

BRB No. 02-0517 BLA

LONIE ZELL STACY)
(Widow of JOHNNIE E. STACY))
)
Claimant-Petitioner)
)
v.)
)
KNOX CREEK COAL CORPORATION) DATE ISSUED:
)
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 Edward Terhune Miller, Administrative Law Judge, United States Department of Labor.

Lonie Zell Stacy, Wolford, Virginia, *pro se*.

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

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

PER CURIAM:

Claimant appeals, without the assistance of counsel, the Decision and Order Denying Benefits (01-BLA-0616) of Administrative Law Judge Edward Terhune Miller rendered 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).¹ Considering all the evidence of

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 20 C.F.R. Parts 718, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

record, the administrative law judge found that claimant established the existence of coal workers' pneumoconiosis pursuant to 20 C.F.R. §§718.202(a)(2), 718.203(b), but failed to establish that the miner's death was caused by, contributed to, or in any way hastened by pneumoconiosis and that claimant had failed therefore to establish that a mistake in a determination of fact had been made in the prior denial of her survivor's claim.² Accordingly, benefits were again denied.

On appeal, claimant generally challenges the findings of the administrative law judge. Employer responds, urging affirmance of the Decision and Order of the administrative law judge as supported by substantial evidence. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not participate in 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. *Hodges v. BethEnergy Mines, Inc.*, 18 BLR 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). 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).

To establish entitlement to survivor's benefits, claimant must establish that the miner had pneumoconiosis, that the miner's pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988);

² The miner filed a claim on October 3, 1991, which was denied for failure to establish a totally disabling respiratory impairment and not subsequently pursued. The miner died on May 19, 1999. Claimant filed her survivor's claim on July 28, 1999. Director's Exhibit 1. The claim was denied by the district director on October 12, 1999 for failure to establish that the miner's death was due to pneumoconiosis. Director's Exhibit 12. Thereafter, claimant requested modification of the denial on July 22, 2000. Director's Exhibit 14. The denial of that request for modification is the subject of this appeal.

Boyd v. Director, OWCP, 11 BLR 1-39 (1988). For a survivor's claim filed on or after January 1, 1982, death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, if pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, if death was caused by complications of pneumoconiosis, or if the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. See 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 *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993). In determining whether claimant's petition for modification should be granted, the administrative law judge must determine whether the claim had been erroneously denied. See *Jessee v. Director, OWCP*, 5 F.3d 723, 18 BLR 2-26 (4th Cir. 1993); see also *O'Keefe v. Aerojet-General Shipyards, Inc.*, 404 U.S. 254 (1971).

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 is supported by substantial evidence and contains no reversible error. The administrative law judge rationally found that the miner's death certificate, which was prepared by Dr. Modi, and which listed coal workers' pneumoconiosis among the causes of death, was insufficient to establish death due to pneumoconiosis because it was not a reasoned medical opinion inasmuch as it was not accompanied by any explanation for the inclusion of pneumoconiosis as a cause of death and Dr. Modi did not testify regarding the death certificate. Decision and Order at 7; Director's Exhibit 6; see *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251, 2-263 (4th Cir. 2000); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *Oggero v. Director, OWCP*, 7 BLR 1-860 (1985).³ The administrative law judge also properly found that Dr. Segen's autopsy report diagnosing the presence of moderate to moderately severe coal workers' pneumoconiosis could not establish death due to pneumoconiosis as Dr. Segen's statement that the miner's slowly progressive deterioration may have been caused either by his lung and larynx cancer or coal workers' pneumoconiosis, was, among other things, vague, equivocal, and unreasoned and thus insufficient to meet claimant's burden of

³ The miner died on May 19, 1999. Listed as causes of death on the death certificate were: acute cardiorespiratory arrest, coal workers' pneumoconiosis, bilateral bronchopneumonia, terminal carcinoma of the lung, and carcinoma of the larynx. Director's Exhibit 6.

proof. Decision and Order at 7, 8; Director's Exhibits 7, 9; *see Sparks* at 192, 2-263; *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988).

Instead, the administrative law judge properly accorded controlling weight to Dr. Naeye's opinion, that the miner's death was due to metastatic lung cancer, not pneumoconiosis, because it was well-reasoned and most in accord with the objective medical evidence. Decision and Order at 8; Director's Exhibit 11. *See Clark, supra; Lucostic, supra; Oggero, supra.* In addition, the administrative law judge correctly found that Dr. Naeye's opinion was supported by the opinions of Drs. Tomashefski and Castle that the miner's death was due to metastatic lung cancer and related complications. Decision and Order at 8; Employer's Exhibits 3, 5. We, therefore, affirm the administrative law judge's finding that the miner's death was not due to pneumoconiosis, an essential element of entitlement in a survivor's claim. *Neeley, supra.* Moreover, as claimant failed to establish death due to pneumoconiosis, the administrative law judge properly found that claimant was not entitled to modification of the prior denial as claimant failed to establish that a mistake in a determination of fact had been made in the prior denial of the survivor's claim. *See Jessee, supra; Shuff, supra; Wojtowicz, supra.*

Accordingly, the Decision and Order Denying Benefits of the administrative law judge is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge