

BRB No. 03-0277 BLA

LISA WHITE o/b/o FLORENCE GROVES)
(Widow of JOHN W. GROVES))
)
 Claimant-Petitioner)
)
 v.)
)
 U. S. STEEL MINING COMPANY) DATE ISSUED: 11/19/2003
)
 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 Richard A. Morgan, Administrative Law Judge, United States Department of Labor.

Thomas McK. Hazlett (Harper & Hazlett), St. Clairsville, Ohio, for claimant.

Christopher Pierson (Burns, White & Hickton), Pittsburgh, Pennsylvania, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order – Denying Benefits (01-BLA-0457) of Administrative Law Judge Richard A. Morgan rendered on a claim filed pursuant to the provisions of Title IV of the Federal Coal Mine Health and Safety Act of 1969, as

¹ Claimant filed the instant survivor's claim on March 27, 2000, on behalf of her mother, Florence Groves, widow of the miner. Director's Exhibit 1.

amended, 30 U.S.C. §901 *et seq.* (the Act).² In this survivor's claim, the administrative law judge found that the evidence failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. § 718.205. Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding that the death certificate and hospital records were insufficient to establish that the miner's death was due to pneumoconiosis. Employer responds, urging affirmance of the administrative law judge's Decision and Order. The Director, Office of Workers' Compensation Programs (the Director), is not participating this appeal.

The Board' 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).

To establish entitlement to survivor's benefits, claimant must establish that the miner had pneumoconiosis, that the miner's 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); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *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, if pneumoconiosis was 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. *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 Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

Claimant contends that the administrative law judge erred in finding the death certificate and hospital records were inadequate, as a matter of law, to support a finding

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 20 C.F.R. Parts 718, 725 and 726 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

of death due to pneumoconiosis in this case. In finding that the death certificate and the hospital records did not establish death due to pneumoconiosis, the administrative law judge found that even though Dr. Tan, who signed the death certificate, was the miner's attending physician, he found that neither the death certificate nor the hospital records established death due to pneumoconiosis. Specifically, the administrative law judge noted that Dr. Tan had simply listed "COPD" and "ASHD" as underlying causes of the miner's pneumonia, the cause of his respiratory arrest and death. The administrative law judge noted, however, that Dr. Tan did not explain how these conditions caused, contributed to, or hastened the miner's death, nor did the hospital records assist claimant since the hospital records from the time immediately prior to the miner's death referred only to his long cigarette smoking history, and not his coal mine employment. Further, the administrative law judge noted that Dr. Tan's reference to "COPD" without stating that it arose out of coal mine employment was insufficient to establish the existence of pneumoconiosis as defined by the Act, a respiratory impairment arising out of coal mine employment, see 20 C.F.R. §718.201, nor did Dr. Tan even address the possible role of the miner's other health problems, e.g., a history of cerebrovascular accident, in contributing to or hastening the miner's death. Thus the administrative law judge concluded that the death certificate and hospital records, in this case, did not constitute a reasoned medical opinion sufficient to establish that pneumoconiosis caused, contributed to, or hastened the miner's death. This was reasonable. *Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997); see *Addison v. Director, OWCP*, 11 BLR 1-68, 1-70 (1988). Contrary to claimant's argument, the administrative law judge did not find that a death certificate and hospital records could never provide evidence adequate to establish the cause of death. Rather, he permissibly found that, in this case, neither contained sufficient reasoning or explanation to provide such evidence. This was permissible. *Lango*, 104 F.3d 573, 21 BLR 2-12; *Addison*, 11 BLR at 1-70. Thus, we affirm the administrative law judge's finding that the evidence failed to establish death due to pneumoconiosis.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

PETER A. GABAUER, Jr.
Administrative Appeals Judge