

BRB Nos. 06-0605 BLA
and
06-0605 BLA-A

CATHERINE L. MEHALIK)
(Widow of STEVE C. MEHALIK))
)
Claimant-Petitioner)
)
v.)
)
NATIONAL MINES CORPORATION)
)
and)
)
OLD REPUBLIC INSURANCE COMPANY) DATE ISSUED: 12/20/2006
)
Employer/Carrier-)
Respondents)
)
and)
)
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 Michael P. Lesniak, Administrative Law Judge, United States Department of Labor.

Daniel L. Chunko, Washington, Pennsylvania, for claimant.

George H. Thompson, Pittsburgh, Pennsylvania, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order Denying Benefits (2004-BLA-5401) of Administrative Law Judge Michael P. Lesniak rendered in her 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 adjudicated the claim pursuant 20 C.F.R. Part 718 and credited the miner with twenty eight-years of coal mine employment. The administrative law judge found that the evidence established the existence of pneumoconiosis arising from such employment pursuant to 20 C.F.R. §218.202(a).² Decision and Order at 3, 5; Director's Exhibits 7, 8. However, the administrative law judge found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to any of the provisions of 20 C.F.R. §718.205(c). Decision and Order at 6. Accordingly, the administrative law judge denied benefits.

On appeal, claimant alleges that the administrative law judge erred in finding that the miner's death was not due to pneumoconiosis.³ Employer responds, urging affirmance of the administrative law judge's denial of benefits on the basis that there is no evidence that pneumoconiosis contributed to the miner's death. Employer has also filed a cross-appeal challenging the administrative law judge's finding regarding the presence of pneumoconiosis. The Director, Office of Workers' Compensation Programs (the Director), has declined to file a substantive response to either appeal.

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

¹ The deceased miner died on January 22, 2002. Claimant's application for survivor's benefits filed on November 12, 2002, was denied by the district director on August 29, 2003. Claimant requested a hearing, which was held November 3, 2005. Director's Exhibits 24, 25; Decision and Order at 2.

² The record indicates that the miner's coal mine employment occurred in Pennsylvania. Director's Exhibit 2. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Third Circuit. *Shupe v. Director, OWCP*, 12 BLR 1-200(1989)(*en banc*).

³ Claimant also asserts that the administrative law judge erred in finding that she "failed in establishing the presence of coal workers' pneumoconiosis." Claimant's Brief at 2. Contrary to claimant's assertion, the administrative law judge found the evidence sufficient to establish the presence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Decision and Order at 5.

and is in accordance with law. 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 pursuant to 20 C.F.R. §718.205(c), 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. §718.205(a)(1)-(3); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). For survivor’s claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was a substantially contributing cause or factor leading to the miner’s death. 20 C.F.R. §718.205(c)(2),(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); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 1006 (3d Cir. 1989). 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).

The administrative law judge found that although the record establishes that the miner had pneumoconiosis arising from his coal mine employment, the evidence does not establish that the pneumoconiosis caused or contributed to his death pursuant to 20 C.F.R. §718.205(c). Claimant contends that the administrative law judge erred in finding that claimant failed to meet her burden of establishing that pneumoconiosis caused or contributed to the miner’s death. In reviewing the record below, we find that claimant’s contention lacks merit.

The administrative law judge found that Dr. Murello provided medical treatment to the miner for twelve years. Decision and Order at 6. The record reflects that the death certificate, signed by Dr. Murello, lists the miner’s immediate cause of death on January 22, 2002, as “a malignancy in the miner’s chest (type unclear),” and pulmonary fibrosis. Director’s Exhibit 10. The administrative law judge determined from the miner’s medical records that Dr. Murello attributed the pulmonary fibrosis to the miner’s coal mine employment. Decision and Order at 6. However, the administrative law judge also stated that the record contains no autopsy reports, and explained that the only evidence submitted discussing the cause of the miner’s death was the death certificate. *Id.*

After considering the evidence, the administrative law judge relied on *Lango v. Director, OWCP*, 104 F.3d 573 (3d Cir. 1997), 21 BLR 2-12, to conclude that claimant failed to meet her burden in establishing that pneumoconiosis caused or contributed to the miner’s death.⁴ *Id.* Because the only evidence offered regarding the cause of the miner’s

⁴ As noted by the administrative law judge, in *Lango*, as in this case, the treating physician identified authored the cause of death on the death certificate. *Lango*, 104 F.

death was the death certificate signed by Dr. Murello, and because the doctor issued no report following the miner's death discussing the circumstances of the death or his rationale for listing pulmonary fibrosis as a cause of death on the death certificate, the administrative law judge properly determined that there was no competent medical evidence sufficient to establish that the miner's death was due to pneumoconiosis under 20 C.F.R. §718.205(c)(1). Decision and Order at 6. Likewise, the administrative law judge found that the evidence was not sufficient to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death and that the record did not contain evidence of the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(2)-(3). *Id.*

We therefore hold that the administrative law judge's decision was rational and in accordance with applicable law. Substantial evidence supports the administrative law judge's findings, and claimant presents no basis to disturb the administrative law judge's decision. *See Mays v. Piney Mountain Coal Co.*, 21 BLR 1-59, 1-64 (1997)(Dolder, J., concurring and dissenting). Consequently, we affirm the administrative law judge's finding that claimant "failed to meet her burden of establishing death due to pneumoconiosis" pursuant to 20 C.F.R. §718.205(c). Decision and Order at 6. In view of our disposition of this case, we need not address employer's cross-appeal regarding the administrative law judge's finding that the miner suffered from pneumoconiosis.

3d at 578; Decision and Order at 6. The administrative law judge quoted the court's statement that "the mere fact that a death certificate refers to pneumoconiosis cannot be viewed as a reasoned medical finding, particularly if no autopsy has been performed." *citing Lango*, 104 F.3d at 578 *citing Risher v. Office of Workers Compensation Program*, 940 F.2d 327, 331 (8th Cir. 1991); Decision and Order at 6.

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