

BRB No. 90-1965 BLA

LOIS HARRIS)
(Widow of WILLARD HARRIS))

)
Claimant-Petitioner)

v.)

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

)
Respondent)

DECISION and ORDER

Appeal of the Decision and Order of Robert Kaplan, Administrative Law Judge, United States Department of Labor.

Lawrence E. Kazmierczak, Oakland, New Jersey, for claimant.

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

PER CURIAM:

Claimant appeals the Decision and Order (89-BLA-1515) of Administrative Law Judge Robert Kaplan denying benefits 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). Based on the date of filing, December 2, 1986, the administrative law judge considered the claim pursuant to 20 C.F.R. Part 718. After crediting claimant with ten years of coal mine employment, the administrative law judge found that the evidence of record was insufficient to establish that the miner had pneumoconiosis or to establish that pneumoconiosis contributed to the miner's death in any way. Accordingly, benefits were denied. On appeal, claimant contends that the administrative law judge erred in finding that the miner did not have pneumoconiosis arising out of his coal mine employment, that the miner was not totally disabled, and that the miner's death was not due in part to pneumoconiosis. The Director, Office of Workers' Compensation Programs, has chosen not to respond in this case.

The Board's scope of review is defined by statute. The administrative law judge's findings of fact and conclusions of law must be affirmed if they are supported by substantial evidence, are rational, and are in accordance with 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).

Claimant's first contention is that the administrative law judge erred in finding that the miner did not have pneumoconiosis. The medical evidence in this case consists of the miner's death certificate dated February 14, 1975 and records of the miner's hospital care. See Director's Exhibits 5, 16. The death certificate lists the immediate cause of death as occlusive coronary arteriosclerosis, with no contributing causes. See Director's Exhibit 5. The miner's hospital records range in date from 1967 to 1973 and consist of three hundred and fourteen pages of documents. None of these documents, which include twenty x-ray interpretations, make any reference to pneumoconiosis. See Director's Exhibit 16. The administrative law judge considered this evidence and permissibly determined that claimant did not establish that the miner suffered from pneumoconiosis. See Lafferty v. Cannelton Industries, Inc., 12 BLR 1-190 (1989).¹ As a result, the administrative law judge's finding that claimant did not establish that the miner suffers from pneumoconiosis is affirmed as it is supported by substantial evidence. Moreover, as claimant has failed to establish the existence of pneumoconiosis, she has also failed to establish that the miner's death was due in part to pneumoconiosis, both of which are essential elements of entitlement under 20 C.F.R. Part 718. As claimant has failed to establish these essential elements of entitlement, the administrative law judge's denial of benefits is affirmed. See Anderson v. Valley Camp of Utah, Inc., 12 BLR 1-111 (1989); Neeley v. Director, OWCP, 11 BLR 1-85 (1988); Perry v. Director, OWCP, 9 BLR 1-1 (1986).

¹The administrative law judge permissibly determined that the presumption found at 20 C.F.R. §718.304 does not apply as the record contains no evidence of large opacities, massive lesions, or any condition which a physician has stated could be expected to result in these. See Decision and Order at 4; Lafferty, supra.

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

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

JAMES F. BROWN
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge