

BRB No. 99-0817 BLA

ILLIE JENT)	
(Widow of RANT JENT))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED:
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Thomas F. Phalen, Jr.,
Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Dorothy L. Page (Henry L. Solano, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, SMITH, Administrative Appeals Judge, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant¹ appeals the Decision and Order Denying Benefits (98-BLA-1159) of Administrative Law Judge Thomas F. Phalen, Jr. on 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). Adjudicating this claim pursuant to 20 C.F.R. Part 718, the

¹ Claimant, Illie Jent, filed a survivor's claim for benefits on June 11, 1997. Director's Exhibit 1. Mrs. Jent is the widow of Rant Jent, the miner, who died on March 14, 1997. Director's Exhibit 4. The miner filed an application for benefits on December 13, 1990, which was denied by the district director on May 9, 1991. Director's Exhibit 17. The record contains no evidence indicating that the miner pursued this denial.

administrative law judge credited the miner with six and three-quarter years of qualifying coal mine employment and found that claimant established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). Next, the administrative law judge found that claimant failed to establish that the miner's pneumoconiosis arose out of coal mine employment pursuant to 20 C.F.R. §718.203(c) and that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant argues that the administrative law judge erred in calculating the length of the miner's coal mine employment and in failing to find that the miner's death was due to pneumoconiosis under Section 718.205(c). The Director, Office of Workers' Compensation Programs (the Director) responds, urging affirmance of the denial of benefits.²

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 the applicable law, they are binding upon this Board and may not be disturbed. 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).

To establish entitlement to benefits on a survivor's claim filed on or after January 1, 1982, a claimant must establish that the miner had pneumoconiosis, that the miner's pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.202(a), 718.203(a), 718.205(a). Death will be considered due to pneumoconiosis if the evidence establishes that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(1), (2), (4). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, has held that pneumoconiosis is a substantially contributing cause of death if it actually hastens the miner's death. *See Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

With respect to Section 718.205(c)(2), claimant argues only that Dr. Stumbo opined

² We affirm the administrative law judge's determinations pursuant to Sections 718.202(a)(1) and 718.203(c) inasmuch as these determinations are unchallenged on appeal. *See Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Director, OWCP*, 6 BLR 1-710 (1983); Decision and Order at 9-10.

that if pneumoconiosis existed, it could have hastened the miner's death. Claimant contends that because the administrative law judge found that pneumoconiosis was established, Dr. Stumbo's opinion is sufficient to establish that pneumoconiosis contributed to the miner's death. Claimant's argument lacks merit. Dr. Stumbo, the miner's treating physician, wrote a letter on June 16, 1998 stating, "We never made a diagnosis of pneumoconiosis on this patient. However, if present, it could have hastened [sic] his death." Director's Exhibit 14. The administrative law judge properly found that, in reports dated February 28, 1997 and November 7, 1997, Dr. Stumbo neither mentioned the presence of pneumoconiosis nor causally related the miner's respiratory conditions to coal dust exposure. *See Brown, supra*; Decision and Order at 11; Director's Exhibits 6, 9. Furthermore, the administrative law judge, within a proper exercise of his discretion, found that Dr. Stumbo's opinion contained in the June 1998 letter was "equivocal at best," and therefore, not probative of demonstrating that pneumoconiosis contributed to the miner's death. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91, 1-94 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16, 1-19 (1987); Decision and Order at 11; Director's Exhibit 14. Inasmuch as the administrative law judge reasonably discredited Dr. Stumbo's opinion because it was equivocal, we reject claimant's argument. *See Justice, supra*; *Campbell, supra*. Furthermore, the administrative law judge properly determined that the evidence of record, consisting of the death certificate and the reports of Drs. Stumbo and Williams, failed to demonstrate that pneumoconiosis hastened the miner's demise. *See Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); Decision and Order at 11-12; Director's Exhibits 4, 6, 9, 14, 17. Inasmuch as claimant has not raised any other allegation of error with respect to the administrative law judge's analysis of the medical evidence under Section 718.205(c), we affirm the administrative law judge's determination that claimant failed to satisfy her burden of establishing that pneumoconiosis substantially contributed to the miner's death.

Accordingly, the Decision and Order Denying Benefits of the administrative law judge is affirmed.³

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge

³ Our affirmance of the administrative law judge's finding that claimant failed to establish that pneumoconiosis contributed to the miner's death pursuant to Section 718.205(c) obviates the need to address claimant's arguments regarding the issue of length of coal mine employment. *See* Claimant's Brief at 3-4.