

BRB No. 99-0232 BLA

GEORGIA PEACE,)
(Surviving Widow of HAYS PEACE))
)
and)
)
LORENE PEACE)
(Surviving Divorced Spouse of HAYS PEACE))
)
Claimants-Petitioners)
)
v.) DATE ISSUED:
)
MOUNTAIN CLAY, INCORPORATED))
)
Employer-Respondent)
)
and)
)
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 Joseph E. Kane,
Administrative Law Judge, United States Department of Labor.

Edmond Collett, Hyden, Kentucky, for claimants.

Timothy J. Walker, London, Kentucky, for employer.

Before: SMITH, and BROWN, Administrative Appeals Judges, and NELSON,
Acting Administrative Appeals Judge.

PER CURIAM:

Claimants¹ appeal the Decision and Order - Denying Benefits (98-BLA-0282) of Administrative Law Judge Joseph E. Kane on two survivor's claims 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 administrative law judge found that the evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a), but failed 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 the claims.

On appeal, claimants challenge the administrative law judge's consideration of the medical opinions of record pursuant to Section 718.205(c). Employer, in response, asserts that the Decision and Order of the administrative law judge is supported by substantial evidence, and accordingly urges affirmance. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not respond to the instant appeal.²

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

¹ Claimants are Georgia Peace, surviving spouse of the miner, and Lorene Peace surviving divorced spouse of the miner. The miner, Hays Peace, died on November 30, 1996. Director's Exhibit 8. Georgia Peace filed her claim for survivor's benefits on May 1, 1997. Director's Exhibit 2. Lorene Peace filed her claim on December 7, 1996. Director's Exhibit 1. Counsel represents both claimants.

²We affirm, as unchallenged on appeal, the administrative law judge's finding that the evidence establishes the existence of pneumoconiosis at Section 718.202(a)(4). *See Coen v. Director, OWCP*, 7 BLR 1-30 (1984); *Skrack v. Island Coal Co.*, 6 BLR 1-710 (1983).

disturbed. 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to survivor's benefits under 20 C.F.R Part 718 in a claim filed after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment, and that the miner's death was due to pneumoconiosis or that the pneumoconiosis was a substantially contributing cause or factor leading to the miner's death or that death was caused by complications of pneumoconiosis or that the miner had complicated pneumoconiosis. *See* 20 C.F.R §§718.202, 718.203, 718.205(c), 718.304; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).

Claimant challenges the administrative law judge's consideration of the medical opinion evidence pursuant to Section 718.205(c). Claimant asserts that the administrative law judge failed to fully discuss the opinions of Drs. Harrison and Dineen and the deposition testimony of Dr. Manoviwala. We disagree. Contrary to claimant's arguments, the administrative law judge fully considered the evidence of record and rationally determined that "the record is silent as to whether the pneumoconiosis was 'a substantially contributing cause of death'." Decision and Order at 14-15. The administrative law judge correctly found that the opinions of Drs. Harrison and Dineen, that the miner's death was not caused in any way by a condition arising out of coal mine employment, are insufficient to establish claimant's burden. *Id.* In addition, Dr. Manoviwala, who completed the miner's death certificate, stated that the miner died due to "respiratory failure as a consequence of chronic obstructive pulmonary disease." Director's Exhibit 8. In his deposition, Dr. Manoviwala testified that cigarette smoking was a likely cause of the miner's death. Employer's Exhibit 1 at 8. He testified further that "the smoking history is probably the more important contributing factor to the severity of the lung disease. How much one or either [the coal dust exposure or smoking history] caused the severity of the lung disease is difficult to distinguish." *Id.* at 10. Claimants, in their own brief, admit that Dr. Manoviwala's deposition testimony is "vague and equivocal and should have been discounted since he neither took a stand for or against the existence of or death due to pneumoconiosis". Claimant's Brief at 6. Thus, while claimants state that the miner died due to a respiratory condition, they have not alleged error in the administrative law judge's evaluation of the evidence that they seek to affirmatively establish that the miner's death was due to his pneumoconiosis.

Inasmuch as it is claimant's burden to affirmatively establish that the miner's pneumoconiosis was a substantially contributing cause of the miner's death, *see Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111(6th Cir. 1995); *see also Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Neeley, supra* we hold that the administrative law judge's finding that the claimants in this case have not sustained their burden of proof is

supported by substantial evidence. We affirm, therefore, the administrative law judge's finding that the medical evidence fails to establish death due to pneumoconiosis at Section 718.205(c). Accordingly, we affirm the administrative law judge's denial of benefits in both survivor's claims.

Accordingly, the administrative law judge's Decision and Order - Denying Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge