

BRB No. 07-0652 BLA

R.B.)
(Widow of J.B.))
)
Claimant-Respondent)
)
v.)
)
EASTERN ASSOCIATED COAL) DATE ISSUED: 04/24/2008
CORPORATION)
)
and)
)
PEABODY INVESTMENTS,)
INCORPORATED)
)
Employer/Carrier-)
Petitioners)
)
DIRECTOR, OFFICE OF WORKERS')
COMPENSATION PROGRAMS,)
UNITED STATES DEPARTMENT)
OF LABOR)
)
Party-in-Interest) DECISION and ORDER

Appeal of the Decision and Order – Award of Benefits of Paul H. Teitler,
Administrative Law Judge, United States Department of Labor.

Laura Metcoff Klaus (Greenberg Traurig LLP), Washington, D.C., for
employer/carrier.

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

PER CURIAM:

Employer appeals the Decision and Order – Award of Benefits (2006-BLA-5540) of Administrative Law Judge Paul H. Teitler rendered 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).¹ The administrative law judge credited the miner with 42 years of coal mine employment, and found that employer is the responsible operator. The administrative law judge found that the autopsy and medical report evidence, when weighed against the x-ray evidence, establishes that the miner suffered from coal workers’ pneumoconiosis.² 20 C.F.R. §718.202(a). The administrative law judge also found that the evidence is sufficient to establish that the miner’s death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), and he accordingly awarded claimant survivor’s benefits.

On appeal, employer contends that the administrative law judge erred in awarding benefits since the opinion of Dr. Imbing, on which the administrative law judge relied, is insufficient to satisfy claimant’s burden of establishing that the miner’s death was due to pneumoconiosis, and there is no additional evidence in the record to support such a finding. Claimant has not responded to this appeal, and the Director, Office of Workers’ Compensation Programs, has filed a letter stating that he will not participate in this appeal.

The Board must affirm the findings of fact and conclusions of law of the administrative law judge if they are supported by substantial evidence, are rational, and are 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).

In order to establish entitlement to survivor’s benefits under 20 C.F.R. Part 718 in a claim filed after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment and that the miner’s death was due

¹ The miner filed several claims for benefits, all of which were denied. Director’s Exhibits 1-6. The miner died on January 25, 2005. Director’s Exhibit 18. On April 5, 2005, claimant filed an application for survivor’s benefits under the Act. Director’s Exhibit 8. On December 23, 2005, the district director issued a Proposed Decision and Order awarding benefits on this claim. Director’s Exhibit 28. Employer requested a hearing before the Office of Administrative Law Judges, and a formal hearing was scheduled for September 28, 2006. Claimant informed the administrative law judge that she was unable to find representation and that she wished to have the case decided on the record. On May 30, 2006, the administrative law judge issued an order cancelling the hearing and granting claimant’s request for a decision on the record.

² These findings have not been challenged on appeal and are, therefore, affirmed. *Skrack v. Island Creek Coal Co.*, 6 BLR 1-710 (1983).

to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).³ See 20 C.F.R. §§718.1, 718.203, 718.205(c); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). Where pneumoconiosis is not the cause of the miner's death, death will be considered to be 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 hastened the miner's death. 20 C.F.R. §718.205(c)(5); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert. denied*, 506 U.S. 1050 (1993).⁴

Employer contends the administrative law judge erred in relying on Dr. Imbing's opinion to establish that pneumoconiosis contributed to the miner's death since, employer avers, that opinion is legally insufficient to meet claimant's burden in this regard. We agree and, for the reasons that follow, we reverse the administrative law judge's award of survivor's benefits to claimant.

³ Section 718.205(c) provides that death will be considered to be due to pneumoconiosis if any of the following criteria are 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 or pneumoconiosis, or
- (3) Where the presumption set forth at §718.304 is applicable.
- (4) However, survivors are not eligible for benefits where the miner's death was caused by traumatic injury or the principal cause of death was a medical condition not related to pneumoconiosis, unless the evidence establishes that pneumoconiosis was a substantially contributing cause of death.
- 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).

⁴ The record indicates that the miner's coal mine employment occurred in West Virginia. Director's Exhibit 10. Accordingly, the law of the United States Court of Appeals for the Fourth Circuit is applicable in this case. See *Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989)(*en banc*).

The miner died from congestive heart failure due to arteriosclerotic heart disease. Director's Exhibit 18. Following the miner's demise, claimant requested that an autopsy be performed for the purpose of determining whether or not coal workers' pneumoconiosis was present in the miner's lungs. *See* Director's Exhibit 20 at 3. Dr. Imbing performed an autopsy on January 31, 2005. Based upon his findings of coal dust macules and nodules in the miner's lungs as well as atherosclerosis and biventricular hypertrophy and dilation, Dr. Imbing opined that the miner died of a myocardial infarct and bronchopneumonia, and that the presence of pneumoconiosis contributed to the miner's death. *Id.* at 4. In contrast, in a report dated October 27, 2005, Dr. Caffrey stated that while the autopsy slides revealed the presence of simple coal workers' pneumoconiosis and emphysema, the miner's death was due to an acute myocardial infarction unrelated to his bilateral simple coal worker's pneumoconiosis. Director's Exhibit 21. Dr. Crouch, in a report dated August 28, 2006, reviewed the miner's autopsy slides and found histologic evidence of simple silicosis consistent with simple coal workers' pneumoconiosis and of emphysema, but that the latter condition was predominately attributable to cigarette smoking. Dr. Crouch concluded that the miner's history of, *inter alia*, atherosclerosis, congestive heart failure, hypertension, and smoking-related chronic obstructive pulmonary disease (COPD) were the most likely etiologies of any clinically evident respiratory impairment. Employer's Exhibit 8. Dr. Zaldivar noted the existence of radiographic evidence of pneumoconiosis, but opined that the presence of pneumoconiosis would not have contributed to the miner's myocardial infarct or bronchopneumonia, that the miner's pneumonia was due to his generalized weakness,⁵ and that the miner's death was due to coronary artery disease and myocardial infarction. Director's Exhibit 21; Employer's Exhibit 9.

In finding that pneumoconiosis contributed to the miner's death, the administrative law judge gave greatest weight to the opinion of Dr. Imbing, the autopsy prosector. Decision and Order at 10–12; Director's Exhibit 20. In contrast, the administrative law judge found that Dr. Caffrey did not address the issue of whether the miner's pneumoconiosis might have played a role in his bronchopneumonia, while the record was unclear as to the bases for Dr. Crouch's opinion that the miner's COPD was smoking-related. The administrative law judge also found that Dr. Zaldivar's opinion regarding the type of pneumonia suffered by the miner at the time of his death appeared to be based on the miner's hospice treatment records, which were not in the record. *Id.*

We agree with employer that the administrative law judge's award of survivor's benefits is not supported by substantial evidence and must, therefore, be reversed. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case

⁵ Specifically, Dr. Zaldivar opined that the miner's pneumonia was unrelated to his pneumoconiosis since, he stated, the miner's pneumoconiosis was insufficient to interfere with his lung clearance. Director's Exhibit 21. There is no evidence of record that the miner's pneumonia arose from coal mine employment.

arises, has stated that a death certificate that does not explain how, or if, a miner's coal workers' pneumoconiosis hastened his death, and an autopsy report that noted the presence of coal workers' pneumoconiosis but did not indicate how the pneumoconiosis might have related to the miner's demise, fail to provide a basis upon which to sustain a finding that the coal workers' pneumoconiosis hastened the miner's death. *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 22 BLR 2-251 (4th Cir. 2000).⁶ In this case, while the autopsy report authored by Dr. Imbing states his opinion that bilateral simple coal workers' pneumoconiosis contributed to the miner's death, it does not explain the purported relationship between the pneumoconiosis and the death. Therefore, the autopsy report is insufficient to establish that pneumoconiosis contributed to the miner's death, as Dr. Imbing's single conclusory sentence cannot be considered a reasoned medical opinion. *Sparks*, 213 F.3d at 192, 22 BLR at 2-263. Moreover, the administrative law judge's reliance on the fact that claimant told Dr. Imbing of the miner's medical history does not cure this defect. Consequently, as claimant did not offer into evidence any reasoned and documented medical evidence from which the administrative law judge could find that the miner's pneumoconiosis actually hastened or caused his death, claimant has failed to establish an essential element of her claim for survivor's benefits. We therefore reverse the administrative law judge's award of survivor's benefits to claimant.⁷ See *Dillon v. Peabody Coal Co.*, 11 BLR 1-113 (1988); 20 C.F.R. §702.205(c).

⁶ The administrative law judge, citing *Sparks*, 213 F.3d 186, 22 BLR 2-251, properly found that the miner's death certificate was insufficient to establish that pneumoconiosis contributed to the miner's death since it contained no explanation or basis for its conclusion in that regard. Decision and Order at 10; Director's Exhibit 18.

⁷ Given this disposition, we need not address employer's contentions regarding the administrative law judge's discussion of the remaining medical opinions of record.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge