

BRB No. 03-0218 BLA

IMAJENE HARPER)
(Widow of PAUL E. HARPER))
)
 Claimant-Petitioner)
)
 v.)
)
 BROWN BADGETT, INCORPORATED) DATE ISSUED: 10/31/2003
d\b\A ARCH on the GREEN)
)
 and)
)
 LIBERTY MUTUAL INSURANCE)
COMPANY)
)
 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 - Denying Benefits of Stephen L. Purcell,
Administrative Law Judge, United States Department of Labor.

Joseph Kelley (Monhollon & Kelly, P.S.C.), Madisonville, Kentucky, for
claimant.

Francesca L. Maggard (Lewis and Lewis Law Offices), Hazard, Kentucky,
for employer.

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

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order Denying Benefits
(01-BLA-0305) of Administrative Law Judge Stephen L. Purcell rendered on a 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).¹ The administrative law judge found and the employer stipulated to thirty-four years of coal mine employment and adjudicated the claim pursuant to 20 C.F.R. Part 718, based on the date of filing.² The administrative law judge found that the evidence was insufficient to establish the existence of pneumoconiosis or that pneumoconiosis was a substantially contributing cause of death pursuant to Sections 718.202(a) and 718.205(c). Accordingly, benefits were denied.

On appeal, claimant contends that the administrative law judge erred in finding the evidence insufficient to establish the existence of pneumoconiosis or that death was a substantially contributing cause of the miner's death. Employer responds urging affirmance of the denial of benefits. The Director, Office of Workers' Compensation Programs (the Director), is not participating in this appeal.

The Board's 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 into the Act by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To establish entitlement to survivor's benefits, claimant must establish that the miner suffered from pneumoconiosis, that the 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); *see 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). For survivors' claims filed on or after January 1, 1982, death will be considered to be due to pneumoconiosis if pneumoconiosis was the cause of the miner's

¹ 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 (2002). All citations to the regulations, unless otherwise noted, refer to the amended regulations.

² The miner filed his claim for benefits on August 23, 1983, which was denied on December 22, 1983 and again on reconsideration on January 3, 1985. Director's Exhibits 29-154, 29-219, 29-263. No further action was taken on the miner's claim. The miner died on February 14, 1998. Director's Exhibit 7. Claimant filed this survivor's claim for benefits on March 1, 2000. Director's Exhibit 1.

death, 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. 20 C.F.R. §718.205(c)(1)-(4). 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 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).

After consideration of the arguments on appeal, the administrative law judge's decision, and the evidence of record, we conclude that the administrative law judge's Decision and Order – Denying Benefits is supported by substantial evidence and must be affirmed. The administrative law judge noted that even if he were to find the existence of pneumoconiosis established, the evidence did not establish that death was caused by pneumoconiosis or that pneumoconiosis was a substantially contributing cause or factor leading to the miner's death inasmuch as the only affirmative evidence offered by claimant was the miner's death certificate. Although the death certificate listed "black lung disease" as a condition underlying the cause of death, the administrative law judge found that the death certificate, without supporting evidence, was not a "reasoned medical finding." Decision and Order at 15. The administrative law judge further noted that medical evidence associated with the miner's hospitalization just prior to his death showed that lung cancer was the only condition for which the miner was being treated. Additionally, the administrative law judge found that the medical opinions of Drs. Fino and Dahhan stated that death was neither caused nor hastened by pneumoconiosis. Accordingly, the administrative law judge concluded that the evidence failed to establish that the miner's death was due to pneumoconiosis. This was rational. *See Farmer v. Matthews*, 584 F.2d 796, 801 (6th Cir. 1978); *Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *see Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12 (3d Cir. 1997).

Contrary to claimant's argument, the fact that Dr. Armstrong had noted on a hospital admission report, dated October 27, 1987, that claimant had a past history of coal workers' pneumoconiosis is not sufficient to establish that, because the miner died of a respiratory impairment, his pneumoconiosis must be a substantially contributing cause of his death. *See Bill Branch Coal Co. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000). Nor, contrary to claimant's argument, does the fact that the hospital report at the time of claimant's death referring to respiratory arrest and bradycardia (slowing of the heart beat) mean that claimant was being treated for more than lung cancer at the time of his death. Claimant's arguments are, therefore, rejected and the administrative law judge's finding that death did not cause or substantially contribute to the miner's death is affirmed. *Griffith*, 49 F.3d 184, 19 BLR 2-111; *Brown*, 996 F.2d 812, 17 BLR 2-135. Because claimant has failed to produce credible evidence establishing death due to pneumoconiosis, we need not reach claimant's arguments concerning the opinions of Drs.

Dahhan and Fino. *See Director, OWCP v. Greenwich Collieries*, 512 U.S. 267, 18 BLR 2A-1 (1994), *aff'd sub nom. Greenwich Collieries v. Director, OWCP*, 990 F.2d 730, 17 BLR 2-64 (3d Cir. 1993). Further, inasmuch as claimant has failed to establish death due to pneumoconiosis, we need not consider claimant's arguments regarding the existence of pneumoconiosis. *See Griffith*, 49 F.3d 189, 19 BLR 2-111; *Brown*, 996 F.2d 812, 17 BLR 2-135.

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