

BRB No. 07-0850 BLA

P.G.)	
(Widow of G.G.))	
)	
Claimant-Respondent)	
)	
v.)	
)	
ISLAND CREEK COAL COMPANY)	
)	DATE ISSUED: 07/25/2008
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Amended Decision and Order – Award of Benefits of Daniel F. Solomon, Administrative Law Judge, United States Department of Labor.

Derrick W. Lefler (Gibson Lefler & Associates), Princeton, West Virginia, for claimant.

Ashley M. Harman and Kathy L. Snyder (Jackson Kelly PLLC), Morgantown, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Amended Decision and Order – Award of Benefits (2006-BLA-05501) of Administrative Law Judge Daniel F. Solomon 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).¹ Claimant filed her survivor's claim on April 11, 2005. Director's Exhibit 2. The district director issued a Proposed Decision and Order awarding benefits on January 10, 2006. Director's Exhibit 29. Employer requested a hearing, which was held on April 25, 2007.² The administrative law judge found that since the existence of legal pneumoconiosis was established in the miner's lifetime claim, the doctrine of collateral estoppel barred employer from relitigating the issue. The administrative law judge further found that claimant established, pursuant to 20 C.F.R. §718.205(c), that the miner's death was due to pneumoconiosis because pneumoconiosis hastened the miner's death. Accordingly, the administrative law judge awarded survivor's benefits.

On appeal, employer challenges the administrative law judge's decision to exclude the medical opinions of Drs. Spagnolo and Rosenberg because they had reviewed evidence from the miner's claim which the administrative law judge ruled was outside the record. Employer also argues that the administrative law judge erred in excluding the reports of Drs. Spagnolo and Rosenberg because they relied on evidence that exceeded the evidentiary limitations. On the merits, employer argues that the administrative law judge erred by relying on the death certificate to find that the miner's death was due to pneumoconiosis. Employer maintains that claimant's evidence is insufficient, as a matter of law, to satisfy her burden of proving that the miner's death was due to pneumoconiosis. Employer further argues that the administrative law judge erred in his treatment of the opinions of Drs. Spagnolo and Rosenberg relevant to the existence of legal pneumoconiosis and the cause of the miner's death. Claimant responds, urging affirmance of the award of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.

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.³ 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).

¹ Claimant, P.G., is the widow of the miner, G.G., who was awarded benefits on a living miner's claim filed on January 25, 1993. This claim is contained in the record at Director's Exhibit 1. The miner died on March 29, 2005.

² Prior to the hearing, the administrative law judge also conducted a telephone conference on April 6, 2007. Decision and Order at 2.

³ Because the miner's coal mine employment occurred in Virginia, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibit 1.

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. Part 718, claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85, 1-87-88 (1993). For survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis caused the miner's death, or was a substantially contributing cause or factor leading to the miner's death, or that death was caused by complications of pneumoconiosis. 20 C.F.R. §718.205(c)(1)-(4). Pneumoconiosis is a substantially contributing cause of a miner's death if it hastened the miner's death. 20 C.F.R. §718.205(c)(5); *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 190, 22 BLR 2-251, 2-259 (4th Cir. 2000); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993). 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 (1987).

We first address employer's contention that the administrative law judge erred in finding the evidence sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The record contains treatment notes prepared by Dr. Ahmed in June 2004, January 2005 and March 4, 2005 that relate the course of the miner's treatment at Clinch Valley Medical Center prior to his death at home on March 29, 2005. Director's Exhibits 10-12. Dr. Ahmed prepared the death certificate on April 4, 2005, and listed the immediate cause of the miner's death as respiratory failure, with coal workers' pneumoconiosis as the underlying cause. Director's Exhibit 9. Diabetes mellitus and coronary artery disease were listed as other significant conditions contributing to the miner's death. *Id.* No autopsy was performed.

In weighing the evidence, the administrative law judge found that while claimant did not provide "any medical records which discuss the possible causation between pneumoconiosis and the miner's death," the death certificate constituted evidence that the miner's death was due in part to pneumoconiosis. With respect to Dr. Ahmed's opinion, the administrative law judge stated as follows:

Dr. Ahmad (sic) had personal knowledge of the miner from which to assess the cause of death. He had treated the miner on many occasions. Dr. Ahmad (sic) treated the miner on January 11, 2005, and March 4, 2005. (DX10). . . . Dr. Ahmad (sic) was the attending physician during the miner's treatment at Clinch Valley Medical Center in August 2004 and September 2004. Dr. Ahmad (sic) had prior knowledge of the miner's condition and consistently makes a diagnosis of COPD and emphysema. Thus, Dr. Ahmad's (sic) conclusion on the death certificate is more than a

conclusory statement. Dr. Ahmad's (sic) conclusion on the death certificate taken in context with his treatment of the miner throughout the course of the miner's last few years substantiates and supports his conclusion on the death certificate. 20 C.F.R. §718.104(d).

Decision and Order at 11-12.

Employer correctly argues on appeal that the administrative law judge erred in relying on the death certificate prepared by Dr. Ahmed to establish that the miner's death was due to pneumoconiosis. Employer's Petition for Review and Brief at 14-19. Moreover, the administrative law judge correctly found that "the hospital treatment notes do not provide any greater insight into the issue of death due to pneumoconiosis." Decision and Order at 11. In addition, Dr. Ahmed has provided no discussion regarding the basis for his conclusion on the death certificate that pneumoconiosis was the underlying cause of the miner's death. Further, Dr. Ahmed's opinion is not entitled to weight based simply on his status as the miner's treating physician. 20 C.F.R. §718.104(d)(5) recognizes that:

In appropriate cases, the relationship between the miner and his treating physician may constitute substantial evidence in support of the adjudication officer's decision to give that physician's opinion controlling weight, provided that the weight given the opinion of a miner's treating physician shall also be based on the credibility of the physician's opinion *in light of its reasoning and documentation*, other relevant evidence and the record as a whole.

20 C.F.R. §718.105(d) (emphasis added). A physician's statement that pneumoconiosis was the underlying cause of the miner's death due to respiratory failure, without any explanation of that conclusion, is generally insufficient to support such a finding. *See Sparks*, 213 F.3d at 192, 22 BLR at 2-264; *see also Lango v. Director, OWCP*, 104 F.3d 573, 577, 21 BLR 2-12, 2-20 (3d Cir. 1997).

Thus, we conclude that the death certificate is insufficient to carry claimant's burden of proof as it is not supported by any additional reasoned or documented medical opinion addressing the causal link between the pneumoconiosis and the cause of the miner's death at 20 C.F.R. §718.205(c). *See Sparks*, 213 F.3d at 192, 22 BLR at 2-264; *Smith v. Camco Mining, Inc.*, 13 BLR 1-17 (1989); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988).

In order to establish entitlement to survivor's benefits, claimant was required to prove every element of entitlement by a preponderance of the evidence. *See Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'g*

Greenwich Collieries v. Director, OWCP, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). Based on the administrative law judge's credibility rulings and the evidence of record, claimant is unable to establish that the miner's death was due to pneumoconiosis as a matter of law and, therefore, is not entitled to benefits. Thus, the administrative law judge's award of benefits must be reversed.⁴

⁴ Because we reverse the award of benefits, we decline to address employer's arguments concerning alleged evidentiary errors committed by the administrative law judge with respect to his consideration of the opinions of Drs. Spagnolo and Rosenberg.

Accordingly, the administrative law judge's Decision and Order – Award of Benefits is reversed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge