

BRB No. 07-0308 BLA

D.B.)
(Widow of C.B.))
)
Claimant-Respondent)
)
v.)
)
MACK COAL COMPANY,) DATE ISSUED: 12/31/2007
INCORPORATED)
)
and)
)
WEST VIRGINIA COAL WORKERS')
PNEUMOCONIOSIS FUND)
)
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 of Alan L. Bergstrom, Administrative Law Judge, United States Department of Labor.

S.F. Raymond Smith (Rundle and Rundle, L.C.), Pineville, West Virginia, for claimant.

Christopher M. Hunter (Jackson Kelly PLLC), Charleston, West Virginia, for employer.

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

PER CURIAM:

Employer appeals the Decision and Order (05-BLA-5850) of Administrative Law Judge Alan L. Bergstrom awarding benefits on a 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). This case involves a survivor's claim filed on February 12, 2004.¹ The administrative law judge found that the evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a). The administrative law judge also found that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge awarded benefits.

On appeal, employer challenges the administrative law judge's finding that the evidence established that the miner's death was due to pneumoconiosis at 20 C.F.R. §718.205(c). Claimant² responds, urging affirmance of the administrative law judge's award of benefits. The Director, Office of Workers' Compensation Programs, has declined to participate in this appeal.

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 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).

Employer argues that the administrative law judge erred in finding that the evidence established that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Because this survivor's claim was filed after January 1, 1982, claimant must establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).³ See 20 C.F.R. §§718.1, 718.202, 718.203, 718.205(c); *Neeley v.*

¹ The miner previously filed a claim for benefits on September 24, 1987. Director's Exhibit 11. The miner was awarded benefits on May 12, 1988. *Id.*

² Claimant is the widow of the deceased miner, who died on January 8, 2004. Director's Exhibit 11.

³ Section 718.205(c) provides that death will be considered to be due to pneumoconiosis if any of the following criteria is 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 of pneumoconiosis, or

Director, OWCP, 11 BLR 1-85 (1988). A miner's 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). 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)(5); *Shuff v. Cedar Coal Co.*, 967 F.2d 977, 16 BLR 2-90 (4th Cir. 1992).

Dr. Greenwald completed the miner's death certificate. Dr. Greenwald attributed the miner's death to chronic obstructive pulmonary disease due to "black lung disease." Director's Exhibit 11. Drs. Fino and Hippensteel opined that the miner's death was not caused by, contributed to, or hastened by pneumoconiosis. Director's Exhibit 5; Employer's Exhibits 2-4.

In his consideration of whether the evidence established that the miner's death was due to pneumoconiosis, the administrative law judge accorded no weight to the opinions of Drs. Fino and Hippensteel regarding the cause of the miner's death because they "did not examine the medical records that l[ed] to the [miner] being classified as totally disabled under the Act nearly two decades prior to his death." Decision and Order at 15. The administrative law judge found that "[t]he cause of death reported by the attending hospice physician [Dr. Jeremiah] and the physician [Dr. Greenwald] on the death certificate [is] consistent with the course of medical care and progress of the pulmonary disease process fully documented in . . . the hospice medical records." *Id.* at 16. Because the opinions of Drs. Jeremiah and Greenwald were not contradicted by any other credible evidence, the administrative law judge found that the miner's "progressive and irreversible pulmonary disease (pneumoconiosis) hastened and caused [his] death." *Id.*

We agree with employer that the administrative law judge erred in relying upon the opinions of Drs. Greenwald and Jeremiah to support a finding that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The miner's death certificate is the only evidence of record supportive of a finding of death due to

(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).

pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁴ Dr. Greenwald, however, provided no explanation for his findings on the miner’s death certificate. *See* Director’s Exhibit 11. The United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that a physician’s statement that pneumoconiosis hastened a miner’s death, without any additional support or explanation of that conclusion, is insufficient as a basis for such a finding. *Bill Branch Coal Corp. v. Sparks*, 213 F.3d 186, 192, 22 BLR 2-251, 2-264 (4th Cir. 2000). Consequently, we hold, as a matter of law, that the death certificate is insufficient to carry claimant’s burden of proof since it is unreasoned and is not supported by competent medical evidence linking the miner’s death to his pneumoconiosis. *See Sparks*, 213 F.3d at 192, 22 BLR at 2-264; *U.S. Steel Mining Co. v. Director, OWCP [Jarrell]*, 187 F.3d 384, 21 BLR 2-639 (4th Cir. 1999); *see also Addison v. Director, OWCP*, 11 BLR 1-68 (1988). We, therefore, reverse the administrative law judge’s finding that the evidence established that the miner’s death was due to pneumoconiosis at 20 C.F.R. §718.205(c).⁵

⁴ Although Dr. Jeremiah diagnosed “black lung” in hospice treatment records completed after the miner’s death, Dr. Jeremiah did not address whether the miner’s “black lung” caused or hastened his death. Director’s Exhibit 16.

⁵ In light of our decision to reverse the administrative law judge’s award of benefits, we decline to address employer’s arguments with regard to his consideration of the opinions of Drs. Fino and Hippensteel. *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order awarding benefits is reversed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge