BRB No. 03-0298 BLA

ROSALIE DOLORES OWENS (Widow of ANDREW C. OWENS) Claimant-Petitioner v. SOUTH HOLLOW COAL COMPANY and ROCKWOOD INSURANCE COMPANY Employer/Carrier J & J COAL COMPANY and OLD REPUBLIC INSURANCE COMPANY BIG BLUE COAL COMPANY and OLD REPUBLIC INSURANCE COMPANY Employers/Carrier- Respondents DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: 01/29/2004 DECISION and ORDER

Appeal of the Decision and Order – Denial of Benefits of Richard T. Stansell-Gamm, Administrative Law Judge, United States Department of Labor.

Rosalie D. Owens, Dante, Virginia, *pro se*.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for J&J Coal Company, Big Blue Coal Company and Old Republic Insurance Company.

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

PER CURIAM:

Claimant,[1] without the assistance of counsel, appeals the Decision and Order – Denial of Benefits (2002-BLA-0111, 2002-BLA-0112) of Administrative Law Judge Richard T. Stansell-Gamm on a miner's claim and 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).[2] The administrative law judge found that the instant case involved the consolidation of the miner's duplicate claim,[3] filed May 4, 1999,

[1] Claimant is the widow of the miner, Andrew C. Owens, who died on September 17, 2000. Director's Exhibit 58. Claimant filed her application for survivor's benefits on January 1, 2001. Director's Exhibit 66.

[2] 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, 722, 725, and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

[3] The miner filed his initial application for benefits with the Social Security Administration on June 11, 1973. Director's Exhibit 46-1. On April 6, 1978, the miner filed an Election Card seeking Department of Labor review. Director's Exhibit 46-25. By decision dated May 31, 1981, the district director denied benefits, finding that the miner failed to establish the existence of pneumoconiosis or a totally disabling respiratory or pulmonary impairment. Director's Exhibit 46-29. No further action was taken by the miner on this claim. A second application for benefits was filed on April 18, 1997, which was denied by the district director because the miner failed to establish any element of entitlement under 20 C.F.R. Part 718. Director's Exhibits 47-1, 47-21. No further action

and the survivor's claim filed January 1, 2001. Initially, the administrative law judge noted that the miner worked for at least thirty years as an underground coal miner and adjudicated both claims pursuant to 20 C.F.R. Part 718. Addressing the merits of entitlement, the administrative law judge first considered the survivor's claim and found the medical evidence of record sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(c) and *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 22 BLR 2-162 (4th Cir. 2000). However, the administrative law judge found the medical evidence insufficient to establish that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to 20 C.F.R. §718.205(c).

With regard to the miner's claim, the administrative law judge found, based on his determination in the survivor's claim that the medical evidence was sufficient to establish the existence of pneumoconiosis, that claimant has established a material change in conditions in the miner's claim pursuant to 20 C.F.R. §725.309 (2000),[4] as well as establishing the existence of pneumoconiosis arising out of coal mine employment. The administrative law judge further found that the medical evidence was sufficient to establish a totally disabling respiratory or pulmonary impairment pursuant to 20 C.F.R. §718.204(b). However, he found the medical evidence insufficient to establish that the miner's total respiratory disability was due to pneumoconiosis pursuant to 20 C.F.R. §718.204(c). Accordingly, the administrative law judge denied benefits in both the miner's claim and the survivor's claim.

In response, employer urges affirmance of the administrative law judge's denial of benefits in both the miner's claim and the survivor's claim as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not file a response brief in this appeal.[5]

---

as taken on this claim. The miner filed a third application for benefits on May 4, 1999, Director's Exhibit 1, the denial of which is currently on appeal to the Board.

[4] The amendments to the regulations at 20 C.F.R. §725.309 (2000) do not apply to claims, such as the instant miner's claim, which were pending on January 19, 2001. 20 C.F.R. §725.2.

[5] The parties do not challenge the administrative law judge's decision to credit the miner with thirty years of coal mine employment or his finding that claimant established total respiratory disability. Inasmuch as these findings are not adverse to claimant, they are affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In an appeal filed by a claimant without the assistance of counsel, the Board will consider the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge 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 by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

After consideration of the administrative law judge's Decision and Order 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. With regard to the survivor's claim, a review of the record indicates that the administrative law judge properly found that the medical evidence was insufficient to establish that the miner's death was due to pneumoconiosis or that the miner's death was due to complications of pneumoconiosis as neither the death certificate nor any of the physicians of record provided credible opinions that the miner's death was due to pneumoconiosis.[6] Decision and Order at 26-27; 20 C.F.R. §§718.205(c)(1), (2); Director's Exhibits 58, 62, 63, 68-70, 72; Employer's Exhibits 1, 3. In particular, the administrative law judge found that while the death certificate signed by Dr. Sarrouj, the miner's treating physician, indicated that the miner died due to respiratory failure, it did not include a diagnosis of pneumoconiosis nor does the record indicate that Dr. Sarrouj considered the miner's respiratory impairment to be related to his coal dust exposure. Decision and Order at 26; Director's Exhibits 58, 68. In addition, the administrative law judge found that Dr. Joyce, the autopsy prosector, while finding that pneumoconiosis was present on autopsy, did not

[6] 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. §§718.201, 718.202, 718.203, 718.205(a)(1)-(3); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). 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, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). Evidence that pneumoconiosis hastened the miner's death is sufficient to establish that the miner's death was due to pneumoconiosis. 20 C.F.R. §718.205(c)(5); *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).

render an opinion regarding the cause of the miner's death. Decision and Order at 26; Director's Exhibits 58, 68.

In considering the remainder of the medical opinions, the administrative law judge found that none of the physicians of record, including those physicians who acknowledged the existence of pneumoconiosis, opined that pneumoconiosis was the cause of the miner's death or that complications of pneumoconiosis caused or hastened the miner's death. Decision and Order at 26; Director's Exhibits 58, 62, 63, 68-70, 72; Employer's Exhibits 1, 3. Consequently, the administrative law judge reasonably found that the medical evidence of record was insufficient to establish either that the miner's death was due to pneumoconiosis or that the miner's death was caused by complications of pneumoconiosis. Decision and Order at 26-27; 20 C.F.R. §§718.205(c)(1), (2), (5); *see Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993); *see also Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998). Likewise, the administrative law judge properly found that the miner's death was not due to complicated pneumoconiosis inasmuch as none of the physicians of record diagnosed complicated pneumoconiosis pursuant to 20 C.F.R. §718.304. Decision and Order at 26; 20 C.F.R. §718.304; *see Eastern Associated Coal Corp. v. Director, OWCP* [*Scarbro*], 220 F.3d 250, 22 BLR 2-93 (4th Cir. 2000); *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240 (4th Cir. 1999); *see also Melnick v. Consolidation Coal Co.*, 16 BLR 1-31 (1991)(*en banc*). Inasmuch as the administrative law judge has considered all of the relevant evidence, we affirm his finding that claimant has failed to carry her burden to establish that the miner's death was due to pneumoconiosis.

With regard to the miner's claim, the administrative law judge found that claimant failed to establish entitlement to benefits inasmuch as the medical evidence of record was insufficient to establish that the miner's total respiratory disability was due to pneumoconiosis pursuant to Section 718.204(c). Decision and Order at 29-31. In particular, the administrative law judge found that the medical opinion of Dr. Paranthaman, the only evidence that could be interpreted as supportive of claimant's burden, was insufficient to establish that pneumoconiosis was a substantially contributing factor in the miner's total respiratory disability as it was not well documented.[7] Decision

[7] Dr. Paranthaman diagnosed simple coal workers' pneumoconiosis and pulmonary emphysema that he stated was due to the miner's combined smoking history and coal dust exposure. Director's Exhibit 10. Dr. Paranthaman opined that the miner was totally disabled due to a respiratory problem and the administrative law judge concluded that the physician "essentially rendered an opinion that Mr. Owens was totally disabled due to pneumoconiosis." Decision and Order at 29; Director's Exhibit 10.

and Order at 30; Director's Exhibit 10. Within a reasonable exercise of his discretion as trier-of-fact, the administrative law judge found that Dr. Paranthaman's opinion was entitled to little weight as it was not consistent with the other medical evidence of record. Decision and Order at 30; 20 C.F.R. §718.204(c); *see Hicks*, 138 F.3d 524, 21 BLR 2-323; *Akers*, 131 F.3d 438, 21 BLR 2-269; *Pastva v. The Youghiogheny & Ohio Coal Co*., 7 BLR 1-829 (1985); *see also Hobbs v. Clinchfield Coal Co.* [*Hobbs II*], 45 F.3d 819, 19 BLR 2-86 (4th Cir. 1995); *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990). Inasmuch as the administrative law judge has considered all of the relevant medical evidence and reasonably found the lone opinion supportive of claimant's burden insufficient to establish disability causation pursuant to Section 718.204(c), we affirm his finding that claimant failed to establish entitlement to benefits in the miner's claim.[8] *See Hobbs II*, 45 F.3d 819, 19 BLR 2-86; *Robinson*, 914 F.2d 35, 14 BLR 2-68.

[8] In light of the affirmance of the administrative law judge's findings that the medical evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) and that the evidence was insufficient to establish that pneumoconiosis was a substantially contributing cause of the miner's total respiratory disability pursuant to Section 718.204(c), we need not address employer's allegations of error in the administrative law judge's findings pursuant to Section 718.202(a). *See generally Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed.

SO ORDERED.

_____
NANCY S. DOLDER, Chief
Administrative Appeals Judge

_____
ROY P. SMITH
Administrative Appeals Judge

_____
REGINA C. McGRANERY
Administrative Appeals Judge