

BRB No. 07-0520 BLA

K.J.R. )  
(Widow of J.R.) )  
 )  
Claimant-Petitioner )  
 )  
v. )  
 )  
DIRECTOR, OFFICE OF WORKERS' ) DATE ISSUED: 02/26/2008  
COMPENSATION PROGRAMS, UNITED )  
STATES DEPARTMENT OF LABOR )  
 )  
Respondent ) DECISION and ORDER

Appeal of the Decision and Order – Denying Benefits of Paul H. Teitler,  
Administrative Law Judge, United States Department of Labor.

K.J.R., Tower City, Pennsylvania, *pro se*.

Michelle S. Gerdano (Gregory F. Jacob, 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: SMITH, HALL and BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant,<sup>1</sup> without the assistance of counsel, appeals the Decision and Order (2006-BLA-05304) of Administrative Law Judge Paul H. Teitler (the administrative law judge) denying benefits 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 twelve years of qualifying coal mine employment and adjudicated this claim pursuant to the regulations contained in 20 C.F.R. Part 718. The administrative law judge found that claimant had

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<sup>1</sup> Claimant is the widow of the miner who died on February 13, 2001. Claimant filed a survivor's claim for benefits on April 6, 2005. Director's Exhibits 2, 7.

failed to establish either the existence of pneumoconiosis at 20 C.F.R. §718.202, or that the miner's death was due to pneumoconiosis pursuant to 20 C.F.R. §718.205(c). Accordingly, benefits were denied.

On appeal, claimant generally challenges the administrative law judge's denial of benefits. The Director, Office of Workers' Compensation Programs (The Director), has submitted a response urging affirmance.

In an appeal filed by a claimant without the assistance of counsel, the Board considers the issue raised on appeal to be whether the Decision and Order below is supported by substantial evidence. *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.<sup>2</sup> 33 U.S.C. §921(b)(3), as incorporated into the Act by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

In order to establish entitlement to survivor's benefits in a claim filed on or after January 1, 1982, claimant must establish that the miner had pneumoconiosis arising out of coal mine employment, and that the miner's death was due to pneumoconiosis. 20 C.F.R. §§718.1, 718.202, 718.203, 718.205, 718.304; *Trumbo v. Reading Anthracite Co.*, 17 BLR 1-85 (1993); *Haduck v. Director, OWCP*, 14 BLR 1-29 (1990); *Neeley v. Director, OWCP*, 11 BLR 1-85 (1988). The miner's death will be considered due to pneumoconiosis if pneumoconiosis was the cause of the miner's death, if it was a substantially contributing cause or factor leading to the miner's death, if death was caused by complications of pneumoconiosis, or if the presumption relating to complicated pneumoconiosis, set forth at 20 C.F.R. §718.304, is applicable. 20 C.F.R. §718.205(c)(1)-(3). Pneumoconiosis is a "substantially contributing cause" of death if it hastened the miner's death. 20 C.F.R. §718.205(c)(5); *Lukosevicz v. Director, OWCP*, 888 F.2d 1001, 13 BLR 2-100 (3d Cir. 1989).

After consideration of the administrative law judge's Decision and Order and the evidence of record, we conclude that the Decision and Order is supported by substantial evidence, consistent with applicable law, and must be affirmed.

In his consideration of the evidence relevant to the cause of the miner's death pursuant to Section 718.205(c), the administrative law judge determined that the miner's death certificate attributed the miner's death to metastatic lung cancer, and that a

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<sup>2</sup> The law of the United States Court of Appeals for the Third Circuit is applicable, as the miner was employed in the coal mine industry in Pennsylvania. See *Shupe v. Director, OWCP*, 12 BLR 1-200 (1989) (*en banc*); Director's Exhibits 3, 4.

pulmonary specialist, Dr. Sherman, reviewed the medical records and concluded that the miner's death was due solely to anaplastic small cell carcinoma.<sup>3</sup> Decision and Order at 5; Director's Exhibits 7, 11. The administrative law judge accurately determined that the only evidence of record that would support a finding of death due to pneumoconiosis was a letter from Dr. Moylan dated August 6, 2004.<sup>4</sup> Director's Exhibit 8. However, the administrative law judge permissibly found that Dr. Moylan's opinion was conclusory, and was neither well reasoned nor well documented. Decision and Order at 5; *see Lango v. Director, OWCP*, 104 F.3d 573, 21 BLR 2-12, 2-20 (3d Cir. 1997). Thus, the administrative law judge properly found that there was no persuasive and credible medical evidence to establish that pneumoconiosis was a "substantially contributing cause or factor leading to the miner's death." Decision and Order at 5; *Lukosevich*, 888 F.2d 1001, 13 BLR 2-100; *see also Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989)(en banc); *Lucostic v. United States Steel Corp.*, 8 BLR 1-46 (1985). The administrative law judge's findings at Section 718.205(c) are supported by substantial evidence, and are therefore affirmed.

Because claimant failed to establish death due to pneumoconiosis at Section 718.205(c), an essential element of entitlement to benefits in a survivor's claim, we affirm the administrative law judge's denial of benefits and need not reach the issue of the existence of pneumoconiosis. *See Trumbo*, 17 BLR 1-85.

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<sup>3</sup> Dr. Sherman, a pulmonary specialist, reviewed the miner's death certificate, hospitalization records, and Dr. Moylan's letter, and found that the miner had died due to metastatic lung cancer. Dr. Sherman also found that there was no evidence of any underlying pulmonary disease from pneumoconiosis, or any other cause that would be severe enough to contribute to the miner's death. Additionally, Dr. Sherman asserted that Dr. Moylan's letter provided no documentation to support his assertion that pneumoconiosis was present, and that he himself had found no medical literature to support any causal connection between coal mine dust exposure and lung cancer. Dr. Sherman concluded that miner's anaplastic small cell carcinoma was a rapidly growing tumor that caused the miner's imminent death. Director's Exhibit 11.

<sup>4</sup> Dr. Moylan's opinion reads in full: "Several years ago, I did care for Mr. [J.R.], a most unfortunate gentleman who had Stage IV small cell anaplastic lung cancer. His past medical history was significant for exposure to coal dust while working in the Anthracite Industry during his adult life. I have reviewed his pertinent medical records surrounding that illness which proved to be fatal. In my medical judgment, the compromise of his lung function related to the coal dust exposure was a likely contributing factor to his demise from a respiratory death." Director's Exhibit 8. Dr. Moylan provided no supporting documentation.

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

SO ORDERED.

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ROY P. SMITH  
Administrative Appeals Judge

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BETTY JEAN HALL  
Administrative Appeals Judge

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JUDITH S. BOGGS  
Administrative Appeals Judge