

BRB No. 07-0593 BLA

F.C.)
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 Claimant-Petitioner)
)
 v.)
)
 CONSOLIDATION COAL COMPANY) DATE ISSUED: 03/28/2008
)
 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 Paul H. Teitler,
Administrative Law Judge, United States Department of Labor.

F.C., Corinne, West Virginia, *pro se*.

Kathy L. Snyder (Jackson Kelly PLLC), Morgantown, West Virginia, for
employer.

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

PER CURIAM:

Claimant¹ appeals, without the assistance of counsel, the Decision and Order (06-
BLA-5564) of Administrative Law Judge Paul H. Teitler 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). In a Decision and
Order dated March 29, 2007, the administrative law judge credited the miner with thirty-

¹ Claimant is the miner's widow. The miner died on January 21, 2005, following a
cerebrovascular event. Director's Exhibit 9.

eight years of coal mine employment,² as stipulated by the parties, and found that the autopsy and medical opinion evidence established that the miner had pneumoconiosis arising out of coal mine employment, pursuant to 20 C.F.R. §§718.202(a)(2), (4), 718.203. The administrative law judge further found, however, that claimant failed to establish that the miner's death was due to or hastened by pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally contends that the administrative law judge erred in failing to award benefits. Employer responds, urging affirmance of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a brief in this appeal.³

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989). The Board must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and in accordance with law. 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).

To establish entitlement to survivor's benefits pursuant to 20 C.F.R. §718.205(c), 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 hastens 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). Failure to establish any one of these elements precludes

² The record indicates that the miner's coal mine employment occurred 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, 1-202 (1989)(*en banc*).

³ The administrative law judge's finding of thirty-eight years of coal mine employment is affirmed as unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

entitlement. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987).

In considering the medical evidence relevant to the cause of the miner's death pursuant to 20 C.F.R. §718.205(c), the administrative law judge initially noted that the miner's death certificate listed the immediate cause of death as a cerebrovascular event, due to congestive heart failure, with other significant conditions listed as "pneumoconiosis/coal worker." Decision and Order at 5; Director's Exhibit 9. The administrative law judge permissibly accorded the death certificate little weight, because it lacked sufficient explanation for the diagnosis to constitute a reasoned medical opinion. *See Sparks*, 213 F.3d at 192, 22 BLR at 2-263; *Addison v. Director, OWCP*, 11 BLR 1-68, 1-70 (1988); Decision and Order at 8.

Turning to the autopsy and medical opinion evidence, the administrative law judge accurately found that Dr. Koh, the autopsy prosector, diagnosed macular pulmonary anthracosis, consistent with simple pneumoconiosis, and pulmonary emphysema, and opined that the miner's terminal events were cardio-respiratory failure and acute bronchopneumonia of the left lung. Decision and Order at 5; Director's Exhibit 10. In addition, the administrative law judge found that Drs. Bush, Castle, and Oesterling had reviewed the medical evidence and autopsy findings, and that Drs. Bush and Oesterling had also reviewed the autopsy slides, and they all had unanimously opined that the miner's emphysema was not due to coal dust exposure, and that neither coal dust exposure, nor the miner's coal workers' pneumoconiosis, played any role in the miner's death. Decision and Order at 8; Director's Exhibit 11; Employer's Exhibits 1, 5, 6.

By contrast, the administrative law judge found that only Dr. Rasmussen opined that coal dust exposure contributed to and hastened the miner's death. Decision and Order at 8; Claimant's Exhibit 1. Specifically, Dr. Rasmussen agreed with the final diagnoses made by Drs. Koh and Oesterling, but, citing to scientific literature for support, went on to state that there was "ample evidence to conclude that coal mine dust causes all forms of emphysema Coal mine dust exposure also causes interstitial fibrosis, which may or may not have been a contributing factor in [the miner's] case." Claimant's Exhibit 1 at 3. In addition, Dr. Rasmussen noted that, while the only valid pulmonary function study of record had been performed more than thirty years ago, and, at that time, did not indicate sufficient impairment to contribute to death, "impairment may progress indefinitely, [and] this could have led to much more significant impairment in lung function, which is in fact supported by the pathologic findings at the time of [the miner's] death." Claimant's Exhibit 1 at 6. Thus, Dr. Rasmussen concluded that "[the miner's] underlying chronic lung disease was sufficient to have caused death following the superimposed congestive heart failure, passive congestion, [and] bronchopneumonia[,] and that [the miner's] impairment was due in significant part to his previous coal mine dust exposure." *Id.*

The administrative law judge permissibly accorded little weight to Dr. Rasmussen's opinion, because it was based on generalities and medical literature, without pointing to the specifics of this particular case. Specifically, the administrative law judge found that Dr. Rasmussen failed to point to any objective data, specific to the miner, to support his conclusion that this particular miner's death was due to coal dust exposure. *See Island Creek Coal Co. v. Compton*, 211 F.3d 203, 211, 22 BLR 2-162, 2-174 (4th Cir. 2000); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-274 (4th Cir. 1997); *Hutchens v. Director, OWCP*, 8 BLR 1- 16 (1985); Decision and Order at 8-9; Claimant's Exhibit 1. In addition, the administrative law judge permissibly found Dr. Rasmussen's opinion to be equivocal, because the physician stated that a mild impairment, such as that diagnosed in 1972, "may progress" and "could have" led to a more significant impairment. *See Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). Thus, the administrative law judge acted within his discretion in concluding that Dr. Rasmussen's opinion was not a reasoned opinion sufficient to meet claimant's burden of proof to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *See Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-336 (4th Cir. 1998).

As the administrative law judge properly analyzed the medical opinions and explained his reasons for discrediting the opinion of Dr. Rasmussen, the only physician to opine that pneumoconiosis played any role in the miner's death, we affirm the administrative law judge's conclusion that a finding of entitlement is precluded in this case. *See* 20 C.F.R. §718.205(c); *Hicks*, 138 F.3d at 533, 21 BLR at 2-336; *Trent*, 11 BLR at 1-27.

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