

BRB No. 02-0231 BLA

MINNIE MAE TAYLOR)
(Widow of JAMES MORTON TAYLOR))

Claimant-Petitioner)

v.)

DATE ISSUED:

IKERD BANDY COMPANY,)
INCORPORATED)

Employer-)

Respondent)

DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS,)
UNITED STATES DEPARTMENT OF)
LABOR)

DECISION AND ORDER

Party-in-Interest

Appeal of the Decision and Order - Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Charles E. Keith (Morgan, Bailey & Collins), Richmond, Kentucky, for claimant.

Timothy J. Walker (Ferreri & Fogel), Lexington, Kentucky, for employer.

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

PER CURIAM:

Claimant¹ appeals the Decision and Order - Denial of Benefits (2001-BLA-

¹ Claimant is the widow of the miner, James M. Taylor, who died on April

0407) of Administrative Law Judge Robert L. Hillyard 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 Adjudicating this survivor's claim pursuant to 20 C.F.R. Part 718, based on claimant's May 12, 2000 filing date, the administrative law judge credited the miner with at least twenty-two years of coal mine employment. Addressing the merits of the claim, the administrative law judge found the medical evidence of record insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). In addition, he found the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant challenges the administrative law judge's denial of benefits, contending that the administrative law judge erred in finding the medical evidence insufficient to establish the existence of pneumoconiosis. In response, employer urges affirmance of the administrative law judge's denial of benefits as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not file a response brief on the merits of this appeal.³

23, 2000. Director's Exhibit 9. The miner filed an application for benefits on January 2, 1981, which was denied by the district director on March 27, 1981, finding no elements of entitlement established. Director's Exhibits 25-428, 25-374. The miner filed a second application for benefits on March 30, 1984. Director's Exhibit 25-424. Following a denial by the district director, the case was transferred to the Office of Administrative Law Judges. Director's Exhibits 25-368, 25-335. In a Decision and Order issued on September 17, 1987, Administrative Law Judge Eric Feirtag denied benefits. Director's Exhibit 25-1. No further action was taken on the miner's claim.

Claimant filed her survivor's claim on May 12, 2000. Director's Exhibit 1. The survivor's claim is the only claim herein at issue.

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, 722, 725, and 726 (2001). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

³ The parties do not challenge the administrative law judge decision to credit the miner with at least twenty-two years of coal mine employment or his

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).

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 survivor's claims filed on or after January 1, 1982, the miner's death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, 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 20 C.F.R. §718.304 is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a substantially contributing cause of death if it hastened the miner's death. 20 C.F.R. §718.205(c)(5); see *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

The Board is not permitted to undertake a *de novo* adjudication of the claim. To do so would upset the carefully allocated division of power between the administrative law judge as the trier-of-fact, and the Board as a review tribunal. See 20 C.F.R. §802.301(a); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987). As we have emphasized previously, the Board's circumscribed scope of review requires that a party challenging the Decision and Order below address that Decision and Order and demonstrate that substantial evidence does not support the result reached or that the Decision and Order is contrary to law. See 20 C.F.R. §802.211(b); *Cox v. Director, OWCP*, 791 F.2d 445, 9 BLR 2-46 (6th Cir. 1986), *aff'g* 7 BLR 1-610 (1984); *Sarf, supra*; *Fish v. Director, OWCP*, 6 BLR 1-107 (1983). Unless the party identifies errors and briefs its allegations in terms of the relevant law and evidence, the Board has no basis upon which to review

findings pursuant to 20 C.F.R. §718.202(a)(2) and (3). These findings are therefore affirmed. See *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

the decision. See *Sarf, supra*; *Fish, supra*.

In this case, other than generally asserting that the medical evidence is sufficient to establish the existence of pneumoconiosis, claimant has not challenged the rationale provided by the administrative law judge for finding the medical evidence of record insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). Claimant has failed to identify any error made by the administrative law judge in the evaluation of the evidence pursuant to Section 718.205(c) and applicable law. Thus, the Board has no basis upon which to review this part of the decision of the administrative law judge. See 20 C.F.R. §802.211(b); *Cox, supra*; *Sarf, supra*; *Fish, supra*. Consequently, we must affirm the finding of the administrative law judge that the evidence of record is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c).⁴ We, therefore, affirm the denial of benefits as it is supported by substantial evidence and is in accordance with law.

Accordingly, the administrative law judge's Decision and Order - Denial of Benefits is affirmed.

⁴ In light of our affirmance of the administrative law judge's finding that the medical evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), a requisite element of entitlement in this survivor's claim, we decline to address claimant's contentions regarding the administrative law judge's findings under 20 C.F.R. §718.202(a). See *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); see also *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); see generally *Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge