

BRB No. 04-0358 BLA

FAY M. ELLIOTT)	
(Widow of OREN H. ELLIOTT, JR.))	
)	
Claimant-Petitioner)	
)	
v.)	
)	
DIRECTOR, OFFICE OF WORKERS')	DATE ISSUED: 12/22/2004
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Respondent)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Pamela Lakes Wood, Administrative Law Judge, United States Department of Labor.

Fay M. Elliott, Vansant, Virginia, *pro se*.

Sarah M. Hurley (Howard M. Radzely, Acting 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 McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Claimant, the miner's widow, appeals, without the assistance of counsel, the Decision and Order Denying Benefits (02-BLA-5260) of Administrative Law Judge Pamela Lakes Wood 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). The administrative law judge credited the miner with sixteen years of coal mine employment, and based on the date of filing, adjudicated the claim pursuant to 20 C.F.R. Part 718.¹ Decision and Order at 5. The administrative law judge

¹ The miner died on October 11, 1997. Director's Exhibit 8. Claimant filed her claim for survivor's benefits on December 1, 2001, which was denied by the district director. Director's Exhibits 3, 42. Claimant requested a hearing and the case was

found that the evidence was insufficient to establish the existence of pneumoconiosis or that pneumoconiosis was a substantially contributing cause of the miner's death pursuant to 20 C.F.R. §§718.202(a) and 718.205(c), respectively. Accordingly, benefits were denied.

On appeal, claimant contends that the evidence is sufficient to establish death due to pneumoconiosis. The Director, Office of Workers' Compensation Programs (the Director), responds, urging affirmance of the administrative law judge's denial of benefits.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised to be whether the Decision and Order below is supported by substantial evidence. *Hodges v. Bethenergy Mines, Inc.*, 18 BLR 1-84 (1994); *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are rational, supported by substantial evidence, and 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).

To establish entitlement to survivor's benefits, 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 cause of the miner's death if it hastens the miner's death. 20 C.F.R. §718.205(c)(5); see *Bill Branch Coal Co. v. Sparks*, 213 F.3d 186, 190, 22 BLR 2-251, 2-259 (4th Cir. 2000); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992), *cert denied*, 506 U.S. 1050 (1993).

After consideration of the administrative law judge's Decision and Order, the issues on appeal, and the evidence of record, we conclude that the Decision and Order of the administrative law judge is supported by substantial evidence and that there is no reversible error contained therein. The administrative law judge rationally found that the

transferred to the Office of the Administrative Law Judges on June 24, 2002. Director's Exhibits 42, 44, 46. A hearing was held before the administrative law judge on December 11, 2002.

x-ray evidence of record was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a)(1) as all of the x-rays of record, including the readings by dually qualified physicians, were interpreted as negative for pneumoconiosis. 20 C.F.R. §718.202(a)(1); *Adkins v. Director, OWCP*, 958 F.2d 49, 6 BLR 2-61 (4th Cir. 1992); *Edmiston v. F & R Coal Co.*, 14 BLR 1-65 (1990); Director's Exhibits 1, 10, 11, 13, 34-37; Decision and Order at 5. The administrative law judge properly noted that there was no autopsy or biopsy evidence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(2). Decision and Order at 5. Additionally, since claimant filed her survivor's claim after January 30, 1982, and there is no record evidence of complicated pneumoconiosis, the administrative law judge properly found that claimant was unable to establish the existence of pneumoconiosis based on the presumptions set forth at 20 C.F.R. §718.202(a)(3). See 20 C.F.R. §§718.304, 718.305, 718.306; *Langerud v. Director, OWCP*, 9 BLR 1-101 (1986); Decision and Order at 5.

In finding that the relevant evidence of record was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), the administrative law judge correctly noted that the death certificate, listing the cause of death as respiratory failure secondary to progressive lung cancer, makes no mention of pneumoconiosis or black lung disease. This evidence thus cannot support claimant's burden at 20 C.F.R. §718.202(a)(4). The administrative law judge also found that the miner's hospital records, listing, among other conditions, respiratory insufficiency and chronic obstructive pulmonary disease with chronic cor pulmonale, were insufficient to establish the existence of pneumoconiosis as they failed to discuss the miner's coal dust exposure as a possible contributing factor to the miner's conditions. See *Island Creek Coal Co. v. Compton*, 211 F.3d 203, 213, 22 BLR 2-162, 2-177 (4th Cir. 2000); *Milburn v. Colliery Co. v. Hicks*, 138 F.2d 524, 532 n.9, 21 BLR 2-323, 2-235 n.9 (4th Cir. 1998); *Crosson v. Director, OWCP*, 6 BLR 1-809, 1-812 (1984). In addition, the administrative law judge rationally found Dr. Paratham's diagnosis of chronic bronchitis with severe airway obstruction, insufficiently definitive to establish the existence of pneumoconiosis as the physician simply opined that coal dust exposure "could have" aggravated the miner's conditions. See *Compton*, 211 F.3d at 213, 22 BLR at 2-177; *Hicks*, 138 F.2d at 532 n.9, 21 BLR at 2-235 n.9; *Justice v. Island Creek Coal Co.*, 11 BLR 1-91 (1988); Director's Exhibit 1. Finally, the administrative law judge properly found that the CT scan evidence of record was negative for pneumoconiosis. We thus affirm the administrative law judge's finding that the relevant evidence was insufficient to establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(4), as it is supported by substantial evidence and in accordance with law. See *Compton*, 211 F.3d at 213, 22 BLR at 2-177.

Since the administrative law judge rationally concluded that the evidence of record was insufficient to establish the existence of pneumoconiosis at 20 C.F.R. §718.202(a), an essential element of entitlement, *Trumbo*, 17 BLR at 1-85, we need not address the

issue of death due to pneumoconiosis. We thus affirm the administrative law judge's denial of benefits in this survivor's claim.

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge