

BRB No. 06-0202 BLA

JUANITA M. BROWN)
(Widow of DAVID H. BROWN))
)
 Claimant-Petitioner)
)
 v.) DATE ISSUED: 08/31/2006
)
 EASTERN ASSOCIATED COAL)
 CORPORATION)
)
 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 Thomas M. Burke,
Administrative Law Judge, United States Department of Labor.

Juanita M. Brown, Charlotte, North Carolina, *pro se*.

Mark E. Solomons and Laura Metkoff Klaus (Greenberg Traurig LLP),
Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Benefits (03-BLA-6573) rendered by Administrative Law Judge Thomas M. Burke with respect to a survivor's claim filed pursuant to the provisions of the 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 adjudicated the claim pursuant to 20 C.F.R. Part 718, credited the miner with forty years of coal mine employment, and found that employer is the responsible operator. The administrative law judge accepted employer's concession that the miner suffered from pneumoconiosis, but found that the evidence was

insufficient to establish that that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).¹ Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally contends that the evidence is sufficient to establish that the miner's death was due to pneumoconiosis. In response, employer urges affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not submit a response brief on the merits of 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 by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to survivor's benefits under 20 C.F.R. Part 718 in a claim filed 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 had complicated pneumoconiosis. 20 C.F.R. §§718.1; 718.202; 718.203; 718.205(c); 718.304. *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 the miner's death if it hastened the miner's death. 20 C.F.R. §718.205(c)(2); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 980, 16 BLR 2-90 (4th Cir. 1992).²

¹ The miner filed five claims for benefits that were denied. His last claim was denied on April 1, 1998. Director's Exhibit 5. The miner died on May 2, 2002. Director's Exhibit 12. Claimant, the miner's surviving spouse, filed her claim on July 29, 2002. Director's Exhibit 7. On April 24, 2003, the district director issued a Proposed Decision and Order Award of Benefits. Director's Exhibit 26. Employer requested a hearing. A detailed procedural history is found in the administrative law judge's Decision and Order at 2-3.

² This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner's most recent coal mine employment occurred in West Virginia. Director's Exhibits 1, 2; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

The administrative law judge considered all the relevant evidence under Section 718.205(c), consisting of the miner's treatment records by Dr. Kane at Carolina Medical Associates, the miner's final hospital admission record, the death certificate, autopsy report, letters from treating physicians Drs. Dalto and Gardella, and the opinions of Drs. Naeye, Tuteur, and Zaldivar. Decision and Order at 5-10; Claimant's Exhibits 2, 6; Director's Exhibit 12-14; Employer's Exhibit 1-5. In November 2000, Dr. Kane stated that he treated the minor for COPD, restrictive lung disease, and black lung secondary to coal exposure. Claimant's Exhibit 6. On May 2, 2002, the miner was admitted to the hospital. Dr. Gardella's hospital discharge summary (dated May 4, 2004) listed massive left intracerebral hemorrhage, bilateral pulmonary thromboemboli with right ventricular hypokinesis and dilation on cardiac echo, anticoagulated state post PTA and on heparin, underlying chronic lung disease (by history coal miners' pneumoconiosis) and 2 cm right upper lobe nodule on CT scan. Claimant's Exhibit 2.

The miner died on May 5, 2002. The death certificate prepared by Dr. Dalto listed the immediate cause of death as intracerebral bleed due to heparin therapy and multiple emboli. Director's Exhibit 12. Dr. Cohen's autopsy report summarized that the miner had multiple pulmonary thrombo-emboli, pulmonary edema and hemorrhage, scattered areas of acute broncho-pneumonia, large parenchymal lymph nodes, scattered foci of fibrosis with anthracotic pigment and silica. Director's Exhibit 13. Dr. Cohen noted that because the autopsy was limited to the lungs, he could not automatically confirm the presence of cerebral hemorrhage but his preliminary cause of death was intracerebral hemorrhage due to pulmonary emboli. *Id.* By letter addressed to the miner's widow on June 3, 2002, Dr. Dalto stated that the autopsy report confirmed that the miner had black lung, and that in her opinion the miner died from a "bleed in his brain from blood thinners" used to treat his blood clots. Director's Exhibit 13. In a June 15, 2002 letter also addressed to the miner's widow, Dr. Gardella explained that Dr. Cohen's autopsy final diagnosis meant that at the time of his death the miner had fluid in his lungs formed in response to blood clots and pneumonia, "bleeding into the small air sacs in the lung as a result of the clots," terminal pneumonia, residual clots in his lungs and lung scarring due to his work as a coal miner. Director's Exhibit 13. In a letter addressed to claims examiner Debbie Anderson on December 26, 2002, Dr. Dalto reported that the miner had cor pulmonale due to his "severe lung disease" and that this is a "development of high blood pressure in one's lungs due to the presence of lung disease, such as black lung, emphysema or any one of a number of respiratory illnesses." Director's Exhibit 14. Dr. Dalto opined that as a complication of cor pulmonale, the miner developed pulmonary emboli and died from hemorrhaging complications from the blood thinners used to treat his blood clot. *Id.* Dr. Dalto opined that black lung did not directly cause the miner's blood clots, but it indirectly caused the blood clots by causing cor pulmonale. *Id.*

The administrative law judge correctly found that there is no evidence of complicated pneumoconiosis and that the death certificate, autopsy report, and report by

Dr. Gardella did not list pneumoconiosis as having played any role in the miner's death. Decision and Order at 9. The administrative law judge reasonably found Dr. Dalto's December 26, 2002 letter, the only evidence connecting the miner's death to pneumoconiosis, not persuasive because it was the first time she opined that cor pulmonale indirectly caused the miner's death, and she had made no mention of pneumoconiosis or cor pulmonale on the death certificate or in her June 3, 2002 letter. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); Decision and Order at 9-10. The administrative law judge noted that Dr. Zaldivar specifically opined that claimant's cor pulmonale was not due to pneumoconiosis, that the miner suffered from acute cor pulmonale not chronic cor pulmonale. *Id.* The administrative law judge rationally found that the opinions of Drs. Tuteur, Zaldivar, and Naeye, that pneumoconiosis did not contribute to the miner's death, were well reasoned and documented by the hospital records and autopsy report, and they outweighed Dr. Dalto's December 26, 2002 letter. *Id.* Consequently, we affirm the administrative law judge's determination that the preponderance of the evidence of record does not support a finding that pneumoconiosis caused, contributed to, or hastened the miner's death pursuant to Section 718.205(c), and thus, we must affirm the denial of benefits. *Mays*, 176 F.3d 753, 21 BLR 2-587; *Shuff*, 967 F.2d 977, 980, 16 BLR 2-90; *Neeley*, 11 BLR 1-85.

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

JUDITH S. BOGGS
Administrative Appeals Judge