

BRB No. 08-0842 BLA

O.S.)
(Widow of G.S.))
)
Claimant-Petitioner)
)
v.)
)
EASTERN ASSOCIATED COAL)
CORPORATION)
)
and) DATE ISSUED: 06/24/2009
)
OLD REPUBLIC INSURANCE COMPANY)
)
Employer/Carrier-)
Respondents)
)
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.

James C. Hook, Waynesburg, Pennsylvania, for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for employer/carrier.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order Denying Benefits of Administrative Law Judge Pamela Lakes Wood with respect to a survivor's claim filed on August 28, 2003, 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). Director's Exhibit 2. At the hearing, the administrative law judge raised, *sua sponte*, the issue of collateral estoppel and found that it precluded relitigation of the existence of legal pneumoconiosis because it had been established that the miner had chronic obstructive pulmonary disease (COPD) arising out of coal mine employment. However, upon reviewing the medical evidence regarding whether pneumoconiosis caused or substantially contributed to miner's death, the administrative law judge determined that claimant failed to meet her burden pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant argues that, when weighing the medical opinion evidence at 20 C.F.R. §718.205(c), the administrative law judge should have found that Dr. Hall's opinion was "superior" based on his status as claimant's treating physician. Claimant's Brief at 3 [unpaginated]. In addition, claimant asserts that the opinions of Drs. Fino and Zaldivar, that the miner's death was unrelated to pneumoconiosis, should not have been accorded any weight by the administrative law judge because both opined, contrary to the administrative law judge's determination, that the miner did not have coal workers' pneumoconiosis.

Employer responds urging affirmance of the administrative law judge's denial of benefits. Employer also contests the administrative law judge's application of collateral estoppel, but notes that if the Board affirms the administrative law judge's decision denying benefits, the collateral estoppel issue is moot. The Director, Office of Workers' Compensation Programs, has not filed a response 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.² 33 U.S.C. §921(b)(3), as incorporated by 30

¹ Claimant is the surviving spouse of the miner, G.S., who died on August 13, 2003. Director's Exhibit 7. At the time of his death, G.S. was receiving benefits under the Act. *See* Administrative Law Judge Exhibit 2.

² The record reflects that claimant's coal mine employment was in West Virginia. Director's Exhibit 3. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*).

U.S.C. §932(a); *O’Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Because this survivor’s claim was filed after January 1, 1982, claimant was required to establish that the miner’s death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *See* 20 C.F.R. §§718.1, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner’s death will be considered to be due to pneumoconiosis if the evidence is sufficient to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner’s death. 20 C.F.R. §718.205(c)(2). 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)(5); *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, 16 BLR 2-901 (4th Cir. 1992).

In reaching her decision concerning death causation pursuant to 20 C.F.R. §718.205(c), the administrative law judge reviewed medical records, hospital records, and the medical opinions of Drs. Hall, Zaldivar, and Fino. Decision and Order at 8. The medical records reveal that the miner was hospitalized from 2002-2003 for a variety of reasons, including COPD and congestive heart failure. Employer’s Exhibits 7, 8, 10-12, 14. Prior to his death on August 13, 2003, the miner was admitted to the hospital on August 8, 2003, for flash pulmonary edema, congestive heart failure, and possible pneumonia. Employer’s Exhibit 12. The miner’s history of anemia, hypertension, emphysema, COPD, coal workers’ pneumoconiosis, and cancer of the stomach were also noted. *Id.* In the hospital records, Dr. Hall, the miner’s treating physician at the time of death, described the miner’s cause of death in the following terms: “Patient went into respiratory failure and cardiac arrest and codes and ACLS protocol [were] followed and patient expired secondary to being Do Not Resuscitate.” Employer’s Exhibits 7, 8, 10-12, 14. On the miner’s death certificate, Dr. Hall listed “Respiratory Failure” and “Coal Workers Pneumoconiosis (Black lung)” under the section labeled “Immediate Cause (Final disease or condition resulting in death).” Director’s Exhibit 7. Dr. Hall also prepared a handwritten statement, dated August 26, 2003, which provided: “[Patient] was under my care [at] time of death. [Patient] died due to coal workers pneumoconiosis[,] which resulted in respiratory failure.” Director’s Exhibit 8.

Dr. Zaldivar, in his report and deposition testimony, concluded that the miner did not have coal workers’ pneumoconiosis and was not disabled from a respiratory standpoint. Employer’s Exhibits 1, 17. Further, Dr. Zaldivar found that the miner’s death was due to pulmonary edema “resulting from cardiac disease and left ventricular failure unrelated to the lungs and certainly unrelated to his occupation.” Employer’s Exhibit 1. In his deposition, Dr. Zaldivar indicated that even assuming that the miner had coal workers’ pneumoconiosis, he would have died at the same time and for the same

reason, as the pulmonary edema was caused by congestive heart failure, which was unrelated to pneumoconiosis. Employer's Exhibit 17 at 42-44, 45-46.

Similarly, Dr. Fino determined that the miner's death was due to congestive heart failure and pulmonary edema and did not find any conclusive evidence of coal workers' pneumoconiosis. Employer's Exhibit 2. Dr. Fino diagnosed obstructive lung disease but concluded that this did not in any way cause or hasten the miner's death. Employer's Exhibits 2, 16 at 13. In addition, Dr. Fino explained that the term "respiratory failure" on the miner's death certificate should not be given undue weight since it is a "generic statement" because people generally die as a result of their heart and lungs failing. Employer's Exhibit 2. In his deposition testimony, Dr. Fino explained that, even if he were to assume that the miner suffered from coal workers' pneumoconiosis, his opinion on the cause of death would not change, as the data he reviewed showed a cardiac cause of death, which was not hastened, or contributed to, by coal mine dust. Employer's Exhibit 16 at 10-14.

The administrative law judge considered the evidence and found that "[w]ithout a medical explanation as to how [coal workers' pneumoconiosis] or COPD resulted in the [m]iner's respiratory failure, which is lacking, I find Dr. Hall's opinion to be unreasoned[.]" Decision and Order at 20. The administrative law judge also determined that the opinions of Drs. Zaldivar and Fino were documented and reasoned. *Id.* at 20-21. Therefore, the administrative law judge concluded "that the weight of the medical opinion evidence does not support a finding that pneumoconiosis caused, contributed to, or hastened the [m]iner's death." *Id.* at 21.

Claimant argues that the administrative law judge should have given Dr Hall's opinion added weight, pursuant to 20 C.F.R. §718.104(d), based upon his status as the miner's treating physician. In addition, claimant asserts that Dr. Hall's reference to COPD in the hospital records, in combination with Dr. Hall's knowledge of the miner's employment history, supported a finding that Dr. Hall identified COPD, caused by coal dust exposure, as a contributing cause of the miner's death. Further, claimant argues that because Drs. Zaldivar and Fino opined, contrary to the administrative law judge's determination, that the miner did not suffer from coal workers' pneumoconiosis, the administrative law judge should not have given their opinions any weight.

Upon consideration of claimant's arguments on appeal, we affirm the administrative law judge's finding at 20 C.F.R. §718.205(c), as it is rational and supported by substantial evidence. Contrary to claimant's assertion, the administrative law judge considered whether Dr. Hall's opinion was entitled to additional weight, pursuant to 20 C.F.R. §718.104(d), due to his status as the miner's treating physician. Decision and Order at 20. The administrative law judge rationally concluded that "Dr. Hall had sufficient experience with the [m]iner to develop a heightened understanding of

his symptomatology, the pertinent diagnosis, his capabilities, and his prognosis, and I will take that into account in weighing the probative value of his stated opinion.” *Id.*; see *Consolidation Coal Co. v. Held*, 314 F.3d 184, 22 BLR 2-564 (4th Cir. 2002); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997). However, the administrative law judge rationally determined that Dr. Hall’s opinion was inconsistent with the hospital records, noting “[a]lthough both COPD and coal worker’s pneumoconiosis were listed as diagnoses during the [m]iner’s hospitalizations, the operative diagnoses at the time of his death were flash pulmonary edema, exacerbation of congestive heart failure, and possible pneumonia.” Decision and Order at 19; see *Perry v. Director, OWCP*, 9 BLR 1-1 (1986). Furthermore, the administrative law judge acted within her discretion in concluding that Dr. Hall’s opinion, as expressed in the handwritten statement and death certificate, was “unreasoned” because his opinion lacked “a medical explanation as to how [coal workers’ pneumoconiosis] or COPD resulted in the [m]iner’s respiratory failure.” Decision and Order at 20; see *Held*, 314 F.3d at 188, 22 BLR at 2-571-2-572; *Akers*, 131 F.3d at 441, 21 BLR at 2-274-2-276; *Tackett v. Cargo Mining Co.*, 12 BLR 1-11 (1988) (*en banc*).

The current case is distinguishable from the Fourth Circuit’s decision in *Collins v. Pond Creek Mining Co.*, 468 F.3d 213, 23 BLR 2-393 (4th Cir. 2006), in which the court vacated the administrative law judge’s decision denying survivor’s benefits and remanded the case for further consideration because the administrative law judge had erred in crediting the causation opinions of physicians who had not diagnosed pneumoconiosis, and he had cursorily rejected the causation opinions of the miner’s treating physicians. Like the administrative law judge in *Collins*, the administrative law judge in the case at bar credited the causation opinions of physicians who failed to diagnose pneumoconiosis, which was established in the record. This was error, as claimant correctly contends. *Collins*, 468 F.3d at 223-24, 23 BLR at 2-412. The error was harmless, however, as the administrative law judge properly discredited Dr. Hall’s opinion and thoroughly explained her reasons for doing so. Claimant bears the burden of proving, by a preponderance of the evidence that the miner’s death was due to pneumoconiosis. See *Mays*, 176 F.3d at 757, 21 BLR at 2-592-2-593; *Neeley*, 11 BLR at 1-86. Because we have affirmed the administrative law judge’s determination that Dr. Hall’s opinion, the only evidence supportive of claimant’s burden under Section 718.205(c), was unreasoned, the validity of her decision denying benefits was not affected by her erroneous crediting of employer’s doctors’ opinions. It is, therefore, unnecessary to remand the case for further consideration. Hence, we affirm the administrative law judge’s finding that claimant failed to prove that the miner’s death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).

In light of our affirmance of the administrative law judge's finding that claimant did not establish that pneumoconiosis was a contributing cause of the miner's death at 20 C.F.R. §718.205(c), an essential element of entitlement, we must also affirm the denial of benefits. *See Mays*, 176 F.3d at 757, 21 BLR at 2-592 – 2-593; *Neeley*, 11 BLR at 1-86. We decline to address, therefore, employer's challenge to the administrative law judge's application of collateral estoppel.

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

JUDITH S. BOGGS
Administrative Appeals Judge