

BRB No. 05-0887 BLA

LORENE SMITH )  
(Widow of RUFUS SMITH) )

Claimant-Petitioner )

v. )

JAMIESON CONSTRUCTION COMPANY, )  
INCORPORATED )

and )

DATE ISSUED: 07/27/2006

KENTUCKY CENTRAL INSURANCE )  
COMPANY )

Employer/Carrier- )  
Respondent )

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 Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

H. Brett Stonecipher (Ferreri & Fogle), Lexington, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant, the surviving spouse of the deceased miner, appeals the Decision and Order Denying Benefits (03-BLA-6288) of Administrative Law Judge Pamela Lakes

Wood rendered on a miner's and a survivor's claims 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 administrative law judge accepted the parties' stipulation to seven years of coal mine employment, outlined which evidence she would consider pursuant to evidentiary limitations contained at 20 C.F.R. §725.414, and found that the record did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Accordingly, the miner's claim was denied. With respect to the survivor's claim, the administrative law judge found that even if the existence of pneumoconiosis were established, the record does not contain any evidence linking the miner's death to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits in the survivor's claim.

On appeal, claimant contends that the administrative law judge erred in her consideration of the x-ray and medical opinion evidence. Employer responds, urging affirmance. The Director, Office of Workers' Compensation Programs, has indicated that he will not participate in this appeal.<sup>2</sup>

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable 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).

In order to establish entitlement to benefits in a living miner's claim filed pursuant to 20 C.F.R. Part 718, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the pneumoconiosis is

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<sup>1</sup> The miner filed his first claim on March 19, 1984, which was denied on March 24, 1987 for failure to establish the existence of pneumoconiosis or a totally disabling respiratory or pulmonary impairment. Director's Exhibit 1. There was no appeal and the decision became final. On January 31, 2002, the miner filed a second application for benefits. Director's Exhibit 3. The miner died on April 18, 2002 while the claim was still pending. The administrative law judge noted that although "Subsequent Claim" was not listed as an issue on the CM-1025 transmittal form, the parties agreed that the issue did not need to be amended as the omission was of no practical significance. Decision and Order at 3; Hearing Transcript at 8.

<sup>2</sup> The administrative law judge's length of coal mine employment determination, as well as his findings that pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(2)-(3) are affirmed as unchallenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

totally disabling. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987).

In order to establish entitlement to benefits in a survivor's claim filed on or after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis. Death is due to pneumoconiosis where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, where death was caused by complications of pneumoconiosis, or where the presumption set forth at 20 C.F.R. §718.304, relating to complicated pneumoconiosis, is applicable. See 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *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). Pneumoconiosis is a "substantially contributing cause of a miner's death" if it hastens the miner's death. 20 C.F.R. §718.205(c)(2); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 135 (6th Cir. 1993). Failure to establish any one of these elements precludes a finding of entitlement. *Anderson*, 12 BLR 1-111; *Trent*, 11 BLR 1-26.

With respect to the administrative law judge's determination that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(1), claimant indicates that the relevant x-ray evidence consists of the two readings of the film dated March 28, 2002 and argues that the administrative law judge improperly relied on the readers' credentials, merely counted the negative readings, and "may have 'selectively analyzed'" the readings. Claimant's Brief at 3 - 4. Claimant's allegations of error are without merit. The administrative law judge determined that the "1/2, p/q" reading of this x-ray by Dr. Baker, an A-reader, was countered by a negative reading for pneumoconiosis by Dr. Wiot, a B-reader and Board-certified radiologist. Director's Exhibits 14, 20. Relying on the physicians' relative qualifications, the administrative law judge accorded greater weight to the negative reading by Dr. Wiot and found that claimant failed to establish the existence of pneumoconiosis. The administrative law judge conducted a proper qualitative analysis of the conflicting x-ray readings. See *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Woodward v. Director, OWCP*, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993). We affirm, therefore, the administrative law judge's determination that the x-ray dated March 28, 2002 does not support a finding of pneumoconiosis under Section 718.202(a)(1). In addition, in light of the fact that claimant raises no other allegations of error, we also affirm the administrative law judge's finding that the x-ray evidence of record as a whole is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

Regarding the administrative law judge's finding that pneumoconiosis was not established under Section 718.202(a)(4), claimant argues that an administrative law judge erred in discrediting Dr. Baker's opinion that claimant is suffering from pneumoconiosis. Contrary to claimant's contention, the administrative law judge rationally found Dr. Baker's diagnosis of clinical pneumoconiosis was not entitled to determinative weight because the physician was equivocal in diagnosing pneumoconiosis and because Dr. Baker's opinion was outweighed by the well-documented and well-reasoned report in which Dr. Broudy stated that the miner did not have the disease.<sup>3</sup> See *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-88-89 and n.4 (1993); Decision and Order at 12; Director's Exhibits 14, 19.

Additionally, claimant contends that the administrative law judge "appears to have" interpreted medical data and substituted his own conclusion for that of a physician. Claimant's Brief at 5. This contention lacks merit. The administrative law judge permissibly found that Dr. Baker's only support for his diagnosis of legal pneumoconiosis was his own chest x-ray interpretation, which was contradicted by a negative interpretation proffered by a doctor with superior radiological qualifications, and coal dust exposure, with no further explanation as to whether the miner's chronic obstructive pulmonary disease, chronic bronchitis and hypoxemia were significantly related to or substantially aggravated by dust exposure. *Cornett v. Benham Coal, Inc.*, 227 F.3d 569, 22 BLR 2-107 (6th Cir. 2000); *Worhach v. Director, OWCP*, 17 BLR 1-105 (1993); *Taylor v. Brown Badgett, Inc.*, 8 BLR 1-405 (1985); Decision and Order at 13; Director's Exhibit 14. Consequently, we affirm the administrative law judge's treatment of Dr. Baker's opinion at Section 718.202(a)(4). As claimant raises no other arguments at Section 718.202(a)(4), we also affirm the administrative law judge's finding that the medical opinions of record as a whole are insufficient to establish the existence of pneumoconiosis. *Skrack*, 6 BLR 1-710.

In light of our affirmance of the administrative law judge's finding that the claimant has not established the existence of pneumoconiosis pursuant to Section 718.202(a), a requisite element of entitlement in both the miner's and survivor's claims, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. *Anderson*, 12 BLR 1-111.

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<sup>3</sup> On the Department of Labor's Report of Physical Examination form, Dr. Baker placed question marks next to his diagnoses of both clinical and legal pneumoconiosis. Director's Exhibit 14.

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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ROY P. SMITH  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge