

BRB No. 07-0336 BLA

E.G.)
(Widow of B.G.))
)
Claimant-Petitioner)
)
v.)
)
ENERGY DEVELOPMENT COMPANY) DATE ISSUED: 11/14/2007
)
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 of Stephen L. Purcell, Administrative Law Judge, United States Department of Labor.

Earl Mettler (Mettler & Lecuyer, P.C.), Albuquerque, New Mexico, for claimant.

Catherine MacPherson (MacPherson, Kelly & Thompson, LLC), Rawlins, Wyoming, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (05-BLA-5620 and 05-BLA-5621) of Administrative Law Judge Stephen L. Purcell denying benefits on a miner's claim and a survivor's claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act). The

¹ Claimant is the widow of the deceased miner. The miner filed a claim on May 11, 2004. Director's Exhibit 2. He died on August 7, 2004. Director's Exhibit 13. Claimant filed a survivor's claim on August 20, 2004. Director's Exhibit 4.

administrative law judge credited the miner with two and one-half years of coal mine employment² and adjudicated both of the claims pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the evidence did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(4). Accordingly, the administrative law judge denied benefits in both the miner's claim and the survivor's claim.

On appeal, claimant challenges the administrative law judge's finding that the medical opinion evidence did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4). Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.³

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to benefits in a miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish that the miner was totally disabled due to pneumoconiosis arising out of coal mine employment. 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 entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989).

To establish entitlement to survivor's benefits, claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993).

² The record indicates that the miner's last coal mine employment occurred in Utah. Director's Exhibit 6. Accordingly, the Board will apply the law of the United States Court of Appeals for the Tenth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

³ Because the administrative law judge's findings that the evidence did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1)-(3) are not challenged on appeal, we affirm these findings. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

At Section 718.202(a)(4), the administrative law judge considered the reports of Drs. Repsher and James.⁴ Dr. Repsher opined that the miner had typical idiopathic interstitial lung disease and nonspecific idiopathic interstitial lung disease that were unrelated to coal dust exposure, and that the miner's clinical course was typical of unusual interstitial pneumonia and idiopathic pulmonary fibrosis. Employer's Exhibit A. Dr. Repsher also opined that the miner did not have medical or legal pneumoconiosis. *Id.* By contrast, Dr. James, who was the miner's treating physician, opined that the miner had interstitial lung disease related to coal dust exposure. Director's Exhibit 17; Claimant's Exhibits 7, 8; *see* 20 C.F.R. §718.201(a)(2).

The administrative law judge found that Dr. Repsher's opinion outweighed Dr. James's contrary opinion, because Dr. Repsher's opinion was better reasoned and documented. Decision and Order at 21. The administrative law judge also found that "[e]ven standing alone, Dr. James's conclusions with respect to the effect of the [m]iner's coal mine dust exposure are less persuasive in view of the lengthy post-coal mine industrial exposure." *Id.* at 21. Hence, the administrative law judge concluded that "[i]n the final analysis, given the alternate possible etiologies for the development of the [m]iner's pulmonary or respiratory impairment and fibrosis, and the conflicting opinion from Dr. Repsher, I find that the evidence of disease causation is at best equally probative." *Id.* at 23.

Claimant asserts that substantial evidence does not support the administrative law judge's finding, because Dr. James's opinion established the existence of legal pneumoconiosis. We disagree. The administrative law judge permissibly accorded greater weight to Dr. Repsher's opinion than to Dr. James's contrary opinion, because he found that Dr. Repsher's opinion was better reasoned and documented. *See Hansen v. Director, OWCP*, 984 F.2d 364, 370, 17 BLR 2-48, 2-59 (10th Cir. 1993); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). The administrative law judge explained that "Dr. Repsher's conclusion, that the [m]iner suffered from an idiopathic disease and not coal workers' pneumoconiosis, is more in line with the biopsy findings,

⁴ The administrative law judge also considered medical treatment records, CT scans, and a death certificate signed by Dr. Batuello. In considering the medical reports and the medical treatment records, the administrative law judge noted that while there was a consensus of opinion that the miner had a severe pulmonary fibrosis and interstitial lung disease, there was no consensus as to the causes of this disease. Decision and Order at 21. In addition, the administrative law judge noted that "[t]he CT scans of record detected interstitial opacities, but there is no diagnosis of pneumoconiosis on the basis of these CT scan readings, or any interpretation that demonstrated that the fibrosis or interstitial opacities constituted coal workers' pneumoconiosis." *Id.* at 22. Further, the administrative law judge noted that "[t]he [m]iner's death certificate cited 'idiopathic pulmonary fibrosis.'" *Id.* at 22.

the lengthy non-coal mine dust exposure, and the protracted cigarette smoking history.” Decision and Order at 23.

Regarding Dr. James’s opinion, the administrative law judge recognized that Dr. James was the miner’s treating physician. *Id.* at 23 n.6; *see* 20 C.F.R. §718.104(d). The administrative law judge also found that Dr. James’s opinion was detailed. Decision and Order at 23 n.6. Nonetheless, the administrative law judge permissibly found that the clinical documentation was inadequate to support Dr. James’s diagnosis of pneumoconiosis, considering that the “clinical evidence points to an *idiopathic* (*i.e.*, ‘of unknown cause’) pulmonary disease or a process of fibrosis that is non-specific, the employment history comprises at least two decades of non-coal mine dust industrial exposure,⁵ and the [m]iner smoked, by at least one estimate, far in excess of [thirty] years....” *Id.*; *see* 20 C.F.R. §718.104(d)(5). In addition, the administrative law judge acted within his discretion in finding that Dr. James did not adequately “explain how the [m]iner’s brief coal mine employment would cause a pulmonary or respiratory impairment that meets the standard set forth in the Act and the Secretary’s regulations that the pulmonary or respiratory impairment be ‘significantly related to, or substantially aggravated by’ the coal mine dust exposure.” Decision and Order at 22; *see Hansen*, 984 F.2d at 370, 17 BLR at 2-59. Thus, because the administrative law judge permissibly found that Dr. Repsher’s opinion was better reasoned and documented than Dr. James’s contrary opinion, *see Clark*, 12 BLR at 1-155, and reasonably found that the conflicting evidence was, at best, in equipoise, *see Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), we reject claimant’s assertion that substantial evidence does not support the administrative law judge’s finding.

Claimant also asserts that “the decision of the [administrative law judge] does not articulate a reason why the dust exposure in [the miner’s] coal mining work would not have been at least in part a cause of the lung disease.” Claimant’s Brief at 5. The Administrative Procedure Act, 5 U.S.C. §557(c)(3)(A), as incorporated into the Act by 30 U.S.C. §932(a), by means of 33 U.S.C. §919(d) and 5 U.S.C. §554(c)(2), requires that an administrative law judge independently evaluate the evidence and provide an explanation for his findings of fact and conclusions of law. *Wojtowicz v. Duquesne Light Co.*, 12 BLR 1-162 (1989). As discussed above, the administrative law judge permissibly found that “[e]ven standing alone, Dr. James’s conclusions with respect to the effect of the [m]iner’s coal mine dust exposure are less persuasive in view of the lengthy post-coal mine industrial exposure.” Decision and Order at 21; *see Clark*, 12 BLR at 1-155. Further, the administrative law judge reasonably explained:

⁵ As summarized by the administrative law judge, Dr. James explained that, following his coal mine employment, the miner worked in heavy equipment maintenance for twenty-two years, where he had extensive exposure to inorganic dusts, welding fumes, and solvents. Decision and Order at 7-9, 12, 21.

[w]hen the cumulative industrial exposure is taken as a whole, there is no conclusive explanation as to how the [m]iner's pulmonary or respiratory impairment is significantly related to, or substantially aggravated by, the [m]iner's two and one-half years of coal mine employment, when the [m]iner suffered from two decades of post mining industrial dust exposure.

Decision and Order at 21-22; *see Hansen*, 984 F.2d at 370, 17 BLR at 2-59. Because the administrative law judge provided a valid basis for discounting Dr. James's opinion, we reject claimant's assertion that the administrative law judge did not explain why he found that the medical opinion evidence did not establish the existence of pneumoconiosis. *See Wojtowicz*, 12 BLR at 1-165.

Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the medical opinion evidence did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(4).

In light of our affirmance of the administrative law judge's finding that the evidence did not establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement in both the miner's and survivor's claims, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *See Trumbo*, 17 BLR at 1-88; *Anderson*, 12 BLR at 1-112.

Accordingly, the administrative law judge's Decision and Order denying benefits in the miner's and the survivor's claims is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge