

BRB No. 08-0634 BLA

V.R. )  
(Widow of F.R.) )  
 )  
Claimant-Petitioner )  
 )  
v. )  
 )  
WESTMORELAND COAL COMPANY )  
 ) DATE ISSUED: 04/16/2009  
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 – Denying Benefits of Paul C. Johnson, Jr., Administrative Law Judge, United States Department of Labor.

V.R., Jonesville, Virginia, *pro se*.<sup>1</sup>

Kathy L. Snyder (Jackson Kelly PLLC), Morgantown, West Virginia for employer.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order – Denying Benefits (07-BLA-5757) of Administrative Law Judge Paul C. Johnson, Jr., rendered on a survivor’s claim filed pursuant to the provisions of Title IV of the Federal

---

<sup>1</sup> Ron Carson, a Benefits Counselor with Stone Mountain Health Services of St. Charles, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge’s decision. However, Mr. Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. §901 *et seq.* (the Act).<sup>2</sup> Initially, the administrative law judge observed that the miner had been awarded benefits in his lifetime claim. The administrative law judge noted further that, in the survivor's claim, employer conceded that it was collaterally estopped from contesting the existence of pneumoconiosis arising out of coal mine employment, as it was established in the miner's successful claim for benefits. The administrative law judge therefore determined that claimant established the existence of pneumoconiosis arising out of coal mine employment<sup>3</sup> pursuant to 20 C.F.R. §718.202(a). *See Collins v. Pond Creek Mining Co.*, 468 F.3d 213, 23 BLR 2-393 (4th Cir. 2006). The administrative law judge found, however, that the medical evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally challenges the denial of benefits. In response to claimant's appeal, employer urges affirmance of the administrative law judge's denial of benefits as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176, 1-177 (1989). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with 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).

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); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). A miner's death will be considered to be due to pneumoconiosis if the evidence establishes that pneumoconiosis was the cause of the miner's death, or that

---

<sup>2</sup> Claimant is the widow of the miner, F.R., who died on April 26, 2006. Director's Exhibit 8. Claimant filed her survivor's claim on August 21, 2006. *Id.*

<sup>3</sup> The record indicates that the miner was employed in the coal mining industry in Virginia. Director's Exhibits 2, 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BR 1-200 (1989)(*en banc*).

pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, or where the presumption relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(4). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *see Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992).

After consideration of the administrative law judge's Decision and Order and the relevant evidence of record, we conclude that substantial evidence supports the administrative law judge's finding that claimant did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).

The administrative law judge considered all of the medical evidence of record relevant to the cause of the miner's death, including the miner's death certificate, the medical opinion of Dr. Litton, the miner's treating physician, the medical reports and depositions of Drs. Repsher and Spagnolo, and the miner's hospital records and treatment notes. Decision and Order at 3-17. In the death certificate, Dr. Litton listed chronic obstructive pulmonary disease (COPD) and coal workers' pneumoconiosis as the immediate causes of the miner's death, and did not list any other conditions as having contributed to the miner's death. Director's Exhibits 8, 10. In a letter dated February 22, 2008, Dr. Litton stated that "coal miner's pneumoconiosis" contributed to "cardiopulmonary strain" that led to the miner's death. Claimant's Exhibit 1 at 2. By contrast, Dr. Spagnolo opined that the miner's death was caused solely by his progressive cardiac disease and bullous lung disease, neither of which, according to Dr. Spagnolo, was "in any way related to [coal workers' pneumoconiosis]." Employer's Exhibit 2 at 3-4, Employer's Exhibit 5 at 16-17. Dr. Repsher opined that the miner's death was most likely due to a "malignant" cardiac arrhythmia, and explained that there was no evidence that the miner's death was caused or hastened by either medical or legal pneumoconiosis. Employer's Exhibit 1 at 3; Employer's Exhibit 3 at 4-5; Employer's Exhibit 4 at 12, 14. The miner's treatment records indicated that the miner had a history of COPD, hypertension, congestive heart failure, pneumoconiosis, coronary artery disease, hypoxia, chronic bronchitis, emphysema, and pneumonia, among other ailments. Claimant's Exhibits 2, 3; Director's Exhibit 9.

Pursuant to 20 C.F.R. §718.205(c)(3), the administrative law judge correctly found that there was no evidence of complicated pneumoconiosis in the record. Therefore, we affirm the administrative law judge's finding that the irrebuttable presumption of death due to pneumoconiosis, set forth at 20 C.F.R. §718.304, was inapplicable. *See* 20 C.F.R. §718.304; Decision and Order at 12.

Pursuant to 20 C.F.R. §718.205(c)(1), the administrative law judge rationally determined that the weight of the evidence did not establish that pneumoconiosis was the

cause of the miner's death. The administrative law judge acted within his discretion as the fact-finder when he determined that Dr. Litton's statement on the death certificate, that COPD and coal workers' pneumoconiosis caused the miner's death, was conclusory and unexplained. *See Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 192, 22 BLR 2-251, 2-264 (4th Cir. 2000); Decision and Order at 13; Director's Exhibits 8, 10. As the administrative law judge further permissibly determined, in Dr. Litton's letter, Dr. Litton did not "set forth the clinical findings, observations, facts, or other data on which he based his opinions," or demonstrate that he took into account the medical evidence, discussed fully by Drs. Repsher and Spagnolo, that the miner was experiencing congestive heart failure near the time of his death. *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-276 (4th Cir. 1997). Substantial evidence supports these findings.

By contrast, the administrative law judge permissibly found the opinions of Drs. Repsher and Spagnolo to be well-reasoned and documented, because they were supported by the medical evidence of record, and because Drs. Repsher and Spagnolo based their opinions on a comprehensive review of all the evidence of record. *See Hicks*, 138 F.3d 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-276. Substantial evidence supports these findings. As the administrative law judge stated, Dr. Repsher testified that the medical records showed that the miner's hypoxemia levels were characteristic of heart failure more than COPD, and that, because the miner died suddenly, his death was more likely due to a malignant cardiac arrhythmia, or abnormal heartbeats, rather than to COPD, which results in a more prolonged, lingering death. Decision and Order at 14; Employer's Exhibit 4 at 12-13. As the administrative law judge further found, the record supported Dr. Repsher's conclusion that the miner died suddenly at home. Decision and Order at 15; Director's Exhibit 9 at 34-37; Director's Exhibits 8, 10.

With respect to the opinion of Dr. Spagnolo, the administrative law judge accurately observed that, despite assuming that the miner had pneumoconiosis, Dr. Spagnolo concluded that his death was caused solely by cardiac failure, in light of the miner's previous abnormal cardiogram, history of cardiac arrest, and evidence of left-sided heart failure shortly before his death. Decision and Order at 15; Employer's Exhibit 2 at 4. Further, as the administrative law judge stated, "[t]he records from Litton Family Medicine are replete with references to [the miner's] coronary artery disease and congestive heart failure," and "include a history of abnormal cardiogram and prior cardiac arrest." Decision and Order at 15; Director's Exhibit 9.

Based on the foregoing, substantial evidence supports the administrative law judge's finding that the evidence did not establish that pneumoconiosis was the cause of the miner's death pursuant to 20 C.F.R. §718.205(c)(1). The finding is therefore affirmed.

Pursuant to 20 C.F.R. §718.205(c)(2), the administrative law judge considered whether the evidence established that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death from cardiac disease. The administrative law judge considered Dr. Litton's opinion that "coal miners' pneumoconiosis . . . contributed to cardiopulmonary strain that ultimately led to [the miner's] demise." Claimant's Exhibit 1 at 2. The administrative law judge permissibly found that Dr. Litton's opinion "carrie[d] little weight" because it was not supported by the record. Decision and Order at 17; *see* 20 C.F.R. §718.104(d)(5). By contrast, the administrative law judge found that Drs. Repsher and Spagnolo provided well-reasoned and documented opinions explaining that pneumoconiosis played no role in the miner's death due to heart disease. The administrative law judge specifically noted Dr. Repsher's explanation that, even assuming that the miner's COPD was due to coal mine dust exposure and thus constituted legal pneumoconiosis,<sup>4</sup> it did not hasten the miner's death. The administrative law judge acted within his discretion in finding that the opinions of Drs. Repsher and Spagnolo were better-reasoned and documented than that of Dr. Litton, and substantial evidence supports his credibility determination. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-276. Thus, we affirm his finding that claimant failed to establish that the miner's death was hastened by pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(2),(5).

Because the administrative law judge properly discounted the evidence of record supportive of a finding that pneumoconiosis caused, contributed to, or hastened the miner's death, we affirm the administrative law judge's finding that claimant did not establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). We must also affirm, therefore, the denial of benefits in this survivor's claim. *See Shuff*, 967 F.2d at 987-80, 16 BLR at 2-92-93.

---

<sup>4</sup> 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). This definition encompasses any chronic respiratory or pulmonary disease or impairment "significantly related to, or substantially aggravated by, dust exposure in coal mine employment." 20 C.F.R. §718.201(a)(2)(b).

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

SO ORDERED.

---

NANCY S. DOLDER, Chief  
Administrative Appeals Judge

---

ROY P. SMITH  
Administrative Appeals Judge

---

BETTY JEAN HALL  
Administrative Appeals Judge