

BRB No. 07-0613 BLA

V.M.)
(Widow of H.M.))
)
)
 Claimant-Petitioner)
)
 v.)
)
 J & D COAL COMPANY) DATE ISSUED: 03/25/2008
)
 and)
)
 KENTUCKY COAL PRODUCERS SELF-)
 INSURANCE FUND)
)
 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 of Adele Higgins Odegard, Administrative Law Judge, United States Department of Labor.

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

Rodney E. Buttermore, Jr. (Buttermore & Boggs), Harlan, Kentucky, for employer/carrier.

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

PER CURIAM:

Claimant appeals the Decision and Order (05-BLA-5965) of Administrative Law Judge Adele Higgins Odegard 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). This case involves a survivor's claim filed on August 12, 2004.¹ The administrative law judge credited the miner with eleven years of coal mine employment pursuant to the parties' stipulation,² and found that the x-ray evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1). The administrative law judge also found that claimant was entitled to the presumption that the miner's pneumoconiosis arose out of his coal mine employment pursuant to 20 C.F.R. §718.203(b). However, the administrative law judge found that the evidence did not 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 that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). 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).

Because this 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).³ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director*,

¹ The miner filed a claim for benefits on April 16, 1991. That claim was finally denied on January 24, 1992. Director's Exhibit 1.

² The record reflects that the miner's coal mine employment occurred in Kentucky. Director's Exhibit 5. Accordingly, this case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

³ Section 718.205(c) provides 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

OWCP, 11 BLR 1-85 (1988). Where pneumoconiosis is not the cause of death, a miner's death will be considered to be due to pneumoconiosis if the evidence establishes 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); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

As summarized by the administrative law judge, the record reflects that the miner died in the hospital on April 11, 1998, due to respiratory failure related to lung cancer. Director's Exhibits 15, 18, 19. Dr. Weiler, the attending physician during the miner's final hospitalization, reported that the miner died due to "a combination of pneumonitis, pulmonary edema[,] and carcinoma of the lung." Director's Exhibit 19 at 2. No autopsy was performed.

Dr. Eubanks, the miner's treating physician, completed the miner's death certificate and listed respiratory failure due to "adenocarcinoma of the lung with metastases" as the immediate cause of death. Director's Exhibit 15. Dr. Eubanks also listed pneumoconiosis as a significant condition contributing to death. *Id.* By letter dated May 13, 2004, Dr. Eubanks opined that pneumoconiosis contributed to the miner's death:

[The miner] had Black Lung first diagnosed at our clinic on 4-10-91. Subsequently, he had adenocarcinoma of the lung diagnosed on 9/97. He died of respiratory failure on 4-11-98.

It is my opinion that the Black Lung contributed to his early demise with respiratory failure.

Director's Exhibit 18.

(3) Where the presumption set forth at §718.304 is applicable.

(4) However, survivors are not eligible for benefits where the miner's death was caused by a traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.

(5) 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).

By contrast, Drs. Dahhan and Fino reviewed the miner's medical records and concluded that pneumoconiosis played no role in the miner's death due to lung cancer that was related to smoking. Director's Exhibits 20, 21.

The administrative law judge found that there was no credible evidence supportive of a finding that the miner's pneumoconiosis played any role in his death. Decision and Order at 15-16. The administrative law judge, therefore, found that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). *Id.*

Claimant argues that the administrative law judge erred in discrediting Dr. Eubanks' "well reasoned" opinion that the miner's death was due to pneumoconiosis. Claimant's Brief at 3. We disagree. The administrative law judge reasonably found that, although Dr. Eubanks was the miner's treating physician, she offered no explanation for her "conclusory" opinion that the miner's pneumoconiosis contributed to his death. Decision and Order at 15; *see* 20 C.F.R. §718.104(d)(5); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003). Substantial evidence supports this permissible finding. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149, 1-155 (1989)(*en banc*). Additionally, the administrative law judge properly determined that Dr. Eubanks' notation of pneumoconiosis on the death certificate, "standing alone, [was] insufficient to establish that pneumoconiosis" caused or contributed to the miner's death. Decision and Order at 15-16; *see Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 192, 22 BLR 2-251, 2-263 (4th Cir. 2000).

Further, the administrative law judge accurately found that the "record contains no other medical opinion positing any causal connection between the [m]iner's pneumoconiosis and his death." Decision and Order at 15; Director's Exhibits 19-21. Because it is supported by substantial evidence, we affirm the administrative law judge's finding that the evidence did not establish that the miner's death was due to or hastened by pneumoconiosis pursuant to 20 C.F.R. §718.205(c). We therefore affirm the denial of benefits.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge