BRB No. 99-1086 BLA

LORETTA JONES (Widow of RAYMOND JONES) Claimant-Petitioner v. MOUNTAIN CLAY, INCORPORATED) and TRANSCO ENERGY COMPANY Employer/Carrier- Respondent DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR Party-in-Interest	)	DATE ISSUED: DECISION and ORDER

Appeal of the Decision and Order of Donald W. Mosser, Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimant.

Paul E. Jones (Baird, Baird, Baird & Jones), Pikeville, Kentucky, for employer.

Jeffrey S. Goldberg (Henry L. Solano, 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: BROWN and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.
PER CURIAM:

Claimant appeals the Decision and Order (98-BLA-1063) of Administrative Law Judge Donald W. Mosser denying benefits on 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 found at least fifteen years of coal mine employment established and adjudicated the survivor's claim pursuant to 20 C.F.R. Part 718. The administrative law judge found that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(1)-(4) and further found that death due to pneumoconiosis was not established pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. In addition, the administrative law judge held that there is no authority for approving the settlement agreement reached by the parties in this case. On appeal, claimant contends that the administrative law judge erred in not approving the settlement agreement reached by the parties and, alternatively, in finding that the existence of pneumoconiosis was not established pursuant to Section 718.202(a)(1) and (4) and that death due to pneumoconiosis was not established pursuant to Section 718.205(c). Employer responds, also contending that the administrative law judge erred in not approving the settlement agreement reached by the parties or, alternatively, urging the Board to affirm the administrative law judge's denial of benefits on the merits. The Director, Office of Workers' Compensation Programs (the Director), as a party-in-interest, also responds, urging the Board to affirm the administrative law judge's holding that there is no authority for approving the settlement agreement reached by the parties in this case.

The Board's scope of review is defined by statute. If the administrative law judge's findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law, they are binding upon this Board and may not be disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Initially, claimant and employer submitted a settlement agreement reached by the parties at the hearing held on April 7, 1999, for approval by the administrative law judge,

[1] Claimant is the surviving spouse of the miner, Raymond Jones, who died on May 3, 1997, Director's Exhibit 6. The miner had filed a claim on January 13, 1992, and was ultimately awarded benefits on February 24, 1994, Director's Exhibit 19, but the miner's claim is not at issue herein. Subsequent to the miner's death, claimant filed a survivor's claim on May 16, 1997, Director's Exhibit 1.

Joint Exhibit 1. However, inasmuch as the Board has held that settlement of claims under the Black Lung Benefits Reform Act is prohibited in *Ladigan v. Central Industries, Inc.*, 7 BLR 1-192 (1984), and the United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, concurred with the Board's holding that there is no authority under the Act for settlement agreements in *Niece Mining Company v. Quillen*, No. 88-4170 (6th Cir., Aug. 28, 1989)(unpub.), the administrative law judge held that there is no authority for approving the settlement agreement reached by the parties in this case, Decision and Order at 12-13. Claimant, and employer, contend that public policy favors settlements, as they serve the interest of judicial economy and finality, and that neither the Act nor the regulations specifically forbid settlement of black lung claims, so long as a settlement agreement is submitted for approval and/or a review of the equities of the settlement.

However, as the Director contends, settlement of claims under the Black Lung Benefits Reform Act is prohibited, *see Gerzarowski v. Lehigh Valley Anthracite, Inc.*, 12 BLR 1-62 (1988); *Myers v. Director, OWCP*, 11 BLR 1-45 (1988); *Putnam v. Director, OWCP*, 8 BLR 1-388 (1985); *Ladigan*, *supra*; *see also Niece*, *supra*. The settlement provisions of the Longshore and Harbor Workers' Compensation Act were expressly excluded from incorporation into the Black Lung Benefits Reform Act, *see* 33 U.S.C. §9089(I)(1), excluded under 30 U.S.C. §932(a); *Gerzarowski*, *supra*; *Myers*, *supra*; *see generally* 20 C.F.R. Part 725. Consequently, the settlement agreement reached by the parties in this case is prohibited.

Next, we address the administrative law judge's findings on the merits of the instant survivor's claim. In order to establish entitlement in this survivor's claim filed after January 1, 1982, in which the miner had not been awarded benefits on a claim filed prior to January 1, 1982, *see* 30 U.S.C. §§901; 932(1), claimant must establish the existence of pneumoconiosis, *see* 20 C.F.R. §718.202; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988), and that the miner's death was due to pneumoconiosis, *see* 20 C.F.R. §§718.1; 718.205(c); *Neeley*, *supra*; *cf. Smith v. Camco Mining, Inc.*, 13 BLR 1-17 (1989), which arose out of coal mine employment, *see* 20 C.F.R. §718.203; *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Moreover, the United States Court of Appeals for the Sixth Circuit, has held pursuant to Section 718.205(c)(2), that pneumoconiosis substantially contributes to death if it hastens the miner's death, *see Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *see also Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995).[2]

[2] The administrative law judge properly found that the presumptions at Section 411(c)(4) of the Act, 30 U.S.C. §921(c)(4), as implemented by 20 C.F.R. §718.305, and at Section 411(c)(5) of the Act, 30 U.S.C. §921(c)(5), as implemented by 20 C.F.R. §718.306, are inapplicable to this survivor's claim filed after January 1, 1982, *see* 20 C.F.R. §§718.202(a)(3), 718.305(a), (e), 20 C.F.R. §718.306(a); Director's Exhibit 1. Decision and

Order at 10. In addition, the presumption at Section 411(c)(2) of the Act, 30 U.S.C. §921(c)(2), as implemented by 20 C.F.R. §718.303, is inapplicable to this survivor's claim filed after January 1, 1982, *see* 20 C.F.R. §§718.303(c); Director's Exhibit 1. Finally, the administrative law judge properly found that the irrebuttable presumption at Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304, is inapplicable as there is no evidence of complicated pneumoconiosis in the record, *see* 20 C.F.R. §§718.202(a)(3), 718.205(c)(3), 718.304.

The administrative law judge considered all of the relevant medical opinion evidence of record pursuant to Section 718.205(c), which included the miner's death certificate which attributed the miner's death to respiratory failure due to silicosis, Director's Exhibit 6. However, the administrative law judge noted that the certificate was signed by a deputy coroner who is not a licensed physician, *see* Employer's Exhibit 1, and, therefore, is entitled to little weight. Inasmuch as the administrative law judge's finding that the miner's death certificate is entitled to little weight is not challenged by claimant on appeal, it is affirmed, *see Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

In addition, the administrative law judge noted that the only other medical evidence of record linking the miner's death to pneumoconiosis was a letter from the miner's treating physician, Dr. Smith, who stated that the miner's respiratory failure was hastened by coal miner's pneumoconiosis, Director's Exhibit 7. However, the administrative law judge found little rationale or documentation for Dr. Smith's opinion. The administrative law judge then noted that contrary opinions were provided by Drs. Broudy, Branscomb, Caffrey and Kleinerman, who all reviewed the medical evidence of record and concluded that the miner's death was not caused or contributed to by pneumoconiosis.[3] Thus, the administrative law judge found the relevant evidence weighs in favor of a determination that the miner's death was not due to or hastened by pneumoconiosis, Decision and Order at 11-12.

[3] Drs. Caffrey, Employer's Exhibit 11, and Branscomb, Employer's Exhibit 12, both opined that, even assuming claimant had simple pneumoconiosis, it would not have caused, contributed to and/or hastened the miner's death. Although Dr. Broudy stated that the miner probably had simple coal workers' pneumoconiosis, he found no evidence that the miner's death was in any way related to or hastened by coal workers' pneumoconiosis, Employer's Exhibit 10. Finally, Dr. Kleinerman found that the miner's death was not related to, caused, contributed to or hastened by coal workers' pneumoconiosis, Employer's Exhibit 13.

Claimant contends that the opinions of Drs. Broudy, Branscomb, Caffrey and Kleinerman should be entitled to little weight as they only reviewed the medical evidence of record, whereas claimant contends that the administrative law judge failed to consider the fact that Dr. Smith was the miner's treating physician and thus his opinion, is entitled to greater weight. Contrary to claimant's contention, the administrative law judge did note that Dr. Smith was the miner's treating physician, *see* Decision and Order at 7, 11. However, *see Tussey v. Island Creek Coal Co.*, 982 F.2d 1036, 17 BLR 2-16 (6th Cir. 1993); *Onderko v. Director, OWCP*, 14 BLR 1-2 (1989), the principle that a treating physician's opinion may be accorded greater weight should not be applied mechanically without regard to the other evidence of record, *see Halsey v. Richardson*, 441 F.2d 1230 (6th Cir. 1971). The administrative law judge permissibly found, within his discretion, that the opinion of Dr. Smith, the only medical opinion of record linking the miner's death to pneumoconiosis, was not adequately documented or reasoned, *see Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987)*; Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). Consequently, inasmuch as the Board is not empowered to reweigh the evidence nor substitute its inferences for those of the administrative law judge if the administrative law judge's findings are supported by substantial evidence and in accordance with the law, *see Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111 (1989); *Worley v. Blue Diamond Coal Co.*, 12 BLR 1-20 (1988), and it is claimant's burden to establish death due to pneumoconiosis, *see Neeley*, *supra*; *Smith*, *supra*, we affirm the administrative law judge's finding that death due to pneumoconiosis was not established pursuant to Section 718.205(c), *see Neeley*, *supra*; *cf. Smith*, *supra*; *see also Brown*, *supra*.[4]

[4] Inasmuch as the administrative law judge's finding that death due to pneumoconiosis was not established pursuant to Section 718.205(c) is affirmed, we need not address the administrative law judge's findings, and claimant's contentions, pursuant to Section 718.202(a)(1) and (4), *see Neeley*, *supra*; *cf. Smith*, *supra*; *see also Brown*, *supra*.

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

SO ORDERED.

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge