BRB No. 10-0450 BLA

IDA WILLIAMS (adult disabled daughter of the deceased miner, EARNEST MEADE)	)	
Claimant-Petitioner	)	
v.	)	
J & V COAL COMPANY	)	DATE ISSUED: 04/18/2011
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 Survivor's Benefits of William S. Colwell, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

James M. Kennedy (Baird and Baird, P.S.C.), Pikeville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Survivor's Benefits (2005-BLA-6102) of Administrative Law Judge William S. Colwell (the administrative law judge) on a claim[1] filed pursuant to the provisions of the Black Lung Benefits Act, 30

[1] Claimant is the adult, disabled daughter of the miner, Earnest Meade, who died on February 26, 2003. Director's Exhibit 14-1. The miner filed a claim for benefits on December 17, 1992, which was finally denied on December 22, 1997, for failure to establish total disability. *Meade v. J & V Coal Co.*, BRB No. 97-0525 BLA (Dec. 22,

U.S.C. §§901-944 (2006), *amended by* Pub. L. No. 111-148, §1556, 124 Stat. 119 (2010) (to be codified at 30 U.S.C. §§921(c)(4) and 932(*l*)) (the Act). The administrative law judge accepted the parties' stipulation that the miner had twenty-one years of qualifying coal mine employment. The administrative law judge further found that claimant met the requirements to be an eligible survivor of the miner, inasmuch as "she [was] not married," "her disability has been present since birth," and "she depended on her father to meet her personal living and financial needs." Decision and Order at 7. Adjudicating the claim pursuant to 20 C.F.R. Part 718, the administrative law judge found that, while the x-ray evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1), the medical opinion evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). However, the administrative law judge found the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205. Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's findings that the evidence of record is insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(1) and death due to pneumoconiosis under Section 718.205(c). Claimant further contends that the presumption established in Section 921(c)(4) of the Act is applicable to this case because the miner had twenty-one years of coal mine employment and a totally disabling respiratory impairment. Employer responds, urging affirmance of the administrative law judge's decision denying benefits. Employer also contends that the presumption is not applicable to this case because claimant filed her claim prior to January 1, 2005. The Director, Office of Workers' Compensation Programs (the Director), declines to file a substantive brief in this appeal. The Director does, however, state that the presumption is not applicable to this case because the claim was filed prior to January 1, 2005.

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,[2] they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman and Grylls Associates, Inc.*, 380 U.S. 359 (1965).

1997) (unpub.) Director's Exhibits 1-2, 1-36. Claimant filed her survivor's claim on August 4, 2004. Director's Exhibit 3-1.

[2] The record indicates that the miner was employed in the coal mining industry in Kentucky. Director's Exhibit 4. Accordingly, the law of the United States Court of Appeals for the Sixth Circuit is applicable. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

In order to establish entitlement to survivor's benefits under 20 C.F.R. Part 718, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc*., 12 BLR 1-111, 1-112 (1989). For survivor's claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if the evidence establishes that pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or 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); *Brown v. Rock Creek Mining Co*., 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

Initially, we address claimant's argument concerning the applicability of the presumption. On March 23, 2010, amendments to the Act were enacted, affecting claims filed after January 1, 2005, that were pending on or after March 23, 2010. With respect to such claims the amendments, in pertinent part, reinstate Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), which provides a rebuttable presumption that a miner's death was due to pneumoconiosis, if fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. *See* 20 C.F.R. §718.204(b). Because claimant filed her claim prior to January 1, 2005, the amendments do not apply to this case.

Claimant challenges the administrative law judge's finding that the evidence of record was insufficient to establish the existence of pneumoconiosis under Section 718.202(a)(1) of the regulations. Inasmuch as the administrative law judge found the existence of pneumoconiosis established, and there is no contention that claimant was entitled to the irrebuttable presumption under Section 718.304, we need not consider the administrative law judge's finding at Section 718.202(a)(1). *Dixon v. North Camp Coal Co.*, 8 BLR 1-344 (1985); *see Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 575, 22 BLR 2-107, 2-119 (6th Cir. 2000). Error, if any, by the administrative law judge in considering the x-ray evidence at Section 718.202(a)(1) would be harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Claimant next argues that the administrative law judge erred in his evaluation of the opinions of the miner's treating physicians, namely Drs. Breeding and Alam. Specifically, claimant contends that the opinions of Drs. Breeding and Alam were sufficient to establish that the miner's pneumoconiosis caused his death pursuant to Section 718.205(c). In support of her argument, claimant contends that the

administrative law judge failed to consider the "intimate relationship" between the treating physicians and the miner in weighing their opinions.

Contrary to claimant's argument, however, the administrative law judge acknowledged that Drs. Breeding and Alam were the miner's treating physicians and, as such, "had an opportunity to observe and monitor [the miner's] physical condition over a period of a few years prior to his death[.]" Decision and Order at 30. Nonetheless, the administrative law judge properly found that the opinions of Drs. Breeding and Alam were insufficient to establish death causation pursuant to the standard set forth in *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003). In *Williams*, the United States Court of Appeals for the Sixth Circuit held that the opinion of a physician who merely asserts that because the miner had pneumoconiosis, the pneumoconiosis must have hastened his death, is insufficient to establish death causation. Rather, the court held that, in order to establish that pneumoconiosis hastened the miner's death, the physician must explain how pneumoconiosis hastened death "through a specific defined process that reduces the miner's life by an estimable time." *Williams*, 338 F.3d at 518, 22 BLR at 2-655.

A review of the record shows that neither Dr. Breeding nor Dr. Alam addressed the "specific process" by which pneumoconiosis hastened the miner's death or the amount of time by which the existence of pneumoconiosis shortened the miner's life.[3] Thus, because the opinions of Drs. Breeding and Alam did not meet the death causation standard set forth in *Williams*, the administrative law judge properly found that they did not constitute the medical evidence required on the issue at Section 718.205(c). *See* 20 C.F.R. §718.104(d)(5); *Conley v. National Mines Corp.*, 595 F.3d 297, 24 BLR 2-255 (6th Cir. 2010); *Williams*, 338 F.3d at 518, 22 BLR at 2-655; *see generally Peabody Coal Co. v. Groves*, 277 F.3d 829, 836, 22 BLR 2-320, 2-330 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003)(administrative law judge as fact-finder should decide whether physician's report is sufficiently reasoned and documented). The administrative law judge's finding that claimant failed to establish death causation at Section 718.205 is, therefore, affirmed.

Moreover, the opinions of treating physicians are to be accorded weight in light of their documentation and reasoning, and are neither presumed to be correct nor afforded

[3] Dr. Breeding stated that it was his "opinion that within reasonable medical probability … [the miner's] death was hastened by his coal worker's pneumoconiosis and that his coal worker's pneumoconiosis contributed to his death that was ultimately due to metastatic lung carcinoma." Director's Exhibit 17. Dr. Alam stated that "although [the miner] died of lung cancer, coal worker's pneumoconiosis may have hastened his death." Director's Exhibit 16.

automatic deference, *see Groves*, 277 F.3d at 836, 22 BLR at 2-330, but "get the deference they deserve based on their power to persuade." *Williams*, 338 F.3d at 513, 22 BLR at 2-647; *see* 20 C.F.R. §718.104(d)(5). In the present case, the administrative law judge acknowledged that Drs. Breeding and Alam were the miner's treating physicians, but nonetheless properly found that their opinions were insufficient to demonstrate death causation pursuant to the standard set forth in *Williams*. Decision and Order at 30-31.

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

SO ORDERED.

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NANCY S. DOLDER, Chief
Administrative Appeals Judge

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ROY P. SMITH
Administrative Appeals Judge

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JUDITH S. BOGGS
Administrative Appeals Judge