

BRB No. 03-0805 BLA

OPAL L. CHATMAN)
(Widow of JOHN F. CHATMAN))
)
Claimant-Petitioner)
) DATE ISSUED: 08/12/2004
v.)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Respondent) DECISION and ORDER

Appeal of the Decision and Order of Edward Terhune Miller,
Administrative Law Judge, United States Department of Labor.

Opal L. Chatman, Welch, West Virginia, *pro se*.

Timothy S. Williams (Howard Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; 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: DOLDER, Chief Administrative Appeals Judge, SMITH and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant,¹ representing herself, appeals the Decision and Order (02-BLA-0392) of Administrative Law Judge Edward Terhune Miller denying benefits on a 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).² This case involves a survivor's

¹ Claimant is the surviving spouse of the deceased miner who died on January 17, 2000. Director's Exhibit 9.

²The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became

claim filed on March 3, 2000.³ On July 25, 2000, the district director found that the evidence was insufficient to establish that the miner's pneumoconiosis caused his death. Director's Exhibit 13. The district director, therefore, denied claimant's survivor's claim. *Id.* After the case was forwarded to the Office of Administrative Law Judges for a formal hearing, claimant's counsel filed a letter with the Office of Administrative Law Judges, wherein claimant's counsel stated:

After some development and following a conference with our client today, we have decided to withdraw the Request for Hearing previously made in this case. We have explained to [claimant] the nature of her burden of proof going into a hearing and the fact that it would be futile to continue with the hearing unless it were possible to produce evidence that the Miner's death was caused by, hastened or contributed to by pneumoconiosis.

Unmarked Exhibit.

By Order dated December 18, 2000, Administrative Law Judge Daniel F. Solomon granted claimant's request to withdraw her claim. Director's Exhibit 19. Thereafter, claimant, representing herself, filed a "Notice of Appeal" with the Board. Director's Exhibit 20. While her appeal was pending, claimant filed an October 11, 2001 letter with the Board,⁴ stating that:

I have recently obtained reports from two doctors regarding the contribution of coal workers' pneumoconiosis to the death of my late

effective on January 19, 2001, and are found at 20 C.F.R. Parts 718, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

³ The miner filed a claim for benefits with the Social Security Administration (SSA) on May 31, 1972. Director's Exhibit 1. The SSA denied the claim on August 28, 1973, October 18, 1973 and June 18, 1974. *Id.* The Department of Labor denied the claim on January 10, 1980. *Id.* There is no indication that the miner took any further action in regard to his 1972 claim.

The miner filed a second claim on March 17, 1997. Director's Exhibit 2. The district director awarded benefits on May 7, 1998. *Id.*

⁴ Claimant submitted Dr. Dawood's September 4, 2001 report and Dr. Piracha's August 16, 2001 report.

husband, John F. Chatman. I am submitting the reports and requesting a reconsideration of the decision on my survivor's claim for benefits.

If the Board is unable to consider this new evidence, I am requesting my claim be remanded to the Administrative Law Judges' office for his consideration.

I did submit a Notice of Appeal in January 2001 after my attorney had submitted a request to withdraw my claim. With this new evidence, I feel that I have ample ground to request [sic] this reconsideration of my claim.

Director's Exhibit 26.

The Board construed claimant's October 11, 2001 letter as a motion for modification. Director's Exhibit 27. By Order dated November 27, 2001, the Board dismissed claimant's appeal and remanded the case to the district director for modification proceedings. *Chatman v. Director, OWCP*, BRB No. 01-0384 BLA (Nov. 27, 2001) (Order) (unpublished).

In a Proposed Decision and Order dated April 26, 2002, the district director denied claimant's motion for modification. Director's Exhibit 29. At claimant's request, the case was forwarded to the Office of Administrative Law Judges for a formal hearing. Director's Exhibits 30, 31. Administrative Law Judge Edward Terhune Miller (the administrative law judge) held a hearing on January 30, 2003.⁵

After crediting the miner with at least nineteen years of coal mine employment, the administrative law judge found that the evidence was sufficient to establish the

⁵ Claimant appeared before the administrative law judge without the assistance of counsel. During the hearing, the administrative law judge informed claimant that she was entitled to have counsel and that legal assistance would be helpful. Transcript at 7. Claimant, however, indicated that she was prepared to go forward with the hearing. *Id.* The administrative law judge also informed claimant as to the issues in the case, including the fact that she was required to establish that the miner's death was due to pneumoconiosis. *Id.* at 8-9. Although the administrative law judge did not inquire as to whether claimant wanted to submit additional evidence, there is no indication that claimant desired to do so. Moreover, the administrative law judge's Notice of Hearing advised claimant of her right to submit evidence and the method by which the evidence should be submitted. Finally, claimant was provided an opportunity to provide testimony. *Id.* at 15-28. Consequently, we hold that the hearing before the administrative law judge was properly conducted. See *Shapell v. Director, OWCP*, 7 BLR 1-304 (1984).

existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). The administrative law judge also found that claimant was entitled to a presumption that the miner's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). However, the administrative law judge found that the evidence was insufficient to 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 contends that the administrative law judge erred in denying benefits. The Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's denial of benefits.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they 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).

Because the instant survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁶ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner's death will be considered to be due to

⁶ Section 718.205(c) provides that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or
- (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
- (3) Where the presumption set forth at §718.304 is applicable.
- (4) However, survivors are not eligible for benefits where the miner's death was caused by traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.
- (5) 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).

pneumoconiosis if the evidence is sufficient to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). 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), *cert. denied*, 506 U.S. 1050 (1993).

While Drs. Dawood and Piracha opined that the miner's death was due to pneumoconiosis, Director's Exhibits 9, 15, 26, Drs. Ranavaya and Spagnolo opined that the miner's death was not due to pneumoconiosis. Director's Exhibits 12, 28. The administrative law judge acted within his discretion in discrediting the opinions of Drs. Dawood⁷ and Piracha⁸ because he found that their respective opinions were not

⁷ Dr. Dawood completed the miner's death certificate. Dr. Dawood attributed the miner's death to cardiopulmonary arrest, sepsis, congestive heart failure, cirrhosis of the liver, COPD and black lung. Director's Exhibit 9. Dr. Dawood listed chronic renal failure and "coal workers COPD" as other significant conditions contributing to the miner's death. *Id.*

In a letter dated April 8, 2000, Dr. Dawood listed "black lung" and COPD as contributing factors to the miner's death. Director's Exhibit 15.

In a letter dated September 4, 2001, Dr. Dawood noted that the miner died after being on dialysis. Dr. Dawood further opined that the miner's death was "contributed by the Coal Workers coal [sic] pneumoconiosis and COPD which precipitated to severe pulmonary hypertension and corpulmonale." Director's Exhibit 26.

⁸ In a letter dated August 8, 2000, Dr. Piracha stated:

This patient was under my care for congestive heart failure, chronic renal disease and COPD. His chest x-rays had shown COPD. Patient had worked in the mines for 15 years. It is felt that his "morbid" conditions included COPD, and since he had worked in the mines for 15 years that may be one of the etiologies of his COPD.

Director's Exhibit 15.

In a letter dated August 16, 2001, Dr. Piracha stated:

This patient was treated by me in the past for congestive heart failure, chronic renal disease, and COPD.

sufficiently reasoned. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); Decision and Order at 14. The administrative law judge properly found that neither Dr. Dawood nor Dr. Piracha provided explanations for their conclusions. *Id.* Because the administrative law judge properly discredited the only medical evidence supportive of a finding that the miner's death was due to pneumoconiosis, we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁹ In light of our affirmance of the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718.

Prior to patient's death, COPD was confirmed by chest x-rays. The patient had a 15 year history of working in the coal mines. It is felt that his "morbid" conditions included COPD, and since he worked in the mines for 15 years, that may be one of the etiologies of his COPD. The COPD certainly contributed to and hastened the death of this patient.

Director's Exhibit 26.

The administrative law judge properly questioned Dr. Piracha's finding that the miner's COPD was attributable to his coal mine employment, finding that the doctor's statement was "equivocal at best." *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987); Decision and Order at 8.

⁹ Because there is no evidence of complicated pneumoconiosis, the administrative law judge properly found that claimant is not entitled to the presumption set out at 20 C.F.R. §718.304. Decision and Order at 14.

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