

BRB No. 03-0654 BLA

JO RUTH CALDWELL )  
(Widow of ORVILLE CALDWELL) )  
 )  
Claimant-Petitioner )

v. )

DIRECTOR, OFFICE OF WORKERS' )  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
 )  
Respondent )

DATE ISSUED: 04/13/2004

DECISION and ORDER

Appeal of the Decision and Order - Denying Benefits of Daniel J. Roketenetz, Administrative Law Judge, United States Department of Labor.

Thomas E. Johnson (Johnson, Jones, Snelling, Gilbert & Davis), Chicago, Illinois, for claimant.

Jeffrey S. Goldberg (Howard M. Radzely, Solicitor of Labor; Donald S. Shire, Associate Solicitor; Rae Ellen Frank James, Deputy Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

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

PER CURIAM:

Claimant, the miner's widow, appeals the Decision and Order - Denial of Benefits (2001-BLA-982) of Administrative Law Judge Daniel J. Roketenetz 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).<sup>1</sup> Based on the date of

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<sup>1</sup> 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.

filing, the administrative law judge adjudicated the claim pursuant to 20 C.F.R. Part 718.<sup>2</sup> The administrative law judge found that, although the existence of pneumoconiosis was established in the miner's claim, claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied in this survivor's claim.<sup>3</sup>

On appeal, claimant contends that the administrative law judge erred in his weighing of the medical opinion evidence of record and, therefore, erred in finding that death due to pneumoconiosis was not established. The Director, Office of Workers' Compensation Programs, (the Director) responds that the administrative law judge's Decision and Order denying benefits should be affirmed.

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 in a survivor's claim, 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 survivor's 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 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

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<sup>2</sup> The miner died on May 12, 1999. Claimant filed her survivor's claim for benefits on June 8, 2000.

<sup>3</sup> Administrative Law Judge David J. Roketenetz stated that Administrative Law Judge Robert G. Mahoney awarded benefits on the miner's October 8, 1980 claim, finding that the miner established the existence of pneumoconiosis, that it arose out of coal mine employment, and that it was totally disabling. Decision and Order at 3. Judge Mahoney's decision, however, reflects that the miner's October 8, 1980 claim was denied, as was his October 11, 1983 claim, and that these denials were not appealed, Director's Exhibits 1, 2, 29, 30. Benefits were awarded on the miner's December 10, 1985 claim. Claimant is not, therefore, entitled to consideration under 20 C.F.R. §725.212. *See Neeley v. Director, OWCP*, 11 BLR 1-85 (1987); *Smith v. Camco Mining, Inc.*, 7 BLR 1-17 (1989).

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, 186, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

Claimant contends that the administrative law judge erred in rejecting the opinion of Dr. Goldenberg, the miner's treating physician, opining that the miner's pneumoconiosis contributed to his death, because Dr. Goldenberg did not refer to pneumoconiosis on the miner's death certificate or in his treatment reports at the time of the miner's death. Claimant also contends that the administrative law judge failed to compare Dr. Goldenberg's opinion to the opinion of Dr. Katzman, who found that pneumoconiosis did not contribute to death, which the administrative law judge properly rejected.<sup>4</sup>

In considering the evidence relevant to cause of death, the administrative law judge found that Dr. Goldenberg's letter of June 5, 2000, opining that pneumoconiosis contributed to the miner's death, was neither well-reasoned nor well-documented because Dr. Goldenberg made no other reference to the existence of pneumoconiosis in either the death certificate he signed or the treatment record he authored at the time of the miner's death. Likewise, the administrative law judge found that there was no other evidence of record suggesting that pneumoconiosis contributed to the miner's death. Thus, contrary to claimant's contention, the administrative law judge could reasonably reject Dr. Goldenberg's opinion as neither well-reasoned nor well-documented. *See* 20 C.F.R. §718.104(d)(5); *Eastover Mining Co. v. Williams*, 338 F.3d 501, BLR (6th Cir. 2003), *Griffith*, 49 F.3d 184, 19 BLR 2-111; *Director, OWCP v. Rowe*, 710 F.2d 251, 255, 5 BLR 2-99 (6th Cir. 1983); *see also Risher v. Director, OWCP*, 940 F.2d 327, 15 BLR 2-186 (8th Cir. 1991)(a fact-finder "may disregard a medical opinion that does not adequately explain the basis for its conclusion"); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(*en banc*); *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987); *King v. Consolidation Coal Co.*, 8 BLR 1-262 (1985); *Hess v. Clinchfield Coal Co.*, 7 BLR 1-295, 1-297 (1984). We therefore affirm the administrative law judge's finding that the evidence failed to establish death due to pneumoconiosis pursuant to Section 718.205(c) as it is supported by substantial

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<sup>4</sup> Dr. Goldenberg listed the immediate cause of death as a stroke caused by a cardiac arrhythmia caused by peripheral vascular disease on the miner's death certificate. Director's Exhibit 1. In a letter dated June 5, 2000, Dr. Goldenberg noted the miner's stroke in August 1991, heart failure in November 1998, and stated that heart failure is considered a reflection of high pulmonary artery pressures which is consistent with a history of pneumoconiosis. The physician concluded that "pneumoconiosis was a clear diathesis for his developing heart failure and pneumonia." Director's Exhibit 1. Dr. Katzman found that the miner died due to a combination of multiple strokes, coronary artery disease, chronic heart failure, recurrent aspiration and pneumonia. He concluded that pneumoconiosis did not contribute to death. Director's Exhibit 6.

evidence and in accordance with law.

Accordingly, the administrative law judge's Decision and Order – Denial of Benefits is affirmed.

SO ORDERED.

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NANCY S. DOLDER, Chief  
Administrative Appeals Judge

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge