

BRB No. 04-0468 BLA

RUTH M. JORDAN	)	
(Widow of JAMES H. JORDAN)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	DATE ISSUED: 01/31/2005
	)	
WP COAL COMPANY/OMAR DIVISION	)	
	)	
and	)	
	)	
WEST VIRGINIA COAL-WORKERS'	)	
PNEUMOCONIOSIS FUND	)	
	)	
Employer/Carrier-	)	
Respondents	)	
	)	
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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Roger D. Forman (Forman & Huber, L.C.), Charleston, West Virginia, for claimant.

Robert Weinberger (West Virginia Coal-Workers' Pneumoconiosis Fund), Charleston, West Virginia, for employer/carrier.

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

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order Denying Benefits (03-BLA-5778) of Administrative Law Judge Richard A. Morgan rendered on 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).<sup>1</sup> The parties stipulated to, and the administrative law judge found, at least forty-two years of coal mine employment. Based on the date of filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718. The administrative law judge found the evidence sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a), 718.203(b), but insufficient to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in discrediting Dr. Cohen's opinion that the miner's death was hastened by his significant underlying lung disease, including coal workers' pneumoconiosis that arose from his coal mine employment.<sup>2</sup> *See* Claimant's Exhibit 1. Employer/carrier responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law 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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits, claimant must prove that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine

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<sup>1</sup> Claimant filed the instant survivor's claim on September 28, 2001. Director's Exhibit 5. On January 3, 2002 the district director issued a Proposed Decision and Order – Denial of Benefits, finding that the miner had pneumoconiosis but that pneumoconiosis did not cause the miner's death. Director's Exhibit 22. Claimant requested a hearing, which was held before the administrative law judge on September 23, 2003.

The miner's death certificate indicates that he died on July 24, 2001 due to respiratory failure, congestive heart failure, pneumonia, and "s/p CABG s/p acute MI." Director's Exhibit 12. "Atrial [sic] fibrillation DVT" is listed as a significant condition "contributing to death but not resulting in the underlying cause[s given]." *Id.*

<sup>2</sup> Claimant further asserts that Dr. Crouch's medical opinion is unreasoned, but makes no argument regarding the administrative law judge's weighing of Dr. Crouch's opinion, as required for Board review. *See* 20 C.F.R. §802.211(b).

employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *see Trumbo v. Reading Anthracite Co.* 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *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 to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the irrebuttable presumption provided at 20 C.F.R. §718.304 is applicable. 20 C.F.R. §718.205(c)(1)-(4). 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*, 506 U.S. 1050 (1993).

Claimant contends that the administrative law judge provided "spurious" reasons for discrediting Dr. Cohen's opinion, in determining that the evidence of record is insufficient to establish at 20 C.F.R. §718.205(c)(2) that the miner's pneumoconiosis was a substantially contributing cause or factor leading to the miner's death.<sup>3</sup> We disagree. The administrative law judge, within his discretion, discredited Dr. Cohen's opinion as he found that the physician "did not explain why the coal dust exposure *significantly* contributed to the miner's death. Aside from mentioning coal mine dust exposure, Dr. Cohen did not discuss his reasoning for concluding that such coal mine dust exposure would significantly contribute to the miner's lung disease," Decision and Order at 10 (emphasis in original). The administrative law judge thus permissibly found unreasoned Dr. Cohen's opinion that the miner's death was hastened by "quite significant underlying lung disease," to which "[h]is coal mine dust exposure was significantly contributory,"

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<sup>3</sup> In his consultative report dated August 4, 2003, Dr. Cohen reviewed the miner's medical records, including the death certificate, autopsy report, and Dr. Crouch's March 26, 2003 report, and stated:

Mr. Jordan's death certificate noted that he died from congestive heart failure and pneumonia as well as an acute MI. Mr. Jordan died a respiratory death. His respiratory failure was multifactorial. He had underlying obstructive and restrictive lung disease. His coal mine dust exposure was significantly contributory to this underlying disease. He then developed pneumonia, pleural effusions, and pulmonary edema on top of his already damaged lungs. It is quite clear to me that had he had normal lungs he would have been better able to resist the additional insults to his respiratory system caused by his heart disease and infection. I believe, to a reasonable degree of medical certainty that his death was hastened by the fact that he suffered from quite significant underlying lung disease.

Claimant's Exhibit 1.

Claimant's Exhibit 1. See *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 213, 22 BLR 2-162, 2-177 (4th Cir. 2000); *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 532 n.9, 21 BLR 2-323, 2-325 n.9 (4th Cir. 1998)(administrative law judge is required to consider quality of physician's reasoning); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*). Because the administrative law judge properly discredited Dr. Cohen's opinion, the only evidence of record on which claimant relies in challenging the administrative law judge's finding that the miner's pneumoconiosis was not a substantially contributing cause or factor leading to his death, we affirm the administrative law judge's finding at 20 C.F.R. §718.205(c)(2).<sup>4</sup>

Based on the foregoing, we affirm the administrative law judge's finding that the evidence of record failed to meet claimant's burden to establish death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), as it is supported by substantial evidence and is in accordance with law. We thus affirm the administrative law judge's denial of benefits in this survivor's claim.

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<sup>4</sup> We affirm the administrative law judge's findings that the evidence failed to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c)(1) and (c)(3) as they are unchallenged on appeal. *Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge