

BRB No. 02-0429 BLA

PATSY ANN HOLLAND (Widow of CHARLIE HOLLAND))	
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)	
Claimant-Petitioner)	
)	
v.)	DATE ISSUED:
)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order - Denial of Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

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

Timothy S. Williams (Eugene Scalia, Acting Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant, the miner's widow,¹ appeals the Decision and Order (2001-BLA-0432) of Administrative Law Judge Daniel J. Roketenetz denying benefits on a survivor's claim 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 The administrative law judge credited

¹ Claimant is Patsy Ann Holland, the surviving spouse of the deceased miner, Charlie Holland, who died on May 8, 2000. Decision and Order at 2; Director's Exhibits 1, 5.

² The Department of Labor has amended the regulations implementing the Federal Coal

the miner with at least eleven years of coal mine employment and adjudicated the survivor's claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) or death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal herein, claimant contends that the administrative law judge erred in his evaluation of the x-ray evidence in finding that the existence of pneumoconiosis was not established pursuant to 20 C.F.R. §718.202(a)(1).³ Claimant also contends that the administrative law judge erred in failing to find that the evidence establishes death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's denial of benefits

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 the Board and may not be disturbed. 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).

To establish entitlement to survivor's benefits, claimant must demonstrate by a preponderance of the evidence that the miner had pneumoconiosis arising out of coal mine employment and that his death was due to pneumoconiosis. *See* 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). For survivors' claims filed on or after January 1, 1982, death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, pneumoconiosis was

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 (2002). All citations to the regulations, unless otherwise noted, are to the amended regulations.

³ The administrative law judge's findings pursuant to 20 C.F.R. §718.202(a)(2)-(4) are unchallenged on appeal and are therefore affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

a substantially contributing cause or factor leading to the miner's death, death was caused by complications of pneumoconiosis, or the presumption, relating to complicated pneumoconiosis, set forth at Section 718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); *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).

After consideration of the administrative law judge's Decision and Order, the arguments of the parties and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. Claimant contends that the administrative law judge erred in finding that the x-ray evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1). Claimant asserts that the administrative law judge selectively analyzed the evidence, improperly relied on the superior qualifications of the readers that did not interpret the x-rays as positive, and improperly gave greater weight to the numerical superiority of the x-ray readings that were not positive. We disagree. In his consideration of the relevant x-ray evidence, the administrative law judge noted that there were three x-rays which were interpreted as negative by Drs. Barrett and Sargent, both of whom are dually qualified physicians, i.e., physicians who are Board-certified radiologists and B readers. Decision and Order at 4; Director's Exhibits 12-13. The administrative law judge found that there were no positive interpretations of record. Decision and Order at 4. The administrative law judge thus reasonably found that the x-ray evidence failed to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), and this finding is affirmed. *Staton v. Norfolk & Western Ry. Co.*, 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); *Roberts v. Bethlehem Mines Corp.*, 8 BLR 1-211 (1985).

The administrative law judge also properly found that the evidence failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). The administrative law judge correctly found that as none of the physicians attributed the miner's death to pneumoconiosis, claimant failed to establish entitlement to survivor's benefits.⁴ We,

⁴ The death certificate lists the causes of the miner's death as pneumonia, septic shock and congestive heart failure. Decision and Order at 6; Director's Exhibit 5. In addition, the administrative law judge correctly noted that the hospital records failed to indicate that pneumoconiosis played a role in the miner's death. Decision and Order at 6-7; Director's

therefore, affirm the administrative law judge's finding that the medical evidence failed to establish that pneumoconiosis caused, contributed to, or hastened the miner's death. 20 C.F.R. §718.205(c); *see Brown, supra*.

Claimant has the general burden of establishing entitlement and bears the risk of non-persuasion if her evidence is found insufficient to establish a crucial element. *See Trent, supra; White v. Director, OWCP*, 6 BLR 1-368 (1983). As the administrative law judge correctly concluded that the evidence does not establish the existence of pneumoconiosis or that the miner's death was due to pneumoconiosis and because claimant has not met her burden of proof on the essential elements of entitlement in a survivor's claim, we must affirm the denial of benefits. *Brown, supra; Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Trent, supra; Trumbo, supra; Neeley, supra*.

Accordingly, the Decision and Order of the administrative law judge denying benefits on this survivor's claim is affirmed.

SO ORDERED.

NANCY S. DOLDER
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge

Exhibit 7.