

BRB No. 09-0167 BLA

J.G.)
(Widow of P.G.))
)
Claimant-Petitioner)
)
v.)
) DATE ISSUED: 08/26/2009
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Respondent) DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Robert D. Kaplan,
Administrative Law Judge, United States Department of Labor.

Carl E. Hostler (Prim Law Firm, PLLC), Hurricane, West Virginia, for
claimant.

Ann Marie Scarpino (Carol A. DeDeo, Deputy Solicitor; Rae Ellen Frank
James, 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:

Claimant¹ appeals the Decision and Order Denying Benefits (07-BLA-5918) of
Administrative Law Judge Robert D. Kaplan (the administrative law judge) rendered on 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). Claimant
filed the instant claim for benefits on July 21, 2006. The administrative law judge

¹ Claimant is the widow of the miner, P.G., who died on March 20, 2006.
Director's Exhibit 10.

credited the miner with twenty years of coal mine employment² and found the existence of pneumoconiosis arising out of coal mine employment established pursuant to the parties' stipulations, and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that claimant did not 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 contends that the administrative law judge erred in his consideration of the medical opinion evidence at 20 C.F.R. §718.205(c). The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to affirm the denial of benefits.³

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and 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).

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that the miner's death was due to pneumoconiosis, the irrebuttable presumption at 20 C.F.R. §718.205(c)(3) is applicable, or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 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). Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

² The law of the United States Court of Appeals for the Fourth Circuit is applicable as the miner was last employed in the coal mining industry in West Virginia. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

³ We affirm, as unchallenged on appeal, the administrative law judge's finding that the miner had pneumoconiosis arising out of coal mine employment under 20 C.F.R. §§718.202(a), 718.203. See *Coen v. Director, OWCP*, 7 BLR 1-30, 1-33 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

Relevant to death causation under 20 C.F.R. §718.205(c), the administrative law judge considered the miner's death certificate and statements from two of the miner's treating physicians, Drs. Jagannath and Crisalli. The death certificate listed "non small cell lung cancer with metastases" as the immediate cause of the miner's death, and "coronary artery disease" as a "significant condition contributing to death." Director's Exhibit 10. Dr. Jagannath issued a one-page letter on August 28, 2006, stating that, "even though the [p]neumoconiosis did not directly kill [the miner], [i]t played a role in his chronic lung condition and may have contributed to his lung cancer." Claimant's Exhibit 7. Dr. Crisalli issued a letter on January 5, 2007, stating that, prior to being diagnosed with cancer in 2005, the miner had a disabling pulmonary disease due to coal workers' pneumoconiosis and smoking. Claimant's Exhibit 5. Dr. Crisalli further stated that the miner's coal workers' pneumoconiosis contributed to his death because "it certainly limited the treatment that we could provide for [the miner]." *Id.* On April 14, 2008, Dr. Crisalli authored a second letter, stating that he began treating the miner in 1991, and that the miner's August 13, 1998 pulmonary function study and January 8, 1992 arterial blood gas study were abnormal. *Id.*

Because the death certificate made "no mention of pneumoconiosis or any other respiratory condition (other than lung cancer)," the administrative law judge determined that it did not support a finding that pneumoconiosis contributed to the miner's death. Decision and Order at 5. Finding Dr. Jagannath's statement, that pneumoconiosis "may have contributed to [the miner's] lung cancer," to be equivocal as to whether pneumoconiosis hastened the miner's death, the administrative law judge determined that Dr. Jagannath's opinion was entitled to no weight. *Id.* Further, because Dr. Crisalli did not state what treatment was limited by the presence of pneumoconiosis, or explain how any such limitation hastened the miner's death, the administrative law judge determined that Dr. Crisalli's opinion did not support a finding that pneumoconiosis hastened the miner's death. *Id.* The administrative law judge therefore concluded that claimant did not establish that the miner's death was due to pneumoconiosis.

Claimant's sole argument on appeal is that the administrative law judge erred in failing to credit Dr. Crisalli's opinion because Dr. Crisalli, as a long-term treating physician, opined that pneumoconiosis hastened the miner's death due to cancer. Claimant's Brief at 3-4. We disagree. Substantial evidence supports the administrative law judge's permissible finding that Dr. Crisalli did not adequately explain how pneumoconiosis limited the miner's treatment options or how any such limitations hastened the miner's death. *See* 20 C.F.R. §718.104(d)(5); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 528, 21 BLR 2-323, 2-326 (4th Cir. 1998); *Lane v. Union Carbide Corp.*, 105 F.2d 166, 174, 21 BLR 2-34, 2-48 (4th Cir. 1997). Contrary to claimant's assertion, therefore, the administrative law judge permissibly concluded that Dr. Crisalli's opinion was not sufficiently explained to support a finding that pneumoconiosis hastened the miner's death. *See U. S. Steel Mining Co. v. Director, OWCP [Jarrell]*, 187

F.3d 384, 389, 21 BLR 2-639, 2-647 (4th Cir. 1999). That determination by the administrative law judge distinguishes this case from the one relied upon by claimant, *Consolidation Coal Co. v. Kramer*, 305 F.3d 203, 22 BLR 2-467 (3d Cir. 2002), wherein the claimant's physicians had explained the basis for their respective conclusions that pneumoconiosis had hastened the miner's death. Consequently, we reject claimant's allegation of error and affirm the administrative law judge's finding that claimant did not establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c).

Because we affirm the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis at Section 718.205(c), an essential element of entitlement in a survivor's claim under 20 C.F.R. Part 718, we affirm the denial of benefits. *Anderson*, 12 BLR at 1-114; *Trent*, 11 BLR at 1-27.

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