

BRB No. 06-0636 BLA

GLADYS NANTZ)
(Widow of VIRGIL NANTZ))
)
 Claimant-Petitioner)
) DATE ISSUED: 02/15/2007
 v.)
)
 DIRECTOR, OFFICE OF WORKERS')
 COMPENSATION PROGRAMS, UNITED)
 STATES DEPARTMENT OF LABOR)
)
 Respondent) DECISION and ORDER

Appeal of the Decision and Order of Joseph E. Kane, Administrative Law Judge, United States Department of Labor.

Edmond Collett (Edmond Collett, P.S.C.), Hyden, Kentucky, for claimant.

Jeffrey S. Goldberg (Jonathan L. Snare, Acting Solicitor of Labor; Allen H. Feldman, 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, McGRANERY and HALL, Administrative Appeals Judges.

PER CURIAM:

Claimant¹ appeals the Decision and Order (04-BLA-6105) of Administrative Law Judge Joseph E. Kane denying 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

¹ Claimant is the surviving spouse of the deceased miner, who died on July 20, 1998. Director's Exhibit 8.

et seq. (the Act). This case involves a survivor's claim filed on June 7, 2002.² After crediting the miner with seven years of coal mine employment, the administrative law judge found that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1)-(4). The administrative law judge also found that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, the administrative law judge denied benefits.

On appeal, claimant contends that the administrative law judge erred in finding that the evidence did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). Claimant also argues that the administrative law judge erred in finding that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The Director, Office of Workers' Compensation Programs (the Director), has filed a response brief, arguing that claimant's brief fails to provide a proper basis for review. The Director also responds in support of the administrative law judge's denial of benefits.

The Board must affirm the findings 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).

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. Director*,

² The miner filed two claims for benefits. The first, filed on October 19, 1978, was finally denied on April 8, 1986. The second, filed on May 21, 1991, was withdrawn. Director's Exhibit 1.

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
- (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

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); *see Brown v. Rock Creek Mining Co.*, 996 F.2d 812, 17 BLR 2-135 (6th Cir. 1993); *see also Griffith v. Director, OWCP*, 49 F.3d 184, 19 BLR 2-111 (6th Cir. 1995).

Claimant contends generally that she met her burden to prove that the miner's death was due to pneumoconiosis. Claimant's Brief at 5. We agree with the Director that claimant's statements neither raise any substantive issue nor identify any specific error on the part of the administrative law judge in determining that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). We therefore affirm the administrative law judge's finding that the evidence did not establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c).⁴ *See* 20 C.F.R. §§802.211(b), 802.301(a); *Cox v. Benefits Review Board*, 91 F.2d 445, 9 BLR 2-46 (6th Cir. 1986); *Sarf v. Director, OWCP*, 10 BLR 1-119 (1987).

In light of our affirmance of the administrative law judge's finding that claimant failed to establish that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c), we affirm the administrative law judge's denial of benefits under 20 C.F.R. Part 718. Consequently, we need not address claimant's contentions regarding the

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 We further note that the administrative law judge properly found that there is no evidence in the record supportive of a finding that the miner's death was due to pneumoconiosis. Wayne E. Bowling, a deputy coroner, completed the miner's death certificate. Mr. Bowling attributed the miner's death to (1) CVA; (2) hypertensive heart failure; and (3) diabetes mellitus. Director's Exhibit 8. Consequently, the miner's death certificate does not support a finding of death due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). The administrative law judge correctly found that there is no other evidence of record that addresses the cause of the miner's death. Decision and Order at 10. Moreover, because there is no evidence of complicated pneumoconiosis in the record, the administrative law judge properly found that claimant could not establish entitlement based on the irrebuttable presumption at 20 C.F.R. §718.304. *See* 20 C.F.R. 718.205(c)(3); Decision and Order at 8.

administrative law judge's findings that claimant did not establish the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a)(1) and (a)(4). *See Larioni v. Director, OWCP*, 6 BLR 1-1276 (1984).

Accordingly, the administrative law judge's Decision and Order denying benefits is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge

BETTY JEAN HALL
Administrative Appeals Judge