

BRB No. 01-0576 BLA

JOSEPHINE HAGER )  
(Widow of BOBBY HAGER) )  
 )  
 Claimant-Petitioner )

v. )

PIKCO MINING COMPANY )

and )

UNDERWRITERS SAFETY & CASUALTY )

Employer/Carrier- )  
Respondents )

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 Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

William Lawrence Roberts, Pikeville, Kentucky, for claimant.

Natalie D. Brown (Jackson & Kelly PLLC), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order (00-BLA-0268) of Administrative Law

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<sup>1</sup>Claimant is the surviving spouse of the deceased miner who died on March 3, 1999. Director's Exhibit 10.

Judge Joseph E. Kane denying benefits 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).<sup>2</sup> The instant case involves a survivor's claim filed on May 4, 1999. After

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<sup>2</sup>The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 722, 725, and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United States District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). As part of its acknowledgment of claimant's appeal in the instant case, the Board attached a February 16, 2001 Memorandum requesting the parties to address the impact of the new regulations. On August 9, 2001, the District Court issued its decision upholding of the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F.Supp.2d 47 (D.D.C. 2001). The court's decision renders moot those

crediting the miner with at least fourteen years of coal mine employment, the administrative law judge found that the autopsy evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). The administrative law judge also found that claimant was entitled to a presumption that the miner's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). The administrative law judge, however, found that the evidence was insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits. On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Claimant also contends that the evidence is sufficient to establish that the miner's total disability was due to pneumoconiosis. Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable 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).

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arguments made by the parties regarding the impact of the challenged regulations.

Inasmuch as the instant survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).<sup>3</sup> See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). 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 *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

Claimant argues that the administrative law judge erred in finding the evidence insufficient to establish that the miner’s death was due to pneumoconiosis. Claimant specifically argues that:

The administrative law judge failed to give proper weight to [the miner’s] family and treating physicians, Dr. Ango [sic] and Dr. Camomot. Both these physicians stated that pneumoconiosis caused the miner’s death.

Claimant’s Brief at 4.

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<sup>3</sup>Section 718.205(c) provides, in pertinent part, that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner's death, or
- (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or where the death was caused by complications of pneumoconiosis, or
- (3) Where the presumption set forth at §718.304 is applicable.

20 C.F.R. §718.205(c).

While Dr. Camomot opined that the miner suffered from an occupational lung disease caused by his coal mine employment and that the miner was totally disabled, the doctor did not address the cause of the miner's death. See Director's Exhibit 35. Consequently, Dr. Camomot's opinion is insufficient to support a finding that the miner's death was due to pneumoconiosis.

In his consideration of whether the medical opinion evidence was sufficient to establish that the miner's death was due to pneumoconiosis, the administrative law judge found that Dr. Angco's opinion was unreasoned.<sup>4</sup> Decision and Order at 22; Director's Exhibit 35. Whether a medical report is sufficiently reasoned is for the

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<sup>4</sup>In a letter dated June 11, 1999, Dr. Angco noted that he did not have any medical records confirming that the miner suffered from "Black Lung." Director's Exhibit 35. Dr. Angco opined that the miner suffered from advanced emphysema and died of "a chronic lung related disease." *Id.* Dr. Angco indicated that if the miner's autopsy revealed the presence of "Black Lung," he would conclude that it "contributed greatly to his death."

Dr. Angco subsequently completed a questionnaire on June 30, 1999. Dr. Angco indicated that the miner suffered from an occupational lung disease caused by his coal mine employment. Director's Exhibit 35. Dr. Angco noted that the miner's autopsy report confirmed the presence of coal workers' pneumoconiosis. *Id.* Dr. Angco further opined that that the miner was totally disabled due to pneumoconiosis and "died of respiratory disease." *Id.*

administrative law judge as the fact-finder to decide. See *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). The administrative law judge found that Dr. Angco's opinion was not sufficiently reasoned because the doctor failed to explain whether he had diagnosed the existence of pneumoconiosis independently or had merely accepted the findings of the prosector. Decision and Order at 22; Director's Exhibit 35. Moreover, Dr. Angco failed to provide any rationale as to how the miner's pneumoconiosis contributed to his death. We, therefore, hold that the administrative law judge properly found that Dr. Angco's opinion was insufficient to establish that the miner's death was due to pneumoconiosis.

Inasmuch as claimant does not raise any other contention of error in regard to the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to coal workers' pneumoconiosis pursuant to 20 C.F.R. §718.205(c), this finding is affirmed.<sup>5</sup>

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<sup>5</sup>Claimant's remaining statements address whether the miner was totally disabled due to pneumoconiosis, an issue not relevant in the instant survivor's claim.

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

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge