

BRB No. 01-0264 BLA

NAOMI WILLIAMSON )  
(Widow of ROY WILLIAMSON) )

Claimant-Petitioner )

v. )

) DATE ISSUED:

EASTERN ASSOCIATED COAL )  
CORPORATION )

Employer-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 John C. Holmes,  
Administrative Law Judge, United States Department of Labor.

S. F. Raymond Smith (Rundle & Rundle, L.C.), Pineville, West Virginia,  
for claimant.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for  
employer.

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

PER CURIAM:

Claimant<sup>1</sup> appeals the Decision and Order Denying Benefits (00-BLA-0383) of

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<sup>1</sup> Claimant is the widow of Roy Williamson, the miner, who died on February 3, 1999. Director's Exhibit 6. The miner filed an application for benefits in April 1982, which was awarded by the district director in 1984. Director's Exhibits 22-1, 22-23, 22-35. The miner was in payment status at the time of his death in February 1999. Director's Exhibit 22-42. Claimant filed her survivor's

Administrative Law Judge John C. Holmes 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).<sup>2</sup> Based on claimant's March 16, 1999 filing

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claim on March 16, 1999. Director's Exhibit 1.

<sup>2</sup> 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 20 C.F.R. Parts 718, 722, 725, and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

Pursuant to a lawsuit challenging revisions to forty-seven of the regulations implementing the Act, the United States 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 claim, determined that the regulations at issue in the lawsuit would not affect the outcome of the case. *National Mining Ass'n 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

date, the administrative law judge adjudicated this claim pursuant to 20 C.F.R. Part 718 (2000). Initially, the administrative law judge acknowledged that the miner was receiving Federal Black Lung benefits at the time of his death in 1999, pursuant to a claim filed in April 1982 and awarded by the district director in 1984. However, the administrative law judge found that the doctrine of collateral estoppel was not applicable in this case and, therefore, that claimant must establish all of the elements of entitlement, including the existence of pneumoconiosis, in her survivor's claim.

Addressing the merits of the survivor's claim, the administrative law judge found the x-ray evidence sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) (2000). In addition, the administrative law judge found that the medical opinion evidence was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) (2000). However, the administrative law judge found that the medical evidence of record was insufficient to establish that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to 20 C.F.R. §718.205(c) (2000). Accordingly, the administrative law judge denied the survivor's claim.

On appeal, claimant generally contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis, arguing that the medical opinion of Dr. Giessel was sufficient to establish that pneumoconiosis hastened the miner's death. In response, employer urges affirmance of the administrative law judge's denial of benefits. Alternatively, employer contends that the administrative law judge erred in finding that the medical evidence was sufficient to establish the existence of pneumoconiosis. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not file a response brief in this appeal.

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 applicable 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).

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injunction. *National Mining Ass'n v. Chao*, 160 F.Supp.2d 47 (D.D.C. Aug. 9, 2001).

Benefits are payable on a survivor's claim filed on or after January 1, 1982 only when claimant meets her burden of establishing that the miner had 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 where complicated pneumoconiosis is established. 20 C.F.R. §§718.201, 718.202, 718.203, 718.205(c) (2001); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Sumner v. Blue Diamond Coal Co.*, 12 BLR 1-74 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (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) (2001); *see Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993).<sup>3</sup>

After consideration of the administrative law judge's Decision and Order, the issues raised on appeal and the relevant evidence of record, we conclude that substantial evidence supports the administrative law judge's findings that the miner's death was not due to pneumoconiosis nor was pneumoconiosis a substantially contributing cause of the miner's death. As the administrative law judge correctly set forth, the relevant evidence of record includes the miner's death certificate, medical treatment notes and the medical reports of Drs. Giessel, Fino and Branscomb. In weighing this evidence, the administrative law judge rationally determined that the death certificate, which listed "COPD" as the immediate cause of the miner's death and coal workers' pneumoconiosis as an "other significant condition," was insufficient to support a finding that pneumoconiosis contributed to the miner's death. Decision and Order at 7. The administrative law judge reasonably accorded no weight to the death certificate because the signature of the certifying physician was illegible and, therefore, the administrative law judge found that he could not determine the credibility of the physician or assess the evidence upon which the physician based his or her conclusion. Decision and Order at 7; Director's Exhibit 6; *see Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *see also Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, BLR (4th Cir. 2000); *Smith v. Camco*

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<sup>3</sup> The administrative law judge properly found that the miner's last coal mine employment occurred in West Virginia and, therefore, that this case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit. *See Shupe v. Director, OWCP*, 12 BLR 1-200 (1989)(*en banc*); Decision and Order at 5; Director's Exhibits 2; 22-2.

*Mining Inc.*, 13 BLR 1-17 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985).

With respect to the medical opinion evidence, the administrative law judge acted within his discretion in finding that Dr. Giessel, the only physician to state that pneumoconiosis contributed to the miner's death, failed to adequately explain his determination that coal workers' pneumoconiosis was a contributing cause in the miner's death, as the physician did not provide any reasoning for his conclusion.<sup>4</sup> Decision and Order at 7-8; Director's Exhibit 9; see *U.S. Steel Mining Co., Inc. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999); see also *Clark, supra*; *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Pastva v. The Youghiogheny & Ohio Coal Co.*, 7 BLR 1-829 (1985). Since claimant has the burden of establishing that the miner's death was due to, or hastened by, pneumoconiosis and the administrative law judge rationally discredited the only evidence supportive of claimant's burden, we affirm his finding that claimant failed to prove that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c) (2001).<sup>5</sup> 20 C.F.R. §718.205(c) (2001); see *Shuff, supra*; *Neeley, supra*; see also *Addison, supra*; *Fetterman v. Director, OWCP*, 7 BLR 1-688 (1985).

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

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<sup>4</sup> The August 1999 medical report of Dr. Giessel states, in its entirety,

I am responding to your [Office of Workers' Compensation Programs] request on additional information regarding Roy Williamson. It is my belief that Coal Workers' pneumoconiosis was a contributory cause to Mr. Williamson's death.

Director's Exhibit 9.

<sup>5</sup> Inasmuch as we affirm the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis, we need not address the administrative law judge's finding that the medical evidence of record was sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) (2000), as error, if any, therein is harmless. See *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984); see also *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993).

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge