

BRB No. 04-0775 BLA

BETTY J. JOSEPH	)	
(Widow of ISAAC JOSEPH)	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
GLENN'S TRUCKING COMPANY,	)	DATE ISSUED: 05/06/2005
INCORPORATED	)	
	)	
and	)	
	)	
INSURANCE COMPANY of AMERICA	)	
	)	
Employer/Carrier-Respondent	)	
	)	
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 Rudolf L. Jansen, Administrative Law Judge, United States Department of Labor.

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

Philip J. Reverman, Jr. (Boehl, Stopher and Graves), Louisville, Kentucky, for employer.

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

PER CURIAM:

Claimant appeals the Decision and Order – Denying Benefits (2003-BLA-5928) of Administrative Law Judge Rudolf L. Jansen rendered 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). Based on the date of filing, the administrative law judge adjudicated this claim pursuant to 20 C.F.R Part 718, and noted the parties' agreement that

claimant established fifteen years of coal mine employment and the presence of coal workers' pneumoconiosis. Decision and Order at 3-5; Hearing Transcript at 8.<sup>1</sup> The administrative law judge further found that the evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant challenges the administrative law judge's consideration of the evidence relevant to the cause of the miner's death at Section 718.205(c). Employer responds, urging affirmance of the Decision and Order of the administrative law judge denying benefits as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, (the Director) has filed a letter indicating that he will not participate in this appeal.

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 disturbed. 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).

In order to establish entitlement to benefits in a survivor's claim filed on or after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment, and that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, or that the miner was entitled to the irrebuttable presumption at Section 718.304, relating to the existence of complicated pneumoconiosis. See 20 C.F.R. §§718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Pneumoconiosis is a "substantially contributing cause" of a miner's death if it hastens the

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<sup>1</sup> The record indicates that the miner, Isaac Joseph, filed an application for benefits on January 22, 1981, which was denied by the district director on March 27, 1981. Director's Exhibit 1. The miner filed a second claim for benefits on October 5, 1982, which was denied by the district director on March 10, 1983. Director's Exhibit 1. The miner's third application for benefits was filed on July 12, 1996, and denied on April 30, 1998 by Administrative Law Judge Thomas F. Phalen, Jr. Director's Exhibit 1. On appeal, the Board affirmed the denial of benefits on the miner's claim. *Joseph v. Glenn's Trucking Co., Inc.*, BRB No. 98-1094 BLA (May 11, 1999)(unpub.). The miner died on March 7, 2000, and claimant filed for survivor's benefits on December 10, 2001. Director's Exhibits 3, 9. Claimant is appealing only the denial of survivor's benefits herein.

miner's death. 20 C.F.R. §718.205(c)(2); *see Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).<sup>2</sup>

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the Decision and Order is supported by substantial evidence and contains no reversible error. Regarding the administrative law judge's consideration of the medical opinion evidence pursuant to Section 718.205(c), claimant contends that the administrative law judge erred by finding that pneumoconiosis was not an underlying factor in the miner's death, asserting that the record contains "extensive medical documentation showing that Mr. Joseph did suffer from pneumoconiosis and that said disease did hasten his death." Claimant's Brief at 3. Claimant further suggests that the administrative law judge "may have" improperly "selectively analyzed" the evidence of record. Claimant's Brief at 3. We find no merit in these assertions, however.

The Decision and Order indicates that the administrative law judge considered all the relevant evidence, and rationally found that the record evidence was insufficient to establish that pneumoconiosis contributed to the miner's death as the medical reports of Drs. Caffrey, Branscomb and Sandlin, and the miner's death certificate all state that the miner died due to stomach cancer, and do not indicate that pneumoconiosis played any role in the miner's death. Decision and Order at 7; Employer's Exhibits 1, 2; Director's Exhibits 9, 11. Thus, the administrative law judge rationally found that claimant failed to satisfy her affirmative burden of proof to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). *Director, OWCP v. Greenwich Collieries [Ondecko]*, 512 U.S. 267, 18 BLR 2A-1 (1994); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003); *Griffith*, 49 F.3d 184, 19 BLR 2-111; *Brown*, 996 F.2d 812, 17 BLR 2-135; *Neeley*, 11 BLR 1-85. Moreover, we find no evidence to support claimant's suggestion that the administrative law judge selectively analyzed the medical evidence of record. As we affirm the administrative law judge's finding that the evidence of record failed to establish that pneumoconiosis contributed to the miner's death pursuant to Section 718.205(c), we must affirm the denial of benefits. 20 C.F.R. §718.205(c); *Brown*, 996 F.2d 812, 17 BLR 2-135.

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<sup>2</sup> This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit, since claimant's coal mine employment was in the Commonwealth of Kentucky. Director's Exhibit 1; *see Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

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

SO ORDERED.

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REGINA C. McGRANERY  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge