

BRB No. 94-0378 BLA

MARY H. JONES)
(Widow of SHELBY JONES))
)
Claimant-Petitioner)
)
v.)
) DATE ISSUED: _____)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Respondent) DECISION and ORDER

Appeal of the Decision and Order of J. Michael O'Neill, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

C. William Mangum (Thomas S. Williamson, Jr., Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: , and , Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order (92-BLA-1434) of Administrative Law Judge J. Michael O'Neill 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). The miner filed a claim for

benefits with the Social Security Administration in 1972, which was ultimately denied by the Social Security Administration in 1983. On February 25, 1982, claimant filed a claim for benefits with the Department of Labor (DOL), which was initially denied on June 10, 1982. Claimant filed a second claim with the DOL on November 14, 1982, which was considered a request for modification of the denial of the prior claim. The claim was ultimately denied as claimant failed to respond to an Order to Show Cause why the claim should not be dismissed by reason of abandonment. The miner died on March 12, 1991 and claimant filed a survivor's claim on April 1, 1991. The administrative law judge considered the claim pursuant to 20 C.F.R. §718.205(c) and found that claimant failed to establish that the miner had pneumoconiosis and that, as a result, the miner's death was not due to or hastened by pneumoconiosis. Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in weighing the x-ray and medical opinion evidence pursuant to 20 C.F.R. §718.202(a)(1) and (4) and in finding that the miner's death was not due to pneumoconiosis pursuant to Section 718.205(c). The Director, Office of Workers' Compensation Programs (the Director), responds in support of the administrative law judge's Decision and Order denying benefits.

The Board's scope of review is defined by statute. The administrative law judge's findings of fact and conclusions of law must be affirmed if they are supported by substantial evidence, are rational, and are in accordance with 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 initially contends that the administrative law judge erred in failing to apply the true doubt rule in weighing the x-ray evidence of record pursuant to Section 718.202(a)(1). This contention of error is without merit, however, as the United States Supreme Court has held that the true doubt rule may no longer be applied in the weighing of the evidence to aid a claimant in meeting his burden of proof. See [*Ondecko*], *Director, OWCP v. Greenwich Collieries*, U.S. , 114 S.Ct. 2251, 18 BLR 2A-1 (1994), *aff'g sub nom., Greenwich v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3rd Cir. 1993). Further, the administrative law judge permissibly relied on the negative interpretations of Drs. Simmons and Elmer on the basis of their superior qualifications. See Decision and Order at 4; Director's Exhibit 14; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987). As a result, the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1) is affirmed as it is supported by substantial evidence.

Claimant further contends that the administrative law judge erred in rejecting the opinions of Drs. Bushey and Williams upon weighing the evidence pursuant to Section 718.202(a)(4). Dr. Bushey, in an opinion dated April 30, 1977, diagnosed coal workers' pneumoconiosis 2/1 p, 2/1 t and chronic lung disease. See Director's Exhibit 13. Dr. Williams, in a report dated March 29, 1982, diagnosed chronic obstructive pulmonary disease with 1/0 ps pneumoconiosis in two lower zones. See Director's Exhibit 14. Upon weighing the opinions of Drs. Bushey and Williams, the

administrative law judge permissibly stated that Dr. Bushey's diagnosis of chronic lung disease and Dr. Williams' diagnosis of chronic obstructive pulmonary disease are not diagnoses of pneumoconiosis as neither physician attributed the disease to the miner's coal mine employment. See Decision and Order at 4; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Willburn v. Director, OWCP*, 11 BLR 1-135 (1980). The administrative law judge had previously permissibly found Drs. Bushey's and Williams' positive x-ray interpretations to be outweighed by the negative interpretations of Drs. Simmons and Elmer pursuant to Section 718.202(a)(1). See Decision and Order at 4; *Trent, supra*. As a result, the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(4) is affirmed as it is supported by substantial evidence.

Additionally, claimant contends that the administrative law judge erred in failing to find that the miner's death was due to pneumoconiosis pursuant to Section 718.205. However, as the administrative law judge's finding that claimant failed to establish that the miner suffered from pneumoconiosis pursuant to Section 718.202(a) is affirmable, the administrative law judge properly found that the miner's death was not due to pneumoconiosis pursuant to Section 718.205. See Decision and Order at 5; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993). Also, the administrative law judge properly found that the record contains no evidence regarding the cause of the miner's death other than the death certificate. See

Decision and Order at 5; Director's Exhibit 7. The death certificate lists the cause of death as metastatic prostate cancer and lists past history of diabetes mellitus, CVA, hyperlipidemia, and coronary artery disease as contributing causes of death. See Director's Exhibit 7. As a result, the administrative law judge's finding that claimant failed to establish death due to pneumoconiosis pursuant to Section 718.205 is affirmed as it is supported by substantial evidence.

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

SO ORDERED.

Administrative Appeals Judge

Administrative Appeals Judge

Administrative Appeals Judge