BRB No. 88-1560 BLA

JANICE REDDEN (Widow of FRED REDDEN) and THOMAS E. THOMAS E. REDDEN (Dependent Child of FRED REDDEN)	)	
CLaimants-Petitioners	)	
v.	)	
ROBINSON-PHILLIPS COAL COMPANY	)	
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 Reno E. Bonfanti, Administrative Law Judge, United States Department of Labor.

Richard G. Rundle (Rundle & Rundle, L.C.), Pineville, West Virginia, for claimant.

John P. Scherer (File, Payne, Scherer & Brown), Beckley, West Virgnia, for employer.

Before: BROWN and McGRANERY, Administrative Appeals Judges, and LAWRENCE, Administrative Law Judge.*

PER CURIAM:

Claimants, the widow and dependent child of the deceased miner (hereinafter referred to as "claimant"), appeal the Decision and Order (85-BLA-6231) of Administrative Law Judge Reno E. Bonfanti Health and *Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5) (Supp. V 1987).

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 Safety Act of 1969, as amended, 30 U.S.C. §901 et seq. (the Act). The administrative law judge credited the miner with at least twenty-one years of qualifying coal mine employment and found invocation of the interim presumption established by autopsy evidence pursuant to 20 C.F.R. §727.203(a)(1). The administrative law judge further found, however, that the evidence established rebuttal on both claims pursuant to 20 C.F.R. §728.203(b)(3), and accordingly denied benefits. Claimant appeals, contending that the evidence is sufficient to establish invocation of the interim presumption pursuant to 20 C.F.R. §727.203(a)(1), (a)(2) and (a)(4), and is insufficient to establish rebuttal of this presumption pursuant to subsection (b)(3). Employer responds, urging affirmance.[1]

[1] The administrative law judge's findings that the evidence was insufficient to establish rebuttal under 20 C.F.R. §727.203(b)(1) or (b)(2), and his findings with

The Director, Office of Workers' Compensation Programs, has not participated in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §932(a); O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc., 380 U.S. 359 (1965).

Claimant first contends that the administrative law judge erred in failing to find invocation established by x-ray evidence under Section 727.203(a)(1), by pulmonary function study evidence under subsection (a)(2), and by medical opinion evidence under subsection (a)(4). The administrative law judge properly found that the autopsy evidence of record established the existence of pneumoconiosis. See Terlip v. Director, OWCP, 8 BLR 1-363 (1985); Fetterman v. Director, OWCP, 7 BLR 1-688 (1985). Consequently, we affirm the administrative law judge's determination that invocation of the interim presumption had been established pursuant to subsection (a)(1). As he found invocation pursuant to subsection (a)(1), the administrative law judge's failure to consider invocation of the interim presumption pursuant to subsections (a)(2) - (a)(4) is harmless. See Cochran v. Consolidation Coal Co., 12

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regard to length of coal mine employment are affirmed as unchallenged on appeal. See Skrack v. Island Creek Coal Co., 6 BLR 1-710 (1983).

BLR 1-136 (1989); Fagg v. Amax Coal Co., 12 BLR 1-77 (1988); Wetzel v. Director, OWCP, 8 BLR 1-139 (1985).

Claimant also contends that the administrative law judge erred in finding the evidence sufficient to establish rebuttal under Section 727.203(b)(3). We agree. In finding subsection (b)(3) rebuttal established, the administrative law judge considered the miner's and the survivor's claims jointly pursuant to the standard enunciated by the United States Court of Appeals for the Fourth Circuit, wherein appellate jurisdiction of these claims lie. See Bethlehem Mines Corp. v. Massey, 736 F.2d 120, 7 BLR 2-72 (4th Cir. 1984). The administrative law judge found that the weight of the evidence ruled out any relationship between the miner's disability and coal mine employment, and also ruled out the causal relationship between death and coal mine employment. Claimant notes that of the medical opinions of record, only two reviewing physicians, both certified pathologists, addressed the cause of the miner's death. The administrative law judge credited Dr. Hansbarger's opinion that the miner's death was unrelated to coal mine employment, but provided no explanation for rejecting Dr. Rasheed's opinion that the miner's pneumoconiosis was a major contributory factor in the cause of death. As the administrative law judge may not reject relevant evidence without explanation, see Tucker v. Director, OWCP, 10 BLR 1-35, 1-42 (1987), we must vacate his findings under Section 727.203(b)(3), and remand this case for reconsideration of both the miner's and the survivor's claims in light of Taylor v. Clinchfield Coal Co., 895 F.2d 178, 13 BLR 2-294 (1990),

reh'g denied (1990); see also Pittston Coal Group v. Sebben, 109 S.Ct. 414, 12 BLR 2-89 (1988).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed in part, vacated in part, and this case is remanded for further consideration consistent with this opinion.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

LEONARD N. LAWRENCE
Administrative Law Judge