judge also credited the opinions of Drs. Dahhan and Jarboe that Claimant's disabling blood gas impairment is due entirely to LAM. Decision and Order at 24. He did so, however, without addressing their failure to diagnose clinical or legal pneumoconiosis, contrary to his findings. *See Skukan v. Consolidated Coal Co.*, 993 F.2d 1228 (6th Cir. 1993), *vacated sub nom.*, *Consolidation Coal Co. v. Skukan*, 512 U.S. 1231 (1994), *rev'd on other grounds*, *Skukan v. Consolidated Coal Co.*, 46 F.3d 15 (6th Cir. 1995). We need not address this issue, since we have affirmed the administrative law judge's determination that Dr. Ajjarapu's opinion did not meet Claimant's burden to establish disability causation. *See Groves*, 761 F.3d at 599-601; *Larioni*, 6 BLR at 1-1278. For the same reason, we need not address Employer's arguments that the administrative law judge erred in finding that Claimant has clinical and legal pneumoconiosis. Employer's Brief at 13-19.

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

MELISSA LIN JONES
Administrative Appeals Judge