

BRB No. 03-0198 BLA

FLOYEDITH STILLS (Widow of)	)	
RAYMOND STILLS)	)	
Claimant-Petitioner	)	
v.	)	DATE ISSUED: 08/25/2004
LODESTAR ENERGY,	)	
INCORPORATED	)	
Employer-Respondent	)	
DIRECTOR, OFFICE OF WORKERS'	)	
COMPENSATION PROGRAMS,)	)	
UNITED STATES DEPARTMENT	)	
OF LABOR	)	
Party-in-Interest	)	ORDER on RECONSIDERATION

Claimant, the miner's widow, has filed a timely Motion for Reconsideration requesting review of the Board's Decision and Order in the above-captioned case which affirmed in part, and vacated in part, the Decision and Order (2001-BLA-1052 and 2001-BLA-1053) of Administrative Law Judge Robert L. Hillyard denying benefits on a miner's duplicate claim and a survivor's claim 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). In that decision, the Board, with respect to the miner's claim, held that the administrative law judge acted within his discretion in finding Dr. Simpao's opinion, that the miner was totally disabled due to pneumoconiosis, inadequately explained, and affirmed the administrative law judge's rejection of Dr. Simpao's opinion at 20 C.F.R. §718.204(c)(1), the only medical opinion supportive of claimant's burden of establishing a material change in conditions pursuant to 20 C.F.R. §725.309(d) (2000).

With respect to the survivor's claim, the Board rejected claimant's contention that the administrative law judge erred in failing to conclude that the opinion of Dr. Simpao and the death certificate established death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The Board determined that the administrative law judge reasonably found that since there was no competent medical evidence which attributed the miner's death to pneumoconiosis, claimant failed to establish entitlement to survivor's benefits. The Board thus affirmed the

administrative law judge's finding that the medical evidence failed to establish that the miner's death was due to pneumoconiosis pursuant to Section 718.205(c).

However, the Board granted the request by the Director, Office of Workers' Compensation Programs (the Director), to remand this case to the district director for additional medical evidentiary development since the opinion of Dr. Simpao, who evaluated the miner on behalf of the Department of Labor, did not fulfill the requirements for a complete and credible pulmonary evaluation. Accordingly, the Board vacated the administrative law judge's denial of benefits and remanded this case to the district director for further development of the evidence as specifically set forth in the Director's response brief.

In her Motion for Reconsideration, claimant seeks clarification regarding whether the Board vacated the administrative law judge's denial of benefits in only the miner's claim and remanded that claim for further evidentiary development or if benefits in both the miner's claim and the survivor's claim were vacated and both cases were remanded for further evidentiary development. The Director responds, noting that although it appears that the Board's remand order applies to both the miner's claim and the survivor's claim, his suggestion regarding remanding the case was limited only to the miner's claim and urges the Board, on reconsideration, to explicitly affirm the denial of benefits in the survivor's claim. Employer has not filed a brief in response to claimant's motion.

After consideration of claimant's request, we hereby grant claimant's Motion for Reconsideration and clarify our decision. We reiterate here that since Dr. Simpao's opinion was obtained by the Director, but found to be not credible by the administrative law judge, the Director failed to meet his statutory obligation to provide claimant with a complete pulmonary evaluation sufficient to constitute an opportunity to substantiate the claim. *See* 30 U.S.C. §923(b); 20 C.F.R. §§718.101, 718.401, 725.405(b); *Newman v. Director, OWCP*, 745 F.2d 1162, 7 BLR 2-25 (8th Cir. 1984); *Hodges v. Bethenergy Mines, Inc.*, 18 BLR 1-84 (1994); *Petry v. Director, OWCP*, 14 BLR 1-98 (1990); *Hall v. Director, OWCP*, 14 BLR 1-51(1990)(*en banc*). Consequently, we vacated the administrative law judge's denial of benefits in the miner's claim and remanded the miner's claim to the district director for further development of the evidence as specifically set forth in the Director's response brief, *i.e.*, have either Dr. Simpao or another physician review the evidence of record and offer a reasoned opinion on whether claimant was totally disabled due to pneumoconiosis.

In addressing the merits of the survivor's claim, the administrative law judge found that there was no competent medical evidence which attributed the miner's death to pneumoconiosis, and thus that claimant failed to meet her burden of proof to establish that the miner's death was due to pneumoconiosis, or that

pneumoconiosis was a substantially contributing cause or factor leading to the miner's death. Decision and Order at 24. Although claimant contended that the administrative law judge erred in failing to conclude that the opinion of Dr. Simpao established death due to pneumoconiosis, we determined that the administrative law judge acted within his discretion in ignoring the opinion of Dr. Simpao, authored while the miner was still alive, since the physician did not render an opinion regarding whether pneumoconiosis caused or contributed to the miner's death. In this case, the administrative law judge permissibly found that the evidence was insufficient to establish death due to pneumoconiosis because he found there were no credible medical opinions attributing the miner's death to pneumoconiosis. *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (*en banc*); *Fields v. Island Creek Coal Co.*, 10 BLR 1-19 (1987). We, therefore, clarify our previous decision and affirm the administrative law judge's finding that the medical evidence failed to establish that pneumoconiosis caused, contributed to, or hastened the miner's death. 20 C.F.R. §718.205(c); *Brown v. Rock Creek Mining Co., Inc.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993). Because claimant has not met her burden of proof on an essential element of entitlement under 20 C.F.R. Part 718 in this survivor's claim, benefits are precluded. 20 C.F.R. §718.205(c); *see Brown*, 996 F.2d 812, 17 BLR 2-135; *Clark*, 12 BLR 1-149; *Trent v. Director, OWCP*, 11 BLR 1-26 (1987); 718.205(a); *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988).

Accordingly, claimant's Motion for Reconsideration is granted and we reiterate that the administrative law judge's Decision and Order denying benefits in the miner's claim is vacated in part, affirmed in part, and that the miner's claim is remanded to the district director for further evidentiary development. Furthermore, the administrative law judge's denial of benefits in the survivor's claim 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