

BRB No. 03-0137 BLA

EDNA MUSIC)
(Widow of ARNOLD MUSIC))
)
Claimant-Petitioner)
)
v.)
)
BRANHAM AND BAKER COAL)
COMPANY)
)
and) DATE ISSUED: 08/26/2003
)
OLD REPUBLIC INSURANCE COMPANY)
)
Employer/Carrier-)
Petitioners)
)
DIRECTOR, OFFICE OF WORKERS=)
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
) DECISION and ORDER
Party-in-Interest)

Appeal of the Decision and Order B Denial of Benefits of Daniel J. Ruketentz, Administrative Law Judge, United States Department of Labor.

Edna Music, Prestonburg, Kentucky, *pro se*.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer.

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

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order B Denial of Benefits (01-BLA-0122) of Administrative Law Judge Danel J. Roketenetz on a survivor=s claim

¹ 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).

² The administrative law judge credited the miner with nine and one-half years of coal mine employment and adjudicated the claim pursuant to the regulations contained in 20 C.F.R. Part 718 (2001). The administrative law judge found that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. ' 718.202(a) and death due to pneumoconiosis pursuant to 20 C.F.R. ' 718.205(c). Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge=s denial of benefits is erroneous. Employer responds, urging affirmance of the decision. 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. We must affirm the findings of the administrative law judge if they

¹ Claimant, Edna Music, is the widow of the miner, Arnold Music, who died on August 12, 1999. Director=s Exhibit 6. The administrative law judge noted that the death certificate lists the causes of death as lymphoma due to sepsis (both hand-written), and coal workers= pneumoconiosis (typed). Decision and Order at 11; Director=s Exhibit 6. Claimant filed a survivor=s claim on September 16, 1999.

² The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725 and 726. All citations to the regulations, unless otherwise noted, refer to the amended regulations.

are supported by substantial evidence, are rational, and are in accordance with applicable law. 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).

Benefits are payable on a survivor=s claim filed on or after January 1, 1982, only when the claimant establishes that the miner had pneumoconiosis arising out of coal mine employment and that the miner=s death was due to pneumoconiosis. *See* 20 C.F.R. ' '718.1, 718.202(a), 718.205(c); *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). Pursuant to Section 718.205(c)(5), pneumoconiosis is considered a substantially contributing cause of death if it hastened the miner=s death. 20 C.F.R. '718.205(c)(5); *see also Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 135 (6th Cir. 1993).

Initially, we affirm the administrative law judge=s finding of nine and one-half years of coal mine employment. In making this determination, the administrative law judge considered the form completed by claimant, listing the miner=s coal mine employment from 1954 to 1962, and 1972 to 1977, the Social Security Administration Itemized Statement of Earnings showing employment beginning in 1959, and the miner=s own testimony given during the adjudication of his claim for benefits.³ The administrative law judge found that the Social Security records accurately reflected the miner=s employment from 1959 to 1978, for a total of four and one-half years of creditable coal mine employment, and that the miner=s testimony regarding his pre-1959 coal employment was credible, resulting in another five years of coal mine employment. Decision and Order at 4. As the administrative law judge utilized a reasonable method for computing the years of coal mine employment, we affirm his finding of nine and one-half year of coal mine employment. *See Dawson v. Old Ben Coal Co.*, 11 BLR 1-58, n.1 (1988)(*en banc*); *Vickery v. Director, OWCP*, 8 BLR 1-430 (1986); *Smith v. National Mines Corp.*, 7 BLR 1-803 (1985); *Miller v. Director, OWCP*, 7 BLR 1-693 (1983).

Next, the administrative law judge considered the x-ray evidence and found that the x-rays submitted with the miner=s claim were conflicting but that the x-rays submitted by claimant were all negative for pneumoconiosis.⁴ Decision and Order at 6. Relying upon the

³ The miner filed an application for benefits on October 28, 1980, which was finally denied by Administrative Law Judge Bernard J. Gilday, Jr., on March 2, 1987. Director=s Exhibit 35.

⁴ The administrative law judge noted that the x-rays submitted by claimant were not read for the purpose of classifying pneumoconiosis. Decision and Order at 6; Director=s Exhibits 8, 11.

readings by B-readers and board-certified radiologists, the administrative law judge permissibly found that the preponderance of the evidence by well-qualified physicians is negative for pneumoconiosis. See *Woodward v. Director*, OWCP, 991 F.2d 314, 17 BLR 2-77 (6th Cir.1993); *Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989). Accordingly, we affirm the findings pursuant to Section 718.202(a)(1).

Regarding the autopsy evidence at Section 718.202(a)(2), the administrative law judge found that Dr. Boswell performed a lungs-only autopsy and diagnosed adult respiratory distress syndrome, aspergillosis and increased anthracotic pigment. Director=s Exhibit 7. By contrast, three physicians who reviewed the autopsy report and slides, Drs. Perper, Caffrey, and Naeye, found the anthracotic pigmentation to be too mild to substantiate a diagnosis of pneumoconiosis. Director=s Exhibit 14; Employer=s Exhibits 6, 7. The administrative law judge found the three reviewing physicians= opinions to be better reasoned and better documented than Dr. Boswell=s opinion, and further found that Dr. Perper=s observation, that Dr. Boswell had missed the severe infiltration by lymphoma cells of the pulmonary parenchyma and alveolar septa, raised doubts about the reliability of Dr. Boswell=s findings. Decision and Order at 9. The administrative law judge acted within his discretion in finding that the opinions of Drs. Perper, Caffrey and Naeye outweigh the opinion of Dr. Boswell. Thus, we affirm the administrative law judge=s determination that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(2). See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987).

The administrative law judge then properly found that claimant did not establish pneumoconiosis pursuant to Section 718.202(a)(3) as the presumptions set forth in Sections 718.304 and 718.305 are inapplicable in this case filed after January 1, 1982 in which there is no evidence of complicated pneumoconiosis and in which the miner died after March 1, 1978. See 20 C.F.R. ' ' 718.304, 718.305, 718.306; Decision and Order at 9. The administrative law judge also considered the medical opinion evidence and found that three physicians, Drs. Campbell, DeGuzman, and Sundaram, concluded that the miner had pneumoconiosis. Director=s Exhibits 6, 10, 11, 13. The administrative law judge found that Dr. DeGuzman provided no basis for her opinion and that Drs. Campbell and Sundaram relied on Dr. Boswell=s faulty conclusions and failed to point to any specific, reliable studies to support their conclusion. Decision and Order at 13. Additionally, with respect to Dr. Sundaram, the administrative law judge found that there is no indication that the physician fully considered the miner=s tobacco usage. Thus, the administrative law judge found these opinions to be unpersuasive.

By contrast, the administrative law judge found the medical opinions by reviewing physicians, Drs. Branscomb and Fino, that there was no evidence of pneumoconiosis, as

well as the opinions of Drs. Perper, Caffrey and Naeye, who reviewed the medical record in addition to the autopsy report and slides, to be well-reasoned and well-documented. This finding by the administrative law judge was permissible. *See Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Tedesco v. Director, OWCP*, 18 BLR 1-103 (1994); *Clark*, 12 BLR 1-149; *Fields*, 10 BLR 1-19. We therefore affirm the administrative law judge=s finding that the medical opinions fail to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4).

The Board cannot reweigh the evidence or substitute its inferences for those of the administrative law judge. *See Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989). As the administrative law judge=s findings are supported by substantial evidence, we affirm his finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a). Moreover, as claimant has failed to establish the existence of pneumoconiosis, a prerequisite to establishing that the miner=s death was due to pneumoconiosis pursuant to Section 718.205(c), claimant cannot establish her entitlement to survivor=s benefits. *See Trumbo*, 17 BLR 1-85; *Neeley*, 11 BLR 1-85.

Accordingly, the administrative law judge=s Decision and Order-Denial of Benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, JR.
Administrative Appeals Judge