BRB No. 99-0430 BLA

GENEVA COLLINS (Widow of ERNEST COLLINS))
Claimant-Petitioner)
v.)
CUMBERLAND RIVER COAL COMPANY) DATE ISSUED:
and)
ARCH MINERAL CORPORATION)
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 Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Geneva Collins, Ermine, Kentucky, pro se.

Denise M. Davidson (Barret, Haynes, May, Carter & Roark, P.S.C.), Hazard, Kentucky, for employer.

Before: BROWN and McGRANERY, Administrative Appeals Judges, and NELSON, Acting Administrative Appeals Judge.

PER CURIAM:

Claimant, without the assistance of counsel, appeals the Decision and Order (98-BLA-0529) of Administrative Law Judge Joseph E. Kane 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). The administrative law judge found that the miner had over twenty-one years of coal mine employment and, based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.¹ Decision and Order at 4, 8. The administrative law judge concluded that the evidence of record 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. Decision and Order at 8-10. Accordingly, benefits were denied. On appeal, claimant generally contends that the evidence of record is sufficient to establish entitlement to benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs, has filed a letter indicating that he will not participate in this appeal.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's findings of fact and conclusions of law if they are rational, supported by substantial evidence, and consistent 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).

¹The miner died on January 9, 1997. Director's Exhibit 9. Claimant filed her survivor's claim, the subject of the instant appeal, on February 13, 1997. Director's Exhibit 1.

In order to establish entitlement to benefits pursuant to 20 C.F.R. Part 718 in a survivor's claim filed after January 1, 1982, claimant must establish that the miner suffered from pneumoconiosis arising out of coal mine employment and that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death. See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 725.201; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). The United States Court of Appeals for the Sixth Circuit has held that pneumoconiosis will be considered a substantially contributing cause of death if it actually hastens the miner's death.² *See 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 1-135 (6th Cir. 1993).

After consideration of the administrative law judge's Decision and Order, the arguments raised on appeal and the evidence of record, we conclude that the administrative law judge's Decision and Order is supported by substantial evidence and contains no reversible error. The administrative law judge in the instant case permissibly determined that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). Piccin v. Director, OWCP, 6 BLR 1-616 (1983). The administrative law judge rationally concluded that the x-ray evidence of record is insufficient to establish the existence of pneumoconiosis at Section 718.202(a)(1) as the preponderance of x-ray readings by physicians with superior qualifications is negative. Director's Exhibits 3-5, 12-16, 18, 20, 22-29, 32, 33, 35, 37; Decision and Order at 8-9; Staton v. Norfolk & Western Railroad Co., 65 F.3d 55, 19 BLR 2-271 (6th Cir. 1995); Woodward v. Director, OWCP, 991 F.2d 314, 17 BLR 2-77 (6th Cir. 1993); Edmiston v. F & R Coal Co., 14 BLR 1-65 (1990); Clark v. Karst-Robbins Coal Co., 12 BLR 1-149 (1988)(en banc); Trent v. Director, OWCP, 11 BLR 1-26 (1987); Roberts v. Bethlehem Mines Corp., 8 BLR 1-211 (1985). We, therefore, affirm the administrative law judge's finding that the x-ray evidence is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a)(1), as it is supported by substantial evidence.

²This case arises within the jurisdiction of the United States Court of Appeals for the Sixth Circuit as the miner was employed in the coal mine industry in Kentucky. See Shupe v. Director, OWCP, 12 BLR 1-200 (1989)(en banc).

Further, we affirm the administrative law judge's finding that the evidence is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(2) since the record does not contain any autopsy or biopsy results demonstrating the presence of pneumoconiosis. Decision and Order at 9. Additionally, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(3) since none of the presumptions set forth therein is applicable to the instant claim. See 20 C.F.R. §§718.304, 718.305, 718.306; Langerud v. Director, OWCP, 9 BLR 1-101 (1986); Decision and Order at 9.

³The presumption at 20 C.F.R. §718.304 is inapplicable because there is no evidence of complicated pneumoconiosis in the record. Claimant is not entitled to the presumption at 20 C.F.R. §718.305 because she filed her claim after January 1, 1982. See 20 C.F.R. §718.305(e); Director's Exhibit 1. Lastly, as the miner died after March 1, 1978, the presumption at 20 C.F.R. §718.306 is also inapplicable.

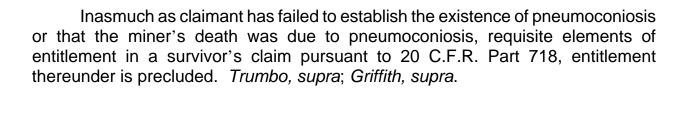
The administrative law judge also considered the entirety of the medical opinion evidence of record and properly found that the opinions are insufficient to establish the existence of pneumoconiosis as no physician specifically opined that claimant suffered from pneumoconiosis or that coal dust contributed to any impairment. Decision and Order at 9: Director's Exhibits 9, 10, 13-15; Clark, supra: Dillon v. Peabody Coal Co., 11 BLR 1-113 (1988); Fields v. Island Creek Coal Co., 10 BLR 1-19 (1987); Budash v. Bethlehem Mines Corp., 9 BLR 1-48 (1986) (en banc), aff'd on recon. en banc, 9 BLR 1-104 (1986); Gee v. W.G. Moore and Sons, 9 BLR 1-4 (1986)(en banc); Perry v. Director, OWCP, 9 BLR 1-1 (1986)(en banc); King v. Consolidation Coal Co., 8 BLR 1-262 (1985). Furthermore, the administrative law judge properly restricted his discussion of the evidence of pneumoconiosis to the medical evidence presented because a determination of the existence of pneumoconiosis in a survivor's claim filed after January 1, 1982 cannot be based solely on a claimant's testimony. 20 C.F.R. §718.202(c). Anderson v. Valley Camp of Utah, 12 BLR 1-111 (1989). Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish the existence of pneumoconiosis pursuant to Section 718.202(a) as it is supported by substantial evidence.

⁴Dr. Lane, in an opinion dated November 9, 1993, opined that the miner did not have an occupational lung disease. Director's Exhibit 15. Dr. Lockey, in his report dated November 2, 1993, opined that there are no findings consistent with pneumoconiosis. Director's Exhibit 14. In his opinion dated November 3, 1993, Dr. Powell opined that the miner did not suffer from pneumoconiosis but had a history of chronic myelogenous leukemia. Director's Exhibit 13. In the hospital record entitled Death Summary, dated January 9, 1997, Dr. Phillips, noted a history of pneumoconiosis but did not offer a basis for this statement and thus it is insufficient to carry claimant's burden of proof. Director's Exhibit 10; *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989).

With respect to 20 C.F.R. §718.205(c), the administrative law judge properly considered the entirety of the medical opinion evidence of record and rationally found that the evidence is insufficient to establish that the miner's death was due to pneumoconiosis. Piccin, supra. The relevant evidence of record concerning the cause of death consists of three medical opinions and the death certificate. Drs. Lane, Lockey and Powell did not offer an opinion as to the cause of death. Director's Exhibits 13-15. The death certificate, signed by Dr. Phillips, who treated the miner prior to his death, listed the cause of death as disseminated adenovirus infection due to acute, chronic renal failure as a consequence of allogeneic bone marrow transplantation for chronic myelogenous leukemia. Director's Exhibit 9. The administrative law judge properly considered this evidence and rationally concluded that it was insufficient to establish claimant's burden of proof pursuant to 20 C.F.R. §718.205© as none of the medical evidence of record indicated that the miner's death was in any way related to pneumoconiosis.⁵ See Griffith, supra; Neeley v. Director, OWCP, 11 BLR 1-85 (1988); Dillon, supra; Kuchwara v. Director, OWCP, 7 BLR 1-167 (1984); Director's Exhibits 9, 10, 13-15; Decision and Order at 9-10. The administrative law judge is empowered to weigh the medical opinion evidence of record and to draw his own inferences therefrom, see Maypray v. Island Creek Coal Co., 7 BLR 1-683 (1985), and the Board may not reweigh the evidence or substitute its own inferences on appeal. See Clark, supra; Anderson, supra; Worley v. Blue Diamond Coal Co., 12 BLR 1-20 (1988). Consequently, we affirm the administrative law judge's finding that the evidence of record is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205© as it is supported by substantial evidence and is in accordance with law.6

⁵The administrative law judge properly found that the presumption at 20 C.F.R. §718.304 is not applicable in this case as the record indicates that there is no evidence of complicated pneumoconiosis contained therein. See 20 C.F.R. §718.205(c)(3); Decision and Order at 9-10.

⁶Although claimant was not represented by counsel during the proceedings before the



administrative law judge, she was specifically informed of her right to have counsel at no charge to her and was informed of the issues involved in the case. She was also allowed to testify and present evidence. Hearing Transcript at 4-6, 8-9, 11-12, 23-24. Consequently, the hearing before the administrative law judge was properly adjudicated. *See* 20 C.F.R. §725.362(b); *Shapell v. Director, OWCP*, 7 BLR 1-703 (1985).

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

SO ORDERED.

JAMES F. BROWN Administrative Appeals Judge

REGINA C. McGRANERY Administrative Appeals Judge

MALCOLM D. NELSON, Acting Administrative Appeals Judge