

BRB No. 99-1171 BLA

THELMA R. HONAKER)
(Widow of CARL HONAKER))
)
 Claimant-Petitioner)
)
 v.)
)
 OLGA COAL COMPANY) DATE ISSUED: _____
)
 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 of John C. Holmes, Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle & Rundle, L.C.), Pineville, West Virginia, for claimant.

K. Keian Weld (West Virginia Coal-Workers' Pneumoconiosis Fund), Charleston, West Virginia, for carrier.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (99-BLA-0510) of Administrative Law Judge John C. Holmes 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 instant case involves a survivor's claim filed on March 23, 1998.² The administrative law judge found the evidence insufficient to 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 the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Carrier 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'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

¹Claimant is the surviving spouse of the deceased miner who died on March 5, 1998. Director's Exhibit 7.

²The miner filed a claim for benefits with the Social Security Administration on May 30, 1973. Director's Exhibit 20. The miner's 1973 claim was finally denied on November 10, 1980. *Id.* The miner, however, filed a duplicate claim on September 7, 1982. Director's Exhibit 21. The district director awarded benefits on the miner's claim on March 20, 1984. *Id.* The miner's claim was in payment status when he died.

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that substantial evidence supports the administrative law judge's denial of benefits under 20 C.F.R. Part 718.³

In his consideration of whether the medical evidence was sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), the administrative law judge properly discredited the opinions of Dr. Meyers set out on the miner's death certificate and in his October 30, 1998 letter because Dr. Meyers failed to provide a basis for his finding that pneumoconiosis contributed to the miner's death. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); see also *Bill Branch Coal Corp. v. Sparks*, BLR , 213 F.3d 186 (4th Cir. 2000); Decision and Order at 4; Director's Exhibits 7, 19. The remaining physicians of record, Drs. Gaziano, Renn and Fino, all opined that the miner's death was not due to pneumoconiosis.⁴

³ Inasmuch as the instant 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). See 20 C.F.R. §§718.1, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Under Section 718.205(c)(2), pneumoconiosis will be considered a substantially contributing cause of the miner's death if it actually hastened the miner's death. *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992).

⁴Dr. Gaziano provided answers to a questionnaire on September 4, 1998. Although Dr. Gaziano indicated that the miner suffered from pneumoconiosis, he opined that the miner's death was not due to pneumoconiosis. Director's Exhibit 9. Dr. Gaziano indicated that pneumoconiosis was not a substantially contributing cause or factor leading to the miner's death. *Id.* Dr. Gaziano opined that the terminal event was due to a combination of factors, primarily development of kidney failure with congestive heart failure, diabetes and pneumonia. *Id.*

Dr. Renn reviewed the medical evidence. In a report dated March 3, 1999, Dr. Renn opined that the miner's simple coal workers' pneumoconiosis was neither a cause of, nor a substantially contributing factor in, his demise. Employer's Exhibit 1. Dr. Renn opined that the miner's death "occurred when, and in what manner, it would have whether or not he had ever been exposed to coal mine dust." *Id.*

Dr. Fino also reviewed the medical evidence. In a report dated March 12, 1999, Dr. Fino opined that the miner's death was not caused, contributed to or hastened by the inhalation of coal mine dust. Employer's Exhibit 1. Dr. Fino further opined that the miner would have died as and when he did had he never set foot in the mines. *Id.*

Director's Exhibit 9; Employer's Exhibit 1. Inasmuch as it is based upon substantial evidence, we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge