

BRB No. 02-0543 BLA

BONNIE J. CARROLL)
(Widow of WILLIAM J. CARROLL))
)
Claimant-Petitioner)
)
v.)
)
PRO-LAND, INCORPORATED/KEM COAL) DATE ISSUED:
)
COMPANY)
)
and)
)
TASCO ENERGY,)
c/o ACCORDIA EMPLOYERS SERVICE)
)
Employer/Carrier-)
Respondents)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS, UNITED)
STATES DEPARTMENT OF LABOR)
)
Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order of Daniel J. Roketentz, Administrative Law
Judge, United States Department of Labor.

James D. Holliday, Hazard, Kentucky, for claimant.

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

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

PER CURIAM:

Claimant¹ appeals the Decision and Order (01-BLA-0338) of Administrative Law

Judge Daniel J. Ruketentz 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 U.S.C. §901 *et seq.* (the Act).² The instant case involves a survivor's claim filed on August 2, 1999. After crediting the miner with at least twenty years of coal mine employment, the administrative law judge found that the evidence was insufficient to establish that the miner suffered from pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(a)(4). The administrative law judge also found that the evidence was 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 contends that the medical opinion evidence is sufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4). Claimant also contends that the administrative law judge erred in finding the evidence insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Employer responds in support of the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs, has not filed a response brief.

The Board 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).

Because the instant survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).³ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). A miner's death will be considered to be due to pneumoconiosis if the evidence is sufficient to establish that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. 20 C.F.R. §718.205(c)(2). 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); see *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993)

Claimant contends that the opinion of Dr. Wicker, his treating physician, is sufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction the instant case arises, has held that although the opinion of a treating physician merits proper deference, the opinion must be "properly credited and weighed." *Peabody Coal Co. v. Groves*, 277 F.3d 829, 834, 22 BLR 2-320, 2-326 (6th Cir. 2002). Although Dr. Wicker opined that the miner's death was contributed to by his pneumoconiosis, the administrative law judge found that Dr. Wicker provided no explanation for his finding.⁴ Decision and Order at 14; Employer's Exhibit 15. The administrative law judge, therefore,

properly found that Dr. Wicker's opinion was not sufficiently reasoned. *See Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99, 2-103 (6th Cir. 1983); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); *see also Groves, supra*; Decision and Order at 14-15. The administrative law judge noted that Dr. Wicker, during his treatment of the miner, did not render a diagnosis of pneumoconiosis. Decision and Order at 14. The administrative law judge further noted that Dr. Wicker did not list pneumoconiosis as a contributor to the miner's death on the death certificate. *Id.* [On the miner's death certificate, Dr. Wicker listed the immediate cause of death as respiratory failure. Director's Exhibit 13.]

Claimant contends that Dr. Wicker's diagnosis of chronic obstructive pulmonary disease constitutes a finding of "legal pneumoconiosis." *See* 20 C.F.R. §718.201(a)(2). We need not address this contention, however, inasmuch as Dr. Wicker did not explicitly attribute the miner's death to his chronic obstructive pulmonary disease. *See Larioni v. Director, OWCP*, 6 BLR 1-1284 (1986). We, therefore, affirm the administrative law judge's finding that Dr. Wicker's opinion is insufficient to establish that the miner's death was due to pneumoconiosis.

There is no other medical evidence of record supportive of a finding that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁵ Inasmuch as it is supported by substantial evidence, the administrative law judge's finding that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c) is affirmed.⁶

In light of our affirmance of the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), an essential element of entitlement, we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. Consequently, we need not address claimant's contentions regarding the administrative law judge's finding pursuant to 20 C.F.R. §718.202(a)(4). *See Larioni v. Director, OWCP*, 6 BLR 1-1284 (1986).

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