

BRB No. 06-0766 BLA

JEAN IRENE DALTON)
(Widow of CHARLES B. DALTON))
)
Claimant-Petitioner)
)
v.)
)
TUSCARORA COAL COMPANY)
)
and)
) DATE ISSUED: 06/14/2007
ROCKWOOD 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 Ralph A. Romano,
Administrative Law Judge, United States Department of Labor.

Jean Irene Dalton, Middleport, Pennsylvania, *pro se*.

Paul K. Paterson (Mascelli & Paterson), Scranton, Pennsylvania, for
employer/carrier.

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

PER CURIAM:

Claimant appeals,¹ without the assistance of counsel, the Decision and Order – Denying Benefits of Administrative Law Judge Ralph A. Romano 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 noted that, at the hearing, the parties agreed that the miner had eleven years of coal mine employment, and that he had pneumoconiosis arising out of his coal mine employment. Therefore, the only issue before the administrative law judge was whether the miner’s death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The administrative law judge found the evidence insufficient to establish that the miner’s death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c)(1)-(3). Accordingly, the administrative law judge denied benefits.

Claimant generally challenges the denial of benefits. Employer responds, urging affirmance of the denial of benefits. The Director, Office of Workers’ Compensation Programs, has not submitted a brief in this appeal.

In an appeal by a claimant filed without the assistance of counsel, the Board will consider 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, 1-177 (1989). We must affirm the administrative law judge’s Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and 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).

Benefits are payable on a survivor’s claim filed on or after January 1, 1982 only when the miner’s death was due to pneumoconiosis.² See 20 C.F.R. §§718.1, 718.205(c);

¹ Claimant is the widow of the miner, who died on March 28, 2004. Director’s Exhibit 5. The miner filed an application for benefits on May 21, 1986, and benefits were awarded on September 20, 1993. Claimant filed her survivor’s claim on April 15, 2004. Director’s Exhibit 2.

² Section 718.205(c) provides, in pertinent part, that death will be considered to be due to pneumoconiosis if any of the following criteria is met:

- (1) Where competent medical evidence establishes that pneumoconiosis was the cause of the miner’s death, or
- (2) Where pneumoconiosis was a substantially contributing cause or factor leading to the miner’s death or where the death was caused by complications of pneumoconiosis, or
- (3) Where the presumption set forth at §718.304 is applicable.

...

Neeley v. Director, OWCP, 11 BLR 1-85 (1988); *Boyd v. Director, OWCP*, 11 BLR 1-39 (1988). Where pneumoconiosis is not the cause of death, death will be considered due to pneumoconiosis if the evidence establishes that pneumoconiosis was a “substantially contributing cause or factor leading to” the miner’s death. 20 C.F.R. §718.205(c)(2), (4). 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); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 1006, 13 BLR 2-100, 2-108 (3d Cir. 1989).

The administrative law judge found that there was no evidence that pneumoconiosis was the cause of the miner’s death pursuant to Section 718.205(c)(1), and no evidence of complicated pneumoconiosis, and thus no proof to establish death due to pneumoconiosis pursuant to Section 718.205(c)(3). The administrative law judge then weighed the conflicting medical opinion evidence and found it insufficient to establish that the miner’s pneumoconiosis was a substantially contributing cause of the miner’s death pursuant to Section 718.205(c)(2).

The record contains several opinions addressing the cause of the miner’s death. The death certificate, signed by a deputy coroner, whose signature is illegible, states that the miner’s death was due to acute myocardial infarction, due to coal workers’ pneumoconiosis, due to atherosclerotic coronary artery disease. Director’s Exhibit 5. Dr. Hadam reviewed the miner’s medical records and opined that the miner’s death was caused by “an acute cardiac event that was not caused or contributed to by his pneumoconiosis.” Director’s Exhibit 8. Dr. Simelaro reviewed claimant’s medical records and stated that anthracosilicosis was a direct cause of the miner’s myocardial infarction and his death. Dr. Simelaro explained that coal workers’ pneumoconiosis is an inflammatory lung disease that also causes a systemic inflammation which:

then promotes arteriothrombosis in the coronaries, which causes acute coronary syndrome, arrhythmias and sudden death. . . . In summary, [the miner] was a coal miner and did have enough coal dust in his lung (2/3 profusion) which causes moderate obstructive pulmonary disease starting the inflammatory cycle as described. This inflammatory cycle promotes atherosclerosis and leads to myocardial infarction and death.

Claimant’s Exhibit 2. Dr. Levinson also reviewed the miner’s medical records and opined that the miner’s coal workers’ pneumoconiosis did not cause, contribute to, or hasten the miner’s death. Dr. Levinson explained that the miner’s sudden and

(5) 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).

unexpected death is the type of death that is characteristic of a “sudden cardiac event and is not characteristic of a pulmonary death or death from increasing shortness of breath.” Employer’s Exhibit 3; *see* Employer’s Exhibit 4.

As the administrative law judge found, the record does not contain any evidence stating that pneumoconiosis was the cause of the miner’s death, or that the miner suffered from complicated pneumoconiosis. Therefore, we affirm the administrative law judge’s finding that claimant did not establish death due to pneumoconiosis pursuant to Section 718.205(c)(1) and (c)(3), as these findings are supported by substantial evidence.

Turning to Section 718.205(c)(2), the administrative law judge noted that the records of Dr. Shah’s treatment of the miner do not discuss the cause of the miner’s death. Therefore, this evidence does not assist claimant in establishing that the miner’s death was due to pneumoconiosis. The administrative law judge found that:

the opinions of Drs. Hadam and Levinson which are well supported by their review of the medical evidence outweigh Dr. Simelaro’s speculative findings regarding the coal worker’s pneumoconiosis and its impact on the miner’s cardiac condition. As noted by Drs. Hadam and Levinson, Dr. Simelaro does not indicate any findings in the treatment record which support his finding that the miner had an inflammatory lung disease. Furthermore, these records do not indicate any right sided heart problems or other problems consistent with pulmonary disease and its impact on the cardiac system. Rather, both physicians note the results of cardiac testing established the miner had left sided heart problems which are clearly due to atherosclerosis and coronary artery disease and not to pulmonary problems. Furthermore, Dr. Levinson noted there is no medical literature which supports Dr. Simelaro’s conclusory statement that miners with chronic obstructive pulmonary disease are more likely to die from ischemic heart disease. . . .

In conclusion, I find Dr. Haddam [sic] and Levinson’s reports better supported by the miner’s treatment records and cardiac test results. In addition, I note Dr. Levinson is highly qualified as a pulmonary specialist. Therefore, I find their opinions more persuasive and I find they outweigh the contrary findings of the deputy coroner on the death certificate and the contrary findings of Dr. Simelaro in his review report. Thus, I find the evidence is not sufficient to establish the miner’s pneumoconiosis was a substantially contributing cause or factor leading to the miner’s death and, therefore, it is not sufficient to establish death due to pneumoconiosis under Section 718.205(c)(2).

Decision and Order at 5-6.

We affirm the administrative law judge's reliance on the opinions of Drs. Hadam and Levinson, based on the administrative law judge's reasonable determination that these physicians' opinions are better supported by the miner's treatment records and cardiac test results. *See Kertesz v. Crescent Hills Coal Co.*, 788 F.2d 158, 9 BLR 2-1 (3d Cir. 1986); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Wetzel v. Director, OWCP*, 8 BLR 1-139 (1985); *Pastva v. Youghioghney & Ohio Coal Co.*, 7 BLR 1-829 (1985). Further, we hold that it was rational for the administrative law judge to find that Dr. Simelaro's statement, regarding the connection between coal workers' pneumoconiosis and the miner's cardiac condition, was speculative. The administrative law judge permissibly found that Dr. Simelaro did not fully document and explain this opinion. *See Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987).

Because we affirm the administrative law judge's reliance on the opinions of Drs. Hadam and Levinson, that pneumoconiosis was not a substantially contributing cause of the miner's death, we also affirm the administrative law judge's finding that claimant did not establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c)(2). Consequently, we affirm the administrative law judge's finding that claimant did not establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c)(1)-(3), and we affirm the administrative law judge's denial of benefits in this survivor's claim.

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

BETTY JEAN HALL
Administrative Appeals Judge