

BRB Nos. 06-0479 BLA
and 06-0479 BLA-A

ALICE LESTER)	
(Widow of JAMES R. LESTER))	
)	
Claimant-Petitioner)	
Cross-Respondent)	
)	
v.)	
)	DATE ISSUED: 12/19/2006
HAMDEN COAL COMPANY)	
)	
Employer-Respondent)	
Cross-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order of Richard A. Morgan, United States Department of Labor.

Joseph E. Wolfe (Wolfe, Williams & Rutherford), Norton, Virginia, for claimant.

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

Helen H. Cox (Howard M. Radzely, Solicitor of Labor; Rae Ellen Frank James, Deputy 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 McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals and employer cross-appeals the Decision and Order (04-BLA-6487) of Administrative Law Judge Richard A. Morgan denying benefits 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). This case involves a survivor's claim filed on June 9, 2003. After crediting the miner with twenty-two years and one month of coal mine employment, the administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found that the evidence was insufficient to 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 argues that the administrative law judge erred in finding the autopsy evidence insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). Claimant also contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Employer responds in support of the administrative law judge's denial of benefits. Employer has also filed a cross-appeal, contending that the administrative law judge erred in excluding Dr. Rosenberg's medical report. In response to employer's cross-appeal, the Director, Office of Workers' Compensation Programs, argues that the administrative law judge permissibly excluded Dr. Rosenberg's medical report.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

Because the instant survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).² See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director*,

¹Claimant is the surviving spouse of the deceased miner who died on May 17, 2003. Director's Exhibit 9.

²Section 718.205(c) provides that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

(1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or

OWCP, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if the evidence is sufficient to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). 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 Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993).

After consideration of the administrative law judge's Decision and Order, the arguments on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Claimant contends that the miner's autopsy report is sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). We disagree. The administrative law judge properly found that there is no evidence in the record supportive of a finding that the miner's death was due to pneumoconiosis. The miner's autopsy report is insufficient to support a finding that the miner's death was due to pneumoconiosis.³ The miner's death certificate also does not support a finding of death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁴ Moreover, none of the

(2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or

(3) Where the presumption set forth at §718.304 is applicable.

(4) However, survivors are not eligible for benefits where the miner's death was caused by traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.

(5) 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).

³Dr. Hansen performed the miner's autopsy. In his autopsy report, Dr. Hansen diagnosed, *inter alia*, (1) marked cardiomegaly; (2) severe atherosclerosis; and (3) lungs with emphysematous changes, vascular congestion and small anthracotic pigment macules (no coal dust nodules or fibrosis seen). Director's Exhibit 10. Although Dr. Hansen noted that the miner did not survive coronary artery bypass graft surgery, he did not otherwise address the cause of the miner's death. *Id.*

⁴Dr. Requarth completed the miner's death certificate. Dr. Requarth attributed the miner's death to cardiopulmonary arrest due to status post aortic valve

medical reports of record indicates that pneumoconiosis caused or hastened the miner's death in any way. *Id.* The administrative law judge correctly stated that Drs. Naeye, Bush, Zaldivar and Castle did not attribute the miner's death to pneumoconiosis.⁵ Decision and Order at 6; Director's Exhibit 11; Employer's Exhibits 1-3, 5, 6. Consequently, we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁶

In light of our affirmance of the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. Consequently, we need not address claimant's contentions regarding the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(2) or employer's contentions raised in its cross-appeal. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

replacement/coronary bypass surgery, critical aortic stenosis and coronary artery disease status post myocardial infarction. Director's Exhibit 9. Dr. Requarth also listed a calcified ascending aorta as an "other significant condition" that contributed to the miner's death. *Id.*

⁵Dr. Naeye opined that the miner's death was the direct consequence of several acute myocardial infarcts that developed during the last week of his life. Director's Exhibit 11. Dr. Bush opined that the coal workers' pneumoconiosis did not contribute to the miner's death. Employer's Exhibits 1, 6. Dr. Zaldivar opined that the miner "died as the result of cardiac disease, which was an acute myocardial infarction, unrelated to the lungs." Employer's Exhibit 2. Dr. Castle opined that the miner's death was not caused by, contributed to, or hastened in any way, by coal mine dust exposure or coal workers' pneumoconiosis. Employer's Exhibits 3, 5.

⁶Because there is no evidence of complicated pneumoconiosis in the record, the administrative law judge properly found that claimant is precluded from establishing entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304. *See* 20 C.F.R. §718.205(c)(3); Decision and Order at 8.

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

REGINA C. McGRANERY
Administrative Appeals Judge