

BRB No. 01-0220 BLA

DEBORAH ANN LEDFORS)
(Widow of RICHARD LEDFORS))
)
 Claimant-Petitioner)
)
 v.)
)
 ENERGY WEST MINING COMPANY, INC.) DATE ISSUED:
)
)
 and)
)
 WASATCH CREST MUTUAL INSURANCE)
 COMPANY)
)
 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 Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Barbara E. Holmes (Blaufeld and Schiller), Pittsburgh, Pennsylvania, for claimant.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (99-BLA-1172) of Administrative Law

¹ Claimant is the widow of Richard Ledfors, the miner, who died on October 9, 1998. See Director's Exhibits 1, 6.

Judge Daniel J. Roketenetz 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).² Based on the filing date of November 27, 1998, the

² The Department of Labor has amended the regulations implementing the Federal Coal Mine Health and Safety Act of 1969, as amended. These regulations became effective on January 19, 2001, and are found at 65 Fed. Reg. 80,045-80,107 (2000)(to be codified at 20 C.F.R. Parts 718, 725 and 726). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to 47 of the regulations implementing the Act, the United District Court for the District of Columbia granted limited injunctive relief for the duration of the lawsuit, and stayed, *inter alia*, all claims pending on appeal before the Board under the Act, except for those in which the Board, after briefing by the parties to the claims, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Association v. Chao*, No. 1:00CV03086 (D.D.C. Feb. 9, 2001)(order granting preliminary injunction). On August 9, 2001, the District Court issued its decision upholding the validity of the challenged regulations and dissolving the February 9, 2001 order granting the preliminary injunction. *National Mining Ass'n v. Chao*, 160 F.

administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718. The administrative law judge credited the miner with thirty-four years of qualifying coal mine employment and found employer to be the responsible operator. On the merits, the administrative law judge found the evidence of record insufficient to establish the existence of pneumoconiosis arising out of coal mine employment and therefore insufficient to establish death due to pneumoconiosis and, even if the existence of pneumoconiosis were established, insufficient to establish that pneumoconiosis caused, contributed to, or hastened the miner's death. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in not finding the evidence sufficient to establish the existence of pneumoconiosis and death due to pneumoconiosis. Employer has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), has filed a letter indicating that he will not participate in this appeal.³

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).

Supp. 2d 47 (D.D.C. 2001).

³ We affirm the findings of the administrative law judge regarding the miner's length of coal mine employment, the miner's employment as a miner under the Act, the designation of employer as the responsible operator, and the determination of claimant's eligibility as a surviving spouse, as they are unchallenged on appeal. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

To establish entitlement to survivor's benefits claimant must establish that the miner suffered from pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.3, 718.202, 718.203, 718.205(a); *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). In a survivor's claim filed on or after January 1, 1982, death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, if pneumoconiosis was a substantially contributing cause or factor leading to the miner's death, if death was caused by complications of pneumoconiosis, or if the presumption set forth at Section 718.304, relating to complicated pneumoconiosis, is applicable. See 20 C.F.R. §§718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); see *Northern Coal Co. v. Director, OWCP [Pickup]*, 100 F.3d 871, 20 BLR 2-335 (10th Cir. 1996).⁴

⁴ Although the miner initially worked in Ohio, the Board applies the law of the circuit where the miner last worked. Thus, the Board will apply the law of the United States Court of Appeals for the Tenth Circuit as the miner's last coal mine employment took place in Utah. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Director's Exhibit 4. We note that at the time of his death, the miner was living in Ohio. See Director's Exhibit 1.

First, claimant asserts that the opinion of Dr. Shah establishes the existence of complicated pneumoconiosis pursuant to 20 C.F.R. §718.304 which entitles her to the irrebuttable presumption that the miner's death was due to pneumoconiosis, *see* Section 411(c)(3) of the Act, 30 U.S.C. §921(c)(3). *See* 20 C.F.R. §718.205(c)(3).⁵ In finding that complicated pneumoconiosis was not established, the administrative law judge found that Dr. Shah's opinion diagnosing complicated pneumoconiosis was neither well-reasoned nor well-documented because, although Dr. Shah found fibrotic nodules in both lungs, he noted that the nodules were small, and that he could not explain the etiology of the lesions. Director's Exhibit 7; Employer's Exhibit 1. Further, considering the opinion of Dr. Naeye, who reviewed the autopsy report and slides, the administrative law judge noted that Dr. Naeye reported that the miner "had minimal diagnostic findings of simple coal workers' pneumoconiosis in his lungs" based on two micronodules found in the lungs. The administrative law judge also noted that Dr. Naeye found massive fibrosis due to non-occupational factors. Director's Exhibit 30. The administrative law judge stated that Dr. Hutchins, who had reviewed Dr. Shah's autopsy report, reasoned that "the absence of silicotic nodules in [the miner's] pathology slides of lung and lymph nodes strongly mitigates against the possibility that his pulmonary fibrosis was caused by silica," and attributed the miner's fibrosis to an unknown cause. Thus, in conclusion, the administrative law judge determined that the nodules of 1 millimeter and 5 millimeters observed by Dr. Naeye were insufficient to establish complicated pneumoconiosis, and that the report of Dr. Shah, the only physician to diagnose complicated pneumoconiosis was not well-reasoned or well-documented in light of the other relevant evidence of record. Decision and Order at 11; *Double B Mining, Inc. v. Blankenship*, 177 F.3d 240, BLR (4th Cir. 1999); *Gray v.*

⁵ Section 411(c)(3) provides:

If a miner is suffering or suffered from a chronic dust disease of the lung which (A) when diagnosed by chest roentgenogram yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B or C in the International Classification of Radiographs of the Pneumoconioses by the International Labor Organization, (B) when diagnosed by biopsy or autopsy yields massive lesions in the lung, or (C) when diagnosis is made by other means, would yield a condition which could reasonably be expected to yield results described in clause (A) or (B), if diagnosis had been made in the manner prescribed in clause (A) or (B), then there shall be an irrebuttable presumption that he is totally disabled due to pneumoconiosis or that his death was due to pneumoconiosis, or that at the time of death he was totally disabled by pneumoconiosis, as the case may be.

30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304.

SLC Coal Co., 176 F.3d 382, 21 BLR 2-615 (6th Cir. 1999); *Lester v. Director, OWCP*, 993 F.2d 1143, 17 BLR 2-114 (4th Cir. 1993); *Clites v. Jones & Laughlin Steel Corp.*, 663 F.2d 14, 3 BLR 2-86 (3d Cir. 1981), *rev'g* 2 BLR 1-1019 (1980); *Handy v. Director, OWCP*, 16 BLR 1-73 (1990); *Maypray v. Island Creek Coal Co.*, 7 BLR 1-683, 1-685 (1985); *Reilly v. Director, OWCP*, 7 BLR 1-139 (1984); *Lohr v. Rochester and Pittsburgh Coal Co.*, 6 BLR 1-1264, 1267 (1984). Accordingly, we affirm the administrative law judge's finding that claimant has failed to establish the existence of complicated pneumoconiosis and is not therefore entitled to the irrebuttable presumption of death due to pneumoconiosis. 20 C.F.R. §§718.205(c)(3), 718.304.

Next, in finding that claimant failed to establish that the miner's death was due to pneumoconiosis, the administrative law judge specifically determined that while Dr. Shah found that the miner had pneumoconiosis at the time of his death, he did not find that the miner died of pneumoconiosis, and that there was nothing in his opinion to establish that causal connection. Further, upon review of the other medical evidence of record, the administrative law judge stated that none of the other medical records indicated that pneumoconiosis was a cause of the miner's death, and that the cause listed on the miner's death certificate was "malignant pleural effusion due to lung cancer," Director's Exhibits 6, 7, 30; Employer's Exhibits 1, 4. The administrative law judge, therefore, found based on the record as a whole that claimant failed to establish that the miner's death was in any way caused or contributed to by coal workers' pneumoconiosis. This was rational. *Pickup, supra*. Accordingly, the administrative law judge's finding that the evidence fails to establish death due to pneumoconiosis must be affirmed, and we need not consider the administrative law judge's findings regarding the existence of pneumoconiosis. *See* 20 C.F.R. §718.205(c).

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

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge