

BRB No. 91-0158 BLA

LOUISE BLANKENSHIP )  
(Widow of ORVILLE BLANKENSHIP))

)  
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 of Bernard J. Gilday, Jr., Administrative Law Judge, United States Department of Labor.

Beechum A. Lakes (Lakes Investigations & Claims Service), Berea, Kentucky, for claimant.

Dorothy L. Page (Marshall J. Breger, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Richard A. Seid and 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 and McGRANERY, Administrative Appeals Judges, and LAWRENCE, Administrative Law Judge.\*

PER CURIAM:

Claimant, the miner's widow, appeals, with the assistance of a lay representative, the Decision and Order (89-BLA-0727) of Administrative Law Judge Bernard J. Gilday, Jr. 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

\*Sitting as a temporary Board member by designation pursuant to the Longshore and Harbor Workers' Compensation Act as amended in 1984, 33 U.S.C. §921(b)(5)(1988).

U.S.C. §901 et seq. The miner died on April 8, 1984 and claimant filed her survivor's claim on March 24, 1986. The administrative law judge considered the claim pursuant to 20 C.F.R. Part 718. After crediting the miner with six and one-quarter years of coal mine employment, the administrative law judge determined that the evidence of record was insufficient to establish that the miner's death was caused by pneumoconiosis, that pneumoconiosis was a substantial contributing cause or factor leading to the miner's death, that his death was caused by complications of pneumoconiosis, or that the miner had pneumoconiosis. Accordingly, benefits were denied. The Director, Office of Workers' Compensation Programs, responds in support of the administrative law judge's Decision and Order.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue to be whether the Decision and Order below is supported by substantial evidence. Stark v. Director, OWCP, 9 BLR 1-36 (1986). We must affirm the findings of the administrative law judge if they are supported by substantial evidence, are rational, and are in accordance with applicable law. 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).

In order to establish entitlement in this survivor's claim filed after January 1, 1982, claimant must establish that the miner had pneumoconiosis, that such pneumoconiosis arose out of coal mine employment, and that such pneumoconiosis caused or contributed to the miner's death. See 20 C.F.R. §§718.3, 718.202, 718.203, 718.204, 718.205.; Grant v. Director, OWCP, 857 F.2d 1102, 12 BLR 2-1 (6th Cir. 1988).

Initially, the administrative law judge permissibly determined that there is no competent medical evidence that the miner's death was due to pneumoconiosis, that pneumoconiosis was a substantial contributing cause or factor leading to the miner's death, or that his death was caused by complications of pneumoconiosis. See Decision and Order at 7; Lafferty v. Cannelton Industries, Inc., 12 BLR 1-190 (1989).

In making these findings, the administrative law judge permissibly determined that claimant failed to establish that the miner suffered from pneumoconiosis. See Decision and Order at 7; Lafferty, supra.

In making his determination pursuant to 20 C.F.R. §718.202(a)(1), the administrative law judge considered the x-ray evidence of record, which consists of ten interpretations of four x-rays. See Director's Exhibits 13-21. As none of these interpretations are positive for the existence of pneumoconiosis, the administrative

law judge properly concluded that the existence of pneumoconiosis is not established by the x-ray evidence of record.<sup>1</sup> As a result, the administrative law judge's finding that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) is affirmed as it is supported by substantial evidence.

There is no autopsy or biopsy evidence in the record in this case, thus the existence of pneumoconiosis is not established pursuant to 20 C.F.R. §718.202(a)(2). Also, the existence of pneumoconiosis is not established pursuant to 20 C.F.R. §718.202(a)(3) as there are no presumptions that apply in this case.<sup>2</sup>

The medical opinion evidence of record consists of three medical opinions, none of which diagnose pneumoconiosis. See Director's Exhibits 12, 13. Further, the miner's death certificate does not list pneumoconiosis as a cause of his death. See Director's Exhibit 9. As a result, the administrative law judge's determination that claimant failed to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4) is affirmed as supported by substantial evidence. Moreover, as claimant has failed to establish that the miner suffered from pneumoconiosis, an

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<sup>1</sup>The administrative law judge properly denied claimant's motion to have the July 20, 1983, November 10, 1983 and March 21, 1984 x-rays reread because granting of the motion would result in a violation of the twenty day rule of 20 C.F.R. §725.456(b)(1).

<sup>2</sup>The presumption at 20 C.F.R. §718.304 is not applicable as there is no evidence that the deceased miner suffered from complicated pneumoconiosis. The fifteen year presumption contained in 20 C.F.R. §718.305 is inapplicable here as claimant's application for benefits was filed after January 1, 1982. 20 C.F.R. §718.305(e). The presumption at 20 C.F.R. §718.306 applies only to survivor's claims filed prior to June 30, 1982 wherein the miner died on or before March 1, 1978. 20 C.F.R. §718.306(a).

essential element of entitlement under Part 718, the administrative law judge's finding that the miner's death was unrelated to pneumoconiosis and his denial of benefits in the survivor's claim are affirmed. See Neeley v. Director, OWCP, 11 BLR 1-85 (1988).

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

SO ORDERED.

NANCY S. DOLDER  
Administrative Appeals Judge

REGINA C. McGRANERY  
Administrative Appeals Judge

LEONARD N. LAWRENCE  
Administrative Law Judge