

BRB No. 01-0345 BLA

HELEN VANHOOSE)
(Widow of THOMAS VANHOOSE))
)
 Claimant-Petitioner)

v.)

MARTY CORPORATION)

DATE

ISSUED:

and)

LIBERTY MUTUAL INSURANCE GROUP)

Employer/Carrier-)
Respondents)

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 Joseph E. Kane,
Administrative Law Judge, United States Department of Labor.

John C. Collins (Collins, Allen & McFarland), Salyersville, Kentucky, for claimant.

W. Barry Lewis (Lewis & Lewis Law Offices), Hazard, Kentucky, for employer.

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

PER CURIAM:

Claimant, the widow of the miner, appeals the Decision and Order - Denying
Benefits (00-BLA-0438) of Administrative Law Judge Joseph E. Kane 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).¹ The administrative law judge found five and three-fourths years of coal mine employment established and determined that the evidence of record established the existence of pneumoconiosis, but failed to establish that the pneumoconiosis arose out of coal mine employment, and caused, contributed to, or hastened the miner=s death. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in not finding that the miner=s pneumoconiosis arose out of his coal mine employment. Claimant further contends that her testimony establishes that the miner was totally disabled prior to his death. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers= Compensation Programs, is not participating in this appeal.

The Board=s scope of review is defined by statute. If the administrative law judge=s findings of fact and conclusions of law 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 into the Act 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, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment,

¹ 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 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief and stayed, inter alia, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determines that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Association v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). The Board subsequently issued an order requesting supplemental briefing in the instant case. On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Association v. Chao*, Civ. No. 00-3086 (D.D.C. Aug. 9, 2001). The court=s decision renders moot those arguments made by the parties regarding the impact of the challenged regulations.

and that the miner=s death was due to pneumoconiosis. 20 C.F.R. ' '718.3, 718.202, 718.203, 718.205(a); see *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). For survivor=s claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner=s death, pneumoconiosis was a substantially contributing cause or factor leading to the miner=s death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. ' 718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of the miner=s death if it hastens the miner=s death. 20 C.F.R. ' 718.205(c)(5); see *Griffith v. Director, OWCP*, 49 F.3d 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); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

After consideration of the administrative law judge=s Decision and Order, the arguments raised on appeal, and the evidence of record, we conclude that the administrative law judge=s Decision and Order must be affirmed as claimant has not challenged the administrative law judge=s finding that claimant failed to establish that the miner=s death was not due to pneumoconiosis, an essential element of entitlement in a survivor=s claim. 20 C.F.R. ' 718.205(c); see *Cox v. Benefits Review Board*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987); *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983); *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Because claimant has failed to challenge the administrative law judge=s finding that death was not due to pneumoconiosis, we need not consider her arguments concerning cause of pneumoconiosis and disability.

Accordingly, the administrative law judge's Decision and Order - Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge