

BRB No. 03-0733 BLA

ADA HENSON)
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 Claimant-Petitioner)
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 v.)
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 R.R. DAWSON BRIDGE COMPANY) DATE ISSUED: 06/23/2004
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 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 – Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

John Hunt Morgan (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

David L. Murphy (Clark & Ward), Louisville, Kentucky, for employer.

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

PER CURIAM:

Claimant, the surviving spouse of a deceased miner, appeals the Decision and Order – Denial of Benefits (2000-BLA-0553) of Administrative Law Judge Daniel J. Roketenetz with respect to 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 considered the evidence of record and

¹ Claimant, Ada Henson, is the surviving spouse of Cecil Henson, a miner who died on February 20, 1996. Director’s Exhibit 8. Claimant filed an application for survivor’s benefits on December 13, 1996. Director’s Exhibit 1. The miner filed claims

determined that it was insufficient to establish either the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. Claimant argues on appeal that the administrative law judge did not properly weigh the evidence relevant to Sections 718.202(a)(1) and (a)(4) and 718.205(c). Employer has responded and urges affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.

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 by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits, claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *see Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). In survivor's claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(4). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *Mills v. Director, OWCP*, 348 F.3d 133, 23 BLR 2-12 (6th Cir. 2003); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

Pursuant to Section 718.205(c), the administrative law judge indicated that Dr. James was the only physician of record who identified pneumoconiosis as a contributing cause of the miner's death. Dr. James, who was the miner's treating physician, prepared the death certificate on which he identified hypoxic encephalopathy, cardiopulmonary arrest, and dilated cardiomyopathy as the causes of death. Director's Exhibit 8. Dr. James also indicated that renal failure and ventricular arrhythmia were other significant conditions contributing to death. *Id.* Dr. James subsequently submitted a letter in which he stated that chronic obstructive pulmonary disease and coal workers' pneumoconiosis

for benefits on October 11, 1989 and June 14, 1993. Benefits were not awarded in these claims. Director's Exhibit 44.

also contributed to the miner's death. He further noted that he should have mentioned coal workers' pneumoconiosis on the death certificate but did not do so because space was limited. Director's Exhibit 18.

The administrative law judge found that Dr. James's opinion was insufficient to establish that pneumoconiosis contributed in any way to the miner's death. Decision and Order at 18. Claimant asserts that the administrative law judge's finding is incorrect because Dr. James's opinion proves that the miner's death was related to pneumoconiosis. This contention is without merit. The administrative law judge acted within his discretion, as trier-of-fact, in determining that Dr. James's opinion does not support a finding of death due to pneumoconiosis on the grounds that the doctor failed to identify the objective evidence which supported his opinion and failed to explain how the miner's respiratory condition related to the miner's cardiopulmonary arrest and related medical conditions. *Id.*; *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003); *Peabody Coal Co. v. Groves*, 277 F.3d 829, 22 BLR 2-320 (6th Cir. 2002), *cert. denied*, 537 U.S. 1147 (2003). We affirm, therefore, the administrative law judge's finding that the evidence of record is insufficient to prove that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). *Mills*, 348 F.3d 133, 23 BLR 2-12; *Brown*, 996 F.2d 812, 17 BLR 2-135.

Because we have affirmed the administrative law judge's finding that claimant has not established an essential element of entitlement in this survivor's claim, error, if any, in the administrative law judge's weighing of the evidence relevant to the existence of pneumoconiosis under Section 718.202(a)(1) and (a)(4) is harmless. *Johnson v. Jeddo-Highland Coal Co.*, 12 BLR 1-53 (1988); *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984). We will not, therefore, address claimant's arguments pertaining to these findings.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge