

BRB No. 05-0613 BLA

GEORGIA R. FRIZZELL)	
(Widow of WILLIAM W. FRIZZELL))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
TENNESSEE CONSOLIDATED COAL)	DATE ISSUED: 08/30/2005
COMPANY)	
)	
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 Stephen L. Purcell, Administrative Law Judge, United States Department of Labor.

Georgia R. Frizzell, Whitwell, Tennessee, *pro se*.

Ronald E. Gilbertson (Bell, Boyd & Lloyd PLLC), Washington, D.C., for employer.

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

PER CURIAM:

Claimant,¹ without the assistance of counsel,² appeals the Decision and Order (2002-BLA-05256) of Administrative Law Judge Stephen L. Purcell denying benefits on

¹ Claimant, Georgia R. Frizzell, is the widow of the deceased miner, William W. Frizzell. The miner died on September 12, 2000, and claimant filed her claim for survivor's benefits on April 30, 2001. Director's Exhibits 2, 6.

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). The administrative law judge credited the miner with 35.5 years of qualifying coal mine employment, and, based on the date of filing, adjudicated this survivor's claim pursuant to the provisions at 20 C.F.R. Part 718. The administrative law judge found that the evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4), which precluded entitlement to benefits. Accordingly, benefits were denied.

On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has declined to file a substantive response in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-58 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). If the findings of fact and conclusions of law of the administrative law judge are supported by substantial evidence, are rational, and are consistent with 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).

In order to establish entitlement to survivor's benefits in a claim filed on or after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner suffered from complicated pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 718.304; *see 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). 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 also Griffith v. Director, OWCP*, 49 F.3d

² 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, but Mr. Carson is not representing claimant on appeal. *See Shelton v. Claude V. Keen Trucking Co.*, 19 BLR 1-88 (1995)(Order).

184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).³

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the Decision and Order is supported by substantial evidence, consistent with applicable law, and must be affirmed. The administrative law judge accurately determined that none of the x-ray evidence of record was interpreted as positive for pneumoconiosis, and that the two negative interpretations by Dr. Sargent were entitled to the greatest weight because of the physician's superior qualifications as a Board-certified radiologist and B reader, thus claimant could not establish the existence of pneumoconiosis at Section 718.202(a)(1). Decision and Order at 4-5; Director's Exhibits 7, 9, 10; *see Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993). The administrative law judge properly found that claimant did not establish the existence of pneumoconiosis at Section 718.202(a)(2), as the record contained no biopsy or autopsy evidence demonstrating the presence of pneumoconiosis. Decision and Order at 5. The administrative law judge also correctly found that claimant could not establish the existence of pneumoconiosis at Section 718.202(a)(3), as the presumptions at 20 C.F.R. §§718.304, 718.305 and 718.306 were inapplicable because there was no evidence of complicated pneumoconiosis and this claim was filed after January 1, 1982. Decision and Order at 5; Director's Exhibit 2.

In evaluating the medical opinions of record at Section 718.202(a)(4), the administrative law judge accurately determined that no physician affirmatively diagnosed clinical pneumoconiosis. Decision and Order at 4-6; *see* 20 C.F.R. §718.201(a)(1). Although Dr. Greer opined that the miner's chronic obstructive pulmonary disease (COPD) was "probably" related to coal mine employment, the administrative law judge acted within his discretion in finding that this opinion was equivocal and entitled to little weight. Decision and Order at 6; Director's Exhibit 8; *see Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Justice v. Island Creek Coal Co.*, 11 BLR 1-191 (1988). Further, while there were multiple references to COPD contained in the miner's hospital records and his physicians' treatment notes, the administrative law judge properly concluded that this evidence was insufficient to establish legal pneumoconiosis, as the various physicians either failed to unequivocally attribute the condition to dust

³ This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, as the miner was last employed in the coal mine industry in the State of Tennessee. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

exposure in coal mine employment,⁴ or merely noted a history of COPD, which the administrative law judge found does not constitute a reasoned medical opinion diagnosing the disease. Decision and Order at 6; Director’s Exhibit 7; see 20 C.F.R. §718.201(a)(2); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*).

The administrative law judge’s findings pursuant to Section 718.202(a)(1)-(4) are supported by substantial evidence and are affirmed. Because claimant has failed to establish the existence of pneumoconiosis, an essential element of entitlement, we affirm the administrative law judge’s denial of survivor’s benefits. *Trumbo*, 17 BLR at 1-88.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

⁴ The administrative law judge further noted that in October of 1999, Dr. Gay indicated that the miner’s COPD was “secondary to emphysema versus black lung disease.” Decision and Order at 6; Director’s Exhibit 7 at 58.