

BRB No. 04-0568 BLA

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| MELBA J. ODOM |) | |
| (Widow of LONNIE ODOM, Sr.) |) | |
| |) | |
| Claimant-Petitioner |) | |
| |) | |
| v. |) | |
| |) | |
| PEABODY COAL COMPANY |) | |
| |) | |
| Employer-Respondent |) | |
| |) | |
| |) | |
| DIRECTOR, OFFICE OF WORKERS' |) | DATE ISSUED: 02/24/2005 |
| COMPENSATION PROGRAMS, UNITED |) | |
| STATES DEPARTMENT OF LABOR |) | |
| |) | |
| Party-in-Interest |) | DECISION and ORDER |

Appeal of the Decision and Order – Denial of Benefits of Robert L. Hillyard, Administrative Law Judge, United States Department of Labor.

Melba J. Odom, Sturgis, Kentucky, *pro se*.

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

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

PER CURIAM:

Claimant, the miner's widow, appeals, without the assistance of counsel, the Decision and Order – Denial of Benefits (03-BLA-5827) of Administrative Law Judge Robert L. Hillyard rendered on a survivor's claim¹ filed pursuant to the provisions of

¹ Claimant filed the instant claim on February 13, 2002. Director's Exhibit 3. The miner's death certificate indicates that he died on January 1, 2002 due to probable acute myocardial infarction. Director's Exhibit 10. By Decision and Order dated September

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 found both that the miner had twenty-three years of coal mine employment and that employer had stipulated to the existence of pneumoconiosis arising out of coal mine employment. Decision and Order at 3 n.3; *see* Hearing Transcript at 11. Considering the claim on its merits, the administrative law judge found that the evidence of record was insufficient to meet claimant's burden to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c). Accordingly, benefits were denied. On appeal, claimant generally challenges the administrative law judge's finding that the evidence was insufficient to establish death due to pneumoconiosis. Employer responds, and seeks affirmance of the decision below. The Director, Office of Workers' Compensation Programs, has not filed a brief in the appeal.

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 1-85 (1994); *McFall v. Jewell Ridge Coal Co.*, 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).

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; *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 irrebuttable presumption set forth at 20 C.F.R. §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); *Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995); *Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993).

After consideration of the administrative law judge's Decision and Order, the issue on appeal and the evidence of record, we affirm the administrative law judge's denial of

11, 1997, Administrative Law Judge Mollie W. Neal awarded benefits in the miner's claim. *See* Director's Exhibit 1.

survivor's benefits based on the insufficiency of the evidence to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c).² The administrative law judge correctly found that the miner's death certificate contains no reference to pneumoconiosis, legal or clinical, and thus cannot support a finding of death due to pneumoconiosis at 20 C.F.R. §718.205(c). Decision and Order at 7; *see* Director's Exhibit 10. There is no other evidence supportive of claimant's burden at 20 C.F.R. §718.205(c).³ We, therefore, affirm the administrative law judge's finding that the evidence was insufficient to meet claimant's burden to establish death due to pneumoconiosis at 20 C.F.R. §718.205(c). 20 C.F.R. §718.205(c). We thus affirm the administrative law judge's denial of benefits in the instant survivor's claim.

² Claimant asserts that the administrative law judge did not give enough consideration to the opinions rendered by the miner's treating physicians, referring to the opinions by Drs. Houser, Sheth, and Murrell. Director's Exhibit 13; Claimant's Exhibits 1, 2. Claimant's assertion lacks merit. The United States Court of Appeals for the Sixth Circuit, within whose jurisdiction this case arises, held, in *Eastover Mining Co. v. Williams*, 338 F.3d 501, 22 BLR 2-625 (6th Cir. 2003), that there is no rule requiring deference to the opinion of a miner's treating physician in black lung claims; rather, "the opinions of treating physicians get the deference they deserve based on their power to persuade." *Williams*, 338 F.3d at 512, 513, 22 BLR at 2-644-47. Moreover, the administrative law judge in the instant case correctly noted that Drs. Houser, Sheth, and Murrell offered no opinion regarding the cause of the miner's death. Decision and Order at 4.

³ The administrative law judge correctly noted that, other than the report of Dr. Branscomb, no medical report contains an opinion regarding the cause of the miner's death. Decision and Order at 4-6. By consulting report dated November 10, 2003, Dr. Branscomb accepted that the miner had pneumoconiosis and found that coal workers' pneumoconiosis contributed to his pulmonary impairment. Employer's Exhibit 1. Dr. Branscomb opined, however, that "these processes are nonetheless not sufficiently severe or progressive to have influenced or contributed to the death from coronary disease." *Id.*

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

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge