

BRB No. 06-0798 BLA

GRACIE JOSEPH)
(Widow of SILAS JOSEPH))
)
Claimant-Petitioner)
)
v.)
)
ALLIED COAL, INCORPORATED) DATE ISSUED: 05/24/2007
)
and)
)
KY COAL PRODUCERS S-I 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 on Motion for Reconsideration of Rudolf L. Jansen,
Administrative Law Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

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

PER CURIAM:

Claimant, the miner's widow, appeals the Decision on Motion for Reconsideration (04-BLA-5452) of Administrative Law Judge Rudolf L. Jansen (the administrative law judge) 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).¹ The administrative law judge 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, benefits were denied.²

On appeal, claimant contends that the administrative law judge erred in not crediting Dr. Sandlin's opinion that pneumoconiosis contributed to and hastened the miner's death. Employer has not responded to claimant's appeal. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not respond.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is supported by substantial evidence, is rational, and is 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).

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 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. Death is considered due to pneumoconiosis where pneumoconiosis caused the miner's death, was a substantially contributing cause or factor leading to the miner's death, where death was caused by complications of pneumoconiosis, or where the presumption, set forth at 20 C.F.R. §718.304, relating to complicated pneumoconiosis, is applicable. *See* 20 C.F.R. §§718.1, 718.201, 718.202(a), 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (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 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 1-135 (6th Cir. 1993).³

¹ The miner died on June 14, 2002 due to lung cancer. Director's Exhibit 2. Claimant filed a survivor's claim on July 2, 2002. Director's Exhibit 2.

² On May 11, 2006, the administrative law judge issued a decision denying benefits because claimant failed to establish that the miner had pneumoconiosis. Pursuant to claimant's request for reconsideration, the administrative law judge found that the existence of pneumoconiosis arising out of coal mine employment was established pursuant to 20 C.F.R. §§718.202, 718.203.

³ The record indicates that the miner was last employed in the coal mine industry in Kentucky. Director's Exhibit 5. Accordingly, this case arises within the jurisdiction

Claimant contends that the administrative law judge erred in rejecting Dr. Sandlin's opinion as equivocal because, claimant's asserts, it was a well-reasoned and well-documented opinion.⁴ Claimant also contends that the administrative law judge erred in not crediting the opinion of Dr. Sandlin because he was the miner's treating physician. We do not find merit in either of claimant's arguments.

Contrary to claimant's contention, the administrative law judge rationally found that Dr. Sandlin's opinion was equivocal in light of the physician's statement that the miner's weakened and poor condition from chronic obstructive pulmonary disease and coal workers' pneumoconiosis *probably* hastened the miner's death from cancer. *Griffith*, 49 F.3d at 186, 19 BLR at 2-117; *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). For this same reason, the administrative law judge also rationally declined to give controlling weight to the opinion of Dr. Sandlin, despite the fact that he was the miner's treating physician. 20 C.F.R. §718.104(d)(5); *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003) (treating physicians get the deference they deserve based on their power to persuade).

As claimant makes no other specific challenges to the administrative law judge's findings regarding the evidence, we affirm the administrative law judge's finding that the evidence failed to establish that pneumoconiosis caused, substantially contributed to, or hastened the miner's death. Because claimant has failed to establish death due to pneumoconiosis, her survivor's claim must be denied. *Williams*, 338 F.3d at 517-518, 19 BLR at 2-655; *Griffith*, 49 F.3d at 186, 19 BLR at 2-117.

of the United States Court of Appeals for the Sixth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*).

⁴ Dr. Sandlin based his opinion on a physical examination, history, and review of pulmonary function studies. Claimant's Exhibit 1.

Accordingly, the administrative law judge's Decision on Motion for Reconsideration 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