

BRB No. 06-0198 BLA

JANET STOVALL)
(Widow of JACK E. STOVALL))
)
 Claimant-Petitioner)
)
 v.)
) DATE ISSUED: 07/27/2006
 WESTMORELAND COAL COMPANY)
)
 Employer-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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Janet Stovall, Sophia, West Virginia, *pro se*.

Christopher M. Hunter (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Claimant, the spouse of a deceased miner, appears without the assistance of counsel and appeals the Decision and Order - Denying Benefits (2002-BLA-0236 and 2002-BLA-0237) of Administrative Law Judge Richard A. Morgan (the administrative law judge) with respect to a miner's claim and 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).¹ The administrative law judge accepted the parties' stipulation to thirty-two years of coal mine employment and considered both of the claims pursuant to the regulations set forth in 20 C.F.R. Part 718. The administrative law judge determined that the relevant evidence supported a finding of pneumoconiosis under 20 C.F.R. §718.202(a), but that claimant did not prove that pneumoconiosis played any role in the miner's total disability or his death pursuant to 20 C.F.R. §§718.204(c) and 718.205(c). Accordingly, benefits were denied in both claims.

Claimant generally contends on appeal that the administrative law judge erred in denying benefits in both claims. Employer has responded and urges affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not respond to claimant's appeal.²

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with 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).

In order to establish entitlement in a miner's claim filed after January 1, 1982, claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that he was totally disabled due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204.

¹ The miner filed an application for benefits on July 9, 1993, which he later withdrew. Director's Exhibit 34. The miner subsequently filed a claim on July 14, 1999. Director's Exhibit 1. He died on September 21, 2000. Director's Exhibit 7. Claimant filed her application for survivor's benefits on October 3, 2000. Director's Exhibit 2.

² We affirm the administrative law judge's crediting of the miner with thirty-two years of coal mine employment and his findings pursuant to 20 C.F.R. §§718.202(a)(2), (a)(4), 718.203(b), 718.204((b)(2)(iv)), as they are not adverse to claimant and are not challenged on appeal. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983). In addition, we affirm the administrative law judge's determination that the irrebuttable presumption of total disability or death due to pneumoconiosis, set forth in 20 C.F.R. §718.304, is not available in this case, as there is no evidence that the miner was suffering from complicated pneumoconiosis. Decision and Order at 14.

Failure to establish any one of these elements precludes entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989).

In order to establish entitlement to survivor's benefits under 20 C.F.R. Part 718 in a claim filed after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, that the miner's death was caused by complications of pneumoconiosis, or that the miner had complicated pneumoconiosis. 20 C.F.R. §§718.1; 718.202; 718.203; 718.205(c); 718.304. *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 the miner's death if it hastened the miner's death. 20 C.F.R. §718.205(c)(2); see *Piney Mountain Coal Co. v. Mays*, 176 F.3d 753, 21 BLR 2-587 (4th Cir. 1999); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 980, 16 BLR 2-90 (4th Cir. 1992).³

After reviewing the administrative law judge's Decision and Order and the relevant evidence, we affirm the administrative law judge's determination that entitlement to benefits was not established in either the miner's claim or the survivor's claim. Regarding the miner's claim, the administrative law judge rationally found that the record does not contain a well-reasoned or well-documented opinion in which a physician indicated that the miner's total disability was related to coal workers' pneumoconiosis or dust exposure in coal mine employment pursuant to 20 C.F.R. §718.204(c). The administrative law judge determined that the evidence proffered by Dr. Graeber and Ms. Vickie McCoy, a registered nurse, was the most favorable to claimant. Decision and Order at 13; Director's Exhibits 11, 12. The administrative law judge acted within his discretion as fact-finder in determining that Dr. Graeber's opinion did not establish total disability due to pneumoconiosis, as he did not indicate that pneumoconiosis caused or contributed to the miner's totally disabling pulmonary impairment. Decision and Order at 13; *Robinson v. Pickands Mather & Co.*, 914 F.2d 35, 14 BLR 2-68 (4th Cir. 1990). The administrative also rationally found that the statement by Ms. McCoy, that the miner required continuous oxygen in the period immediately preceding his death, did not support a determination that the miner's total disability was related to pneumoconiosis, as Ms. McCoy did not indicate that the miner's need for supplemental oxygen was attributable to his pneumoconiosis. *Id.* We affirm, therefore, the administrative law judge's determination that claimant did not prove that

³ This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit, as the miner's most recent coal mine employment occurred in West Virginia. Director's Exhibits 1, 2; *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

the miner was totally disabled due to pneumoconiosis as is required under Section 718.204(c). Thus, we must also affirm the denial of benefits in the miner's claim. *Anderson*, 12 BLR 1-111, 1-112.

With respect to the survivor's claim, the administrative law correctly found that the death certificate, prepared by Dr. Khanna, is the only evidence connecting the miner's death to pneumoconiosis. Decision and Order at 14. Dr. Khanna identified lung cancer due to coal workers' pneumoconiosis as the cause of the miner's death. Director's Exhibit 7. The administrative law judge rationally determined that the death certificate was insufficient to establish that the miner's death was due to pneumoconiosis because Dr. Khanna did not identify any evidence supporting his finding and did not explain how pneumoconiosis caused the miner's lung cancer. Decision and Order at 14-15; *Mays*, 176 F.3d 753, 21 BLR 2-587; *Shuff*, 967 F.2d 977, 980, 16 BLR 2-90; *Neeley*, 11 BLR 1-85. We affirm, therefore, the administrative law judge's determination that the evidence of record does not support a finding that pneumoconiosis caused, contributed to, or hastened the miner's death pursuant to Section 718.205(c). Thus, we must also affirm the denial of benefits in the survivor's claim. *Mays*, 176 F.3d 753, 21 BLR 2-587; *Shuff*, 967 F.2d 977, 980, 16 BLR 2-90; *Neeley*, 11 BLR 1-85.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge