

BRB No. 07-0742 BLA

J.P.)
(Widow of C.P.))
)
Claimant-Petitioner)
)
v.) DATE ISSUED: 02/29/2008
)
PEABODY COAL COMPANY)
)
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 of Paul H. Teitler, Administrative Law Judge, United States Department of Labor.

John Cline, Piney View, West Virginia, for claimant.

Laura Metcoff Klaus (Greenberg Traurig, LLP), Washington, D.C., for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order (06-BLA-5328) of Administrative Law Judge Paul H. Teitler 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 February 15, 2005. After crediting the miner with eighteen years of coal mine employment,¹ the administrative law

¹ The record indicates that the miner's last coal mine employment occurred in West Virginia. Director's Exhibits 4, 5. Accordingly, the Board will apply the law of the

judge found that the autopsy and medical opinion evidence established the existence of clinical coal workers' pneumoconiosis pursuant to 20 C.F.R. §718.202(a).² The administrative law judge further found that claimant was entitled to the presumption that the miner's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). However, the administrative law judge found that the evidence 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 finding that the evidence did not 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. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

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'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Claimant contends that the administrative law judge erred in finding that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Because this 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).³ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v.*

United States Court of Appeals for the Fourth Circuit. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

² The administrative law judge found that the medical evidence did not establish the existence of legal pneumoconiosis. Decision and Order at 7; see 20 C.F.R. §718.201(a)(2).

³ Section 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
- (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.

Director, OWCP, 11 BLR 1-85 (1988). Where pneumoconiosis is not the cause of the miner's death, a miner's death will be considered to be 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). 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); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992).

The record before the administrative law judge reflected that the miner died at home on November 11, 2004, while under hospice care. Director's Exhibit 9; Claimant's Exhibit 6. In his consideration of whether the evidence established that the miner's death was due to pneumoconiosis, the administrative law judge credited the opinions of Drs. Caffrey and Zaldivar, that the miner's death was not due to or hastened by pneumoconiosis, over Dr. Porterfield's contrary opinion. Decision and Order at 8-9. The administrative law judge, therefore, found that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *Id.*

Claimant argues that the administrative law judge erred in failing to find that Dr. Porterfield's opinion established that the miner's death was due to pneumoconiosis. Dr. Porterfield, the miner's treating physician, completed the miner's death certificate. Dr. Porterfield listed emphysema due to coal workers' pneumoconiosis as the immediate cause of the miner's death. Director's Exhibit 9. Dr. Porterfield listed chronic pain syndrome as an "[o]ther significant condition[] contribut[ing] to death but not resulting in the underlying cause" *Id.*

Dr. Porterfield also completed an August 27, 2006 report, wherein he stated that pneumoconiosis likely played a role in the miner's death:

This letter is to verify that [the miner] did carry a diagnosis of Coal Worker's pneumoconiosis as confirmed by the autopsy report. I first saw [the miner] on June 21, 1993 and assisted in his care until his death. The

(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).

[miner] did have [an] asthmatic component to his condition, required bronchodilators and treatment for exacerbations of COPD and asthma from time to time. As his lung disease was a significant part of his overall list of medical problems and caused air trapping on his pulmonary function tests in the past, I would think it would be reasonable to conclude that pneumoconiosis likely contributed to his demise.

Claimant's Exhibit 7.

Claimant argues that the administrative law judge erred in not according greater weight to Dr. Porterfield's opinion based upon his status as the miner's treating physician. We disagree. Section 718.104(d) provides that the weight given to the opinion of a treating physician shall "be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. §718.104(d)(5); *see Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 535, 21 BLR 2-323, 2-340 (4th Cir. 1998). In this case, the administrative law judge found that Dr. Porterfield did not offer any explanation for his opinion that the miner's pneumoconiosis contributed to his death.⁴ Decision and Order at 8. Substantial evidence supports this finding. The administrative law judge, therefore, permissibly determined that Dr. Porterfield's opinion was not sufficiently reasoned. *Id.*; *see Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 192, 22 BLR 2-251, 2-263 (4th Cir. 2000); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985).

Claimant accurately notes that the administrative law judge misconstrued the length of time that Dr. Porterfield treated the miner.⁵ However, because the administrative law judge permissibly found that Dr. Porterfield's opinion regarding the cause of the miner's death was not sufficiently reasoned, the administrative law judge's error is harmless. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). That Dr. Porterfield treated the miner for a greater length of time than was acknowledged by the

⁴ The record reflects that Dr. Porterfield provided no explanation for his findings on the miner's death certificate. Director's Exhibit 9. The record also reflects that Dr. Porterfield did not explain why air trapping on the miner's pulmonary function studies made it "reasonable to conclude that pneumoconiosis likely contributed to [the miner's] demise." Claimant's Exhibit 7.

⁵ Although the administrative law judge stated that Dr. Porterfield first saw the miner on June 21, 2003, Dr. Porterfield indicated that he first saw the miner on June 21, 1993. Decision and Order at 6-8; Claimant's Exhibit 7.

administrative law judge does not alter the fact that the administrative law judge found Dr. Porterfield's opinion to be inadequately reasoned.⁶ See 20 C.F.R. §718.104(d)(5).

We also reject claimant's contention that the administrative law judge ignored that Dr. Dy's autopsy report supports a finding that the miner's death was due to pneumoconiosis. As the administrative law judge accurately noted, Dr. Dy, the autopsy prosector, did not address the cause of the miner's death in the autopsy report. Decision and Order at 8; Director's Exhibit 10.

The remaining physicians of record, Drs. Caffrey and Zaldivar, opined that the miner's death due to pneumonia and a sudden cardiac event was unrelated to his pneumoconiosis. Employer's Exhibits 5, 8. The administrative law judge permissibly found that the opinions of Drs. Caffrey and Zaldivar were supported by specific findings in the miner's medical records, and "outweigh[ed] the conclusory statement" of Dr. Porterfield.⁷ Decision and Order at 9; see *Hicks*, 138 F.3d at 533, 21 BLR at 2-335;

⁶ Moreover, while Dr. Porterfield indicated that he first saw the miner in 1993, Dr. Porterfield's earliest report in the record is a discharge summary detailing the miner's hospitalization from January 14, 2003 to January 19, 2003. Claimant's Exhibit 2. The administrative law judge also accurately noted that there is no indication in the record that Dr. Porterfield treated the miner during his time in hospice care from June of 2004 until his death on November 16, 2004. Transcript at 10; Claimant's Exhibit 6.

⁷ Dr. Caffrey opined that:

[The miner's] death was due to acute bronchopneumonia with abscess formation, and I believe that in all likelihood the bronchopneumonia with abscess formation was subsequent to probable aspiration in an individual who had previously had a CVA.

Employer's Exhibit 5 at 6.

Dr. Zaldivar opined that:

[The miner] had chronic aspiration into the lungs of saliva and food. This chronic aspiration resulted in the necrotizing pneumonia described by Dr. Caffrey. His death since it was sudden and at home, is best ascribed to an acute coronary event causing an arrhythmia and cardiac standstill unrelated to his lungs. From the pulmonary standpoint, there is no evidence that any impairment existed at any time. Therefore, the mild pneumoconiosis found histologically did not result in any legal pneumoconiosis since no pulmonary impairment existed. Medically there was no dust disease of the

Sterling Smokeless Coal Co. v. Akers, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997). The administrative law judge also noted that Drs. Caffrey and Zaldivar were both highly qualified physicians.⁸ Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the evidence did not establish that the miner's death was due to pneumoconiosis, or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, pursuant to 20 C.F.R. §718.205(c).

lungs, by which statement I mean that the lungs were not malfunctioning as a result of the very mild dust deposition found by histological examination.

Employer's Exhibit 8 at 7.

⁸ The record reflects that Dr. Caffrey is Board-certified in Anatomical and Clinical Pathology, and Dr. Zaldivar is Board-certified in Internal Medicine and Pulmonary Disease. Employer's Exhibits 5, 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

BETTY JEAN HALL
Administrative Appeals Judge