

BRB No. 91-0776 BLA

DINAH E. RUNYON)
(Widow of ALBERT RUNYON))

Claimant-Petitioner)

v.)

MARONTHA COAL COMPANY)

and)

BLACKBERRY CREEK COAL COMPANY)

Employers-Respondents))
DATE ISSUED:

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)

Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Dinah E. Runyon, McCarr, Kentucky, pro se.

Ronald E. Gilbertson (Kilcullen, Wilson & Kilcullen Chartered), Washington, D.C., for employer.

Before: BROWN, DOLDER, and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow, appeals, without the assistance of counsel, the

Decision and Order (89-BLA-0072) of Administrative Law Judge Robert L. Hillyard denying benefits on a consolidated miner's and 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). The miner filed for benefits on June 5, 1987, and died on September 17, 1987. Claimant filed a survivor's claim on September 30, 1987. Both claims were considered pursuant to the regulations found at 20 C.F.R. Part 718. The administrative law judge credited the miner with sixteen years of coal mine employment and found the evidence of record insufficient to establish that the miner had pneumoconiosis or that

the miner was totally disabled due to pneumoconiosis. The administrative law judge further found that claimant failed to establish that the miner's death was caused by pneumoconiosis or that pneumoconiosis was a substantially contributing cause of the miner's death. Accordingly, benefits were denied on both the miner's and the survivor's claims. Employer responds in support of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, did not respond to claimant's appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. Stark v. Director, OWCP, 9 BLR 1-36 (1986). We 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).

Upon considering the x-ray evidence of record, which consists of nine interpretations of eight x-rays, pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge properly determined that all of the x-ray evidence is negative for the existence of pneumoconiosis. See Director's Exhibits 22, 23, 30; Employer's Exhibits 2, 4. As a result, the administrative law judge's finding that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) is affirmed as it is supported by substantial evidence.

The administrative law judge next considered the autopsy report of Dr. Donmenzer pursuant to 20 C.F.R. §718.202(a)(2). In his report, Dr. Donmenzer diagnosed changes "suggestive of coal worker's pneumonia, very mild, simple". See Director's Exhibit 17. However, the administrative law judge permissibly gave this report less weight than the reports of Drs. Caffrey and Anderson, both of whom reviewed the autopsy slides and found no pneumoconiosis, as they possessed qualifications superior to those of Dr. Donmenzer. See Decision and Order at 7; Employer's Exhibits 1, 6; Scott v. Mason Coal Co., 14 BLR 1-37 (1990). The administrative law judge further permissibly assigned Dr. Donmenzer's report less weight because his statement that the changes were "suggestive of coal worker's pneumonia" is equivocal. See Decision and Order at 7; Director's Exhibit 17; Justice v. Island Creek Coal Co., 11 BLR 1-91 (1988). As a result, the administrative law judge's finding that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2) is affirmed as it is supported by substantial evidence. Further, the existence of pneumoconiosis is not established pursuant to Section 718.202(a)(3) as there are no presumptions that apply in this case.¹

¹The presumption at 20 C.F.R. §§718.304, 718.305 and 718.306 are not

applicable as there is no evidence that the deceased miner suffered from complicated pneumoconiosis and claimant's application for survivor's benefits was filed after June 30, 1982.

The administrative law judge next considered the medical opinions of record, which consists of the reports of eight physicians, pursuant to 20 C.F.R. §718.202(a)(4). Two of the physicians, Drs. Cherukuri and Kraman, diagnosed pneumoconiosis, while the remaining physicians reported that the miner did not suffer from pneumoconiosis. See Director's Exhibits 16, 17, 19, 30-32; Employer's Exhibits 1-3, 5-8. The administrative law judge permissibly accorded greater weight to the reports of Drs. Anderson, Branscomb and Caffrey, none of whom diagnosed the existence of pneumoconiosis, based on their superior qualifications. See Decision and Order at 8; Employer's Exhibits 1, 5, 6, 8; Scott, supra. As a result, the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) is affirmed as it is supported by substantial evidence. Moreover, as claimant has failed to establish the existence of pneumoconiosis, she has also failed to establish that the miner's death was due in part to pneumoconiosis, both of which are essential elements of entitlement under 20 C.F.R. Part 718. See 20 C.F.R. §§718.202, 718.205; see also Neeley v. Director, OWCP, 11 BLR 1-85 (1988). As claimant has failed to establish these essential elements of entitlement, the administrative law judge's denial of benefits in both the miner's claim and the survivor's claim is affirmed. See Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); Neeley v. Director, OWCP, 11 BLR 1-85 (1988); Perry v. Director, OWCP, 9 BLR 1-1 (1986).²

²As we have affirmed the administrative law judge's denial of benefits as supported by substantial evidence, we need not address employer's request for dismissal from further proceedings.

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge