

BRB No. 99-0697 BLA

NATALIE M. COLLINS)
(Widow of OTIS L. COLLINS, Sr.))
)
Claimant-Petitioner)
)
v.) DATE ISSUED:
)
CLINCHFIELD COAL COMPANY)
)
Employer-)
Respondent)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS,)
UNITED STATES DEPARTMENT OF)
LABOR)
) DECISION AND ORDER

Party-in-Interest

Appeal of the Decision and Order - Denying Benefits of John C. Holmes, Administrative Law Judge, United States Department of Labor.

Natalie M. Collins, Cleveland, Virginia, *pro se*.

Timothy W. Gresham (Penn, Stuart & Eskridge), Abingdon, Virginia, for employer.

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

PER CURIAM:

Claimant,¹ without the assistance of counsel, appeals the Decision and

¹ Claimant is the widow of the miner, Otis L. Collins, Sr., who died on September 10, 1996. Director's Exhibit 6. Claimant filed her survivor's claim on October 1, 1996. Director's Exhibit 1. The survivor's claim is the only claim currently before the Board.

Order - Denying Benefits (98-BLA-1043, 98-BLA-1044) of Administrative Law Judge John C. Holmes 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 initially the procedural history of this claim, specifically, that the miner had been awarded federal Black Lung benefits pursuant to an application for benefits filed on October 19, 1983.² Addressing the survivor's claim, the administrative law judge credited the miner with at least twenty-three years of coal mine employment and adjudicated this claim pursuant to 20 C.F.R. Part 718, based on claimant's October 1, 1996 filing date. The administrative law judge found that the existence of pneumoconiosis arising out of coal mine employment was established based on the finding from the miner's claim and that employer was collaterally estopped from raising this issue herein. However, the administrative law judge found the medical evidence of record insufficient to establish that the miner's death was due to pneumoconiosis or that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to 20 C.F.R. §718.205(c)(1)-(3). Accordingly, the administrative law judge denied benefits. In response to claimant's appeal, employer urges affirmance of the administrative law judge's denial of benefits as supported by substantial evidence. The Director, Office of Workers' Compensation Programs, has filed a letter stating that he will not file a response brief in this appeal.³

² In a Decision and Order issued on March 8, 1988, Administrative Law Judge Robert D. Kaplan awarded benefits in the miner's claim, crediting the miner with twenty-seven and one-half years of coal mine employment and finding the evidence of record sufficient to establish the existence of pneumoconiosis arising out of coal mine employment pursuant to 20 C.F.R. §§718.202(a)(4) and 718.203(b). Additionally, Judge Kaplan found the evidence sufficient to establish a totally disabling respiratory impairment due to pneumoconiosis pursuant to 20 C.F.R. §718.204(b), (c). Director's Exhibit 23.

On appeal, the Board held that Judge Kaplan reasonably found the evidence of record sufficient to establish pneumoconiosis pursuant to Section 718.202(a)(4). In addition, the Board affirmed Judge Kaplan's finding that the evidence established a totally disabling respiratory impairment due to pneumoconiosis pursuant to Section 718.204(b), (c), as unchallenged on appeal. Accordingly, the Board affirmed Judge Kaplan's award of benefits. *Collins v. Clinchfield Coal Co.*, BRB No. 88-1281 BLA (Feb. 23, 1990)(unpub.). No further appeal was taken.

³ Inasmuch as the parties do not challenge the administrative law judge's decision to credit the miner with at least twenty-three years of coal mine

In an appeal filed by a claimant 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 (1989). The Board's scope of review is defined by statute. If the findings of fact and conclusions of law of the administrative law judge 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 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 claimant meets her burden of establishing that the miner's death was due to pneumoconiosis arising out of coal mine employment, where pneumoconiosis was a substantially contributing cause of the miner's death, where death was caused by complications of pneumoconiosis, or where complicated pneumoconiosis is established. 20 C.F.R. §§718.201, 718.202, 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Sumner v. Blue Diamond Coal Co.*, 12 BLR 1-74 (1988); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that if pneumoconiosis hastens death in any way, it is a substantially contributing cause of death pursuant to Section 718.205(c)(2). *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 969 (1993); *see generally Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

employment and this finding is not adverse to claimant, it is affirmed. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

After consideration of the administrative law judge's Decision and Order and the relevant evidence of record, we conclude that substantial evidence supports the administrative law judge's finding that the medical evidence of record is insufficient to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c). The administrative law judge considered all of the medical evidence of record relevant to the cause of the miner's death, including the miner's death certificate, the medical opinion of Dr. Robinette, the miner's treating physician, and the medical opinions of Drs. Castle and Fino. Decision and Order at 4-8; Director's Exhibits 6, 11; Employer's Exhibits 4-7. In reviewing this evidence, the administrative law judge properly found that all of the medical reports stated that pneumoconiosis was not the immediate cause of the miner's death. Rather, the death certificate and medical opinions attributed the miner's death to acute myocardial infarction and CAD.⁴ Decision and Order at 9; 20 C.F.R. §718.205(c)(1). In addition, the administrative law judge properly found that the irrebuttable presumption of death due to pneumoconiosis was inapplicable in this case because the record contains no evidence of complicated pneumoconiosis. Decision and Order at 9; 20 C.F.R. §§718.205(c)(3), 718.304.

Furthermore, the administrative law judge properly found that the medical evidence of record was insufficient to establish that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to Section 718.205(c)(2). Initially, the administrative law judge properly stated that while Dr. Robinette was the miner's treating physician and his opinion may be entitled to greater weight, it was not necessarily entitled to dispositive weight solely due to his status as treating physician. Decision and Order at 10; see *Grigg v. Director, OWCP*, 28 F.3d 416, 18 BLR 2-299 (4th Cir. 1994); see also *Adkins v. Director, OWCP*, 958 F.2d 49, 16 BLR 2-61 (4th Cir. 1992). The administrative law judge, therefore, properly considered each of the relevant medical opinions of record, including the qualifications of the physicians, the explanation of their medical opinions, and the documentation underlying their opinions, to determine the weight to be accorded these opinions. Decision and Order at 10; see *Milburn Colliery Co.*

⁴ The record contains the death certificate which lists the cause of the miner's death as acute myocardial infarction due to CAD [coronary artery disease], but does not list any additional conditions which contributed to the miner's death. Director's Exhibit 6. An autopsy was not performed.

v. Hicks, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 21 BLR 2-269 (4th Cir. 1997); *Grizzle v. Pickands Mather and Co.*, 994 F.2d 1093, 17 BLR 2-123 (4th Cir. 1993).

In weighing the relevant medical opinions, the administrative law judge reasonably exercised his discretion as trier-of-fact in according greater weight to the opinions of Drs. Castle and Fino, that pneumoconiosis was not a contributing cause of the miner's death, finding that these opinions were better reasoned and documented than the opinion of Dr. Robinette inasmuch as these physicians provided more thorough analyses of the objective medical evidence and the relevant medical literature.⁵ Decision and Order at 10; Employer's Exhibits 4-7; see *Lafferty v. Cannelton Industries, Inc.*, 12 BLR 1-190 (1989); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985); see also *Hicks, supra*. In addition, the administrative law judge reasonably accorded less weight to the opinion of Dr. Robinette inasmuch as the administrative law judge found that Dr. Robinette did not adequately explain his rationale for stating that "it is my opinion that Mr. Collins would have had a greater chance in surviving a myocardial infarction if he had normal lung function and not suffered from black lung disease." Decision and Order at 10; Director's Exhibit 11; *Lafferty, supra*; *Clark, supra*. Moreover, the administrative law judge reasonably found Dr. Robinette's opinion regarding the relationship of the miner's airflow obstruction and intercurrent hypoxemia to his myocardial infarction was equivocal and speculative.⁶ Decision and Order at 10;

⁵ The administrative law judge also found that Drs. Castle and Fino are Board-certified in Internal Medicine and Pulmonary Diseases, whereas Dr. Robinette is Board-certified in Internal Medicine but Board-eligible in Pulmonary Diseases. Decision and Order at 10, n.4; Director's Exhibit 11; Employer's Exhibits 4-7; see *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 21 BLR 2-323 (4th Cir. 1998).

⁶ Dr. Robinette stated:

There is sufficient evidence in the literature to suggest that coal workers' pneumoconiosis with such severe airflow obstruction results in chronic respiratory symptoms and produced total pulmonary disability in Mr. Collins. It is well recognized that impairment of his diffusion capacity may be associated with intercurrent hypoxemia. When airflow obstruction and intercurrent hypoxemia is present in an individual, one can certainly

Director's Exhibit 11; see *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); *Campbell v. Director, OWCP*, 11 BLR 1-16 (1987). Consequently, inasmuch as the administrative law judge considered all of the relevant medical evidence of record, we affirm his finding that claimant failed to prove that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c)(1)-(3). 20 C.F.R. §718.205(c)(1)-(3); see *Shuff, supra*; *Neeley, supra*; see also *Addison v. Director, OWCP*, 11 BLR 1-68 (1988); *Fetterman v. Director, OWCP*, 7 BLR 1-688 (1985).

Since claimant has not established that the miner's death was due to pneumoconiosis, a necessary element of entitlement to survivor's benefits pursuant to Part 718, an award of benefits is precluded. *Shuff, supra*; see also *Trumbo, supra*; *Smith v. Camco Mining Inc.*, 13 BLR 1-17 (1989).

Accordingly, the administrative law judge's Decision and Order - Denying Benefits is affirmed.

SO ORDERED.

ROY P. SMITH
Administrative Appeals Judge

recognize the potential role for the development of an acute myocardial infarction.

Director's Exhibit 11.

JAMES F. BROWN
Administrative Appeals Judge

MALCOLM D. NELSON, Acting
Administrative Appeals Judge